

**JUVENILE LAW AND JIHAD:**

**EXPLORING ANTI-TERROR LEGISLATION AND  
CALLING FOR MANDATORY JUVENILE TREATMENT  
OF RADICALIZED TEENS JOINING ISIS IN SYRIA**

ERIC M. MARKISEN\*

**ABSTRACT**

In international law, there are certain protections afforded to child combatants, but there is also a lack of clarity or agreement on when a child combatant loses the "child" status. This Note explores the consequences of this ambiguity in the realm of anti-terrorism legislation. It contrasts the divergent evolution of antiterrorism law of member states of the European Union and United Nations. It details the discretionary nature of protections for youth offenders, and ultimately calls for mandatory youth treatment of those radicalized juveniles who voluntarily return to their home countries.

Abstract.....	182
Introduction.....	183
I. Background Information.....	186
A. International Law Regarding Child Soldiers.....	186
B. Terrorism and Anti-Terror Legislation.....	188
1. Defining Terrorism; Origins and the Modern Era .....	188
2. United Nations .....	190
3. European Union .....	193
II. Analysis.....	195
A. The United Kingdom.....	195
B. France .....	198
C. Possible Methods of Protecting Juvenile Offenders.....	202
1. Mandatory "Youth Discount" .....	203
2. Rehabilitation.....	205

---

\* J.D., May 2016, University of Wisconsin Law School. I would like to thank Jackie for her unwavering encouragement and support, as well as the Wisconsin International Law Journal's staff members for their help throughout the publication process.

*Vol. 34, No. 1 Mandatory Juvenile Treatment for ISIS Teens* 183

D. Barriers to Juvenile Leniency.....	208
III. Conclusion .....	209

## INTRODUCTION

Within the last several months, the world has seen the emergence of a new phenomenon in global terrorism: Western teens voluntarily leaving their homes to join Islamic extremist militants waging war in Syria. This recent trend has been fueled in large part by the use of social media by the extremist groups.<sup>1</sup> The Islamic State of Iraq and Syria, or “ISIS” (also sometimes known as the Islamic State of Iraq and the Levant [“ISIL”], or simply the Islamic State [“IS”]),<sup>2</sup> has been at the forefront, leading one of the most sophisticated social media propaganda wars ever seen.<sup>3</sup> Their approach is two-pronged, first vastly distributing their messages and images over numerous accounts to increase awareness, and then recruiting interested individuals via direct messages to lure them to Syria.<sup>4</sup> Although not all have been teenagers, as of September 2014, the CIA estimated that approximately 2,000 Westerners had gone to Syria to join forces with ISIS.<sup>5</sup> By April 2015, the International Centre for Counter-Terrorism—The Hague estimated that number had grown to 4,000.<sup>6</sup>

The Islamic State is a relatively young group, originating as Al-Qaeda in Iraq (“AQI”) after the US invasion of Iraq in 2003.<sup>7</sup> Although

<sup>1</sup> Harriet Sherwood, *Schoolgirl Jihadis: The Female Islamists Leaving Home to Join ISIS Fighters*, GUARDIAN (Sept. 29, 2014, 15:52 EDT), <http://www.theguardian.com/world/2014/sep/29/schoolgirl-jihadis-female-islamists-leaving-home-join-isis-iraq-syria>.

<sup>2</sup> See Jaime Fuller, *‘ISIS’ vs. ‘ISIL’ vs. ‘Islamic State’: The Political Importance of a Much-Debated Acronym*, WASH. POST (Sept. 9, 2014), <http://www.washingtonpost.com/blogs/the-fix/wp/2014/09/09/isis-vs-isil-vs-islamic-state-the-political-importance-of-a-much-debated-acronym/>.

<sup>3</sup> Doug Gross, *Social Media Battle Augments Iraq Bloodshed*, CNN, <http://www.cnn.com/2014/06/17/tech/social-media/iraq-crisis-isis-social-media/> (last updated June 18, 2014).

<sup>4</sup> For a discussion on ISIS’ social media presence and how it effects recruitment, see e.g., *id.*

<sup>5</sup> Jim Sciutto et al., *ISIS Can ‘Muster’ Between 20,000 and 31,500 Fighters, CIA Says*, CNN, [http://www.cnn.com/2014/09/11/world/meast/isis-syria-iraq/index.html?hpt=hp\\_t1](http://www.cnn.com/2014/09/11/world/meast/isis-syria-iraq/index.html?hpt=hp_t1) (last updated Sept. 12, 2014).

<sup>6</sup> EDWIN BAKKER & SERAN DE LEEDE, INTERNATIONAL CENTRE FOR COUNTER-TERRORISM-THE HAGUE, EUROPEAN FEMALE JIHADISTS IN SYRIA: EXPLORING AN UNDER-RESEARCHED TOPIC 1 (2015).

<sup>7</sup> Zachary Laub & Jonathan Masters, *CFR Backgrounders: Islamic State*, COUNCIL ON FOREIGN RELATIONS, <http://www.cfr.org/iraq/islamic-state-iraq-syria/p14811> (last updated Mar. 3, 2016).

originally part of Al-Qaeda, the group's violent extremism led to strife with Al-Qaeda leadership, and it was eventually denounced by Osama bin Laden.<sup>8</sup> The group evolved over the next decade, merging with various other groups and adopting the name Islamic State of Iraq ("ISI") in 2006.<sup>9</sup> In April 2013, ISI joined forces with the Syrian Jabhat al-Nusra and adopted the moniker ISIS.<sup>10</sup> Today, it is a predominantly Sunni jihadist group that is attempting to establish a caliphate—an Islamic state governed by Sharia law—in Iraq and Syria.<sup>11</sup>

The group has gained significant notoriety in recent months with their violent public acts and their successful capture of a large territory. As their reputation has grown, the group has successfully recruited fighters from across the globe.<sup>12</sup> The glamorization of a promised lifestyle to those who join has led to many juveniles leaving family and friends behind to start a life as a soldier with ISIS.<sup>13</sup> Young boys are targeted through the assurance of a "brotherhood" lifestyle and through the assertion that fighting for ISIS will give them purpose by serving their religion. ISIS has also targeted young women, luring them with status and wealth upon marrying an ISIS militant.<sup>14</sup> The recruitment campaign painted a "Disney-like" picture of life in the caliphate.<sup>15</sup>

While there are many reasons why Westerners are drawn to the conflict in Syria, it is undoubtedly the case that many of the juvenile recruits do so out of naiveté and with romantic ideas of religious war.<sup>16</sup> Unfortunately for those few, the reality of war and life in the caliphate is a far cry from the "five star jihad"<sup>17</sup> they were expecting. Many of these young members regret their upheavals the moment they step foot on camp but quickly find out that turning around is much harder than

---

<sup>8</sup> Gross, *supra* note 3.

<sup>9</sup> See Laub & Masters, *supra* note 7.

<sup>10</sup> Rania Abouzeid, *Syria's Uprising Within an Uprising*, EUR. COUNCIL ON FOREIGN RELATIONS (Jan. 16, 2014), [http://www.ecfr.eu/article/commentary\\_syrias\\_uprising\\_within\\_an\\_uprising238](http://www.ecfr.eu/article/commentary_syrias_uprising_within_an_uprising238).

<sup>11</sup> *Id.*

<sup>12</sup> *European Jihadists: It Ain't Half Hot Here, Mum*, ECONOMIST (Aug. 30, 2014), <http://www.economist.com/news/middle-east-and-africa/21614226-why-and-how-westerners-go-fight-syria-and-iraq-it-aint-half-hot-here-mum>.

<sup>13</sup> Michael Pizzi, *French ISIL Fighters Want to Return Home, Plead for Clemency*, AL JAZEERA AMERICA (Dec. 3, 2014, 2:00 PM ET), <http://america.aljazeera.com/articles/2014/12/3/france-isil-fightersreturn.html>.

<sup>14</sup> Sherwood, *supra* note 1.

<sup>15</sup> *Id.*

<sup>16</sup> Oliver Roy, an expert on extremist violence, is quoted as saying, "for many radicals, there's this romantic dimension in jihad." Pizzi, *supra* note 13.

<sup>17</sup> ECONOMIST, *supra* note 12.

arriving.<sup>18</sup> Even when they do manage to escape from ISIS, these young, manipulated children, now almost certainly deemed “terrorists,”<sup>19</sup> have nowhere to turn.

Currently, the unofficial policy of the international community with regards to child soldiers is to treat them as victims, rather than combatants.<sup>20</sup> Official protections for child soldiers, however, come from Additional Protocol I of the Geneva Convention, which, by its own title, applies to victims of armed conflict.<sup>21</sup> Moreover, this policy has largely evolved in the context of conscripted service in conflicts such as the Sierra Leonean Civil War. In the current atmosphere where anything terrorism related is simultaneously feared and demonized, the children who fall victim to recruitment tactics but later wish to return home are at a special risk for prosecution under anti-terrorism legislation. Because of their voluntary participation, their home countries may be pressured by nervous citizens to eschew categorizing them as victims and instead labeling them full-fledged combatants. While children voluntarily leaving home to fight for a foreign terrorist organization is a novel and unique circumstance, the proliferation of social media and the refinement of recruitment techniques may put many more children at risk.

This Note addresses the need for an official policy in the international community that ensures that these “radicalized”<sup>22</sup> juveniles in this unique situation are not prosecuted as adults under current anti-terrorism legislation. Instead, a position that favors rehabilitation over incarceration should be instituted. Part I of this Note provides a brief background of the development of anti-terrorism legislation and the child soldier policy in the international community, particularly the European Union and United Nations. Part II examines how that international policy has been implemented at the state level. This examination focuses on legislation enacted in the United Kingdom and France, countries from

---

<sup>18</sup> See PETER R. NEUMANN, THE INTERNATIONAL CENTRE FOR THE STUDY OF RADICALIZATION AND POLITICAL VIOLENCE, VICTIMS, PERPETRATORS, ASSETS: THE NARRATIVES OF ISLAMIC STATE DEFECTORS 11–13 (2015) (detailing poor living conditions, difficulty of leaving, fear of reprisal, and fear of prosecution in their home towns).

<sup>19</sup> *Id.* at 12–13.

<sup>20</sup> Maria Achton Thomas, *Malice Supplies the Age? Assessing the Culpability of Adolescent Soldiers*, 44 CAL. W. INT’L L.J. 1, 3 (2013).

<sup>21</sup> G. Alex Sinha, *Child Soldiers as Super-Privileged Combatants*, 17 INT’L J. HUM. RTS. 584, 585 (2013).

<sup>22</sup> Radicalization can be defined as “the process of adopting an extremist belief system, including the willingness to use, support, or facilitate violence, as a method to effect societal change.” ANGEL RABASA ET AL., RAND CORP. – NAT’L SEC. RESEARCH DIV., DERADICALIZING ISLAMIST EXTREMISTS 1 (2010).

which a large proportion of Western fighters in Syria originate. Part II also presents and evaluates potential positions that the international community could adopt and barriers that may deter the elimination of full prosecution for this class of offender.

## I. BACKGROUND INFORMATION

### A. INTERNATIONAL LAW REGARDING CHILD SOLDIERS

Child soldiers present a unique legal issue because they are simultaneously victims and perpetrators.<sup>23</sup> The current state of international law—human rights law, humanitarian law, and criminal law—does not provide a clear answer for this unique status. To begin, there is a lack of consistency in even establishing the age cutoff that distinguishes adult from child. This lack of uniformity is illustrated in the Convention on the Rights of the Child (“CRC”), a 1989 United Nations human rights treaty.<sup>24</sup> While the CRC generally defines children as any person under the age of eighteen, that age is only a default and countries are free to set a lower age.<sup>25</sup>

Furthermore, the CRC allows for recruitment or participation in armed conflict of individuals at least fifteen years old.<sup>26</sup> Additional treaties, including the Additional Protocols to the Geneva Conventions, have set the age minimum for participation in armed conflict at fifteen as well.<sup>27</sup> Other international agreements, meanwhile, bar accepting recruits below the age of sixteen.<sup>28</sup> This discrepancy in standards begs the question of what status applies to those who rightfully volunteer yet have not met the age of majority.

The approach taken in international criminal law only adds to the uncertainty surrounding the age at which one is deemed an adult combatant rather than a child combatant. The body of international

---

<sup>23</sup> Thomas, *supra* note 20, at 2.

<sup>24</sup> Kurtis A. Kemper, Annotation, *Construction and Application of the United Nations Convention on the Rights of the Child*, 28 *I.L.M.* 1448 (1989)—*Global Cases and Administrative Decisions*, 20 A.L.R. Fed. 2d 95 (2007).

<sup>25</sup> Convention on the Rights of the Child, art. 1, Nov. 20, 1989, 1577 U.N.T.S. 3.

<sup>26</sup> *Id.*, art. 38.

<sup>27</sup> Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts (Protocol I), June 8, 1977, 1125 U.N.T.S. 3.

<sup>28</sup> Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict, May 25, 2000, 2173 U.N.T.S. 222.

criminal law is directed at preventing and punishing recruitment of the child soldiers.<sup>29</sup> There is relatively little law regarding the actions of the child.<sup>30</sup> The Rome Statute of the International Criminal Court established a permanent international criminal tribunal<sup>31</sup> that is charged with prosecuting, among other things, the commission of war crimes.<sup>32</sup> Included in the definition of war crimes is “[c]onscripting or enlisting children . . . into the national armed forces or using them to participate actively in hostilities.”<sup>33</sup> Once again, however, the age threshold is set quite low—recruitment is not criminalized unless the children are younger than fifteen years old.<sup>34</sup>

This age threshold is in direct contradiction with other portions of the Rome Statute. Article 26 of the Statute establishes the Court’s jurisdiction and states: “The Court shall have no jurisdiction over any person who was under the age of 18 at the time of the alleged commission of the crime.”<sup>35</sup> This ensures that the International Criminal Court will try only those who are universally accepted as not being children under international law.<sup>36</sup> Therefore, the treatment of child war criminals is left to national courts.<sup>37</sup>

Finally, the international standard for the minimum age for criminal responsibility (“MACR”) provides only vague guidance.<sup>38</sup> The United Nations Minimum Rules for the Administration of Juvenile Justice, promulgated by the United Nations General Assembly and adopted on November 29, 1985, created a standard that does not readily allow for consistent application.<sup>39</sup> The provision, often referred to as the Beijing Rules, states, “the age of criminal responsibility for juveniles . . . shall not be fixed at too low an age level, bearing in mind the facts of

---

<sup>29</sup> Thomas, *supra* note 20, at 3.

<sup>30</sup> *Id.*

<sup>31</sup> Steven Freeland, *Child Soldiers and International Crimes – How Should International Law be Applied?*, 3 NEW ZEALAND J. PUB. & INT’L L. 303, 318 (2005).

<sup>32</sup> *Id.* at 319.

<sup>33</sup> Rome Statute for the International Criminal Court, art. 8(2)(b)(xxvi), July 17, 1998, 2187 U.N.T.S. 90, 37 I.L.M. 999.

<sup>34</sup> Freeland, *supra* note 31, at 319.

<sup>35</sup> Rome Statute for the International Criminal Court, *supra* note 33, art. 26.

<sup>36</sup> Steven Freeland, *Mere Children or Weapons of War – Child Soldiers and International Law*, 29 U. LA VERNE L. REV. 19, 51 (2008).

<sup>37</sup> Matthew Happold, *Child Soldiers: Victims or Perpetrators?*, 29 U. LA VERNE L. REV. 56, 79 (2008).

<sup>38</sup> Thomas, *supra* note 20, at 8.

<sup>39</sup> See Happold, *supra* note 37, at 75–76.

emotional, mental, and intellectual maturity.”<sup>40</sup> This in essence leaves the MACR up to the individual states, whose practices already vary widely.<sup>41</sup>

In sum, the accretion of international legal norms on individual criminal responsibility was created without a preconceived plan, logical interrelation, or ordered design.<sup>42</sup> The various departments of international law aggregated a haphazard system that provides little in the way of concrete guidance on how to treat adolescents who engage in warfare. The desire to generally discourage use of children under the age of eighteen as child soldiers and to shield those children from prosecution is inherently incompatible and difficult to reconcile with the decision to criminalize recruitment of only those below fifteen.<sup>43</sup> These different provisions underscore the recurring theme of indecision in the international community and only further obscure the issue. Children between the ages of fifteen and eighteen who voluntarily join armed groups for the purpose of participating in hostilities are left in an especially precarious and opaque realm. They are faced with an international system of norms that is neither coherent nor integrated.<sup>44</sup>

## B. TERRORISM AND ANTI-TERROR LEGISLATION

### 1. *Defining Terrorism; Origins and the Modern Era*

“Terrorism” as a category of crime is a subjective determination, posing special conceptual challenges compared to most types of criminal violence.<sup>45</sup> The factors behind classification of a group or action as terroristic are largely political and dependent on the perspective from which they are viewed.<sup>46</sup> In a 1974 speech before the United Nations, Yasser Arafat noted this dynamic when he said, “One man’s terrorist is another man’s freedom fighter.”<sup>47</sup> This is no doubt the reason that

---

<sup>40</sup> United Nations Standard Minimum Rules for the Administration of Juvenile Justice, G.A. Res. 40/33, U.N. Doc. A/RES/40/33 (Nov. 29, 1985) [hereinafter Beijing Rules].

<sup>41</sup> Happold, *supra* note 37, at 73.

<sup>42</sup> LYAL S. SUNGA, THE EMERGING SYSTEM OF INTERNATIONAL CRIMINAL LAW: DEVELOPMENTS IN CODIFICATION AND IMPLEMENTATION 6 (1997).

<sup>43</sup> Freeland, *supra* note 31, at 319.

<sup>44</sup> *Id.*

<sup>45</sup> Gary LaFree & Laura Dugan, *Research on Terrorism and Countering Terrorism*, 38 CRIME & JUST. 413, 417 (2009).

<sup>46</sup> *Id.*

<sup>47</sup> *Id.*

terrorism has evaded a universally accepted definition by international organizations such as the United Nations.<sup>48</sup>

Despite the difficulty in agreeing on an official definition of terrorism, some aspects of the concept are fundamental.<sup>49</sup> These include its political nature, the surprise use of violence against seemingly random targets, and attacks on innocent persons carried out by non-state actors.<sup>50</sup> Some authors have found an apt definition by applying Justice Potter Stewart's description of pornography from the United States Supreme Court decision in *Jacobellis v. Ohio*:<sup>51</sup> when one sees terrorism, one recognizes it.<sup>52</sup> Under this standard, it is not difficult to argue that most western countries share a generally common understanding of "terrorism."

As an indisputable form of political violence, terrorism has likely been around as long as there have been political systems to rebel against.<sup>53</sup> Terrorism on an international scale, however, is a relatively recent phenomenon.<sup>54</sup> It did not become a topic of international discussion until the 1890s during the "Golden Age of Assassination."<sup>55</sup> This first wave of international terrorism saw the first great effort to deal with and eliminate terrorism on an international scale.<sup>56</sup> Since then, international law has expanded with the use of terrorism. As the result of a regional concentration of terrorism in Western Europe in the 1970s,<sup>57</sup> France, Spain, and the United Kingdom responded by enacting anti-terror legislation later in that decade and into the early 1980s.<sup>58</sup> The

<sup>48</sup> *Id.* at 418.

<sup>49</sup> Aubrey Kurth Cronin, *Introduction: Meeting and Managing the Threat*, in *ATTACKING TERRORISM: ELEMENTS OF A GRAND STRATEGY* 1, 3 (Aubrey Kurth Cronin & James M. Ludes eds., 2004).

<sup>50</sup> *Id.* at 4.

<sup>51</sup> *Jacobellis v. Ohio*, 378 U.S. 184, 197 (1964) (Stewart, J., concurring) (discussing what he considered "hard-core pornography": "I shall not today attempt further to define the kinds of material I understand to be embraced within that shorthand description; and perhaps I could never succeed in intelligibly doing so. But I know it when I see it.").

<sup>52</sup> Transnat'l Terrorism, Sec., and the Rule of Law, *Defining Terrorism* 8 (European Commission, Working Paper No. 3, Deliverable 4, 2008) available at [xa.yimg.com/kq/groups/83582643/717197286/name/WP3+Del+4.pdf](http://xa.yimg.com/kq/groups/83582643/717197286/name/WP3+Del+4.pdf).

<sup>53</sup> *Id.* at 57.

<sup>54</sup> Rapoport, *The Four Waves of Modern Terrorism*, in *ATTACKING TERRORISM: ELEMENTS OF A GRAND STRATEGY* 46, *supra* note 49, at 65.

<sup>55</sup> *Id.* at 52.

<sup>56</sup> *Id.*

<sup>57</sup> LaFree & Dugan, *supra* note 45, at 413.

<sup>58</sup> See Jeremie J. Wattellier, Note, *Comparative Legal Responses to Terrorism: Lessons from Europe*, 27 *HASTINGS INT'L & COMP. L. REV.* 397, 398–403 (2004).



attacks of September 11, 2001 however, placed terrorism on center stage.<sup>59</sup> The attacks ushered in a new era of law enforcement and anti-terror efforts not only in the United States but also around the world.<sup>60</sup> The Madrid bombings of March 11, 2004, and the London bombings of July 7, 2005 only enhanced the international efforts.<sup>61</sup>

## 2. United Nations

The United Nations was founded in the aftermath of World War II, designed and instituted for the preservation of world peace.<sup>62</sup> Its founding document, the UN Charter, takes the form of an international treaty,<sup>63</sup> and thus binds the nations that have ratified it.<sup>64</sup> The founding nations, however, did not intend for the newly created organization and its General Assembly to be vested with the authority to enact new rules on international law.<sup>65</sup> Such a role for the General Assembly was proposed but was voted down by an overwhelming margin.<sup>66</sup> Individual state autonomy is valued and further evidenced in the UN Charter. Article 2, Section 1, states that “the organization is based on the principle of the sovereign equality of all its Members,”<sup>67</sup> while Section 7 further directs that “[n]othing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state.”<sup>68</sup>

This value on individual state autonomy leaves many actions taken by the United Nations forceless. While the charter is a treaty, binding the nations that are party to it (currently 193 nations),<sup>69</sup> the General Assembly resolutions are largely considered nonbinding

---

<sup>59</sup> Crenshaw, *Terrorism, Strategies, and Grand Strategies*, in *ATTACKING TERRORISM: ELEMENTS OF A GRAND STRATEGY* 74, *supra* note 49, at 74.

<sup>60</sup> Deborah J. Daniels, *Prosecution in the Post-9/11 Era*, 36 *PROSECUTOR* 28 (2002).

<sup>61</sup> LaFree & Dugan, *supra* note 45, at 414.

<sup>62</sup> William E. Rappard, *The United Nations from a European Point of View*, 55 *YALE L.J.* 1036, 1037–38 (1946).

<sup>63</sup> Cloy D. Monzingo, *International Law – United Nations Charter – Statutes in Conflict with the Charter*.— *Sei Fuji v. State*, 217 P.2d 481 (Cal. App. 1950), 29 *TEX. L. REV.* 263, 264 (1950).

<sup>64</sup> Gregory J. Kerwin, *The Role of United Nations General Assembly Resolutions in Determining Principles of International Law in United States Courts*, 1983 *DUKE L.J.* 876, 878 (1983).

<sup>65</sup> *Id.* at 879.

<sup>66</sup> *Id.*

<sup>67</sup> U.N. Charter art. 2, para. 1.

<sup>68</sup> *Id.*, para. 7.

<sup>69</sup> *Member States: Growth in United Nations Membership, 1945-Present*, UNITED Nations, <http://www.un.org/en/members/growth.shtml> (last visited Apr. 20, 2016).

recommendations that reflect an idealized international principle.<sup>70</sup> This leaves member states free to decide how much weight to give to General Assembly Resolutions.<sup>71</sup>

There are two general exceptions, however, to the United Nations' advisory and recommendatory role. The United Nations has the power to make binding law through conventions and resolutions enacted by the Security Council. UN conventions are treaties enacted by the United Nations that bind the contracting states.<sup>72</sup> Simply signing a convention does not make it binding; rather, the state must further ratify the convention.<sup>73</sup> To date, the United Nations has issued thirteen Conventions on Terrorism. These focus comprehensively on a wide range of specific, commonly agreed-upon terrorist activities, including hijacking aircraft, manufacturing unmarked plastic explosives, and taking hostages.<sup>74</sup> These Conventions form the basis of the international counterterrorism legal regime.<sup>75</sup>

The United Nations can also create binding resolutions through the Security Council, organized under Chapter 7 of the UN Charter.<sup>76</sup> The Security Council is charged with "primary responsibility for the maintenance of international peace and security."<sup>77</sup> To fulfill this duty, the Council is specifically entitled to "decide what measures not involving the use of armed force are to be employed."<sup>78</sup> These resolutions, though binding, are not self-executing;<sup>79</sup> it is up to the individual UN member states to carry them out.<sup>80</sup>

In the aftermath of the September 11th terrorist attacks, the Security Council convened and passed a series of resolutions over the course of the following months. Security Resolution 1373 was significant among these resolutions. It passed unanimously on September 28th,

---

<sup>70</sup> Kerwin, *supra* note 64, at 867, 876.

<sup>71</sup> *See id.* at 880.

<sup>72</sup> *Frequently Asked Questions regarding the Convention on the Rights of Persons with Disabilities*, UN ENABLE, <http://www.un.org/esa/socdev/enable/convinfaq.htm#q1>.

<sup>73</sup> *Id.*

<sup>74</sup> Sheehan, *Diplomacy*, in *ATTACKING TERRORISM: ELEMENTS OF A GRAND STRATEGY* 97, *supra* note 49, at 104.

<sup>75</sup> *Id.*

<sup>76</sup> *See* U.N. Charter ch. 7.

<sup>77</sup> U.N. Charter art. 24, para. 1.

<sup>78</sup> U.N. Charter art. 41.

<sup>79</sup> Johannes Reich, *Due Process and Sanctions Targeted Against Individuals Pursuant to U.N. Resolution 1267 (1999)*, 33 *YALE J. INT'L L.* 505, 505 (2008).

<sup>80</sup> U.N. Charter art. 48, para. 2.

2001.<sup>81</sup> Resolution 1373 focused on destroying the financial lifeline of terrorists, obliging all member states to prevent and suppress the financing of terrorist acts and to criminalize the provision or collection of funds by their nationals for terrorist acts.<sup>82</sup> It also called on member states to freeze funds and other financial assets that may be used to commit or facilitate terrorism.<sup>83</sup> The Council also decided that the states shall ensure that “terrorist acts are established as serious criminal offences in domestic laws and regulations and that the punishment duly reflects the seriousness of such terrorist acts.”<sup>84</sup> Among its major accomplishments, Resolution 1373 established the Counter Terrorism Committee to monitor the implementation of the resolution.<sup>85</sup>

Resolution 1377 was passed just over a month later and paired with Resolution 1373 to establish a consensus framework to combat international terrorism and the threat it posed to international peace and security.<sup>86</sup> Resolution 1377 called on “all States to take urgent steps to implement fully resolution 1377 . . . and underline[d] the obligation on States to deny financial and all other forms of support and safe haven to terrorists and those supporting terrorism.”<sup>87</sup> Taken together, these actions by the Security Council were unprecedented, proactive steps to address the new global environment as it existed after the September 11th terrorist attacks.<sup>88</sup> As of the date of this Note’s publication, the Security Council has issued thirty-two Resolutions in conjunction with the Counter-Terrorism Committee.<sup>89</sup>

---

<sup>81</sup> Press Release, Security Council, Security Council Unanimously Adopts Wide-Ranging Anti-Terrorism Resolution; Calls for Suppressing Financing, Improving International Cooperation, U.N. Press Release SC/7158 (Sept. 28, 2001).

<sup>82</sup> *Id.*

<sup>83</sup> *Id.*

<sup>84</sup> S.C. Res. 1373, U.N. SCOR, 56th Sess., 4385th mtg., U.N. Doc. S/RES/1373, at 2 (Sept. 28, 2001) [hereinafter Resolution 1373].

<sup>85</sup> *Id.* at 3.

<sup>86</sup> Mona Ali Khalil, *Iraq, Afghanistan, and the War on Terrorism: Winning the Battles and Losing the War*, 33 GA. J. INT’L & COMP. L. 261, 262 (2004).

<sup>87</sup> S.C. Res. 1377, U.N. SCOR, 56th Sess., U.N. Doc. S/RES/1377, at 2 (Nov. 12, 2001) [hereinafter Resolution 1377].

<sup>88</sup> Khalil, *supra* note 86, at 263.

<sup>89</sup> *Security Council Counter-Terrorism Committee: Security Council Resolutions*, UNITED NATIONS, <http://www.un.org/en/sc/ctc/resources/res-sc.html#> (last updated Jan. 29, 2016).

### 3. European Union

The European Union is a unique entity, more integrated than an international organization yet not integrated enough to be considered a true federal system.<sup>90</sup> This hybrid nature, which is somewhere between nation states and intergovernmental organizations,<sup>91</sup> and the resultant division of powers makes the United Nations' foggy binding/non-binding system for division of authority seem simple. Because EU organization and authority prior to the Treaty of Lisbon is beyond the scope of this analysis, this Note will provide only as much depth as is necessary to understand how the overlaying European Union affects the individual member states in their legislative endeavors against terrorism.<sup>92</sup>

As it existed at the time of the September 11th terrorist attacks, the European Union lacked a clear and concrete hierarchy of authority in its legal system.<sup>93</sup> With multiple bodies—both within the European Union itself and the member states—all ostensibly capable of enacting law, the lack of hierarchy left no means to resolve conflicts among the different kinds of legal acts.<sup>94</sup> Powers, known as “competences” were instead distributed across the “Three Pillars,”<sup>95</sup> and determining the legal authority and rank of a legal act was a matter of competency and pillar rather than hierarchy.<sup>96</sup>

The Three Pillars were comprised of the Community (first pillar), Common Foreign and Security Policy (“CFSP”; second pillar), and Police and Judicial Cooperation in Criminal Matters (“PJCC”; third pillar).<sup>97</sup> Perhaps as a result of the non-governmental nature of most modern terror organizations,<sup>98</sup> the European Union largely considered

---

<sup>90</sup> Josephine Van Zeben, *Subsidiarity in European Environmental Law: A Competence Allocation Approach*, 38 HARV. ENVTL. L. REV. 415, 421 (2014).

<sup>91</sup> ALLAN ROSAS & LORNA ARMATI, EU CONSTITUTIONAL LAW: AN INTRODUCTION 4 (2d ed. 2012).

<sup>92</sup> For a much more thorough discussion of the interplay between the different competences and the resulting complexity, see Koen Lenaerts & Marlies Desomer, *Towards a Hierarchy of Legal Acts in the European Union? Simplifications of Legal Instruments and Procedures*, 11 EUR. L.J. 744 (2005).

<sup>93</sup> *Id.* at 745.

<sup>94</sup> *Id.*

<sup>95</sup> See generally ROSAS & ARMATI, *supra* note 88, at 11–12.

<sup>96</sup> See generally ROSAS & ARMATI, *supra* note 91, at 11–12.

<sup>97</sup> *Id.* at 747.

<sup>98</sup> See generally Rapoport, *supra* note 54, at 56–65 (stating that the most recent wave of terrorism is motivated and driven by religion, in contrast to earlier waves which were based on loosely on nationalism).

terrorism to be a matter of criminal law and justice rather than foreign policy. As a result, much of the anti-terror initiative took place under the umbrella of the PJCC pillar.<sup>99</sup> Actions taken under that pillar, however, were enacted via many types of “soft law” instruments enacted outside the Treaty framework and were therefore seldom binding.<sup>100</sup>

The European Union itself, however, did have the power to create binding instruments and executed several of these in the realm of counter terrorism. These binding actions, called Framework Decisions, set out exactly what the member states needed to achieve while leaving the methods of implementation up to the individual states.<sup>101</sup> In the wake of the September 11th terrorist attacks, the European Union pushed through two important Framework Decisions, the first of which was the Arrest Warrant Framework Decision (“AWFD”).<sup>102</sup> The AWFD was designed with more general law enforcement facilitation in mind, but it has been a boon in the anti-terrorism arena.<sup>103</sup> The AWFD essentially simplifies and expedites the warrant and surrender procedures between member states, creating a “European arrest weapon” and requiring states to recognize those duly issued elsewhere in the Union.<sup>104</sup> The AWFD went into effect on January 1, 2004.<sup>105</sup>

The other key Framework Decision was the “Framework Decision on Combating Terrorism,” (“FDCT”) which took effect on June 22, 2002.<sup>106</sup> A key accomplishment and starting point of the FDCT is that it included provisions that define “terrorist groups” and “terrorist acts.”<sup>107</sup> This harmonization of definitions was a substantial step, given the difficulty the international community at large had experienced attempting to come to an agreement on a definition. The FDCT mandated that member states make provisions in their national legislation for

---

<sup>99</sup> Jan Wouters & Frederik Naert, *The European Union and ‘September 11,’* 13 IND. INT’L & COMP. L. REV. 719, 724 (2003).

<sup>100</sup> Lenaerts & Desomer, *supra* note 92, at 748.

<sup>101</sup> Hoyt, *Military Force*, in ATTACKING TERRORISM: ELEMENTS OF A GRAND STRATEGY 140, *supra* note 49, at 155–56.

<sup>102</sup> Council Framework Decision 2002/584, of 13 June 2002 on the European Arrest Warrant and the Surrender Procedures between Member States, 2002 O.J. (L 190) 1, 1.

<sup>103</sup> Wouters & Naert, *supra* note 99, at 726–27.

<sup>104</sup> *More Effective Extradition Procedures: European Arrest Warrant*, EUR-LEX.EU, [http://europa.eu/legislation\\_summaries/justice\\_freedom\\_security/judicial\\_cooperation\\_in\\_criminal\\_matters/l33167\\_en.htm](http://europa.eu/legislation_summaries/justice_freedom_security/judicial_cooperation_in_criminal_matters/l33167_en.htm) (last visited Mar. 28, 2015).

<sup>105</sup> *Id.*

<sup>106</sup> Council Framework Decision 2002/475, of 13 June 2002 on Combating Terrorism, 2002 O.J. (L 164).

<sup>107</sup> *Id.*, art. 2.

“effective, proportionate, and dissuasive criminal penalties, which may entail extradition.”<sup>108</sup>

After these measures and others were implemented, the European Union signed the Treaty of Lisbon in 2007. Taking effect in 2009, the Treaty abolished the EU pillar structure.<sup>109</sup> This new iteration of the European Union, while eliminating the pillars and consolidating legislative procedures, is still a unique amalgamation of state-like and non-state-like features and remains incapable of simple classification.<sup>110</sup> This new EU model is based on a theory of conferral, which in essence limits the Union to acting “only within the limits of the competences conferred upon it by the Member States in the Treaties to attain the objectives set out therein” and the competences not so conferred remain with the member states.<sup>111</sup> Under this, the member states retain significant powers in several areas, including criminal law, security, and defense.

In sum, the United Kingdom and France, the two countries analyzed in depth below, operate under the overlapping EU and UN canopies. While both the United Nations and the European Union have their peculiarities in issuing guidance and setting policy, the individual states are afforded significant discretion in implementing those supranational enactments. As a result of this sovereignty, the systems of anti-terror legislation in the United Kingdom and France have developed into unique beings despite both countries being members of the international organizations.

## II. ANALYSIS

### A. THE UNITED KINGDOM

The United Kingdom relies primarily on criminal law as the preferred method of instituting anti-terrorism legislation.<sup>112</sup> Since 2000, the UK government has enacted five major pieces of legislation aimed at

---

<sup>108</sup> *Id.*, art. 5.

<sup>109</sup> ROSAS & ARMATI, *supra* note 91, at 11.

<sup>110</sup> *See id.* at 15–19.

<sup>111</sup> Consolidated Versions of the Treaty on European Union and the Treaty on the Functioning of the European Union, arts. 4(1), 5(2), 1992 O.J. (C 191) 13 [hereinafter TEU].

<sup>112</sup> Diane Webber, *Can We Find and Stop the “Jihad Janes”?*, 19 CARDOZO J. INT’L & COMP. L. 91, 99 (2011); Elies van Sliedregt, *European Approaches to Fighting Terrorism*, 20 DUKE J. COMP. & INT’L L. 413, 422 (2010).

combating terror: Terrorism Act 2000 (“TACT”);<sup>113</sup> The Anti-Terrorism, Crime and Security Act 2001 (“ATCSA”);<sup>114</sup> The Prevention of Terrorism Act 2005;<sup>115</sup> Terrorism Act 2006;<sup>116</sup> and the Counter-Terrorism Act 2008.<sup>117</sup> Despite the more recent legislation enacted in response to the terror attacks of September 11<sup>th</sup>, 2001, and July 7, 2005, Terrorism Act 2000 remains one of the United Kingdom’s most effective and frequently used counter-terrorism measures.<sup>118</sup>

The Terrorism Act 2000 accomplished several things. First, it continued the authority of the Home Secretary to maintain a list of “proscribed groups” that were “concerned in terrorism.”<sup>119</sup> Being a member of, supporting, or wearing, carrying, or displaying an article of any of the proscribed groups were punishable offenses.<sup>120</sup> Second, the Terrorism Act 2000 also included provisions that provided for random, warrantless searches and seizures without probable cause or other suspicion.<sup>121</sup> These “Section 44” powers have since been repealed<sup>122</sup> but were used extensively while they were in effect.<sup>123</sup>

Juveniles and children are not immune from scrutiny under the UK’s antiterrorism legislation. In 2008, the Section 44 stop and search

<sup>113</sup> Terrorism Act, 2000, c. 11 (U.K.).

<sup>114</sup> Anti-Terrorism, Crime and Security Act 2001, c. 24 (U.K.).

<sup>115</sup> Terrorism Act 2006, c. 11 (U.K.).

<sup>116</sup> Counter-Terrorism Act 2008, c. 28 (U.K.).

<sup>117</sup> Counter-Terrorism Act 2008, c.28

<sup>118</sup> Robin Simcox, Hannah Stuart, Houriya Ahmed & Douglas Murray, *Islamist Terrorism: The British Connection*, HENRY JACKSON SOCIETY (July 7, 2011), <http://henryjacksonsociety.org/2011/07/07/islamist-terrorism-the-british-connections/> (stating that between 1999-2010, 58% of successful prosecutions came under anti-terror legislation, of which 73% were secured under the Terrorism Act 2000).

<sup>119</sup> Terrorism Act 2000, c. 11, § 3 (U.K.).

<sup>120</sup> *Id.* §§ 11–13.

<sup>121</sup> Terrorism Act 2000, c. 11, § 44 (U.K.).

<sup>122</sup> In January 2010, the European Court of Human Rights ruled that the Section 44 powers were illegal as violating Article 8 of the European Convention on Human Rights. The European Court of Human Rights found that the stop and search powers were overbroad and lacked “adequate legal safeguards against abuse.” *Gillan and Quinton v. United Kingdom*, 50 Eur. Ct. H.R. 1105, available at <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-96585>). The ruling, however, did not immediately void the law like a similar ruling from the Supreme Court would in the United States. Rather, laws found illegal in the courts remain in effect until repealed or replaced by additional legislation. Section 44 was replaced by Section 47A of the Terrorism Act 2000 (Remedial) Order 2011. Under Section 47A, warrantless searches without individualized suspicion were still permitted but under more restricted conditions.

<sup>123</sup> In 2008 alone, over 175,000 “Section 44” searches were executed. See Vikram Dodd, *Metropolitan Police Used Anti-Terror Laws to Stop and Search 58 Under-10s*, GUARDIAN, <http://www.theguardian.com/politics/2009/aug/18/met-police-stop-search-children> (last updated Aug. 18, 2009).

powers were used on 2,331 children under the age of 15.<sup>124</sup> Of these, fifty-eight searches were conducted on children younger than ten years.<sup>125</sup> These searches were conducted despite the children being below Britain's age of criminal responsibility.<sup>126</sup> That same year, Hammad Munshi was sentenced to two years in a young offender's prison after having been radicalized at the age of fifteen. At the time, he was known as "Britain's youngest teenage terrorist."<sup>127</sup>

As juvenile radicalization continues to occur and, perhaps become more frequent, prosecutions under certain provisions of the Terrorism Act 2006 are likely to become more prevalent. Passed in the aftermath of the London bombings on July 7, 2005,<sup>128</sup> the Act creates several new criminal offenses.<sup>129</sup> Among these new offenses are inciting terrorism, distributing terrorist writings, training terrorists, and being present at places where terrorists are trained.<sup>130</sup>

These new offenses are particularly relevant to radicalized British juveniles. As soon as a juvenile arrives at an ISIL camp he can be charged under the Terrorism Act 2006, regardless of whether or not he himself received training.<sup>131</sup> Even if he had a change of heart and left immediately, he had already committed a violation. Additionally, after being charged, the offense carries a penalty of up to ten years' imprisonment.<sup>132</sup>

Also created by the Terrorism Act 2006 is the offense of "glorifying terrorism."<sup>133</sup> Criminalizing anything that can considered

<sup>124</sup> *Id.*

<sup>125</sup> *Id.*

<sup>126</sup> The age of criminal responsibility in England and Wales is 10. *Age of Criminal Responsibility*, GOV.UK (August 12, 2014), <https://www.gov.uk/age-of-criminal-responsibility>.

<sup>127</sup> Caroline Gammell, *Britain's Youngest Teenage Terrorist: 'A Wake-up Call for Parents'*, TELEGRAPH, <http://www.telegraph.co.uk/news/2988926/Britains-youngest-teenage-terrorist-a-wake-up-call-for-parents.html> (last updated Sept. 19, 2008).

<sup>128</sup> On the morning of July 7, 2005, three suicide bombings occurred within 50 seconds of each other on three separate trains in London's Underground system. Nearly an hour later, a fourth suicide bombing occurred on a double-decker bus. In all, 52 people were killed and over 700 were injured in the attacks. *July 7 2005 London Bombing Fast Facts*, CNN.COM, <http://www.cnn.com/2013/11/06/world/europe/july-7-2005-london-bombings-fast-facts/> (last updated July 3, 2014).

<sup>129</sup> van Sliedregt, *supra* note 112, at 422.

<sup>130</sup> Terrorism Act 2006, c. 11, §§ 1, 2, 5, 6, 8 (U.K.).

<sup>131</sup> *Id.* §8(3)(a) (stating that it "is immaterial for the purposes of this section whether the person concerned receives the instruction or training himself").

<sup>132</sup> *Id.* §8(4)(a).

<sup>133</sup> *Id.* §1. In full it reads, "This section applies to a statement that is likely to be understood by some or all of the members of the public to whom it is published as a direct or indirect encouragement



“direct or indirect encouragement,” it is a broad and vaguely defined restriction that has the potential to disproportionately affect teens.<sup>134</sup> The prevalence of modern terrorism organizations, particularly ISIS, on social media sites “lowers the barrier to access” to terrorist propaganda.<sup>135</sup> The “glorifying” provision could lead to teens being prosecuted simply for “retweeting” one too many times.<sup>136</sup>

Finally, as the pace of terrorism has heightened in the recent past and the terrorist threat has evolved, the United Kingdom is considering new legislation further cracking down on terrorism.<sup>137</sup> Included in this proposed legislation are exclusion orders, which could prevent British nationals from returning to the United Kingdom if they were suspected of terrorist involvement.<sup>138</sup> Such exclusion orders could last up to two years.<sup>139</sup>

The UK legislative response to the new era of terrorism in the aftermath of the September 11th and July 7th terrorist attacks has been aggressive.<sup>140</sup> A particular concern regarding the UK policy for juveniles is the length of the sentences that are typical for offenses of UK antiterrorism legislation. Currently forty-five percent of those convicted received sentences longer than four years in prison.<sup>141</sup>

## B. FRANCE

Like many other parts of Europe, France is no stranger to terrorism.<sup>142</sup> The Muslim-related violence is not simply relegated to the

---

or other inducement to them to the commission, preparation or instigation of acts of terrorism or Convention offenses.” *Id.*

<sup>134</sup> S. Chehani Ekaratne, *Redundant Restriction: The U.K.’s Offense of Glorifying Terrorism*, 23 HARV. HUM. RTS. J. 205, 205 (2010).

<sup>135</sup> Emily Goldberg Knox, *The Slippery Slope of Material Support Prosecutions: Social Media Support to Terrorists*, 66 HASTINGS L.J. 295, 301 (2014).

<sup>136</sup> Although there is a requisite *mens rea* that the publisher intend the statement encourage terrorism, simple recklessness as to the statement having that affect would also satisfy the *mens rea*. Terrorism Act 2006, c.11, §1(2)(b) (U.K.). See also Ekaratne, *supra* note 134, at 208.

<sup>137</sup> *Terrorism Laws: ‘Time is Right’ for New Police Powers*, BBC NEWS UK (Nov. 24, 2014), <http://www.bbc.com/news/uk-30173238>.

<sup>138</sup> *Powers to stop British jihadists returning to UK – PM*, BBC NEWS UK (Nov. 14, 2014), <http://www.bbc.com/news/uk-politics-30041923>.

<sup>139</sup> *Id.*

<sup>140</sup> See van Slieght, *supra* note 112, at 422–24.

<sup>141</sup> Simcox et al., *supra* note 118.

<sup>142</sup> See France: Counter-Terrorism, LEGISLATIONLINE (2004), <http://www.legislationline.org/topics/country/30/topic/5>; see also *List of terrorist incidents in*

past either.<sup>143</sup> On January 7th, 2015, two Muslim gunmen attacked the office of the satirical magazine *Charlie Hebdo* in Paris. The attack was retaliation for *Charlie Hebdo*'s history of publishing visual depictions of the Muslim Prophet Mohammed, which are expressly prohibited in some interpretations of the religion.<sup>144</sup> Over the next two days, the two gunmen and a third accomplice killed seventeen people before they were finally killed by police on January 9th.<sup>145</sup> France had hardly finished mourning the *Charlie Hebdo* attacks when tragedy struck again on November 13, 2015. That night, a series of coordinated attacks were carried out in Paris and its northern suburb, Saint-Denis. Gunmen and suicide bombers hit a concert hall, a major stadium, restaurants, and bars, and left 130 people dead and hundreds more wounded.<sup>146</sup>

As these attacks illustrate, France has a legitimate threat from radicalized nationals.<sup>147</sup> Approximately ten percent of France's total population is Muslim, equaling about 6.5 million persons.<sup>148</sup> In real numbers, France has the largest Muslim population in Europe.<sup>149</sup> As of April 2015, approximately 1,430 French Muslim citizens and residents had left to fight for ISIS;<sup>150</sup> this number was up from 621 in mid-December, 2014.<sup>151</sup> As more and more French citizens leave to fight and

---

France, WIKIPEDIA, [http://en.wikipedia.org/wiki/List\\_of\\_terrorist\\_incidents\\_in\\_France](http://en.wikipedia.org/wiki/List_of_terrorist_incidents_in_France) (last accessed Jan. 18, 2015).

<sup>143</sup> See *Charlie Hebdo Attack: Three Days of Terror*, BBC NEWS EUROPE (Jan. 14, 2015), <http://www.bbc.com/news/world-europe-30708237>.

<sup>144</sup> Laura Smith-Spark, Dana Ford, and Jethro Mullen, *Charlie Hebdo attack: What we know and don't know*, CNN.COM, <http://www.cnn.com/2015/01/07/europe/charlie-hebdo-attack-summary/> (last visited March 22, 2016).

<sup>145</sup> *Charlie Hebdo Attack*, *supra* note 143.

<sup>146</sup> *Paris Attacks: What happened on the Night*, BBC NEWS EUROPE, <http://www.bbc.com/news/world-europe-34818994>.

<sup>147</sup> See Editorial Board, Op-Ed., *An Inclusive French Republic: Paris Attacks Lay Bare Longtime Muslim Exclusion*, N.Y. TIMES (Jan. 19, 2015), [http://www.nytimes.com/2015/01/19/opinion/paris-attacks-lay-bare-longtime-muslim-exclusion.html?\\_r=0](http://www.nytimes.com/2015/01/19/opinion/paris-attacks-lay-bare-longtime-muslim-exclusion.html?_r=0) (stating that all three of the *Charlie Hebdo* attackers were born and raised in France).

<sup>148</sup> Soeren Kern, *The Islamization of France in 2013*, GATESTONE INSTITUTE (Jan. 6, 2015), <http://www.gatestoneinstitute.org/4120/islamization-france> (Published the day before the *Charlie Hebdo* attack in Paris, this article's discussion of the proposed jihadist actions against *Charlie Hebdo* is chilling); see also *World Factbook France*, CIA, <https://www.cia.gov/library/publications/the-world-factbook/geos/fr.html#People> (estimating the French Muslim population at 5-10%).

<sup>149</sup> *Id.*

<sup>150</sup> *Nearly Half of European Jihadists in Syria, Iraq Are French: Report*, YAHOO NEWS, (Apr. 8, 2015), <http://news.yahoo.com/nearly-half-european-jihadists-syria-iraq-french-report-175845419.html>.

<sup>151</sup> Editorial Board, *supra* note 147.

train in Iraq and Syria, the specter of another terror attack in France is only growing larger, and France's legislative actions against it are likely to increase.<sup>152</sup>

Like the United Kingdom, France has elected to use criminal law to combat terrorism.<sup>153</sup> Unlike the United Kingdom, however, France uses existing offenses in the Penal Code to prosecute acts of terror rather than creating new terrorism-specific offenses.<sup>154</sup> It does this by incorporating an additional, terrorism-specific *mens rea* intent to the existing criminal offense.<sup>155</sup> Although based on standard criminal offenses, once an act is identified as a "terrorist offense" it is no longer prosecuted in the same way as a standard offense. France instead has centralized and specialized its anti-terror criminal system.<sup>156</sup> This system is administered by a small network of prosecutors and judges who deal only with terrorism cases and who operate under specialized procedures and sentencing guidelines.<sup>157</sup> This centralization was instituted to recognize the complexity and international character of terrorism.<sup>158</sup>

Among these special rules are longer-than-usual detention periods. Suspects can be held for up to ninety-six hours before charges

<sup>152</sup> In response to the November 13th attacks, French parliament has extended the country's state of emergency for a period of three months. This state of emergency gives police the power to search homes without a warrant, place people under house arrest, ban protests and public gatherings, and tighten border controls. France's state of emergency laws explained in 90 seconds. *France's State of Emergency Laws Explained in 90 Seconds*, BBC NEWS EUROPE (Nov. 19, 2015), <http://www.bbc.com/news/world-europe-34852916>; in January, 2016, French President Francois Hollande requested another three month extension and pushed for measures to enshrine the emergency powers in the French Constitution. See *France Looks to Enshrine Emergency Anti-Terror Laws In Constitution*, YAHOO.NEWS.COM (Dec. 23, 2015), <http://news.yahoo.com/french-cabinet-backs-state-emergency-reforms-115006079.html>; additionally, a proposal has been introduced that would strip citizenship from French-born dual nationals convicted of terrorism. Adam Nossiter, *French Proposal to Strip Citizenship Over Terrorism Sets Off Alarms*, N.Y. TIMES (Jan. 8, 2016), <http://www.nytimes.com/2016/01/09/world/europe/french-proposal-to-strip-citizenship-over-terrorism-sets-off-alarms.html>.

<sup>153</sup> See W. Jason Fisher, *Militant Islamist Terrorism in Europe: Are France and the United Kingdom Legally Prepared for the Challenge?*, 6 WASH. U. GLOBAL STUD. L. REV. 255, 260 (2007).

<sup>154</sup> *Id.*

<sup>155</sup> "France classifies an offense as a 'terrorist offense' if it contains a terror intent element—if an 'individual or collective undertaking' is 'intentionally' designed 'to cause a serious disturbance to public order by means of intimidation or terror.'" *Id.*

<sup>156</sup> *Legislating Against Terrorism – The French Approach: Summary of a Meeting of Int'l Law Discussion Group*, CHATHAM HOUSE (Dec. 8, 2005), <https://www.chathamhouse.org/sites/files/chathamhouse/public/Research/International%20Law/ilp081205.doc>.

<sup>157</sup> *Id.*

<sup>158</sup> Fisher, *supra* note 153, at 273.

are brought.<sup>159</sup> After charges are brought, terrorism suspects may be held in prison awaiting trial for up to four years; despite condemnation from the European Court of Human Rights for this time period, France has adhered to these policies.<sup>160</sup> In addition to longer periods of pre-charge and pretrial detention, terrorism-related offenses allow for special rules regarding investigations and information gathering, namely searches and seizures that do not require the owner's consent.<sup>161</sup>

One of France's more recent anti-terrorism laws, the 21 December 2012 law, has made it possible to prosecute French nationals or "habitual resident" of France for alleged acts of terrorism abroad without the legal red tape that was previously required.<sup>162</sup> Before the 21 December 2012 law, such individuals could be prosecuted under French criminal law only if the offenses were also offenses in the foreign state and that state sent France an official report to that effect.<sup>163</sup> This reform now allows French nationals and habitual residents to be prosecuted without either of those conditions. Offenses now punishable under this reform include, *inter alia*, going abroad to visit terrorist training camps.<sup>164</sup>

France has demonstrated a vigorous determination to combat terrorism, often times pursuing use of their powers with a greater willingness than their UK counterparts.<sup>165</sup> In the wake of the Charlie Hebdo attacks, French Prime Minister Manuel Valls announced new, "exceptional measures" designed to "respond to the 'change in scale' of the terrorist threat."<sup>166</sup> These new measures include allocating over 425 million euros over the next three years to combat terrorism and legislation aimed at advanced domestic surveillance and early detection.<sup>167</sup>

---

<sup>159</sup> *France Profile on Counter-Terrorist Capacity*, CODEXTER (2013), <http://www.legislationline.org/topics/country/30/topic/5>.

<sup>160</sup> *Legislating Against Terrorism – The French Approach: Summary of a Meeting of Int'l Law Discussion Group*, *supra* note 156.

<sup>161</sup> France: Counter-Terrorism, *supra* note 142; *France Profile on Counter-Terrorist Capacity*, *supra* note 159, at 3.

<sup>162</sup> *France Profile on Counter-Terrorist Capacity*, *supra* note 159, at 2.

<sup>163</sup> *Id.*

<sup>164</sup> *Id.*

<sup>165</sup> Fisher, *supra* note 153, at 271.

<sup>166</sup> See Angelique Chirasafis, *France Passes New Surveillance Law in Wake of Charlie Hebdo Attack*, GUARDIAN (May 5, 2015), <http://www.theguardian.com/world/2015/may/05/france-passes-new-surveillance-law-in-wake-of-charlie-hebdo-attack>.

<sup>167</sup> *Id.*

Once France apprehends those suspected of being linked to the fight in Syria, they have demonstrated a hardline approach. In November 2014, France sentenced its first citizen returned from jihad in Syria, Flavien Moreau, to seven years in prison.<sup>168</sup> This sentence was the maximum possible.<sup>169</sup> An associate of Moreau's who had not traveled to Syria but merely communicated with Moreau and received money from him was sentenced to four years in prison.<sup>170</sup> Following the Charlie Hebdo attacks, French authorities moved swiftly. In the two weeks that followed, prosecutors opened 117 legal proceedings for either "incitement of racial hatred" or "glorification of terrorism."<sup>171</sup> Twelve of those arrested had received jail sentences by the end of the month, some ranging between one and four years.<sup>172</sup>

### C. POSSIBLE METHODS OF PROTECTING JUVENILE OFFENDERS

The UN Convention on the Rights of the Child ("CRC") recognizes that every child "alleged as, accused of, or recognized as having violated penal law" has the right to "be treated in a manner consistent with the promotion of the child's dignity and worth . . . and which takes into account the child's age and desirability of promoting the child's reintegration and the child's assuming a constructive role in society."<sup>173</sup> In addition, state parties are to make available to juveniles a "variety of dispositions," including counseling, foster care, and other alternatives to institutionalization and avoid judicial proceedings whenever appropriate.<sup>174</sup> Despite these aims to protect children from harsh treatment by the criminal justice system, the protections in the CRC are worded in ways that could allow signatories to disregard these

---

<sup>168</sup> *Première condamnation d'un djihadiste français rentré de Syrie*, LE MONDE (Nov. 13, 2014), [http://www.lemonde.fr/societe/article/2014/11/13/premiere-condamnation-d-un-djihadiste-francais-rentre-de-syrie\\_4523218\\_3224.html](http://www.lemonde.fr/societe/article/2014/11/13/premiere-condamnation-d-un-djihadiste-francais-rentre-de-syrie_4523218_3224.html).

<sup>169</sup> *Id.*

<sup>170</sup> *Id.*

<sup>171</sup> *French Police Question 8-year Old Over Terror Comment*, FRANCE 24 (Jan. 29, 2015), <http://www.france24.com/en/20150129-french-police-question-8-year-old-over-terror-comment-jihadism-charlie-hebdo/>.

<sup>172</sup> *Id.*; *Dieudonné Goes on Trial for 'Condoning Terrorism'*, FRANCE 24 (Feb. 4, 2015), <http://www.france24.com/en/20150204-dieudonne-charlie-hebdo-goes-trial-defending-terrorism-coulbaly/>.

<sup>173</sup> Convention on the Rights of the Child, *supra* note 25, at 40.

<sup>174</sup> *Id.*

protections.<sup>175</sup> Terms such as “all appropriate measures”<sup>176</sup> and “wherever appropriate and desirable”<sup>177</sup> are reminiscent of the US Supreme Court’s command that desegregation of public schools occur “with all deliberate speed.”<sup>178</sup> This subjective language suggests that for especially heinous acts such as terrorism, public pressure could lead to the conclusion that avoiding judicial proceedings and “promoting the child’s reintegration” are neither appropriate nor desirable.

### 1. Mandatory “Youth Discount”

One alternative to full-scale adult sentencing of juveniles is to mandate a categorical “youth discount.” In the United Kingdom, the Crown Prosecution Service guidelines state that “[t]he general policy of the legislature is that those who are under 18 years of age and in particular children of under 15 years should, wherever possible, be tried in the youth court.”<sup>179</sup> This general policy is followed for the most part, but certain exceptional cases still get tried in adult court.<sup>180</sup> In essence, such a measure would ensure that the discretion to try juveniles in exceptional cases is removed.

Such a measure provides a straightforward way for legislatures to recognize juveniles’ categorically diminished responsibility and to formally incorporate youthfulness as a mitigating factor in sentencing.<sup>181</sup> Using age as a firm and conclusive proxy for diminished responsibility in

<sup>175</sup> For example, Art. 40, sub. 4, which directs that alternatives to institutionalization be made available is qualified by stating that the dispositions for children should be “proportionate to the offense.” *Id.*

<sup>176</sup> *Id.* at 39.

<sup>177</sup> *Id.* at 40.

<sup>178</sup> *Brown v. Board of Educ. of Topeka, Kan.*, 394 U.S. 294, 301 (1955). The ambiguity of the phrase “all deliberate speed” effectively watered down the Supreme Court’s order and caused years of delay in the desegregation process; the phrase was still causing trouble nine years later, prompting Justice Black to state that the “time for mere ‘deliberate speed’ has run out.” *Griffin v. County School Bd. of Prince Edward County*, 377 U.S. 218, 234 (1964).

<sup>179</sup> *Prosecution Policy and Guidance: Youth Offenders*, CROWN PROSECUTION SERV., [http://www.cps.gov.uk/legal/v\\_to\\_z/youth\\_offenders/](http://www.cps.gov.uk/legal/v_to_z/youth_offenders/) (last visited Mar. 3, 2016).

<sup>180</sup> In one case, two 10 year-old children were tried as adults in the murder of a two year-old boy. Jon Venables and Robert Thompson murdered James Bulger in 1993. They were originally sentenced to ten years minimum initial confinement followed by release on a lifelong license, but the initial confinement period was eventually reduced to eight years. See Eric D. Sentlinger, Comment, *V v. United Kingdom: Is it a “New Deal” for Prosecuting Children as Adults?*, 16 CONN. J. INT’L L. 117 (2000).

<sup>181</sup> Barry C. Feld, *The Youth Discount: Old Enough to Do the Crime, Too Young to Do the Time*, 11 OHIO ST. J. CRIM. L. 107, 108 (2013) [hereinafter *Youth Discount*].

instances of teen radicalization provides needed protection from the risk of political or public pressures leading to trial as an adult.

The foundation of a criminal sanction is the tradeoff between the seriousness of the harm and the culpability of the actor.<sup>182</sup> With juveniles, there are several justifications for reduced culpability that should rightfully transfer into reduced sentencing. First among these are immature judgment and self-control.<sup>183</sup> While teens' cognitive abilities may be close to that of adults, often they suffer from reduced impulse control; the gap in impulse control often takes several years to close.<sup>184</sup> They are less experienced, have less education, and less intelligence than their adult counterparts.<sup>185</sup> Overall, they are not capable of the same level of rational judgment and evaluation as adults and therefore they are categorically less blameworthy.<sup>186</sup>

Closely related to immature judgment is the consideration that teens are more susceptible to peer influence, both negative and positive. Peer influence tends to peak around age fifteen, and teens get better at setting boundaries with peers around age eighteen.<sup>187</sup> But during those years, research suggests that the pleasure centers of the brain are more reactive to peers.<sup>188</sup> This biological system, designed to encourage teens to explore outside their home,<sup>189</sup> leads to a reduced ability to resist peer pressure. The result is that teens take greater risks in groups than they would have if they were alone.<sup>190</sup> This biologically-induced susceptibility to peer pressure justifies reduced criminal liability.<sup>191</sup>

---

<sup>182</sup> Barry C. Feld, *Competence, Culpability, and Punishment: Implications of Atkins for Executing and Sentencing Adolescents*, 32 HOFSTRA L. REV. 463, 464-465 (2003) [hereinafter *Implications of Atkins*].

<sup>183</sup> *Youth Discount*, *supra* note 181, at 115.

<sup>184</sup> *Id.* at 116.

<sup>185</sup> *See* *Thompson v. Oklahoma*, 487 U.S. 815, 835 (1988).

<sup>186</sup> *Youth Discount*, *supra* note 181, at 116.

<sup>187</sup> Shirley S. Wang, *Peer Pressure for Teens Paves the Path to Adulthood*, WALL ST. J. (June 17, 2013), <http://www.wsj.com/articles/SB10001424127887324520904578551462766909232>.

<sup>188</sup> *Id.*

<sup>189</sup> *Id.*

<sup>190</sup> Most reports of teens attempting to travel to Syria have one theme in common: they all involve a group of teens traveling together. Unlike most adults who leave to fight with ISIS, teens largely are trying to make the journey in groups. *See, e.g.*, Kevin Sullivan, *Three American Teens, Recruited Online, Are Caught Trying to Join the Islamic State*, WASH. POST (Dec. 8, 2014), [http://www.washingtonpost.com/world/national-security/three-american-teens-recruited-online-are-caught-trying-to-join-the-islamic-state/2014/12/08/8022e6c4-7afb-11e4-84d4-7c896b90abdc\\_story.html](http://www.washingtonpost.com/world/national-security/three-american-teens-recruited-online-are-caught-trying-to-join-the-islamic-state/2014/12/08/8022e6c4-7afb-11e4-84d4-7c896b90abdc_story.html); Ben Brumfield, *Officials: 3 Denver Girls Played Hooky from School and Tried to Join ISIS*, CNN.COM (Oct. 22, 2014), <http://www.cnn.com/2014/10/22/us/colorado-teens-syria-odyssey/>; Laura Smith-Spark, *UK Police Raise Alert over Missing Teen Girls Who*

## 2. Rehabilitation

Another option for protecting juvenile offenders is rehabilitation through “de-radicalization” programs.<sup>192</sup> The premise behind deradicalization is that, just as there are processes through which an individual becomes an extremist, there are also processes through which an extremist can come to renounce violence, leave a group or movement, or even reject a radical worldview.<sup>193</sup> Deradicalization is distinguished from “disengagement,” which merely aims at achieving a change in behavior (i.e., refraining from violence and withdrawing from a radical organization) but not necessarily a change in beliefs.<sup>194</sup> Using a combination of psychiatry, education, and religion, these deradicalization programs are aimed toward the eventual reintegration of these former terrorist converts.<sup>195</sup>

To be successful, any terrorism prevention or rehabilitation program must first have a clear understanding of what motivates people to join terrorist movements and what motivates them to leave.<sup>196</sup> Ideology is an important consideration luring individuals to a movement, but it is not the only factor. Often times the desire to share in a collective identity has as much, if not more, to do with the decision.<sup>197</sup> The need for relatedness—the need to feel securely connected with others in the environment and experience belongingness—is one of the three

---

*May Be Headed to Syria*, CNN.COM (Feb. 20, 2015), <http://www.cnn.com/2015/02/20/europe/uk-syria-missing-girls/>.

<sup>191</sup> *Youth Discount*, *supra* note 181, at 121.

<sup>192</sup> Saudi Arabia, as well as other governments in the Middle East, Europe, and Southeast Asia have initiated programs aimed at counteracting terrorists’ radicalization – to turn them away from violence and return them to society. Jessica Stern, *Deradicalization or Disengagement of Terrorists: Is it possible?*, FUTURE CHALLENGES IN NATIONAL SECURITY AND LAW 1 (Peter Berkowitz ed., 2009). These rehabilitation programs are largely prison-based. Participants in the programs are under 24-hour supervision and are generally not allowed to leave the compound. A major difference, however, is that these programs generally take place in facilities more closely resembling a hotel than prison. They often feature comfortable rooms, swimming pools, gyms, and other perks. Activities include courses in positive thinking and art therapy. In some instances, conjugal visits are even permitted. *See, e.g., CBS This Morning, Terrorist Rehab: Rare Look Inside Saudi De-radicalization Program* (CBS television broadcast Nov. 19, 2014), [hereinafter *Terrorist Rehab*].

<sup>193</sup> RABASA, *supra* note 22, at iii.

<sup>194</sup> *Id.* at xiii.

<sup>195</sup> Martha Raddatz & Sarah Netter, *Rehab for Terrorists: Pakistan Tries Reintegration Program on Teen Extremists*, ABC NEWS (Dec. 31, 2010), <http://abcnews.go.com/International/rehab-terrorists-pakistan-reintegration-program-teen-extremists/story?id=12515154>.

<sup>196</sup> Stern, *supra* note 192, at 4.

<sup>197</sup> *Id.*



psychological needs essential to human growth and development.<sup>198</sup> This need for a sense of belonging is most prevalent in the formative adolescent years and, when compounded with the prejudice<sup>199</sup> they may suffer, leaves many Islamic teens in Europe especially ripe for radicalization. Feeling ostracized in their community, they are left searching for a place to belong. Radical groups can fill that void and become an essential part of the teens' identities or perhaps their only community.<sup>200</sup> It is imperative that deradicalization programs focus on finding new sources of social support if they are to have any chance of success.<sup>201</sup>

Leaving an Islamist group implies rejecting the radical ideology of the group or essential parts of it.<sup>202</sup> Therefore, changing the ideology of the radicalized juveniles is also an essential ingredient for success. In some instances this represents the biggest complication for such programs: it can be very difficult to dissuade someone from an ideology rooted in a major world religion because the ideology is viewed as a religious obligation.<sup>203</sup> Religious education thus plays a very large role in the deradicalization process. Based on Yemen's "theological dialogue" model, most programs operate on the assumption that the majority of militants do not have a proper understanding of Islam and therefore can be reeducated and reformed.<sup>204</sup> For example, in Saudi Arabia, the vast majority of participants in the program do not have much formal education or proper religious instruction and have only limited, incomplete knowledge of Islam.<sup>205</sup> That lack of knowledge about Islam makes youth vulnerable to the "teachings" of self-appointed imams and extremist propaganda.<sup>206</sup>

It is that same incomplete knowledge of Islam, however, that makes reeducation possible. If a main contributor to joining a group such as ISIS is an ignorance about the true nature of Islam, disabusing radicalized teens about their mistaken beliefs is a major step towards

---

<sup>198</sup> Karen F. Osterman, *Students' Need for Belonging in the School Community*, 70 REV. OF EDUC. RESEARCH 323, 325 (2000).

<sup>199</sup> See Stern, *supra* note 192, at 6.

<sup>200</sup> *Id.*

<sup>201</sup> *Id.*

<sup>202</sup> RABASA, *supra* note 22, at xv.

<sup>203</sup> *Id.* at xiii.

<sup>204</sup> *Id.* at xvii.

<sup>205</sup> Stern, *supra* note 192, at 5.

<sup>206</sup> RABASA, *supra* note 22, at 30.

success. To that end, these programs enlist imams, Islamic scholars, and sometimes even former radicals to discuss Islamic theology in an effort to convince militants that their interpretation of Islam is incorrect.<sup>207</sup> “The basic concept is to provide them all their comparative education, where they are able to decide for themselves what is right and what is wrong, that whatever was told to them previously is not true.”<sup>208</sup> Because part of the motivation for many radicalized youths to join Islamist groups in the first place is the desire to be good Muslims, exposure to non-radical interpretations of Islam is very compelling for many participants.<sup>209</sup> Not only is it more likely to effect a longer-lasting change in the participant’s worldview, but it also helps to discredit the radical ideology.<sup>210</sup>

Providing continued care to “graduates” following their reintegration into general society is another aspect of these programs that is critical to success. This is a rational policy because the search for community is a primary driver of radicalization. Stripping individuals of the community they had been a part of (i.e., the radical groups) and then releasing them without a replacement community leaves them in the same vulnerable position. The probability of recidivism in such situations will, logically, be higher. If, on the other hand, former militants are able to develop a new social network and mentoring relationships, the likelihood that participants will successfully reintegrate into society and avoid returning to terrorism increases greatly.<sup>211</sup> Not only do deradicalized (or disengaged) militants need family and community, the beliefs of those people can help shape the militant’s subsequent behavior.<sup>212</sup> Returning a militant to an environment where there is support for the radical movement can undo transformations that occur during the program.<sup>213</sup> Material support is often given to family and friends of former militants to help persuade them against the radical

---

<sup>207</sup> *Id.* at 29.

<sup>208</sup> Pakistani Colonel Iman Bilal. Raddatz & Netter, *supra* note 195.

<sup>209</sup> RABASA, *supra* note 22, at 29.

<sup>210</sup> *Id.*

<sup>211</sup> Marisa L. Porges & Jessica Stern, Letter to the Editor, *Getting Deradicalization Right*, FOREIGN AFFAIRS, May/June 2010, <http://www.foreignaffairs.com/articles/66227/marisa-l-porges-jessica-stern/getting-deradicalization-right> [hereinafter *Getting Deradicalization Right*].

<sup>212</sup> RABASA, *supra* note 22, at 21.

<sup>213</sup> “‘Even if you are convinced by what you have heard during the programme, you have to be a very brave man to go back to your community and start saying that everyone else is wrong.’” Jason Burke, *Fighting Terrorism, Do ‘Deradicalization’ Camps Really Work?*, GUARDIAN (June 9, 2013), <http://www.theguardian.com/world/2013/jun/09/terrorism-do-deradicalisation-camps-work> (quoting Professor Peter Neumann, King’s College, London).

causes. This support in most instances is offered only so long as the former militant does not re-offend.<sup>214</sup>

Deradicalization programs are not without their drawbacks. Principally, the programs are not one hundred percent successful.<sup>215</sup> Notably, despite the overall success, Saudi Arabia has experienced some embarrassing failures. Some eleven graduates have ended up on the country's "most wanted list" following completion of the program;<sup>216</sup> in September 2013, Saudi police arrested eighty-eight suspected Al-Qaida operatives, fifty-nine of whom had been through reform programs and then released.<sup>217</sup> Part of the difficulty lies in distinguishing between deradicalized and disengaged individuals. There are many incentives available to those going through these programs, the greatest of which is their possible freedom. Whether someone is truly deradicalized or simply disengaged is difficult to determine; the only way to tell is usually years of continued observation after release.

A second major drawback is that, even if deradicalization is possible (which some still argue that it is not), there are those who are "irreconcilable." Much like trying to distinguish deradicalized individuals from disengaged individuals, there is no reliable method for determining those who are reconcilable and those who are not.<sup>218</sup> Finally, these programs, if done properly, are extremely resource-intensive.<sup>219</sup> Moreover, they are heavily dependent on after-care measures (e.g., monitoring by security forces, job-placement help, monetary support of participants and their families, ongoing contact, etc.), which are not likely to be replicated in most places.<sup>220</sup>

#### D. BARRIERS TO JUVENILE LENIENCY

There are several barriers that may prevent these or similar protections from being implemented or mandated. Namely, public opinion towards criminals, especially those accused of terrorism, is

---

<sup>214</sup> *Id.*

<sup>215</sup> For example, the Saudi Arabian program boasts a success rate of between 80-90%. *See, e.g.,* Marisa L. Porges, *The Saudi Deradicalization Experiment*, COUNCIL ON FOREIGN RELATIONS (Jan. 22, 2010), <http://www.cfr.org/radicalization-and-extremism/saudi-deradicalization-experiment/p21292>.

<sup>216</sup> Stern, *supra* note 192, at 10.

<sup>217</sup> *Terrorist Rehab*, *supra* note 192.

<sup>218</sup> RABASA, *supra* note 22, at 7.

<sup>219</sup> *See* Porges, *supra* note 215.

<sup>220</sup> *Id.*

generally hostile: the general public will often disfavor treating them with leniency.<sup>221</sup> As a corollary, legislators know that being perceived as “soft on crime” does not appeal to the voting constituency.<sup>222</sup> This discourages politicians from proposing any measures that may create that perception.<sup>223</sup> Finally, leniency for any class of offender undermines two of the principle purposes for punishment: retribution and deterrence. The cumulative effect is that the nebulous entity that is “the public” may be the biggest obstacle to overcome in the fight for juvenile leniency.

### III. CONCLUSION

The current state of international anti-terror law does not adequately protect juveniles. Although the current trend is to treat juveniles as victims, there is no legislation mandating such treatment. The protections of children adopted by bodies like the European Union and United Nations contain subjective language and are left to member states to implement as they see fit. At the state level, leniency on crime, especially terrorism, is an unpopular position in the eyes of the public. Juveniles, readily susceptible to peer pressure and other manipulations, are in a precarious position without legal recognition of their reduced criminal culpability. ISIS is unlikely to be the last group to take advantage of the vulnerability of youths. Firm, defined protections should be put in place before the next radical group follows ISIS’s lead and more juveniles are exploited and exposed.

---

<sup>221</sup> See, e.g., Mike Hough & Julian V. Roberts, *Sentencing trends in Britain: Public knowledge and public opinion*, 1 PUNISHMENT & SOC’Y 11, 12 (1999).

<sup>222</sup> “For their part, politicians have every incentive to play to the public’s fears instead of correcting them. Candidates for office at all levels of government. . . have learned that an opponent’s charge that they are soft on crime can be devastating to their political futures because it resonates with voters.” Rachel E. Barkow, *Federalism and the Politics of Sentencing*, 105 COLUM. L. REV. 1276, 1280–81 (2005).

<sup>223</sup> See *id.* at 1281.