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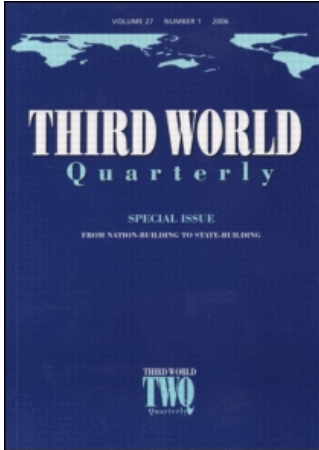
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# Exporting the Patriot Act? Democracy and the ‘war on terror’ in the Third World

BETH ELISE WHITAKER

*ABSTRACT* Since 2001 many countries have adopted anti-terrorism laws that limit civil liberties and expand law enforcement powers in the name of national security. Counter-terrorism legislation is promoted through several international channels, most notably the United Nations Counter-Terrorism Committee, but the USA is clearly seen as the driving force. This article examines the politics surrounding the recent development and implementation of anti-terrorism laws in the Third World and the implications for ongoing processes of democratisation. In some countries the adoption of anti-terrorism laws has provided leaders with the tools they need to silence critics and punish political opponents. In others the introduction of such bills has actually encouraged debate and fostered civil society activism, much of it anti-American in tone. In either setting the Bush administration’s twin foreign policy goals of strengthening international security and promoting democracy may be creating more cynics than friends.

Since the beginning of his second term in January 2005 US President George W Bush has called repeatedly for the expansion of democracy around the globe. White House officials have praised popular political movements in Egypt, Lebanon and Ukraine and condemned autocratic regimes in North Korea, Syria and Zimbabwe. Although this rhetoric has declined since the Hamas victory in the 2006 Palestinian elections, democracy promotion remains an important foreign policy goal. At the same time, of course, the Bush administration’s primary emphasis continues to be the ‘war on terror’, including the war in Iraq. How are these goals of promoting democracy and fighting terrorism related? In some ways the two go hand in hand; many analysts argue that extremism emerges partly out of frustrations associated with a lack of political freedom. In other ways, however, the goals are at odds, as the USA finds it necessary to work closely in the struggle against terrorism with friendly authoritarian regimes in the Middle East, Central Asia and beyond.<sup>1</sup>

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One area in which this tension between democracy and security plays out is in the introduction of anti-terrorism laws. The USA's own Patriot Act has sparked heated debate and a wave of litigation over the extent to which the government can limit individual freedoms in the name of national security. Concerns have focused especially on the law's provisions for enhanced surveillance, information sharing and indefinite detention.<sup>2</sup> As controversy continues in the USA, similar legislation has been adopted in countries around the world. In the aftermath of the attacks on 11 September 2001, the UK, Australia, Canada, France, Germany and Japan, among others, enacted their own anti-terrorism laws, prompting familiar arguments about the proper balance between human rights and security. But this debate is not limited to established democracies. The introduction of anti-terrorism bills has sparked similar controversies in many developing countries, where democratic institutions are far from consolidated, if they exist at all. The ways in which these countries resolve the tension between freedom and security will have far-reaching implications for both the spread of democratic institutions and the success of the 'war on terror' world-wide.

This article examines the relationship between promoting democracy and fighting terrorism in the Third World. It focuses on the politics surrounding the development of recent anti-terror laws, including the involvement of the USA and others in that process. Many legal scholars have compared the specific provisions of anti-terrorism legislation around the world.<sup>3</sup> The current analysis instead explores the political dynamics underlying the passage and implementation of these policies in developing countries. In some cases governments have been quick to exploit the tools of repression provided by anti-terrorism laws. In others the legislation has sparked widespread debate and protest, often with an anti-American slant. Either way the perceived role of the USA in promoting these laws has generated cynicism about the Bush administration's twin foreign policy goals. To many it seems that one (security) is likely to take priority over the other (democracy) for years to come.

### **Anti-terrorism legislation in the Third World**

The events of 9/11 shifted global attention from individual rights to national security.<sup>4</sup> In order to combat the threat of terrorism, it was argued, democratic citizens would have to accept legislation placing constraints on their individual freedoms. In addition, the fight against terrorism could not be won by national governments alone; it required countries around the world to embrace similar measures. On 28 September 2001 the United Nations Security Council adopted Resolution 1373 calling on member states to become party to all relevant international conventions on terrorism and to enact the necessary domestic legislation to enforce these agreements. Less than a month later the US Congress passed the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT) Act of 2001. Although this law has received

widespread media attention, the USA was not alone in passing such a controversial measure.

Since September 2001, according to reports submitted to the UN Counter-Terrorism Committee (CTC) and other sources,<sup>5</sup> at least 33 countries in Africa, Asia and Latin America have introduced specific anti-terrorism legislation in their parliaments (see Table 1). This number does not include many countries that have enacted anti-terrorism measures as amendments to existing criminal codes or those that had similar laws on the books before the current 'war on terror'. The focus in this paper is on domestic political debates, so the table also excludes countries like Thailand that have addressed terrorism largely through executive decree. In addition to the countries listed here, many others are currently drafting new anti-terrorism legislation and several have sought CTC assistance in that process.

Fourteen developing countries that have introduced anti-terrorism legislation since 2001 passed it with minimal debate (see first column of Table 1). Many did so within months of 9/11, and all took less than a year between introduction and passage of their bills. This group includes countries that are themselves facing terrorist threats, as well as less likely targets. Morocco is an interesting case in this category. In the aftermath of the attacks on New York and Washington the government did little more than to establish an inter-ministerial structure to address the issue of terrorism. Official reports to the CTC from this time period reflect no urgency to change existing laws or enact new legislation along the lines of the Patriot Act. Then, in a period of half an hour on 16 May 2003, more than 40 people died when suicide bombers attacked five separate sites in Casablanca. The impact on the country's tourism sector was immediate. Within days, the government enacted sweeping counter-terrorism measures and arrested thousands of suspected militants, prompting protests from Human Rights Watch and other groups.

Another group of 13 countries has passed anti-terrorism legislation, but only after significant debate or controversy (second column). Opposition

TABLE 1. Anti-terror legislation in the Third World since 9/11 (as at March 2007)

Passed with minimal debate	Passed after extensive debate or controversy	Still pending
Antigua and Barbuda (2001)	Bahamas (2004)	Kenya
Barbados (2002)	Bahrain (2006)	Ghana
Cuba (2001)	Colombia (2003) (overturned 2004)	Namibia
Gambia (2002)	El Salvador (2006)	Nigeria
Jordan (2006)	India (2002) (repealed 2004)	South Korea
Morocco (2003)	Indonesia (2003)	Zimbabwe
Nepal (2002)	Jamaica (2005)	
Qatar (2004)	Mauritius (2002)	
St Vincent and Grenadines (2002)	Philippines (2007)	
Samoa (2002)	Seychelles (2004)	
Singapore (2001)	South Africa (2004)	
Tanzania (2002)	Trinidad and Tobago (2005)	
Tunisia (2003)	Turkey (2006)	
Uganda (2002)		

criticism of proposed legislation in many countries delayed its passage for at least a year; in a few cases the government was forced to make major concessions and revise the most controversial provisions. In Indonesia, as in Morocco, new legislation came quickly after terrorist attacks on Bali (October 2002) and Jakarta (August 2003), but a proposed bill had been the subject of significant debate in parliament before that time. Several of these cases are discussed further below, but the extent of the controversy over anti-terrorism legislation in Mauritius is noteworthy. Soon after the government introduced the bill in the National Assembly in early 2002, an opposition request to delay its discussion pending further review was denied. Opposition members protested by walking out of the assembly and the bill passed quickly in their absence. But, in order for a bill to become law in Mauritius, the (largely ceremonial) president must provide his assent. In a period of three days, two presidents refused to assent to the controversial legislation and chose instead to resign. Eventually, an interim president was appointed and signed the bill into law.

Finally, six countries have introduced anti-terrorism legislation but are continuing to debate its provisions (third column). While discussions have just started in a few countries, they have been going on for years in others. Within this group, South Korea deserves special attention. It has been a staunch supporter of the 'war on terror' and is the third largest contributor of troops in Iraq (after the USA and Britain), but widespread domestic opposition there blocked an anti-terrorism bill introduced in 2002. South Korean officials have been working on a new draft since then, but have yet to introduce one publicly. This situation is similar to that in the Philippines, which passed anti-terrorism legislation in March 2007 after nearly four years of debate. The Philippines also had troops in Iraq until July 2004, when a hostage-taking incident prompted them to pull out early. President Gloria Arroyo repeatedly called for an anti-terrorism bill, but multiple versions were blocked by the opposition-controlled Senate. Finally, after a name change and significant concessions on the most serious measures, the Human Security Act of 2007 became law.<sup>6</sup> Despite the support of these governments for the US approach against terrorism, their proposed bills sparked considerable criticism among civil libertarians and media groups within their own countries. Thus, strong anti-terrorism rhetoric in the executive branch does not always translate into related legislation down the line.

The tension between freedom and security is evident in these countries even in the policy deliberation phase, as more democratic countries have demonstrated greater reluctance to pass anti-terrorism laws that might limit individual rights. Indeed, the extent of political liberalisation in a country is a key factor determining how quickly such a bill is passed. The 14 countries that enacted anti-terrorism laws with minimal debate had an average Freedom House political rights score of 4.36 on a scale of 1 (most democratic) to 7 (most authoritarian).<sup>7</sup> The average score for the 13 countries that extensively debated such bills before passing them was 2.54. The difference between these groups is highly statistically significant. In addition, the average political rights score is 2.2 in the five countries where politicians are

still debating anti-terrorism bills more than 18 months after their introduction.<sup>8</sup> In other words, the more authoritarian a country, the more quickly it enacts anti-terrorism legislation. This is not surprising; political debates over all types of proposed legislation are more common in countries that are more democratic. The implication, however, is that supporters of anti-terrorism laws (including the USA) may find it easier to work with authoritarian governments than with democratic ones simply because the measures can be enacted more quickly. In addition, as discussed below, the anti-American tone of the debate about anti-terrorism bills in the more democratic countries may generate special cause for concern among some officials.

The specific provisions of anti-terrorism legislation differ from country to country, as examined elsewhere, but some parallels with the Patriot Act are worth mentioning. Most of the new laws define terrorism broadly, emphasise anti-state activities, and give the government in question the authority to label whole organisations as terrorist groups.<sup>9</sup> They expand law enforcement powers by permitting enhanced surveillance and reducing procedural requirements such as obtaining court approval. The measures call for improved sharing of information among law enforcement bodies within a country and often with counterpart agencies in other countries. In many cases anti-terrorism legislation allows for lengthy pre-trial detention of suspects and imposes mandatory sentences on those convicted. The similarities among anti-terrorism laws across the globe reflect what one scholar has described as the transnational diffusion of norms surrounding public order, a process that cannot be separated from the influence of the USA.<sup>10</sup> Indeed, given the parallels between the legislation in developing countries and the Patriot Act, there is ample reason to suspect active American promotion of these laws. It is to this question of US involvement that the paper now turns.

### **Exporting the Patriot Act?**

The USA generally supports the adoption of anti-terrorism laws in developing countries. American diplomats in particular often encourage passage of such legislation through public statements that generate local media attention. In Trinidad and Tobago, for example, the US ambassador warned about a possible reduction in US investment if the anti-terrorism bill was not passed.<sup>11</sup> On a visit to the Philippines, US Deputy Secretary of State Robert Zoellick praised the government's efforts to pass an anti-terrorism bill and mentioned the possibility of receiving aid through the Millennium Challenge Account. The comments were not linked, but opposition politicians interpreted them as promising increased US assistance in exchange for the passage of the proposed legislation.<sup>12</sup> In Kenya US officials have called repeatedly on the government to pass anti-terrorism legislation, although the previous ambassador raised concerns about the human rights implications of an early draft. Thus, the extent of US pressure for anti-terrorism laws varies depending upon the details of the proposed legislation, the nature of the terrorist threat, and the importance of other foreign policy goals in a country.

Beyond the public rhetoric, however, the presence or absence of anti-terrorism legislation does not seem to have had a significant impact on levels of US economic and military assistance. Statistics from the US Agency for International Development demonstrate no clear pattern with respect to economic and military funding levels for the countries considered here.<sup>13</sup> The countries that enacted anti-terrorism legislation did not receive significantly larger aid increases between 2000 and 2005, on average, than their counterparts that failed to pass such measures. In fact, the countries that received the largest proportional increases in US military assistance during that period (Colombia, Kenya, Nepal, the Philippines, Seychelles, Tanzania, Turkey and Uganda) suggest decisions based on a range of strategic and other considerations rather than simply the status of domestic legislation.

In general, therefore, it is not clear that countries are being rewarded financially by the USA when they pass anti-terrorism legislation or punished when they do not.<sup>14</sup> Instead, many countries have received symbolic recognition for their co-operation in the 'war on terror', including their enactment of such laws. After cracking down on domestic terrorist networks, Morocco was visited by then US Secretary of State Colin Powell (December 2003) and granted major non-NATO ally status by the USA (June 2004). Mauritius, which also has participated in joint military training operations, has been added to the US Anti-Terrorism Assistance Program. But again, domestic laws are not the only factor determining such recognitions. The Philippines became a major non-NATO ally of the USA in October 2003, despite the political impasse over proposed anti-terrorism legislation at the time.

The US government is not the only source of pressure on developing countries for the adoption of anti-terrorism laws. The more consistent message actually comes from the UN Counter-Terrorism Committee, which was created to monitor the implementation of Resolution 1373. Comprised of all 15 UN Security Council members, the CTC does not sanction governments or identify terrorist supporters. Instead, it seeks to build a global legal infrastructure against terrorism by urging governments to ratify relevant international conventions and enact the legislation necessary for their enforcement. In an unprecedented move Resolution 1373 imposes uniform requirements on all member states regardless of their ratification of international conventions.<sup>15</sup> UN member states must submit periodic reports on their laws in a number of areas (financing, recruiting, information sharing, etc) and the CTC follows up with questionnaires until each government has fulfilled its obligations under the resolution. In its early reports to the CTC, for example, Costa Rica argued that various portions of the existing penal code were sufficient to address the threat of terrorism. After receiving several requests from the CTC for clarification about specific measures, however, Costa Rica relented and agreed to draft specific anti-terrorism legislation, a process that is ongoing.<sup>16</sup>

To date, the CTC has received a high level of co-operation from member states.<sup>17</sup> Nearly every state has submitted an initial report on its implementation of Resolution 1373, and many have submitted several. But some questions remain about what will happen to the CTC when the post-9/11

energy declines, particularly with respect to funding its work. The General Assembly has provided sufficient funds until now, but it may become necessary in the future for individual member states to fund CTC operations. In addition, the CTC has encountered tensions with the Office of the United Nations High Commissioner for Human Rights, which is concerned that the committee does not evaluate member states' laws to ensure compliance with human rights standards.<sup>18</sup> Thus, the same rights-versus-security debate that is taking place in many countries is also reflected within the UN family. For now, though, the CTC is a significant source of pressure on member states to adopt anti-terrorism legislation.

In addition to this global initiative, the Commonwealth has its own programme to support the development of anti-terrorism laws in its 53 member countries. The Commonwealth Secretariat has issued a model bill to be used as a template in drafting such legislation. It includes various options drawn from existing laws in certain member countries for everything from defining terrorism to trying a suspect under the act.<sup>19</sup> A civil society watchdog group, the Commonwealth Human Rights Initiative, has produced reports about the development of anti-terrorism legislation in these countries, drawing particular attention to the implications for human rights and democracy.<sup>20</sup> In many ways the CTC and the Commonwealth initiative represent the building blocks of an emerging counter-terrorism regime.<sup>21</sup> The CTC is pushing all UN member countries to adopt similar anti-terrorism provisions. If policy makers do not want to draft legislation from scratch, they can simply cut and paste from the Commonwealth's model. Thanks in part to these influences, anti-terrorism legislation is becoming increasingly harmonised in countries around the world.

Despite the role of these multilateral initiatives in promoting anti-terrorism legislation, the USA is clearly *perceived* to be the driving force behind such laws. There have not been massive protests or angry editorials against the CTC or the Commonwealth. In country after country people view these measures as requirements imposed by the Bush administration and leaders see them as a way to win favour with the USA. An editorial on a Filipino website reads:

Treating the world like a schoolyard where it reigns supreme, the United States made up the rules for those who want to be on its good side—like the passage of laws outlawing terrorism, if possible patterned after the United States' own repressive Anti-Terrorism Law.<sup>22</sup>

Legislative hearings on a recent anti-terrorism bill in the Philippines were suspended when opponents accused it of coming from the USA. 'Maybe Bush has a man here', complained one representative.<sup>23</sup> Similar views have been expressed in many countries where such bills have been debated, including India, Jamaica and South Korea. Two cases from sub-Saharan Africa demonstrate the prevalence of this viewpoint.

In 2003 Kenya's newly elected government introduced in parliament the Suppression of Terrorism Bill, setting off a firestorm of controversy. After deadly terrorist attacks on the US Embassy in Nairobi (August 1998) and on



an Israeli-owned hotel near Mombasa (November 2002), Kenya might have been expected to enact such legislation quickly and without debate (much like its neighbour Tanzania). Kenyan authorities have co-operated in investigating these incidents, but 'the willingness of Kenyans to assist the United States... is by no means assured'.<sup>24</sup> The anti-terrorism bill generated fervent criticism among members of parliament, human rights advocates, lawyers and religious leaders. Muslim populations felt especially targeted by the proposed legislation. Widespread opposition forced the government to withdraw the bill in late 2003. After two years of consultation with lawyers and civil society organisations, a revised anti-terrorism bill was introduced in April 2006. Although the new draft is widely acknowledged to be much improved, several prominent members of parliament have promised to block its passage. Their reason, quite simply, is that the bill is promoted by the USA.<sup>25</sup>

US diplomats have indeed pushed Kenyan leaders to adopt the domestic legislation necessary to investigate and prosecute terrorist groups,<sup>26</sup> but they have steered clear of the issue publicly in recent years.<sup>27</sup> Kenyans widely perceive the Bush administration as forcing anti-terrorism legislation on the country, and opponents are happy to reinforce this view. One politician accused the USA of 'drawing a draft and handing it to the [Kenyan] executive with a demand that it be enacted by Parliament'.<sup>28</sup> Others have claimed an explicit link (denied by US officials) between passage of anti-terrorism legislation and the lifting of a travel warning imposed by the USA in May 2003 and extended periodically since then.<sup>29</sup> Human rights activists blame the Kenyan government for bowing to US pressure in exchange for aid. In fact, even without a bill's passage, US economic assistance to Kenya increased by 106% and military aid by 220% between 2000 and 2005.<sup>30</sup> In addition, most of the \$100 million East African Counter-Terrorism Initiative is going to Kenya and the USA provided training for an anti-terrorism police unit. With so much focus on the influence of the USA (both real and exaggerated), a high-level CTC delegation to Kenya in May 2005 received relatively little attention; its main purpose was to encourage the passage of legislation criminalising terrorism.

In South Africa the debate over a series of proposed anti-terrorism bills was fuelled by both the perceived heavy-handedness of the USA and by the country's own painful history of apartheid.<sup>31</sup> An anti-terrorism bill introduced in 2002 sparked widespread criticism among the usual groups, including human rights activists, civil rights lawyers and media organisations. The politically powerful Congress of South African Trade Unions (COSATU) also emerged as a prominent opponent of the legislation, eventually forcing the government to temporarily withdraw it from consideration in February 2004 by threatening to strike.

The debate in South Africa centred on the potential for abuse of specific provisions in the bill, including its vague definition of terrorism and restrictions on free speech. Critics also expressed concerns about the US role in promoting the legislation. One editorial asked, 'So what if... everyone else is passing these laws...? The true nature of the problem is largely hidden from public view, namely that America is using the anti-terrorism drive to

further its global imperialist aims'.<sup>32</sup> Another argued, 'Put simply, this Bill is not in the interests of South Africa as it is being forced on weaker states by powerful nations, such as the United States and the United Kingdom, in their prosecution of the so-called "war against terror"'.<sup>33</sup> In the face of such criticism the government redrafted the bill several times. It was only after major revisions and a name change that the measure finally became law. In late 2004 the Protection of Constitutional Democracy against Terrorist and Related Activities Bill won unanimous support in the National Assembly.

In addition to highlighting the anti-American tone of domestic political debates, the cases of Kenya and South Africa reflect public concerns about adopting anti-terrorism legislation in countries that have only recently emerged from authoritarian rule. Even after the end of apartheid and the country's first multiracial elections in 1994, South Africans continue to be wary of legal measures that restrict civil liberties and increase the reach of government authorities. The transition in Kenya is even more recent: in late 2002 long-time leader Daniel arap Moi finally allowed free and fair elections that brought an opposition coalition to office. In both countries recently empowered political groups pounced on government anti-terrorism proposals as reminiscent of past experiences with unlawful arrests, police seizures and human rights abuses. Civil society organisations and media outlets were particularly vocal in demanding that the bills be revised to protect hard-won freedoms. Compromises were eventually reached in South Africa, while the debate continues in Kenya. In contrast, anti-terrorism bills have faced relatively little opposition in countries where political groups have not been recently empowered.

Although US pressure for the adoption of anti-terrorism legislation is largely through rhetoric rather than actual incentives, people in many developing countries clearly believe that such laws are required by the USA as part of its global 'war on terror'. In some cases ruling parties are happy to perpetuate that impression in order to deflect criticism and avoid blame. The association of domestic anti-terrorism legislation with the USA is important because any effects of these laws—especially negative ones—are likely to be attributed to US pressure. The USA will not get much credit if the laws are used to infiltrate a terrorist cell and prevent a deadly bombing, but it will get blamed if the laws are used to violate human rights and restrict civil liberties. In fact, as examined in the next section, the use of anti-terrorism laws to crack down on political opponents has already led citizens in some countries to question President Bush's commitment to spreading freedom and democracy.

### **Anti-terrorism legislation and democracy**

Many countries that have introduced anti-terrorism legislation since 2001 are at various stages of political liberalisation. Some are well on their way towards consolidating democratic institutions (Barbados, Mauritius, South Africa), others have only recently held free elections (Indonesia, Kenya, South Korea), and still others are moving more cautiously towards

competitive multiparty systems (Tanzania, Uganda). Despite their adherence to legislative procedures, several countries on the list have yet to embark upon a path toward true liberalisation (Morocco, Tunisia). The introduction of anti-terrorism legislation in the context of democratisation poses significant challenges, as formerly authoritarian countries struggle to find a manageable balance between political freedoms and state power. Very quickly, perhaps more so than in established democracies, governments are likely to resolve this dilemma in favour of the latter.

Indeed, in several countries under examination here, recent anti-terrorism legislation has been used to target political opponents and crack down on dissidents. India's democratic institutions are well established in comparison with many other Third World countries, but the government is frequently accused of overstepping its bounds. In 2002, after a bitter debate between members of the ruling Bharatiya Janata Party (BJP) and opposition groups, parliament passed the Prevention of Terrorism Act (POTA).<sup>34</sup> It contained many controversial provisions, including a broad definition of terrorism, expanded police powers, and the ability to detain suspects for 90 days without charge. After its passage, human rights activists argue, POTA was used 'against political opponents, religious minorities, Dalits, tribals and even children'.<sup>35</sup> Under the law, state governments rounded up opposition politicians for speaking in favour of Tamil separatists, boys as young as 12 for supporting Maoist rebels, and Muslims for attacking Hindus in a resumption of sectarian violence. After similar abuses in Jammu and Kashmir the state government announced that it would no longer enforce POTA.<sup>36</sup> By late 2003 public criticism and a series of court cases had prompted widespread debate about the law.<sup>37</sup>

In May 2004 the Congress Party won a surprise victory over the BJP in parliamentary elections. Within months the new government had repealed POTA. Human rights groups widely praised the move, but critics described it as merely 'cosmetic'.<sup>38</sup> Based on a clause in the original legislation, POTA was scheduled to expire in October 2004 anyway. With its repeal, many features of POTA, including the broad definition of terrorism and expanded law enforcement powers, were simply incorporated as amendments to existing legislation. In this way the new government earned praise by repealing an unpopular law without losing many of its weapons in the war against terror. In addition, POTA's repeal did not mean that existing charges under the law were automatically dropped; a review committee was formed to determine which cases to pursue. Nevertheless, the new package of anti-terrorism measures has more civil rights protections and procedural requirements. This suggests that India has learned lessons from its counter-terrorism experience that could be useful in other contexts.<sup>39</sup>

Recent anti-terrorism legislation in Indonesia also has been the subject of human rights concerns. Since the 1998 fall of General Suharto the country has been undergoing a tentative democratic transition, with legislative elections in 1999 and direct presidential elections in 2004. In the midst of this process, terrorism has become a major political issue. An anti-terrorism bill introduced in 2002 generated widespread criticism, with civil society groups

arguing that it would reinstate many of the police powers of the authoritarian period. While the measure was being debated in parliament, the country was attacked; on 12 October 2002 the bombing of a night club in Bali left 202 people dead, many of them Australian tourists. Less than a week later President Megawati Sukarnoputri issued two regulations along the lines of the anti-terrorism bill. With few changes, these regulations were passed into law by the Indonesian parliament in early 2003. The legislation contains many of the same provisions as anti-terrorism laws elsewhere. Officials have applied its broad definition of terrorism to separatist movements in Papua and Aceh and arrested suspects on evidence obtained through questionable means.<sup>40</sup>

A unique aspect of the 2003 legislation in Indonesia was that it applied retroactively to the 2002 Bali bombings. This provision was challenged in courts after 32 militants were convicted under the law for their role in that incident. In 2004 the country's new constitutional court ruled that the retroactive provision was unconstitutional, throwing the earlier convictions into legal limbo and tying prosecutors' hands for subsequent cases. Instead of praising Indonesia for its adherence to the rule of law, the USA and Australia criticised the justice system for being weak on terrorists.<sup>41</sup> Megawati was defeated in 2004 presidential elections. Her replacement, former security minister Susilo Bambang Yudhoyono, is on record as saying that bombing victims are more important than human rights.<sup>42</sup> Reflecting Indonesia's importance in the 'war on terror', the USA has renewed ties with the Indonesian military that had been restricted for a decade over human rights concerns. The Bush administration has provided millions of dollars to the Indonesian army and police, lifted a ban on sales of non-lethal military equipment, and resumed a training programme for military personnel.<sup>43</sup>

In Uganda President Yoweri Museveni has exploited the 'war on terror' to lash out against both legitimate security threats and non-violent political opponents. Under the Anti-Terrorist Act of 2002 the government labelled as terrorists the Lord's Resistance Army (LRA) and started a massive military offensive against the brutal rebel group known for kidnapping children. The violence displaced hundreds of thousands, but most people recognised a legitimate threat. In addition to going after the LRA, however, the government has used the anti-terrorism legislation to limit freedom of speech and target opponents. In 2004 two journalists from an independent newspaper were threatened with prosecution under the law after their phone numbers were found on dead LRA commanders.<sup>44</sup> Soon thereafter radio stations were warned not to broadcast interviews with opposition leader Kizza Besigye, Museveni's main opponent in the 2001 presidential elections, who was also labelled a terrorist.<sup>45</sup> Citing these cases and others, critics accuse Museveni, who has been in power since 1986, of using the terrorism issue to delay political reforms and silence opponents. Despite these concerns, US economic and military aid to Uganda more than tripled between 2000 and 2005.

While these countries have used new anti-terrorism laws to legitimise their questionable practices, it is clear from other contexts that specific legislation is not necessary to take advantage of the global 'war on terror'. Leaders in

China, Egypt, Eritrea, Malaysia, Russia and Syria, among others, have justified recent crackdowns on political opponents as a necessary response to terrorist threats.<sup>46</sup> Another example of the abuse of anti-terrorism rhetoric comes from Zimbabwe, where journalists writing about political violence in the country have been labelled as terrorists. In an attempt to align Zimbabwe with the USA in November 2001, a spokesman for President Robert Mugabe said: 'As for the [journalists], we would like them to know that we agree with US President Bush that anyone who in any way finances, harbours or defends terrorists is himself a terrorist. We, too, will not make any difference between terrorists and their friends and supporters.'<sup>47</sup> In early 2006 Mugabe's government introduced the Suppression of Foreign and International Terrorism Bill, but withdrew it after some clauses were found to be unconstitutional. A revised version was introduced in parliament later in the year.

In many ways, therefore, the adoption of anti-terrorism legislation in the Third World provides governments with the tools they need to justify anti-democratic practices. In more than a few countries, as has been documented extensively by human rights groups, the new laws have been used to silence critics and punish political opponents. Broad definitions of terrorism have allowed incumbents to apply the label to any group or individual that threatens their political power. Expanded law enforcement capabilities have permitted officials to keep tabs on the communications and activities of civil society organisations. The reduction of procedural requirements has led police to detain suspects first and ask questions later. These trends are worrisome in any country, but would seem especially so in countries where democratic institutions are relatively new and have not yet been consolidated.

Interestingly, however, it is in several newer democracies that anti-terrorism laws have faced the toughest opposition. Rather than rolling over and accepting harsh restrictions on personal liberties, civil society organisations and political parties in these countries have vigorously defended their newfound freedoms. In Kenya and South Korea public outcry has prevented the passage of anti-terrorism bills. In South Africa and the Philippines activists forced the governments to significantly alter legislative proposals and eliminate their most draconian provisions. In Indonesia, court cases have raised questions about the constitutionality of anti-terrorism legislation and forced the government to reconsider its tactics. Compare these outcomes to more authoritarian countries and even to some more established democracies where, despite criticism and some legal challenges, recent anti-terrorism laws remain largely intact.

Finally, in countries that have only recently begun to embrace democratic principles, anti-terrorism legislation can actually foster civil society engagement and debate. In Tanzania the Prevention of Terrorism Act faced minimal opposition when it was enacted in 2002. Within months, however, the 'Ashcroft law'<sup>48</sup> was widely criticised, particularly for a provision allowing the government to share information about citizens with the 'appropriate authority of a foreign state' (understood to be the US Federal Bureau of Investigation and Central Intelligence Agency).<sup>49</sup> After FBI officials arrested two Muslim leaders in Tanzania, civil society groups organised a massive

anti-American protest. On 13 June 2003 thousands of protestors marched through Dar es Salaam, many carrying placards that read 'FBI get out'. Police prevented them from reaching the US embassy, which closed for the afternoon rather than receive their demands. In a country that has allowed multiparty competition since 1992 but has yet to see an opposition victory, the scale of the protest was significant. In a strange twist, therefore, US promotion of anti-terrorism legislation may generate new opportunities for political participation in some countries, but much of that activism is directed against the USA.

### Conclusion

The global 'war on terror' has generated a wave of literature, particularly concerning its implementation in several focus countries, but relatively little attention has been given to its legal institutional underpinnings.<sup>50</sup> Since September 2001 countries around the world have adopted anti-terrorism legislation similar to the USA PATRIOT Act. Although details vary, these laws generally limit civil liberties and expand law enforcement powers in the name of protecting national security. The adoption of anti-terrorism legislation is promoted through several multilateral channels, most notably the UN CTC, but the USA is clearly seen as the driving force. In light of President Bush's 'you're either with us or against us' warning, world leaders have embraced anti-terrorism laws as an efficient and visible way to demonstrate their co-operation.

For centuries people in democratic countries have argued about the appropriate balance between individual rights and national security. With the spread of anti-terrorism legislation across the globe, this debate between rights and security is also being exported, often to contexts in which the human rights side of the scale has long been neglected. In many countries authoritarian leaders have seized on the new laws and the broader rhetoric of the 'war on terror' to punish opponents and silence dissent. The claim that they are simply fighting terrorists provides lightly veiled justification for their actions and, in many cases, reduces the risk of criticism from the USA and other Western countries. Thus, while Bush administration officials speak eloquently about the spread of freedom and democracy US-promoted anti-terrorism laws give authoritarian leaders the tools to be more ruthless. In such contexts it is easy to understand why many people in the Third World are cynical about Bush's promises.

Interestingly, however, the introduction of anti-terrorism legislation in some places has actually fostered civil society activism and encouraged open debate. In several countries, many of which only recently witnessed democratic transitions, politicians, journalists and activists have attacked anti-terrorism bills that are reminiscent of past authoritarian practices. Through savvy media campaigns and political strategies, they have often forced changes in the laws and revisions to the more questionable provisions. So perhaps, in some cases, fighting terrorism does go hand in hand with spreading democracy, as proposed laws generate widespread debate.

The problem for the USA is that, in all these examples, popular movements against anti-terrorism legislation were largely anti-American in tone. The association of the USA with these bills was a major justification for opposing them and beleaguered policy makers often sought to downplay any American connection. In promoting such legislation, therefore, the USA may in fact be stirring up resentment in countries where it did not previously exist.

In the end there is no question about the need to respond to the threat of international terrorism. The debate is about the best strategy for doing so. The Bush administration is currently striving to strengthen security measures and promote democracy around the world, both laudable goals. Yet in practice there is a risk that this approach will eventually be seen as yet another chapter in the history of American hypocrisy. As the two goals come into conflict with one another, it appears likely that security concerns will take priority. If the 'war on terror' is used to justify support for Western-friendly authoritarian regimes, as the Cold War was in past decades,<sup>51</sup> the USA will be seen as placing its own national interests over the human rights of other peoples. If, on the other hand, the opportunity is taken to promote a genuine movement towards democracy around the world, the USA may not like the results.

## Notes

- 1 Thomas Carothers, 'Promoting democracy and fighting terror', *Foreign Affairs*, 82 (1), 2003, pp 84–97.
- 2 Christopher C Joyner, 'The United Nations and terrorism: rethinking legal tensions between national security, human rights, and civil liberties', *International Studies Perspectives*, 5 (3), 2004, pp 240–257.
- 3 See, for example, VV Ramraj, Michael Hor & Kent Roach (eds), *Global Anti-Terrorism Law and Policy*, New York: Cambridge University Press, 2005. The authors provide one of the broadest studies of anti-terrorism legislation around the world, including examples from Asia, Europe, Africa, the Middle East and the Americas.
- 4 Rosemary Foot, 'Collateral damage: human rights consequences of counterterrorist action in the Asia-Pacific', *International Affairs*, 81 (2), 2005, pp 411–425.
- 5 Reports can be found at the CTC website, <http://www.un.org/Docs/sc/committees/1373/>. Although UN Resolution 1373, which created the CTC, also concerns terrorist financing, I have focused here on legislation addressing sub-paragraph 2(a) on criminalising terrorism and bringing its perpetrators to justice.
- 6 According to AP news reports, the Filipino military complained that the new law lacked the teeth necessary for their fight against terrorists, while leftist leaders vowed to challenge it in court for violating civil liberties.
- 7 Freedom House, *Freedom in the World: The Annual Survey of Political Rights and Civil Liberties*, various dates. Annual issues are available at <http://www.freedomhouse.org>. This study used the political rights score for each country in the year the anti-terrorism bill was enacted; for countries that are still debating such measures, scores from the 2006 Freedom House report were used.
- 8 Of the countries listed in the third column of Table 1, this average political rights score excludes Zimbabwe, where anti-terrorism legislation was introduced more recently. An initial bill introduced there in March 2006 was withdrawn after a few months because of concerns that it violated the constitution. A revised anti-terrorism bill was gazetted in December 2006 and introduced in parliament in March 2007 as this article was going to press.
- 9 For an interesting series of articles on the politics of labelling different groups as terrorists, see the special issue of *Third World Quarterly*, 26 (1), 2005.
- 10 Latha Varadarajan, 'Patriot games: making sense of anti-terrorism legislations in the post-9/11 world', paper presented at the International Studies Association annual meeting, Honolulu, HI, March 2005.
- 11 Dominic Bascombe, 'Anti-terrorism legislation in the Commonwealth: a briefing paper for the Commonwealth Human Rights Initiative', May 2003, at <http://www.humanrightsinitiative.org/>.
- 12 CPP Information Bureau, 'CPP assails US for pushing VAT increase and anti-terror bill', press release, 6 May 2005.

- 13 US Agency for International Development (USAID), *US Overseas Loans and Grants [Greenbook]*, 2005, at <http://quesdb.cdie.org/gbk/>.
- 14 This differs markedly from US efforts to force countries to sign 'Article 98' bilateral immunity agreements that protect US citizens from prosecution before the International Criminal Court. Per congressional legislation in 2002, certain categories of US military and economic assistance have been suspended to countries that have not signed such agreements, including several of the countries under discussion here.
- 15 Eric Rosand, 'Security Council Resolution 1373, the Counter-Terrorism Committee, and the fight against terror', *American Journal of International Law*, 97 (2), 2003, pp 333–341.
- 16 'Third report of the Republic of Costa Rica on the measures taken to follow up United Nations Security Council resolution 1373 (2001), submitted to the United Nations Security Council Counter-Terrorism Committee, in response to the Chairman's note', United Nations Security Council S/2003/453, March 2003, p 4, at [http://www.un.org/Docs/sc/committees/1373/submitted\\_reports.html](http://www.un.org/Docs/sc/committees/1373/submitted_reports.html).
- 17 Rosand, 'Security Council Resolution 1373'.
- 18 International Peace Academy, United Nations Office of the High Commissioner for Human Rights & Center on International Organization at Columbia University, 'Human rights, the United Nations, and the struggle against terrorism', report of a conference held in New York, 7 November 2003.
- 19 Commonwealth Secretariat, 'Model legislative provisions on measures to combat terrorism', September 2002, at <http://www.thecommonwealth.org>.
- 20 Bascombe, 'Anti-terrorism legislation in the Commonwealth'; and Dominic Bascombe, 'An update of anti terror legislation in the Commonwealth', July 2004, at <http://www.humanrightsinitiative.org/>. The availability of information about Commonwealth countries is one reason for the emphasis on them in this article.
- 21 Karthika Sasikumar, 'Regimes at work: a comparative analysis of the international nonproliferation and counter-terrorism regimes', paper presented at the International Studies Association annual meeting, Honolulu, HI, March 2005.
- 22 Paulynn P Sigam, 'Anti-terrorism legislation in the Philippines: a plot of its own', *CyberDyaryo* internet publication, 4 September 2002, reproduced in *World Press Review*, 49 (11), November 2002.
- 23 Philip C Tubeza, 'Tempers flare in House anti-terrorism hearing', *Philippine Daily Inquirer*, 5 May 2005.
- 24 Joel D Barkan, 'Kenya after Moi', *Foreign Affairs*, 83 (1), 2004, pp 87–100.
- 25 Honourable Paul Muite, MP-Kabete, interview with the author, Nairobi, 9 November 2005.
- 26 US officials were especially disappointed by the June 2005 acquittal of seven suspects in the Nairobi and Mombasa incidents by Kenyan courts.
- 27 Honourable William Bellamy, US Ambassador to Kenya, interview with the author, Nairobi, 27 March 2006. In private, however, the ambassador continued to remind Kenyan leaders of the need for anti-terrorism legislation.
- 28 Honourable Paul Muite, 'State jobs: MPs' verdict must be respected', *Daily Nation*, 3 October 2005. This accusation was flatly denied by several officials at the US Embassy in Kenya.
- 29 Interestingly, the number of American visitors to Kenya recently has risen to new highs. Kenyan tourism officials believe that the totals would be even higher if the travel warning was dropped.
- 30 USAID, *US Overseas Loans and Grants*. These overall increases were made, despite the mandated suspension of certain categories of economic and military assistance for Kenya's refusal to sign an Article 98 agreement with the USA.
- 31 During that period, liberation movements such as the now-governing African National Congress were often labelled terrorists and the term continues to provoke strong emotions today.
- 32 Jane Duncan, 'Anti-Terrorism Bill will stamp on human rights', *Sowetan*, 10 January 2003, at <http://fxi.org.za/anti-terrorism.htm>.
- 33 Iqbal Jassat, 'US-inspired climatic changes in the form of anti-terror laws: will these rain clouds unleash a torrent of hail?', 2003, at <http://www.mediareviewnet.com>.
- 34 The earlier Terrorist and Disruptive Activities (Prevention) Act (TADA) was allowed to expire in 1995 after widespread criticism of its abuses.
- 35 Human Rights Watch, 'In the name of counter-terrorism: human rights abuses worldwide', Briefing for the 59th session of the United Nations Commission on Human Rights, 25 March 2003.
- 36 *Ibid.*
- 37 Dan Morrison, 'India's "Patriot Act" comes under scrutiny', *Christian Science Monitor*, 30 October 2003, p 7.
- 38 Kranti Kumara, 'Repeal of India's draconian anti-terrorism law: largely a cosmetic change', *World Socialist Web Site*, 27 November 2004, at <http://www.wsws.org/articles/2004/nov2004/ind-n27.shtml>.
- 39 Manas Mohapatra, 'Learning lessons from India: the recent history of antiterrorist legislation on the subcontinent', *Journal of Criminal Law and Criminology*, 95 (1), 2004, pp 315–343.
- 40 Human Rights Watch, 'In the name of counter-terrorism'.



- 41 These governments were especially critical when the alleged mastermind of the Bali bombings, Muslim cleric Abu Bakar Bashir, was convicted of conspiracy and sentenced to just 30 months in prison in March 2005.
- 42 Foot, 'Collateral damage'.
- 43 'US eases curbs on ties with Indonesian military', *Financial Times*, 31 May 2005.
- 44 After widespread criticism and a campaign by the International Federation of Journalists, no charges were filed.
- 45 In October 2005 Besigye returned to Uganda from self-imposed exile in South Africa to launch another presidential campaign. Within days, he was arrested on rape and treason charges, prompting widespread protests and the suspension of aid by several foreign donors. In January 2006 he was released on bail by the High Court. The presidential elections in February 2006 were marred by irregularities and Besigye protested against the result, but the Supreme Court declared Museveni the winner.
- 46 Human Rights Watch, 'Opportunism in the face of tragedy: repression in the name of anti-terrorism', 2004, at <http://www.humanrightswatch.org/campaigns/september11/opportunismwatch.htm>.
- 47 Quoted in *ibid*.
- 48 Tanzanians gave the law a nickname tying it to former US Secretary of Homeland Security John Ashcroft.
- 49 Informal discussions with Tanzanians by the author, Dar es Salaam, June and July 2003.
- 50 Varadarajan, 'Patriot games'.
- 51 Adekeye Adebajo, 'Africa and America in an age of terror', *Journal of Asian and African Studies*, 38 (2–3), 2003, pp 175–191.