Terrorism and anti-terror legislation - the terrorised legislator? A comparison of counter-terrorism legislation and its implications on human rights in the legal systems of the United Kingdom, Spain, Germany, and France

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Part I

Conceptualisation of Terrorism from a Historical Perspective

The present Part will give an account of movements identified by others as terrorists, throughout world's history. Because of this selection criterion, some fairly ugly incidents in history (e.g. the medieval persecution of the Cathars in France) have not been discussed. Since the terrorism we face nowadays is not restricted to one national territory, but occurs internationally, an international view is required. We shall see that terrorism has had different meanings at different times and places, that different methods were used, different ideas lay behind it, and different purposes were pursued. Taking account of these examples, an attempt to conceptualise terrorism will be made. Further, the thesis that the preservation of human rights is crucial for the fight against terrorism will be argued.

The historical overview will be ordered chronologically / systematically and consists of five chapters: examples of terrorism before the term itself emerged (Chapter 1); terrorist movements after the French Revolution (Chapter 2); terrorism committed by the State (Chapter 3); terrorist movements with direct impact on the legislation of the UK, Spain, Germany, and France (Chapter 4); and a conclusion (Chapter 5).

In the first Chapter the characteristics of the respective groups are discussed, in order to find common or divergent features of movements that have received the name of 'terrorism' *ex post*. In Chapter 2 those groups that were generally called terrorists, at a certain time, in a certain region, will be examined. Here the purpose is to learn lessons as to the circumstances that brought about or stimulated terrorism, its goals, as well as its political instrumental use. Chapter 3 will explore a special type of terrorism: terrorism committed or supported by the *state*. The main aim of this part will be to compare and to examine the differences between terrorism by state actors as opposed to terrorism by non-state actors. Chapter 4 will outline mainly those terrorist groups that have influenced the legislation of the four countries subject to this study. As in Section 2, the motives and characteristics of terrorists will be analysed, as well as the political contexts, the states' reactions and the consequences of these reactions. Besides the regional types of terrorism that emerged in the late twentieth century in the four countries studied, international

Islamic terrorism will be discussed in this context, as this currently presents the greatest factor affecting Western European counter-terrorism legislation. In the concluding Chapter 5, I shall summarise the lessons learnt from this investigation: An attempt will be made to identify the common features of the "terrorist" groups examined, and their typical characteristics and general motivations will be analysed. Against this background, a potential "catch-all" definition of terrorism and its pitfalls will be discussed. In addition, the role of human rights in terrorism and counter-terrorism will be discussed. Historical experience may, perhaps, indicate whether terrorism can be successfully fought by reducing or even suspending human rights.

1. Examples of terrorism before 1793

Let us start by examining a number of different groups or incidents that have either contributed to today's ideas about terrorism or have been classified, *a posteriori*, from today's perspective, as terrorists.

1.1. Antiquity – terrorist behaviour in the Bible?

Some claim that the Book of Numbers (Numbers 25:1, 6-8) already contains signs of (religious) terrorism.[1] At the passage in question, sexual relations between the people of Israel and the people of Moab are castigated by Phineas, who would pierce the Israelite and the foreign woman from Moab "through the belly".

The behaviour described above is characterised by two elements: violence (or corporal punishment) applied with a religious purpose. However, to classify such a biblical citation as an example of terrorism would be going too far. If we agreed to classify such conduct as terrorism, criminal law of the Middle Ages would carry this name also.[2] Thus, the execution of sentences under the *Sachsenspiegel* would be an early example of (State) Terrorism. Such a broad interpretation of terrorism is therefore questionable.[3]

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[1] Cited by Martin (2003), at 4.

[2] See, for instance, the *Sachsenspiegel* of the thirteenth century, picture No. 87, where Church robbery was punished with breaking on the wheel: Zweites Buch Landrecht, Artikel 13 und 14 (Registerangabe: Artikel 12 und 13): „*Alle mordere unde di den phlug rouben oder mulen oder kirchen oder kirchove, unde vorre there unde mortburnere oder di ire botschaft werbin czu irme vrumen, di sal man alle radebrechen.*", Wolfenbüttel and Braunschweig/Wolfenbüttel (2004)(online database), Bild # 87, Folio 29r.

[3] But see also the following passages of the bible, which Siddiqi refers to as 'terrorism':
"Now therefore, kill every male among the little ones, and kill every woman who has known man intimately. But all the girls who have not known man intimately, spare for yourselves" (Numbers 31:17-18). "When the LORD your God brings you into the land where you are entering to possess it, and clears away many nations before you, the Hittites and the Girgashites and the Amorites and the Canaanites and the Perizzites and the Hivites and the Jebusites, seven nations greater and stronger than you. And when the LORD your God delivers them before you and you defeat them, then you shall utterly destroy them. You shall make no covenant with them and show no favor to them" (Deuteronomy 7:1-2)."When you approach a city to fight

Another biblical passage sometimes referred to in relation to terrorism is the conquest of Canaan, as described in Joshua (Joshua 11:1, 4-8, 10-14).[4] Here the author of Joshua narrates how Joshua fought with the Israelite people Hazor. "The Lord handed them over to Israel", meaning that the Israelites "struck them down with the edge of the sword, utterly destroying them", and that "they did not leave any who breathed". However, this scene might rather qualify as a religiously-motivated war than terrorism.[5]

1.2. The roman age

Terrorism is sometimes associated with regicide (killing of the king) or tyrannicide (killing of the tyrant).[6] Under such premises, the most prominent example is perhaps the assassination of Gaius Julius Caesar on the Ides of March (March 15) 44 B. C. by his opponents in the Senate.[7] The senators feared that Caesar might endanger the Republic and become king. Therefore they plotted against him, and invited him to a meeting of the senate where they stabbed him to death. The senators morally justified their act on the grounds that they committed tyrannicide, not murder, and were preserving the Republic from Caesar's alleged monarchical ambitions.[8]

However, it is also questionable whether such actions deserve the label of terrorism. As we shall see, the plot against Julius Caesar differs from most other terrorist activities in that it did not aim at the terrorisation of people, i.e. the creation of fear in parts or the whole of a population. It was a unique event, no other violent acts followed. The assassination of Caesar was not part of a long-term strategy. The conspirators did not engage in systematic and repetitive acts of violence in order to achieve their goal. The goal was indeed political, the method violent. But are these two elements sufficient to define terrorism? A deeper look into what scholars have classified as terrorism seems necessary.

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[4] Martin (2003).

[5] Considering the definition which Alex P. Schmid proposed to the United Nations Crime Branch in 1992, that terrorism was the 'peace-time equivalent of war crimes', the terms 'war' and 'terrorism' would exclude each other on a level of quantity, and define each other at the same time: we would assume that terrorism ends precisely where war begins.

[6] Ford (1985); Chaliand and Blin (2004f), at 87 et seqq.

[7] See e.g. Martin (2003), at 4; Williams and Head (2006), at 40-44.

[8] See also Shakespeare's drama (Julius Caesar) relating to this incident where one of the conspirators, Cinna, after having stabbed Caesar to death, cries out: "Liberty! Freedom! Tyranny is dead!" (Act III, Scene 1, Shakespeare (1997), at 825).

against it, you shall offer it terms of peace. If it agrees to make peace with you and opens to you, then all the people who are found in it shall become your forced labor and shall serve you. However, if it does not make peace with you, but makes war against you, then you shall besiege it. When the LORD your God gives it into your hand, you shall strike all the men in it with the edge of the sword. Only the women and the children and the animals and all that is in the city, all its spoil, you shall take as booty for yourself; and you shall use the spoil of your enemies which the LORD your God has given you... Only in the cities of these peoples that the LORD your God is giving you as an inheritance, you shall not leave alive anything that breathes" (Deuteronomy 20:10-17). See Siddiqi (2007). (http://www.islam101.com/terror/bibleT.htm (visited on 08-5-07-07).

1.3.   Zealots (A. D. 66-70)

One of the first groups we know of which used systematic terror were the *sicarii*[9] (named after their preferred use of *sica*, or short, curved daggers)[10]. They belonged to a Jewish group known as the Zealots.[11] The Zealots used guerrilla warfare and destroyed symbolic property.[12] They had the religious motive of imposing a particularly severe form of religious practice (linked with the idea of purity), and the political goal of freeing Palestine from Roman rule.

In A. D. 6 they revolted against the census ordered by the Roman authorities that year for the entire province of Syria. They launched a campaign of assassination which not only targeted the occupying Roman citizens, but also Jews who sympathised with Rome.[13] During the Jewish War (A. D. 66 – 70), they assassinated several political and religious opponents.[14] They attacked priests and moneylenders, and torched archives and palaces in Jerusalem. According to the first century Jewish historian Josephus, they also contributed to the destruction of the second Temple around A. D. 70, and thus to the Diaspora of the Jewish people.[15] The Zealots were eventually besieged in the citadel at Masada, where the Jewish leaders and their families committed mass suicide.[16]

1.4.   Assassins (A. D. 1090-1256)

The group of the assassins (*Heyssessini*)[17] has its roots in Iran and Syria as a Muslim movement in 632. The death of the Prophet Mohammed led to a disagreement as to how his successor, a caliph (literally: "deputy of the Prophet"),[18] should be chosen. His first successor, Ali, who was recognised formally for his hereditary claims as cousin, son-in-law, and adopted son of the prophet, was assassinated in 661.[19] His death bred a crisis within the Muslim movement which caused a split into different currents, some of which still exist today (such as the Shi'ite and the Sunni Muslims, the former named after their party, *Shi'atu Ali*, "party of Ali", or simply *Shi'a*). In the ninth century another division separated the orthodox Shi'a – the majority – from the Ismailis.[20] In secret, the Ismailis formed a sect which 'in cohesion and organisation, in both intellectual and emotional

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[9] Chaliand and Blin (2004g)at 59.

[10] Martin (2003), at 5.

[11] From the Greek *zelos,* which means ardour or strong spirit.

[12] Martin (2003), at 5.

[13] Ford (1985), at 91.

[14] Chaliand and Blin (2004g), at 59 et seqq.

[15] Harzenski (2003), at 140 fn. 17; Chaliand and Blin (2004c), at 13.

[16] Ford (1985), at 91.

[17] Cited by Lewis (1967), at 2. The term *assassin*, which means murderer in various languages, derived itself from the name of this sect. Silvestre de Sacy's showed conclusively that the word came from the Arabic *hashish*, originally meaning herbage (dry herbage, fodder). Later it was used in particular to describe Indian hemp, *cannabis sativa.* Lewis (1967), at 12.

[18] Ford (1985), at 98.

[19] Lewis (1967), at 21.

[20] The latter group had their name from Ismail, who was the elder son of the sixth Imam and was passed over for the succession in favour of a younger son (Ibid. at 26).

appeal, far outstripped all its rivals'.[21] Distinguished theologians created a system of religious doctrine on a high philosophical level where the Imam was central. In the eleventh century the Islamic world was repeatedly invaded. The most important invasion, that of the Seljuq Turks, created a new military Empire stretching from Central Asia to the Mediterranean. The Turks brought strength and order, but at a cost of higher military expenditure, firmer control of public life, and stricter conformity of thought.[22] The Ismaili looked for a new strategy of revolt: Hasn-i Sabbah, a 'revolutionary of genius', founded the Order of the Assassins.[23] Hasan built a series of strong mountain fortresses which he believed could be made invincible with the commitment of devoted men. In 1090 he took the Seljuk stronghold of Alamut in northern Persia, and thus conquered his first castle.[24] His strategy consisted of carrying the message by means of Ismaili *da'is* (literally "summoners") throughout western Asia, and systematically terrorising the unconverted population by killing selected enemies. They tried to convert the *muezzin* of one village. When he resisted, they assassinated him. As the vizier, Nizam ul-Mulk, intended to respond to that attack by killing Hasan, the latter ordered the assassination of the vizier. After this had been accomplished in 1092 by the first team of assassins,[25] Hasan declared the "death of this demon" as "the beginning of happiness".[26] From that moment on, assassination became the symbol and the most common *modus operandi* of the assassins. They targeted not only powerful individuals of political relevance, but also crusaders. The dagger was the unique instrument they used, and they committed most of their assassinations during prayers or marches.[27]

After the thirteenth century there are no further authenticated murders by Assassins reported. In the sixteenth century, after the Ottoman conquest of Syria, qila'al-da'wa – castles of the mission – were reported as being inhabited by followers of a peculiar sect, only distinguished by the fact that they paid a special tax. They reappear in historical records in the early nineteenth century, when they were reported to be in conflict with their rulers, their neighbours, and each other. From the mid-nineteenth century they settled down as a peaceful rural population. At the present time they number some 50,000.[28]

1.5. Indian Thugs

Another group that has been classified as terrorists by some are the Thugs of India.[29] The Thugee sect was a cult devoted to the Hindu goddess Kali, the 'goddess of destruction', requiring its followers to kill and subsequently rob travellers. To this end, they approached

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[21] Ibid. at 27.
[22] Ibid. at 36.
[23] Lewis (1967) at 37.
[24] Ford (1985)at 101.
[25] Ibid. at 102.
[26] Chaliand and Blin (2004g), at 71 et seqq.
[27] Ibid. at 76.
[28] Lewis (1967), at 124.
[29] Information on this group is taken from Dash (2006).

travellers in a friendly manner, joined them on their journeys, sometimes for weeks, until full trust between them was established. Subsequently they lured them to a remote place where they played loud music to drown suspicious noises. At the same time, they strangled their victim with a "holy" cloth. Afterwards they looted the corpses and kept their belongings.

Traces of their actions go back to the Muslim conquest of India in the thirteenth century. Their actions, and the scale of them, started to be discovered only in the nineteenth century, when India was ruled by the British. In the 1830s the British soldier William Henry Sleeman started a campaign against the Thugee, and eventually suppressed them.

Estimates of how many died by their hands vary greatly: while according to some sources, a few hundred travellers were killed per year, some Thugs when arrested claimed to have killed about twenty persons daily. Others calculated an average of up to 40,000 per year, which would amount to twenty million victims in total, assuming that the Thugs really started their activity in the thirteenth century.

1.6. Gunpowder Plot (1605)

Already in the reign of Elizabeth I, Catholics had been persecuted for their religious beliefs in England. When Elizabeth's successor, James I, gained power, Catholics hoped in vain that the policy towards their religion would change. Persecutions continued, and a group of thirteen Catholics, led by Robert Catesby, then attempted to change this situation by force: they plotted to kill King James, his family, and as many of the Protestant aristocracy as possible. To this end, they planted 36 barrels of gunpowder (more than 800 kg) in a cellar located just under the Houses of Parliament. The amount was sufficient not only to destroy the Parliament's building, but also to blow out windows within a radius of 1 km. However, a letter from one of the conspirators had warned Lord Monteagle, and hence the plot was discovered. Guido (Guy) Fawkes, an explosives expert, was arrested and proudly announced their plans. Only when subjected to torture did he he denounc his accomplices. Since then the Gunpowder Plot has been celebrated every year on 5 November, or Bonfire night. In remembrance of the event, people let off fireworks and burn an effigy of Guy Fawkes.[30]

1.7. Summary

We have seen that the first traces of terrorism had either a religious (see sections on the Bible, the assassins, and the thugs), or a political (plot against Caesar, Gunpowder plot) background, or a mixture of both (zealots). The first biblical examples consist of violence, motivated by religion. No other defining element can be distinguished here. The murder of

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[30] Information taken from Williams and Head (2006), at 72-80.

Caesar and the gunpowder plot wer conspiracies against a political ruler by his political opponents. Characteristic is the organisation and preparation of the action in a group, and the conviction of the actors that they act 'rightfully', for a 'good purpose'. Neither the conspirators against Caesar nor those who conspired against King James used terrorism as a tactic to frighten parts or the whole of a population. Similarly, the goal of the Indian thugs was not to spread fear, but rather to remain unrecognised by the masses, in order to be able to continue their actions. The zealots and the assassins, on the other hand, committed assassinations in order to intimidate the population, for the ultimate purpose of gaining more adherents and thereby greater power. The elements evident in these two latter groups – religiously motivated violence, aiming at terrorising people, and organisation in a group – are the same as the religious Islamic terrorism we experience today, although the organisational level of today's terrorists may differ, depending on the specific splinter group. With respect to the gunpowder plot, it is a precedent for today's terrorism insofar as explosives were used for the first time in an action against the state, a method that would be repeated frequently by later terrorist or potentially terrorist actors.

2. Terrorist movements after the French Revolution

2.1. Robespierre's reign of terror (1793-4)

It was during the French Revolution when the word *terrorism* was allegedly invented. It derived from the term 'terror'. This word was used when describing the regime under the Jacobins in 1793-4. The first meaning of the word 'terrorism' as recorded by the *Académie Française* in 1798 was 'system or rule of terror'.[31]

Following the French Revolution of 1789, internal conflicts presented a real danger to the newly installed Republic. Maximilien (de) Robespierre had been appointed public prosecutor in February 1792, and soon afterwards became the "uncrowned king of Paris".[32] In a climate of tensions, insecurity and civil unrest, Robespierre proposed to install a Committee of Public Safety, and an attached tribunal, to identify and eliminate potential traitors to the system. To achieve this, the legislative and the executive branch were temporarily restricted. Additionally, Robespierre prompted the French to set up a ministry of information and propaganda to divide and weaken the enemies of the Republic. Thus Robespierre "blueprinted the machinery of terror".[33] Counter-revolutionaries were indeed seen as a real threat to the new-born Republic. From the leaders' point of view, pre-

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[31] ARTFL Project (2007)Roberts (2005). The German term *terror* originates, etymologically, also from the French *terreur*, and was first used in 1838 by Heyse. See Köbler (1995), at 405: „**Terror**, M., >Terror, Schrecken<, M. 19. Jh.(Heyse 1838) Lw. (frz. terreur [Bodin], M., >Schrecken<,) lat. terror, M., >Schrekken<, zu lat. terrere, V., >erschrecken<, häufiger seit A. 20. Jh., vgl. Geschichtliche Grundbegriffe.".

[32] Carr (1972), at 32.

[33] Ibid. at 35.

emptive, official terror was the only means against the insurgencies. In steady fear of being assassinated by political opponents, the Committee of Public Safety proposed a drastic response to rebellion: the Law of Suspects of 17 September 1793, which ordered the arrest of a group of people declared as 'suspects', among them nobles, parents of emigrants, dismissed functionaries, and others. From April until July 1794 the "high tide of Terror"[34] ruled France: another law was enacted: the Decree of 10 June 1794[35] that allowed the number of cases before the tribunal to be doubled. Executions rose from 346 in May to 689 in June and 936 in July. Under the leadership of Robespierre the French Revolutionary Committee of Public Safety undertook purges of real and suspected enemies of the revolution, leading to approximately 300,000 arbitrary arrests and 17,000 executions.[36] The guillotine as an "enlightened and civilised tool of revolutionary justice" was institutionalised by the revolutionaries.[37] Governmental use of terror was considered, at that time, as a legitimate means to ensure the maintenance of power. In addition, terror in those days was closely related to the ideals of virtue and democracy. Robespierre himself referred to 'virtue, without which terror is evil; terror, without which virtue is helpless'. He considered virtue joined with terror as the necessary preconditions to establish democracy.[38] At the same time, it seems that, personally, Robespierre was opposed to the draconian measures taken under his regime: in fact, he condemned capital punishment, holding on May 30, 1791 that the new penal code should not include a death sentence.[39]

The era of enlightenment had brought about the idea of the sovereignty of the people. During the French Revolution, Robespierre and the Jacobins defended this idea by applying a kind of State terror where the ends justified the means.[40] Thus Brissot, the creator of the *Comité des Recherches de la Ville de Paris* (a committee designed to reveal conspiracies against the revolution), exclaimed: « *Qui veut la fin, veut les moyens.* »[41] (the one who wants the ends, wants the means). However, Robespierre's way of using terror

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[34] Ibid. at 47.

[35] *Décret du 22 Prairial an II - 10 Juin 1794, concernant le tribunal révolutionnaire.* The text of the law, as well as of other laws adopted during the French Revolution, can be found at: http://ledroitcriminel.free.fr/la_legislation_criminelle/anciens_textes/lois_penales_revolution_francaise.htm (visited on 10-7-07).

[36] The figures vary considerably. The numbers cited here are those mentioned by Anderson and Sloan (2002), at xxiii et seqq. Similarly, Donald Greer establishes a number of 16,600 deaths throughout France (Chaliand and Blin (2004d), at 114, citing Donald Greer, *The Incidence of the Terror During the French Revolution : A Statistical Interpretation* (1935). Another source counts 500,000 arrests, 40,000 executions, 200,000 deportations, and another 200,000 deaths in prisons (O'Connor (2001), at 1).

[37] Martin (2003), at 5.

[38] Hoffman (1998), at 15, 16.

[39] Carr (1972), at 133. Opinions about Robespierre's person therefore greatly diverge – Clauzel phrased it as follows: "*Robespierre fut-il un monstre ou un martyr vertueux?*" ("Robespierre – was he a monster or a virtuous martyr?") , see Carr (1972), at 55.

[40] Chaliand and Blin (2004d), at 105.

[41] Ibid. (113, fn. 1) citing Buisson, *À Stanislas Clermont, sur la diatribe de ce dernier contre les comités de recherches, et sur son apologie de Mme Jumilhac, et des illuminés*, (1790), at 12-13.

reached such a scale that those who had previously supported him feared for their own lives and conspired to bring him down. As they themselves had promoted terror as the legitimate form of government, they could not reproach him for the same crime, but instead accused him of 'Terror*ism*' (thus an exaggeration of terror).[42] Only one year after Robespierre's downfall the term was introduced into the English language by Edmund Burke who used it in his famous polemic against the French Revolution. He described the French revolutionaries as "thousands of those hell hounds called terrorists".[43]

Robespierre was assassinated by his political enemies in 1794. Thus the Jacobins eventually executed Robespierre and his followers the same way so many had been executed by his regime: with the guillotine.[44] Robespierre's assassination gave rise to a period known as the White Terror, during which the new regime persecuted the former regime as terrorists. Napoleon Bonaparte put an end to this slaughter when he took power in 1799.[45]

2.2. Terrorism and anarchism in the second half of the nineteenth century

The nineteenth century and the beginning of the twentieth century was a revolutionary time in many ways: with the Industrial Revolution, trade unions and labour parties emerged. Workers responded to injustice with insurrections and anarchism.[46] Governments chose repressive methods to put an end to these uprisings, while those backlashes in turn stimulated the anarchists' desire for revenge.[47] The time was one of economic transition thanks to the emergence of capitalism, which caused significant social and economic changes. Economic prosperity went hand in hand with financial crises, such as the crisis of 1873 caused by excessive speculation.[48] This meant bankruptcy for many. At the same time, social differences became more evident, as the two social classes, the Proletariat (consisting of industrial workers) and the Bourgeoisie (the social middle class, consisting of those who did not work manually) co-existed next to each other. The differences between the classes grew stronger as the bourgeoisie was eager to keep their prosperous living standards while the proletarians strove for social changes in order to improve their miserable situation.[49]

The 1880s also saw throughout the Western world the beginning of a 'new journalism'. Editors like Joseph Pulitzer sought to attract a vast majority of the population with entertaining and sensational headlines instead of the in-depth analysis of political

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[42] Schmid (1984), at 65 et seq.
[43] Chaliand and Blin (2004d), at 109. Hoffman (1998), at 17.
[44] Hoffman (1998), at 16/17.
[45] O'Connor (2001) at 1.
[46] Jensen (2004), at 120.
[47] Ibid., at 128 and 143.
[48] Hubac-Occhipinti (2004), at 126.
[49] Ibid. at 127.

events carried out previously in newspapers. News was now produced for the masses, reducing the costs and expanding circulation considerably.[50]

These factors led to a climax in the history of terrorism between 1880 and World War I. Schwarz and Krummenacher describe this period as the 'Golden Age of terrorism'[51], Chaliand and Blin as the '*Belle Époque*' of terrorism.[52] Such statements find confirmation in contemporary newspapers, where journalists claimed that "a very small number of unscrupulous fanatics terrorise the entire human race… The danger for all countries is very great and urgent".[53]

Looking back at the terrorist activity of the end of the nineteenth century, a peak can also be noted in the unusual accumulation of regicides carried out between the years 1892 and 1901, the so-called "Decade of Regicide":[54] preceded by the killing of Tsar Alexander II in 1881 by the Russian revolutionaries, in the years between 1892 and 1901 five more assassinations of political leaders followed (President Sadi Carnot of France, Prime Minister Antonio Cánovas of Spain, the Empress Elizabeth of Austria, King Humbert of Italy, and President William McKinley of the United States).

Terrorism reached a new level of deadliness with Alfred Nobel's invention of dynamite in 1866, which not only enabled spectacular construction projects such as blasting railroad tunnels through the Alps and digging the Panama Canal, but also gave an impressive and powerful tool to terrorists, permitting them to destroy on a larger scale than ever.[55]

For a better understanding of the terrorist currents of those times, it is important to be aware of the different political currents evolving in the course of the nineteenth century. The first theorist who explicitly justified terrorist means for political (revolutionary) goals was the German radical democrat Karl Heinzen.[56] With his pamphlet "*Der Mord*" (The Murder) of 1848, and the rarely cited but still more radical second edition "*Mord und Freiheit*" (Murder and Liberty), of 1853, he developed a theory of tyrannicide where murder, not only of the political leader, but also of all of his followers, was considered the appropriate and only method to achieve historical progress.[57] Furthermore, during the nineteenth century terrorism was regularly associated with an emerging political movement known as anarchism. While in retrospect we know that this association was only partly

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[50] Between 1871 and 1910 the real cost of Parisian newspapers for laborers in the provinces dropped by over fifty percent. (Jensen (2004), at 140 et seqq).

[51] Schwarz and Krummenacher (2004). Schwarz and Krummenacher refer to figures for the year of 1892 according to which 500 explosive attacks took place in the USA and more than 1,000 in Europe.

[52] Chaliand and Blin (2004e).

[53] Staatsburger Zeitung, 13 September 1898; Die Post (Berlin), 16 September 1900, cited by Jensen (2004), at 117.

[54] Ibid., at 134.

[55] Ibid., at 116; Chaliand and Blin (2004e), at 194 et seqq.

[56] Chaliand and Blin (2004e), at 190.

[57] See Grob-Fitzgibbon (2004).

correct – for in fact few anarchists carried out acts of violence – among most people the image prevailed that anarchists were terrorists and vice-versa. This image was also used and reiterated by politicians with the purpose of polemicising against their anarchist political opponents.[58] In such a way, Theodore Roosevelt – the successor of President McKinley, who had been assassinated by an anarchist – announced that "when compared with the suppression of anarchy, every other question sinks into insignificance".[59]

But what did anarchism actually mean, and who were these anarchists? The underlying principle of anarchism was to deny any form of authority, any constraint to the liberty of the individual, in order to create a society based on the voluntary cooperation between free individuals.[60] However, when the notion was first used in political theory by Pierre Joseph Proudhon (1809-65), the goal was not to abolish *any* form of state, but to reorganise it differently in a way that provided respect for the individual and allowed free political and economic association. The doctrine thus aimed at removing social injustice. Proudhon's theory had a great impact on the First International, also known as the 'International Workers' Association', founded in 1864 in London.[61] A first follower and missionary of Proudhon's doctrine was the Russian anarchist Michael Bakunin (1814-1876), who promoted the free federation of individuals, arguing that effective liberty was the only requirement to manage political, social and economic relations. Together with Bakunin, Sergej Nechaev created in 1869 a 'revolutionary catechism':

> *Le révolutionnaire est un homme condamné. Il n'a pas d'intérêts propres, pas de liaisons, pas de sentiments, pas d'attaches, pas de biens et pas même de nom. Tout en lui est absorbé par un seul et unique intérêt, une seule pensée, une seule passion : la révolution.[62]*

This extreme and exclusive dedication to one single goal reminds us of today's Islamic terrorists, who also pursue one goal with the same unconditional determination. Nechaev convinced Bakunin to accept the use of terror for revolutionary aims. However, after Nechaev had organised the assassination of one member of their group accused of denunciation, Bakunin dissociated from him.[63] Nechaev's and Heinzen's doctrines, together with the social and economical changes of the nineteenth century, the invention of dynamite, the emergence of the mass media that facilitated the international propagation of acts of terror, and governmental repression of anarchist and terrorist movements are some

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[58] For a thorough understanding of the society in which anarchism grew, see Conrad, *The Secret Agent (1907)*.

[59] Jensen (2004), at 117.

[60] Hubac-Occhipinti (2004), at 127 ; Ternon (2004), at 152.

[61] Hubac-Occhipinti (2004) at 128.

[62] "The revolutionary is a condemned man. He has no interests of his own, no relationships, no feelings, no attachments, no goods and not even a name. Everything in him is absorbed by one unique interest, one single thought, one single passion: the revolution." Extract from : Sergej Netchaev. *The Revolutionary Catechism* (1869), cited by Chaliand and Blin (2004b), at 523 (translation by the author).

[63] Ternon (2004), at 153.

of the factors Bach Jensen[64] identified as contributing to the appearance of a new theory of terrorism: propaganda of the deed. Its inventor, the Italian Republican Carlo Pisacane (1818-57) developed and promoted the idea that violence was not only necessary to receive attention or public interest for a cause, but also to inform, to teach, and to lead the masses to the goals of revolution. This idea has had a strong impact on rebels and terrorists ever since.[65]

The first terrorist group following this doctrine was the Russian ***Narodnaya Volya*** (The People's Will), which started a bombing campaign against the tsarist regime in 1878, culminating in the assassination of Tsar Alexander II on 13 March 1881.[66] This group carried the title 'terrorists' with pride, as they believed in the assassination of the leaders of oppression in order to liberate their people.[67] Tsarist Russia was at that time "the most repressive country in Europe".[68] While the majority was living in severe poverty, there was a small but extremely rich aristocracy. Corruption among the bureaucracy was common. The terrorist ideas thus evolved from a new generation that sought a better life for the Russian people free of oppression. These terrorists did not initially want to kill or hurt innocent people; they only started to use violence after their political propaganda campaign had failed. And even during their attacks they desired that "not one drop of superfluous blood should be shed in pursuit of their goals, however noble or utilitarian they might be".[69] Hence one of them, Kaliayef, when attempting to assassinate the Tsar, abstained from throwing the lethal bomb when he realised that the Tsar's children were in the carriage and would die as well.

Albert Camus reflects their highly idealistic philosophy in his drama *Les justes* (The Just Assassins):

> '[Kaliayef]: "[…] nous tuons pour bâtir un monde où plus jamais personne ne tuera ! Nous acceptons d'être criminels pour que la terre se couvre enfin d'innocents.[…] Mourir pour l'idée, c'est la seule façon d'être à la hauteur de l'idée."[70]

The Russian anarchists differed considerably from the terrorists we know today: they had goals, and they consented in sacrificing human life, if necessary, in order to reach their goal, but the means they used were limited by superior ethical values.

Ironically, the most influential and sensational action of the Narodnaya Volya, the successful attack on Tsar Alexander II, also resulted in their decline. Police reacted

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[64] Jensen (2004).
[65] Hoffman (1998), at 17; Jensen (2004), at 121.
[66] Anderson and Sloan (2002), at xxiii.
[67] Roberts (2005), at 1.
[68] Laqueur (2003), at 11.
[69] Ibid. at 11; Roberts (2005) at 1; Hoffman (1998), at 18.
[70] "We kill to build a world where no one will kill anymore ! We are prepared to be criminals in order to cover the earth with innocents in the end. […] To die for the idea, that is the only way to be on the same level with the idea". (Camus (1950 (re-edited in 1977)), at 37, 38 [translation by the author]).

promptly. One of the attackers was caught in the act and subsequently informed the police about his conspirators. Most group members were apprehended, convicted, and hanged within one year of the assassination, so that by 1883 the first generation of Narodnaya Volya ceased to exist.[71]

2.3. Early nationalist and anti-colonial groups

Several nationalist and anti-colonial movements evolved at the same time, some of them using terrorist methods.

2.3.1. Ireland

One of the first nationalist movements were the Irish in their struggle to become independent from British rule.[72] England had already been involved in Irish politics and history for more than 1000 years. A determining event, however, for the creation of the two communities took place around 1600, under Elizabeth I. In fear of a possible Spanish invasion of Catholic Ireland, the English decided to introduce Protestant settlers into Ulster in order to make Ulster loyal to the English crown. Many Protestant settlers were planted into the town of Derry, which they subsequently called Londonderry.[73] This invasion was not received peacefully by the Irish people but led to growing tensions culminating in an uprising in 1641, when 10,000 Protestant settlers were killed by Irish rebels. Eight years later Oliver Cromwell took revenge, killing nearly 3,000 people. Subsequently, several attempts[74] were made to free Ireland from British rule, culminating in the Easter rising in 1916.[75]

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[71] Hoffman (1998), at 18/19.

[72] According to Clutterbuck (2004), the actions of the Irish nationalist movement of those days could be considered as a more significant milestone in the evolution of terrorism than the previously described Russian group, The People's Will. For instance, the IRA succeeded in liberating southern Ireland (Eire) from the British rule (only Northern Ireland, Ulster, remained British, because most of the population settled in the North are Protestant and opted to be British rather than Irish). Moreover, the Irish terrorists were the first ones to understand the complex mechanisms which define the disproportion between the very weak strategic potential of terrorist arms and the potentially very high political rewards. They managed to weaken the democratic British Government with very limited means but a highly elaborated organisational structure. This pattern wouldbe copied by many independence movements throughout the world (Chaliand and Blin (2004d), at 107).

[73] The name had been given by an English corporation that oversaw a massive plantation of Protestants during that time.

[74] During the Williamite Wars in the late seventeenth century, Ireland became again the battleground for religious disputes between the Dutch Protestant William III and the Catholic king James II. As William won the battle of the Boyne in 1690, Irish politics were dominated by Protestants during the next century, suppressing not only Catholics, but also other religious groups such as Presbyterians. In 1798 the Presbyterians and the Catholics associated under the title "United Irishmen" and rebelled – without success - against the Protestant leadership (Minnis (2001), at 6 et seq.).
Another attempted insurrection against the British occurred in 1867. In this year members of the Irish Republican Brotherhood (IRB, also colloquially known as Fenians) bombed the wall of Clerkenwell prison with the intention of freeing Fenian prisoners there (Clutterbuck (2004), at 158 et seq.), The attack failed in the sense that the prison wall was not destroyed, but instead several inhabitants from the surrounding

On this occasion, Irish nationalists proclaimed Irish independence and were violently oppressed by the British police and military forces. This event caused almost 200 deaths.[76] It is after that incident that the name "Irish Republican Army – IRA" appears allegedly for the first time in history (used by James Connolly to describe the Irish nationalist group).[77]

After the Easter rebellion, the Irish nationalists started to organise themselves militarily. At the same time the British police created specialised counter-terrorism units called 'Black and Tan' (in reference to the colour of their uniforms). During the following Irish War of Independence both sides used violence and terror deliberately – the police killed two rebels for each loyalist killed. In 1920 the IRA attacked simultaneously more than three hundred police stations, and only a few months later eleven agents of the British secret service were killed within one hour at eight different places. In the same year actions against British police took place on the British mainland.[78] The Irish case now received financial and political support from the United States. In consequence, the British Prime Minister was obliged to negotiate with the rebels. The Anglo-Irish Treaty was concluded in 1922, and hence a free Irish State was created.[79] The treaty contained a provision allowing Northern Ireland to break from the Free Irish State and to reunite with Great Britain. Northern Ireland, populated mainly by protestant loyalists, opted for British rule.[80] Thus only Eire, the southern part of Ireland, became independent.[81] This led to a split between those Fenians who supported the Anglo-Irish treaty and those who did not. Irish terrorist activity diminished in the following years until the 1970s, with two exceptions: the

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buildings were killed – a consequence that had an unforeseen terrorising effect on the public. However, the Fenians did not promote terrorist methods and never accepted the legitimacy of indiscriminate killing or targeted assassination. They wanted to fight for Ireland's independence by means of open insurrection rather than with unnecessary violent and fear-creating techniques (Townshend (1995), at 321 et seq.). However, their war for Irish independence brought about the emergence of three independent groups in the 1870s and 1880s: Jeremiah O'Donovan Rossa's Skirmishers, the Irish-American Clan na Gael, and the Irish National Invincibles. The third of these groups could, arguably, be classified as a terrorist one: their assassination of two leading Irish politicians, Lord Frederick Cavendish and Thomas Henry Burke, in 1882 (the event became also known as Phoenix Park, named after the scene of the crime) was an attack planned within the framework of the long-term project to paralyse British rule in Ireland (Ford (1985), at 230 et seqq.; Townshend (1995), at 323). The subsequent political and legal repression put a temporary end to the political terror, which would revive again during the great systematic crisis of the early twentieth century, manifested in the Easter Rising and the subsequent Irish War of Independence.

[75] A critical impression of the political tensions existing in Northern Ireland in the beginning of the twentieth century is given in the film by Loach (2006).

[76] Chaliand and Blin (2004e), at 201.

[77] Anderson and Sloan (2002), at 225.

[78] In Liverpool two Black and Tans were killed.

[79] Chaliand and Blin (2004e), at 202.

[80] History of Terrorism in Ireland, site: www.about.terrorism.com . (http://terrorism.about.com/od/historyofterrorism/a/ireland.htm : "The Anglo-Irish war was to last from 1919 to 1921 until a truce was called. This truce resulted in the Anglo-Irish treaty, which created a Free Irish State. But in this treaty was a provision that would allow Northern Ireland to break from the Free Irish State and reunite with Great Britain, which they did.", last visited on 21 September 2008).

[81] Chaliand and Blin (2004e), at 200 et seqq.

'sabotage campaign'[82] in Great Britain performed by the IRA in 1939 and 1940, and a 'border campaign'[83] of the IRA against the royal Ulster Constabulary between 1955 and 1962. Both campaigns were suppressed by the cooperating British and Irish authorities.[84] The period following the border campaign became known as "the troubles". It will be examined more closely in Chapter 4 of this Part.

2.3.2. Serbia

Another group of nationalist terrorists of historical importance appeared at the beginning of the twentieth century in the Balkan region. Here the geopolitical situation was extremely fragile owing to its location at the intersection between the Austrian and the Ottoman Empire.[85] This political tension generated a new political terrorist movement: the Serbian nationalist group 'The Black Hand'. The Black Hand was a secret society, including many people of high rank (government officials, professional people, and army officers). The movements of the Black Hand were therefore well known to the Serbian government.[86]

The terrorist group The Black Hand not only carried out attacks within Serbia, but also outside its territory, within the context of Balkan conflicts. In Bosnia they promoted the idea of Great-Serbian solidarity and organised an uprising against the provisional Austrian administration. In reaction to this event, the Austrian emperor Franz-Joseph decided to annex Bosnia-Herzegovina in 1908. This action led to a series of attacks organised by the Black Hand between 1910 and 1914 against Austrian rule. They were supported by the Serbian government and provided paramilitary training to Serbian youth. The Black Hand used secret oaths and gruesome initiation rituals; traitors were habitually assassinated.[87] Their actions culminated in the assassination[88] of the archduke of Austria, Franz Ferdinand, and his wife on 28 June 1914.[89] The event triggered the outbreak of World War I a few months later.[90]

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[82] From 1926 to 1936 the IRA was increasingly influenced by Marxist ideas. Many Communist Party of Ireland members were at the same time members of the IRA. Under the first government of the Irish Free State, in the year of 1932, republican prisoners were released and the IRA was unbanned. However, only three years later, the organisation was banned again. The government under de Valera led a strict anti-IRA policy. This attitude triggered the IRA Army Council to declare war against Britain in January 1939, and a few days later, the Sabotage Campaign began. During this campaign, over 50 targets on British territory were bombed in London, Manchester, Glasgow and Birmingham. Among the targets were power stations, underground stations, and department stores. In spite of the high amount of attacks, only three fatalities could be counted, all of them voluntary IRA fighters.

[83] During the border campaign, direct attacks on security installations and disruptive actions against infrastructure were carried out. This time, eighteen people died during the operation. Again, the governments both of Northern Ireland and of the Republic of Ireland reacted with harsh methods such as the introduction of internment without trial. The campaign was officially ended in February 1962.

[84] Anderson and Sloan (2002), at 225.

[85] Chaliand and Blin (2004d), at 106.

[86] Williams and Head (2006), at 129.

[87] Anderson and Sloan (2002), at 86.

[88] The act was attributed to the Young Serbian nationalist Gavrilo Princip.

[89] Chaliand and Blin (2004e), at 191 et seqq.

[90] Hoffman (1998), at 21.

2.3.3. India

Like the Irish, people in the British colony of India also aimed at independence. It is there where the philosophy of the bomb developed, a terrorist approach mixing elements of the Western and the Indian culture of violence, and inspired by the Russian terrorists of the turn of the century.[91] The Russians had in fact helped the Indians in the construction of bombs. In 1909 Indian nationalists assassinated a member of the British government in London. In the attempt to decolonise India, violent and non-violent movements evolved in parallel. The British responded with exceptional repression, as is evident in the Jallianwala Bagh Massacre of 1919, for instance.[92]

One significant violent group was the Hindustan Socialist Republican Association, founded in the late 1920s, which followed the Marxist doctrine of abolishing capitalism and class differences by means of a revolution, thereby establishing the dictatorship of the proletariat. In 1930 the movement published a pamphlet titled "The Philosophy of the Bomb", propagating terrorism as the necessary preliminary stage for the final revolution. The manifesto also contained personal attacks on Mahatma Gandhi and his methods. Mahatma Gandhi, by contrast, promoted home rule for India as well, but strived for it exclusively by peaceful means (what he called 'non-cooperation' and 'passive resistance'). His impact on Indian decolonisation was immense. Although some of his adherents decided to resort to terrorist actions, it is probable that without such an influential leader as Gandhi the liberation of India would have been much more gruesome. In 1948, after the liberation of India, nationalist extremists killed Mohandas K. Gandhi.[93]

However striking their theoretical declarations were, the Indian terrorists had in fact limited impact and duration. After a few attacks carried out in the 1920s and 1930s, the British succeeded in suppressing the movement in the mid-1930s. But World War II brought a resurgence. The call for liberation both by violent and non-violent movements had reached its climax, and after the losses experienced in World War II, it was not surprising that the British had become tired of fighting. On 15 August 1947 India gained independence from British rule. However, it lost its Muslim majority areas, which from

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[91] Chaliand and Blin (2004d), at 108.

[92] The Jallianwala Bagh Massacre, also known as the Amritsar Massacre**,** may serve as just one example of the violence inherent in the maintenance of colonial power. The massacre was named after the Jallianwala Bagh (Garden) in the northern Indian city of Amritsar, where in April 1919 British Indian Army soldiers opened fire on an unarmed group of men, women, and children. Martial law at these times had forbidden any kind of gathering of five or more people, and the commanding Brigadier-General Reginald Dyer had been instructed to open fire if these orders were ignored. Within about ten minutes, hundreds of unarmed people were deliberately killed by the authorities, and many severely wounded. However, this incident backfired. Such utter violence was condemned by many,[92] and sympathy with the Indian cause grew considerably both on the national and international level. (For a more detailed description of the incident see e.g. Brittanica Encyclopedia (2002)).

[93] Chaliand and Blin (2004e), at 203 et seqq.

then on belonged to the nation-state of Pakistan.[94] India became a republic in 1950. Since her independence, sectarian violence and insurrections have continued in several parts of India, especially concerning the border with Pakistan.

2.4. Liberation movements after Wold War II

As we have seen, nationalist movements aiming to free a country from colonial rule had appeared already in earlier years. However, a global climax of decolonisation emerged in the aftermath of World War II. Hoffman[95] attributes this development to two events in particular: one is the fall of Singapore to the Japanese, the other one is the Atlantic Charter. While the first one weakened the belief in the invincibility of the European colonial powers, the second stimulated the hope of the colonies to become independent, since point two of the Charter declared that neither the British nor the United States intended to see "territorial changes that do not accord with the freely expressed wishes of the peoples concerned".

2.4.1. Palestine / Israel

When the National Council of Jews proclaimed the State of Israel in 1948, this state of affairs was not recognised by the surrounding Arab countries, and four Israel-Arab wars followed (1948, 1956, 1967, and 1973). Israel, supported by the United States, ultimately won the wars, but violence has not ceased ever since. As a consequence, a number of different and partially competing guerrilla groups have been active during the last thirty to forty years. Three of them, the Jewish group Irgun, the Palestine Liberation Organisation (PLO), and the militant Islamist organization Hamas, will be discussed below.

The Jewish liberation group **Irgun**, under the leadership of Menachem Begin, started committing terrorist attacks on the Arab inhabitants of Palestine in retaliation for the Arab's violent rebellion between 1936 and 1939. They also started attacking symbols of British colonial power after the colonials had placed some severe restrictions on the Jewish inhabitants. During World War II the Irguns interrupted their terrorist attacks, because they did not want to weaken the U.K. in their war against the Anti-Zionist Germany. After the war they recommenced their combat, culminating in the spectacular bombing of the King David Hotel in Jerusalem in 1946. This was a highly symbolic act due to the fact that the hotel housed the British government's secretariat as well as the headquarters of British military forces. The bombing caused the deaths of 91 people and injured 45, including men, women, Arabs, Jews, and Britons. The attack turned international public attention to Palestine and thus helped to accomplish the Irguns' goal. Begin's plan to create a climate of fear and terror and to destabilise British order in Palestine had been accomplished.

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[94] At the same time, Bengal was divided. Its Western territory became part of India, while its Eastern part, due to its mainly Muslim population, was conferred on Pakistan and later became the independent state of Bangladesh, following the Third Indian-Pakistan War (Harenberg (1996), at 256 et seq.).
[95] Hoffman (1998), at 45.

Begin hoped that the repressive counter-measures the British government took to restore security and order would undermine their authority, and the image the Jews had of the Britons would change from protectors to oppressors. Moreover, the Irguns were supported by the broad Jewish Community of the United States, who now used their political influence to lobby against 'British oppression' in Palestine. Another spectacular action of the Irguns was condemned by public opinion but, regrettably, at the same time promoted the Irgun's cause: their hanging of two British sergeants in retaliation for the preceding execution of three convicted Irgun terrorists. Eventually, in September 1947, the British colonial secretary, Arthur Creech-Jones, declared that Britain would no longer be responsible for the territory of Palestine.[96] In spite of this declaration, a few months later, the Irgun killed 250 men, women, and children in the Arab village of Deir Yassin.[97]

After the creation of Israel[98] in 1948, the leader of the Irgun, Menachem Begin, was one of the founders of the extreme right-wing Cherut (freedom) party; he was later (in 1978) elected prime minister of Israel.

The **Palestine Liberation Organisation** (PLO) is an umbrella organisation comprising several major Palestinian political and guerrilla groups. It defines itself, and is recognised by all Arab governments, as "the sole legitimate representative of the Palestinian people". Its oldest guerrilla group is the Fatah (Arabic word for "conquest"), founded in 1957, with Yassir Arafat as its leader. The PLO was founded in 1964 at the first Arab Summit Conference of thirteen Arab kings, emirs, and presidents called together by President Nasser of Egypt. In the course of the meeting, the creation of the PLO was agreed upon. In 1969 Fatah and other similar guerrilla groups entered the PLO. Arafat was elected Chairman of the PLO Executive Committee.

The original PLO had as its military wing the Palestine Liberation Army (PLA), comprising Palestinian contingents under Egyptian, Syrian, and Jordanian command. These were trained in regular military warfare rather than guerrilla or terrorist operations. After 1967 guerrilla groups attracted larger numbers of recruits (including some members

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[96] Ibid. at 45-56.

[97] William Martin remembers the massacre on its 60th birthday: "On April 9, 1948, members of the underground Jewish terrorist group, the Irgun, led by Menachem Begin, who was to become the Israeli prime minister in 1977, entered the peaceful Arab village of Deir Yassin, massacred 250 men, women, children and the elderly, and stuffed many of the bodies down wells. There were also reports of rapes and mutilations. The Irgun was joined by the Jewish terrorist group, the Stern Gang, led by Yitzhak Shamir, who subsequently succeeded Begin as prime minister of Israel in the early '80s, and also by the Haganah, the militia under the control of David Ben Gurian. The Irgun, the Stern Gang and the Haganah later joined to form the Israeli Defense Force. Their tactics have not changed. The massacre at Deir Yassin was widely publicized by the terrorists and the numerous heaped corpses displayed to the media. In Jaffe, which was at the time 98 percent Arab, as well as in other Arab communities, speaker trucks drove through the streets warning the population to flee and threatening another Deir Yassin. Begin said at the time, 'We created terror among the Arabs and all the villages around. In one blow, we changed the strategic situation.'" (Counter Punch (13 May 2004): *"We Created Terror Among the Arabs".The Deir Yassin Massacre*).

[98] By United Nations General Assembly Resolution No. 181 the Palestinian territory was officially conferred to the Jews. This act of international recognition led to the creation of the state of Israel.

of the RAF, for example),[99] so that the PLA started to set up its own guerrilla unit, the Popular Liberation Forces (PLF). Under the command of the PLO, the PLA carried out terrorist attacks throughout the Middle East and non-Communist nations against Israeli, U.S., West European, and Arab targets.

Beginning in 1974 Fatah officially renounced terrorism outside the Palestinian borders. It developed the idea that armed struggle as such was not sufficient to achieve its goals, and that diplomatic initiatives had to take place in parallel. This view was not shared by more radical leftist groups within the PLO. This divided the Palestinian groups internally into Fatah and anti-Fatah groups. When the anti-Fatah group Black June attempted to kill Israel's ambassador to London in 1982, Israel invaded Lebanon and occupied Beirut. Diplomatic talks were intensified by the end of the 1980s, when the PLO as a whole formally adopted Fatah's long-standing policy of abstaining from terrorism outside the occupied territories and Israel. On 13 September 1993 a peace accord was concluded between the PLO and Israel (the so-called Oslo Accords). Following the Oslo Accords of 1993, a PLO-dominated Palestinian Authority was established to administer the autonomous areas of Gaza and West Bank.

The PLO has developed a legislative, executive, and quasi-judicial and police infrastructure, similar to a government-in-exile. The only thing missing to make a full claim to statehood is an independent territory to govern. The guerrilla groups within the PLO play similar roles as political parties in a parliamentary system, with the Fatah as a dominating nationalist right-wing party, and George Habash's Popular Front for the Liberation of Palestine (PFLP) being the second most influential group, representing Pan-Arab Marxist-Leninist left-wing views.

From 1968 until 1987 the PFLP was responsible for at least 81 major actions, including 38 bombings, 10 hijackings,[100] nine kidnapping or hostage situations, and three assassinations. The brutality towards innocent civilians shown in these acts provoked so much international condemnation that the PFLP eventually acquiesced in the PLO's renunciation of terrorism outside Israel.

Hamas, the Arabic acronym for the "Islamic Resistance Movement" ("Harakat al Muqawama al Islamiyya") is an Islamic fundamentalist, revolutionary Palestinian group devoted to the complete eradication of the State of Israel and the creation of an Islamic Palestinian state. It is a separate organisation from the PLO, but has coordinated with other

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[99] See below, 4.3.

[100] In September 1970 the PFLP simultaneously hijacked three airliners to Dawson's Field, north of Amman, Jordan, in which more than 400 hostages were kidnapped for three weeks, to force the release of imprisoned terrorists elsewhere. On 27 June 1976 the PFLP hijacked an Air France Tel Aviv-to-Paris flight to Entebbe Uganda, in collaboration with the Red Army Faction, where 240 passengers were held hostage until rescued by Israeli commandos on 1 July 1976. Also, the PFLP hijacked in collaboration with the RAF the Lufthansa plane Landshut to Mogadishu, Somalia, in October 1977 (see below, 4.3.), to free RAF prisoners held in Germany.

groups in the *intifada*[101] against Israeli 'occupation' of Palestinian territory. It was officially founded in 1988. However, it is in fact continuous with the Muslim Brotherhood that established itself in Palestine in 1946 and remained active in Gaza and the West Bank after the 1948 Arab-Israeli war.[102]

The ideology of Hamas is based on Islamic fundamentalism and the Islamic religious duty of jihad incumbent on all Muslims (not just Palestinians) under Israeli occupation. The Hamas also resorts to the more radical beliefs of the Egyptian leader of the Muslim Brotherhood, Sayyid Qutb (see below, 4.5.). Their goal is the establishment of an Islamic State in all of Palestine, i.e. Israel and the Occupied Territories.[103] Hamas attracted more followers after the Oslo Accords in September 1993, which it had opposed. In 1992 Israel exiled 400 Hamas radicals to Lebanon, where they later claimed to have learned the suicide bombing tactic from Hezbollah. Suicide bombings aimed at civilians started in earnest in April 1994 with an attack on the northern town of Afula, killing nine Israelis and wounding 45, and a second attack in the same month in Hadera, where a bus was destroyed and six Israelis were killed. Hamas had switched from military to civilian targets. This occurred in reaction to the 25 February 1994 massacre in Hebron where Baruch Goldstein massacred 29 Muslims at the Ibrahimi Mosque. Apart from the suicide bombings, Hamas carried out kidnappings, machine-gun attacks, and shootings. When Israeli intelligence agents assassinated the alleged mastermind behind most of the suicide bombings, Yahya Ayyash, Hamas retaliated with more violence throughout 1996, killing over 61 people within nine days. Suicide attacks went on in 1997. In the course of 1998, conflicts intensified between Hamas and the Palestinian Authority. During their peace negotiations with Israel, the latter had made concessions to help Israel in preventing Hamas bomb attacks. Hamas' attempt to attack a school bus with a suicide bomber was answered by over 300 arrests of Hamas activists, ordered by Arafat. Since this event, Hamas' violence has not increased, but maintained its level. Since the death of PLO leader Yassir Arafat, Hamas's political wing has entered Palestinian politics. Arafat was replaced by Mahmoud Abbas, the Fatah's candidate, in January 2005. In January 2006 Hamas was elected as the government of the Palestinian people. This surprise victory led to heightened tension between the Palestinian factions. There were recurring violent attacks between Hamas and Abbas's Fatah faction, raising fears of civil war. In February 2007, Hamas and Fatah agreed to form a united national government. However, in June 2007 Hamas took control of the Gaza strip, thereby seriously challenging the concept of a coalition, which was subsequently dissolved by Abbas.[104]

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[101] The *intifada* (Arabic: uprising, revolt) is the popular uprising against Israeli occupation among Palestinians on the West Bank and the Gaza Strip that began in December 1987. Most of its leading events have been coordinated by the PLO, Hamas, and Islamic Jihad of Palestine.

[102] Alexander (2002), at 1.

[103] Ibid. at 3.

[104] Information taken from Anderson and Sloan (2002), at 159-63, 193-99, 379-85, 396-8; BBC News (2007): *Country profile: Israel and Palestinian territories.*

2.4.2. Cyprus

The Cypriot revolutionaries followed the Palestine question closely and were considerably encouraged by their success. Like their predecessors, they also strived for the internationalisation of their problem and even appealed directly to the United Nations for help.

In Cyprus the *Ethniki Organosis Kyprion Agoniston* (National Organisation of Cypriot Fighters, **EOKA**) followed the same strategy as the *Irguns* in their long-term goal to reunify Cyprus with Greece: instead of trying to defeat the British in an open military conflict – an impossibility in light of their numeric, material, and logistical inferiority – they counted on impressive, thoroughly manipulated, and properly timed acts of violence that would draw international attention to their cause. The EOKA not only created an atmosphere of terror and intimidation, but also attracted the attention of the international community, by 'turning the whole island into a single field of battle in which there was no distinction between front and rear, so that the enemy should at no time and in no place feel himself secure'.[105] The UN put Cyprus on their agenda. The United Kingdom reacted with draconian emergency legislation against the insurgency. Detention, deportation, curfews, and collective fines imposed upon the civil population were later the subject of an application by Greece against The United Kingdom at the European Commission of Human Rights.[106] The Commission concluded, *inter alia,* "that the full enjoyment of human rights in Cyprus is closely connected with the solution of the wider political problems relating to the constitutional status of the island. Once these political problems have been solved, no reason is likely to subsist for not giving full effect to the human rights and freedoms in Cyprus. On the other hand, as long as these problems remain, it may be feared that a situation will continue to exist in which the rights and freedoms protected by the Convention can only be enjoyed to a partial measure." In February 1959 the British and the Greek governments came to an agreement creating the independent republic of Cyprus, with a provision allowing Britain to keep strategic bases on the island. The rebels agreed to these conditions, since otherwise Turkey would have claimed their part of the island by force.

2.4.3. South Africa

In 1961 Nelson Mandela established *Umkhonto we Sizwe* (the Spear of the Nation, MK), the military wing of the African National Congress (ANC), the oldest and largest black national political party in South Africa. The ANC was banned by the South African government in the aftermath of the 20 March 1960 massacre where some sixty-nine demonstrators were killed by South African police. While the political party officially ceased to exist, its leaders created the military wing, Umkhonto we Sizwe, to carry out limited violence against the South African regime. The aim was to destroy the South

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[105] Grivas, *Guerrilla Warfare*, at 19, cited after: Hoffman (1998), at 58.
[106] Decision of 26 September 1958, application no. 176/56.

African *apartheid* regime through political agitation, sabotage, and terrorism. The group gained support from Mozambique and Angola after Portugal had withdrawn from these countries. It also received military training from Cuba, and material support from the Soviet Union and the Eastern Bloc. Until 1977 the MK avoided targeting civilians, concentrating on sabotaging power pylons and commercial property. However, in 1977 the South African Defence Forces killed hundreds of blacks in South African townships, and thereby triggered the MK's 'second campaign'. In this campaign police and military officials were also targeted. Over two hundred terrorist attacks were committed from 1977 to 1983, including several bombing operations. On 20 May 1983 the MK bombed South African Air Force headquarters, killing seventeen persons and injuring around 200. On 24 June 1986 the Wimpy Burgers in Johannesburg were bombed, wounding seventeen customers. On the same day the Holiday Inn-owned President Hotel was bombed as well, wounding two persons. From 1983 the MK engaged in terrorism against white farmers, as well as black policemen and politicians supporting the *apartheid* regime.

After the fall of the USSR and the end of the Cuban exercise, the ANC engaged in negotiations with the South African government. Under the then President W. de Klerk, peace negotiations were held, which resulted eventually in the end of the *apartheid* policy, the legalisation of the political party ANC, and the release of Mandela and other ANC members from prison. In consequence, the activities of Umkhonto we Sizwe ceased. However, violence between different political groups continued, so that in 1992 Mandela and other ANC leaders threatened to resume guerrilla warfare and terrorism if killings of black nationals by South African police continued. But South Africa became democratic, and in April 1994, with the first free and fair elections, the ANC, under the presidency of Mandela, obtained a majority of votes for the National Assembly of the transitional South African Regime, and violence ceased. In 1993 Mandela and de Klerk were awarded the Nobel Prize for Peace. A Truth and Reconciliation Commission, headed by Nobel Peace Prize laureate Archbishop Desmond Tutu, issued a report on 30 October investigating alleged terrorist actions by all participants in the conflict.[107]

2.5. The beginning of contemporary terrorism: ideological left-wing terrorism

In the 1970s and 1980s a new type of terrorism emerged: the ideological left-wing terrorism, represented by various groups such as the Red Brigades (*Brigate Rosse, BR*) in Italy, Red Army Faction (*Rote Armee Fraktion*, RAF) in Germany, Direct Action (*action directe)* in France, and the Communist Combat Cells (CCC) in Belgium, to name only a few. As the RAF and *action directe* form part of those terrorist groups that had a direct impact on national legislation in France and Germany, they will be discussed separately in Section 5.

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[107] See Tutu (released 2003).

2.5.1. Brigate Rosse

In Italy the Red Brigades determined the political climate during the 1970s. Between 1969 and 1982, 4,362 acts of political violence took place, among them 2,712 attacks for which terrorist groups claimed responsibility, in which 351 people were killed.[108]

Until the second half of the 1970s, left-wing terrorism did not receive much public attention in Italy. The most devastating incidents were, at that time, indeed carried out by neofascist groups.[109] Della Porta points out that at least until 1974 right-wing violence appeared to be largely tolerated. This encouraged left-wing activists to opt for more radical action. Protests arose in the universities in 1967 and spread in the subsequent years to the high school system.[110] From 1972 to 1974 the BR kidnapped the director of Fiat-Siemens of Milan, the director of Alfa Romeo, the head of the personnel unit of Fiat, and several judges.[111] The first wave of left-wing terrorism was almost brought to an end in 1976, when most of the leaders of the BR had been arrested. However, the second wave, the so-called 77 Movement, started only one year later.[112] In 1976 and 1977 the BR assassinated the Attorney General and an editor of *La Stampa*. In 1978 they abducted the important politician Aldo Moro (former secretary of the Christian democratic party, several times minister, and president of the Council). Several other assassinations took place in Turin at the same time. Eventually, the BR killed Aldo Moro, and assassinated six more people. The state response to these actions was not satisfactory. An anti-terror policy only gradually evolved, with the establishment of the *Nucleo Speciale* (established by the *Carabinieri*) and of the Central Office for Special Investigations and Operations *(Ufficio Centrale per le Investigazioni e le Operazioni Speciali, Ucigos)*. Many so-called emergency laws were adopted concerning judicial procedures, preventive detention, criminalisation of specific terrorist acts, and increased penalties in the case of terrorist crimes. A significant effect was attributed to the 1980 law that provided "compensation" for the members of underground organisations who cooperated with the authorities (so-called *pentiti*).[113] This model was soon followed by many European countries.

A major success of the BR took place in December 1981, when they kidnapped the American General of NATO, J. L. Dozier. He was freed by the police of Padua. Step by step, the organisation dissolved itself, although some operations were still carried out. In 1984 they assassinated the U.S. diplomat Leamon Hunt. This was considered as an act to aid Palestinian rebels who had provided material support to the BR.[114] Finally, in 1985 the

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[108] Porta (1995), at 106.

[109] E.g. a bomb in the Bank of Agriculture in Milan killed seventeen people in 1969, six were killed on a train in July 1970, eight during a union meeting in Brescia, and twelve on another train attack near Bologna in 1974.

[110] Porta (1995), at 113.

[111] Chaliand and Blin (2004a), at 260.

[112] Porta (1995), at 114.

[113] Ibid. at 118 et seq.

[114] Ibid. at 119.

BR declared the end of their movement,[115] although one year later they still claimed responsibility for the assassination of the former mayor of Florence, Lando Conti.[116]

2.5.2. Communist Combatant Cells

The Communist Combatant Cells (CCC) was a Belgian left-wing organisation which was only active from 1984 to 1985. They used bombing attacks to protest against the 'Americanisation of Europe', capitalism, and NATO. They briefly formed an alliance with the German Red Army Faction (Rote Armee Fraktion, RAF) and the French Direct Action (Action Directe, in the following: AD) known as the 'Anti-Imperialist Armed Front' in order to coordinate their actions against the NATO governments. Unlike the RAF and the AD, however, the CCC did not target people at all but concentrated exclusively on symbolic targets, damaging property rather than people. Two fire fighters, however, died as an unintended result of a bombing attack carried out in May 1985, and one security guard was injured in another bombing that took place in November of the same year.

The CCC bombed only international corporate offices, banks, and NATO facilities. In late December 1985 police arrested the founder and leader of the CCC, Pierre Carette, together with three other group members. The arrests effectively put an end to the actions of the CCC.[117]

2.6. Summary

We have seen that the term 'terrorism', when it first appeared in European languages, referred in fact to state terrorism rather than terrorism against the state. This is remarkable since nowadays terrorism is mostly associated with the latter. It is also interesting to note that the term "terreur" had initially a positive connotation, as the reign of terror was associated with establishing order during the transitory anarchical period of disorder in the aftermath of 1789. The terrorism as experienced during the French revolution could be defined as (political) violence applied by the state for the purpose of maintaining order. The purpose soon changed into suppressing any political opposition. In contrast to most early examples of "terrorism" described in Chapter 1, the groups examined in the present Chapter pursued mainly political goals (in Ireland, the goals were mixed with religious interests, but the political purpose remained dominant).

By the end of the nineteenth and the beginning of the twentieth century, terrorist activities were inspired by philosophical ideas; moral justifications were sought. The acts carried out by the so-called terrorists of those days were backed by some philosophical and political thinkers. The power of thought and reason – both in positive and negative directions – is evident when scrutinising the incompatible views concerning the practice of

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[115] Chaliand and Blin (2004a), at 260 et seq.
[116] Porta (1995), at 120.
[117] Anderson and Sloan (2002), at 115.

terrorism.[118] While some considered it legitimate to kill not only the tyrant but also all of his followers (e.g. Heinzen, see above 2.2.), others had high moral values that did not allow, under any circumstances, the shedding of innocent blood (e.g. the *Narodnaya Volya*, see above 2.2.). As a consequence, the targets were in many cases limited to symbolic places or figures. An attempt was made to spare the lives of uninvolved civilians. Moreover, the idea of 'propaganda by the deed' was developed, i.e. the idea that terrorist actions not only served to draw attention to the terrorist cause, but also to inform, and to lead the population to the goals of revolution; this is an idea that has been followed by terrorist sucessors ever since. The terrorism of those days could be defined as – (morally) limited – violence, aimed at intimidating political leaders in order to change social and political conditions of society.

When looking at the reception of terrorism by the people a hundred years ago, in particular the emerging mass media, we note that people considered the danger from dynamite in the hands of terrorists as extremely great, as "a very small number of unscrupulous fanatics" terrorised "the entire human race".[119] Today's experience relativises this statement. We have seen that dynamite used by terrorists indeed had some devastating effects, but was far from terrorising the entire human race. In parallel, we can see that the contemporary fear that terrorists might use atomic, biological, or chemical weapons is similar to the one experienced a hundred years ago. It is indeed true that terrorists might use such weapons, and that the consequences might be more serious than what we have experienced in the past. But this has nothing to do with an increased level of terrorist threat – it is no more than a necessary consequence of technical progress.

Considering both the early nationalist/anti-colonial and liberation groups after World War II, it becomes clear that terrorism emerged as a consequence of a socially and politically unjust situation, i.e. the clear domination of one national and/or ethnic group by another. The so-called terrorist actions of these groups actually did not differ so much from the methods used by their opponents. At the same time, rulers had of course more powerful means to put down opposition; their responses to uprisings in some cases were even more disastrous than the attacks of the – less well equipped and trained – revolting clandestine group (as can be seen in the Amritsar Massacre, for instance). As peaceful means seemed not able to improve the situation of the oppressed people, some took up violent measures, to leave a greater impression on their oppressors. These acts clearly aimed at provoking the ruling power into adopting repressive measures which would undermine the state's authority, and bring more adherents to the insurgent group. Moreover, these actions were considered by their authors as legitimate acts of self-defence, considering that the

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[118] Some of the conflicting views are illustrated by Camus: "[Stepan]: 'Quand nous nous déciderons à oublier les enfants, ce jour-là, nous serons les maîtres du monde et la révolution triomphera' - [Dora]: 'Ce jour-là, la révolution sera haïe de l'humanité entière. (…) Même dans la déstruction, il y a un ordre, il y a des limites.' - [Stepan:] 'Il n'y a pas des limites. La vérité est que vous ne croyez pas à la révolution.' ", in: Camus *Les Justes* (1950) at 59, 62.
[119] See above at 2.2.

oppressed group of people often faced the constant threat of being subjected to arbitrary measures of oppression. It is also remarkable that in most of the cases discussed above the groups ended by winning over their oppressor, and gained freedom. In the following time they were no longer called 'terrorists', but 'revolutionaries' or 'freedom fighters'. Some even became heads of a state (e.g. Nelson Mandela, Menachem Begin) or gained a nobel price for peace (Mandela). This shows clearly the ambivalence connected to the term 'terrorism'. From one perspective, a person may be called a terrorist, from another he may be considered a hero. Yet it is not completely subjective: the reason why people such as Mandela or Begin became politicians and were no longer considered terrorists was that they also stopped their violent activity and restricted themselves to peaceful political means. They had acted violently at some point in history, and some may even argue that their actions were justified and therefore did not constitute terrorism (maintaining that they acted in self-defence or in defence of others), and once they had reached the goal they had fought for, there was no longer a need for them to use violence, and so they stopped their – terrorist or non-terrorist – violent activity.

The case of the Serbian Black Hand shows that even secret services resorted to terrorist methods. This example confirms Joseph Conrad's view in 1907 that secret services not only combat, but also produce terrorism themselves, via their role as *agents provocateurs*.[120] It shows the risk of abuse inherent in secret service methods, and hence the necessity for judicial control of their actions. The contemporary scandals about secret CIA prisons in Europe and torture allegations against the US' and other countries' secret services[121] unfortunately confirm this thesis even for today. We learn from this that distrust is not only justified in the case of identified or potential terrorist perpetrators, but also in the case of those working for the state.

The left-wing terrorism of the 1960s and 1970s differs from the earlier groups insofar as it emerged under democracy, where political leaders were elected by the majority of the people, in a climate where it is supposed that peaceful means such as publications, demonstrations etc. can be used to oppose the government. However, the actual implementation of the theoretically granted rights to freedom of expression and of association was not always satisfactory. Police intervened in demonstrations, often applying more violence than necessary. The terrorist groups emerging in those days argued that the capitalist system did not provide freedom and equality for everybody. Another characteristic of the left-wing terrorist groups is that they originated from student

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[120] Conrad, *The Secret Agent (1907)*.
[121] Evidence for the existence of these prisons is presented by Dick Marty in his report for the Council of Europe (Marty (2006)). Also German secret services are not innocent; two incidents of recent years illustrate their role in serious criminal plots: in 1978 the secret service of Lower Saxony bombed a hole into the wall of a prison in Celle, Germany, and pretended that the bombing had been caused by terrorists. More recently, in the plutonium affair, in a highly dangerous and risky action plutonium was smuggled to Munich in 1998 and subsequently confiscated there by the authorities. As it turned out later, it had been the German secret service who had instigated this action, offering a lot of money to 'ordinary' criminals until they eventually agreed to smuggle nuclear objects. See Prantl (2002), at 123 et seqq.

movements. They resorted mainly to kidnappings of symbolic figures, and to bombings. By these methods they mainly fought against the capitalist system. With respect to their victims, it is conspicuous that the Belgian CCC did not attack any persons, while the Red Brigades caused the deaths of more than 300 people. Another common feature of these groups is that they also established contacts with foreign groups with similar aims, including Palestine terrorists, thus trying to organise themselves internationally. The left-wing activities were responded to by the state with repression. This repression had two opposite consequences: on the one hand, they considerably weakened the terrorists' efforts, but on the other, they confirmed to the public the terrorists' negative view of the state and thereby provided them with more support and sympathy. In a nutshell, the left-wing terrorism of the second half of the twentieth century can be characterised as violence applied for a specific political purpose. The intensity of violence differed from group to group; in the case of the CCC, the harm caused was limited to property damage, while the Red Brigades were willing to kill certain (targeted) people. (As we shall see, the German RAF initially also avoided killing, but later accepted it as long as the victims were representatives of the state. The French AD committed fewer attacks, but their actions included bombings and also a few assassinations.)

3. Terrorism committed or supported by the state

A renowned expert in terrorism studies, Alex P. Schmid, when analysing the relationship between terrorism and politics, compares political actions by state actors and by non-state actors in the following table. He distinguishes three levels of political conflict waging, leading from a state of peace to a state of war:

Table: The Spectrum of Political Action

State of Peace	
State Actor	**Non-state Actor**
Conventional Politics	
I. Rule of Law (Routinized rule, legitimated by tradition, customs, constitutional procedures)	I. Opposition politics (Lobbying among power holders, formation of opposition press and parties, rallies, electoral contest, litigation [use of courts for political struggle])
Unconventional Politics	
II. Oppression (Manipulation of competitive electoral process, censorship, surveillance, harassment, discrimination, infiltration of opposition, misuse of emergency legislation)	II. Non-violent Action (Social protest for political persuasion of rulers and masses; demonstrations to show strength of public support; non-cooperation, civil disobedience, and other forms of non-violent action)
Violent Politics	
III. Violent Repression for control of state power III.1. (Political Justice. Political Imprisonment) III. 2. Assassination III. 3. State-terrorism (torture, death squads, disappearances, concentration camps) III. 4. Massacres III. 5. Internal War III. 6. Ethnocide/Politicide Genocide	III. Use of Violence for contestation challenging state power III. 1. Material destruction III. 2. Assassination. (Individuated political murder) III. 3. Terrorism (De-individuated political murder) III. 4. Massacres III. 5. Guerrilla Warfare III. 6. Insurgency, Revolution (if successful).
State of War	

Source: Alex P. Schmid. Political Terrorism. Amsterdam, North-Holland Publ., 1988, at 58-9.

We note that the methods of violent politics do not differ too much: both sides use violence, assassination and even massacres. Under these premises, the violent political actions of states also deserve examination:

3.1. State terrorism in the twentieth century

3.1.1. Russia's (soviet) terror regimes[122]

In the years following World War I, Russians experienced State terrorism in various forms. The first wave of terror became known as the Red Terror, and shortly after was followed by a White counter-terror. After Lenin's death in 1924, Stalin's terror regime replaced the former on a larger and longer-lasting scale, culminating in what is generally referred to as the Great Purge[123] or the Great Terror.[124]

After the February Revolution of 1917 the Mensheviks had overthrown the Russian Tsar and gained power. The country was in a state of civil war. Meanwhile, the Bolsheviks, under the leadership of Lenin, conspired to overturn the provisional governors and to establish the 'dictatorship of the proletariat'. In preparation for their coup, already in August 1917 they had instituted the *Cheka* (ЧК - чрезвычайная комиссия), an armed soviet security organisation, in order systematically to take hostages (both members of the opposition – 'counter-revolutionaries' - as well as of the bourgeoisie). The *Cheka* installed concentration camps where their abductees should be locked up. They systematically executed opponents and therewith spread terror throughout the country, with the aim of suppressing any potential resistance. On 5 September the terror was officially legitimated by a decree named *On Red Terror*. From then on, mass executions were carried in several places. At the end of October 1917 the Menshevik leader Iouri Martov estimated that the number of direct victims since September of the same year amounted to more than 10,000.[125] By May 1919 about 16,000 persons were interned in concentration or labour camps, and by September 1921 it more than 70,000.

However, the Bolsheviks were not the only ones using terror. A White counter-terror led by the monarchists soon emerged, worst expressed in the wave of pogroms committed in Ukraine in summer and autumn 1919, with almost 150,000 victims. This counter-terror differed considerably from the Bolshevik terror: while the Red terror was more systematic, more organised, elaborate, theorised, and directed against entire groups in society, the White terror was less structured and never systematised.[126]

After the foundation of the Soviet Union in 1922, its people soon experienced even greater terror under Communist rule, especially under the leadership of Joseph Stalin, who became *de facto* leader in 1928 (after having eliminated his political rivals Trotzky, Zinoviev, and Kamenev). In 1927 the Penal Code was reformed, including now an

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[122] For a detailed account on the terror that took place in Russia and the Soviet Union during the twentieth century see Courtois, Werth, Panné, Paczkowski, Bartosek and Margolin (1997). A literary impression is also given by Solzhenitsyn, *The Gulag Archipelago (1973)*.

[123] See Courtois, Werth, Panné, Paczkowski, Bartosek and Margolin (1997) at 206-25.

[124] This term became popular after the publication of Robert Conquest's book describing this period, titled *The Great Terror*, published in 1968.

[125] For more detailed accounts on the number of victims see Courtois, Werth, Panné, Paczkowski, Bartosek and Margolin (1997), at 88 et seqq.

[126] The following information is taken from Ibid. at 83-93, 94 et seqq.

extremely widely formulated offence of 'counter-revolutionary activities', under its Article 58 (see Annex).[127] This provision led to the imprisonment of both prominent and unknown people. Section 10 of Article 58 made "propaganda and agitation against the Soviet Union" a criminal offence, and under section 12 the failure to report certain incidents became likewise punishable. It turned out that Article 58 was a *carte blanche* for the secret police to arrest and imprison anybody they deemed suspicious of political opposition. In the 1930s, during the "anti-capitalist revolution", when private property became collectivised, the regime introduced many repressive measures to suppress "enemies of the people" (i.e. political opponents, peasants that kept too much harvest for themselves, clergymen, businessmen, and traders). In particular the forced collectivization and the related exploitation of farmers has been regarded as the main cause of the subsequent terrible famine in 1932-33, in which approximately six million people died.[128] But people died not only of hunger: during the 1930s Joseph Stalin carried out repression and persecution campaigns, including purges of the Communist Party, and the persecution of unaffiliated persons. The period was characterized by omnipresent police surveillance, widespread suspicion of "saboteurs", imprisonment, and killings. By the *Law of the First December* (of 1934), proceedings in terrorist cases were limited to no more than ten days, *in absentia* trials were introduced, and the immediate application of the death penalty authorised. This measure would prove the ideal instrument to apply the Great Terror that followed only a few months later.[129] The triggering event for the purges was the assassination of Sergei Mironovich Kirov, a popular Bolshevik leader. Stalin took advantage of this incident to initiate great purges, claiming that the assassins had participated in a large-scale conspiracy against the state. On this pretext supporters of Trotsky and other suspected enemies of the state were arrested. Thus, within only two months following the decree, 6,500 people were condemned in accordance with the procedures established by the Law of the First December. Not only political opponents, but also about 2,000 "anti-soviet families" were deported in December 1934. In March 1935 the same measure was extended to "all those insecure elements of the border districts in the region of Leningrad and from the autonomous Republic of Karelia to Kazakhstan and West Siberia".[130] The scale of the condemnations was immense: in 1935 267,000, and 274,000 people in 1936 were condemned on terrorist charges. At the same time, state terror also entered the industrial sector: any technical incident could trigger arrests on grounds of sabotage, so that by the second semester of 1936 more than 14,000 industrial workers were arrested on sabotage charges.

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[127] Ibid. at 152.
[128] Ibid. at 178.
[129] Ibid at 202.
[130] Ibid at 204.

The condemnations were followed by a period known as *The Great Terror* (describing the period 1936-8). During these two years the NKVD[131] was led by Nikolai Ivanovich Yezhov, and initiated a repression campaign without precedent. The degree of centralisation of terror, as well as the numbers and categories of victims, have been disputed by historians.[132] Recently accessible documents have confirmed that the purge was led by the Politburo, and in particular by Stalin himself. The problem the regime faced was what to do with all the arrested people in the camps. The solution was to shoot dead those of them considered 'hostile to the Regime'. The Politburo issued quotas, i.e. numbers of people to be executed and people to be deported to every region, thus precisely determining the scale of deaths and deportations. In addition to the quotas, family members of condemned persons could also be arrested.[133] According to the Black Book on Communism, during the years 1937-8, 1,575,000 persons were arrested by the NKVD, 1,345,000 (85.4 %) of them were condemned, and 681,692 (51 % of those condemned) were executed.[134]

3.1.2. Fascist movements

Fascist regimes also resorted to terror. Germany was a primary example of systematic governmental terror against different social minority groups and stands out as a country responsible for genocide in its worst form. Compared to the German Fascist regime, Mussolini's Italy and Franco's Spain were relatively harmless: in both cases the use of terror was limited to the suppression of political opposition. Spain experienced the longest period of Fascist terror. It was in this climate that one of the strongest terror organizations of today, ETA, was created.

All these regimes were characterised by dictators who repressed and terrorised their population in order to maintain power. Their methods were also referred to as state terrorism, state-imposed terrorism, or state-directed terrorism.[135] The politics of Germany, Italy, and Spain were those of the extreme right, promoting supreme nationalism and authoritarianism. The three governments had in common their authoritarian regime, and the methods to maintain or increase power: mass detentions, torture, and executions of (potential) political opponents.

While in many terror regimes arbitrary and uncontrolled indiscriminate violence dominated, the situation in **Germany** slightly different: violence was seldom beyond Hitler's control, and it was applied systematically in accordance with strict rules. Moreover,

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[131] NKVD stands for *Narodniy komissariat vnutrennikh del* (Russian: НКВД, Народный комиссариат внутренних дел), i.e. the People's Commissariat for Internal Affairs. It was the leading secret police organization of the Soviet Union during the Stalinist era.
[132] Courtois, Werth, Panné, Paczkowski, Bartosek and Margolin (1997), at 208.
[133] Ibid at 210.
[134] Ibid at 213.
[135] Anderson and Sloan (2002), at 465.

not the whole population was targeted, but only certain minority groups (e.g. Jews, Communists, political opponents, as well as mentally or physically disabled persons, criminals, and homosexuals) so that the majority of the population felt relatively safe and therefore had no personal reason to oppose the regime.[136] It was Hitler's election as Chancellor (*Reichskanzler*) on 30 January 1933 that set the conditions for him to take over total power. With the so-called "Legal Revolution", Hitler satisfied the German people's need for law and order. Instead of using open violence Hitler started by adopting a series of emergency decrees (*Notverordnungen*) that gradually increased the Chancellor's power. On 4 February 1933 Hitler promulgated the 'Decree for the Protection of the German People' (*Verordnung zum Schutze des deutschen Volkes*) granting the government the right to prohibit political events, as well as newspapers or other publications of the opposition parties, on the slightest evidence.[137] Two days later another emergency decree ordered the dissolution of the Prussian parliament. Hermann Wilhelm Göring became Prussia's home secretary, and in this function replaced all leading holders of positions in the Prussian police departments with high-ranking leaders of the SA (*Sturmabteilung*). On 17 February he ordered the police to maintain very friendly relations with the national associations (*SA, SS,[138]* and *Stahlhelm*), and at the same time to show no mercy towards leftists. Subsequently, Göring created a supplementary police force, consisting of about 50,000 members of SA and SS, to support the public police. The public police was no longer neutral towards arbitrary detentions and terror measures carried out by the party forces. Göring ensured: '*Meine Maßnahmen werden nicht angekränkelt sein durch irgendwelche juristische Bedenken. (…) Hier habe ich keine Gerechtigkeit zu üben, hier habe ich nur zu vernichten und auszurotten, weiter nichts*!' (1933)[139] It was part of the concept of the Legal Revolution not to subdue the enemy by violent means of open terror and prohibitions, but by provoking him again and again to violent acts so that he himself created eventually the pretexts and justification for legal suppression measures.[140] The culmination of this agitation against the Communist enemy was the burning of the Reichstag (the building of the German Parliament in Berlin) on 27 February 1933. Until today there is no certainty about the perpetrators of this arson. While Hitler and his party immediately blamed the Communists and used the event as a pretext to detain thousands of political opponents,[141]

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[136] Johnson (2000), at 20 et seq., 253 et seq., concludes from his research with Karl-Heinz Reuband, that "most of the ordinary German population supported the Nazi regime, did not perceive the Gestapo as all-powerful or even as terribly threatening to them personally, and enjoyed considerable room to express frustration and disapproval arising out of minor disagreements with the Nazi state and its leadership." (at 262).

[137] Fest (2007), at 604.

[138] The SS (*Schutzstaffel*, German for "protective squadron") was a paramilitary organization created to protect the Party of the National Socialists (NAZI).

[139] English translation cited by O'Connor (2001), at 2 et seq.: 'I will not be crippled by judicial thinking. (…) I don't have to worry about justice. I shall use the power of the police to the utmost'.

[140] Fest (2007), at 609.

[141] In the same night as the arson, around 4,000 functionaries of mostly the Communist parties, but also some writers, doctors, and lawyers were detained (Ibid. at 613).

later many historians have suspected that it was in fact the National Socialists who carried out the burning themselves.[142] On the day after the arson, Hitler presented another emergency decree, the "Decree for the Protection of the People and the State" ("*Notverordnung zum Schutze von Volk und Staat*"),[143] this time suspending all fundamental rights, extending considerably the scope of application of the death penalty,[144] and granting multiple competences to the central government against the *Länder* (federal states). From now on, police could detain people arbitrarily and for an unlimited period of time. By this decree, also called "*Reichstagsbrandverordnung*" (Decree of the burning of the parliamentary building) the rule of law was replaced by a permanent state of exception. On basis of this Decree, during the first two years of Hitler's regime, more than 60,000 Communist and Social Democratic activists were arrested, and some 2,000 Communists were killed.[145] The decree remained in force until 1945. It is considered as the actual legal basis for Hitler's terror regime, rather than the Authorising Act (*Ermächtigungsgesetz*) that a few weeks later formally confirmed total power for Hitler.[146] The public support these measures encountered can only be understood when looking at the propaganda the National Socialists successfully implemented against Bolshevism and the Communist party. The burning of the parliamentary building, the 'Communist attack', had been dramatised with propagandistic measures to such an extent that people were 'numbed' by the perceived Communist threat and thereby accepted voluntarily the increased governmental control.[147]

Besides Communists, Hitler also lodged terror measures against other social groups. Following the Röhm affair,[148] he began persecution not only of homosexuals;[149] in the mid-1930s persecution was extended to handicapped people (including mentally, psychologically, physically, and "morally" ill people, thus opening the door to arbitrary

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[142] Ibid. at 611 with further references.

[143] The Decree can be found online on the website of the online archiv: http://www.documentarchiv.de/ns/rtbrand.html (visited on 2 October 2008).

[144] The scope of application of the death penalty was in fact continuously extended during the Third Reich (in 1933-34 alone, it underwent at least five reforms, each of them extending the application to more criminal behaviour, culminating in the Decree of 20 December 1934 that foresaw capital punishment for especially "nasty" ("gehässig") jokes or comments on leading persons of the State or the Party. For more details see Evans (2001), at 760 et seqq, 771 et seqq.

[145] Johnson (2000), at 162.

[146] Fest (2007), at 614 et seq.

[147] Ibid.

[148] When Hitler realised that the uncontrolled acts of utter violence carried out by the SA, under the leadership of Ernst Röhm, impeded the creation of normality and order in Germany, and that Röhm criticised and provoked Hitler openly, and in addition showed homosexual tendencies, he decided to put an end to this and had Röhm arrested. To set an example, he not only ordered the arrest and execution of Röhm, but also of nearly one hundred other recalcitrant SA and Nazi leaders (Johnson (2000), at 171).

[149] According to official statistics from the Reich Ministry of Justice, convictions under paragraph 175 of the criminal code criminalising homosexuality rose from 948 in 1934 to 5,321 in 1936, and to 8,270 in 1937. Many of the convicted were sent to concentration camps, following the completion of their sentences. Strong evidence suggests that their experience there was more horrible and more fatal than for most other groups of people, their estimated death rate in the camps amounting to approximately 60 % (Ibid. at 288).

classifications), who received insufficient medical care, were subjected to medical experiments and even deliberate killings (euphemistically called "euthanasia").[150] The Nazis also targeted opposition church members,[151] and Jehovah's witnesses.[152] While these were the first social groups to be excessively targeted by the Nazi terror, the Jewry soon became subject of terror on an exceedingly larger scale. Already in March 1933 Jews were openly harassed, beaten up on the streets or verbally assaulted. On 1 April 1933 violence reached a systematic level: the Nazi Party leadership in Berlin ordered a boycott of Jewish stores and business "in an effort to manage the anti-Semitic onslaught", and in order to replace spontaneous attacks on the Jews.[153] Again, a legal basis was soon provided to legalise this terror: a large package of anti-Semitic legislation was passed, aiming to destroy the Jews' economic chances of survival, to exclude them from the German community, and to convince them to emigrate. A significant Act was the "Civil Service Act of April 7 of 1933" (*Beamtengesetz*), excluding Jews from all public service positions. Jewish judges, lawyers, teachers, and officials were thereby "retired".[154] In the subsequent years discrimination against Jews increased. Radio and press disseminated anti-Semitic hate propaganda. With the infamous Nuremberg Laws of September 1935, the persecution of Jews given a legal framework. By means of the 'Law for the Protection of German Blood and Honour' (*Gesetz zum Schutze des deutschen. Blutes und der deutschen Ehre*[155]) and the 'Reich Citizenship Law' (*Reichsbürgergesetz*[156]) of 15 September 1935, Jews became legally defined; they were excluded from citizenship rights, and physical relations between Jews and Non-Jews were prohibited (so-called race "disgrace", "*Rassenschande*").[157] Violations of these prohibitions led to confinement (of legally undefined – thus indefinite – duration!). Jews received generally harsher sentences than

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[150] For more information on this see Klee (1985).

[151] However, as the majority of the German population was Christian, and as Nazi propaganda in general promulgated religious beliefs, the Nazi's campaign against the churches and the clergy proceeded more cautiously. Initially only individuals that presented a real threat to the Nazis were targeted, while the regime promised the Churches generally freedom of religion, as long as they did not get politically involved. However, the policy changed when Nazis judged the Catholic church a "fertile hotbed of real and potential resistance" In consequence, several Catholic clergymen were accused of homosexuality, highly publicised trials took place in the years 1936 and 1937 (with a temporary break during the Olympic Games in the Summer of 1936) and led to the arrest and incarceration of hundreds of Catholic clergymen (see Johnson (2000) at 195 et seqq.).

[152] Many of the Jehova's Witnesses demonstrated openly, sometimes fanatically, their opposition to the Nazi regime which they considered to be the incarnation of the devil himself. They were only a small minority of the German population, numbering about 30,000 members in 1933, but almost all of them suffered dearly from Nazi rule: 97 % of them experienced one or another form of persecution, and about one in three died as a result of that persecution (Ibid. at 238 et seqq).

[153] Ibid. at 88 et seq.

[154] Ibid. at 90.

[155] Online available at: http://de.wikisource.org/wiki/Gesetz_zum_Schutze_des_deutschen_Blutes_und_der_deutschen_Ehre (visited on 21 September 2008).

[156] Online available at: http://de.wikisource.org/wiki/Reichsb%C3%BCrgergesetz (visited on 21 September 2008).

[157] Johnson (2000), at 104.

Aryans.[158] Theh discrimination and isolation of Jews forced many of them to leave the country. The violence was, however, kept at a relatively moderate level, until the unleashing of the *Reichskristallnacht* on 9/10 November 1938.[159] However, there was still worse to come: after the November pogrom and the outbreak of war on 1 September 1939 more than 200 anti-Jewish measures were adopted. After the war started, the speed of new anti-Semite legislation even accelerated. Jews lost their careers, their houses, and their property. They were subjected to forced labour, received little to eat, and were moved into "Jewish houses". They were branded with big yellow stars of David identifying them as Jews. They were only allowed to shop for certain items, at certain times of the day, in certain stores. In addition, they were denied access to bomb-shelters. Needless to say, they were easy prey for any sadistic anti-Semite with some official power (e.g. police men, SA, SS, Gestapo officials, or simply party members), who ill-treated them or worse. After October 1941 emigration became prohibited for Jews, and at the same time the deportations began. The 'Final Solution' (*Endlösung*) was initiated and the Holocaust, the systematic killing of Jews began on a large scale: millions of Jews were systematically transported to concentration camps in order to be worked to death, shot, or gassed.[160]

In **Italy**, Benito Mussolini and the Futurist Filippo Tommaso Marinetti founded the first Fascist movement in March 1919, the *Fasci Italiani di Combattimento.*[161] After the Fascists had lost elections in November 1919, Fascist shock troops called *squadristi* (squads) emerged and used violence to pursue of their goals: in July 1920 they burnt down the Slovene headquarters in Trieste. In November of the same year, when a 'maximalist' Socialist Mayor called Bucco had been elected at Bologna, Fascists warned that there would be trouble, and fights broke out between the two opposing groups, causing many casualties. This event brought up a new category of *squadristi*, formed of agrarian people. Mussolini used the squads to intimidate and destroy Socialism, in order eventually to take

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[158] The German Secret Service, the Gestapo (*Geheime Staatspolizei*), increased this tendency, following a secret decree by Reinhard Heydrich of 12 June 1937 that stipulated that persons who had been sentenced for a crime of race defilement were to be sent by the Gestapo to a concentration camp after serving their prison sentence. In the absence of a legal basis for incriminating Jewish women (Hitler's laws had only found men guilty of the offence of race defilement as they always, in his view, took the initiative step), the Gestapo often sent Jewish women caught in a relationship with an Aryan directly to concentration camps, without any legal recourse (Ibid. at 110 et seq.).

[159] The triggering event was the shooting of a German diplomat named Ernst von Rath at the German embassy in Paris by the young Jew Grynszpan in retaliation for the deportation of his parents to Poland. Goebbels was enraged by this act and demanded that all Jews should pay for the assassination. Subsequently, party leaders, SA men, and Gestapo offices throughout Germany were contacted to take immediate action against the Jews. As a result, in one night thousands of Jewish houses and business premises were raided, synagogues burnt, people tormented, harassed, arrested, and some even killed.

[160] Johnson (2000), at 382 et seqq. Some interesting background information is provided by Arendt (1992), who attended the trial against the *Obersturmbannführer* Adolf Eichmann, the man responsible for the transport of the Jews to their concentration camps.

[161] "Fascio" in Italian means bunch, bundle, or group, so the name could be translated as "Group of Italian Combat".

over political power. The squads also supported industrialists and landowners by intimidating their striking workers. When the Fascist movement was transformed into the Fascist party by November 1921, the squads gradually became the official Party Militia. The murder of the Socialist leader Giacomo Matteotti by a group of ex-*squadristi* brought about a political crisis that led Mussolini to make a famous speech on 3 January 1925, in which he assumed personal responsibility for all that had happened, and installed a permanent dictatorship, a tyranny in fact.[162] A series of attempts on Mussolini's life in 1925-6 were used as a justification for the adoption of Exceptional Decrees in November 1926, thereby suppressing all political parties except the Fascists, as well as all newspapers which did not fit into the Party's line. The death penalty, which had been abolished in 1889, was reintroduced, and a political police force was instituted. Under Mussolini's two decades of totalitarian rule, the *Duce* (the leader) was idealised, violence was glorified, and political opposition was repressed. However, terror was used on a comparatively small scale, in contrast to Nazi Germany or Stalinist Russia: political opponents were seldom condemned to more than *'confino'* (exile to some remote island like Ustica or Lipari where conditions were bad but could be survived), and after the fall of Mussolini's dictatorship there were far more Italian anti-Fascist leaders left to take over responsibility than there were anti-Nazi leaders in 1945 to take over in Germany after a much shorter period of Nazi rule.[163]

In **Spain** under general Francisco Franco's regime following the Civil War of 1936-9, terror was used initially to punish former Civil War opponents. Thus, thousands of prisoners of war, suspected communists, and Freemasons were shot during the Civil War and in the early years after. Several years after the end of the war, imprisonment and abuse of political opponents continued systematically for the purpose of maintaining totalitarian power.

Even before the end of the Civil War (which was declared as officially over by Franco on 1 April 1939) a *Law of Political Responsibilities* had been adopted already on 9 February 1939, providing blanket justification for repression. Likewise, a *Special Tribunal for the Repression of Freemasonry and Communism* was created on 1 March 1940, in which the "flower of the country's cultural life and the nation's university teaching and research staff" were tried in the subsequent twenty-four years. Journalists were systematically purged, many of them were executed, and almost all of them lost the opportunity to work.[164] After the end of the Civil War, revenge actions against Republicans continued until the mid-sixties. The captured Republicans who were not executed were put

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[162] Wiskemann (1969), at 8 et seqq.
[163] Ibid. at 20 et seq.
[164] See Preston (1995), at 42, with further references.

into massively overcrowded prisons and sentenced to forced labour.[165] Furthermore, other political opponents were executed, such as the anarchists Francisco Granados Gata and Joaquín Delgado Martínez,[166] as well as Salvador Puig Antich.[167] In the Burgos Trials of 1970, several members of the Basque terrorist organization ETA were sentenced to death for having assassinated Melitón Manzanas, chief of the secret police in San Sebastián and an alleged torturer. Strong international pressure led to commutation of the sentences, although some had already been executed.

Franquist Spain was characterised by an overwhelming military and police presence, cowing the population. [168] The police in the cities and the Guardia Civil in the smaller towns and the countryside were well-armed, well-resourced, and virtually unrestrained. The population was intimidated by overcrowded prisons, labour camps, tortures and executions, policemen trained by Gestapo advisers, and a range of secret police organizations active in the factories and universities. Conflicts between right-wing Franquists and political opponents became stronger in the 1960s and 1970s, leading to the eventual fall of the Fascist State after Franco's death. During the 1960s fascist right-wing groups (e.g. *Defensa Universitaria, Círculo Español de Amigos de Europa* and others) responded to the growth of leftist student groups by spying on them, breaking up anti-regime meetings, beating up individuals, and intimidating female leftists. These groups considered themselves to be "freelance patriots acting as flying squads wherever the essences of Franquism were in danger". In 1971 they initiated a series of night raids against 'left-wing' book shops (those that specialised in legally authorised books on sociology and politics), smashing windows and doors, destroying stock, and spreading about threatening and humiliating pamphlets. Police did not intervene. The campaign of ultra-rightists became known to the international public when three bookshops displaying Picasso prints in Madrid and Barcelona were smashed, on the grounds that Picasso supported the Communist party. [169] Violent attacks against liberal bookshops increased. In 1973, 6,000 people in the Barcelona booktrade received anonymous threats. Further, offices of liberal journals were attacked, as well as defence lawyers for workers. At university, *Defensa Universitaria* continued sporadically to terrorise students and professors. Also the Catholic church was targeted, since clergymen became increasingly opposed to the Franco regime, and sometimes allowed clandestine unionists to hold meetings in their protected premises.

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[165] To give an example: 20,000 people were employed (several of them died or were badly injured during the works) when constructing the *Valle de los Caídos*, a large mausoleum for Franco and monument remembering those who fell in the war for Franco (Ibid. at 43).

[166] Executed on 17 August 1963 by *garrote vil* (ibid). A garrote is an instrument that was used in Spain under Franco until 1974 for public executions. It consists of a stick against which the victim's back is put and a rope or wire attached to this stick that surrounds the victim's neck. By slowly tightening the rope or wire, the victim is slowly strangled to death. In some cases, the garrote also included a screw that was twisted slowly into the victim's neck from behind – then death was caused by breaking of the neck.

[167] Executed the same way on 2 March 1974 (ibid).

[168] Preston (1995) at 85.

[169] Ibid. at 165 et seqq. (Quotation at 167).

The violence reached a summit during the May Day demonstration in 1973 when a member of the secret police was stabbed to death. Hundreds of arrests and torture followed the incident. At the same time ultra-rightists organised mass-protests. After the death of Franco in 1975, under his assigned successor King Juan Carlos, the country underwent a slow and peaceful transition back to democracy.

3.1.3. Chile and Argentina

State terrorism in Chile and Argentina deserves closer examination.[170] The political setting was quite different from the fascist one described previously: Castro's socialist revolution of the 1960s had inspired the radicalisation of politics throughout Latin America. Left-wing candidates promoting land reforms and investments in education and health gained growing support.

In **Chile**, Salvador Allende was promoting a socialist revolution following Cuba's example. The party which opposed him, under the leadership of Christian Democrat Eduardo Frei, proposed a "revolution in liberty". Throughout the 1960s U.S. governments were increasingly concerned by the radicalisation of Chilean politics. They spent millions of dollars in order to strengthen opposition to the left.

In this climate Salvador Allende was elected in 1970 – the world's first, and only, freely elected socialist who was committed to eliminating large-scale capitalism in his country. On 11 September 1973 armed forces and the *Carabineros*, Chile's national police, carried out a military coup, bringing down Allende's regime. Under the military leadership of Augusto Pinochet, the coup was followed by a massive crackdown on Allende's supporters. People were openly shot; others "disappeared" (i.e. were either secretly detained for long periods, or simply killed and buried in secret graves). Almost 2,000 people were tried by hastily assembled military war tribunals; some 300 were executed immediately; others were sentenced to prison camps. By the end of 1973 tens of thousands had been arrested without warrants, thousands had been tortured, and hundreds had been tried and sentenced in war tribunals. Nearly 2,000 people had been killed immediately or had disappeared following detention. The truth commission established after the dictatorship's end observed a shift in 1974 from ad hoc terrorism to institutionalised terrorism: 'the instances of disappearance after arrest in the 1974-1977 period reflect a pattern of prior planning and centralized coordination.'[171] Disappearances became the preferred method of eradicating opponents, i.e. any real or potential adherents to Marxist ideas (not only politically involved people were targeted, but also general "risk groups" such as poor and intellectual people). With the creation of the *Dirección de Inteligencia Nacional* (National Directorate of Intelligence, DINA), information gathering was institutionalized on a large scale. The DINA was further authorised (secretly) to conduct raids and make arrests without restraint. It established secret detention and torture centres

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[170] The following section is based on the information provided by Wright (2007).
[171] United States Institute of Peace (1992), Part III, Chapter 2.

around the country. In November 1975 it organised the 'First Inter-American Conference on National Intelligence', where secret services from Chile, Argentina, Uruguay, Bolivia, and Paraguay agreed to collaborate in their persecution of Marxists. The *Operación Condor*[172] was thus adopted. Intelligence services of the U.S., but also of France, West Germany, and East Germany knew about this operation and collaborated in several ways.[173] The military coup of 1973 had introduced a State terrorism to Chile that lasted eventually for more than sixteen years.

Similarly to Chile, the **Argentina** of the 1960s and 1970s was marked by conflicts between the contrasting political powers. After the overthrow of Juan Perón in 1955 – who was subsequently exiled to Spain – Argentina fluctuated between civilian and military governments that lasted on average not more than twenty-two months. Influenced by the Cuban revolution, radical groups increasingly emerged during these years, including guerrilla movements based on Che Guevara's doctrine. In 1966 General Juan Carlos Onganía established a repressive regime based on the national security state concept. In response to his repression, the "*Cordobazo*" emerged in May 1969 in the city of Córdoba, a massive but short-lived uprising of workers and students. This movement gave rise to a powerful urban guerrilla movement, including two main organisations: the Trotskyist/Guevarist *Ejército Revolucionario del Pueblo* (People's Revolutionary Army, ERP), and the pro-Perón *Montoneros*. In order to obtain public support, they carried out Robin Hood-style actions (stealing goods and distributing them among the poor, forcing firms to re-employ dismissed workers, assassinating high-ranking political figures, etc.). These movements undermined General Onganía's power, and he was consequently overthrown by General Roberto Levingston in June 1970. Levingston's successor, General Alejandor Lanusse, encouraged the military's support of the police in fighting terrorism and subversion. A special court was set up to expedite trials of guerrillas. This court convicted some 600 accused terrorists in two years. At the same time, the regime directed torture, executions, and disappearance in their fight against leftist insurrection. The *Montoneros* continued their fight against the regime, demanding Perón's return. Peron, in exchange, encouraged them and promised to establish a socialist state upon his return. Rebellion increased and led eventually to Perón's re-election as president in 1973. Perón, however, did not fulfil the leftist's expectations, but rather supported employers' organisations and in fact repressed the left. For the suppression of the left, Perón's social services minister José López Rega created the *Alianza Anticomunista Argentina* (Argentine Anticommunist Alliance, AAA), an extra-official death squad consisting mostly of military and police. After Peron's death in July 1974, Lopez Rega actually[174] led Argentine politics.

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[172] Operation Condor, named after the Chilean national bird, the Condor.
[173] See Dinges (2004), at 130-3, 142-3, 175-98.
[174] Officially, Perón's wife, Isabel, held power. However, according to Wright, she "allowed herself to be controlled by López Rega" (Wright (2007), at 99).

In response to the *Montoneros'* insurrection in September 1974, increasingly tough anti-terror laws were enacted, and a state of siege established that gave extra powers to the military. By the end of 1974, dozens of "subversives" were being murdered monthly. Leftist terror and rightist counter-terror grew exponentially. In the subsequent year the Army became officially involved in the fight against "subversive elements". In this general climate of terror and insecurity, accompanied by economic crisis, the coup of 24 March 1976 was welcomed by many. The new junta, comprising the army, navy, and air force commanders, promulgated a new ambitious programme: *el Proceso de Reorganización Nacional* (the Process of National Reorganisation). To this end, they dismantled all institutions capable of opposition, suspended the constitution and political parties, extended the state of emergency, closed Congress, provincial legislatures, and city councils, banned union activity, etc.; state terrorism was instituted. While the threat posed by guerilla movements had already diminished considerably by 1976, the military continued to fight them vigorously, and simultaneously justified their repressive methods imposed upon the Argentine people as a necessary response to the (alleged) terrorist threat.

3.1.4. Systematic terror under Mao Tse Tung

While the state terror described above had fortunately ceased by the end of the twentieth century, if not earlier, the systematic state terror that emerged in the founding phase of the People's Republic of China was the most serious in terms of duration. Even recently the Chinese government has shown that it has absolute control over politics and suppresses any potential political opposition. Student demonstrations at Tiananmen Square were violently put to an end by the Chinese army in 1989. Not only political opponents, but also different-minded peaceful people such as adherents of the Falun-Gong movement, for instance, are suppressed. Nearly 20 years after the Tiananmen incident, human rights concerns in China are still very great, especially with regard to the high number of executions carried out yearly (approximately 10,000).[175] This year (2008), a few weeks before the Olympic Games were held in Beijing, Chinese authorities violently suppressed peaceful demonstrations of Tibetan monks, causing an international outcry. In addition, Amnesty International raised concerns that the human rights situation deteriorated already during the preparations for the Beijing Olympic Games to be held in August 2008. It has been reported that people were detained and assigned to 're-education through labour' and other forms of administrative detention imposed without charge, trial, or judicial review, in order to 'clean-up' Beijing ahead of the Olympic Games.[176] During the games, people who wanted to demonstrate were arrested by police beforehand.[177] Furthermore, censorship of

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[175] Human Rights Watch (2007).

[176] The current human rights situation of China is thoroughly described in the respective country reports of Human Rights Organisations, such as Amnesty International or Human Rights Watch.

[177] E.g. see Human Rights Watch (13 August 2008): *China: Police Detain Would-Be Olympic Protesters*.

the intenet sources also for international journalists was criticised.[178] But let us now go back some fifty years to the origins of today's situation:

'The People's War'[179] was a military-political strategy invented by Mao Tse Tung. His basic concept was to maintain the support of the population by provoking the enemy to attack them. At the same time, the population was terrorised in order to deter them from uprising.

Mao started out in the late 1920s as a "bandit", based in the Jinggang Mountain range, traditional outlaw country. There he soon became the boss of the bandits. Lootings, torture, and killings of the "rich landed tyrants"[180] were carried out on a large scale, in order to accumulate food and property, while at the same time the aim was to spread fear and respect among the peasant population. Mao claimed an ideological rationale behind these atrocities: fighting the exploiting classes. However, the indiscriminate nature of the raids makes this justification appear rather as a pretext than anything else.[181] The conquests of villages were accompanied by public victory rallies where the county chief was arrested and people used their spears, *suo-biao*, to kill him. Mao thus made killing compulsory viewing for a large part of the population. This strategy fuelled the people's fear.

Russia needed a winner, an independent thinker, to become the leader of the future Communist State, and chose Mao. When Mao learnt about his ultimate promotion, he decided on a large-scale purge to eliminate all potential political opposition. The purge was initiated in late November 1929, under the command of Lie Shau-joe. The latter started by arresting a few so-called 'Anti-Bolshevists', torturing them to get more names, and subsequently making more arrests. In the course of one month, over 4,400 people were tortured, and most of them were killed. Moscow tolerated these atrocities. When Communists from Jiangxi denounced Mao's methods and showed their torture wounds to the Communist leadership in Shanghai, the Communist Party backed Mao's methods. The Jiangxi men who had tried to denounce Mao were labelled as 'counter-revolutionaries', and many were killed. About a quarter of the Red Army of Jiangxi (*c.* 10,000) died. In a nearby village, Fujian, where local Reds had also rebelled against Mao's atrocities, many thousands were executed.[182] This was the first large-scale purge carried out by the Chinese Communist Party, under the leadership of Mao Tse-Tung.[183] Other purges followed, all

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[178] E.g. see Human Rights Watch (15 August 2008): *China: End Abuses of Media Freedom-*
[179] Chinese language: 人民战争.
[180] 'Rich' was highly relative and could mean 'a family with a couple of dozen litres of cooking oil, or a few hens' (Chang and Halliday (2005), at 58 et seqq.)
[181] Ibid.
[182] Those alone names are known and who were later officially cleared numbered 6,352. The real figure may be much higher.
[183] Chang and Halliday (2005), at 100.

pursuing the same aim: the elimination of "anti-Bolshevists". To get an idea of the dimension of these campaigns, three of them will be briefly described:

In February 1933 Mao started arresting people who could be identified as 'counter-revolutionaries', in order to have enemies who could be 'legitimately', according to the Communist doctrine, dispossessed and worked to death. This method was used in order to enhance the Party's property, to have cheap workers, and, at the same time, to spread fear and thereby intimidate and deter any potential opposition. Besides the executions, suicides became more and more common. During the years of 1933-5, the population of Jiangxi and Fujian dropped tremendously: more than half a million of Jiangxi's people (20 %) died. In Fujian it was about 700,000.[184]

During the Sino-Japanese War, Mao gained more and more young enthusiast adherents ready to fight against the Japanese. In his *Zheng-feng* (usually translated as 'Rectification Campaign') in Yenan Mao used their enthusiasm in order to remould his followers fundamentally.[185] A series of mass detentions, executions, and interrogations, accompanied by torture, followed. Young volunteers were coerced to confess to being spies and to name others in front of large groups of people. People who were named were taken to prison or to mock executions. The spectacle was accompanied by hysterical slogan-screaming.[186] People were ordered to write so-called 'thought examinations': to write down any information passed on by other people and also by themselves which was 'not so good for the party'. This criterion 'not so good for the party' was kept deliberately vague so that people tended to include more, out of fear. Any person opposing or resisting these ideas was immediately identified as a spy. Information exchange between people was put under total control. Thus, 'Information starvation gradually induced brain death'.[187] Mao had banned irony and satire officially in spring 1942 and criminalised humour itself. A new catch-all offence – 'speaking weird words' was introduced. Two years of this indoctrination and terror sufficed to turn the young idealists into robots. The full cycle of terrorisation of Yenan was to be copied in other Red bases.

A last purge that deserves mention here took place during the Cultural Revolution (1966-76), in the summer of 1966, when the Mao-Cult was intensified: the Little Red Book was published and became obligatory reading for Chinese people. Pictures of Mao were present everywhere. In June 1966 Mao incited young school students to riot against their teachers whom he accused of poisoning the students' heads with 'bourgeois ideas'. Riots took place where teachers were dragged in front of crowds and maltreated. These scenes happened everywhere in China and led to many suicides. The episode was followed by the institution of terror on a much larger scale: the so-called terror of 'Red August', aimed at 'frightening the whole nation into an even greater degree of conformity'.[188] The creation of 'Red Guards', violent teenage terror groups 'protecting' Mao from enemies, was officially promoted. As a result, Red Guards mushroomed and their atrocities at schools and universities (beating, torturing, and even killing school and university teachers) were

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[184] Ibid. at 114.
[185] Ibid. at 250 et seqq.
[186] Ibid. at 254.
[187] Ibid. at 255.
[188] Ibid. at 537 et seqq.

not stopped by the government or police. On the contrary, the government supported their actions by providing them free travel, food, and accommodation, in order to allow the terror to spread throughout the whole country. The terror at schools was subsequently extended to custodians of culture and culture itself. Houses were raided and cultural items (books, paintings, etc.) were destroyed, and valuable property confiscated. Likewise, promoters of culture, such as writers and artists, were tortured and expelled. During the months of August and September, in Peking alone, 33,695 homes were raided, and 1,772 people tortured or beaten to death. Nearly 100,000 inhabitants of Peking were expelled in less than a month from late August.[189] By mid-September 1966 people were sufficiently terrorised for Mao now to shift to his real targets: disloyal Party officials. The teenage Red Guards were thus superseded by new groups, consisting mainly of older people called 'Rebels' who 'seized power' from their party bosses. They acted under official order declared by Mao in January 1967. They were assigned to punish Party cadres. Consequently many party bosses were publicly tortured, some of them to death.

3.2. Vigilante terrorism: death squads in Central America and Colombia[190]

Also often associated with state terrorism are death squads. Death squads are military, paramilitary, or irregular forces financed by a regime or political group to engage in violent repression against a population in order to prevent it from supporting the opponents of the regime or group. The term is believed to have originated in Brazil in the 1960s where off-duty policemen formed *'Esquadraos de Morte'* to kill criminals. Subsequently these groups helped the Brazilian military regime to kill dissidents. They were also known for killing poor or homeless people, simply the 'undesirables'.[191] Death squads are often treated as an aspect of vigilantism.[192]

Most often, the term 'death squads' refers to militants sponsored by right-wing regimes in Central and Latin America to suppress (potential) leftist opponents through kidnapping, torture, and murder. However, there have also been examples of death squads outside of Central and Latin America.[193] Furthermore, not only right-wing, but also leftist regimes have sponsored their own death squads.[194]

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[189] Ibid. at 540 et seq.

[190] The information in this section is taken from Anderson and Sloan (2002), at 130 et seq., and from Campbell and Brenner (2000).

[191] Williams and Head (2006), at 179.

[192] Vigilantism means that the state's powers of law and monopoly on violence are temporarily usurped by groups of ordinary citizens who try to enforce social norms. While death squads directly involve the state in addition to other actors, vigilantism is predominantly based on the initiative of private persons and is therefore more spontaneous. However, there is considerable overlap between death squads and vigilantism as death squads often also combat crime, and vigilantes are often influenced or even instigated by the state (Campbell (2000), at 2 et seq.).

[193] E.g. some Ulster Protestant militias were accused of acting as death squads; South Africa's military Civil Cooperation Bureau is said to have sponsored death squads, and the Turkish government as well seems to have hired members of a drug dealing gang to kill suspected dissidents.

[194] E.g. in the Philippines the communist New People's Army has been using death squads known as 'Sparrow Squads' to murder government officials.

3.2.1. El Salvador

In El Salvador death squads called 'the National Guard' emerged in the beginning of the twentieth century, to protect the interests of land owners. They soon became known as a 'local instrument of terror'. With the support of the army and paramilitary groups, the National Guard carried out *'La Matanza'* ('the Great Killing') massacre, in which they suppressed peasant insurgencies by rounding up the peasants, lining them up against a wall, and shooting them. The massacre is estimated to have killed over 30,000 peasants.[195] In 1963 the United States government offered help to El Salvador by sending ten Special Forces personnel to set up a paramilitary death squad which became known as the *Organización Democrática Nacionalista.* With the government's support, this squad carried out political assassinations. There is now proof that these activities have been going on for over thirty years. Entire villages were massacred if they were suspected of hiding guerrillas.[196]

Another death squad active during the 1970s was the rural militia *ORDEN*.[197] Killings by Salvadoran death squads between 1979 and 1982 sometimes exceeded 800 people per month. These death squad actions created much controversy regarding the Reagan administration's support of the Salvadoran transitional regime against leftist insurgency, since many of the leaders and members of the squads were themselves Salvadoran army or police officials.[198]

Even today death squads still operate openly in El Salvador, under the name of *Sombra Negra* ('Black Shadow').[199]

3.2.2. Guatemalan mass killings

In Guatemala death squads emerged in the 1960s as a consequence of the United States' direct involvement in the *coup d'état* of 1954. The CIA had engaged in the overthrow of the then head of the state, Jacobo Arbenz, together with a small group of the Guatemalan elite, after the government had ordered the expropriation of large tracts of land owned by the United Fruit Company, a US-based banana merchant ("Chiquita Banana"). The US now took an active role in the restructuring of Guatemala, in order to make it a "showcase for democracy". It donated millions of dollars, and in exchange redefined politics, with the aim of maintaining a stable climate for private investment and the elimination of insurgence. However, elections in the following years were accompanied by irregularities – if they were not fraudulent. Moreover, the military became a leading force in Guatemalan

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[195] The leader of the action, General Martinez, defended his actions on religious grounds, arguing that it was more of a crime to kill an ant than a man because a man was born again at death whereas an ant died forever.
[196] Williams and Head (2006), at 176.
[197] The group was declared to have been disbanded in November 1979. However, its members appear to have entered newer death squads such as the 'White Warriors' Union' and the 'Maximiliano Hernández Martínez Anticommunist Brigade'.
[198] Anderson and Sloan (2002) at 130-1.
[199] Williams and Head (2006), at 178.

politics. Democratic legality was thus replaced by terror. Half of the years from 1963 through 1971 were marked by states of emergency where constitutional guarantees and liberties were abrogated and official terror was used, with the pretext of maintaining public order and combating leftist guerrilla insurgency. After 1966, a series of right-wing death squads emerged, such as the *Mano Blanca* ('White Hand') and *Ojo por Ojo* ('an eye for an eye'). Financed by the bourgeoisie, these groups were allegedly clandestine, but in fact acted with complete impunity. They were generally composed of off-duty or former members of the army and police and served to complement the government's activities against insurgency. Their actions ranged from publication of death lists to kidnappings, torture, and assassinations. By the 1980s, 40,000 people had "disappeared". The death squads targeted workers and peasants, but also university students and professors.[200]

In the 1980s death squads reached an even higher level when combating leftist rebellion: the tale of the death squads of 1980 to 1983 is one of 'wholesale slaughter and genocide'; they carried out illegal violence without even the façade of legal constraints. The goal was literally to 'drain the sea' in which the guerrilla movement operated. The principal techniques were depopulation through 'scorched-earth' bombings, massacres of whole village populations,[201] and massive forced relocations. Thus over 440 villages were entirely destroyed; over 100,000 civilians (according to other estimates:[202] from 150,000 to 200,000!) were killed or 'disappeared'; and there were over 1 million displaced persons.[203]

3.2.3. The Contras in Nicaragua

The Contras, short for 'counter-revolutionaries', were the armed groups that began to fight against Nicaragua's Communist Sandinista Regime established in 1979. They were originally trained and supported by Argentinean military advisors and Cuban and Nicaraguan exiles. But from 1982 onwards the US sponsored them by sending CIA advisers, and military and humanitarian aid. Due to disputes between the Reagan administration and the U.S. Congress, military aid was cut off in 1984, resumed in 1986, and again cut off following the revelation of the Iran-Contra affair in late 1986.[204]

Fights between the Contras and the Sandinista forces (*Frente Sandinista de Liberación Nacional*, FSLN) continued in the 1980s on a large scale. In March 1988, when the FSLN invaded Honduras in order to capture the Contras' headquarters, President

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[200] Jonas (1991), at 57-72.

[201] E.g. the massacre at San Francisco, Nentón, Huehuetenango of 17 July 1982, where an estimated 352 people were openly and deliberately killed (Ibid. at 145 et seq).

[202] Campbell and Brenner (2000), at 316.

[203] Jonas (1991) at 145-159.

[204] In this affair the US had illegally sold arms to Iran for two motives: (1) to secure the release of US hostages held in Lebanon, and (2) to generate revenues independent of congressional approval in order to support the contras in Nicaragua. The action was dubious in several respects: the exchange for hostages conflicted with the long-standing declared US policy not to pay ransom for hostages. Further, by selling arms to Iran, the Reagan administration violated its own executive orders banning arms sales to Iran, since the US themselves had declared Iran as a state sponsor of terrorism. Finally, the financial support of the Contras took place in contravention of congressional restrictions.

Reagan deployed 3,000 U.S. paratroopers to Honduras and provided the Contras with 'humanitarian aid' of $ 17.7 million.

Following democratisation developments in Nicaragua in response to international political pressure, the Contras began their demobilisation, which was completed in June 1990. Some of them, however, rearmed themselves afterwards, claiming that the government's promises related to the decommissioning had not been kept.[205]

3.2.4. Colombia: Drug cartels and death squads

In Colombia a special form of terrorism, "narco-terrorism', has led to the emergence of non-state death squads. The *Medellín* and *Cali* groups were two drug trafficking families which together supplied about 80 % of the world's cocaine.[206] After eliminating Cuban rivals in Miami during 1978-1979, the cocaine-producing Columbian families agreed to share the market among themselves in a cartel-like arrangement. When the M-19[207] leftist guerrillas carried out several kidnappings, the Columbian families united against their common enemy: in December 1981 the heads of three leading cocaine-producing families contributed $7.5 million each to establish their own security force and anti-leftist death squad, known as *Muerte a Secuestradores* (MAS, Death to Kidnappers). Hence the MAS started out as a group countering leftist guerrilla movements, such as the M-19 or the *Fuerzas Armadas Revolucionarias de Colombia* (Revolutionary Armed Forces of Colombia, FARC). Eventually, it became a right-wing death squad targeting leftist revolutionaries, politicians, students, the Colombian state, and members of the US Drug Enforcement Agency (DEA).

In 1996 another Colombian death squad started its activities: the *Autodefensas Unidas de Colombia* (Self-Defense Units of Colombia, AUC). They are reported to engage largely in summary executions of persons suspected of having helped leftists. They have carried out public hangings, decapitations, and quarterings of the bodies of their victims. In the first nine months of 1996 about 2,492 political homicides were reported, of which the AUC and similar groups account for 59 % while leftist rebels account for 34 % (the remainder being the work of the police and military). In November 1996 the Human Rights Watch/America group released a report alleging US support for the creation of so-called self-defence forces or anti-leftist paramilitaries.[208]

3.2.5. Death squads elsewhere

Death squads have not only been identified in Latin America, but also in other parts of the world. For example, in Vietnam death squads trained, armed, and directed by the CIA

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[205] Information taken from Anderson and Sloan (2002), at 119-122; Williams and Head (2006), at 180.
[206] The Medellin family alone had about 120,000 full-time employees.
[207] A guerilla movement named after 19 April 1970 (*Movimiento 19 de Abril – M-19*), the day on which allegedly fraudulent presidential elections took place in which the National Popular Alliance (ANAPO) of former military dictator Gustavo Rojas Pinilla was denied an electoral victory.
[208] Information taken from Anderson and Sloan (2002), at 108-13, 130-2, 427-30, 447-9.

murdered up to 50,000 people in *Operation Phoenix*. In 1993 Haitian death squads terrorised sympathisers of Bertrand Aristide, a former Roman Catholic priest and the President of Haiti. Terror in the form of murder, massacres, public beatings, arson, and even removal of limbs was used to eliminate support for the president. Moreover, the Khmer Rouge employed death squads when taking over power in Cambodia in 1975. More than 1.6 million Cambodians were killed before the government was overthrown. Another death squad, the Interahamwe, committed genocide in Rwanda in 1994. The number of people massacred reached a figure of around 800,000.[209] Other places where death squads were active include Algeria/France, Bangladesh, Burundi, Congo-Brazzaville, Germany, India, Indonesia, Kenya, Liberia, the Philippines, Rwanda, Serbia, Sierra Leone, Somalia, South Africa, Spain, Sri Lanka, Turkey, the United States, Uganda, and Zaire.[210] The term originated in Latin America and has been mostly applied to the groups acting there. It is for this reason that I have limited the overview to a few 'representative cases', without ignoring the fact that many others would deserve mention.

3.3. Wartime terrorism

Finally, we should not leave out another type of state conduct referred to by Blakesley as terror: wartime terrorism, the use of terror for the purpose of winning a war (to intimidate the enemy in order to coerce his surrender).[211] By deliberately bombing civilian targets in order to break the morale of the enemy (terror bombing), governments at war attempted to defeat each other. The goal being to terrorise civilians, the perpetrator aims at attacking the enemy in the most impressive, and thereby devastating way, in order to maximise its terrorising effect. The reader may recall the atomic bombings of Hiroshima and Nagasaki during World War II,[212] the destruction of Guernica during the Spanish Civil War,[213] or the bombardment of Dresden at the end of World War II,[214] to get an idea of how strategic war could turn into deliberate acts of terror. There is no doubt that the bombing was intended to have a terrorising effect: In the case of Japan, during World War II Americans dropped leaflets on Japanese cities to warn its citizens and force them to capitulate:

> "We are in possession of the most destructive explosive ever devised by man. A single one of our newly developed atomic bombs is actually the equivalent in explosive power to what 2000 of our giant B-29s can carry on a single mission. This awful act is one for you to ponder and we solemnly assure you it is grimly accurate." (excerpt of leaflets dropped on 6 August 1945 on Japanese cities)[215]

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[209] Williams and Head (2006), at 179-82.
[210] Campbell and Brenner (2000), see Appendix (at 313 et seqq).
[211] E.g. Blakesley (2006), at 2 et seqq., with further references.
[212] Frank (2001).
[213] See Arias Ramos (2003). The horror of this event is expressed in Pablo Picasso's masterpiece, *Guernica* (Reina Sofia, Madrid).
[214] See Taylor (2004).
[215] Cited after Blakesley (2006), at 3.

As to Dresden, Churchill considered the bombing as an appropriate strategy to terrorise the German civilian population and break their will in supporting the Nazis. However, with hindsight, he regretted the bombing:

> "It seems to me that the moment has come when the question of bombing of German cities simply for the sake of increasing the terror, though under other pretexts, should be reviewed. (…) I feel the need for more precise concentration upon military objectives such as oil and communications behind the immediate battle-zone, rather than on mere acts of terror and wanton destruction, however impressive."[216]

The impact of these bombings was overwhelming: thousands of people died, innumerable victims were injured, houses, including historical buildings and cultural heritages, were destroyed.

3.4. Summary

We see that terror actions have also been committed by or have been supported by governments. Here, terrorism is committed by those holding power. Consequently, the goal is not to change the political situation, but to maintain or strengthen it. The means are less clandestine and directed systematically against large groups of the population, if not the whole of the population. They are applied indiscriminately, with the purpose of creating fear. Since the perpetrators of state terrorism are often also those who make the law, their terrorist actions are not criminally prosecuted and, in many cases, are not even covered by legislative provisions. The direct goal of state terrorism is to intimidate the population, in particular potential political opponents, and to show them the state's overwhelming power, so that resistance becomes futile and is nipped in the bud.

We have seen in the case of Hitler's Germany that emergency legislation against 'terrorists' was used particularly to strengthen police powers and legitimise the detention or elimination of political opponents. The fundamental need to critically examine anti-terrorism or emergency legislation becomes evident: counter-terrorism legislation must be closely watched and checked against potential abuses. The terrorist methods applied by states include censorship, tortures, abductions, extrajudicial executions, and, in some cases, even mass killings and genocide. Considering the unlimited powers a ruling state may have, it is clear that the mischief done by totalitarian states can be much more devastating than what single clandestine groups – however organised, well-equipped, and structured –

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[216] Cited from a memo which Churchill sent by telegram on March 28 to General Ismay for the British Chiefs of Staff and the Chief of the Air Staff, cited after ibid An image of the memo can be found at: http://en.wikipedia.org/wiki/Image:Dresden%2CChurchillletter.jpg (visited on 13-06-07).

could ever accomplish. The power of the totalitarian regime has, in principle,[217] no limits, and consequently the overwhelming results of its actions, e.g. a genocide killing six million Jews, may go far beyond the atrocities which clandestine terrorists are ever able to commit against the ruling state.

Death squad activity as a special form of terrorism supported by the state has taken place in many parts of the world. In this context, most famous are the actions committed in Latin America, which were partially backed and even trained by US secret services during the Cold War. The death squads are similar to the police forces of a totalitarian state, but with one important difference: their actions are paid, but not controlled by the state, so that they act in total impunity, with practically unlimited powers. Death squads may be part of a broader strategy of a governmental terror, designed to spread fear amongst the population.

Finally, we have seen that wartime terrorism is one of the most devastating forms of terror. War produces the most destructive weapons, and the level of destruction increases along with the technological development of weapons. If we fear that terrorists might get a hold of these weapons, we might as well fear that the weapons could be used by a state in times of war. History has proven that during wartime, the most destructive weapons available will be used. Fortunately, a nuclear bomb does not seem fit to combat international terrorism – otherwise, some states, in their war against terrorism, might have already used it for this purpose.

4. Terrorist movements with direct impact on legislation of the UK, Spain, Germany, and France

After having had a broad overview on different acts of terrorism and terror, we shall now look more closely at the terrorism that has concerned the governments of the UK, Spain, France, and Germany in more recent years. I shall start by outlining the different national terrorist movements that these countries have experienced in the near past, and, in a second step, shift the reader's attention to the contemporary threat that all four countries share at present: International religiously motivated terrorism.

4.1. United Kingdom

Having already elaborated on the antecedents of Irish nationalism and the origins of the IRA, I shall concentrate only on the more recent history of the activities of the Provisional

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[217] At least in recent years, there have been some exceptions to this principle (consider the developments in international criminal law, and the on-going interventions in conflicts by third parties, e.g. the invasion of Iraq by the US). However, the legal measures to prevent or supress such state terrorism are considerably limited. Legally it can only be prevented by international tribunals, such as the International Criminal Court, for instance. However, the latter Court's preventive power is rather limited, due to its limited jurisdiction (cf., in particular, Arts. 5 and 11 of the Rome Statute of the International Criminal Court). Recently, a hybrid international tribunal in Lebanon has aimed at prosecuting the killers of Lebanon's former Prime Minister Rafik Hariri under the charge of 'international terrorism'.

IRA (PIRA). To this end, I shall outline the so-called period of "the troubles" from the late 1960s to 1998, during which more than 3,000 people were killed.[218]

During the 1960s the Catholic minority of Ireland slowly recovered from the demoralisation they had experienced after the failure of the IRA's Border Campaign in 1959.[219] However, tensions grew again when the Catholic nationalists in Northern Ireland continued to be discriminated against by the state.[220] Civil rights movements demonstrated and dramatised the injustice which the local councillors – most of them Unionists - applied when allocating housing in Northern Ireland.[221] Demonstrations from both sides[222] were accompanied by growing violence, responded to by increasing military action, culminating in events like the Battle on the Bogside[223] and Bloody Sunday.[224] As Kelley puts it, a war had broken out in the North of Ireland.[225]

In 1969 the IRA split into two groups: the Official Irish Republican Army, a rather moderate Marxist group which acted politically and tried to abstain from violence, and the militant Provisional Irish Republican Army, which prepared a long-term battle in order to regain liberty from British rule.[226] During the Falls Road Curfew of July 1970, 3000 British troops imposed a curfew on the nationalist Lower Falls area of West Belfast and held a gun battle with both the Official and the Provisional IRA. From that moment on, the PIRA started to attack British soldiers.

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[218] Minnis (2001), at 4. A concise overview on the conflict of Northern Ireland is given, e.g., by Bonner (2000); Walker (2003).

[219] Factors that contributed to their increasing self-confidence include the election of President John F. Kennedy (of Irish-Catholic descent) and the installation of Pope John XXIII (committed to social justice and ecumenism): see Kelley (1990), at 82.

[220] E.g. statistics showed a clear predominance of Protestants in public offices: see Ibid. at 979.

[221] Ibid. at 100 et seq.

[222] For example, on 5 October 1968 Civil Rights activists demonstrated in Derry, a town with a highly symbolic connotation as it was the ultimate example of how the Irish had been deprived by force of their territory (see above, 2.3.1.). However, their demonstration had been banned two days before due to a declared counter-demonstration of the Apprentice Boys the same day. Subsequently, their illegal gathering was suppressed violently by police, leading to a total of 88 injured, including one Westminster MP, who was beaten by the police.

[223] In August 1969 some 15,000 Apprentice Boys followed their tradition, and openly marched through Derry to celebrate the 280th anniversary of King James' defeat at Derry. Catholic youngsters reacted by throwing stones at them. Police intervened and an uncontrollable riot emerged – the Battle of the Bogside – by far the most serious to date, which resulted in 200 wounded. The British answered the riots by reinstalling soldiers in the city (Kelley (1990), at 117 et seq.).

[224] On Sunday, 30 January 1972 a march of the Northern Ireland Civil Rights Association in the city of Derry/Londonderry escalated into a lethal confrontation between the marchers and the British Army. The soldiers fired at the masses indiscriminately and shot thirteen people dead. Another fourteen were injured; one of them died of his wounds a few months later. According to the testimony of many witnesses, including bystanders and journalists, the victims were all unarmed. This incident would be remembered as Bloody Sunday. See also the documentary on this day by Greengrass (2002). The events of Bloody Sunday were followed by a thorough inquiry only a long time after (see http://www.bloody-sunday-inquiry.org/, last visited on 2 October 2008).

[225] Kelley (1990), at 119.

[226] Ibid. at 127 et seqq.

In the early 1970s the IRA imported a huge amount of weapons. They were supported by large parts of the population, and their membership increased rapidly, as internment without trial[227] and events such as the Bloody Sunday provoked resentment and frustration among the nationalist community. The following years were the most violent ones. In 1972 alone 477 people were killed in Northern Ireland in incidents connected with the conflict.[228] There were 1,300 explosions in the same year. The British fortified their police and military posts and took over control of areas that had previously been effectively controlled by the PIRA. During the 1970s the PIRA members typically engaged in attacking British patrols and provoking gunfights. They also killed British police and soldiers when off-duty. This produced casualties not only on the side of the British and the IRA, but also among uninvolved bystanders. Another tactic was the bombing of shops and businesses, using predominantly car bombs. One of their most spectacular attacks took place on 20 July 1972, when 22 bombs exploded, causing the deaths of nine people and wounding 130 (later remembered as Bloody Friday or the Belfast Bomb Blitz). Other bombings followed.[229]

Two temporary ceasefires took place during the 1970s, one in July 1972, and the other from February 1975 to January 1976. Both were eventually interrupted because the condition demanded by the PIRA – the withdrawal of British soldiers – was not met by the British politicians. The second ceasefire allowed many British informers to infiltrate the Provisionals. This led in its aftermath to a number of arrests. The PIRA, in consequence, reorganised itself into smaller cells, in order to become less vulnerable. They also engaged in a new strategy called "long war", with the objective of continuing their fight indefinitely until the British became exhausted, and eventually withdrew their troops.

In July 1976 a spiral of violence was triggered when Loyalists shot an English tourist and a Catholic, ending in a total of 96 deaths on both sides during that month. Such events happened frequently, although the figure for July 1976 was never surpassed during that decade.[230]

The IRA continued their bombing attacks and gun battles during the 1980s and 1990s. One of their bloodiest attacks of these years was the Remembrance Day Massacre, when eleven bystanders were killed by a bomb placed near a Remembrance Day service in Enniskillen.

While their main region of action was Northern Ireland, they also carried out some of their activities abroad, targeting British government officials in Great Britain, in

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[227] Internment, which means imprisonment or confinement, was a method ordered by the Prime Minister of Northern Ireland, Brian Faulkner, with the backing of the British government, in the course of which hundreds of nationalists and republicans were arrested by the British Army and the Royal Ulster Constabulary. It was highly criticised for increasing tensions between the two parties without effectively weakening the IRA. Many of the interned people later turned out to have no links to the PIRA.

[228] Minnis (2001)), at 27.

[229] These included, *inter alia,* one at the Abercorn restaurant in Belfast in 1972 (two deaths, 130 wounded), and, five years later, at the La Mon Restaurant in County Down (twelve deaths).

[230] Minnis (2001), at 17.

Germany, Belgium, Canada, the Netherlands, and Australia. Between 1979 and 1990 eight soldiers and six civilians were killed in these attacks, including the British Ambassador to the Netherlands. In 1985 the IRA attempted to assassinate British Prime Minister, Margaret Thatcher, during her stay at the Brighton hotel. She survived, but five other people did not.

The Provisionals directed their attacks often against civilian targets, such as pubs or means of public transport. However, their criminal activities were much broader. They also committed robberies in banks and post offices, and abductions for fundraising purposes. Moreover, as they were more in control of some territories than the local police services, they also engaged in the administering of justice. It happened frequently that they summarily executed or otherwise punished, e.g. by punishment beatings or "knee cappings" (shooting in the knees), suspected drug dealers and other suspected criminals, sometimes after so-called 'kangaroo trials'.

During the 1980s not only British government forces but also Loyalist paramilitaries carried out an armed struggle with their Republican opponents. The Stevens Report[231] proves that there was collusion between these paramilitary forces and British agents of the Covert Human Intelligence Sources (CHIS), and that actions taken by these agents could have prevented some of the killings that took place at that time. The IRA responded with an assassination programme directed at identified loyalist targets, such as leading members of the UDA (Ulster Defence Association) and UVF (Ulster Volunteer Force).

Peace efforts intensified in the late 1990s. In August 1994 the PIRA announced another ceasefire. However, the PIRA ended the ceasefire on 9 February 1996 with the Docklands bombing (also known as the Canary Wharf bombing or South Quay bombing).[232] On 20 July 1997 they recommenced their ceasefire, resulting in the Belfast (Good Friday) Agreement on Friday, 10 April 1998. The Agreement aimed at disarming all paramilitary groups in Northern Ireland by May 2000. The disarming process resulted eventually in the PIRA's declaration of 28 July 2005, thereby officially ending their campaign of violence. They were willing to cooperate with the Independent International Commission on Decommissioning (IICD) and put their weapons down.[233] On 25 September 2005 the officials of the IICD monitored the entire disarmament of the IRA. After around 3,524 casualties between July 1969 and 31 December 2001[234] caused by the conflictbetween the PIRA and Northern Ireland military and police forces, it seems that the troubles have finally come to an end.

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[231] Sir John Stevens (2003).
[232] A half-tonne bomb was left in a small lorry; its explosion caused 36 casualities, including two deaths. For details see BBC ON THIS DAY (9 February 1996) (1996): *Docklands bomb ends IRA ceasefire*.
[233] See BBC NEWS (2005): *IRA statement in full*.
[234] Sutton (2001).

4.2. Spain

Euskadi Ta Askatasuna or **ETA** is, next to the IRA, probably the biggest contemporary terrorist organisation on European soil. More than 800 deaths have been attributed to them. ETA has its roots in Basque nationalism.[235]

In 1952 the new generation of nationalists created in Bilbao a bulletin called "Ekin" (to act) in which they called for action and denounced the impotence of the PNV (*Partido Nacional Vasco* or National Basque Party) under Franco's dictatorship.[236] Subsequently, different Ekin groups emerged in Vizcaya and Guipúzcoa and fused with other groups of young PNV adherents. In 31 July 1959, on the day of San Ignacio, a total rupture with the PNV took place, and their organisation of young people created a new movement: ETA.[237]

In the first two years ETA's main action involved producing politically inspired murals. From 1962 onwards, however, armed combat seems to have been indispensable for the fight against Franco's dictatorship, which carried out political detentions, torture, executions, and other authoritarian methods in order to repress any opposition. The ideology of ETA was also inspired by current models of revolutionary guerrilla movements (such as the Algerian FLN[238] or Mao Tse Tung).

For several years, maybe due to their limited material means, the activity of ETA involved little violence and focused on clandestine ideological work. In 1965 the concept of the revolutionary war, which had guided ETA's ideology until then, was replaced at the fourth assembly of ETA by the Spiral theory "action – repression – action".

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[235] Basque nationalism had emerged by the end of the nineteenth century. It came about as a xenophobic reaction to the massive immigration that occurred in the context of the industrial revolution, and was strengthened by the abolition of the old laws (*los fueros*). According to these laws, a contract existed between the Basques and the Crown establishing that Biscay and Navarra were part of the Spanish kingdom. The laws were definitely abolished in 1879 and replaced by the so-called 'economic convent' (*Concierto Económico*) that provided fiscal autonomy for the Basque country, a provision that has survived until today, albeit temporarily abolished under Franco. Due to industrialisation and the related massive immigration, the population of Biscay grew massively, from 169,000 in 1877 to almost 350,000 in 1910. This produced a growing nationalism throughout the Basque country. Sabina Arana, founder of the National Basque Party in 1894, created the term 'ETA' which means 'and' in Basque language, symbolising the conjunction of God and tradition, religion, traditional laws, Basque race and language. Almost a century later the term would mean, in addition, *Euscadi ta Askatasuna* (Basque Homeland and Freedom) (Madariaga (2000)). In 1936 Biscay gained its first autonomous Statute, but this lasted only for a short while, for Franco won the Civil War and subsequently repressed all separatist movements. In May 1947 the exiled Basque government organised a general strike of Basque workers. The strike was brutally suppressed by the Franco regime: all strikers were dismissed. The National Basque Party (*Partido Nacional Vasco, PNV*) had the strategy to reorganise their resistance by means of collaboration with the Allies, mainly the U.S., and the creation of an 'embryo State' within the Spanish State. As relations between Franco and the United States grew closer and the U.S. recognised Franco's regime, the PNV saw no other option than to organise another general strike, in order to demonstrate to the world the weakness of Franco's government. The strike that took place on 23 April 1951 had the same consequences as the first one and did not help the cause of the Basque Nationalists. When in June of the same year Franco's authorities occupied the seat of the Basque government in exile, Basque nationalism was destroyed and the PNV ceased to exist.

[236] See above, 3.1.2.

[237] Elorza, Garmendia, Jáuregui and Domínguez (2000), at 78 et seqq.

[238] *Front de Libération Nationale* (National Liberation Front, FLN), see below at 4.4.

The first lethal confrontation between ETA and the Guardia Civil occurred on 7 June 1968, when Txabi Echebarrieta, ETA member in charge of the Guipuzcoanan operation (a planned attack on Melitón Manzanas), was stopped by the police, apparently for speeding. Txabi shot the Civil Guardian José Pardines dead. Not long afterwards Txabi and his companion were found by the police, and this time Txabi was the victim. Less than two months later the Guipuzcoanan operation was accomplished. Melitón Manzanas, commissionary Chief of the police of San Sebastian, famous for his torture activities, was the first victim of planned assassination carried out by ETA.[239]

The events of 1968 provoked radical legislative changes throughout Spain. All demonstrations, meetings, and strikes that disturbed "public order" could be qualified as "military rebellion". This led to 1953 detentions without trial in 1969. Tortures, summary proceedings, and imprisonments of wide sectors of the Basque population weakened considerably the organisation of ETA. In 1970, during the famous Burgos trial, 16 ETA members were condemned to death. In order to draw international attention to this process, ETA abducted the German honorary consul Eugen Beihl.

At the beginning of the 1970s ETA concentrated on practical organisation of the armed combat. As in the 1960s, ETA only engaged in sporadic acts of violence against the authoritarian Franquist regime. The most dramatic and important of their activities during that time was the assassination of Prime Minster Carrero Blanco, apparent heir of Franco, in 1973. This event helped to bring about the demise of Franco's regime.[240] After Franco's death in 1975 ETA increased dramatically their violence, reaching a summit during the transition to democracy.

In the so-called 'years of transition'(1977-9) a profound political change took place. During the first democratic elections on 15 June 1977 the PNV became more popular and cut its links with ETA. This seems odd considering that many of the PNV militants were former ETA members. Other nationalist political parties included Euskadiko Eskerra (EE) and Herri Batasuna (the latter was banned in 2003).

At the beginning of the post-Franquist era, the ETA members who left prison were warmly received in their villages and celebrated like heroes. Enormous demonstrations took place to support ETA's claims. The Statute of 1979 of the autonomous community (*Comunidad Autónoma*) of the Basque Country separated the nationalists into two groups: those who approved the Statute and those who did not and strove for a sovereign Basque State (e.g. ETA).

During the years 1978 to 1980 the number of ETA victims increased tremendously: in 1977 "only" ten people were killed, while in 1978 there were sixty-six killings, and in 1980 ninety-two.[241] An explanation for this rising violence may be that many Etarras who had been living underground for many years during the dictatorship were unable to

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[239] Wieviorka (1991), at. 245 et seqq.
[240] Shabad and Ramo (1995), at 411.
[241] Panorama-actual-Espana (2007).

reintegrate into the now democratic society. They had literally "lost their job". And since their job was more than any ordinary job, since it was rather an idealistic vocation, their lives had no other meaning unless they redefined their goals. And so they did, demanding an independent Basque country. However, their public support diminished: the people responded to the new terrorist actions under democracy with demonstrations in February 1981 in which they condemned ETA's practice for the first time. ETA lost the popular support which it had enjoyed during the dictatorship. A movement that started as a revolutionary group, pursuing social and moral objectives, converted itself during the transition process into a high-scale extremist and terrorist movement that even eliminated its own members or former members.[242]

Between 1976 and 1987 ETA continued its armed fight in the Basque Country. Their members lived 'on the other side', in France, where they enjoyed sanctuary until 1986, the year in which the French changed their policy and started to collaborate with the Spanish authorities.

During the 1980s ETA conducted assassinations, sabotages, thefts and hold-ups, abductions, and imposition of the 'revolutionary tax', a 'tax' the ETA forced upon citizens of the Basque Country to support its "revolutionary" fight.

The *Pactos por la Paz* (Peace Conventions),[243] adopted in 1988-9 in response to ETA's fight, had no recognizable pacifist impact.

Nonetheless, in the 1990s the activities of ETA diminished remarkably (to an average of – still – 16.2 victims per year), and there was a temporary ceasefire in the summer of 1998. This pause lasted 14 months. From 1995 onwards their actions continued again and were mainly directed against members of the then ruling popular party (*Partido Popular*, PP).

After the abduction and assassination of the City Councillor of the PP, Miguel Ángel Blanco in July 1997, the civilians formed a counter-group called '*basta ya!'* (enough now!). More city councillors of the PP, as well as members of the Guardia Civil, were killed by ETA during this time until the temporary ceasefire of September 1998.

When in 2000 ETA's violence reached another climax (killing 23 people during that year), the theory emerged that the ceasefire, which followed the Irish example, was only being used by ETA to reorganise the group and to prepare new actions. ETA continued its terrorist activities, mainly car bombs and several assassinations. Attacks on the Madrid train stations on 11 March 2004, which occurred the weekend before elections, were initially attributed by the authorities to ETA. *A posteriori*, this attribution appeared to

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[242] Miguel Solaun in 1984; Yoyes in 1986.

[243] These conventions include, more concretely, the *Pacto de Madrid* (Convention of Madrid on Terrorism, adopted by Congress on 5 November 1987), the *Pacto de Ajuria Enea* (Convention of Ajuria Enea for the normalisation and pacification of the Basque Country), the *Pacto de Vitoria* of 12 January 1988, and the *Pacto de Navarra* (Convention for Peace and Tolerance) of Pamplona, 7 October 1988. These conventions lay out clearly that no political objective, no matter how legitimate it may be, can justify the use of violence. They also deny extensively any possibility of negotiating politically with terrorists (Source: La Guardia Civil Frente al Terrorismo: Pactos por la Paz (in: Documentos) .

be more a political strategy of the conservative party under José Aznar, who held power at that time, than a realistic appreciation of the facts, since later investigations brought up more convincing proof that the attacks which killed 192 people were the work of Islamic terrorists responding to Aznar's support for the US-American invasion in Iraq.

On 22 March 2006 ETA announced a permanent ceasefire, which they interrupted in the very same year: on 30 December they bombed the airport Barajas in Madrid, killing two Equatorians. ETA officially repealed their ceasefire on 5 June 2007, announcing that they were resuming armed combat "on all fronts".[244] Another bomb attack took place in October 2007, seriously injuring the bodyguard of a socialist politician.

4.3. Germany

It was mainly the left-wing terrorism of the 1960s and 1970s that led to the adoption of a large number of special anti-terror laws in Germany. It was, above all, the Red Army Fraction (*Rote Armee Fraktion*, RAF) that terrorised the German people and politicians during this period.

The RAF was founded under this name in 1971, but some preliminary facts cannot be left unmentioned which contributed to its formation and its further evolution.[245] Germany was still recovering from the disastrous historical experience under Hitler and World War II. It was still under the occupation of the Western Allies, though it gradually gained more political autonomy. The Allies returned sovereignty to Germany on the condition that Germany passed emergency legislation in order to ensure the safety of the Allied troops. As a consequence of this condition, Germany adopted the so-called Notstandsgesetze (emergency laws) in 1968, which provided a right to resistance and the possibility to encroach civil rights in certain emergency situations. The young generation of the 1960s had a highly developed political conscience, eager not to repeat the mistakes of their predecessors. They were very actively engaged in politics and had an idealistic view of how a society should work. Students demonstrated on a large scale against social injustice. They raised their voice against the Vietnam War and against German emergency legislation reducing basic rights. They condemned imperialism, capitalism, and exploitation in Third World countries. It must be understood that the first German terrorists of this era started out as young, intelligent idealists, striving for a better world.

The confrontations between demonstrators and police escalated when on 2 June 1967, during the visit of the Shah of Persia to West-Berlin, Persian opponents of the Shah were arrested preventively, while supporters of the Shah were permitted to be present at his visit, and to carry wooden clubs with them. During the Shah's visit to the Berlin opera police beat up the protestors, who had planned to continue their demonstration after the

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[244] Frankfurter Allgemeine Zeitung (Online-Edition) (5 June 2007): *Spanien: Eta kündigt „permanenten Waffenstillstand" auf.*

[245] The following information was taken from the comprehensive historical overview by Aust (1998). A computer animation (in German language) compiling relevant news broadcasts of the German TV News: *Tagesschau* on the RAF provides further insight into the history: tagesschau.de (2007).

opera without previous warning. Adherents of the Shah actively helped the police. The 26-year-old student Benno Ohnesorg was shot by the German police officer Kurras, who, in the subsequent trial, was acquitted. As a result of this, the left-wing terrorist group 2 June Movement (*Bewegung 2. Juni)* was formed in Germany. They sometimes cooperated with the RAF, but, because of their different views, also competed with them. The death of Benno Ohnesorg triggered waves of protest against the way German police had dealt with the demonstrations. It was in this climate of political tension that the first terror actions took place, carried out by Gudrun Ensslin and Andreas Baader, the later heads of the RAF. On 2 April 1968 they burnt two warehouses in Frankfurt/Main. Their intention was to make the German population aware of the events in Vietnam. Since the bombs exploded after closing hours, nobody got hurt.

However, right-wing organisations, agitated by the popular press, especially by the publications of a certain publisher (*Springer*), mobilised against the leftists, and in April of the same year the leader of the communist party, Rudi Dutschke, was shot by a right wing extremist, following the appeal of the radical German national newspaper (Deutsche Nationalzeitung): "Stoppt Dutschke jetzt!"[246] (Stop Dutschke now).[247]

The group was initially known as the Baader-Meinhof Group or Gang (*Baader-Meinhof-Gruppe* or *-Bande*). Since the publication of its manifesto in 1971 by Ulrike Meinhof, the group has carried the name '*Rote Armee Fraktion*'.

In the following years, besides managing to free their leading member, the detained Andreas Baader, the RAF's main activities consisted of professional car thefts, weapon thefts, and bank hold-ups. In 1971 the RAF-member Petra Schelm was killed by the police – it was the first of a series of deaths in combat between RAF and German police. The police officer responsible was acquitted for having shot in self-defence. In the same year two police officers were shot, apparently by the RAF. But also the RAF member Georg von Rauch was shot. In May 1972 the RAF carried out five bomb attacks, four of them directed at US institutions and police stations, and one directed at the judge of the German Supreme Court (*Bundesgerichtshof*), Buddenberg, killing in total four American citizens and leaving many injured.

During the Olympic Games in Munich on 5 September 1972, the Palestinian terror organisation 'Black September', which had connections to the Baader-Meinhof Group, shot two and abducted nine Israeli athletes, in order to exchange them with detained Palestinian terrorists. The German police pretended to allow them to fly to Cairo, but then opened fire. All hostages, one police man, and five terrorists were killed.

The key figures of the RAF, Ulrike Meinhof, Andreas Baader, Gudrun Ensslin, Holger Meins, and Jan-Carl Raspe were arrested in June 1972. Their trial, the so-called

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[246] See also the song by Rolf Biermann: "Drei Kugeln auf Rudi Dutschke".
[247] Aust (1998), at 68.

"Stammheim-Prozess",[248] turned out to be one of the most spectacular ones in German history. New laws were introduced to cope with the strategies the political prisoners used in their attempt to obstruct the trial. Account had to be taken of sympathetic lawyers: some were excluded on suspicion that they had supported terrorist actions. Moreover, prison conditions (in particular: incommunicado detention)[249] were questionable from a human rights' point of view, and the prisoners embarked on several hunger strikes. Holger Meins died in 1974 after eight weeks of hunger strike. The *Bewegung 2. Juni* replied to his death by killing the president of the Regional Court of Berlin (*Kammergericht*), Günther von Drenckmann. Other celebrities were abducted, and some of them were killed.[250] In 1976 one of the main key figures of the RAF, Ulrike Meinhof, was found hanging in her cell. While according to the police and legal medical investigations there was strong evidence that she had committed suicide, an international commission was formed to scrutinise her death more carefully. Based on its research, this commission found that Meinhof's death had not been caused by suicide.[251]

In 1976 new counter-terrorism laws were adopted, restricting in particular the procedural rights of the defence in cases of terrorism.[252]

In the subsequent year, the RAF-group 'Ulrike Meinhof' shot the Attorney General (*Generalbundesanwalt*), Siegfried Buback. In the same year another RAF-branch tried to abduct the chairman of the Dresdner Bank, Jürgen Ponto, and killed him during the operation. Only a few months later, the president of the BDI and the BDA[253] and former Chairman of Daimler Benz, Hanns Martin Schleyer, was abducted by the RAF-Commando 'Siegfried Hausner'. The German government did not give in to the claims of the terrorists. While Schleyer was still being held, on 13 October 1977 the Lufthansa-Jet 'Landshut' was hijacked on its flight from Palma de Mallorca to Frankfurt by the Palestine terror unit Martyr Halimeh, in order to increase the pressure on the German government to free the detained terrorists. Five days later, the German special counter-terrorism unit *GSG9 (Grenzschutzgruppe 9* or Border Guard Group 9) recaptured the airplane in Mogadishu, Somalia. Three of the four hostage-takers were killed. Only a few hours after the *GSG9* officers had completed their mission and informed their German colleagues, the

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[248] Named after the place where the high security penitentiary centre was located where many of the left-wing terrorists were detained meanwhile and which had been constructed especially to that end.

[249] On the law, which is still in force nowadays, see Oehmichen (2008).

[250] Thus in 1975 the politician Lorenz was abducted by the *Bewegung 2. Juni*, shortly before the elections. He was exchanged for five political prisoners. The newly constructed Commando Holger Meins occupied the German embassy in Sweden in the same year and took 12 hostages. Police forces tried to liberate the hostages. Two hostages and one of the occupiers died during the operation, one other hostage-taker died a few days later from the consequences of his injuries.

[251] For more details on their results see Aust (1998), at 388 et seq (supporting the theory of suicide) and Bakker Schut (1986), at 394, challenging this view.

[252] For details, see Part 2, s. 3 (Germany).

[253] BDI stands for *Bundesverband der Deutschen Industrie* (Federal Association of the German Industry), BDA for *Bundesvereinigung der Deutschen Arbeitgeberverbände* (Federal Association of the German Employer's Union).

three terrorists Jan-Carl Raspe, Andreas Baader, and Gudrun Ensslin died in Stammheim prison (17-18 October). The case has been thoroughly investigated. It is no longer seriously doubted that they committed collective suicide.[254] The day after the RAF prisoners were found dead in their cells, Schleyer's kidnappers killed their hostage.

During the 1980s, the second generation of the RAF continued to carry out terrorist actions such as bank hold-ups and bomb attacks. In 1985 they published a common communiqué, together with their French sister group *Action Directe*, under the title: *Pour l'unité des révolutionaires en Europe de l'ouest* (for the unity of revolutionaries in Western Europe). Their aim was to collaborate with other left-wing groups in Western Europe, such as the French AD and the Belgian CCC, for instance. A few actions were subsequently carried out in coordination with other terror groups.[255] A few more bomb attacks followed, until the RAF declared their dissolution in 1998.

As Stephan Aust sets out comprehensively in his historical overview, the RAF started out as an idealistic left-wing student movement, but, influenced by the social and political events of their time, and provoked by the authorities' methods of dealing with left-wing activists, became one of the most dangerous and ruthless non-state terrorist groups German history has known.

4.4. France

France has experienced several types of terrorism since the second half of the twentieth century. They first introduced anti-terrorist measures when one of their colonies, Algeria, strove for its independence, just like many of the other former colonies had done (see above, 2.3. and 2.4.). This development gave rise to special laws, directed against Algerian rebels, but also applicable in mainland France. Later, by the end of the 1970s, left-wing terrorism, preceded by the German RAF and the Irish IRA, also started to emerge in France, predominantly in form of an organization named *Action Directe* (AD, Direct Action). Simultaneously, Corsican terrorism emerged which, sporadically, also swept over to mainland France, and which aimed at Corsica's political independence from France. Special anti-terror legislation was adopted to respond to these terrorist groups, as well as to emerging Islamic fundamentalist terrorism.

One of the last post-colonial struggles took place in Algeria between 1954 and 1962. It had a considerable influence on later nationalist terrorist groups (e.g. the PLO). The *Front de Libération Nationale* (National Liberation Front, FLN) first avoided human targets and

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[254] However, some supporters of the RAF have continued to believe that the prisoners had in fact been murdered by the German State. It might be worth mentioning that another RAF intern, Irmgard Möller, was found in her cell with several stab wounds in her chest the same morning. She survived the incident and has rejected until today the suicide theory.

[255] For instance, following the communiqué, General René Audran, Director in the French Ministry of Defence, was shot by the *Action Directe* (Commando *Elisabeth von Dyck*) in La Celle-Saint-Cloud, close to Paris.

only attacked symbols of French rule. This changed, however, after two of their members were executed by the colonial power. Subsequently, the FLN started a pitiless terror campaign and answered the executions with the assassinations of 49 French civilians. The terrorists announced that for each FLN member, a hundred Frenchmen would die. They led an urban terrorist campaign now targeting French civilians in busy places like bars and crowded streets. Eventually they assassinated the mayor of Algiers. On 28 January 1957 the FLN declared a general strike to coincide with the United Nation's annual opening session. Moreover, they increasingly bombed popular bars and bistros, crowded city streets, and sports stadia. The French army in Algeria used repressive means and applied torture routinely[256] to get information regarding the terrorist network, justifying their action with the argument that the innocents deserved more protection than the guilty. In addition, military courts (*Cours de Sûreté de l'État)* were installed where the rights of the accused were considerably restricted, especially when compared to the general French court system (for instance, there were no legal remedies against the decisions of these tribunals). However, the cruelty which the French army used in its fight against the FLN alienated the native Algerian Muslims from the French, so that support for the FLN increased constantly. The French eventually withdrew from Algeria in 1962. In the same year an amnesty law was passed allowing impunity for all Frenchmen who had been involved in war crimes during this time, including torture and summary executions.

The AD was a group of French anarchistic leftist terrorists who carried out their activities during the years 1979 to 1987. One of the main factors that brought about this emergence of left-wing terrorism in France was, according to Dartnell, the revolutionary tradition in French politics.[257] Based on the French experience of changing society by means of rebellion, the extremists believed that social change could only be achieved by violent means.

The name 'Action Directe' originated in a statement in which the group described their strategy: [we shall] "wreck society through direct action by destroying its institutions and the men who serve it."[258] During the above mentioned period, seventeen bombings, at least five assassinations, and at least 58 assaults were attributed to them. One of their cross-border actions was the so-called 'Rhine-Main attack'*,* which was carried out in cooperation with the RAF. After the arrests of four AD leaders in February 1987 and their bombing expert Max Frerot in November of the same year, the group appears to have been dismantled.[259]

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[256] According to a report of the French newspaper *Le Monde*, French's famous leader of the right-wing party *Front national,* Jean-Marie Le Pen, also committed torture during the Algerian crisis. Although he denied the allegations and sued *le Monde* for defamation, he lost the case, as the Court considered the results of *Le Monde'*s investigations to be "credible". See Le Monde (online edition) (28 June 2003): *Le Pen et la torture : l'enquête du "Monde" validée par le tribunal.*

[257] Dartnell (1995), at 18.

[258] Anderson and Sloan (2002), at 139.

[259] Ibid.

Compared to the Red Brigades and the Red Army Fraction, their actions were of less significance; moreover, they had little social and intellectual substance.[260]

France has also faced separatist terrorism, although not to the level reached in Spain and Northern Ireland (in nearly all of their bombings, the terrorists successfully spared human life).[261] The main terrorist group is the National Liberation Front of Corse (*Fronte di Liberazione Naziunale di a Corsica, FLNC*).[262] It was founded in 1976. The FLNC are not considered to have a well-established ideology, although they adhere to generally left-wing ideas. They once claimed they were fighting the internal colonialism of France. They strive for the self-determination of Corsica and for the preservation of Corsican language and culture. In addition, the entry of North African immigrants has exacerbated xenophobic violence and discrimination: the FLNC aims at preferential treatment for Corsicans in the job market.

The FLNC began its bombing campaign in mainland France and in Corsica in the year of their foundation.[263] In mainland France they targeted predominantly French governmental offices, banks, or tourist offices connected with Air France, while on the island also properties belonging to non-Corsicans were targeted. The FLNC conducted six bombings in Paris on 23 April 1980, four bombings in 1981, 100 bombings in Corsica on one night alone in August 1982, 20 bombings in Paris in 1983, and 16 bombings in 1984 in mainland France. In its attacks the group carefully avoided shedding human blood, and exclusively targeted symbols. When the group robbed a tourist resort in Southern Corsica in March 1986, masked FNLC gunmen evacuated the twenty tourists from the facilities before bombing them, so that nobody was hurt.

The group split at the end of the 1980s and beginning of the 1990s, because of growing political rivalry, and created a 'historical channel' (*Canal Historique*) and a 'usual channel' (*Canal Habituel*). The groups later fractured into even more groups (*Resistenza, Fronte Ribellu, Front Arme Revolutionnaire Corse,* etc.). Some of these only existed for a short period, while others continued and would later merge with each other or different new groups. The *Canal Habituel* and the *Canal Historique* were considered the most important terrorist organisations of Corsica, until *Canal Habituel* decided to end its activities in 1997. The *Canal Historique*, on the other hand, extended its operations, attempting to target mainland France. To this end, in 1996 a series of assaults against senior government officials was carried out. Claude Erignac, the prefect of Corsica and the most senior representative of the French government on the island, was assassinated. The murder encountered considerable protest: about 40,000 Corsican people participated in protest marches on 11 February 1998. In 1999 the *Canal Historique* fused with other

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[260] Chaliand and Blin (2004a), at 263.
[261] The following information is taken from Anderson and Sloan (2002), at 344 et seq. and from the MIPT (2007).
[262] The following information is taken from MIPT (2007).
[263] Anderson and Sloan (2002), at 344.

smaller organisations and they resumed their old name again (FLNC). By the end of the same year the FLNC declared a temporary ceasefire. It was eventually extended indefinitely. In spite of this, the conflict arouse again in 2000, due to rivalries between the various splinter groups.

4.5. The "new global threat": international Islamic terrorism (1980s until present)

Islamic terrorism has been perpetrated or attempted in the UK,[264] Spain,[265] and Germany.[266] France has so far been spared from any attacks. However, a terrorist attack was attempted in 2000 on Strasbourg's Christmas market. When referring to Islamic terrorism, inevitably one catastrophic incident comes immediately to mind: the planes hijacked by Islamic fundamentalists and flown into the twin towers of the World Trade Center in New York on 11 September 2001, causing the deaths of approximately 2,500 people. However, Islamic terrorism did not begin in 2001, nor did the frequently cited network of Al Qaeda come into existence at that time. The tragic events of September 2001 in New York and Washington can be seen rather as the climax of a long history of Islamic terrorism that originated many years before and only gradually became international.

Multiple factors have to be taken into account when attempting to understand the causes and preconditions that led to this type of global extremism. On an intellectual level, the holy warriors or *mujahidin* were inspired by a variety of Islamic thinkers, among them Maududi, al-Banna, and Qutb. Qutb, together with Azzam, were the main teachers of today's most feared terrorist, Osama bin Laden.

The intellectual father of modern Islamism was Syyid Abu 'Ala Maududi (1903-1979), founder of the *Jama'at-i-Islami*.[267] The totalitarian regimes in Russia, Italy, and Germany during the 1930s had a great impact on him – he saw communist and fascist movements like Islam as movements capable to mobilise the masses. He believed in what he called 'theo-democracy', an ideological state in which people were not under the control of one individual, be it a political or a religious authority, but only subjected to the power

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[264] In the UK similar bombings took place in London on 7 July 2005, killing 56 people including the bombers. Later that month an attempt was made to repeat such attacks, but the bombs failed to explode. About two years later, on Saturday 30 June 2007, a jeep loaded with propane canisters was driven into the main terminal of Glasgow International Airport and caused a great fire. The two suspects who were found in the car were both Muslim doctors. The event coincided with two car bombs that had been discovered and disabled before they could be detonated only 36 hours earlier in London.

[265] As for Spain, the reader may recall 11 March 2004, when a series of coordinated bombings on trains in Madrid caused the deaths of 192 people. The attack was eventually attributed to the network Al-Qaeda. Since mid-February 2007 the trial proceedings have been initiated. The trial is public and can be watched on the website of the Spanish newspaper *El País.* see http://www.datadiar.tv/juicio11m/#dia_d_ia (last visited 2 October 2008).

[266] In Germany on 31 July 2006 two bombs were found in suitcases in regional trains from Mönchengladbach to Koblenz and from Aachen to Hamm. These bombs could have exploded, in principle; however, due to some operational mistakes, they did not. The attacks have been attributed to Islamic cells close to Al Qaida.

[267] Ruthven (2002), at 68.

of God,[268] a state where "legislators do not legislate, citizens only vote to reaffirm the permanent applicability of God's laws, women rarely venture outside their homes lest social discipline be disrupted, and non-Muslims are tolerated as foreign elements required to express their loyalty by means of paying a financial levy".[269]

An important Islamic current that contributed to the appearance of radicalism was the emergence of a religious organisation, becoming gradually more military, known as the Muslim Brotherhood. In 1928 Hasan al-Banna founded the Muslim Brotherhood, a political and religious movement inspired by Nazi ideology, but also by some Hindu nationalists as well as by the Boy Scouts and the YMCA. For him, Islam was:

> "ideology and belief, homeland and nationality, religion and State, spirit and action, book and sword." (Hassan Al Banna, 1934)[270]

The Muslim Brotherhood grew quickly and gained significant political power. During the Palestine War of 1948 as well as during other revolutionary events, liberating Arab countries from colonial rule,[271] the Muslim Brotherhood played a leading role and hence gained military experience. The ideology of freedom fighters liberating Egypt from British rule would later serve as a justification for suicide bombers.

The modern Islamic ideologue of the Muslim Brotherhood in Egypt, Sayyid Qutb, promulgated Maududi's writings after they had been translated into Arabic during the 1950s. According to Ruthven,[272] his work was the main inspiration for the attacks of September 11th.

While both Maududi and Al Banna promoted a religious form of political system that could promote reforms, the influential fundamental thinker Sayyid Qutb[273] gave this

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[268] Migaux (2004b), at 305 et seq.

[269] Choueiri (1997), at 113.

[270] Cited after Migaux (2004b), at 281.

[271] For instance, the riots of Black Saturday in 1952 during which Egypt was liberated from British rule. In January 1952 British soldiers assaulted the Egyptian police stations in Ismailia after the police had refused to surrender. The next day, 'Black Saturday', riots (the Cairo Fires) followed, introducing the end of monarchy.

[272] Ruthven (2002), at 71.

[273] Qutb was born in 1906 in a small village near Asyut in Upper Egypt. Egypt was at that time a quasi-protectorate of Britain. After its formal independence in 1918, British restrictions on the country's sovereignty remained. The Egyptians did not appreciate the British neocolonialism, and when British troops suppressed Arab revolts against the increasing Jewish immigration between 1936 and 1939, tensions between the European and the Arab population increased considerably. As a student of English literature, Qutb soon became acquainted with European culture. During the second World War, like many Egyptians, Qutb became involved in anti-British agitations in outrage over the large scale Jewish immigration for which the British seemed responsible. In 1948 he obtained a government grant to study American instructional methods and curricula in primary and secondary education. His visit to the United States turned out to be the defining moment for the subsequent Islamist war against America. He had been disappointed by U.S. policy after World War II, since, contrary to his (and many other's) expectations, they had supported Arab demands for self-determination, but instead promoted the establishment of a Jewish State in Palestine. During his stay in Washington D. C., while he was being treated in hospital, he learned of the death of Hasan al-Banna. He

development a much more radical turn, leading eventually to the dissemination of the *jihad* on a global level.[274] Qutb joined the Muslim Brotherhood in 1951. This was the time when the Muslim Brotherhood started to take action against the British government, calling for a jihad against the Britons. In June 1952 the nationalist Free Officers Movement overthrew Egypt's pro-Western government Contrary to the Muslim brotherhood's expectations, the movement did not construct an Islamic, but a secular state. In 1954, after a failed attempt to overthrow the Egyptian government, this attempt was subsequently used by the Egyptian government to justify a crackdown on the Muslim Brotherhood; many Muslim brothers, among them Qutb, were arrested, tortured, tried, and convicted. Qutb was sentenced to 25 years, but was released early after ten years on account of his delicate health and thanks to an intervention by the Iraqi president. However, only one year later, he was accused of another plot, condemned to death, and hanged on 29 August 1966. During his imprisonment, Qutb produced two works that strongly influenced future Islamists: his multi-volumed Quranic commentary *Fi zalal al-Quran* (In the Shade of the Quran) and the tract *Ma'alim fi'l-tariq* (Signposts on the Road). Among others, Qutb interprets certain passages of the Quran as a "progressive licence for war".[275]

On a political level, the situations of Afghanistan and Saudi Arabia need further examination. These have contributed substantially to the Muslims' frustration, which eventually motivated many of them to engage in *djihad*.

When the Russians invaded Afghanistan in 1979, many volunteers from Arabic countries came to join the mujahidin (the "holy warriors").[276] As a strategy embedded in their cold-war politics, the US and its allies, including Britain, France, and Portugal, supported, in collaboration with Saudi Arabia and Pakistan, the mujahidin, who resisted the Soviet assault. Afghan warriors were trained and equipped by the CIA, and the US Army and Navy Special Forces. The contribution of the US in terms of money and arms to the Afghan fighters amounted to approximately $6 billion. The ten year war waged against Russia in Afghanistan seemed a success for the USA as it contributed considerably to the collapse of the Soviet system in 1989.[277] However, the other side of the coin was that the totalitarian, Islamist extremist Taliban became the rulers of the country.

While Afghanistan was still suffering from the great damage caused by the war against the Soviets, Saudi Arabia, one of the richest countries of the world thanks to its oil resources, constituted another, even more powerful promoter of Islamist fundamentalism. Their economic power combined with their political influence as rulers of Mecca allowed

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became more and more isolated. His perception was selective; he only saw what he chose to see. As a consequence, his prejudices regarding American culture and society were only confirmed and strengthened during his stay in North America.

[274] Migaux (2004b), at 310.

[275] Ruthven (2002), at 91.

[276] Many troops arrived from the Middle East: approximately 6,000 Saudis, 4,000 Egyptians, 1,000 from Yemen and some others from Syria or Jordan, generally of Palestinian origin (Migaux (2004b), at 321).

[277] Ruthven (2002), at 169 et seqq.

them to impose fundamentalist Islamic ideas not only on their own population, but also on international Muslim pilgrims.

During the 1980s, inspired intellectually by fundamentalist writers such as those mentioned above, and provoked by political changes such as the invasion of the Russians into Afghanistan, different militant Islamist groups evolved of which a few deserve mention.

Shortly after Qutb's death, the jihadist group Al *Harakat al Islamiya lil Tahrir* (Islamic Liberation Movement) emerged. It was led by Salih Sirriyya, who attempted to suppress the Technical Military Academy in the Cairene suburb of Heliopolis in April 1974.[278] Another radical group was the Society of Muslims under the leadership of Shukri Mustafa, generally known as *Takfir wa-l-Hijra* (TwH).[279] The leaders of both groups were tried and executed. However, while the collapse of the mutiny under Sirriyya brought an end to the Islamic Liberation Movement (whose work was to be followed up by the formerly described group, Al Jihad), TwH continued its existence as its followers emigrated after Shukri's death to Algeria and Pakistan. In 1989 many of the Algerian war veterans came back to their homeland and joined the jihad led by the TwH.[280]

Another group was founded by Abdallah Azzam, a teacher of Quran Sciences at the Islamic University of Jedda. He created in 1984 a new structure, the *Makhtab Ul Khedamat Ul Mujahidin Ul Arab* (MUKUB – Office of the Services of Arabian God fighters). It was in fact Azzam who, after the Afghan war was over and the fighters originally from different places tended to disperse again, formed a new movement, allegedly under the name 'Al-Qaeda',[281] in order to overcome the ethnic divisions of the Muslim fighters and provide an international army to defend Muslims from oppression.[282] It should be noted that this group was at that time of no particular importance; it numbered no more than a dozen men, and there were plenty of other groups and individuals also ready to continue the fight.

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[278] The operation failed and Sirriyya and his top assistant were sentenced to death and executed. (Ibid. at 104 et seq.).

[279] They followed a fanatical approach to religion and separated themselves in their spiritual practice deliberately from the ordinary Muslims. They saw themselves as "the only true Muslims in an ocean of infidelity"(107). They attracted the public's attention when recruiting young women to be married to the society's men under a simplified contract. This approach made them popular in particular among young men who could not afford to marry a woman, since marriage in Islamic society imposed on the man the duty to provide housing and furniture to the bride. The TwH kidnapped Shaikh Muhammad al-Dhahabi in July 1977. When their demands (release of prisoners, apologies, and a large sum of money) were rejected, they allegedly executed al-Dhahabi. After his subsequent trial, Mustafa was executed in 1977 (Ibid. at 107 et seq.).

[280] Migaux (2004b), at 315 et seq.

[281] The name Al-Qaeda has its roots in the Arabic *qafayn-dal*. It can be translated as 'base', as in a camp or a home, or a foundation, like the fundament of a house. It can also mean pedestal supporting a column, but can also be translated as precept, rule, principle, maxim, formula, method, model, or pattern (Burke (2003), at 7).

[282] IbidMigaux (2004a), who stipulates a different aim of the group directed at the reconquest of the Islamic World (at 343).

It was Osama Bin Laden[283] who became Azzam's assistant and would, after the brutal assassination of Azzam, take over Azzam's work and give a new direction to the movement. Bin Laden was enraged by the invasion of Soviets in Afghanistan and went directly there to help his "Muslim brothers".[284] This is where Bin Laden's political involvement started. When Saddam Hussein invaded Kuwait in 1990, Bin Laden offered to form, together with other Arab veterans of the Afghan war, a military Islamic group to protect Saudi Arabia. When the offer was rejected, he invested his time and energy in reforming his country,[285] which was at that time hosting more than half a million international soldiers, mainly Americans, who were fighting against Saddam.[286] When the war in Afghanistan was over, Bin Laden became the main financer of mujahidins, who no longer received any financial aid from the Saudi and American governments. In the early 1990s Bin Laden decided to flee and moved via Pakistan to Sudan, where he used his economic power to improve infrastructures and buildings in Sudan. In exchange, the authorities ignored his clandestine jihad activities.[287] When the Venezuelan terrorist Ramirez Sanchez was captured in Khartoum, Osama Bin Laden no longer felt secure in Sudan and fled to Afghanistan, which had been ruled by the Taliban since 1994. They controlled about 80 % of the territory, but lacked material resources. Bin Laden offered them financial aid; in exchange he was allowed to reopen training camps for the mujahidins.[288]

In 1998 Al-Qaeda was reorganised in order to pursue their aim of attacking the United States. Attacks had already been carried out since 1993.[289] It is important to notice that these attacks cannot be attributed to one single organisation called Al-Qaeda. There were each time different groups who claimed responsibility, sometimes even several groups claiming responsibility for the same act. As Burke correctly points out, such an enormous, powerful network under the control of one leader, Osama Bin Laden, does not

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[283] Osama Bin Laden was born in 1957 in Saudi Arabia. His father owned one of the most influential construction companies there and brought up his 52 children in an environment of luxury and abundance. While Osama is said to have first lived a self-indulgent, prodigal life including alcohol and prostitutes, he later became deeply religious and followed the ideas of the Muslim Brotherhood. After his studies, he joined his father's firm and directly became involved in the senior management. It was possibly owing to his management abilities that Prince Faysal Al Turky appointed him officially assistant to Azzam. (Ruthven (2002), at 196 et seqq.).

[284] Ibid. at 2000.

[285] Burke (2003), at 9 et seq.

[286] Migaux (2004a), at 347.

[287] Ibid. at 348.

[288] Ibid. at 350 et seqq.

[289] To name a few: on 26 February 1993 a car bomb exploded on the parking lot of the World Trade Center in New York. In 1995 Ramzi Youssef was arrested in relation to this incident. He had also planned to attack Pope John Paul II and the American President Clinton. In June eight Islamists were arrested for preparing attacks on the headquarters of the UNO and of the FBI as well as against road tunnels. In September Mir Aimal Kansi assassinated three CIA agents in front of their headquarters. Attacks were also carried out outside the United States, such as the attack on 18 members of the Special Forces in Mogadishu in August 1993; two American diplomats were killed in Pakistan in March 1995; in Saudi Arabia a car bomb in front of the National Guard Building in Riyadh caused the deaths of seven American soldiers.

exist; however, "the threat now facing the world is far more dangerous than any single terrorist leader with an army, however large, of loyal cadres. Instead, the threat that faces us is new and different, complex and diverse, dynamic and protean, and profoundly difficult to characterise."[290]

In August 1998 Ayman Al Zawahiri announced that violent acts against America would be carried out: one day later, two suicide attacks were committed against the American embassies in Nairobi (Kenya) and Dar es Salaam, causing the deaths of 224, among them seven Americans. In 1999 the Muslim fighters prepared, from their Afghan base, several attacks against the U.S., as well as against their allies.

As international counter-terror measures started gradually to disturb Al-Qaeda's activities, in 2000 the mujahidins organised a number of meetings to develop a new strategy against their opponents. Within a year they prepared in Afghanistan, under the direction of Osama Bin Laden, the most devastating terrorist attack ever experienced on American territory – the attacks of 11 September 2001. On that day four planes were hijacked to be used as weapons and flown into buildings (World Trade Center Twin Towers, the Pentagon, and either the White House or US Capitol building). Two of them crashed into one of the world's highest buildings, the World Trade Center, killing over 2,500 people.[291] Almost immediately the attack was attributed to Bin Laden's terror network Al-Qaeda.

All over the world politicians have reacted to this new global terrorist threat. New laws were adopted, new anti-terror units created, new counter-terror measures employed by police and secret services. President Bush initiated a "global war on terror", proclaiming to the other states: "Either you are with us, or you are against us." Thus international cooperation was intensified significantly. Despite these efforts, other attacks followed in Western cities, the most devastating of which were the 11 March bombings in Madrid in 2004,[292] and the London Bombings in 2005.[293] In June 2006 bombs were found in two suitcases on German regional trains, which, by chance, had not exploded, and in July 2007 a car loaded with propane canisters crashed into Glasgow International Airport.

Meanwhile, several Europeans had been abducted in Iraq by Islamists. Some of them were freed in exchange for a ransom, others were beheaded publicly. Al-Qaeda is also supposed to have been involved in the car bomb attacks carried out in Sharm el-

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[290] Burke (2003), at 7.

[291] In total, 2, 973 people were lost that day, while 24 officially remain listed as missing. See National Commission on Terrorist Attacks Upon the United States (2004), at 311.

[292] Nonetheless, on 11 March 2004 a series of coordinated bombings on commuter trains in Madrid caused the deaths of 192 people. Again, this attack was attributed to suicide bombers belonging to the network Al-Qaeda.

[293] On 7 July 2005 a number of coordinated suicide bombings were carried out in London, killing 56 people including the bombers. A previously unknown group, 'The Secret Organisation of al-Qaeda in Europe', claimed responsibility. However, the authenticity of the statement and the links of the group to al-Qaeda have not been verified. Later that month an attempt was made to duplicate these attacks, but the bombs failed to explode.

Sheikh, killing about 90 people, on 23 July 2005. Another incident in which al-Qaeda's involvement is presumed were the three simultaneous bombings in American hotels in Amman, Jordan, in November 2005, that caused the deaths of at least 57 people.

As there is no foreseeable end to the jihad carried out not only by al-Qaeda and Bin Laden, but also by numerous other large and small Islamist groups (or even individual perpetrators acting as suicide bombers), further terrorist attacks on mainly occidental targets are likely to occur in the future.

4.6. Summary

When comparing the types of terrorism the four countries experienced, there seems to be only one thing common to all of them: they already had experience of terrorism. Spain and the UK share relatively similar experiences – they both struggled with serious separatist terrorism that was active during the same period, and had similar goals (mainly independence, although in Northern Ireland religion also played a role). Both Basque and Northern Irish terrorism caused deaths and injuries to many people (although the number of terrorist victims is considerably higher in the UK than in Spain). The Corsican terrorism cannot really be put on a par with the two previous ones, although the aim – national independence – seems similar. The impact was far less significant, and most of the victims of Corsican terrorism were not produced by terrorist actions but rather by clan rivalries. However, there are a few parallels between the PIRA, ETA, and the FLNC. All these organisations defended an ethnic majority that strove for independence from the nation that ruled them.[294] All applied similar methods (car bombs, assassinations, abductions, etc.), although not on a comparable scale. It is very likely that they inspired each other. The ceasefire which the IRA initiated in 1998 was copied by ETA and by the FLNC. When the IRA resumed violence, ETA did likewise. Violence also continued in Corsica, but was then attributed rather to rivalries between the different splinter groups than to a continuation of their political fight against the French. After the IRA laid down their weapons in July 2005, ETA followed again only a few months later. However, there are large differences as to the number of victims attributed to each organisation (FLNC: 1; ETA: around 800; IRA: around 1,800). And also their origins and further evolution differ significantly: while the PIRA and the FLNC started their armed struggle against a democratic government, ETA was established under an authoritarian regime; it constituted initially one of the major resistance movements against Franco's dictatorship. Nobody expected them to continue their combat after democracy had been established in Spain. Nonetheless, they continued their fight more brutally than had ever been possible under the repressive regime of General Franco. In view of the number of victims, the methods applied, and the different groups existing and fighting each other, the situation in Northern Ireland reached almost a

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[294] With respect to Northern Ireland, we shall differentiate: originally, the Catholic majority of Ireland as a whole fought against British rule. But if we limit the view to Northern Ireland post 1922, since then, Northern Irish Catholics have been a minority (though their population is actually growing).

war-like instability. ETA terrorised large parts of the Basque population, although fewer acts of violence have been reported than in Ireland or the UK. With Corsica, sporadic bombings took place also in mainland France, but people hardly ever were hurt.

As to the terrorism France experienced in their Algerian colony, this rebellion against foreign occupation was a typical colonial phenomenon of that time, and took place in most, if not all former colonies prior to their independence. What was different in the Algerian case was that special anti-terror laws were adopted, which also applied to mainland France, to increase the repressive measures against Algerian opponents, and that torture and summary executions by the French state took place on a large scale.

With respect to the German RAF and the French AD, they were both part of a left-wing terrorism wave that emerged in the 1960s and 1970s in several parts of the world.[295] The PIRA and ETA were also left-wing, although in their case other political goals predominated. Except for their ideology, RAF and AD had few things in common. Although the RAF killed in total "only" 34 people, the media attention they received, as well as the political and legislative actions taken against them resulted in the terrorisation of the whole German population, and meant that the terrorist threat of this small group was largely overestimated by the German people (as Heinrich Böll put it: a fight of six against six million). AD received comparatively much less attention. Also, they operated on a lesser scale and committed fewer terrorist acts in total. Compared to the RAF, AD, and left-wing terrorists emerging in other parts of Europe around the same time (e.g. Red Brigades, CCC, see above at 2.5.2.), ETA and PIRA were clearly the most violent and unscrupulous groups in Europe, taking into account their numerous victims. They were, excluding Islamic terrorism, the most dangerous and devastating terrorist movements Europe has known until now.

When we look at the current Islamic international terrorist threat which the four countries, together with many others, face today, we observe that, contrary to general public opinion, Islamic terror differs not so much from the forms of terrorism experienced before. It is both religiously and politically motivated, like the zealots or the assassins. It uses mostly the same methods as other contemporary terrorists: bombs and abductions. While the focus of this historical overview has been on the main groups and therefore some smaller movements have been left aside, it is important to notice that the multitude of Islamic groups working autonomously for one common goal – the jihad – is not a new feature either. During the time of the RAF, for example, other groups such as Movement 2 June worked for the same purpose, but autonomously. The same is true for Northern Irish and Basque terror groups (e.g. the Irish National Liberation Army, or the *Koordinadora Abertzale Sozialista* in Basque country). Even the preparedness of the 'holy warriors' to die is not new; the only, but very crucial, new element Islamic terrorists bring is *large scale* suicide intended to kill many others. This is their most dangerous weapon since, by accepting one's own death, the actions of the terrorist are no longer restricted even by the

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[295] On the historical classification of terrorism into different waves see Rapoport (2004).

most essential human feature – the desire to live. While before September 11th passengers in hijacked airplanes could comfort themselves by believing that the terrorists wanted to come out of the operation alive as well, this is no longer the case. Related to this willingness to kill themselves is also the fact that they do not feel much need to claim responsibility for their acts. Unlike the members of ETA or the IRA, Islamic fighters act on behalf of their god. For many of them, it is not necessary for the world to know of their acts, as long as god sees them. However, this is also not a new feature in history; already the Indian thugs – if we consider them as terrorists, and not as a simple religious sect – committed their killings in secrecy.

At the same time it is undeniable that the threat from Islamic terrorism is greater than in the past. But this has more to do with modernity than with the movement as such: the invention of chemical and nuclear weapons that can be used by governments, can of course equally be used by terrorists. The internet, accelerating at an immense speed the general social phenomenon of globalisation, facilitates not only cross-border police cooperation and information exchange, but of course also international organisation of crimes and hence also of terrorist assaults. Finally, the mass media and the accessibility of TV world-wide are excellent propaganda tools for terrorist attacks. Maybe if September 11th had not been broadcast world-wide, no further Islamic attacks would have happened. Instead, every new attack means new propaganda, and the more scandalous, the more outrageous the attack is, the more media attention it gets.

Excursus: Other religions as motivators for contemporary terrorism

Since Islamic terrorism is presently for obvious reasons the centre of attention, hostility towards Islam has grown considerably. The gap between Western and Eastern society and values seems to be wider than ever.[296] It is mainly for this reason that terrorism motivated by other religions than Islam should also receive attention. Some examples will show that not only Islam, but also many other religions have been instrumentalised for terrorist purposes, even in recent times.

Several terrorist groups have based their ideas on Christian values. Thus the racist Ku-Klux-Klan (KKK) in the United States[297] claimed inspiration from Christ; anti-abortion movements[298] were

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[296] Cf. the apocalyptic predictions already made in 1993 by Huntington (1993). The essay was later extended to become a book: Huntington (1996)

[297] This white supremacist organisation was founded in 1865 by Confederate veterans of the Civil War. They believed in the racial superiority of the white race, and in the need to safeguard that primacy. Their characteristics were the burning cross and the hooded and white-sheeted garments of its members. They carried out night-time raids against blacks and others, in which they would beat or lynch their victims. Altogether, about 1,000 blacks are estimated to have been killed by the KKK during the early post-Civil War period. The Klan was federally banned in 1871. It was resurrected in 1915. In 1920 it expanded its list of enemies to include Roman Catholics, Jews, immigrants, and, later in the 1930s, communists as well. Due to this expansion, the Klan recruited much more members and numbered over four million members nationwide, including also highly respected persons such as Protestant ministers, doctors, lawyers, and politicians. (Anderson and Sloan (2002) at 276-80).

[298] E.g. the Army of God, accounting for several assaults on abortion clinics in the United States and Canada. While some of the anti-abortionists only used non-violent methods (protests, sit-ins at abortion clinics), others embarked on serious violence, including arsons, bombings, assaults, and killings. Dr. David Gunn was

entirely based on the Christian belief that the life God had given should not be taken by humans; and the Lord's Resistance Army (LRA) in Uganda (currently investigated by the International Criminal Court) has committed atrocities on the level of war crimes and crimes against humanity in the name of 'the Lord'.[299]

Also, the Jewish religion has been used to support terrorism, in particular in the region of Israel/Palestine. One example of Jewish terrorism, which has been discussed already,[300] were the acts of the Irgun. Another is the Gush Emunim,[301] a group that tries to establish Jewish settlements in the West Bank. Even the so-called "religion of peace", buddhism, has served terrorist aims, if we ought consider – in accordance with the Historical Dictionary on Terrorism – the Japanese sect Aum Shinrikyo as a terrroist band.[302]

We note therefore that not only Islam, but also Christianity, Judaism, and even Buddhism have been used for terrorist purposes. It is therefore crucial not to confuse religions such as the Islam with terrorism and vice-versa. Terrorists rely on convictions and ideas to convince their adherents, and whether these ideas can be found in the Quran or in the Bible matters little, as long as the belief is strong enough.

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murdered by the Christian fundamentalist Michael Griffin outside his clinic in Florida in 1993. Likewise, the clinic owner Dr. George R. Tiller was shot in August the same year, but luckily survived the attack. In 1994 Dr. John B. Britton was murdered by a former Presbyterian minister. The most serious attacks claimed in the name of the Army of God were two bombings at the Atlanta Northside Planning Services abortion clinic in January 1997 and another at the Otherside Lounge (a bar frequented by lesbians). While the first bomb did not injure anybody, a second bomb wounded six persons. (Ibid. at 50 et seqq, and 66 et seq.).

[299] The LRA's alleged leader, Joseph Kony, is currently arrested on several charges, including deliberate killings, rapes, mutilations, abductions, child soldier recruiting, and lootings. The group started out as the Holy Spirit Mobile Force, an armed rebel group led by the Acholi prophetess Alice Lakwena, who claimed to be possessed by the Holy Spirit. After her soldiers were largely defeated by Government forces in 1987, Lakwena fled to Kenya. Her place was taken by Joseph Kony, who gathered around him a small group of rebels based in Sudan. This group was eventually named the Lord's Resistance Army. As under Lakwena's leadership, the group aims at overthrowing the government. The movement does not present a serious threat to the Ugandan government, but it has terrorised the poorest region of the country. Almost fifty % of the Ugandan civilian population now live in camps for internally displaced persons. The LRA has engaged in the kidnapping of approximately 8,000 children, who were alternatively recruited as child soldiers, sold into slavery or prostitution, or raped and murdered. While the LRA claims to fight for the freedom of the Acholi people in Northern Uganda, in fact the group has mainly attacked the Acholis they claim to represent. Jan Egeland of the United Nations has called the situation in Northern Uganda "the biggest forgotten, neglected humanitarian emergency in the world today" (Cited after Moreno-Ocampo (2005)).

[300] See above, Chapter 4.1.

[301] The Israeli messianic movement Gush Emunim (Block of the Faithful) is committed to establishing Jewish settlements in the West Bank (biblical Judea and Samaria) and has committed several stunning acts of anti-Arab terror in the West Bank since 1980. It even developed a very elaborate plan to blow up the Muslim Dome of the Rock on Jerusalem's Temple Mount.

[302] 1995 the Japanese religious group Aum Shinrikyo (Japanese: オウム真理教 *Ōmu Shinrikyō),* now known as Aleph, committed with sarin gas an attack on Japanese underground trains, killing twelve commuters, and injuring over 5,000. Following the attack, the sect's leader, Asahara Shoko, and 400 of his followers were arrested and charged for various offences, including kidnapping, illegal production of drugs and weapons, and murder. The Japanese government subsequently banned the sect under the Anti-Subversive Law in December 1995. This decision was, however, overturned in January 1997 on the grounds that the cult posed no further danger to society. Since 2000 the sect has changed its doctrine: the group, renamed as Aleph, publicly distanced itself from Asahara Shoko and the sarin gas attack (see Anderson and Sloan (2002), at 72 et seq).

5. Conclusions of Part I

5.1. Conceptualisation of terrorism – a definition?

This historical overview has produced some insights. We see now that terrorism has been using political or religious ideas indiscriminately – rightist and leftist ideas served for terrorist purposes, and different religions have been (ab)used in order to justify terrorist acts. Furthermore, the aims of different groups labelled as terrorists differed significantly: some had religious goals (e.g. the Sicarii, the Assassins, the Djihadists, the AUM sect), others political (Jacobins, RAF, IRA) or idealist (Anarchists) aims. Some targeted the whole or large parts of the civilian population (Al Qaida), others targeted only or mostly symbols of oppression (Russian terrorists). Some were considered by many as revolutionaries freeing their country from foreign oppression (see the liberation movements under Sections 3.3. and 3.4.). In these cases, the use of the word 'terrorism' seems at least highly subjective, if not inappropriate alltogether. Revolutionaries were 'terrorists' as long as they were unsuccessful; once they gained power they became national heros (e.g. Mandela, Arafat). Many (at least in the early days of their foundation) relied on strong support from society (ETA, RAF, IRA). While most of the outlined groups were directed against the State or the ruling power, some of them, being the ruling power themselves (State terrorism such as Hitler's or Stalin's regimes) were responsible for the most horrendous acts we can imagine (torture, unlawful interminable detentions, mass executions without trial, and even genocide). From all this we can deduce that it is impossible to find a catch-all definition of this phenomenon called terrorism.[303] We rather discover an accumulation of very different, in some respects even opposing concepts, with just one main common element: the use of violence. And even the scale of violence varies from one group to another. In addition, we may find that common to all the movements is the desire, combined with an (in many cases unconditional) readiness, to act (e.g. propaganda of the deed declared by the People's Will in Russia, the ekin-movement in Spain, Direct Action in France etc.). In many cases the motivation is the wish to escape oppression from a dominating power. Terrorism is chosen instead of open war as this seems the only method able to succeed. Taking into consideration groups such as the RAF, the *brigate rosse,* or even ETA or the IRA, we notice that terrorism not only appears under oppressive dictatorships but even in democracies where it is supposed that people have the right to declare their opinion freely by peaceful means. However, the example of the RAF[304] or the case of Northern Ireland[305] show that even in these recognised democracies

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[303] This view is shared by the terrorist expert Walter Laqueur who also stated that "No definition of terrorism can possibly cover all the varieties of terrorism that have appeared throughout history" (Laqueur (1987), at 7).

[304] Demonstrations on occasion of the visit of the Shah, during which one student demonstrator, Benno Ohnesorg, was shot by police. See above 4.3.

the freedom of association was *de facto* limited – police used violence against unarmed demonstrators. Naturally this produced more frustration and aggression on the other side and encouraged support for terrorist movements.

If, in spite of these difficulties, we still attempt to find a definition of terrorism for the purposes of criminal law, we can deduce from the above that there exists one common element that all these movements share, and that is the *use of violence*. However, when looking at the different movements described above, one realises that not all movements deserve to be called "terrorist". While they all resorted to violence, it was the *disproportionate* use of violence which made the acts of some socially unacceptable, while, in consideration of the circumstances (e.g. suppression), the *limited* use of violence seemed unavoidable. And it is this disproportionate use of violence which causes *intimidation and terror* among parts of or the whole of a civil population. Admittedly, the notion of disproportionality itself can again be interpreted differently. But let us assume that judges will be able to concretise the term in their case-law. The next question is: are these three elements – disproportionate violence which causes intimidation and terror – enough to define terrorism? Many definitions of terrorism contain an additional element, namely the presence of an idealistic, political, or religious *goal*. We have seen that people have indeed committed terrorist acts for idealistic, political, or religious reasons. However, I consider the inclusion of such an element in a legal definition of terrorism as extremely dangerous. First, there is no need to include these goals. Criminal law, as the sharpest sword of the state, should only criminalise acts that cause (not negligible) damage or at least imminently threaten legally protected interests. But the goals, by themselves, present no risk to society; it is rather the determination to follow this goal *unconditionally* that can produce great harm. This assessment is confirmed when looking at other criminal offences. A thief, for instance, is defined under German law as "whoever takes moveable property not his own away from another with the intent of unlawfully appropriating the property for himself or a third person". Moreover, it is problematic to say that a criminal offence becomes more serious on the exclusive grounds that it is religiously motivated. For the victim, of course, it matters little whether the offender killed for egoistic or for spiritual motives.[306] There is indeed a specific subjective element required, i.e. the "intent of unlawfully appropriating the property for himself or a third person", but this intent is not the ultimate goal of the thief. The ultimate goal is to become rich (or to become less poor). Similarly, I do not claim that a legal definition of terrorism does not require any subjective element; I argue only that the ultimate goal of the actor should not be confused with his *concrete* intention. But there is a second reason why we should abstain from referring to

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[305] E.g. Bloody Sunday, the day on which several demonstrators – unarmed – were shot dead by the authorities. See above at 4.1.
[306] In the words of Mahatma Gandhi: "What difference does it make to the dead, the orphans, and the homeless, whether the mad destruction is wrought under the name of totalitarianism or the holy name of liberty and democracy?" (Gandhi (1972)).

"political, ideological, or religious goals", and this is because these terms are extremely value-loaded, and invite "political, ideological or religious" abuse from those who apply the law. If we want to prevent a legal definition of terrorism from being used arbitrarily against any political opponent, we must restrict ourselves to at least objectifiable elements. If we want to include a *dolus specialis* in the definition, we might as well go back to the already mentioned element of terror and intimidation, thus requiring that the violent act is committed *with the specific intent to cause terror and intimidation amongst the population*. Any further-going intent is, in my view, inadmissible. Therefore the only definition that in my view defines terrorism adequately is the following:

> The disproportionate use of violence, applied with the specific intent to cause terror and intimidation amongst parts or the whole of a population.

However, a reservation is necessary. Although we might be able to apply this definition to most terrorist movements that deserve this name, it is evident that the first element, the "disproportionate use of violence", is still far too open and unclear to be of any use in criminal justice. But the acts committed by terrorists are too diverse to be concretised any further in one single definition. To avoid arbitrariness, and to abide by the fundamental principle of certainty and clarity of the law, in a potential definition we can only list certain concrete violent acts usually carried out by terrorists.[307]

5.2. Lessons learnt or why we should *not* reduce human rights when fighting terrorism

History has shown something else: the law is one, but not the most important means to counter terrorism. Its power should not be overestimated. We have seen that in many cases terrorism evolved as a consequence of political unrest or social injustice. Most martial laws did not destroy terrorist groups, but social and political changes eventually did. In this context, Rapaport has developed the theory of the "four waves of terrorism", where he observes that terrorist movements always appeared in waves (of limited duration), starting at a low level intensity, then increasing in their intensity until reaching a peak, and then decreasing again.[308] We should focus on changing the social and political preconditions that provoke terrorism rather than drafting special counter-terror legislation.

Furthermore, this overview has shown that special anti-terror legislation which limits or reduces human rights can be counter-productive for two reasons: First, governments use this legislation to confer more and more powers on state authorities, to the detriment of individual rights and freedoms. History has shown that totalitarian states

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[307] Incidentally, this is what most legislators did. However, some avoided the problem entirely, by simply referring to "terrorism" or "terrorist" in the respective provisions, without further defining the term. This gives much cause for concern, as the arbitrary application of such a law will be highly likely, as history has regrettably shown.
[308] See Rapoport (2004).

became totalitarian only gradually, namely through the adoption of laws which conferred increasingly more power to the state authorities, and, at the same time, gradually limited the human rights of their citizens. Often these laws were justified by the – be it real or only imaginary, but in any case quite vague – 'terrorist threat'. (But 'terrorist', for these purposes, can be replaced by any term causing fear amongst the population, e.g. 'mafia', 'dangerous (sexual) offenders', 'serial killers', and sometimes even merely a certain political direction (e.g. communists).)[309] It was the continuous and very gradual limitation of human rights which facilitated the emergence of state terror. Certainly, it would go too far to claim that counter-terrorism legislation *caused* state terrorism, but these laws set the perfect preconditions for its development. We have also seen that state terrorism is the worst type of terrorism we can imagine; history has shown that the consequences of state terror are far more devastating than those of non-state actors ever can be. Institutionalised, systemised state terrorism can reach dimensions that even an apparently powerful movement like "Al Quaida" could only dream of. The power of a totalitarian dictator is, unlike the powers of non-state actors, practically unlimited. In consequence, fighting terrorism by reducing human rights risks not eliminating terrorism, but, quite the contrary, creating it. Second, history has also shown that one of the main goals of terrorists often have often been to provoke the state into disproportionate repression, because in this way the state loses its credibility and the support of the people. It is often argued that by sacrificing our basic human rights we play into the hands of the terrorists we try to combat.[310] Indeed, if a state reacts to a terrorist attack by radically reducing the human rights of its citizen, this often does not increase trust in and sympathy for the state. Therefore, if a state overreacts to a terrorist attack, in a way, it damages itself.

We conclude that there is a considerable risk that reductions in or suspensions of human rights can extend terrorist action, be it on the part of the state, or on the part of a terrorist group which gains more adherents and sympathisers when repressed by the government. To avoid this risk, we should restrict ourselves to combatting terrorism within the limits provided by human rights law.

Last but not least, this view is also supported by the very function of human rights, which lies in protecting the citizens from undue encroachments by the state. Human rights are designed to be basic rights; they are already by nature limited to the most basic rights any person should enjoy. Reducing these rights or suspending them therefore means abolishing them entirely.

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[309] E.g. in Germany it was the great fear of the communists after the burning of the *Reichstag,* spurred on by systematic hate propaganda, which made people accept the sacrifice of their basic human rights. See above at 3.1.2.

[310] Cf. e.g. Blakesley (2006).