El Salvador: Repression in the Name of Anti-Terrorism

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El Salvador: Repression in the Name of Anti-Terrorism

Mirna Cardona†

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Introduction

The rising concern about terrorism after the tragic terrorist attacks against the United States on September 11, 2001 has allowed many countries to use the guise of fighting terrorists to intensify their suppression of

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political opponents, separatists, and religious groups. The use of anti-terrorism legislation to suppress dissent is successful because of the combination of recent terrorist attacks, political sentiments, and the lack of a precise definition of terrorism in the international community. At their annual meeting in Geneva in June 2003, United Nations (UN) special rapporteurs and independent experts expressed concern about the growing threats against human rights that have resulted from the varying policies, legislation, and practices that many countries have adopted in the name of fighting terrorism. In particular, the UN rapporteurs expressed concern about "the indiscriminate use of the term 'terrorism', and the resulting new categories of discrimination."

The Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT) Act of 2001 (the Patriot Act) is an example of anti-terrorism legislation that was passed hastily and resulted in vague legislation which grants the government broad powers to monitor citizens. Yet, after the signing of the Inter-American Convention Against Terrorism, other countries used the Patriot Act as a model for their anti-terrorism laws. El Salvador was one of the


2. See Ben Golder & George Williams, What Is 'Terrorism'? Problems of Legal Definition, 27 U. NEW S. WALES L.J. 270, 271-72 (2004) ("Today, it is clearly necessary to develop a coherent legal description of terrorism. . . . For example, national laws now criminalize 'terrorist acts', give police enhanced powers of investigation and arrest in regard to such offences, establish regimes for the electronic surveillance of people suspected of terrorism, deny visas to people engaged in terrorism, freeze the assets of 'terrorist organisations' and impose trade sanctions on countries that harbour or support terrorists."); Sharon H. Rackow, Comment, How the USA Patriot Act Will Permit Governmental Infringement upon the Privacy of Americans in the Name of "Intelligence" Investigations, 150 U. PA. L. REV. 1651, 1651-52 (2002) (noting the political sentiments following the events of September 11th allowed the passage of legislation that greatly restricted domestic liberties).


4. Id.


6. See, e.g., Rackow, supra note 2, at 1651-52 (noting the Patriot Act was formed "without deliberation or debate" and that several provisions of the bill permit the government to intrude upon the private lives of law-abiding Americans); see also Adam Clymer, Antiterrorism Bill Passes; U.S. Gets Expanded Powers, N.Y. TIMES, Oct. 26, 2001, at Al ("Senator Feingold, while praising his colleagues for denying Mr. Ashcroft some of the powers he sought, complained of 'relentless' pressure to move quickly, 'without deliberation or debate.'").


countries that joined in the war on terror and used the Patriot Act as a model for its own legislation. On October 17, 2006, the Salvadoran legislature enacted a vague anti-terrorism law, Decreto No. 108, the Special Law Against Acts of Terrorism (SLAAT) which allows the government to repress its citizens' right to free expression—a right protected both under international law and the Salvadoran Constitution. The Salvadoran Executive has used this anti-terrorism law to quiet political dissent and to threaten Salvadoran citizens' democratic right to free speech.

A student protest in 2006 served as the excuse for enacting the SLAAT. On July 5, 2006, students at the University of El Salvador protested against rising bus ticket prices. Riot police arrived at the University of El Salvador to calm the protests. Police officers fired tear gas at the students and violence ensued. Two officers died and ten were wounded. Students and members of the faculty and staff were also injured. President Tony Saca blamed the violence on the Farabundo Marti National Liberation Front Party (FMLN), the group that fought against the government during the twelve-year civil war. The government considered this protest a threat to national security, and so the legislature began working to enact the current anti-terrorism law.

The SLAAT appears neutral on its face, but the government is applying the law in a way that suppresses opposition. Although the use of anti-terror...
orism laws to repress dissent is a common problem in many countries,\textsuperscript{22} El Salvador's recent history with civil war and the assassinations of those opposing the government make it especially important for El Salvador to address this issue.\textsuperscript{23} If the Salvadoran government continues on the current path of repression, it will cause a breakdown of democracy.

The Salvadoran anti-terrorism law violates the constitutional rights of its citizens. Article 6 of El Salvador's Constitution grants citizens the right to "express and to freely spread their thoughts,"\textsuperscript{24} and provides that this right "will not be subject to prior examination, censorship nor caution."\textsuperscript{25} Yet, the government is violating the right to free expression through the application of the anti-terrorism law. El Salvador is also a party to various international agreements that protect freedom of expression and the right to peaceful assembly.\textsuperscript{26} The government's acts at the University of El Salvador violated these rights as well.

This Note will focus on El Salvador as an example of one of the many countries that has adopted vague legislation against terrorism and then used it to repress political dissent. This study will illustrate the dangers that potentially face citizens if other countries also adopt overly broad and vague anti-terrorism legislation. Part I focuses on the international community's need for a more precise definition of terrorism. It also provides examples of countries that have enacted vague anti-terrorism legislation and describes how these countries have used such legislation for inappropriate purposes. Part II focuses on El Salvador's definition of terrorism. This section also compares El Salvador's recent history of repressing dissent and violating human rights with its current application of the SLAAT. Finally, this section discusses the theory of authorized repression and how central governments legitimize oppression. Part III illustrates how the

\begin{itemize}
  \item \textsuperscript{22} See, e.g., Karima Bennoune, \textit{Terror/Torture}, 26 \textit{Berkeley J. Int'l L.} 1, 25-26 (2008) (noting that Amnesty International frequently critiques reports using the word "terrorism" to categorize non-violent dissidents); Stanley A. Cohen, \textit{Law in a Fearful Society: How Much Security?}, 54 \textit{U. New Brunswick L.J.} 143, 157-58 (2005) (discussing Canadian criminal law enforcement in a post-September 11th world and how anti-terrorism legislation works to repress citizens' dissent); Dane E. Johnson, Comment, \textit{Cages, Clinics, and Consequences: The Chilling Problem of Controlling Special-Interest Extremism}, 86 \textit{Or. L. Rev.} 249, 257 (2007) ("Characterizing violent activism as terrorism is likely to repress willingness to engage in nonviolent protest for those causes. Confrontational protest activities, such as those of radical environmentalists, antiglobalization advocates, and abortion opponents, may be vulnerable to characterization as acts of domestic terrorism . . . ").
  \item \textsuperscript{24} Constitución de la República de El Salvador tit. II, ch. 1, art. 6, Diario Oficial, Tomo No. 281, 16 Dec. 1983 (El Sal.) (translated by author).
  \item \textsuperscript{25} Id. (translated by author).
\end{itemize}
SLAAT violates both the Salvadoran Constitution and El Salvador's obligations under international treaties. Part IV discusses the international implications of El Salvador's current legislation and policies.

I. The Challenge of Defining "Terrorism"

It is easy for governments to label opposition groups as terrorists and to use this claim as an excuse to suspend civil liberties and use extensive means of repression. Because of the dangers that anti-terrorism measures pose to individual freedoms, it is imperative that the international community develop a neutral definition of "terrorism" and "terrorist." Currently, the lack of a precise definition of "terrorism," both in international law and in the laws of specific countries such as El Salvador, allows legislatures to enact anti-terrorism laws that look neutral on their face, but are applied in a way that suppresses opposition to the ruling government.

A. Defining "Terrorism" Internationally

There is currently no widely accepted, neutral definition of "terrorism." The UN has defined terrorism as "criminal acts intended or calculated to provoke a state of terror in the general public, a group of persons or particular persons for political purposes." This definition, however, lacks consensus and is quite vague. The lack of a clear internationally accepted definition of terrorism is due to unsuccessful efforts to draft an anti-terror convention and because of the difficulties in getting states to agree. For example, many states disagree on whether the actions of military forces during armed conflict should be jurisdictionally excluded from the definition of terrorism.


29. See infra Part III.


the definition of terrorism. Some states argue that various UN General Assembly resolutions and declarations, as well as anti-terrorism conventions, contain a central definition of what constitutes terrorism under international law. Others argue that the problem of defining terrorism still exists even with such resolutions, declarations, and conventions. Despite disagreement about the definition of terrorism, most states agree on the importance of having an internationally accepted definition of terrorism.

Professor Christopher Blakesley agrees that it is imperative to have a neutral definition of terrorism. He defines terrorism as

violence committed by any means; causing death, great bodily harm, or serious property damage; to innocent individuals; with the intent to cause those consequences or with wanton disregard for those consequences; and for the purpose of coercing or intimidating some specific group, or government, or otherwise to gain some perceived political, military, religious, or other philosophical benefit.

Blakesley's definition is more neutral than the legal definitions that countries have adopted in their domestic legislation. Notably, his definition encompasses acts of terrorism by both state and non-state actors. Unfortunately, Blakesley's definition is not yet widely accepted. As a result, the term "terrorism" remains overly inclusive because almost all acts of violence committed for political purposes fall within its scope.

A problem with defining terrorism is that states have a vested interest in a vague definition that allows them to include many persons and groups within it, while allowing the state itself to use terrorism without penalty. To this end, states have defined terrorism in a way that excludes state terrorism and allows for a defense of "extreme emergency." This defense, in effect, creates a double standard by justifying a state's use of terrorism in

36. See generally Reuven Young, Defining Terrorism: The Evolution of Terrorism as a Legal Concept in International Law and its Influence on Definitions in Domestic Legislation, 29 B.C. INT'L & COMP. L. REV. 23, 23 (2006) (arguing that there is a core international law definition of terrorism).
38. See id. at 1048-49; Young, supra note 36, at 31-33.
39. BLAKESLEY, supra note 31, at 46.
40. Id.
41. See Golder & Williams, supra note 2, at 275-86 (discussing statutory definitions of terrorism employed by the United States, Australia, the United Kingdom, Canada, New Zealand, and South Africa, and noting their broad and vague nature).
42. See Christopher L. Blakesley, Ruminations and Terrorism: Expiation and Exposition, 10 NEW CRIM. L. REV. 554, 580 (2007).
43. See, e.g., Jordan J. Paust, An Introduction to and Commentary on Terrorism and the Law, 19 CONN. L. REV. 697, 721 (1987) (noting that Blakesley's "definitional scheme is flawed because it lacks a needed terror purpose or terror outcome, it contains the value-laden criterion of 'innocent', and it is otherwise far too broad to be sufficiently descriptive").
44. BLAKESLEY, supra note 31, at xviii.
45. Id. at 213-14.
certain situations. In light of these concerns, a clear definition of terrorism is necessary to ensure that a person accused of committing an act of terrorism is not deprived of due process of law.

Part of the danger in adopting a definition of terrorism that allows for an "extreme emergency" exception is that it is difficult to distinguish between state terrorism and terrorism by non-state actors. Decolonization and the Cold War led to a rise in nationalist and ideologically based terrorism, fought by large states through proxy groups. For example, the United States supported the Contras in Nicaragua against the Sandinista regime, and the Contras engaged in murders, rapes, and kidnappings of innocent civilians. In El Salvador, the United States supplied the Salvadoran army with military aid in the form of training, weapons, aircraft, and intelligence to sustain the army in its fight against the FMLN. Similar to the Contras in Nicaragua, the Salvadoran army murdered and kidnapped innocent civilians. However, the governments of El Salvador and Nicaragua did not consider many of these acts to be terrorism and no one was punished. This is because many states' definition of terrorism reflects the distribution of political power within their states.

For many years the dominant interpretation of "terrorism" has been "violence thrust on society by radical elements bent on destroying the status quo." This interpretation continues to this day and is evident in the way that many countries have used their anti-terrorism legislation to target political opponents and minorities. As a result, human rights often take a second seat to national security concerns, especially when anti-terrorism legislation is drafted hastily.

B. Examples of Vague Domestic Anti-Terrorism Legislation

India passed the Prevention of Terrorism Act (POTA) on March 28, 2002, and the Indian government later used this legislation to target

46. See id.
47. Id. at 217 (stating that a working definition of terrorism is necessary in order to prosecute people for it).
49. Id.
50. Id.
52. Id. at 108-10.
54. Donohue, supra note 48, at 19.
55. Id.
56. See infra Part I.B.
political opponents. Lawmakers modeled POTA after the Terrorists and Disruptive Activities (Prevention) Act (TADA) of 1985, which was often used inappropriately to target minorities and political dissenters. POTA's broad definition of terrorism expanded the state's investigative and procedural powers. As defined by the POTA, a terrorist:

is or continues to be a member of an association declared unlawful under the Unlawful Activities (Prevention) Act, 1967 (37 of 1967), or voluntarily does an act aiding or promoting in any manner the objects of such association and in either case is in possession of any unlicensed firearms, ammunition, explosive or other instrument or substance capable of causing mass destruction and commits any act resulting in loss of human life or grievous injury to any person or causes significant damage to any property, commits a terrorist act.

Due to the abuse of power by law enforcement officials under the guise of enforcing POTA, 79 people died while in police custody and 580 died in judicial custody between April and August of 2002. Like TADA, POTA allowed the government to use the broad definition of terrorism to target political opponents. A presidential ordinance repealed POTA in 2004, but the amendments of the Unlawful Activities (Prevention) Act (UAPA) retained some of its provisions.

China amended its Criminal Law in 2001 to criminalize participation in a “terrorist organization” and engagement in “terrorist activities.” Yet, China's legislation fails to define “terrorist,” “terrorist organization,” or “terrorist activities” anywhere. This is alarming, especially because the legislation can impose a life sentence on those who are found to have participated in a terrorist organization. With this new legislation, China has attempted to equate independence movements with terrorism. China has also systematically violated due process rights and the right to a fair trial in connection with its “strike hard” campaign.

II. Defining Terrorism in El Salvador

Like India and China, the Salvadoran government is using the new

61. See HRW World Report 2003, supra note 59, at 241; see also Kumar, supra note 57, at 207.
63. Prevention of Terrorism Act, ch. 2, § 3(1)(b).
64. Kumar, supra note 57, at 206.
66. Kumar, supra note 57, at 196.
67. Luey, supra note 35, at 159.
68. Id. at 160.
69. Id.
70. HRW Briefing Paper, supra note 30, at 10-11.
71. Id.
72. See discussion supra Part 1.B.
anti-terrorism law and its broad definition of terrorism to silence dissent. Many countries, such as India, China, the United Kingdom, and the United States, have hurriedly enacted their anti-terrorism laws, failing to take the time to carefully consider an appropriate definition of terrorism. These countries have enacted anti-terrorism laws after a poignant event that is perceived as a threat to national security or is deemed a terrorist attack. Victor V. Ramraj argues that following a threat to national security, public fear of terrorism is heightened and politicians respond to public emotion by passing laws that are aimed more at addressing public fears than at finding a solution that works for the common good. This was the case in El Salvador where the anti-terrorism law was enacted only a few months after the violent student protest at the University of El Salvador. The fact that the definitions section of the Salvadoran law fails to define terrorism explicitly evidences that the legislature was more concerned with addressing public fears than with enacting effective legislation.

A. The Special Law Against Acts of Terrorism

Because anti-terrorism laws will be used to prosecute individuals engaging in “terrorist activities,” the definition of the terrorist activities must contain clear and identifiable elements. This is so because a criminal prosecution requires that the constituent elements of the crime be proved or disproved. Thus, a legislature’s failure to properly define the criminal act of terrorism or its constituent elements may lead to illegitimate prosecutions.

The danger of wrongful prosecution is especially prevalent because states do not recognize that their own acts can constitute terrorism. States mislead themselves by thinking that only their enemies can commit terrorism. Because of El Salvador’s history of human rights abuses and repression by military officials, the idea that the state can “do no wrong”

75. See Ramraj, supra note 74, at 107, 113.
76. Id. at 113.
77. See Seeds of Revolution, supra note 14.
79. See BLAKESLEY, supra note 31, at 177.
80. See id.
81. See id. at 177-78.
82. See id. at 213 (stating that some states’ definitions of terrorism exclude the idea of state terrorism).
83. See id. at 219 (arguing that states apply the term terrorism to encompass a wide range of enemy conduct).
potentially presents a special challenge. Salvadoran people have not forgotten how the ruling powers abused and killed citizens "in the name of justice." For a long time, Salvadoran civil society was under the rule of an authoritarian regime that used terror to "restrict, restrain, and punish the citizen for his demands and peaceful manifestations." Therefore, a law in which the definition of terrorism excludes the state's repression of its own citizens is likely to increase citizens' fear that they are returning to dictatorship and repression.

Recent events in El Salvador demonstrate that the danger of the government using the anti-terrorism law for repression and wrongful prosecutions is especially prevalent in El Salvador. This danger is due to the lack of a definition of terrorism and "terrorist activities" in the Salvadoran anti-terrorism law. The only semblance of a definition of terrorism in the SLAAT is in Article 1, which states the purpose of the law.

The purpose of the law is to prevent, investigate, sentence, and punish crimes that:

by their form of execution, means and methods employed, evidence the intention to provoke a state of alarm, fear, or terror in the population, by putting in imminent danger or affecting peoples' lives or physical or mental integrity, or their valuable material goods, or the democratic system or security of the State, or international peace.

This provision is too vague to serve as a workable definition of terrorism.

Article 5 of the Special Law Against Acts of Terrorism is also too broad to be useful. Under this provision, actions executed:

against the life, the personal integrity, the liberty or safety of an internationally protected person, of the presidents of the three branches of the government or those who take their place, and of the remaining public officials or authorities; or against their families who reside in their homes, when these acts are committed by reason of the functions that these officials must perform, will be sanctioned with a prison term of forty to sixty years.

While the activities described in Article 5 of the SLAAT are criminal, they do not include the intent element that is usually included in any pro-

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84. See Bird & Williams, supra note 53, at 39 (stating that the issue of human rights abuses by military officers was a special challenge in the negotiations leading to the peace accords).


89. Id. (translated by author).

90. Id. ch. III., art. 5 (translated by author).

91. See id.
posed definition of terrorism. The UN definition described above requires intent to provoke a state of terror for political purposes. Blake-sley's definition requires a "purpose of coercing or intimidating some specific group, or government, or otherwise to gain some perceived political, military, religious, or other philosophical benefit." The provision in Article 5 criminalizes any acts aimed at "destroying or damaging" the lives or belongings of government officials and does not require an intent to cause terror or to intimidate for the purpose of obtaining a philosophical benefit. El Salvador's criminal laws could cover this type of behavior since it could be untied to terrorism.

Article 8 is another sweeping provision. This prescribes a five to ten year prison sentence to anyone who publicly "justifies terrorism or incites another or others to commit any of the crimes listed in the law." This provision is vague and is subject to the interpretation of those who consider the actor an enemy. It also seems vague enough to allow the state to curb freedom of speech, and the state used it in such a manner in El Salvador.

B. A History of Repressing Dissent: Failing Democracy and Guerilla Warfare

The Salvadoran government's current reaction to political dissent is reminiscent of the way the government dealt with dissent throughout the period of military dictatorship in the 1970s and 1980s. During that period, a powerful oligarchy and a strong military ruled via military

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92. See id.
94. BLAKESLEY, supra note 31, at 46.
98. See INT'L HUMAN RIGHTS CLINIC, HUMAN RIGHTS PROGRAM, HARVARD LAW SCH., NO PLACE TO HIDE: GANG, STATE, AND CLANDESTINE VIOLENCE IN EL SALVADOR 70-71 (2007) [hereinafter NO PLACE TO HIDE], available at http://www.law.harvard.edu/programs/hrp/documents/FinalElSalvadorReport(3-6-07).pdf (discussing the July 5, 2006 protest at the National University in San Salvador and pointing out the parallels between conflicts between the FMLN and the Salvadoran government during the civil war and the Salvadoran government's current discourse characterizing the FMLN as terrorists); see also Raúl Gutiérrez, DD HH-El Salvador: El Fantasma de La Guerra a 15 Años de la Paz [DD HH-El Salvador: The Ghost of the War to Fifteen Years of Peace], NOTICIAS EN ESPAÑOL, July 16, 2007, http://ipsnoticias.net/nota.asp?idnews=41511 (discussing El Salvador's political history and pointing to the parallels between the army's repression of civilians during the civil war and the PNC's recent repression of the protestors in Suchitoto).
99. BOOTH ET AL., supra note 51, at 114; Pablo de J. Castro Hernández, EL INICIO DEL FIN DE LA DICTADURA MILITAR, in EL SALVADOR HISTORIA GENERAL, supra note 85, at 107, 108-09.
regimes that stifled political dissent with violence and blocked progressive reform. Paramilitary groups, backed by the government and the oligarchy, massacred anyone who spoke out against the government. Today, the paramilitary groups are gone, but the government has criminalized speaking out against it as a terrorist activity.

Between 1970 and 1977, El Salvador experienced a series of fraudulent elections that undermined its democracy. If an opposition candidate won an election, the National Coalition Party, the military, the oligarchy, and the United States prevented his assent to power. During 1975 and 1976, then President Arturo Armando Molina attempted to implement Agrarian Reform that would redistribute land to farmers in order to fight underdevelopment. However, the oligarchy and the National Association of Private Companies violently resisted the reform. Therefore, the Legislative Assembly changed the law that would create the Salvadoran Institute of Agrarian Reform and ensured the project’s failure. This history of preventing the opposition party from taking control of the government has great potential to repeat itself today, especially because conservative governments have ruled El Salvador since the end of the civil war.

During the 1970s, farmers, laborers, and teachers knew that the corrupt government expected them to be obedient, yet they organized and started revolutionary social movements anyway. Teachers organized strikes and protests against the government’s proposed educational reforms. The teachers opposed the reforms because they would hurt the educational system. Organized student groups and labor organizations joined the protests in solidarity. President Molina responded to the protests with military intervention. On July 19, 1972, he closed the University of El Salvador and accused students of being communists.

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101. See id.
102. See infra Part II.C.
104. See id.
105. Id. at 110.
106. See id.
107. See id.
108. See id. at 110–18. The current trend of increased repression is probably, in part, a result of the increasing support for the more liberal opposition party in El Salvador and the threat it presents to the conservative government’s continuing dominance. See Saca afirma que victoria del FMLN alejaría al país de Estados Unidos [Saca Affirms that FMLN’s Victory Will Distance the Country from the United States], EFE NEWSWIRE - RELEVANTES DE CENTRAL AMERICA (El Sal.), Nov. 12, 2007, http://noticias.terra.com/articulo/html/act1035741.htm [hereinafter Saca Affirms FMLN’s Victory]; see also Almeida, supra note 100, at 184.
110. Id. at 112.
111. Id.
112. Id.
113. Id. at 113.
because they were inspired by revolutionaries Che Guevara and Salvador Allende. University authorities and foreign professors were thrown out of the country. In September 1973, the government opened the University under the direction of the Provisional Governing Council of the University of El Salvador (the Council). The Council-backed University Police violently oppressed the administrators, professors, and students. It appears that the fear of communism that existed in the 1970s has yet to dissipate. The current Salvadoran government, under President Elias Antonio Saca, has warned citizens that electing candidates from the FMLN party in the upcoming elections will lead the country to communism.

The oligarchy has also accused the progressive wing of the Catholic Church of destabilizing the social order by informing the poor and the farmers of their rights and encouraging them to organize to fight for those rights. During the 1960s and 1970s, the number of Catholic Christian base communities (CEBs) increased in both urban and rural neighborhoods, and in the 1970s, these CEBs made increasing political demands for the poor. Between 1970 and 1982 many priests were persecuted and some were assassinated. In 1977, Archbishop Oscar Arnulfo Romero organized protests against the government in response to the assassinations. He demanded that the government explain the reasons behind the assassinations, but the government refused to take responsibility. In March 1980, he too became a victim of the government’s repressive powers when a Death Squad, a group of paramilitaries with government authority to assassinate dissidents, killed him.

In 1977, Military General Carlos H. Romero, who identified with the military and the oligarchy, came into power, though many suggested that he won by way of electoral fraud. General Romero announced that he would not tolerate leftist terrorism, but that his regime would bring social change and tranquility. On February 28, 1977, the Unión Nacional Opositora (UNO), an opposition party, protested the electoral fraud at Plaza Libertad. Government forces massacred the protestors at the

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114. Id.
115. Id.
116. Id.
117. Id.
118. Id.
120. See Saca Affirms FMLN’s Victory, supra note 108.
122. Booth et al., supra note 51, at 101.
123. Id. at 102; Hernández, supra note 99, at 113.
125. Id.
126. Id. at 114.
127. See id. at 110; see also Booth et al., supra note 51, at 101.
129. Id.
plaza and exiled UNO’s candidates.\textsuperscript{130} The ruling powers accused UNO of being a Christian-Marxist alliance that would introduce El Salvador to communism via the Church’s influence.\textsuperscript{131} To prevent further political opposition, President Romero enacted the Law of Defense and Guaranty of Public Order on November 27, 1977.\textsuperscript{132} Since the 1960s, the oligarchy had financed emerging groups of paramilitaries.\textsuperscript{133} One such group was The Nationalist Democratic Organization (NDO), a rightist paramilitary organization formed in the late 1960s with direct ties to government security forces.\textsuperscript{134} This group endeavored to suppress peasant organization, and it did so with increasing violence.\textsuperscript{135} Under the Law of Defense and Guaranty of Public Order, the NDO and other paramilitary groups gained authority to kill opponents of the regime; these groups became known as \textit{Los Escuadrones de la Muerte}, or Death Squads.\textsuperscript{136}

The similarities between the oppressive law passed by President Romero in 1977 and the SLAAT are striking. Both laws have the facial objective of defending the public order, while they are in fact being used to weaken the opposition. This history of repression is likely to repeat itself if the current legislative trend of repression continues.

In the 1960s, the opposition groups knew they could not survive through legitimate political means.\textsuperscript{137} They felt forced to form revolutionary groups to express their dissent and to survive the constant attacks from the government.\textsuperscript{138} Their tactics displayed influences of the Cuban revolution, the Guatemalan and Nicaraguan guerrillas, Salvador Allende, and national liberation movements worldwide.\textsuperscript{139} Between 1970 and 1979, citizens formed multiple guerilla groups.\textsuperscript{140} In 1974, the Popular Liberation Forces Farabundo Martí (FPL)—founded on April 1, 1970—and a remnant of the Salvadoran Communist Party, which had tried to organize armed struggle in the 1960s,\textsuperscript{141} organized the \textit{Bloque Popular Revolucionario} (BPR), a mass front that brought together all the peasant and union organizations associated with the FPL.\textsuperscript{142} On July 30, 1975, General Romero ordered the assassination of high school and University of El Salvador students because they were protesting in front of the Social Security Institute.\textsuperscript{143} In response, the BPR seized the Metropolitan Cathedral.\textsuperscript{144}

\begin{itemize}
\item \textsuperscript{130} \textit{Id.} at 110-11.
\item \textsuperscript{131} \textit{Id.} at 110.
\item \textsuperscript{133} Hernández, \textit{supra} note 99, at 110-11.
\item \textsuperscript{134} BOOTH \textit{ET AL.}, \textit{supra} note 51, at 101.
\item \textsuperscript{135} \textit{Id.}
\item \textsuperscript{136} Hernández, \textit{supra} note 99, at 110.
\item \textsuperscript{137} \textit{Id.} at 114.
\item \textsuperscript{138} \textit{Id.}
\item \textsuperscript{139} \textit{Id.}
\item \textsuperscript{140} \textit{Id.}
\item \textsuperscript{141} \textit{Id.}
\item \textsuperscript{142} \textit{Id.} at 114.
\item \textsuperscript{143} \textit{Id.} at 115.
\item \textsuperscript{144} \textit{Id.}
\end{itemize}
The government's repressive tactics in response to the takeover of the Cathedral, such as removing people forcefully, using guns, and causing many deaths, triggered opposition groups to retaliate. Armed leftist groups kidnapped and assassinated prominent business and political leaders. These guerrilla groups were split along ideological and tactical lines. However, despite their differing positions, the guerrilla organizations all had a strong desire to start a popular democracy and get rid of the elite oligarchy—a desire which encouraged unified revolutionary action and allowed the groups to mobilize hundreds of thousands of supporters for demonstrations and strikes. The guerrillas were also able to obtain weapons from private dealers in Costa Rica and Nicaragua.

At the same time, Romero's inability to address national problems and the threat of the growing guerilla movements led to a regime change. Young military officers ousted the Romero government in a coup on October 15, 1979. The coup consisted of an alliance between military factions, the social democrats, the Christian democrats, and some business factions. This junta proposed socioeconomic reforms, but failed to subdue the increasing violence. Rightist leaders eventually took charge of the junta and expelled some of the reformers. The emerging government could no longer reconcile the different societal interests and as a consequence, the moderate left joined the revolutionary forces.

The first junta eventually failed and a second junta replaced it on January 10, 1980. At the same time, five guerilla groups joined together and formed the FMLN; they later joined with another guerilla coalition to form the FMLN-FDR. This coalition coordinated opposition strategy, fielded 4000 troops and 5000 militia, and controlled several zones of the country. They gained legitimacy abroad and began planning their takeover. Their representatives operated openly in Panama, Nicaragua, Mexico, Colombia, and the United States. Meanwhile, the U.S. government provided military aid, advice, and economic assistance to the Salvadoran government.

146. Id.
147. Id.
149. Booth et al., supra note 51, at 103.
150. Id.
151. Id.
152. Hernández, supra note 99, at 117.
153. Booth et al., supra note 51, at 103.
154. Id.
155. Id.
157. Booth et al., supra note 51, at 104.
159. Booth et al., supra note 51, at 104.
160. Id.
161. Id.
162. Id.
This military aid, in the form of training, weapons, aircrafts, and intelligence held the Salvadoran army together long enough to fight the FMLN effectively and to prolong the civil conflict.\textsuperscript{164} Despite the widespread armed conflict, El Salvador held regularly scheduled elections beginning in 1982; and in 1984, the country elected a civilian president, PDC leader José Napoleón Duarte.\textsuperscript{165} The following year, the PDC took a majority of the legislative seats.\textsuperscript{166} The United States was interested in backing Duarte and the PDC and therefore provided them with financial, technical, and political resources.\textsuperscript{167} The underlying rationale for this support was that creating opportunities for the moderates to participate in the government would aid in the fight against communism.\textsuperscript{168} But, despite the moderates' success in coming into power, the military's strength did not weaken as it continued to confirm that its interests were satisfied.\textsuperscript{169}

Even after the Central American Peace Accord was signed in Guatemala,\textsuperscript{170} neither the Salvadoran conservatives and military nor the United States were interested in compromising with the rebels.\textsuperscript{171} Consequently, both the Salvadoran military and the United States hindered Duarte's attempts to negotiate with the FMLN-FDR, even though the rebels had been willing to work out a compromise with the conservatives since late 1982.\textsuperscript{172} In 1989, despite the FMLN's willingness to participate in the presidential elections, the government ignored their request for democratic protections and had the elections without them.\textsuperscript{173} Ignoring the FMLN's offer to participate in the rising democracy was consistent with the United States' previous unwillingness to negotiate with the FMLN-FDR, and with their support of the Salvadoran military in the Salvadoran military's attempts to defeat the FMLN. Alfredo Cristiani, the leader of the conservative Nationalist Republican Alliance Party (ARENA), won the presidential election.\textsuperscript{174} Cristiani, who came from a rich aristocratic family and had been educated in the United States, had the support of the U.S. government.\textsuperscript{175}

The government's outright unwillingness to cooperate with the FMLN induced the rebel groups to increase their offensive strategies.\textsuperscript{176} The FMLN mounted a military offensive in the capital city of San Salvador to

\begin{enumerate}
\item\textsuperscript{163} \textit{Id.} at 105.
\item\textsuperscript{164} \textit{Id.}
\item\textsuperscript{165} \textit{Id.} at 106; Bird & Williams, \textit{supra} note 53, at 30.
\item\textsuperscript{166} Booth \textit{et al.}, \textit{supra} note 51, at 106.
\item\textsuperscript{167} \textit{Id.}
\item\textsuperscript{168} \textit{Id.}
\item\textsuperscript{169} Bird & Williams, \textit{supra} note 53, at 31.
\item\textsuperscript{170} Agreement on Procedure for Establishing Firm and Lasting Peace in Central America, Aug. 7, 1987, 26 I.L.M. 1164.
\item\textsuperscript{171} Booth \textit{et al.}, \textit{supra} note 51, at 106, 108-09.
\item\textsuperscript{172} \textit{Id.}
\item\textsuperscript{173} \textit{Id.} at 109.
\item\textsuperscript{174} \textit{Id.}
\item\textsuperscript{175} \textit{Id.} at 106.
\item\textsuperscript{176} \textit{Id.} at 110.
\end{enumerate}
increase pressure on the government to cooperate. In response, the military killed many innocent people who were accused of sympathizing with the rebels. The most infamous military attack was the murder of six Jesuit priest-intellectuals, their housekeeper, and her daughter at the Central American University. The increased violence inspired the United States and El Salvador’s political parties to support the peace process.

The Salvadoran government and the FMLN signed a peace agreement on January 16, 1992. The government reduced the size of its army, disassembled the National Police, and formed the National Civil Police (PNC), which drew its members from both the FMLN and from government. The FMLN disbanded its forces by early 1993 and, beginning in 1994, the government granted it political party status. The 1994 elections were the first truly democratic elections in El Salvador and parties competed for seats in the government without any claims of electoral fraud. The FMLN was even able to gain electoral support in the 2000 and 2003 elections. Since these elections, El Salvador has made a great deal of progress in creating a strong democracy. However, some people in El Salvador do not think there is a bright outlook for the future and instead believe that the country is walking a thin line that may ultimately lead to another armed conflict.

C. Repressing Dissent Today: Application of the Special Law Against Acts of “Terrorism”

Despite the fact that El Salvador is now a democratic nation, the conservative government continues to use repression and violence to stay in power. Currently, the Salvadoran government is using the guise of fighting terrorism to repress political opposition and the SLAAT is its new weapon in the fight for control.

The most controversial application of the SLAAT occurred on July 2, 2007 when President Saca planned to announce the government’s decentralization plan for the water distribution system in Suchitoto, El Salvador. Members of community groups and NGOs protested against the decentralization plan, claiming that it was a plan to privatize the water distribution service. Protestors blocked the highways that the official committee and members of the diplomatic corps would use to arrive at the

177. Id.; see also Almeida, supra note 100, at 178.
178. Booth et al., supra note 51, at 110; Cienfuegos, supra note 156, at 163.
179. Booth et al., supra note 51, at 110.
180. Id.; Cienfuegos, supra note 156, at 164.
181. Bird & Williams, supra note 53, at 34.
182. Booth et al., supra note 51, at 110-11.
183. Id. at 111; see also Almeida, supra note 100, at 178.
184. Booth et al., supra note 51, at 111.
185. Almeida, supra note 100, at 190.
186. Booth et al., supra note 51, at 114.
187. Peñate, supra note 85, at 165.
188. Gutiérrez, supra note 98.
189. Id.
event, and some protestors threw rocks at the police. The police intercepted the vehicle transporting Lorena Martinez, the president of the Association of Rural Communities for the Development of El Salvador (CRIPDES); Rosa Maria Valle, the organization's Vice President; and Haydee Chicas, a reporter who was filming the events. The police arrested Martinez, Valle, and Chicas for protesting, even though Chicas identified herself as a member of the press. Ten others were arrested and charged with "acts of terrorism." Reporters Without Borders condemned the journalist's arrest and demanded her release. Although all those arrested were released, under the SLAAT they still faced the possibility of sixty-year sentences. However, due to international activism and the prosecution's inability to substantiate its accusations of terrorism, the government has since dropped the terrorism charges against those arrested.

In an interview with National Public Radio (NPR), Lorena Martinez stated that she and the other passengers in the vehicle were neither told the reason for their arrests nor were they read their rights. Martinez argued that the purpose of the anti-terrorism law was not to counter terrorist threats, but rather to threaten social movements in El Salvador. The people arrested were charged under Article 5 of the anti-terrorism law because they allegedly acted "against the life, the personal integrity, the liberty or security of... a public official" when they threw rocks at police officials. Although the act of throwing rocks would be considered criminal under most criminal statutes, it would not likely be con-
considered an act of terrorism that justifies punishment.\textsuperscript{203} Moreover, neither Martinez nor any of the passengers in the vehicle were part of the violence at the protest because they were intercepted before their arrival at the site.\textsuperscript{204}

Mr. Astor Escalante, El Salvador's Vice Minister for Security and Public Safety, admitted to NPR that "[t]here is a big difference between Osama bin Laden and the person who threw that rock,"\textsuperscript{205} but he found this difference to be irrelevant and focused mainly on the language in Article 5 of the law.\textsuperscript{206} His attitude is consistent with some states' beliefs that only their enemies can commit terrorism.\textsuperscript{207} In fact, the conservative government currently in power in El Salvador believes that anyone on the political left is an enemy of the government and a potential terrorist.\textsuperscript{208} Mr. Ulises Campos, the Risk Management Coordinator for the environmental group Unidad Ecológica Salvadoreña (UNES), believes that the government is making the left synonymous with terrorism.\textsuperscript{209}

El Salvador's President Elias Antonio Saca reflected on the position of the current Salvadoran government when he warned citizens that electing an FMLN candidate in the 2009 elections would lead to communism in El Salvador and would separate the country from its ally, the United States.\textsuperscript{210} The FMLN, formerly a guerilla group during the civil war, has become an official political party in El Salvador and chose journalist Mauricio Funes and representative Salvador Sánchez Cerén as the candidates for President and Vice-President of El Salvador in the election.\textsuperscript{211} This development, and the conservative government's response, are of particular importance because they are reminiscent of the conditions that began the civil war in the early 1980s.\textsuperscript{212} The FMLN's increasing strength also increases the likelihood that the Salvadoran government will use the current anti-terrorism law to repress dissent, both because the conservatives consider the FMLN a threat to their power and because they consider the FMLN and anyone on the left to be terrorists. This attitude is also reminiscent of the prevailing attitude of the ruling elite in the 1960s and 1970s.

\textsuperscript{203} See NPR Broadcast, supra note 8 (quoting Human Rights Watch's statement that "destroying or damaging the belongings of government officials or their physical person" does not fall within "any reasonable definition of terrorism").  
\textsuperscript{204} See id.  
\textsuperscript{205} Id.  
\textsuperscript{206} Id.  
\textsuperscript{207} See \textsc{Blakeley}, supra note 31, at 219.  
\textsuperscript{208} See NPR Broadcast, supra note 8 (stating that the Vice Minister's assistant whispered to the reporter that those who are protesting the application of the law are from the left).  
\textsuperscript{209} Id.  
\textsuperscript{210} \textit{Saca Affirms FMLN's Victory}, supra note 108.  
\textsuperscript{211} Id.; see also Blake Schmidt & Elisabeth Makin, \textit{In a Salvadoran Leftist's Victory, a Pledge to Govern as a Moderate}, \textsc{N.Y. Times}, Mar. 17, 2009, at A5 (discussing the electoral victory of Mauricio Funes, member of the FMLN, and noting how much El Salvador's civil war aftermath infuses its current politics).  
\textsuperscript{212} See \textsc{Booth et al.}, supra note 51, at 106 (discussing pre-civil war conditions in El Salvador).
toward the leftist opposition,²¹³ and the repression is similar to that which occurred in the 1970s and 1980s.²¹⁴ The danger of returning to the past and to the breakdown of democracy is clear.

Another instance where the Salvadoran government used the SLAAT to stifle dissent occurred on February 10, 2007 in response to a protest by a group of merchants in Apopa, El Salvador.²¹⁵ The Municipal Police force confronted the merchants, who were protesting announced evictions.²¹⁶ The merchants used gasoline to burn an automobile as part of the protest.²¹⁷ Several individuals were arrested and charged under Articles 15 and 34 of the SLAAT.²¹⁸ Article 15 prohibits the use of any “weapons, artifacts, or explosive substances . . . in a public place or public installation,” and an act violating this provision is punishable with a sentence of forty to sixty years in prison.²¹⁹ Article 34 lists the aggravating circumstances that will increase the penalty indicated by the law, including the commission of a terrorist act by two or more persons.²²⁰

On February 17, 2007, the PNC arrested Vicente Ramírez, the President of the Salvadoran National Association of Workers, Salespersons, and Small Merchants (ANTRAVEPECOS) in connection with the protests in Apopa.²²¹ The district attorney charged him with acts of terrorism under the above-mentioned sections of the SLAAT.²²² Ramírez and several vendors were later released because the judge did not consider them to have participated in terrorist activities, but rather in public disorder.²²³ This example demonstrates the constant struggle for justice in Salvadoran society. Although the protestors were wrong for setting a vehicle on fire because of the danger posed to the community and themselves, the applicable punishment under the SLAAT would have been excessive—forty to sixty years of imprisonment. The potential for such severe punishment strongly supports the contention that the Salvadoran government is using the law to repress dissent.


²¹⁴. ALMEIDA, supra note 100, at 150-53; BOOTH ET AL., supra note 51, at 101-10.

²¹⁵. Cruz, supra note 73, at 2-3.

²¹⁶. Id.

²¹⁷. Id.

²¹⁸. Id.


²²⁰. Id. ch. III, art. 34.

²²¹. Cruz, supra note 73, at 2-3.

²²². Id.

D. Authorized Repression

Governments can often exercise repressive tactics with initial public approval because citizens expect that political agents will use repression to eliminate threats to citizens' safety and to protect the security of government personnel, policies, and institutions.224 Professor Christian Davenport refers to the interactions between states and dissidents as the "Law of Coercive Monopolization," under which it is almost certain that repression will follow dissent.225 Davenport argues that authorities do not necessarily wait for dissident behavior to apply repression, but instead political leaders identify threats after some dissent has already taken place, using repression under the guise that additional problems are imminent.226 It is beneficial to a state to respond to behavioral threats such as boycotts or demonstrations because countering or eliminating these behaviors increases the state's legitimacy and the possibility that the ruling powers will survive politically.227

Individuals in threatened societies are more likely to think coercion is a legitimate way to maintain the status quo.228 Governments can manipulate citizens' perceived level of threat through political means, such as press releases, congressional hearings, and legislation.229 In the case of El Salvador, the conservative government is trying to make its citizens believe there is a threat to their status quo.230 For example, President Elias Antonio Saca responded to the nomination of the FMLN's presidential candidate (and to many Salvadoran citizens' positive responses to the nomination) by warning citizens that voting for the left would lead to the rise of a communist regime and a severance of El Salvador's alliance with the United States.231 President Saca's condemnation of many protestors and demonstrators as terrorists is another example of the Salvadoran government trying to establish the presence of a threat in the minds of its citizens.232

For almost twenty years, the ARENA party has been at the forefront of the Salvadoran government and has become the status quo.233 For the first

225. Id. at 312.
226. Id. at 312-13.
227. Id. at 316.
228. Id.
229. Id. at 317.
230. See Booth et al., supra note 51, at 114.
231. Saca Affirms FMLN's Victory, supra note 108.
232. See, e.g., Daniel Choto, Saca: Violencia de Ayer es "Terrorismo" [Saca: Yesterday's Violence is "Terrorism"], AGENCIAS (El Sal.), May 13, 2007, http://www.elsalvador.com/mwedh/nota/nota Completa.asp?idCat=63296idAr=1371242 (reporting that President Saca classified the individuals who burned three vehicles during a confrontation between street vendors and the National Civil Police (PNC) as "terrorists," and insisted that the term "terrorist" applies to those who "overturn a car in the street and burns it, who attack businesses and destroys them, and who commit acts of vandalism") (translated by author); Two Police Killed in El Salvador, supra note 15 (stating that President Saca blamed the protestors' terrorist acts on the FMLN).
233. See Booth et al., supra note 51, at 111-12.
time since the party gained the presidency after the civil war, ARENA is starting to feel seriously threatened by the opposition and is fighting to maintain its position of dominance.\textsuperscript{234} The Salvadoran ruling party uses the global fear of terrorism and the pretext of fighting terrorism to repress the voice of dissent through the use of the SLAAT.

III. The Salvadoran Anti-Terrorism Law Violates its Citizens' Rights

A. The Anti-Terrorism Law Violates Article 6 of the Salvadoran Constitution

The vague language of the SLAAT makes it possible for the law to be easily applied to activities that would be protected as expressions of free speech under El Salvador's Constitution.\textsuperscript{235} Article 6 of the Salvadoran Constitution provides:

\begin{quote}
All persons may freely express and disseminate their thoughts so long as they do not subvert public order, nor harm the morality, the honor, nor the private lives of others. The exercise of this right will not be subject to prior approval, censure nor precaution; but those who in using it, violate the laws, will be responsible for the crime they commit.\textsuperscript{236}
\end{quote}

Although the Salvadoran Constitution limits freedom of speech in situations in which its expression destabilizes public order,\textsuperscript{237} Salvadoran criminal law could properly address this limitation.\textsuperscript{238} Thus, it is not necessary to apply anti-terrorism legislation to expressions of thought which subvert the public order.

If the penal law—which would likely have punished the July 5, 2006 student protests at the University of El Salvador—was not effectively addressing the problem of riots, then the appropriate response should have been to determine why the law was ineffective, not to use the incendiary term “terrorism” to categorize the crime.\textsuperscript{239} Hastily creating anti-terrorism legislation and then liberally applying it to situations that do not fit an equitable definition of terrorism may even weaken the deterrence goal of the law. If a state applies a severe punishment to a public disturbance by a few individuals legitimately protesting, then what punishment will it then use when a whole organization actually conspires to destroy the fabric of society through illegitimate means? Kent Roach argues that the harsher penalties imposed by new criminal laws against terrorism actually have marginal deterrence value.\textsuperscript{240}

\begin{itemize}
\item \textsuperscript{234} See id. at 112-13; see also Schmidt & Makin, supra note 211, at A5.
\item \textsuperscript{235} Constitución de la República de El Salvador tit. II, ch. 1, art. 6, Diario Oficial, Tomo No. 281, 16 Dec. 1983 (El Sal.).
\item \textsuperscript{236} Id. (translated by author).
\item \textsuperscript{237} Id.
\item \textsuperscript{238} Cf. Roach, supra note 74, at 130 (arguing that there are virtues to using criminal law as a response to terrorism, and thereby suggesting that the criminal law is not necessarily deficient in dealing with domestic threats to the public safety).
\item \textsuperscript{239} See id. at 136 (“9/11 was much more a failure of law enforcement and intelligence coordination than a failure of the criminal law.”).
\item \textsuperscript{240} Id. at 137.
\end{itemize}
The application of the law in the Suchitoto water protest situation illustrates the violation of Article 6 of the Salvadoran Constitution. There, the PNC confronted the protestors even though they were peacefully assembling. Many of those arrested were deprived of the due process rights afforded by Articles 11 and 12 of the Constitution. While the Constitution limits free speech in order to protect the people, the application of the anti-terrorism law is more concerned with protecting the government and government officials. The pro-government focus of the law is evidenced by the fact that many protestors who suddenly become alleged terrorists, like the protestors in Suchitoto, have been arrested under Article 5, which prohibits acts against the lives, liberty, and security of public officials.

B. The Anti-Terrorism Law Violates El Salvador's International Treaty Obligations

El Salvador is party to several international covenants, conventions, and declarations which include provisions that protect freedom of expression and the right to peaceful assembly. These include the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, and the American Convention on Human Rights. El Salvador's blind application of the anti-terrorism law violates its citizens' human rights, which are protected under these international agreements.

The Universal Declaration of Human Rights provides that "[e]veryone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers." It also provides the right to "freedom of peaceful assembly." In 1968, the United Nations International Conference on Human Rights agreed that the Universal Declaration of Human Rights "states a common understand-

241. Tania Membreño & Jéssica Ávalos, Protestas Terminan en Disturbios en Suchitoto [Protests End in Disturbances in Suchitoto], LA PRENSA GRÁFICA (El Sal.), July 3, 2007, at 28, available at http://www.laprensagrafica.net/nacion/816095.asp (quoting a protestor who stated that the PNC provoked the disturbances when the protestors were trying to assemble peacefully).
242. Constitución de la República de El Salvador tit. II, ch. 1, arts. 11-12, Diario Oficial, Tomo No. 281, 16 Dec. 1983 (El Sal.) (guaranteeing that a person who is detained should be informed in an immediate and comprehensible manner of her rights and the reasons for her detention, and that she cannot be forced to testify); see NPR Broadcast, supra note 8 (providing that Lorena Martinez of CRIPDES alleged her due process rights were violated when she, three persons from her organization, and a journalist were detained without being told the reason for the detention, without being read their rights, and without being asked for identification to verify they were in fact the persons who should be arrested).
244. See generally supra note 26.
245. UDHR, supra note 11, arts. 19, 20.
246. ICCPR, supra note 26, arts. 19, 21.
247. ACHR, supra note 26, arts. 13, 16.
248. UDHR, supra note 11, art. 19.
249. Id. art. 20.
ing of the peoples of the world concerning the inalienable and inviolable rights of all members of the human family and constitutes an obligation for the members of the international community.\textsuperscript{250} El Salvador is therefore bound by the obligations set forth in this declaration and has an obligation to respect its citizens' rights to freedom of expression and peaceful assembly.

In addition, El Salvador voluntarily ratified the American Convention on Human Rights on June 23, 1978.\textsuperscript{251} Article 13 of the Convention protects a person's right to "freedom of thought and expression," including the freedom "to seek, receive, and impart information and ideas of all kinds... either orally, in writing, in print, in the form of art, or through any other medium of one's choice."\textsuperscript{252} Article 13 also provides that the exercise of this right shall not be subject to prior censorship, but can be subject to imposition of liability to ensure the "protection of national security [or] public order."\textsuperscript{253} Finally, El Salvador is party to the International Covenant on Civil and Political Rights (ICCPR).\textsuperscript{254} Article 19 of the ICCPR preserves the same rights protected by Article 13 of the American Convention on Human Rights.\textsuperscript{255}

In the examples of the application of the Salvadoran anti-terrorism law mentioned earlier,\textsuperscript{256} the government did not prevent protestors from organizing the demonstrations. Therefore, it is possible that the Salvadoran government could argue that they did not violate any international agreements. However, the preemptive arrests of the leaders of various organizations constitute an attempt to subvert the citizens' right to freedom of expression. Further, the arbitrary arrest of Lorena Martinez and the vehicle's occupants constitutes a violation of their right to be free from arbitrary or unlawful detention or arrest—a right which is also protected in the previously mentioned covenants and declarations.\textsuperscript{257}

El Salvador's failure to safeguard the human rights protected under international law presents a threat to its internal stability.\textsuperscript{258} Contemporary human rights violations are reminiscent of the reign of the oppressive conservative government, which encouraged the murder and kidnapping of


\textsuperscript{251} See generally ACHR, supra note 26 (El Salvador ratified the Convention on June 23, 1978).

\textsuperscript{252} Id. art. 13(1).

\textsuperscript{253} Id. art. 13(2).


\textsuperscript{255} Compare ICCPR, supra note 26, art. 19, with ACHR, supra note 26, art. 13.

\textsuperscript{256} See supra Part II.C.

\textsuperscript{257} ACHR, supra note 26, art. 7; ICCPR, supra note 26, art. 9; UDHR, supra note 11, art. 9.

\textsuperscript{258} See Pérate, supra note 86, at 5 (stating that the Salvadoran Armed Forces, who violated human rights, were not destroyed at the end of the civil war and that therefore, the process of democratization was not enhanced by their destruction).
IV. International Implications of Vague Anti-Terrorism Laws

A. UN Authorization for Anti-Terrorism Legislation is Not a License for Repression

After September 11, 2001, the UN Security Council addressed the issue of international terrorism in Resolution 1373. This resolution imposes obligations on UN Member States which include preventing and repressing the financing of terrorism, preventing and criminalizing acts of terrorism, and cooperating internationally by ratifying international anti-terror treaties. This resolution was adopted under Chapter VII of the UN Charter, which authorizes the Security Council to "determine the existence of any threat to the peace, breach of the peace, or act of aggression" and to decide "what measures shall be taken in accordance with Articles 41 and 42, to maintain or restore international peace and security." Article 41 gives the Security Council authority to "decide what measures... are to be employed to give effect to its decisions, and it may call upon the Members of the United Nations to apply such measures." Because Chapter VII gives the Security Council this authority, the obligations it imposes on member states in Resolution 1373 are binding. The Counter-Terrorism Committee is responsible for monitoring states' implementation of the resolution.

Despite the Security Council's mandate to member states to criminalize terrorism, the UN has not been able to provide an agreed-upon, neutral definition of terrorism. This lack of definition, however, was not an invitation to create the vague and neutral definitions that may allow states to suppress opposition and minority groups. Unfortunately, the mandate of Resolution 1373 lacks an enforcement mechanism, and it is difficult for the UN to monitor the actual implementation of each state's legislation.

Even if states argue that their vague anti-terrorism legislation complies with Resolution 1373, they must still comply with their human rights obligations under other treaties and conventions. For example, the ICCPR

259. See Booth et al., supra note 51, at 101-08 (discussing the history of violence and abduction under the conservative government); see also No Place to Hide, supra note 98, at 70 ("In the days following the July 5 protests, government officials and opposition party leaders engaged in heated rhetorical battles that evoked the polarized discourse of the 1980s and revealed the fragility of the country's democratic transition.").
261. Bianchi, supra note 37, at 1047.
263. U.N. Charter art. 41.
264. Bianchi, supra note 37, at 1047.
265. Id.
266. Id. at 1049-50.
267. Id. at 1050.
268. Id. at 1059-60.
protects non-derogable rights that states cannot ignore, even in the case of an extreme emergency.\textsuperscript{269} Neither El Salvador nor any other country can use a "state of emergency" defense as an excuse to ignore its obligations under the ICCPR.

B. Why El Salvador's Repression in the Name of Anti-Terrorism Matters

El Salvador's violation of its obligations under international human rights treaties via the repression of political dissidents in the name of anti-terrorism should not be ignored. Allowing the Salvadoran government to continue repressing political opposition implies that the international community accepts legislation that deprives citizens of due process and violates their human rights. Further, the international community's failure to object to overly broad legislation enacted in the name of the war on terrorism will only serve to encourage other states to do the same.

The domestic consequences of El Salvador's legislation can also have an international impact. As mentioned earlier, El Salvador has a long history of responding to opposition with repression and violence.\textsuperscript{270} To counter this response, the opposition engaged in guerrilla warfare as a way to resist the government's power, and a civil war ensued.\textsuperscript{271} The current situation in El Salvador has the ingredients of another breakdown of democracy. Currently, left-wing parties are gaining power in Latin America, which some consider a threat to the international political status quo.\textsuperscript{272} If the history of civil war and government repression repeats itself in El Salvador, there could be serious consequences in Latin America. President Hugo Chavez of Venezuela, for example, would likely support leftist opposition groups because he currently supports radical parties in countries like El Salvador, Panama, and Nicaragua.\textsuperscript{273} It would not be far-fetched to see the United States getting involved in the same way as it did in the previous civil war.

Conclusion

The purpose of enacting anti-terrorism legislation is to bring more stability to the international political scene, not to create more turmoil. The Salvadoran government's current trend of repressing dissent through the use of the SLAAT represents a threat to the stability of the nation's democracy. The legislation's lack of a precise definition of what constitutes terrorism has allowed the Salvadoran government to use the law as a tool to quell political dissent, as evidenced in the repression of CRIPDES' protest...
in Suchitoto.\textsuperscript{274} Although the international community has failed to agree on a neutral definition of terrorism, this should not prevent countries from objecting to abuses of due process and internationally protected rights such as freedom of expression and freedom of peaceful assembly that stem from vague anti-terrorism laws. If El Salvador continues repressing dissent and opposition, it is in grave danger of repeating the history of civil war and human rights violations that occurred in the 1980s.

Objecting to El Salvador’s broad definition of terrorism will allow the international community to move further in the direction of consensus on an international definition of terrorism. Every step taken toward a definition will help nations to consolidate their efforts in the battle against terrorism. No nation can stand alone against the transnational threat of terrorist groups. It is therefore a mistake to think that the problems with El Salvador’s domestic legislation affect only its own citizens. A breach in El Salvador’s line of defense against terrorism and against human rights violations is a threat to the international community.

\textsuperscript{274} See supra Part II.C.