Present-day terrorist activities around the world have been described as religious terrorism where terrorists have used religious teaching as their justification or source of actions (Rapoport 2004). The practitioners of terrorism motivated either in whole or in part by a religious imperative consider violence as a divine duty or a sacramental act. It embraces different means of legitimization and justification compared to other terrorist groups. In fact, religious motive has become an essential part of defining terrorism in the UK and other jurisdictions including Australia and New Zealand. Terrorism has been distinguished from an ordinary crime not only by reference to the nature of the harm caused, but by terrorists’ ideology. This partly explains why some criminal activities such as a school shooting were not labelled as terrorist attacks in the media, while others like the 2013 Boston marathon bombing were quickly reported as an act of terrorism.

Religion itself is too important to ignore in our current public life. According to Norris and Inglehart (2004), the more secure people become in the developed world, the more they loosen their hold on religion. Religion, meanwhile, retains its authority among the less secure but faster-growing populations of the less developed world. They conclude that rich societies are becoming more secular but the world as a whole is becoming more religious. But is it true that the more religious people are, the more violent they are? Is there a connection between religiosity and violence? Juergensmeyer (2003) examines the cases of a number of people who engage in, or somehow support, the use of violence for religious ends in different religious traditions. So basically he asks some difficult questions here: ‘[S]ince religion was found in bed with terrorism, is this the fault of religion? Has its mask been ripped off and its murky side exposed – or has its innocence been abused? Is religion the problem or the victim?’

People are concerned that religious terrorist attacks are likely to be more deadly as they are less motivated by a desire to win over the people. This is owing to the fact that religious terrorists differ from their secular counterparts in motivation. Bruce Hoffman (1998) writes that ‘whereas secular terrorists attempt to appeal to actual and potential sympathizers, religious

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1 As has been discussed in my writing (Hosen 2013).
terrorists appeal to no other constituency than themselves’. For Audrey Cronin (2002), religious terrorists act ‘directly or indirectly to please the perceived commands of a deity’. This is why, for Hoffman and Cronin, such distinguishing factors make religious terrorism more destructive in nature.

This chapter focuses mainly on how the discourse on religious terrorism has influenced the status of religious freedom through case studies of motive elements in anti-terrorism laws, religious profiling, guilt by association, targeting materials for supporting Jihad, and religious charity institutions. Firstly, the inadequacy of defining terrorism will be analysed to demonstrate how religious motive has been included in some of the definitions which in turn create more problems in distinguishing between terrorism and ordinary crime. It will then identify how religious charity institutions in the US and Australia led to a profiling and a tougher anti-terrorism law and related legislation. I would argue that we need to protect religious freedom without endangering security, and we could do so by treating terrorism as a crime without including religion as its element. We should focus on the terrorist activities, not their religious ideology. Maintaining the rule of law is not the only option in dealing with terrorism. A holistic approach together is needed. This is to include an accommodation of pluralism in order to pursue communication and mutual understanding.

Defining terrorism: is the law adequate?

In an international arena that is dominated by media reported terrorist attacks, what matters most is not a definition of terrorism, but rather the effect of what is labelled terrorism. The term terrorism that many associate with fanatical, radical Islamic sects, has distorted views towards organizational violence. In turn, this has created the misconception that internationally based violence is synonymous with terrorism. However, there is no all-encompassing definition of terrorism, there are only common elements that are used to determine actions as such (Donohue 2005: 22–4), and accordingly promote fear. The very inadequacy of this classification of terrorism is problematic as one cannot clearly draw the line between violence, terrorism, freedom fighters and separatist movements.

The term terrorism can be loosely attributed to a form of psychological warfare that is designed to alter behaviours of the state and general public to that of inconvenience out of fear. Terrorism in the current oft-cited use of the ‘War on Terrorism’ refers, in a general sense to violent, fear-inducing, attacks by the individual, groups or state, against civilians. That is, terrorism bears with it a distinct exclusion of attacks against military and other state agents. Further, the definition of terrorism cannot be limited to the exclusion of counter-terrorism. When considering illegitimate state action masked as self-defence, such as the US bombings of Nagasaki or Hiroshima, it quickly becomes apparent that the definition of terrorism is unsatisfactory (Weber 1997).

Additionally, the denomination of a particular socio-economic demography attributable to members of indiscriminately violent organizations is also inadequate. Members of what are considered terrorist organizations vary from Western educated professionals to uneducated people (Moghaddam 2006: 14). This suggests that there is no particular environment that generates the archetypal terrorist, or for that matter that the ‘archetypal terrorist’ exists. In order to realize the drivers of such violence ‘we have to look behind the images of cruelty and fear, and understand that the violence cannot solely be explained by state suppression, economic, or other structural factors’ (Helbardt 2010: 26) as these conditions occur both in regions of peace and violence.

It is the Western hegemony that has created the difficulty in pinning down what exactly it is that terrorism entails. The current standards for what is considered terrorist action are the actions
of foregone US founding fathers and revolutionaries. Ultimately, this highlights the effect that perspective has on the dichotomy of what is considered ‘right and wrong’. This issue is compacted by the lack of an international consensus on a definition of terrorism, with the League of Nations rejecting a draft in 1937, outlining terrorism as ‘all criminal acts directed against a State and intended or calculated to create a state of terror in the minds of particular persons or groups of persons or the general public’. However, the pervasiveness of fear and terror amongst the public is often promoted by the action, or inaction of a state. Draconian measures that usurp human rights in concurrence with continuous media coverage of a ‘war on terror’ effectively fuel the notoriety required to sustain the premise of radical and violent ideologists; with the public (Moghaddam 2006: 19–20), sympathizers (Moghaddam 2006: 3), and potential funders alike (Rehman 2005: 53).

Therefore, with no official definition, what it is that terrorism entails is subject to the misinterpretations of ethnocentric populations. Donohue pointed out that there are seven identifiable elements that are common in terrorist acts: the use of violence, the creation of fear, the generation of fear in a broader audience, purposive actions, a political agenda, actions levied on non-combatants and the intention to achieve a broader goal (Donohue 2005: 22–4). Ben Saul, in his book Defining Terrorism in International Law (2006), proposes the following definition, which, he argues, would reflect existing agreement on the wrongfulness of terrorism: ‘(1) Any serious, violent, criminal act intended to cause death or serious bodily injury, or to endanger life, including by acts against property; (2) where committed outside an armed conflict; (3) for a political, ideological, religious, or ethnic purpose; and (4) where intended to create extreme fear in a person, group, or the general public, and: (a) seriously intimidate a population or part of a population, or (b) unduly compel a government or an international organization to do or to abstain from doing any act.’ Furthermore, he suggests an explicit exception for acts of advocacy, protest, dissent or industrial action that are not intended to cause death, serious bodily harm or serious risk to public health or safety (Saul 2006: 65–6).

Other definitions usually include: ‘the use or threat of action’ where it endangers life, or poses a serious risk to health or to property, and is ‘designed to influence the government or to intimidate the public or a section of the public’, and where ‘the use or threat is made for the purpose of advancing a political, religious or ideological cause’ (Section 1 of the Terrorism Act 2000 in the United Kingdom). And yet, on each of these counts, the attempt to define terrorism is fraught with difficulties in distinguishing terrorism from what it is not, such as legitimate state responses or counter-terrorism, national liberation struggles or freedom fighters, and ordinary criminal offences.

With regard to freedom fighters, one only needs to offer the examples of Yasser Arafat and Nelson Mandela. Nobel Prize winner Yasser Arafat has been charged with the cold-blooded assassination of US Ambassador Cleo Noel in Sudan in 1973. His PLO (Palestine Liberation Organization) is an umbrella group embracing organizations for defending their lands. Nelson Mandela, another Nobel Peace Prize winner, did not get life imprisonment on Robben Island for sitting in at lunch counters, but if memory serves, for plotting terror to overthrow the regime. Is it then true that ‘one man’s terrorist is another man’s freedom fighter’?

It is worth noting that half of all terrorist organizations have such ‘liberation’ aims. They wish to make an independent state for minority (The Basque Fatherland and Liberty group, IRA, Kurdistan Worker’s Party), independent Islamic state (Abu Sayyaf Group, Moro Islamic Liberation

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Front), or independent working class (Revolutionary People’s Liberation Party/Front). Put simply, they struggle for the country’s liberation. Are they terrorists or freedom fighters?

Is religion the problem or the victim?

Religion includes a belief system that influences behaviour. This is because people’s beliefs influence their behaviour and how they interact with others. Most religions have within them complex and often contradictory doctrines and concepts. These vast bodies of doctrine can provide a resource for those who wish to justify their actions. They also can be where people seek guidance for the proper way to deal with a given situation. Religion is also a source of legitimacy. In fact, it can be used to justify nearly any policy or action, even those that may otherwise be considered unjustifiable (Fox and Sandlera 2005: 293–5).

Religious freedom is protected under many liberal democratic constitutions. However, what happens when a person’s religion comes into conflict with criminal legislation? In general, there is no religious defence to criminal conduct. However, some states have enacted statutes that allow defendants to raise religious defences to certain criminal charges. And, in many situations, prosecutors may treat people who commit crimes out of deeply held religious beliefs more leniently than people who commit the same crimes for other reasons. Likewise, people who claim that their criminal activity is actually an expression of religious identity may be sentenced to a lighter sentence. The use of sacramental drugs in certain religious ceremonies is often touted as a defence to criminal activity, based on religious freedom. In 2006, the US Supreme Court decided that under the federal Religious Freedom Restoration Act, members of a New Mexico church could not be prohibited from using sacramental ayahuasca, a hallucinogenic tea and a controlled substance. But what if terrorists use Holy Books as justification to attack non-combatant civilian or public places, can ‘such expression of their religious practice’ be protected under the constitution? The answer is no. Crime is a crime. This is how we draw a clear line between religious freedom and criminal activities. But how can we distinguish between a terrorist act and an ordinary crime? Two possible scenarios below might explain the difficulty to draw a clear line between a terrorist act and a crime:

A. Rambo with M16 in his hands came to the class, and said clearly ‘Allahu Akbar’ before shooting everyone in the classroom.

B. Rocky with M16 in his hands came to the class, and said clearly ‘Jennie, I love you’ before shooting everyone, including Jennie, in the classroom.

The acts of Rambo and Rocky are the same, but the motive might be different. One is about personal feelings, and the other is about religious ideology. So, which one is a terrorist and which one is considered as a mass murderer?

This illustration leads us to examine the problems with motive elements (reference to a political, religious or ideological purpose) in the definition of terrorism. On the one hand, the adoption of motive elements assists us to differentiate terrorism from other kinds of serious violence which may also generate fear such as common assault, armed robbery, rape, or murder. On the other hand, such inclusion might encourage a process of religious profiling in which investigators and others paid undue attention to the politics or religion of suspects or accused persons. This could be seen as not only a departure from ordinary criminal law principles,
but is also a prosecutorial and political minefield. Giving motive (rather than the intention) primary legal significance leaves prosecutors and governments vulnerable to charges of profiling and discrimination against religious groups or unpopular political groups, further politicizing anti-terrorism prosecutions.

It is worth noting that the ordinary criminal law functioned under the traditional principle that motive was not relevant to a crime and that a political or religious motive could not excuse the commission of the crime. Professor Kent Roach of McGill University shares the views that the requirement of proving a political, religious or ideological motive is a threat to liberal principles:

'It means that police and prosecutors will be derelict in their duties if they do not collect evidence about a terrorist suspect's religion or politics. In my view, this presents a threat to liberal principles that democracies do not generally inquire into why a person committed a crime, but only whether he or she acted intentionally or without some other form of culpability. It also may have a chilling effect on those whose political or religious views are outside the mainstream and perhaps similar to those held by terrorists. Investigations into political and religious motives can inhibit dissent in a democracy.'

(Roach 2004. See also Roach 2007: 41)

Another concern is that if we still accept the motive elements, particularly religious ones, the motive requirement could also provide an accused with a possible platform to politicize the trial process by offering extensive evidence about the true meaning of often ambiguous religious beliefs. The battle of interpretation within religion will take place in the court. Do the courts have the capacity and ability to analyse the religious text and literature? Religious freedom could be under threat if the Court concluded that a particular text in the Holy Books was a source of a terrorist act. Anti-terrorism legislation in the United Kingdom, New Zealand, and South Africa all require the prosecution to establish a political, religious or ideological motive. South Africa also includes philosophical motives. Conversely, the United States and the draft UN Comprehensive Convention on International Terrorism do not require such a motive (see Golder and Williams 2004).

Religious profiling and guilt by association

The inclusion of religion as one of the motive elements in defining a terrorist act could also lead to another problematic situation: guilt by association. It starts with religious profiling and ends with guilt based on a person's association with a particular religious group/institution; not based on his/her actual crimes. For instance, an Illinois National Guardsman and three private security personnel at O'Hare International Airport were reported to engage in an unnecessary, unjustified, illegal and degrading search of a 22-year-old US citizen, Ms Samar Kaukab, who was identified and subjected to a humiliating search not because she posed any security threat, but only because her wearing of a hijab identified her as a Muslim (see American Civil Liberties Union 2002).

It could be seen as the vulnerability of democratic values and freedom of association in the face of anxieties over issues of national security. The Dr Haneef case in Australia is illustrative. Dr Mohamed Haneef, a Muslim and an Indian national, was arrested at Brisbane airport on 2 July 2007 in connection with a failed London bomb plot. He was held for 12 days before being charged with providing support to a terrorist organization. His particular part in the terrorist action was deemed to be the provision of a SIM card and the two years of telephone credit to one of the extremist operatives in London who was his cousin. It was essential for the police to
prove beyond reasonable doubt that the support (i.e. SIM card) Haneef provided would help the terrorist to act. Due to a lack of evidence Haneef was released without charge but had his Australian work visa revoked under s. 501 of the Migration Act 1958, stating that Dr Haneef had failed the 'character test' referred to under the section. The Act states that a person does not pass the character test if he/she has had an association with somebody who has been involved in criminal conduct. The Minister stated that there was an 'association' between Dr Haneef and his cousins (one of whom was Sabeel Ahmed). Dr Haneef appealed the decision to the Federal Court and it was overturned in his favour on 21 August 2007 (see Rix 2010).

A wearing of hijab or providing a SIM card have nothing to do with the crimes, but because of the ‘guilt by association’ paradigm two Muslims were in trouble as described above. In Australia, the government does not only call the people or the organizations which are actually involved in terrorist acts as ‘terrorists’, in fact, they also name those who provide information or support terrorist activities ‘terrorists’ too. This behaviour can be known as ‘advocating terrorism’. In addition, not only is the organization involved in or supportive of terrorist acts considered terrorist, all members affiliated with the organization, no matter if they are against the organization’s actions, can be punished with up to 25 years of jail time (Lynch, MacDonald and Williams 2007). This is because the Australian government believe that if the people or the organization did not provide information or support to the terrorist, then it may pose difficulties for the actual terrorists to proceed with their unlawful acts. For example, if all citizens follow the doctrine of ‘if you see something, say something’ then it may contribute in stopping a terrorist act. Hence, the Australian government established the law policy to prevent people or organizations providing support for terrorist activities and enacted the Section 102.1(1A) of the Criminal Code, where it is stated that an organization advocates the doing of a terrorist act if:

(a) The organization directly or indirectly counsels or urges the doing of a terrorist act.
(b) The organization directly or indirectly provides instruction on the doing of a terrorist act.
(c) The organization directly praises the doing of a terrorist act in circumstances where there is a risk that such praise might have the effect of leading a person (regardless of his or her age or any mental impairment . . . that the person might suffer) to engage in a terrorist act.

Banning books on Jihad

Another potential problem of religious freedom and national security is the targeting of material support to terrorist organizations. Religious books or sermon on jihad could be seen as part of freedom of expression and opinions, however under the national security approach, the story would be different. The then Federal Attorney General of Australia, Phillip Ruddock, insisted that he was prepared to change the law, if books sold in a Sydney bookshop, allegedly promoting jihad and suicide bombings, were found to be legal.4 His statements were made following the Australian Federal Police and the NSW Counter Terrorism Command investigation into bookshops allegedly selling extremist literature.5 Cutting off material support for terrorist activity is undoubtedly a worthy and appropriate goal. But that can be done without indulging in guilt by association.

5 The Australian, 18 July 2005.
At the request of the then Attorney-General Phillip Ruddock, the books named *Defence of Islamic Lands* and *Join the Caravans* were banned by the Office of Film, Literature and Classification (OFLC) Board. Both books were found to be in breach of the Classification (Publications, Film and Computer Games) Act 1995, which under paragraph 1 (c) of the Table provides that publications should not ‘promote, incite or instruct in matters of crime or violence.’ The author was the late Sheikh Abdullah Azzam, known as one of the founding Fathers of jihad. He was assassinated in Pakistan in 1989. Originally the book was written in Arabic in 1984, then it was re-published in English in 1996 and 2002. The preface was written by Osama Bin Laden.

The Attorney General was also in favour of re-amending and strengthening the censorship law in Australia for the purpose of banning any materials which urges or advocates terrorist acts. There is a concern of eroding democracy – a bedrock culture which made up Australia as a free country. The Media, Entertainment and Arts Alliance, which represents journalists, has written to Commonwealth, State and Territory attorneys-general to express its concerns over plans to introduce additional censorship laws, believing that there ‘are already too many harsh laws that curb freedom of expression in Australia’ (The Media, Entertainment and Arts Alliance 2006). However, these acts of unnecessary censorship of religious freedom are believed to be politically driven and may further marginalize the Islamic community in Australia.

In Indonesia, the story was different. Imam Samudra, the convicted Bali bomber, published his book *I Fight the Terrorist* while waiting for his execution (Samudra 2004). In his book, he wrote stories of times during his childhood, falling in love, and going to Afghanistan. He provided justification for suicide bombings. He shared stories of some miracles he obtained in the jail. There was a risk that young Muslim students, reading this book, would be influenced by Imam Samudra’s thoughts and ideas. The question is: should the Indonesian government ban this book?

Freedom of opinion is guaranteed as a basic right for citizens. Banning Imam Samudra’s book would invite criticisms that the Indonesian government was following the rule of Soeharto’s New Order government that could easily ban any books it did not like. The cause of freedom and reform is a worthy one for the Indonesian people, who were governed for 32 years by the dictator Soeharto. Banning is certainly not an option. In this case, the Indonesian government has chosen human rights protection, rather than national security as a reason to limit freedom of opinion.

Instead of banning the book, the Indonesian government encouraged a public discourse on the topic of jihad. The publication of Imam Samudra’s book has invited a public debate. There have been many books published to challenge Samudra’s book. For instance, Ustad Abu Hamzah Yusuf al-Atsary and Al Ustadz Luqman bin Muhammad Ba‘abduh, to name a few, criticized Samudra’s book in detail.6 Ja‘far Umar Thalib also criticized Samudra’s book at least twice in October and in December 2004 public seminars.7 Therefore, despite some risks that people might be influenced by Imam Samudra’s extremist position, the public has been given the opportunity to criticize and challenge his book. Banning the book would have closed the door for public debate. The Indonesian government’s response was very different from the Australian government in this respect.

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7 He was the Head of Laskar Jihad. More information on him can be found in Hasan 2006: 63–70.
Religious charity and security

The issue of religious freedom becomes more complicated and not really clear when an act of religious activities such as charity is being accused of funding terrorism. To the extent that anti-terrorism offences are incorporated into the criminal law system, substantive and procedural criminal law concerns arise. Substantively, these concerns relate, for example, to the ways in which anti-terrorism laws depart from traditional criminal law norms. They might do so by, for instance, expanding criminal liability to those who facilitate acts of terrorism or even to third parties with no direct knowledge of the activity in question (by creating secondary offences relating to, say, the failure to monitor or report financial transactions) (Ranraj 2005). Below is a case study of how the issue of financing terrorism has an impact on religious freedom and expression.

Giving to charity is incumbent upon every Muslim. Muslims have always donated to charitable endowments set up for the purposes of promoting Islam through the construction of mosques, schools, and hospitals. In recent years, there has been a dramatic proliferation of Islamic charities. While most of these are legitimate, there is now considerable evidence to show that others have more questionable intentions, and that funds have been diverted to support terrorist groups. In 2007 the US had seized in excess of US$2 million of suspected terror funds (Smith, McCusker and Walters 2010). According to the former US Attorney General, ‘the war against terrorism is a war of accountants and auditors, as well as a war of weaponry and solicitors’.9

The UN has addressed the need for uniformity of state action when combating the financing of terrorism through the advent of the International Convention for the Suppression of the Financing of Terrorism (‘ICSFT’).10 The ICSFT aims to address the ‘urgent need to enhance international cooperation among States in devising and adopting effective measures for the prevention of the financing of terrorism, as well as for its suppression through the prosecution and punishment of its perpetrators’.11 To this end, the Convention calls upon states to adopt measures to suppress the financing of terrorism that can be grouped into three categories: prohibition provisions, seizing and freezing provisions and lastly monitoring provisions.12

The United Nations Security Council (‘Security Council’) passed the Security Council Resolution 1373 (‘Resolution 1373’) in 2001 as an effort to further unite state parties in the suppression of the financing of terrorism globally. Resolution 1373 has the effect of binding all UN Member States to ‘prevent and suppress the financing of terrorist acts’ (Davis 2005: 180). Specifically, the resolution obliges UN Member States to sign and ratify the ICSFT and enhance cooperation with other Member States in accordance with the aim of the Convention.13 The ICSFT is one of the most unanimously accepted UN Conventions; 117 nations have now ratified the ICSFT with the primary influx occurring post-September 11 2001.14

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11 Ibid., Preamble para. 12.
12 ICSFT.
13 SC Res 1373, UNSCOR., 56th session, 4385th meeting, UN Doc S/RES/1373 (28 September 2001) (‘Resolution 1373’).
15 ICSFT.
While the offence of financing terrorism must be ‘wilful’ in order to be deemed as an offence,,\(^{16}\) it is not necessary that the funds provided or transferred are actually used to carry a terrorist plan to fruition, or for that matter that the funds even reach their intended terrorist recipient.\(^{17}\) Further complicating this issue is the lack of international consensus on a definition of terrorism (see, e.g., Lim 2005: 399). Through examining the ICSFT it becomes apparent that a grey area exists between the requirement of proving direct intent to provide funds to a terrorist organization and a less determinable mens rea, such as a recklessness standard.\(^{18}\) In this regard the Convention’s ambiguity could be interpreted by many Member States as a requirement to include a lower threshold of mental culpability, perhaps even as low as that of negligence,\(^{19}\) when ratifying the Convention into domestic legislation. This becomes particularly concerning when viewing the mens rea of the offence as the subjective criterion that it is portrayed under the ICSFT.\(^{20}\)

The UK takes a broader approach in legislative countering of terrorism than is provided for in the ICSFT. It is an offence under the Terrorism Act 2000\(^{21}\) to receive, provide or invite another to provide money, or other property, with the intent that it should be used for the purposes of terrorism.\(^{22}\) Further diminishing the mens rea threshold, individuals need only have reasonable cause to suspect that funding may be used for the purposes of terrorism;\(^{23}\) a low threshold of proof indeed. In addition to this, the actus reus of the crime also bears a somewhat lower threshold than that suggested by the ICSFT,\(^{24}\) given that an individual needs only to possess money that may be used for the purposes of terrorism.\(^{25}\) Further exacerbating this issue, the actus reus aspect of the offence of terrorism under this legislation is determinable as the action, or the mere threat of action, that is made for advancing a cause in an attempt to influence the government.\(^{26}\) This definition of terrorism is extremely broad, rendering actions of mere civil disobedience or liberation and the funding thereof, tantamount to terrorism.

A large portion of terrorism financing is believed to stem from charities. Charities that fund terrorism can take on various forms; false charities or ‘front’ charities that direct a portion of philanthropic funds to advertised recipients while skimming amounts to financing terrorist activities highlight how easily good intentions can be abused. The lack of governance of non-government organizations contributes to the prominence of terrorist organizations exploiting charities to fund operations. Exacerbating this seemingly free rein of charities supporting terrorism is the social and legal climate within Southeast Asia, which has Philippine Islamic Charities diverting 50 to 60 per cent of funds to politically motivated groups and known terrorist organizations.\(^{27}\)

The use of charities to covertly fund terrorist operations seems logical, given the capacity to exploit the somewhat ungoverned field (see, e.g., Bloodgood and Tremblay-Boire 2011).

16 ICSFT, Art. 2.1.
17 ICSFT, Art. 2.3.
18 Australian Criminal Code Act 1995 (Cth), s. 5(5).
19 Australian Criminal Code Act 1995 (Cth), s. 5(4).
20 ICSFT, Art. 2.1.
21 Terrorism Act 2000 (UK) c 11.
22 Terrorism Act 2000 (UK) c 11, s. 15.
23 Terrorism Act 2000 (UK) c 11, s. 15.
24 ICSFT, Art. 1.
25 Terrorism Act 2000 (UK) c 11, s. 16.
26 Terrorism Act 2000 (UK) c 11, s. 1.
27 Zachary Abuza, Interview with a Major of the IS-AFP, Camp Aguinaldo, Quezon City, 24 January 2001.
In addition to this, the pool of available funds is sizeable with charitable giving commonplace in Islamic societies, under the pillar of *Zakat*. *Zakat* is the principal source of income for Islamic charitable organizations, and is the practice of almsgiving in accordance with the Koran (Brisard 2002: 12). It is a duty that is bestowed upon believers to give charitably for the poor and needy and to advance the cause of Allah in order to purify individuals and improve Islamic communities.\(^{28}\)

In absence of income tax, nations such as Saudi Arabia provide that 2.5 per cent of an individual's income must be donated to a charity of choice (Raphaeli 2003: 62). As such, there is a sizeable amount of funds being transferred to charities per annum, and accordingly, much of this is finding its way to terrorist organizations. A prime example is charitable donations given to the Philippines branch of one of the largest Islamic charities worldwide, the International Islamic Relief Organization ('IIRO'). It was found that these donations were transferred and used to fund operations of the aggressive Abu Sayyaf Group. This is not a singular occurrence and the lack of adequate regulation of NGOs plays a considerable role in the recurrence of this happening.

Another method of value transfer that presents an issue for counter financing of terrorism policy and is near impossible to monitor is the *hawala* network. *Hawala* is a legal method of transferring money, or value that is somewhat endemic to Islamic communities and is not bounded by national borders. Generally, the *hawala* systems deal with small sums that can either originate from a legal or illegal source (Hess 2007: 58). It does not involve the physical transfer of funds, but rather *hawala* merchants act as intermediary holding houses and take considerable fees to conduct the informal transfer (Bowers 2009: 380). It is particularly problematic in efforts to counteract the financing of terrorism as there is a lack of physical transfer of the funds, wiring details, accounts and general records. Thus there is exceptional difficulty in tracing and monitoring funds that may be directed to terrorist organizations. Additionally, it is a prominent method of value transfer, with an estimated US$300 billion having been transferred using *hawala* in the last two decades (Hess 2007: 58).

There have been at least 20 Islamic charities accused of ties to terrorism. Take the example of Muslim Aid Australia (MAA) (Kerbaj 2008). It was alleged that MAA channelled aid through an Islamic organization banned in Australia for its alleged terror links: Interpal. The Australian Federal Police and counter-terrorism agents seized computer files and financial records from MAA's headquarters in Lakemba, Sydney's Muslim heartland, during a seven-hour raid.

Interpal is the working name for the British charity Palestinian Relief and Development Fund founded in 1994 which claims to be a non-political charity to alleviate problems faced by Palestinians, focused solely on the provision of relief and development aid to the poor and needy Palestinians the world over, but primarily in the Palestinian territories, Lebanon and Jordan. Interpal has on three occasions, following allegations, been the subject of investigations by the Charity Commission for England and Wales. In all three investigations evidence was not found to prove alleged links between Interpal and organizations involved in terrorism. The US government has made allegations that Interpal is funding or supporting terrorism, but these have not been substantiated in the British courts or by the Charity Commission. This did not stop the US government prohibiting US citizens and permanent residents from doing business with Interpal through the Specially Designated Nationals (SDN) List.

\(^{28}\) Holy Qur'an, Surah At-Taubah 9: 60.
Interpal was banned by the then Australian foreign minister Alexander Downer in 2003 following the American SDN list. Mr Downer added Interpal to the Department of Foreign Affairs and Trade’s Consolidated List. Now, the question is: Can MAA be considered breaching a maximum 10-year prison sentence and fines of more than $275,000 for individuals and more than $1.1 million for organizations as it channelled its aid to the organization that is free from any wrongdoing in the UK, but considered ‘dangerous’ in Australia and the US? Put differently, as different countries have different list of terrorist organizations, based on their own intelligence sources, should any Muslim who pays his/her charity through MAA that sends money to Interpal in the UK that provides food for Palestinians be considered as helping a terrorist organization?

MAA is still in operation today. The matter did not go to the Court and it seems that the Police could not find any link between MAA and terrorist organizations. Another example is provided by a Chicago based charity, Benevolence International Foundation (BIF). In the US, in 2003, the BIF head Mr Enaam Arnout, pleaded guilty to diverting money related to terrorism (*The Economist* 2013). The US government alleged that BIF sent money and communications to Osama bin Laden, purchased rockets, mortars, rifles, bayonets, dynamite, and other bombs for Al-Qaeda members in Chechnya, Afghanistan, and Pakistan, and redirected funds meant for charity purposes to purposes related to terrorism. The US government also alleged that the group was aiding the travel of terrorists, including Khalifa, Bayazid, and al-Qaeda co-founder Mamdouh Salim, and was coordinating the escape of BIF members from the Bosnian police. During a sentencing hearing in August 2003, US District Judge Suzanne Conlon told prosecutors they had ‘failed to connect the dots’ and said there was no evidence that Mr Arnout “identified with or supported” terrorism (Eggen and Tate 2005). Such allegations were withdrawn as part of a February 2003 plea bargain in which Enaam Arnaout pleaded guilty to racketeering charges. The plea bargain allowed him to provide information to prosecutors as long as charges that are related to Al-Qaeda are dropped. He publicly denies any link to the group.

It is worth noting that the US government has frozen the assets of other Islamic charities, including two of the biggest in the country, the Global Relief Foundation, also in Illinois, and the Holy Land Foundation for Relief and Development, in Texas (*The Economist* 2013).

**Conclusion**

This chapter has examined the difficulties involved in drawing a clear line between religious freedom and national security. It identified the issues with liberty and security, definition of terrorism, and religious charity. In February 2014, President Barack Obama stated that freedom of religion matters to US national security, and promoting religious freedom abroad is a key part in the country’s foreign policy (*Voice of America* 2014). However, this chapter has shown that religious freedom is a complex issue involving social, legal and political factors. Religious freedom is more than the simple freedom to believe and practice a ‘religion’. It is the power of ideas, values, beliefs, and related behaviours that support the ideals a society holds as aspirational. This is in part because religious freedom includes other civil liberties such as freedom of conscience, freedom of speech, freedom of assembly, and freedom of association. The constitutional protection of freedom of religion is a necessity. In a religiously pluralistic world, granting the guarantee is also in the state’s best interest.

However, in so doing, the constitutional state faces the paradox of tolerance. It grants a protected sphere to individuals and organizations that may not be inclined to reward the protection by being tolerant themselves with competing religions or with the state. Religious
groups might push the secular legal system to reach a compromise and concessions. For instance, the supporters of a strong religion would take the idea of pluralism to the extreme by putting one religion’s rule over other normative systems. This is partly due to the fact that religion has become an idiom of expression of people’s anger, fear, and hopes, spurred by social discontent, economic dissatisfaction, political frustration, and personal unhappiness. But one thing is for sure, one may see religion as an explanation of why violence occurs, but one should not use religion as a justification for committing crimes or for punishing the criminals.

Law might not be the only perspective or the only answer when it comes between religion and security. As this chapter has shown, we don’t even have a consensus on the definition of terrorism under international law. But on the other hand, it would be problematic to see the intersection of religion and law by only using security perspectives, as this chapter has demonstrated in the case studies of religious charity vis-à-vis financing terrorism and religious profiling vis-à-vis national security. We should be aware of the limitations of religious freedom, law and security. Silvio Ferrari reminds us that there is the danger of criminalizing religion instead of religious violence, and religious freedom instead of religious extremism (Ferrari 2004). One of the problems faced by many liberal democratic countries is the inability of legal systems to cope with pluralism. We need to think outside the legal arena in order to pursue communication and mutual understanding. Only by acknowledging such limits can one offer a further avenue for negotiation, reciprocity, exchange and perhaps accommodation.

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