



DOMESTIC LEGAL RESPONSES TO TERRORISM: AN ANALYSIS OF PAKISTAN'S COUNTERTERRORISM LEGISLATION THROUGH THE FRAMEWORK OF US-LED INTERNATIONAL NORM CREATION

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Abstract

This study explores antiterrorism legislation in Pakistan since 2001. It aims to comprehend the extent to which changes in antiterrorism legislation reflect the US-backed international counterterrorism norms. By doing so, the study attempts to determine the degree to which the United States has influenced Pakistan's compliance with these counterterrorism norms. Such analysis not only allows us to understand the role of international actors, in this case the United States, in shaping domestic legal responses to a global problem, but it also determines the extent to which the state, in this case Pakistan, might make such changes by its own volition and understanding of its own self-interest.

Keywords: Terrorism, Counterterrorism, Pakistan, Legislation



Introduction

The resurgence of the threat of fourth wave of terrorism in the 1990s and its intensification in early 2000s was accompanied by norm creation at international multilateral institutions (Rappaport, 2006). The adoption and compliance by states, especially by those central to combatting terrorism, potentially decide the effectiveness and the output of these norms (Checkel, 1997). Therefore, the United States, by using its significant clout, spearheaded the development and adoption of counterterrorism norms in international institutions. The significant among these were the United Nations Security Council Resolutions such as 1267 and 1373 and the integration of countering financing of terrorism (CFT) norms into the working of existing international bodies, most significantly in the Forty Recommendations of the FATF.

At the same time, the United States pursued a policy of urging and persuading members of international community to adopt the norms created at these institutions and to comply with them as nearly as possible. The US efforts to promote compliance with these norms took two approaches – bilateral through the US diplomatic efforts, often involving military and economic assistance and through international institutions demanding compliance with their provisions. Pakistan, as a key state to global efforts to combat terrorism, has been a particular focus of such US policies. Both bilaterally as well as through these multilateral forums, such as the FATF, the United States has made significant efforts to influence Pakistan's domestic responses to the threat of terrorism. However, it should also be noted that not all antiterror action and legislation in Pakistan can be understood as the consequence of US coercion or persuasion. Rather, the study establishes a cause-and-effect relationship between Pakistan's antiterrorism measures and the factors that might have prompted it. (Khan et al., 2021)

Background and Rationale of the Study

The September 11, 2001 attacks was a 'global event' (Halliday, 2013, p. 1). The victims of the attacks included citizens of, or people originating from, all parts of the world. More importantly, Al Qaeda, the organization that claimed responsibility for the attacks, had developed a global network that operated in many regions across the world (Gunaratna, 2002, p. xix). With its support to numerous insurgent groups in countries stretching from Philippines to Algeria, Al Qaeda did not focus on a single conflict. Rather it viewed its role as the entity that provided ideological framework and logistical support through which multiple organizations operated (Byman, 2003). The global terrorism model of the Al Qaeda is also referred to as 'new terrorism' (Martin, 2013). Since then the model has been embraced and expanded by other organizations, most notably by ISIS (Islamic State of Iraq



and Syria). ISIS, for instance, has not only created a territorial base that it uses as safe haven like traditional insurgencies but also sends operatives to commit acts of terrorism in areas outside its immediate bases (Cronin, 2016).

The new terrorism not only threatens the security of individual states but also poses significant threats to the international system. Therefore, dealing with the threat requires counterterrorism actions at both the state as well as international level (Mendelsohn, 2005). As suggested earlier, substantial nonparticipation by states, particularly those deemed central to the global counterterrorism efforts, has the potential to negate the work of national or multilateral efforts (Rotberg, 2002). It is therefore important to examine the counterterrorism efforts of the states at the national level to understand the extent of the diffusion of the global norms into domestic policy making and legislation. The institutional context in which certain norms are created and take precedence over others is also vital to our understanding of this global-local connection.

Framework for Analysis

In his article “Legitimacy and Authority in International Politics”, Ian Hurd explains that a state complies with international norms for three reasons: for the fear of punishment by the actors that enforce specific norms, for the belief that such compliance is in its self-interest and by viewing the norms as legitimate (Hurd, 1999). The frame of reference for the analysis is borrowed from who argues that “hegemonic leadership can help to create a pattern of order” (Keohane, 2005, p. 49). Elsewhere he contends that “state action to a considerable degree depends on the prevailing institutional arrangement” (Keohane, 1989, p. 1-20). The paper explains the behavior of Pakistan after September 11, 2001 through understanding the prevailing institutional arrangement and the position of the US in it. It does so by analyzing counterterrorism legislation in Pakistan after September 11 as an indicator for compliance with the demands of international institutions. Firstly, the paper examines if the post-September 11 counterterrorism legislations in Pakistan constitute a significant break from the pre-September 11 period. Secondly, and more importantly, the paper investigates the relationship between these legislations and the international norms created after September 11. The paper does not aim to evaluate the merits or implementation of this legislation.

This paper specifically focuses on the post-September 11 counterterrorism legislation in Pakistan through the US efforts to employ international institutions to shape other states’ domestic and foreign policy behavior. The US assumed the role of leadership in the global war on terror (GWOT) on account of its superior position in the unipolar world order, and as the primary victim of September 11 attacks. Pakistan, on the other hand, is at times



criticized for joining the GWOT reluctantly. It was the only regional state that had recognized Taliban government in Afghanistan and had inculcated long-term relations with the Taliban leadership (Tellis, 2008).

Counterterrorism Legislation in Pakistan: Before and Since September 11, 2001

In 1975, Pakistan passed the *Suppression of Terrorist Activities (Special Courts) Act*. The purported object of the legislation was to accelerate the judicial process in dealing with terrorism (Fayyaz, 2010). The law refrained from defining terrorism but mentioned specific type of offenses such as 'the use of explosives' covered by the Act (Murphy 2010, p. 478). Special laws were passed 1987 and 1992 to further strengthen these 'Speedy Trial Courts'. Designed to deal with offenses classified as terrorism, the courts could hand down death penalty in as little as three days and only one appeal was permitted (Thronton 1995, p. 308).

The current legislation, *Anti-Terrorism Act 1997*, replaced the 1975 legislation. The Act lays down the foundation for the domestic counterterrorism regime. Unlike the earlier legislation, the 1997 Act defined terrorism – albeit in a broad manner (Fayyaz, 2010). The Act reconstituted the speedy trial courts and specified deadlines for investigation and judicial verdicts. However, as a departure from the earlier legislation, the Act gave the accused right to appeal against the decision of antiterrorism court to higher judiciary – high courts and the Supreme Court of Pakistan (Parvez and Rani, 2015).

The Anti-Terrorism Act was amended seventeen times between 1997 and 2015 (Parvez and Rani, 2015). The rate with which amendments in the Antiterrorism Act was particularly accelerated after September 11, 2001. In 2002, government made the second amendment to the Act that gave law enforcement authorities the power to detain any person on the 'terrorism list' (the list was created by Government of Pakistan in 2001) for 'up to one year without filing specific criminal charges' (Kennedy, 2004, p. 410). For the first time, it provided for the documentation of foreign students studying in Pakistan, particularly those studying in religious seminaries. Amendments have been consistently made into the Act. The punishment for aiders and abettors in acts of terrorism has been made more stringent – life sentence instead of 14 years (Fayyaz, 2010). Other than the Antiterrorism Act, Pakistan has passed other counterterrorism legislations, for instance legislation to prohibit terrorism finance. I use some of these legislations along with the provisions of Antiterrorism Act in the next part of the paper as examples.

Counterterrorism Legislation in Pakistan through the US-led International Institutional Framework



The US response to the September 11 attacks and the resulting GWOT combined diplomatic multilateralism with military interventionism. The multilateral diplomacy in the international organizations was aimed at achieving two objectives: First, it was meant to address the concerns of some of the partner in the military coalition regarding the legality of military intervention in Afghanistan; two, it allowed the US to seek compliance with these measures at the domestic levels in states around the world (Byers, 2002).

One of the earliest and most important institutional measures the US promoted was the passage of *Resolution 1373* in the UN Security Council. Resolution 1373 (adopted under Chapter VII of the UN Charter) founded the CTC (Counter-Terrorism Committee) that functions under the Security Council. The resolution is seen as one of the most innovative resolution passed by the Security Council. The Security Council, arguably for the first time, used Chapter VII "to order all states to take or to refrain from specified actions in a context not limited to disciplining a particular country". In previous instances, the Security Council asked states to take certain actions, such as imposition of sanctions on a state or in a particular context, but these provisions would expire with the ending of that particular conflict or situation. The nature of issue area addressed by the Resolution 1373 makes it unbound from a specific timeframe.

The Resolution imposes on states the obligation to suppress terrorist finances, disallow terrorist national territories as safe havens, strengthening states' control over their international borders, to formulate and enact national counter-terrorism legislation informed by the provisions of the Resolution and bring to justice the perpetrators of terrorism (Stromseth, 2003). It is mandatory in its relation to the States. The resolution imposed obligations relating to fighting terrorism on all States. More importantly, for our current purposes, the resolution, in the form of CTC, established the institutional mechanism through which this obligation of the states will be regulated (Rosand, 2006, p. 81).

The main purpose of the CTC is to enhance each state's capacity in two fundamentally important areas: legislation and executing machinery. It is the task of the committee to provide broad but effective outlines for standard counter-terrorism legislation that are to be followed by the member states in the form of legal measures. Moreover, each member state would also help states in developing institutional framework for the implementation of such legislation (Bianchi, 2004, p. 534). In order to ensure global compliance with the UN counter-terrorism framework, under Para 6 of the Resolution 1373 and the subsequent Resolution 1624 (2005) member states are requested to regularly submit country reports to the CTC. The reports outline the steps that states have taken in the implementation of the provisions of the resolutions during the reporting period (United Nations, 2005).



Pakistan has consistently submitted the annual reports to the CTC Executive Directorate (CTED). Although the practice of making the country reports public has been disbanded since 2006, one can see the patterns of compliance in the available reports. Para 2 of the Resolution 1373 demanded that states should suppress terrorist organizations working within its boundaries and should deny safe havens to terrorists from outside. Pakistan had previously demonstrated a high degree of tolerance for militant organizations that carried their activities in India (Ciment, 2015). In fact, Pakistan allegedly saw its patronage to these terrorist organizations as a 'strategic asset' (Riedel, 2008, p. 38). However, after the institutionalization of the global norms regarding banning the non-state militant actors, it was left with little choice. Through a legislation by the National Assembly of Pakistan banned various organizations for their alleged involvement in terrorist activities. The names of these banned organizations have been mentioned in the reports (UN Security Council, 2004). In January 2004, the UN started the practice of issuing various lists of suspected terrorist organizations. It put further pressure on Pakistan to outlaw militant organizations it previously backed and to make its national list match the UN lists (Haider, 2015). As of 2015, Pakistan has placed 212 organizations in the 'proscribed list' including several that the country had allegedly backed for decades (Gishkori, 2015).

As mentioned, Resolution 1373 that articulates the mandate of CTC also called for suppressing terrorism finance. The various reports submitted to by Pakistan consistently referred to the anti-money laundering bill that was to be passed by the Parliament. However, the *Anti-Money Laundering Act* was only signed in 2010, 9 years after the first report mentioned it. Although money laundering provisions had been inserted into the 1997 Act, these were deemed insufficient by the CTED. In 2010, Pakistan adopted the more comprehensive *Anti-Money Laundering Act 2010*. The stated purpose of the Act is "prevention of money laundering, combating financing of terrorism and forfeiture of property derived from, or involved in money laundering or financing of terrorism" (Lennon & Walker, 2015). Further, the US also backed the inclusion of the UN CTC's provisions dealing with counterterrorism financing into the mandate of Financial Action Task force (FATF) – a body created by G-7. As a result of the failure to enact a comprehensive anti-money laundering legislation, FATF had initially placed Pakistan on a blacklist of countries with deficient money laundering regimes, an action protested by the Pakistani government (Rana, 2015). In November 2015, Pakistan was excluded from the FATF blacklist only after further amendments were made in the Act that made it consistent with FATF requirements (Zahid, 2015).



Conclusion

Pakistan's post-September counterterrorism legislation, including provisions dealing with maintaining lists of banned terrorist organizations and counterterrorism financing legislation, illustrates the effects of international norm creation on domestic legislation. One can question the effectiveness of these legal measures in a country that is traditionally viewed as reluctant to curb certain kind of terrorist activity. However, legal measures are important as these can serve as the standards around which a state's response to terrorism and terrorist organizations can be measured.

The paper does not argue that all of the US response to terrorism and the subsequent GWOT was multilateral. In fact, it has been reasonably argued that unilateralism was the dominant dimension of the GWOT. The focus of this paper is on the institutional aspects of the US response to terrorism and coalition building. The purpose is to highlight the utility of institutional approaches to understanding and conducting global security politics, particularly in the area of global counterterrorism cooperation.



References

- Bianchi, A. (2004). Enforcing International Law Norms against Terrorism: Achievements and Prospects. in Andrea Bianchi (Eds.), *Enforcing International Law Norms against Terrorism*. Portland: Hart Publishing.
- Byers, M. (2002). Terrorism, the use of force and international law after 11 September. *International Relations*, 16(2), 155-170.
- Byman, D. L. (2003). Al-Qaeda as an Adversary do We Understand Our Enemy?. *World Politics*, 56(01), 139-163.
- Checkel, J. T. (1997). International norms and domestic politics: Bridging the rationalist—Constructivist divide. *European journal of international relations*, 3(4), 473-495.
- Ciment, J. (2015). *World Terrorism: An Encyclopedia of Political Violence from Ancient Times to the post-9/11 Era*. New York, NY: Routledge.
- Cronin, A. K. (2016). ISIS is more than a Terrorist Group. *Foreign Affairs*, retrieved at <https://www.foreignaffairs.com/articles/2016-03-23/isis-more-terrorist-group>
- Fayyaz, S. (2010). Responding to Terrorism: Pakistan's Anti-Terrorism Laws. *Perspectives On Terrorism*, 2(6). Retrieved from <http://www.terrorismanalysts.com/pt/index.php/pot/article/view/39>
- Gishkori, Z. (2015). 212 organizations formally banned by Pakistan. *Daily Express Tribune*. Retrieved at <http://tribune.com.pk/story/911295/212-organisations-formally-banned-by-pakistan/>
- Gunaratna, R. (2002). *Inside Al Qaeda: Global Network of Terror*. New York: Columbia University Press.
- Haider, I. (2015, February 11). Pakistan's banned organizations list to match UN blacklist. *The Dawn*, Islamabad. Retrieved from <http://www.dawn.com/news/1162733>
- Halliday, F. (2013). *Two Hours that Shook the World: September 11, 2001: Causes and Consequences*. London: Saqi,



- Hurd, I. (1999). Legitimacy and authority in international politics. *International organization*, 379-408.
- Ikenberry, G. J. (2002). America's Imperial Ambition. *Foreign Affairs*, 81(5), 44-60.
- Kennedy, C.H. (2004). The Creation and Development of Pakistan's Anti-terrorism Regime 1997-2002. In Limaye, S. P., Wirsing, R.G. & Malik, M. (eds.) *Religious Radicalism and Security in South Asia*. (Honolulu: Asia Pacific Center for Security Studies): 387-413.
- Keohane, R. O. (1989). *International Institutions and State Power: Essays in International Relations Theory*. Westview Press.
- Keohane, R. O. (2005). *After Hegemony: Cooperation and Discord in the World Political Economy*. Princeton, NJ: Princeton University Press.
- Khan, M. F., & Khan, M. A. (2021). CAUSES AND IMPACTS OF TERRORISM IN SWAT VALLEY (2007-2017). *Pakistan Journal of International Affairs*, 4(1).
- Lennon, G., & Walker, C. (2015). *Routledge Handbook of Law and Terrorism*. Abingdon, Oxon: Routledge.
- Martin C.A. (2013). Terrorism and Transnational Organized Crime. In Reichel, P., & Albanese, J. (Eds.). *Handbook of Transnational Crime and Justice*. New York Sage Publications.
- Mendelsohn, B. (2005). Sovereignty under attack: the international society meets the Al Qaeda network. *Review of International Studies*, 31(01), 45-68.
- Murphy, J. (2010). Defining International Terrorism: A way out of Quagmire. In Dienstein, Yoram, and Fania Domb, eds. *The progression of international law*. Boston: Martinus Nijhoff Publishers.
- Pervaz, T. & Rani, M. (2015 August). An Appraisal of Pakistan's Anti-Terrorism Act. Special Report No. 377, United States Institute of Peace, retrieved at <http://www.usip.org/sites/default/files/SR377-An-Appraisal-of-Pakistan%E2%80%99s-Anti-Terrorism-Act.pdf>



- Rana, S. (2015, February 14). Money Laundering Forum: Pakistan to Protest UN Task Force's Hostility. *The Express Tribune*. Retrieved from <http://tribune.com.pk/story/838135/money-laundering-forum-pakistan-to-protest-un-task-forces-hostility/>
- Rapoport, David C., ed. *Terrorism: The fourth or religious wave*. Vol. 4. Taylor & Francis, 2006.
- Riedel, B. (2008). Pakistan and terror: The eye of the storm. *The Annals of the American Academy of Political and Social Science*, 618(1), 31-45.
- Rosand, E. (2006). Resolution 1373 and the CTC: The Security Council's Capacity building. in Guiseppa Nesi (ed.), *International Cooperation in Counter-Terrorism: The United Nations and Regional Organizations in the Fight against Terrorism*. Hampshire, UK: Ashgate.
- Rotberg, R. I. (2002). Failed States in a World of Terror. *Foreign Affairs*, 81(4), 127-141.
- Stromseth, J.E. (2003, April). The Security Council's Counter-Terrorism Role: Continuity and Innovation. *Proceedings of the Annual Meeting*, American Society of International Law, no. 97, 41-45.
- Szasz, P.C. (2002, October). The Security Council Starts Legislating. *The American Journal of International Law*. 96, no. 4, 901-905.
- Tellis, A. J. (2008). Pakistan's Record on Terrorism: Conflicted Goals, Compromised Performance. *Washington Quarterly*, 31(2), 7-32.
- Thronton, T.P. (1995). National Security. in Blood, P. P.R. (ed.). *Pakistan: A Country Study*. Washington, D.C.: Federal research Division.
- UN Security Council. (2004). Pakistan's Interim Response to the Counter Terrorism Committee of the UN Security Council. S/2004/21, January 13, 2004. Retrieved from <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N04/206/04/PDF/N0420604.pdf?OpenElement>
- United Nations (2005). Revised procedures for the Counter-Terrorism Committee's stocktaking of Member States' implementation of Security Council resolutions 1373 (2001) and 1624 (2005).
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Zahid, K. (2015 November 13). Senate passes Anti-Money Laundering Bill. Samaa News. Retrieved from <http://www.samaa.tv/pakistan/2015/11/senate-passes-anti-money-laundering-bill/>