NOTE

PROTECTING ITS OWN: SUPPORT FOR RUSSIA’S FEDERAL LAW ON THE COUNTERACTION OF TERRORISM

Clare Cavaliero

I. INTRODUCTION

Alexander Valterovich Litvinenko, a former Russian intelligence officer who had been fiercely critical of Russian President Vladimir Putin, was poisoned in London in 2006. United Kingdom investigators have identified Andrei K. Lugovoi as their primary suspect, but the retired KGB agent has consistently denied that he had any involvement in the murder. Alexander Litvinenko joined the Russian secret service—more commonly referred to as the KGB—in 1988, and was a middle-ranking Russian security service agent until he was promoted to lieutenant colonel in the successor organization to the KGB, the Federal Security Service (FSB). The intelligence officer eventually betrayed his organization when he very publicly revealed that his superiors had ordered him to assassinate Boris Berezovsky, an “implacable political foe of Putin.”

Andrei Lugovoi arrived in London on November 1, 2006, to meet with Litvinenko, who had been living in England since 2000 when the country granted him political asylum. Suspiciously,

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2. Andrei Lugovoi was appointed to the security committee of the lower house of the Russian parliament in 2007. See Mark Franchetti, Litvinenko Suspect Given Key Security Role, TIMES (June 7, 2009), http://www.timesonline.co.uk/tol/news/world/europe/article6446277.ece.


4. See Penketh, supra note 1.

5. Id. Berezovsky won a libel suit in London on March 10, 2010, against Russian satellite broadcaster All-Russian State Television and Broadcasting, known as RTR, which had linked him to the Litvinenko murder. See Cowell, supra note 3.

6. See Philippe Naughton, British Police Arrive in Moscow to Hunt for Spy Death Clues, TIMES (Dec. 4, 2006), http://www.timesonline.co.uk/tol/news/world/article659441.ece;
November 1 is the same day Litvinenko fell ill. Litvinenko, who was only forty-three years old, “died three weeks after ingesting a toxic radioactive isotope, polonium-210, which made his hair fall out and ravaged his organs.” In response to Litvinenko’s death, the Crown Prosecution Service formally submitted an extradition request for Andrei Lugovoi to Moscow in May of 2007. Russia refused the demand to provide Lugovoi for trial in Britain, citing the Russian Constitution’s prohibition on extraditing its citizens as legal grounds for its decision.

Executions by a Russian secret service organization are seen as characteristic of the Russian Federation due to the widespread use of these practices by the Soviet Union from the 1930s through the 1950s. This less-than-favorable history coupled with Litvinenko’s curious death were enough to incite an “outpouring of conspiracy theories” regarding the Russian state’s involvement in the apparent homicide.

On February 26, 2006, the State Duma, the lower chamber of the Russian Parliament, passed a law that provides the Russian president with authority to use the nation’s armed forces and special services outside Russia’s borders to combat terrorism and extrem-
ism.\textsuperscript{13} In early March of 2006, just a few months before Litvinenko was murdered, the upper chamber of the federal parliament passed the bill.\textsuperscript{14} Then, a few short days after the legislation passed in the Federation Council, Russian President Vladimir Putin signed the Federal Law on the Counteraction of Terrorism on March 6, 2006.\textsuperscript{15} This federal law establishes a domestic legal basis for combating terrorism beyond the borders of Russia.\textsuperscript{16}

While the Litvinenko murder has drawn international attention to the Federal Law on the Counteraction of Terrorism, the Kremlin has yet to claim any responsibility for the death of Litvinenko and has denied that this murder was committed under the authority of the recently enacted law.\textsuperscript{17} In fact, if Litvinenko’s murder were purely punitive in nature, it would not fall within the parameters of the types of action the law intends to sanction.\textsuperscript{18} Yet, if Litvinenko, who had “close links” to the rebel Chechen Islamists,\textsuperscript{19} had been conspiring to commit a terrorist attack on Russian citizens, his murder may have been a preventative measure, rendering it consistent with both Russian domestic law and customary international law.\textsuperscript{20}

The 2006 Federal Law on the Counteraction of Terrorism maintains much of what was established by the 1998 Russian Law on the Fight Against Terrorism, but also extends that law and amends additional previous legislation.\textsuperscript{21} Although the Russian law may

\begin{itemize}
\item \textsuperscript{13} See Eke, supra note 10; Federal’nyi Zakon o Protivodeistvii Terrorizmu [Federal Law on the Counteraction of Terrorism], S OBRANIE ZAKONODATEL’STVA ROSSII FEDERATIVNOI [SZ RF] [Russian Federation Collection of Legislation] 2006, No. 35-FZ [hereinafter Federal Law on the Counteraction of Terrorism].
\item \textsuperscript{15} See id.
\item \textsuperscript{16} See Bridge, supra note 12, at 7.
\item \textsuperscript{17} See, e.g., Naughton, supra note 6 (“Russian authorities have denied any involvement in Litvinenko’s death. Sergey Lavrov, Russia’s Foreign Minister, warned . . . that continued suggestions of Russian official involvement in Litvinenko’s death could damage relations with Britain.”).
\item \textsuperscript{18} See generally Federal Law on the Counteraction of Terrorism; see also infra Part III.C.
\item \textsuperscript{19} Naughton, supra note 6; see also Penketh, supra note 1 (“The small band of political dissidents in London was growing . . . [a] former Chechen actor and rebel commander, Akhmed Zakayev, claimed asylum in Britain in December 2002 . . . . The Chechen and [Litvinenko] were neighbours on the same street in north London.”).
\item \textsuperscript{21} See Bridge, supra note 12, at 7–8.
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seem extreme regarding the types of activities it purports to legitimize, a number of other countries, including the United States, have been exercising similar authority and ordering targeted killings for some time.22

This Note will propose that Russia, and any other nation forced to defend itself against violent and debilitating terrorist attacks, ought to have the ability to send its military special services into foreign territories for the purpose of eliminating those who pose immediate terrorist threats to the nation’s citizens and that the service members who perform the mission should be immune from prosecution by the country in which the execution occurs. It will compare the experiences of, and subsequent countermeasures adopted by, three nations recently suffering from unrestrained terrorist activity.

Part II of this Note will first provide the recent history of terrorist attacks on the United States, Israel, and the Russian Federation. It will then explain the nations’ military responses to these extremist activities and will highlight the background that eventually led to the enactment of the 2006 Federal Law on the Counteraction of Terrorism. Part III of this Note will explicate the Russian legislation, the similar laws and policies of the United States and Israel, and the existing international law on terrorism. Next, Part IV of this Note will compare the Russian, United States, and Israeli responses to terrorist activity. Finally, this Note will propose that nations ought to and are entitled to pass legislation that provides them with the authority to deploy their special military forces into foreign territories in the pursuit of self-defense and that the service members designated to perform these operations should be immune from foreign prosecution.

22. See, e.g., Putin Signs Sweeping Anti-Terrorism Law, supra note 14 (“Washington has carried out what it claims to be preventive anti-terror military strikes in both Afghanistan and Iraq on claims of cracking down on terrorists or searching for weapons of mass destruction.”); Sources: U.S. Kills Cole Suspect, CNN (Nov. 5, 2002), http://archives.cnn.com/2002/WORLD/meast/11/04/yemen.blast/index.html (reporting that a CIA drone missile killed six suspected al-Qaeda members, including the terrorist responsible for bombing the U.S.S. Cole, when it struck the vehicle in which they were traveling).
II. TERRORIST ATTACKS ON THE UNITED STATES, ISRAEL, AND RUSSIA

A. TERRORIST ATTACKS ON THE UNITED STATES AND ITS MILITARY RESPONSE: COVERT LETHAL FORCE

The United States and Israel began exercising authority similar to that which is provided to the Russian president in the Federal Law on the Counteraction of Terrorism years before Russia enacted this controversial legislation. The three nations, although largely different in myriad aspects, are united in their struggle to combat terrorism.23

The United States has unfailingly acted to protect its citizens when faced with terrorist threats.24 When, in 1986, a U.S. soldier was killed by a bomb explosion in a West Berlin discotheque, President Ronald Reagan responded by attacking the Libyan targets responsible, including the home of Libyan leader Muammar el-Qadaffi.25 President Bill Clinton authorized covert lethal force against al-Qaeda in 1998, ordering cruise missile strikes on bases where Osama bin Laden was reported to be hiding.26 President Clinton’s actions were in response to information linking bin Laden to the bombings of U.S. embassies in Kenya and Tanzania, which killed 301 people and injured over 5000.27 Following the October 2000 attack on the U.S.S. Cole, the U.S. Central Intelligence Agency (CIA) eliminated six suspected members of al-Qaeda, one of whom was a former security guard of bin Laden’s who had participated in the bombing of the U.S. destroyer.28

Further, President George W. Bush signed a directive in 2001 that “call[ed] for attacks on newly identified weaknesses in Osama

23. See, e.g., Guiora, Legislative and Policy Responses to Terrorism, supra note 20, at 152 (“Over the past few years, post–Soviet Union Russia has faced terrorism similar to that faced by the United States and Israel.”).
24. See id. at 127–42.
25. See Frontline: Target America, Terrorist Attacks on Americans 1979-1988, PBS [hereinafter Frontline], http://www.pbs.org/wgbh/pages/frontline/shows/target/etc/cron.html (last visited Feb. 6, 2012). After the United States determined Libya was responsible for the attack, President Reagan ordered retaliatory air strikes on Tripoli and Benghazi “involving over 200 aircrafts and more than sixty tons of bombs.” See id.
bin Laden’s communications, security apparatus and infrastructure.”29 This “targeted killing campaign” was not the first employed by the United States.30 The CIA was criticized for failed assassination attempts throughout the 1960s and 1970s in Africa, Latin America, and the Middle East.31 The Bush administration claimed that Executive Orders prohibiting assassination previously signed by Presidents Ronald Reagan, Jimmy Carter, and Gerald R. Ford would remain in effect.32 These orders, however, do not define “assassination,” and the White House declined to interpret their texts.33 A spokesman for the White House did, nevertheless, comment that these orders “do[ ] not inhibit the nation’s ability to act in self-defense.”34

As the terrorist threat has become more apparent, the United States has permitted greater transparency regarding these once covert operations.35 In the past, failed assassination attempts were blamed on rogue agents, and were untraceable to the nation’s political leadership.36 To illustrate, the Senate Select Committee on Intelligence “reported on Nov[ember] 20, 1975, that plots against five foreign leaders under Presidents Dwight D. Eisenhower, John F. Kennedy, and Richard M. Nixon were deliberately organized in terms ‘so ambiguous that it is difficult to be certain at what levels assassination activity was known and authorized.’”37 More recently, however, the former deputy director of the CIA explained that “the accountability chain is clear,” and that presidents are taking greater responsibility for these activities.38

30. See id.
31. See id.
32. See id.
33. See id.
34. Id. “Since the late Clinton administration, executive branch lawyers have held that the president’s inherent authority to use lethal force—under Article 2, Section 2 of the Constitution—permits an order to kill an individual enemy of the United States in self-defense.” Id. Then–Secretary of Defense Donald H. Rumsfeld extended this view and said that, “[i]t is certainly within the president’s power to direct that, in our self-defense, we take this battle to the terrorists and that means to the leadership and command and control capabilities of terrorist networks.” Id.
35. See id.
36. See id.
37. Id.
38. Id. (“With explicit authority, he said, ‘I think the case officers are capable [of targeted killing] and would follow instructions, and would, I think, have the capability of succeeding.’”). Although a minority position, one view expressed was that “the clandestine service should target not only commanders but also financiers of al Qaeda.” Id. Representative Robert L. Barr, Jr. stated: “[F]undraisers are legitimate targets for death. ‘Under traditional terms of war, those who assist belligerents are belligerents.’” Id.
B. Terrorist Attacks on Israel and Its Military Response: Targeted Killings

Israel has been paralyzed by terrorism since its creation. Like the United States and Russia, Israel faces a terrorist threat from outside its borders. Terrorist attacks on the state of Israel are often launched from Palestinian-controlled territory, rendering these actions more than solely a domestic concern for the struggling nation.

In response to these unlawful terrorist activities, Israel has implemented an active counterterrorism strategy. Israel’s targeted killing policy was first introduced on November 9, 2000, when the Israeli government ordered a “preemptive attack” on Hussein Abayat, a leader of the Fatah-linked Tanzim militia, who was responsible for a shooting in Jerusalem and attacks on Israeli soldiers in Bethlehem. Three months later, on February 14, 2001, the Israel Defense Forces (IDF) killed senior Palestinian

40. See id.; Clyde Haberman, At Least 14 Dead As Suicide Bomber Strikes Jerusalem, N.Y. TIMES (Aug. 10, 2001), http://www.nytimes.com/2001/08/10/world/at-least-14-dead-as-suicide-bomber-strikes-jerusalem.html?pagewanted=all&src=pm (describing the attack of a Palestinian suicide bomber who blew himself up inside a crowded Israeli restaurant in downtown Jerusalem killing fourteen people, six of whom were children, and wounding 130 others).
41. See Kendall, supra note 39, at 1071–72.
43. Fatah, or al-Fatah, is a reverse acronym for Harakat Tahrir el Wataniyeh Filastiniyeh, or Palestine Liberation Movement. See Fatah, ENCYCLOPEDIA OF THE MIDDLE EAST, http://www.mideastweb.org/Middle-East-Encyclopedia/fatah.htm (last visited Feb. 6, 2012). Fatah was secretly formed by a group of Palestinians on October 10, 1959 (although the actual date of formation is controversial), and became a principle component of the Palestine Liberation Organization (PLO) under the leadership of Yasser Arafat. See id. With the support of Syria, Fatah began carrying out terrorist attacks on exclusively civilian Israeli targets in 1965. See id.
44. Tanzim, or Fatah Tanzim, “was established in 1995 as the militant wing of Yasser Arafat’s Fatah organization.” Fatah Tanzim, GLOBALSECURITY.ORG, http://www.globalsecurity.org/military/world/para/fatah-tanzim.htm (last visited Feb. 6, 2012). “Arafat created the group to help maintain his base of support among Palestinian extremists, many of whom have been drifting toward Islamist groups such as Hamas in recent years. Since the beginning of the current Intifada, or uprising, Fatah Tanzim has also provided Arafat with a means to direct attacks on Israeli targets without involving the security forces of the Palestinian Authority.” Id.
45. See Kretzmer, supra note 28, at 172; Ina Friedman, Surgical Strikes, JERUSALEM REPORT, Feb. 12, 2001, at 20.
46. The Israel Defense Forces (IDF) is the official term for the Israeli Armed Forces and encompasses Israel’s ground, air, and naval operations. See Background Note: Israel, U.S. DEP’T OF STATE, http://www.state.gov/r/pa/ei/bgn/3581.htm (last updated Dec. 1, 2011).
security officer Massoud Ayyad when two Israeli helicopters dropped four missiles on Ayyad’s car.\textsuperscript{47} Israel considered Ayyad to be a terrorist and held him accountable for an attempted attack on a Jewish settlement that had occurred days earlier in Gaza, as well as for “unrealized plans to kidnap senior Israeli military officials.”\textsuperscript{48} The IDF took full responsibility for Ayyad’s death, calling the action “a well-planned surgical activity.”\textsuperscript{49} Brigadier General Ron Kitrey of the Israeli army explained that, in light of Ayyad’s continuous attempts to kidnap soldiers and orchestrate bombings that endanger Israeli civilians and soldiers, there was no need “to await a successful outcome.”\textsuperscript{50}

Similarly, the IDF killed three suspected Muslim militants near Jenin, a city on the West Bank, on July 1, 2001.\textsuperscript{51} Four days later, the Israeli security cabinet issued an official decision to continue with its policy of eliminating suspected Palestinian terrorists intent upon murdering Israeli citizens.\textsuperscript{52} The Israeli ministers stated that they would engage in “active self-defense” when necessary, describing the measures as “intercepting terrorists” before they commit attacks.\textsuperscript{53} Consistent with this articulated policy, the IDF killed senior Hamas terrorist Saleh Darwazeh on July 25, 2001.\textsuperscript{54} Darwazeh was a major force in Hamas activities and had a long record of planning and arming deadly attacks in Israel.\textsuperscript{55} Even in the face of criticism,\textsuperscript{56} Israel firmly defended its policy of employing missile strikes against its adversaries and maintained that it “would carry out more such assaults if it felt that Israeli lives were at


\textsuperscript{48} Id.

\textsuperscript{49} Id. (quoting Brigadier General Ron Kitrey). The Israeli army completed a similar mission in November 2000, killing a Palestinian paramilitary commander in the West Bank. Id.

\textsuperscript{50} Id.


\textsuperscript{52} See id.

\textsuperscript{53} Id.


\textsuperscript{55} See id.

\textsuperscript{56} See, e.g., Krauthammer, supra note 26; AMNESTY INT’L, ISRAEL AND THE OCCUPIED TERRITORIES: STATE ASSASSINATIONS AND OTHER UNLAWFUL KILLINGS (2002) (condemning Israel’s military forces for the alleged “extrajudicial executions” committed).
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risk."57 Israel was one of the first nations to endorse the counterterrorism practice of preemptively striking its enemies and influenced the decision of the United States to eventually adopt a similar policy.58

The measures developed by the United States in the aftermath of the September 11th attacks and those of Israel in response to the Israeli-Palestinian conflict are similar to the procedures adopted by the Russian Federation and subsequently codified in its Federal Law on the Counteraction of Terrorism.59 While the countries’ methods have been criticized as arguably violative of customary international law, a nation must be permitted to take reasonable measures to ensure its self-defense and protect its citizens. Moreover, customary international law has historically respected a nation’s ability to preemptively strike for the purpose of protecting its own citizens.

C. Terrorism in Russia

Russia was first plagued with domestic terrorism in the 1870s,60 but until recently, Russia, much like the United States, saw itself as immune from international terrorism.61 There have been significant changes since Russia first experienced terrorist attacks in the 1800s, however, and the insurgents currently terrorizing Russia’s citizens are no longer limited to those within the country’s borders.62 Russia is now faced with threats originating from outside its territory, and this increased danger necessitates the Federal Law on the Counteraction of Terrorism.63

The Chechen conflict has strained the Russian Federation since Chechnya declared its independence from Russia in 1990 and

58. See Kendall, supra note 39, at 1069–70 (“Former Israeli Prime Minister Benjamin Netanyahu, testifying before the U.S. House of Representatives’ Government Reform Committee after the September 11 attacks, commented: ‘Israel’s policy of preemptively striking at those who seek to murder its people is, I believe, better understood today and requires no further elaboration.’”).
59. See infra Parts III.A–C; see also Gellman, supra note 20 (reviewing some of the measures taken by the United States and Israel); Federal Law on the Counteraction of Terrorism.
60. See Kim Lane Scheppele, “WeForgot About the Ditches”: Russian Constitutional Impatience and the Challenge of Terrorism, 53 Drake L. Rev. 963, 970 (2005).
61. See Guiora, Legislative and Policy Responses to Terrorism, supra note 20, at 154.
62. See Bridge, supra note 12, at 6.
63. See Scheppele, supra note 60, at 1008–10.
again in 1991. The Federation refused to let Chechnya secede, and when Russian President Boris Yeltsin attempted to squash the separatist movement by launching the First Chechen War in 1994, the controversy escalated. “While the Russian military fought battles on the terrain of Chechnya itself, the Chechen separatists countered by launching terrorist attacks inside Russia, and outside Chechen territory.”

Over the next ten years, Chechen terrorist attacks included a catastrophe in which Chechen fighters seized a hospital in Budennovsk, Russia, where they held 1,500 patients and staff members hostage, and then used these Russian citizens as human shields to facilitate the terrorists’ escape. Ultimately, 150 people died. A similar, but larger and more violent terrorist attack occurred a few months later in January of 1996, when another hospital was seized by Chechen fighters, who held 3,400 people hostage.

Chechen separatists and Islamist-inspired Arabs are both sources of terrorist threats for the Russian Federation. Al-Qaeda initiated controversy with Russia before commencing conflict with any other international player. The Islamic extremist group coordinated with Chechen separatists to launch an attack on Dagestan, a Russian republic, in August of 1999, and in September of that year, they successfully blew up two high-rise apartment buildings in Moscow as well as residential buildings in two other cities, resulting in the deaths of more than 300 people. Within a month of being nominated and confirmed as Russian Prime Minister, “[Vladimir] Putin was confronted with a bombing under Manezh Square in

64. See id. at 1001–03. “Chechens are a predominantly Muslim ethnic group with their own language and culture, based in the Caucasus region of southern Russia.” Id. at 1002.
65. See id. at 1003–04.
66. Id. at 1004.
67. See id. at 1005.
68. See id.
69. See id. at 1005–06 (“After holding 3,400 people hostage for a day, the Chechens agreed to release almost all ‘of their captives in exchange for safe passage to Chechnya,’ and, taking more than 150 of the hostages with them, they escaped . . . . The battle [to rescue the hostages] took four days.”).
71. See id. at 896. In Osama bin Laden’s “Address to the American People,” the al-Qaeda leader “specifically mentioned Russia, affirming that ‘we and our mujahedin have bled Russia dry through [ten] years of war.’” Id. Islamic extremist terrorists have been committing violent attacks against Russia since 1994. See id. at 897. Bin Laden’s relationship with Russia began much earlier when he joined the Afghan resistance movement in response to the Soviet invasion of Afghanistan in 1979. See Biggio, supra note 27, at 10.
72. See Scheppelle, supra note 60, at 1008.
central Moscow that killed one person and injured forty; an explosion in Buinaksk, Dagestan, that killed more than sixty people; the [aforementioned] Moscow apartment bombings that killed more than 300 people; and another apartment bombing in Volgodonsk that killed eighteen people.”73

“[T]he appalling tactics of the Chechen terrorists in targeting Russian civilians outside of Chechnya74 have not only continued, but have maintained their violent nature throughout the years.75 In response, Russia attempted to curtail terrorist activities through legislation by enacting the Law on the Fight Against Terrorism in 1998.76 Nevertheless, eight people were killed when a bomb exploded at the Pushkin Square underpass in Moscow in August of 2000; approximately 130 people died in October of 2002 when fifty Chechen terrorists invaded a Moscow theater during the performance of a popular Russian musical; and in July of 2003, two Chechen female suicide bombers killed fifteen people in addition to themselves when they detonated bombs at a rock concert in Moscow.77

Probably the most tragic of all these incidents was that which occurred in Beslan.78 On September 1, 2004, the first day of school, more than 1,500 students, parents, and teachers were taken hostage by thirty-two armed terrorists.79 The hostages were denied food and water and were held in the elementary school’s “stiflingly hot gymnasium” for three days until one of the terrorists’ bombs detonated.80 At least 330 people lost their lives in this horrific episode and more than 150 of the hostages killed were children.81

The Beslan siege was considered “the only truly transformative event in the set of horrific terrorist attacks” that had occurred over the last twenty years.82 Faced with a country in shock, Putin recognized the Federation’s methods for combating terrorism were in

74. Scheppele, supra note 60, at 1006.
75. See id. at 1007–08.
77. See Scheppele, supra note 60, at 1009–10.
78. See id. at 1011.
79. See id. at 1011–12.
80. Id. at 1012.
81. See id.
82. Id.
need of improvement.\textsuperscript{83} Russia’s fight against terrorism was hindered, in part, by the absence of legislation providing for or directly supporting antiterrorism measures.\textsuperscript{84} The foregoing examples serve as evidence that the 1998 Law on the Fight Against Terrorism was insufficient to combat terrorist attacks on the Russian Federation. There were multiple attempts to expand Russia’s antiterrorism laws, including a set of amendments in 2004 that increased the power held by the Russian executive security agencies.\textsuperscript{85} Further legislative advancements, however, were necessary to protect the nation’s citizens from terrorist acts.

\textbf{III. LEGISLATIVE AND POLICY RESPONSES TO TERRORIST ACTIVITIES}  

Russian lawmakers claim their legislation merely emulates United States and Israeli laws that are already in place.\textsuperscript{86} While the Federal Law on the Counteraction of Terrorism differs from its purported Israeli and U.S. counterparts in many respects, the three nations’ laws and policies share numerous common characteristics.\textsuperscript{87}

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  \item[\textsuperscript{83}] See id. at 1012–13.
  \item[\textsuperscript{84}] See Tkachenko, supra note 70, at 897.
  \item[\textsuperscript{85}] See Bridge, supra note 12, at 8.
  \item[\textsuperscript{86}] See Eke, supra note 10.
  \item[\textsuperscript{87}] Much of the legal scholarship regarding states’ counterterrorism strategies centers around terms used to describe these practices and their corresponding definitions. Although international law has not yet defined these terms, they have been commonly understood to mean the following: extrajudicial executions are “unlawful and deliberate killing[s] carried out by order of a government or with its acquiescence . . . to eliminate specific individuals as an \textit{alternative} to arresting them and bringing them to justice.”\textsuperscript{R} Amnesty Int’l, supra note 56, at 2 (emphasis added). These killings occur outside a judicial framework. See Guiora, Legislative and Policy Responses to Terrorism, supra note 20, at 148. While Guiora describes extrajudicial executions as “domestic in orientation,” id., other sources have adopted a broader application of the term and have used it to refer to executions that are not internally focused. See generally, e.g., Amnesty Int’l, supra note 56, at 3 (asserting that these killings are “an abuse of the fundamental principles of international humanitarian law”). Extrajudicial executions are a means of punishing opponents of the state; they are not for the purpose of self-defense. See Guiora, Legislative and Policy Responses to Terrorism, supra note 20, at 148–49. Further, Guiora implies that Israel has engaged only in targeted killings, and has refrain from extrajudicial executions. See id. at 147–49. Amnesty International would disagree with that. See Amnesty Int’l, supra note 56, at 6–8.\textsuperscript{R} Assassinations fall under a different category than that of both extrajudicial executions and targeted killings in that an assassination is “the killing of a political leader or a statesman and, according to international law, involves treachery or perfidy.” Guiora, Legislative and Policy Responses to Terrorism, supra note 20, at 149. For a comprehensive definition and explanation of assassinations, see Patricia Zengel, Assassination and the Law of Armed Conflict, 43 Mercer L. Rev. 615, 617–21 (1992). This Note will focus only on targeted killings.
\end{itemize}
A. United States Laws: The USA PATRIOT Act and Others

The United States' PATRIOT Act was enacted October 26, 2001, the purpose of which is to “deter and punish terrorist acts in the United States and around the world, to enhance law enforcement investigatory tools, and for other purposes.” Section 411 defines the term to “engage in terrorist activity,” in an individual capacity or as a member of an organization, as the following:

(I) to commit or to incite to commit, under circumstances indicating an intention to cause death or serious bodily injury, a terrorist activity;
(II) to prepare or plan a terrorist activity;
(III) to gather information on potential targets for terrorist activity;
(IV) to solicit funds or other things of value for—
   (aa) a terrorist activity;
   (bb) a terrorist organization described in clause (vi)(I) or (vi)(II); or
   (cc) a terrorist organization described in clause (vi)(III), unless the solicitor can demonstrate that he did not know, and should not reasonably have known, that the solicitation would further the organization’s terrorist activity;
(V) to solicit any individual—
   (aa) to engage in conduct otherwise described in this clause;
   (bb) for membership in a terrorist organization described in clause (vi)(I) or (vi)(II); or
   (cc) for membership in a terrorist organization described in clause (vi)(III), unless the solicitor can demonstrate that he did not know, and should not reasonably have known, that the solicitation would further the organization’s terrorist activity; or
(VI) to commit an act that the actor knows, or reasonably should know, affords material support, including a safe house, transportation, communications, funds, transfer of funds or other material financial benefit, false documentation or identification, weapons (including chemical, biological, or radiological weapons), explosives, or training—
   (aa) for the commission of a terrorist activity;
   (bb) to any individual who the actor knows, or reasonably should know, has committed or plans to commit a terrorist activity;
   (cc) to a terrorist organization described in clause (vi)(I) or (vi)(II); or
   (dd) to a terrorist organization described in clause (vi)(III), unless the actor can demonstrate that he did not know, and

should not reasonably have known, that the act would further the organization’s terrorist activity.\footnote{Id. § 411, 115 Stat. at 346-47.}

The PATRIOT Act also defines “terrorist organization” as a group: (I) designated under the immigration and nationality act; (II) by the Secretary of State; or (III) “a group of two or more individuals, whether organized or not, which engages in [terrorist-related activities].”\footnote{Id. at 348.}

The United States has consistently expressed a firm commitment to taking proactive counterterrorist measures.\footnote{See, e.g., THE WHITE HOUSE, THE NATIONAL SECURITY STRATEGY OF THE UNITED STATES OF AMERICA 5 (Sept. 17, 2002) [hereinafter NATIONAL SECURITY STRATEGY] (“Our priority will be first to disrupt and destroy terrorist organizations of global reach and attack their leadership; command, control, and communications, material support, and finances. This will have a disabling effect upon the terrorists’ ability to plan and operate.”).} In September of 2002, the Bush administration articulated its position: “as a matter of common sense and self-defense, America will act against such emerging threats before they are fully formed.”\footnote{George W. Bush, Introduction to National Security Strategy, supra note 91.} The administration warned other nations that, “[h]istory will judge harshly those who saw this coming danger but failed to act. In the new world we have entered, the only path to peace and security is the path of action.”\footnote{Id.} The National Security Strategy Document signed by President Bush on September 17, 2002, promised that the United States would:

disrupt and destroy terrorist organizations by: . . . defending the United States, the American people, and our interests at home and abroad by identifying and destroying the threat before it reaches our borders. While the United States will constantly strive to enlist the support of the international community, we will not hesitate to act alone, if necessary, to exercise our right of self-defense by acting preemptively against such terrorists, to prevent them from doing harm against our people and our country; and denying further sponsorship, support, and sanctuary to terrorists by convincing or compelling states to accept their sovereign responsibilities.\footnote{NATIONAL SECURITY STRATEGY, supra note 91, at 6.}

The United States has adhered to its stated objective, and has maintained a strong stance against terrorist threats.

\section*{B. Israeli Law and Policy: Active Self-Defense}

Much like the United States, Israel is willing to take preemptive action for the protection of its citizens if the need so arises. Israel
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has been under attack since “the moment of its inception” in May of 1948. Since 1967, Israel has responded to terrorism with a combination of measures, including: demolishing terrorists’ homes, imposing curfews on neighborhoods and towns, deporting terrorists, placing suspected terrorists in administrative detention, and trying terrorists in a court of law. However, over the last ten years, Israel has been forced to adjust its counterterrorism policy in response to an increased Palestinian threat, a threat “characterized by Kassam missiles, mortar shells[,] and suicide bombers.”

Unlike the laws of Russia and the United States, which are readily ascertainable, Israeli counterterrorism policies are not contained in a specific piece of legislation; rather, they have evolved in application and practice over the years. Israel has implemented a practice of targeted killings to prevent and deter terrorist attacks, among other policies adopted in pursuit of this objective. Targeted killings are a last resort for Israel, employed only when arrest “poses an extraordinary operational risk.” The primary purpose of this measure is to prevent a terrorist attack on innocent civilians, not to retaliate against those who have already completed terrorist missions. Accordingly, because targeted killings are neither punishment nor reprisal, they are legally and factually distinguishable from extrajudicial executions.

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95. See Guiora, Legislative and Policy Responses to Terrorism, supra note 20, at 143.
96. Id. at 144. “All of these measures have been based on Israeli law, international law, or regulations inherited from the British mandate.” Id.
97. See Sontag, supra note 47 (“Palestinian militants have stepped up attacks on Israelis since [Prime Minister Ariel] Sharon’s election. Roadside shootings, bombings and attempted attacks on settlements and soldiers in the West Bank and Gaza have increased.”).
98. Guiora, Legislative and Policy Responses to Terrorism, supra note 20, at 144. “A suicide bomb attack, an attack which kills dozens of innocent civilians on their way to work, relaxing at a coffee house or walking with their children, has been described by Amnesty International as a ‘deliberate and systematic targeting of civilians’ and condemned by the organization as ‘a crime against humanity.’” Guiora, Targeted Killing As Active Self-Defense, supra note 42, at 321. A successful suicide bombing involves the work of a “well-orchestrated, difficult to penetrate, highly disciplined, financially solvent terror organization and not an act of a lone individual.” Id.
99. See Bridge, supra note 12, at 57–58 (explaining that targeted killing policies are a result of executive policy and not legislation); Guiora, Legislative and Policy Responses to Terrorism, supra note 20, at 144–50.
100. See Guiora, Targeted Killing As Active Self-Defense, supra note 42, at 319.
102. See id.
103. See id.
Dissimilar to the pronouncements of other nations, the Israeli government has openly endorsed the use of targeted killings and has expressed its satisfaction with the effectiveness of this practice. A targeted killing is the result of a “deliberate decision to order the death of a particular terrorist.” Under Israeli policy, an individual will not be targeted unless he presents a “serious threat to public order and safety” and the government is in possession of sufficient evidence that clearly implicates him. The Israeli government must also be without a reasonable alternative to the targeted killing, that is, the government must be unable to incapacitate the terrorist by other means.

Israel views the present conflict with Palestinian terrorists as an “armed conflict.” Israel’s Supreme Court, sitting as the High Court of Justice, explained that its “army is authorized to do all the lawful actions that are required for the defence of the state and in order to achieve its national security goals.” The court also stated that military operations required for the purpose of protecting the state and public security are considered constitutional by the Israeli government and that “[n]aturally, these operations also include an armed conflict with terrorist organizations outside the borders of the state.” Israel adopts customary international law as its own and as such, follows the international law of armed conflict domestically. Pursuant to that law, terrorists taking part in attacks against civilians are classified as unlawful combatants, not civilians. Accordingly, under the

104. See Bridge, supra note 12, at 59 (“Although many states purportedly use targeted killings, Israel is the only state that publicly admits to a policy of targeted killings.”).

105. See AMNESTY INT’L, supra note 56, at 6–8; see also Guiora, Legislative and Policy Responses to Terrorism, supra note 20, at 145–49.

106. Guiora, Legislative and Policy Responses to Terrorism, supra note 20, at 145.

107. Id.

108. Id.


110. Id. at 478 (quoting section 18 of the Government and Justice Arrangements Ordinance, 1948).

111. Id. (“When the soldiers of the Israel Defence Forces operate in accordance with the laws of armed conflict, they are acting ‘according to law,’ and they have the defence of justification.”).

112. See id. at 477–78.

113. See id. at 477 (“Significant parts of international law that deal with an armed conflict are of a customary nature. These customary laws are a part of Israeli law.”).

114. See id. at 524.
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Israeli view, these terrorists are legitimate targets of attack under both international and Israeli law.\textsuperscript{115}

Israel justifies its practice of targeted killings as “active self-defense,”\textsuperscript{116} which has been defined as “military action taken by a state against non-traditional, non-state actors, such as terrorists,” who pose a significant threat of attack.\textsuperscript{117} Israel has consistently maintained that its concerns focus on security, not retaliation or punishment.\textsuperscript{118} Its dedication to the preventative nature of its policy is evidenced by the restraint exercised, as “Israel attempts not to injure the innocent by focusing on terrorists in isolation from their environment and by targeting persons on whom there is intelligence proving that they are actively involved in terrorist activities against Israel.”\textsuperscript{119}

Israel considers its targeted killing policy effective because “(1) Terrorists understand that Israel has been able to penetrate informants into their cells; (2) Terrorists have had to change their living and sleeping habits on a regular basis; [and] (3) A significant number of terrorists have been killed.”\textsuperscript{120} Israel hails targeted killings as necessitating the difficult, nomadic lifestyle of terrorists; contributing to “distrust and confusion amongst terrorist organizations regarding the identify of informants;” eliminating a significant number of attackers; and discouraging potential terrorists from joining these groups.\textsuperscript{121}

C. The Federal Law on the Counteraction of Terrorism:
Russia’s Response

The Russian Federal Assembly proposed the 2006 Federal Law on the Counteraction of Terrorism shortly after four Russian diplomats who had been working in Iraq were taken hostage and mur-

\begin{itemize}
\item \textsuperscript{115} See id. at 523 (“Indeed, in a conventional war the combatants are identifiable and distinguishable from the civilian population. It is permitted to target these combatants (subject to the limitations of international law). Civilians may not be targeted. Similarly, within the framework of the struggle against terrorism, it is permitted to target international lawbreaking combatants . . . .”).
\item \textsuperscript{116} See generally Guiora, Targeted Killing As Active Self-Defense, supra note 42 (explaining the development of the term “active self-defense”).
\item \textsuperscript{117} See Bridge, supra note 12, at 65–66.
\item \textsuperscript{119} Emanuel Gross, Democracy in the War Against Terrorism—The Israeli Experience, 35 Loy. L.A. L. Rev. 1161, 1194 (2002).
\item \textsuperscript{120} Guiora, Legislative and Policy Responses to Terrorism, supra note 20, at 149.
\item \textsuperscript{121} See Guiora, Targeted Killing As Active Self-Defense, supra note 42, at 334.
\end{itemize}
ordered. The general consensus within Russia was that the Iraqi insurgents responsible should be brought to justice, even if that meant deploying Russian special forces into foreign states.

The Kremlin has been accused of ordering extrajudicial executions on multiple occasions, and the current state of international law does not provide the armed services members with immunity from prosecution outside Russia. Although Russian nationals within Russia’s borders may not be extradited pursuant to the Russian Constitution, this safeguard is insufficient. An international agreement shielding these actors from liability is necessary to ensure the effectiveness of Russia’s legislation and similar legislation enacted by other nations. The existing international legal regime requests cooperation among nations to prevent and deter acts of terrorism, but there are no official documents in place that explicitly authorize a nation’s armed forces to enter another state for the purpose of ensuring its own security or self-defense.

The 2006 Federal Law on the Counteraction of Terrorism reflects a departure from the previous antiterrorism legislation of Russia, the 1998 Law on the Fight Against Terrorism, which did not grant the president authority to exercise the police power outside Russia’s borders. The focus of the 1998 Law on the Fight Against Terrorism was to stop acts of terror, but it was replaced by the Federal Law on the Counteraction of Terrorism passed in

122. See Bridge, supra note 12, at 9–10. “On June 7, 2006 the Mujahedeen Shura Council abducted four Russian diplomats working in Iraq, holding them for approximately twenty days and offering to release the hostages in exchange for Russia withdrawing troops from Chechnya and releasing Islamic prisoners from Russian prisons.” Id. at 9 n.40.

123. Id. at 9.

124. See, e.g., Eke, supra note 10 (“In the wake of the death of ex-spy Alexander Litvinenko in London, the Sunday Telegraph has alleged that Russian spy agencies—‘emboldened’ by the new law—have carried out a number of such targeted killings.”); Bridge, supra note 12, at 2–5 (referring to death squad activities in North Caucasus and the murder of the Chechen separatist president in Qatar).

125. See generally, e.g., U.N. Charter (revealing the absence of any provision that would provide immunity from prosecution to Russian armed services members carrying out targeted killings outside of Russia).

126. See Konstitutsia Rossiskoi Federatsii [Konst. RF] [Constitution] art. 61.


128. See generally 1998 Law on the Fight Against Terrorism; see also Federal Law on the Counteraction of Terrorism art. 2.

129. See Putin Signs Sweeping Anti-Terrorism Law, supra note 14.
2006.130 The newly enacted legislation seeks to prevent terrorism “in all its forms and manifestations.”131

The language used in the 2006 Federal Law on the Counteraction of Terrorism is the primary focus of criticism due to its alleged ambiguity. It is therefore important that the terms used and definitions provided are considered carefully. The preamble of the Federal Law on the Counteraction of Terrorism recognizes Russia’s struggle with terrorism.132 Article 1 asserts that in addition to the Russian Constitution, the legal basis for the law’s implementation shall be “generally recognised principles and rules of international law [and] any international treaties made by the Russian Federation.”133

Article 2 highlights the fundamental principles of counteraction against terrorism, the first of which listed is “ensuring and protecting fundamental civil and human rights and freedoms.”134 The law defines terrorism as “the ideology of violence and the practice of influencing the adoption of a decision by state power bodies, local self-government bodies or international organisations connected with frightening the population and (or) other forms of unlawful violent actions.”135 “Terrorist activity” includes the following:

a) arranging, planning, preparing, financing[,] and implementing an act of terrorism; b) instigation of an act of terrorism; c) establishment of an unlawful armed unit, criminal association (criminal organisation) or an organised group for the implementation of an act of terrorism, as well as participation in such a structure; d) recruiting, arming, training[,] and using terrorists; e) informational or other assistance to planning, preparing[,] or implementing an act of terrorism; f) popularisation of terrorist ideas, dissemination of materials or information urging terrorist activities, substantiating[,] or justifying the necessity of the exercise of such activity.136

While the law has been condemned for the vague terms it uses to define “terrorist activity,” its description of a “terrorist act” is much

130. See Federal Law on the Counteraction of Terrorism art. 26(2).
132. See Federal Law on the Counteraction of Terrorism pmbl. (“This Federal Law shall establish the fundamental principles of the counteraction terrorism, the legal and organisational basics of preventing terrorism and struggling against it, of reducing to a minimum and (or) liquidating the consequences of manifestations thereof, as well as the legal and organisational basics of using the Armed Forces of the Russian Federation in struggling against terrorism.”).
133. Id. art. 1.
134. Id. art. 2.
135. Id. art. 3(1).
136. Id. art. 3(2).
more precise.\textsuperscript{137} Under the legislation, a terrorist act is defined as follows: 

making an explosion, arson or other actions connected with frightening the population and posing the risk of loss of life, of causing considerable damage to property or the onset of an ecological catastrophe, as well as other especially grave consequences, for the purpose of unlawful influence upon the adoption of a decision by state power bodies . . . as well as the threat of committing the said actions for the same purpose.\textsuperscript{138}

In response to these activities, the law provides that to counteract terrorism, the Russian Federation will direct its efforts at the “prevention of terrorism, including the detection and subsequent removal of the reasons and conditions conducive to committing acts of terrorism,” as well as “detection, prevention, suppression, disclosure[,] and investigation of an act of terrorism,” and finally, “reduction to a minimum and (or) liquidation of terrorist manifestations.”\textsuperscript{139}

Further, although this law is intended to govern Russia’s measures to combat domestic threats, it includes an article addressing international cooperation in the struggle against terrorism.\textsuperscript{140} It proclaims that the Russian Federation, “in compliance with international treaties made by it, shall cooperate in struggling against terrorism with foreign states, their law enforcement bodies and special services, as well as with international organisations.”\textsuperscript{141} In addition to collaborating with other nations and international groups, Russia promises to “prosecute on its territory the persons who are accused (suspected) of involvement in terrorism.”\textsuperscript{142}

Article 10 of the Federal Law on the Counteraction of Terrorism grants the Russian president authority to deploy the nation’s special forces into another state with the purpose of enforcing Russian antiterrorist policy extraterritorially.\textsuperscript{143} The law states that the armed forces shall “suppress international terrorist activities outside the Russian Federation,” but the law also mandates that this is done in accordance with the international treaties made by the Russian Federation.\textsuperscript{144} Further, Article 12 imposes a limit on the authority of the Russian president: “An antiterrorist operation
shall be conducted for the purpose of suppressing a terrorist act, if it is impossible to suppress it by other forces or ways.” 145

D. Existing International Law on Terrorism

The international community recognized the significant threat posed by terrorist activities in the wake of the September 11th attacks on the United States in 2001, and acknowledged the necessity of a strong response to such actions. 146 Although the first measures to combat terrorism in the international arena were developed in the 1970s, these measures were only marginally effective and severely limited in scope. 147 In 1992, the U.N. General Assembly agreed that international terrorism was a very serious crime that threatened international peace and security. 148 With authority under Chapter VII of the U.N. Charter, the U.N. Security Council imposed sanctions upon nations, such as Libya, and military groups controlling territory of sovereign states, such as the Taliban in Afghanistan. 149 These commendable steps were extensively supplemented by the developments in the aftermath of September 11, 2001, but are still insufficient to insulate nations from terrorist harms. 150

The U.N. Security Council adopted Resolution 1373 on September 28, 2001, which reaffirmed the organization’s position that “act[s] of international terrorism[] constitute a threat to international peace and security.” 151 Resolution 1373 recognizes that member states possess an “inherent right of individual or collective self-defence,” confirms the need to “combat by all means . . . threats to international peace and security caused by terrorist acts,” and calls on states to “prevent and suppress terrorist acts.” 152 The resolution commands members to “[t]ake the necessary steps to prevent the commission of terrorist attacks,” to “[d]eny safe haven to those who finance, plan, support, or commit terrorist acts,” and to “[p]revent those who finance, plan, facilitate or commit terrorist

145. Id. art. 12(1).
146. See Tkachenko, supra note 70, at 892 (“But the tragic events of September 11th clearly demonstrated that there were not enough actions implemented prior to that day in the United States, as well as in other countries of the world.”).
147. See id. at 891.
148. See id. at 891–92.
149. See id. at 892.
150. See id. at 892–93 (discussing the changes made after September 11, 2001, but also observing that the nature of these terrorist organizations is becoming more international in scope).
151. S.C. Res. 1373, supra note 127, pmbl.
152. Id.
acts from using their respective territories for those purposes against other States or their citizens.” It was over fifty years earlier that the international community endorsed the concept of a nation’s right to protect its own. Signed on June 26, 1945, Article 51 of the U.N. Charter unmistakably states that “[n]othing in the present Charter shall impair the inherent right of individual or collective self-defense if an armed attack occurs against a Member of the United Nations.” Extending this proviso, international law prohibits only those attacks that are solely retaliatory in nature.

Customary international law presently mandates that actions taken for the purpose of self-defense meet certain requirements in order to be lawful. The basis for defensive actions lies in the Caroline doctrine, which pronounces: “there must be an imminent threat and an armed response must be necessary to respond to that threat before a state may engage in self-defense. The armed response must be in proportion to that threat and the armed response must be taken only as a last resort.” Another condition imposed upon a nation’s use of force is found in Article 51 of the U.N. Charter, which, under a restrictive interpretation, permits an armed retaliation only in response to an “armed attack.” Most states would consider an imminent terrorist attack an armed attack, which would render defensive action permissible under Article 51. Similarly, “if a state sponsors or controls a terrorist group,”

153. Id. ¶ 2.
154. See U.N. Charter art. 51 (“Nothing in the present Charter shall impair the inherent right of individual or collective self-defense if an armed attack occurs against a Member of the United Nations, until the Security Council has taken measures necessary to maintain international peace and security. Measures taken by Members in the exercise of this right of self-defense shall be immediately reported to the Security Council and shall not in any way affect the authority and responsibility of the Security Council under the present Charter to take at any time such action as it deemed necessary in order to maintain or restore international peace and security.”).
155. Id.
156. See Guiora, Legislative and Policy Responses to Terrorism, supra note 20, at 132.
157. See Bridge, supra note 12, at 67–68.
158. Id. (emphasis in original). “The principle of necessity requires that the resort to force occur only when no other reasonable options remain to frustrate continuation of the armed attack.” Michael Schmitt, Counter-terrorism and the Use of Force in International Law (2002), reprinted in International Law and the War of Terror 7, 28 (Fred L. Borch & Paul S. Wilson eds., 2003).
159. See U.N. Charter art. 51; Bridge, supra note 12, at 68.
160. See Bridge, supra note 12, at 68 (“[W]ith the increasing frequency of terrorist attacks and the weight of such attacks on the public, most states would likely interpret an imminent terrorist attack as an armed attack under Article 51.”). This Note will assume that an imminent terrorist attack falls within the category of armed attacks. This Note will
and perhaps if it fails to prevent terrorists from using its territory as a base for attacks, the terrorist attacks that emanate from that nation “may be imputed to the sponsor or host state.” These activities would also qualify as “the kind of armed attack contemplated by Article 51.”

Protocol I to the Geneva Conventions addresses protection of the civilian population in Chapter II. Protocol I defines a “civilian” as “any person who does not belong to one of the categories of persons referred to in [Articles of the Third Convention] and in Article 43 of this Protocol.” Article 43 states that “[t]he armed forces of a Party to a conflict consist of all organized armed forces, groups and units which are under a command responsible to that Party for the conduct of its subordinates, even if that Party is represented by a government or an authority not recognized by an adverse Party.” Members of a party’s armed forces are considered combatants, a label that gives them the “right to participate directly in hostilities.”

Conversely, Article 51 of Protocol I provides the following: “The civilian population and individual civilians shall enjoy general protection against dangers arising from military operations.” This article further states that civilians “shall not be the object of attack” and prohibits “[a]cts or threats of violence the primary purpose of which is to spread terror among the civilian population.” Importantly, civilians are guaranteed protection under this article “unless and for such time as they take a direct part in hostilities.” This provision has been interpreted and applied such that one who has participated in the commission of a terrorist attack is no longer considered an innocent civilian. Rather, the participant is an “illegal combatant” who “has either performed terrorist attacks or

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161. See Kretzmer, supra note 28, at 187.
162. See id.
164. Id. art. 50.
165. Id. art. 43(1).
166. Id. art. 43(2).
167. Id. art. 51(1).
168. Id. art. 51(2).
169. Id. art. 51(3).
ordered them to be carried out,” and is no longer entitled to the rights or protections afforded civilians under this protocol.171

Protocol I also prohibits “indiscriminate attacks,” which are defined as follows:

(a) Those which are not directed at a specific military objective;
(b) Those which employ a method or means of combat which cannot be directed at a specific military objective; or
(c) Those which employ a method or means of combat the effects of which cannot be limited as required by this Protocol; and consequently, in each such case, are of a nature to strike military objectives and civilians or civilian objects without distinction.172

Last, “[a]ttacks against the civilian population or civilians by way of reprisals are prohibited.”173

In addition to the many prohibitions announced, Protocol I to the Geneva Conventions obligates countries committing attacks to take all steps necessary to protect civilians from injury, damage, and harm.174 It requires: “In the conduct of military operations, constant care shall be taken to spare the civilian population, civilians[,] and civilian objects.”175 Article 57 also commands the following:

With respect to attacks, the following precautions shall be taken:
(a) Those who plan or decide upon an attack shall:
   (i) Do everything feasible to verify that the objectives to be attacked are neither civilians nor civilian objects . . . ;
   (ii) Take all feasible precautions in the choice of means and methods of attack with a view to avoiding, and in any event to minimizing, incidental loss of civilian life, injury to civilians and damage to civilian objects;
   (iii) Refrain from deciding to launch any attack which may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, which would be excessive in relation to the concrete and direct military advantage anticipated.176

The subsequent article further elaborates on a nation’s obligations when initiating attacks, and requires, essentially, that a state remove civilians and civilian objects under its control from the vicinity of military objectives and “[a]void locating military objec-

172. Additional Protocol I, supra note 163, art. 51(4).
173. Id. art. 51(6).
174. Id. art. 57.
175. Id. art. 57(1).
176. Id. art. 57(2).
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tives within or near densely populated areas.”

Finally, Article 58 implores states to “[t]ake the other necessary precautions to protect the civilian population, individual civilians[,] and civilian objects under their control against the dangers resulting from military operations.”

In summary, under the aforementioned customary international law, targeted killings are considered a means of anticipatory self-defense and, accordingly, are a “legal, defensible policy” when adopted by nations facing legitimate terrorist threats.

IV. ANALYSIS

Although there are significant points of criticism relating to the Russian Federal Law on the Counteraction of Terrorism, the benefits of this type of legislation far outweigh its shortcomings. Russia has pursued an operationally active counterterrorism strategy, which resembles the approaches taken by both Israel and the United States; none of these nations has balked when circumstances demanded that it take initiative to protect its citizens.

A major difference among the legal structures of these three states is that Israel’s targeted killing policy “do[es] not arise from legislation; [it is] is purely executive policy.” Accordingly, Israel’s legal authority is distinct from that of both Russia and the United States because Israel cannot point to a law to demonstrate its ability to act. Nonetheless, the Federal Law on the Counteraction of Terrorism grants the Russian president authority to order a targeted killing, just as the laws and Executive Orders of the United States provide similar authority to the U.S. president, and thus, the three legal regimes may reasonably be considered functionally similar. Further, the counterterrorism measures employed by these states are, respectively, domestically legal in

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177. Id. art. 58.
178. Id.
179. See, e.g., Kendall, supra note 39, at 1070.
180. This law has substantial advantages, but the author of this Note recognizes that the Russian law has imperfections and is not advocating for other nations to adopt identical legislation.
181. See Guiora, Legislative and Policy Responses to Terrorism, supra note 20, at 156.
182. See Bridge, supra note 12, at 57–58.
183. See Guiora, Legislative and Policy Responses to Terrorism, supra note 20, at 144–45.
184. See Bridge, supra note 12, at 68.
185. See Gellman, supra note 20 (“Since the late Clinton administration, executive branch lawyers have held that the president’s inherent authority to use lethal force—under Article 2, Section 2 of the Constitution—permits an order to kill an individual enemy of the United States in self-defense.”).
their territories, presenting another commonality among the three systems.\textsuperscript{186}

Consistent with international law, the policies of all three nations require that its military actions are preemptive, rather than punitive, in nature.\textsuperscript{187} Similarly, the aforementioned nations have employed these extraordinary measures only when arrest, subpoena, or extradition is either impossible or unlikely to prove fruitful.\textsuperscript{188} Finally, these countries have resorted to the use of targeted killings only when all reasonable alternatives have been exhausted,\textsuperscript{189} including those instances in which international agreements or accords have been ineffective.\textsuperscript{190}

Legislation comparable to the Federal Law on the Counteraction of Terrorism, granting a state authority to act in self-defense, is desirable because it enables a national government to fulfill its obligation to protect its citizens from terrorist threat. Terrorism is not a conventional act of war, and as such, this type of violent attack was not directly addressed by the current international law of warfare. An active counterterrorism strategy is nonetheless consistent with the existing international legal regime because its aim is prevention, not post hoc retaliation. Moreover, the proactive measures implemented by the United States, Israel, and Russia have proven effective in deterring and preventing terrorist attacks. Therefore, adopting legislation that parallels the Federal Law on the Counteraction of Terrorism would be advantageous for states facing similar terrorist conflicts.

\textsuperscript{186} See Bridge, \textit{supra} note 12, at 6 ("With the passage of the Counteracting Terrorism Law, the Russian President now has the domestic legal authority to deploy Russian special forces beyond Russia’s borders."); Gellman, \textit{supra} note 20 (reporting that the Bush administration concluded that the president may single out a terrorist for death by covert action); HCJ 769/02 Public Committee Against Torture in Israel v. Government of Israel 2006(2) IsrLR 459, 516 [2006] (Isr.) (concluding that preemptive attacks are domestically legal in Israel when carried out consistent with international law).

\textsuperscript{187} See Federal Law on the Counteraction of Terrorism art. 3(4) (providing for steps to prevent terrorism); \textit{National Security Strategy, supra} note 91, at 5–7 (emphasizing the need to prevent and deter attacks); Public Committee Against Torture in Israel v. Government of Israel, 2006(2) IsrLR at 464 ("[t]he Government of Israel has adopted a policy of preventative attacks that cause the death of terrorists"); \textit{see also} Friedman, \textit{supra} note 45.

\textsuperscript{188} See, e.g., Biggio, \textit{supra} note 27, at 3–4 (describing Afghanistan’s refusal to assist the United States in its attempts to prosecute bin Laden); \textit{Kонституция Российской Федерации [Konstitutsia Rossiskoi Federatsii] [Constitution]} art. 61 (prohibiting extradition of Russian citizens); Friedman, \textit{supra} note 45 (describing the Israeli government’s admission that arrest of Palestinian terrorists is impossible).

\textsuperscript{189} See, \textit{e.g.,} Federal Law on the Counteraction of Terrorism art. 12(1).

\textsuperscript{190} See, \textit{e.g., infra} Part IV.A (discussing the United States’ unsuccessful attempts to capture bin Laden).
A. National Sovereignty, Self-Defense, and Responsibility to Citizens

The authority that the Russian Federation possesses pursuant to the enacted Federal Law on the Counteraction of Terrorism is important for all states to possess because one nation’s ability to protect its own should not be crippled by another nation’s inability to control theirs. National governments have a responsibility to defend their citizens from both internal and external threats and should act accordingly to provide that security.

Customary international law has never denied a state the ability to act for the purpose of protecting its own. To the contrary, the U.N. Charter recognizes the importance and necessity of a nation’s right to act in self-defense. Pursuant to that document, a nation is permitted to act defensively “until the Security Council has taken measures necessary to maintain international peace and security.” The U.N. Security Council has not insulated Russia from terrorist attacks, and consequently, Russia is within the legal boundaries of the U.N. Charter when it acts, as here, in self-defense. Russia first attempted to eliminate terrorist threats peaceably, but these efforts ultimately proved ineffective. The nation initially expanded its criminal laws to encompass terrorist activity, then promulgated the Law on the Fight Against Terrorism in 1998, and finally amended the previously enacted 1998 legislation to increase the power of Russia’s executive security

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191. See Biggio, supra note 27, at 9 ("The shield of sovereignty by a complicit or hapless host nation should not be a sufficient barrier to conduct necessary acts of self-defense.").

192. See, e.g., Konstitutsia Rossiskoi Federatsii [Konst. RF] [Constitution] art. 20(1) ("Everyone shall have the right to life."); U.S. Const. pmbl. ("insure domestic Tranquility, provide for the common defence, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity"); Basic Law: Human Dignity and Liberty, 5752-1992, SH No. 1391 § 4 (Isr.) ("All persons are entitled to protection of their life, body and dignity.").

193. See, e.g., HCJ 769/02 Public Committee Against Torture in Israel v. Government of Israel 2006(2) IsrLR 459, 518 [2006] (Isr.) (recognizing that international law clearly permits a state to act in self-defense); see generally S.C. Res. 1373, supra note 127; S.C. Res. 1368, supra note 127.

194. See U.N. Charter art. 51.

195. Id.

196. See infra Part IV.C.

197. See U.N. Charter art. 51.

198. See infra Part IV.C.


agencies.\textsuperscript{201} Nevertheless, Russia continued to be a target of terrorist attacks.\textsuperscript{202} Faced with no other alternatives to stop suicide bombings, kidnappings, hostage situations, and armed attacks\textsuperscript{203}, the measures authorized by the Federal Law on the Counteraction of Terrorism have been adopted only as a last resort, and are therefore consistent with international law.\textsuperscript{204}

The international legal regime calls upon states to control terrorist activities within their own borders.\textsuperscript{205} In fact, U.N. member states are \textit{required} to “[t]ake the necessary steps to prevent the commission of terrorist acts,” “[p]revent those who finance, plan, facilitate[,] or commit terrorist acts from using their respective territories for those purposes against other States or their citizens,” update their domestic laws accordingly to reflect the seriousness of such acts, and “[p]revent the movement of terrorists or terrorist groups by effective border controls.”\textsuperscript{206} As terrorist groups have persevered notwithstanding the implementation of these U.N. directives, it is apparent that these international mandates, while commendable, are nonetheless ineffective.\textsuperscript{207} When these efforts fail, a nation must have the ability to act for the protection of its citizens.\textsuperscript{208}

Further, while the international legal regime requires state cooperation in the elimination of terrorist threats,\textsuperscript{209} collaboration among states that are ideologically opposed is near impossible.\textsuperscript{210} In its struggle to capture Osama bin Laden, the United States made numerous “efforts and pleas to Afghanistan’s Taliban” for assistance.\textsuperscript{211} Afghanistan refused the United States’ requests to turn bin Laden over to law enforcement officials, to extradite him to the United States, and to try him under acceptable international

\textsuperscript{201} \textit{See} Bridge, \textit{supra} note 12, at 8–9.

\textsuperscript{202} \textit{See supra} Part II.C.

\textsuperscript{203} \textit{See supra} Part II.C.

\textsuperscript{204} \textit{See supra} Part III.C; Bridge, \textit{supra} note 12, at 67 (outlining the requirements for self-defense under customary international law).

\textsuperscript{205} \textit{See}, e.g., S.C. Res. 1373, \textit{supra} note 127; S.C. Res. 1368, \textit{supra} note 127.

\textsuperscript{206} S.C. Res. 1373, \textit{supra} note 127, ¶ 2.

\textsuperscript{207} \textit{See supra} Part II.A–C.

\textsuperscript{208} \textit{See} Michael N. Schmitt, \textit{State-Sponsored Assassination in International and Domestic Law}, 17 Yale J. Int’l L. 609, 649 (1992) (arguing that “a state generally may target those reasonably believed to represent a violent threat to it”).

\textsuperscript{209} \textit{See supra} Part III.D.

\textsuperscript{210} \textit{See} Krauthammer, \textit{supra} note 26 (“Israel has no great desire to go hunting terrorists . . . . Israel wanted these people arrested and jailed. That is why the Israeli government gave [Palestinian leader] Arafat a list of the ringleaders.”).

\textsuperscript{211} \textit{See} Biggio, \textit{supra} note 27, at 3–4.
law. President Clinton issued an Executive Order barring business activity between the two nations and the U.N. Security Council voted unanimously to impose sanctions on Afghanistan, but the Taliban maintained its position. Instead of supporting the United States’ peaceful attempts to resolve the matter, the Taliban was providing bin Laden with considerable protection in Afghanistan, rendering the nonviolent means employed by the United States frivolous.

The Russian Constitution protects the right to life of those within Russia’s borders, and the 2006 Federal Law on the Counteraction of Terrorism enables the Russian government to realize this guarantee even if it requires the Russian military to suppress terrorist attacks that emanate from outside the country’s territory. Prior to the passage of the Federal Law on the Counteraction of Terrorism, one of the reasons cited for Russia’s inability to win its fight against terrorism was “the absence of legislation for such struggle.” Russia has now remedied this problem and equipped its national government with a domestic legal basis for counterterrorism measures. Russia is acting in the nation’s best interest by protecting its citizens and other nations ought to follow Russia’s example.

If every nation were entirely effective in policing terrorist activities within its own borders, there would be no need for Russia, or any other state, to exercise the authority granted to the Russian president in the Federal Law on the Counteraction of Terrorism. Until that occurs, a nation should be permitted to take reasonable and necessary steps within the boundaries established by existing international law to ensure its self-defense and protect its citizens.

B. Terrorism Is an Unconventional Act of War and Active Prevention Is Consistent with International Law

Since the introduction of terrorist acts, the way in which war is fought has significantly changed, and consequently, so must the

212. See id. at 4.
213. See id. at 13–14.
214. See id.
215. KONSTITUTSIYA ROSSIISKOGO FEDERATSII [KONST. RF] [CONSTITUTION] art. 20(1) (“Everyone shall have the right to life.”).
216. Federal Law on the Counteraction of Terrorism art. 10.
217. Tkachenko, supra note 70, at 897.
218. See generally Federal Law on the Counteraction of Terrorism.
response to combat these unlawful operations. War is no longer waged on an open battlefield, rifle in hand, with each nation clearly identifiable by the color of its uniform. Terrorism is a very “specific form of asymmetrical violence,” that takes place in “back alleys and dark shadows against an unseen enemy.”

Hence, in order to defend its population, a state “must be able to take the fight to the terrorist before the terrorist takes the fight to it,” employing all necessary measures to “protect itself against terrorists whose modus vivendi is killing.” It would be unreasonable and irresponsible for a nation to sit idly by and fail to adjust its policies and military forces as its opponents engage in heightened and more extreme commissions of violence. Accordingly, the perspective has developed that: “[u]nder customary international law and Article 51 of the U.N. Charter, . . . taking the life of a terrorist to preempt an imminent or continuing threat of attack is analogous to self-defense against conventional attack.”

The United States, Israel, and Russia are currently faced with a type of threat that was not contemplated by international conventions and agreements. The traditional international legal regime assumes that war is an armed conflict between states, and as such, this legal structure is clearly inapplicable to terrorist operations carried out by non-state actors. The United States recognized the unique nature of a terrorist conflict when it explained that “[w]e must adapt the concept of imminent threat to the capa-

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219. See, e.g., Guiora, Targeted Killing As Active Self-Defense, supra note 42, at 323–24 (referring to terrorism as the “new form of warfare” and arguing that active self-defense must be considered in formulating international law’s response to this “modern ‘warfare’ which is clearly a very different ‘war’ than all previous ones”).

220. Cf. Additional Protocol I, supra note 163, art. 44(3), (7) (requiring, inter alia, that “combatants” distinguish themselves from the civilian population and maintaining the “generally accepted practice of States with respect to the wearing of the uniform by combatants assigned to the regular, uniformed armed units of a Party to the conflict”).

221. Tkachenko, supra note 70, at 898.

222. Guiora, Targeted Killing As Active Self-Defense, supra note 42, at 324.

223. Id.


225. See generally National Security Strategy, supra note 91 (describing the United States’ proactive national security strategy after the attacks on September 11, 2001); Guiora, Targeted Killing As Active Self-Defense, supra note 42, at 330 (“[I]t would be illogical to expect the victim State not to respond.”).

226. Gellman, supra note 20 (emphasis added).

227. See, e.g., Guiora, Targeted Killing As Active Self-Defense, supra note 42, at 323 (“International law was originally intended to apply to war and peace between recognized States; the concept of non-State actors was not contemplated.”); Biggio, supra note 27, at 29 (arguing for a broader interpretation of U.N. Charter Article 51 because the changing dynamics of warfare and terrorism were not anticipated at the time it was drafted).

228. See Guiora, Targeted Killing As Active Self-Defense, supra note 42, at 330.
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bilities and objectives of today's adversaries.\textsuperscript{229} International legal scholars have called for the current legal regime of the international community to “adjust[ ] itself to the new dangers facing society today” so to enable states to combat these “non-State actors involved not in traditional warfare but in terrorism.”\textsuperscript{230}

Terrorists are contravening international law in many aspects. Protocol I subjects a party’s armed forces to the rules of international law regardless of whether those forces are represented by an authority that the adverse party recognizes.\textsuperscript{231} Pursuant to this directive, although terrorists are non-state actors, they are nevertheless obligated to comply with international laws when engaged in armed conflicts.\textsuperscript{232} It is apparent, however, that this is not the reality. To highlight a few of the international laws violated by terrorist groups: Article 23 of the Hague Convention states that “it is especially forbidden . . . [t]o kill or wound treacherously individuals belonging to the hostile nation or army.”\textsuperscript{233} Yet, members of al-Qaeda collaborated with members of the Chechen separatist movement to bomb apartment buildings in Moscow, directly violating this international mandate.\textsuperscript{234} Article 23 also declares it forbidden to “employ arms, projectiles, or material calculated to cause unnecessary suffering.”\textsuperscript{235} Yet, Chechen terrorists clearly defied this provision when they invaded a theater that was full of people during a performance and when they detonated suicide bombs at a rock concert.\textsuperscript{236} Protocol I to the Geneva Conventions prohibits killing
civilians,237 and specifically prohibits what is now commonly referred to as “human shielding,” or the use of civilians as a shield from the adverse party’s military operations.238 Notwithstanding the existence of this international law, Chechen fighters used Russian patients, whom the Chechen terrorists had taken hostage at a hospital in Budennovsk, as armor to escape from the hostile situation they created.239 Protocol I also outlaws indiscriminate attacks,240 and requires that states take a number of precautionary measures when attacking the enemy, “to spare the civilian population, civilians and civilian objects.”241 As demonstrated by the aforementioned examples, and in light of terrorism’s goal of instilling fear in a nation’s citizens, it is apparent that no precautionary measures are taken to prevent the loss of civilian lives.242 Although numerous international directives exist to constrain operations in an armed conflict, terrorists respect none of these provisions.

One of the major criticisms of Russia’s legislation is that it provides the Russian president with authority to order Russian armed services to enter foreign nations and commit acts that might “jeopardize the right to life and fundamental rights of due process in host states.”243 It is true that “[a]ll international conventions dealing with civil and political rights protect the ‘inherent right to life’;” however, “none of them grants this right absolute protection.”244 In recognizing that the right to life is not impenetrable, international bodies have determined that a “‘state has the right and obligation to protect the population against [threats of violence] and in so doing may use lethal force in certain situations.’”245 Furthermore, terrorists who “take a direct part in

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237. Additional Protocol I, supra note 163, art. 51.
238. Id. art. 51(7) (“The presence or movement of the civilian population or individual civilians shall not be used to render certain points or areas immune from military operations, in particular in attempts to shield military objectives from attacks or to shield, favour or impede military operations. The Parties to the conflict shall not direct the movement of the civilian population or individual civilians in order to attempt to shield military objectives from attacks or to shield military operations.”).
239. See Part II.C; Scheppele, supra note 60, at 1005.
240. Additional Protocol I, supra note 163, art. 51(4).
241. Id. arts. 57–58.
242. See, e.g., NATIONAL SECURITY STRATEGY, supra note 91, at 15 (“mass civilian casualties is the specific objective of terrorists”).
are not entitled to the privileges provided by the category of “civilian” under Protocol I. To the contrary, unlawful combatants who take a direct part in hostilities forfeit their immunity from attack and become legitimate targets. As such, states are not required to provide these terrorist combatants with the same guarantees of protections, rights, or due process that states would otherwise be obligated to extend to lawful members of an adversary’s armed forces.

Targeted killings are also condemned because of the possibility that innocent citizens, who are truly unassociated with terrorist activities and fit the definition of “civilians” under international law, might be harmed. Targeted killings are nevertheless consistent with customary international law even where a preemptive strike incidentally causes civilian casualties so long as the acting nation took all reasonable steps to prevent unnecessary harm and the operation was proportionate to the perceived threat. Additionally, “a terrorist should not be granted immunity simply because he can surround himself with non-terrorists.” Protocol I condemns the practice of surrounding oneself with civilians as a shield from adverse military strikes.

U.N. Security Council Resolution 1373 specifically recognizes a state’s “inherent right of individual or collective self-defence,” and calls on states to “prevent and suppress terrorist acts.” This resolution commands members to “[t]ake the necessary steps to prevent the commission of terrorist attacks,” which is consistent with the type of authority the Russian Federal Law on the Counteraction of Terrorism appears to legitimize and with the type of authority exercised by Israel and the United States pursuant to their targeted kill-

246. Additional Protocol I, supra note 163, art. 51(3).
247. See id. art. 51.
248. See, e.g., Kretzmer, supra note 28, at 190.
249. See id.; HCJ 769/02 Public Committee Against Torture in Israel v. Government of Israel 2006(2) IsrLR 459, 526 [2006] (Isr.) (“Admittedly, international law does not grant lawbreaking combatants equal rights to those given to lawful combatants or, conversely, to innocent civilians.”).
250. Guiora, Targeted Killing As Active Self-Defense, supra note 42, at 328–29 (addressing this as an argument against targeted killings).
251. See, e.g., Additional Protocol I, supra note 163, arts. 57–58; Bridge, supra note 12, at 67.
253. See Additional Protocol I, supra note 163, art. 51(7).
255. Id. ¶ 2(b) (emphasis added).
ing and counterterrorism policies.\textsuperscript{256} Russia, “guarantor of international norms as a charter member of the Security Council,”\textsuperscript{257} understands and upholds these international legal instructions. Nowhere in these documents are the states’ rights and duties qualified by due process concerns for terrorists.

In the unique circumstances of violent terrorists, arrests are impossible or would merely result in a higher death toll.\textsuperscript{258} For example, an Israeli arrest of the Palestinian terrorist leaders would require that Israel “invade Palestinian cities and kill hundreds of civilians along the way.”\textsuperscript{259} Israel’s Deputy Defense Minister stated simply that “[t]hose who preach to us tend to forget that our first responsibility is to protect Israelis.”\textsuperscript{260} The Defense Minister then posed the question: “If I know that somebody (in the Palestinian-controlled areas) is preparing a car bomb, what am I supposed to do? Write him a warning letter? Send him a subpoena?”\textsuperscript{261} The states facing terrorist threats have learned, through experience, that traditional or passive reactions to terrorism are wholly ineffective.\textsuperscript{262} Accordingly, “Israel has responded the only way it can, and precisely as any other country would.”\textsuperscript{263}

Targeted killing policies are consistent with international law because, as preventative measures, targeted attacks are not retaliatory in nature.\textsuperscript{264} Further, terrorists are not considered civilians,\textsuperscript{265} which releases states from any obligation to provide these unlawful

\textsuperscript{256} See Guiora, \textit{Targeted Killing As Active Self-Defense}, supra note 42, at 325–26 (explaining that, in justifying U.S. missile attacks as the response to embassy bombings in Kenya and Tanzania, President Clinton “mainly relied on traditional Article 51 self-defense” but added that the strikes “were a necessary and proportionate response to the imminent threat of further terrorist attacks against U.S. personnel and facilities”).

\textsuperscript{257} Krauthammer, \textit{supra} note 26.

\textsuperscript{258} See Sontag, \textit{supra} note 47.

\textsuperscript{259} Krauthammer, \textit{supra} note 26. “The entire suggestion—serving terrorists with subpoenas—is ludicrous. What country in war time tells its soldiers not to shoot back at those trying to kill them, but instead to cross enemy lines and try to apprehend them for trial?” Id.

\textsuperscript{260} Friedman, \textit{supra} note 45.

\textsuperscript{261} Id.

\textsuperscript{262} Cf. Guiora, \textit{Targeted Killing As Active Self-Defense}, supra note 42, at 324 (“From experience gained over the years, it has become clear that the State must be able to act preemptively in order to either deter terrorists or, at the very least, prevent the terrorist act from taking place. By now, we have learned the price society pays if it is unable to prevent terrorist acts.”).

\textsuperscript{263} Krauthammer, \textit{supra} note 26. “When, in 1986, the U.S. found Libya responsible for a terrorist bombing that killed American soldiers in a Berlin discotheque, it did not send Muammar Gaddafi a subpoena. It bombed his barracks.” Id.

\textsuperscript{264} Cf. Guiora, \textit{Legislative and Policy Responses to Terrorism}, supra note 20, at 132 (“[I]nternational law clearly prohibits retaliatory attacks.”).

\textsuperscript{265} See Additional Protocol I, \textit{supra} note 163, art. 50.
actors with guarantees of rights and due process.\textsuperscript{266} International law requires that nations take precautionary measures to protect the hostile state’s civilians from harm,\textsuperscript{267} and as targeted killing policies focus on an individual attacker,\textsuperscript{268} civilians are collateral damage only infrequently. Moreover, Russia, along with a number of other countries, recently reaffirmed its commitment to respecting human rights in the global war on terrorism.\textsuperscript{269} In light of the international legality of an active counterterrorism strategy, nations facing terrorist threats would benefit from enacting a law similar to Russia’s Federal Law on the Counteraction of Terrorism.

C. Proactive Measures Have Proven Effective in Deterring and Preventing Terrorist Attacks and Passive Measures Have Proven Ineffective

The proliferation of targeted killing policies included as part of various nations’ counterterrorism measures demonstrates the effectiveness of this practice. Active self-defense is an attractive response because it “not only enables the State to more effectively protect itself within a legal context,” but also minimizes the deaths of innocent civilians.\textsuperscript{270} Targeted killings serve a dual purpose for the nations that employ this tactic: they prevent the commission of an imminent terrorist attack, often saving the lives of countless citizens; and they send a clear message to terrorists that these egregious actions will not be passively witnessed.\textsuperscript{271} Even unsuccessful targeted killing missions operate as deterrence for terrorist attackers.\textsuperscript{272}

To illustrate, when Russia was confronted with the Moscow theater hostage crisis, President Putin “was conscious not only of the potential for a negative public reaction to any concession to the terrorists, but also of the possibility that a harsh and swift response might effectively deter similar acts in the future.”\textsuperscript{273} Similarly, upon discovering that Libya was responsible for the terrorist bombing that killed U.S. soldiers at La Belle Discotheque in West Berlin,

\begin{thebibliography}{99}
\bibitem{266} See Guiora, \textit{Legislative and Policy Responses to Terrorism, supra} note 20, at 148.
\bibitem{267} See, e.g., Additional Protocol I, \textit{supra} note 163, art. 57.
\bibitem{268} \textit{See supra} Part III.B.
\bibitem{270} Guiora, \textit{Targeted Killing As Active Self-Defense, supra} note 42, at 324.
\bibitem{271} \textit{See} Krauthammer, \textit{supra} note 26.
\bibitem{272} \textit{Id.}
\bibitem{273} Guiora, \textit{Legislative and Policy Responses to Terrorism, supra} note 20, at 155–56.
\end{thebibliography}
President Reagan ordered air strikes on two Libyan cities. The U.S. offensive succeeded in hitting a residence of Libyan leader Muammar el-Qadaffi that was located within one of the cities. Subsequently, U.S. security officials claimed that “Libyan-sponsored terrorism ceased for a long time.”

Israel has also attested to the effectiveness of its targeted killing policy. Israeli military officials generally acknowledged the use of targeted killings as early as December of 2000, and affirmed the policy’s “chilling effects” on Palestinian attacks. Israel’s targeted killing policy has effectuated the removal of the most threatening operatives, rendering Palestinian terrorists “simply not as effective as evidenced by the relative lack of success of many recent attempted suicide bombings and the long lulls between attacks.” After a successful targeted killing campaign in February of 2001, Israel’s caretaker prime minister explained that these missions “send a message to those who would attack Israel: ‘The long arm of the Israeli Defense Forces will reach them.’” Conversely, when the prime minister elected for a more passive approach to Palestinian terrorists, he was criticized for the “embarrassing capitulation” and warned that Israel would “pay a heavy price” for this “surrender to Palestinian violence.” The failure of a state to respond to terrorist attacks is disfavored, and has been described as essentially “granting terrorists a form of immunity,” and “an invitation to further horror.”

A mere few months after its adoption, Israel’s counterterrorism policy had already prevented several attempted terrorist attacks. For example, in October of 2001, the IDF intercepted terrorists set to attack Dugit, a city located in the northern Gaza Strip. Hamas-linked terrorists had infiltrated the community of Elei Sinai, which is near Dugit, only a month earlier, where the ter-

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274. See Frontline, supra note 25.
275. Id.
276. Id.
277. See, e.g., supra Parts II.B, III.B.
278. Sontag, supra note 47.
279. Guiora, Targeted Killing As Active Self-Defense, supra note 42, at 333.
280. Sontag, supra note 47.
283. Biggio, supra note 27, at 16 (quoting U.S. Secretary of State Madeleine Albright).
284. See Krauthammer, supra note 26.
rorists shot two civilians dead and seriously wounded other civilians and soldiers. This time, the IDF took preventative action and killed the terrorists as they tried to bypass the security fence, before they could murder innocent Israeli citizens. Israel’s proactive measures can be directly contrasted with the policies of Spain, a country that, as a result of its passive approach to global terrorism, has continued to be a terrorist target.

Moreover, the authority to execute specific individuals engaged in imminent terrorist operations enables nations to target violence more narrowly than they have been able to in the past. Pursuant to the Federal Law on the Counteraction of Terrorism as implemented by the Russian Federation, the president can plan for the killing of a particular threat with precision and purpose. A calculated operation of this nature minimizes casualties and is a more restrained option than “bombing or large-scale military sweeps that do far more harm to genuine noncombatants.” Targeted action is therefore preferable to substantial retaliation or full out war, which are often inevitable results of terrorist activities. In that regard, counterterrorism measures are distinguishable from “other security tasks [because the] central goals and the main indicators of success are prevention and preemptive disruption of terrorist activities and networks, rather than post hoc retaliation or coercion, particularly when the latter takes the form of massive collective punishment.”

The use of force to prevent, combat, and suppress terrorist operations lends greater legitimacy and respect to that nation’s military. When a nation’s armed forces are unable to protect its

286. See id.
287. See id.
289. See Eke, supra note 10; Krauthammer, supra note 26 (“Israel’s response to unre-
290. See Federal Law on the Counteraction of Terrorism art. 10.
291. See Tkachenko, supra note 70; Friedman, supra note 45 (quoting the Deputy Defense Minister of Israel justifying its policy because other options are unacceptable: “[t]anks are too brutal; helicopter gunships are an indiscriminate and ‘excessive’ use of force”).
292. Cf. Tkachenko, supra note 70, at 898 ("As a result of the offensive defeat, the Russian state and particularly certain institutions, e.g., armed forces and special services, lost public prestige as they appeared to be unable to make use of the whole power and

V. CONCLUSION

International law should not tie the hands of a nation to provide its military with the authority necessary to fulfill its duties. Rather, the international legal regime should encourage states to proactively protect their citizens from international terrorist threats. Similar to Russia’s enactment of the Federal Law on the Counteraction of Terrorism, nations ought to pass legislation that provides them with the authority to deploy their special military forces into foreign territories in the pursuit of self-defense.

This type of legislation is necessary because national governments have a responsibility and obligation to defend their citizens from imminent terrorist threats, and just as the Federal Law on the Counteraction of Terrorism grants the Russian president authority to provide that security, other states should enact analogous laws that enable them to fulfill these promises to their citizens. Additionally, terrorism is an unconventional act of war that was not contemplated by the drafters of the documents that comprise the existing international law of warfare. While the need for a modification of the law is apparent, an active counterterrorism strategy is nonetheless consistent with international law because its goals are preventative, and not punitive, in nature. The proactive measures might of Russia to defeat a relatively small (in comparison to Russia) separatist movement.

295. See Biggio, supra note 27, at 37 (“[I]naction in the face of attacks against U.S. overseas facilities and citizens erodes the credibility of the United States among its international counterparts.”).

296. See Bridge, supra note 12, at 59 n.301 (citing the Colombian extrajudicial killings).
adopted and endorsed by the United States, Israel, and Russia have proven effective in deterring and preventing terrorist attacks. States facing similar terrorist threats would benefit from implementing like policies.

Nations must act in concert to eradicate the threat of terrorist activities. In light of that understanding, to permit a small intrusion upon a state’s sovereignty in order to accomplish this objective is consistent with the global fight against terrorism. Nations should consider those states that are preemptively striking against imminent terrorist threats as a single, unified, international force acting in defense of all nations against a universal enemy, rather than as a single state responding to a particular non-state threat.

The recent suicide bombings in Moscow underscore the importance of a nation’s ability to act preemptively to defend its citizens. On March 29, 2010, two female terrorist bombers set off explosions during the Monday morning rush hour in two subway stations, causing “panic at the stations with people falling over each other in dense smoke and dust as they fled,” and leaving others “desperately trying to figure out what had happened to missing loved ones.” More than three-dozen people were killed in the rush hour attacks, the timing of which suggested “a well-planned and carefully executed operation designed to bring terror to the heart of the Russian capital.” This tragic occurrence in Moscow adequately demonstrates that where a terrorist threat remains prevalent, and a state has employed all peaceable means of resolving the conflict with no success, a nation must have the ability to act preemptively for the protection of its citizens.

297. Biggio, supra note 27, at 6 (noting that “the threat of terrorism is a universal problem that potentially affects all nations”) (emphasis in original). “Former U.S. Secretary of State Madeleine Albright has stated that terrorism “is the biggest threat to our country and the world as we enter the 21st Century.”” Id.

298. See id. at 4–5 (asserting that international law must evolve to allow limited intrusions into the sovereignty of a nation if that nation is unable or unwilling to cooperate with efforts to prevent further terrorist attacks).

299. Luke Harding & Mark Tran, Moscow Metro Bombs Kill Dozens, GUARDIAN (Mar. 29, 2010), http://www.guardian.co.uk/world/2010/mar/29/moscow-metro-bombs-explosions-terror. “The Moscow subway system is one of the world’s busiest, carrying about 7 million passengers on an average workday.” Id.

300. Id.