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**Conflict Mapping in Kashmir –
Role of Terrorism and Its Implications on the
Kashmir Conflict**

Bachelor thesis

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Olomouc, 2020

I hereby declare that this thesis is of my own work under the professional supervision of Mgr. Lenka Dušková, Ph.D. and to the best of my knowledge, it contains no material previously published or produced by another author. If so, it is acknowledged, and the list of references is given.

Olomouc, 2020

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Zásady pro vypracování

The aim of this thesis is to outline the history of conflict in Kashmir, map the different actors and their interests in the area as well as map the development of the conflict itself and define the interests of stakeholders. The main benefit of this work will be its focus on terrorism in the Kashmir region, from the nuclearization of the region through its development until today. The thesis will also track the cross-border overlap of terrorism and the caused consequences. The thesis will be written in English.

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Abstract

The bachelor thesis aims to highlight a new type of discussion about the conflict in Kashmir in terms of the problematic phenomenon of “terrorism”. Without a definition within the United Nations, it left the decision on interpretation and solution with the problematic “terrorism” warfares on states which often designate the events in a different way. The core question for the author is how terrorism fits in the Kashmir conflict – how it has evolved in the region, and what role it plays today. As a result of the latest development – the Office of the High Commissioner for Human Rights’ publication of two reports (2018 and 2019) on Human Rights Violations in Kashmir areas administrated by different state actors – the author discusses the violations of human rights related to terrorism with reference to the principles of the international (humanitarian) law. The author considers fundamental to distinguish terrorism from all other types of fighting and violence which are mentioned the most when describing the Kashmir conflict. Attention is paid to individual state actors involved, their views and definitions not only on terrorism, but also on the whole conflict over Kashmir.

Key words: Terrorism, Kashmir, Jammu and Kashmir, India, Pakistan, China, United Nations

Abstrakt

Bakalářská práce si klade za cíl zdůraznit obnovení diskuzí o Kašmírském konfliktu, a to z hlediska problematického fenoménu „terorismu“. Bez definice v rámci Organizace Společnosti Národů bylo ponecháno rozhodnutí o definici a přístupu k terorismu na státech samotných. Ty však mohou za případný „teroristický čin“ považovat odlišné případy. Klíčovou otázkou autorky je jakým způsobem zapadá terorismus do konfliktu o Kašmír – jak tam vznikl a jakou roli hraje v konfliktu dnes. V důsledku posledních událostí – vydání dvou zpráv Úřadem Vysokého komisaře OSN pro lidská práva (2018 a 2019) – autorka diskutuje masivnímu porušování lidských práv spojované s terorismem s odkazem na principy mezinárodního (válečného) práva. Autorka považuje za zásadní rozlišit terorismus od všech jiných nejčastěji zmiňovaných typů bojů a násilí v souvislosti s Kašmírem. Pozornost je věnována jednotlivým zainteresovaným státním aktérům, jejich pohledům a definicím, a to nejen ohledně terorismu, ale i v případě sporu o Kašmír.

Klíčová slova: Terorismus, Kašmír, Džammú a Kašmír, Indie, Pákistán, Čína, Organizace spojených národů

Abbreviations

AI	<i>Amnesty International</i>
AII	<i>Amnesty International India</i>
ATA	<i>Anti-Terrorism Act</i>
AU	<i>Austria</i>
BBC	<i>British Broadcasting Corporation</i>
CA	<i>Canada</i>
FATA	<i>Federally Administered Tribal Areas</i>
GC	<i>Geneva Conventions</i>
GB	<i>United Kingdom of Great Britain and Northern Ireland</i>
HR	<i>Human Rights</i>
HRW	<i>Human Rights Watch</i>
HuM	<i>Harkat-ul-Mujahideen</i>
ICRC	<i>International Committee of the Red Cross</i>
IHL	<i>International Humanitarian Law</i>
IN	<i>India</i>
ISI	<i>Inter-Services Intelligence</i>
ISIS	<i>Islamic State in Iraq and Syria</i>
ISKP	<i>Islamic State of Iraq and the Levant</i>
J&K	<i>Jammu and Kashmir</i>
JeM	<i>Jaish-e-Mohammed</i>
JKCCS	<i>Jammu Kashmir Coalition of Civil Society</i>
JKLF	<i>The Jammu and Kashmir Liberation Front</i>
LeT	<i>Lashkar-e-Taiba</i>
LoC	<i>Line of Control</i>
NACTA	<i>National Counter Terrorism Authority</i>
OHCHR	<i>Office of the High Commissioner for Human Rights</i>

POTA	<i>Prevention of Terrorism Act</i>
POTO	<i>Prevention of Terrorism Ordinance</i>
POW	<i>Prisoners of War</i>
PPC	<i>Pakistan Penal Code</i>
PSA	<i>Public Safety Act</i>
RU	<i>Russian Federation</i>
SATP	<i>South Asia Terrorism Portal</i>
SFC	<i>Security Force Personnel</i>
TADA	<i>Terrorist and Disruptive Activities (Prevention) Act</i>
TAJK	<i>Tehreek-e-Azadi-e Kashmir</i>
UAPA	<i>Unlawful Activities Prevention Act</i>
UJC	<i>United Jihad Council</i>
UN	<i>United Nations</i>
UNHCR	<i>United Nations Human Rights Council</i>
UNICP	<i>United Nations Commission for India and Pakistan</i>
UNMOGIP	<i>United Nations Military Observer Group in India and Pakistan</i>
UNODC	<i>United Nations Office on Drugs and Crimes</i>
UNSC	<i>United Nations Security Council</i>
US	<i>United States of America</i>
U.S.S.R	<i>Union of Soviet Socialist Republics</i>

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Introduction

The initial thought of writing this thesis came up from author's long-term interest in the analysis of the conflicts in the world. The disputed Kashmir territory has become once again the subject of international discussions, as is evidenced by the delegations of India and Pakistan who blame each other and are pulling out the Kashmir topic at the international fora, which the author could have witnessed during the internship at the Permanent Mission of the Czech Republic to the United Nations Office and other International Organisations at Geneva. Much was written about the Kashmir conflict, studying it from the historical, political, security and many other points of view. However, the aspect of terrorism with a focus on the countries claiming the area and their background and policies has not been studied enough. Terrorism is gaining its importance in the world and has turned into a pressing matter within many regions, especially in South-East Asia, and more particularly in India and Pakistan who live in a long-term disruptive relationship affected by terrorism. This is proven in the report by the Global Terrorism Index (GTI) from 2019, which ranks both countries among the top 10 most affected by terrorism. Furthermore, Bukhari and Dim (2018; 201) claim that *Terrorism and counter-terrorism approach is being used as a tool for deliberate deferral to this [Kashmir's] historical dispute for the last two decades*. Their hypothesis is supported by an in-depth research of dozens of peace efforts interrupted by terrorist attacks occurring in Kashmir (usually within weeks or months) between 1999 and 2016. It is for that reason why terrorism has become and remained the key theme for this thesis; it is an integral form of warfare in Kashmir's conflict since the definition of terrorism in the region up until today. Therefore, some other topics mentioned in the original assignment could not be addressed.

Henceforward, a fragmented and non-existent global definition of terrorism provides many loopholes for state-actors involved as well as for the terrorists and, among other factors, obstruct to a peaceful solution to this dispute. This bachelor thesis does not serve to exhaust the topic, but with its carefully chosen themes it draws its attention to the need of linking further researches of the Kashmir conflict to terrorism and furthermore distinguish terrorism from other types of warfares and properly explain the used terminology in media, as well as within the studies.

Methods and Objectives

Throughout the course of research for this thesis, the author found various books tracking the history of Kashmir's conflict. Specifically, those of V. Schofield, S. Ganguly and R. G. Wirsing have served to the author as a basic overview and introduction of the whole situation in Kashmir based on their numerous and recurrent positive criticisms among other scholars and experts on the topic (originating from e.g. *The Foreign Policy Research Institute*, *Council on Foreign Relations* or *The Round Table*). By these, they were particularly appreciated for their efforts to investigate the issue impartially and from the perspective of the actors involved in the conflict. These authors also significantly contributed, or contribute up until today, to other well-assessed sources such as to *The Council on Foreign Relations* or *Security Studies*, examining in detail the Kashmir conflict, its history, the complexity of the actors, and explaining the escalation of the conflict and its implications for political and everyday life. In the same spirit, the selection of work of other authors and academics in both articles and media was mainly based on their connection to these authors (e.g. Bhatt who refers to Ganguly or Swami – author of a chapter in a book *The Kashmir Question: Retrospect and Prospect* edited by Ganguly).

There are various books and articles about terrorism and terrorist activities linked to the Kashmir region. Throughout the author's research on the Kashmir conflict it emerged that the main actors in the present dispute are India and Pakistan. Therefore, the following research on terrorism and its role within the area the author needed to be compared to numerous research outputs made by not only International but also India's and Pakistani authors. As a summary of these, the author used, among others, the *Bibliometric study* published in 2018 by Loan and Shah. Researches from the University of Kashmir also served as a local source. The author encountered various challenges, especially in a form of unilaterally focused studies written by scholars originating from the countries in the dispute more or less influenced by their country's politics and position. Though, to her best knowledge, these articles have been analysed with reference to the specific point of view and complemented with the perspectives of the other actors in the conflict. The same approach was applied in the cases of supporting the generally valid examined thesis which, if required, were quoted from Indian, Pakistani, as well as international authors. Sometimes, all of these were mentioned to create a better neutrality and general facts, such as in the case of defining the milestone of beginning of terrorism in the area in chapter 4.

The intention of this thesis is to analyse the role of terrorism and its implications within the Kashmir conflict. To gain a deeper understanding of the gap within the Kashmir conflict and terrorism, the author will address the following, more specific research sub questions:

1. What are the key actors involved in the Kashmir conflict?
 - What is their position within the Kashmir conflict?
 - How does this position influence their mutual relationship?
2. What is the position of terrorism within the Kashmir conflict?
 - How is terrorism generally viewed and defined?
 - How is it individually perceived by the examined actors?
 - What are their counter-terrorism strategies?
 - Did the first strategies emerge in relation to the Kashmir conflict?
3. What types of fighting are most associated with the Kashmir conflict?
 - What are their differences and similarities with terrorism?
4. How has terrorism changed the nature of the Kashmir conflict?
 - When did it first occur?
 - What were its “milestones” throughout its course?
 - What area is most affected by terrorism?
 - What role does terrorism play in the conflict today?
 - How does it interact with the international humanitarian law and human rights in the area?

Therefore, Chapter 1 begins the thesis with the definition of the territory of Kashmir and the general terminology of the area. Furthermore, it introduces the basic characteristics of the area, including the map issues bundled with the conflict and further adds reasoning why the conflict in Kashmir still matters today. Following, in chapter 2, the author determines the different stakeholders involved in the Kashmir conflict and analyses the conflict from their points of view in comparison with the others. In chapter 3 the author follows with a description of a problematic and non-existent global definition of terrorism, distinguishes terrorism from other types of fighting often used by many authors analysing the Kashmir conflict, introduces few common features of the terrorism’ definitions around the world, and argues that the set policies depend on the defining

agency. For this reason, the chapter also examines the viewpoints and counter-terrorist measures taken by the relevant state actors involved in the Kashmir conflict. Finally, chapter 4 focuses on the role of terrorism within the conflict and begins with the establishment of the most significant attacks as “milestones” and explains their course in the context of terrorism in Kashmir. Further, the term *jihad* is examined since it is often associated with the Kashmir fighting and terrorism within the area. The chapter also tracks the latest developments concerning terrorism in the region. Last but not least, the chapter focuses on the transformation of Kashmir’s warfare due to terrorism and its implications on the conflict. Many more things could be examined within this topic, however, the most recent and significant step taken by the International Community – United Nations was the issue of two Human Rights reports (last one in July 2019). Therefore, the author decided to dedicate the final examination to the linkage of these human rights violations to terrorism with regard to the international (humanitarian) law.

1. Introducing Kashmir

1. 1. Basic characteristics of the territory

Kashmir spreads over the northernmost region in the Indian subcontinent. The territory, with a total area of approximately 222,000 square kilometres, is a main disputed region between (1) India and Pakistan since the partition of the Indian subcontinent in 1947, and (2) China and India since 1962. Up until today, it still does not have clear borders. The Indian and Pakistani administrated areas are split by the “Line of Control” (LoC) recognized in 1972. However, neither of the two countries acknowledge the Line as an international frontier (Encyclopaedia Britannica, 2019).

For the purposes of this thesis, the author refers to the whole disputed area (bordered by a red line as a traditional boundary claimed by the former princely state of Jammu and Kashmir – *see figure 1*) by the general designation – Kashmir. Only when talking about a specific part, any of the terms of the areas mentioned in the next two paragraphs can be used.

55% of the Kashmir total area is controlled by India. The territory encompasses India’s claimed state of Jammu and Kashmir (J&K), which consists of the regions Ladakh, Jammu, and the (former) Vale of Kashmir. Approximately 30% of Kashmir is administrated by Pakistan; areas under its control include ‘Azad’ (Free) Jammu and Kashmir, and the Northern Areas of Gilgit-Baltistan (Schofield, 2011; Salter and Hobbs, 2002). Finally, the remaining 15% of the total area is claimed by China who became active in the eastern areas of Kashmir in the 1950s and administrates the Aksai Chin and Shaksgam regions since the 1962 Sino-Indian war (*Figure 1*). The Chinese sovereignty over those territories, has been acknowledged only by Pakistan in 1963 (Schofield, 2011).

The Kashmir region is culturally very diverse. The majority of inhabitants are Muslim, living in the Vale of Kashmir, Azad Kashmir, and Gilgit-Baltistan. The Jammu region is predominantly populated by Hindus, who also represent the largest minority in the state of Jammu and Kashmir. The third largest group are Buddhists who inhabit the Ladakh and Aksai Chin region (MRGI, 2008).



Figure 1: Kashmir disputed region; source: CIA Factbook, 2004

1. 1. 1. Map issues

Considering claims over the disputed area, each government involved in the Kashmir dispute produces a map of the territory from their point of view, disregarding the actual control. On India's part, the Criminal Law Amendment Act from 1961 section 2, sub-section 2, bans publishing any other map than those appointed by the Survey of India. The Survey of India further prohibits to exclude Kashmir or any of its aforementioned disputed parts from India's map (Survey of India, 2020). Pakistan, on the other hand, insists on displaying Kashmir, notably the state of Jammu and Kashmir as disputed area, as permits the United Nations (UN). The 'Azad' (Free) Jammu and Kashmir, and the Northern Areas of Gilgit-Baltistan are then on Pakistani maps as integral parts of Pakistan and, analogously, the China controlled areas are presented as integral parts of China (Global Citizen Journey, 2018).

To bypass the argument, the UN produced the least political map of the Kashmir area dividing it along the LoC. The map is accompanied by a note: *Dotted line represents approximately the LoC in Jammu and Kashmir agreed upon by India and Pakistan [as of 1972 Simla Agreement]. The final status of Jammu and Kashmir has not been agreed upon by the parties* (UN, 2011) – see *Figure 2*. It is clear that the UN's map goal, by comparison with India's and Pakistan's view, is to maintain the level of impartiality. However, this map does not capture the actual control over the territory. Therefore, many non-participants of the dispute draw as a border the LoC or the Line of Actual Control, as shows the CIA World Factbook map (*Figure 1*) compiled by the United States of America (US). The author has decided to adduce those facts, yet demonstrate the disputed region with a reference to the CIA's map since it nicely distinguishes all the disputed areas and their claimants, the internationally used names of those areas, as well as the original boundaries of the former princely state of Jammu and Kashmir, representing the initial territory that is currently in dispute.

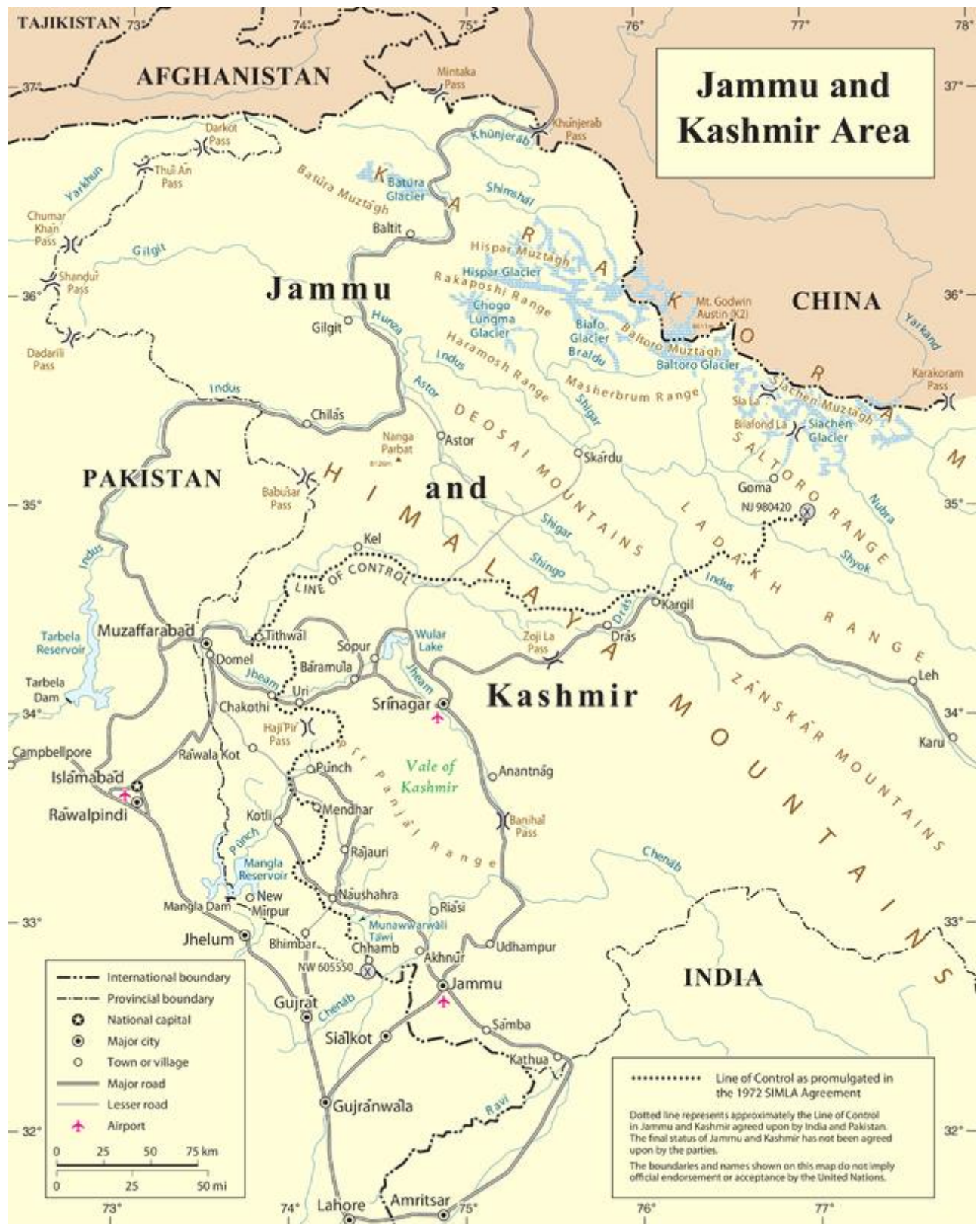


Figure 2: United Nations' Map of Kashmir Area; source: UN, 2011

1. 2. The importance of the conflict today

The Kashmir dispute still matters today. According to Schofield (2015), it is a region that still highly deserves international attention because of four main reasons. Firstly, the conflict has been ongoing for the past 73 years – since 1947 – and little has changed to diminish civilian casualties. Secondly, the main states in dispute (India and Pakistan) are still in possession of many nuclear weapons which represents one of the biggest security threats in South Asia. According to The World Nuclear Weapons Stockpile Report (2019) published by The Ploughshares Fund (the biggest foundation in the world devoted solely to examine existential threat of nuclear weapons and its elimination), India's arsenal comprises of approximately 130 nuclear weapons while Pakistan possesses around 150. Thirdly, as Schofield argues, the mindset and hostile domestic narratives of both India and Pakistan towards one another is bringing up a new, distrustful, and militant generation, adverse in relation to its neighbours over the unresolved conflict. This dangerous narrative can also be seen when those countries discuss the problems on the international fora, as observed in 2019 within the United Nations Human Rights Council (UNHRC), when the UN was releasing the second report on the human rights violation in Kashmir (UN Web TV, 2019).

Finally, it is one of the most under-reported armed conflicts with human rights violations on daily basis, especially since the 1989 insurgency arose. Human rights abuses against the Kashmir civilian population represent a primary topic of the current discussions held by scholars (e.g. Bhat, 2019; Mathur, 2014), media (e.g. Kashmir Media Service, 2020), as well as the international forum of the UN. Because of the UN's difficult position within the conflict (as described later in chapter 2), the international community has thus far offered minimal help for the people affected by the conflict. Today, especially, the search for a solution is important, with worldwide terrorist attacks on the rise, still heavily afflicting both India and Pakistan. As countries, they ranked among the top 10 (7th and 5th, respectively) most affected by terrorism, as reported by the Global Terrorism Index (GTI), 2019.

2. Mapping the actors

To understand the role of terrorists within the Kashmir conflict, it is first and foremost necessary to outline the conflict's history and define the interests of the different stakeholders in Kashmir, starting at the state level – map the actors who either take or took an active military part in the Kashmir conflict (India, Pakistan, UN) or who are military passive within the conflict, but influence it in a fundamental way (China).

2. 1. Origin of the dispute

Today's Pakistan used to be a part of India, but due to the frequent conflicts between the Indian Hindu areas and pre-dominantly Muslim areas, the independent “West and East Pakistan” were created in 1947¹ (Cohen, 2004). Unfortunately, the partition of Pakistan was not of a friendly spirit. The sharing-out of key resources between the two countries – military, finance, and the vital water resources – followed several of India's blockages and repeated compulsions before finally signing strict agreements about a fair distribution of the resources. This resulted in a border dispute, which included the key area of Kashmir. All of the disparities, whether completely solved or not, have left a bitter mark on Pakistan and made it believe that India does not want to accept the partition as a “fait accompli” (Jaffrelot, 2002).

Most of the scholars agree that the origin of the dispute over Kashmir can be traced back to 1947, when Britain withdrew from the subcontinent. At that time, the area comprised from India – the state directly under the guardianship of the British Crown – and set of states, the so-called titularly independent “princely states” (Kashmir among them) ruled by the local monarchs and recognised by the British as the predominant powers in the region (Ganguly, 2003).

In the Indian independence plan, the British colonial authorities gave freedom to the princely states to either stay independent or decide which of the two authorities – Pakistan or India – they yearned to accede (Jha, 1996). Unfortunately, after the British left, the relationship between India and Pakistan was very tense and the last British Lord urged the former princely states to rather join one or the other side (Bose, 2003). At the beginning, Kashmir chose to stay independent (Sil, 2010).

¹ Western Pakistan” represents today's Islamic Republic of Pakistan. The “East Pakistan” has gained its independence as “Bangladesh” after the Civil War in 1971.

2. 1. 1. India's perspective

From India's perspective, Kashmir had a legal right to self-determination or to join one of the "Dominos" after the British left. Late October of the same year when Pakistan gained its independence, Pathan tribesmen from Pakistan invaded Kashmir and the First Kashmir war was fought (1947-1948). Kashmir's Maharaja sought assistance from India and signed "The Instrument of Accession" four days after the war had started. Thanks to this legal document, Kashmir had become an integral part of India. Even to this day, the "legal authority" argument is used by Indian advocacy (Sil, 2010). The position further confirms India's narratives in 2019 in all sorts of media, for example in Kashmir Times (Indian Media in English dealing exclusively with the situation in Kashmir) where the Veteran Congress leader Karan Singh proclaimed "The state was founded by the ancestors of Maharaja Hari Singh²" (The Kashmir Times, 2019). This document, however, had several conditions, among them a guarantee that after the expulsion of the invaders, the will of the people of Kashmir will be examined and a plebiscite would be held. Later, thanks to the Karachi agreement, a temporary ceasefire was established but India refused to hold a plebiscite in Kashmir if Pakistan did not withdraw its troops. Nehru, a former Prime Minister of India, was repeatedly reassuring that it will be possible (Sil, 2010). However, up until today, no plebiscite was held.

The original demarcation line has shifted only slightly since the end of 1948. The biggest milestone in the Indo-Pakistan agreements over Kashmir (from Indian's point of view) was the "Simla Agreement" signed in 1972, which had as a primary goal to diplomatically recognize Bangladesh ("East Pakistan") by Pakistan and secondly affirmed that the differences between India and Pakistan would be settled by peaceful means and through bilateral negotiations (Simla Agreement, 1972; Wirsing, 1998). India has tried to maintain the dispute in Kashmir as a bilateral issue and thus oppose to any third-party interference, including the United Nations (The Indian Express Group, 2013).

India's interest in the region also sustains the economic factors, such as glacial waters providing fresh water and electricity for over a billion of people (Khan 1955; Snow, 2016). Another important factor is the agricultural production and incomes from tourism, which, unfortunately, cannot boost due to the ongoing dispute (Government of India, 2012; IBEF, 2019).

² Maharaja Hari Singh signed the Instrument of Accession

2. 1. 2. Pakistan's perspective

According to Pakistan, Kashmir's Maharaja, despite the liked independence, held two public discontents – Muslim pro-Pakistan conference and Sheikh Abdullah's National pro-Indian Conference. Poonch region, however, rose against the Maharaja and promulgated itself "Azad Kashmir" (free Kashmir). On October 24, 1947, tribal men from the north marched to Srinagar, capital of the Jammu and Kashmir State. The Maharaja then sought help in India who agreed, but only under the condition of signing an act of accession to unite India and Kashmir, which he did on October 26, 1947. Nehru then promised this will be confirmed by a referendum (Jaffrelot, 2002).

Nonetheless, Pakistan's position on Kashmir is mostly founded on a "Two Nation Theory" – a Hindu and a Muslim one – which also played an essential role in the emergence of independent Pakistan (Sil 2010; Jaffrelot, 2002). This means the majority of the Muslim areas would go with the newly founded Pakistan Dominion, and Kashmir as a largely Muslim state (77% of the population) should become a part of their territory (Sil, 2010). This position further confirms a research of other scholars such as Khan's (1955). He adds other points to Pakistan's historical claim over Kashmir; (1) its territorial contiguity to two Pakistani provinces – North West Frontier and Punjab, (2) economic factors linked from Pakistan to local logging industries, (3) the aforementioned vital water resources from three rivers (Indus, Jhelum and Chenab), and (4) most importantly the factor of strategy and security stemming from the key position of Kashmir ensuring Pakistan's safety from India. For both Dominions, Kashmir represents a strategic point in security and international contacts in the region due to its borders with a former U.S.S.R. republic (Today's Tajikistan), China, and Afghanistan (Nehru, 1949).

In Pakistan's viewpoint, India has broken the Instrument of Accession since the conjointment should be conducted by the people of Kashmir who wanted to join Pakistan, not its pro-Hindu rulers (Sil, 2010). They also emphasize the need of involving a third party to unblock the stagnant bilateral negotiations resulting from the Instrument of Accession (Jaffrelot, 2002). To date, this is Pakistan's official position on this matter (PAKUN³, 2020).

³ PAKUN = Pakistan Mission to United Nations

2. 4. Coming to the UN

The United Nations, an international organization whose goal is to maintain worldwide peace and security, has a complicated position within the Kashmir dispute. To stop the fighting or solve a dispute, it can exert its power through the United Nations Security Council (UNSC). However, the proposed resolution requires 9 out of 15 votes to pass, with none of the permanent members (China, France, Russia, USA, and UK) exercising their right to veto (UNSC, n.d.).

18 UNSC resolutions on Kashmir have passed so far, the first of which was immediately after the First Kashmir War in 1948 and the most recent one in 1971 (SCR, 2020). Unfortunately, little has been done and the dispute is still pending. Nevertheless, UN has established in 1949 the United Nations Commission for India and Pakistan (UNICP) to investigate the dispute and find a possible solution to both India and Pakistan (Schofield, 2011). In addition to that, the United Nations Military Observer Group in India and Pakistan (UNMOGIP) was formed “to supervise the ceasefire between India and Pakistan in the State of Jammu and Kashmir” (UN Peacekeeping, 2020).

The failure of a consensus between India and Pakistan over Kashmir after the First Kashmir War led India to bring the matter to attention of the UN Security Council on 1 January 1948 (Khan, 1955). India pressed charges that Pakistan nationals, including tribesmen, entered Kashmir with the purpose of fighting on India’s territory. Similarly, Pakistan has accused India of a genocide of India’s Muslims resulting in a movement of millions of Muslims to Pakistan, withholding the financial compensations after the Indo-Pakistan division and the occupation of Kashmir, which posed a threat to Pakistan’s sovereignty (Ahmad, 1951). After three months of debates, the UNSC decided via resolution that the Kashmir dispute should be solved through a plebiscite under UN supervision, acknowledging Kashmiri’s people right to self-determination, and the area should be demilitarized (Khan, 1955). This, however, did not happen.

India required the asymmetric treatment in the withdrawal – Pakistan first, then India. Pakistan demanded parity, stating it would have no guarantee that India would subsequently withdraw (Varshney, 1992). The UN mediators inclined toward parity but due to India’s refusal, it could not be carried out (Schofield, 2011). No agreement could be reached on the demilitarization in Kashmir then (Khan, 1955), nor today (OHCHR, 2019). However, the UN’s latest concern about the human rights violations in the area has resulted in releasing two reports

on the human rights situation in Kashmir. The latest one, from July 2019, described the situation in both India and Pakistan-administrated Kashmir from May 2018 to April 2019 (OHCHR, 2019).

2. 5. China joins the fray

People's Republic of China (further only as China) became interested in Kashmir shortly after the annexation of Tibet in the 1950s. Gradually, it started to claim the Aksai Chin region in Ladakh in the Indian-administrated part of Kashmir – the state of Jammu and Kashmir (J&K), and Hunza and the Shaksgam Valley in the Pakistan-administrated part of Kashmir. Even though China's official position on the dispute is military inactive and neutral – calling for a peaceful resolution stating Kashmir's conflict is a “leftover” from history (Jacob, 2008), China has become a “secret supporter” of Pakistan throughout the Kashmir dispute (Garver, 2004) following the Sino-Indian border dispute in 1962 and the Pak-China border agreement in 1963 (Jacob, 2008).

Multiple factors play a role for this support. Historically, China did not have a great relationship with India due to many disputes, such as disagreements in the road constructions in Kashmir – examples of which are the roads connecting Ladakh with Mt. Kailash and Lake Manasarovar, holy sites for both Hindus and Buddhists, or the former axes of the Silk Route (Shoaib and Shafiq, 2015). Chinese-claimed regions in Kashmir also contain two of the most strategic roads, Karakoram Highway – a key trade road between China and Pakistan (Singh, 2012) – and China National Highway 219 in Aksai Chin region, which connects Xinjiang to Tibet (Malik, 2010). Moreover, India as a strategic partner to the US, joined the South China Conflict in favour of the US, rebalancing the power in the Asia-Pacific region (Shoaib and Shafiq, 2015).

China seeks mainly to secure its own position in the region, and by supporting Pakistan it also secures the politics over its Muslim-majority autonomous region, Xinjiang, bordering with Kashmir. If India would win the Kashmir dispute, China would also have to renegotiate the territory Pakistan has ceded to China in the Sino-Pakistan Frontier Agreement of 1963 (Jacob, 2008). Furthermore, other factors play an important role for Pakistan's support today: (1) Pakistan can provide a safe solution to China's need for reducing its dependency on the Malaccan Straits as a conduit for oil imports, and (2) thanks to their history of a friendly relationship, Pakistan can play an essential role in the expansion of Chinese influence (Shoaib and Shafiq, 2015).

3. Defining Terrorism

The term “terrorism” is globally known and is one of the most used words of the Twenty-first century. However, despite all sorts of efforts made by various national and international law makers, academics, and states, there is still not a single world-recognized definition. Thus, in unclear cases, namely within the Kashmir’s conflict, scholars and media often tend to avoid it completely. They rather refer to a possible “terrorism act” as an insurgency (Marks, 2004), militancy (Tripathy and Rid, 2010), or guerrilla (Katju, 2016), stressing the need to distinguish between all the types of warfare used within Kashmir’s conflict. Accordingly, this can make it difficult for the reader to fully understand what the situation is about. In general, terrorism is perceived as an unlawful use of force and states duly agree that terrorism represents an illegal use of force which should be combated (OHCHR, 2008).

3. 1. Terrorism vs. Guerrilla vs. Conventional war

Not all the rules applicable in the “traditional warfare” can be implemented in a “war on terrorism” case, triggered by 9/11 attacks against the United States (Weiss et al., 2007). If “war” is declared, against whom is it? Who is the enemy? The “enemy” can also have no identifiable border or army, and it is very hard to distinguish when the “potential danger” is gone and the war can be declared over (Blum and Heymann, 2010). Firstly, all of these terms used when describing the conflict in Kashmir – terrorism, guerrilla, and (conventional) war – represent a particular strategy of insurgency with their differences. Importantly, unlike terrorism, guerrilla and conventional war seek to establish some part of physical control over a territory (Merari, 1993). Merari further argues that terrorism, as well as all the other forms of warfare, target non-combatants and civilians. What he perceives as the biggest problem is terrorism’s methodical violation of internationally acknowledged laws of war. The main differences of all strategies of insurgency are summarized in *Table 1*.

Other scholars support Merari’s claim, such as Hanle: *Terrorism is called terrorism because it violates the normative values of the target entity regarding the employment of lethal force* (Hanle, 2006; 105). According to Raswan (2014), terrorism differs in its intent from all other crimes since its purpose is to bring and keep people in a state of terror for the time needed to force a government or an organisation to either operate in a direction given by the forcing entity or not.

This entity used to be a state at first but, subsequently, terrorism became a matter of a group or an individual violence. However, as Loan and Shah (2018; 134) argue, *no one is born as terrorist, terrorists are created*. In a similar way, Laqueur (1986), with references to moralists, stated that terrorism is a natural response to persecution, injustice, and oppression.

Table 1: Characteristics of Terrorism, Guerrilla and Conventional War as modes of violent struggle

	<u>CONVENTIONAL WAR</u>	<u>GUERRILLA</u>	<u>TERRORISM</u>
UNIT SIZE IN BATTLE	Large (armies, corps, divisions)	Medium (platoons, companies, battalions)	Small (usually less than ten persons)
WEAPONS	Full range of military hardware (air force, armour, artillery, etc.)	Mostly infantry-type light weapons but sometimes artillery pieces as well	Handguns, hand grenades, assault rifles and specialized weapons, such as car bombs, remote control bombs, barometric pressure bombs
TACTICS	Usually joint operations involving several military branches	Commando-type tactics	Specialized tactics: kidnapping, assassinations, car bombing, hijacking, barricade-hostage, etc.
TARGETS	Mostly military units, industrial and transportation infrastructure	Mostly military, police and administration staff, as well as political opponents	State symbols, political opponents and the public at large
INTENDED IMPACT	Physical destruction	Mainly physical attrition of the enemy	Psychological coercion
CONTROL OF TERRITORY	Yes	Yes	No
UNIFORM	Wear uniform	Often wear uniform	Do not wear uniform
RECOGNITIONS OF WARZONES	War limited to recognized geographical	War limited to the country in strife	No recognized war zones. Operations carried out zones world-wide
INTERNATIONAL LEGALITY	Yes, if conducted by rules	Yes, if conducted by rules	No
DOMESTIC LEGALITY	Yes	No	No

Source: Merari, 1993; 226

It is crucial to bear in mind that the terrorism's nature varies pursuant to location. According to Schmid (1983; 6): *The question of definition of a term like terrorism cannot be detached from the question of who the defining agency is.* This is an important truth about the Kashmir case, since every party within the conflict has a different set of rules on how to define, perceive, and respond to an act of terror. As Hanle argues, *terror is an integral part of terrorism* and since *terror is a subjective phenomenon (...) terrorism is equally difficult to operationalize* (Hanle, 2006; 104). In other words, to understand the terrorism within Kashmir we must investigate the laws of individual states involved in the conflict, for what can India perceive as a terrorist attack can be defined by Pakistan quite differently and vice versa – depending on the designating agency.

As for the actors further examined within this thesis, the author decided to stay at the state level of the actors when examining the role of terrorism in the context of the Kashmir conflict, mainly because the state has the right to create its own laws in its territory - from this point of view the current conflict, here India and Pakistan. That is why further investigation from the point of view of terrorism is focused on these two states. The role of the UN remains mentioned since, as stated in Article 1 of the UN Charter, 1945: *The Purposes of the United Nations are:*

(1) To maintain international peace and security, and to end: to take effective collective measures to prevent and eliminate threats to the peace, and to suppress the acts of aggression or other breaches of peace, and to bring about by peaceful means, and in conformity with the principles of justice and international law, regulation or settlement of international disputes or situations that could lead to breach of peace.

China's policies will not be discussed within this thesis, since neither the state nor other actors living in the state carry out terrorist attacks within the conflict, thus their policies are not relevant in today's terrorism setting in Kashmir.

3. 2. UN's perspective and policies on counter-terrorism

The definition of terrorism within the international community is particularly problematic, since the UN itself comprises of 193 states of the world (UN, n.d.), all with different sets of laws and policies. A key moment for the United Nations' position on addressing terrorism were undoubtedly the events of the 9/11 attack in the United States, leading the UNSC to passing

the resolution 1368 (2001) calling “*on all States to work together urgently to bring to justice the perpetrators, organizers and sponsors of these terrorist attacks and stresses that those responsible for aiding, supporting or harbouring the perpetrators, organizers and sponsors of these acts will be held accountable*” (Resolution 1368; 2001; para. 3.). This has led some states to believe that the force can be used against both terrorists, as well as the states providing a refuge for them (Iqbal and Shah, 2018). The missing worldwide definition of terrorism, which would set up the common ground rules for combating terrorism, became far more urgent.

Despite the non-existing universal definition, The United Nations Office on Drugs and Crimes (UNODC) – a responsible body for implementing the United Nations lead programme on terrorism (UNODC, n.d.) – use a so-called terrorist “triangle”. This tool summarizes the relationships between actors in the context of terrorism and distinguish the terroristic violence from “ordinary” violence; *actor A attacks actor B, to convince or coerce C to change its position regarding some action or policy desired by A. The attack spreads fear as the violence is directed, unexpectedly, against innocent victims, which in turn puts pressure on third parties such as governments to change their policy or position.* (UNODC, 2018; 1). According to it, the violation of laws of war and contemporary challenge of targeting civilians by terrorist is one of the most severe that needs to be addressed.

The UN’s current fight against terrorism is based on the UN Global Counter-Terrorism Strategy adopted by the General Assembly in 2006, offering an exclusive global instrument to strengthen the efforts on counter terrorism on all levels. This tool stands on four pillars; (1) to stop the spread of terrorism by focusing on the conditions leading to it, (2) the prevention of and fighting against terrorism, (3) to build the UN’s and states’ capacity to fulfil pillar 2, and (4) the worldwide respect for human rights and the rule of law⁴ (UN Office of Counter-Terrorism, n.d.). Furthermore, as the rule of law states (*see footnote 4*), the UN itself (apart from its own efforts) emphasize the state’s politics put in force to encounter terrorism. Therefore, we shall further look into the policies of the parties involved in the Kashmir conflict.

⁴ For the UN, the *rule of law* is a principle of governance in which all persons, institutions, public and private, including the State itself, are accountable to laws that are publicly promulgated, equally enforced and independently adjudicated, and which are consistent with international human rights norms and standards (UN, n.d.).

3. 3. India's definition and strategies on combating terrorism

India has a significant history of fighting against different rebellions and terrorism. Besides, as Balakrishnan (2018) claims, terrorism has played an important role in funding of criminal activities and still helps keeping the insecurity both within the country and across the borders, especially what concerns the Jammu and Kashmir state. India's policies on combating terrorism became first enacted in 1987 by Act No. 28 of 1987, the Terrorist and Disruptive Activities (Prevention) Act (TADA). The law came into force because of a growing terrorist violence in the Punjab region (SATP, 2001). Though, as later confirmed by the India's Supreme Court in the "Hitendra Vishnu Thakur vs. State of Maharashtra" case, the TADA did not provide a definition of terrorism, but rather listed "unlawful terrorist activities" forbidden under this measure (Raswan, 2014). Within TADA, terrorism was associated with a political militancy. However, in 1995, India's parliament abolished the law due to a strong public criticism (Balagopal, 2000).

Later, in 2001, the Indian parliament adopted the Prevention of Terrorism Ordinance (POTO). The central government claimed this was due to an escalation of terrorist activities within India as well as across its borders throughout the radical groups (SAHRDC, 2001). This originally temporary ordinance law was further transformed into Prevention of Terrorism Act (POTA). Introduced in 2002 due to a Muslim terrorist attack on the Indian parliament (allegedly upheld by Pakistan) (Tribune News Service, 2002), it is a first one containing a definition of terrorists according to India. The definition of terrorists under this Act is following:

Whoever, (a) with intent to threaten the unity, integrity, security or sovereignty of India or to strike terror in the people or any section of the people does any act or thing by using bombs, dynamite or other explosive substances or inflammable substances or firearms or other lethal weapons or poisons or noxious gases or other chemicals or by any other substances (whether biological or otherwise) of a hazardous nature or by any other means whatsoever, in such a manner as to cause, or likely to cause, death of, or injuries to any person or persons or loss of, or damage to, or destruction of, property or disruption of any supplies or services essential to the life of the community or causes damage or destruction of any property or equipment used or intended to be used for the defence of India or in connection with any other purposes of the Government of India, any State Government or any of their agencies, or detains any person and

threatens to kill or injure such person in order to compel the Government or any other person to do or abstain from doing any act.

Further, this Act extends the definition to **(b)** *who 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* (POTA 2002, Act No. 15; sub-section (1) of section 3; in SATP, 2002).

As stated, this definition of “terrorists” was again very vague and granted a great freedom to the commission in the interpretation. Interestingly, this Act allowed the government to freely add terrorist organisations to the Schedule list⁵ at any given time, as shows POTA, 2002; sub-section (1-4) of section 18. Both laws (TADA and POTA) were very special since they authorized omissions in investigation and trial procedures (Singh, 2007), mainly focusing on those who allegedly *incited, supported, abetted, harboured, concealed, or benefited from the proceeds of terrorism* (POTA, 2002; sub-section (1) of section 3; in SATP, 2002). India was criticised in the long term by numerous human rights organisations, condemning these laws and their misuse even after the appeal of POTA, as states Amnesty International (AI), 2006. Further, they have called for a right to a fair trial and no detention of an individual without a proper examination (AI, 1994; and Human Rights Watch – HRW, 2001 and 2004). The POTA was repealed too, in 2004 (Singh, 2007).

Despite the abolishment of POTA, India has kept many of the fundamental provisions on how to deal with terrorism and integrated them into the Unlawful Activities Prevention Act (UAPA) (Setty, 2011). This law dates back to 1967 and incorporates 6 amendments up to today, the most recent one passing as terrorist Amendment Act in 2019. The concrete definition of the terrorism itself was, once more, not provided. Nonetheless, under this Act, the central government may now define a terrorist organisation if it: *(i) commits or participates in acts of*

⁵ Schedule list in this context represents an inventory of banned terrorist organisations under the POTA

terrorism, (ii) prepares for terrorism, (iii) promotes terrorism, or (iv) is otherwise involved in terrorism. The Bill additionally empowers the government to designate individuals as terrorists on the same grounds (PRS India, 2019). Once again, the Central Government may, by notification, add and remove the Terrorist organisations to the Schedule list, designated either by the Central government or as *identified as a terrorist organisation in a resolution adopted by the Security Council under Chapter VII* (UAPA Bill No. 130, 2019; sub-section 1 of section 35; in: Shah, 2019).

3. 4. Counter-terrorist arrangements and definition of Pakistan

Even though Pakistan is among the most affected countries by terrorism, Pakistani lawmakers, unlike India's, did not set up any definition to address it. Rather, they set a broad scope of terrorist activities forbidden under the law. In the past, some statutory coverage has been made through the Suppression of Terrorist Activities (Special Courts) Act, 1975; the Special Courts for Speedy Trial Ordinance, 1987; the Terrorist-Affected Areas (Special Courts) Ordinance, 1990; and the Terrorist-Affected Areas (Special Courts) Act, 1992. Those, however, only granted constitutional cover to specific courts set up for sporadic matters of terrorism brought in front of the courts (Tariq, 2019). Similarly to India, the need for addressing the terrorism issue in form of a counter-terrorism law occurred due to an increased number of insurgencies using illegal "terrorist" strategies and weapons (such as bomb blasts, suicide attacks, school explosions etc.) starting in the 1970s and intensifying in the 1980s within the Sindh and Punjab region (Ismail and Amjad, 2014). This concludes that the first Pakistani anti-terrorist arrangements did not occur in relation to the Kashmir conflict. The current law, The Anti-Terrorism Act, 1997 (ATA), addresses the lack in some ways but its vague definition also allows to the government to deal with some cases of terrorism under the Pakistan Penal Code (PPC) established in 1860 (Tariq, 2019).

Today, ATA has many amendments established due to various reasons, and through the amendments, the original definition of terrorist acts has already changed completely three times. The definition currently in force, extended by the amendments fundamentally changing the definition (ranging from 1997 to 2013), complied Iqbal and Shah (2018; 294-296) based on the ATA, 1997:

[6. Terrorism.-(1) In this Act, "terrorism" means the use or threat of action where:- (a) the action falls within the meaning of sub-section (2); and (b) the use or threat is designed to

coerce and intimidate or overawe the Government or the public or a section of the public or community or sect [or a foreign government or population or an international organization] or create a sense of fear or insecurity in society; or (c) the use or threat is made for the purpose of advancing a religious, sectarian or ethnic cause [or intimidating and terrorizing the public, social sectors, media persons, business community or attacking the civilians, including damaging property by ransacking, looting, arson or by any other means, government officials, installations, security forces or law enforcement agencies:] [Provided that nothing herein contained shall apply to a democratic and religious rally or a peaceful demonstration in accordance with law.]

Further (2) An “action” falls within the meaning of sub-section (1), if it:

(a) involves the doing of anything that causes death;

(b) involves grievous violence against a person or grievous bodily injury or harm to a person;

(c) involves grievous damage to property [including government premises, official installations, schools, hospitals, offices or any other public or private property including damaging property by ransacking, looting or arson or by any others means;]

(d) involves the doing of anything that is likely to cause death or endangers person’s life;

(e) involves kidnapping for ransom, hostage-taking or hijacking; [(ee) involves use of explosive by any device including bomb blast [or having any explosive substance without any lawful justification or having been unlawfully concerned with such explosive]];

(f) incites hatred and contempt on religious, sectarian or ethnic basis to strip up violence or cause internal disturbance;

[(g) involves taking the law in own hand, award of any punishment by an organization, individual or group whatsoever, not recognized by the law, with a view to coerce, intimidate or terrorize public, individuals, groups, communities, government officials and institutions, including law enforcement agencies beyond the purview of the law of the land;]

(h) involves firing on religious congregation, mosques, imambargahs, churches, temples and all other places, or worship, or random firing to spread panic, or involves any forcible takeover of mosques or other places of worship;

(i) creates a serious risk to safety of the public or a section of the public, or is designed to frighten the general public and thereby prevent them from coming out and carrying on their lawful trade and daily business, and disrupts civic life;

(j) involves the burning of vehicles or any other serious form of arson;
(k) involves extortion of money (“bhatta”) or property;
(l) is designed to seriously interfere with or seriously disrupt a communication system or public utility service;
(m) involves serious coercion or intimidation of a public servant in order to force him to discharge or to refrain from discharging his lawful duties;
(n) involves serious violence against a member of the police force, armed forces, civil armed forces, or a public servant;
[(o) involves in acts as part of armed resistance by groups or individuals against law enforcement agencies; or (p) involves in dissemination, preaching ideas, teachings and beliefs as per own interpretation on FM stations⁶ or through any other means of communication without explicit approval of the government or its concerned departments.]

(3) The use or threat of use of any action falling within sub-section (2) which involves the use of firearms, explosive or any other weapon is terrorism, whether or not sub-section (1) (c) is satisfied (Iqbal and Shah, 2018).

An important role within the definition and counterterrorism efforts Pakistan represents is the National Counter Terrorism Authority (NACTA) established in 2008 as an administrative entity under the Ministry of Interior. It has gained an even greater role in 2013 when, under the NACTA Act, it was acknowledged as a focal national institution on combating terrorism. This authority is responsible to (1) gather, retail, and coordinate all relevant information, as well as (2) prepare comprehensive national counter terrorism and counter extremism strategies, and to periodically review them (NACTA Pakistan, 2017). Despite all the efforts, some are concerned by the high liberation rate of people convicted from terrorism activities (allegedly only 4% of the detained are convicted; Rauf, 2012). The Iqbal and Shah (2018; 302) mark Pakistan’s definition as *imprecise and overbroad*, and further state, as in India’s case, *there is an evidence that the law has been causing human rights abuses*, similarly comparable to the criticism of India’s definition of terrorism. This is confirmed by numerous human rights organisations in their reports, such as AI, 2006; or International Federation for Human Rights (FIDH), 2018.

⁶ FM stations = Frequency modulation broadcast stations, i.e. radio stations

3. 5. Comparing India's and Pakistani views on terrorism in Kashmir

The well-known phrase *one man's terrorist is another man's freedom fighter* (as comment Iqbal and Shah, 2018; 277) could seem true in the approach of India's and Pakistan's policies in Kashmir. However, Merari (1993; 225) highlights the misuse of this phrase since *'Terrorism' and 'freedom fighting' are terms which describe two different aspects of human behaviour; The first characterizes a method of struggle and the second a cause*. He argues that groups using terrorism as a type of warfare have different manifold motives – some might be fighting for self-determination or liberation of its nation. But not all of them should be accounted as terrorism; some of the groups can be recognised as freedom fighters or terrorists, some are either of them, others neither of the mentioned. In case of Kashmir, as stated above, none of the definitions of “terrorism” and “terrorist acts” in both of those countries' politics were created merely due to the Kashmir dispute. Yet, they still represent an important part of Kashmiris lives and many are accused of terrorism.

The aforementioned definition of terrorism within India's and Pakistan's policies are both very broad but varies significantly in some viewpoints. Noor (2007), Pakistani academic, offers an interesting comparison between these two. According to his research, India looks at terrorism as *an execution of anti-state elements' political objectives attained through violence with the help of external agents*. This is quite different from Pakistan's point of view, which considers it as *a result of injustices and the oppressive policies of governments and, more importantly, 'illegal occupation by foreign forces' as in the case of Kashmir* (Noor, 2007; 76). Noor stresses that Pakistan defends Muslim freedom struggles in other parts of the world (e.g. Palestine) and thus, it supports freedom movements in Kashmir too. He offers a solution to Kashmir's terrorism not by treating the symptoms but rather addressing the root causes, which consist of occupation, oppression, and state terrorism. As for India, he adds, there is *no link between terrorism and the grievances of terrorist groups* and further supports it by a definition created by Indian military officer Mohindra (Noor, 2007; 77): *International Terrorism is not a social phenomenon born out of economic misery or frustration. In fact, it is rooted in political ambitions and designs of expansionist states and groups that are financed by them and therefore serve them*. Nonetheless, this is disputed by the aforementioned Laqueur's thesis, stating that *terrorism is a natural response to persecution, injustice and oppression*.

Looking at the terrorism from India's point of view, terrorism in both Kashmir and in the rest of India is often allegedly linked with Pakistan's sponsorship, namely with Pakistan's Intelligence Agency, the Inter-Services Intelligence (ISI) (Puroshotham et al., 2009; Ogden 2013), whereas on Pakistan's part, they do not associate terrorism in Kashmir with one agency. TRAC (2020) sets the ISI's establishment to 1948 with the intention *to facilitate intelligence gathering and sharing between the three main sections of the armed forces: the army, navy and air force*. According to this research, ISI is heavily politicised and stands out as the most compelling military intelligence agency within the country. And, as other scholars suggest, terrorism in Kashmir is associated Pakistan's military campaign, among other things, connected to Afghan insurgency extended to Kashmir (Tripathy and Rid, 2010). Puroshotham et al. (2009) further analyse different causes for terrorism within India and designate religious causes as vital ones playing the role in the case of Kashmir's terrorism, which will be additionally examined in Chapter 4. Jafa (2005; 142), another researcher of Indian origin, attempts to explain that terrorists rose in Kashmir (and namely in the J&K state) *because of their cultural identity, suppression of their political rights, and unemployment among educated Muslim youth*, especially after Pakistan's failure to conquer the territory by force in 1947 and 1965. Thus, this would talk in favour of Laqueur's thesis.

4. Analysing terrorism within the Kashmir conflict

Noor (2007) developed an argument that terrorism itself has become a new core issue, replacing the Kashmir dispute as a corner stone between the states. This encourages the further studying of terrorism when analysing the Kashmir imbroglio. For a clearer understanding, the author will briefly introduce few key events that changed the nature of terrorism in the context of the Kashmir conflict.

4. 1. “Milestones” of terrorism within the Kashmir conflict

In the next chapter, the author will discuss important “milestones” to determine the transformation of terrorist struggles and related aspects. The main stages of these “milestones” are divided into 3 subchapters – (1) dating the beginning of terrorism, (2) links to cross-border terrorism and (3) the current form and latest “milestone” attack of terrorism within the conflict. The chapter also contains a discussion over *jihad* that is often mentioned in the context of terrorism in Kashmir and discusses its similarities and differences with terrorism.

4. 1. 1. The vague beginning of terrorism in Kashmir

Many authors refer to the onset of terrorism in Kashmir as an increase of organized violent insurgency that started in the 1980s with its culmination towards the end (1987-1989) (Balakrishnan, 2018; Jafa, 2007; Tripathy and Rid, 2010). In the 90s it grew more, and there is a frequent mention of terrorist attacks led by the Islamist right groups (Swami, 2003). What makes defining the initial terrorism’s milestone difficult is that most authors do not define terrorism in a first place within their studies and generally set the onset only based on the type of attacks often associated with terrorism – such as the terror bombings by so-called *fiyadeen*, those who choose to die for the cause (Dwivedi, 2008). Simply, they often view attacks linked with the terrorist activities as the beginning of terrorism (Sil, 2010). This suggests their possible reference to the definitions of state terrorism referring to the list of terrorist-related activities, as discussed in the chapter 3, in counter-terrorist policies of India and Pakistan. In terms of weapons usage, all scholars’ definitions hereafter further support Merari’s designation of terrorism within the Kashmir conflict, as introduced in *table 1*.

Certain studies talk about a direct control and guidance by Pakistan, such as Tripathy and Rid (2010); or Bhatt (2003), who propose the linkage of terrorism in Kashmir with Pakistani active

support of proxy war⁷, which suggests the importance of the involvement of other agencies and the overall internationalisation of terrorism in Kashmir. A first organisation linked with the first terrorist incidents is considered The Jammu and Kashmir Liberation Front (JKLF) – then a leading group in the struggle for independence (Sil, 2010). In 1989 they were responsible for the kidnapping of then Home Minister of India’s daughter; in exchange for her, they demanded the release of several Kashmir militants (Jafa, 2007), which many of the academics consider as a first terrorist incident (Balakrishnan, 2018; Jafa, 2007; Tripathy and Rid, 2010). Others consider the first one to be in 1988 when two bombs blasted but missed their targets (supposedly the TV station and the Central Telegraph Office) in Srinagar, the capital of the Indian union territory of J&K (Sil, 2010). Tripathy and Rid (2010) further debate that the reason for the terrorism spread in Kashmir from Pakistan was the failure of electoral democracy and the malfunctioning of democratic institutions in general. Their study stresses the association between terrorism and democracy and alert that allowing and promoting the function of democratic institutions in the area alleviates terrorist struggles.

However, not everyone agrees with this initial milestone. Swami (2003), who studied unpublished materials issued by the Indian government, recalls the arrest of the key initiator of the JKLF, Mohammad Maqbool Butt, in 1966 already, for the murder of an intelligence officer which was also designated as a “terrorist activity”. Similarly, a great number of arrests in J&K took place as early as 1967 on terrorism-related charges when an organised group of young people failed to murder a Central Reserve Police Force constable. Notwithstanding, what could lead a majority of authors to a setup of the initial milestone of terrorism within Kashmir to the 80s and 90s is the highly intensified bomb explosions and other acts of violence on civilians and security force personnel. This also counts for the Indian State’s intensified response to the arrests of terrorists, with many of them killed because of their designation as terrorists by Indian state in 1989 (Swami, 2003).

What seems the academics generally agree on is the place where the initial phase of terrorism in Kashmir started – in the Jammu and Kashmir Indian administrated state (Balakrishnan,

⁷ Proxy war, as defined in the *Encyclopedia of the United Nations and International Agreements* (Osmańczyk, 2002), refers to an armed conflict between either state or non-state actors proceeding on behalf of other parties which are not straightforwardly involved in the hostilities.

2018; Jafa, 2007; Tripathy and Rid, 2010, Swami, 2003). The following *Table 2*, based on the Indian Union Ministry of Home Affairs data, lists the terrorist killings in the Indian state Jammu and Kashmir in its initial phase, between the years 1988-2002. It displays a rise of involvement of foreign forces. The increase in killings of identified terrorists by India is considerable. The Indian officials argue that terrorist groups’ ability to keep the violence ongoing was due to several devoted Pakistani nationals. Yet again, this suggests the cross-border overlap of Kashmir’s terrorism early in its creation within its own territory.

Table 2: Foreign vs. Kashmiri terrorists killed in J&K state between 1988-2002

	1988	1989	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002*
Terrorists killed	1	0	552	1,016	991	1,584	1,818	1,545	1,313	1,282	1,111	1,278	1,308	2,119	1,719
of which Pakistani/foreign	0	0	0	5	19	97	125	119	194	258	394	348	403	488	504
% of which foreigners	0	0	0	0.5	1.92	6.12	6.88	7.7	14.8	20.1	35.5	27.2	22.3	23	29.32

Source: Union Ministry of Home Affairs, New Delhi, in: Swami, 2003 – adjusted by the author

4. 1. 2. Kashmir’s terrorism rises across the border

As *Table 2* shows, in the first two years of terrorism in Kashmir the Islamist Right terrorists were mostly of a Kashmiri origin. However, starting in 1990 – and especially between 1993 and 1996 – a large increase in number of foreign “terrorist” fighters occurred from Pakistan, Afghanistan, and central Asia (Swami, 2003; Jafa, 2007), extending the overlap of Kashmir terrorism to other countries. As reported by India’s Ministry of External affairs in 2002, the period between 1990 and 2002 has been the deadliest for both civilian and military casualties. This was also confirmed by the compiled data of South Asia Terrorism Portal (SATP), which tracked the fatal casualties in Jammu and Kashmir between 1990 and 2017 and made their peak in 2001 – *Figure 3*⁸. Some researches, e. g. Sondhi (2004), link this peak with failed attempts to restrain the *jihadi* groups and peace initiatives and escalating trends both before and after the year 2000. According to him, many designated terrorist groups such as Harkat-ul-Mujahideen (HuM), Jaish-e-Mohammed (JeM), and Lashkar-e-Taiba (LeT) *had direct links with the Taliban and with al-Qaeda* (2004; 94). This also confirms in-depth researches by other independent think-thanks

⁸ Fatalities in the “terrorist group” bear its name based on their designation under the counter-terrorist laws of India.

such as *The Institute of Peace and Conflict Studies* (Honawar, 2005), *Council of Foreign Relations* (Bajoria, 2010) or *Terrorism Research Initiative* (Rassler, 2017). It was speculated that many members of the Islamist terrorist network crossed over to Kashmir to continue the struggle against the “enemies of Islam”. And to this category, Osama bin Laden, the leader of al-Qaeda, also included India after its continuous support by the US in the aftermath of the 9/11 attack (Santhanam, et al., 2003).

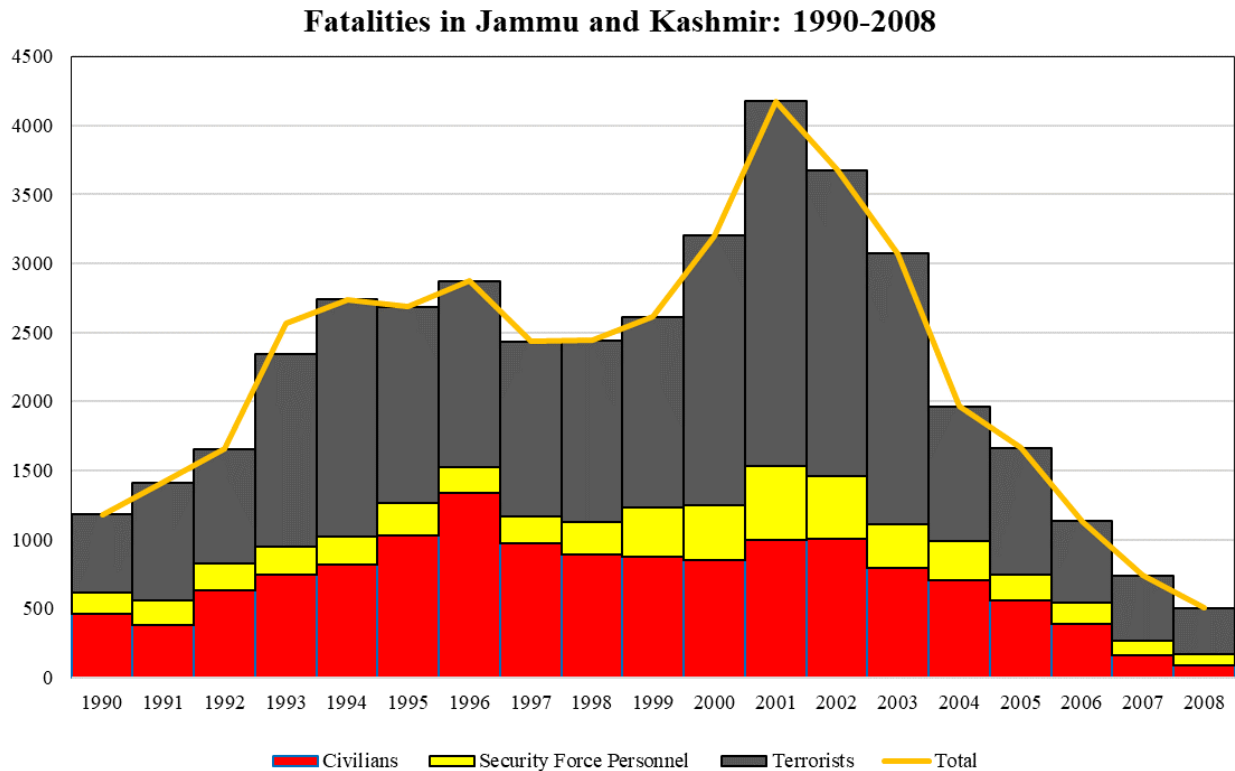


Figure 3: Civilians, SFC and designated Terrorist fatalities between 1990 and 2008; source: Ministry of Home Affairs India, in: SATP, 2019; created by the author, 2020

Oetken (2009) further reported about an internationalization of terrorism in Kashmir’s case. According to his study, terrorism in the Kashmir area relates to a state-sponsored terrorism which, as Badey (1998) states, can be in the form of money, equipment, technical assistance or as a safe haven for group members or their proponents. In Kashmir’s case, an example can be Pakistan’s assistance for terrorist groups in the means of providing training for Kashmiri militants in dozens of training camps set up in the Pakistani Administrated Kashmir (as reports Byman, 2005; or Wirsing, 1998). Additionally, as Schofield (2011) adduces and other scholars confirm (e. g. Padukone, 2011; or Fair, 2014), all the major Indian and sometimes internationally designated terrorist organisations have a base in Pakistan – such as the JKLF originating from Pakistan’s

borders, or LeT headquarter in Muridke and Hizb-ul-Mujahedin originating from Pakistan's North West Frontier Province.

Byman (2005) further stresses the political coordination of these groups and Pakistan's organisation of United Jihad Council (UJC) – a coordinating organisation formed by the Pakistan Army to conduct militant organisations mainly operating in the India-administrated J&K – under which Pakistan associates and manages numerous “jihadi” militant groups (Akhtar, 2012), ranging between 7,000-10,000 personnel in Pakistan and Azad Kashmir and 5,000-7,000 militants of Pakistani, Kashmiri and non-Pakistani origin in Kashmir itself at that time, according to ICG (2002). Another evidence of Kashmir terrorism's rise across the border represents Pakistan's funding for the labelled terrorist activities and groups connected with those acts (Khan, 2005; Trehan, 2002) which is estimated to range from \$40 million to as high as \$250 million (a figure claimed by the Indian government) annually (Byman, 2005).

Further, in case of Kashmir's terrorism cross-border overlap, Oetken (as previously Sondhi, 2004) also speculates over the *collapse of regimes abroad or the proliferation of extremist Islamist militant groups in reaction to the Iranian Revolution and the Soviet invasion of Afghanistan in 1979*, and its potential influence on the cross-border terrorism spread both from and to Kashmir territory (Oetken, 2009; 121). This further confirms the studies made by Ziring (2009); or Jafa (2007; 145) who claimed that *the victory of the mujahideens against the Soviet Union in Afghanistan in 1988 encouraged the Kashmiri militants, who went in large numbers to Pakistan-controlled Kashmir for training and weapons for waging an armed struggle*. As a main provider responsible for the training and weapons distribution to the Kashmiri militants/"terrorists", and further “jihadist” organisations, they both designate once again Pakistan's ISI.

As for the most notable attacks delimiting this phase of Kashmir's terrorism and its overlap, the attacks on December 3, 2000 and December 13, 2001 should be mentioned. The first attack was aimed at security barracks at New Delhi's historic Red Fort and relates to the statement given by Hussain (2007; 58): the attackers *initiated the expansion of the Kashmir jihad to the rest of India*. The second attack, a terrorist attack on the Indian Parliament building, is similarly related to his statement since, for the first time, the Kashmir “terrorists” crossed the Kashmir' borders to India's territory and internationalized the insurgency and azaadi (freedom) movement that originated from 1989 (Sil, 2010). Both attacks were claimed by Lashkar-e-Toiba (LeT), a Pakistan-

based Islamist militant group that have been fighting since 1993 for Kashmir's accession to Pakistan (Bajoria, 2010; Oetken, 2009).

4. 1. 2. 1. Jihad in Kashmir

The Kashmir conflict is often connected to Islamic extremists (Tripathy and Rid, 2010) and foreign mercenaries – *rented jihadis* (Bhatia and Knight, 2011), otherwise called *mujahideens* (Feyyaz, 2019). These designations – often associated with fight and Islam – can confuse the readers what role religion plays within this conflict and how it is related with terrorism in the area. Jafa (2007) directly links the concept of *jihad* – *a holy war or striving for justice* (pp. 146) to terrorism in Kashmir. Not being the only one, he designates jihadi's warriors as militants fighting for Pakistan and Islamic purpose. However, Jafa is originally from India and therefore a further look into some international research is needed, such as to D'Souza and Routray, 2016; 557 who also set jihadi's primary objective of *finding a separate homeland for the Muslims of the state*. Their findings conclude that this type of warfare is bolstered and financed by Pakistan with the intention to set a pure Islamic state of Kashmir. This leads to two preliminary conclusions: (1) jihadi groups are associated with Pakistan, and (2) fighting in the name of Islam represents an integral part of Kashmir's terrorism.

The definition of jihad is not uniform among the Muslim scholars, nor among the terrorist groups. The various researches of scholars remind us there are two meanings to it: a holy war and the "Greater jihad". The "Greater jihad" mainly represents individual redemption of each and every Muslim (Sullivan, 2003; D'Souza and Routray, 2016). Contrarily, numerous militant groups highlight mainly the "holy war against atheists" meaning of the jihad, backed up in Quran, holy book of Muslims. This is supported by Joshua (2010) who reports about the statements made by the LeT, JeM, and other Kashmiri militant "terrorist" organisations who were *pronouncing jihad as the only way to liberate Kashmir from "Indian occupation"*. Importantly, if jihad in Kashmir is connected to Pakistan, then it is important to remember that Pakistan's state organisation is a so-called Islamic republic (Maududi⁹, 1960), for which the primary sources of both national and

⁹ Maududi represented a major 20th century Islamist thinker and political philosopher, who in 1941 founded Jamaat-e-Islami, the oldest Islamic party within Pakistan today (Jamaat-e-Islami Pakistan, 2020).

international law – *the Quran, the Sunnah, Ijma and Qiyas and ijihad*¹⁰ (Ali and Rehman, 2005) – are radically different than those of India, a federal parliament republic (National Portal of India, 2020). The first and foremost source of Islamic law, Pakistan’s laws, is The Quran, considered by Muslims as the word of God himself that is unchangeable (Ali and Rehman, 2005). Within it, the “jihad” is viewed as a permissible cause of a “Just war“ (Zawati, 2001). However, even this “Just war” has its rules. Similarly, to the “Just War” allowing the fight as viewed by the others, e.g. Frowe (2015); or Lee (2012) argue, it has to be (1) for a “just cause”, (2) proportionate – proportionate response to the suffered wrong, (3) with a reasonable chance for a success, (4) led by a legitimate authority, (5) with the right intentions, and (6) as a last resort¹¹.

The Islamist thinker Maududi already wrote in 1927 that jihad has to be guided by the Quran or it is not considered jihad but a simple cruelty. His work was later composed into a book *Al Jihad Fil Islam* (transl. Jihad in Islam) (2017). A frequent confusion of the terms “terrorism” and “jihad” has also let many Muslim authors and journalists to oppose it: *The term jihad has been twisted by the gangs that commit acts of terror in the name of Islam in the post 9/11 era. [...] “Islam” means “peace,” and that the Holy Quran teaches tolerance towards other faiths; despite its mentioned guidance for a war, killing of women, children, the old and the weak is strictly forbidden* (Zafar, 2014).

Maududi’s other statements condemned involvement of non-Muslim minorities in an Islamic state, which he viewed as unequal until they adopt Islam (1960). Since the Hindus represent a minority within Kashmir, D’Souza and Routray (2016) argue that the inevitable spread and success of *jihad* within this area is therefore tied to the very emergence of Pakistan as a state. Similarly, other authors indicate reasons for Pakistan’s involvement in *jihad*, like Kapur and Ganguly (2012). They highlight *jihad* as a strategic need for the security of their country linked with a militant country setting and state’s fear of its political and material existence dating back to its separation. Authors further emphasize the mere benefit of Pakistani’s supported *jihadi* groups – leading to (1) a stronger national unity among the uncoherent founding of the state, (2) Pakistan’s

¹⁰ *Sunnah* refers to the traditions of the Prophet Muhammad. Further, the Islamic law consists of the key Muslim jurists’ opinions; (a) the consensus of opinion (called *ijma*) and (b) individual opinions (called *Qiyas*). *Itjihad* is characterised as drafting of law through an independent interpretation of both Islamic sources of law, the Quran and Sunnah

¹¹ Many has been written about a “Just War“, so the thesis will not go into details of this. Further, see e.g. Frowe (2015); Lee (2012); or Rochester (2016).

better balance of the unevenly distributed resources and (3) a possibility of a constant challenge of Indian control over Kashmir. What has become a problem is the gained power of militant groups that often surpass the state's capability to manage these groups, which pursue their own goals. This internal problem is further escalated by India's military and diplomatic pressure to Pakistan after various terrorist attacks (e.g. after the recent Pulwama attack, Aljazeera, 2019 – further described in the next chapter; or see Sasikumar, 2019). However, the paradox is, as Kapur and Ganguly state, that weak states like this still rather prefer to gamble and invest in the *jihadi* militant groups in order to pursue their goals.

Though, it is important to distinguish *jihad* from terrorism. Principally, every attack should be assessed individually. Bhatt (2003) views the issue of differentiation of these two in terms of human rights violations – such as targeting civilians, which are also pointed out in the 2019 OHCHR *Update of the Situation of Human Rights in Indian-Administered Kashmir and Pakistan-Administered Kashmir* report. However, these are used within both types of warfare. In the Quran itself are terms often transcribed and referred to as a “terror”. As an example, Surat al-Anfal 8:60 commands the following: *Against them make ready your strength to the utmost of your power, including steeds of war, to strike terror into (the hearts of) the enemies, of Allah and your enemies, and others besides, whom ye may not know, but whom Allah doth know.*” However, Holtmann (2014; 142) further warns about the *cherry-picking verses from the Quran*, [which] *seemingly provides (salafi) jihadists with a licence to kill indiscriminately*. This makes it clear that the *jihad* itself can be connected to “terrorism”, however, as one aspect primarily used for *deterrence and tactical purposes*. As for the distinction of the attacks within the Kashmir area – coming back to the comparison of different warfare from *Table 1* in Chapter 3, attacks conducted under the “jihad cause” reportedly hijacked airliners, attacked India's parliament, and kidnapped and killed American and European tourists (Frost, 2019; Honawar, 2005; Riedel, 2008; or U.S. Department of State, 2004). These all point towards the features of terrorism. What is problematic, though, is that many authors, especially in media, refer to terrorists originating from a Muslim country, hence Kashmir, automatically as “jihadists” without further supporting arguments (such as IFI Advisory, 2019; or the aforementioned Riedel, 2008).

4. 1. 3. Contemporary terrorism in Kashmir

The current power of terrorism is still apparent. Given the whole country, in case of India, Jammu and Kashmir state is still one of the regions most affected by the terrorist attacks within the country, as is demonstrated by the research of Surrency (2018). Radical Terrorist groups in the state represent the second biggest threat of terrorism in the country, right after the Left-Wing terror traditionally linked with Maoist living mostly in the Western part of India. As the Jammu Kashmir Coalition of Civil Society (JKCCS)¹² reported in 2018 in their *Annual Human Rights Review*, the violence significantly escalated in 2018 again with 160 civilians killed in J&K that year, the highest number in the past decade – *Figure 4*. An important thing to note is that the group “militants” in *Figure 4* comprises of any armed personnel – as they are generally designated by the JKCCS, among which some or many might be called by a state as “terrorists” – according to the state which identifies them. Nonetheless, JKCCS as a civil society does not have a need for such designation.

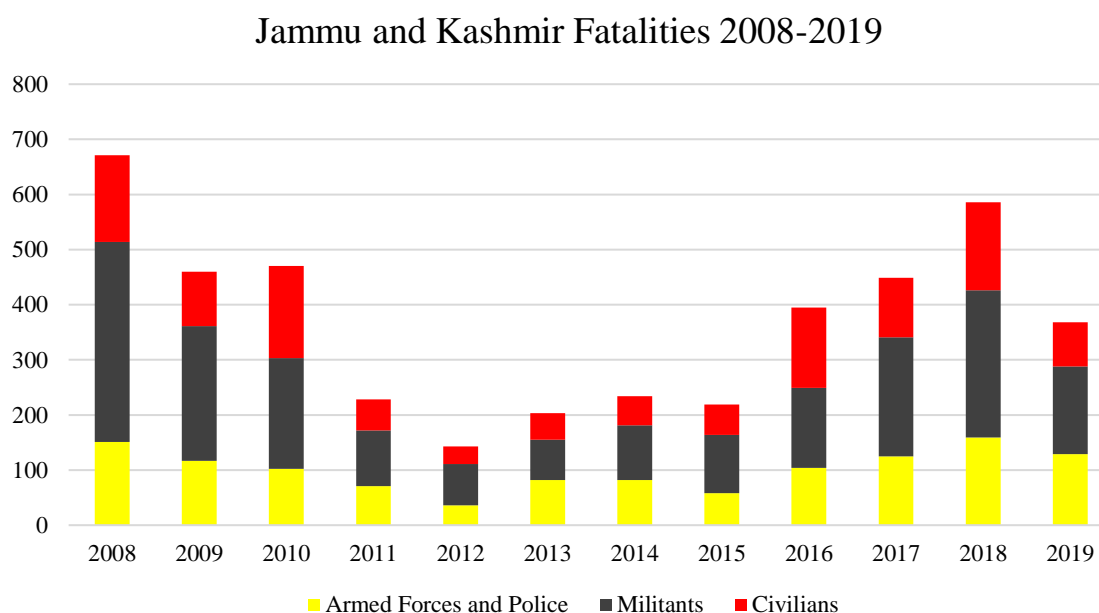


Figure 4: Fatalities comparison by victims between 2008-2018 in J&K state; source: JKCCS, 2018 and 2019; created by the author, 2020

¹² JKCCS was founded in 2000 as an association of human rights organisations including individuals, members of the civil society. Since their foundation they monitor and report on the HR situation in the area as a non-profit, campaign, research, advocacy and politically free group (JKCCS, n.d.)

The escalation of violence resulting in increased casualties explains the research made in the J&K by Wani (2018) when questioning Kashmiris about their perception of past events. From his study, 3 main conclusions should be presented as a reasoning for the increased violence: (1) the central government has failed in governing the J&K state when not enforcing the accountability on the local State Government, resulting in corruption and high unemployment and further escalating in increased protests. (2) The increased and long-term detention of people under the “Public Safety Act“ (PSA), in force since 1978 and further amended in 2018 (Government of J&K, 2018). As Amnesty International India (AII), 2018 reported: *The PSA allows for administrative detention of up to two years “in the case of persons acting in any manner prejudicial to the security of the State,” and for administrative detention of up to one year where “any person is acting in any manner prejudicial to the maintenance of public order”*. Their next argument for this law’s violation of the international HR laws includes, among others, the non-existing and vague definition of “security of the state” and “public order”, and the fact that the detainee is not told the reason of their custody – allowing *the detaining authority to not communicate grounds of detention for up to 10 days of detention*. Furthermore, the detained person has no right under the PSA to a judicial review of their arrest (AII, 2019). Finally (3), Wani (2018) warns about the framing of Kashmiris in media, especially among young men, many of whom have joined the radical militant groups between 2016-2018, and who are often perceived by India as “terrorist”. They report themselves not being able to find a job or housing outside of the Vale of Kashmir due to being automatically labelled by many media all over India as “terrorists”, or “Pakistan agents”, which makes them feel unwanted in the rest of India.

Figure 4 further displays the decrease in the fatalities in 2019. According to the last *Annual Human Rights review* from 2019 (JKCCS, 2019), the repression of local human rights went up even though there were less victims than last year. This could possibly be due to the withdrawal of article 370 and the joining of the J&K state to the rest of India made by the newly elected Indian government on August 5, as part of their 2019 election manifesto. This triggered considerable unrests and wage of protests, since the article 370 previously granted the state Jammu and Kashmir having their amount of autonomy – their own constitution, a separate flag and freedom to make laws (BBC, 2019).

In the case of Pakistan as a whole, terrorism represents a big threat to the population. Nonetheless considering Pakistani administrated Kashmir, the ‘Azad’ (Free) Jammu and Kashmir, and the Northern Areas of Gilgit-Baltistan are currently not among the most affected areas by terrorism in the country. The most affected provinces are those neighbouring Afghanistan: Federally Administered Tribal Areas (FATA) and Balochistan (GTI, 2019). No further civilian casualties were published, even though the last report from 2019 compiled by the OHCHR on *Situation of Human Rights in Indian-Administered Kashmir and Pakistan-Administered Kashmir from May 2018 to April 2019*, notes the misuse of counter-terrorist laws in the country leading to denial of bails, arrests without warrant and increased risk of torture, as well as various enforced and involuntary disappearances without further known fate. The available data for the “terrorist incidents” within the whole Kashmir area indicate that the main area of terrorist attacks remains in the J&K India-administrated state (GTI, 2019).

Going back to the “milestones” of terrorism within the Kashmir imbroglio, undoubtedly the most important recent attack to mention happened on February 14, 2019 in Pulwama – in India’s claimed J&K state. The Pulwama attack, as media, scholars as well as the UN refer to it, was the deadliest terror attack on India's state security personnel in Kashmir since 1989, killing 40 Indian paramilitary policemen and wounding dozens of others, as reported by the BBC news (2019) and OHCHR (2019). This gruesome attack was claimed by JeM, a Pakistani-based Islamist group (BBC News, 2019). A big surprise for India was the involvement of a Kashmiri boy as a suicide bomber for this attack, since, as Pandya (2019; 65) describes, *the local version of Islam in Kashmir is very liberal, and local youth are unlikely to volunteer for ISIS-like suicide bombings*. In his view, this attack represented a clear case of jihadi extremism, particularly fearing for India, since a raising radicalization of the youth from J&K state that has even multiplied after August 5, 2019 with the aforementioned withdrawal of article 370 from India’s constitution. Pandya; pp. 66, further highlights the attack as *a possible way for the entry of transnational terrorist organizations, like al-Qaida or the Islamic State in Khorasan Province, Afghanistan (ISKP), into Kashmir and possibly also the rest of India, where so far the local Muslim populace more or less stayed away from terrorist organizations*. Another scholar, Feyyaz (2019), studied the attack from a Pakistani view. He bases his argumentation on inconsistent and different definitions of terrorists in both India and Pakistan, *used for both rebel combatants as well as common stone throwers comprising school and college youth* (pp. 70), bringing us back to the original problem of a non-uniform

worldwide definition of terrorism, allowing the countries to use *terrorism* as a new type of warfare within a disputed area.

4. 2. Transformation of Kashmir’s fighting due to terrorism

The change of warfare and designation of “terrorist acts” and “terrorists” within the Kashmir conflict resulted in multiple changes within the conflict. Firstly, a large part of the Islamist organisation previously banned in the wake of events of 9/11 started to function again. This time, however, under a different name (Swami, 2003); The *Jaish-e-Mohammad* changed its name to *Tehreek Kuddam-ud-Din* (Haas, 2002). Similarly, in 2017 *Lashkar-e-Taiba* started to operate under various aliases, namely *Milli Muslim League (MML)* and *Tehreek-e- Azadi-e Kashmir (TAK)*, to avoid sanctions imposed on them, as stated the U.S. Department of State (2018). Swami further highlights the release on of multiple chiefs of banned terrorist organisations such as Maulana Azam Tariq from the group called *Sipah-e-Sahaba* – blacklisted as “extremist/terrorist” group by the GB¹³, Freedman (2010); and designated as terrorist by India, SATP (2001) – who even in October 2002 gained a seat at the National Assembly of Pakistan; or Hafiz Mohammad Saeed, head of the *Lashkar-e-Taiba*, designated by AU, CA, IN, RU, GB, US¹⁴, as well as by the UN as a terrorist group (Freedman, 2010). This indicates another related fact – many that are labelled as terrorist organisations are blacklisted by individual countries or organisations, such as the UN or the EU. Usually, travel and arms embargos are imposed, as well as financial or assets sanctions on the members of the group (UNSC, n.d.).

Secondly, new radical militant groups that are designated unilaterally as terrorist, such as *Al-Mansoorain* group on India’s list of terrorist organisations (SATP, 2017), still emerge within the conflict and further fragment the number of non-state actors involved in the Kashmir conflict up until today. Thirdly, related to the designation as “terrorists”, numerous human rights violations occur, as is described within the last UN report (OHCHR, 2019). The UN itself does not link the atrocities with terrorism, possibly due to the complexity of the uniform terrorism definition which needs to be, among others, agreed upon by the very states in conflict. Therefore, the international community lacks the possibility to address the issue about terrorism properly. However,

¹³ GB – two-letter country code used for The United Kingdom of Great Britain and Northern Ireland (otherwise abbreviated as UK) according to the UN/LOCODE Code List 2019-2

¹⁴ All country abbreviations as used within the UN/LOCODE Code List 2019-1 (UNECE, 2019)

the description of clear human rights violations within the Kashmir administrated areas can be viewed as a first step towards the involvement of the international community and the atrocities linked to the area due to the increased insurgency and terrorist acts. Finally, the weapons and tactics used by designated terrorists change the nature of the conflict, as well as the legal status of terrorists, who are often referred to as “unlawful” combatants. This makes their rights, obligations, and protection in the context of International Humanitarian law (IHL) within the Kashmir imbroglio very complicated (Mofidi and Eckert, 2003).

4. 2. 1. The status of terrorists as “unlawful” combatants

Historically, the law of armed conflict has been divided into two groups. A first group of instruments contains restrictions on the conduct of hostilities (often referred to as Hague Law). The second concerns the laws of armed conflict that contain provisions to protect victims, i.e. people not taking active part in combat, including those who have been imprisoned or shipwrecked. Most of them are laid down in four conventions concluded in Geneva in 1949 (referred to as the Geneva law). The total body of rules also comprises two additional protocols to the Geneva conventions, concluded in 1977 and updating the law (Protocol I) and relating to non-international armed conflicts (Protocol II) (Klabbers, 2013). *The International Humanitarian Law* (IHL) that builds on the four main Geneva Conventions (GC) and two Additional Protocols (ICRC, 2010) is *applicable only to international conflict* (Fleck, 2008). This was not nor is up until today the case of Kashmir’s conflict since, as previously mentioned, India still insists on the term “internal dispute” between them and Pakistan to which Pakistan opposes (UN News, 2019). Nonetheless, as Klabbers (2013) states, the principle of distinction must not be neglected. Combatants and civilians should be treated separately, as should military and civilian targets, within any conflict.

Generally, members of the armed forces of a state – or another party to the conflict which is recognised subject of international law – are combatants. Therefore, they are authorized within the limits imposed by international law applicable in international armed conflicts to participate directly in hostilities (Fleck, 2008). The legal definition of "combatant" is found in article 43 of Additional Protocol 1 of the GC compiled by the International Committee of the Red Cross (ICRC). It states that Members of the armed forces of a Party to a conflict – other than medical personnel and chaplains covered by Article 33 of the Third Convention – are combatants, and

means they have the right to participate directly in hostilities (Fleck, 2008). Combatants can be prosecuted under national or international criminal law if they commit war crimes, crimes against humanity, or acts of genocide. Prosecution is possible even if they act under the orders of their superiors, but not for their plain participation in the hostilities as defined under the IHL. (MSF, n.d.). However, this definition lacks the recognition of “irregular” – individuals taking part in other irregular hostilities – or “unlawful” combatants such as the terrorists (Rochester, 2016). The humanitarian protection of such individuals in a case of war paradigm is virtually non-existent. Therefore, if they are captured they cannot enjoy the rights of prisoners of war (POW) under the 3rd Geneva Convention (Fleck, 2010) that guarantees, for example, their release and repatriation without delay after the end of hostilities, their humane treatment in any circumstances, protection against further violence as well as against intimidation, insults, and public curiosity. IHL also defines minimum conditions of detention covering issues such as accommodation, food, clothing, hygiene and medical care (ICRC, 2010). In Kashmir’s case, more concrete data and evidences are still missing since the states in conflict do not cooperate well and often do not let the impartial international investigators in the area, as stated OHCHR (2019) in their last HR report.

Some states, e.g. the US, argue that the terrorists should not enjoy the rights of POW as combatants since they are “not playing by the rules” and have an “unlawful” advantage in the fight. They also argue that not labelling them as “combatants” means they should not be targeted based on their mere membership in a terrorist group but rather the individual culpability of terrorist’s act is to be found (unlike combatants who are all legitimate targets). This allows a potential killing of a combatant based on blame rather than status which can again be controversial; if the “war on terror” is declared, this type of killing falls under a peacetime operation’s law enforcement (Blum and Heymann, 2010).

What could seem as a possible way forward from this is set forth in Article 45 (3) of the Additional Protocol of ICRC (1977) GC; *any person who has taken part in hostilities, who is not entitled to prisoner of-war status and who does not benefit from more favourable treatment in accordance with the Fourth Convention shall have the right at all times to the protection of Article 75 of this Protocol*, which shows it perceives the possibility to apply GC to some categories of unlawful combatants, even outside the international armed conflict (Dörmann, 2003). Still, for this

statement to be put fully into practice, all states must recognize and ratify the additional protocols of the Geneva conventions. Thus, the problem in Kashmir's case remains since (1) India has not signed nor ratified this protocol and (2) even though Pakistan has signed this treaty on 12 December 1977, it did not ratify it, which means that neither of those states is bound by this convention, as ICRC (n. d.) states, unless the signature has been consented by ratification.

4. 2. 2. Weapon and tactic usage – violation of the IHL within the Kashmir conflict

The weapon and tactic usage within the terrorist struggle as described in *Table 1* contributes to both international and domestic illegality of this type of warfare in the area. Humanitarian law prohibits not only weapons *of a nature to cause superfluous injury or unnecessary suffering* but also those who bear *indiscriminate or excessively injurious effects*. This is a principle linked to the customary law that *the right of the parties to the conflict to choose methods or means of warfare is not unlimited* as stated in the Additional Protocol of GC Art. 35. (MSF, 2018). In Kashmir's case, AII (2018) repeatedly reported about the usage of pellet guns with metal bullets causing unnecessary suffering and lethal injuries to both targeted persons as well as to the non-targeted ones in the India-administrated Kashmir. Therefore, they *call upon the central government and government of Jammu and Kashmir to immediately stop the use of pellet-firing shotguns and ensure that the use of all other weapons is in line with international human rights standards on use of force*, since, as they further stated, *the shotguns fire a large number of small pellets spreading over a wide range and there is no way to control the trajectory or direction of the pellets, whose effects are therefore indiscriminate*.

Another debatable tactic represents the suicide bombers and car bombs used many times in Kashmir, as demonstrated suicide car bomb attack on the state assembly building in Srinagar, India-administrated Kashmir on October 1, 2002, killing 38 people and wounding many more (Freedom House, 2002). Another example is the aforementioned Pulwama attack from February 14, 2019. Even though IHL does not prohibit their usage per se (ICRC, n.d.), they seem to violate the law in many cases since – as HRW, 2007 stated – in the studied case of IHL prohibitions in Afghanistan, (1) the suicide bombers target civilians or civilian objects during their attacks, not military targets, as directs the Additional Protocol I of GC, Article 51(4); and (2) the attacker pretended civilian status, violating the prohibition against perfidy. Regarding the Kashmir case, it does not seem that the suicide attackers are targeting civilians primarily, but they wound many

when carrying out the attack. Many of the mentioned violations in the area relate to the “irregular militants”, designated terrorists, such as the so-called 2003 *Nadimarg massacre* from 2003 or *Doda massacre* from 2006 that both occurred in the J&K state. In the first case, “militants” wore *counterfeit uniforms*, believed to be part of the designated terrorist organisation LeT, and executed 24 civilians of Hindu origin (Spaeth, 2003). In the second case, 22-35 Hindu civilians were dragged from their homes and shot dead by the members of the same terrorist group – LeT. This time, however, they were wearing combat uniforms (Sharma, 2006; Swami and Puri, 2006).

Finally, all examples mentioned should clearly state that many of the HR violations within the Kashmir conflict are deeply connected with terrorist warfare. Therefore, they need to be considered when studying both this conflict and its possible solution.

Conclusion

The main state-actors involved within the conflict today are India and Pakistan (China has its claims and controls part of the territory but is not in an “open dispute” with the other two). Their bitter relationship still escalates and is hostile since their division in 1947. The root of the hostility and blame of India and Pakistan also translates into the definition of terrorism in both their countries, as well as the definition of terrorist organizations operating within their countries and in the Kashmir territory. The UN have served as a mediator between the two parties. However, due to their limited mandate (derived from the very states in dispute) none of the states withdrew from Kashmir and the plebiscite to fulfil the will of Kashmiris could not have been held.

All studied actors – UN, India and Pakistan – have their own strategies on fighting terrorism and agree that there is a deeper need to stop its spreading. First terrorism laws within India and Pakistan did not emerge in relation to the Kashmir dispute, but rather due to increased riots with terrorism patterns defined by the states within Punjab and Sindh region, throughout the 1970s in Pakistan and 1980s in India. Coming back to Noor’s statement (2007) that *terrorism has become a new core issue, replacing the Kashmir dispute*, the researched findings do not support this claim but rather suggest the involvement of terrorism as part of the struggle in the long-standing unresolved dispute. Both India’s and Pakistan’s unclear and vague definition of terrorism, further intensified by the inconsistent international definition of terrorism, creates a mess within the researches and across the media. These often do not provide an explanation of what their definitions of “terrorism” and “terrorists” are based on, perhaps also because of the inability of these countries to argue the detention of all people suspected of committing a “terrorist act” under their laws. Nonetheless, due to India’s and Pakistan’s complicated and hostile relationship, the UN’s universal definition could have a potential for starting up new discussions over the terrorism issue in Kashmir.

The thesis set up the “milestones” in Kashmir’s terrorism to describe its course. Kashmir’s most-affected area by terrorism was and is up until today the Indian-administrated Jammu and Kashmir state. It lies at the centre of events and attacks, nowadays also as a result of recent events as its "permanent" connection to the Indian state in 2019. The beginning of terrorism in Kashmir set by many to the end of 1980s with a peak towards the end of the 20th century and the beginning of the 21st century in terms of number of victims (2001), as well as the intensified involvement of

foreign troops (1990s). Their support by Pakistan is highly problematic, since many of today's Kashmir "terrorist organizations" originate from this country and are connected in some way – financially, by equipment or training – to the local support. This connection further deepens the engagement of the *jihad*. Having two main components – (1) “Greater jihad”, which signifies an individual redemption of every Muslim, and (2) “Holy war against atheist” – the mere interpretation of the second component is widely used by the “terrorist groups” fighting in Kashmir, referring to the sources of Islamic law.

Moreover, the violations of the IHL and HR due to “terrorism cause” became part of the terrorism fight, escalated by the attacks of “irregular” combatants (as terrorist are often referred to), cleaving the number of players in the conflict. Designating a militant as a terrorist poses a significant risk because, as research suggests, people living in Kashmir are struggling with prejudices and automatic labelling as “terrorists” or “jihadists” because of their origin. Thus, both India and Pakistan bear a big responsibility for their classifications, which can lead to *a discrimination, ostracization and dehumanizing rhetoric faced by people accused of terrorist attacks, their families or others affiliated with them, which may create a sense of exceptionalism, meaning that counter-terrorism efforts could justify the use of tactics otherwise deemed unacceptable, including war crimes or even torture*, as was recently warned by Policinski, 2020, on the ICRC Humanitarian Law and Policy blog. This confirms the need of further states’ and scholars’ focus on the designation as “terrorists”, not only for the human treatment of the designated terrorists in case of their capture or trial within the Kashmir dispute, but also for eradicating the violation of laws of war and increasing the protection of innocent civilians living in the area. Moreover, the prevention of weapons – pellet guns, and tactic usage – suicide bombers, car bombs, kidnapping and hijacking, which contradict the principles of "just war", is needed.

Finally, as for the discernment between terrorism and other types of warfare, each attack within the Kashmir conflict should be assessed individually. *Table 1* can serve as a good distinction instrument – comparing the conventional war, guerrilla and terrorism violent struggles, all conducted within the Kashmir conflict. In terms of IHL, conventional war, guerrilla as well as *jihad* warfare can have the international legality, if conducted by the rules. Terrorism, however, cannot have international legality under any circumstances. Problematic within the Kashmir warfare is the failure of those violent struggles to comply with the rules of IHL. Furthermore, *jihad*

(here in terms of the “holy war”) shows many similarities with terrorism in terms of human rights violations and conduction of warfare as set in *table 1* – such as hijacking of airplanes and kidnapping or “unlawful” killing of civilians. Thus, these “attacks” are impermissible under the IHL and “Just war” theory.

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