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NORWAY

NORWEGIAN CRIMINAL LAW AND THE JULY 22, 2011, MASSACRE

Executive Summary

Anders Breivik, the suspect detained in the July bombing in the government district of Oslo, Norway, and subsequent mass killing on Utøya Island, near Oslo, may face charges under the country's Penal Code for terrorist crimes, carrying at present a maximum penalty of twenty-one years in prison, or for crimes of humanity, for which the ultimate penalty is thirty years. However, if certain conditions are met, those penalties may be extended five years at a time by means of a system of preventive detention. It is also possible that Breivik, if found to be mentally unfit, could be placed under compulsory mental health care for an indeterminate time. Whatever the nature of the charges against the suspect, however, it is likely that his actions and the determination of his punishment will engender debate in Norway about the adequacy of the criminal justice system to deal with large-scale threats to public safety from extremist elements in society. This report, which is based chiefly on English-language materials, examines some of the current legal provisions in Norwegian law that may apply in the Breivik case and concludes with a look at some of the possible social outcomes that have been posited.

Introduction

On Monday, July 25, 2011, a closed hearing was held in Oslo, Norway, on the detention of Anders Behring Breivik, the suspect in the twin attacks carried out in the city's government district and at a Labour Party youth camp on Utøya Island on July 22, resulting in nearly eighty deaths thus far, mostly young people.¹ Some aspects of Norway's criminal justice system that may be of relevance to the handling of the Breivik case are discussed below.

Custody

Oslo City Court Judge Kim Heger ordered Breivik, who confessed to the bombing of the government's headquarters and to the massacre of the youths, to be remanded in custody for at least eight weeks (with a minimum of four weeks in total isolation) while police investigate the terrorism charges against him.²

Arrest and remanding in custody is covered under Chapter 14 of Norway's Criminal Procedure Act. Section 185 is on the time limit for custody, which "shall be as short as possible and must not exceed four weeks" but "may be extended by order by up to four weeks at a time," and "[i]f the nature of the investigation or other special circumstances indicate that a review of the order

after four weeks will be pointless, the court may fix a longer time-limit.”³ The prosecutor must state when the investigation is expected to be completed if an application for extended custody is made.⁴

The District Court

Courts in Norway are organized into three levels: sixty-five city/district courts (*tingrettene*, typically the court of first instance), six Courts of Appeal (*lagmannsrettene*, typically the court of second instance), and the Supreme Court (*Høyesterett*). All courts, and all the judges, handle civil, criminal, and administrative cases. In criminal cases, decisions are rendered by judges together with lay members of the court, “and by a jury in the Courts of Appeal in serious criminal cases.”⁵

The Oslo District Court is Norway’s largest first-level court, handling 20% of all civil and criminal cases in the country. The government has set a standard of a three-month maximum time limit for the district court to handle criminal cases, from the time when a case is brought before the court until a verdict is reached.⁶ Under the Criminal Procedure Act, criminal trials are based on oral proceedings, and evidence must be heard in court. The indictment is the only document that the court receives prior to the main hearing of the case; judges are not permitted to see police records before the trial opens. Typically, the court comprises one professional judge and two lay judges.⁷

Possible Criminal Charges and Penalties

News reports at first indicated that Breivik might be tried for terrorist offenses.⁸ Subsequently, however, it was reported that the General Civil Penal Code’s provisions on crimes against humanity may be applied in the Breivik case.⁹ It is also possible that he might ultimately “be sentenced to *forvaring* (protective custody subject to continual re-evaluation that may keep him in confinement for the rest of his life) or be committed to a psychiatric institution.”¹⁰

According to media reports, attorney Carol Sandbye of Norway’s office of public prosecutions has stated that Norway’s General Civil Penal Code gives the state prosecutor the authority “to seek an extension of sentences beyond the 21-year maximum for up to five years at a time, on the condition that the inmate is deemed to be a ‘high risk’ of repeating serious offences.”¹¹ Therefore, she stated, it is “technically possible to keep extending a sentence indefinitely,” even though it is “highly unlikely” because it would mean the person could be imprisoned for life, which is not done in “civilized countries” that lack the death penalty where even the most notorious inmates are eventually paroled.¹²

Terrorism

Crimes of terrorism and the corresponding punishments are set forth chiefly under Chapter 14, “Felonies Against Public Safety,” of Norway’s General Civil Penal Code (Penal Code).¹³ The maximum term of imprisonment stipulated is twenty-one years.

It should be noted that a new Norwegian Penal Code (new Penal Code) has been adopted by Parliament, but the King has apparently not yet determined the date of entry into force of the

whole Code.¹⁴ The new Penal Code of 2005 was amended in 2008 to incorporate, among other changes, separate chapters on genocide, crimes against humanity, and war crimes (Chapter 16); protection of Norway's independence and other fundamental national interests (Chapter 17); and terrorist and terrorist-related acts (Chapter 18). The amending law is Act No. 4 of March 7, 2008.¹⁵ The new provisions found under Chapter 16 have entered into force; the new chapter 17 and 18 provisions have not, however.

The main anti-terrorism articles in the General Civil Penal Code are sections 147a, 147b, and 148. These provisions were introduced into the Code in 2002, in fulfillment of Norway's international obligations pursuant to its joining the [International Convention for the Suppression of the Financing of Terrorism](#) of December 9, 1999 (entered into force Apr. 10, 2002) and [Security Council Resolution 1373](#) (adopted on Sept. 28, 2001).¹⁶ On January 10, 1980 (effective April 11, 1980), Norway also ratified the [European Convention on the Suppression of Terrorism](#); ¹⁷ it ratified the amending [Protocol](#) on Sept. 24, 2003.¹⁸ On February 1, 2010, Norway ratified the [Council of Europe Convention on the Prevention of Terrorism](#).¹⁹ The treaty took effect in Norway on June 1, 2010.²⁰

Section 147a provides that any criminal act (with reference to other specified sections of the Code)

is considered to be a terrorist act and is punishable by imprisonment for a term not exceeding 21 years when such act has been committed with the intention of

- a) seriously disrupting a function of vital importance to society, such as legislative, executive or judicial authority, power supply, safe supply of food or water, the bank or monetary system or emergency medical services or disease control,
- b) seriously intimidating a population, or
- c) unlawfully compelling public authorities or an intergovernmental organization to perform, tolerate or abstain from performing any act of substantial importance for the country or the organization, or for another country or another intergovernmental organization.

No penalty less than the minimum penalty prescribed in the penal provisions mentioned in the first sentence may be imposed.²¹

Section 147a also penalizes threats to commit the above-mentioned criminal acts, "under such circumstances that the threat is likely to provoke serious intimidation," with a prison term upon conviction of up to twelve or twenty-one years, depending on whether or not the above-mentioned consequences in (a) to (c) have occurred.²² In addition, planning or preparing to commit a terrorist act by conspiring with another person is punishable upon conviction with a prison term of up to twelve years.²³ Section 147b addresses the punishment for financing terrorist acts.

Among the specific types of criminal acts set forth in the Code that may be considered terrorist are those destructive acts that result in loss of human life or extensive destruction of property, as set forth in section 148:

Any person who causes any fire, collapse, explosion, flood, maritime damage, railway accident or aircraft accident which may easily result in loss of human life or extensive destruction of another person's property, or who aids and abets thereto, shall be liable to imprisonment for a term of not less than two years and not exceeding 21 years, but not less than five years if as a result of the felony any person dies or is seriously injured in body or health.

An attempt may be subject to the same penalty as a completed felony.²⁴

Some of the other sections referred to in section 147a as criminal acts that are potentially terrorist are: hijacking (§ 151a); destruction of data collection or of power or communications installations that “causes comprehensive disturbance in the public administration or in community life” (§ 151b); unlawful addition of noxious substances to drinking water sources (§ 152); unlawful possession, use, distribution, etc., of plutonium or uranium (§ 152a); willful or grossly negligent pollution of air, water, or soil (§ 152b); addition of poison or other such substances to products intended for general use or sale, altering its intended purpose such that its use will cause death or injury (§ 153); possession of bacteriological or biological toxins in unjustifiable quantities or of weapons or equipment made for using such substances (§ 153a); causing the spread of dangerous contagious disease (§ 154); infliction of “considerable injury to the body or health of another person” (§ 231); and homicide (§ 233).²⁵

In the new Penal Code, the provision corresponding to, and mostly drawing from, section 147a is section 131. The new provision differs in three important respects, however, from 147a. First, a higher threshold of terrorist intent is required:

Section 147a includes all forms or levels of intent recognized under Norwegian penal law, including knowledge to purpose. Under the new provision, however, the offender must have acted with a specific intent, i.e., with the purpose of bringing about one or more of the harmful consequences set out in the provision.²⁶

This terrorist intent definition, moreover, “corresponds closely with the definition in the EU Framework Decision 2002/475/RIA on combating terrorism.”²⁷

Second, the new provisions on terrorism distinguish between ordinary terrorist acts and gross terrorist acts. Gross acts of terrorism can incur a punishment of up to thirty years' imprisonment, under the new section 132.²⁸

Third, there are specific provisions in the new sections 138–144 on, among other acts, terrorist bombing, seizure of aircraft and ships or interference with their safe operation, unlawful dealings with hazardous materials, the taking of hostages for terrorist purposes, and crimes against internationally protected persons.²⁹

Crimes Against Humanity

As was noted above, Norway amended the new Penal Code in 2008 to include crimes against humanity, under section 102 of Chapter 16, on Genocide, Crimes Against Humanity and War Crimes. Unlike the current maximum penalty for crimes of terrorism, the punishment for crimes

against humanity is up to thirty years' imprisonment, Norway's most severe criminal punishment.³⁰

Section 102, paragraph 1, provides in part that anyone who, "as part of a widespread or systematic attack directed against any civilian population," kills another person, "exterminates a population in whole or in part," or commits any other "inhumane act of a similar character that causes great suffering or severe injury to body or health" will be liable to punishment for a crime against humanity.³¹

In the view of Professor William Schabas, an expert on international law and human rights,

If the Norwegian legislation follows the text of the Rome Statute, it would seem unlikely that the recent atrocities fit within the definition. Not only does article 7 of the Rome Statute require that the crimes be part of a "widespread or systematic attack on a civilian population", the attack must be "pursuant to a state or organizational plan or policy."³²

The argument might also be made, he writes, that Breivik "was acting pursuant to the plan of some organization," but that "raises the issue of the nature of the organization," and in 2010 a Pre-Trial Chamber of the International Criminal Court [divided on that issue](#). (In ICC-01/09, Situation in the Republic of Kenya, the majority of the judges interpreted the concept of "organization" more broadly, to encompass the post-electoral violence in that country.³³ Dissenting Judge Hans-Peter Kaul held, based on historical sources, "that the 'organization' in question must be affiliated with a State or State-like entity."³⁴)

Schabas continues:

If the Norwegian legislation departs from the text of the Rome Statute [Note: it apparently does] and has no reference to State or organizational policy, the issue will remain as to whether the State or organizational plan or policy is a requirement that is implied within the general notion of crimes against humanity. The Appeals Chamber of the International Criminal Tribunal for the former Yugoslavia has said that it is not.³⁵

In the opinion of Schabas, it is better to apply crimes against humanity under general international law consistent with the Rome Statute, rather than taking the Appeals Chamber approach.³⁶

Preventive Detention (Forvaring)

The key provisions on preventive detention in the General Civil Penal Code are sections 39c–39h. Section 39c states, "[w]hen a sentence for a specific term is deemed to be insufficient to protect society, a sentence of preventive detention in an institution under the correctional services may be imposed instead of a sentence of imprisonment," provided one of the two following sets of conditions are fulfilled:

- (1) The offender is found guilty of having committed or attempted to commit "a serious violent felony" that impairs the life, health, or liberty of other persons or exposes such legal rights to risk; additionally, there is the risk that the offender will commit

the felony again. In the risk assessment, importance is attached to the nature of the given felony as compared to the offender's conduct and capacity to function socially and personally. Particular importance is attached to whether the person has previously committed or attempted to commit a section 39c type of felony.

- (2) The offender is found guilty of having committed or attempted to commit a less serious felony of the same nature as specified in (1) and has previously committed or attempted to commit such a felony, a close connection between the previous and current felonies is presumed, and there is a "particularly imminent" risk that the offender will relapse into a new felony.

A social inquiry related to the person charged must be carried out before a sentence of preventive detention can be imposed. The court has the authority to decide instead that the person must undergo a forensic psychiatric inquiry.³⁷

Sentences of preventive detention passed by the court are to be fixed for a term "that should usually not exceed 15 years and may not exceed 21 years."³⁸ However, at the prosecutor's request, the court may "extend the fixed term by up to five years at a time," with extension proceedings to be initiated in the District Court "not later than three months before the period of preventive detention expires."³⁹ The court must also determine a minimum period of the detention, not to exceed ten years.⁴⁰ Once a sentence of preventive detention is passed, any previously imposed sentence of imprisonment will no longer have effect.⁴¹

Release on probation before the expiration of the preventive detention period will be effected with a probation period of from one to five years. The District Court will make a judgment on cases submitted by a prosecutor regarding the application for release on probation made by the convicted person or the prison and probation service; hearings of such cases are to be accelerated.⁴² Applications for release on probation cannot be made until a year has elapsed after the date of legal enforceability of the sentence of preventive detention or a judgment denying release on probation.⁴³

Under the new Penal Code, a separate chapter is devoted to *forvaring*, but its provisions are not yet in force.⁴⁴

Compulsory Mental Health Care

Breivik's defense attorney reportedly called for a medical examination of his client and questioned whether Breivik is mentally fit to stand trial. The suspect is to undergo examination by two court-appointed psychiatrists, according to Prosecutor Christian Hatlo.⁴⁵ In the view of New Zealand criminologist Professor John Pratt, however, "[f]rom what I've read and heard about the case, it is pretty clear he is not legally insane. . . . [H]e is obviously competent to plead and knew full well what he was doing. Therefore the insanity issue doesn't come in and he will face the full force of the law for what he's done."⁴⁶

Sections 39 and 39a of the General Civil Penal Code provide that an offender will be transferred to compulsory mental health care "[w]hen it is deemed necessary for the protection of society."⁴⁷

This prescription applies to those offenders who are not liable for punishment based on grounds set forth in section 44, i.e., they were psychotic or unconscious when they committed the act or are “mentally retarded to a high degree.”⁴⁸ (If the unconsciousness is due to self-induced intoxication, through alcohol or other means, however, exemption from liability to punishment will not apply.⁴⁹) The transfer decision is to be made by a court order. The transfer may only take place if one of two conditions has been fulfilled. These conditions are largely the same as the two alternative conditions that must be met in the case of *forvaring*, except that the risk assessment to be made must attach importance to the nature of the felony committed compared with “the offender’s conduct, the course of the illness, and mental functioning capacity.”⁵⁰

In connection with the above, section 39 references Chapter 5, “Court Order for Transfer to Compulsory Mental Health Care,” of the Mental Health Care Act.⁵¹ The Mental Health Care Act stipulates, among other provisions in Chapter 5, that “the regional health authority in the region where the person transferred by court order resides will decide which institution shall be responsible for the treatment of the said person,”⁵² although that competence may be transferred to another authority by royal regulation.⁵³ It is the regional health authority’s responsibility, moreover, to ensure “that compulsory mental health care is provided as soon as the court order is legally enforceable.”⁵⁴ Chapter 5 also covers such matters as implementation of compulsory mental health care,⁵⁵ appeals to the supervisory commission on administrative decisions made in connection with the transfer,⁵⁶ requests for changes in implementation of the transfer,⁵⁷ court decisions to transfer the person under care from compulsory mental health care to a prison service facility “when special grounds so indicate,”⁵⁸ and so on.

The General Civil Penal Code provides that compulsory care is to be carried out in an expert unit in the specialized health service constituted for this purpose. Care may be implemented outside the expert unit, pursuant to a royal regulation and by an agreement entered into by the unit, “[i]f due consideration for the convicted person so indicates and it is not contraindicated by security reasons.”⁵⁹ The Code stipulates that the convicted person may be restrained against his will and that force may be used, if necessary, to bring back an escapee.⁶⁰ The Code also refers to provisions of the Mental Health Care Act that may apply to the execution of a sentence of compulsory care.⁶¹

Compulsory mental health care may be continued, the General Civil Penal Code states, “only if the condition relating to a risk of repetition in section 39, No. 1 or No. 2, continues to be fulfilled.”⁶² The convicted person, his next-of-kin, or the person professionally responsible for his treatment may apply for remission of the sanction. In such instances, the prosecutor will submit the case to the district court for a judgment; hearings of such cases are to be accelerated.⁶³ A remission application may not be made “until one year after the transfer judgment or a judgment denying remission is legally enforceable.”⁶⁴ Remission of the sanction may also be initiated by the prosecutor:

The prosecutor may also decide at any time to remit the sanction. Not later than three years after the last legally enforceable judgment has been passed, the prosecuting authority shall either decide to remit the sanction or bring the case before the District Court, which will decide whether the sanction shall be continued.⁶⁵

Norway's Gun Laws

The Act Relating to Firearms and Ammunition (Firearms Act) governs the use of firearms in Norway.⁶⁶ The Act stipulates that anyone intending to purchase or otherwise acquire a firearm or firearm parts must have permission from the Chief of Police.⁶⁷ According to the Act, “[p]ermission may only be given to reliable persons of sober habits who need or have other reasonable grounds for possessing firearms, and who can not be deemed unfit to do so for any special reason.”⁶⁸ Moreover, the firearms owner “must provide a written statement saying why he or she wants one.”⁶⁹

The law on firearms was tightened in 2009, with the promulgation of the Regulation Relating to Firearms, Firearm Parts, and Ammunition (Firearms Regulations).⁷⁰ The Firearms Regulations make it illegal to acquire, hold, or possess firearms normally used as weapons of war, fully automatic weapons, and firearms disguised as other objects.⁷¹ The same holds true for semiautomatic weapons, unless the weapon cannot be easily converted to produce fully automatic fire and the would-be owner obtains police approval for the weapon.⁷² Many other categories of weapons, including some powerful handguns, are also banned from sale.⁷³ The Regulations contain a lengthy chapter on the conditions for authorized acquisition and possession of firearms, e.g., for purposes of hunting, competition shooting, collection, animal slaughter, and protection.⁷⁴

Similarly, those who intend to buy or otherwise acquire ammunition must have police permission.⁷⁵ Such permission must be only for a certain quantity of ammunition and may not be made valid for a period longer than three months.^{76,77}

Breivik reportedly wrote in his manifesto that he bought ammunition clips for his rifle from “an undisclosed, small U.S. supplier, which had acquired the clips from other suppliers.”⁷⁸ The sale of clips for hunting rifles that hold more than three bullets is banned by Norwegian law, according to the Norwegian newspaper *Aftenposten*.⁷⁹ General provisions on weapons export and import in Norway are found in Chapter VI of the Firearms Act, which governs the import and export of firearms, firearm parts, and ammunition. It provides, among other stipulations, that anyone who intends to import or export such materiel must have permission from the competent Ministry, i.e., the Ministry of Foreign Affairs for commercial exports or else the Ministry of Justice.⁸⁰ The permit must state the nature and quantity of the goods and the period of time for which it will be valid; the time limit can be extended upon application.⁸¹ The King may also prohibit the import or export of arms or the like that do not fall within the scope of the Firearms Act.⁸²

Although permission to import is to be restricted to persons who have a license to trade in firearms, firearm parts, or ammunition or to those with permission to manufacture such materiel,⁸³ permission to import can nevertheless be granted for the purpose of personal use but only if the person satisfies the conditions stipulated under sections 7 or 13 of the Act.⁸⁴

Police figures cited by a news report indicate that there are 1,229,436 registered guns in Norway, owned by 484,298 persons; many of the weapons are for hunting purposes or are held by the “many Norwegians” registered for civil defense duty or in the military reserves.⁸⁵ In Breivik’s

application for a semiautomatic weapon license, the reason he provided for applying was that it was to hunt deer.⁸⁶ Swedish police, cited in Sweden’s English-language newspaper *The Local*, contend that someone like Breivik would not have been permitted under Swedish law to obtain a license for a semiautomatic weapon built expressly for military purposes. Moreover, “[b]y law, licenses for fully automatic weapons can only be issued to individuals if there are special circumstances”—the person must have a “great need” for such a weapon, “be an elite-level marksman,” and must have kept “active in a shooting club for an extended period of time”—and the Swedish Armed Forces must justify the possession of such a weapon.⁸⁷

Possible Future Steps

Speculation remains as to the motivation behind the accused’s violent actions, but in the view of one Norwegian research analyst, Breivik’s goal in life, as revealed in his manifesto *2083 – A European Declaration of Independence*,

is to reverse what he views as the Islamization of Western Europe The best way to do so, [Breivik] argues, is to wage war against “cultural Marxists”—his label for the European political and intellectual elite—because they are the traitors who allow the colonization to take place.⁸⁸

Among Norway’s registered population of about 4.9 million, about 68% of immigrants in 2010 were European, with the largest numbers from Poland and Sweden.⁸⁹ Among the 100,400 children in Norway born to immigrant parents as of 2010, the largest group comprises children born to Pakistani parents (14,400); the second-largest group is children born to Somali parents (7,800), followed by those with parents from Vietnam (7,400), Iraq (6,600), and Turkey (5,900).⁹⁰ The largest population of immigrants and of Norwegian-born children of immigrants at the beginning of 2011 was in Oslo, “both in relative and absolute figures.” That population numbered 170,200 (or 28.4%) among the city’s 599,200 inhabitants. “The largest groups are persons with backgrounds from Pakistan (21,600), Somalia (12,200), Sweden (12,100) and Poland (10,400). All suburbs in Oslo were above the national average of 12.2 per cent.”⁹¹

It is likely, in light of the massacre, that Norway will conduct a security review, “with particular stress on how Anders Behring Breivik obtained his weapons. Norway already has some of the toughest gun laws in the world, but they were apparently easily circumvented by the killer.”⁹² The Norwegian police would reportedly like to see stronger regulation of guns in the wake of the attack; in 2010, Norway’s Justice Department had already established a committee to suggest stricter gun ownership rules by December 2011.⁹³ An expert affiliated with the Norwegian Police University College, by contrast, reportedly expressed the view that the law on weapons was sufficient, but that “better routines” were necessary “to make the police aware of people with such serious psychological problems that they can hurt themselves or others,” and that officials should more closely monitor “hunters or other licensed shooters who have fallen inactive.”⁹⁴

Politicians both in the ruling party and the opposition, reacting to an opinion poll showing that Norwegians believe that “the level of punishment for ‘the most serious offenses’ is ‘too low,’ ” have called for debate on sentencing and other criminal justice issues.⁹⁵ [Jenny Klinge](#), of Norway’s Centre Party (part of the governing coalition), has reportedly expressed interest in considering a new law on mass murder that would provide for life sentences, despite admitting

the likelihood that Breivik would remain in custody for life through *forvaring*.⁹⁶ According to a news report, Carol Sandbye of the Norway public prosecutors office has stated in connection with the possible debate over adoption of life sentences, “[t]hat’s what the world needs to understand about Norway, is that this incident represents our loss of innocence, because we’ve been a very safe country to live in until now There’s been no reason to keep people in prison for life.”⁹⁷ The debate may take a while, however; one expert, Frank Aarebrot, was quoted by the newspaper *Aftenposten* as saying that it might not occur until the commission reviewing the attacks has submitted its report, which in his estimated could take a year. In his view, topics of the debate will include the use of hidden surveillance.⁹⁸ Even if the massacre on Utøya Island does not have an immediate effect on the laws of Norway, it has already influenced the actions of other countries to tighten legislation. Finland announced shortly after the tragedy occurred that it was fast-tracking stricter gun laws, even though the most recent changes in its firearms legislation entered into force at the beginning of June, making it more difficult to acquire handguns, raising the minimum age for their ownership to twenty, and requiring gun permit applicants to undergo testing for their suitability as gun owners. Those changes were influenced by two separate killing sprees, school shooting massacres that occurred in the Finnish towns of Jokela in 2007 and Kauhajoki in 2008.⁹⁹ Political parties in Denmark have already put forward several proposals on such issues as ownership of weapons, internet extremism, and the purchase of fertilizers.¹⁰⁰

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¹ *Death Toll Declines After Confusion*, VIEWS AND NEWS FROM NORWAY (July 26, 2011), <http://www.newsinenglish.no/2011/07/26/death-toll-declines-after-early-confusion/>; *Accused Norway Shooter ‘Unaffected’ by Killings*, CTV NEWS (July 25, 2011), <http://www.ctv.ca/CTVNews/World/20110725/norway-gunman-court-appearance-110725/>.

² Nina Berglund, *Confessed Terror Suspect Held in Jail*, VIEWS AND NEWS FROM NORWAY (July 25, 2011), <http://www.newsinenglish.no/2011/07/25/confessed-terror-suspect-held-in-jail/>.

³ The Criminal Procedure Act, § 185, ¶ 1 (in part), Act No. 25 of May 22, 1981, text in English based on Act as amended by Act No. 53 of June 30, 2006, translated Norwegian Legislation website (Faculty of Law Library, University of Oslo), <http://www.ub.uio.no/ujur/ulovdata/lov-19810522-025-eng.pdf>; LOV 1981-05-22 nr 25: Lov om rettergangsmåten i straffesaker (Straffeprosessloven) [Law No. 25 of May 22, 1981: Law on Legal Procedure in Criminal Cases (Criminal Procedure Law)], *last amended* by Law No. 32 of June 24, 2011, LOVDATA online legal database, <http://www.lovdatabasen.no/cgi-wift/ldles?xdoc=/all/nl-20110624-032.html>.

⁴ *Id.* § 185, ¶ 2.

⁵ *European Police and Judicial Systems*, INTERPOL website, <http://www.interpol.int/Public/Region/Europe/pjsystems/> (click on Norway; last visited July 27, 2011); Lov om domstolene (domstolloven) [Act Relating to the Courts of Justice (Courts of Justice Act)], Law No. 5 of Aug. 13, 1915, *as amended*, LOVDATA online legal database, <http://www.lovdatabasen.no/all/nl-19150813-005.html> (last visited July 27, 2011).

⁶ *Oslo District Court*, <http://www.domstol.no/no/Enkelt-domstol/Oslo--tingrett/SPRAK/English/> (last visited July 26, 2011).

⁷ *Id.*

⁸ Breivik Due to Face Terror Charges, INDEPENDENT.IE (July 25, 2011), <http://www.independent.ie/breaking-news/world-news/breivik-due-to-face-terror-charges-2830109.html>; Norway Attacks: Breivik Makes 'Unrealistic' Demands, BBC NEWS (Aug. 2, 2011), <http://www.bbc.co.uk/news/world-europe-14372038>; Spencer Kimball, Norway Gunman Flagged by Law Enforcement Once Before, DW-WORLD.DE [DEUTSCHE WELLE] (July 26, 2011), <http://www.dw-world.de/dw/article/0,,15265643,00.html>.

⁹ William Schabas, *Crimes Against Humanity in Norway?*, PHD STUDIES IN HUMAN RIGHTS (July 26, 2011), <http://humanrightsdoctorate.blogspot.com/2011/07/crimes-against-humanity-in-norway.html>; Nina Berglund, *Defendant 'Insane,' Faces New Charges*, VIEWS AND NEWS FROM NORWAY (July 26, 2011), <http://www.newsinenglish.no/2011/07/26/defendant-faces-tougher-charges/>.

¹⁰ Berglund, *supra* note 9.

¹¹ Peter O'Neil, *Norway Suspect Could Be Jailed Beyond Max Sentence: Prosecutor*, GLOBAL TORONTO (July 24, 2011), <http://www.globaltoronto.com/Norway+suspect+could+jailed+beyond+sentence+Prosecutor/5152572/story.html> (quoting Sandbye).

¹² *Id.*

¹³ Almindelig borgerlig Straffelov (Straffeloven), Act No. 10 of May 22, 1902, *as amended*, LOVDATA online legal database, <http://www.lovdato.no/all/hl-19020522-010.html>. The title "General Civil Penal Code" appears to have been used to distinguish this Code from the Military Penal Code, *Militær Straffelov*, Law No. 13 of May 22, 1902. As is evident from its different "long" title, the new Penal Code drops the use of the words "General Civil."

¹⁴ Lov om straff (Straffeloven) [Act on Punishment (Penal Code)], Act No. 28 of May 20, 2005, *as last amended by* Act No. 44 of June 20, 2008, <http://www.lovdato.no/all/nl-20050520-028.html> (hereinafter new Penal Code).

¹⁵ Act Amending the Penal Act 20 May 2005 No. 28, etc. (Aggravating and Mitigating Circumstances, Genocide, National Independence, Terrorism, Peace, Order and Security, and Public Authorities) [Lov om endringer i straffeloven 20. mai 2005 nr. 28 mv. (skjerpene og formildende omstendigheter, folkemord, rikets selvstendighet, terrorhandlinger, ro, orden og sikkerhet, og offentlig myndighet)], LOVDATA online legal database, <http://www.lovdato.no/cgi-wift/ldles?ltdoc=/all/nl-20080307-004.html>.

¹⁶ Council of Europe, Committee of Experts on Terrorism (CODEXTER), *Norway*, PROFILES ON COUNTER-TERRORIST CAPACITY 8 (Nov. 2008), [http://www.coe.int/t/dlapi/codexter/4_theme_files/country_profiles/Codexter%20Profile%20\(2008\)%20Norway.pdf](http://www.coe.int/t/dlapi/codexter/4_theme_files/country_profiles/Codexter%20Profile%20(2008)%20Norway.pdf).

¹⁷ European Convention on the Suppression of Terrorism, European Treaty Series (ETS) No. 90, in force Aug. 4, 1978.

¹⁸ ETS No. 190, May 15, 2003.

¹⁹ ETS No. 196, in force June 1, 2007.

²⁰ CODEXTER, *supra* note 16.

²¹ General Civil Penal Code, Act. No. 10 of May 22, 1902, text in English based on the Code as amended by Act No. 131 of Dec. 21, 2005, University of Oslo Translated Norwegian Legislation website, <http://www.ub.uio.no/ujur/ulovdata/lov-19020522-010-eng.pdf>.

²² *Id.* § 147a, ¶ 3.

²³ *Id.* ¶ 4.

²⁴ *Id.*

²⁵ *Id.*

²⁶ CODEXTER, *supra* note 16, at 2.

²⁷ *Id.*

²⁸ *Id.*

²⁹ *Id.*

³⁰ Act Amending the Penal Act 20 May 2005 No. 28, *supra* note 15; new Penal Code, *supra* note 14. For a draft English translation of Chapter 16, “Genocide, Crimes Against Humanity and War Crimes,” *see* Rule of Law in Armed Conflicts Project [RULAC], http://www.adh-geneva.ch/RULAC/pdf_state/draft-chapter-16.pdf (last visited July 28, 2011).

³¹ RULAC, *supra* note 30.

³² Schabas, *supra* note 9 (referencing Rome Statute of the International Criminal Court, July 17, 1998, in force July 1, 2002, 2187 U.N.T.S. No. 38544, <http://www.icc-cpi.int/NR/rdonlyres/ADD16852-AEE9-4757-ABE7-9CDC7CF02886/283503/RomeStatutEng1.pdf>).

³³ Decision Pursuant to Article 15 of the Rome Statute on the Authorization of an Investigation into the Situation in the Republic of Kenya, Case No. ICC-01/09-19-Corr, at, e.g., 37–39 (Mar. 31, 2009), <http://www.icc-cpi.int/NR/exeres/422F24A9-5A0F-4FD0-BC3E-9FFB24EC7436.htm>.

³⁴ *Id.* at, e.g., 107–09, 118 (Kaul, J., dissenting).

³⁵ Schabas, *supra* note 9; Prosecutor v. Kunarac, Kovac and Vukovic, Case No. IT-96-23 & IT-96-23/1-A, Judgment, ¶ 104 (Int’l Crim. Trib. for the Former Yugoslavia, June 12, 2002), <http://www.icty.org/x/cases/kunarac/acjug/en/kun-aj020612e.pdf>.

³⁶ Schabas, *supra* note 9.

³⁷ General Civil Penal Code § 39d.

³⁸ *Id.* § 39e, ¶ 1.

³⁹ *Id.*

⁴⁰ *Id.* ¶ 2.

⁴¹ *Id.* ¶ 3.

⁴² *Id.* ¶¶ 1–3.

⁴³ *Id.* ¶ 5.

⁴⁴ New Penal Code, ch. 7, §§ 40–47.

⁴⁵ Nina Berglund, *Confessed Terror Suspect Held in Jail*, VIEWS AND NEWS FROM NORWAY (July 25, 2011), <http://www.newsinenglish.no/2011/07/25/confessed-terror-suspect-held-in-jail/>.

⁴⁶ Sarah Dingle, *Breivik Trial to Challenge Norwegian Justice*, THE WORLD TODAY (July 25, 2011), <http://www.abc.net.au/worldtoday/content/2011/s3277087.htm>. According to the article, Pratt has “won awards for his research comparing Scandinavian and Anglophone penal systems.”

⁴⁷ General Civil Penal Code § 39.

⁴⁸ *Id.* § 44.

⁴⁹ *Id.* § 45.

⁵⁰ *Id.* § 39, item 1.

⁵¹ Act No. 62 of 2 July 1999 Relating to the Provision and Implementation of Mental Health Care (Mental Health Care Act), with Later Amendments, University of Oslo Translated Norwegian Legislation website, <http://www.ub.uio.no/ujur/ulovdata/lov-19990702-062-eng.pdf> (last visited July 29, 2011); Lov om etablering og gjennomføring av psykisk helsevern (psykisk helsevernloven), LOVDATA online legal database, <http://www.lovdata.no/all/nl-19990702-062.html> (last visited July 29, 2011).

⁵² *Id.* § 5-2, ¶ 1.

⁵³ *Id.*

⁵⁴ *Id.* ¶ 2.

⁵⁵ *Id.* § 5-3.

⁵⁶ *Id.* § 5-4.

⁵⁷ *Id.* § 5-5.

⁵⁸ *Id.* § 5-6.

⁵⁹ General Civil Penal Code § 39a, ¶ 2.

⁶⁰ *Id.* ¶ 3.

⁶¹ *Id.* ¶ 4.

⁶² *Id.* § 39b, ¶ 1.

⁶³ *Id.* ¶ 2.

⁶⁴ *Id.* ¶ 3.

⁶⁵ *Id.* ¶ 4.

⁶⁶ Lov om skytevåpen og ammunisjon mv. [våpenloven] (Act No. 1 of June 9, 1961, *as last amended on June 19, 2009*, <http://www.lovdata.no/all/hl-19610609-001.html>; Act No. 1 of 9 June 1961 Relating to Firearms and Ammunition, <http://www.ub.uio.no/ujur/ulovdata/lov-19610609-001-eng.html> (English translation based on the Act as amended in 1990; last visited July 27, 2011).

⁶⁷ *Id.* § 7, ¶ 1.

⁶⁸ *Id.* ¶ 3.

⁶⁹ Simon Tisdall, *Norway's Gun Laws Prove Easy to Ignore*, GUARDIAN.CO.UK (July 24, 2011), <http://www.guardian.co.uk/world/2011/jul/24/norway-strict-gun-laws-circumvented>.

⁷⁰ Regulation No. 904 of June 25, 2009, Forskrift om skytevåpen, våpendeler og ammunisjon mv. (våpenforskriften) [Regulation Relating to Firearms, Firearm Parts, and Ammunition (Firearms Regulations)], <http://www.tonsbergpk.net/Vapenforskriften%20pr%20010709.pdf>.

⁷¹ *Id.* § 5, ¶ 1.

⁷² *Id.* § 7, ¶¶ 1 & 2.

⁷³ Tisdall, *supra* note 69.

⁷⁴ Firearms Regulations, ch. 3, §§ 10–25.

⁷⁵ Firearms Act § 13, ¶ 1.

⁷⁶ *Id.* ¶ 2.

⁷⁷ For statistics on crime in Norway, *see Crime and the Justice. Tables* [sic], STATISTICS NORWAY, http://www.ssb.no/english/subjects/03/05/a_krim_tab_en/ (last visited Aug. 1, 2011).

⁷⁸ Reid J. Epstein, *Norway Shooter: Ammo Clips Were from U.S.*, POLITICO (July 28, 2011), <http://www.politico.com/news/stories/0711/60154.html>.

⁷⁹ *Id.*

⁸⁰ Firearms Act, § 23, ¶ 1.

⁸¹ *Id.* ¶ 2.

⁸² *Id.* ¶ 3.

⁸³ *Id.* § 24, ¶ 1.

⁸⁴ *Id.* ¶ 2.

⁸⁵ Aled Dilwyn-Fisher, *Police Want Stricter Gun Control*, VIEWS AND NEWS FROM NORWAY (Aug. 2, 2011), <http://www.newsinenglish.no/2011/08/02/police-will-have-stricter-gun-control/>.

⁸⁶ *Sweden's Gun Laws Would Have Stopped Norway Killer: Police*, THE LOCAL (July 25, 2011; updated Aug. 1, 2011), <http://www.thelocal.se/35156/20110725/>.

⁸⁷ *Id.*

⁸⁸ Thomas HeggHammer, Op.-Ed., *The Rise of the Macro-Nationalists*, THE NEW YORK TIMES, July 31, 2011, at 5, available at <http://www.nytimes.com/2011/07/31/opinion/sunday/the-rise-of-the-macro-nationalists.html>.

⁸⁹ *Id.*, graphic insert.

⁹⁰ *Many New European Immigrants*, STATISTICS NORWAY (Apr. 28, 2011), http://www.ssb.no/english/subjects/02/01/10/innvbef_en/.

⁹¹ *Id.*

⁹² Tisdall, *supra* note 69.

⁹³ Dilwyn-Fisher, *supra* note 85.

⁹⁴ *Id.* (quoting Ragnhild Bjørnebekk of the Norwegian Police University College as reported by the newspaper *Bergens Tidende*).

⁹⁵ *Id.*

⁹⁶ *Id.*

⁹⁷ *Id.*

⁹⁸ *Id.*

⁹⁹ Tisdall, *supra* note 69.

¹⁰⁰ Dilwyn-Fisher, *supra* note 85.