

UNDERSTANDING TERRORISM IN AFRICA:
**BUILDING BRIDGES AND
OVERCOMING THE GAPS**

19-20 May 2007, Cairo, Egypt



Edited by Wafula Okumu and Anneli Botha



Terrorism Studies &
Research Program



Understanding Terrorism in Africa
Building Bridges and Overcoming the Gaps

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19 and 20 May 2007

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Contents

About the authorsiii

Introduction.....vi

Panel 1: Bridging Gaps in Definitions and Understanding of Terrorism

Terrorism: An Etymo-Epistemological Analysis
Mhand Berkouk

Challenges in understanding terrorism in Africa
Anneli Botha

Panel 2: Bridging Gaps in Understanding the Impact of the War on Terrorism

The Impact of the War on Terrorism in Western Democracies
Clinton W Watts

The Impact of Terrorism on the Middle East and North Africa
Mohamed Kamal

The Impact of the War on Terror on Governance and Human Rights in Sub-Saharan Africa
Samuel M Makinda

Economic Consequences of Terrorism in North Africa: Insights from Economic Theory
Abdallah Shehata Khattab

Terrorist Attacks and the Kenyan Economy.....
Martin Kimani Mbugua

The Impact of War on Terrorism on the Media and Civil Society in North Africa
Al-Shikaki Ahmed

Panel 3: Building Bridges in Preventing and Combating Terrorism in Africa

Egyptian Legislative Strategy in Addressing Terrorism.....
Ismael Abd El Rahman

Gaps and Challenges in Preventing and Combating Terrorism in East Africa.....
Wafula Okumu

Initiatives to Prevent and Combat Terrorism in Southern Africa
Anneli Botha

Counter-Terrorism Measures in West Africa
Gani Yoroms

Panel 4: International Experiences in Preventing and Combating Terrorism

Terrorism in Southeast Asia: Threats and Responses
Mohamed Bin Ali

Terrorism: The European Experience
Karin Kneissl

The United States of America’s Experience in Preventing and Combating Terrorism.....
Donovan C Chau

Canadian Experiences in Preventing and Combating Terrorism
Kent Roach

List of Participants **135**

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Introduction

This report contains papers that were presented at the second of a series of four seminars on the theme 'understanding terrorism in Africa'. The seminar, organized jointly by the Institute for Security Studies (ISS), the Terrorism Studies and Research Programme (TSRP) of Cairo University, and the African Centre for Strategic Research and Studies (ACSRS) at the Nigerian National War College, took place at the University of Cairo from 19 and 20 May 2007. The sub-theme of the seminar, 'building bridges and overcoming gaps in the understanding of terrorism in Africa', was one of the recommendations reached at the first seminar held in Benoni, South Africa, in November 2006. It posits that, in order to prevent and combat terrorism in Africa, we must come up with ways of building bridges across the continent. Hence, the Cairo seminar had the primary aim of building bridges between North and sub-Saharan Africa, between Africa and the West, and between practitioners, scholars or researchers, civil society, communities and the general public. It was hoped that the process of building these bridges would also provide opportunities for forging and strengthening partnerships that are necessary in combating and preventing terrorism in Africa. Most critical, according to the participants in the Cairo seminar, is the need to build bridges that would lead to a common understanding of terrorist threats and the harmonisation of counter-terrorism measures and strategies in Africa.

This report is divided into four parts. The first part contains papers that seek to bridge the gaps in the definitions and understanding of terrorism in Africa. Mhand Berkouk's paper briefly outlines some of the common challenges and contradictions inherent in the definition of terrorism. He emphasises that there is currently no widely accepted definition of terrorism and that most attempts to define it have often been complicated by the similarity that exists between terrorism (which is a legally illegitimate expression of beliefs) and resistance (which is legally legitimate). Anneli Botha examines the African experience of both domestic and international terrorism and outlines African attempts to define terrorism through various AU agreements and legislation. She emphasises the problematic distinction between resistance and terrorism and analyses the factors, which both contribute to and counter terrorism.

The second part of the report explores the impacts of the war on terrorism on various aspects of society, in particular its ideals, norms, practices, institutions and processes. Clinton Watts examines how US counter-terrorism has affected American democracy by examining four key areas: personal freedoms;

political pluralism; the US judicial system; and political accountability. He argues that, while terrorism has, in some ways, succeeded in eliciting the exact repression of democratic rights that it aims to, it has more often caused US citizens to question their democracy, which is, in itself, indicative of a healthy democratic process.

Mohamed Kamal argues that terrorism is influenced by a combination of domestic and international factors, which include the economic, social and cultural impact of globalization (particularly Western globalisation) and Western foreign policies towards Arab and Islamic countries. Dr. Kamal examines Egypt's multi-dimensional counter-terrorism response to reveal that tackling terrorism requires many domestic reforms.

Samuel Makinda argues that terrorism, governance and human rights have a symbiotic relationship. Factors such as human rights abuses and undemocratic or corrupt governance can cause or facilitate terrorism. However, these exact same things are often features of counter-terrorist responses. By examining regional and sub-regional counter-terrorism responses, Professor Makinda outlines the difficulty of formulating an effective African counter-terrorism that doesn't exacerbate the very terrorism it aims to prevent.

Abdallah Shehata Khattab examines the economic impact of terrorism around seven key sectors: tourism; direct foreign investment, savings and consumption; physical capital accumulation and/or investment; the stock markets; foreign trade; and general economic growth. He finds that the economic impact of terrorism is greater in the long term—in, for example, the sustained use of state budget money to finance counter-terrorism state security measures – than in the short term – in, for example, the tourism sector or stock market.

Martin Mbugua examines the impact which terrorist attacks in Kenya in the period between 1998 and 2002, had on the Kenyan economy. He finds that, although there were significant short-term economic consequences in the tourism sector after the 1998 US embassy bombing and 2002 Mombasa hotel bombing, tourism bounced back fairly quickly. Mbugua also finds that, in general, Kenyans perceive the impact of terrorism, in a country that has many other social, economic and political problems, as negligible.

Shikaki Ahmed examines the case of three North African countries; Algeria, Morocco, and Tunisia. He argues that governments often react to terrorism by imposing harsh counter-terrorism measures, which stifle freedom of expression and repress a

civil society. Ironically it is only through a vibrant civil society and an active and open media that these countries can engage in the social discourse necessary to prevent the dissemination of the extremist ideology that bolsters terrorism. Ahmed makes several recommendations emphasising the importance of maintaining an open and free media and a healthy civil society to counter terrorism.

The third part of the report contains papers that contextualise the challenges and gaps in combating and preventing in Egypt and African sub-regions of East, West and Southern Africa. Ismael Adb el Rahman examines Egypt's legislative counter-terrorism actions by looking at both the objective criminal legislation used to deal with terrorist suspects and the procedural rules under which such legislation is carried out. He concludes that there are some gaps in the legislative framework and that the current legislation, while often only adhering to minimum rights standards, is necessary given Egypt's high vulnerability to terrorism.

Wafula Okumu examines the gaps and challenges in preventing and combating terrorism in East Africa by focusing on possible factors contributing to terrorism in region and then outlining the measures undertaken to counter terrorism. He argues that there are still major gaps in counter-terrorism policies in East Africa which include: the lack of a definition of terrorism; a lack of implementation and commitment; and, most importantly, a focus on state security and actual terrorist acts, rather than human security and a preventive approach to the socio-economic conditions which engender terrorism.

Anneli Botha outlines incidences and risks of terrorism in Southern Africa, as well as the legislative measures – including international legislation and agreements and national legislation – which these countries have undertaken to prevent and combat terrorism. She explores the ways in which police organisations, such as the International Criminal Police (INTERPOL) and Southern African Regional Police Chiefs Cooperation Organisations (SARPCO) can play important roles in countering terrorism in southern Africa.

Gani Yoroms argues that West Africa is highly susceptible to terrorism. He examines both individual national responses and larger regional responses – such as bilateral and multilateral agreements, ECOWAS cooperation, and international collaboration and support. Dr. Yoroms also outlines the weaknesses in West African counter-terrorism, such as weak states and a lack of sincere political commitment on the part of West African leaders. He stresses the importance of regional cooperation (through Ecowas, the AU, and bilateral agreements), national commitment, and democratic state strengthening.

The final part of the report contains papers that examine experiences from different parts of the world and how they can be useful in bridging the gaps in the understanding and addressing of terrorism in Africa. Mohamed Bin Ali's paper focuses on how countries in Southeast Asia such as Thailand, Indonesia, the Philippines, Singapore, and Malaysia have responded to terrorist threats. He emphasises the preventive aspects of counter-

terrorism and advocates countering the radical Islamic ideology that engenders it. He particularly praises the effectiveness of re-education and rehabilitation programs, like those of Singapore, and stresses the necessity of inclusion of and cooperation with Islamic communities.

Karin Kneissl examines terrorism in the European context by drawing examples from domestic conflicts (Northern Ireland, the Basque region, and Corsica), political groups on both the right and the left (the Red Army in Germany), and comparing them to transnational cultural and political conflicts (Palestine, Libya, Iran and the terrorism in the Islamic Diaspora). She also examines the EU's increasingly concerted response to terrorism.

Donovan Chau analyses the US counter-terrorism strategy by examining counter-terrorist measures undertaken by agencies at both the state and federal levels. He describes the procedures of information gathering, arrest, prevention, and, finally, examines US counter-terrorism strategy in Africa by focusing on the CJTF-HOA mission.

Professor Kent Roach compares Canada's previously moderate counter-terrorism measures (particularly in relation to the October Crisis, Quebec separatism, and 1985 Air India flight bombing) with its more aggressive post-9/11 legislation and practices. He particularly focuses on the human rights implications of applying immigration law (which can seriously infringe on individual human rights and freedoms) in the place of anti-terrorism law in situations involving terrorist suspects.

I hope that this report, like the previous one, will contribute to a deeper understanding of terrorism in Africa and to finding a common ground from which to address the phenomenon. It is built upon the first report of the Benoni seminar and will, in turn, be built upon by the Accra and Nairobi seminars that focus on domestic terrorism in Africa and an assessment of counter-terrorism measures and strategies in Africa, respectively.

The seminar organisers would like to heartily thank the Norwegian government for generously supporting the seminar series, and Mr. Jon Erik Stromo for his steadfast support of our work and continued encouragement. Also deserving deep appreciations are the hosts of the Cairo seminar, Professor Abdel-Aziz Shady and Ms Charlotte Kopper, our Nigerian partners, Drs. Zabadi and Gani Yoroms from the Nigerian War College, and the administration and staff of Cairo University, particularly Prof. Dr. Ali Abdul-Rahman, the President, and Dr. Mona El Baradei, the Dean of the Faculty of Economics and Political Science.

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Panel 1

Bridging Gaps in Definitions and Understanding of Terrorism

**Terrorism:
An Etymo-Epistemological Analysis**

Mhand Berkouk

**Challenges in understanding
terrorism in Africa**

Anneli Botha

Terrorism

An Etymo-Epistemological Analysis

Mhand Berkouk

Terrorism is a growing transnational threat. It extends from Jolo in the Philippines to Patani in Thailand and the Sahel and Maghreb regions in Africa. History records that Europe has had its own terrorist organisations: *Action Directe* in France, Red Brigade in Italy, Irish Republican Army (IRA) in the United Kingdom, *Euzkadi Ta Azkatasuna (ETA)* in Spain and Red Army Faction (RAF) or *Baader–Meinhof* Group in Germany. The Americas have been influenced by groups such as *Farabundo Marte* in Salvador and Shining Path in Peru and events such as the Oklahoma terrorist bombing in the United States in 1995. Terrorism is a worldwide threat with varying modes of expression and justification and with different tactical *modi operandi*.

Terrorism is a historical phenomenon that can be identified in the violent nature of the French Revolution (Montbrial & Klein 2006:582). Besides being a ubiquitous occurrence that transcends cultural, religious, economic and political contexts, it is a threat to political stability, international security and human wellbeing. Terrorism is simply a threat to individual and collective human rights. Despite the recurrent nature of this over-reaching and over-arching phenomenon, it is still ill-defined and open to misinterpretation, misuse and moral justification.

This paper addresses the issue of terrorism from the viewpoint of political engineering that uses human rights as its ontological grounding and human security as its final object.

TERRORISM: THE ETERNAL CACOPHONY

Terrorism is a value-laden concept. It is a highly contentious and emotionally charged term. Furthermore, it is a highly loaded political idiom. What constitutes terrorism for one could be defined as resistance by others. In this context, Koufa (2001)¹ states that

[there is a] tendency amongst commentators to mix definitions with value judgments and either qualify as terrorism violent activity or behaviour which they are opposed to or, conversely, reject the use of the term when it relates to activities and situations which they approve of.

This cacophony is due to a number of variables attached to the very nature of the phenomenon. They are discussed below.

Terrorism as plurimorphic phenomenon

Terrorism takes on different forms, for instance religious terrorism, narco-terrorism, bio-terrorism, state terrorism, international terrorism and group terrorism. In addition, it takes varying modes of expression, such as assassinations, hostage taking, hijacking, suicide bombing, car bombs, sabotage, terrorist mass murders and air and missile strikes against sovereign states.

Terrorism as dynamic phenomenon

Terrorism varies not only in terms of tactical and operational choices and actions but also in terms of frames of legitimisation, for instance ethno-political separatism, dogmatic Puritanism, religious and ideological extremism and hegemonic tendencies.

Terrorism as phenomenon lacking inter-disciplinary consistency

Terrorism, in fact, is defined differently by different political scientists, criminologists, forensic psychologists and social pathologists. This etymologically magnified inflation has further complicated the cacophonous character of the phenomenon.

The varying contexts from which terrorism emerges, or in which it thrives, further complicate this etymological dilemma.

TERRORISM: A CAUSAL ANALYSIS

Political psychologists agree that every consciously chosen course of action is almost always rationalised and every act is a mature cognitive image of reality (Boulding). In pathological political analysis, however, one is inclined to perceive these choices, behaviours and acts as having been caused by either subjective or objective sources.

Category one of causal dynamics

The first cluster contains motivational factors and idiosyncratic variables.

Motivational factors

Motivational factors are linked to feelings of injustice; a sense of disempowerment; and feelings of alienation, possibly religious or socio-political. These beliefs drive certain individuals to resort to terrorism, as a tactical choice, for the sake of change or empowerment and self-actualisation (not in Maslow's sense) by

striving to die for a cause or ideas and convictions. For Islamic terrorists, self-actualisation could be summarised by the trilogy jihad–martyrdom–paradise, which constitutes their mode of rationalisation.

Idiosyncratic variables

Idiosyncratic variables are linked to states of psychosis, neurosis, deviant behaviour, mental disorders, aberrant personalities and other socio-psychological pathogens and pathologies.

Category two of causal dynamics

The second cluster contains objective causal dynamics. These could be divided into two sub-clusters.

Exogenous factors

Exogenous factors include the following:

- The spillover of ethno-political conflicts and crises as, for example, in the Balkans, Central Africa and the Horn of Africa; the spread of certain types of religious terrorism as found in the internationalisation of Al-Qaeda's philosophy and modus operandi; and systems of allegiance as, for example, in the case of *Groupe Salafiste pour la Prédication et le Combat (GSPC)* or Salafist Group of Preaching and Combat, which joined this criminal network.
- American and Western unilateral aggressive actions across the Muslim world, in addition to Israel's occupation of Palestinian and Arab lands, and acts of aggression against Lebanon; incidents that generate a sense of rejection of the religious and cultural other; and policies, actions and local frustrations that terrorists use as a background to recruitment strategies and for the legitimisation of their acts.

Endogenous Factors

Endogenous factors include the following:

- Crises of identity and affiliation that are due to ethno-political conflicts and weaknesses in social and cultural integration; terrorism used for cultural affirmation and political separation
- Democratic deficit that generates a multi-dimensional political crisis: crisis of performance; crisis of participation; crisis of representation; crisis of legitimacy, or refusing the governing elite the right to rule in the name of the citizenry; and crisis of legitimisation, rejecting the normative and ideological underpinnings of the incumbent political system
- Human development deficit that reflects the existence of economic poverty, lack of human security and feelings of disempowerment
- Lack of distributive justice (in the Rawlsian sense): absence of equal opportunities, social and economic justice and political rights; and a weak and dependent judicial system
- Low state capacity building

TERRORISM: A METHODOLOGICAL AND AN OPERATIONAL PERSPECTIVE

3.1 METHODOLOGICAL IMPLICATIONS

The complex nature of terrorism and its causal dynamics have several methodological implications. In fact, the study of terrorism requires the use of transversal, non-linear and multi-disciplinary approaches. These are necessary for the study of this multi-morphic phenomenon.

Moreover, understanding and analysing terrorism needs a clinical perspective that is deconstructive and not simply interpretative. One needs to use at least five modes of thinking: contextual, causal, dimensional, critical and comparative. The process involves a junction between methods proper to the field of creative thinking and problem solving (De Bono) and that of epistemological logic (Michel Foucault).

Any serious and scientific study of terrorism needs to avoid stereotyping, meta-narratives and simplistic classifications that reproduce misinterpretations and cultural-bound rhetoric. One needs, therefore, to move beyond the confines of ethno-centrism and the demonisation of the cultural and/or religious other.

Operational perspective

At the operational level, however, one might ask what implications this complex phenomenon has. In fact, it needs a holistic, global and multi-dimensional approach that will tackle not only its symptoms but also its real causes and dynamics. The process should go beyond simple security reactions, adaptations and responses. These implications could be clustered in national and international sets.

National set of implications

This sub-cluster contains the following:

- The need to develop an adequate legislation against terrorism that combines approaches to pre-emption, prevention, deterrence and criminal sanctions
- The need to engage in a process of political re-engineering in line with the principles and basic requirements of participative democracy, state of law and rights, good governance and human security
- The need to engage in socio-economic reforms to alleviate poverty, marginalisation, lack of justice and absence of equal opportunities
- The need to engage in cultural and educational reforms to improve the socialisation of new generations according to the principles of tolerance, dialogue, diversity, human rights and the rejection of extremism, political violence and terrorism

International set of implications

The second sub-cluster contains the following:

- The need to develop a comprehensive international convention on terrorism that defines unequivocally and

consensually the substance of the phenomenon and its epistemological limits

- The need to distinguish between terrorism and the right to self-determination
- The need to resolve hanging crises and conflicts, such as those in Palestine, Afghanistan, Chechnya, Somalia and Sudan, for they generate objective and subjective causes used by terrorists in their process of legitimisation
- The need to develop international mechanisms prohibiting the financing of terrorism and the harbouring of terrorists
- The need to humanise global governance (to paraphrase Richard Falk) by ending double standards and international inequalities, by enforcing the human rights regime and by pressing for a human approach to international security

CONCLUSION

As a transnational phenomenon, terrorism is a growing threat to human life, state stability and international security. It requires serious consideration by scholars, politicians, civil societies and international and regional institutions.

As a concept, terrorism needs to be defined clearly and consensually so as to avoid any etymological or political overlapping between terrorism and resistance. The former can never be justified politically, legally or normatively; the latter, however, is a right grounded in international law.

As a threat, terrorism is expanding worldwide and is finding its way to several parts of Africa: North Africa, the Sahel, the Horn of Africa and West Africa. Therefore, Africans need to address this menace rationally and consciously and avoid American attempts at using terrorism as a pretext to establish itself militarily on the continent.

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NOTES

- 1 Kalliopi K Koufa serves as Special Reporter on Human Rights and Terrorism, Unesco, Subcommission on Human Rights.

Challenges in Understanding Terrorism in Africa

Anneli Botha

INTRODUCTION

When addressing the challenges to understanding terrorism in Africa, one immediately assumes that people on the African continent have a certain understanding of the threat of terrorism to state and human security and of its implications. One needs to recognise that the use of terrorism as a tactic is not new in Africa. To comprehend the challenges facing a researcher studying terrorism in Africa, one must ask this central question: If it is not a new phenomenon, why is it so difficult for African countries and their nationals to recognise the threat and impact of terrorism?

This historic reference aside, African countries are gradually beginning to realise that the threat of and vulnerability to terrorism differ from one continent to another, one subregion to another and one country to another. This fact implies that subregions and countries will react differently according to their unique threat perception. It furthermore implies that the African interpretation of the reason, threat and impact of terrorism differs from that of other parts of the world. Equally, Africa cannot isolate itself from developments relating to the threat of terrorism in other parts of the world since factors such as globalisation, the Internet and the impact of United States foreign policy in the Middle East directly influence perception formation and radicalisation and cannot be stopped by borders.

Two additional factors that challenge the understanding of terrorism in Africa need to be highlighted: the development of double standards and the abuse of the concept *terrorism* for ulterior motives. This paper therefore defines *terrorism* within an African counter-terrorism strategy; situates this strategy within African history; and analyses its impact on the recent understanding of terrorism in Africa. The paper also reviews the underlying causes of terrorism in Africa; its changing nature; and challenges of designing effective strategies to address it.

DEFINITION OF 'TERRORISM' AND AN AFRICAN COUNTER-TERRORISM STRATEGY

Despite a history of terrorism on the continent, manifested especially through domestic terrorism, African countries were not fully committed to implement existing regional and international strategies until the events of 11 September 2001 (9/11). However, efforts to improve African regional cooperation to counter terrorism predate the 9/11 attacks and even the 1998 bombings of

the American Embassies in Kenya and Tanzania. As early as July 1992, the Organisation of African Unity (OAU) Heads of State and Government meeting in Dakar adopted Resolution 213. The objective of this resolution was to strengthen cooperation and coordination among African states to enhance the effectiveness of initiatives against the first real manifestations of extremism. More specifically, member states agreed not to allow any movement using religion, ethnic or other social or cultural differences to incite and justify hostile activities against each other. Another element, reinforced seven years later in the Algiers Convention of 1999, was aimed at preventing territories from being used to provide support to any group that could disrupt the stability and territorial integrity of member states by violent means.

Member States [were called upon] not to allow any movement using religion, ethnic or other social or cultural differences to indulge in hostile activities against Member States as well as to refrain from lending any support to any group that could disrupt the stability and the territorial integrity of Member States by violent means, and to strengthen cooperation and coordination among the African countries in order to curb the phenomenon of extremism and terrorism.

Resolve against terrorism and extremism was confirmed in June 1994 when the Assembly of Heads of State and Government adopted the Declaration on the Code of Conduct for Inter-African Relations during its session in Tunis. In that declaration, the summit rejected fanaticism and extremism, whatever their nature, origin or form, particularly those based on religion, as unacceptable and detrimental to the promotion of peace and security on the continent. The summit unreservedly condemned terrorist acts, methods and practices and expressed its determination to strengthen cooperation between member states.

Terrorism and religious extremism, especially as witnessed in North Africa with the return of former Afghanistan War veterans during the 1990s, influenced the region's resolve against terrorism and extremism. Although other African countries sympathised with countries in North Africa, concrete action to prevent and combat terrorism was limited to countries that were directly affected. In other words, only countries that had been directly threatened by acts of terrorism were prepared to commit themselves to regional and international instruments and to implement legislation and other initiatives to address this phenomenon.

African countries were abruptly awakened to the emerging threat of transnational terrorism when terrorists bombed the American Embassies in Dar es Salaam and Nairobi in 1998. The car bombs caused many casualties among local residents and American officials. In reaction to these bombings, and the devastating consequences of domestic terrorism in North Africa, the OAU Convention on the Prevention and Combating of Terrorism (known as the Algiers Convention) was implemented during July 1999 by the 35th Ordinary Session of the Assembly of Heads of State and Government. The convention called on member states not to justify terrorism under any circumstances, whatever the origins, causes and objectives. Article 1 (3)(a) described terrorism as:

... any act which is a violation of the criminal laws of a State Party and which may endanger the life, physical integrity or freedom of, or cause serious injury or death to, any person, any number or group of persons or causes or may cause damage to public or private property, natural resources, environmental or cultural heritage and is calculated or intended to:

- (i) Intimidate, put in fear, force, coerce or induce any government, body, institution, the general public or any segment thereof, to do or abstain from doing any act, or to adopt or abandon a particular standpoint, or to act according to certain principles; or
- (ii) Disrupt any public service, the delivery of any essential service to the public or to create a public emergency; or
- (iii) Create general insurrection in a State.

Article 3 is, however, worth noting:

Notwithstanding the provisions of Article 1, the struggle waged by peoples in accordance with the principles of international law for their liberation or self-determination, including armed struggle against colonialism, occupation, aggression and domination by foreign forces shall not be considered as terrorist acts;

However, there is a distinction:

Political, philosophical, ideological, racial, ethnic, religious or other motives shall not be a justifiable defence against a terrorist act.

As a sign of greater awareness by OAU member states of the threat terrorism presents to their stability and security, the Constitutive Act of the African Union listed among its principles the rejection of acts of terrorism (Article 4(o)). In addition, the Solemn Declaration of the Conference on Security, Stability, Development and Cooperation in Africa (CSSDCA) adopted by the Lomé Summit in July 2000 contains a double reference to terrorism:

- Under the principle on the stability, states declared, 'terrorism, in all its manifestations, is inimical to stability [para 11(e)].'

- In the Plan of Action, meant to translate into concrete actions the principles governing the CSSDCA process, the Member States agreed on the need to 'exchange information and cooperation, at the Sub-regional level, on security matters, especially on issues relating to terrorism ... [para 14(d)].'

Despite the sense of urgency experienced by a number of African countries that were confronted by the devastating impact of different manifestations of terrorism, 9/11 emphasised the need to implement the Algiers Convention. The AU Convention on the Prevention and Combating of Terrorism (1999) came into force on 6 December 2002 after obtaining 23 ratifications. African countries believed that after 9/11, the Algiers Convention was not sufficient to develop a comprehensive counter-terrorism strategy and introduced the following:

- Plan of Action of the African Union High-Level Inter-Governmental Meeting on the Prevention and Combating of Terrorism in Africa
- Peace and Security Council (PSC)
- African Centre for the Study and Research on Terrorism (ACSRT)

The primary aim of the Plan of Action, as reflected in its preamble, is 'to give concrete expression to commitments and obligations (presented in the Algiers Convention and UN Resolution 1373), to enhance and promote African countries' access to appropriate counter-terrorism resources through a range of measures establishing a counter-terrorism cooperation framework in Africa'. The Plan of Action clearly sets out a series of general and specific measures and actions member states are required to comply with. The proposed general measures of the Plan of Action include the following:

- Signing, ratifying and implementing the Algiers Convention and other international counter-terrorism instruments
- Introducing review legislation making terrorism a criminal offence and making provisions within international conventions binding
- Promoting interaction between the institutions involved in the fight against terrorism: legislative, judicial and financial authorities, security forces, the army and civil protection
- Examining the interrelationships and links between terrorism and other forms of crime such as corruption, drug trafficking, illegal proliferation and circulation of light arms and collection of money destined to be used in the financing of terrorist activities because of the acknowledgement of the influence in Africa of transnational organised crime in creating a suitable atmosphere for terrorism
- Dealing with causes of terrorism, in particular poverty and marginalisation

The proposed specific measures of the Plan of Action are the following:

- Police and border control – The creation and development of anti-terrorist units by supplying the equipment and training needed to exchange information and expertise; the reinforcement of border controls (air, sea and land); the prevention of the falsification of identity and travel documents; and the training and development of African specialist capacities
- Legislative and legal measures – The creation of coordinating mechanisms between legal authorities; the application of the principle of systematic extradition or prosecution; the application of the main charge of terrorism to acts of instigation, incitement and justification of acts of terrorism; the qualification of terrorist acts in national legislations as serious crimes; and the introduction of punishments which correspond thereto
- Financing of terrorism – The implementation of the International Convention for the Suppression of the Financing of Terrorism; the control of funds and suspect movement of capital; preventative measures that relate to banking identity and anonymous accounts; the creation of information and financial investigation units; and the control of public collections of funds
- Exchange of information – Operational co-operation between the law enforcement communities by sharing information, manifesting in regional early-warning initiatives; and member states' establishing or supporting the expansion of a sub-regional system to facilitate the exchange of information

In an attempt to bring about coordination in preventing and combating terrorism at the regional, continental and international levels, the African Union initiated the formation of the Peace and Security Council (PSC). In turn, the African Centre for the Study and Research on Terrorism (ACSRT) was established under the authority of the PSC.

The PSC is primarily responsible and tasked to prevent and combat terrorism as part of the creation of a secure environment in Africa. Article 7(i) of the Protocol Relating to the Establishment of the PSC gives the organ the power to 'ensure the implementation of the OAU Convention on the Prevention and Combating of Terrorism and other relevant international, continental and regional conventions and instruments and harmonize and coordinate efforts at the regional and continental levels to combat international terrorism'. Paragraph 16 of the Plan of Action and Article 4 of the Protocol further provide for a detailed role for the PSC, which includes the following:

- Prepare, publicize and regularly review a list of persons, groups and entities involved in terrorist acts;
- Establish mechanisms to facilitate the exchange of information among State Parties on the patterns and trends in terrorist acts and the activities of terrorist groups and on successful practices in combating terrorism;
- Request all Member States to report, on an annual basis, on the steps taken to prevent and combat terrorism and,

where appropriate, on the implementation of the Algiers Convention; and

- Monitor, evaluate and make recommendations on the implementation of the Convention and the Plan of Action.

Paragraphs 19 to 21 of the Plan of Action provided for an African Centre for the Study and Research on Terrorism. The centre was launched during the Second High-Level Inter-Governmental Meeting on the Prevention and Combating of Terrorism in Africa held in Algiers, Algeria on 13 and 14 October 2004. The centre, which is based in Algiers, serves as a structure of the Commission of the African Union and the Peace and Security Council and has the following central objectives:

- To centralise information (establish and maintain a database) focusing on groups and individuals suspected of being involved in acts of terrorism that would enable the study and analysis of terrorism
- To develop training programmes with the assistance of individual countries and organisations

Despite these initiatives, the threat perception differs vastly from one sub-region to another. Subsequently, only Eastern Africa under the auspices of Inter-Governmental Agency on Development (IGAD) developed a sub-regional counter-terrorism initiative known as IGAD Capacity Building Programme against Terrorism (ICPAT).

In addition to the continental and sub-regional initiatives presented above, individual countries adopted their own definitions through their respective counter-terrorism legislations. In practical terms, terrorism can broadly be categorised as domestic and international or transnational, on the basis of the role-players, objectives, target and impact of the particular incident.

Domestic terrorism

Domestic terrorism refers to acts of terrorism that are confined to national boundaries and do not include targets or agents from abroad. The underlying reasons for domestic terrorism are diverse, with the only commonality that individuals become frustrated with the status quo and gradually begin to implement a campaign of systematic violence, often against civilians, as part of a strategy to put pressure on the government of the day and to highlight its incapability to govern. State terrorism is part of domestic terrorism when state actors (police, military, etc) resort to acts of terror against their own nationals, often through a third force, frequently to justify harsher reaction against political opponents. For example, it is suspected that members of the security forces are responsible for the recent wave of bombings in Zimbabwe. By blaming the opposition and referring to them as 'terrorists', the state apparatus justifies harsher measures taken against the opposition.

International/transnational terrorism

International terrorism comprises acts – instigated by a third party – that have clear international consequences. These acts include incidents when terrorists cross national borders to strike

foreign targets or select victims or targets because of their connections to a foreign country (for example diplomats or local executives). International terrorism is broadly associated with the Cold War, when acts of terrorism were carried out by individuals or groups controlled by a sovereign state.

According to Anderson (1998), transnational terrorism is:

... the use, or threat of use, of anxiety – including extra normal violence for political purposes by any individual or group, whether acting for or in opposition to established governmental authority, when such action is intended to influence the attitudes and behavior of a target group wider than the immediate victims and when, through the nationality or foreign ties of its perpetrators, through its location, through the nature of its institutional or human victims, or through the mechanics of its resolution, its ramifications transcend national boundaries.

In contrast to international terrorism where state actors commit acts of terrorism, autonomous non-state actors, irrespective of support from sympathetic states, carry out acts of transnational terrorism. Terrorism is transnational through the nationality or foreign ties of its perpetrators and its location, victims, mechanics of resolution and ramifications that transcend national boundaries.

Despite greater emphasis being placed on transnational terrorism, Dekmejian (2007) expresses the transnationalisation of domestic terrorism when explaining why groups and individuals spread their reach beyond domestic terrorism:

Reaching beyond their domestic origins, anti-state terrorist groups can also develop a transnational outreach. Some sub-national terrorist groups confronting a regime make a strategic choice to transnationalize their operations against that regime's embassies, diplomats, soldiers or even citizens located in other countries. By shifting the arena of violence from the national to the transnational level, these groups seek to maximize their coercive leverage, heighten the target country's vulnerability and insecurity, and increase its costs while creating an international forum for propagating their cause.

While a number of organisations might have made a strategic choice, the historic development of terrorism throughout history, particularly in Africa, might introduce another element in the transnationalisation of domestic terrorism, namely counter-terrorism strategies. A campaign of mass arrest tends not only to drive perpetrators underground but also to export individuals and the philosophy of extremists (or terrorists) to other countries and regions. The responses of the Egyptian government to the Muslim Brotherhood and more radical groups such as al-Jihad in Egypt serves as an example.

Notwithstanding the above-mentioned distinction, there have developed double standards as a result of the differentiation between domestic and transnational terrorism. Although it is not implied that transnational terror organisations do not pose a direct threat through their reach and capabilities, an analyst finds it frustrating that the international community waits until a group

aligns itself with *al-Qa'eda* before considering it a threat. What about the countless lives lost before this happens? Reporting in the media further fuels the perception that a Western life is worth more than that of an African one. Consequently, African people are driven even further away from leading world powers that almost exclusively hunt for *al-Qa'eda* or associated operatives. Furthermore, the *War on Terrorism* debate leads to a growing perception that terrorism, as perceived by the US, is the only threat. However, Africans themselves are equally to blame for the development of double standards because of the inability of African leaders and people to acknowledge the threat and manifestation of terrorism on the continent. To illustrate this fact, Abdi Shakur Sheik Hussien, a religious clan leader presented the following argument during Somalia's reconciliation congress in August 2007: 'We only heard the words 'extremists and terrorists' from the American president, George W Bush, and I believe that we, as Muslims, do not have to repeatedly say what an infidel said.' General Abdirahman Abdi Hussein replied: 'You all ignore that there are terrorists in this country. Those who kill innocent people in the mosques are terrorists. You will only admit and hate them when they kill your relatives and children' (allAfrica.com 2007).

A number of African governments, however, have seen that they can gain from the US through their association with it and other Western countries in the *war against terrorism*. For example, under the pretext of preventing and combating terrorism, a number of countries on the continent have focused their attention on civil society and infringed on the political space (protecting regime security) while failing to address the underlying causes, for example repression or marginalisation. The perception exists that the US will become involved only when its interests are in danger or when those in power play the terrorism card against its enemies. For instance, the Traditional Federal Government (TFG) of Somalia and Prime Minister Meles Zenawi of Ethiopia have used this ploy to secure assistance from the US against the growing influence of the Islamic courts. Although the war on terrorism is portrayed as not being a war against Islam, a possible Islamic state in Somalia evokes fear. Both Prime Ministers Gedi and Meles played the terrorism and an Islamic State card, not in fear of an escalation of acts of terrorism but for political reasons and vested interests. Ironically, the consequence of this strategy was an increase in the threat of terrorism, a playing into the hands of extremists in the Islamic courts and the broader *al-Qa'eda* strategy to justify the call for international fighters and acts of terrorism against an enemy of Islam and a foreign occupying force. The events can be compared to a delicate chess game between Islamist extremists who would use every opportunity to justify their strategy, recruit new members or secure more support against the US as the champion of the *war on terror*. Adopting this less-considered strategy will result in moderate Muslims moving further into the camp of extremism. It is therefore feared that although the TFG and Ethiopia may have won the battle against the Islamic courts, they will lose the war against extremists, thereby further enhancing the perception that the US, as an important ally of the TFG and Ethiopia, acted against Islam. The challenge analysts

and researchers are constantly being confronted with remains: how to develop a balanced and independent understanding of the threat and manifestation of terrorism on the continent while one is constantly faced with strong emotional arguments and perceptions that have developed over time.

TERRORISM AS STRATEGY IN AFRICAN HISTORY

In the introduction, reference was made to terrorism as a tactic because it developed throughout centuries of human history. It was used in conflicts in which opposing sides were unequal in strength, or as part of a strategy to gain the upper hand. Influenced by history, terrorism became a label or was labelled a curse. The debate became emotional, and consequently people began to align themselves with the underdogs: those who resorted to acts of terrorism while searching for change and even defending their actions. In the glorified past, terrorism became associated with a strategy to initiate change.

Terrorism as a strategy directed against civilians and non-combatants has had a long history in Africa. Although 9/11 had devastating consequences, campaigns of systematic terror directed against civilians in low-intensity conflict areas throughout Africa should not be disregarded. One needs to determine what asymmetric warfare is and how terrorism fits into this strategy.

Asymmetric warfare is a term that describes a violent confrontation in which two opposing forces of unequal strength or capacity interact and take advantage of their own strengths and weaknesses and those of their enemies. This interaction often involves strategies and tactics outside the bounds of conventional warfare and the outcome of the conflict is not determined by numerical and technological superiority. Tactical advantages such as decentralised cell structures and a small force using hit-and-run tactics characteristic of guerrilla warfare (which is also associated with asymmetric warfare) and disappearance amongst the local population imply that the playing field is levelled. The adoption of low-tech tactics is essentially a sign of a weaker force that incorporates initiative and uncertainty into its strategy (Wikipedia 2007a). These two concepts contribute to conventional forces' difficulty to counter asymmetric tactics. The concept of fourth generation warfare is associated with asymmetric warfare. The term refers to conflicts in which one of the parties is not a state. The state therefore loses its monopoly to wage war to decentralised non-state actors who do not adhere to the rules of warfare as described by Geneva Conventions. In addition, the role of religion and culture imply that the theatre of the conflict extends beyond a state's borders to individuals throughout the world who identify with the opposing force. The manipulation of the media as part of psychological warfare contributes to the triumph of non-state actors over conventional forces that often rely on advanced technology. It is essential to win the sympathy of people through the selected use of information, disinformation, propaganda and manipulation of the press (Wikipedia 2007b).

With the above-mentioned comments in mind, one may benefit from focusing briefly on two concepts associated with

asymmetric warfare: insurgency and terrorism: Although terrorism was briefly referred to, an insurgency can broadly be described as the resort to violence against an established government, motivated by a number of political, economical and social factors. In its *Dictionary of Military and Associated Terms* (2007), the US Department of Defence defines *insurgency* as 'an organized movement aimed at the overthrow of a constituted government through use of subversion and armed conflict'. A distinction is also made between *insurgency* and *resistance*. The former is considered to be 'an internal struggle against an established government' while the latter is described as 'a struggle against an invading or occupying foreign force and their collaborators'.

Influenced by developments in countries such as Somalia, Afghanistan and Iraq, analysts were confronted with the following question: Is it possible to distinguish between insurgency, other manifestations of political violence and terrorism? Extremist analysts categorise political violence as terrorism. Martin (2006), for example, describes 'insurgent terrorism' as 'violence directed by private groups against public authorities that aims at bringing about radical political change' and 'dissent terrorism' in which he differentiates between three generalized categories of political action:

- Revolutionary terrorism – the threat or use of political violence aimed at effecting complete revolutionary change [as a result of nationalist aspirations, religious principles, ideological dogma, etc. Revolutionaries view the existing order as regressive, corrupt and oppressive; their envisioned new order will be progressive, honest and just. Revolutionary dissent terrorists are not necessarily trying to create a separate national identity; they are activists seeking to build a new society on the rubble of the existing one.];
- Subrevolutionary terrorism – the threat or use of political violence aimed at effecting various changes in a particular political system (but not aimed at abolishing it); and
- Establishment terrorism – or use of political violence by an established political system against internal or external opposition. [Also commonly referred to as 'state terrorism'.]

However, O'Neill (1990) explains that the violent aspects of insurgency are manifested in three different forms of warfare: terrorism, guerilla war and conventional warfare. Terrorism in the context of insurgency refers to incidents in which 'violence is directed against noncombatants (usually unarmed civilians), rather than operational military and police forces or economic assets'. *Modi operandi* include 'assassinations, bombings, tossing of grenades, arson, torture, mutilation, hijacking and kidnapping' aimed at

- extracting particular concessions (for example the payment of ransom or the release of prisoners);
- gaining publicity, demoralizing the population through the creation of widespread disorder;

- provoking repression by the government;
- enforcing obedience and cooperation from those inside and outside the movement;
- fulfilling the need to avenge losses inflicted upon the movement; and
- enhancing the political stature of specific factions within the insurgent movement.

One therefore needs to emphasise that terrorism is considered a strategy available to insurgents. Rosenau (2006) summarises the differences between terrorists and insurgents as follows:

	Terrorists	Insurgents
Targets	Predominately non-combatants	Official targets: military, police and government officials
Operations	Attacks carried out by small cells	Para-military, military and small cells
Territory	Rarely hold territory for longer than short periods	Hold larger territories; may even create 'liberated' zones
Distinction	Do not wear uniforms	May wear uniforms
International law	Do not abide by laws of war	Abide by laws of war

That the distinction between combatant (the target of insurgents) and non-combatant (the target of terrorists) is increasingly being blurred, particularly in urban environments, and challenges analysts to differentiate between terrorism and insurgency. Grey areas such as attacks against government officials, members of the security forces not in combat areas or off-duty security personnel and even indiscriminate tactics such as bombings that include civilian casualties drift into the realm of terrorism.

Both asymmetric and fourth generation warfare clearly refer to terrorism as one has come to know it. Traditionally, asymmetric warfare could be limited to a specific country or sub-region in which specific government forces have been confronted with an enemy or insurgency that makes use of the tactic of terrorism with a specific outcome in mind. This phenomenon explains why terrorism is not a new concept in Africa: As could be expected, liberation struggles could not be fought within conventional warfare frameworks because of unequal strengths in forces or technologically superior enemies. As a result, both parties made use of terror tactics within the framework of asymmetric warfare. Despite this reality, the psychological impact remained in the argument that 'one person's terrorist is another's freedom fighter'. This very emotional debate, despite contributing to an unrealistic understanding of the concept of terrorism within the African context, reflects other realities:

- No person or organisation will accept that his/her or its actions constitute acts of terrorism.
- Individuals and organisations will always fall back on certain arguments to justify the use of terrorism as a tactic.
- The action – in which everyone has a choice – and not the philosophy or reasoning should be the deciding fac-

tor in categorising whether or not an action should be termed an act of terrorism.

- Although history has played an essential role in African politics, one cannot allow it to determine the resolve of African countries and their peoples against terrorism. The indiscriminate use of violence against civilians has devastating consequences to everything people hold dear. It even goes against the reason of liberation, namely freedom. How can a country targeted by acts of terrorism remain free when basic human rights and liberties are being threatened?

O'Neill (1990) makes the following remark when he refers to the *terrorist versus freedom fighter* debate:

From our perspective, the dichotomy between terrorist and freedom fighter is a false one because the term freedom fighter has to do with ends (e.g., the secessionist goal of freeing workers and peasants from the oppression of an exploitative political system), while terrorism connotes means. Hence, one can be a freedom fighter who uses terrorism to achieve his (or her) purpose. The analyst, of course, must depict things as they are, regardless of his (or her) feelings about the insurgents. For the neutral or outside analyst this is easier than for an analyst who supports insurgents. But for the partisan analyst it may be more important because prolonged and indiscriminate terrorism can undercut support for insurgents, and ignoring or refusing to admit it means insurgents never address the problems or come to terms with the counterproductive aspects of terrorism as an instrument for furthering their cause. In short, the partisan analyst may fail to identify correctly and promptly the problems that the use of prolonged terrorism will eventually cause the movement. All analysts need to be scrupulously objective. If insurgent actions meet the criteria of terrorism, then they are using terrorism as a form of warfare.

Interestingly, despite an equally shared colonial past, countries in northern Africa experience no difficulty in categorising terrorism-related activities as terrorism while countries in Sub-Saharan Africa are reluctant to categorise them as such. Practitioners and those in government have different perceptions. Governments often refer to individuals as a few isolated thugs who do not present a real threat, while security personnel have a different reading. A possible reason might be found in the role of both. Those in government need to defend the image of the country while security forces are responsible for protecting the state and its citizens from internal and external enemies. However, a comfort zone on the part of government and over-eagerness on that of security officials may have devastating consequences.

In addition, periods of conflict, particularly liberation struggles, have left an unmistakable impression on the psyche on the African people. The level of impression relates to the level of violence people have witnessed and experienced. One wonders whether the tactics being resorted to, such as the slitting of throats, a tactic used by the *Groupe Islamique Armé* (GIA)

in Algeria, can be traced back to the *Kabyle smile* used in the liberation war against France.

Similarly, in contrast to domestic insurgencies in which terrorism was used as part of a tactical arsenal, acts of transnational terrorism increasingly became part of a global insurgency. Through the transnationalisation of terrorism, agents of transnational terrorism could affect the most secure and safe country. Having a false sense of security might be the greatest mistake any country could make. In addition, states are increasingly being confronted with situations where divisions between combatants, insurgents or terrorists; criminal opportunist; and civilians are blurred.

CHALLENGES IN UNDERSTANDING THE UNDERLYING CAUSES OF TERRORISM IN AFRICA

Despite the world's attention being focused on transnational acts of terrorism with their dramatic and devastating consequences, the underlying causes can always be traced to domestic grievances or circumstances because the persons or cells responsible are moved to action by their own reality, a domestic one. Even the resentments of Osama bin Laden and his 'coalition' started with domestic grievances. For example, the perception that Muslim leaders do not govern in accordance with the principles of Islam originated with organisations such as *al-Ikwan al-Muslimin* or the Muslim Brotherhood in Egypt in 1928. The grievance was directly related to the political realities in these countries. Yet the strategy against transnational terrorism focuses extensively on the manifestation of terrorism in its tactical form, without addressing the underlying domestic causes.

A paper that I presented at the Benoni seminar in November 2006 contains more details on the vulnerability and the underlying causes of terrorism in Africa (Okumu & Botha 2007). For the current discussion, reference will be made to pull and push factors.

Push factors

The term *push factors* refer to conditions that will generate domestic support.

Levels of support

Levels of support can be divided into direct involvement and in-principle, financial and facilitation support. The greater the level of support individuals and organisations associated with terrorism can count on, the greater the possibility of that country or community's being used to launch an attack against an intended target in the particular region or to plan and stage attacks in other countries. Domestic circumstances, associated with the perception that the war against terrorism is directed against specific communities, Muslim minority countries in particular, increasingly provide a foothold for the spread of extremism.

Identity and religion

A search for identity and the role of religion are regarded as push factors.

Level and success of indoctrination

Certain factors influence the level and success of indoctrination.

- Education as a double-edged sword: A lack of education limits prospects for the future, and limited access to information contributes to a situation in which a person can be manipulated, thereby providing valuable foot soldiers. University graduates without career opportunities are equally vulnerable.
- Socio-economic conditions: Poverty, unemployment and the growing gap between the elite and the overwhelming majority produce people who have nothing to lose. Widespread conditions of conflict and poverty create a breeding ground for alienation and radicalisation. However, poverty alone is not a reason for individuals to resort to terrorism. In Morocco, for example, unemployment, poverty and social tensions influence radicalisation. Disillusionment and poverty, in turn, fuel bitterness. Those who have become involved in petty crime or drugs soon become the targets of Islamic extremist elements that use these conditions to their advantage to recruit foot soldiers who need to redeem themselves and have nothing to lose. The background of individuals involved in the latest suicide attacks in Morocco reconfirmed the influence of poor socio-economic conditions. According to estimates, more than 35 per cent of Morocco's 30 million people are poor and more than 40 per cent are illiterate. According to economists, the wealth gap makes the social picture grim as 10 per cent of the rich own 85 per cent of the wealth (Ghanmi 2007). As with the suicide bombers in the 2003 Casablanca attacks, identified individuals involved in the March and April 2007 attacks originated from slums such as Sidi Moumen and Douar Sekouila. In addressing this reality, the Moroccan government initiated a campaign after the 2003 bombings to clear these slums and construct affordable housing, sport stadiums and community centres.

In Eastern Africa, for example, Fahid Mohammed Ally Msalam and Sheikh Ahmed Salim Swedan, who were implicated in the 1998 bombings at the US Embassies in Kenya and Tanzania, had remarkably similar backgrounds. Both Msalam, 28, and Swedan, in his 30s, were born into large families; Msalam was one of five children and Swedan one of nine. Swedan's father, a mason, died in 1985. Msalam's father, a businessman, died in the mid-1990s. Swedan dropped out of school after completing his primary education and was known for using khat. Neither Msalam nor Swedan completed their education. Both grew up in a poor neighbourhood. The combination of poor socio-economic conditions, inadequate education and limited future prospects made the philosophy of *al-Qa'eda* a viable option.

Isolation

Pockets of like-minded people will influence the development of perceptions. A serious consequence of radicalisation is isolation. Under normal circumstances, a distinction can be

made between physical and mental seclusion. People may seek physical seclusion to remove distractions in order to easily concentrate, reflect and meditate. However, isolation in this context refers to a group of individuals who could use circumstances associated with physical seclusion to indoctrinate an individual or individuals. Physical and mental isolation from other religious and cultural communities not only influences the formation of perceptions but could also create no-go areas, further contributing to isolation. Being constantly in the same company, excluded from other people, could create a reality far removed from the truth. Isolation is an important step in preparing a potential suicide bomber before an attack; therefore, the importance of this component as both a push and a pull factor is enhanced.

Counter-terrorism strategy

A counter-terrorism strategy is important to prevent radicalisation and terrorism. Strategies founded on abuse of power, profiling and mass arrests will ultimately be counter productive and serve as a push factor. The fear exists that individuals initially arrested for lesser offences, even for offences not associated with terrorism, are being radicalised in prisons. For example, the backgrounds of individuals involved in suicide bombings in Morocco in March and April 2007 support this assessment. Abdelfattah Raydi, the suicide bomber on 11 March, had been jailed for five years for his association with the attackers, along with an estimated 3 000 people who had been arrested in Morocco since the 2003 attacks. This development is, however, not new. Without addressing the underlying reasons, one could expect that individuals previously incarcerated for lesser involvement in acts of terrorism might still concentrate on the use of violence as the only viable strategy if they have not undergone a period of reform in the form of religious education. Considering that, according to the US government, at least 30 former Guantánamo Bay captives have been killed or recaptured in Afghanistan, Pakistan and Iraq after initially being released, one wonders whether radicalisation occurred while they were incarcerated and whether all were successful in keeping their interrogators in the dark. A study carried out by Seton Hall University places this argument in context. The study found that only 8 per cent of those in detention were identified as *al-Qa'eda* operatives (Munro 2007). It is therefore to be expected that those considered less important and those who had to undergo interrogation and incarceration will develop feelings of animosity against their captors – driving those not formerly committed to the cause to extremism and terrorism. It is, however, commendable that a number of Middle Eastern countries, for example Saudi Arabia, are following the example of Egypt (in their agreement with *al-Gama'a al-Islamiyya*) to re-educate former terrorists in religion.

The relationship between state and public

The relationship between the state, its security forces and the public is of great importance. Countries and security forces that are not corrupt will definitely facilitate community participation, for example reporting crime and suspicious activities. The opposite is unfortunately also true. Equally, in developing and stimulating a partnership with the ordinary citizen, a state needs

to deal effectively with all crimes. In countries with cohesion between the state and its security forces and the populace, external terrorists will feel unwelcome. Fear of being caught in a country where ordinary citizens act as eyes and ears on the ground will be a valuable deterrent. Unfortunately, in most countries on the continent, terrorism is considered a state-only matter, which implies that citizens are excluded from the counter-terrorism strategy. Without direction from the state and its security forces, this valuable resource is under-appreciated. While the United Kingdom and Australia, for example, have developed specific strategies to engage with the public on counter-terrorism, countries in Africa still have a great deal to learn about the relationship between those in power and the populace, particularly in countries where security forces are being used to ensure regime security. Despite damage in the relationship between security forces and ordinary citizens, these security forces (along with the governments they keep in power) are confronted with a legitimacy crisis that can be used and manipulated by individuals and groups with ulterior motives.

Pull factors

Pull factors refer to domestic conditions that will draw individuals involved in especially transnational terrorism to that particular country or community. Some are discussed in the following points.

Availability and protection

The availability and protection of selected targets, as well as access to weaponry, will influence the decision to target a particular country.

Level of ease and safety

The level of ease and safety with which suspected terrorists can operate without being caught and prosecuted is important. Related to this category are the capacity and effectiveness of counter-terrorism units, the political will to prevent and combat terrorism that extends beyond lip service, the relationship between the state and its security forces and local communities and the implementation of counter-terrorism instruments and legislation.

Ease of entry or departure

The ease with which one may enter or exit a country unnoticed is an important element. The overall health of governments and their control over their respective territories are therefore important. Weak or failed states could provide favourable conditions for terrorists to plan, train and launch attacks. The absence of local authority not only allows the use of these territories by external actors but also permits the activities of paramilitaries to terrorise local populations. Transnational terrorists may see ungoverned parts of Africa as safe havens, or as providing them with opportunities to attack Western targets on the continent. Somalia and the Sahara were previously implicated as areas formerly used by terrorists. Border control is associated with control over territories. It is an unfortunate reality that a line on

a map might not always correspond with a border that is effectively monitored to prevent the movement of unwanted individuals. In fact, most African countries do not have the human and technological resources to effectively monitor their borders due to the following factors:

- Laxity at formal and informal points of entry
- Uncontrolled or ungoverned areas
- Corruption of government officials and lack of capacity

Agencies with ulterior motives

The inability of a government to provide basic services may give NGOs (with ulterior motives) an important foothold in a particular country or community. Providing and addressing basic needs make it possible to buy support and loyalty.

Foot soldiers

The number of sufficient willing foot soldiers corresponds with levels of support. Although domestic conditions differ from one sub-region to another, additional external factors provide a growing number of willing foot soldiers to be manipulated by both domestic and external role players.

Incorporation into local communities

Suspected terrorists may be incorporated into local communities and enjoy a level of expected support from them. For example, they may become part of communities through marriage, the setting up of legitimate businesses that could be used as fronts, etc. As mentioned before, relationships with local communities are of particular importance.

Anti-United States/Western sentiment

The level of anti-US/Western sentiment could act as an indicator of support networks.

Government systems

Draconian or closed political systems have failed to establish institutions to mediate between state and society. Restrictions on basic human rights, including freedom of expression, speech and association, contribute to frustrations and deprive people of the opportunity to change their governments democratically. None of the organisations implicated in acts of terrorism in the past recognised their governments as legitimate.

Geographic location and international relations

On the external level, vulnerability to terrorism is, inter alia, influenced by geographic position, alliances and the question of identity. Particularly in the aftermath of 9/11, governments' alignment with the US in the 'war against terrorism' enhanced their vulnerability as targets of terrorist organisations. Besides globalisation, the development of telecommunications enables same-minded individuals to unite and conspire against common enemies. *Global Trends 2015* (National Intelligence Council 2000) characterises globalisation as 'the rapid and largely unrestricted flow of information, ideas, cultural values, capital, goods and services, and people: that is, globalization'. It further states:

[G]overnments will have less and less control over flows of information, technology, diseases, migrants, arms, and financial transactions, whether licit or illicit, across their borders. Non-state actors ranging from business firms to non-profit organizations will play increasingly larger roles in both national and international affairs ... States with ineffective and incompetent governance not only will fail to benefit from globalization, but in some instances will spawn conflicts at home and abroad, ensuring an even wider gap between regional winners and losers than exists today.

It is especially in this regard that Africa has played an important role in the transnationalisation of terrorism.

Religion has a particular impact on the threat of transnational terrorism. For example, it determines the ability to recruit members of the moderate and traditional Muslim community to extremism. Governance also has a direct impact on domestic terrorism, and indirectly influences transnational terrorism. A number of countries in Africa have used the *global war on terror* as an excuse to delay reforms and commit extensive human rights abuses. Because they prevent democracy and democratic reforms, existing divisions between those in power and ordinary citizens will increase, giving extremist movements a much-needed foothold. Muslim countries are especially vulnerable since domestic legitimacy conflicts can be incorporated in a *jihad* worldview. When freedom of expression and other civil liberties are protected, non-violent ways to express political and/or social frustration exist. If this theory is correct, terrorist attacks should increase under a repressive regime. Unfortunately, civil liberty is often the first casualty in the fight against terrorism; ironically, a lack of civil liberties seems to be a main cause of terrorism around the world. Algeria and Egypt are the best examples of how domestic terrorism is linked to transnational networks.

Factors leading to transnationalisation of domestic terrorism

Only a small number of conflicts will remain domestic. Neither domestic nor transnational terrorism can be compartmentalised. Both are important and often inter-related. The following factors contribute particularly to the transnationalisation of domestic terrorism.

Globalisation

Two factors are of particular importance in globalisation and the creation of a global village:

- Free movement and settlement of concentrations of foreigners in other countries: Although these individuals might become productive members of society, they will always remain loyal to their countrymen. A distinction can be made between those individuals who previously were members of terrorist organisations in their respective countries of origin and fled to the West in search of political asylum and those who left of their own free will in search of better opportunities. The former used liberal freedoms to further the objectives and activities of organ-

isations such as the GIA and, later, the *Groupe Salafiste pour la Prédication et le Combat* (GSPC) in Algeria by channelling funds and using propaganda instruments such as bulletins and websites. A number of individuals within the latter organisation might become involved in terrorism-related activities within their new host country or assist upcoming causes in their respective countries of origin. Moroccan nationals responsible for the Madrid bombings and Pakistani nationals involved in the London bombings serve as examples.

- Internet: The Internet has proved to be a valuable tool not only to spread radical ideals but also to recruit, communicate with and train decentralised, independent cell structures throughout the world.

Religion

Religion provides a sense of identity or a feeling of community and belonging that bridge national, racial and language differences. One may therefore expect that when the world is divided between 'us' and 'them', the possibility of remaining moderate in the interpretation of one's religion will minimise. *Jihadists* would benefit if the world were divided between Christianity and Islam and the *war against terrorism* were synonymous with a *war against Islam*. To achieve this objective and to minimise the voice of moderates, mass media and the Internet are being used within the framework of fourth generation warfare. In addition to a *war against terrorism*, African nationals and states are in the midst of a war between extremists and moderates for the spirit of Islam.

The conditions and circumstances mentioned in this section, as well as others, will continue to challenge African countries as they seek to prevent and combat a phenomenon that keeps on changing.

CHANGING NATURE OF TERRORISM

Although governments and people in Africa are well aware of the devastating consequences of domestic terrorism, the role of Africa in transnational terrorism is increasingly being noticed because of the involvement of African nationals in transnational terror networks and the use of African countries to facilitate attacks in others. The threat of transnational terrorism and Africa's involvement can be divided into two components:

- The involvement of African nationals in acts of transnational terrorism
- The level of threat within Africa in which African nationals under the influence of external elements, or on their own, commit acts of terrorism on African soil

The US Embassy bombings in Dar es Salaam and Nairobi on 7 August 1998 and the 2002 Mombasa bombings are probably the best-known examples of acts of transnational terrorism on the African continent. These are, however, not the only incidents where targets extended beyond domestic terrorism; the list is extensive.

Another challenge in understanding the threat of terrorism in Africa is grasping and appreciating the role of Africa in the broader fight against terrorism. A number of issues come to mind:

- The participation of African nationals in transnational terrorism, including Iraq. I referred to the role of African nationals as facilitators or agents of terrorism in a previous report. It is important to acknowledge the impact and threat of recruitment being conducted in especially North African countries for foreign fighters in Iraq.
- The use of Africa as a staging ground or safe haven for transnational terror networks: British officials, for example, have expressed concern that home-grown terrorists have been flying to countries in Africa that do not require visas from London before transiting to suspected *al-Qa'eda* training camps in Pakistan. Countries such as Kenya, Tanzania and South Africa where visas are available on arrival or countries that require no visas for a stay of less than 90 days are particularly vulnerable (Clayton and Evans 2007).

The growing use of African countries and their nationals in transnational causes is challenging Africa's resolve against terrorism. This alignment is effected by African nationals and groups that traditionally originated from Africa and *al-Qa'eda* leadership, who hope to use domestic challenges to their advantage: to further its reach and recruit new members. With reference to the latter, *al-Qa'eda* leadership, in particular Ayman al-Zawahiri, has referred to Darfur, Somalia and the Niger Delta as areas in which its enemies, could be fought, thereby merging a transnational ideology with a domestic cause. In the former scenario, or the transnationalisation of domestic terrorism, the GSPC in Algeria serves as an example as it openly aligned itself with *al-Qa'eda*. This step indicated a new phase in the threat to security in not only Algeria but also the region as a whole. When the GSPC aligned itself with *al-Qa'eda*, the following became evident:

- Commitment and recruitment to *al-Qa'eda's* cause exists in current hotspots (Iraq and Afghanistan).
- The GSPC's network is utilised in Europe, particularly in France.
- A growing possibility exists of suicide operations, clearly evident in the latest rhetoric of the GSPC, since the latter adhere to the strategy and philosophical principles of *al-Qa'eda*. A certain Abu Amr, who is living in Iraq, issued a *fatwa* that the Algerian, Moroccan, and Tunisian *Salafists* could resort to suicide attacks in their respective countries (BBC 2007c). The fear of an incident was realised on 11 April 2007 when three suicide bombers attacked the Prime Minister's office and a police station in Bab Ezzouar in the first suicide bombing in Algeria.
- The influence of the GSPC in the Maghreb region is growing despite a decline in the number of attacks in Algeria. The GSPC incorporates Algerian, Moroccan, Libyan, Tunisian and Mauritanian *jihadists* and is therefore no longer an Algerian organisation but rather a transnational terror group.

Fear that Algerian militants might re-direct their attacks from Algerian security forces to foreign interests was realised on 10 December 2006 when armed assailants attacked a bus carrying employees of Brown & Root-Condor (BRC) who were on their way from their offices to a Sheraton Hotel in Bouchaoui, 15 kilometres west of Algiers. Attackers used an explosive device and firearms in the attack that resulted in the death of the Algerian driver and nine injuries, including one American, four Britons, one Canadian, one Algerian and one Lebanese employee (Ouali 2006). This attack serves as an example of the GSPC's renewed commitment to a broader cause in alliance with *al-Qa'eda*.

While the attacks on 11 April 2007 reflect a new trend, reports of training camps attended by non-Algerians (extending over a large geographical area) as well as growing alliances with transnational organised crime syndicates (although not a new phenomenon) again emphasise that individuals and groups associated with terrorism will use whatever means available to adapt to vulnerabilities and local conditions. The events introduce a new challenge in understanding and countering terrorism.

Furthermore, the invasion of Somalia by Ethiopia in December 2006 led to the development of an additional hotspot on the continent in which domestic or, at most, a sub-regional issue has developed into a transnational crisis. Without disregarding the developments that led to the invasion of Somalia by Ethiopian troops (with the assistance of the US), one realises that this step had devastating consequences. Despite the Islamic courts no longer being able to control much of the territory and therefore no longer posing a direct threat to the political control of the TFG, the decision to invade Somalia provided justification for a *jihād* – a call made by both domestic role-players and international *al-Qa'eda* leadership. Ironically, this strategy will lead to an increasing threat of terrorism, playing into the hands of extremists in the Islamic courts and the broader *al-Qa'eda* strategy to justify resorting to a call for international fighters and acts of terrorism against an enemy of Islam and a foreign occupying force. As could be expected, a conventional conflict would favour the alliance between Ethiopia, the US and the TFG but the aftermath is a different scenario. Although not on the same level, Iraq provides elements that can be compared:

- Notwithstanding the fact that US forces overran Iraqi ones, the real conflict started when combatants disappeared into the local community; the same occurred in Somalia.
- Both the Iraqi government and the TFG are kept in power by foreign forces, strengthening the perception of a foreign invasion and therefore justifying calls for a *jihād* that will include tactics associated with a global *jihād* – insurgency associated with acts of terrorism.
- These tactics include hit-and-run tactics in which security forces are engaged. Attacks can also be directed against aerial transportation. Furthermore, suicide bombings are included. On 30 November 2006 a suicide bombing killed eight people near the Somali government seat of Baidoa. Two detonated car bombs left eight people

dead. Four wounded were admitted to hospital. These events, as well as previous incidents, reflect a trend in using improvised explosive devices (IED), in particular remote-controlled roadside bombings. On 13 March 2007 a convoy of the deputy mayor of Mogadishu, Ibrahim Omar Sabirye, was attacked. Two Somali government employees were left dead and another four people were injured (*Dow Jones International News* 2007).

It has therefore become increasingly difficult to contain terror groups in a particular country. Although only a limited number of domestic terror groups will maintain a domestic profile, the growing involvement of different nationals in terror networks presents an additional challenge for states and their security forces to contain the influence of a particular terror group. For example, according to the Moroccan Interior Ministry in April 2007, the country has compiled a list of approximately 50 individuals, all Moroccans, who returned to the country after being trained in camps in Mali, which could form the basis of an *al-Qa'eda* network in Morocco. A number of individuals who had received training in explosives at these camps left for Spain by making use of a human trafficking network that operates in the Tangiers and Larache regions (BBC 2007a).

Structuring of terror networks

During the different phases of the development of terrorism as a strategy in African history, security forces and analysts, inter alia, used the strength of terror networks as a benchmark in assessing the level of threat a particular organisation might present. This framework of reference is, however, not applicable when one assesses the threat transnational terrorism networks might pose to a particular country. A mind shift is required; in contrast to domestic terrorism networks, in which strength is important to achieve specific objectives, transnational terror cell structures, as part of a broader philosophy, have objectives that differ from overthrowing the government of a particular country, for example. There is a growing threat from small, independent cell structures that are not part of a formerly known organisation. The increasing role of the Internet in radicalisation serves as a possible explanation, as does being part of the third and even fourth generation in the development of individuals associated with *al-Qa'eda*. These individuals come from diverse backgrounds, and the recent attacks in Algeria and Morocco reflect this reality. In Algeria, Oudina Bilal, alias Mouad Ben Djebel, one of the suicide bombers in the 11 April 2007 attack, had been arrested and jailed three times in cases linked to drug trafficking; he had been a well-known drug dealer in the El-Harrach and El-Maqaria neighbourhoods (BBC 2007b). On 14 April 2007 in Morocco, Mohamed Maha (responsible for the attack close to the US Consulate) had not previously been known to the police, while his younger brother Omar Maha (responsible for the attack close to the American Language Centre) had previously been sought by the police for his possible involvement in earlier bombings. In addition, Abdelfettah Raydi, who detonated his suicide belt on 11 March 2007, had been pardoned by the king for his involvement in the 2003 Casablanca bombings.

In contrast to domestic terrorism where the signs are clearly visible, acts of transnational terrorism are often unexpected. Decentralised cell structures make detecting and preventing the threat almost impossible, especially in countries that have not previously been targets of terrorism or ones that do not consider terrorism a viable threat. For example, the bombings in Kenya and Tanzania had been planned since 1994, a time when only a limited number of observers knew the names Osama bin Laden and *al-Qa'eda*. Capitalising on domestic circumstances, *al-Qa'eda* established a presence in Nairobi and Mombasa. Osama bin Laden was approached with photographs and sketches on account of his knowledge of civil engineering and was asked to identify a path of entry for the explosives van into the embassy. The operation was originally planned for 1996 but was delayed. In addition to southern and eastern Africa, Osama bin Laden planned to make inroads into central and western Africa. Plans were set in motion for further attacks against US Embassies in the hope of politicising and radicalising African Muslims and provoking anti-Muslim backlashes (Gunaratna 2002).

Despite the immediate impact on security in Iraq, it is feared that a trend might develop similar to that during the aftermath of the Afghanistan war against the Soviet Union 'occupation' that ended in 1989. Returning individuals with combat experience and influenced by a new philosophy ultimately led to the emergence of terrorism groups in all northern African countries during the early 1990s. Considering that individuals throughout Africa are eager to participate in conflicts in a transnational force from Iraq to Somalia, one can only imagine what the consequences might be in the medium to long term. Willingness to participate is, however, not limited to northern and eastern Africa. Although figures are not easily available, individuals in countries, including South Africa, have indicated their willingness to participate in this transnational force.

In addition to the use of southern Africa as a possible safe haven for terrorists, the involvement of African nationals in transnational terrorism is not limited to northern and eastern Africa. Along with Ahmed Khalfan Ghailani, an alleged *al-Qa'eda* member, Dr Firoz and Zubeir Ismail were arrested after a long shoot-out with Pakistani authorities in a safe-house in Pakistan in 2004. Ghailani, a Tanzanian national in US custody, was allegedly involved in the 1998 Nairobi and Dar es Salaam embassy bombings. The two South Africans, however, alleged that they had been hiking in Pakistan, an explanation not accepted by analysts considering the conditions and the company they were in. Even the target selection by People against Gangsterism and Drugs (PAGAD) in the bombing of Planet Hollywood and other US affiliated restaurants, as well as the bombing of Western embassies, indicates that the threat of transnational terrorism in this part of the continent is a reality. However, why would individuals affiliated with a global *jihad* be interested in South Africa, a country with a liberal foreign policy in which essential freedoms are well established and protected? Earlier in this discussion, where the inner workings of asymmetric warfare were presented, it was mentioned that terrorists will use weaknesses to their advantage: in this case, a free society in which liberal democratic principles such as freedom of speech, association

and human rights are protected. In addition, the following factors contribute to Africa's vulnerability to transnational terrorism:

- Open borders and large illegal immigrant communities allow individuals with ulterior motives to disappear. Hospitality and a culture in which people are willing to help those in need without asking questions might contribute to a situation where innocent people provide a place of safety and support, and even unwittingly facilitate acts of terrorism.
- Insufficient communication, as well as the broad public's lack of education on what to look out for and its role in a holistic counter-terrorism strategy, enables potential terrorists to disappear under the radar. Over-sensitivity on the part of security forces and their tendency to consider everything relating to terrorism as top secret exclude a valuable source of information: the broad public. Community involvement cannot be secured through legislation. Although the responsibility rests with the public to inform the police of any suspicious activity, it cannot be done without establishing a relationship of trust and without their being equipped with knowledge.
- *Jihadists* are increasingly being identified with a perceived *war against Islam*. Despite calls by the US and local governments that the *war against terrorism* is not necessarily a *war against Islam*, actions speak louder than words. *Islamophobia* is the order of the day at all levels, from lower-ranking officials to members of the public, because of a lack of knowledge. Africa provides the ideal recruitment conditions, which might worsen as a result of increased resentment towards US foreign policy in the Middle East. In addition to being recruited with the objective of being directly involved in the planning and execution of terrorist operations in Africa (or other countries), an increasing number of Africans, indirectly or in principle, support the activities of extremist groups. Although this situation can be managed, countries should be cautious in the implementation of their respective counter-terrorism strategies; they should take care not to drive moderate supporters to extremism.

In summary, the involvement of African nationals in transnational acts of terrorism is not the only threat. The evolution of *al-Qa'eda's* philosophy on the African continent among traditional domestic organisations, areas of conflict (such as Somalia) and individuals sympathetic to the message of *al-Qa'eda* will contribute to Africa's importance as a new battleground against terrorism. The use of domestic grievances will be of strategic importance, for example the control over natural resources, such as oil in the Niger Delta. Merging resentment with a global *jihadist* philosophy will lead to an explosive situation. On the individual level, images of the Muslim world suffering at the hands of the West and its allies and the ever-increasing message that the world is divided between true believers and its enemies are moving moderate Muslims into action, forcing them to decide. In a polarised world, moderate beliefs and co-existence disappear.

The threat of transnational terrorism is therefore no longer limited to the export of African nationals to transnational terror operations. The continent, traditionally plagued by domestic terrorism, will increasingly be confronted with transnational acts of terrorism.

CHALLENGES RELATING TO COUNTER-TERRORISM STRATEGIES

Although it is beyond the focus of this paper to extensively assess the success and effectiveness of counter-terrorism strategies in Africa, brief reference will be made to aspects that directly influence the understanding of terrorism in Africa.

Throughout this paper reference has been made to the influence counter-terrorism initiatives have on the strategic success of counter-terrorism strategies. This aspect will not be discussed again. However, it is important to recognise that the different sub-regions in Africa each have their own unique threat perception that directly influences the commitment of governments to develop and implement counter-terrorism strategies. Instead of trying to convince a country to develop a specific counter-terrorism strategy, countries are rather encouraged to develop holistic policies and strategies that will address not only terrorism but also other threats to national, regional and international security. For example, through addressing border control, other forms of transnational organised crime will also be combated, including cattle rustling. In certain areas this is considered to be a greater threat to security than terrorism.

The resolve of states to counter terrorism is determined by their respective threat perception. In contrast to the high threat perception in northern Africa (and, increasingly, eastern Africa), countries in southern Africa have a lower threat perception and have required the events of 9/11 to gradually develop and implement counter-terrorism strategies. This low threat perception can also be traced to local communities that consider terrorism an international phenomenon, and when these countries are targeted by transnational terrorism, they consider themselves innocent bystanders. A low threat perception impacts the extent of implementation – a check list mentality developed in reaction to international instructions, in particular UN Resolution 1373. In a number of countries, counter-terrorism legislation is considered the culmination of all counter-terrorism initiatives, without its being followed by implementation.

The perception that counter-terrorism strategies are directed against Muslim communities is particularly challenging in countries with a Muslim minority, especially when safeguards such as basic human rights, civil liberties, democracy, rule of law and due process are not well established.

CONCLUSION

The development of transnational terrorism should be studied and understood in historical context. Terrorism as a successful tactic is well established. A certain inability exists to rationally

acknowledge the threat of terrorism to human security; the focus is primarily on the act, and finding excuses and/or justifying the use of the tactic has contributed to a world where terror is the victor. This is particularly true in Africa where the colonial past often blurs one's better judgement. Emotional excuses such as 'We were branded as terrorists' facilitate the formation of double standards. The danger exists that we might wake up too late to do what is needed to protect ourselves against the devastating direct and indirect consequences of terrorism, domestic as well as transnational. I am not implying that a hard-handed approach should be used as a shield against this threat to human security, but rather that we adopt a holistic approach starting with the root causes and addressing the linkages between domestic and transnational terrorism. Equally important will be acknowledging that no instant solution or cure exists to prevent that it ever happens to us.

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Panel 2

Bridging Gaps in Understanding the Impact of the War on Terrorism

The Impact of the War on Terrorism in Western Democracies

Clinton W Watts

The Impact of Terrorism in the Middle East and North Africa

Mohamed Kamal

The Impact of the War on Terror on Governance and Human Rights in Sub-Saharan Africa

Samuel M Makinda

Economic Consequences of Terrorism in North Africa: Insights from Economic Theory

Abdallah Shehata Khattab

Terrorist Attacks and the Kenyan Economy

Martin Kimani Mbugua

The Impact of War on Terrorism on the Media and Civil Society in North Africa

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The Impact of the War on Terrorism in Western Democracies

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Terrorism's effect on the world is traumatic. The tactic of terrorism has posed the first challenge to democratic governments in the post-Soviet era. Islamist terror organisations use a hostile ideology to threaten and manipulate the values of representative democracy. Using the freedoms and rights offered by democracies, terrorists have penetrated the United States, Great Britain and Spain to perpetrate attacks against an unsuspecting civilian populace.

One question yet to be addressed is the extent of the impact of the global war on terrorism (GWOT) on Western democracies. Terrorism has undoubtedly changed the relationship among states, but little research has been done on the impact of terrorism on their internal governmental systems. Western democracies have been the models for state creation over the past several decades. With the end of the Cold War, there have been few challenges to the efficacy of such democratic systems. Terrorism, a tactic most often used by non-state actors, provides a unique challenge to representative governments. While known and admired for their freedoms, justice and representative nature, democracies harbour structural weaknesses that may easily be exploited. The respect of personal freedoms, the slow deliberative process of policy creation and the decentralised system of government allow terrorist groups to operate rapidly and without interference from democratic counterterrorism and law enforcement efforts. In response to terrorist attacks, democracies must change their structure to address the capabilities and motivations of new enemies. These structural changes often challenge the values on which the democratic nation prides itself.

To best understand how the war against terrorism impacts a democracy, one must first create a set of parameters to evaluate the effectiveness and quality of a democratic system. An election is often cited as a metric for evaluating the quality of a democracy. Many assume that a democracy is effective if it merely holds free and fair elections on a routine basis. However, this notion is spurious as elections say nothing about a government's ability to uphold the values of a representative system. As seen in many undemocratic countries, elections occur on a regular basis but the leaders that arise from a democratic victory may not be effective in governing or protecting the rights of citizens.

Evaluating the impact of terrorism requires a look at that which a successful democratic system is designed to achieve. A quality democracy is best evaluated when one uses the ideas of Diamond (2000:414–415), who states that 'elections are only one dimension of democracy. ... [T]he quality of democracy

also depends on its levels of freedom, pluralism, justice and accountability.' Diamond's framework correctly outlines the principles which democracies must uphold to qualify as representative governments. This framework provides not only a spectrum by which democracies might be compared to one another but also a method for evaluating the effect of events on democracies over time. The attacks of 11 September 2001 and the ensuing global conflicts over the past five years have certainly challenged the quality of democratic systems. With the use of Diamond's parameters, it is possible to analyse the impact of terrorism since 2001.

THE IMPACT OF TERRORISM ON FREEDOM

Western democracies have been marketed for years as the providers and protectors of freedom. However, the GWOT presents an interesting paradox for democracies. One may ask how a democracy aggressively pursues terrorists and still protects those freedoms that are the foundation of such a political system. Defeating terrorists and protecting citizens from terrorist attacks require large amounts of intelligence and vigilant policing. Gaining sufficient information to identify and stop the terrorists and their attacks before they occur seems problematic in democracies where unwarranted surveillance and intrusion are seen as clear violations of civil liberties. Therefore, democratic governments are charged with protecting citizens from terrorist acts without intruding in those areas where citizens have a reasonable expectation of privacy.

The most prolific debate on democratic freedoms since the events of 9/11 has centred on the USA Patriot Act. The act became a law on 26 October 2001. In response to the *al-Qa'eda* terrorist attacks, this legislation gives the federal government increased authority in four areas. First, both law enforcement and foreign intelligence officials gain greater authority to track and intercept communications. Second, the act gives powers to the Secretary of Treasury to combat corruption of US financial institutions for foreign money-laundering purposes. Third, it attempts to close US borders to foreign terrorists. Fourth, the act creates new crimes, penalties and procedures for rapid dealing with a terrorist entity (Doyle 2002).

The arguments of the US government (USG) and the American populace over the need and scope of the USA Patriot Act have focused largely on the first two sections: electronic surveillance

and money laundering. The monitoring and surveillance of individuals in the US have been contentious issues since the 1950s. From 1956 to 1971, the Federal Bureau of Investigation (FBI) conducted an intelligence collection effort entitled Cointelpro. This programme performed surveillance on dissident organisations and domestic political groups. However, it proceeded too far in monitoring groups that were not a threat to US security and were strictly political in nature. In response to these alleged abuses, the US Senate initiated the Select Committee to Study Governmental Operations with Respect to Intelligence Activities (also known as the Church Committee) in 1975. The committee concluded that 'domestic intelligence activity has threatened and undermined the constitutional rights of Americans to free speech, association and privacy' (Select Committee to Study Governmental Operations with respect to Intelligence Activities, 1976). As a result, the US Congress established the Foreign Intelligence Surveillance Act (Fisa) in 1978. This act sought to protect privacy rights while maintaining national security (Bazan 2004).

The investigation into the Cointelpro programme and the subsequent creation of Fisa demonstrated that democracies and their system of checks and balances can protect the freedoms of citizens. However, the intrusive abuses by government agencies during the mid-twentieth century ultimately hindered their ability to maintain the nation's security in the twenty-first century. The restrictions created by Fisa and other legislation in the 1970s resulted in the Central Intelligence Agency (CIA) and FBI's being unable to detect and deter the attacks of 9/11. The National Commission on Terrorist Attacks upon the United States (9/11 Commission) report cited that those working counterterrorism in the FBI 'were limited in several areas critical to an effective preventive counterterrorism strategy'. The report concluded that the FBI's counterterrorism agents worked with 'limited intelligence collection ... [and] a limited capacity to share information both internally and externally ... [and] perceived legal barriers to sharing information' (9/11 Commission 2003:13).

The USA Patriot Act significantly changed the operational environment of the FBI and its ability to gather intelligence. Essentially, the USA Patriot Act amended the Fisa provision that required certification that the 'purpose' of the search or surveillance under Fisa was to obtain foreign intelligence information. Instead, the amended certification requires that only a 'significant purpose' of the search or surveillance is to obtain foreign intelligence. In addition, the USA Patriot Act permits the sharing of information gained from a Fisa electronic surveillance or search with other federal law enforcement officers (Doyle 2002).

The debate on how far the USA PATRIOT Act has gone appears to be far from over. The current US administration and many in government consider the act to be the single most effective tool in preventing terrorist attacks in the US. Those opposing the act suggest that the provisions go too far in terms of surveillance. The *New York Times* revealed in December 2005 that President Bush authorised the National Security Agency (NSA) to eavesdrop on the communications of individuals within the US to 'intercept the international communications of people with known links to al Qaeda and related terrorist organizations' ('Bush Says He Signed NSA Wiretap Order' 2005). Public dis-

closure of this action took place while debate on the renewal of the USA Patriot Act was beginning. The unauthorised NSA surveillance of US citizens invigorated the debate whether or not the USA Patriot Act sufficiently protected the freedoms of speech and privacy. The reauthorisation of the act was signed by President Bush in March 2006. However, the preceding three months of debate resulted in revisions to the act; the changes increased personal privacy for persons who are in libraries, those who receive secret court orders, and those who receive FBI national security letters (Diamond 2006).

THE IMPACT OF TERRORISM ON PLURALISM

From the beginning of US democracy, the notion of political pluralism held central importance and permitted the existence of a host of political opinions and groups. Pluralism protects democratic citizens from the tyranny of a single political entity through institutional dominance. Furthermore, pluralism supplies a system of continuous checks and balances on government power and continuous policy debate and provides necessary course corrections to the state. Lastly, the debate and diversity of interests found in a pluralist society prevent the persecution of minority groups and protect the rights of those both in and out of political power.

The very core of pluralism, a diversity of interests and beliefs, becomes problematic when one drafts and executes a clear strategy for the prevention of terrorist attacks and the defeat of the networks that perpetuate them. In the immediate aftermath of the 9/11 attacks, a strong sense of nationalism created unity in the nation's first campaign to eliminate terrorists in Afghanistan. However, the extension of the US GWOT to Iraq and other operational theatres, combined with the national elections of 2004 and 2006, brought the re-emergence of dissenting opinions on how best to deter and defeat terrorist networks. The question is now how a Western democracy develops a clear strategy to defeat terrorists in the presence of such a plurality of political actors and interests.

Pluralism demands constant political competition while defeating terror networks requires unity in thought and action. Crafting a coherent counterterrorism strategy in a post-9/11 environment appears to be difficult. In the US democracy, essentially two different political games make effective dealing with terrorist entities difficult. The first battle is the classic chess game between the two dominant political parties: Republican and Democrat. The second battle takes place between the branches of government, predominately the executive and legislative branches. The political battle between Republicans and Democrats should ideally produce a focused strategy that clearly identifies a method to defeat terrorists while protecting the freedoms of all citizens. Thus far, the issue of terrorism appears to be used as a fulcrum for political parties to acquire more votes and control more funding. Votes and money essentially bring about a haphazard and bureaucratic counterterrorism policy that inadequately addresses threats and inefficiently applies resources to strategy.

The unity of political effort following the 9/11 attacks diminished substantially in the beginning of spring 2002 when a US intelligence report dated 8 August 2001 became public knowledge. The intelligence report, which asserted that a terrorist hijacking was imminent, pitted the Democratic Party against the Bush Administration on terrorism strategy. The debate surrounding the US invasion of Iraq drove this political battle between parties to its highest level. Terrorist issues brought about one of the closest presidential elections in history. In November 2004, President Bush won the election by only 3 per cent of the popular vote, marking one of the closest US presidential elections in history and signalling the deep political and public divide about the nation's strategy for defeating terrorism (American President Project 2004).

The more intriguing dynamic of political party plurality has been the division of counterterrorist funding since 9/11. Each state, represented by its Congressmen, has sought counterterrorist funding from the federal government to protect key infrastructure from terrorist attacks and equip and train counterterrorist forces to eliminate terrorist elements. The provision of funds from the newly created Department of Homeland Security (DHS) appears to have been fraught with political interest. The DHS National Asset Database report of January 2006 illustrates the weaknesses of applying resources in a representative plurality. The *New York Times* reported that 'Indiana, with 8,951 potential terrorist targets, had 50 percent more listed sites than New York (5,687) and more than twice as many as California (3,212), ranking the state the most target-rich place in the nation' (Lipton 2006). This glaring example of improper resource distribution demonstrates how representatives within a plurality have strong incentives to acquire resources from the national coffer for their constituency in the hope of securing more votes on Election Day.

The most recent dynamic of political plurality arose after the national election of 2006 in which terrorism was a central issue. The Democratic Party regained the majority in Congress for the first time in 12 years, marking a demonstrated shift in public opinion about how the nation should counter terrorist activity and who should do it. With the Republicans in charge of the executive branch of government and the Democrats the majority in the legislative branch, the first issue addressed after the election was the Terrorist Surveillance Act of 2006, 'which allows wiretapping on phone calls between people in the United States and suspected terrorists overseas' ('Bush, Dems Promise Cooperation as Senate Shifts' 2006). Fearing a major political battle, Attorney General Alberto Gonzales brought the Terrorist Surveillance programme under the guidelines of the Fisa court, thus averting a political battle in the Senate and effectively checking the government's reach (Gonzales 2007). Today, the battle between Congress and the President over authority in combating terrorism continues.

Political plurality demands competition and should in the long run theoretically produce the best solution to countering terrorist elements. However, the rich counterterrorism resource pool and the emotionally fuelled debate between political parties suggest that it may be in the interest of political actors not to

find consensus about defeating terrorism. The political divisions in appropriate counterterrorism strategy and the economic dependency created by developing counterterrorism capacity may increase disunity in effort, thus eliminating the possibility of any coherent solution.

THE IMPACT OF TERRORISM ON JUSTICE

The quality of democracy most questioned since the start of the war on terrorism is that of justice. The GWOT consists not of a traditional battle between nation states but of a conflict largely between non-state actors and nation states. Immediately following the attacks of 2001, the US and its coalition partners participated in a multinational effort to destroy *al-Qa'eda* and the supporting Taliban organisation in Afghanistan. The capture of Taliban and *al-Qa'eda* members during battle produced the first justice dilemma to US democracy. The question was essentially how a democracy should administer justice to individuals and organisations that are non-state actors and that lie outside the US legal system and international laws. The US initially began a temporary solution whereby it transferred prisoners on the battlefield of Afghanistan and other operational theatres in the GWOT to Guantánamo Bay, Cuba. After more than five years, this temporary solution remains the only one to detaining prisoners from GWOT battlefields.

The Guantánamo Bay debate centres on several contentious issues previously unaddressed by international legal systems. The central issue is 'whether the international humanitarian law of armed conflict provides for the possibility of detention and prosecution of persons as "unlawful combatants" or "unlawful enemy combatants" without granting them prisoner of war status' (Gill & Van Sliedregt 2005:28). Depending on the answer to this question, the issue becomes whether prisoners held at Guantánamo Bay fall under the scope of the Geneva Convention and the legal protections that flow from this status, which include those rights granted to individuals under the American court system: rights that are 'required under both international and American constitutional law' (Gill & Van Sliedregt 2005).

Debate over the categorisation of these detainees has raged for nearly five years. The current US presidential administration characterises the prisoners of Guantánamo Bay as 'unlawful enemy combatants'. This status, combined with the fact that the prisoners reside outside US territory, prevents those held in Cuba from obtaining the rights attributed to the status of 'prisoner of war' (Gill & Van Sliedregt 2005:40). Challenges to the 'unlawful enemy combatants' status of detainees arose in 2002. The US Supreme Court heard three cases that year, all of which addressed the question of combatant status. In response, the US Department of Defence (DOD) initiated the Combatant Status Review Tribunals to determine the status of prisoners held at Guantánamo Bay. However, legal arguments continued as to whether these tribunals met the qualifications of 'competent tribunals' under the provision of Article 5 of the Third Geneva Convention (Gill & Van Sliedregt 2005:52).

The 'combatant status' debate and the resulting legal rights provided by the declaration of such a status have provoked the most intense legal discussion in recent American history. As of 29 June 2007, the US Supreme Court agreed to hear the cases of detainees challenging their status as 'unlawful enemy combatants' and ensuing access to US Federal Courts. This latest challenge in the country's highest court implied that the end of the detention facility may be near. Additionally, the decision to hear the cases of detainees signalled the justice system's awareness of the American public's backlash to the Guantánamo Bay detention policies while placing a check on executive branch powers (Glaberson 2007). To many the alleged injustices of Guantánamo Bay represent the deterioration of American democracy, but to others the ensuing judicial debate is a strengthening of the democratic process.

THE IMPACT OF TERRORISM ON ACCOUNTABILITY

After the initial shock of *al-Qa'eda's* surprise attacks on New York and Washington, the focus of the media and society quickly shifted from mourning to blame. Most US citizens wanted to know why their country had been attacked and why the government had been unable to stop such an event from happening. The multitude of intelligence, law enforcement and defence agencies began pointing fingers at each other in an effort to deflect blame for not preventing such a devastating attack. Ultimately, no one person or entity was ever held responsible for not preventing the terrorist attacks. With no established and charged headquarters for combating terrorism, the US had no one accountable for failing to stop the latest terror attack nor did it have a leading entity to now wage the GWOT. The issue became the following: In a diverse and expansive democracy, what single entity is responsible for preventing a terrorist attack and defeating future terrorist threats?

The 9/11 Commission (2003:13) found that bureaucratic government management resulted in a failure of the military, law enforcement and intelligence agencies to detect and stop the terrorist attacks of 9/11. The commission determined the following:

The missed opportunities to thwart the 9/11 plot were also symptoms of a broader inability to adapt the way government manages problems to the new challenges of the twenty-first century. Action officers should have been able to draw on all available knowledge about al Qaeda in the government. Management should have ensured that information was shared and duties were clearly assigned across agencies, and across the foreign-domestic divide.

The crux of all the research done after 9/11 is that no entity bore responsibility for counterterrorism activities in the US.

Analysing the diffuse authority for US counterterrorism prior to 9/11 might best be done by looking at the variety of government agency definitions for the term *terrorism*. The USG distributed the counterterrorist mission among a host of agencies which

then defined their version of the term, assigned differing priorities for terrorism within their own fiefdoms, and allocated resources to counterterrorism in their own fashion. This resulted in an incoherent counterterrorism strategy whereby everyone was accountable in some part for stopping terrorism; however, no one entity felt the sole burden of responsibility. Within each participating counterterrorism entity, a definition of *terrorism* emerged that fit the needs of each individual agency while simultaneously blurring the accountability landscape. Instead of one single definition of *terrorism* in government, there were and still are four separate definitions of the term among the Department of State, the FBI, DHS and the DOD. For example, the Department of State uses the definition found in Title 22 of the US Legal Code which states *terrorism* is 'premeditated, politically motivated violence perpetrated against non-combatant targets by sub-national groups or clandestine agents, usually intended to influence an audience' (Hoffman 2006:31). Meanwhile, the FBI, which is a law enforcement organisation, uses its own definition for *terrorism*, which is 'the unlawful use of force or violence against persons or property to intimidate or coerce a Government, the civilian population, or any segment thereof, in furtherance of political or social objectives' (Hoffman 2006:31). The FBI definition clearly conforms to the mission and needs of the organisation to protect personnel and property while the Department of State's portfolio needs arise in its definition's focus on diplomatic terms that mesh better with international legal codes. While these definitions are remarkably similar, they do illustrate the lack of a common government understanding of the terrorist threat and each agency's role in countering it.

The problems of accountability became apparent after 9/11 and continue to the present day. The media largely placed blame on the CIA for not sharing information, on the FBI for not connecting pieces of intelligence involving the attackers, and on two presidential administrations for not eliminating the threat of Osama Bin Laden and *al-Qa'eda*. The 9/11 Commission's recommendations focused on creating unity of effort and accountability by assigning responsibilities to each participating agency. The key dimension in unifying this effort came in the creation of a National Counterterrorism Centre (NCTC) and National Intelligence Director (DNI). The NCTC holds responsibility for integrating strategic intelligence on terrorism threats and joint operational planning. The DNI maintains responsibility for overseeing national intelligence centres and the agencies that contribute to the national intelligence programme (9/11 Commission 2003:22). An additional post-9/11 creation was the DHS, which became tasked with protecting the US homeland.

Despite the restructuring to fight terrorism, many see little improvement in accountability. Sceptics largely cite two reasons. First, the post-9/11 reorganisation created more bureaucracy than it eliminated. While all assigned agencies have oriented their efforts toward countering terrorism, many now perform redundant tasks and analyses. The increased layers of authority created by the NCTC, the Office of the DNI and the DHS have further muddied roles and responsibilities in fighting terrorism. The analytical sections of all intelligence agencies appear to be performing the same tasks in separate locations. One may

ask which organisation is ultimately in charge of evaluating and tracking threats geographically or in cyberspace and which one holds the analysis that will guide counterterrorist efforts. Second, the overlapping jurisdictions and increased hierarchy in fighting terrorism have reduced the flexibility of ground-level counterterrorism investigators to interdict groups such as *al-Qa'eda*. As noted repeatedly in terrorism analysis, *al-Qa'eda* and like-minded terrorist organisations are highly adaptive. Increased bureaucracy without accountability suggests that the nation's counterterrorism capacity is less flexible rather than more. Who or what is ultimately tasked with interdicting a transnational terrorist organisation remains difficult to ascertain.

THE WAY FORWARD

Although great strides have been made since the attacks of 2001, democracies must focus on

- Defeating terrorist threats while mitigating terrorists' grievances
- Educating the public on the true nature of terrorism
- Establishing clear and efficient methods for assessing and eliminating terrorist organisations

Democratic counterterrorism efforts focus far too much on threats while they never truly deal with grievances. Most counterterrorism actions work to remove cell leaders or shut off funding to terror groups. However, democracies have yet to understand the grievances behind the threats. Overall, Western democracies have improved at deterring or eliminating terrorist threats. Yet the number of threats appears to have grown considerably. This inverse relationship suggests that democracies may continue to improve their ability to eliminate terrorist threats, but if they do not mitigate the long-run grievances that create terrorists, democracies will be eternally vulnerable to attack. In many cases, the techniques that are successful at eliminating terrorist threats actually accentuate the grievances that created the threat. Heavy-handed police and military responses, as well as intrusive investigative techniques that undermine the principles of freedom and justice so critical to an effective democracy, will likely reinforce past grievances and multiply terrorist threats. Democracies must establish a system that eliminates threats but understands the grievances behind them and create long-term solutions to mitigate them. A long-run mitigation of terrorist grievances requires a diverse counterterrorism force with specific expertise in culture, religion and sociology so that a democracy can be reactive to near-term threats while using soft forms of democratic power to reduce grievances.

An informed public forms the cornerstone of an effective democracy. Without being fully informed and having an understanding of issues, democratic societies are likely to choose counterterrorist policies and strategies that are ineffective, if not counterproductive. Many argue this is the case with the current US counterterrorism strategy. During the Cold War, the US and other Western democracies went to great lengths to use both the

media and the academia to illustrate the nature of the communist threat to democratic citizens. Without question, democratic citizens understood the loss of freedom, justice, and plurality that came with a communist system. Today, few American citizens understand the grievances behind modern terrorist organisations. The media, which cover every detail of a terrorist attack, are unlikely to provide much enlightenment about the grievances terrorist organisations have against the US and other Western democracies. Thus uninformed democratic citizens choose leaders and policies without assessing all the relevant information or understanding a particular policy's likelihood of mitigating terrorist grievances or of defeating terrorist threats.

Known to some as the fourth branch in a democratic government, Western media have had mixed success since 9/11. Western media have done a splendid job revealing and checking the actions of the executive and legislative branches of the US over the past few years. Returning to their role as a checking government action, the American media have revealed the injustices of Abu Ghraib and the potential curb on individual freedom from the NSA wiretapping programme, exposed the use of secret overseas prisons for terrorist suspects, accentuated the debate on holding prisoners at Guantánamo Bay and questioned the justification for going to war in Iraq. These media revelations have checked government action and elevated the public debate on issues of freedom, plurality, justice and accountability. Despite these successes at checking government action, the media have largely failed to explain the true nature of terrorist organisations and their grievances. Media coverage focuses on the excitement of terrorist attacks and threats. While this coverage brings a larger audience, the media's disjointed analysis fails to educate the public on how best to deal with terrorist grievances. In the future, the media must work to extend beyond the notion of 'gotcha journalism' with regard to the government and infotainment with respect to terrorist attacks. To perform its obligation as a fourth branch of government, the media must inform the public holistically about the nature of terrorism and link that understanding to current government policy.

Academic communities found in democracies, similar to Western media outlets, have failed to adequately understand terrorism and engage with democratic governments in developing long-run solutions. In the US, few academic establishments are well equipped to analyse terrorism. Only a small group of universities maintain programmes in Middle Eastern and South Asian history and even fewer provide training in languages such as Arabic, Urdu, Pashto and Farsi. While there has been a growth since 9/11, the US still remains severely deficient in the cultural expertise necessary to identify and mitigate terrorist grievances before they turn into threats. Government officials put in charge of fighting terrorism often find few academic analyses to consult when crafting policy and are likely to have received little or no education on terrorism prior to assuming their duties. Democracies must link the academic and policy communities to help educate the public on the threat of terrorism and how best to defeat it. One such example is the Combating Terrorism Centre at West Point.¹ This centre focuses entirely on bridging the gap between democratic governments, academia and

the public. Its largest project to date encompasses the declassification of *al-Qaeda* documents seized on the battlefields of Afghanistan. These declassified documents inform the public about *al-Qaeda's* motivations and methods and provide the academic community with data for the analysis of terrorist organisations' weaknesses.² In future, democracies should look to create more engagement between academic and policy communities, which will inform the public and engage society in creating solutions to terrorist grievances.

Despite restructuring, the government policy and system for defeating terrorism remains unclear. The American public does not understand which individual or entity is ultimately responsible for preventing terrorist attacks. Without a clear understanding of roles and responsibilities, a democratic populace cannot possibly engage in policy debate. Democratic populace disengagement is likely to create infringement of freedoms and compromises in justice, thus weakening the quality of democracy. In addition to educating the populace, democratic representatives must re-examine counterterrorism architecture and establish clear roles and responsibilities for government agencies. In the US, the counterterrorism system lacks coherence, fails to assign accountability and leaves the populace ill prepared to effectively decide how best to eliminate terrorist organisations. Only a further-refined architecture can eliminate terrorists at the same speed at which they are created.

CONCLUSION

Returning to the issue of how terrorism has affected Western democracies, one finds a mix of both positive and negative consequences. According to Diamond's framework, the quality of a democracy depends on its levels of freedom, pluralism, justice and accountability; one finds that terrorism might have actually improved the quality of democracy in the US more than it has hurt it.

Many will argue that the quality of American democracy has suffered because of the creation of the USA Patriot Act and the detention of prisoners at Guantánamo Bay, Cuba. While it may be true that some freedom has been lost through these government actions, the negative externalities associated with these temporary setbacks are outweighed by the increased plurality found in the democratic electorate. Many outsiders to democracy may see the current debate over issues of justice and freedom as a sign of a faltering political system. This belief could not be further from the truth. The attacks of 9/11 and the subsequent GWOT have initiated an unprecedented re-engagement by the American public. The emergence of terrorist issues resulted in the 2004 US presidential election's having the highest voter turnout in more than 30 years. Competition for the 2008 US presidential election has begun earlier than on previous occasions, with more public debates within political parties than witnessed in the past. As of the summer of 2007, the US Supreme Court is entrenched in deliberation over the status of prisoners at Guantánamo Bay, the legality of the NSA wiretapping programme and the authority of the executive branch. The

US Congress remains in continuous debate over the continuation of the US war in Iraq and its status as a critical front in fighting terrorism.

All these debates suggest that terrorism has had a positive rather than a negative impact on Western democracy. The initial negative side effects of the terrorist attacks have resulted in a re-engagement by a democratic populace considered by many to be apathetic. Its increased engagement is resulting in slow but positive changes to the quality of democracy. While accountability in the war on terrorism remains an issue, current policy debates indicate that renewed public engagement has improved the quality of freedom, justice and plurality in American democracy. History suggests that democracies survive and succeed when debate abounds. Terrorism has renewed healthy debate in Western democracies. Through a slow and deliberate process, democracies are likely to mitigate terrorist grievances while improving the quality of their representative system.³

NOTES

- 1 See the Combating Terrorism Centre at West Point website available at www.ctc.usma.edu
- 2 See the Combating Terrorism Centre Harmony reports available at http://www.ctc.usma.edu/harmony_menu.asp

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The Impact of Terrorism in the Middle East and North Africa

Mohamed Kamal

The region of the Middle East and North Africa was hit hard by terrorism. The goal of this paper is to remark on the causes of terrorism in that region and to give a perspective on dealing with it.

TERRORISM AS COMPLEX AND MULTIDIMENSIONAL PHENOMENON

Terrorism is a complex and multidimensional phenomenon. There is no single theory that is capable of explaining it. In the Middle East and North Africa, terrorism could be explained in the light of several variables: some are related to the structural internal conditions of the North African countries' political, social or economic conditions; others have to do with individual factors pertaining to the ideological framework of terrorists, or even their psychological conditions; yet others are associated with external factors and resentment toward outside powers.

Several reports have described the deteriorating economic and social conditions in the region. The Arab Human Development Report of 2002 (United Nations Development Programme 2002:22) paints a grim picture of conditions in the Arab world. According to the report, the per capita growth in the region over the past 20 years was the lowest in the world except in sub-Saharan Africa. It represented an annual growth rate of 0,5 per cent. According to the report, if this trend continues, the average Arab citizen will take 40 years to double his or her income, while other regions will achieve this level in less than 10 years. The number of unemployed in the Arab world is estimated to be no less than 12 million in 1995, around 15 per cent of the labour force. If the present rate continues, the number is expected to rise to 25 million in 2010.

Labour productivity has been low and is still declining. This situation has been accompanied by a deterioration in wages, which has accentuated poverty. Gross domestic product (GDP) in all Arab countries combined stood at \$531,2 billion in 1999, less than the \$595,5 billion of Spain, a single middle-sized European country. The deficit in human capabilities is grave: 65 million Arab adults are illiterate; two-thirds of them are women, and 10 million children are out of school. Arab unemployment is estimated at 15 per cent, which is the highest in the developing world. Arab countries have some of the lowest level of daily incomes in the world, \$1 a day, together with low levels of inequality. One out of every five Arabs live on less than \$2 a day. In a public opinion poll, 51 per cent of older adolescents and 45 per cent of younger

ones expressed a desire to emigrate, indicating dissatisfaction with current conditions and future prospects in the region (United Nations Development Programme 2002:98).

GLOBALISATION AS CONTRIBUTING FACTOR TO TERRORISM

Globalisation has resulted in resentment toward the West and contributes to terrorism. Certain Arab intellectuals argue that globalisation represents a new form of Western and American hegemony. As Nasser Aruri (1998) says,

Today, after the collapse of the Soviet Union, and as the US embarks on a second era of world hegemony, the goal remains the same, except that globalisation has emerged as a benign label for the same goal. ... The difference is that the post-Cold War hegemony is more fierce and potentially more ruinous, yet seemingly gentle because it is couched in benevolent terms. It is also more damaging due to the absence of a counterbalance.

In addition, various Arab intellectuals seem concerned with the cultural implications of globalisation and its impact on national identity. They argue that globalisation is not about liberation, as its proponents claim. It is about cultural penetration and the imposition or globalisation of a certain lifestyle that is typical of the West or America. Consequently, it seeks to create cultural hegemony and dependency and to deprive countries of their identity and cultural character. Moreover, it will enhance cultural duality in the Arab world and widen the gap between tradition and modernity in thought and in practice. Whereas the modern elite interacts with the tool of globalisation and understands its language, the traditional elite lives in isolation (Al-Gabri 1998:297–308).

Arab intellectuals have even expressed concern over the revolution in information technology because, as one notes, it has sharply divided the world between those living in the pre-modern age and those in the post-modern era. Haleem Barakat (1993:348) argues that

The information revolution has not brought about harmony, cooperation and mutual support among states and peoples for the common good of humanity, but rather provided a new and effective tool for entrenching the hegemony of those who con-

control the means by which that revolution is taking place. What we are seeing is a shift to what is erroneously termed the 'global village' or 'family' but amounts to nothing more than sweeping American hegemony. The information revolution is not neutral, in the sense of benefiting everyone equally. There are clearly good and bad things about it, and major advantages for those who know how to use it. Above all, however, it serves those who produce, own and manage it.

Others argue that globalisation is not really global in its application. It remains partial and selective. It is concentrated in the North, where world trade and movement of money mostly take place; it discriminates against the products of developing countries by erecting trade barriers against the products in which these countries have comparative advantage, such as agriculture and textiles, while opening markets for the products of the industrialised nations. It encourages the movement of money but restricts the movement of labour and the transfer of technology. Some have raised the issue of double standards in the application of political principles such as human rights and democracy.

The Arab world gives a mixed picture with regard to its integration in the globalised economy. On the one hand, Arab economies are totally integrated in the international oil market but on the other, they face serious challenges in the era of globalisation. The pace of economic globalisation in the Arab world is slow and lags behind that of major regions of the world.

The Arab countries continue to control around 60 per cent of the world's oil and much of its natural gas. The oil embargo imposed by Arab countries in 1973 had a major impact on the global economy. While the embargo itself lasted only five months, it triggered eight years' worldwide energy shortages, a global recession, and permanent changes in the oil market. Since then, however, the energy environment has changed dramatically. The price of oil has been steadily declining with an increase in the international oil supply. Countries such as the United States have built a strategic petroleum reserve for use in energy emergencies. A decline in oil prices has affected economic conditions in the Arab world, especially in the Gulf countries where a total of around 75 per cent of the national income depends on oil revenues. The collapse of oil prices in 1998, driven in large part by sharply reduced Asian demand, had a severe impact on the economies of Arab oil-producing countries. The Gulf Cooperation Council (GCC) governments had to reduce spending and apply the brakes on several development projects.

The Arab economies face other serious challenges. For example, the Arab countries' combined GDP rose from \$440 billion in 1980 to \$650 billion in 2000; this is less than 2.5 per cent of the world GDP and less than the GDP of Brazil. The rate of Arab economic growth has lagged behind that of other regions of the world with an average annual growth rate of around 2 per cent between 1980 and 2000. Taking into account the average annual inflation of around 3 per cent over the same period, the region's growth in real GDP was marginally negative compared to global average annual real GDP growth of 3 per cent. Furthermore, the region's high population growth rates contributed to a marked decline in per capita income. In Saudi Arabia, for example, per capita in-

come was \$25 000 in 1981, equal to that of the US at the time, but it fell to \$7 000 in 2000 (Shobokshi 2001; Azzam 2001:14).

The Arab countries' trade performance has also been weak. Exports from the Arab world, including oil, totalled \$163 billion in 1999 – less than the exports from Hong Kong alone, which totalled \$174 billion that year. The region's non-oil non-mineral exports in 1999 totalled no more than \$45 billion, which was less than the exports of Finland. By mid-2001, Bahrain, Egypt, Kuwait, Morocco, Qatar, Tunisia, Emirates, Jordan and Oman were members of the World Trade Organisation (WTO) (Azzam 2001:14).

With regard to foreign investment, the total direct foreign investment in the Middle East and North Africa in 1995 was \$4 billion, compared with \$65 billion in South and Southeast Asia, \$27 billion in Latin America and \$12 billion in Central and Eastern Europe (Lancaster 1997:A01).

In the financial world, where globalisation has been about consolidation and building massive financial institutions, domestic Arab banks remain quite small compared to their counterparts in Europe and the US. By the end of 1999, only four Arab banks had assets exceeding \$20 billion, which compared poorly to other leading banks around the world. The combined assets of all Arab banks in 1999, at approximately \$526 billion, were smaller than the assets of any of the 10 largest banks in the world. The 54 leading Arab banks that were among the *Banker Magazine's* top 1 000 banks in the world in 1999 accounted for approximately 2 per cent of the 1 000 banks' aggregate assets.¹

The Arab world, however, still lags far behind Europe and the US in Internet use. Only 2 per cent of the entire Arab population had access to the Internet in 2001, which is a very low figure compared with that of the US, which led the cyber world with 60 per cent of its population online.

Another aspect of globalisation and information technology in the Arab world is the spread of Arabic-speaking satellite television, whether privately owned or owned by Arab governments. Terrorists have managed to use some of these outlets to achieve their goals.

FOREIGN POLICY AS CONTRIBUTING FACTOR TO TERRORISM

Foreign policy has contributed to terrorism. Since the collapse of the Soviet Union and the defeat of Saddam Hussein in the Gulf War, the US has enjoyed unprecedented influence in the Arab world, causing more resentment in the region. After the Gulf War, most Arab countries probably had little choice but to support the US-sponsored Arab–Israeli peace process. The US led the effort to impose sanctions on Iraq and Libya. Most Arab countries, though some reluctantly, adhered to these policies.

In the Gulf region, US policy focused on a unilateral military strategy to defend oil sources. The US maintains a strong military presence in the region, which reached its peak of 500 000 troops during Operation Desert Storm in January 1991. Ten years later, in January 2001, the US continued to maintain a substantial force in the region. US Central Command deployed about 20 000 personnel in the Gulf, 10 000 Navy sailors and Marines at sea, 6 000

Air Force airmen, and 4 000 Army soldiers (Tirpak 2001:22). In addition, the US maintained over 150 000 soldiers in Iraq.

Moreover, Bahrain hosts the Navy's 5th Fleet, and the US Army stores tanks and other war-fighting supplies in Kuwait and Qatar. In February 2000, the US and Kuwait renewed a 10-year defence cooperation agreement (Barr 2001:1).

The member states of the GCC acknowledge that they could not defend themselves against regional powers such as Iraq in the past, nor can they currently do so against Iran despite the \$75 billion investment of their oil wealth in the purchase of weapons systems since the late 1980s, mainly from France, the US and the United Kingdom. From 1990 to 2000, the Saudi government signed contracts for US weapons systems worth \$36 billion, or 32 per cent of the US's global arms exports of a total of \$110.8 billion in that period (Blanche 1997:50).

The UN Human Development Report of 1992 (1992:26-27) acknowledged the destructive impact of the Arab-Israeli conflict, which is at the core of the region's political crisis, as a major constraint on high and sustained growth. The report asserts that the conflict is a contributing factor to the region's democratic deficit and that it is often used as an excuse for distorting the development agenda. According to the report, the conflict disrupts national priorities and retards political development in the region.

MULTIDIMENSIONAL APPROACH TO COMBATING TERRORISM

Combating terrorism has required a multidimensional approach. Egypt has been subject to terrorist violence for several years. Terrorist violence targeted politicians such as former President Sadat, who was assassinated in a terrorist attack in 1981. President Mubarak escaped a terrorist attack on his life during an official visit to the Ethiopian capital, Addis Ababa. A former Egyptian prime minister, a Speaker of Parliament and several ministers were also subject to terrorist attacks. Terrorists have targeted tourist destinations in Egypt, which resulted in the death and injury of many Egyptians and foreign tourists and caused extensive damage to the tourism industry and the economy at large. Examples of such incidents are the October 2004 terrorist attacks in Taba and Nuieba in Sainai, in which 34 people were killed and over 140 were injured. On July 2005, another took place in Sharm el Sheikh, resulting in the death of 67 and the injury of hundreds.

Egypt has adopted a multidimensional approach to combating terrorism. Egypt implemented zero tolerance against the violent terrorist groups. A tough emergency law was used to combat these groups and bring their members to trial before military and civilian courts. President Mubarak promised to introduce a tough anti-terrorism law to replace the emergency law. It is expected that this new law will be adopted in mid-2008. Egypt also adopted an anti-money laundering law in 2002 and established a unit to monitor its implementation. Egypt has become party to 10 international conventions and protocols relating to international cooperation on combating terrorism.

Egypt used economic and political tools as part of the approach to dealing with the causes of terrorism. Government in-

vestments increased tremendously in poor areas, especially in Upper Egypt where many terrorist attacks took place. Egyptian authorities engaged in a dialogue with jailed members of terrorist groups such as the Islamic Group (IG), which led to the release of more than 1 000 members and supporters of the IG after they announced their conversion in thought and rejected violence.

Egypt has adopted a comprehensive political reform programme. Part of this programme includes major constitutional amendments aimed at enhancing the role of Parliament in supervising the executive authority; limiting the exceptional powers given to the President at times of emergency; reforming the electoral system to increase women's and political parties' representation; creating greater decentralisation to give the local authority more supervisory and executive powers; and reinforcing the independence of the judiciary. The political reform programme includes legislative initiatives such as amending the Judicial Authority Law to enhance the independence of the judiciary; reviewing the prevention of detention system to protect citizens' rights; reviewing the penal code and laws regulating civil and commercial disputes to protect citizens' rights; adopting a freedom of information act to allow for more transparency as far as government decisions are concerned; giving citizens the freedom to demand and circulate information; devising laws that protect citizens' rights, such as the Consumer Protection Law; establishing specialised economic courts; and invigorating the role of trade unions.

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NOTES

- 1 See Special report: banking 2000. *Middle East Economic Digest*, 22 December, p 21; and Azzam, HT 2000. Local and international changes are redefining the traditional, conservative role of Arab banks; financial performance of Arab banks and analysis of challenges they face. *Middle East Executive Reports*, July, 23(7):8.

The Impact of the War on Terror on Governance and Human Rights in Sub-Saharan Africa

Samuel M Makinda

Clear connections exist between the war on terror, governance and human rights in sub-Saharan Africa, as elsewhere. The war on terror is a governance issue at two levels. At one level, bad governance, or the lack of effective governance, often gives rise to terrorism. Even where terrorism is not home-grown, bad governance, such as corruption or the lack of professionalism in the security forces, might make it easier for foreign-trained terrorists to carry out their activities.

At another level, an effective counter-terrorism strategy would be expected to address the issue of governance. It is through governance that African states, like their counterparts elsewhere, can find solutions to terrorism. Counter-terrorism initially emerged as an episodic reaction to terrorism, but over the years it has become a continuing practice that may anticipate, prevent or pre-empt terrorist activities. Such a practice cannot take place outside governance. Counter-terrorism measures may be undertaken at a unilateral (national), bilateral, regional or global level, depending on the nature of the problem and the means and interests of the parties involved.

In implementing their counter-terrorism measures, states and their agencies may trample on human rights or inconvenience their citizens in various ways. There have been claims that national counter-terrorism activities have curtailed civil and political liberties in sub-Saharan Africa. Therefore, any counter-terrorism strategy has to be understood against a backdrop of its possible effects on human rights.

This essay makes four key claims. First, terrorism generally emerges from conditions in which democracy, human rights, and social justice are perceived to be absent. Thus bad governance, social injustice, the denial of self-determination and the abuse of human rights are factors that underpin terrorism.

Second, and this statement appears to contradict the first claim, terrorists need the free media, which is an essential element of democracy and good governance, to succeed. Without the media in sub-Saharan Africa and other parts of the world giving publicity to terrorist acts, terrorism cannot generate the fear and uncertainty that make it an effective tool. In this sense, terrorism exploits elements of a democratic system to succeed.

Third, recent counter-terrorism measures, and especially the new or emerging legislative actions that constrain political and civil liberties, serve as an aid to the goals of the terrorists. Thus, unless sub-Saharan African governments tread carefully, they might put in place counter-terrorism strategies that serve the interests of the terrorists rather than those of their own people.

Fourth, if African governments were to pursue long-term solutions to solve problems posed by terrorism, they would need to devise counter-terrorism measures that are primarily aimed at enhancing good governance, human rights and social justice. Indeed, the war on terror can have a positive or a negative impact on governance and human rights, depending on what measures governments decide to take.

In the light of the aforementioned claims, the rest of this essay is divided into three sections. The first discusses the relationship between terrorism, on the one side, and democracy, human rights and social justice, on the other. The second explains the possible effects of counter-terrorism actions, including legislative measures, on political and civil rights. The third discusses governance and how it relates to counter-terrorism measures.

TERRORISM, DEMOCRACY AND SOCIAL JUSTICE

Any analysis of the impact of the war on terror on governance and human rights inevitably has to explore the relationship between terrorism, democracy and social justice. I use the term 'democracy' loosely to refer to a political system whose main features are periodic elections; free competition among political parties; and respect for the fundamental freedoms of thought, expression, and assembly. In a democracy, the rulers are theoretically accountable to those they rule, and the ruled have opportunities to participate in the governance of their community. While these features are the visible signs of democratic practices, democracy is an idea. If democracy is not internalised by the populace, the features, to which I have referred, will have limited purchase.

I use the term 'social justice' in this essay to refer to a fair and equitable distribution of social or material resources, such as income, jobs and social honours or status. In a society that promotes social justice, it is expected that no ethnic, social, political or other group should be marginalised on the basis of its identity.

In a number of sub-Saharan African countries and elsewhere on the continent, incidences of terrorism have frequently been explained in terms of political, economic or social marginalisation. Those who resort to violence have often complained of the lack of democracy and social justice. The rise of terrorism and extremism in Algeria in the early 1990s was due partly to the nullification of the general elections, which the Islamist party, *Front*

Islamique du Salut (FIS) or Islamic Salvation Front, was poised to win. Having been denied the chance to take power through the democratic process, FIS resorted to violence, together with other insurgent groups such as *Groupement Islamique Armé* (GIA) or Armed Islamic Group. This could be cited as a case where the frustration of the democratic process led to terrorism. Indeed, the Algerian example is a clear case of terrorism emerging from government-led attempts to deny groups a chance to exercise their democratic rights. However, it has been claimed that had the FIS won the election, it would eventually have abolished the democratic system. There has been no case in sub-Saharan Africa that can be compared with that of Algeria.

However, some of the terrorist attacks in sub-Saharan Africa cannot be traced to the lack of democratic processes or the existence of unbearable social injustices in these countries. For example, the *al-Qa'eda* terrorists who simultaneously bombed United States diplomatic missions in Nairobi, Kenya, and Dar es Salaam, Tanzania, in August 1998 did not do so because of the lack of democracy in these countries. The Nairobi terrorist bombing resulted in 291 deaths and 5 000 injuries while that in Dar es Salaam resulted in 11 deaths and 77 injuries. These attacks appear to have resulted from grievances about the lack of social justice in the Palestinian territories, which have partly been blamed on the US support of Israel.

While the Nairobi and Dar es Salaam terrorist bombings could not be blamed on the lack of democracy in Kenya and Tanzania respectively, the lack of effective governance in these countries, and especially corruption in high places, may have played a role in creating an atmosphere that made the terrorist actions possible. The existence of porous borders, the long coastline that could not be patrolled, and the low level of professionalism in the security forces were factors that made these countries vulnerable to infiltration by *al-Qa'eda* agents.

The question may be asked whether the war on terror has compelled African governments to pay more attention to the need for effective governance. There has been a coincidence between the establishment of the African Union in July 2002 and efforts to implement counter-terrorism measures, some of which were authorised by the United Nations Security Council Resolution 1373 of 2001. The idea of establishing the AU preceded the launch of the war on terror, but the implementation of the Union's security agenda may possibly have been influenced by the global security climate, which was underpinned by the war on terror following the terrorist attacks of 11 September 2001.

The AU has paid more attention to governance than did its predecessor, the Organisation of African Unity. For example, the AU's Charter on Democracy, Elections and Governance, which was adopted by the Heads of State and Government summit in Addis Ababa in January 2007, identifies the following among its principles: regular, transparent, free, and fair elections; representative government; respect for human rights; separation of powers; popular participation; and constitutional transfers of political power. The Charter on Democracy, Elections and Governance goes further and links democracy to human security, sustainable development, and peace (Chapter 5). Furthermore, it associates democracy with human rights by seeking the commit-

ment of African states to promote democracy alongside the rule of law and human rights (Article 4(1)). In Article 27, it recognises 'freedom of expression, in particular freedom of the press,' as an essential ingredient of good governance.

Moreover, the AU's Charter on Democracy, Elections and Governance recognises popular participation, particularly through 'universal suffrage' (Article 4(2)), as 'the inalienable right of the people'. Chapter 7 of the Charter on Democracy defines the conditions under which democratic elections should be conducted, with particular reference to the AU's Declaration on the Principles Governing Democratic Elections in Africa. The Charter on Democracy, Elections and Governance calls on African states to 'commit themselves to democracy, the principle of the rule of law and human rights'. Furthermore, it calls on African states to 'ensure that citizens enjoy fundamental freedoms and human rights taking into account their universality, interdependence and indivisibility'.

While it has been recognised that a lack of democracy and social justice are factors that ignite terrorism, their existence in a country does not insulate it from terror. For example, the United Kingdom is a democracy that promotes social justice at home, but this did not protect it from the terrorists who targeted the London Underground system in July 2005. To understand the situation, one needs to pay attention to the politics of identity. People who enjoy democracy and social justice in one country may resort to violence because they identify with those who lack them elsewhere.

COUNTER-TERRORISM AND HUMAN RIGHTS

The popular perception is that counter-terrorism measures stem from a genuine desire to protect people and their values, including human rights. Terrorist attacks, on the other hand, do not take into account people's right to life. They undermine values that make it possible for people to enjoy their rights. However, the reality is different. As was revealed by the Abu Ghraib prison abuses in Iraq in 2004, those who are entrusted with the protection of human rights sometimes abuse them. At Abu Ghraib, American troops tortured Iraqi suspects as any dictator would do. Even in African states, the torture of terrorist suspects has been common. Moreover, some counter-terrorism measures give law enforcement agents enormous powers that, when implemented, result in the erosion of human rights. When counter-terrorism measures undermine civil and political liberties, they threaten the security of the people, partly because security, broadly defined, is embedded in human rights.

Human rights need to be defined, but this is not an easy task. Some analysts regard human rights as entitlements of humans by virtue of their humanity. They are claims that individuals make against states, societies or fellow humans, and this means that they cannot be taken away by the state. During the 1970s, for example, Wilkinson (1977:121) postulated that the 'primary objective of counter-terrorist strategy must be the protection and maintenance of liberal democracy and the rule of law'. He posited that 'this aim over-rides in importance even the objec-

tive of eliminating terrorism and political violence'. Wilkinson's argument was that undermining human rights and democratic processes would defeat the purpose of counter-terrorism.

Human rights are presumed to be based on the moral imperative that all people are equal, irrespective of gender, race, nationality, colour, religion, political conviction or ethnic origin. Natural rights theorists believe that people have the same rights, which are inalienable and inherent. In addition, human rights imply obligations. For example, the African Charter of Human and People's Rights, which came into force in 1986, refers to obligations in Article 27(2) when it states that 'the rights and freedoms of each individual shall be exercised with due regard to the rights of others, collective security, morality and common interest'. Unfortunately, terrorists feel no obligation towards those whose lives they take away.

The meanings and significance that policy makers in sub-Saharan Africa and elsewhere attached to human rights during the Cold War were different from those in the immediate post-Cold War era. In the Cold War, few African and Western governments paid attention to human rights in Africa. The situation changed following the end of the Cold War, when the West sought to distance itself from African dictators and insisted on respect for human rights whenever they offered assistance to African states. However, in the aftermath of the 9/11 terrorist attacks, the US and some of its friends in Africa increasingly paid less attention to human rights. In this context, one may possibly argue that the war on terror has had a deleterious effect on human rights in sub-Saharan Africa.

The US government is reported to have rendered terrorist suspects to be tortured in African states. For example, an Egyptian-born Australian citizen, Mamdouh Habib, was arrested in Pakistan in late 2001 because of suspected links with *al-Qaeda*. He was subsequently sent to Egypt by his US captors, where he was tortured for five months before being sent to Guantánamo Bay. Habib, who was released from Guantánamo in 2005 without charge, has made a documentary explaining how he was tortured after being rendered to Egypt. No sub-Saharan African state has been mentioned in relation to American rendition activities. The torturing of terrorist suspects by states and the suspension of the presumption of innocence until proved guilty indicate that the war on terror undermines human rights.

Yet it was as a result of war that international society came to pay special attention to the significance of human rights in the 1940s. The 1948 Universal Declaration of Human Rights was the most significant step in efforts to universalise rights. In its preamble, the Universal Declaration drew a link between human rights, security and governance when it stated that 'recognition of the inherent dignity and of the equal and inalienable rights' of all peoples was 'the foundation of freedom, justice and peace in the world'. The impetus for the Universal Declaration was the brutality of World War II, and especially the extermination of Jews. International society's response to the Jewish holocaust was to establish the Nuremberg tribunal. This was a normative development that touched on governance in at least three respects. First, Nuremberg placed human rights in the domain of global governance. Second, it helped rede-

fine aspects of morality at the global level. Third, for the first time in history it gave coherence to the idea of crimes against humanity, in which individuals, as well as governments, were held responsible for war atrocities. The idea of crimes against humanity stems from the assumption that each human has a duty toward others.

The imperative to eliminate anti-Semitism eventually developed into a global struggle against racism and for racial equality. The struggle for racial equality was most vividly demonstrated in global efforts to end the system of apartheid in South Africa, which succeeded in the early 1990s. A commitment to end racial discrimination is essentially a proclamation that all humans are equal. Therefore, it was not surprising that the fight for racial equality was followed by efforts to achieve the rights of women, minorities and children. The war on terror appears to be undermining these achievements.

For liberals, the post-World War II period was the beginning of a new global moral order based on the equality of all peoples. Nuremberg and the Universal Declaration of Human Rights were important initial steps in the construction of a base for global governance. In addition, they were the beginning of systematic efforts to establish a basis for addressing the welfare, security and basic needs of humans outside national boundaries. These efforts were consolidated through the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, which were adopted by the UN General Assembly in 1966. These two instruments and the Universal Declaration constitute what is called the International Bill of Rights. The International Bill of Rights, in turn, arguably laid the moral foundation for global governance. However, under the present conditions, human rights in sub-Saharan Africa and elsewhere have to be understood against the backdrop of the war on terror.

ENHANCING GOVERNANCE

Governance provides the context within which the war on terror is pursued. Without governance and the rules, norms and institutions that underpin it, the war on terror would be unintelligible. However, some tactics through which the war on terror is pursued have the potential to undermine certain forms of governance. At the same time, the best way to undermine terrorism is to enhance governance and the values, norms, rules and institutions on which it is based.

One may ask what governance is. It occurs at various levels of social activity, from the village to the state and the global system. The Commission on Global Governance has claimed that governance is 'a continuing process through which conflicting and diverse interests may be accommodated and co-operative action may be taken' (Commission on Global Governance 1995:2). From this perspective, governance would describe the structures, rules and institutions that African people have established to manage their political, cultural, economic and social affairs. Governance has also been used to refer to formal and informal sets of arrangements.

As governance is based on values, norms, rules and institutions, which are dynamic, it can be assumed that governance is dynamic. For this reason Rosenau (1998:34) has observed that governance 'is in a continuous process of evolution, a becoming that fluctuates between order and disorder as conditions change and emergent properties consolidate and solidify'. In this sense, governance is historically contingent. In practice, governance reflects the preferences of hegemonic actors. To the extent that the interests of hegemonic forces shape governance, the latter does not accurately reflect the diversity of interests in a particular situation.

Various types of governance exist, among others bad governance, cooperative governance, corporate governance, global governance, good governance and regional governance.

In much of sub-Saharan Africa, counter-terrorism measures have been taken in response to global, continental, sub-continental and national governance factors. Some of the global governance forces include the UN Security Council Resolution 1373 of 2001, which requires all countries around the world to implement particular counter-terrorism measures. Countries that do not have the capacity to put in place counter-terrorism measures can ask for assistance. Several sub-Saharan African states have passed counter-terrorism legislations and established national counter-terrorism centres for the purpose of meeting UN Security Council requirements.

At the continental level, African states have partly responded to the 1999 OAU Convention on the Prevention and Combating of Terrorism (also called the Algiers Convention). The Algiers Convention, which was adopted before the global war on terror was launched, does not require African states to undertake any onerous security activities.

Within sub-regions, African states have participated in sub-regional counter-terrorism measures. An example of regional governance is the Inter-Governmental Authority on Development (IGAD's) Capacity Building Programme Against Terrorism (ICPAT), which is a product of the global war on terror. The origin of ICPAT was an IGAD Heads of State resolution in 2002, the Khartoum Declaration on Terrorism and Transnational Organised Crime, whose aim was to launch a regional programme to counter terrorism. An implementation plan was subsequently prepared and approved by the IGAD summit in Kampala, Uganda, in October 2003. Subsequently, a more concrete proposal was prepared and finalised by experts and officials meeting in Mombasa, Kenya, in October 2004. ICPAT has been implemented from Addis Ababa since 2006. This is evidence of how the war on terror has fostered regional governance in sub-Saharan Africa. ICPAT's broad aims are to counter terrorism, freeze the finances of terrorists, prevent illegal cross-border movements, enhance judicial measures and promote strategic cooperation among IGAD member states and their supporters.

ICPAT is guided by a steering committee made up of focal or relevant ministry representatives from IGAD member states.

The six donor countries, Canada, Denmark, Italy, Netherlands, Spain and Sweden, are also members of the steering committee, but they do not have voting rights. The first meeting of the steering committee was convened in Addis Ababa on 14 June 2006. While ICPAT is regarded as a regional effort, it would not have come off the ground without funding from the six donor countries.

The main problem with a collective approach like ICPAT is that it brings together countries that come with baggage in terms of their regional differences, thereby requiring constant high-level diplomatic leveraging by external forces to make the programmes work. Because security is a sensitive issue and the relations between the member states of IGAD are fraught with problems, ICPAT works mainly at building national capacity while seeking to gradually promote a regional security agenda to the extent that is possible. According to observers, ICPAT's value stems from the fact that it is a programme that is indigenous to the region, but which has international links that can help regional countries identify their shortcomings and establish a viable system to combat terrorism nationally, while building regional cooperation. It is a sub-regional governance structure that might be emulated by other sub-regions.

CONCLUSIONS

In sub-Saharan Africa, a coincidence has existed between the global war on terror and efforts to re-examine afresh security and governance strategies on the continent. At the national level, several countries have passed counter-terrorism legislations and established national counter-terrorism centres in response to the UN Security Council Resolution 1373. However, several countries have yet to establish counter-terrorism acts. At the sub-regional level, efforts have been made to pool resources with a view to enhancing counter-terrorism efforts. IGAD's ICPAT is an example of such efforts. At the continental level, the Algiers Convention has assumed extra significance because of the global war on terror. While the AU's plans to focus attention on new security and governance approaches were in place before the 9/11 terrorist attacks, it is possible that the global war on terror provided more impetus to this effort. Unfortunately, some sub-Saharan African states have used the global war on terror to undo some of the gains made in the promotion of democracy and human rights.

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Economic Consequences of Terrorism in North Africa

Insights from Economic Theory

Abdallah Shehata Khattab

INTRODUCTION

Countries all over the globe were plagued by terrorist campaigns in the twentieth century. During the past four decades, the world has witnessed more than 20 000 incidents, a significant number. Such waves of terrorist attacks have resulted in about a million casualties and injuries (Barth 2006). In addition to the direct losses incurred and the climate of fear evoked by terrorist attacks, counter-terrorism policies can impair daily life and economic development in terrorism-ridden countries. Thus the assessment of the economic consequences of terrorism is a crucial issue. However, methodologies of assessing the impact of terrorism differ and are controversial. Basically, conventional methodologies analyse the consequences of terrorist activities by counting the number of incidents and casualties. Recently, economic literature argued that terrorist attacks influence various aspects of the economy.

In the region of North Africa, the extent of the effects of terrorism attacks differs significantly, as do experiences. For instance, Algeria's experience of terrorism and its extent and impact are not similar to those of Egypt, Morocco or Tunisia. This paper explains how economic theory and models provide key insights in different aspects of terrorism in these regions. The paper is divided into five sections including the introduction and conclusion. Section 2 discusses economic models that assess the impact of terrorist attacks while Section 3 analyses the extent of terrorist incidents in North Africa. Section 4 refers to the implications of such models in the process of assessing the impacts of terrorism in North Africa. Finally, Section 5 summarises key findings and policy implications.

ECONOMIC THEORY AND THE IMPACT OF TERRORISM

Understanding the causes and consequences of terrorism, especially in its current form, has been a key issue for academic discussion. Economic theorists consider the phenomenon of terrorism a challenge that economists need to understand and analyse (Becker and Rubinstein 2004). A distinction should be made between two streams of literature in economic theory regarding terrorist acts, although both types are in the process of evolution. The first stream of literature uses economic theory tools and deals with an understanding of the act of terrorism.

Specifically, it focuses on understanding why individuals and groups of terrorists commit acts of violence. The second type of literature includes economic models that assess the impacts of terrorism on the economy. In this section, attention will be given to models that assess the impacts of terrorism, particularly as discussed in empirical literature.

As economic models constitute an abstract framework, the analysis of the economic consequences of terrorism is controversial. As argued, terrorist attacks do not have a significant economic impact since they destroy only a fraction of the capital reserve of a country.¹ Nevertheless, it has been argued that terrorism might have a considerable effect on the allocation of productive capital within and across countries, even if it represents a fraction of the overall economic risk. Economic models have emphasised that increasing uncertainty as a result of terrorism reduces, or changes, the expected return of investment. This depends, basically, upon the intensity and length of the attacks. Specifically, attacks may cause movements of capital within the country and across countries if the world economy is sufficiently open (Abadie and Gardeazbal 2005).

Models have identified key channels through which terrorism affects the economy (United States Congress 2002). They are the following:

- Capital destruction, both human and physical: Terrorist attacks affect the country's capital negatively as they result in destroying a proportion of either physical or human capital.
- Higher levels of uncertainty and decision making: Terrorism increases uncertainty and distorts the process of decision making since attacks affect the expected rate of return on investment, transaction cost, etc.
- State budget: Terrorist acts affect decisions about resource allocation in the state budget and promote increases in counter-terrorism expenditures, drawing resources from productive sectors for use in security fields.
- Mobility of productive factors in an open economy (foreign direct investment and capital flight): This aspect includes trade movement among countries.

Narrowing the focus of analysis to consider the direct effect of terrorism on the economy as it destroys a proportion of productive capital (channel one) underestimates the true impact of such a phenomenon. Becker and Murphy (2001) argue that

the direct impact of terrorist attacks on productive capital is relatively modest, even for events of catastrophic terrorism. The authors estimate that the 11 September 2001 terrorist attacks resulted in a loss of 0,06 per cent of the total productive assets of the US. Therefore, some writers have argued that terrorism is unlikely to exert a significant influence on economic activity in the long run. On the contrary, empirical estimates of the consequences of terrorism typically suggest large effects on economic outcomes (Abadie and Gardeazabal 2005). For instance, the impact of terrorism in the Basque Country is estimated at about a 10 per cent drop in per capita gross domestic product (GDP) that emerges during a period of two decades (Abadie and Gardeazabal 2003).

Even after controlling for other types of country risks, models have shown that higher levels of terrorist risks are associated with lower levels of net foreign direct investment (FDI). It has been argued that terrorist risk induces a fall in the net FDI of about 5 per cent of GDP. Terrorism may cause large movements of capital across countries (either in the form of FDI flow or capital flight movement) if the world economy is sufficiently open since international investors are able to diversify other types of country risks (Abadie and Gardeazabal 2005).²

In general, economic scholars have analysed the effects terrorist acts have on various aspects of the economy. These aspects mirror the channels of effects and are discussed in the following paragraphs.

Sectors sensitive to the act of violence: Tourism

In recent years, tourists frequently became targets of terrorist activities as these attacks generated a great deal of attention in the media. The Luxor massacre in 1997³ and the bombing of a discotheque in Bali in 2002 serve as examples. Enders and Sandler (1991) assessed the negative impact of terrorist incidents on tourism in Spain. According to their assessment, terrorist attacks there scared away over 140 000 tourists. Specifically, if terrorist incidents had not been taken into account, 1,5 times as many tourists would have visited Spain during the period of the study. Similarly, Ito and Lee (2004) assess the impact of the 9/11 attacks and the imposition of severe new security requirements on domestic airline demands in the US. After the authors had controlled cyclical, seasonal and other unique events impacting the industry, they estimated the initial demand at more than 30 per cent measured in revenue passenger miles (RPMs) and 7,3 per cent measured in yields (Barth 2006). However, one needs to stress that the estimated impacts of terrorism on tourism vary considerably as the structures of the tourism industry and terror campaigns differ, not only across countries but also over time. Thus the assessment of the effects on tourism should emphasise the importance of differentiating between different types of attacks, for example the location of an incident and the number of casualties. For instance, the impact of the Luxor incident differs from that of Bali, Indonesia. Moreover, the impact on tourism is influenced not only by the incidents of terrorism in the country but also by the attacks taking place in the region. Terrorism systematically influences tourists' choice of destination and can, therefore,

affect a host country negatively. Furthermore, it affects the demand for tourism in neighbouring countries (Drakos and Kutan 2003).

Foreign direct investment

Because terrorism influences factors such as transaction cost and level of uncertainty, it affects the allocation decision of firms investing money in real foreign assets. Firms fear act of terrorists that can damage their assets and thus seriously disrupt their activities. As argued, even relatively mild terrorist activities may significantly reduce the flow of capital into a terror-stricken country (Becker and Rubinstein 2004). Enders and Sandler (1996) argue that terrorism is estimated to have reduced annual FDI inflow in Spain by 13,5 per cent on average between 1975 and 1991. Such a reduction negatively affects economic growth as the transfer of technological know-how of the country is decreased along with the decrease of foreign saving as a key source of financing investment in developing countries (Barth 2006).

Savings and consumption

Terrorist activities may affect consumption and, hence, savings rates in different ways. As indicated, violence might increase perceived risks associated with savings, either because legal claims on assets are compromised or because individuals are prevented from spending their savings. However, terrorist activities may induce individuals to place their money in safe assets rather than consume durable goods (Becker and Rubinstein 2004). The ultimate outcome of these two opposite effects of terrorism is still an empirical question. Empirical studies assessing such effects on consumption and savings have ended having ambiguous results (Barth 2006).

Physical capital accumulation or investment

Since the effects of terrorist attacks aggregate consumption and savings, they undoubtedly influence the level of investment and, hence, economic growth. Terrorism influences both the level and the composition of investments (Frey at al 2004) because terrorist acts increase the level of risk and uncertainty. Thus investments in either non-traded capital goods or non-residential construction, risky assets in an environment of political instability, are reduced. Such investments might arguably be reduced more than those in machinery and equipment because of the diffusion of violence (Abadie and Gardeazabal 2003).

Depression of the stock markets

Theoretically, terrorist attacks may affect the expected profits of economic activities as they increase the cost of production and business because of the higher cost of security measures. The airline industry is an excellent example. Furthermore, attacks increase the risk premium as terrorism leads to increased uncertainty about a firm's prospects on the market (Frey 2004). However, empirical literature does not reach a final conclusion about these impacts. It is difficult to disentangle investors' decentralised evaluation of a firm's costs

because of terrorism, as reflected in the stock price, from a host of other factors (Barth 2006). For instance, when analysts tried to determine the impact of 14 terrorist and military attacks on returns on the US capital market, it was argued that military attacks in the past, such as the invasions of France (1940) and North Korea (1950), had led to substantial negative cumulative abnormal returns when measured over 11 trading days. Nonetheless, no abnormal returns occurred even on the actual day of the terrorist bombing attacks on Pan America (1988), the World Trade Centre (1993), Oklahoma City (1995) and even the US embassies in Kenya and Tanzania (1998). The single recent terrorist event that showed negative cumulative abnormal returns, even after six days' trading, was that of 9/11 (Chen & Siems 2004).

Foreign trade

Terrorism may affect foreign trade in several ways. It raises the costs of doing business because of an insecure and unstable business environment. In addition, security measures in response to terrorist activities increase transaction costs. Furthermore, terrorism has negative impacts on foreign trade because of the risk of a direct destruction of traded goods (Frey 2004). For instance, frequent attacks on oil pipelines in Iraq after the occupation of the country paralysed oil exports. Nitsch and Schumacher (2004) argue that a doubling of the number of terrorist incidents reduces bilateral trade flows by 4 per cent.

Economic growth

The overall effect of terrorist attacks can be ascertained by the impacts on economic growth. However, when estimating such an effect on the economy, one is faced with the question of how the economy would have developed if there had been either less terrorism or the absence of it (Frey 2004). Furthermore, the causality between economic growth and terrorism is still an open question. As stated by Krueger and Maleckova (2003), 'The evidence we have assembled does not indicate a connection between poverty and terrorism, and we are not aware of compelling evidence that points in the opposite direction' (Frey 2004).

The impacts of terrorism on GDP per capita in Spain's Basque Country⁴ have been assessed by Abadie and Gardeazabal (2003). The authors argue that during the pre-terrorism period 1955 to 1975, the actual and 'synthetic' Basque regions behaved similarly in their growth dynamics. Nonetheless, since 1975 these paths have diverged with the actual region's per capita GDP lagging behind that of the 'synthetic' Basque region by 12 percentage points. Similarly, Tavares (2003) suggests that the 'economic cost of a terrorist attack is, all else equal, less severe in countries with better developed institutions' (Barth 2006). Similarly, a number of cross-country empirical studies have shown that political instability has a negative impact on economic growth that might result from the negative effect on investment and savings (Frey 2004).

As noted, the literature, both theoretical and empirical, has stressed that terrorism affects the economy in different direc-

tions and aspects. Key lessons learned from the literature review are the following:

- Literature distinguishes between the direct and indirect cost of terrorism. The direct costs consist of the destruction of infrastructure and human capital. Nonetheless, the indirect costs may be substantial as they consist, among others, of the military cost, the induced cost of doing business and higher transactions costs in international trade and civilian resources used to fight terrorism (Frey 2004).
- Estimating the effects of terrorism on various sectors and the overall economy does not capture the total costs of terrorism. Such estimates exclude the non-market values. For instance, the fear of individuals and victims' grief are ignored. This exclusion of different forms of damage may significantly underestimate the true cost of terrorism (Becker and Rubinstein 2004).
- Estimating the impact of terrorism requires a comprehensive framework that takes into consideration different determinants of economic performance, such as exports, size of government, spending on education, development stage and political stability.
- The overall impact of terrorism on the economy depends on the attacks' intensity and regularity (for instance, the cases of the Basque Country in Spain, Algerian violence and Israeli aggression against the Palestinians). However, terrorism indicators are found to have a negative and significant impact on growth in real GDP per capita.

Lessons such as these seem crucial in discussions about the relationship between terrorism and the economy in the North African region.

TERRORIST ATTACKS IN THE NORTH AFRICAN REGION

As noted above, the overall impact of terrorism on the economy depends on the experience of each country. In addition, the analysis of such an impact requires an understanding of the origin of the phenomenon and its future trend. These two factors are crucial in estimating the impact of terrorist attacks on countries, particularly in the Middle East and North Africa.

The latest figures indicate that the Middle East⁵ and Arabian Gulf regions had the highest number of terrorist incidents between 1970 and 2005. As indicated in Table 1, about 35 per cent of terrorist incidents worldwide occurred in the Middle East region between 1970 and 2004.

Most terrorist attacks in the Middle East have hit the North African countries of Algeria, Egypt, Tunisia and Morocco. Algeria is the country with the highest share of terrorist incidents among the North African countries (47,9 per cent), followed by Egypt (35,5 per cent) (see Table 2). About 5 per cent of the incidents occurred in each of Morocco, Tunisia and Libya, while Mauritania has the lowest share of incidents in the North African region.

Table 1. Terrorist incidents, fatalities and injuries by region: 1970–2004

Region	Share of terrorist incidents (%)	Fatalities and injuries per incident
Middle East and the Arab Gulf	34,60	5,8
Western Europe	21,00	1,5
South Asia	15,60	7,3
Latin America	13,70	13,2
Africa	4,40	33,1
Eastern Europe	4,25	7,6
Southeast Asia and Oceania	2,95	14,0
North America	2,70	7,7
East and Central Asia	0,80	1,9

Source: Milken Institute 2006.

Table 2. Terrorist incidents and fatalities in North Africa

Country	Share of the total number of incidents in the region	Share of the total number of fatalities and injuries in the region
Algeria	47,9%	66,8%
Egypt	35,5%	27,0%
Libya	4,5%	0,4%
Mauritania	2,4%	1,3%
Morocco	5,1%	2,4%
Tunisia	4,5%	2,1%

Source: Milken Institute 2006.

From 1968 to 2004, the North African region was struck by more than 300 terrorist incidents; of these, more than 83 per cent hit Algeria and Egypt. The fatalities and injuries per incident are 12 in Algeria and seven in Egypt, while Libya has the lowest rate of one (see Table 3).

Algeria has taken impressive steps against terrorist groups operating in the country, particularly against the *Groupe Salafiste pour la Prédication et le Combat* (GSPC) or Salafist Group of Preaching and Combat. The Algerian government has publicly condemned international terrorism; however, it has made a distinction between terrorism and legitimate armed resistance in Palestine and Lebanon by Hamas, Palestinian Islamic Jihad, and Hezbollah

According to Algerian authorities, less than 800 terrorists remained active in Algeria, down from the estimated 28 000 terrorists in the mid-1990s. The success of government in capturing or killing a number of GSPC terrorists has weakened the effectiveness of this group. However, the remaining GSPC members have continued to be active and have engaged in low-level attacks in several areas across the country (United States Department of State 2006).

For the greater part of 2006, the security situation in Algeria remained relatively unchanged and was marked by stability in the key urban areas and low-level terrorist activities in the countryside. The last quarter of the year, however, witnessed

four attacks in the province of Algiers, including one that targeted Westerners. These were the first attacks inside the province since 2004. Until these recent attacks, terrorism in Algeria was generally not aimed at foreign entities. Instead, the country's major terrorist group, GSPC, preferred to target Algerian government interests (United States Department of State 2006).

Egypt has been the victim of terrorism activities since the early eighties with the assassination of President Sadat in 1981. Most recently, in April 2006, three suicide bombers detonated explosive charges in rapid succession at three popular tourist locations in the southern Sinai resort town of Dahab. The bombers killed at least 24 people, including six foreigners. At least 87 were injured, among them four Americans and 25 other foreigners. Moreover, two suicide bombers attacked a vehicle belonging to the Multinational Force and Observers (MFO) in northern Sinai and the Egyptian police, but the bombers were the only casualties (USA. Department of State 2006). Such recent attacks seemed to target the Egyptian tourism industry, not Americans or foreigners specifically, as the 2005 triple bombing in Sharm el-Sheikh showed.

Despite these recent incidents of terrorism, the rate of attacks has been declining significantly in Egypt as the key Islamic fundamentalist group has declared the initiative of No-Violence Action after the incident of Luxor in 1997. Most of the Egyptian President's far-reaching counter-terrorism authority is derived from a decades-old emergency law that was renewed by Parliament for another two years in 2006.⁶

The Moroccan government has implemented different internal reforms to address socio-economic conditions that create an environment fostering exclusion and despair. This process of eradicating terrorist roots has been under the leadership of King Mohammed VI who, in 2005, launched the National Initiative for Human Development to combat poverty, create jobs, and improve infrastructure. The initiative targets Morocco's poorest rural regions and disadvantaged areas such as urban slums (United Nations 2006).

Despite these efforts, Moroccan suicide bombers attacked several sites in Casablanca killing 45 people (including the 12 bombers) and injuring 100 others. The government's swift and

Table 3. Terrorism indicators in the North Africa region: 1968–2004

Country	Number of terrorist incidents (1968–2004)	Total fatalities of terrorist incidents (1968–2004)	Fatalities and injuries per incident
Algeria	159	1917	12,1
Egypt	118	774	6,6
Libya	15	11	0,7
Mauritania	8	38	4,8
Morocco	17	69	4,1
Tunisia	15	59	3,9
Total	332	2868	32

Source: Milken Institute 2006.

ongoing crackdown on the Salafiya Jihadiya movement resulted in the arrest of an estimated 3 000 extremists and the sentencing of at least 900 individuals for crimes under counter-terrorism laws. Many of these cases were still active in the judicial system; at least nine suspects were acquitted, and the prison sentences of at least 30 individuals were reduced in 2005 (USA. Department of State 2006).

In Tunisia, the security institutions have monitored the activities of extremists, both in the country and abroad. Moreover, the Tunisian government worked to improve security procedures at borders and the country's airports. The government actively prevented the formation of terrorist groups inside Tunisia, including prohibiting the formation of religious-based political parties and groups that it believed would pose a terrorist threat. In addition, the government of Tunisia has responded positively to US requests for information and assistance by blocking financial assets in counter-terrorism investigations.

Literature that examines terrorism in North African countries argues that

- A significant part of violence in the area is due to the long-lasting undemocratic systems
- The rate of violent incidents has depended basically on social, economic and political reform, as the Algerian case shows, despite security measures against what governments consider to be tourist movements or groups
- The rate of violence in North African countries correlates significantly with the aggression against the Arab states led by the US and Israel in Iraq and Palestine

CONSEQUENCES OF TERRORIST ATTACKS IN THE NORTH AFRICA REGION

As noted above, the influence of terrorism on the economy is not easy to assess as terrorist acts affect different aspects of the economy. Moreover, it has been proven that the effects on each aspect depend on a range of factors such as the structure of the economy, intensity and length of terrorist acts and measures against terrorism. Because of limited time and space, this section does not consider all aspects. It focuses on the effect on tourism and state budgets of specific countries in North Africa because of the availability of data. The choice of these two aspects is justified as terrorist attacks have essentially struck tourist spots and resulted in significant increases in the allocations of resources for security items in the state budget.

Effects of terrorist attacks on tourism

Tourism has become a leading sector in the economic development strategies of North Africa, despite the region's states' having varying degrees of success in their attempts to expand and develop their tourism sectors. As argued, all North African states have now embraced tourism, albeit with varying degrees of enthusiasm, as a key economic industry (Nabli 2004). Tourism as an economic activity has traditionally been most dominant in Tunisia, Egypt and Morocco. Tunisia has the longest history

of the developed standardised package sea-and-sun resort tourism. Morocco and Egypt have also developed such mass tourism sectors for tours that seek to take advantage of cultural and historical sites such as the pyramids and the sphinx, temple of Luxor (Egypt), and souks of Marrakech (Morocco). In these three countries, tourism is a major business and has been expanding rapidly over the last two decades. From 1983 to the mid-1990s, tourist arrivals in Tunisia and Egypt more than doubled from 1,5 million to about 4 million visits by non-residents to each country (United Nations 2005b).

Tourism receipts in Egypt amounted to over 6,4 billion dollars or about 7 to 8 per cent of the Egyptian GDP in 2005 (Egypt. Ministry of Economic Development 2006). Similarly, receipts in Tunisia and Morocco represent 5 to 6 per cent of their gross national product. These figures make tourism one of the top foreign exchange sources for these countries. These foreign exchange sources cover, for example, over 40 per cent of Tunisia's commercial trade deficit. In addition, most direct employment is in the hotel sector where, for example, over 50 000 people are employed in Tunisia. Very likely tourism indirectly employs one out of every ten people in Morocco, Tunisia and Egypt (Hazbun 1998).

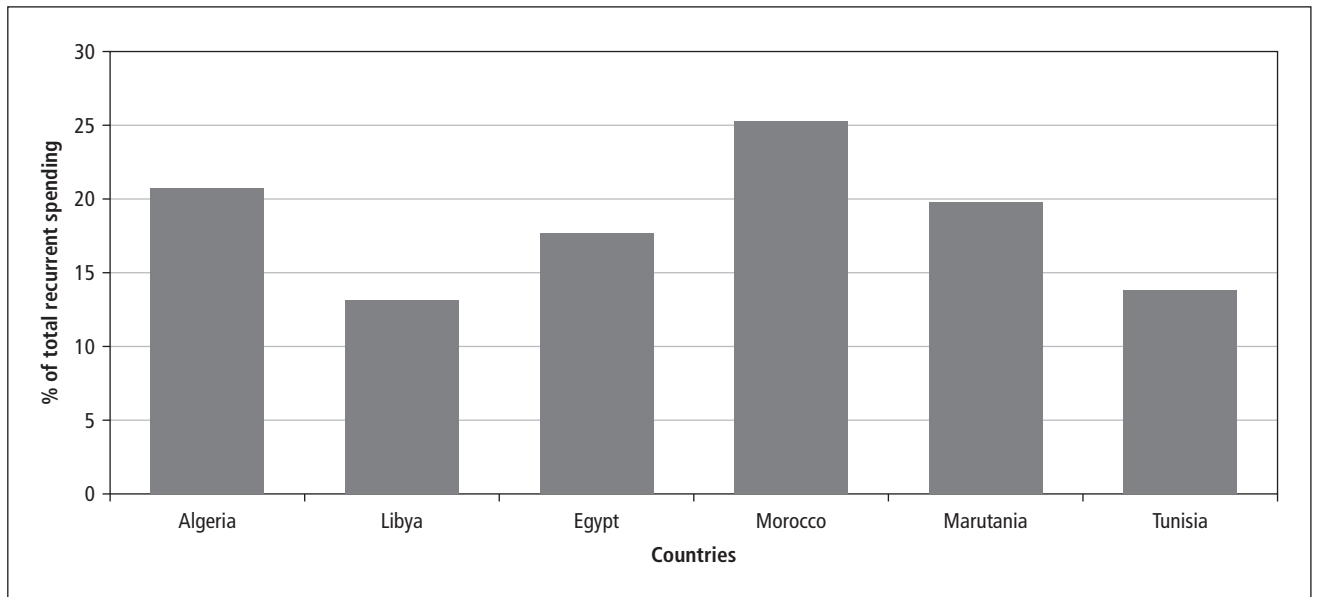
The phenomenal growth of Egypt's services sector over the last two decades has been the result of a pick-up in tourism flows that attained unprecedented levels. The number of arrivals increased from 2 million in 2003 to 9 million in 2005/2006 (Egypt. Ministry of Economic Development 2006). For Morocco, the rate of increase in services accounts for 3,1 per cent in 2004 against 3 per cent in 2003. It should be stressed that there has been a notable growth in tourist activities, which increased by almost 5,8 per cent in 2004 against a fall of 4,7 per cent in 2003 and 7,5 per cent in 2002 following the attacks of 9/11 (Hazbun 1998).

As the leading industry in these three countries of North Africa, tourism has been a primary target for terrorist attacks, as demonstrated in Luxor (1997), Wadi Garabah (2001), Casablanca (2005/2006) and Sharm el-Sheikh (2006). Although tourism has been a key target in these countries, the damage was minor because they were short-term attacks. In Egypt, for instance, although Sharm el-Sheikh was targeted in 2006, the influx of tourists into the country has grown significantly and it reached approximately 25 per cent in 2005 to 2006.

The effect of terrorist attacks on the state budget

The effect terrorist activities have on the state budget is crucial as governments in North Africa face tight budget constraints, similar to other developing countries. Because of terrorist acts in the area, security and defence spending constitute a significant share of the state budget. In 2005, security and defence spending exceeded 22 per cent in Algeria and 25 per cent of the total recurrent spending in Morocco. On average, spending on defence and security exceeded 18 per cent of the total recurrent spending in 2005. In the North African countries, such spending reaches approximately 14 per cent of the total spending, which is higher than that in sectors such as health, social security and environment (Arab League 2006). Such a significant share of spending on defence and security, partially for terrorism countermeasures, is justified, particularly in the countries of the Arab Moroccan Union.

Figure 1. Spending on defence and security



Source: Arab League 2006.

In Egypt, for instance, the budget for security has shown an upward trend and has exceeded the allocation of resources for the health sector over the last five years (see Table 4, Figure 2). Thus the absence of terrorist activities in North African countries would have positively affected the allocation of resources in the sense that part of the security budget could be reallocated in favour of sectors such as health, education and social security.

Table 4: Spending on security and health sectors

Sector	2003/2004	2004/2005	2005/2006	2006/2007	2007/2008*
Security	7,60	8,90	10,50	9,60	11,30
Health	8,00	7,26	9,60	9,30	10,60

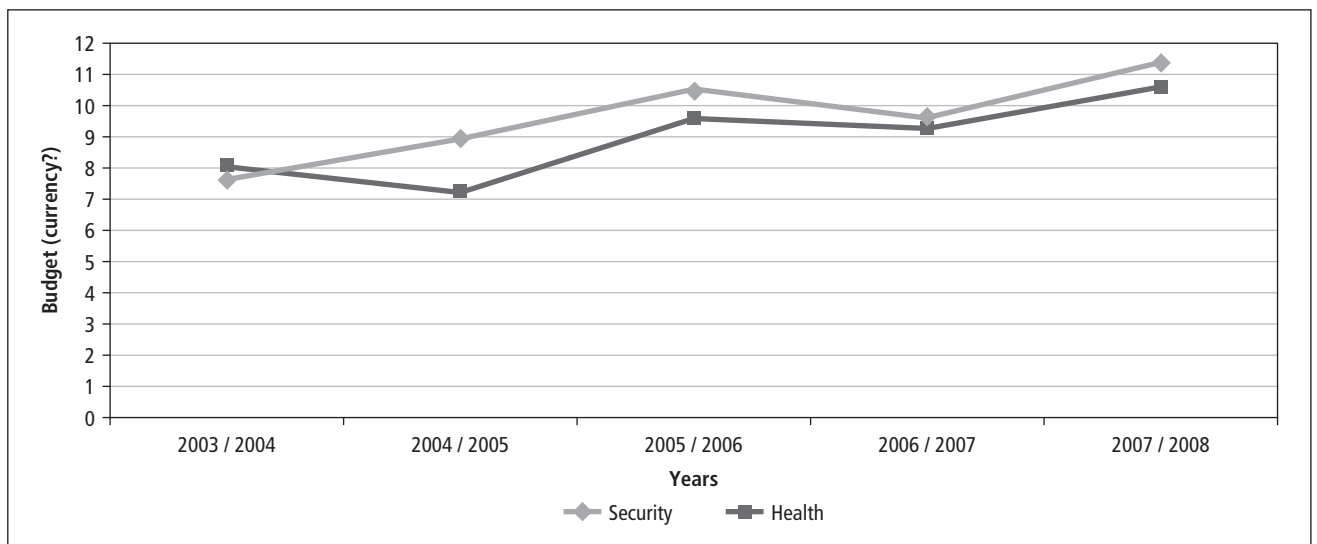
*Projected figures for the fiscal year 2007/2008.

Source: Ministry of Finance 2007.

CONCLUSION

In general, this paper shows how economic theory and economic models provide insights into the impact of terrorism on the economy. Furthermore, the paper shows how this framework can be applied in the North Africa region.

As argued, understanding the causes and consequences of terrorism has been a key issue for academic discussions and writing. In economic theory, theorists consider the phenomenon of terrorism a challenge that has to be understood and analysed. A distinction is usually made between two streams of literature in economic theory regarding terrorism. The first stream focuses on understanding why individuals and groups of terrorists commit such acts of violence. The second type of economic model assesses the impacts of terrorism on the economy.



Source: Egyptian Ministry of Finance 2007.

Literature argues that the direct impact of terrorist attacks on productive capital is relatively modest, even for events of catastrophic terrorism, and thus some writers have stressed that terrorism is unlikely to exert a significant influence on economic activity in the long run. In contrast, empirical estimates of the consequences of terrorism typically suggest major effects on economic outcomes. In general, scholars of economy have indicated that terrorist acts have significant effects on various aspects of the economy, such as physical and human capital; economic growth; international trade and budget allocation; and FDI.

North Africa is one of the world's regions that has suffered most from terrorist incidents. Between 1968 and 2004, it was hit by more than 300 terrorist attacks, of which more than 83 per cent occurred in Algeria and Egypt. This high rate of violence has affected the region, particularly where tourism and spending on security are concerned. As noted, the effect of terrorism on tourism seems minor as it is a short-term phenomenon, whereas security and countermeasures against terrorism continue to be a dominant item in the state budget for most countries in the region at the expense of other items and programmes such as health, education and social security.

NOTES

- 1 Becker and Murphy (2001) estimate that the 9/11 terrorist attacks resulted in a loss of 0.06 per cent of the total productive assets of the US economy.
- 2 The Iraqi case is a clear example of that phenomenon as most Iraqi businessmen, and even families who have sold their properties, start to move to neighbouring countries such as Jordan and Egypt.
- 3 In the Luxor incident, members of an Egyptian Islamic group shot dead 58 foreign tourists visiting the temple of Queen Hatshepsut, while in Bali, Indonesia, the bombing cost the lives of almost 200 tourists.
- 4 This region has been beset by terrorism since the 1970s.
- 5 The term *Middle East* includes the North African countries.
- 6 Egypt has been governed by emergency law since 1981.

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Terrorist Attacks and the Kenyan Economy

Martin Kimani Mbugua

Terrorism's economic impact on Kenya, for all the sound and heat it elicits in counterterrorism circles, has received very little data-driven documentation. The security response has swung into high gear, renditions are underway, counterterrorism centres have been constructed and staffed and the United States is doggedly pursuing its *Global War on Terror* (GWOT) in the region. Terrorism, the public is repeatedly assured by security officials, is a deadly threat that must be contained. This message comes in an environment where disease, poverty and forms of violence spanning a wide spectrum claim far more lives and treasure than attacks by international terrorist groups. The public in the country can therefore scarcely be blamed for its scepticism about the merits of a muscular counterterrorism policy, especially in the light of other areas of government responsibility that have a far higher impact on human security and that are in want of resources and attention. The heightened perception of violent risk in Kenya in reaction to terrorist attack has to be viewed in the context of other risks to life and property if counterterrorism is to be appropriately prioritised in the public agenda.

This paper focuses on the 1998 and 2002 *al-Qa'eda*-sponsored attacks in Kenya for the sake of a closer, clearer focus on the overall economic impact (or non-impact) of this form of political violence. The overarching argument is that even while one acknowledges the very real costs of terrorism in terms of life and treasure, the impact on Kenya's politics, economy and governance has been modest. The lasting result is a continuing lack of public and political support for a strong counterterrorist response. The public's tepid support and sometimes outright opposition, especially among the Muslim population, is counteracted only by strong international pressure on the government to give greater priority to counterterrorism. If Kenyans believe terrorism means foreigner versus foreigner, they also believe that counterterrorism involves one foreigner using their government to fight another. This sense of terrorism as a peripheral, if highly dangerous, phenomenon is supported by the modest impact that it has had on the economy and national psyche. This divergence between the public's perception of terrorism risk and a strengthening counterterrorism national and international regime must be closed by either deepening the former's appreciation of the risk or, if there is no basis for this, turning down the intensity of the latter.

TERRORIST ATTACKS IN KENYA

On the morning of 7 August 1998, car bombs exploded simultaneously at the US embassies in Nairobi, Kenya, and Dar es

Salaam, Tanzania. The American embassy in Nairobi was situated in one of the busiest areas in the central business district. Alongside the embassy was the four-story Ufundi Cooperative Building which toppled over onto the embassy from the force of the blast (Mbitiru 1998). The majority of victims were Kenyans going about their normal Friday morning business. The enormous explosion was followed by pandemonium and screams of panic as thousands of people tried to flee from the site. Flying glass blinded some and maimed others; cars collided as frightened drivers lost control. A huge plume of smoke was visible from miles away, testament to the frantic news reports that carried the scene to millions of Kenyans in far-flung towns and homesteads. Good Samaritans scrambled to push the wounded and dying into cars heading toward hospitals; others formed crews scrabbling with their bare hands to reach into the mound of concrete rubble that had trapped dozens of victims. President Daniel arap Moi was driven to the scene and shown on television shedding tears into his handkerchief. Fear of a further attack was universal, especially when Kenyans learnt that a simultaneous attack had been carried out in the capital of neighbouring Tanzania. The attack made every major international headline. Condemnations were issued from the Western capitals, and in the US the Clinton Administration declared war against the perpetrators.

The next attack on Kenya occurred on 28 November 2002. Three suicide bombers drove their car through the gate and almost into the lobby of the Paradise Hotel in Mombasa. The bomb killed 13 and injured almost a hundred others. The dead bombers had accomplices who almost simultaneously to the hotel attack fired shoulder-launched missiles at a chartered Boeing 757 airliner carrying Israeli tourists as it took off from Mombasa's international airport. The missiles did not find their target which, had it happened, would have doomed most of the almost 300 passengers making their way to Tel Aviv. As with the Nairobi bombing, the majority of victims of the Paradise Hotel bombing were Kenyan even though the attack was aimed at the Israeli tourists who frequented the hotel, just as the Americans had been the targets in August 1998. Of the dead, the majority were dancers – ordinary working people to whom millions of Kenyans could relate – employed to entertain tourists. Like the other victims of the Nairobi bombing, they were set aside by no discernible characteristics other than having been at the wrong place at the wrong time. They were an everyman and everywoman, and the message that the bombers sent to the country was that its citizens were acceptable collateral damage. They were accept-

able losses if *al-Qa'eda* could achieve its wider goal of terrorising Americans and Israelis into achieving its goals. Kenyan life and property were a mere proxy, and the terror felt by Kenyans at the site of the attacks and as they looked on was subsidiary. The blood-soaked details of the attacks matter. The attacks did not merely produce media coverage with its barrage of images and narratives, they were launched for that express purpose.

The feelings of terror that suffused the cities and the country were stage-managed and needed to be carried over the airwaves to the furthest corners if *al-Qa'eda* were to benefit from sending forth its suicidal soldiers. Perception was therefore the ground on which the contest would be played, and it remains in Kenya, as elsewhere, the critical testing ground of both terrorism and counterterrorism. If perception is indeed the target of terrorist attack, the continuing existence of *al-Qa'eda* and like-minded groups means that future attacks should be expected. Kenya's neighbours are a fractious Somalia and a Middle East embroiled in conflicts that regularly make use of the kind of terror-inducing tactics employed in the two Kenyan attacks. The country's large community of Western citizens and businesses, porous borders and relatively modest security resources and capabilities make it an ideal operating theatre for this kind of campaign. The immediate material and human costs of the bombs are easy to ascertain. So many people died and buildings worth millions of US dollars were destroyed. These are important aspects to the bombing and, in the case of the human victims, critical. However, there were secondary impacts, and they form the bulk of this paper for they have received far less attention and are in grave need of deeper analysis.

ATTACKS AND THEIR IMPACT ON THE KENYAN PUBLIC'S PERCEPTION OF TERRORISM

Kenya's participation in domestic and international campaigns against transnational terrorism will always be coloured by the 1998 and 2002 attacks. The word *terrorism*, whether used to describe the events of 11 September 2001 in the US or insurgent violence in Iraq, is interpreted with the prism formed by the local attacks. The abiding lesson of the attacks is that locals were collateral damage and that Kenyans suffered the consequences of an enmity that has little to do with them. No matter the pronouncements on terrorism that have been made by successive Kenyan governments and the country's participation in regional and global counterterrorism efforts, Kenyan citizens persist in the belief that this is not their fight. Even the fact that the majority of the victims were their countrymen has, in the years since the incidents, hardly caused a public cry that the government step up its efforts to bring the perpetrators to justice in a Kenyan court. The lack of outrage aimed at the bombers has been conspicuous in its absence from public debates. It hardly matches the muscular pronouncements made in various professional forums by the country's security policymakers who voice the urgent need for strengthened counterterrorist action. The public and policymakers are divided when it comes to how high a priority to assign to transnational terrorism.

Kenyan history is replete with the use of terror as a political tool. From the punitive expeditions at the start of the twentieth century, when entire villages or regions were punished for the sins (at least in the eyes of the British colonial regime) of the few, to the Mau Mau campaigns of the 1950s, terror has been brought to bear on Kenyan citizens. However, the policies of the government have rarely sought to bring some form of settlement or restitution to the victims of these campaigns. When it comes to past atrocity or abuse, Kenya's reaction has been to turn the page and urge the citizenry to look to the future. Indeed, the way Kenyans seem to have forgotten the attacks of 1998 and 2002 is a clear indication that they are likely to treat these atrocities against civilians as the others the country has experienced in the past. The point here is not to condemn whatever decisions were made in the past, but rather, to recognise that the strong official reaction to transnational terrorism strikes the public, not as a reaction to domestic concerns, but rather as a bowing to international pressure. This perception feeds into the attackers' strategic goal of separating the counter-terrorist response from popular acclaim. Furthermore, the history of official neglect of violence and domestic terrorism, when compared to the more rigorous government rhetoric against transnational terrorism, has resulted in the perception that the counterterrorist response is anything but a defence of Kenyan human security.

A divergence between official support for countering terrorism and the public's seeming disregard or even outright opposition to it exists, despite the traumatic impact of the 1998 bombing. By the evening of 7 August, President Moi had declared a five-day period of national mourning for the victims of the attack (*Xinhua News Agency* 1998). His grief at the scene which he visited hours after the explosion matched the public's mood. Terror had been brought to bear on the city and the country, but to the majority of Kenyan onlookers its perpetrators' intention clearly seemed to have little to do with gaining concessions from the state or the body politic in general. The state, with the exception of promising to bring the terrorists to book in line with any other criminal act, was unable to couch its condemnations in the political language of the country. Nairobi and Mombasa were the stages for a drama played out between *al-Qa'eda*, on one hand, and the Israelis and Americans, on the other hand. Since it seemed aimed elsewhere, the trauma of the victims and the rest of the country was of a kind (but clearly not exactly) with a natural disaster. The political dispensation in Kenya could scarcely react in a meaningful fashion. It is this abiding sense of terrorism, as an act by one foreigner against another, that continues to form the foundation of the Kenyan public's attitude to terrorism. This perception colours the actions and decisions of Kenyans, in this case dampening the impact of the attacks on the economic and political life of the country. Before delving into this arguably modest impact, one perhaps needs to briefly consider, in narrative form, a small and not scientifically rigorous qualitative survey of public attitudes to terrorism undertaken by the Inter-Governmental Authority on Development (IGAD) Capacity Building Programme Against Terrorism (ICPAT). (Full disclosure: Author works for ICPAT.) The exercise was meant to test anecdotal evidence against the more formal setting of a focus group discussion.

If, indeed, the study accurately captures the national mood, Kenyans overall, and especially in the urban areas, are more afraid of ordinary crimes than of terrorism. This perception is supported by a 2002 survey by the United Nations Human Settlements Programme (UN-HABITAT) and the Nairobi City Council that indicated that almost 40 per cent of respondents had been victims of some form of robbery, with 18 per cent of the total having been physically assaulted during the commission of the crime (UN-HABITAT & City Council of Nairobi 2002). Over half the city's residents constantly worry about crime, and 75 per cent feel unsafe in their homes at night. A similarly large majority refuses to contemplate visiting the central business district in the evening. Terrorism, as much as it killed and injured Kenyans in 1998 and in 2002, is unlikely to ever raise such a level of alarm unless it becomes as constant as crime.

In addition, Kenyans by and large seem to believe that despite the attacks by *al-Qa'eda*, an organisation that professes to be carrying out a holy Islamic war (*jihad*) against the West and its 'apostate' supporters, religious extremism is not a serious threat to national continuity or even to national unity. They believe where such religious extremism exists, it is highly localised and present among a small minority. Those who subscribe to *al-Qa'eda's* radical and violent message are thought by Kenyans to be influenced by the global rise of a violent *Jihadist* ideology and the perceived Western injustice foisted on the Muslim-dominated lands of Somalia, Afghanistan, Iraq and Palestine. Kenya's apparent decision to side with the US and Ethiopia in a global campaign against terrorists, most participants believed, made their country more vulnerable rather than safer. In particular, the routing of Somalia's Islamic Courts at the end of 2006 was perceived to have sharply increased Kenya's exposure to terrorism. In other words, extremism among Kenyans, similar to the 1998 and 2002 bombs, is perceived to be of foreign derivation.

The bulk of participants in the survey pointed out that religion does not play a dominant role in the country's politics and that the majority Christians have cohabited peacefully with Muslims. However, they also believed that foreign events such as the Ethiopian attack on Somalia's Union of Islamic Courts had fuelled radicalisation among a Muslim minority in Coast Province. Radicalisation, they believed, was not limited only to Muslims and could easily be present in any community exposed to a charismatic and radical religious ideology. The real danger that again emerged was that of radicals from abroad carrying their violent campaigns to Kenya. The world and its happenings were the threat. Kenya itself might have some minor upsurges of radicalisation among very few of its citizens, the majority of participants argued, but this was nothing compared to the importation of terrorist troubles. The persistent sense of terrorism as an external matter seeped into the participants' perceptions of its impact when it had actually materialised in Kenya as it did in 1998 and 2002.

The impact of the attacks on the economy, most of the participants thought, was something of the past. Tourist visits had fallen immediately after the blasts but had recovered to pre-attack levels because of government efforts to show improved security and the tendency of potential tourists to ignore the

oft-issued Western travel advisories. In the most general terms, when it comes to violence, Kenyans feel more vulnerable to crime than they do to terrorism. The terrorist, to the majority, is one foreigner attacking another. Any ill-effects from the bombings are a thing of the past from which the country has recovered. Radicalisation is not a leading threat, and religious extremism is a minority phenomenon that does not undercut the largely harmonious relations between religious communities. Whatever the impact of a terrorist attack in Kenya, it does not rise to a national emergency. By inference, if the public mood is a pointer to government action, counterterrorism should be similarly understated.

TERRORISM'S IMPACT ON COUNTERTERRORISM MEASURES

A thesis that is difficult to doubt is that *al-Qa'eda* attacks in Kenya have led, especially since its 9/11 attacks in the United States, to Kenya receiving much more attention from the global counterterrorism regime. It is an obvious point to make that terrorism leads to counterterrorism. However, it becomes less so when this is an outcome that arguably dominates all others. In terms of its impact on Kenya's diplomatic affairs, particularly its partnership with Western countries such as the US, and on the country's civil liberties, counterterrorism measure is having major implications in Kenya.

Since the 9/11 attacks on American soil, the US government has increased its military aid to Kenya by nearly 800 per cent since its designation by the State Department as a *frontline state* in the American GWOT (BBC 2007a). However, this partnership has not always been harmonious. At times, the State Department has criticised Kenya's CT efforts as inadequate. This has happened when Kenyan government has tried to balance its responsibilities to its citizens and to satisfy a demanding and powerful partner. In trying to carefully handle the rights its Muslim population, Kenya has been criticised for not acting aggressively and decisively to smoke out terrorist suspects. Curving in to US pressure has resulted in accusations of human rights abuse. In the global campaign against transnational terrorism, Kenya's willingness to share intelligence and take a positive approach to US requests is competing directly with the traditional activist role that it has played in promoting free elections and civil liberties protections. The US, despite stepping up its military aid and emphasising counterterrorism as a primary component of the bilateral relationship, meaning that many other forms of aid to Kenya potentially fall under its purview, has found itself stymied in gaining as much cooperation as it would wish for.

After a sharp rise in weapons-related grants in 2002 and 2004, aid amounts have dropped after a 2006 State Department ruling that Kenya's counterterrorism cooperation with the US is patchy and hampered by domestic political pressures (BBC 2007a). The public-government divide is again responsible for the state of counterterrorism cooperation. The public and particularly the Muslim community has been sharply critical of new counterterrorism legislation and any move to increase the

powers and prerogatives of the police in this matter. The security agencies, after decades of operating more for the sake of regime security than for citizen security, are mistrusted with any new powers. In fact, the broad trend in terms of public sentiment has been to curtail state power. The impact of counterterrorism which, as we have said, is a corollary to the terrorist attacks, thus curiously separates the state from its people.

In September 2007, Michael Ranneberger, the US ambassador to Kenya, denied on Kenyan television that his government was 'arm-twisting' his hosts into supporting US operations in Somalia ('BBC 2007b). Ranneberger further argued that Kenya, of its own accord, had chosen to cooperate in matters such as sharing intelligence with the US on *al-Qa'eda* cells in the region. His interview came amid concern within the Kenyan human rights community that Kenyans had allegedly been extra-judicially detained in Ethiopia and Guantánamo Bay, Cuba. Ranneberger characterised Kenya's cooperation and coordination with the US as reflective of its own national interest and denied that such relations would make his embassy less likely to support anti-corruption legislation and action. This balancing act is one of the lasting legacies of transnational terrorist activity in Kenya and elsewhere. Prior to 2001, and especially in the years after the fall of the Berlin Wall, US policy in Kenya emphasised the expansion of the democratic space, the reining in of grand corruption and the promotion of a security apparatus that was conscious of human rights and civil liberties. Whether or not this is still the case can be argued, but the perception by Kenyans is that the US and the other countries engaged in the GWOT have pulled back on their earlier stances and placed counterterrorism at the top of their agenda.

Kenyan government actions, such as closing off the Somalia border in early 2007 as Ethiopia and Somali Transitional Federal Government (TFG) troops chased the Union of Islamic Courts out of Mogadishu, have tended to be regarded as American sponsored ones. There is the pervasive sense that Kenyan sovereignty is compromised when it comes to American security policy in the region. While this is not a perception that is unique to Kenya, it nevertheless continues to have a real and ongoing impact since it saps the prestige of the state in the eyes of its citizens. The participants of the ICPAT study indicated that Kenya's cooperation with the US and Ethiopia in Somalia makes their country more vulnerable to terrorist attack. It means that the perception of the Kenyan government as an American pawn leads to increased risk perception whenever the headlines announce a new security initiative that appears to be counterterrorist in nature.

Kenyan counter-terrorism strategy heightens perceptions of vulnerability rather than reassuring signals of a better-protected citizenry. Some terrorist suspects interviewed in the country have suggested sensitivity to this divide between the public and the government. While the targeting of the embassy and the hotel led to Kenyan fatalities and injuries, it was clearly meant for foreigners. This is a valuable strategic weapon which, if deployed skilfully, could be used to turn public sentiments against local initiatives to prevent and combat terrorism. Kenya's experience of terrorism, rather than making it a stronger partner in the GWOT,

may well have significantly weakened it. This is especially the case with the opening up of a multi-party democracy and a free press in the last 15 years. The divide appears set to last if politicians continue to need the electoral support of the Muslim community whose leaders have broadly resisted the successful parliamentary passage of initiatives such as the Suppression of Terrorism Bill. Where the economy is concerned, terrorism's impact has been modest when compared to the other economic inputs. Kenya, being a relatively poor and badly governed country, seems to produce such a proliferation of challenges that terrorism's impact, while significant, pales in comparison.

ECONOMIC IMPACT OF TERRORIST ATTACKS

The 9/11 attacks on the US shock the financial markets and had a devastating impact on the economy, for a few months. Estimates of the damage ranged from \$35 billion to \$50 billion in a \$10 trillion economy (Morrison 2003). The enormously diversified and liquid financial markets instantly reflected the disaster with plunging values. The clearest indication of economic confidence was a rally in gold prices in the days immediately following the attack; it saw them rise to a seven-year high (Morrison 2003). Gold has traditionally been regarded as a safe haven during volatile periods. So it was following the attacks on the US. Large corporations in that competitive market worried in the aftermath of the attack that a similar event would severely undermine business continuity. Some, such as the New York Mercantile Exchange, which built a full replica of its commodities trading floor outside New York City, had decided that redundancy and geographic dispersal were critically needed to create resiliency in the face of similar disasters. The costs of the re-engineering of business models to account for terrorism have, in all probability, been far higher than the \$35 to \$50 tag of the attacks' actual damage. The 1998 attack on the American embassy in Nairobi on a per capita basis is comparable to 9/11 to the US.

The most-referred-to economic impact of the two terrorist attacks in Kenya is the impact on tourist visits. Tourism is Kenya's third largest foreign-exchange earner and a leading employer. Since the majority of visitors are from Western countries, reports of the attack on the American embassy and on a beach hotel led to a downward spike in visits. The Kenya Tourist Board estimated that 3 000 'bed nights' were lost in the week following the 7 August bombing (Melvin 1998). This figure represents a fall of almost 30 per cent from the approximately 9 000 beds available at the time (Nyong'o 2004). International tourists who might otherwise have travelled to Kenya were heeding not only the headlines with their mix of sensationalism and alarmism but also travel advisories issued by the various Western governments. After the 2002 attack, the British Department of Transport went as far as to ban British-registered aircrafts for three months from Kenya, citing threats of shoulder-fired missile attacks. The headlines prompted by the attacks further helped dampen visitor enthusiasm by portraying the country as a terrorism-prone location because of the ease with which terrorists were able to

operate owing to corrupt and inept law enforcement. However, the terrorist attack alone could not have led to the slump in visitor numbers.

International tourist visits, after a gain to 800 000 in 1996, fell to 744 000 in 1997 when the country held its parliamentary and presidential elections (Economist Intelligence Unit July 1999). During the campaign, the coastal region, which is a major tourist destination, had been racked by violent political clashes. Gangs numbering up to 500 had attacked coastal residents deemed to be from 'upcountry' and not native to the area in a form of ethnic cleansing. Dozens had died, and the violence received international coverage. The bombing and the attending headlines drove down numbers even further in 1998, to 673 000 (Economist Intelligence Unit July 1999). Media reports paraphrasing tourism officials and managers indicated Kenya had lost up to \$400 million in tourist revenue in the 12 months preceding the August bombing, with about 50 000 jobs shed by the industry (Wrong 1998). The economy was faring little better than the tourism sector.

Foreign investment in Kenya had stagnated in 1997. The East Asian financial crisis of that year had effectively frozen investment flows into emerging markets. Simultaneously, domestic debt was claiming a hefty 19 per cent of total government revenue to service the interest alone as the economy recovered from the spiralling inflation that had followed loose fiscal and monetary policies during the 1992 election. Through 1997 and 1998, government bonds paid a 25 per cent interest to induce borrowers to lend it money (Economist Intelligence Unit 1999). Commercial banks and other investors preferred such yields from sovereign debt to lending private businesses which, in reality, rarely would have managed to turn a profit with interest rates that high.

In addition, Kenya was burdened with an aid freeze as its major bilateral donors displayed their continued frustration with the country's corruption-tolerant governance. The donors' lack of confidence in the government's fiscal and monetary policy sent negative signals to foreign investors, further limiting investment inflows. Torrential rains brought by the El Niño weather phenomenon had reduced agricultural harvests in addition to washing away roads along the coast, making it difficult for tourist operators to maintain normal services. It added up to real gross domestic product (GDP) growth limping along by 2,3 per cent in 1997, a dismal trend that continued with growth of 1,8 per cent in 1998 (Economist Intelligence Unit 1999).

This was the economic scenario that existed around the time of the bombing in August 1998. There is no doubt that the attack itself caused significant damage. For instance, about 30 buildings in the business district adjacent to the embassy grounds

suffered serious damage, with many of the enterprises housed within experiencing serious disruptions. The many informal traders that operated in the area also suffered from the blast once the area was sealed off temporarily to aid the recovery of survivors and to secure evidence. Insurance coverage would not have been available to the vast majority of disrupted businesses. No insurance company in Nairobi offered political risk insurance at the time, and few companies were of a sufficient scale to afford seeking such coverage abroad or had ever calculated on similar political violence as a critical risk to their business. The cost of the damage has been widely attributed in the literature to have been close to \$500 million. This estimate appears to reflect a statement that President Moi made almost immediately after the incident and, if accurate, would mean that the bomb directly cost almost 3 per cent of GDP added on top of a similar percentage in terms of loss in tourism revenues whose downward trend was accelerated by the attack. These were large costs to a fledgling economy. Perhaps the reason for the contention that terrorism is not a leading threat to many Kenyans is that these effects came amid a period of economic retreat; this was just one more terrible thing happening. The workers in the hotel industry who had lost their jobs and those threatened with further layoffs would probably have regarded the bombing as an unfortunate streak.

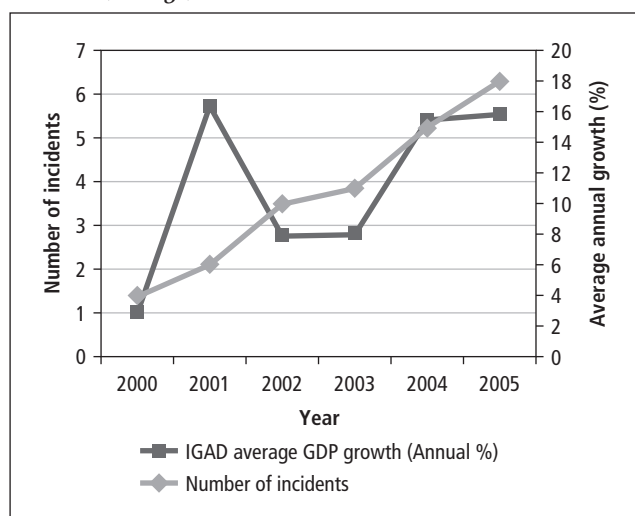
The US issued a travel advisory immediately after the blast, as did a number of other Western countries that comprise the major source of tourists. This would repeat itself in 2002 following the suicide bombing of the Paradise Hotel. The impact of these warnings has been a sore point with the Kenyan government and tourist industry since they are perceived to limit the potential number of visitors. As with the bombing in 1998, the overall state of the economy was negative at the turn of the millennium. This made the terrorist bombing's impact difficult to ascertain even while a definite drop in hotel bed occupancy did take place in the weeks immediately following the Paradise Hotel assault. The governments of Australia, Belgium, Britain, Germany and the US promptly warned their nationals against visiting Kenya. Tourists had been directly targeted by the bombing which, in addition to the government warnings and the myriad headlines, would surely have given visitors pause. Yet tourist numbers increased in 2003 and have been on the upswing ever since. The impact of the terrorist attack seems to have been quickly overcome in economic terms, even though it had short-term negative effects. Table 1 demonstrates the bounce in visits from 2002 onward. By late 2006, the industry earned the country a record \$800 million in foreign exchange up from the previous year's \$648 million as the numbers of visitors rose 11,8 per cent on the year (AFP 2006). Tourist officials attributed the advance to an aggressive marketing push aimed at more expensive tour packages and

Table 1. Tourist arrivals (excluding cross-border visitors)

	2002	2003	2004	Jan–Apr 2005
Total	495 751	547 314	662 832	260 245
Percentage change, year on year	0,6	10,4	21,1	31,1

Source: Kenya Tourist Board 2005. Derived from the Economist Intelligence Unit 2006.

Figure 1. IGAD region GDP growth and number of incidents (average)



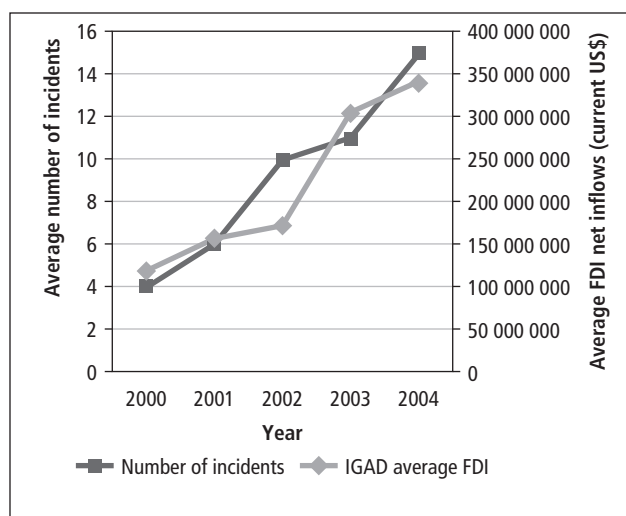
Source: Data derived from World Bank, World Development Indicators, 2006.

non-traditional markets such as Asia (AFP 2006). The short-term impact was mitigated in this instance, and this applies to the global experience as well.

These short-term negative effects followed by strong rebounds are characterised by the 9/11 attacks in the US. The Dow Jones Industrial Average (DJIA) dropped by 14 per cent in the week following the attacks but then rallied by 22 per cent by the end of December of that year (Walker 2006). The economy had been in a recession since the beginning of 2001 and it recovered strongly two months after the attacks. In the years since 9/11, to late 2006, the DJIA has surged 41 per cent. This was broadly reflective of other US markets and of the history not only of terrorist attack but of catastrophe in general. The DJIA, for instance, fell 6,5 per cent after the 1941 Pearl Harbour attack, only to bounce back 5,4 per cent a year later. The 1987 stock market collapse led to a rally of 24 per cent in 1988 (Walker 2006). Consider, though, that the impact of the 9/11 attacks has been made part of the commentary on how much the world has changed paradigmatically since 9/11. If that is so, it is a difficult case to make on the basis of the economy. In Kenya, the economy grew at only 0,4 per cent in 2002 after a gain of 4,38 per cent the previous year (IGAD 2007). In 2003, it recovered ground and rose 2,77 per cent; in 2004, it rose 4,34 per cent. Terrorist attacks hurt in the weeks and months following, and they certainly do so in lives lost and injuries, but the correlation between them and growth is poor, as shown in Figure 1. Even though the overall economy seems to be able to withstand terrorist attacks quite effectively in the longer-term, and perhaps, where attacks are not frequent, to have little effect on the economy, it should not preclude a finer-grained investigation of a localised impact. The overall economy may not be much affected, but incidents can seriously damage local economies for a longer period of time.

Investor risk appetite is surely affected by terrorist attacks or their strong possibility. Direct investment in a business enterprise, particularly, is a matter of local as opposed to national or regional perception when terrorist attacks, as in Kenya, are

Figure 2. GAD region: average number of incidents and FDI inflows



Source: World Bank, World Development Indicators, 2006, and Terrorism Knowledge Base (TKB) 2006.

one-off events. Such capital would have a tendency to flow into enterprises deemed to be safer from terrorist attack, thus reducing investment in other more risky areas. This may, in turn, intensify local conditions that produce social and political factors that enable the recruitment and deployment of terrorists.

International capital faced with the worldwide threat of terrorism will make comparative approaches to risk. It will react not only to terrorism risk but also to a host of other business and economic risks. In Kenya, corruption, poor infrastructure and crime are most often cited as the more significant risks to business performance and continuity. Investors are more driven to positive or negative reaction by potential return on capital and the regulatory regimes that they must negotiate. Where it is enhanced, the terrorist threat, for example in Kenya's tourist trade, becomes a factor all else holding equal in other investment-hungry locations and sectors. Foreign direct investment has been rising in Kenya and the overall Horn of Africa region despite incidents of terrorism, as shown in Figure 2, which demonstrates the curious rise in both terrorist incidents and foreign direct investment (FDI). During the woebe-gone economy of the 1990s, Kenya slipped from 90th to 118th position according to the UN Conference on Trade and Development (UNCTAD), which compared 140 countries' share of global FDI to share of global GDP (IGAD 2007). A weaker economy led to lower investment, or perhaps the reverse, but either way, FDI was driven more by wider economic factors than by terrorism, as Figure 2 demonstrates in regional terms.

The impact of terrorism on the tourism trade would perhaps be most discernible in rising political risk premiums demanded by underwriters. However, the vast majority of business enterprises in Kenya do not have any access to this kind of insurance product. This lack is an indication that most enterprises continue to judge terrorism low risk, or they would hasten to learn of this product, just as insurance companies would look to offer it.

CONCLUSION

Terrorism, at least in Kenya's experience and as has been suggested, internationally, does not present a long-term danger to overall economic prosperity. The economy is, rather, in the hands of macro and micro-economic policies and environments. Yet a terrorist attack does more than cause harm to property. It bruises social cohesion, particularly if the counterterrorism response is muscular to the point of ignoring civil liberties and human rights amongst the populace. Lower social or political cohesion across different regions and groupings undermines the forging of a peaceful and democratic political process. Kenya is multi-ethnic and multi-religious and therefore terrorist tactics threaten a fragile patchwork. They can appear to set one group against the rest. After all, when attacks have local recruits, they are broadly indicative of feelings of grievance and marginalisation among a section of the society. These threaten stability, which is an important component of developing prosperity. It would appear to be more promising to seek out the impact of terrorism in the social and political realm than in the economic one.

A need exists for more in-depth studies of the *localised* economic effects of terrorism and counterterrorism to guide policymakers. Tourist marketing organisations, other government investment marketing bodies and private security companies are at the forefront of dealing with perceptions of terrorist attack. In Kenya, they have been poorly integrated into the government's counterterrorism efforts. One could argue that these stakeholders do not have a place at the counterterrorism table since the overall economy and its tourist sector have not been hurt by the attacks over the long term. However, even the short-term and localised impact of an attack is not to be taken lightly. Livelihoods are lost and businesses compromised, quite apart from the unacceptable loss of life and the injury to the social and political life of the country. Fruitful efforts to understand the impact of terrorism in

the future point toward this urgent need for a better understanding of the local picture rather than the national or regional impacts which are the staple of terrorism studies in the Horn of Africa.

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The Impact of the War on Terrorism on the Media and Civil Society in North Africa

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INTRODUCTION

Globalisation is an important factor in the spread of international terrorism. Radio and television, satellite, Internet, cell phones and international travel provide a facilitating environment. Through television and other media, the demonstration effect provided by highly publicised acts, such as bomb explosions and aircraft hijackings, and the intimate focus on the effects of state and sub-state terrorism in certain areas serve to mobilise and instigate others to do the same, or to protest violently against these actions. Population displacement, migration and diasporas in liberal states with their own subcultures bring about a lack of integration within host societies and are factors that further facilitate to internationalise terrorism.

North Africa² may come to play a central role in international terrorism. The motivation, means and targets all exist and these opportunities will not go unheeded for much longer. This region presents both a facilitating and a target-rich environment for terrorists who seek to attack the United States and, indeed, the global system (Cilliers 2003).

North African countries stand at a crucial crossroad in their political evolution as they face simultaneous challenges from domestic, regional and global forces. All Maghreb states are governed autocratically and will therefore be unable to meet the upcoming threats to their political stability, social cohesion, cultural integrity and economic viability. One result will be increased domestic, regional and global tensions as militant forces seep through these socio-political fault lines finding support from and identification with similarly discontented co-religionists living in Europe.

The conditions of political oppression, social marginalisation, economic deprivation and cultural alienation have created a wide-ranging landscape of disaffected young people ever ready to engage in militant activity and often catalysed by religious invocation and Islamist appeal that inspires, among the most fanatical, a sense of martyrdom justifying the use of terror, including suicide bombing (Stern 2003).

Levels of modernisation and development vary enormously among the countries of North Africa. Many of the states in this region have stable authoritarian governments while others have been plagued by violence and instability. The region's economies are fragile. For some individuals, criminal activity has been a gateway to direct participation in terrorism. Violent extremist groups target unemployed and underemployed young men for

recruitment into terrorist organisations. These disenfranchised youths are vulnerable to ideologies that offer simple solutions to their problems and promise great rewards for their participation. If the economic situation in North Africa continues to stagnate, association with extremist groups will become more appealing for both financial and ideological reasons (Kennedy 2007).

North Africa could be a home to a number of terrorist groups whose increasingly international activities have generated concern in Washington as well as in European capitals. These groups are supported by overlapping financial, logistical and operational networks in Europe. The growing involvement of North Africa in international terrorism has led to the recent focus on the region as a potentially safe haven for terrorists (Kennedy 2007).

Al-Qa'eda's influence is spreading into the cities and deserts of North African states. From the *Groupe Salafiste pour la Prédication et le Combat (GSPC)* or Salafist Group of Preaching and Combat in Algeria³ to the Moroccan Islamic Combatant Group, the Salafiya Jihadia in Morocco, the Libyan Islamic Fighting Groups in Libya and the Islamic Jihadist Group in Tunisia, one can see the beginning of the formation of a pan-Maghreb militancy organisation network with possible devastating impacts on local populations and governments. Heading this network is *al-Qa'eda's* spiritual guidance which urges these organisations to destabilise the region and move beyond. Since September 2006, *al-Qa'eda* has had an official presence in Algeria; the GSPC is now calling itself the Organisation of *al-Qa'eda* in the Land of Islamic Maghreb. *Al-Qa'eda's* global ideology intersects with local anger directed at undemocratic regimes. Simultaneously, *al-Qa'eda* has renewed its efforts to tap into local grievances, focusing its followers on the global jihad against the West. One of the keys to *al-Qa'eda's* resilience has been its ability to co-opt and exploit local, ready-made networks to its ideological and operational advantage (Lipton 2007).

The latest suicide-bombing attacks in Casablanca targeted the American Cultural Centre and the US consulate, and the recent bombings in the Algerian capital signals that terrorists are working more effectively together. The coordination of activity reveals that even though terrorist groups now recruit, train and finance themselves locally to avoid detection, they still plan and communicate across national borders. It also means that *al-Qa'eda* is becoming stronger. And its tactics, such as using smaller operations that require only a few young men, are becoming harder to stop.

COUNTER-TERRORISM

The relationship between protecting human rights and democratic freedoms and fighting terrorism needs to be mentioned. Terrorism is a threat to liberty, to law and to human rights values. However, terrorists are often the first to benefit when governments fail to uphold those values. It is precisely in societies where ordinary people have limited peaceful ways for expressing their grievances that violent movements tend to thrive. When governments restrict free expression, shut down political parties and punish peaceful dissent, they do not hurt those who use violence to advance their aims. They hurt the moderate, democratic, political movements that need these freedoms to endure, the very forces that can serve as a counterweight to violent groups.

Suppressing recognised human rights in the name of protecting the state may only fuel the sense of injustice that terrorist fanatics seek to exploit. It may also convert innocents swept up in anti-terrorist dragnets into active terrorist supporters. Some argue that terrorist attacks will cause people to accept more limits on their personal freedoms. Consequently, it is important that state and civil society organisations play their role in educating the public about the effectiveness of existing arrangements.

The human rights framework is not soft on terrorism. It acknowledges that states must sometimes take exceptional measures to ensure public security. However, whatever the emergency situation, some fundamental human rights and freedoms can never be suspended or derogated, such as the right to life; the right to freedom from torture and all forms of cruel, inhuman, or degrading treatment; and the right to freedom of thought, conscience and religion. In addition, human rights treaties such as the International Covenant on Civil and Political Rights, establish that any restrictions on other rights must be, among other requirements, exceptional and temporary in nature; limited to the extent strictly required by the exigencies of the situation; non-discriminatory on the grounds of race, colour, sex, language, religion or social origin; and consistent with the state party's other obligations under international law, particularly the rules of international humanitarian law. Protecting human rights during counterterrorist efforts is more than a legal requirement. It is integral to the success of the campaign against terrorism itself. Terrorism will not be defeated by solely military or security means. By indiscriminately attacking civilians, terrorism breaches the most basic values of human rights. Combating terrorism requires a reaffirmation of human rights values, not their rejection. State repression and human rights abuses close off peaceful and political channels for political dissent and can channel alienation and grievance into extremism and violence (Human Rights Watch [HRW] 2003a).

The threat of terrorism and the responses of the authorities in North African countries differ in many ways and need to be understood in their country specific contexts. Tunisia and Morocco have each seen a major terrorist act against civilians in the course of 2003, whereas Algeria has lived through a decade-long internal conflict marked by not only acts of terror of particular cruelty but also grave human rights violations, including enforced disappearances, committed by security forces.

The North African countries have responded aggressively to terrorist groups' activities, but the physical territory in North Africa is so vast and the underlying socio-economic conditions so dire that external assistance and coordination are necessary (Kennedy 2007).

The war against global terrorism has significantly raised the Maghreb's geopolitical profile, especially in American eyes. Consequently, fighting terrorism has joined access to reliable oil and gas supplies as a key concern justifying intense foreign involvement with existing army-backed regimes in Algeria, Morocco and Tunisia. In that way, US and international support are accorded to North African states.⁴

The governments of Algeria, Morocco and Tunisia are left caught between official allegiance to the US who led the war against terrorism and extremism and enhancing legitimacy among their populations. There has been a progression in the way the governments of all the three nations have addressed terrorist threats. Initially, when there was little dissent, they adopted tough national security measures to prevent *al-Qa'eda* from establishing itself in the region. Meanwhile, as the threat progressed, the leaders of Algeria and Tunisia have used constitutional amendments to tighten their grip. Morocco has swept thousands of Islamists into its prisons.

Among the unintended consequences of increased US and other international military, political and economic assistance to all three Maghreb countries, there has been a clampdown on press freedoms; increased violations of human rights through the random arrest of hundreds, if not thousands, of so-called Islamic terrorists in Morocco; and a general deterioration of political and civil rights (Tuquoi 2004). It is within such a degraded political environment that terrorism finds its most willing recruits.

Many crimes were committed under special counter-terrorism laws. This situation can lead to abuse, including the prosecution of legitimate political or social opposition. The inclusion of subversive acts within the definition of *terrorist acts* in Algeria's counter-terrorism law is a particularly problematic example in this regard (International Commission of Jurists [ECJ] 2006).

THE IMPACT OF ANTI-TERRORISM LAW ON THE MEDIA IN NORTH AFRICA

Media-related freedoms in the region of North Africa have been regarded with relative or temporary tolerance owing to social pressures. They are viewed as a natural outcome of globalisation and the revolutionary forms of communication provided by satellite television and the Internet. During recent years, certain red circles and lines, which were previously unapproachable, have been overstepped, especially regarding the ability of the media to criticise ruling figures or reveal cases of corruption and/or serious human rights violations. Furthermore, additional exceptional legislation has been increasingly enacted of late under the pretext of the struggle against terrorism in North Africa countries. Such legislation tends to extend its impact to cover peaceful activities and opinion if the authorities in those countries believe them to constitute 'incitement to terrorism'. The following are the most

prominent limitations on press freedom imposed in North African states (Cairo Institute for Human Rights Studies [CIHRS] 2007):

- Restricting the right to publish newspapers by requiring a license as a precondition, instead of accepting a notification, as is the case in Egypt.
- Press-related legislation in North Africa vests the executive authority with broad powers regarding administrative arrest or the banning of newspapers. Legislation is rather strict where foreign newspapers are concerned; they are subject to in-advance censorship prior to circulation.
- Legislation throughout North Africa permits the detention of journalists pending the investigation of publication crimes. This procedure is used as a tool to intimidate journalists.
- The scope of prohibitions is fairly broad in the legislation of North African countries. In addition, such legislation usually tends to enlarge the scope of criminalisation in a way that far exceeds the acceptable restrictions on freedoms of media and expression.
- Exceptional emergency laws continue to be enforced for long periods, with all the broad powers accompanying them, a trend that permits the breach of constitutional guarantees of public freedoms and the censorship and confiscation of newspapers and printed material. These laws permit eavesdropping and the control of messages and telephones, interference in the application of justice, creation of special courts and deprivation of citizens of their right to trial by an independent judge.
- All Arab countries in North Africa still retain absolute control over radio and television broadcasting, especially land broadcasting. The states control the power of granting licenses to establish satellite transmission corporations or stations, in addition to the censoring of all that is transmitted. These countries lack legislation that guarantees plurality and diversity in the ownership of means of audio and video mass media.
- North African countries continue to practice their hegemony over the information infrastructure and monopolise, in one way or another, the distribution of Internet services. They seek to restrict the flow of information through several means of technology by using various forms of Web content control.

The war on terrorism is fought in a pervasive atmosphere of paranoia in which the spirit of press freedom and pluralism is fragile and vulnerable. Every conflict is fought on at least two grounds: the battlefield and the minds of the people via propaganda and media. Both the governments and the terrorists can be guilty of misleading their people with distortions, exaggerations, and even fabrications, in addition to subjectivity and inaccuracy, to receive their support.

The world of media is rife with rumours. All persons involved in the war on terrorism must ensure that their programme activities are not misinterpreted by the local population. Suspicion, distrust or confusion about the nature of anti-terrorism measures could undermine their goal to confront terrorism and reduce radicalism.

Media manipulation often involves government. Sometimes organisations and governments can feed fabricated news or politically or ideologically slanted stories to broadcasters who describe them as quality items and journalism. Terrorists also manipulate the traditional mass media as a means of waging psychological warfare against a population. Information and communications technologies provide a new medium through which terrorists can attack the nation-state.

To understand the interplay between terrorism and the media fully, one must examine not only the various forms of news media but also the other forms of media and technologies: novels, DVDs, video and audio cassettes, video games and popular music. Video tapes, audio cassettes and DVDs have been used by *al-Qa'eda* and like-minded groups in the Middle East, Europe and elsewhere to spread propaganda and condition teens and young adults for recruitment. Contemporary terrorists use the Internet in the same way as marginalised elements of civil society do, to communicate with sympathetic members of the diaspora and to disseminate propaganda and issue statements unfettered by the ideological refractions of the mass media. Terrorists benefit from the rapid and low-cost communication available to all civil sub-state actors on the Internet (European Consortium for Political Research [ECPR] 2003).

However, the existence of a terrorist website does not guarantee that people will be exposed to the *raison d'être* of the terrorist organisation. The Internet will not guarantee an increased numbers of sympathisers or even increased financial aid.

In the name of the war on terrorism, members of the media and journalists face threats of restriction, beatings and even death for reporting issues that may be controversial or not in the interests of power holders. The government reserves its worst treatment for journalists it believes to be sympathetic to the Islamists. While the radio and, particularly, television remain under tight state control, the independent print media are outspoken and often critical of the government. However, their situation remains precarious. The truth is not always reported and the media are paying a very high price for this neglect.

Some offences contained in special counter-terrorism laws, such as praising or justifying terrorism or associating with terrorist organisations, are so broadly worded that they may lead to excessive interferences with freedom of association and expression and the media. Lawyers, especially in Morocco and Tunisia, have questioned the justification of special legislation on counter-terrorism given existing laws (ECJ 2006).

A government's censorship takes many forms. In addition to the censorship of security matters, the authorities use subtle means to constrain political discourse in the press. The government controls the supply of newsprint and owns the printing presses and is thus able to put economic pressure on newspapers. When subtle means fail to restrain the press, home affairs suspends publications and summons reporters to court.

The impact of anti-terrorism legislation on Algeria

Algeria is particularly important because of its proximity to Europe, the large presence of Algerian diaspora in many European countries and the radicalisation of many of these scattered groups.

The Algerian Constitution of 1989 recognises the plurality of the media and modifies the relation between politics and the media. Law No 90, published on 3 April 1990, abolishes the state monopoly over the newspapers. This has resulted in many journalists leaving the state-controlled and -owned media to establish new newspapers. During a few years, the number increased from 30 to more than 148, 14 of which are dailies. This process of liberalisation was hindered by the state with its politics of eradicating Islamic groups. In this way, freedom of expression was reduced and financial support was granted to only non-hostile newspapers as an essential requirement in confronting the terrorists (El Oifi 2004).

Algeria is home to two prominent extreme Islamic terrorists groups, the Armed Islamic Group (GIA) and the GSPC, which are both seeking an Islamic state in Algeria. Algeria first adopted anti-terrorist laws in 1992 and these were adapted for the penal code in 1995. They restrict access to information, freedom of movement and the right of journalists to report on certain subjects.

In recent years, the Algerian government has tightened laws on freedom of expression. During September 2003, six daily newspapers were suspended for publishing critiques of the regime of President Abdelaziz Bouteflika. The most recent measure was taken in February 2006 when a law was introduced making public criticism of the conduct of the security forces punishable by up to 10 years' imprisonment. President Bouteflika's amnesty for journalists convicted of 'defamation' and 'insulting state institutions' freed many journalists from legal harassment, but repression of the media continued with further prosecutions and several editors still feared their papers would be shut down (HRW 2007).

The case of attorneys Amine Sidhoum and Hassiba Boumerdassi, known for their public defence of human rights, is an excellent example. They regularly represent detainees charged with terrorism and security offences, families of people whom the security force caused to 'disappear' during the civil strife of the 1990s, and suspects who claim the police tortured them under interrogation. Sidhoum and Boumerdassi have been on trial on charges of handing unauthorised documents, their business cards, to their clients in prison. They face up to five years in prison if convicted.

The impact of anti-terrorism legislation on Morocco

Morocco's progress in human rights over the past decade is being seriously undermined by its government's moves to fight terrorism, which include sweeping powers to detain suspected Islamic militants and arrest journalists who report on terrorist-related issues (HRW 2003b).

Since the passage of a tough new anti-terrorism law that was rushed through parliament in 2003 following the Casablanca bombings, thousands of terrorism suspects have been arrested and several journalists have been detained and sentenced to prison. Numerous trials of arrested Islamic radicals have taken place, with harsh sentences meted out to many. The result has been a return to some of the regime's worst authoritarian excesses including flagrant abuses of human rights, with arbitrary arrest, torture and unfair trials (Entelis 2005).

Several times security forces have banned journalists from covering demonstrations or trials. Three editors of the weekly newspapers *Al-Sharq* and *Al-Hayat al-Maghribiya* were charged with supporting terrorist acts after they had published an article on the history of the Islamist movement in Morocco and its alleged relationship with the country's intelligence services (International Federation of Journalists [IFJ] & Statewatch 2005).

In Tetuan, detectives arrested Jamal Wahbi, of the weekly *Assahifa al-Maghribiya*, for photographing three prisoners who were suspected terrorists leaving a court building in the city. He was questioned by the public prosecutor and various state security officials, and his camera was seized. Morocco blocks access to websites close to the Polisario Front and to the online publication of the Islamist organisation Justice and Charity, which challenges the monarchy's legitimacy (HRW 2006). Furthermore, accusations of collusion with Islamists have made working conditions even worse for journalists. Mohammed El Hard, director of the *Al-Sharq* newspaper, Abdelmajd Ben Tahar, editor-in-chief of the same publication, and Mustapha Kechini, director of the weekly magazine *Al-Hayat al-Maghribia*, were convicted in November 2003 and given sentences ranging from six months to two years in prison for allowing Islamist points of view to be expressed in their papers (El Oifi 2004).

The impact of anti-terrorism legislation on Tunisia

The Tunisian government is working actively to prevent the formation of terrorist groups inside the country; it prohibits the formation of religious-based political parties or groups that it believes would pose a terrorist threat. Overall, the government is responsive to US requests for information and assistance in counter-terrorism investigations. According to the International Freedom of Expression Exchange Tunisia Monitoring Group (IFEX-TMG) (2005), the Tunisian government has used 11 September 2001 to restrict freedom of association, movement and expression, and to trumpet its support for President George Bush's *Global War on Terror*.

According to IFJ and Statewatch (2005), the anti-terrorism law of 10 December 2003 aimed at supporting international efforts to combat terrorism and money laundering has a vague and broad definition of terrorism. This law prompted widespread concern amid local and international human rights groups that acts of freedom of expression criticising President Ben Ali's policies would be considered 'acts of terrorism'. People arrested in connection with alleged terrorist activities have been charged and tried under a controversial counter-terrorism law introduced in 2003.

Despite these prisoner releases, Tunisian security forces continue to harass and intimidate local human rights defenders, lawyers and other rights activists, as well as the families of political prisoners and former prisoners, and seek to severely restrict the rights to freedom of expression and association (Amnesty International [AI] 2006). Additionally, all the Internet cafes in Tunisia are state-controlled. They filter Web content and are under close police surveillance.

After government forces had clashed with an Islamist terrorist cell, killing more than two dozen people, Khadija Cherif,

head of the Tunisian Association for Women's Rights, said in an interview in Tunis, 'In the absence of debate, people turn to the simplest ideas.' She argued that the repression of President Zine al-Abidine Ben Ali had left no political space for progressive moderates who might otherwise help slow the drift among Tunisian youth toward fundamentalist political Islam (Smith 2007).

Under anti-terrorist laws, it is difficult for journalists to interview people, to talk to them, because they feel threatened and scared. At the same time, the states that are fighting terrorism impose a huge burden on the media, advocating that the media not make certain comments nor cover certain events. One wonders whether the media can be neutral in the war on terrorism. The governments try to control the flow of information and manipulate the media. Meanwhile, terrorists use the assassination of journalists to gain publicity while the government exploits the brutal murders of journalists and intellectuals as propaganda tools to sustain international support for its all-out war against terrorism. In the light of the country's continuing rigorous control over the media, both written and audiovisual, efforts by journalists to scrutinise or express critical opinions remain extremely limited.

The expression of counter-terrorism has frequently been co-opted by regimes to legitimise brutal internal security measures and institute all-embracing anti-opposition crackdowns, steps that have had a highly damaging impact on human rights and notions of responsible and responsive civil governance. The combined effect has been the emergence of states lacking most, if not all, of the prerequisites for viable socio-political development.

The impact of anti-terrorism legislation on civil society in North Africa

There is a notion of civil society as a free space where citizens can take charge of their own destiny; a form of resistance and struggle; a source of knowledge, public debate and social reflection; and a mechanism for mediation, reconciliation and compromise. Civil society gives voice to different social groups and causes; provides channels of expression for minorities and dissenters; and promotes, by its very diversity, a culture of tolerance and pluralism. Civil society includes the radicals and the moderates, those who resist and those who negotiate.

The cooperation between civil society and human rights organisations, on the one hand, and media institutions in North Africa, on the other, could be important for the advancement of the professional media in the region, considering the impact of long periods of political despotism and a culture in which various forms of fanaticism and hostility toward freedom of expression are embraced. This cooperation could be achieved either by promoting joint activities between political and trade union frameworks for the review and amendment of the oppressive legislative structure in general or by disseminating a culture of human rights and democracy and promoting the values of plurality, diversity, tolerance, the right to differ, the renunciation of the values of fanaticism, and the exclusion and denial of the other (CIHRS 2007).

Dealing with the threat of terrorism should be the responsibility not only of governments but also of all sectors of society. Indeed, a vibrant civil society can play a strategic role in protecting local communities, countering extremist ideologies and dealing with political violence. Civil society can play an important role in strengthening democracy and countering terrorism. It gives a voice to different social groups and causes, which provides a channel of expression to the minorities and dissenters and promotes, by its very diversity, a culture of tolerance and pluralism. Civil society ensures a countervailing power to the ever-present risk of state authoritarianism and creates a framework of trust where people can discuss and deliberate without fear, by using reason rather than superstition or prejudice.

The private sector and journalists, academics, lawyers, spiritual leaders, trade unionists, human rights activists and other civic and democratic forces find themselves caught between threats from terrorist groups on the one hand and excessive and arbitrary restrictions imposed by states in the name of counter-terrorism on the other. This situation has seriously compromised their ability to monitor human rights and the democratic process and has generated a climate of fear, potentially silencing and immobilising those who would be forces for democratisation.

Nevertheless, NGOs, aid organisations and other civil society groups face attempts to control or curb their activities. The thesis promoted by the US and its partners is that terrorist groups use laundered money for their activities and that charitable and non-profit organisations are potential conduits for these groups. Moreover, in the war on terrorism political activists and protest groups everywhere face new restrictions on their association and movement (IFJ & Statewatch 2005).

According to Entelis (2005), an institutional or procedural approach to democracy implies that

... no group in civil society – including religious groups – can a priori be prohibited from forming a political party. Constraints on political parties may only be imposed after a party, by its actions, violates democratic principles. The twin tolerations – freedom for democratically elected governments and freedom for religious organisations in civil and political society – serve as the minimal definition of democracy.

A prominent civil society can serve as a natural challenge to the autocratic state and thereby facilitate the evolution of a political society within which democracy, liberal or otherwise, can be nurtured. In addition to the state response, strengthening civil society against extremists and violent ideologies, as well as mobilising citizens in favour of democracy, is an essential part of the long-term response to terrorism. If civil society is to become an effective means of prevention in the struggle against terrorism, it needs to develop a systematic understanding of both its potential and its limitations. The war on terrorism and the restricted democracy not only squeeze out Islamists but also prevent more liberal elements of civil society from participating in politics. That leaves most people without a political voice, caught

between a distant, elitist and often corrupt government and a militant opposition rooted in fundamentalist Islam. Yet, to date, North African states have succeeded in manipulating, co-opting or coercing civil society's most politically effective organisations, both secular and Islamist (Entelis 2005).

CONCLUSION

The long-term monopoly of video and audio mass media by the state has contributed to the consecration of a one-sided media which fundamentally serves official viewpoints. Such a media would eventually render the conveyed content or message without expressing political plurality or cultural diversity within society. Under the ongoing hegemony and monopoly, the opportunities for competition that might develop in media performance, and the diversity and plurality of media outputs, diminish and almost vanish.

In countries that have never known freedom of expression, the war on terrorism has added to existing twilight conditions. It has become a further check on the progress towards democratic reform. Some countries are using the perceived threat of terrorism to justify new laws to stifle political opposition and free expression.

Journalists and media face a range of problems: restrictions on freedom of movement, increasingly strident demands from authorities to reveal sources of information, and undue pressure from political leaders to toe the official line on security issues. All Arab countries in North Africa still retain absolute control over radio and television broadcasting, especially land broadcasting. These countries, in their entirety, lack legislation that guarantees plurality and diversity in the ownership of means of audio and video mass media. Lately additional exceptional legislation has been enacted under the pretext of combating terrorism in North Africa. Such legislation extends to cover peaceful activities and opinions whenever authorities in those countries consider them to constitute 'incitement to terrorism'.

The war against terror cannot be won by police force alone. Force is effective in defeating those terrorists who are already active, but it is useless in combating the regeneration of terrorists. Poverty and extremism incite suicide bombers to bluster. Salafism represents an attractive philosophy for unemployed Maghreb youth searching for meaning. Work must be done to improve the living conditions of the Maghreb and terminate its conversion into a breeding ground for radical Islamists.

The chances for promoting media freedom depend on the adoption and promulgation of serious reform programmes, as well as the governments' political will to achieve political, constitutional and legislative reform. This development would eventually secure the balance between authorities and put an end to control by the executive power of the legislative and judicial authorities. Thus the rule of law and judicial independence will be promoted and the right to intellectual, political and partial plurality will be consecrated, as well as the right of civil society organisations to practice their roles without governmental intervention.

RECOMMENDATIONS

- States have a duty to protect their citizens from terrorist acts. At the same time, any measure to counter terrorism must be proportionate to the actual threat to the country.
- The principles of human rights and non-discrimination must be respected at all times, especially anti-terrorism measures adopted by states.
- The state of emergency laws used in certain countries urgently need to be ended, and the anti-terrorism exceptional legislation needs to be revised in a way that would prevent the use thereof in the incrimination of opinions or ideas and the circulation of information.
- Governments need to commit themselves to freedom of information and give regular, as well as easy, access to information to enable as broad participation as possible in the effort to stem terrorism.
- Civil society needs to market its concerns more creatively to create a wider support of human rights. Therefore, human rights defenders in their national contexts must be supported so that they can monitor and report on violations by state and non-state actors without fear of revenge.
- Coordination mechanisms and joint action with human rights organisations and civil society institutions need to be developed to face the pressures and violations committed under the anti-terrorist law.
- An appeal needs to be made to civil society institutions to develop effective training programmes for journalists and media professionals, especially among the youth, in coordination with trade union organisations and press and media institutions. In the meantime, while these programmes are being devised, it is necessary to ensure that trainees accumulate knowledge. More attention should be given to application-based trainings which help promote professional performance and deepen the legal awareness of media professionals of the space of freedom and the ethical responsibilities required by such freedom.
- Restrictions imposed on the freedom of the publication of newspapers need to be eliminated. Instead, newspapers should be published upon notification systems. All forms of prior control of newspapers should be abolished and the banning of newspapers without a court judgment should be prohibited.

NOTES

- 1 The views expressed herein are those of the author and do not necessarily reflect the position of CERAM in Geneva.
- 2 For the purpose of this paper North Africa or the Maghreb includes Algeria, Morocco and Tunisia.
- 3 The GSPC was created in 1998 as an offshoot of the Armed Islamic Group which, along with other Islamist guerrilla forces, fought a brutal decade-long civil war after the Algerian military cancelled elections in early 1992 because an Islamist party was poised to win. In 2003, the US decided to give Morocco \$60 million to assist in the fight against terrorism, as well as for development programmes. On 3 June 2004, the US granted Morocco the status of 'major non-NATO ally' and, on 15 June 2004, signed a free-trade agreement with the Kingdom. See the following: United States Department of State 2004. *Supporting human rights and*

democracy: the US record 2003–2004 – Middle East and North Africa. Washington, DC.

- 4 It had been a dramatic increase in funding for US-based training of Algerian military officers under the International Military Education and Training (IMET) programme with almost \$600 000 provided for such training in 2003 compared to merely \$30 000 in 2002.

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Panel 3

Building Bridges in Preventing and Combating Terrorism in Africa

Egyptian Legislative Strategy in Addressing Terrorism

Ismael Abd El Rahman

Gaps and Challenges in Preventing and Combating Terrorism in East Africa

Wafula Okumu

Initiatives to Prevent and Combat Terrorism in Southern Africa

Anneli Botha

Counter-Terrorism Measures in West Africa

Gani Yoroms

Egyptian Legislative Strategy in Addressing Terrorism¹

Ismael Abd El Rahman

INTRODUCTION

The recent increase in the number of terrorist operations at national and international levels has led the international community to confront terrorism through agreements and conventions which oblige countries to initiate serious counter-terrorism actions and procedures. Although international agreements call for such procedures, it is upon national legislatures to nationalise them. This process of nationalising counter-terrorism procedures starts with the definition. Terrorism is variously defined and has derivatives such as 'terrorist'; 'international terrorism', which refers to activities beyond the regional boundaries of certain country; 'political terrorism', which refers to the objective of the terrorist operation; and 'doctrinal or ideological terrorism', which concerns the doctrine in which the terrorist believes. However, 'terrorism' refers to the means used in the operation. For instance, 'nuclear terrorism' refers to the probability of terrorists using nuclear weapons. The term 'terrorism' has been studied by social scientists that produce literature on psychology, criminology, theology, strategy, politics, philosophy, law and war-craft. Decision makers also use it. As the rate of terrorist operations rises steadily each year decision makers in confrontational situations should engage more with these studies that inquire into the public causes of terrorism.

Many decision makers reject the preventive definition of terrorism as the product of unfair national and international policies and fail to formulate strategies that could root out terrorism through the institutionalisation of fair political practices. However, the formulation of counter-terrorism policy could benefit from social science studies that emphasise the preventive aspects of counter-terrorism by examining the environment that leads to its spread. Additionally, counter-terrorism requires a study of the psychology of the terrorist and the correction of false concepts that could lead him or her to be involved in operations of this nature. Legislators at the national level, including those from Egypt, seem to regard the prescriptions resulting from academic studies of counter-terrorism more thoroughly than international legislators.

Egypt has been afflicted by terrorist attacks since the 1970s when the country witnessed a series of terrorist operations. The assassinations of Sheikh El Zahaby and President Anwar al-Sadat, followed by scattered operations such as the Luxor incident and, recently, those of Sharm El Sheikh and Dahab are some of the

examples. These operations emphasise the presence of terrorism today in Egypt.

The main objective of this paper is to examine terrorism from a legal perspective; in particular, this study examines the Egyptian legislative framework that deals with terrorism as a crime committed against the community. The paper calls for a measure of objectivity while discussing terrorism. Accuracy, clarity and comprehensiveness are conditions that should prevail in any academic research, more so in legal sciences, and criminal law in particular.

The previous criminal law of Egypt defined terrorism in Article 98 of Penalties Law 58 of 1937 without describing it as violence that is used for political purposes. Therefore, the Egyptian legislature used the term 'terrorism' for crimes of a political nature. The Article did not mention that terrorism, as an independent crime, needed to be defined individually. Because of this legislative gap and the terrorist attacks in Egypt, the Egyptian legislature has broadened the definition of terrorism, to include also the non-political acts of violence.

On the basis of the above, this paper examines two major issues: objective criminal rules in regard to terrorism confrontation, and procedural criminal rules.

OBJECTIVE CRIMINAL RULES IN REGARD TO TERRORISM CONFRONTATION

The Egyptian legislature has realised the importance of filling the legislative gap concerning terrorism confrontation. For this reason, experts are encouraged to study this phenomenon and produce the necessary criminal texts. Consequently, Law 97 of 1992 has been issued to modify the articles on penalties law, criminal procedures, establishment of national security courts, accounts privacy, weapons and repertories.

Law 97 has been applied to Article 86 and in the ensuing current Egyptian law of penalties. The Egyptian legislature is determined not to use special legislative articles for terrorism but to make it a part of the penalties system. This was criticised by experts after the law was passed. For this reason, the Egyptian legislature then defines terrorism precisely in Article 86, which concentrates on giving objective definitions to the actions that describe terrorism. However, the legislature did not produce an exclusive definition of terrorism because they wanted to allow for the future improvement of the definition of terrorist operations.

Article 86 of the above-mentioned law has defined terrorism as:

[a] power, an act of violence, a threat, or a scare tactic used by criminals, to execute a nefarious operation, individually or in groups, targeting the public system or subjecting security and community safety to danger that could consequently hurt or threaten individuals or destroy communications, properties, buildings, private or public entities or the environment by either occupation or force, or prevent public authorities or religious or educational institutions from practicing their activities, or hinder the application of the Constitution and of laws or regulations.

This definition describes the criminal behaviour involved in terrorism, whereas the traditional criminal text in penalties law failed to do so. The Egyptian legislature succeeded in producing a special definition for terrorism.

The definition above depended mainly on two factors. First, the terrorist focuses on using power, violence, threats or terrifying actions to execute the criminal operation individually or in groups. Second, the terrorist targets the destruction of the public system or endangers the security and the safety of the community. Article 86 also clarifies the protection framework for the environment, communication and property and for individuals, buildings and private or public entities, be they occupied or taken by force. This framework largely focuses on public interests that deserve protection. In general, all criminal acts prevent public authorities and religious or educational institutions from practicing their usual activities, or hinder the application of the Constitution and of laws or regulations.

Acts of terrorism are meant to be absolute crimes, as expressed in the use of terrorism or the execution of terrorist operations. These crimes have been updated as provided for by Law 97 of 1992, or according to the current law of penalties before the passing of Law 97. While everyday crimes often elicit overly harsh punishment, the legislature limits the punishment of terrorist crimes when they are committed in a terrorist framework.

Crimes can be divided into two sections:

- The first section is evinced by establishing a corporation, organisation or association, or forming a group or gang (Article 86/bis1); by belonging to an association....; by participating in (Article 86/bis2) or promoting terrorist thoughts; by possessing editions, publications or tape recordings (Article 89/bis3); by seizing a means of transportation, whether by air, land or sea (Article 88); by arresting or imprisoning someone as a hostage (Article 88/bis1); by using the terrorist acts of someone who is a member of the above-mentioned associations (Article 86/bis A); by forcing him or her to join this association or by preventing him or her to leave (Article 86/bis B); by communicating with a foreign country or any organisation, corporation, association, group or gang located outside the country or corresponding with someone who works for these institutions to execute terrorist operations inside or against Egypt or against the country's institutions (Article 186/G), or with an Egyptian

cooperating or affiliating with any terrorist association or organisation, whatever its name, when the body has its headquarters outside the country and uses terrorism or military training as a means to achieve its objectives (Article 68/bis A D /2).

- The second section includes crimes with penalties that provide for the committing of a terrorist operation in a criminal framework. The legislator focused on the aggravation of punishment for these crimes in Law 97 of 1992, such as disturbing ceremonies (Article 160); falsifying travelling tickets (Articles 66/2,17/2 and 8/42); knowingly registering the owners of rented places by falsified names (Article 219); hitting and hurting (Articles 240, 241, 242 and 243); intended destruction (Article 90/1); forethoughtful destruction of or damage to buildings (Article 162); intended wasting of fixed or movable properties (Article 361); hitting or hurting leading to death; and forethoughtful murder (Article 234).

PROCEDURAL CRIMINAL RULES

The Egyptian legislature does not limit terrorist confrontation to the production of special rules for criminalisation and punishment. Procedural legal rules, designed for the process of uncovering these crimes and accelerating the effectiveness of investigation and judicial proceedings have also been drawn up. The most important rules concern the argumentation stage and the investigation stage.

In the argumentation stage, Law text 105 of 1980 provides for the establishment of national security courts according to Article 5 of Law 97 of 1992. Whenever the judicial apprehension commissioner has adequate evidence to accuse someone of committing one of the crimes as provided for in Section 1, Chapter 2 of Book 2 of penalties, suitable precautionary measures should be taken and the public prosecution should be asked, within 24 hours, for permission to apprehend the suspect for seven days. The judicial apprehension commissioner should listen to the suspect's statements and send him or her to the prosecution concerned at the end of the referred period.

The legislature opposes the rules that are mentioned in the criminal procedural law on two accounts. First, the legislature permits the judicial apprehension commissioner to take the necessary measures concerning the restriction of personal freedom immediately after the suspicion arises and without any judicial permission, as long as it is within the terrorist crimes framework. Secondly, the legislature orders the provisional seizure, without investigation or accusation, of someone suspected of terrorist crimes for a maximum period of seven days, contrary to the rules of criminal procedural law, which require that detention takes place after legal investigation and accusation.

In the investigation stage, Law 105 of 1980, which has been added to Law 97 of 1992, provides for the public prosecution to have the same authority as the investigation judge regarding the questioning of crimes mentioned in the first section. It also

provides for the offense court to be appealed and assembled in the consultation room, as provided for in Article 143 of criminal procedural law. In addition, the public prosecution should undertake the inquiry and take legal action against the crimes referred to in the previous paragraph, as provided for in Article 9 of the criminal procedural law.

Therefore, the legislature expands the authority of the public prosecution in regards to the revival of criminal action and the period of provisional seizure. This authority is vested in the investigation judge, the summary judge or the offense court appealed and assembled in the consultation room, which could extend the period of provisional seizure for up to 15 days or, as it more frequently does, for up to 45 days.

Furthermore, the legislature also allows for the rules of frisking, seizure and tape recording. It legalises the frisking of someone suspected of the crime; the random searches of houses of terrorism suspects; the seizure of correspondences, letters, publications, packages and telegrams; and the observation and recording of regular and wireless telephone calls.

GENERAL RULES AND CONCLUSIONS

To conclude, one should note that the Egyptian legislature followed the most likely process aimed at boasting criminal law. In other words, the legislature followed a strict policy regarding crimes of a terrorist nature, as indicated below.

- It is impossible to apply the rule of decreasing the punishment by one or two degrees, as mentioned in Article 17 of penalties (Article text 88/ bis; the Attorney General mentioned that the application of Article 17 of the law is impossible at the crimination judgment). The Article 17 excluded the execution of a life sentence and offered a decreasing punishment, from execution to a life sentence to restrictive imprisonment and, subsequently, to 10 years' punishment.
- It is possible to take precautionary measures as provided for in Article 88/bis. This provides for the possibility of imprisoning a suspect who opposes these precautionary measures by at least six months.
- The legislature followed the exemption policy of punishment (in the case of a repentant criminal), whereas it is provided for in Article 88/bis D. This policy exempts the criminal from certain penalties as referred to in the following section: 'Every criminal takes the initiative to inform the administrative or judicial authorities before implementing the crime and before the investigations start.' The court could exempt someone from punishment if he or she informed the authorities about the crime after

its completion and before the beginning of investigations. The court could also exempt the criminal in the case of his or her ability to inform authorities during the investigations and, thus, lead to the arrest of the real perpetrators or the perpetrators of other crimes similar in type and danger to the one they committed.

- It is worth mentioning that Egypt has called, and is still calling, for an international conference on terrorism. Egypt plays a major role in phrasing regional agreements for the tackling of terrorism, such as the Arab League Agreement and the Islamic Conference Agreement. Both agreements concur with the Egyptian legislature's definition of terrorism. Furthermore, Egypt fulfilled all the requirements of the international community when the country signed all related international agreements and committed itself to promote mechanism of international cooperation. Additionally, Egypt has added Law 80 of 2002, which focuses on money laundering, as it is believed that there are strong links between terrorism and money laundering.
- The Egyptian Constitution, which was recently modified, provides in Article 179 for protection and security of the public when confronting terrorism.

The whole process is under the control of judicial authorities. The president has the authority to transfer any crime of a terrorist nature to any court, as provided for in the Constitution or the law. The incorporation of this text into the Constitution reflects the magnitude of the impact of terrorism on the Egyptian community. The legislature admitted that the text concerned included strict regulations about terrorism confrontations and went beyond the traditional and normal rules, as stated in penalties and criminal procedural law. It is imperative that terrorism cases should be accorded necessary justice. Until this is done, undue focus will be on regulations governing the arrest, capture and provisional seizure of suspected terrorists. In this regard, Egypt should adhere to the minimum level of international human rights standards when dealing with suspected terrorists. In dealing with terrorism, again, fair political practices and preventive measures should be put in place, rather than the harsh reactions as stipulated in the criminal procedural law. A dialogue between academics and decision makers, as discussed in the introduction, should inform and foreground such an understanding of terrorism.

NOTE

- 1 This paper was translated from an Arabic text. Consequently, some parts may not read as in the original text due to the translation.

Gaps and Challenges in Preventing and Combating Terrorism in East Africa

Wafula Okumu

INTRODUCTION

East Africa has been a soft and direct target of international terrorism since the 1970s. Prior to August 1998, when United States embassies were simultaneously bombed in Kenya and Tanzania, the countries of the region had no plans or strategies to counter terrorist tactics by local and international terrorists. The bombings demonstrated that security and intelligence services in East African countries were too under-funded and ill-equipped to prevent and combat terrorism (Shinn 2004:38). Furthermore, these countries took time to realise that they were not only helpless and easy targets but also breeding grounds and havens for terrorists with regional and international networks (Khadiagala 2003; Mbugua 2004). Since 2001, countries in the Eastern Africa region have realised that terrorism constitutes a common security threat that requires a common approach. Since 2003, the countries in the region have been vigorously addressing institutional weaknesses that impede their ability to pursue terrorists and respond to threats while, at the same time, harmonising their counter-terrorism measures and cooperating at the regional level. This paper gives an overview of terrorist activities in East Africa and discusses the reasons why some countries in the region have been targeted by international terrorists. Furthermore, it highlights measures being taken to counter terrorism and discusses the gaps and challenges in combating and preventing terrorism in East Africa. Finally, the paper offers a way forward.

TERRORISM IN EAST AFRICA

Some of the most striking and notable acts of international terrorism in Africa have taken place in East Africa. Of the East African countries Kenya, Tanzania and Uganda, Kenya has been the most frequent target. Whereas Kenya and Tanzania have experienced mainly trans-national threats, Uganda has been plagued by domestic terrorism for over 20 years. The first international terrorist attack in East Africa took place on 3 February 1969, when Eduardo Chivambo Mondlane, leader of the Front for the Liberation of Mozambique (Frelimo) was killed in Dar es Salaam by a bomb mailed to him and marked as a book. The second international terrorist attack in East Africa took place on the eve of 1981 when a terrorist linked to the Popular Front for the Liberation of Palestine (PFLP) planted a bomb in the historic Norfolk Hotel which was, at the time, owned by a Jewish family. The claim was later made that this was a revenge attack on Kenya

for assisting Israeli commandoes in the successful July 1976 rescue of hostages from a hijacked Air France Airbus that had been commandeered to Entebbe, Uganda. When Air France Flight 139 with 250 people on board was hijacked on 28 June 1976, it was diverted to Entebbe where the 10 hijackers demanded the release of 53 militants held in prisons in five countries, inter alia Kenya.¹ It was revealed that two years earlier, Kenya had arrested three Palestinians within the vicinity of the Nairobi airport; they had been planning to shoot down an El Al aeroplane with a surface-to-air missile. Instead of trying them in Kenyan courts, the government handed them to the Israeli government.

However, the most devastating terrorist attack in East Africa took place in August 1998 when the US embassies in Nairobi and Dar es Salaam were simultaneously bombed. The embassy bombings killed 224 people, among them 12 Americans, and injured more than 5 000 others.

Immediately after these bombings, Osama bin Laden and *al-Qa'eda* were suspected of carrying them out. Before moving to Afghanistan, Bin Laden had an Eastern Africa connection when he was exiled to Sudan from 1991 to 1996. Osama bin Laden's personal secretary, Wadi el-Hage, is credited with establishing the Kenya cell in 1994 (Khadiagala 2003). Furthermore, Bin Laden's followers were linked to the terrorist attacks on the Paradise Hotel near Mombasa in which 15 people, mostly Kenyans, were killed, and on an Israeli jetliner in Mombasa on 28 November 2002. The Paradise Hotel was targeted because Israeli tourists frequented it. The same day, terrorists tried but failed to shoot down with shoulder-held surface-to-air missiles an Israeli Arkia aeroplane, Flight 582, carrying 264 Israeli tourists. Terrorists then embarked on their next plan, to bomb the new American embassy in Gigiri, Nairobi, in June 2003.

These terrorist activities have spurred governments in the region to formulate strategies and undertake individual and joint measures to address trans-national and domestic terrorism threats and vulnerabilities. To analyse and determine the effectiveness of these measures, one needs to understand why East Africa has been targeted by international terrorism.

EAST AFRICA AS TARGET FOR INTERNATIONAL TERRORISTS

East Africa has been targeted by international terrorists for a number of reasons (Wycoff 2004; Kagwanja 2004). These range

from the region's proximity to the failed state of Somalia and weak counter-terrorism and police capabilities to porous borders and bad governance, which contributes to poverty and corruption--factors easily exploitable by those planning and carrying out terrorist activities.

Proximity to the failed state of Somalia

In late 2001, Rudolf Scharping, Germany's defense minister, caused a stir when he announced that the US had decided to make Somalia its next target in the war on terrorism. Although the US vehemently denied this claim, State Department spokesman Richard Boucher reiterated that Washington's goal was to 'make sure Somalia does not become a location where (the terrorists) could operate, or a safe haven for terrorists' (Cobb 2001). According to press reports, the US had been gathering information on suspected military training camps in western Somalia, near the Kenyan border. These camps were mainly run by al Ittihad al Islamiya, a radical Somali Islamic group believed to be linked to Osama bin Laden and members of Somalia's fledgling Transitional National Government (TNG). The suspicion that Washington was keenly watching Somalia was confirmed on 6 December 2001 when al Ittihad al Islamiya was added to a US Government's List of Terrorist Individuals and Groups, then containing 39 groups.

The US was concerned that al Ittihad al Islamiya could develop into a Taliban-like movement and take over the stateless and lawless Somalia. According to David Shinn, a former US ambassador to Ethiopia, *al-Qa'eda* operatives and sleepers in Somalia are few but dangerous, and have regional links to cells in Kenya, Tanzania and the Comoros.² (US Department of State 2004). International intelligence sources have established that the bombings of US embassies in Nairobi and Dar es Salaam in 1998 and the Paradise Hotel in 2002 were planned in the Kiamboni area, in south Somalia, which is believed to be a stronghold and training base for foreign Arabs linked to *al-Qa'eda* (Mutiga 2004). In addition, Kenya's intelligence community believes that the planning for the terrorist attacks was done in lawless Somalia, with which it shares porous and poorly patrolled borders.

Intractable conflicts in the region

The Eastern Africa region has been plagued by intractable and long-running armed conflicts that have littered the region with small and light weapons that, owing to the permeable borders, are easily moved around. The refugees produced by these conflicts have crisscrossed borders carrying weapons with them; in addition, those who have crossed into Kenya and Tanzania from the Somali conflict bring radical Islamic ideas.

Presence of muslims in the population of the region

Although the general Muslim population in the region has not shown interest in Islamic fundamentalism, small, radicalised Islamic elements in Kenya and Tanzania have 'assisted outside terrorist groups'³ (Shinn 2003). These radical elements have easily hidden in the Muslim population, as was the case with Faizul Abdullah Mohammed, the mastermind behind the Paradise Hotel

bombing, indicates. A Comoran citizen, Mohammed settled on a remote island off the coast of Kenya one hour away from Kiamboni on a speedboat. After moving to an impoverished, remote and desolate ancient settlement of about 1 500 Muslim people, he married a local girl and founded three local football teams for the youth, which he named *Al Qa'eda*, *Kandahar* and *Kabul* (Mutiga 2004). Similar to other international terrorists who exploited Kenya's endemic corruption and an environment which is open to terrorist activities, Mohammed obtained Kenyan citizenship, set up a small business and did charity work in a Muslim community.

At the New York trial of four men convicted of involvement in the Nairobi and Dar es Salaam embassy attacks, several charities were named by a former *al-Qa'eda* member as fronts for the terrorist group, including Mercy International Relief Organisation (Mercy). Documents were presented at the trial demonstrating that Mercy smuggled weapons from Somalia into Kenya and that Abdullah Muhammad, one of the Nairobi bombers, had delivered to Mercy's Kenya office eight boxes of convicted *al-Qa'eda* operative Wadi al-Haji's belongings, including false documents and passports (Levitt 2002). Intelligence sources have confirmed that the branches of al-Haramain in Kenya and Tanzania have been used as conduits for financial, material and logistical support to *al-Qa'eda* and other terrorist organisations.⁴ Furthermore, the Somali branch of al-Haramain Islamic Foundation, an affiliate of the Saudi Muslim World League, has been linked to *al-Qa'eda* and al-Ittihad al-Islamiya (Shinn 2004:39).

Presence of Israelis in East Africa and close ties to the West

Although only about 200 Israelis are reported to live in East Africa, some are prominent in business and professional circles and enjoy a luxurious expatriate lifestyle (Singer 2005). In addition, Jewish business people own prominent businesses and exclusive hotels in the region. One of these, the historic Norfolk Hotel in Nairobi, was specifically targeted in 1981 because it was owned by the Block family. Kenya has maintained close ties to Israel, even during the 1970s and 1980s when many African countries severed relations with Israel over the Palestinian problem.

Notably, the African countries (Uganda, Rwanda, Eritrea and Ethiopia) that supported the US-led war to oust Saddam Hussein in March 2003 were all in Eastern Africa. The Kenyan government has also supported the US-led *War on Terror* by opening its military bases to the American military to patrol the region, particularly the neighbouring Somalia area. Kenya has allowed the American military to operate from the country since 1991, during the Persian Gulf War, and it did so in 1994 during the ill-fated Operation Restore Hope mission in Somalia.

Since gaining its independence from Britain in 1963, Kenya has been closely linked to British interests in Africa and has over the years become one of Britain's most reliable allies within the region. Besides being a regional hub for British businesses, Kenya has signed agreements giving the British military access to bases and training grounds. Its closeness to the West and Israel has

not endeared Kenya to Islamic extremists. Mohammed Sadeek Odeh, an *al-Qa'eda* operative who was arrested after the 1998 Nairobi blast, told interrogators that he had been willing to carry out a terror attack in Kenya because he did not like Kenyans (Maina 2003).

Weak government control and bad governance

Low levels of economic development in the region have contributed to weak government structures and processes, particularly those related to law enforcement and protection of national interests from foreign threats such as international terrorism. Low pay and poor working conditions have made security personnel vulnerable to bribery. Weak government control of territories, laxity in control of border and immigration entry points, and poorly equipped, trained and paid security personnel have enabled *al-Qa'eda* operatives to move into the region, establish cells and carry out terrorist attacks.

Bad governance has provided a fertile ground for institutionalised corruption. Endemic corruption that pervades the security sector and immigration and customs departments has, in turn, made it easy for international terrorists to enter and move around the region. For instance, a 2002 survey carried out by Transparency International Kenya found that the average urban Kenyan paid 16 bribes a month, amounting to US\$104, yet the average monthly income among Kenyans was only US\$331 (Transparency International 2002). The survey ascertained that public servants were the most corrupt, 'accounting for 99 per cent of all bribery transactions and 97 per cent of the total value of bribes given'. The police department was found to be the most corrupt government institution while the immigration department was the third most dishonest one.

Abject poverty

According to Shinn (2004:38), abject poverty in the East African region has combined with bad governance, social injustice and political alienation to create an environment that attracts 'religious extremists to export their philosophy and of terrorists to find local support for their nefarious acts'. The East African Muslim community, particularly that residing along the Indian Ocean coastline and in the far-flung north-east that borders Somalia, has felt 'alienated from the mainstream political establishment and ... increasingly looked to Islamic agencies funded by Persian Gulf donors to provide education, health, social welfare, and security' (Mbugua 2004). As the case of Faizul Mohammed illustrates, terrorists have capitalised on poverty to gain access to communities that give them cover to plan and execute their nefarious acts. Although Kenya is economically the best developed country in the region, the uneven distribution of development is most pronounced in Muslim settlements along its coast and in the area bordering Somalia. Additionally, 'poverty weakens structures of governance, and weak institutions provide a fertile environment for terrorism to prosper' (Mbugua 2004). Islamic radicalism on Zanzibar and Pemba has been linked to the high levels of poverty on these islands. However, one needs to point out that Islamic radicalism and poverty alone do not create terrorists. Factors such as

political alienation and Muslim solidarity and the perceived loose morals of the West combine to create a fertile ground that terrorists can exploit.

COUNTER-TERRORISM MEASURES IN EAST AFRICAN COMMUNITY MEMBER STATES

Repeated terrorist attacks in East Africa have prompted the countries in the region to evaluate their counter-terrorism measures, particularly those related to intelligence gathering, and their preparedness in dealing with the aftermath of terrorist acts. Since 1998, the East African countries have adopted counter-terrorism programmes and taken a number of measures aimed, among others, at transforming their security apparatus into modern units with unified prosecution, investigation and intelligence structures capable of preventing and combating both domestic and trans-national terrorism (Mutiga 2004).

Creation of anti-terrorism police units

Kenya formed an Anti-Terrorist Police Unit⁵ in February 2003 and has established a Task Force on Anti-Money Laundering and Combating the Financing of Terrorism consisting of representatives from the ministries of finance, trade and foreign affairs; the Central Bank; the police; the Criminal Investigation Department (CID); and the National Security Intelligence Service (NSIS). Other Eastern African Community (EAC) countries need to establish similar structures composed of various counter-terrorism authorities drawn from security forces and the legislative, judicial and financial authorities. Tanzania has formed an Anti-Terrorist Police Unit while the Ugandan government has established a Joint Anti-Terrorism Task Force, comprising the Department of Military Intelligence, the Police Criminal Investigation Department and Special Branch, the External Security Organisation and the Internal Security Organisation.

Counter-terrorism reward programmes

Counter-terrorism reward programmes such as the US Department of State's Rewards for Justice one have offered large sums of money for information on suspected terrorists. For instance, a reward of up to \$5 million has been offered for information leading directly to the apprehension or conviction of Faizul Abdullah Mohammed, one of the masterminds of the bombings of the US embassies in 1998 and the Paradise Hotel in 2002. Under the State Department programme, the identity of the reward recipients is kept confidential for their own protection, but no one has been rewarded for providing information leading to the arrest of the suspects on this 'most wanted list'. According to speculation, Israeli secret agents may have eliminated some of these suspects (Thomas 2005:363-4). According to Thomas (2005), a Mossad assassination team was dispatched to Mombasa in October 2002 to 'find and kill the men behind' the bombing of the Israeli-owned Paradise Hotel. Thomas wrote that several suspected terrorists were killed and their bodies were dumped in a 'crocodile-infested swamp'.

Introduction of counter-terrorist legislation

Kenya, Tanzania and Uganda have all introduced counter-terrorism legislation. In 2003, the Kenyan government introduced anti-terrorism legislation in parliament that included Suppression of Terrorism and Anti-Money Laundering and Proceeds of Crime bills. If it goes through parliament, the latter bill will harmonise the following existing laws that aim at checking money laundering and related activities that might assist terrorist activities: Banking Act, Narcotic Drugs and Psychotropic Substances Control Act, Fugitive Offenders Pursuit Act, Extradition (Contiguous and Foreign Countries) Act, Extradition (Commonwealth Countries) Act, Capital Markets Authority Act, Insurance Act, Official Secrets Act, and Criminal Procedure Code and Evidence Act.

However, critics have vehemently opposed the Suppression of Terrorism Bill of 2003, charging that it would erode some of the rights and freedoms that Kenyans have gained since 1992 (Kulundu 2006). For example, they argue that Section 3(1) of the bill defines *terrorism* as 'the use or threat of action designed to influence the Government or to intimidate the public or a section of the public; and made for the purpose of advancing a political, religious or ideological cause'. This broad and vague definition, the critics argue, provides wide latitude for varied interpretations and potential abuse by the government in applying the proposed law. Sections 3(b) and (c) were likely to criminalise liberation movements and excite defiance against an oppressive government, which is contrary to Article 3(1) of the Organisation of African Unity (OAU) Convention on the Prevention and Combating of Terrorism which excludes liberation struggles from the definition.⁶ Interestingly, if this law were to be enacted, it would brand civil society activities that seek to expand democratic space as terrorist acts. The bill has also been challenged on the grounds that it could be used to sanctify an oppressive government and perpetuate its term in power. Furthermore, under Section 4 of the bill, which enumerates several acts of commission or omission that constitute terrorist offences. This includes possession of an article in circumstances that give rise to a reasonable suspicion that it could be used to commit a terrorist act. This clause gives law enforcement officers unfettered discretion to determine what is reasonably suspicious and to arrest and confine people on that basis. Furthermore, the police have powers to arrest a person without a warrant if there are reasonable grounds to suspect that he or she is guilty of an offence under Section 12(2).

The bill was opposed because of its stating in Article 12(1) that a person will be suspected of being a terrorist by merely wearing clothing similar to those worn by known terrorists affiliated to organisations such as *al-Qa'eda*. Muslims in the country say this clause specifically targets them as their religious and social practices include wearing garbs similar to those of traditional Middle Easterners. Section 9 of the bill defines organisations that can be declared terrorist if they operate under the same name as those already declared to be terrorist organisations under this section. Organisations using names such as 'al-Qaida' are inevitably criminalised.

Sections 9(3) and 9(4) of the bill confer upon the minister in charge of security the unfettered discretionary power to declare

a certain organisation terrorist. In view of events in Kenya, there is no doubt that the present minister in charge of internal security could be using this section to declare political parties or other entities that he deems to be undermining 'national security' terrorist organisations. The Suppression of Terrorism bill was opposed for allegedly being strikingly similar to the US Patriot Act. Some Kenyans resent it is heavily supported by the US government because they oppose the latter's handling of the *War on Terror* (Kagari 2003).

In Uganda, the President assented to the Anti-Terrorism Act of 2002 on 21 May 2002, and the act came into force on 7 June 2002. This act aims 'at suppressing acts of terrorism' and provides 'for the punishment of persons who plan, instigate, support, finance or execute acts of terrorism'; it prescribes 'terrorist organisations' and provides 'for the punishment of persons who are members of, or who profess in public to be members of, or who convene or associate with or facilitate the activities of terrorist organisations' (Bossa & Mulindwa 2004). However, Bossa and Mulindwa (2004) argue that

... the definition of terrorism around which the legislation is constructed is so broad that it could be used to prosecute trade unionists involved in an illegal strike or those engaged in civil disobedience. This is so because the definition does not specifically exclude legal strikes and protests that do not aim to seriously disrupt an essential service.

Furthermore, the authors assert that 'the wide scope of the offence relating to these organisations damages freedom of expression and freedom of assembly – as it subjects political activities to criminal sanctions, even when there has been no criminal activity' (Bossa and Mulindwa 2004).

The fear that this law could be used to repress political dissent and severely limit freedom of expression, especially by the media, was highlighted in 2002 when Ugandan radio stations were threatened with prosecution under the act if they aired interviews with exiled opposition leader Colonel Kizza Besigye. After labelling Besigye a terrorist, the government warned that anyone aiding him would be guilty of an offence under the act (Kagari 2003). This law could potentially abuse the provision on surveillance; it does not guarantee fair trials and has no safeguards against the death penalty for extraditions in cases of 'terrorist crimes'.

In Tanzania, the Prevention of Terrorism Act was signed into law in December 2002. As in Kenya, the act has faced heavy criticism and opposition, particularly from members of the Muslim population who believe they are being specifically targeted. In a workshop on the Prevention of Terrorism Act organised by the Commission for Human Rights and Good Governance in Dar es Salaam in March 2005, the act was criticised for denying 'individuals most rights, including right to freedom of movement, privacy, and participation in political affairs' (Kigwangalllah 2005). The act was further criticised for borrowing 'heavily from not only the USA's Patriot Act, but also (from) the British Prevention of Terrorism (Temporary Provisions) Act of 1989 and the Suppression of Terrorism and Communism Act of apartheid South Africa' (Kigwangalllah 2005).

Strict border controls and enforcement of immigration procedures

Although there are adequate immigration provisions and procedures to deal with illegal persons or holders of forged documents and to control refugees, the countries of the region have been lax in implementing them. It has now been established that while some *al-Qa'eda* operatives entered the region legally, others passed through border and entry points without proper documents or thorough scrutiny by entry point immigration personnel. Some terrorists were even able to acquire legal residence and travel documents that were reserved for citizens only. The laws in the three countries require those seeking travel documents to produce identification cards and birth certificates, which can only be acquired through producing birth notifications or written reports from local administrators confirming citizenship. However, Fazul Abdullah Mohammed, a Comorian citizen and one of the perpetrators of the August 1998 embassy bombings, was able to acquire through fraudulent means Kenyan travel documents that he used to plan his terrorist activities.

Establishment of national counter-terrorism centres

In Kenya, the government has established a National Counter-Terrorism Centre (NCTC) that will give timely and factual intelligence on terrorism. The NCTC will work closely with the Anti-Terrorism Police Unit. Furthermore, Kenya has drafted a national counter-terrorism strategy and convened a National Security Advisory Committee (NSAC). Although other countries in the region have yet to match Kenya's initiatives, it is hoped that they will in the short run benefit from them through a regional counter-terrorism framework. Once fully operational, the NCTC can liaise with the Algiers Centre for the Study and Research on Terrorism and other relevant organisations to conduct a feasibility study on the establishment and expansion of a regional trans-national crime database to enhance the sharing of information on criminal activities in East Africa. This database would contain the details of individuals identified as associated with terrorism; analyses of previous acts of terrorism, focusing on factors such as causes, characteristics of perpetrators, terrorist *modi operandi*, and law enforcement responses; information on criminal groups, supply routes, financial support networks and money laundering methods; and international connections. Once established, this database should be made accessible to national police forces and other law enforcement agencies in the region, as well as to other regional and international law enforcement agencies such as Interpol.

Leaders meeting and strategising on measures to combat terrorism in the region

EAC member states are currently cooperating with each other and exchanging information through meetings held by national contact persons and offices and leaders. In January 2002, a regional summit of seven East African leaders met in Khartoum to endorse a resolution against international terrorism. However, because of the differences among the countries over the definition of *terrorism*, the proposal that emerged did not include

concrete policies. For instance, a draft proposal suggesting ministers of justice and heads of security meet within two months to begin work on a joint campaign against terrorism was dropped because leaders could not agree on the meaning of the concept (BBC News 2002). Nevertheless, through meetings such as these, regional leaders have the opportunity to distance themselves and their countries from terrorism.

In September 2003, Internal Affairs ministers of the Eastern Africa region met in the Seychelles and signed an agreement on a range of measures to combat trans-national illegal activities. The agreement is intended to strengthen regional cooperation to fight border-crossing organised crime, terrorism and narcotics trade. In 2004, ministers representing the ten member states of the Eastern Africa Police Chiefs Cooperation Organisation (EAPCCO) signed three agreements designed to bolster cross-border work on the extradition of criminals, the fight against terrorism and the struggle with the narcotics trade.⁷ During the first EAPCCO meeting held in Kampala, Uganda, in 1998, an institutionalised body was set up to establish a collective effort to curb cross-border crime in the region.

Accession to international treaties

Kenya has ratified all 12 international counter-terrorism conventions and protocols; Tanzania is a party to 7, and Uganda is a party to 10. Kenya acceded to the 1997 International Convention for the Suppression of Terrorism Bombings on 16 November 2001, Tanzania on 22 January 2003 and Uganda on 5 November 2003. Kenya ratified the International Convention for the Suppression of the Financing of Terrorism on 27 June 2003, Tanzania on 22 January 2003 and Uganda on 5 November 2003. Although Kenya ratified the UN Convention against Trans-National Organised Crime on 16 June 2004, Tanzania and Uganda have signed but not ratified it.⁸ The three countries have all ratified the OAU Convention on the Prevention and Combating of Terrorism.

International assistance

Since 1998, counter-terrorism in East Africa has been greatly boosted by the support and cooperation of the US government. Although the US is concerned about attacks anywhere in Africa, it considers Eastern Africa (Djibouti, Ethiopia, Eritrea, Kenya, Somalia, Sudan, Tanzania and Uganda) to be particularly at risk. In June 2003, the Bush Administration announced a US\$100 million East Africa Counter-Terrorism Initiative (EACTI). This initiative includes military training for border and coastal security, programmes to strengthen control of the movement of people and goods across borders, aviation security capacity building, assistance for regional efforts against terrorist financing, and police training (Pope 2004). EACTI includes an education programme to counter extremist influence and an outreach plan to Muslim populations of the region. In view of the influence that negative perceptions of the West have, in combination with other factors, to fertilize the ground for terrorist activities, these educational programmes can, in the long-term, play an important role to counter radical extremism. Programmes such as these, however, require sustained commitment and effort.

The US is working closely with the East African governments, through the US interagency Terrorist Finance Working Group (TFWG), to develop comprehensive anti-money-laundering/counter-terrorist financing regimes in their nations. Since 2003, the State Department's Terrorist Interdiction programme (TIP) has established a computer system at selected airports and certain border crossings in Kenya, Tanzania, Ethiopia, Djibouti and Uganda to enable immigration and border control officials to identify suspects attempting to enter or leave the country (Pope 2004). State department officials involved in establishing the sophisticated database programme said it was developed in response to Kenya's request for help after the 1998 Nairobi bombings; the country needed to be able to quickly identify who was entering or leaving the country.

In addition, according to William Pope, the then US State Department Deputy Coordinator for Counter-Terrorism, the US is supporting police development programmes for national police in Tanzania, Uganda and Ethiopia. Although these later programmes are not specifically focused on counter-terrorism, they 'are introducing essential skills-based learning and problem-solving techniques to build the capacity of East African police forces to detect and investigate all manner of crime, including terrorist incidents' (Pope 2004). The US is 'also funding forensic laboratory development programmes in Tanzania and Uganda, designed to build the capacity to analyse evidence collected at crime scenes'. Furthermore, the State Department's Anti-terrorism Training Assistance (ATA) programme provides a variety of courses to civilian law enforcement officials in East Africa as well as other parts of the world.

MAJOR WEAKNESS IN EAST AFRICAN COUNTER-TERRORISM MEASURES

The major weakness in the above 'short- and medium-term' strategies is that they aim at 'catching bad guys, providing training and, to a limited extent, building up counterterrorism infrastructure' (Shinn 2004:42). For these strategies to address the problem of terrorism in the region, they must also seek 'to reduce poverty and social alienation'. Shinn warns that unless more resources are channelled 'into improving the environment that encourages terrorism – namely poverty – it is difficult to see lasting progress against this enemy'. Consequently, long-term strategies should aim at addressing the factors that create environments conducive to terrorism: poverty, intolerance, corruption and political alienation. In the case of Kenya, investigations after the terrorist attacks revealed that all these factors played a part. For instance, *al-Qa'eda* operatives used the corrupt government processes to enter and settle among a poor segment of the population that was alienated from the political system. The *al-Qa'eda* supporters established charitable organisations that were used as covers for laundering money, recruiting support and planning and executing terrorist acts in Kenya and Tanzania. Although the three East African countries, particularly Kenya and Uganda, have no history of religious extremism and their diverse religious groups have peacefully co-existed for years, there is a

fear that this situation might change if the material conditions of the population do not improve. Poverty is widely regarded as creating conditions that attract terror organisations to recruit impoverished youth populations (Lobe 2005).

The three countries of the region have been highly ranked in the Transparency International corruption index. Besides instituting national measures such as the enactment of anti-corruption legislation and setting up of anti-corruption watchdog bodies, these countries have a long way to go in uprooting institutionalised corruption. However, one needs to note that concrete steps have been taken to deal with endemic corruption, including the accession to international treaties. Kenya ratified the United Nations Convention against Corruption on 9 December 2003 and Uganda on 9 September 2004. Tanzania has yet to ratify this convention, which it signed on 9 December 2003. The US is also assisting in the long-term strategies by using foreign assistance funds and other developmental tools to help strengthen democratic institutions and support effective governance (Wycoff 2004).

When fully implemented, the counter-terrorism measures mentioned above will, to a large extent, prevent terrorist groups such as *al-Qa'eda* from recruiting followers and establishing bases in the region. Nevertheless, the best prevention is a combination of improving the material and political conditions of the population and arresting operators, planners, financiers and supporters of terrorist organisations before they launch their terror on innocent civilians. However, serious concerns have been expressed that the former prescription has generally been overlooked while the other counter-terrorism measures being implemented by the governments in East Africa could be counter-productive. First, as has been pointed out above, there is fear that the 'governments have sought to exploit "the war against terror" to pass draconian laws that limit freedom of the press and expression' (Transparency International 2003:239). For instance, the Uganda government is accused of introducing an anti-terrorism bill that redefines 'criticism of the government as a new form of "terrorism"'. Furthermore, the government has been accused of using the fight against terror to justify increases in 'military and intelligence agency budgets, increasing the scope for "classified expenditure" and its accompanying abuse'. In 2004, the Kibaki administration was implicated in a scandal that involved a shadowy company, Anglo Leasing. The company was secretly awarded a lucrative government contract to build a modern forensic laboratory and supply new passports that would assist in the fight against terrorism.

The second concern is that countries have exploited the *War on Terrorism* to promote other interests. For instance, the Uganda government was suspected of joining the US-led global *War on Terror* so that it could be perceived as being on Washington's side and qualify for the aid dollars that it needed to fight rebels opposed to the government of Yoweri Museveni⁹ (Bakyawa 2004). Critics have claimed that President Museveni joined the *Global War on Terrorism* launched in the aftermath of 11 September 2001 to persuade the US to add the Lord's Resistance Army (LRA) to its list of international terror groups. Thereafter, Museveni launched Operation Iron Fist in March

2002 to attack LRA bases in southern Sudan. The offensive not only failed but also emboldened the LRA to launch vicious attacks on civilians in northern Uganda in June 2002 and February 2004. In March 2004, General Charles Wald, who was in charge of African operations in the US army, confirmed in an interview that the US was directly involved in the fight against the LRA by giving Uganda ‘many things’ that are ‘more than just moral support’ (Bakyawa 2004).

Museveni drew the Americans into the war when he convinced them that ‘some of [LRA leader] Joseph Kony’s commanders were trained by Osama Bin Laden during the years he spent in Sudan’ (Bakyawa 2004). Similar to Uganda, Ethiopia has been accused of using the *War on Terror* to promote its own interests and benefit from the US\$100 million anti-terrorism package by feeding the US with intelligence information that inflates the terrorist threat from Somalia (De Waal 2004; Green 2005).

The third concern is that the long-term goal of supporting national security forces and strengthening regional alliances to fight terror may be undermined by continuing political instability and simmering border conflicts and ethnic and religious tension in the region (Ryu 2004). Although the war in southern Sudan has ended with the signing of the Comprehensive Peace Agreement in January 2005, the difficult task of post-conflict peace building and reconstruction has yet to start. As for Somalia, although a new government has been formed in Kenya, it has yet to relocate to Mogadishu owing to insecurity in the country. Additionally, the situation in the eastern part of the DRC has continued to deteriorate. However, one dares to hope that the expansion of EAC membership to Rwanda and Burundi next year will bring with it peace and stability in the Great Lakes Region of Central Africa.

WAY FORWARD

Besides overcoming the shortcomings highlighted above, the countries of the region, individually and/or collectively, must undertake further measures.

Understanding the magnitude of the threat of terrorism

At the moment, terrorism is not highly ranked as a security threat to the common people in the region. If a priority list of critical issues facing the region were to be drawn up, the people of East Africa would rank the struggle against poverty and the generation of employment, education, health, and food security higher than the fight against terrorism. Even in terms of security, international terrorism would not be regarded as important as urban gangsterism or political violence. These gaps can be overcome only by governments working closely with the media and civil society to highlight the gravity and seriousness of the threat of terrorism and its impact on human development.

Overcoming the definitional gap

As the problem of definition in the Kenyan legislation has shown, defining *terrorist* is a challenge. Is Joseph Kony, the leader of the Uganda’s LRA, a terrorist or a freedom fighter? Is Kenya’s

Mungiki a criminal ring or a terrorist group? Were the bombers of the American embassies in Dar es Salaam and Nairobi terrorists or resisters of American domination? Was the attempted assassination of President Mubarak in 1995 in Addis Ababa a terrorist act? Are Somali Islamists terrorists? Unless this gap in understanding of the term *terrorist* is bridged, the counter-terrorism approaches and strategies in the region will continue to face major challenges.

Refining approaches to combating terrorism

The understanding of terrorism as a war has influenced approaches to preventing and combating terrorism. A war is usually fought by the military, and sometimes by the police. As a result, in East Africa, institutions that have poor relations with citizens are expected to undertake the critical task of combating and preventing terrorist threats. Inevitably, this has excluded key stakeholders as the issue has largely been treated as state security rather than human security. In addition, the measures and approaches have been defined, driven and directed by the West. Consequently, these approaches have been based on Western understanding and have reflected Western solutions and interests. For instance, Somalia is generally seen in the West as a failed state that is also an incubator of anti-Americanism (terrorism) and a threat to Western security. Consequently, countries in the region have been compelled to

- Adopt legislation that is very similar to the US Patriot Act
- Render their citizens or suspected terrorists to Mogadishu, Addis Ababa or Guantánamo Bay, Cuba
- Endure security alerts that have had adverse effects on their economies
- Violate international human rights law
- Adopt Western-directed counter-terrorist measures or lose foreign assistance
- Chose between sacrificing either governance values or security (In the region, terrorism has been seen to undermine governance or promote narrow political agendas.)
- Compete over financial opportunities presented by joining the war on terror

Adopting counter-terrorism legislation

Although Tanzania and Uganda have adopted counter-terrorism legislation, Kenya has yet to adopt its own. This lack of counter-terrorism legislation has hampered prosecution in terrorism cases and may have contributed to Kenya’s preference for rendition. The anti-terrorism legislation of the East African countries needs to be reviewed to ensure that the security measures prescribed therein do indeed respect human rights and have adequate safeguards for their protection. As the cases of Kenya and Tanzania show, anti-terrorism legislation that does not contain these guarantees is difficult to either enact into law or be enforced once it has become law.

Securing borders

The countries’ borders are not simply poorly controlled and patrolled but are, in most cases, not controlled and patrolled at all,

allowing easy movement of people, weapons and bomb-making material across borders in the region. Although some of the countries belong to the Inter-Governmental Authority on Development (IGAD), a body that has adopted a common strategy, Tanzania, as well as the Rwanda and Burundi, will have to wait until the EAC has enunciated a common regional security policy.

Enhancing airport security

As a result of poor security, almost all regional airports are seriously threatened. Cases have been reported of, among others, ammunition being taken aboard aeroplanes, criminals gaining access to sensitive areas of airports and security personnel being poorly trained. Travellers using airports in the region easily observe major security lapses in passenger screening, poor use of security equipment, and various violations of International Civil Aviation Organisation (ICAO) regulations on aviation security.

CONCLUSION

East Africa, more than any other region in Africa, has been scarred and traumatised by terrorist attacks that could have been prevented had the countries in the region put in place measures that address their vulnerabilities. Although the countries of the region have undertaken various counter-terrorism measures aimed mainly at short- and medium-term goals, they must pursue long-term initiatives that seek to eradicate poverty, rebuild local institutions and address a host of regional security issues such as refugees, armed conflicts and proliferation of small arms and light weapons. Inevitably, these countries would have to build state capacities that could effectively undertake this gargantuan task while understanding that the destruction and elimination of terrorist networks and organisations is a time-consuming task that requires enormous resources and a long-term commitment to address the factors that fertilize the ground for terrorism to mushroom.¹⁰ Ultimately, the key to preventing and combating terrorism in East Africa lies in governments' engagement in good governance, eradication of corruption and adoption of sustainable development policies that enhance human security for all.

NOTES

- 1 Eight of the hijackers belonged to PFLP and two were from Germany's Baader-Meinhof Gang.
- 2 Participants at the Conference on Examining the 'Bastions' of Terror: Governance and Policy in Yemen and the Horn of Africa held from 4 to 6 November 2004 in Boston concluded that these cells needed to be found and eradicated through concerted diplomatic, intelligence and law enforcement efforts, and through military cooperation and coordination.
- 3 Muslims comprise over 10 per cent of Kenya's population, 16 per cent of Uganda's and 35 per cent of Tanzania's. Zanzibar's population is 99 per cent Muslim.
- 4 While Kenya revoked al-Haramain's registration in 1998, Tanzania ordered Kenya to stop the organisation's operations in the country in 2004.
- 5 A leading Kenyan security analyst has dismissed the anti-terrorism unit as non-existent: 'It is just an extravagant title for a squad we would wish to have in future, and not any genuine elite anti-terror response unit presently in existence.' The officers currently deployed in the unit 'operate from wooden prefabs ..., with no training or technical capability worthy of the unit's name' (Murunga 2005).

- 6 Sections 3(b) and (c) of the bill state that terrorism is 'the use or threat ... designed to influence the government or to intimidate the public or a section of the public, and the use or threat ... made for the purpose of advancing a political, religious or ideological cause'.
- 7 The EAPCCO was founded in Kampala, Uganda, during the first meeting of Eastern Africa police chiefs, held in February 1998, and is composed of Burundi, Djibouti, Ethiopia, Eritrea, Kenya, Rwanda, Seychelles, Sudan, Tanzania and Uganda. The body came into force in August 2002 and is recognised by Interpol as an affiliate. Interpol organises regional police coordination organisations in Southern Africa (SARPCCO), Central Africa (CCPAC) and West Africa (CCPAO).
- 8 On 5 January 2005, Kenya ratified the Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition, which supplements the United Nations Convention against Trans-National Organised Crime.
- 9 See Christian Aid May 2004. *The politics of poverty, aid in the new Cold War*. The work criticises Western donor countries for using 'aid ... to serve in the global "War on Terror"'. They should rather address the real needs of the poor.
- 10 See UN General Assembly. *Terrorism must be addressed in parallel with poverty, under-development, inequality, General Assembly told, as general debate concludes*. Fifty-sixth General Assembly, GA/9971, 16 November 2001.

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Initiatives to Prevent and Combat Terrorism in Southern Africa

Anneli Botha

INTRODUCTION

The majority of African countries can be categorised as some of the poorest in the world. Low levels of infrastructure and economic development give the region's armies and police forces a great disadvantage in the fight against terror, which is often considered a foreign concept. In an earlier paper, these misconceptions were addressed in greater detail. The non-urgent or limited attention given to terrorism in the southern African sub-region relates to a low threat perception, particularly in relation to often more direct threats and challenges to human security, such as drought, HIV/AIDS and transnational organised crime. This deficiency and the subsequent challenge to regional counter-terrorism, should be addressed by two separate but inter-related strategies: political and practical initiatives. The former includes the ratification of international and regional conventions and protocols. These culminate in national legislation, which introduces the second level; the implementation of these instruments in strategic and tactical terms.

This paper begins by summarising the compliance of Southern African Development Community (SADC) states with various United Nations conventions relating to terrorism, other relevant UN requirements, the Organisation for African Unity (OAU), including its counter terrorism instruments, and relevant SADC protocols. The paper does not analyse reporting commitments of countries in the sub-region to the respective United Nations Resolution committees. After a brief overview of countries in the sub-region's compliance with international, regional and sub-regional instruments to prevent and combat terrorism, the section titled 'National Legislation and Initiatives' briefly puts the threat of terrorism in the sub-region into context. As mentioned before, a particular country's resolve against terrorism cannot be comprehended without taking its experiences into account. This discussion, however, serves only as a summary and, therefore, will not provide an overview of national legal instruments in force.

The second part of the paper focuses on a practical sub-regional strategy to prevent and combat terrorism, with specific reference to the Southern African Regional Police Chiefs Cooperation Organisation (SARPPCO). The discussion explains the rationale behind this initiative and the relationship between the International Criminal Police Organisation (Interpol), SARPPCO and its member states.

COMMITMENT OF SOUTHERN AFRICA COUNTRIES TO SPECIFIC UNITED NATIONS CONVENTIONS AND PROTOCOLS DEALING WITH TERRORISM

The 11 September 2001 (9/11) events had a remarkable impact on the decision of countries to commit to international and regional counter-terrorist conventions. Sixty-eight per cent of the countries in the SADC sub-region are now parties to the 12 UN conventions in force, in contrast to the 33 per cent before 9/11.

None of the countries in the sub-region are parties to the latest amendments to:

- Amendment to the Convention on the Physical Protection of Nuclear Material;
- Protocol to the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, 2005; and
- Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms, 2005

In addition to the above-mentioned conventions, the UN introduced a Global Counter Terrorism Strategy in 2006 that strives to introduce an international understanding of terrorism. The Global Counter Terrorism Strategy (2006), for example, argues that terrorism, irrespective of its causes or grievances, cannot be justified:

... no cause, no matter how just, can excuse terrorism. This includes the legitimate struggle of people for self-determination. Even this fundamental right defined in the Charter of the United Nations does not excuse deliberately killing or maiming civilians and noncombatants.

Furthermore, the strategy involves the following elements:

- Dissuading groups from resorting to terrorism by listing a number of factors that could be manipulated by terrorists, such as extremist ideologies, particularly those that dehumanise terrorism's victims; pre-existing violent conflict that is used to justify terrorism as a tactic and fuel further recruitment; poor governance and political exclusion; a lack of civil liberties; human rights abuses; religious and ethnic discrimination; and socio-economic marginalisation

Table 1. An overview of the commitment of countries in southern Africa to United Nations instruments relating to terrorism

		Convention on the Offences and Certain Other Acts Committed on Board Aircraft, 1963																		
Angola	24 Feb 1998	12 Mar 1998	12 Mar 1998																	
Botswana	16 Jan 1979	28 Dec 1978	28 Dec 1978	25 Oct 2000	8 Sept 2000	19 Sept 2000	30 Oct 2000	14 Sept 2000	14 Sept 2000	19 Sept 2000	8 Sept 2000	8 Sept 2000								
DRC	20 Jul 1977	6 Jul 1977	6 Jul 1977	25 Jul 1977		21 Sept 2004														
Lesotho	28 Apr 1972	27 Jul 1978	27 Jul 1978		5 Nov 1980															
Madagascar	2 Dec 1969	18 Nov 1986	18 Nov 1986	24 Sept 2003	24 Sept 2003	28 Oct 2003	30 Mar 1998	15 Sept 2006	Not available	23 Dec 2003	24 Sept 2003	24 Sept 2003								
Malawi	28 Dec 1972	21 Dec 1972	21 Dec 1972	14 Mar 1977	17 Mar 1986															
Mauritius	5 Apr 1983	25 Apr 1983	25 Apr 1983	24 Sept 2003	17 Oct 1980		17 Aug 1989	3 Aug 2004	3 Aug 2004											
Mozambique	6 Jan 2003	16 Jan 2003	16 Jan 2003	14 Jan 2003	14 Jan 2003	3 Mar 2003	16 Jan 2003	8 Jan 2003	8 Jan 2003	15 Mar 2006	14 Jan 2003	14 Jan 2003								
Namibia	19 Dec 2005	4 Nov 2005	4 Nov 2005			2 Oct 2002	4 Nov 2005	20 Jul 2004	7 Sept 2005											
South Africa	26 May 1972	30 May 1972	30 May 1972	23 Sept 2003	23 Sept 2003	17 Sept 2007	21 Sept 1998	8 Jul 2005	8 Jul 2005	1 Dec 1999	1 May 2003	1 May 2003								9 May 2007
Swaziland	15 Nov 1999	27 Dec 1999	27 Dec 1999	4 Apr 2003	4 Apr 2003	17 Apr 2003		17 Apr 2003	17 Apr 2003	13 May 2003	4 Apr 2003	4 Apr 2003								
Tanzania	12 Aug 1983	9 Aug 1983	9 Aug 1983		22 Jan 2003	24 May 2006	9 Mar 2004	9 Aug 2005		11 Feb 2003	22 Jan 2003	22 Jan 2003								
Zambia	14 Sept 1971	3 Mar 1987	3 Mar 1987							31 May 1995										
Zimbabwe	8 Mar 1989	6 Feb 1989	6 Feb 1989																	

Ratified

Signed

- Denying terrorists means
- Denying access to recruit and communicate
- Denying access to travel
- Denying access to targets
- Deterring states from supporting terrorism
- Developing the capacity of states to prevent terrorism
- Defending human rights

Despite the importance of this strategic document, the practical implementation of the strategy on a global level is impractical unless it is broken down into sub-regional and national levels. National and regional counter-terrorist initiatives should not only embrace the reality that terrorism has differing manifestations at regional and sub-regional levels; they should also focus their strategy with respect to national realities, such as historical, political, cultural and local facts. The first step in implementing a counter terrorism strategy on national, regional and sub-regional levels should be based on a number of assessments that focus on terrorism, as well as on other threats to security and stability, whether direct or indirect. Within southern Africa, the greatest challenge will probably be to sell the strategy to a part of the continent that does not consider terrorism an immediate threat to its security. The implementation of this holistic strategy will also necessitate honest introspection into the health of political systems and governments' relationships with their citizens. Questions such as respect for civil liberties, human rights abuses, marginalisation and religious and ethnic discrimination are always sensitive issues. The process will require dedication that extends beyond the ratification of conventions and protocols or the introduction of specific counter-terrorism legislation, and includes the implementation of democratic principles and mutual respect among citizens from different cultural, religious and ethnic backgrounds and the state and its populace. In an attempt to coordinate national commitments to the UN Strategy, individual countries established national counter terrorism committees, often under the department of foreign affairs. Coordination between the different departments can be expected to be challenging, considering that even the United States, in its 9/11 Commission Report, admits to problems with cross-agency cooperation.

Implementing the Global Counter Terrorism Strategy extends well beyond simply addressing terrorism. For example, by denying terrorists the means or the possibility to travel, border control and transnational organised crime will also be addressed. A positive element of the UN strategy is that, on an international level, it enforces what so many researchers have been preaching for years; a holistic strategy that is essential to address and prevent terrorism.

Its implementation will, however, require long-term commitment beyond lip service. Instant solutions, such as the arrest and conviction of a few suspects, (although important) will not be sufficient in the long term. During the implementation of the strategy, civil society will be important because it acts as the conscience of both government and citizens. It checks and balances against the misuse of government power; calls for transparency in, among other things, the evaluation of the counter-

terrorism legislation process; ensures a balance between human rights and security; and enables communication between the government and the public. Unfortunately, in a number of countries in southern Africa, the relationship between civil society and the government remains problematic.

Despite steps, particularly those taken in the aftermath of 9/11, to bring national initiatives in line with requirements, particularly those set out in UN Resolution 1373, countries in the sub-region still have a long way to go. They need to move from having a check list approach to satisfying UN commitments to implementing long-term strategies, such as the UN Global Counter Terrorism Strategy. Stretched resources and a lack of capacity are only two of many challenges countries in the sub-region face in implementing UN counter terrorism instruments. Implementation will require a commitment from political role-players that needs to materialize into practical support and capacity building assistance in all sectors. Counter-terrorism must extend beyond a state security-centric approach to a holistic one which addresses possible abuse or increased vulnerability in a particular country.

SOUTHERN AFRICA'S PARTICIPATION IN REGIONAL COUNTER-TERRORISM INITIATIVES: AFRICAN UNION

In a paper presented earlier during this seminar, I gave a detailed account of initiatives taken by the African Union to develop an African counter terrorism strategy; my comments will not be repeated. In addressing the commitment of the states in southern Africa, I briefly present the implementation of these instruments in the sub-region.

The countries in the sub-region are committed to the OAU Convention on the Prevention and Combating of Terrorism and to the Peace and Security Council, which enhances the work of the African Centre for the Study and Research of Terrorism. However, for different reasons two additional instruments were also included. The instruments are:

- Steps against the use of nuclear weapons, which are in line with the latest UN Convention for the Suppression of Acts of Nuclear Terrorism
- Steps to ensure human rights, which take into account that all countries in southern Africa are parties to the instrument and that ensuring human rights is one of the central themes of the UN Global Counter Terrorism Strategy, although implementation of these steps remains an area of concern

Despite the need to practically implement international and regional instruments to prevent and combat terrorism – and also to address other threats and challenges to human security – a number of states, and also the international community, fell into the trap of using commitment to these instruments as a benchmark for actual commitment. Subsequently, a check list approach developed. Rather than measuring the level of imple-

Table 2. Summary of the status of Southern African Development Community member states in regard to African Union instruments

Country	OAU Convention on the Prevention and Combating of Terrorism, Algiers 1999	Protocol to the OAU Convention on the Prevention and Combating of Terrorism	Protocol relating to the Establishment of the Peace and Security Council of the African Union, Durban 2002	AU Convention on African Nuclear-Weapon-Free Zone Treaty, Pelindaba 1995	AU Convention on African Charter on Human and People's Rights, Nairobi 1981
Angola	17 December 2001 (deposited)	–	3 November 2004 (deposited)	11 April 1996 (signed)	9 October 1990 (deposited)
Botswana	14 July 1999 (signed)	–	25 June 2005 (deposited)	16 June 1999 (deposited)	22 July 1986 (deposited)
DRC	9 September 1999 (signed)	–	5 December 2003 (signed)	11 April 1996 (signed)	28 July 1987 (deposited)
Lesotho	14 March 2002 (deposited)	–	7 July 2003 (deposited)	14 March 2002 (deposited)	27 February 1992 (deposited)
Madagascar	23 December 2003 (deposited)	4 July 2005 (signed)	12 July 2004 (deposited)	23 December 2003 (deposited)	19 March 1992 (deposited)
Malawi	4 July 2003 (deposited)	–	8 July 2003 (deposited)	11 April 1996 (signed)	23 February 1990 (deposited)
Mauritius	21 February 2003 (deposited)	–	5 July 2003 (deposited)	24 April 1996 (deposited)	1 July 1992 (deposited)
Mozambique	3 January 2003 (deposited)	–	2 June 2003 (deposited)	11 April 1996 (signed)	7 March 1990 (deposited)
Namibia	14 July 1999 (signed)	–	9 December 2003 (deposited)	11 April 1996 (signed)	16 September 1992 (deposited)
South Africa	18 November 2002 (deposited)	24 May 2007 (deposited)	22 May 2003 (deposited)	27 March 1998 (deposited)	9 July 1996 (deposited)
Swaziland	14 July 1999 (signed)	7 December 2004 (signed)	7 December 2004 (signed)	17 July 2000 (deposited)	9 October 1995 (deposited)
Tanzania	23 September 2003 (deposited)	27 January 2005 (signed)	23 September 2003 (deposited)	19 June 1998 (deposited)	9 March 1984 (deposited)
Zambia	3 August 2005 (signed)	–	7 July 2003 (deposited)	11 April 1996 (signed)	2 February 1984 (deposited)
Zimbabwe	–	–	9 March 2004 (deposited)	6 April 1998 (deposited)	12 June 1986 (deposited)

mentation of these instruments and assessing the impact these instruments have on the relationship between the state (including its security forces) and the populace, many countries search quick fixes. A desire to impress world powers means they often do not take concrete action to implement long-term solutions that address the underlying factors which render them vulnerable to terrorism. It is therefore necessary to recommend a bottom-up approach, in which national and sub-regional realities are taken into consideration, driven by sub-regional organisations, rather than a top-down approach that often raises questions of ownership. Within southern Africa, SADC has an important role to play that will be discussed in the next section.

State resources are stressed to breaking point and are often not equipped to deal with the complexities of counter-terrorist efforts. The lack of adequate human and financial resources proves to be a primary stumbling block at both national and regional levels. Until now, the AU mainly served as a political platform for expressing its collective will to prevent and combat terrorism. While the organisation was successful in adopting a common framework for combating terrorism through the Algiers Convention, it found implementing its decisions and instruments

to be more challenging. However, through the establishment of focal points, countries in the sub-region are gradually increasing their engagement with the African Centre for the Study and Research of Terrorism in Algiers, Algeria.

SUB-REGIONAL COUNTER-TERRORIST INITIATIVES: THE SOUTHERN AFRICAN DEVELOPMENT COMMUNITY

Even though SADC does not currently have a specific protocol dealing with terrorism, a few protocols, although they are not yet in force, are nonetheless relevant. These protocols will come into force once two-thirds of the member states submit their instruments of ratification. Please note that although Madagascar has been accepted as the 14th member of SADC during SADC's Summit held at Gaborone, Botswana on the 16-17 August 2005, the country's adoption of SADC protocols will not be included, since the latest status for protocols is only available till 12 October 2004. Notwithstanding the fact that SADC does not have a specific instrument dealing with terrorism, its role as

regional actor needs attention. Especially since SADC has increasingly indicated its commitment to address terrorism, as part of other security challenges in the region.

Protocols

Protocol on politics, defence and security co-operation

Upon implementation, this protocol specifically calls for the development of an Organ on Politics, Defence and Security Co-operation, which will have the responsibility, among others, to

- Protect the people and safeguard the development of the region against instability arising from the breakdown of law and order, intra and inter-state conflict and aggression
- Develop common foreign policy approaches on issues of mutual concern
- Promote regional co-ordination and co-operation on matters related to security and defence and establish appropriate mechanisms to this end
- Prevent, contain and resolve inter and intra-state conflict by peaceful means
- Develop close co-operation between the police and state security services of state parties in order to address cross-border crime and promote a community-based approach to domestic security

Protocol against corruption

Although not directly introduced as a measure to address terrorism, the curbing of corruption will strengthen a particular state's resolve against bribery. Highly corrupt societies often limit social mobility and therefore prevent economic growth and investment, driving ordinary members of society to dissent, sometimes violently. In other parts of Africa, recruitment to organisations and structures that resort to terrorism as a tactic has flourished in environments where the youth have limited opportunities for advancement.

Protocol on combating illicit drugs

This protocol has been in force since 20 March 1999. It was prompted by the realisation that illicit drugs from the sub-region were destined for international markets and that the large financial resources generated enabled transnational organisations and individuals to undermine governments. Internationally, the illegal drugs trade tends to generate financial resources for terror campaigns.

Protocol on the control of firearms, ammunition and other related material

Firearms are the weapons of choice in terrorism in Africa. When adopted, the protocol will go a long way in eradicating the threat of firearms in the region. To prevent, combat and eradicate the illicit manufacturing of firearms, ammunition and other related materials and to promote and facilitate co-operation and the exchange of information and experience on a regional level, state parties intend to

- i) Become parties to international instruments relating to the prevention, combating and eradication of illicit manufacturing, accumulation and trafficking of firearms;
- ii) Improve the capacity of police, customs, border guards, the military, the judiciary and other relevant agencies to fulfil their roles in the implementation of this Protocol and to:
- iii) Co-ordinate national training programmes for police, customs and border guards, the judiciary and other agencies involved in preventing, combating and eradicating the illicit manufacturing of firearms, ammunition and other related materials and their excessive and destabilising accumulation, trafficking, possession and use;
- iv) Establish and improve national data-bases, communication systems and acquire equipment for monitoring and controlling the movement of firearms across borders;
- v) Establish inter-agency working groups, involving police, military, customs, home affairs, foreign affairs and other relevant agencies, to improve policy co-ordination, information sharing and analysis at the national level regarding firearms, ammunition and other related material; and
- vi) Undertake joint training exercises for officials, drawn from the police, customs and other relevant agencies, including the military where it is involved with border control, of countries within the Region. Further the possibility for exchange programmes for such officials within the Region, and with their counterparts in other regions could be explored.

4.1.5 Protocol on legal affairs

The aim of this protocol is to:

- Provide legal assistance to SADC member states in matters relating to the interpretation and implementation of the treaty, protocols and other legal instruments
- Assist member states to develop legal capacities and expertise in specific legal areas
- Promote the adoption of mutual assistance agreements in criminal and civil matters

The following institutions will be implemented:

- Committee of Ministers of Justice/Attorneys-General
- Committee of legal experts
- Legal sector co-ordinating unit

Protocol on mutual legal assistance in criminal matters

Mutual legal assistance is regarded as being any assistance in criminal matters including investigations, prosecutions or proceedings relating to offences concerning transnational organised crime, corruption, taxation, custom duties and foreign exchange control. Assistance to be provided includes

- Locating and identifying persons, property, objects and items
- Serving documents, including documents seeking the attendance of persons, and providing returns of such service

Table 3. Status of Southern African Development Community protocols in force

Country	SADC protocol on politics, defence and security co-operation	Protocol on control of firearms and ammunition	Protocol on combating illicit drugs
Angola	6 April 2004 (signed)	–	18 August 1999 (signed)
Botswana	14 August 2001 (ratified)	14 August 2001 (ratified)	7 October 1997 (ratified)
DRC	14 August 2001 (signed)	14 August 2001 (signed)	–
Lesotho	6 February 2002 (ratified)	27 September 2002 (ratified)	12 August 1997 (ratified)
Malawi	24 September 2002 (ratified)	24 September 2002 (ratified)	10 February 1998 (ratified)
Mauritius	4 January 2002 (ratified)	4 January 2002 (ratified)	17 October 1996 (ratified)
Mozambique	25 April 2002 (ratified)	20 September 2002 (ratified)	5 July 1998 (ratified)
Namibia	2 December 2002 (ratified)	8 October 2004 (ratified)	18 August 1998 (ratified)
South Africa	6 August 2003 (ratified)	27 January 2003 (ratified)	22 July 1998 (ratified)
Swaziland	14 August 2001 (signed)	1 August 2006 (ratified)	25 March 1999 (ratified)
Tanzania	12 August 2002 (ratified)	24 December 2002 (ratified)	19 February 1999 (ratified)
Zambia	14 August 2001 (signed)	16 January 2003 (ratified)	30 October 1998 (ratified)
Zimbabwe	2 February 2004 (ratified)	14 August 2001 (signed)	13 February 1998 (ratified)

- Providing information, documents and records
- Providing objects and temporary transfer of exhibits
- Taking measures for search and seizure
- Taking evidence or obtaining statements or both
- Ensuring the availability of detained persons to give evidence or to assist in possible investigations
- Facilitating the appearance of witnesses or the assistance of persons in investigations
- Taking possible measures for location, restraint, seizure, freezing or forfeiture of the proceeds of crime

Protocol on extradition

Corresponding to the protocol on mutual legal assistance, this protocol enables co-operation in the prevention and suppression of crime. As in the case of mutual legal assistance, the request for extradition will be refused, *inter alia*, when the of-

fence for which extradition is requested is of a political nature or when the purpose of prosecuting or punishing a person is based on that person's race, religion, nationality, ethnic origin, political opinion or gender. Although the OAU/AU Convention on the Prevention and Combating of Terrorism explicitly excludes terrorism as a political offence, this element might be debatable and open to interpretation in cases of domestic terrorism.

These protocols could provide the foundation for co-operation between SADC member states in all manifestations of transnational crime, including terrorism. Notwithstanding their willingness to become party to these instruments, which imply a commitment to address challenges to human security in the region, the real test of state commitment to counter-terrorism instruments lies in their implementation and the measurement of their impact and success.

Table 4. Status of Southern African Development Community protocols not yet in force

Country	Protocol on legal affairs	SADC protocol on mutual legal assistance	SADC protocol on extradition	Protocol against corruption
Angola	7 August 2000 (signed)	3 October 2002 (signed)	3 October 2002 (signed)	14 August 2001 (signed)
Botswana	14 March 2001 (ratified)	3 October 2002 (signed)	8 October 2004 (ratified)	14 August 2001 (ratified)
DRC	–	3 October 2002 (signed)	3 October 2002 (signed)	14 August 2001 (signed)
Lesotho	27 September 2002 (ratified)	3 October 2002 (signed)	20 August 2004 (ratified)	29 July 2003 (ratified)
Malawi	24 September 2002 (ratified)	3 October 2002 (signed)	3 October 2002 (signed)	27 September 2002 (ratified)
Mauritius	4 January 2002 (ratified)	20 August 2004 (ratified)	19 January 2004 (ratified)	4 January 2002 (ratified)
Mozambique	7 August 2000 (signed)	–	–	14 August 2001 (signed)
Namibia	2 October 2001 (ratified)	3 October 2002 (signed)	3 October 2002 (signed)	14 August 2001 (signed)
South Africa	7 August 2000 (signed)	16 June 2003 (ratified)	16 June 2003 (ratified)	15 May 2003 (ratified)
Swaziland	7 August 2000 (signed)	3 October 2002 (signed)	3 October 2002 (signed)	14 August 2001 (signed)
Tanzania	20 August 2003 (ratified)	20 August 2003 (ratified)	20 August 2003 (ratified)	20 August 2003 (ratified)
Zambia	7 August 2000 (signed)	24 August 2003 (signed)	20 August 2004 (ratified)	8 July 2003 (ratified)
Zimbabwe	7 August 2000 (signed)	3 October 2002 (signed)	3 October 2002 (signed)	8 October 2004 (ratified)

National legislation and initiatives

Although the following section does not aim to provide a detailed overview of the actual and perceived threat of terrorism in southern Africa, it is essential to contextualise the threat or perceived threat in the sub-region in order to understand the commitment of southern African countries to the introduction of counter-terrorism initiatives. Terrorism is often considered a low-level threat to stability in the region. However, matters dealing with terrorism are to be considered, especially with the 2010 Soccer World Cup approaching. Motivating states to develop specific counter-terrorist instruments proved to be a challenge due to its low threat perception compared to the other, more immediate realities and security challenges. Very specific undertakings in Article 2 of the OAU Convention on the Prevention and Combating of Terrorism give certain obligations to state parties. These relate to, among others, the signing and ratification of the UN conventions discussed above. Furthermore, other undertakings include a review of national legislation that refers to the establishment of criminal offences and punishments for terrorist acts, as defined in the convention, as well as the offences established in all other relevant conventions and protocols related to terrorism. Within the SADC (at the time of writing), only South Africa, Mauritius, Tanzania and Zambia have specific counter-terrorist legislation. Countries in southern Africa have been confronted with different types of terrorism and have introduced the following initiatives to prevent and combat terrorism in their respective countries.

Angola

Angola experienced a decades-long civil war that ended in April 2002. A number of incidents committed during this war could be categorised as acts of terrorism. In addition to the current government's engagement with *União Nacional pela Independência Total de Angola* (UNITA), or the National Union for the Total Independence of Angola, the security forces of Angola were confronted with the Front for the Liberation of the Cabinda Enclave (FLEC) in a struggle for self-determination. The separatists argued that because Cabinda had been administered separately from the rest of Angola in Portuguese colonial times, it should have formed a separate state on independence; however, the main reason for the independence drive in Cabinda is economic. Despite having only about 1 per cent of Angola's total population, the enclave generates 60 per cent of its oil production which, in turn, represents approximately 90 per cent of the country's export earnings. Although the Cabinda separatists do not pose a serious threat to Angolan security, they were previously engaged in a guerrilla campaign that was primarily directed against the Angolan government, as well as against foreigners, especially private oil companies. Front for the Liberation of the Cabinda Enclave–Cabinda Armed Forces (FLEC–FAC) activities decreased after their headquarters were dismantled in 2002 (*BBC Africa*, 2003). However, the underlying issues driving factions of FLEC to resort to violence, particularly against the oil industry which could be particularly vulnerable because of growing interest, were not addressed. Nevertheless, specific counter-terrorist legislation is absent.

The state uses Crimes against the State, Law 7/78, and the Penal Code as frames of reference. It is, however, clear that legislation is predominately geared towards domestic threats. One needs to consider that the Penal Code defines a terrorist organisation as any group acting in coordination and seeking to jeopardise national integrity and to subvert the functioning of state institutions provided for under the constitution (Culolo 2003:10). Angola is a party to only three of the 13 UN instruments. On the regional level, Angola is a party to the OAU Convention on the Prevention and Combating of Terrorism (Algiers), 1999.

Botswana

Botswana is a stable country that perceives the possibility of terrorism as remote. Even though no dedicated legislation to deal with terrorism exists, an Anti-Terrorism Committee was established that comprises all the major law enforcement agencies, as well as the government and banking sector. Botswana is a party to the 12 primary UN counter-terrorism (CT) conventions and is yet to become a party to the Nuclear Terrorism Convention. On the regional level, Botswana signed the OAU Convention on the Prevention and Combating of Terrorism (Algiers) of 1999 but still needs to accede to it. On the national level, Botswana is currently in the process of amending current legislation in line with international requirements. Although the country has never experienced the direct threat of domestic or transnational terrorism, it is committed to international counter-terrorist requirements, probably because it markets itself as one of the safest countries on the continent, and therefore as an attractive destination for tourists.

Democratic Republic of the Congo

The DRC has experienced a long period of conflict. Despite recent successful elections, the country faces a number of challenges. During a SADC workshop on terrorism in December 2006 in Windhoek, Namibia, the DRC delegation reaffirmed that terrorism is considered a top priority and part of the country's security agenda. The country is currently in the midst of a legal reform process. The DRC is a party to six UN CT conventions and has signed the OAU Convention on the Prevention and Combating of Terrorism (Algiers), 1999. The DRC also became a party to the Convention on the Physical Protection of Nuclear Material on 21 September 2004; an important step, considering that the country is rich in uranium. Furthermore, it signed the International Convention on the Suppression of the Financing of Terrorism on 28 October 2005.

Lesotho

Terrorism is not considered an immediate threat to national security in Lesotho. Nonetheless, Lesotho is currently in the process of drafting specific counter-terrorist legislation. On the international level, Lesotho is a party to six UN CT conventions and it signed the latest International Convention for the Suppression of Acts of Nuclear Terrorism. On the regional level, Lesotho is a party to the OAU Convention on the Prevention and Combating of Terrorism (Algiers), 1999.

Madagascar

Madagascar experienced periods of political instability that led to a number of acts of sabotage and intimidation, which bordered on acts of terrorism against civilians. Hand grenades proved to be the weapon of choice in both discriminate attacks directed at public figures and indiscriminate attacks against civilians.

Civil unrest began in 1991 with strikes and mass demonstrations against President Didier Ratsiraka in 1991 paralyzed the country. In an attempt to address the crisis, the government accepted an agreement in October 1991 that created a transitional coalition government (Razafintsalama 1992). In mid-March 1992, the church-sponsored National Forum met to draw up proposals for a new constitution and electoral code. President Didier Ratsiraka's Militant Movement for Madagascan Socialism was critical of the manner in which the Council of Christian Churches had organised the National Forum.

- On 26 March 1992, two people were injured in a grenade attack at Madagascar's National Forum. Grenade attacks were also directed at the radio station (*BBC Monitoring Service: Africa* 1992).
- On 30 March 1992, Albert Zafy, an opposition leader, was targeted by a truck bombing of his residence. Zafy was installed on 23 November as president of the 31-member High Council of State (Razafintsalama 1992).
- A petrol bomb was directed at General Desire Phillipe Ramakavelo, Madagascar's defence minister, on 31 March 1993 (*Reuters* 1993).

Foreigners were also targeted. A letter bomb blew up in the right hand of Arnhold Tropee Payns de Molay, a French national who lobbied for closer relations with Israel in October 1994 (*Reuters* 1994). On 16 January 2003, a hand grenade was thrown into the residence of a United States of America embassy employee, possibly because the United States was the first country to endorse Marc Ravalomanana as president ('U.S. Embassy official uninjured after grenade attack in Madagascar' 2002).

Before the 2002 political crisis, the country also witnessed a few sporadic incidents:

- On 24 February 1996 a hand grenade attack was directed at the residence of Jose Andrianoelison, a leader of the Circle for the Recovery of Madagascar's Development (SFFF) (Razafintsalama 1996).
- On 21 August 1997, the residence of Victor Boto, president of the Constitutional High Court was attacked in another hand grenade explosion (*BBC Africa* 1997).
- The political crisis between former President Didier Ratsiraka and President Marc Ravalomanana in 2002 led to a number attacks including:
- On 8 March 2002, a hand grenade was detonated in a plaza crowded with opposition supporters in the town of Fianarantsoa, about 300 kilometers south of the capital, seriously injuring 10 people (*Associated Press* 2002).
- Between 15 April and June 2002, a number of bridges were destroyed leading into the capital Antananarivo after

Marc Ravalomanana, the opposition, took control of the capital, declared himself the winner in the 16 December 2001 presidential elections and appointed his own cabinet, while President Didier Ratsiraka refused to give up power and established himself and his regime in the eastern city of Toamasina (*Forecast International* 2002).

- On 21 June 2002, three electricity pylons were blown up between Antananarivo and a hydro-electric plant at Andekaleka, 150 kilometers east of the capital, that left half of the city without power (*Agence France-Presse* 2002) and again, on 27 June, an electricity pylon was blown up in Toamasina province (*Reuters* 2002).
- On 14 June 2002 a hand grenade attack targeted Member of Parliament Mathilde Rabary's residence in Ampasampito-Nanisana, Antananarivo and, on 15 June 2002, the residence of the presidential spokesman, Moxe Ramandimbilahatra, at Ambohipo, Antananarivo was targeted (*BBC Africa* 2002).

During the period from June 2004 to February 2005 an estimated 21 grenade attacks were recorded, which were directed against predominately senior public figures. During Independence Day celebrations in June 2004, at least 38 people were injured in grenade attacks: 35 people were wounded in Toliara; three people were wounded when a grenade was detonated in Mahajanga, the second commercial port of the country, during a military procession in front of the town hall; and a grenade was thrown at the residence of Dieudonne Randriamboavonjy, vice president of the ruling party (*Reuters* 2004). In addition to these indiscriminate attacks, June and July 2004 also witnessed a number of incidents that were not intended to produce any victims. On 8 July 2004 a grenade was thrown at around half-past midnight into the Magro shop in Fianarantsoa owned by President Marc Ravalomanana's Tiko group (*Agence France-Presse* 2004). The day after that a grenade exploded in a rubbish bin near the entry to the university of Diego at around 4:00 am (*Agence France-Presse* 2004). On 20 July 2004 a grenade targeted the residence of Roger Vony, Toamasina port authority manager (*Reuters* 2004). On 21 November 2004, three grenade attacks targeted the residence of Tsizaraina Emile, president of the special provincial delegation, the regional headquarters of Ravalomanana's Tiko dairy company and a Tiko warehouse (Cocks 2004).

As a result of renewed political tension in preparation for elections in December, the country again saw a number of grenade attacks in 2006. On 21 August 2006 the residences of the minister of interior, Charles Rabemananjara, and General Berthini Rajoelison were targeted (*Reuters* 2006), and the High Constitutional Court was targeted on 24 August (BBC Africa 2006). The targets were clearly symbolic.

On a transnational level, the killing of Jamal Khalifa, Osama bin Laden's brother-in-law in Tulear, 650 kilometers southwest of Antananarivo, raised concern. Jamal Khalifa, a businessman and owner of a precious stone mine was suspected to have links with Abu Sayyaf, a claim that he denied before his death on 31 January 2007 (*Reuters* 2007).

In preventing and combating terrorism, Madagascar ratified 12 of the 13 UN Conventions. On a regional level Madagascar is party to the OAU Convention on the Prevention and Combating of Terrorism, it is also one of the four countries in the sub-region that signed the Protocol to the OAU Convention on the Prevention and Combating of Terrorism. On a national level, the Ministry of Justice drafted specific legislation that still needs to go through parliament.

Malawi

Malawi is in the process of drafting specific legislation to deal with terrorism. The country is a party to seven of the 13 UN CT instruments as well as the OAU Convention on the Prevention and Combating of Terrorism (Algiers), 1999. Although Malawi is not directly targeted by domestic or transnational terrorism, the arrest of five (non-Malawian) suspected *al-Qa'eda* members on 22 June 2003 had devastating consequences for the relationship between the state, its security forces and the Muslim community. The suspects were (*allAfrica* 2003):

- Fahad al-Bahli, a national of Saudi Arabia and director of the Malawi branch of the Saudi Arabian Prince Sultan Bin Aziz Special Committee for Relief
- Khalifa Abdi Hassan, a Kenyan national and teacher at the Muslim Association of Malawi School
- Mahmud Sardar Issa, a Sudanese national and the executive director of the Islamic Zakat Fund Trust, a charitable organisation
- Dr Ibrahim Itabaci of Turkey, the executive director of Bedir International, a Turkish non-governmental organisation (NGO) that built schools in Malawi and offered Turkish as a language option
- Arif Ulusam, another Turkish national who ran the Istanbul Take Away Restaurant

These arrests marked the third time in five years that Malawian security authorities confronted people of Arab origin on suspicion of being connected to transnational terrorism (Vokhiwa 2003). The other two occasions were the following:

- In August 2002, police stormed a mosque in Lilongwe and arrested 30 Asian Muslims on suspicion that they were linked to the *al-Qa'eda* network. The police later released the men unconditionally. The men denied the allegations and maintained that they were members of a group called Tabliq, whose aim it was to bring Muslims together for Islamic teachings (*allAfrica* 2003).
- In 1998, immigration authorities arrested 13 people of Arab origin at Lilongwe International Airport on suspicion that they had entered the country using false documents. This incident occurred two weeks after the simultaneous bombings of the United States Embassies in Nairobi and Dar es Salaam (*allAfrica* 2003).

These incidents were examples of racial profiling and contributed to violence, as the following incidents in Malawi reflect:

- Students at an Islamic school went on a rampage on 2 July 2003, destroying school property in protest over the deportation of one of their teachers who was suspected of being an *al-Qa'eda* member (*Agence France-Presse* 2003).
- On 27 June 2003, a group of Muslims stormed the headquarters of the Muslim Association of Malawi (MAM) in Blantyre, accusing MAM of doing nothing to stop the deportations of five Muslims suspected of being members of *al-Qa'eda*. The protests started in Blantyre when 200 demonstrators staged anti-government protests, accusing the regime of President Bakili Muluzi, himself a Muslim, of giving in to US pressure to have the five men deported (*Agence France-Presse* 2003).
- On 30 June 2003, police used teargas and rubber bullets in Kasungu to disperse a group of Muslims thronging the streets of town. The police ultimately resorted to live ammunition after the group refused to disperse. According to eyewitness reports, demonstrators dared the police to shoot them so that they would become martyrs for defending Islam (*Agence France-Presse* 2003). Earlier in the day, a group of approximately 50 Muslims stormed the Mangochi police station demanding the release of others who had been arrested earlier, but armed police warded them off.
- Despite warnings from President Bakili Muluzi that he would not tolerate violence committed in the name of religion, groups of Muslims went on a rampage in the predominantly Muslim district of Mangochi. They pelted church buildings with crude objects, including the structures of the Central African Presbyterian Church, the Seventh Day Adventists, the Assembly of God and Jehovah's Witnesses. They torched the offices of Save the Children's Fund managed by the Catholic diocese in Mangochi, as well as a vehicle belonging to a Catholic priest. According to observers, they targeted Christian establishments because they believed these institutions to be pro-American (*Associated Press* 2003).

While the Malawian government earned international goodwill for its co-operation with the US in arresting the five suspected *al-Qa'eda* members, their non-procedural rendition to the US created short-term tension. Malawi has a sizeable Muslim minority estimated at 20 per cent of its total population and is rarely confronted by religious clashes. Although the protests were small, they serve as an example of the anger and perceptions of betrayal among both Muslim and non-Muslim religious groups. More significantly, although the decisive action taken by the US and Malawian authorities achieved its immediate objective, it heightened short-term social tensions that might, in turn, cause or influence dissent or even contribute to radicalization and terrorism in the medium to long term.

Mauritius

Mauritius was challenged by the development of extremist ethnic groups during the 1990s. These groups exploited existing social tensions that had been fuelled by a general feeling

that the police were unable to deal with growing threats presented by organised and violent crime. The most prominent was Hezbollah, or Party of God, founded in 1991 by Mohammad Fakeemeeah (aka Meeah), who had studied in Saudi Arabia. By establishing an Islamic students' organisation in Plaine Verte in the capital city of Port Louis, he recruited a large number of supporters. This humanitarian organisation was supposed to provide clothes, food, shelter and Islamic education to the poor. The social organisation then turned into a pressure group to fight for social change, first in Port Louis suburbs and then throughout the country, but it concentrated on areas where young Muslims were most exposed to drugs. After this process, Meeah's group became an openly sectarian political party, which took the name of 'Hezbollah'. Meeah ran for a by-election in 1992 and was narrowly defeated by the government party's candidate. Challenging security, Hezbollah established a Death Squadron as a covert, para-military wing of the political party. After a raid on the residence of Kadhafi Oozeer in Port Louis on 22 November 2000, investigations revealed that extremist movements in Pakistan, Saudi Arabia and Qatar were responsible for training Mauritians for the Death Squadron. Its members were allegedly responsible for six murders, seven hold-ups against individuals and banks, two acts of arson and an attempt to kill Prime Minister Navin Ramgoolam in December 1995 (*Reuters*, 2003). Through bank robberies and hold-ups, Hezbollah was estimated to have collected about three million Mauritian rupees. According to his former lieutenants, this sum was given directly to Meeah. The money, added to funds received from foreign organisations, was used to buy real estate and to finance the party's activities. Meeah's philosophy has given rise to even more radical splinter fundamentalists groups, such as Zam Zam, Al Mujahiroun and Grey Wolves. Members were suspected of being responsible for a terror campaign against restaurants and bars in the Muslim area of the capital city to force them to close because they served pork and alcohol. In April 1999, in the wake of a riot following a football match in which a Muslim-based team lost a final, a mob burned down the oldest traditional Chinese gambling house on the island. Five adults and two babies died in the attack (Cadervaloo 2001). On conviction, seven young Muslims were sentenced to 45 years' imprisonment. Evidence showed that they had wanted to 'purify' a part of Port Louis where a gambling house neighboured a mosque (Botha 2004:9–10).

Despite threats posed by acts of domestic terrorism, the events of 9/11 directly brought about the introduction of specific counter-terrorist legislation amidst much political controversy. Legislation was introduced by the government on 31 January 2002 and was discussed at the National Assembly on 4 February 2002. Opposition parliamentarians proposed a motion to delay the discussions to study the legislation further, but the request was denied. Opposition parliamentarians walked out of the Assembly and President Cassam Uteem, as well as Vice President Angidi Chettiar, had to resign after refusing to enact the legislation (*Agence France-Presse*, 2002).

Influenced by domestic circumstances and the events of 9/11, Mauritius ratified and/or acceded to 10 of the 12 primary UN CT instruments and is signatory to the International Convention for

the Suppression of Acts of Nuclear Terrorism, as well as to the Convention on the Marking of Plastic Explosives for the Purpose of Detection. During the project period, Mauritius became a party to three UN instruments. In addition, Mauritius is a party to the OAU Convention on the Prevention and Combating of Terrorism (Algiers), 1999.

Mozambique

Mozambique is another state that traditionally has not paid a great deal of attention to combating terrorism. Although the country has not experienced any direct threat, well-established smuggling routes for transnational organised crime do exist and have contributed to the country's vulnerability by making it a transit country or safe haven for weapons, people and money used for terrorist purposes. Nevertheless, there is no dedicated counter-terrorist legislation in Mozambique. However, the OAU Prevention and Combating of Terrorism Convention is part of Mozambique's domestic law. With a few exceptions, such as a financial intelligence centre, many of the institutions needed to combat terrorism are already in place. Considering that the country is a party to 11 of the 13 UN CT instruments, Mozambique seems to have the political will to address shortcomings and combat terrorism effectively.

Namibia

Namibia, like Angola, was confronted with attempts at territorial expansion in the name of self-determination and the ensuing potential for inter-state conflict and threats to national and regional stability. The Caprivi Liberation Army (CLA), which mainly directed its attacks against government rather than civilians, gained prominence in October 1998 when it raised concern after the government claimed to have uncovered a rebel training camp. The CLA's two primary objectives were

- To fight for the independence of the Caprivi Strip, a slither of north-eastern Namibia wedged between Zambia and Angola to the north and Botswana to the south
- To integrate members of the Lozi-speaking Barotse tribe in the Caprivi with their counterparts in Botswana and Zambia

Categorised as terrorist by the Namibian government, the CLA attacked several targets in Katima Mulilo in August 1999, including the military base at Mpacha, the police station, a local power station, the Mpacha airport, the Wenela border post in Zambia and the offices of the Namibian Broadcasting Corporation (Jensen 1999). It also reportedly planned to bomb the Kongola Bridge linking Namibia with Zambia (Maletsky 1999). Namibia is currently in the process of introducing specific counter-terrorist legislation. The country is a party to seven of the UN CT instruments and signatory to the International Convention on the Suppression of the Financing of Terrorism. It became a party to all seven with the exception of the Convention on the Physical Protection of Nuclear Material during the project period. Namibia is a signatory to the OAU Convention on the Prevention and Combating of Terrorism (Algiers), 1999.

South Africa

South Africa introduced the Protection of Constitutional Democracy against Terrorist and Related Activities Act in 2005 after a drafting process of close to 10 years. A number of incidents and threats influenced the development of this legislation. On the domestic front, the newly elected government had been confronted with periodic incidents of right-wing extremism since 1994 (the *Boeremag* or Boer Force being the best known) and a pressure or vigilante group known as People against Gangsterism and Drugs (PAGAD) that subsequently initiated a campaign of urban terrorism in Cape Town until 2000. On the transnational level, the arrest of Khalfan Khamis Mohamed, a Tanzanian national who fled to Cape Town in the aftermath of the August 1998 bombings in Kenya and Tanzania and the events of 9/11, introduced specific counter-terrorist legislation. South Africa was again mentioned in relation to Saud Memon, a Pakistani who supposedly owned the compound where Daniel Pearl's body was found. Media reports allege that US officials in South Africa picked up Mr Memon on 7 March 2003 (Syed & Naqvi 2007). In addition, South Africa and its citizens had previously been mentioned in a number of terrorism-related enquiries and allegations, such as the listing of Moulana Farhad Ahmed Dockrat, a Muslim cleric from Pretoria, and his cousin, Junaid Ismail Dockrat, on the US Executive Order 13224 and, later, possibly on the UN Resolution 1267 list; and the arrest, in Pakistan, of Dr Firoz Ganchi and Zubeir Ismail together with Ahmed Khalfan Ghailani. Furthermore, the use of South African passports by transnational criminal elements, including possible terrorists, raised concern. As a result of a number of contributing circumstances, South Africa is currently being branded as a possible safe haven for transnational terrorists. This suspicion was re-enforced when it became known that Jomo Gbomo, the head of the Movement for the Emancipation of the Niger Delta (MEND), met with two other Niger Delta nationals, Mujahid Asari Dokubo and Diepreye Alamiyeseigha, in South Africa in late August 2007, before being arrested in Angola for his suspected involvement in an arms deal.

Dokubo, the former head of the Niger Delta People's Volunteer Force, an outlawed militia group, was recently freed from jail after serving two-and-a-half years in prison. Alamiyeseigha is the former governor of the southern state of Bayelsa, who was also recently freed after being jailed on corruption charges. (Ajayi 2007)

In reaction to these arrests, MEND, an organization that, until then, had focused on the Niger Delta, vowed to attack Angola or any other country that concentrated on MEND's activities abroad ('Militants Attack Shell Facility' 2007). South Africa is a party to 11 of the 13 UN CT instruments and signatory to the remaining two conventions. On the regional level, South Africa is a party to the OAU Convention on the Prevention and Combating of Terrorism (Algiers), 1999.

Swaziland

Swaziland's internal security has been challenged by a series of unsolved terrorist bomb attacks on police and army targets since

1998. An unknown group calling itself 'Tigers' claimed responsibility for two bomb blasts in Swaziland in 1998. One bomb was detonated at a bridge shortly after the King's car had passed in October of that year. Another device was detonated at the deputy president's offices on 20 November, killing one person and injuring nine others (*Jane's Defence Weekly* 1998). On 12 November 1999, an explosive device damaged an office building approximately three kilometres from parliament (*IOL* 1999). In December 2000, an explosion presumably caused by a bomb occurred at a police and army camp in Macetjeni. This event was followed by a series of petrol bomb attacks on targets that included the magistrates' courts in Mbabane. On 30 September 2005, a fire bomb exploded in the Swazi National Court building in the capital Mbabane a few hours after a similar attack on the home of government spokesperson Percy Simelane in another part of the city. Police blamed the attack on the banned People's United Democratic Movement (PUDEMO) (*IOL* 2005). These attacks escalated and six more targeted police and government officials, as well as government buildings. For example, on 28 October 2005, a police officer was critically injured in one of three attacks; in two of these three attacks, the homes of police officials were targeted (*IOL* 2005). More recently, on 1 January 2006, two Swazi high schools, including the Swazi National High School in Matsapha, an industrial area just outside Manzini, were fire bombed. No injuries were reported, but the alumni included some of King Mswati's brothers. This incident was followed by a petrol bomb attack directed at the office of the Mbabane magistrate's court on 21 January 2006 and an attack on two apartments belonging to police officers at a police housing development in Mbabane on 4 February 2006. The political crisis in the country is at the heart of these incidents, particularly since PUDEMO unbanned itself in 1992 when all political parties had been banned by King Shobuza II in 1973 (*allAfrica* 2006).

At the time of writing, Swaziland is in the process of drafting a new Suppression of Terrorism bill. The country is a party to 11 UN CT instruments and signatory to the International Convention for the Suppression of Acts of Nuclear Terrorism. On the regional level, Swaziland is a signatory to the OAU Convention on the Prevention and Combating of Terrorism (Algiers), 1999.

Tanzania

Tanzania is the only country in the sub-region that has firsthand knowledge of transnational terrorism as it experienced the US Embassy bombing on 7 August 1998. It has also experienced sporadic attacks motivated by domestic frictions which are often due to the political relationship between the mainland and the islands of Zanzibar and Pemba. Subsequently, Tanzania's introduction of specific counter-terrorist legislation in 2002 was clearly motivated by its international commitments rather than its domestic realities. The country is a party to 9 UN CT instruments. It became a party to the Protocol for the Suppression on Unlawful Acts of Violence at Airports on 9 March 2004 and Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf on 11 May 2005. On the regional level, Tanzania is a party to the OAU Convention on the Prevention and Combating of Terrorism (Algiers), 1999.

Zambia

In Zambia, terrorism first attracted attention with the Black Mamba case. Between 1 April and 3 June 1996, members of the Zambian cabinet, the diplomatic community and citizens involved in newspapers and businesses received written death threats from a group calling itself the 'Black Mamba'. At the centre of these threats were demands to not introduce legislation that would exclude first-generation Zambian nationals, such as former President Kenneth Kaunda, from running for president (*Reuters* 1996). However, the group did not limit itself to mere threats. On 17 May 1996, an explosive device detonated and damaged the security wall of the official residence of President Frederick Chiluba (*Reuters* 1996), and, on 24 May 1996, a briefcase containing an improvised explosive device was found in a public rest room at the Intercontinental Hotel. According to hotel officials and police officers, an unknown man called the hotel and informed employees that the Black Mamba group had planted a device in response to the government's refusal to withdraw the constitutional amendments bill (Corsun 1997:15). On 30 May 1996, an explosive device detonated at the offices of the *Times of Zambia* in Ndola (*Reuters* 1996). Although only structural damage had been reported up to this point, the explosion on 6 June 1996 in the toilets on the first floor of the terminal building of Lusaka International Airport led to the death of a police officer (Mwiinga 1996). Even the Mutundu Primary School in Kamuchanga township was targeted, but, fortunately, police officials successfully defused the device (*BBC Africa* 1996).

Following a period of calm, 16 explosive devices detonated in and around Lusaka on 28 February 1999. Targets included water pipes, power lines, parks and residential districts, and the bombings injured two people and led to structural damage. Bomb experts detonated five more bombs and defused two others. No one claimed responsibility. Zambian officials blame agents of neighbouring Angola (United States Department of State 2000). Bombs also exploded at the U.S. International School, the headquarters of the Zambian electricity supply firm as well as the Angolan Embassy in Lusaka (*Reuters*, 1999). Attacking the Embassy of Angola reflected political tension between Zambian and Angola, after the Angolan government accused Zambia for backing UNITA (*allAfrica* 1999). In addition to these incidents, the 2002 arrest of Martin Mubangu, a British Muslim who was taken to the US detention camp in Guatánamo Bay where he was held until his release without charge in 2005, and the 2005 apprehension of Haroon Rashid Aswat, who had toured through South Africa, raised concern. According to investigators, Haroon Rashid Aswat, a British citizen, placed a number of calls to those suspected of bombing the London Underground and a London bus on 7 July 2005. Of greater importance to the United States – and ultimately leading to Mr Aswat's extradition – was the allegation that he had been involved in setting up training camps near the town of Bly in Oregon to train fighters against US forces in Afghanistan (*The Columbian* 2006).

Notwithstanding the sudden emergence of the Black Mamba case and allegations that security forces could not effectively address it on the basis of existing legislation, Zambia introduced

specific counter-terrorist legislation in parliament on 17 August 2007. Although members of the opposition party walked out, the opposition party along with nine other opposition members managed to form a quorum (Sianjalika 2007). Zambia is a party to only four UN CT instruments, but the country signed the OAU Convention on the Prevention and Combating of Terrorism (Algiers) on 3 August 2005.

Zimbabwe

Zimbabwe drafted specific counter-terrorist legislation that is currently being tabled before parliament. Zimbabwe is a party to only three of the 13 UN counter-terrorist instruments, but not to the OAU Convention on the Prevention and Combating of Terrorism (Algiers). Notwithstanding its commitments, one should note that Zimbabwe is experiencing a number of consequences of its internal political situation that greatly affect its capacity to combat terrorism. These include internal repression by the government and a growing resort to small bombings. The resort to violence may be explained by growing political frustration, but it is feared that members of the political and security apparatus might be behind these incidents in attempts to justify greater suppression. The Zimbabwean government appears to be using and introducing more security legislation (to supposedly prevent and combat terrorism) which it is applying against domestic opponents.

Without going into great detail, this overview has attempted to shed light on the diverse motivations of individuals and groups to resort to terrorism as a tactic in southern Africa in: quests for self-determination involving, for example, the CLA in Namibia and the FLEC in Angola; politically motivated acts of sabotage and terrorism, in Swaziland and Madagascar; extremism, in South Africa and Tanzania; state terrorism figuring state actors in political violence and intimidation, in Zimbabwe; and state structures' use of force that is designed to intimidate and terrorise citizens to prevent them from opposing the existing regime.

Notwithstanding the above-mentioned groups, one needs to make a mental shift away from formal groups when assessing the threat of terrorism to a particular country or sub-region. The global trend is to move away from centralised organisations toward decentralised cell structures, and it will therefore be essential to focus on vulnerability factors and realise that the individuals involved in terrorism do not need large organisations and support bases to plan or initiate acts of terrorism. During a more detailed analysis, the manner in which these cell structures operate, recruit and finance their activities will be further examined. Despite overall trends, the inner workings of these decentralised structures differ from one country to another and from one region to another, indicating the importance of history and culture in their development.

THE ROLE OF THE INTERNATIONAL CRIMINAL POLICE ORGANISATION IN COMBATING TERRORISM

Terrorists have been known to use the most advanced forms of communication and equipment, which the technology of

the majority of the armies in the sub-region cannot detect or decipher. Although there are efforts to share intelligence among countries in the sub-region, most of the gathered intelligence does not effectively tap into the terror networks. Poor infrastructure contributes to this since detection is difficult in inaccessible areas, of which there are many. New threats to security, associated with globalisation, have emerged. These include a range of non-military and transnational threats such as droughts, mass migration and organised crime. As a consequence, shifts in the conceptualisation of security and an overhaul of existing security institutions are prerequisites for dealing effectively with the sources of regional insecurity. A redefinition of security requires a broadening of the concept both horizontally and vertically. Horizontally, this involves creating an agenda that recognises security as dependent on factors such as political democracy, human rights, social and economic development and environmental sustainability, as much as it is on military stability. Vertically, this involves recognising that people should be the primary referent of security. In this way, it becomes possible to identify threats to human security that emerge at sub-national, national and transnational levels. Despite an international threat to security and stability, each region represents unique conditions and manifestations of socially disruptive activities.

As a result of these facts and the consequent need to adopt a pro-active approach in preventing terrorism, the International Criminal Police Organisation (Interpol) has taken a holistic approach, realising that, in addition to international initiatives, different regions and sub-regions need to consolidate their efforts in addressing their own specific realities. SARPCCO also realised the need to enhance co-operation in addressing transnational crime and establish an early warning mechanism for terrorism. The following section presents a brief overview of these initiatives.

Law enforcement and security authorities often express a need for global strategies or, rather, global guidance to counter multinational and transnational organised crime structures, such as organised crime, drug trafficking and terrorism. Criminal activity flows easily across national borders, while police officers find themselves limited by sovereignty, laws, national pride, the absence of treaty relations and a general lack of co-operation. Founded on the recognition of and respect for national sovereignty, Interpol is not an international police force. Rather, the organisation facilitates interaction and co-operation among police agencies of nations around the globe. These agencies operate within their own national boundaries and remain bound by their own national laws and regulations. Interpol does not conduct investigations on its own authority or without a request for assistance from a recognised law enforcement authority of a member nation. It helps local, state and federal law enforcement agencies co-ordinate their investigations around the world, conducting these tasks within the framework of treaties and international laws. It is effective in most cases because the member nations have agreed to the methodology it has established (Imhoff & Cutler 1998).

Interpol is thus an international, intergovernmental organisation that acts as a forum to co-ordinate and analyse information from around the world. The criminal intelligence centre is re-

sponsible for processing information intended for the National Central Bureau (NCB) in each of its member states. It uses the most up-to-date and sophisticated technology and has five sections, making it possible to respond immediately to NCB's requests for police information. Its central databases are constantly updated with information from police forces in the 186 member countries. Special techniques have been developed through computer technology to analyse this information (Interpol 1998b). The central database includes all the information obtained from investigations of crimes committed by terrorists including: data relating to individuals, groups, instruments or objects used to commit the crimes; evidence found at the scenes of the crimes; and the modus operandi of the terrorists.

Interpol's core functions can be divided into three categories (Goyayi 2007). First, Interpol provides global communication among police agencies. Through its Secure Global Police Communication System, or I24/7, Interpol strives to provide timely and effective exchange, storage and processing of information, which includes alerts and notices, to its member states. Based on their purpose, notices can be divided into

- Wanted persons: red
- Persons related to a crime: blue
- General information and warnings: green
- Missing persons: yellow
- Unidentified bodies: black
- Potential terrorist threats: orange

Additionally, Interpol hosts a 'United Nations Security Council Special Notice' that lists individuals and entities included in the UN-consolidated list of *al-Qa'eda* and *Taliban* members and their associates. Second, Interpol manages and provides operational data to its members, including global databases of suspects, fingerprints, photographs, DNA and stolen identification and travel documents. Third, Interpol offers operational support services that include the development of the Interpol Fugitives Programme as well as the Specialised Crime-Fighting Programme. The latter refers to topics such as terrorism, drugs and organised crime, human trafficking and financial and high-tech crimes.

The above-mentioned categories summarise five areas of priority:

- Terrorism and public safety
- Drugs and organised crime
- Human trafficking
- Financial and high-tech crime
- Fugitives

Interpol's interest in terrorism can, however, be traced to its 54th General Assembly in 1985. Resolution 1 authorised the creation of a specialised group, that of Public Safety and Terrorism (PST), at the General Secretariat to co-ordinate and enhance co-operation on international terrorism matters. During this meeting it was concluded that in order to counter the changing character of terrorism, which had become increasingly institutional, brutal and global, police forces around the world should co-operate

maximally. Since taking this decision, Interpol has considered terrorism to be political, which excludes it from Article 3 of Interpol's Constitution focusing on political, religious, racial and military issues. Focusing on the act and not the underlying motivation, the resolution called for a practical instruction manual on terrorism, another symposium on terrorism, and international terrorism as an agenda item at all future General Assembly and Executive Committee meetings. In 1986, a first 'Guide for Combating International Terrorism' was approved (Deflem & Maybin 2005). The General Secretariat (Interpol 1998a) considers a terrorist incident to be of international significance where

- The aims published by representatives of the organisation affect more than one country
- The incident is planned and begins in one country and is carried out and ends in another
- The acting group's logistics emanate from abroad
- Its victims are citizens of different countries or engaged in the business of transnational organisations
- The damage caused affects different countries or transnational organisations or enterprises of foreign interests

Members of Interpol were called upon to send information about such incidents to the General Secretariat, as well as to concerned member countries. In the event of a terrorist incident, the Interpol representative of the particular country will send the following information to Interpol's headquarters:

- Type of incident
- Location, time and date
- Number of deaths and/or injuries
- Extent of property damage
- Modus operandi
- Claims of responsibility

Police agencies share the view that terrorism is a common law criminal activity. The General Secretariat focuses on the terrorist incident (the crime) and not on the organisation because the General Secretariat has neither the competence nor the authority to declare a particular group or organisation 'terrorist'. This enables Interpol to work through ideological differences among its members, especially when it comes to defining *terrorism*. In summary, when dealing with terrorism, Interpol has a two-phase strategy:

- Prevention, which includes the collection and analysis of all available information, with the objective to prevent, pre-empt, deter and/or initiate an appropriate police response
- Response phase, which dictates that, should a terrorist incident occur, an active and immediate law enforcement response must follow

In the process of combating multinational and transnational crime, namely terrorism, organised crime and drug trafficking, Interpol focuses on illegal firearms and explosives trafficking as a

common factor. The Interpol Weapons and Explosives Tracking System (IWeTS) is an international analytical database that has been designed to collect information, specifically that on illegal firearms and explosives tracking. This database has information on stolen guns, recovered weapons and major firearms traffickers. Furthermore, IWeTS provides up-to-date indices of firearm and explosives manufacturers, models and calibres of weapons and other vital information to assist in the identification of arms. This database is available to all Interpol member countries via its secure global communications network and may be automatically searched (Interpol 2007a).

Although Interpol plays a significant role in providing the instruments needed to combat terrorism, its effectiveness is limited by states. Since 1985, the international community has been divided on a definition of terrorism. The 14th Symposium on International Terrorism, presented to the General Assembly of Interpol, clearly demonstrated that the international community is still divided on defining terrorism and identifying which groups should be designated as terrorist organisations. The factors delaying consensus were identified as state interests, national consciousness and double standards adopted by certain Western countries. As a compromise, Interpol has aimed to seek international co-operation against concrete terrorist activities including hijacking, suicide bombing, killing of innocent civilians and funding of terrorists (*Xinhua News Agency* 1999).

The Interpol Criminal Information System and other specialised databases provide a mechanism through which member countries are able to exchange information on terrorist organisations and individuals. As a result of the escalation of terrorist activities, Interpol is currently realigning and restructuring to offer a more effective service to member countries. Changes to the General Secretariat include the creation of the following supportive structures: the Operational Support Directorate, which includes a 24-hour command centre; the Public Safety and Terrorism Sub-Directorate; and the Regional and National Police Services Directorate, all of which make varying contributions to the prevention and combating of terrorism (Kapinga 2003).

The Fusion Task Force was created in 2002 to galvanise Interpol's efforts to combat international terrorism. Its primary objectives are to

- Establish a global database at the Interpol General Secretariat on specific targeted terrorist organisations and their methods and memberships
- Identify the membership, hierarchy, fields of operation, modus operandi and criminality of these groups
- Develop target packages based on the analysis of collected data which facilitate the disruption and dismantling of criminal entities that play a central role in funding or supporting terrorist activities
- Assist member countries in exchanging investigative information
- Encourage relationships and information exchange between law enforcement and relevant partners, such as immigration, customs and security and intelligence among countries

As part of its initiatives, the Fusion Task Force initiated the following two projects:

Project Passage aims to disrupt the movements of terrorist organisations across national borders. It targets organized crime groups that provide logistical support to members of terrorist organizations in the form of identity and travel documents, illegal entry and immigrant, refugee and/or residence status. There is a high correlation between attendance at training camps and terrorist activity, so Project Tent works to identify individuals who have attended terrorist training camps and inform the countries where these subjects live. (Interpol 2007b.)

SOUTHERN AFRICAN REGIONAL POLICE CHIEFS COOPERATION ORGANISATION

By the time SARPCCO came into existence, Interpol had adopted a strategic plan that included the regionalisation of its services. The overall aim was to create structures at a regional level that would deliver the services of Interpol in a manner that addressed the unique needs of every region, since Interpol was specifically established as a global organisation to promote and facilitate international law enforcement co-operation. Taking advantage of this development, the members of SARPCCO resolved to use the Interpol Sub-Regional Bureau for Southern Africa as their secretariat. This step is provided for under Article 5(5) of the SARPCCO constitution.

Thus SARPCCO's activities should essentially ultimately promote the mission of Interpol. The Interpol Sub-Regional Bureau for Southern Africa therefore serves to advance the missions of Interpol and SARPCCO in combating transnational crime. Subsequently, SARPCCO was formed in 1995 at Victoria Falls, Zimbabwe. In terms of its constitution, the objectives of SARPCCO (2005) are to

- a) Promote, strengthen and perpetuate co-operation and foster joint strategies for the management of all forms of cross-border and related crimes with regional implications;
- b) Prepare and disseminate relevant information on criminal activities as may be necessary to benefit members to contain crime in the region;
- c) Carry out regular reviews of joint crime management strategies in view of changing national and regional needs and priorities;
- d) Ensure efficient operation and management of criminal records and effective joint monitoring of cross-border crime, taking full advantage of the relevant facilities available through Interpol;
- e) Make relevant recommendations to governments of member countries in relation to matters affecting effective policing in the southern African region;
- f) Formulate systematic regional police training policies and strategies, taking into account the needs and performance requirements of the regional police services or forces;

- g) Carry out any such relevant and appropriate acts and strategies for the purposes of promoting regional police co-operation and collaboration as regional circumstances dictate.

Areas of co-operation include

- Regional co-operation
- Cross-border crime
- Information sharing
- Interpol facilities
- Regional training

As an organisation made up of sovereign countries, SARPCCO had to stipulate the principles that govern the interaction between members.. Article 4 of its constitution provides that members will be governed by the following principles in their relations with one another:

- Respect for national sovereignty
- Equality of police services or forces
- Non-political professionalism
- Mutual benefit to all members
- Observance of human rights
- Non-discrimination and flexibility of working methods
- Mutual respect and goodwill

Since its inception, SARPCCO has focused on what are often called common law crimes, especially those of a transnational nature. Joint police operations targeting priority transnational crimes have been undertaken every year since 1997. According to Bruce (1998), the priority crimes are

- Cross-border organised crime
- Motor vehicle theft
- Drug trafficking
- Firearms smuggling
- Money laundering
- Stock theft
- Illegal immigration

In an attempt to facilitate co-operation, SARPCCO (2005) acts as a

... formal forum for the Police Forces or Services of the Southern Africa region be convened to consult and arrange closer co-operation and association among members on issues of common interest such as:

1. Formulation of agreement on joint operations across borders.
2. Reduction of time-consuming bureaucratic procedures on cross-border operations by sensitizing amendments to border control legislation in order to exclude police officers on duty, notably visa requirements.
3. Initiation and harmonization of legislation and practices in the region.

4. Improvements in the dissemination of criminal intelligence and information.
5. Initiation, developments and maintenance of appropriate regional training structures.
6. Deliberate efforts made to facilitate investigators' movements within the region.

Formalising these efforts in dealing with transnational crime, SARPCCO came up with a multi-lateral Agreement on Co-operation and Mutual Assistance in the Field of Crime Combating. This agreement was designed to facilitate the entry of police officers from one country into another for the purposes of investigation, retrieval of evidence or exhibits and tracing and locating of fugitive offenders. Article 5 of the agreement sets out the following areas of co-operation:

- Exchange of crime-related information on a regular basis
- Planning, co-ordination and execution of joint operations, including undercover operations
- Co-operation in border control and crime prevention in border areas, as well as follow-up operations

Significantly, neither constitutive document specifically refers to terrorism as an area for co-operation under the auspices of SARPCCO. However, they implicitly authorise co-operation in that area. The focus of SARPCCO has been predominately cross-border crime. In this regard, seven joint operations have been initiated since 1997. All have focused on organised transnational crime and were complemented by a series of intelligence-sharing projects and several regional training courses run under the banner of Interpol and SARPCCO.

As stated above, one of the objectives of SARPCCO is to ensure the efficient operation and management of criminal records and the joint monitoring of cross-border crime while taking advantage of the relevant facilities available through Interpol. SARPCCO's role is bound to change. Areas of focus will broaden, taking into consideration changing regional needs as well as global priorities, such as terrorism.

Interpol has authorised the establishment of an Anti-Terrorism Early Warning Desk at the Interpol Sub-Regional Bureau for Southern Africa in 2007, after it had been a pilot project for a number of years. Subsequently, the Anti-Terrorism Early Warning Desk initiated Project Signal as a sub-regional anti-terrorism project designed to assist and widen Interpol's anti-terrorism efforts to collect and share information and intelligence, provide analytical support and enhance the capacity of member countries to address threats of terrorism and organised crime. In an attempt to harmonise counter-terrorism legislation and practices in the region, SARPCCO drafted model counter-terrorism legislation and introduced a counter-terrorist training curriculum for the sub-region (Goyayi 2007).

In recognition of sensitivity to counter-terrorism initiatives in the sub-region, providing a broad overview of the purpose of an Early Warning Centre was considered important. Predominately, its function is to enhance existing capabilities to proactively prevent and combat terrorism. The rapid collection, analysis and

dissemination of reliable information lie at the very heart of an effective early warning system. Attempts to manage these threats to human security need to be timely and non-reactive. Early warning can be described as the ability to collect and analyse information in the interests of providing strategic options for preventive action or informed response. When applied to the possibility or eventuality of violent conflict, it consists essentially of four activities:

- Collecting and verifying information
- Analysing information
- Scenario building and making optional responses
- Communicating the above to decision makers

Early warning is not equal to risk assessment. Risk assessment often uses quantitative models to calculate the likelihood and degree of crisis escalation. Early warning, however, is designed to anticipate rather than predict possible outcomes. It is also highly context sensitive.

Table 5. Comparison between early warning and risk assessment

Early warning	Risk assessment
Anticipates possible outcomes	Predicts probabilities
Is dynamic	Is static
Is context sensitive	Is general
Consists mostly of qualitative analysis	Consists mostly of quantitative analysis
Focuses on particular indicators	Focuses on general indicators
Traces narrative patterns	Analyses comparative patterns and trends

Although many equate early warning with traditional intelligence systems, one should keep some clear distinctions in mind. Certainly early warning and intelligence both depend on collecting and analysing information, scenario building and giving decision makers recommendations on options for action and intervention. However, early warning differs from traditional intelligence (state security) in that it could also address other threats to human security, for example food security or the impact of HIV/AIDS on the economic development of the country. The two differ further in terms of their modus operandi. Intelligence systems rely primarily on secrecy, situation rooms and encrypted communications of classified information, while early warning depends principally on transparent methods and the sharing of information, even though these exchanges and the communication of results may be classified and restricted to different levels of users. A further difference is that information and analysis are produced in a transparent rather than a closed system. For early warning to succeed, no single state or organisation can act alone or have a monopoly. Co-operative efforts at international,

national, regional and local levels improve both the quality and the quantity of gathered relevant information. However, trust becomes a stumbling block in the preparedness to share information not only among agencies but also among states. Such information must meet the standards of being timely, accurate, valid, reliable and verifiable, creating additional challenges to sharing information beyond a particular agency.

However, information gathering is only the first step. It needs to be followed by analysis, which has to occur in such a way that it creates a solid basis for anticipating the actions of others and preparing to respond. The aim is to alert governments and the public to impending problems and to allow them the opportunity to take preventative action. Reliably informing decision makers requires the formulation of strategic options directed at taking preventative action. Though active intervention is not necessarily guaranteed, the options need to at least be articulated.

In summary, early warning on a topic such as terrorism might be challenging, particularly in the light of trends of transnational terrorism. Nevertheless, sub-regional structures will be useful to develop sub-regional strategies, as well as to understand and design approaches to common threats.

CONCLUSION

Although this work predominately focuses on sub-regional counter-terrorism initiatives in southern Africa, one needs to place counter-terrorism in the context of the threat, actual or perceived. Border control is considered to be of utmost importance in preventing and combating terrorism. However, in terms of ensuring security and stability in the sub-region, border control is almost impossible. The geographical structure of countries in the sub-region has rendered them prone to infiltration. Most international borders consist of natural barriers such as rivers, mountains and vast forested areas that often fail to prevent the free movement of both contraband and people. Financial constraints to providing manpower to guard borders further limits the capability to monitor and patrol long borders. In addition, immigration posts are predominately found on the main roads entering and exiting countries while the byways are left without any checkpoints.

In terms of numbers, Islamist extremism does not present the same threat to the southern African sub-region as it does to other African countries. However, danger does still exist. The threat posed by Islamist extremism and transnational terrorism cannot be evaluated in terms of numbers. It should, rather, be considered in terms of ideology and the commitment and ability of individuals and organisations to manipulate people, particularly if actual or perceived feelings of marginalization exists.

Although the impact of Islamic extremism in southern Africa is limited in comparison to that in East and North Africa, the region is not safe from sporadic incidents of extremism. These incidents raise concern. This is not to imply that all countries in southern Africa should be placed on high alert. The primary concern, rather, is that governments and their security forces should not perceive these incidents as direct links to *al-Qa'eda*

but, instead, as products of fear and frustration on the part of local communities that can and will be manipulated. The primary challenge will be to give due consideration to such fears and frustrations rather than to drive moderate believers to extremism through racial profiling, arbitrary arrests and degrading and draconian legislation that criminalises Islamic groups by declaring them terrorist organisations. Equally, one should prevent and guard against developing double standards in addressing terrorism, particularly when distinguishing between transnational (with specific reference to *al-Qa'eda*) and domestic terrorism; both are threats to human security. Dealing with terrorism is a sensitive issue, whether or not one addresses the underlying causes or their consequences. It is therefore suggested that one study terrorism as a form of desperate communication, enforcing the principles behind the UN Global Counter Terrorism Strategy.

Without focusing on all elements, one needs to emphasise and acknowledge the following:

- The threat of terrorism in southern Africa is predominately domestic. It flows from feelings of marginalisation; political frustration as a result of exclusion; and inability or lack of interest on the part of governments to address these and other challenges. Equally important are governments' reactions when confronted with acts of domestic terrorism. In adopting short-term strategies (arrest and prosecution) or scare tactics, they may not address the underlying issues, and, therefore, ensure that the same causes will be used as rallying points in the future. Furthermore, considering the international interest in terrorism, incidents of domestic terrorism may either be brushed aside or be overemphasised and categorised as terrorism by repressive regimes in an attempt to ensure international support for their actions and policies.
- Most countries in the region, and particularly their citizens, consider the threat of transnational terrorism as part of an international agenda of certain Western countries. This perception implies that initiatives introduced on a national or international level will be met with suspicion.
- Notwithstanding these perceptions, the vulnerability of countries in southern Africa as targets of domestic terrorism or as safe havens to individuals associated with transnational terrorism is an area of concern. Contributing particularly to this vulnerability is the limited threat perception that could be worded as 'It will never happen to us.'
- This threat perception is often measured and/or formed according to individuals and groups who attract the attention of the broader population. Threats are still being measured according to incorrect frames of reference: that centralised organisations are responsible for transnational terrorism. However, the global trend is to believe that the threat comes from decentralised cell structures, often among families or close friends.
- The radicalisation process itself should be considered when one assesses the threat. Consider the role of the Internet; it is an anonymous and secluded contact

medium that can reach individuals who would previously not have been approached and radicalised easily. The Muslim community in southern Africa is in the minority (not implying that terrorism is limited only to Islam), but unfortunately feelings of 'us' versus 'them' may arise, particularly when individuals with ulterior motives build on existing anti-Western sentiments as a result of US foreign policies, especially in the Middle East where the *War on Terror* poses a threat.

- The inability to communicate or the lack of communication between the state, its security apparatus and ordinary citizens can easily contribute and even facilitate the threat of terrorism in the sub-region. Security and particularly terrorism are considered to be state-only agendas, but terrorism legislation often makes ordinary citizens responsible for informing the government of suspicious activities. However, this sort of co-operation between private citizens and state bodies cannot be expected without the building of a partnership based on information and mutual trust.

In terms of specific compliance, most of the SADC states have yet to become parties to all the relevant UN conventions. Considerable effort is still required from countries in the sub-region to accomplish this, and most SADC states still have a long way to go before they are in complete compliance. Barriers to compliance include inadequate legislation, the impression that terrorism is not a serious threat at the moment and a lack of resources and human capacity.

Considering that all members of SARPPCO are also members of Interpol, this structure could play a positive role in preventing and combating terrorism. In addition to the challenge of breaking down barriers among police agencies, prevention and combating initiatives are not limited to police agencies but involve other intelligence services that do not fall under the authority of the Chief of Police of a particular country. Examples are military intelligence and national intelligence agencies, which do not reside under the same ministry or chain of command. National counter terrorism committees attempt to overcome this challenge, but, on a sub-regional level, SADC could play a leading role in developing a sub-regional strategy against terrorism and other transnational organised crime. The ultimate test will be the creation of trust among countries sharing information. Meanwhile, politicians and citizens continue to question the importance of focusing on terrorism when they are confronted with more direct threats to their immediate security.

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Counter-Terrorism Measures in West Africa

Gani Yoroms

INTRODUCTION

Terrorism has continued to threaten human security in the twenty-first century, just as the Cold War did during the second half of the last Century. But whereas, the key actors of the Cold War were known, terrorism and terrorist phenomena are fluid and continue to meander around the world defying counter-measures. The difficulty of defining the phenomenon makes it even more problematic to determine acceptable counter-terrorism measures in spite of several municipal, bilateral and multi-lateral efforts that have been undertaken. First, there has never been a comprehensive approach to synergise the various counter-terrorism measures. Second, hitherto, several treaties only addressed specific manifestations of terrorism such as bombings, the hijacking of ships and aircraft and attacks on diplomatic staff. The terrorist acts of 11 September 2001 (9/11), therefore, were a watershed in the fight against terrorism as these acts jerked the world to realise that better methods were needed to address this global security threat. Specifically, the United Nations Security Council passed a number of resolutions that called on the international community to redouble its efforts to prevent and suppress terrorist acts by increasing co-operation and full implementation of the relevant international anti-terrorist treaties and conventions and Security Council resolutions. It urged member states of the UN to cooperate with each other in the fight against terrorism and, specifically, to enact or amend existing legislation that will make comprehensive provisions for the prevention, suppression, combating and punishment of acts of terrorism.

Prior to 9/11, the Organisation of African Unity (OAU), now the African Union (AU), had endorsed the OAU Convention on the Prevention and Combating of Terrorism (1999), which called on state parties to review their national laws and establish national measures against terrorist acts. This was followed by a protocol to the Convention in 2002 and a plan of action in 2004, all in compliance with the UN Security Council resolutions and the OAU Conventions directive. Some African countries took decisive counter-terrorism measures, including the enactment of legislation and sharing of information. Countries in North and East Africa that have suffered many casualties from the menace of terrorism have been swift in implementing these measures. It is against this background that one seeks to establish how West Africa has been able to define the parameter of counter-terrorism measures.

For a proper understanding of counter-terrorism in West Africa, the paper first attempts to establish what constitutes West Africa. This is done by defining the political geography of the subregion. Next, it seeks an understanding of the patterns of terrorist activities in West Africa and, third, it identifies the counter-terrorism measures that are in place or being put in place in the subregion. Fourth, the paper identifies the challenges of counter-terrorism in the subregion and, indeed, the continent of Africa. The work concludes with recommendations for the way forward.

HISTORY AND POLITICAL GEOGRAPHY OF WEST AFRICA

The distinction needs to be made between West Africa as a geographical entity and Western Africa as a subregional political entity. West African countries are countries that are contiguous in terms of geographical location at the western plane of Africa, while Western African countries are countries encompassing both West Africa and other countries; though they maintain close geographical proximity, they are apart. However, in spite of their geographical distance (as in the case of some Maghreb countries) or closeness (as in the case of Cameroon and Mauritania) from West Africa, certain historical, cultural and political linkages or influences have kept them together. For instance, Mauritania, which is located in West Africa by geographical extension, has, for political reasons, opted to be with Maghreb while Cameroon has joined the Central African block. Therefore, when economic and political issues concerning West Africa are discussed under the umbrella of the Economic Community of West Africa States (Ecowas), they are excluded because they are not included politically in spite of geographical proximity. Nevertheless, historical and cultural circumstances have always made it possible for events happening in any part of the region to be either mutually reinforcing or counterfactually challenging. For instance a historical linkage brought the West and Western Africa together through the trans-Atlantic and trans-Sahara (slave) trade. In the course of these trades, there were centuries of exchanging slaves and commodities. The trans-Saharan trade subsequently led to the spread of the Islamic religion from North to West Africa. Eventually, religion, economy and politics began to play a tremendous role in the relationship that developed between and among people and nationalities of West and North Africa. This took place long before colonial rule and the trans-Atlantic slave trade in Africa.

In geographical terms, West Africa occupies an area of 5 113 million square kilometres to the north of the equator and the south of the Sahara Desert. It stretches from Nigeria and Niger in the east to Mauritania and Senegal in the west, on the coast of the Atlantic. The subregion has undulating plains of less than 300 meters above sea level. It has a tropical climate with a wet season (April to September) and a dry season (October to March) alternating. The subregion is extremely fertile for terrorism at its border with the Sahel and the Sahara Desert in the north and in the savannah and rainforest mangrove areas along the Atlantic coast in the south. Thus combating terrorism has been difficult because of

- The contour of the political and topographical nature of the region
- The cultural pluralism that is defined by deep barriers of religious and political contradiction
- The long period of military rule and breakdown of social values
- The increase and spread of economic crises in the sub-region compounded by the lack of human capacity and unemployment, poverty and rise in trans-border crimes and arms proliferation
- The general nature of criminal states and failed states, which is sustained by human rights abuses that, in consequence, exacerbate the rise of domestic violence and terrorism

It is on the basis of these factors that one can understand the pattern of terrorism in West Africa.

THE PATTERN OF TERRORISM IN WEST AFRICA

The definition and meaning of terrorism is still being contested despite its long shadow spreading across the globe since 9/11. This shadow spreads fear and intimidation and everyone catches the terrorist flu. West Africa has asked itself whether terrorism is a real, emerging or an imagined threat (Obi 2006:87-101). However, several crises related to economic and political contradictions have clearly triggered the menace of terrorist activism in West Africa. The region of West Africa indeed provides a wide geographical and cultural base for conflicts that that could easily adopt terrorism a tactic. This fact has made the US and its allies fear that

... if terrorists manage to consolidate bases in the Sahel, the Southern fringe of the Sahara Desert that extends from Mauritania in the West to Sudan in the east, they may be able to penetrate into the soft underbelly of Europe via Morocco and Algeria. That was the route taken in 2004 by the perpetrators of the train-bombings in Madrid, most of them Moroccans (The Economist 2007).

This has made it possible for growing international interest in the subregion to bring 'stability to the poor, fragile Muslim countries

along the Saharan belt that might otherwise collapse and create havens for terrorists of the sort Afghanistan became under the Taliban' (The Economist 2007).

West Africa's political, economic and social conditions make it a possible terrorist breeding ground (Levitt 2004). Although the region is rich in resources, it is poor in democratic practices. There is a lack of protection for civil society and human rights. Thus regional, ethnic and religious conflicts abound, as well as economic distress, which leads to lawlessness, corruption and criminal activities. In the cities of West Africa, rapidly growing populations of unemployed or underemployed young men are targets for those who seek to exploit resentment and despair for their own purposes.

West Africa may not be a terrorist hotbed, but it provides sufficient logistical support for international terrorist organisations and criminal syndicates. The Lebanese terrorist organisation Hezbollah is said to have used the subregion as a fertile area for fundraising without engaging in any terrorist activities. Levitt (2004) notes that

Lebanese Hezbollah has been present in West Africa for years drawing support from the significant Lebanese commercial community. Donations from Lebanese in West Africa are a major source of funding for Hezbollah's terrorist activities in the Palestine. According to Israeli and US intelligence, Hezbollah raises hundreds of millions of dollars a year in Africa. The same tactics and networks developed by Hezbollah are now used by *al-Qa'eda*.

The US Department of State (2006) refers to the same situation. While Levitt's account may appear exaggerated, US and Israeli propaganda have provided some justification for this intelligence report. In December 2003, a UTA flight bound for Beirut crashed on take-off from the Republic of Benin, killing, among other passengers, the senior Hezbollah official resident in Africa and two of his aides, who were reportedly transporting \$2 million in cash to Lebanon (Levitt 2004).

Both the vastly and sparsely populated areas of West Africa and the ill-equipped security of its borders have been used effectively by terrorist organisations for easy transportation of light arms, money laundering and the conduct of military training for recruits. The illicit trade in diamonds and other precious commodities in Liberia, Sierra Leone and the Democratic Republic of Congo is a source of fundraising for Hezbollah, *al-Qa'eda* and other terrorist organisations. It has been established that Lebanese diasporas in West Africa penetrated Sierra Leone where they purchased diamonds from the rebel group the Revolutionary United Front (RUF). The proceeds were transferred equally to the *al-Qa'eda* and Hezbollah networks with Ibrahim Bah, a key member of RUF, acting as a front.

The international fear of terrorism extends to the southern part of the subregion, towards the west coast of the Atlantic, where terrorists might be able to target the US and her allies, and has encouraged the US to turn its attention to West Africa as a strategic region. In addition, West Africa with its vast Muslim population has witnessed a rise in Islamic fundamentalism. The Salafist Group

for Preaching and Combat (GSPC) has established a stronghold in the subregion as it spreads southward to the Sahel and Sahara regions. For instance, on 4 June 2005, members of the Sahel faction of the GSPC attacked the remote Mauritanian military outpost at El-Mreiti, killing at least 15 Mauritanian soldiers and wounding at least an equal number (US Department of State 2006). Members of the GSPC have continued to operate in the Sahel region, crossing the unpatrollable terrains of the borders around Mali, Mauritania, Niger, Algeria and Chad to recruit extremists within the region for training and terrorist operations in the trans-Sahara area, and possibly for operations outside the region (Levitt 2004).

In Nigeria, the Salafist ideology reared its head in Yobe in 2003 when a group called *Al Sunna wa Jama'a* engaged in what they called 'purification of Islam'. Between December 2003 and January 2004, 17 of these self-styled Talibanists were killed by the Nigerian security operatives when they attempted to impose a puritan Islamic system on the local community where they set up their well-fortified, military-style camps. Furthermore, the group attacked two local government headquarters in Borno State in September 2004, causing death, destruction and pain to residents (Associated Press 2004). On April 12, 2007, another group of Islamic militants attacked security forces in Kano State, but they were overpowered and 30 of them lost their lives (*al-Africa.com* 2007).

There is, therefore, no doubt that international terrorist organisations have a presence in West Africa and have used the subregion as an operational base without carrying out any major terrorist attacks of international significance. Nevertheless, while using ancient trade routes, they have continued to exploit the lax borders, unstable political system, illicit trade, proliferation of light arms and avalanche of wars and perennial civil unrest in the subregion to raise funds and expand and strengthen their operational capacity. The absence of a major attack on any international terrorist target situated in West Africa may, therefore, be a deliberate tactic to insulate their hiding place from the prying eyes of the international community in order to sustain their activities. The presence of oil bunkers in the Niger-Delta region of Nigeria has exacerbated the transnational trade in light arms and heightened insurgencies and the disruption of oil installations. Foreign oil workers are being held hostage, and there are indications that the insurgent groups in the Niger Delta have cooperated with major international terrorist groups.

COUNTER-TERRORISM MEASURES IN WEST AFRICA

The challenge of the growing menace of terrorism in and around West Africa has enabled countermeasures to prevent its spread and to curb the consequences of it reaching across and exploding in the subregion. There are four levels of assessing counter-terrorism measures in West Africa. They are the following: country specific; regionally sponsored; bilateral and multilateral; and internationally supported countermeasures.

Fifteen countries in the West African subcontinent have come together as an economic community of West Africa states

(Ecowas), and they are expected to take country specific counter-terrorism measures. As noted earlier, there are also Western African countries that relate to West Africa historically, culturally and politically, such as Mauritania, Morocco, Libya, Cameroon, Algeria, Sudan and Tunisia. Though the paper focuses on West Africa, particularly Ecowas member countries, most of the references apply to culturally critical countries to the region. Ordinarily, it is expected that each of these countries ought to have established legislations to regulate and counter terrorism on the basis of the UN and AU resolutions that criminalise terrorism and acts of terrorism. For instance, Resolutions 1368 and 1377 call for information and intelligence sharing among states and regions and the tightening of immigration procedures as a means of fighting terrorism. Most of the countries in the subregion appear to have been unable to put in place legal structures for countering terrorism. However, the critical countries, in spite of the challenges they are confronted with, have tried to enact and/or evolve legislative measures to combat and prevent terrorism. These critical and threatened countries are Nigeria, Ghana, Sierra Leone, Mali and Mauritania. As noted earlier, 9/11 provided the basis for a concerted global war on terrorism. Several resolutions passed by the UN Security Council called for the enactment of legislation to combat terrorism. Perhaps because of the virtual non-occurrence of any terrorist incidents in West Africa, individual countries (except for Nigeria, Ghana, Senegal and Mauritania) have been reluctant to take decisive anti-terrorism measures as recommended by the UN Security Council resolution and the OAU Convention on the Prevention and Combating of Terrorism. The country report on terrorism initiated by the UN Security Council to ensure that member states report periodically to the body on their counter-terrorism efforts has been met by an apathetic response from most West African states. Notwithstanding the above, an overview of counter-terrorism measures in critical West Africa states is important.

Nigeria

Nigeria is at the forefront of counter-terrorism action in West Africa because of its diplomatic and political influence in the subregion. Apart from backing UN Resolutions 1267, 1333 and 1368, which condemn terrorism and call for concerted efforts by member states to eliminate it, Nigeria is party to 13 universal anti-terrorism instruments. It has been in the lead in Ecowas and the Africa Union (AU) in sponsoring joint intelligence and security conferences on counter-terrorism (US Department of State 2006). The Nigerian security forces have always cooperated swiftly with demands for the investigation of terrorist threats and the sharing of information and intelligence in respect to counter-terrorism. The Nigerian military has a counter-terrorism unit at the Armed Forces Command and Staff College in Jaji, Kaduna, which is specially equipped to train officers and men in counter-terrorism tactics and strategies. Counter-terrorism units for monitoring and tracking down acts of terrorism exist in most strategic military formations in the country. In addition, the Nigeria Central Bank has adopted reforms that seek to tighten the financial system and make money laundering extremely difficult. Nigeria has relentlessly supported the fight against terrorism

and backed a diplomatic stance against terrorist organisations. Presently, three people are standing trial at the Federal High Court for indulgence of and support for terrorists and terrorism in Nigeria.

Despite these efforts, evolving a comprehensive legislation on terrorism has been a challenge. The only provision under which one could be charged for terrorism is Section 14 of the Economic and Financial Crimes Commission Act, which does not cover the various manifestations of terrorism expansively. Although the national penal laws (for instance, the Penal Code and Criminal Code) that regulate the criminal justice regime in the north and south, respectively, have made provisions covering criminal offences such as abduction, kidnapping, assault and causing grievous harm, they do not specifically recognise the offence of terrorism. In addition, an executive bill, the Prevention of Terrorism Bill (PTB) of 2006 presented to the upper legislative chamber (Senate), was thrown out in September 2006, thereby creating a serious setback to what would have been a major boost to counter-terrorism. However, certain key issues in the Bill have caused serious concerns that made it possible for the Senate to consider the Bill. For instance, it introduces incitement as a means of terrorism and gives blanket powers to the President to declare any individual or organisation 'terrorist'. This overwhelming power was exercised by the government of President Obasanjo even when the Bill was being deliberated by the Senate. His government declared opposition politicians, such as former Senate President Dr Iyorchia Ayu, terrorists. The attitude of the government has shown that if the Bill had been passed into law, Nigeria would have experienced dangerous situations in which terrorism would have been combatted through human rights abuses. Although this aspect of the Bill was appalling, most Nigerians have, however, expressed their dissatisfaction with the adoption of the US brand of counter-terrorism, which equally hounds opposition and shuts down dissenting voices. Despite the legislative constraint, Nigerian security forces have been proactive in counter-terrorism issues. The recent clamp-down on the Taliban-styled militia in Kano State left 30 of the militia men dead (*allAfrica.com* 2007). This event clearly testifies to Nigeria's stance on terrorism.

Senegal

Senegal has been playing a prominent role in the war against terrorism. President Abdoulaye Wade pioneered a call for an African pact against terrorism at different forums. The Senegalese security forces have been involved in various strategic levels of training in counter-terrorism. They have benefited from the Trans-Saharan Counter-Terrorism Initiative (TSCTI) and from the US ATA programme. Apart from hosting the command post portion of US European Command (Eucom) that sponsored operation Flintlock, Senegal participated in a Eucom-sponsored seminar in Ghana on preventing conflict and combating terrorism (US Department of State 2006).

The Senegal Central Bank and other regional banks based in Dakar have modified regulations to restrict terrorist funding and money laundering. The country has created a regional counter-terrorism intelligence centre, using its security and intelligence

services, with support from the United States. On the legislative front, the Constitution of Senegal affirms the supremacy of international treaties over municipal laws. Accordingly, Senegal is a signatory to most international and regional instruments on terrorism. It has ratified the International Civil Aviation Protocol for the Suppression of Unlawful Acts of Violence at Airports and made commitments to ratify the other treaties in the near future.

Senegal does not have any specific legislation on terrorism. However, under presidential order, a working group of experts was established in 2002. The ministerial group, under the authority of the Ministry of Justice, reviewed the Penal Code and the Code of Criminal Procedure with a view to criminalise certain crimes related to terrorism. The draft law amending the Penal Code defines all terrorist acts recognised as crimes, specifying aspects such as ecological terrorism. Apologies for acts of financing terrorism are punishable. Penalties for terrorist acts include fines and prison sentences ranging from 10 to 20 years or to life or death sentences.

Ghana

Ghana has cooperated with the coalition against terrorism by sharing information and intelligence. The Ghanaian government has sponsored a conference on counter-terrorism, while the security forces have intensified border safekeeping. A specific law on terrorism has not yet been passed in Ghana, however, the government, in its 2002 report to the UN Security Council Counter-Terrorism Committee, said it had directed the Ministry of Justice to expedite action on a terrorism bill. For the moment, the extant criminal justice regime can be relied upon in the event of any occurrence of a terrorist act or acts in Ghana.

Mali

Mali has taken a firm anti-terrorism position against the GSPC, a terrorist group that has found a base in northern Mali. The country has been responsive to requests for information and intelligence sharing. Mali is a beneficiary of both the Pan-Sahel Initiative (PSI) and the TSCTI. The country does not have legislation on terrorism. It therefore relies on the existing Criminal Code.

Mauritania

Mauritania is a classic example of the widespread condemnation of the pursuit of counter-terrorism measures by African leaders with the support of the United States. The deposed leader of Mauritania, President Sid'Ahmed Ould Taya, is said to have used counter-terrorism measures to justify human rights abuse, including the indiscriminate arrest of opposition elements (Motlagh 2005). The GSPC attacks on the Mauritania military outpost in 2006 led to the arrest and detention of many persons perceived to be members of the GSPC. However, critics said most of the people arrested were President Taya's political opponents. Since the President was deposed in a bloodless military coup on 3 August 2006, the transitional leadership has released more than 100 political opposition figures and more than 40 Islamists arrested without credible evidence of guilt. However, 19 additional Islamists with alleged links to international terrorist

organisations are left behind bars awaiting trial. The deposition of President Taya has, however, slowed down the aggressive counter-terrorism measures in Mauritania even though the transitional government has equally pledged to combat terrorism and has so far demonstrated that resolve by cooperating with the US government (USG).

Sierra Leone

Tran-national terrorism does not seem to be a top priority of Sierra Leonean foreign policy since the country is deeply engrossed in its postwar reconstruction and rebuilding efforts. However, the Sierra Leonean government of President Tejan Ahmed Kabbah has pledged to end illegal diamond mining and to properly improve security on its borders. The policing of the country's borders will therefore curb the free movement of terrorists and arms proliferation. According to reports, Kabbah has established secret dungeons with the support of the US in the eastern town of Yenga where suspected terrorists or agents of the Lebanon-based Hezbollah group are kept. This area is shielded from Sierra Leoneans because Guinean forces occupy the fringe of the border with them (Sankoh 2007).

COUNTER-TERRORISM MEASURES OF THE ECONOMIC COMMUNITY OF WEST AFRICA STATES

Apart from country specific counter-terrorism measures undertaken by states, the Economic Community of West Africa States (Ecowas) has instituted counter-terrorism measures in the subregion. Although the subregion is distant, compared to East Africa, from the Arabian Peninsula, the ubiquitous nature of terrorism necessitate collaboration with other states outside the subregion or the region as a whole.

The pioneer step taken by Ecowas to curb terrorism is the Ecowas Moratorium Against Importation and Exportation of Small Arms and Light Weapons (SALW). This moratorium was signed by all member countries in October 1998 and renewed in October 2001. Its code of conduct came into force in 2002. However, to give the moratorium the force of law and avoid its abuse and non-compliance by member-states, it has been upgraded to a convention. This is known as Ecowas Convention on Small Arms and Light Weapons. It has been ratified by most member states, and is legally binding in all member states. The 1999 Protocol on Conflict Prevention Resolution, Management and Security (also known as Ecowas Mechanism) provides comprehensive measures to prevent conflict and, invariably, terrorist-related phenomena. It has four observatory zones across the region to check threats of conflict and terrorism.

On the 23 September 2004, the police chiefs of Ecowas met in Abuja to foster security collaboration to fight transborder crimes and terrorism. Earlier, in April and June of 2006, the West Africa Internal Security Chiefs (Waisec) met in Abuja to also foster cooperation in intelligence sharing on, among other things, terrorism. These meetings, though not institutionalised, have been regularised in the subregion. Most importantly, the

Defence Commission of Ecowas, made up Chief of Defence Staff of member states has been working collectively on regional defence and security issues.

BILATERAL AND MULTILATERAL MEASURES

Apart from Ecowas-led measures, there are bilateral and multilateral cooperation arrangements among Ecowas member states. One such measure is the four-nation arrangement between Nigeria, Ghana, Benin and Togo on cooperation in security and intelligence. Cooperation arrangements have also been made between the intelligence and security services of Nigeria and Ghana and between the immigration and customs service and police departments of Nigeria, Niger and Benin. In addition, joint border cooperation agreements between Nigeria and Benin and between Nigeria and Chad now exist.

Other areas of cooperation in bilateral and multilateral countermeasures among countries in the region involve the following steps:

- Cross-border criminals who commit crimes in one state and take refuge in another within the Ecowas subregion are to be extradited. An example is the case of Hamani Tidjani, a Nigerian resident in Cotonou, Benin who operated a criminal gang between Nigeria and Benin. He was arrested in Benin and handed over to the Nigerian authorities to face trial for crimes committed in Nigeria.
- An informal agreement permits trans-border pursuit of criminals across borders of Ecowas member states.
- Intelligence and strategic training of security forces of fellow West Africa countries is provided when such requests are made. Nigeria has provided such training to Sierra Leonean and Liberian security forces.

INTERNATIONAL SUPPORT FOR COUNTER-TERRORISM MEASURES IN WEST AFRICA

As noted earlier, the ubiquitous nature of terrorism requires cooperation among all peace-loving nations and regions of the world. West Africa's challenge particularly requires this external cooperation because of its proximity to the axis of terrorism at the west of the Atlantic coast and the Sahel-Sahara region. The US, in particular, and its allies are extremely concerned about this part of the world, which is rich in natural resources. It provides 15 per cent of the US oil import with an expected increase to 25 per cent in the next decade (Obi 2006). The area is not only likely to become a competition zone between the US and China but also, more fundamentally, a haven for terrorists who might use it to inflict damage on the global strategic interests of the US and its allies. Lubeck et al (2007) give the following reasons for the strategic concerns:

- Rapidly growing global demand for oil, especially by China and India, as well as the US

- Declining production among several key suppliers, and perhaps globally, as a result of rapid depletion and under-investment in the Persian Gulf region
- Increased political instability in the Middle East, site of the largest reserves, due to the US occupation of Iraq, Sunni-Shi'a rivalries and Islamist-based resistance movements

To avoid a repetition of Middle Eastern events in the West African subregion, the US has set up structures to tackle the vulnerable nature of the area, which is open and insecure because of the proliferation of arms, trans-border crimes and fragile and weak states. This hitherto neglected area is becoming a hot spot of US strategic interest. Lubeck et al (2007) therefore believe that

... along with Latin America, West Africa is expected to be one of the fastest growing sources of oil and gas for the American market. ... Nigeria, in partnership with the private sector, has set ambitious production goals as high as 5 million barrels of oil per day over the coming decade.

Extra-Ecowas counter-terrorism measures have been driven by stakeholders through an arrangement, between West African countries and their North African counterparts, to work together under the Sahel-Saharan Community (or its French acronym Cen-sad) to share intelligence and strengthen their security cooperation to prevent the spread of terrorism. As a Pan-Sahel organisation, Cen-sad is intended to provide training to the military of Sahelian countries such as Mali, Niger, Mauritania and Chad on border and anti-arms-trafficking tactics. In addition, the establishment of the TSCTI remains the most comprehensive and most vigorously pursued extra- Ecowas counter-terrorism effort by the US despite the controversies that have trailed it. The TSCTI is a multi-faceted strategy aimed at defeating terrorist organisations by strengthening regional counter-terrorism capabilities, enhancing and institutionalising cooperation among the security forces in the region, promoting democratic governance, discrediting terrorist ideology and reinforcing bilateral military ties with the USG. Financing the initiative is aimed at enhancing the indigenous capacities of governments in the Pan Sahel (Mauritania, Mali, Chad and Niger, as well as Nigeria and Senegal) to confront terrorist organisations in the region and to facilitate cooperation between member states, their Maghreb partners (Morocco, Algeria and Tunisia) and the US.

The major components of the initiative are the following:

- Creating a new regional focus for trans-Saharan cooperation, including the use of established regional organisations, such as the AU and its new Centre for the Study and Research of Terrorism in Algiers, to improve border and aviation security and overall counter-terrorism readiness
- Providing training assistance on terrorist interdiction under the Counter-terrorism Assistance Training and Terrorist Interdiction Programme (TIP) for the trans-Saharan region and beyond
- Providing public diplomacy programmes that expand outreach in the Sahel and Maghreb regions and Nigeria and

Senegal with emphasis on preserving the traditional tolerance and moderation displayed in most African Muslim communities and countering the development of extremism, particularly among youth and rural populations.

- Creating democratic governance programmes that particularly strive to provide adequate levels of USG and support for democratic and economic development in the Sahel, thereby strengthening those states to withstand internal threats
- Initiating military programmes intended to expand military-to-military cooperation to ensure adequate resources are available to train, advise and assist regional forces, and to establish institutions promoting better regional cooperation, communication and intelligence sharing

Africa and non-African analysts have criticised the presence of the United States government (USG) in this region under the guise of counter-terrorism. Critics of this initiative argue that the region is not a terrorist zone, as some senior US military officers assert, and they warn that a heavy-handed military-social campaign that reinforces authoritarian regimes in North and West Africa could fuel radicalism where it scarcely exists (Motlagh 2005).

Therefore, although the Sahara is not a terrorist hotbed, repressive governments in the region are taking advantage of the Bush administration's *War on Terror* to tap US largesse and deny civil freedoms. For instance, former Mauritanian President Sid'Ahmed Ould Taya used the threat of terrorism to justify human right abuses. He jailed and harassed dozens of opposition politicians charging that they were connected to the Salafist Group of Preaching and Combat (or its French acronym GSPC). This made the TSCTI so unpopular among Mauritians that they protested against it in June 2005. The fear of Africa governments' using counter-terrorism to clamp down on opposition and repress people is strong. It is certainly palpable in Nigeria, where, in an effort to damage their political image, opposition figures were charged with financing terrorism in the wake of the 2007 general election.

Critics of the initiative have argued that the US presence in the region is designed to exploit the vast energy potential of the region rather than provide counter-terrorism measures. As early as 2002, Walter Kansteiner, former Assistant Secretary of State for African Affairs said, 'African oil is of national strategic interest to the US and it will increase and become more important as we go forward' (Kansteiner and Alexander 2002). Another report by the US National Energy Policy Development Group anticipates that by 2015, West Africa will provide a quarter of all oil imported by the United States. The affirmation that West Africa and African oil is of strategic interest to the USG, coupled with its vigorous establishment of a military presence in the region despite the virtual non-occurrence of terrorist incidences has heightened suspicion about the integrity of the TSCTI. It is commonly held that apart from the 2003 kidnapping issue in Algeria, the US has never presented the indisputable verification of a single act of alleged terrorism in the Sahara. This was only intended to serve as a cover

for the US to gain access to the strategic resources of Africa (Motlagh 2005).

This suspicion has gained credibility by the recent mutation of the TSCTI into the African Command (Africom) to enable bases for general security to police the vast resources in the Gulf of Guinea. The US cannot afford for this highly strategic interest to be thwarted. The proposed Africom is intended to spearhead the fight against global terrorism and quarantine the region to meet strategic interests. As US officials have noted, Africom will not be set up to build bases but to 'cooperate with development agencies, NGOs and diplomats to win African hearts and minds and so deny terrorists havens from which to operate' (The Economist 2007).

CHALLENGES TO COUNTER-TERRORISM IN WEST AFRICA

Combating terrorism presents a plethora of challenges at both domestic and subregional levels. First, Levitt (2004) aptly summarised the situation thus:

Unfortunately, West Africa has what it takes to become a terrorist breeding ground; it is resource rich and democracy poor, protection is lacking for civil society and human rights, regional, ethnic and religions conflicts abound as does economic distress, lawlessness and criminal activity. Corruption is rife. In cities of West Africa, growing populations of young unemployed or underemployed young men are easy targets for those who seek to turn resentment and despair to their own purpose.

In spite of the gradual democratisation of countries on the West Coast of Africa, the political landscape is characterised by human rights violations, ethno-religious and cultural suppression, electoral fraud, restraint of opposition elements by whichever means possible and a virtual paralysis of civil society. These factors obviously have the capacity to stimulate conflict or sustain it where it already exists. The Niger Delta dissidence, the recent general elections in Nigeria, which have been condemned by both local and international observers, and the opinions of the opposition eloquently testify to this fact. It is well known that terrorism has the tendency to flourish in states where violations of different types of rights occur.

Second, the vast geographical landscape of West Africa remains a major challenge to its security forces. Despite the support provided by the USG through the TSCTI, West African security forces still remain poorly equipped and ill-motivated. This situation breeds corruption among those manning the borders, and results in the prevalence of trans-boundary crime in West Africa and Africa. Terrorism, which has a significant connection with trans-border crimes, will be leveraged by these persistently porous West Africa borders. Moreover, the common cultural ties among West African countries and the economic reality of their daily living transcend the cartographic delineation of geographical boundaries; these cultural ties present major challenges to security personnel at the borders.

The spread of militant Islam in West Africa has become a major source of concern and therefore presents a major challenge to counter-terrorism measures in the subregion. It has been asserted that members of the GSPC continue to operate in the Sahel region, crossing difficult-to-patrol borders between Mali, Mauritania, Niger, Algeria and Chad to recruit Islamic extremists within the region for training and terrorist operations in the trans-Sahara, and possibly for operations outside the region (US Department of State 2006). The 2004 insurgence of Islamic dissidents in Yobe and Kano States in Nigeria clearly validates the extent of this challenge.

Closely related to the poor democratic leadership and governance that pervades Africa is its natural consequence of poverty. Poverty has remained a propelling force for crime and conflict. Although most people, including US President George Bush, argue that poverty does not cause terrorism since terrorists, including 9/11 terrorist mastermind Osama bin Laden, are not poor but middle-class citizens (White House 2003), many others, among them Philippines President Arroyo contend that

... terrorism will spread like a contagion; it will spread like SARS, if we don't address the poverty that represents the breeding grounds for terrorism ... in any Country, terrorism thrives and gets its recruits, not coincidentally in the poorest provinces of the Country (White House 2003).

The World Bank Human Development report indicates that sub-Saharan Africa remains the poorest region in the world. If the link between poverty and terrorism is conceded, West African leaders should resolutely face the challenge of poverty that will drive their unemployed youth into recruitment for international terrorist organisations.

Third, the lack of sincerity exhibited by some African leaders in their execution of the war against terrorism poses a serious challenge. It has been argued that some African leaders have been using the counter-terrorism ideology to undermine human rights and suppress opposing views. This factor has led to widespread protest against the enactment of anti-terrorism legislation while government anti-terror policies are viewed with suspicion. A number of protests accompanied the debate on Nigeria's draft of the Prevention of Terrorism bill in 2006; for instance, at a press conference, Ijaw leaders condemned the bill as 'a forerunner of possible genocide, targeted at the Ijaws and everyone who dares to challenge government's injustice against citizens' (This Day 2006:9). This opinion has posed a serious challenge to the enactment or amendment of domestic laws to criminalise terrorism.

Finally, the strong sentiment against direct US military involvement in West Africa with the establishment of TSCTI has yet to simmer down. However, the US has moved on to establish a broader African security network, Africom, to police its energy interests in the Gulf of Guinea and, of course, the continent. Its interest in Africa has been growing. In 2007, the US spent \$115 million to combat terrorism in Africa (The Economist 2007). This indicates that the US is concentrating on its rising economic interests in Africa rather than the political interests that preoccupied it during the Cold War years.

WAY FORWARD

In view of the challenges to counter and combat terrorism in West Africa, a way forward needs to be created to tackle the problem. Taking into account the pattern and impact of terrorism in West Africa, the various national and subregional countermeasures and the challenges which militate these countermeasures, it is obvious that although West Africa has been used as an operational base for fundraising and recruitment, it is not a terrorist haven in the mould of the Maghreb and Sahel regions where terrorism is manifestly established. Therefore, a military-based strategy of combating terrorism introduced by the US and embraced by West African leaders could exacerbate radicalism and anti-American extremism where they scarcely exist.

Being mindful of the manifestation of terrorism in the subregion as identified in this paper, the following recommendations are therefore made:

- The TSCTI should be domesticated. Whereas the US provides funds for equipping the armies, the armed forces of the respective states should be responsible for driving the initiative (save for periodic training exercises).
- The AU should take a concrete decision on US intentions to establish Africom to avoid the repetition a Cold War-type, global conflict being peripherally played out on the African continent.
- Joint border patrols between neighbouring countries within the subregion should be institutionalised while extradition treaties should exist among Ecowas member states to ensure the repatriation of cross-border criminals.
- The central banks or ministries of finance of all member states should develop financial reforms that will ensure close scrutiny of foreign business interests and a systematic means of tracking international money transactions.
- A democratic process that will guarantee accountability, good governance, respect for human rights and the rule of law and a strong people-based civil society should be strengthened. This will bring about development,

eliminate corruption and reduce conflict, thereby reducing a drift into terrorist activities.

- Ecowas should promote the evolution of an electoral reform that would ensure that member states conform to the minimum standards of fairness in their electoral processes. Since transition from one government to another (especially from an incumbent) has been a major challenge in Africa, such electoral reform will establish and promote best practices in electioneering among Ecowas member states.

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Panel 4

International Experiences in Preventing and Combating Terrorism

Terrorism in Southeast Asia: Threats and Responses

Mohamed Bin Ali

The European Experience in Addressing Terrorism

Karin Kneissl

The United States of America's Experience in Preventing and Combating Terrorism

Donovan C Chau

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Terrorism in Southeast Asia

Threats and Responses

Mohamed Bin Ali

INTRODUCTION

Since September 2001, radical Islamist groups in Southeast Asia, particularly those in Indonesia, Malaysia, Thailand, Singapore and the Philippines have been linked or allegedly linked to the *al-Qa'eda* network. One indigenous regional network, *Jemaah Islamiyah* (JI), is proving to be particularly dangerous, having successfully carried out the deadliest terrorist attacks since the first Bali bombing on 12 October 2002, which killed 202 people. Two other important terrorist groups in Southeast Asia are the *Abu Sayyaf* group and the Moro Islamic Liberation Front (MILF), both of which are based in the Philippines.

DEVELOPMENT OF REGIONAL TERRORISM

Indonesia has suffered multiple terrorist attacks. The major ones, apart from the 2002 Bali blast, include the 5 August 2003 attack on the JW Marriot Hotel in Jakarta, which resulted in 12 dead and 150 injured, and the 9 September 2006 Australian Embassy bombing in Jakarta. 11 were killed and about 120 were injured in the blast. As for 2007, Indonesia experienced the 28 May bombing in Tentena, Central Sulawesi, which killed 19 people, and the 25 August bombing in Ambon, which wounded seven people. The most recent occurrence is the 1 October Bali bombing that killed 26 and wounded more than 120 people. It was part of suicide attacks that occurred simultaneously in Kuta and Jimbaran, Bali, Indonesia. One blast tore through the Raja Restaurant in Kuta, and the other ripped through two seafront cafes in Jimbaran. The consensus among local and international officials is that the bombings appear to be the work of the *al-Qa'eda*-linked JI and its local affiliate groups.

After 2002, JI switched its tactics and adopted *al-Qa'eda's* style of suicide bombing and attacking Western targets such as the Australian Embassy. As before, JI attacked only domestic targets. By recruiting people from Darul Islam, JI has begun to use non-members for attacks, showing the organisation's potential danger; it is linking to other militant groups. Recent investigations show that JI has recruited drug addicts to become suicide bombers.

Southern Thailand is another source of concern, with approximately 1100 people killed since January 2004. While the Thai government indicated in the past that it had a domestic insurgency problem, the separatist group is believed to have

ties with international Islamist militant organisations and the situation may potentially destabilise the greater region. Violence has indeed escalated in southern Thailand. Notable examples include the well-coordinated attacks on Buddhist temples on 16 October 2005 and another temple raid on 30 October 2005. What is even more perturbing is that the militants have proven to be well organised and coordinated. This is indicated by a string of separate attacks in Pattani and Yala; one of the largest armed robberies in recent months occurred on 26 October 2005. The militants made off with 80 to 90 stolen weapons.

The region of the southern Philippines has emerged as an epicentre for Southeast Asian terrorism, notwithstanding JI's campaign of annual bombing outrages in Indonesia. The National Security Committee of the Australian cabinet and Washington's National Security Council believe that the Philippines, not Indonesia, face the biggest terrorist threat in Southeast Asia and have the least capacity to deal with it.

The Philippine security authority has managed to capture leaders of terrorist groups: Hilarian; Del Rosario; and Santos, head of the Rajah Solaiman Movement, and seven members of his faction. The government has exercised justice by imposing the death penalty on one JI member, Rohmat Abdurrohman, and two *Abu Sayyaf* members, Gamal Baharan and Angelo Trinidad, who were responsible for the 14 February bombing. The government is strongly pushing the implementation of an anti-terrorism bill. People suspected of terrorist attacks can no longer file for bail.

The continued bombings by JI elements in Indonesia suggest that despite the death or arrests of hundreds of JI members, including those of most of its known leadership, JI will persist to be a prominent threat in the region. Several factors will continue to hinder Indonesia's anti-terrorism campaign, including Jakarta's lack of a formal ban against JI. In addition, some of JI's most notorious militants and bomb makers are still on the run, notably Malaysians such as Noordin Mohammad Top. The many clusters of islands in the region limit the resources needed to effectively monitor the region's porous borders.

COUNTER-TERRORIST APPROACHES

An effective multi-pronged approach is needed to combat terrorism in the long run. Technically, there are two counter-terrorist approaches: operational and strategic. Operational counter-terrorism aims at reducing the immediate threat by targeting

the terrorist cells and disrupting their attack plans while strategic counter-terrorism focuses on changing the mindset and creating a hostile environment for terrorists. One could say that it aims at changing the hearts and minds of terrorists.

IMPORTANCE OF IDEOLOGY FOR TERRORISTS

Ideology plays a significant role in the functioning of terrorist organisations such as *al-Qa'eda* and JI in Southeast Asia.

- Ideology is the organising principle of terrorist organisations. It provides a motive and framework for terrorists' actions.
- Ideology provides justification for acts of violence as demonstrated by the World Trade Centre, Bali, Marriott and Australian Embassy bombings.
- Ideology is the language of mass mobilisation. Calling for jihad in the name of Islamic duty has enabled *al-Qa'eda* and JI to continuously indoctrinate and recruit terrorist members.
- Ideology can generate public support among Muslims as supporters who provide financial, logistical assistance or as sympathisers who do not morally condone these acts; this is done in the guise of a social programme.
- Ideology will further radicalise Muslim communities over time by indoctrinating them into a culture of violence and radical interpretations of Islam.

Reasons for ideological response

Given the unique challenges posed by religiously-motivated terrorism, effective counter-terrorist measures demand a multi-pronged approach. In particular, one needs to focus on fighting the ideological and social framework of radical Islam for four main reasons:

- Counter-ideology will provide alternative solutions to terrorist-propagating violence. Given the alienated and the seemingly uncompromising worldview of terrorists, they cannot easily be bought by political concessions, amnesties or other personal incentives. The best chances for success are to engage with them in dialogue, show them where they have gone astray and provide them with alternatives to violent acts.
- A geopolitical battle rather than an ideological one will result in a loss of human life, damage to property and vital installations and a greater sense of fear and insecurity. In fact, engaging in physical battle may have an undesired effect: providing terrorists with validation for their actions and increasing their pool of recruits, supporters and sympathisers.
- Counter-ideology programmes will prevent a further radicalisation of Muslim communities.
- The Muslim youth needs to be immunised against indoctrination into a culture of violence so that a new generation of terrorists will be prevented from being recruited.

Forms of ideological response

To develop a viable blueprint for an ideological response, one must factor in the multifaceted global threat of religiously-motivated terrorism.

In the short term, one needs to preempt and prevent the propagation of terrorist messages by obstructing their channels of transmission such as websites and books. In the long term, one needs to target the terrorist recruitment mechanism by marginalising Islamic radicals, promoting the ideological tenets of traditional Islam and strengthening the bonds between Muslim communities and the state.

Sufficient knowledge of and expertise in the terrorist ideology have to be accumulated before an effective counter-ideology programme can be developed. Toward this end, there is a need to accelerate academic research, particularly the study of various Islamic concepts that have been misinterpreted by extremists and terrorists. Concepts such as *jihad* and *Islamic state*, for instance, need to be studied and understood correctly and practiced contextually.

The spread of religious ideology cannot be halted without the participation of Muslim communities. In particular, the ulama or Muslim religious scholars are the only ones who can steer the efforts of counter-ideology programmes. Active contributions by religious scholars and practising Muslims are crucial as they follow incentives to speak out against radicals and define and defend their own religion.

Countering the threat through education can be done by engaging the channels of Islamic intellectual activity and the traditional routes for knowledge transmission. As the terrorists' ideologues are often disguised as religious teachers/leaders, there is also a need for a watchdog body to filter out deviant teachers and deviant teachings. In this regard, the introduction of the Asatizah Recognition Scheme by the Islamic Religious Council of Singapore late last year is a step in the right direction. A committee of prominent Islamic scholars will control access to religious status and will limit the number and quality of individuals competent to provide religious instruction.

Entities responsible for ideological response

First, one needs to engage religious deviants in dialogue or counselling sessions to bring them to the correct Islamic teachings and to instil in them genuine feelings of repentance and remorse.

Second, it is crucial to extend the counselling services to the families of religious deviants to break the cycle of violence which can occur direct family members are extremely exposed to ideology. As in the case of Singapore, the welfare of detainees and their families is taken care of. For instance, one can look into the children's educational needs and provide financial aid while the father is being detained and assist detainees to secure jobs once they are released.

Finally, the general public should be targeted to create awareness in the community of the danger of these ideologies. One way of doing this is through public talks on deviant ideology to prevent members of the community from becoming susceptible to terrorist ideology.

MEASURES TO COMBAT RADICAL ISLAM

The responses of countries in Southeast Asia have generally been in accordance with the intensity of their concerns about the threat to their own stability and domestic politics. In general, Singapore, Malaysia and the Philippines were quick to take strong action against Islamic militant groups and to share intelligence. Indonesia began to do so only after attacks or arrests revealed the severe threat which terrorism posed to their citizens.

In addition, Singapore has introduced a unique rehabilitation programme for its JI detainees. Under this programme, detainees have to undergo compulsory religious counselling sessions. These sessions are conducted by members of the Religious Rehabilitation Group (RRG) comprising well-known local Islamic scholars and qualified religious teachers. Formed in April 2004, the RRG is tasked to provide detainees with a moderate, non-violent understanding of religious issues. The RRG has since extended the counselling sessions to include JI detainees' family members. More recently, it launched initiatives such as lectures and forums to educate the larger community, thereby hoping to immunise members of the public against indoctrination by wayward groups such as JI.

Intensive, specially-designed counselling for JI detainees will provide an alternative to a deep-seated ideology that is difficult to eradicate because their beliefs are based on religious principles they have strongly adhered to. It is thus most appropriate for Islamic religious scholars and teachers to come forward to render their services as they are deemed experts and specialists in the religious field. The problem with the terrorist ideology is the misinterpretation of verses of the Holy Quran, the Hadith (the words and actions of the Prophet Muhammad pbuh) and views of scholars pertaining to issues such as jihad, Islamic state and *ummah* (Muslim community). While these concepts do exist in Islam, it is of utmost importance that they not be misunderstood or misinterpreted, especially for violent purposes and political or individual gain.

Counselling family members and educating the larger community will help to break the vicious cycle of hatred and violence and disrupt their transmission from generation to generation.

The support from mainstream Muslim individuals and organisations is critical in the war against terror. Since terrorists justify their evil acts in the name of religion, it is especially crucial to encourage Muslim religious scholars and teachers to come forward and counter the deviant ideology. As is the case in Singapore, the RRG not only seeks to correct the ideology of JI detainees but also attempts to reach out proactively to the larger community to immunise future generations against indoctrination from groups such as JI.

Not enough work is done by the Indonesian government to obtain sustained support from mainstream Muslims organisations. Many of them are ignorant about the extent of the terrorist effort in the country because the police do not share information

with them. In Indonesia, government authorities do not release reports to explain what they have done and achieved thus far. Many members of the educated elite and ordinary Indonesians understand the problem through scattered information contained in newspapers.

PERSISTING THREATS OF TERRORISM

Successful counter-terrorism operations by Indonesian authorities have increased pressure on the JI organisation. However, the latest bombing in Bali suggests that hardliners in the group remain both willing and able to use deadly force to promote their agenda.

Despite the killing, in a police raid on 9 November 2005, of Dr Azahari Hussin, a bomb-making expert with a PhD from the University of Reading, UK, who allegedly trained KMM and the Bali bombers, the threat is far from over. His partner, Noordin Mohd Top, also a bomb-making expert, planner and financier who graduated from the Malaysian Technological University (UTM), is recruiting new people even though he is on the run. JI's network with other groups in the region, such as *Darul Islam*, MILF, the *Abu Sayyaf* group, *Laskar Jundullah*, *Laskar Mujahidin* and many others, is still active. Training camps in Mindanao still produce JI leaders and the group's radical ideology has not been eradicated. Hence the regenerative potential of JI has not been effectively curtailed and the organisation can rebuild its capabilities over time.

COPING WITH THE THREAT OF TERRORISM

Five factors may help countries reduce the threat of terrorism:

- Harden security targets by, for instance, putting in place more protective measures against strategic and military targets and soft targets.
- Share intelligence; because transnational terrorism cannot be tackled by any one country, regional cooperation will be key to effective intelligence work.
- Stop terrorist funds and preventing their flow; these measures are essential to cripple terrorist operations and eradicate their capabilities to launch attacks.
- Enact tougher laws against terrorism; for instance, Britain changed its counter-terrorism laws after the London bombings.
- Counter ideology in the long term by using counter-ideological measures, such as religious counselling for detainees; the dissemination of mainstream/moderate/non-violent Islamic teachings which will immunise the young, in particular, against radical JI teachings.

Terrorism

The European Experience

Karin Kneissl

INTRODUCTION

Europe is the continent on which terrorism was invented and shaped. It was the repressive regime of Maximilien Robespierre that, in the aftermath of the French Revolution, triggered an era coined by its victims and witnesses as *Regime de la Terreur*, Reign of Terror. The violence characterising the period was the contemporary form of top-down state terrorism, rather than terror in the form of random intimidation of civilians by extreme groups wishing to put state and society into question.

The French invasion of Spain in the course of Napoleon's expansionism led to the creation of the *guerrilla*, Spanish for 'small war'. The diminutive form of *guerra* gradually became established, and guerrilla warfare became a common feature of twentieth century conflicts. The French occupying forces were met with a popular uprising in 1807. The brutality of that *guerrilla* and its suppression was artistically captured by the Spanish artist Francisco de Goya, who depicted the horror of war in his series *Black Paintings*, thereby walking a tightrope between scenes of resistance, terror and terrorism. Political murder in the guise of terrorist attacks frequently took place on the European continent. One such incident led to one of the major disasters of the twentieth century, when, on 28 June 1914, the killing of Archduke Franz-Ferdinand and his spouse in Sarajevo served as an official pretext to start World War I.

Terror, be it domestic or international, is not new to Europeans. Europe has gradually turned into one of the major theatres of contemporary Islamist terrorism, also known as *jihadism*. In fact, the waves of Islamist violence that had France in its grip as early as the 1980s and the mid-1990s left their mark on legislators, judges and public opinion. France, Italy, Spain, Germany and the United Kingdom have all experienced terrorism and have done their utmost to formulate a response, sometimes by encroaching upon civil rights and often by strengthening the security forces and triggering heated parliamentary debates on how to strike a balance. However, none of them ever declared war on terror, which amounts to mobilising armed forces and fighting an invisible enemy without a territory.

A fully fledged military operation such as the one the United States launched in October 2001 in Afghanistan with the goal of eliminating the training camps of the terrorist group *al-Qa'eda* was not on the mind of decision makers in the 1970s. Military solutions have proven ineffective; *al-Qa'eda* has become stronger. Following the invasion of various Muslim countries, the main

decision makers have not been caught and the popularity of *al-Qa'eda's* extremist ideology has only increased. The question that has to be asked is whether a hierarchy controlling international terrorism really exists. Most probably, *al-Qa'eda* has evolved since its first manifestation in 1996 and has become a label certain groups wish to be affiliated with to gain more prominence.

When European governments were confronted with large-scale terrorist attacks and threats, as was the case both in the 1970s and 1980s by extremists both on the left and on the right and later by violent Islamist groups, they decided to strike back by enhanced executive, legislative and judicial measures. The military option was never seriously considered, neither by the Germans in their fight against the Red Army Faction (RAF) nor by the French in reaction to Algerian or Lebanese-born terrorism. The British finally decided to relinquish a limited military operation against the Irish Republican Army (IRA) in Northern Ireland, which is, historically speaking, completely different from RAF or *Action Directe* operations in Germany and France. It might still be too early to assess the current solution to the question of Northern Ireland. Some praise the outcome of decades of talking and set-backs while others reject it as surrender to the terrorists. The complex issue of Northern Ireland with all its implications for the British history of training security forces in counter-terrorism merits its own investigation.

In its EU Terrorism Situation and Trend Report Europol (2007) states the following:

Altogether 498 attacks were carried out in the EU in 2006. The vast majority of them resulted in limited material damage and were not intended to kill. A total of 706 individuals suspected of terrorism offences were arrested in 15 member states in 2006. The small number of suspects arrested for dissemination of propaganda may indicate the lack of legal basis and difficulty in investigating these crimes. Half of all terrorism arrests were related to Islamist terrorism. France, Spain, Italy and the Netherlands had the highest number of arrests of Islamist terrorist suspects. The majority of the arrested suspects were born in Algeria, Morocco and Tunisia and were loosely affiliated to North African terrorist groups, such as the Moroccan Islamic Combatant Group and the Salafist Group for Preaching and Combat (GSPC).

This article examines the response of European decision makers to international terrorism. To obtain a practical result, the writer will submit recommendations that might make sense in an

African context without confusing circumstances that are fundamentally different.

CONTROVERSIAL SEARCH FOR A DEFINITION FOR TERRORISM

Governments, academics and institutions have created more than a hundred definitions for terrorism. The approach is often a political one. In particular, autocratic governments tend to simply call their opponents 'terrorists'. The European Union (2002) undertook to create its own definition. The EU (2002) document was titled 'Council Framework Decision on Combating Terrorism' ('Framework Decision').

Adopted on 13 June 2002, this instrument reflects growing concern about terrorism both at international and at EU level and confirms that terrorism is no longer considered an internal matter to be solved by states on their own but a worldwide issue that can only be tackled by shared efforts and international cooperation. At that time, the EU consisted of 15 member states. The increase to 27 members, in May 2004 and January 2007, will probably cause more problems about agreement on a common definition. The implementation process by members is slow and has proven to be insufficient.¹

'Framework Decision' refrained from giving a comprehensive definition and, instead, created a list of terrorist offences enumerated in Article 1. Among those are serious intimidation of a population and unduly compelling a government into performing an act.

Prior to 'Framework Decision', not all member states had specific legislation on terrorism. In the majority of member states, terrorist actions were punished as common offences. The main aim of this key provision is to approximate the definition of *terrorist offences* in all member states by introducing a specific and common qualification of certain acts as terrorist offences. Most terrorist acts are basically serious ordinary offences that become terrorist offences because of the motivation of the offender. However, the divergences within Europe can be large. The approaches taken by France and Spain towards the *Euzkadi Ta Azkatasuna (ETA)*, the Basque terrorist organisation, ignited deep conflicts between the capitals. The transatlantic rift is even larger. The Lebanese Shiite movement Hezbollah was put on the US list of terrorist organisations in November 2001, but the EU does not consider it a terrorist group and it has won parliamentary seats in elections since 1992. At a joint press conference with Israeli Minister of Foreign Affairs Ms Tsipi Livni in the summer of 2006, when Israel was waging a war against Hezbollah on Lebanese territory, the High Representative of Europe, Mr Javier Solana, confirmed the EU position that Hezbollah was not to be considered a terrorist group.

CASES OF NATIONAL TERRORISM IN EUROPE

The impact of WWI is still palpable in various parts of the world, be they the Middle East, Southeast Asia or Central Europe.

Borders were drawn up by the victorious powers after 1918, either for self-determination or as linear border tracings imposed on the defeated, and they are still valid in many regions. While WWII finally ended on 9 November 1989 with the destruction of the Berlin Wall, the first *Grande Guerre*, as it was known, is still on. Various peoples and ethnic groups who are unhappy with those borders pursue a violent agenda to implement their political goals. In addition, the tragedy of WWI primarily marked the destiny of peoples such as the Kurds and Arabs in the Middle East and those in the Balkans. Furthermore, the question of South Tyrol remains and could be diplomatically solved between Austria and Italy. Various other wars have left people dissatisfied with the territorial order. The range of liberation movements inside Europe is fairly large. Interestingly enough, the Organisation for Security and Cooperation in Europe (OSCE) has never dispatched a fact-finding mission to any Western European country facing ethnic strife, terror or minority problems, while the Balkans and the Baltic states have been flooded with OSCE missions sent to investigate such issues.

LIBERATION MOVEMENTS IN NORTHERN IRELAND, THE BASQUE COUNTRY AND CORSICA

Borders are sacred, according to widespread agreement. This opinion was shattered after 1989, the *annus mirabilis* that led to a steep increase in states around the globe. Balkanisation seemed part of daily politics, as could be seen during the dramatic years between 1991 and 1995 when the Federation of Yugoslavia fell apart. The fragmentation and mushrooming of new small states does not yet seem to be over with the status of the Serbian province Kosovo still pending. In contrast to the Final Act of the Conference for Security and Cooperation in Europe (CSCE) signed in Helsinki in 1975, the issue of borders and territorial integrity was brought back to the political agenda. Redesigning of the map via diligent negotiations was rare, as was evident in the reunification of Germany and the dissolution of Czechoslovakia in 1992. In most settings, the process of self-determination degenerated into violence and protracted ethnic warfare. The federal government in Belgrade perceived Bosnian Muslims and Croatian paramilitaries as terrorists. Multiple victims accused Serbian troops of terrorist operations.

However, the discussion should not be restricted to the dramatic events in the Balkans or further east. A series of unsolved territorial disputes within the well-established democracies of Western Europe can be identified. They have given birth to secessionist groups often dubbed terrorist movements because their programmes, types of operation and death toll. However, the case of the Basque minority reflects the often-diverging handling of concerned states. While Spain applied an iron-fisted policy under the Franco government, France often served as a safe haven for wanted individuals. Circumstances have changed since. However, it is (nearly) always Spain that turns into a theatre of bloodshed. *Euzkadi Ta Azkatasuna* means 'Basque Homeland and Freedom' in the Basque language. ETA is a paramilitary Basque nationalist organisation, and the EU defines it as a terrorist organisation.

Founded in 1958, it evolved rapidly from a group advocating traditional cultural ways to an armed group demanding Basque independence. Its ideology is Marxist–Leninist. Its political arm, the *Batasuna*, has been banned by Spanish law as non-democratic, however, its popular support can be estimated at 10 per cent. The causes for Basque nationalism lie, inter alia, in the harsh suppression of any Basque cultural affirmation during the authoritarian regime of General Francisco Franco (1939 to 1975). Although ETA started as a protest organization against oppression, it changed its tactics in 1985, when it started using car bombs and has claimed hundreds of lives since. On 6 June 2007, ETA, the Basque separatist movement, called off its 14-month ceasefire.² ETA may be re-energised, and it has probably rebuilt its arms' arsenal (Economist 2007). How to deal with ETA could turn into the dominant election issue in 2008. To sit down and talk to the (moderate) Basque nationalists is not yet acceptable to the entire political spectrum in Spain. It took the British decades to learn that they had no option but to negotiate with certain groups.

The protracted conflict in Northern Ireland is internationally probably the best-known conflict in Western Europe. It could now finally be over after decades of bloodshed. For many years, Northern Ireland has been the site of a violent and bitter ethno-political conflict between the Nationalists, who are predominantly Catholic, and the Unionists, who are predominantly Protestant. In general, the Nationalists want Northern Ireland to be unified with the Republic of Ireland while the Unionists want it to remain part of the UK. Protestants mostly consider themselves British while Catholics see themselves as Irish. The campaigns of violence have popularly become known as 'The Troubles'. The majority on both sides have had no direct involvement in the violent campaigns. Since the signing of the Belfast Agreement in 1998, many of the major paramilitary campaigns have either been on ceasefire or have been declared over. However, the negotiations continued to suffer serious setbacks for nearly another decade. On 8 May 2007 Home Rule returned to Northern Ireland. Democratic Unionist Party Leader Ian Paisley and Sinn Féin's Martin McGuinness took office as First Minister and Deputy First Minister respectively.

Corsica represents another national dispute which regularly emerges onto the French public and political scene, mostly during the holiday season when the attention of the media on this vacation island is even more focused than usual. Corsica is currently governed like almost any other region of France. Several movements on the island are calling for some degree of Corsican autonomy from France, or even for full independence. Clashes between state authority and separatists took place on several occasions. The Corsican Mafia is apparently involved in narco-terrorism which help finance acts of intimidation on the island (Napoleoni 2003).³ The links between organised crime and terrorism are evident in the cases involving not only Corsica, but also many groups that have managed to establish their own economic structures. The role of the diaspora is essential, as members of the IRA and US citizens of Irish descent have proven for decades (Napoleoni 2003:119 ff).

As far as secessionist movements such as those described above are concerned, one should remember that state authori-

ties have also often started some sort of dirty war in the context of their counter-terrorism actions. In the past, Spain retaliated with its own terrorist actions. It took recourse to clandestine operations and engaged in a dirty war against ETA by applying similar methods. In a judicial trial it was proven that *Grupos Antiterroristas de Liberación (GAL)*, death squads that had operated since the mid-1980s, were financed and backed by key officials within the Spanish Homeland Ministry under the Socialist government of Felipe González, who was suspected of involvement but was never prosecuted.

It is a fact that the British also took recourse to clandestine operations. In Northern Ireland, they supported Loyalist forces that fought to remain part of the UK. The same holds true for Italy, one of the main theatres of the US strategy of the containment of communism. Operation Gladio is one of the operations of the dirty war that involved Italy. State-sponsored terrorism was one of the methods used, as the opening up of the archives of the CIA demonstrated in June 2007 ('You had to attack civilians, the people, women, children, innocent people,... 2005).

TERROR FROM THE LEFT AND THE RIGHT

Italy, Germany, France, Austria and various other European countries have had their share of political radicals who performed terrorist actions. The 1970s were often referred to as 'plumb times' (*tempi di piombo* in Italian or *bleierne Zeit* in German). A shadow paralysed the entire society; angst dominated public opinion. Railway stations were bombed in Italy, but one could often not discern whether by the extreme left or by the extreme right. The town of Bologna, traditionally known as one of the centres of left-wing intellectuals and movements, has particularly been the stage for such terrorist acts. In the mid-1980s, France introduced visa restrictions and enhanced its security apparatus.

Infiltrating that radical scene was one of the tools the authorities employed, and the approach was considered to be effective. Nevertheless, doubts about the legality of police and intelligence action, in particular in the dismantling of the RAF in Germany, continue to blur the debate 30 years later. In the spring of 2007, the question about how to deal with the heritage of the RAF once again caused a fairly heated debate. Confronted with the option of amnesty for one convicted RAF prisoner whose 25-year imprisonment will end in two years, German politicians and the public have been reminded of an old phantom that re-emerged to everyone's surprise. Even though the RAF chapter seemed to be closed, it was highly intriguing to observe the debate it could still provoke in 2007.

Right-wing terror hit Germany and Austria in the late 1980s and early 1990s. Neo-Nazi groups were closely monitored and arrests could be made thanks to infiltration and far-reaching observation methods. From 1993 to 1997, Austria experienced six series of letter-bombs and similar devices' killing several persons and injuring dozens. In 1997, the perpetrator Franz Fuchs was arrested by sheer coincidence; he lost both arms while preparing another bomb. In 2000, the convicted Fuchs was found dead in his cell. Until today, it remains unclear whether he had acted

individually or had been part of a large network of right-wing extremists. His targets were people who were active in the media and in politics and who had pronounced themselves in favour of minorities. Right-wing violence is mainly investigated as right-wing extremism and not as right-wing terrorism. Although violent acts perpetrated by right-wing extremists and terrorists may appear sporadic and situational, right-wing extremist activities are organised and transnational, with dissemination via the Internet being of particular importance.

Questions remain, but the most important waves of political domestic terror seemed to ebb in the late 1990s. New legislation allowing tapped phone calls and video-surveillance and creating better-trained police forces had apparently yielded results in counter-terrorism. Society seemed transformed after the shock waves. Democracy survived, and attempts to delegitimise the state had failed. However, literature and films show that Germans, French and Italians are still trying to come to terms with that era of domestic terrorism. Italy is a particular case, where closed political structures and strong links between the ruling elite and organised crime have, to this day, provided cover for many crimes.

EMPOWERING THE EXECUTIVE AND JUDICIAL BRANCHES

A wide range of enlarged competences for the executive and judicial branches was implemented in various European countries to tackle the respective terrorist threats. Measures in the UK differed from those in Germany or Italy. Britain has never been a part of European cooperation on counter-terrorism. Having had its very particular experience of the IRA terror waves, British legislation and police action preferred to follow their own ways.⁴

RED ARMY FACTION LINKS WITH EAST GERMANY DURING THE COLD WAR PERIOD

Monetarily speaking, domestic terrorism had already reached the transboundary stage given its financing channels. That specific financial dimension needs to be studied. Various European countries offer a far-reaching bank secrecy that has certainly contributed to joint ventures of organised crime and the international terror scene. The Financial Action Task Force (FATF), a body created by the G7 in 1989 and now established in the Organisation for Economic Cooperation and Development (OECD) in Paris, exerted continuous pressure on countries like Austria, which only reluctantly changed its comprehensive set of anonymous bank and certificate accounts.

Until 2001, it was surprisingly easy to open a bank account in Austria without identifying oneself. Money laundering has occurred at various Austrian banks. In 2000, someone from within the terrorist Palestinian group of Abu Nidal passed through Vienna to pick up a certain amount of money from such an anonymous banking account. Banks have taken legal measures and have increased supervision in their organisations.

Nevertheless, huge amounts reside in those accounts. Similar deficiencies in the banking sector can be encountered in Switzerland and Luxemburg. As a result of the FATF recommendations, most countries now require their banks to report certain suspicious financial activities to the appropriate financial regulators and law enforcement authorities.

Other significant sources of terrorist funds are private donations and the misuse of *zakat* payments by Muslims. The funds are mostly collected by charitable organisations or associations and individuals. No estimates are available for the amounts of money that are collected either legally or illegally within the EU and that could be misused for terrorist funding. There are strong suspicions that *zakat* money collected within the EU is used to fund terrorism, according to findings by the European Law Enforcement Organisation (Europol) (2007:23).

Further anti-terrorism legislation, which gives unprecedented powers to law enforcement, was implemented in the wake of the London bombings of 7 July 2005. These enlarged competences, highly debated in British Parliament, facilitate more aggressive methods of detainment and investigation of persons suspected of terrorism. Counter-terrorism is a hotly debated topic that will continue to dominate parliamentary discussions. Some societies prove to be more alert than others when striking a balance between security needs and constitutional rights. The gloomy Big-Brother scenario as predicted by George Orwell in *Nineteen Eighty-Four* seems to be increasingly acceptable given the series of terrorist attacks and the many more that could be thwarted by extremely strict security measures, or by sheer luck.

The connection between the German terrorist group RAF, internationally identified as the Baader–Meinhof group,⁵ and the security apparatus of the German Democratic Republic was well known. The RAF had training camps in communist-controlled East Germany and was sponsored by the power brokers of the regime of the communist Sozialistische Einheitspartei Deutschlands (SED).⁶ Furthermore, the RAF entertained close connections with the Palestinian Liberation Organisation (PLO), which was considered a terrorist organisation by large parts of the international community at the time. The RAF was not purely a domestic terrorist organisation; it had features of international terrorism such as trans-boundary operations, financial sources and logistic support outside Germany.

However, the German government had never considered attacking RAF training bases in East Germany or in the PLO-controlled parts of Lebanon. Retaliation by bombing suspected targets, as the US did in 1998 in response to the terrorist attacks on US Embassies in Nairobi and Khartoum, was not the method the German government wished to apply. Of course, the context of the Cold War put many constraints on any action. With the opening up of the archives of the intelligence service, the Staatssicherheitsdienst (Stasi), the full extent of the close links between the RAF and the East German authorities was made public. The question remains whether people like Ulrike Meinhof, who apparently committed suicide in detention, were aware of being manipulated for far-reaching, Cold War political goals. The Middle East was one region of many, including Latin America and Southern Africa, where proxy wars were fought

and terror was only one tool in the larger context of confrontation between the Cold War superpowers.

SECULAR PALESTINIAN LIBERATION ORGANISATION AND LIBYAN AND IRANIAN ACTIONS IN EUROPE: IN SEARCH OF DIPLOMATIC MEDIATION

When one considers Middle Eastern terrorism in Europe 30 years ago, from the events in Munich to the various airport bombings from Paris to Vienna and the hijacking of cruise ships, the situation seems to have been much less complicated then. But, a generation later, there simply is no escape from the cycle of violence. The situation has been complicated by the transformation of a confrontation between secular nationalisms into a war in which each side claims to know God's (political) will: my gods against yours.

State-sponsored terror has been on the decline since the end of the Cold War. The term *rogue states* has nevertheless survived even though realities have changed and now provide a completely new terror threat in Europe, Africa and especially the Middle East. The implosion of states such as Somalia, Afghanistan, Iraq and Yugoslavia create a completely different threat: one of a financially independent group that acts without regard for any directive. If a group propagates an ideology, it is mostly religiously-inspired; those who have never studied theology fight under the flag of a perverted Islam and advocate a violence that amounts to nihilism rather than anything else.

The terror of Middle Eastern origin that swept across Europe in the 1970s and 1980s highlighted the Palestinian issue. The Armenians and Kurds also committed bombings but did not receive the same attention. European reaction was divided. In 1974 Austrian Chancellor Bruno Kreisky invited the PLO, on the list of terrorist organisations of many Western countries until 1993, to open an office in Vienna. Moreover, it was Kreisky who hugged Libyan Colonel Muammar al-Qaddafi and considered him a partner in politics and business while many among al-Qaddafi's Arab brothers treated him as a pariah and a terrorist. London and Hamburg were among the cities where Libyan intelligence experts committed their crimes.

A wish to intervene diplomatically and start solving Middle Eastern problems grew along with the terrorist actions. Various European governments were disposed to release convicted terrorists, as French President Francois Mitterrand did in the summer of 1990, with surprise amnesty that led to the early liberation of Anis Naccache and others who had been responsible for terrorist acts on French soil. They had acted on behalf of the Iranian government when they had tried to assassinate a former Iranian Prime Minister and had planted bombs in Paris. No European operation could be compared to the Iran-Contra-Gate incident in Washington which involved sending US arms supplies to Iran to raise money for Nicaraguan fighters on the payroll of the US in the 1980s. However, many European governments, including France and Austria, brokered tacit truces with the Tehran government to protect their territories against further action by

Iranian intelligence. It should be borne in mind that the government of Ronald Reagan decided to deal with the revolutionary government of Iran long before the death of Ayatollah Khomeini. Khomeini's death in June 1989 led to profound changes in Iran, notably a decrease in the export of revolutionary ideology.

RELIGIOUSLY-INSPIRED TERROR AND THE MUSLIM DIASPORA

Second- or third-generation Muslims, in many cases with a middle-class background and an apparently high degree of integration, tend to create some 'spiritual homeland'. On 7 July 2005, the four London bombers fell into this category. No longer belonging to the country of origin, nor being fully at home in Europe, second- and third-generation Muslims experience a crisis of identity. Seduced by hate preachers, sometimes following to a journey to the home country of their parents, or confronted with daily news from the Middle East, certain individuals can turn into bombers in spite of familial or societal ties. Religion becomes an alternative home. The situation spirals out of control when such a self-created religion is in conflict with the law. Muslim communities need to put constraints on hate preachers and encourage their members to be loyal citizens of the countries to which they are nationals. However, the various forms of dialogue between Islamic communities and their members and state authorities are not free of friction. The status of the Muslim diaspora differs greatly among the 27 EU countries. Furthermore, with each terrorist attack the pressure on the members of a community under observation mounts. An already dark atmosphere can be poisoned.

There are far more than a dozen categories of terrorist profiles. The British and German authorities had to learn that lesson during their investigations. The foiled terror attacks in London and Glasgow on 30 June 2007 confirm the wide range of potential perpetrators. Whatever might have been the motive of the medical doctors involved in those acts, the exposure of European targets has been demonstrated once again.

Lord Stevens, Prime Minister Gordon Brown's new adviser on terrorism, said, after the foiled attacks on 30 June, that the operations signalled a 'major escalation in the war being waged on us by Islamic terrorists'. However, Brown himself carefully chose his words and preferred to speak of criminal acts. The problematic position of migrant communities in Europe has been highlighted over the past years with the bloody bomb attacks in Madrid on 11 March 2004 and the subsequent terror acts. The Madrid incident could have been prevented if the Spanish authorities had listened to their Moroccan colleagues who had issued warnings and shared data after the bombings in Casablanca in the spring of 2004. Appropriate responses in countries like the UK could be compromised when polls show that the London bombers have sympathisers among migrant communities, and when there are collective condemnations, even when leaders of Islamic communities swiftly condemn terrorist acts.

Certain terms need to be clarified. 'Islamists' try to apply their faith to the politics of the states they live in, whether by

peaceful or by violent means. 'Political Islamists' reject violence as a means of achieving this goal. Nowadays, most branches of the Muslim Brotherhood would fall into this category, but the movement is far from monolithic. 'Violent Islamists' advocate or use violence for this purpose. 'International *jihadis*' advocate or use violence in what they see as an international *jihad* to counter threats to Islam. Their use of the term "*jihad*" is itself controversial among Muslims. They are sometimes referred to as *takfiris* since they declare their targets infidel and, thus, legitimate targets for violence. *al-Qa'eda* clearly falls in this category.

It needs to be remembered that all Arabs and most Muslims regard violent resistance to the occupation of one's own land as legitimate. Such resistance, therefore, does not affect this categorisation. Clearly, these distinctions can be blurred, sometimes for political reasons. Moreover, movements and individuals may move from one category to another, as Hamas has indeed done by resorting to violence against fellow Palestinians (while pleading provocation).⁷

Coming to terms with a Muslim diaspora of approximately 22 million inside the EU is a problem that confronts nearly every European government. Equally important, is winning hearts and minds at home and abroad, in countries such as Afghanistan, where European contingents are involved in operations in which collateral damages kill hundreds of civilians while searching for suspected terrorists. Images from Iraq and Afghanistan or Lebanon and the Palestinian territories that reach the living rooms of Muslim families in Europe via Arab and Islamic satellite television differ greatly from the filtered ones received by the larger Western audience. Anger is growing, not only among jobless males on the periphery but also, and in particular, among members of a seemingly assimilated or integrated middle class (Kneissl 2006: ch 5).

The moral authority of European governments has suffered in the eyes of the Arab and Islamic world since the first evidence of European governments' involvement in the so-called torture flights of the CIA were made public in early 2006. The US government acknowledged the forced renditions and European collaboration, notably that of Britain, Poland, Germany and Italy, in September 2006. Dick Marty, a Swiss member of the European Parliament, courageously led the investigation. His report is a sad testimony to the declining standards of the rule of law in various European countries tackling the threat of terrorism. His reports, submitted in the spring of 2006 and 2007, have been supported by the Council of Europe but have been harshly criticised by the aforementioned governments.

The ideal of Europe as the cradle of human rights and respect for the rule of law has suffered with European governments' active involvement in the kidnapping of suspected individuals and their attitude towards the election of Hamas, the Islamic resistance movement, in January 2006. The perception of the war on terror as a war against the Islamic world by European governments is increasingly being shared by military experts in Europe. The risk of this perception is evident. Therefore, the urgency for a European response on various levels, such as a real role that goes beyond cheque diplomacy in the Middle East and stronger intelligence cooperation, requires the 27 EU-

partners to agree on a much more effective political framework. Alas, on 22 and 23 June 2007 the European Council did not pave the way to an ever-closer EU. The façade of European consensus was preserved, but many frictions are lurking below the surface. The British oppose anything that would amount to a European Minister of Foreign Affairs and did their utmost to opt out of a European Charter of Human Rights, while various other European capitals did their share to postpone a common European foreign and security policy.

POSSIBILITY OF A COMMON EUROPEAN RESPONSE

On 30 November 2005, the European Council issued the EU Counter-Terrorism Strategy document, which was followed by an EU action plan. Its four priorities encompass prevention, protection, persecution and reaction. International terrorism demands global action, so it is the bottom line of the strategy.⁸ The strategy is ambitious, but the implementation remains slow. Furthermore, there are no common financial resources for a common counter-terrorism strategy and major competences remain within the national governments. The cooperation between foreign policy makers and judiciaries needs comprehensive improvement. The creation of a real European intelligence communication network is still in limbo. Its urgency is uncontroversial, but how to achieve it remains an issue of dispute. Again, the British raise loud dissenting voices when it comes to close cooperation.

The EU has agreed on lists of persons⁹ and on enumerations of crimes. In spite of verbal commitment to multilateral action, there remains a dominant, bilateral approach. After the 11 September 2001 attacks and subsequent terrorist incidents, the need for a more coherent approach was voiced not only in the fragmented intelligence community of the US but also in Europe.

A transformation from a need-to-know to a need-to-share principle is under way. According to the first approach, only a selected group of decision makers is involved. The latter approach dispenses with the limits of an exclusive processing of information for a much more inclusive one. Given the high investments intelligence services have to make and the risks they need to take, the need-to-share attitude is only slowly being accepted as an additional element. In fact, given the abundance of open-source information, one has to determine how intelligence and political decision shaping and making can better anticipate certain developments. In view of the flood of information, face-to-face contact and renewed talent recruitment will become more relevant on both sides of the Atlantic to respond to current needs and threats.

Inside the EU and the OSCE, the notion of security has been a comprehensive one since the early 1990s. The idea of human security gave the security of individuals a central position. This ideal is compromised in a world of globalised insecurity. One of the basic principles of European integration since its inception in 1957 has been freedom of movement, which however, it is

being compromised by ever-increasing travel restrictions and data processing. What impedes travelling by air today may affect travelling by rail tomorrow.

The EU has certainly stepped up sensible cooperation in fields ranging from intelligence sharing to law enforcement and financial assets control. Furthermore, the European arrest warrant should contribute to the implementation of the comprehensive strategy of counter-terrorism. Gijs de Vries has been appointed as coordinator of this task, and he will improve coordination and visibility of EU actions in this regard. The wish to tackle the underlying causes of terrorism, such as political alienation and radicalisation, is also of major importance to the EU. Nevertheless, the approaches of the 27 member states may differ greatly. Even though EU High Representative Javier Solana regularly states that there is absolutely no trade-off between security and human rights protection, certain legislation in Germany, the UK and elsewhere reflects a different reality.

Unlike the US in the aftermath of the 9/11 attacks, European societies and governments have not decided to declare a *War on Terror* even though they face terrorism in guises which range from the Spanish Basque provinces, to the UK, Italy and Germany where both home-grown and international terrorism have put society on alert. Nevertheless, Nato decided to activate Article 5 of the treaty, showing complete solidarity with the attacked US. The UN Security Council supported the US operation in Afghanistan, which is still being waged under the codename of *Enduring Freedom*.

RECOMMENDATIONS

- The Blair–Bush experimental doctrine of pre-emptive invasion and imposition of change from outside and from above, by force and by threats, has clearly not worked; indeed, it has backfired. The rules of international law have to be reinforced against the new doctrines, promoted by various countries, which emphasise an extensive interpretation of self-defence. Otherwise, the support for international terror will simply continue to grow.
- Most observers agree that the main impediment to greater moderation and tolerance is the nature of the ruling Arab and Islamic regimes. An opening up of society, creating real parliaments and putting an end to the massive harassment of citizens and the media have to take place. The unholy alliances with authoritarian regimes should gradually be replaced by more critical friendships. Criticising partners should be possible; this holds particularly true for the special relationship between Israel and European governments.
- To regain and strengthen trustworthiness, European governments should be ready to follow up on their own

standards of rule of law, especially in their fights against terrorism and with regards to their diplomacy in the Middle East and on the African continent.

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- 1 Refer to http://ec.europa.eu/justice_home/fsj/terrorism/prosecution/fsj_terrorism_prosecution_legal_framework_en.htm [Accessed on 28 June 2007].
- 2 That truce was already fractured in December 2006 when ETA killed two victims in a bombing at Madrid airport.
- 3 For the financing of terrorist movements, see Napoleoni, L 2003. *Modern Jihad. Tracing the dollars behind the terror networks*. London: Pluto Publisher.
- 4 Interview with an Austrian diplomat on 15 May 2007.
- 5 Andreas Baader and Ulrike Meinhof were the best-known leaders of a group of about 60 persons inspired by a theory of anarchy and world revolution.
- 6 This case is referred to as an example of war by proxy: East Germany covertly supported the Red Army Faction (RAF), which was active from 1968 and which carried out a succession of terrorist attacks in West Germany during the 1970s and, to a lesser extent, in the 1980s. After German reunification in 1990, it was discovered that the RAF had received financial and logistic support from the Stasi, the security and intelligence organisation of East Germany. It had also given several RAF terrorists shelter and new identities. It had not been in the interests of either the RAF or the East Germans to be seen co-operating. The apologists for the RAF argued that they were striving for a true socialist (communist) society and not for the kind that existed in Eastern Europe.
- 7 Former British Ambassador Basil Eastwood made this statement in an intranet communication of the Intelligence Unit on 24 June 2007.
- 8 See the following publications: Müller-Wille, B 2004. For your eyes only? Shaping an intelligence community within the EU. *Occasional papers, EU-ISS*, January:50; Bendiek, A 2006. Die Terrorismusbekämpfung der EU: Schritte zu einer kohärenten Netzwerkpolitik. Berlin: Stiftung für Wissenschaft und Politik Studie; Braumandl, W and Desbalmes, C 2007. Nachrichtendienstliche Kooperation der EU im Kampf gegen Terrorismus. *Schriftenreihe der Landesverteidigungsakademie*, 1.
- 9 See the update on http://eur-lex.europa.eu/LexUriServ/site/en/oj/2007/l_169/l_1692007_0629en00580062.pdf [accessed on 28 June 28 2007].

The United States of America's Experience in Preventing and Combating Terrorism

Donovan C Chau

INTRODUCTION

To cogently describe and analyse the United States' experiences in preventing and combating terrorism, one must generally understand the US political system. Briefly, the United States Government (USG) is a federal, constitutional system. Structurally this means there are federal, state, and local governments. At the federal level, which sets national policies according to the Constitution of the US (Constitution), the USG is divided into three branches of government: executive, legislative, and judicial. The three branches of government, in theory, provide a system of checks and balances and work as one for the American people. At the state level, where state policies are set, a similar division of government is found with governors (executive), legislatures (legislative), and state courts (judicial). A similar system exists at local level. For the citizen, the US political system holds individual liberties and the rule of law as the highest, most fundamental rights. The US political system must be kept in mind throughout the paper, which now turns to America's experiences in preventing and combating terrorism.

The US makes a distinction between preventing and combating terrorism. However, the question may be asked whether a nation really can do so. Prevention of terrorism is qualitatively different in meaning from combating terrorism, and the difference in meaning translates into tangible, differing measures and countermeasures. At the same time, however, preventing terrorism and combating it often reside in an uncertain and overlapping grey area. Operationally, the two cross paths and are sometimes even synonymous. It may be for this reason that other nations, such as the United Kingdom, France, and Israel, do not make a clear-cut distinction between preventing and combating terrorism.¹ One may ask why. The United Kingdom subsumes preventing, combating, and all other means of confronting terrorism into the single term, *counter-terrorism*.² Because of its history and culture, the US is uneasy with a single term encompassing all measures to counter terrorism. US policymakers reflect an American culture that prefers simplistic, clear-cut phrases and definitions, and an all-encompassing term such as *counter-terrorism* does not suit the political (or strategic) culture. Nevertheless, while the distinction between preventing and combating terrorism is not a neat one, it is made and has profound organisational and policy ramifications in the US.

The experiences of the US in preventing and combating terrorism are a direct result of the policies set forth and organisa-

tions created by the President of the US (POTUS). The first line of the President's most recent National Security Strategy (NSS) (NSS 2006) is revealing: 'America is at war' (Bush 2006a:i). US policies to prevent and combat terrorism are subsumed within this policy decision for the *War on Terror* (WOT). With the current POTUS, every US action to prevent and combat terrorism is cast in this strategic light. More specific to US strategy, this NSS (similar to its predecessor) sets forth a strategically offensive posture to prevent and combat terrorism: 'The United States can no longer simply rely on deterrence to keep the terrorists at bay or defensive measures to thwart them at the last moment. The fight must be taken to the enemy, to keep them on the run' (Bush 2006a:8). While prevention may be viewed as defensive, official US policies direct an offensive approach to both preventing and combating terrorism.

Based on US policy documents, preventative elements of US strategy include cutting off all sources of support to terrorist organisations, preventing access to weapons of mass destruction (WMD), and defending potential targets of attack (Bush 2006a:9, 2006b:13). In addition, efforts to establish and maintain international standards of accountability, as well as to strengthen coalitions and partnerships, may be considered preventative measures (Bush 2006b:19–20). Combative elements of US strategy include denying safe haven or sanctuary (physical and non-physical), as well as killing or capturing terrorists. Similarly, and notably in its own National Military Strategic Plan for the War on Terrorism (NMSP–WOT), the US Department of Defence (DOD) identifies attacking terrorists and their capacity to operate effectively at home and abroad as a key combative element to the national strategy (Chairman of the Joint Chiefs of Staff 2006). The DOD identifies the following as a mission for the *Global War on Terrorism* (GWOT), which is synonymous with WOT and now a *Long War* comprising global insurgencies: 'Attack and disrupt terrorist networks abroad so as to cause the enemies to be incapable or unwilling to attack the US homeland, allies, or interests' (Chairman of the Joint Chiefs of Staff 2006:5, 19–20). Lastly, a key long-term element of US strategy that is both preventative and combative in character is instituting measures to win the 'battle of ideas' by 'advancing effective democracy' (Bush 2006b:9–11). The policy to 'advance freedom' and the strategic offensive in the Long War frame all US policies to prevent and combat terrorism.

An essential part of the long-term US strategy to prevent and combat terrorism is enhancing 'government architecture

and interagency collaboration' (Bush 2006b:20–21). After the 11 September 2001 attacks, the USG began the process of government-wide reorganisation to prevent and combat terrorism.³ Most important was the establishment of the Department of Homeland Security (DHS) in 2003. The largest governmental reorganisation since the DOD was created in 1947, the DHS represents the consolidation of 22 domestic agencies, 180 000 employees, and \$36 billion in legacy budgets (Cox 2004:13). The core mission of the DHS is securing the homeland with the central objective of preventing terrorist attacks within the US. Numerous other organisational changes have occurred across the entire USG (some of which will be expanded below). They include reorganisation of the US Intelligence Community structure and system, restructuring of military and civilian components within the DOD, and transformation of the national security elements of the Federal Bureau of Investigation.⁴ These organisational changes to the USG are fundamental to understanding US experience preventing and combating terrorism.

With knowledge of the US political system, its policies and its governmental structure, the focus of the paper is on post-9/11 *domestic* US capabilities to prevent and combat terrorism. Specifically, the paper focuses on the central capabilities of intelligence, police, and border guards (Gray 2006:20–28).⁵ While infrastructure protection, weapons of mass destruction detection, emergency response, and the litany of other counter-terrorism capabilities are all important, they are not central to an effective counter-terrorism strategy. Moreover, in discussing US experiences, the paper asks: What can Africans learn from the US? How can Africans benefit? What lessons may be learnt from US experiences? In other words, what works and what does not? Furthermore, does a universally applicable model to prevent and combat terrorism exist? All countries faced with the threat of terrorism use intelligence, police, and border guards as their primary capabilities to prevent and combat terrorism. Logically, these specific US capabilities and experiences need to be examined to answer the paper's questions. Throughout, the paper attempts to distinguish between preventing and combating terrorism in the US, however, as mentioned before, there is a degree of overlap. A brief overview of US experiences in Africa will be given before the concluding remarks.

KNOWING THE ENEMY

To both prevent and combat terrorism, the most fundamental capability needed is intelligence. Similar to other countries, the US views intelligence as a process that includes requirements, collection, analysis, production, and dissemination. Yet the US intelligence process is also nonlinear and dynamic because the executive branch at the highest level, the POTUS, sets policy priorities to drive intelligence objectives.

Prior to the 9/11 attacks, US intelligence on terrorist activities was the focus primarily of traditional law enforcement agencies. While the US Central Intelligence Agency created a Counter-Terrorism Centre in 1986 (renamed the Office of Terrorism Analysis in 2001), the FBI was the lead federal agency with

counter-terrorism responsibilities. Past cases such as the 1993 World Trade Centre's bombing and the 1995 Oklahoma City bombing did not significantly alter either the US intelligence structure or policies to counter terrorism. As head of interagency Joint Terrorism Task Forces (JTTFs), moreover, the FBI remained the lead US agency responsible for countering terrorism domestically and internationally while focusing its efforts on what may be aptly termed 'criminal intelligence'.⁶ The FBI conducted strategic and tactical intelligence, but the action continued to be focused on law enforcement and the criminal aspects of terrorist activities, which was inherently preventative.

The 9/11 attacks altered the US strategic mindset with regard to terrorism and counter-terrorism and gave birth to the concept of 'homeland security'. Since 2002, the US Intelligence Community has been in a state of flux and reorganisation both to prevent and to combat terrorism. The newly created DHS was originally meant to play a significant role in intelligence related to the prevention of terrorism within the US. Owing to, in large measure, institutional bureaucracy, however, the POTUS and the US Congress sidelined the immediate role of the DHS within the Intelligence Community. The Congress passed the Intelligence Reform and Terrorism Prevention Act of 2004 (IRTPA) that, among many things, significantly altered the US intelligence bureaucracy. The central role of the Director of Central Intelligence, who was also head of the CIA, was diminished in favour of a managerial Office of the Director of National Intelligence (DNI). Functional organisations such as the National Counter-Terrorism Centre (NCTC) and the Terrorist Screening Centre (TSC) were created both to combat and to prevent terrorism. At the DOD, where a majority of the Intelligence Community budget resides, the role of intelligence was elevated with the creation of an Under Secretary of Defence for Intelligence, the establishment of the Counter-Intelligence Field Activity, and a significant expansion of the Defence Intelligence Agency workforce. Furthermore, the US Special Operations Command (SOC) was designated the lead Combatant Command responsible for combating terrorism, significantly increasing in its role in intelligence gathering. Taken together, the revamped Intelligence Community led by the DNI and the DOD are tasked to combat and prevent terrorism.

Despite a traditionally weak domestic intelligence capability, the FBI has undergone significant changes with regard to intelligence to prevent terrorism. Since 2005, the FBI has created a National Security Branch comprising the Counter-Terrorism Division, the Counter-Intelligence Division, the Directorate of Intelligence, and the Weapons of Mass Destruction Directorate (Pistole 2007). At the DHS, there has been a renewed effort since 2006 to carve out a specific niche within the Intelligence Community. This has led more recently to the concept of 'homeland security intelligence' (Masse 2006). The DHS is leading an effort at the state and local levels to create intelligence fusion centres to prevent terrorism within the US. In the post-9/11 USG, all these domestic intelligence efforts are to be guided and integrated by the DNI.

Many of the organisational and policy changes to the US Intelligence Community have improved US capabilities to prevent and combat terrorism. Nevertheless, significant obstacles

remain. The inherent difference in organisational culture among intelligence, law enforcement, and military agencies persists. It revolves primarily and constantly around the issue of 'sources and methods' (that is, classification and ownership of intelligence, which leads to the problem of 'stove-piping'). Within the USG, each agency in the Intelligence Community will continue to cater to its own interests first, the greatly improved physical (and virtual) integration and synthesis of intelligence notwithstanding.

ARRESTING THE ENEMY

In the US, as in every other country, police and law enforcement agencies play leading roles to prevent and combat terrorism. Many of the responsibilities of these agencies overlap with intelligence units and border guards. Given its legacy of influence in the US, the FBI retains a predominant role in preventing and combating terrorism. As mentioned before, it does so as head of nationwide Joint Terrorism Task Forces, which comprise groupings of highly trained, locally based investigators, analysts, linguists, and other specialists from dozens of US law enforcement and intelligence agencies. The FBI maintains an individual field presence across the US and, indeed, around the world. As designated by the POTUS, the FBI headquarters provide direction and support to the 56 field offices, approximately 400 satellite offices known as resident agencies, four specialised field installations, and more than 50 international liaison offices known as Legal Attachés. At the end of 2001, the FBI also created the Office of Law Enforcement Coordination (OLEC) to build bridges and strengthen relationships between the FBI and state and local law enforcement communities. The FBI continues to lead federal law enforcement efforts to prevent and combat terrorism.

Another significant law enforcement agency in the US is located organisationally in the DHS. The largest investigative arm of the DHS, US Immigration and Customs Enforcement (ICE), is responsible for preventing acts of terrorism by targeting the people, money, and materials that support terrorist organisations. In this preventive mission, ICE tackles a wide range of crimes related to immigration, money laundering, smuggling, trafficking, trade violations, and cyber security. After 9/11, ICE, the FBI, and other related domestic law enforcement agencies received legal support through the passage of the USA Patriot Act of 2001 and the USA Patriot Improvement and Reauthorisation Act of 2005. US anti-terrorism laws expanded police and law enforcement abilities to conduct physical and electronic surveillance, regulate financial transactions to foreign individuals and entities, and detain persons of interest on the basis of immigration violations.

Because of the US political system, federal law enforcement agencies are complemented by a variety of state and local agencies. Owing to differing legal jurisdictions, state and local agencies have overriding jurisdictions and authorities over federal agencies on occasion. Similarly, the newly termed homeland security and emergency preparedness structures, which often include police and law enforcement entities, vary from one state to another according to each governor's initiatives. At the local

level, cities have differing organisations and policies to prevent terrorism. Examples from the largest state and city in the US provide some insight into the country's experiences.

In the state of California, the Governor's Office of Homeland Security is the lead state agency that gathers and disseminates information critical to the protection of the state. It creates the state's comprehensive security strategy and designs and implements critical state, regional, and local programmes. At the same time, the California State Highway Patrol (CHP) is the state police force. Led by a Commissioner who is appointed by the Governor, the CHP protects state buildings, facilities and visiting dignitaries; conducts criminal investigations; and assists local law enforcement agencies. The CHP is the largest state police agency in the US with approximately 6 800 sworn officers. Across the country, New York City has its own organisations and policies to prevent and combat terrorism. The Mayor's Office of Emergency Management is the lead local homeland security agency. However, the New York City Police Department (NYPD) is the agency most responsible for preventing and combating terrorism. It has specifically designated counter-terrorism and intelligence officials. Led by a Commissioner who is the civilian administrator appointed by the Mayor, the NYPD is the largest municipal police force in the world with over 37 000 uniformed personnel stationed in New York City and abroad.⁸

In the US, police and law enforcement bodies serve primarily to prevent and investigate acts of terrorism. In special cases, such as the FBI and the NYPD, police and law enforcement also serve a unique role in combating terrorism. At the federal level, the roles and responsibilities of police and law enforcement agencies have been legally expanded and supported since the 9/11 attacks. Given the US political system, however, it is noteworthy that police and law enforcement interests continue to compete with one another at and among the federal, state, and local levels.

STOPPING THE ENEMY

About three-tenths the geographic size of the African continent, the US possesses over 12 000 kilometres of land boundaries and nearly 20 000 kilometres of coastline. The US is the world's third-largest country by size (after Russia and Canada) and by population (after China and India) (CIA 2007).⁹ Thus the USG faces the tremendous task of guarding its land and maritime borders, which is, at its very core, a preventative mission. It does so using several federal, state, and local resources; however, the ultimate responsibility rests with the POTUS and the federal government.

The DHS is the leading federal agency that guards America's borders. Within the DHS, US Customs and Border Protection (CBP) is America's unified border agency that combines inspectional workforces and broad border authorities. With over 41 000 personnel to manage, control and protect US borders at and between official ports of entry, the priority mission of CBP is preventing terrorists and terrorist weapons from entering the US, while facilitating the flow of legitimate trade and travel.

CBP uses multiple strategies and employs the latest technology to accomplish its twin goals. Within CBP, the Border Patrol is the mobile uniformed law enforcement agency responsible for detecting and preventing illegal entry into the US. The Border Patrol comprises over 11 000 personnel supported by sophisticated technology, vehicles, aircraft, and other equipment. The Border Patrol employs a small unit of Native Americans called the Shadow Wolves; they use native, specialised techniques to detect and track illegal entries (Archibold 2007). Since 1972, Shadow Wolves agents have travelled to the Baltic states, Central Asia, and other former republics of the Soviet Union to teach ancient tracking skills to enforcement officers.

Another integral component that guards America's land borders is a military one, the National Guard. Known as America's citizen soldiers, National Guard members represent militias from US states and territories. The Constitution grants distinct authorities and responsibilities to the National Guard in the federal and state governments. For example, National Guard units may be mobilised at any time by presidential order to supplement regular armed forces and upon the declaration of a state of emergency by the governor of the state or territory where they serve. The National Guard has worked with US border agencies for over two decades to provide support to the law enforcement counter-narcotics mission. In the summer of 2006, the POTUS ordered the deployment of 6 000 National Guard members to four states along America's southwest border with Mexico. In support of Operation Jump Start, National Guard members are assisting with maintenance, infrastructure construction, camera monitoring and other tasks (US Customs and Border Protection 2006). Both under the purview of the POTUS and state governors, the National Guard plays an important role in guarding America's land borders.

The task of guarding America's ports, waterways, and coastlines lies with the US Coast Guard. With over 47 000 active duty and reserve personnel, the Coast Guard is involved in maritime law enforcement, mariner assistance, search and rescue, and national defence; uniquely, it has both law enforcement and military authorities and responsibilities. After 9/11, the Coast Guard was transferred organisationally to the DHS. Because of its dual responsibilities, however, upon the declaration of war and when Congress so directs, or when the POTUS directs, the Coast Guard operates under the DOD as a service in the Department of the Navy. The daunting task of guarding America's maritime borders has garnered significant attention at the highest levels of the USG. In 2005, the POTUS released a National Maritime Security Strategy and eight supporting plans (Bush 2005). The following year, US Congress passed the Security and Accountability for Every Port Act of 2006 (or the SAFE Port Act of 2006). Both are attempts to guard America's maritime borders better against the potential entry of terrorist individuals, weapons, and materiel.

While the Constitution charges the federal government with guarding the nation's borders, state and local agencies play a crucial role. Border states and localities have immediate responsibilities for guarding America's borders, however, all states and localities face the potential threat of terrorist activities. The

intrinsically preventative mission of guarding America's land and maritime borders challenges efforts to integrate manpower, technology and infrastructure at all levels. In addition, the US confronts the frightening reality that terrorists and smugglers may understand, and overcome, its sophisticated technology and infrastructure. Thus guarding US borders effectively requires essential and sustained cooperation, both domestically and internationally.

THE UNITED STATES AND TERRORISM IN AFRICA

International relations are central to the US strategy of being on the strategic offensive and advancing freedom abroad. Since 9/11, the US has expended time and resources to prevent and combat terrorism in Africa. One of the first US steps was establishing a presence in Africa. Because of combat operations in Afghanistan (Operation Enduring Freedom), the Horn of Africa was defined as a specific and related theatre of operations. By May 2003, the DOD established Combined Joint Task Force–Horn of Africa (CJTF–HOA) in Djibouti. While it 'conducts operations and training to assist host nations to combat terrorism in order to establish a secure environment and enable regional stability', CJTF–HOA 'is focused on detecting, disrupting and ultimately defeating transnational terrorist groups operating in the region – denying safe havens, external support and material assistance for terrorist activity' (Combined Joint Task Force–Horn of Africa 2006). Thus CJTF–HOA has overlapping preventative and combating terrorism missions. Simultaneously, it focuses on building regional capabilities while promoting greater cooperation and inter-operability.

In addition to establishing a sustained presence in the Horn of Africa, multilateral and bilateral initiatives have been central to US strategy on the African continent. Since 9/11, the DOD has led initiatives in East Africa and the pan-Sahel (or trans-Sahara) region. Both programmes, the East Africa Counter-Terrorism Initiative and the trans-Sahara Counter-Terrorism Initiative (formerly the pan-Sahel Initiative), provide assistance and support to local governments to increase their capacities to stem terrorism (Bush 2006c:14–15). Tangibly, this means training and exercising local units to be capable of fighting potential terrorist threats in the region. In addition to multilateral activities and in accordance with theatre security cooperation plans, the DOD conducts bilateral military-to-military relations with countries across the African continent. One example of these operations is a lesser-known DOD initiative, the National Guard Bureau's State Partnership Programme (SPP). The SPP engages 'partner nations via military, socio-political, and economic conduits at the local, state, and national levels' (National Guard Bureau J-5 International Affairs Division 2007). To date, the SPP has created six partnerships between US states and African nations. The partnerships are between the following US states–African nations: California–Nigeria; New York–South Africa; North Dakota–Ghana; Utah–Morocco; and Wyoming–Tunisia (National Guard Bureau J-5 International Affairs Division 2007). The SPP focuses on creating long-term relationships and interagency coordination.

Generally, all US activities in Africa are led or influenced by the DOD. Within the past two years, there has been greater DOD recognition and awareness of the benefits of humanitarian and preventative measures to combat terrorism abroad.¹⁰ Nevertheless, the forthcoming establishment of a single DOD Combatant Command for Africa, the Africa Command (Africom), will no doubt raise questions about long-term US intentions on the continent, both locally and internationally.¹¹

CONCLUSION

From US experiences in preventing and combating terrorism, African nations may take away three specific lessons and one overarching thematic lesson. First, a qualitative and quantitative difference exists between short- and long-term measures to prevent and combat terrorism. Some are more ephemeral than others. Establishing the DHS was a long-term measure to prevent terrorism in the US, both qualitatively and quantitatively. By contrast, the creation of the National Security Branch in the FBI, while intended to be a long-term, qualitative shift, is in fact a short-term quantitative measure due to the organisational history and culture of the FBI and executive branch politics. From US experiences, one sees that bureaucratic and organisational changes may not always enhance capabilities to prevent and combat terrorism. Organisational change is not an end in itself. Since 9/11, however, the USG has tended to view such organisational change as a solution. It does so at its own peril. Moreover, while the central US counter-terrorism capabilities are supported by US laws, one must bear in mind that laws may be altered or interpreted differently at various times, and this may have profound consequences for future US capabilities. Thus long-term measures require more than laws and bureaucratic shuffling and re-shuffling to be institutionalised. What is needed for effective counter-terrorism, both to prevent and to combat terrorism, is sustained political leadership and moral courage.

A second lesson learned from US experiences is that within the US, different schools of thought exist regarding preventing and combating terrorism. They range from traditional law enforcement measures, to the post-9/11 concept of homeland security and the Long War. Each school of thought, law enforcement, homeland security and the Long War, has its respective organisational-bureaucratic supporters and opponents within the US. The political bureaucratic in-fighting is often over budgets and resource allocations and occurs on an annual basis between the executive and legislative branches and among executive branch departments and agencies. The degree to which these internal struggles hamper US policies is unclear, however, it is an inherent long-term challenge due to the nature of the US political system. The second lesson demonstrates that perceptions and thought models about preventing and combating terrorism do affect counter-terrorism capabilities. Synthesising schools of thought and quelling internal squabbles require, once again, sustained political leadership and moral courage.

A third lesson learned from US experiences is that, as always, context matters greatly: geography, culture, and politics in

particular. The US political system, a federal, constitutional democracy, constantly informs and impinges on US policies to prevent and combat terrorism. Political struggles occur within the executive branch among departments and agencies (such as the DHS, the DOD, and the Intelligence Community), just as they occur at state and local levels of government. Understanding why and how these struggles occur helps one better understand US policies and craft an effective counter-terrorism strategy. Geography and culture are especially influential because of their enduring nature. The US occupies a continental island with tens of thousands of kilometres of coastline and land borders. While geographically distant from Europe, the Middle East, and Asia, the US challenge to prevent and combat terrorism is underscored by the fact that America is an open society of immigrants from around the world. America's history of individual liberties and the rule of law is unlike that of any other culture or society. Because of geography and culture, the US views preventing and combating terrorism on a global scale, and its long-term strategy of advancing freedom abroad, are based on its historical experience. Other nations, therefore, will necessarily have different perceptions of how best to counter terrorism over the long term.

Finally, an overarching thematic lesson from US experiences is that there is no universal model to prevent and combat terrorism. The US practices a strategy that is based on its geography, culture, and politics. Whether or not foreign nations agree with US strategy, they would be well served to understand its basis. To craft an effective counter-terrorism strategy, each nation must understand its own geographic particularities. Each nation must stay true to its own culture and implement policies that do not contradict its own political system. This is as true in Africa as it is in any other part of the world. Above all, US experiences demonstrate that a nation most effectively prevents and combats terrorism by using its own strengths while also understanding its own weaknesses.

NOTES

- 1 For the most succinct comparative analysis to date, see United States General Accounting Office 2000. *Combating terrorism: how five foreign countries are organized to combat terrorism*, GAO/NSIAD-00-85. Washington, DC: US General Accounting Office, April.
- 2 Conversation with an official from a UK think tank who was also a former assistant to a Conservative Party Member of the European Parliament, Alexandria, Virginia, 15 April 2007.
- 3 For many of the organisational recommendations, see National Commission on Terrorist Attacks upon the United States 2004. *Final report of the national commission on terrorist attacks upon the United States*, or the *9/11 commission report* 2004. Washington, DC: US Government Printing Office, July, Ch 13.
- 4 For a succinct overview, see Bush, GW 2006. *9/11 five years later: successes and challenges*. Washington, DC: The White House, September, pp 17-18.
- 5 The central capabilities are based in part on Dr Colin Gray's theory of countering irregular warfare (insurgency and terrorism). The work includes the following: 'Protect the people', 'Intelligence is king', 'Unity of effort', 'No sanctuaries and no support' and 'Undercut the irregular enemy politically'. Gray, CS 2006. *Irregular enemies and the essence of strategy: can the American way of war adapt?* Carlisle Barracks, PA: Strategic Studies Institute, US Army War College, March.
- 6 The following work is useful: Whamond, JO 2002. The gathering of criminal intelligence: policy and practice. In M Vohryzek-Bolden, G Olson-Raymer, and JO Whamond (eds), *Domestic terrorism and incident management: issues and tactics*. Springfield, IL: Charles C Thomas, pp 221-241.
- 7 Getting information from a source, usually directly from the top leadership, without proper context.

- 8 . For more on New York City's counter-terrorism organisation and strategy, see the following works: O'Shaughnessy, P 2005. New York's secret war on terror. *New York Daily News*, 2 October, p 6; and Stoll, I 2006. NYPD's Falkenrath aims to keep NY safe – day by day. *The New York Sun Online*, 10 November. Available at <http://www.nysun.com/article/43295> [accessed 30 April 2007].
- 9 . Geographic data from Central Intelligence Agency 2007. *The world factbook 2007*. Washington, DC. Available at <https://www.cia.gov/cia/publications/factbook/geos/us.html> [accessed 30 April 2007].
- 10 . See, for example, Rumsfeld, D 2006. *Quadrennial defense review report*. Washington, DC: Department of Defence, 6 February 2006, pp 12-15.
- 11 . For a sceptical view of US intentions with Africom, see Zhiyuan, L 2007. US moves to step up military infiltration in Africa. *People's Daily Online*, 26 February. Available at http://english.people.com.cn/200702/26/eng20070226_352530.html [accessed on 20 March 2007].

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Canadian Experiences in Preventing and Combating Terrorism

Kent Roach

INTRODUCTION

Compared with many states, Canada has taken a restrained approach to anti-terrorism since the events of 11 September 2001. Whereas the Patriot Act was enacted without any meaningful opposition in the USA, a lively civil society debate arose in Canada at the end of 2001 before the enactment of Bill C-36, the Anti-Terrorism Act (ATA). This law has continued to be the subject of criticism. Groups representing academics, Muslims and various human rights organisations have argued that the ATA and the use of security certificates to detain suspected terrorists should be reformed, if not abolished. Canada altered the broad definition of terrorism found in British law to provide exemptions for strikes and protests. In 2006, a court in Canada struck down the requirement that terrorist activities be committed for a political and religious motive as an unjustified violation of freedom of expression, association and religion (*R v Khawaja* 2006)¹. In 2007, the Canadian parliament refused to renew police powers of preventive arrests and investigative hearings and allowed them to expire under a five-year sunset provision that had been included in the 2001 ATA. Unlike the UK, Canada has not derogated basic rights as part of its anti-terrorism efforts; it has not enacted measures that allow a month of preventive detention or created new offences against terrorist speech or publications. Unlike Australia, Canada has not enacted a continued string of post-9/11 legislations; it has not expanded its sedition law to deal with terrorist speech or allow for the proscription of groups that praise acts of terrorism but are not necessarily involved in terrorism.

At the same time, Canada enacted a massive new ATA within months of 9/11, and at a quicker pace than many African states (Powell 2005a). It followed this law with another massive new Public Safety Act, which was introduced in 2002 and enacted in 2004. Furthermore, Canada created a new Department of Public Safety and Emergency Preparedness, reorganised much of government around public safety issues and issued its first national security policy. The Canadian national security policy is noteworthy because it is based on an 'all-risk' approach that focuses on both emergency preparedness for natural disasters and pandemics and the dangers of terrorism. It also provides for forms of outreach to minority communities affected by the state's increased anti-terrorism efforts and provides that independent review of the state's national security activities should keep pace with the state's intensified national security efforts.

Canada's comparative restraint regarding anti-terrorism law and policy should not suggest that Canada has been complacency in its commitment to prevent and combat terrorism. Until the Toronto arrests in May 2006, Canada relied much more on security certificate detention under immigration law than on arrests and prosecutions under the criminal law. The Supreme Court of Canada has even refused to rule out the possibility of deportation for torture in exceptional cases. In March 2007, the Court held that administrative detention under the security certificate regime violated the Canadian Charter of Rights and Freedoms because it allowed the use of secret intelligence that was not disclosed to non-citizen detainees and was not subject to adversarial challenge. However, the Court gave the government a year to remedy the problem by possibly adding a British special advocate system, which has been criticised as not providing adequate protections for the detainee (*Charkaoui v Canada* 2007). The Canadian government, anxious about its status as a net importer of intelligence, continues to make over-broad claims of secrecy that threaten the viability of criminal terrorism trials. Canada will come under pressure in the near future from both the United Nations and the US to intensify its anti-terrorism efforts. Indeed, in 2005 UN Security Council Resolution 1624 passed calls for laws against the incitement of terrorism that, if enacted, could impose burdens on political and religious speech. Pressure will be placed on Canada to follow the British and Australian examples of creating new offences that target terrorist speech and control orders that can limit the activities of suspected terrorists.

This paper first briefly examines Canada's experience with terrorism to demonstrate that Canada, like many other states, is familiar with terrorism and faces real risks of terrorism in the future. Canada's experience with domestic terrorism is of particular interest because it provides an arguable example of how separatist violence can be peacefully channelled into a democratic and legal struggle for self-determination including secession. The remainder of the paper examines the evolution of Canada's national security policy since 9/11. I first examine the criminal law phase of Canada's response to 9/11; Canada enacted the ATA at the end of 2001 as a direct response to 9/11 and the demands of UN Security Council Resolution 1373, which called on all countries to enact criminal laws relating to terrorism and its financing. I next examine the immigration law phase of Canada's response to 9/11. Canada's reliance on immigration legislation as anti-terrorism law suggests that threats to freedom are distributed

unevenly in post-9/11 Canada. Non-citizens, largely Muslims and Arabs, bear a great risk both directly, because of immigration law, and indirectly, because of enforcement practices and public opinion.

In contrast to the focus on suspected terrorists under either criminal or immigration law, a third public safety phase in Canada's national security policy has resulted in increased attention to a broader range of threats to security, including diseases and disasters. The focus in this phase has been on target hardening and emergency preparedness rather than on deterrence and incapacitation. This third public safety phase started with the creation of a new Department of Public Safety and Emergency Preparedness, an all-risk national security policy and the passage of the Public Safety Act in 2004.

A fourth phase of Canadian national security policy has seen a developing, but still incomplete, emphasis on review and oversight by both parliament and independent bodies, including public inquiries of the state's national activities headed by sitting or retired judges. The 2006 reports of the Commission of Inquiry into the Activities of Canadian Officials in Relation to Maher Arar (Arar commission) has dramatically underlined the importance of independent review of Canada's national security activities and the risk that the innocent may be caught and grievously harmed by excesses and inaccuracies in anti-terrorism investigations (Arar commission 2006b). A rejection of racial and religious profiling and the provision for effective review of the state's national security efforts responds to both perceived and real grievances in Canadian Muslim communities that some fear may result in 'home-grown' terrorism. Another example of review includes an ongoing inquiry into the failure of Canada to prevent the 1985 bombing of Air India, an event that killed 331 people in what was the world's single most deadly act of terrorism until 9/11. Increased independent review of the state's national security activities can respond to both excesses and deficiencies in the state's anti-terrorism efforts.

CANADA'S EXPERIENCES WITH TERRORISM

Although Canada is a peaceful and prosperous country, it has experienced terrorism ranging from domestic political terrorism to international and religiously inspired terrorism. Terrorist threats to Canada come from both inside and outside the country.

October crisis and political terrorism in the cause of Quebec separatism

In October 1970, two cells of the *Front de Libération du Québec* (FLQ) kidnapped a British diplomat and a Quebecois cabinet minister, Pierre Laporte, eventually murdering the latter. The government called a state of emergency under the War Measures Act a day before Mr Laporte was murdered and asked Canadian troops to guard key strategic areas in Montreal. The FLQ and any other group that advocated the use of force or the commission of a crime as a means of accomplishing government change was declared an unlawful organisation. Being a member or supporter of such organisations was made a crime subject to five years'

imprisonment. Police were given the power to arrest those suspected members and supporters of such organisations without a judicial warrant and almost 500 people were subject to arrest and temporary detention during the October Crisis. The police could also search, without a judicial warrant, any premises or vehicle on the suspicion that it contained a member of an illegal organisation or anything kept for the purposes of promoting the unlawful policies of the illegal organisation. These and similar regulations expired by April 1971 (*Public Orders Regulation* 1970),² and the War Measures Act has now been replaced by an Emergencies Act that provides pre-commitment against detention on grounds of race, religion or ethnic origin and provides for different bodies to govern public order and natural disaster emergencies. Furthermore, in 1982, the October Crisis helped to inspire the enactment of a new constitutional bill of rights, the Canadian Charter of Rights and Freedoms, which contains no automatic exemption for states of emergency. Most Canadians now accept that the declaration of a state of emergency and the detention of supporters of Quebec separatism who were not involved in terrorist violence were serious overreactions and abuses of civil liberties.

The aftermath of the October Crisis of 1970 is instructive because it demonstrates the possibility of political terrorism being re-directed into peaceful and democratic channels. In 1976, the people of Quebec elected a *Parti Québécois* provincial government, and such governments held referenda on Quebec sovereignty in 1980 and 1995. Both referenda were defeated, but no serious re-occurrence of separatist violence has since taken place. After the 1995 referenda, the Supreme Court of Canada decided that Quebec did not have a unilateral right to separate under either Canadian or international law, but that the rest of Canada could not ignore a clear vote in favour of Quebec's separation from the rest of Canada (*Reference re secession of Quebec* 1998). The Canadian example provides some support for the thesis that political and domestic terrorism may be combated by open and robust democratic debate and dialogue including democratic consideration of secession.

International and religious terrorism: The 1985 Air India bombings

In 1985, two bombs were placed on planes departing from Vancouver Airport in Canada. One bomb destined for an Air India plane exploded in Narita Airport killing two baggage handlers, while another exploded on an Air India plane that had left Canada. All 329 people on board were killed, literally blown out of the sky. Before 9/11, the Air India bombing was the most deadly single act of aviation terrorism. The bomb was placed on Air India Flight 182 despite increased security precautions; an x-ray machine for luggage had broken down, an unreliable explosives sniffer had been used and no bomb sniffing dogs were present. One person, a Canadian Sikh, has pled guilty to manslaughter in relation to the construction of the two bombs while two others were acquitted in 2005 after one of the longest trials in Canadian history. The trial judge stressed that the Crown had to prove guilt beyond a reasonable doubt even in cases of horrific violence and had problems accepting the credibility of

key state witnesses, some of whom were in witness protection programs (*R v Malik and Bagri* 2005). In addition, two other potential witnesses in the case were murdered, raising more concerns about witness protection. The alleged mastermind of the plot, Talwinder Singh Parmar, a Canadian citizen, was eventually killed in India. One terrorism prosecution against him in Canada collapsed when the state refused to disclose the identity of a key informant and Canada refused to extradite him to India because of concerns that he would be tortured.

Canada's civilian security agency, the Canadian Security Intelligence Service (CSIS), destroyed wiretaps, and notes of its interviews were items of major importance in its Air India investigation. CSIS was created in 1984 with a mandate to provide the government with information about threats to Canadian security, but concerns remain about its relationship with police forces in Canada. At present, a public inquiry in Canada is examining how the Air India bombing happened and whether contemporary aviation security measures and relations between the intelligence collection of CSIS and that of the police, together with the law enforcement powers of the latter, would prevent another such bombing. Furthermore, this inquiry has a mandate to assess the adequacy of contemporary practices relating to the financing of terrorism, witness protection and terrorism prosecutions.

The events of 11 September 2001

Canada was immediately affected by 9/11; it accepted over 200 planes destined for the US after that country had closed its airspace. There were widespread, but false, rumours that some of the 9/11 plotters had entered the US through Canada. One of the reasons for these rumours may have been the 1999 apprehension of Ahmed Ressay, who had attempted to enter the US to bomb the Los Angeles airport from Canada. One part of the Patriot Act reflected American concerns about security threats from Canada and was titled 'Defending the Northern Border'. American commentators have criticised Canada for immigration and multiculturalism policies that are perceived to be more liberal than those of the US and have related these to security concerns. Canada's immigration law is not, however, as liberal or generous as its critics allege. As will be seen, Canada used immigration law to detain six non-citizens from various countries, including four from North Africa, as potential security threats. These people have been subject to years of detention and, more recently, house arrest, but Canada has not ruled out the possibility of deporting them even if it poses a substantial risk of torture. In the wake of 9/11, Canada has entered into a safe-third-country agreement with the US, which requires Canada to reject most refugee or asylum applications made by persons who have reached the US.

In the immediate aftermath of 9/11, a number of security files were transferred from the CSIS to the Royal Canadian Mounted Police (RCMP). Maher Arar, a Canadian citizen born in Syria, was a person of interest in one of these investigations. In 2006, a public inquiry in Canada concluded that the RCMP had passed on inaccurate information about Mr Arar and his wife to American officials who linked them to *al-Qa'eda*. Most probably, this information played a role in the decision of American

officials to detain Arar and render him to Syria where he was tortured and detained for almost a year (Arar commission 2006b). The Canadian government has subsequently apologised to Mr Arar and paid him \$10 million in compensation.

Post-11 September 2001 events and the Khawaja and Toronto terrorism prosecutions

Canada has not been immune to post 9/11 terrorism concerns inspired by the bombings in Bali, Casablanca, Madrid and London. At present there are two ongoing terrorism prosecutions in Canada of citizens alleged to have been involved in plots to commit *al-Qa'eda*-inspired acts of terrorism. One accused, Momin Khawaja, is alleged to have conspired with a group in London to plan to bomb there. Five of the seven charged in London were recently convicted after a year-long terrorism trial, but the Khawaja prosecution in Canada has been delayed by pre-trial proceedings including Charter challenges to the ATA and applications that intelligence gathered in this transnational case not be disclosed to the accused. In the summer of 2006, 17 men and youths in Toronto were arrested and charged with various terrorism offences including allegations that they planned to bomb Toronto and storm the parliament buildings in Ottawa. All the accused are Canadian citizens, and they are alleged to have been inspired by *al-Qa'eda*.

This section has been designed to demonstrate that Canada has experienced serious acts of terrorism in the past and faces some of the same serious threats of international and home-grown terrorism menacing many other countries. The next parts examine various Canadian responses to these threats.

THE CRIMINAL LAW RESPONSE OF THE ANTI-TERRORISM ACT

New crimes and definitions of terrorism

Barely a month after 9/11, the federal government introduced a massive anti-terrorism bill that, for the first time, created and defined crimes of terrorism under Canada's Criminal Code. The act was defended by the government in a preamble to the law as consistent with Canada's constitutional bill of rights, the Canadian Charter of Rights and Freedoms, and as necessary to respond to UN Security Council Resolution 1373. Some defenders of the act argued that it was necessary to protect human security and constitutional democracy from an existential threat. Similar themes can be seen in the preamble to South Africa's Protection of Constitutional Democracy Against Terrorism Act that stress the protection of democracy and participation in international efforts against terrorism (Roach 2005:129–132). The Canadian preamble, however, noted threats to the political, social and economic security of Canada and the country's relations with its allies, in reference to temporarily closed borders with the US, Canada's largest trading partner by far.

As with many post-9/11 anti-terrorism laws, the Canadian ATA's definition of terrorism was clearly inspired by the UK's Terrorism Act of 2000 in requiring proof of religious, ideological or political motive and the commission of a broad range of

harms that went well beyond violence against civilians.³ In some respects, the Canadian bill was even broader. As first introduced, it would have defined acts of terrorism as politically motivated acts that intentionally caused a serious disruption to any public or private essential service. Such acts had to be designed to intimidate a segment of the public with regard to its security, but this could include its 'economic security', a neo-liberal concept that has subsequently been adopted in South Africa's Protection of Constitutional Democracy against Terrorist and Related Activities Act (Roach 2005:136–137). Alternatively, such acts had to be designed to compel a government, an international organisation or any person to act. The only exemption from this sweeping prohibition was for 'lawful [emphasis added] advocacy, protest, dissent or stoppage of work'.⁴ This broad definition of terrorism inspired widespread concerns among many civil society groups that the act would brand many illegal protests and strikes as terrorism.⁵ This concern led to amendments before the bill became law that dropped the requirement that exempted protests must be lawful and provided that the expression of religious, political or ideological thought or opinions would not normally be considered terrorism.⁶

Although the amendments narrowed the definition of terrorism, the remaining definition is still much broader than the functional definition that was used during the 1970 October Crisis. In 1970, groups that advocated 'the use of force or the commission of crime as a means of or as an aid in accomplishing governmental change within Canada' were declared to be unlawful associations under emergency regulations.⁷ Another important difference is that the ATA was enacted as permanent legislation, unlike the emergency orders of the October Crisis. As will be seen, the Supreme Court of Canada read a much narrower definition of terrorism into Canadian immigration law in 2002. The Court's definition focused on intentional killing or causing bodily injury with the intent to intimidate the population or compel governments or international organisations to act (*Suresh v Canada* 2002: para 95), and was inspired by international attempts to reach a consensus definition of terrorism. It did not include references to any form of property damage or disruption of essential services, and it did not require proof that the actions were undertaken for political or religious motives.

The ATA was built on the premise that the ordinary criminal law was inadequate to deal with the threat of terrorism after the events of 9/11. In both the murder of a cabinet minister during the 1970 October Crisis and the 1985 terrorist bombing of Air India, Canada relied on the ordinary criminal law which prohibited participation in crimes such as murders and bombings, as well as conspiracies and attempts to commit those crimes. The ordinary criminal law functioned under the traditional principle that motive was not relevant to a crime and that a political or religious motive could not excuse the commission of the crime. Evidence of political and religious motive was introduced in the trial of two Sikh men for the bombing of Air India, but in acquitting them, the trial judge held that the motive evidence was not particularly helpful because many Sikhs at the time held similar views about the state of India (*R v Malik and Bagri* 2005).

The ATA requires proof that terrorist crimes were committed for religious or political motives. Although this was defended as a means to restrict the ambit of terrorist crimes,⁸ it requires that the religion and politics of terrorist suspects be investigated by the police and become a central issue in any terrorist trials. In October 2006, however, a trial judge concluded that the political and religious motive requirement found in the terrorism legislation of many countries including Britain, South Africa and Australia violated rights of expression, association and religion by encouraging the police to target those with political and religious views similar to those of terrorists. The trial judge found that the state had not justified the political or religious motive requirement necessary to address terrorism, noting that many other countries and international instruments distinguish terrorism from ordinary crime without relying on religious and political motive. The Supreme Court recently refused leave to appeal of this pre-trial decision (*R v Khawaja* 2007). In my view, it is best not to include politics or religion when defining terrorism offences to emphasise that the law rejects the violence of terrorism and does not accept the motive for the violence as either an essential part or an excuse.

The ATA was defended as a necessary means to prevent terrorism. It criminalised a broad array of activities which proceed the actual commission of a terrorist act, including providing finances, property and other forms of assistance to terrorist groups; participating in the activities of a terrorist group; and instructing the execution of activities of a terrorist group. These new offences generally require proof of subjective fault and as such can be contrasted with the use of objective fault levels in South Africa's 2004 anti-terrorism legislation (Roach 2005:140–144). Subjective fault is required under the Canadian Charter with respect to high-stigma and high-punishment crimes such as murder and war crimes. At the same time, the subjective fault requirements in the Canadian law are qualified so that the prosecutor does not have to establish intent to commit particular forms of terrorist activities, and this has been held to be consistent with the Canadian Charter (*R v Khawaja* 2007). In addition, offences under the former Official Secrets Act were extended to providing information to terrorist groups, as well as to foreign governments.⁹ The financing provisions of the ATA were required to implement Canada's obligations under the 1999 Convention for the Suppression of the Financing of Terrorism, but, in my view, the non-financing offences relating to participation, preparation and harbouring terrorists were not required to apprehend and punish those such as the 9/11 terrorists. The problem on 9/11 was law enforcement and intelligence gathering and coordination, not the reach of the criminal law.

Another important feature of the ATA is that it applies to a broad range of acts committed inside or outside of Canada. This was done to make clear that Canada was implementing various international conventions concerning specific forms of terrorism. The extra-territorial application of the new terrorism laws builds on precedents relating to war crimes and aircraft hijackings. People can be prosecuted in Canada for sending financial and other support to struggles fought in foreign lands. In noting the difficulty of defining *terrorism*, the Supreme Court

of Canada has noted that ‘Nelson Mandela’s African National Congress was, during the apartheid era, routinely labelled as a terrorist organization, not only by the South African government but by much of the international community’ (*Suresh v Canada* 2002: para 95). The only exemptions from the scope of international terrorism targeted by the law are for armed conflict conducted according to customary or conventional international law or the official activities of a state military force ‘to the extent that those activities are governed by other rules of international law’.¹⁰ This would not necessarily apply to all the resistance efforts against repressive regimes. Difficult issues may emerge should people in Canada be charged with sending financial or other forms of support to liberation struggles in foreign lands.

Listing of terrorist groups

As in the case of emergency regulations enacted during the October Crisis, a central feature of the ATA is the ability of the cabinet of elected ministers to designate groups and even persons as terrorists.¹¹ So far 40 groups have been listed in this fashion, including, most recently, the Tamil Tigers. Executive designation of a group as terrorist is designed to be conclusive proof in a criminal trial that the group is, in fact, a terrorist one.¹² In addition, more than 450 groups and individuals have been listed as terrorists under regulations enacted under the UN act (*UN Suppression of Terrorism Regulations* 2001).¹³ These lists are distributed to financial institutions and within government. Executive designation of terrorist groups and individuals is a common feature of many international and national anti-terrorism schemes. South African legislation, for example, provides for the listing of terrorist groups that are listed by the UN Security Council (Powell 2005b). Nevertheless, listing can be criticised as an executive challenge to judicial powers to decide in a particular case who is a terrorist. A person or group listed as a terrorist receives no prior notice of the listing decision and a limited right of judicial review after the decision has been made. In Canada, at least one person, Liban Hussein, was wrongfully listed as a terrorist, an error that was corrected by the government after more than six months and considerable harm to Mr Hussein (Dosman 2004:15–19).

There is a limited after-the-fact judicial review of the cabinet’s listing decision, but it is unlikely that such reviews would be successful or remove the stigma of being officially listed as a terrorist. Furthermore, the procedure for judicial review is open to criticism. Hearings can be closed and the group challenging the listing can be denied access to evidence before the judge because of national security concerns. In cases of intelligence received from other governments or international organisations, the applicant can be denied access to even a summary of evidence.¹⁴ In a 2002 case, the Supreme Court of Canada emphasised the importance of Canadian assurance to foreign governments that their intelligence will be kept secret because it relies heavily on such intelligence (*Ruby v Canada* 2002). Canada’s status as a net importer of intelligence has increased its concern with keeping the secrets given to it by other governments.

New and now-expired police powers

Another important feature of the ATA was its expansion of police powers. One provision, now expired, provided for preventive arrest when there were reasonable grounds to believe that a terrorist activity would be carried out and reasonable suspicion to believe that detention or the imposition of conditions was necessary to prevent the carrying out of the terrorist activity. The period of preventive arrest under the Canadian law was limited to a maximum of 72 hours. At the same time, the effects of a preventive arrest could last much longer. The suspect could be required by a judge to enter into a recognisance or peace bond for up to a year, with breach of the bond being punishable by up to two years’ imprisonment. Refusal to agree to a peace bond is punishable by a year’s imprisonment.¹⁵ Governments were required to prepare reports on the use of the measure. No reports were made of the use of preventive arrests. This may have represented restraint on the part of Canadian police, a preference for keeping terrorist suspects under surveillance or difficulties in identifying terrorist suspects.

A second new investigative power, now also expired, was the power to compel a person to answer questions relating to terrorist activities in either the past or the future. The subject cannot refuse to answer on the grounds of self-incrimination, but the compelled statements and evidence derived from them cannot be used in subsequent proceedings against the person compelled. In addition, there is judicial supervision of the questions and a right to counsel. Investigative hearings were required, in part, because Canada, unlike some states, including South Africa, does not make it an offence to refuse to report suspected terrorist acts to the police.¹⁶

The first attempt to use investigative hearings was during the Air India trial. The application for the hearing was held in secret without notice to the media or to the accused. The person compelled to testify challenged the constitutionality of the procedure. In *Application under Section 83.28* (2004),¹⁷ the Supreme Court upheld the constitutionality of this novel procedure in a six to three decision. Iacobucci and Arbour, JJ, held for the majority that the procedure did not violate Section 7 of the Charter, given that compelled evidence or evidence derived from that evidence could not be used against the person in subsequent criminal prosecutions, with the exception of those for perjury. They added that the Charter would prevent the use of an investigative hearing if the predominant purpose was to determine penal liability and would prevent the use of compelled testimony and evidence in subsequent extradition and deportation proceedings, even though this was not specifically provided for in the impugned statute (*Application under Section 83.28* 2004: para 78-79). In almost every case, the government had to be able to show that its predominant purpose was investigative, but the court’s extension of immunity to deportation and extradition hearings added protections that were especially important in the context of international terrorism.

Two judges dissented on the basis that investigative hearings violated the institutional independence of the judiciary by requiring judges to preside over police investigations (*Application under Section 83.28* 2004: para 180). They, along with a third

judge, dissented on the basis that the use of an investigative hearing in the middle of the Air India trial constituted an abuse of process, because it was an attempt by the prosecution to gain an unfair advantage. In the companion case of *Re Vancouver Sun* (2004), a majority of the court held that the presumption in favour of open courts applied to the conduct of investigative hearings, as opposed to the application for an investigative hearing, which would be held in private. Two judges dissented on the basis that such a presumption 'would normally defeat the purpose of the proceedings by rendering them ineffective as an investigative tool' and would harm the rights of third parties and the administration of justice (*Re Vancouver Sun* 2004: para 60).

Even though upheld as constitutional, investigative hearings represented an undesirable incursion on the adversarial traditions of criminal justice. It is also questionable whether investigative hearings were necessary or would be effective. An investigative hearing was never used against the reluctant witness in the Air India trial, and in 2005, the accused were acquitted because of the trial judge's doubts about the credibility of all of the Crown's major witnesses. The authorities had already engaged in the extensive witness relocation of one of the witnesses and had paid another a large sum for testimony. Investigative hearings assume that reluctant, uncooperative or fearful witnesses will suddenly cooperate and tell the truth simply because they are threatened with contempt of court for refusing to cooperate. Investigative hearings may be coercive and band-aid solutions to the larger and more difficult problems of earning the trust of potential witnesses and informers and protecting them from harm and intimidation.

As a concession to critics, the new powers of investigative hearings and preventive arrests enacted in the 2001 ATA were subject to a renewable sunset after five years. At the end of February 2007, Canada's minority Conservative government lost a resolution to extend investigative hearings and preventive arrests for a three-year period and these controversial provisions have now expired. *The New York Times* praised Canada for returning to its pre 9/11 norm ('Canada's Move to Restore Rights' 2007). The Canadian government, however, criticised the opposition for making it more difficult to investigate terrorism cases, including the ongoing police investigation in the 1985 Air India bombings that killed 331 people. Recent reports indicate that the government will introduce new legislation to restore preventive arrests and investigative hearings.

Calls for more laws against incitement

UN Security Council Resolution 1624, adopted on 14 September 2005¹⁸, calls upon all states to take steps to prevent incitement to commit terrorist acts. The resolution declares that states have 'obligations under international law to counter incitement of terrorist acts motivated by extremism and intolerance and to prevent the subversion of educational, cultural and religious institutions by terrorists and their supporters'. In its focus on speech and extremism, this resolution seems to be motivated by Karl Lowenstein's theory of militant democracy, which suggests that democracies need to be more aggressive towards those who do not believe in democracy (Lowenstein 1937:638).¹⁹ Furthermore,

Resolution 1624 calls on states 'to continue dialogue and broaden understanding among civilisations, in an effort to prevent the indiscriminate targeting of different religions and cultures'. Unfortunately, the targeting of what is considered by state officials to be 'extremist' speech that incites terrorism could inhibit intercultural dialogue, particularly if groups believe that some in their community have been unfairly stigmatised as supporting terrorism, or fear that this may occur. The criminalisation of speech is a problematic anti-terrorism strategy, both because it burdens freedom of expression and because criminal prosecutions of such speech may be counterproductive.

The Canadian approach to criminalising speech associated with terrorism has so far been relatively cautious. In 2006, a court struck down an offence against the possession of leaked secrets – which was being used to investigate a journalist who had received leaked information about Maher Arar – on the grounds that the offence was vague and overbroad, did not require proof of fault and constituted an unjustified violation of freedom of expression. The Court also held that it was an abuse of process to seize material from journalists to force them to reveal their sources within government (*R v O'Neill* 2006).²⁰ Although it was a victory for press freedom, this judgment was ironic because government officials were leaking the material and using journalists to discredit Mr Arar.

In response to concerns that including political or religious motive as part of the definition of terrorist activities would target those who might share religious and political opinions with terrorists, Canada amended its 2001 Anti-Terrorism Bill to provide that 'the expression of a political, religious, or ideological thought, belief or opinion' will not constitute a terrorist activity unless the expression satisfies the other definition of terrorist activities.²¹ Although it is possible that speech that might be considered a threat to commit terrorist activities may fall under Canada's definition of terrorism, most extreme speech will not be prohibited under Canada's ATA. Canada did, however, increase the ability of the state to seize and remove hate propaganda from the Internet²² and created a new offence of mischief to religious property,²³ both on the basis of concerns about the connection between hate speech and terrorism. Although Canada accepts the criminalisation of hate speech as a reasonable limit on freedom of expression (*R v Keegstra* 1990), it has not yet focused on targeting speech relating to terrorism. In March 2007, however, a Commons committee called for the enactment of the new offence of glorifying terrorism for the purpose of emulation (Subcommittee on the Review of the Anti-Terrorism Act 2007).

In my view, the government of Canada should resist the overbroad British and Australian attempts to criminalise speech associated with terrorism. The inclusion of counselling and threats in Section 83.01 of Canada's existing definition of terrorist activities already criminalises speech that is most closely associated with terrorism, and a new offence of incitement is neither necessary nor wise. There are ways to discourage people from engaging in terrorism other than criminalising the direct or indirect encouragement of terrorism or terrorist publications. The creation of the Cross-Cultural Roundtable on Security and the meetings of then Prime Minister Martin with a group of Imams who issued a

statement condemning terrorism after the London bombings are positive instances of the necessary cross-cultural dialogue about terrorism.²⁴ The criminalisation of extremist speech may backfire by driving extremists underground or giving them more publicity. Speech prosecutions will be a divisive strategy that could confirm fears that anti-terrorism efforts are based on hostility to Islam as opposed to a condemnation of violence. They may also distract police and prosecutors from far more immediate threats.

Equality and profiling

The ATA included the new offence of hate-motivated mischief against religious property and expanded powers to remove hate literature from the Internet. These provisions were defended on the basis of the connection between racial and religious hatred and terrorism. Although the government was prepared to proclaim its commitment to the anti-discrimination principle when it extended the criminal law, it was not prepared to introduce an anti-discrimination clause in the ATA that would bind state officials.²⁵ Such a clause might provide symbolic reassurance to those in Canada's Muslim communities who have expressed concerns that they will be subject to heightened scrutiny because they may have the same ethnic origins and religion as terrorists. Concerns have been raised about over-inclusive targeting of people by officials or financial institutions because of factors such as an Arabic name. The remedies available for discriminatory profiling of an innocent person are limited (Choudhry & Roach 2003:1; Bahdi 2003:293). For many of Canada's Muslim population of over 600 000, the Maher Arar case stands as an example of the vulnerable position in which they find themselves. The Arar commission (2006b:83) found that the RCMP had wrongly labelled both Mr Arar and his wife 'Islamic extremists' 'suspected of being linked to *al-Qa'eda* terrorist movement' in lookouts issued to Canadian and American customs officials in October 2001.

The government could consider a Criminal Code amendment that would define improper profiling and provide remedies and monitoring for these practices.²⁶ Agreement about and codification of what constitutes improper profiling could be a useful tool in the training of law enforcement officials. An anti-profiling amendment could continue the trend already started in the ATA of imposing reporting requirements on both federal and provincial law enforcement officials. A profiling amendment could, furthermore, build a gateway between law enforcement and various statutory review mechanisms, including human rights commissions. There is a need for tangible efforts, not symbolic rhetoric, on the issue of non-discrimination in Canadian anti-terrorism law.

The most glaring inequalities lie in the differences in treatment of citizens and non-citizens suspected of terrorism under Canadian law. Citizens have their right to a fair criminal trial protected (Canada Evidence Act Section 38.14), whereas non-citizens can be subject to indeterminate detention under immigration law on the basis of allegations that they are members of a terrorist group, even though membership alone is not a crime in Canada. Moreover, the government can keep evidence secret in immigration law and has a burden of proof which is markedly lower than proof of guilt beyond a reasonable doubt.

USE OF IMMIGRATION LAW AS ANTI-TERRORISM LAW

Although most of the post-9/11 debate about anti-terrorism measures in Canada focused on the ATA, it was Canada's immigration law, the Immigration and Refugee Protection Act (IRPA), that has, until recently, been used most frequently against suspected terrorists. Immigration law has been attractive to authorities because it allows procedural shortcuts and a degree of secrecy that would not be tolerated under even an expanded criminal law. Neither the public nor the courts have evaluated the lower standards of proof and adjudicative fairness and the broader liability rules in immigration law, and considered that non-citizens were declared by the Supreme Court of Canada to be a discrete and insular minority vulnerable to discrimination in its very first equality rights case (*Andrews v Law Society of British Columbia* 1989). Nor have the dangers of miscarriages of justice in immigration law been much considered (Roach & Trotter 2005:1001–1010). Rather, the focus has often been on the idea that non-citizens do not enjoy all the rights of citizens (*Chiarelli v Canada* 1992; *Medovarski v Canada* 2005).

Broad grounds of exclusion under immigration laws

Under IRPA, 'engaging in terrorism' or 'being a member of an organisation that there are reasonable grounds to believe engages, has engaged or will engage' in acts of terrorism are grounds to make non-citizens inadmissible to Canada on security grounds (Immigration and Refugee Protection Act 2001: c 27, s 34). Terrorism is not, however, defined under IRPA. In the case of *Suresh v Canada* (2002), the Supreme Court implicitly rejected the broad definition of terrorism found in the ATA. The court defined terrorism for the purpose of the immigration law as any

... act intended to cause death or serious injury to a civilian, or to any person not taking an active part in the hostilities in a situation of armed conflict, when the purpose of such act by its nature or context is to intimidate a population or to compel a government or an international organisation to do or abstain from doing any act.

The court described this definition of terrorism, taken from the general definition of terrorism in the 1999 International Convention on the Suppression of the Financing of Terrorism, as 'the essence of what the world understands by "terrorism"' (*Suresh v Canada* 2002: para 98). The court adopted this definition of terrorism in the course of rejecting challenges that the law was unconstitutionally vague and unjustifiably restricted freedom of expression and freedom of association. It also left open the possibility that parliament might choose to alter its definition of terrorism, perhaps by bringing the broader ATA definition into immigration law.

The fact that terrorism is now defined more narrowly in IRPA than in the ATA has not, however, limited the utility of immigration law as anti-terrorist. One reason is that a person can be declared inadmissible on the alternative ground that a non-citizen is 'a danger to the security of Canada'. The Supreme Court has

decided that, after 9/11, this term must be interpreted broadly and is not limited to direct threats to Canada.²⁷ Another reason is that detention or removal under IRPA can be achieved without the need to prove beyond a reasonable doubt that a person has committed a crime. Under Section 33 of IRPA, a non-citizen can be found to be inadmissible on security grounds on the basis of facts 'for which there are reasonable grounds to believe that they have occurred, are occurring or may occur'. This standard of proof falls well below that of civil trials between individuals; it falls even lower than the proof beyond a reasonable doubt necessary in a criminal trial.

Operation Thread

Procedures used under Canadian immigration law for preventive or investigative detention are more draconian than preventive arrest provisions in the ATA, which expired in 2007. As discussed above, the ATA provided for preventive arrest for a 72-hour period, but with the possibility of peace bonds being imposed for a longer period. In contrast, IRPA authorises a much broader form of preventive detention on reasonable grounds that a non-citizen, including a permanent resident, is inadmissible and a danger to the public. As under the ATA, there would be review within 48 hours, not by a judge, but by an official within the Immigration Division. Continued detention can be authorised on the basis that 'the Minister is taking necessary steps to inquire into a reasonable suspicion that they are inadmissible on grounds of security or for violating human or international rights'.²⁸ This is a form of investigative detention not contemplated under the ATA. There is no limit on this period of detention, but the reasons for the detention must be reviewed every 30 days.²⁹

The above powers of investigative detention were used in August 2003 with respect to 21 non-citizens from Pakistan who were arrested for typical immigration act violations relating to misleading statements and a fraudulent school's being used as a means to obtain student visas. Nevertheless, the arrests were headline news because of a sensational news release which stated that the young men were

... from, or have connections to, the Punjab province in Pakistan that is noted for Sunni extremism. ... They appear to reside in clusters of 4 or 5 young males and appear to change residences in clusters and/or interchange addresses with other clusters. ... All targets were in Canada prior to September 5, 2001. ... A confirmed associate of the group ... provided an offer of employment from Global Relief Foundation ... [which] has been identified by the UN as a fundraising group that provides financial support to terrorist groups, including Al Qaeda. ... One of the targeted apartments is reported to have aeroplane schematics posted on the wall, as well as pictures of guns.

The sensational allegation in the newspapers read, 'One of the subjects is currently enrolled in flight school to qualify as a multi-engine commercial pilot. His flight path for training purposes flies over the Pickering Nuclear Plant.'³⁰

Not surprisingly, given the dramatic nature of this extraordinary press release, the initial detention of 19 men (the same

number as those involved in the 9/11 attacks) was highly publicised and initially raised many security concerns in Canada. The men were entitled to prompt administrative hearings, but most were detained on the grounds that 'the Minister is taking necessary steps to inquire into a reasonable suspicion that they are inadmissible on grounds of security or for violating human and international rights'.³¹ The aftermath of these detentions suggest that the front-page news about a suspected *al-Qa'eda* cell with designs on a nuclear plant was most likely grossly unfair. Many of the men were released after adjudicators had determined that they were not a security threat. Those who have been deported or detained have also been found not to be security threats. Ten of the men made refugee applications on the basis that the publicity surrounding the case has made them liable to detention under Pakistan's harsh anti-terrorism laws ('Detained Students Seek Refugee Status' 2003).

The whole incident has caused widespread resentment among Canada's Muslim communities, with some criticising the apprehension of the men as the actions of a police state and others suggesting it was an example of profiling that victimises the innocent. The Commission for Public Complaints (2005:35) against the RCMP complained that it has not been able to obtain full access to documents to investigate a complaint in relation to Operation Thread (Commission for Public Complaints 2005:35). The Commission, however, subsequently dismissed the third-party complaint about Operation Thread concluding that 'the RCMP members involved were not motivated by racism or racial profiling in their handling of the investigation' even though the investigation involved only 31 of 420 persons who had been issued fraudulent visas by a business college and all those identified for a national security investigation were from Pakistan. The Commission stressed that 'country of origin alone was not sufficient to qualify for inclusion' in the national security investigation and that religion was not used as a ground for inclusion (Chair of the Commission of Public Complaints). However, its conclusion that there was no racial or religious profiling depended on the controversial assumption that using country of origin, namely Pakistan, as one of multiple criteria for investigation did not amount to discrimination and that racial profiling would only occur if the officers had been intentionally motivated by racism.

The Commission also concluded that the international publicity surrounding the detentions was 'an unfortunate consequence', but found 'it was a consequence unrelated to any information disclosed by the RCMP' (Chair of the Commission of Public Complaints).³² This conclusion, however, did not address the fact that inflammatory information was released by someone connected to the joint operation of the RCMP and immigration officials. Finally, the Commission noted that it did not have jurisdiction to examine the activities of immigration officials who worked with the RCMP. As in the Arar case, the effectiveness of existing review mechanisms was compromised by the inability of review bodies to have access to all the information or to review the conduct of the multiple parts of governments that are increasingly tasked to national security matters.

Security certificates

Security certificates were introduced into Canadian law in the early 1990s. Since that time, 28 such certificates have been signed by the ministers of immigration and public safety to designate a non-citizen a threat to Canada's national security. The security certificate is subject to judicial review in the Federal Court, but its issue pre-empts other proceedings, including applications for refugee status. Indeed, if the judge upholds the security certificate as reasonable, the person named is subject to removal without appeal and without being eligible to make a claim for refugee protection.³³

Six security certificates have been issued against men suspected of terrorism, with four of the six originating from North Africa. Mohamad Mahjoub, a 45-year-old Egyptian, has been detained the longest, since 26 June 2000. He is alleged to have worked for Bin Laden and with the Vanguard of Conquest, a group that wishes to overthrow the Egyptian government. In 2007, he was released on strict conditions after a judge found that he would not be returned to Egypt within a reasonable period and his controlled release would not threaten the security of Canada. His conditions of release include electronic monitoring, house arrest, denied access to telephones or the Internet and only approved visits (*Mahjoub v Canada* 2007). Mahmoud Jaballah, alleged to have terrorist ties with the Egyptian *Al Jihad*, has been detained since August 2001 on a security certificate ordering his deportation to Egypt. In 2007, he was released on a very strict form of house arrest that limits all contact with the outside world (*Jaballah v Canada* 2007). Mohammed Harkat was detained on 10 December 2002, with allegations that he had ties to the Algerian Islamic Army Group. He was released in 2006 on strict bail conditions that amount to house arrest. Courts have recently refused to modify those conditions but have issued a temporary stay against his deportation to Algeria (*Harkat v Canada* 2007).³⁴ Adil Charkaoui from Morocco was detained since May 2003 on suspicion of involvement with *al-Qa'eda* but was released in February 2005 on strict conditions on his fourth detention review. In 2006, some of these conditions were loosened (*Charkaoui v Canada* 2007).

Two other security certificate detainees have origins outside North Africa. Manickavasgam Suresh was arrested in 1995 under a security certificate that alleged he had raised money for the Tamil Tigers. He has been released on bail since 1998 on relatively lenient conditions of weekly reporting to immigration officials and no contact with members of the Tamil Tigers (*Re Suresh* 1998), but his deportation is still pending because of concerns that he might be tortured if returned to Sri Lanka. Hassan Almrei, from Syria, has been detained since 19 October 2001. In 2005, he staged a hunger strike for more than 60 days in protest of his conditions of confinement in a remand centre designed for prisoners awaiting trial. He continues to be detained, and in 2005 his application for conditional release was denied on the basis that, while he would not be removed from Canada in a reasonable time, he had not established that his release would not be a danger to the security of Canada (*Almei v Canada* 2005). Unlike the other detainees, Almrei does not have a family who can act as sureties for his release under house arrest.

The procedure for reviewing security certificates is extraordinary because it involves a specially designated judge of the Federal Court's being required to hear the evidence in the absence of the person named in the certificate and his or her counsel if, in the judge's opinion, the disclosure of information would be injurious to national security or the safety of any person. The judge can use such information in determining the reasonableness of the certificate, but it cannot be included in a summary of evidence that is provided to the detainee, who is prevented from knowing the basis for the issuance of the security certificate.³⁵ In practice, the undisclosed evidence contains intelligence gathered by the CSIS and foreign governments. Little is known about the conditions under which the foreign intelligence was obtained.

In 1992, the Supreme Court of Canada upheld a security certificate procedure in an earlier piece of legislation but stressed the importance of providing at least a summary of the evidence to the person named in the certificate (*Chiarelli v Canada* 1992). Somewhat similar procedures are available under the ATA with respect to preserving the confidentiality of information obtained in confidence from a foreign entity or for protecting national defence or national security. Important exceptions under the ATA, however, are that evidence which is the subject of a secrecy or non-disclosure order cannot be used against the accused and that the criminal trial judge has the right to make any order, including a stay of the entire criminal proceedings, that he or she 'considers appropriate in the circumstances to protect the right of the accused to a fair trial'.³⁶ Such orders are not contemplated under Canadian immigration law.

Incursions that are made on standards of due process or adjudicative fairness in the name of keeping information affecting national security confidential but usable in security certificate proceedings are well demonstrated by a 2002 speech given by a judge of the Federal Court, a specialised court in Canada that has jurisdiction over many security matters. According to Hugessen (2002:384), the judge said the following:

We do not like this process of having to sit alone hearing only one party and looking at the materials produced by only one party and having to try to figure out for ourselves what is wrong with the case that is being presented before us and having to try for ourselves to see how that witnesses that appear before us ought to be cross-examined.

The judge ended his speech with an extraordinary confession: 'I sometimes feel a little bit like a fig leaf' (Hugessen 2002:386). He suggested a more proportionate alternative to the present system, one based on the British one: special advocates with security clearances should have access to the confidential information not disclosed to the detainee or his lawyer and should be able to challenge it. Another and perhaps better alternative is to allow lawyers for detainees access to the classified material that they will not disclose to their clients until the government or the court has approved the use of the material. Such reforms have not yet been implemented.

Section 78(g) of IRPA specifically authorises judges to consider information that is not disclosed to the detainee in determin-

ing whether a security certificate is reasonable. This can produce a situation in which a decision to detain and deport a person from Canada is made in the absence of any adversarial challenge of important evidence. The information that is presented to the judge in this manner may include matters such as eyewitness identification and statements from prison informers. Both forms of evidence have proven to be prime causes of miscarriages of justice. The information that is presented to the judge may have been produced and filtered by intelligence agencies through a process of tunnel vision in which ambiguous evidence is interpreted in a manner consistent with the suspect's guilt and potentially exculpatory evidence is ignored or explained away.³⁷ Although there are no guarantees that miscarriages of justice will not occur, vigorous and informed cross-examination is commonly considered one of the most important safeguards against such errors of justice.

In *Charkaoui v Canada* (2007), the Supreme Court of Canada decided that the security certificate procedure violated Section 7 of the Charter because it did not allow the affected person to know the case to meet. The Court indicated, however, that full disclosure of the case to the detainee was not required and that other forms of adversarial challenge to the case, including the British special advocate system, might be satisfactory to make the immigration law procedure constitutional. It also indicated that judges should periodically review whether detention was necessary to protect national security. The Court generally approved of the decisions discussed above, to release detainees under strict conditions amounting to house arrest while also noting that those subject to such conditions could over time challenge them under the Charter. The Court rejected arguments that security certificates infringed the equality rights of non-citizens by concluding that non-citizens do not have a Charter right to remain in Canada. This may be true, but it avoids the very different levels of adjudicative fairness afforded to citizens who must be charged criminally and receive full disclosure and non-citizens who can be administratively detained and denied access to the government's case.

The Supreme Court's decision in *Charkaoui v Canada* (2007) does not go as far as the House of Lord's landmark decision in *A v Secretary of State for the Home Department* (2004). The impugned law in the latter case allowed British authorities to detain non-citizen terrorist suspects indefinitely where they could not be deported because of concerns that they would be tortured, and where another country would not accept the person. It was enacted shortly after 9/11, subject to a formal derogation from fair trial rights, but not equality rights. In an eight to one decision, the House of Lords found that the derogation was disproportionate to the terrorist threat and discriminated against non-citizens. Many lords stressed that the government could not justify a harsh law that only applied to non-citizens suspected of terrorism when it was clear that British citizens were also terrorism suspects. Warnings from both the UN Human Rights Commission and the Inter-American Human Rights Commission about the dangers of discrimination against non-citizens and related dangers of ethnic and cultural stereotyping and profiling in anti-terrorism efforts

were also considered by the House of Lords (*A v Secretary of State for the Home Department* 2004:62, 69).

The mere fact that non-citizens do not have a right to remain in Canada is not a satisfactory basis on which to decide the issue of discrimination. Rather, the focus should be on the truncated procedures and indefinite detention of non-citizen terrorist suspects that are allowed under Canadian immigration law. It is not fair and equal to impose the risk of harsh treatment and perhaps erroneous determination of involvement with terrorism on non-citizens simply because they are already disadvantaged in Canadian law and politics. The immigration law shortcut in dealing with terrorism suspects forces one to question why Canada enacted the ATA with its many new offences, investigative powers and restrictions on the use of national security information.

Deportation and torture

In its 2002 decision in *Suresh v Canada* (2002), the Supreme Court ruled that a person's right to life, liberty or security, except in accordance with the principles of fundamental justice in Section 7 of the Canadian Charter will, in most cases, prohibit his or her deportation to a country where a substantial risk of torture exists.³⁸ The court, however, refused to articulate an absolute rule against torture under the Charter despite finding that such an absolute rule under international law survives. The Court also did not indicate what exceptional circumstances might justify deportation to torture or address the situation of those who may be subject to continued detention because their removal would not be constitutional. Furthermore, the Canadian courts have refused to stay deportations to allow the UN Human Rights Committee or its Committee against Torture to hear complaints from individuals who argue that they will be tortured if deported from Canada (*Ahani v Canada* 2002).³⁹

That Canada might possibly deport a security threat to face a substantial risk of torture is rightly an international embarrassment. The UN Human Rights Committee and its Committee against Torture have both pointedly reminded Canada of its absolute obligation not to participate in the practice. The House of Lords recently affirmed that democracies should not be complicit in torture (*A v Secretary of State* 2005), and the American Congress under the leadership of Senator John McCain, himself a torture victim, proclaimed its commitment to not be involved in the practice. The cases of Maher Arar and other Canadians held in Syria have reminded Canadians of the reality of torture. Although Canada has not enacted legislation specifically deviating from Charter rights, it has derogated from the spirit of those rights by allowing the indefinite detention of suspected terrorists under security certificates and by holding open the possibility of deporting a person to torture. The Canadian government has invoked the *Suresh v Canada* exception to torture in a number of cases involving security certificate detainees from North Africa, but so far no judge has approved deportation to a substantial risk of torture. For example, in 2005 Federal Court judges in Canada rejected the government's argument that exceptional circumstances justified the deportation of Mahmoud Jaballah or Mohamad Mahjoub to Egypt (*Re Jaballa* 2005; *Re Mahjoub* 2005).⁴⁰ In 2007, another Federal Court judge stayed the depor-

tation of Mohammed Harkat to Algeria (*Re Harkat* 2007). These cases indicate how, in a globalised world, Canadian anti-terrorism policy is connected with that of anti-terrorism in other parts of the world, including Africa. The prolonged litigation in all of the above security certificate cases is related to concerns that detainees would be tortured if returned to their home countries. In contrast, a suspected Russian spy was recently apprehended under a security certificate and returned to Russia in a matter of weeks, whereas all of the above security certificate cases are still being litigated and deportation delayed many years after their initial detention.

The case of Maher Arar

One of the more dramatic examples of the abuse of immigration law is the practice of rendition of non-citizens to countries with poor human rights records. Extraordinary renditions take place without any legal process and may involve kidnapping people in one country and removing them to another. Other renditions may be authorised by immigration law but still be problematic. Maher Arar, a Canadian citizen born in Syria, was detained in the US where he was subject to expedited removal proceedings under American immigration law on the basis that the Attorney General had reasonable grounds to believe that he was engaged or was likely to become engaged in a terrorist activity. The basis for the Attorney General's decision has not been made public. Mr Arar requested removal to Canada but was nevertheless sent to Syria via Jordan, despite American and international law that prohibits the involuntary transfer of people to a country in which there are substantial grounds to believe they will be tortured (Yale-Loehr & O'Neill 2005). Mr Arar was detained in Syria for almost a year. He says he was tortured and he signed a false confession about involvement in terrorism. An independent fact finder appointed by the commission of inquiry has confirmed Mr Arar's claims of torture while in Syria and has found that Abdullah Almalki, Ahmad Abou-Elmaati and Muayyed Nureddin, Canadian citizens of Arab origin, were also tortured while detained in Syria on suspicion of involvement with terrorism. These findings have been accepted by the public inquiry (Toope 2005), and another public inquiry has been appointed to examine the actions of Canadian officials in relation to Almalki, Elmaati and Nureddin.

The Arar public inquiry concluded that inaccurate information linking Mr Arar and his wife to *al-Qaeda* had been passed from Canadian to American officials and had likely played a role in Mr Arar's rendition to Syria. Furthermore, it found that Canadian officials did not know of or acquiesce to his removal to Syria, but that they did distribute information obtained from Mr Arar while he was in Syria without noting that the information was likely a product of torture (Arar commission 2006b). After the release of the public inquiry report, the government of Canada paid Mr Arar \$10 million in compensation. Nevertheless, he apparently remains on American watch lists.

Safe-third-country agreement

In December 2001, Canada and the US agreed to implement a 'safe-third-country agreement' as part of a smart-borders

agreement to increase security and ease the flow of goods and people at the border. The agreement now precludes most refugees who reach the US from making a refugee application to Canada, and it has significantly reduced the number of refugees Canada considers in any year. The agreement responds to American perceptions that Canada's refugee policy is too liberal and generous. A report by the research division of the US Library of Congress has concluded that 'Canada's immigration laws are arguably the foremost factor in making Canada hospitable to terrorists'. Although the report noted that IRPA had decreased appeal rights and facilitated the use of detention, it has criticised it in part because its reference to the protection of refugees was 'an indication of the prevailing concern for or priority placed upon civil liberties in Canada' (Library of Congress Research Division 2003:147, 152–153).⁴¹

Regrettably, most concerns focused on the ATA while IRPA provisions that present an even greater threat to the values of due process and equality largely escaped criticism. As my colleague Audrey Macklin (2001:393) has suggested, 'Laws that arouse deep concerns about civil liberties when applied to citizens are standard fare in the immigration context.'⁴² IRPA subjects non-citizens to considerably lower standards of adjudicative fairness than even the enhanced criminal law of the ATA. It is in this context that the Canadian government has chosen to rely more on immigration law than on the new criminal law to deal with suspected international terrorists.

ALL-RISK APPROACH TO PUBLIC SAFETY AND EMERGENCY PREPAREDNESS

Limits of criminal and immigration law

There are reasons to doubt the effectiveness of the ATA as an instrument to deter acts of terrorism. Even before the ATA's enactment, most acts of terrorism were already being punished as serious crimes such as murder, hijacking and the use of explosives. The ATA may marginally increase the severity and certainty of punishment, but determined terrorists are not rational actors amenable to deterrence. The ATA will probably be most useful when it is directed at third parties, such as financial institutions, that could provide services to terrorists. These entities may well be encouraged to cease dealing with suspected terrorists. At the same time, problems of over-deterrence and inflicting harm on the innocent may arise if errors are made in determining who is a terrorist. The 9/11 Commission in the US has expressed scepticism about the ability of laws against terrorist financing to prevent acts of terrorism.⁴³

In addition, reliance on immigration law as anti-terrorism law is both over-inclusive and under-inclusive. Policies such as the safe-third-country agreement will turn away many more legitimate refugees than it will deflect terrorists. The type of long-term and preventive detention that is allowed under Canadian immigration law may be successful in incapacitating suspected terrorists, albeit without a clear finding of guilt. Nevertheless, many of those detained will eventually be deported from Canada. Given

the international nature of terrorism, it is unclear whether deflection or deportation of suspected terrorists to other countries will actually increase security. It may simply replace the problem of global terrorism to other countries. These countries may often have fewer resources with which to combat terrorism, as well as military and justice systems that may occasionally combat terrorism in a counterproductive manner that does not fully respect democratic dissent. In addition, the immigration law approach that Canada has relied upon cannot be used against terrorist suspects who are Canadian citizens, such as the those who engaged in the 1970 October Crisis or the 1985 bombing of Air India.

Administrative target hardening

One might ask what Canada should do to respond to the very real risk of terrorism. Clearly, doing nothing is not an option. Canada has been named as one of *al-Qaeda's* targets because of its military presence in Afghanistan (but not Iraq). One successful act of terrorism, especially biological, chemical or nuclear terrorism or the poisoning of food or water supplies, could have dire consequences. A promising strategy involves administrative and environmental controls that would help secure sites and eliminate substances that could be used to commit acts of terrorism. Some of these controls, including increased protection and surveillance of critical infrastructure such as pipelines, electricity lines and sea- and airports, as well as increased control over dangerous materials, such as explosives and toxins, are included in the Public Safety Act⁴⁴ which was enacted into law in May 2004. Unfortunately, the Canadian government's priority was to define as crimes of terrorism many acts which were already illegal before 9/11. By contrast, administrative measures designed to prevent and reduce the damage caused by terrorists were not defined at all. At the same time, the criminal law approach taken in the ATA, as well as the immigration law approach, was partially encouraged by UN Security Council Resolution 1373 which called for better border controls and the criminalisation of financing and participation in terrorism. The Security Council has a significant responsibility for the nature of post 9/11 anti-terrorism laws and policies in many countries, including Canada. Resolution 1373 required states to have criminal laws against terrorism and terrorist financing without even defining terrorism in the resolution. This allows domestic countries to define terrorism broadly, often following the broad definition in the British Terrorism Act, 2000.

An administrative and environmental approach designed to prevent terrorists from gaining access to substances such as explosives, chemical or nuclear materials or sites vulnerable to terrorism, such as airplanes and nuclear plants, might have a number of benefits. These are softer but smarter strategies that do not rely upon punishment and detention to the same extent as criminal and immigration law do. They work as a fail-safe measure should it prove impossible to deter, incapacitate or identify all the terrorists. Measures such as more effective screening of all passengers and baggage on aircraft through technology may also limit the damage to values such as liberty, privacy and equality. Technology can be used to screen all passengers, and not only those who are thought to match the profile

of a terrorist. To be sure, technology such as the use of biometrics could have a negative impact on privacy. When applied to large-scale populations, it will produce a considerable number of false positives and false negatives. It will not be possible to screen all transit passengers, but it should be possible to provide better controls over explosives and other materials that can be used for bombs.

Environmental measures such as the improved monitoring of public health and safety of food and water have the important additional benefit of providing protection against diseases and the accidental contamination of food and water. Better security for computer systems would protect them against not only cyber-terrorism attacks but also random hacker attacks. Better emergency preparedness serves a similar all-risk function as it prepares society to deal with a wide range of natural and man-made disasters such as blackouts and storms like Hurricane Katrina. Indeed, the failure of the American state to mitigate the damages of Hurricane Katrina suggests that its focus on terrorism as the prime threat to security may hinder broader human security and development goals in the US as well as in Africa (Tynes 2006).

The Public Safety Act⁴⁵ contains provisions that allow ministers of transport, environment, health and defence to take temporary measures in a wide range of emergencies, not only with respect to terrorism. In a post-9/11 report, the American National Research Council (2002) concluded that countries should invest in strategies that will make them safer not only from terrorist attacks but also from disaster, disease and accident (National Research Council 2002). Such strategies present a smaller risk, both for targets and for society, of targeting the wrong people.

Canada's new national security policy

The Canadian government has taken steps towards a comprehensive all-risk approach to national security. In response to not only 9/11 but also blackouts, the contamination of food and water and the SARS pandemic that caused over 50 deaths in Toronto in 2003, a new federal Ministry of Public Safety and Emergency Preparedness was created in late 2003. The Minister of Public Safety is responsible for a new Canada Border Services Agency and the Office of Critical Infrastructure and Emergency Preparedness. The new ministry encompasses more than 55 000 employees and has a \$7 billion budget. It has the potential to develop a more comprehensive and rational approach to the various risks that Canadians face.

In April 2004, the government of Canada released its first official national security policy, which endorsed an all-risk approach. Canada's policy includes commitments to better emergency preparedness, public health, transport security and peacekeeping, as well as terrorism-specific proposals relating to improved intelligence and border security.⁴⁶ This national security policy can be contrasted with the comparable American policy, with its emphasis on the pre-emptive use of military force (Banks 2005), and the American homeland security approach, which was unable to respond to the devastation caused by Hurricane Katrina. An all-risk security policy might provide a means for African nations to benefit from funds that are available

for security issues while enhancing infrastructure and capacity and responding to other security risks facing Africans.

NEED FOR EFFECTIVE REVIEW OF NATIONAL SECURITY ACTIVITIES AND OUTREACH TO AFFECTED COMMUNITIES

Although Canada's national security policy looks good on paper, the country has been fortunate enough not to discover how it will respond to a disaster or an act of terrorism. Troubling reports by a Senate committee reveal that Canada is not adequately prepared for emergencies (Standing Senate Committee on National Security and Defence 2004). Reports by the Auditor General (2004) have found delays in updating Canadian watch lists. These reports underline the importance of effective and independent review of the government's national security activities. Review can help ensure the effectiveness of the state's activities and their propriety and respect for law and human rights. For example, inaccuracies in watch lists are unacceptable from both security and fairness perspectives. Although recent proposals have called for a parliamentary committee that could have access to classified national security material and the Arar inquiry recommended a major expansion and co-ordination of the independent bodies that review national security actors in Canada, the government has yet to embrace either of these important steps. The government should make good on the commitment in its national security policy that review powers keep pace with national security activities. National security activities should be subject to continuous and effective review both to ensure the effectiveness of security efforts and to ensure that they are conducted in a lawful manner that respects rights.

Review of secret information sharing

A comprehensive all-risk policy for human and national security must still be carefully monitored to ensure that it does not produce unwarranted threats to liberty, due process, equality or privacy. Many provisions in the Public Safety Act (2004)⁴⁷ facilitate the collection and sharing of information within and among governments. Although this may respond to some concerns that security information is not appropriately communicated within government, the information-sharing provisions create apprehension about privacy and transparency, as well as practical concerns about decision makers being swamped by too much information. The work of privacy commissioners has become more important since 9/11. Vast databases can undermine privacy when revealing information about potential terrorists that may not be accurate or helpful. The Arar commission's first report is a reminder of the drastic consequences individuals face when information is transferred to foreign governments or within the Canadian government without proper restrictions on its subsequent use and appropriate procedures ensuring the relevancy, reliability and accuracy of the information and compliance with privacy laws when it is released. The challenge for the government will be to make optimal use of its resources to protect the security of Canadians, while also minimising intrusions on im-

portant democratic values such as equality, fairness and privacy and the right to engage in religious or political dissent.

Role of public inquiries

Public inquiries such as the Commission of Inquiry into the Activities of Canadian Officials in Relation to Maher Arar or a subsequent Internal Commission of Inquiry to the Activities of Canadian Officials in relation to Abdullah Almalki, Ahmad Abou-Elmaati and Muayyed Nureddin,⁴⁸ or the Commission of Inquiry into the Bombing of Air India Flight 182⁴⁹ are important means of ensuring adequate review of the state's often secret national security activities. Public inquiries in Canada are, however, called at the discretion of the Cabinet. Arar's treatment at first did not spark widespread concern in Canada, but public pressure mounted until the government decided to appoint an inquiry in early 2004. The inquiry was appointed after the RCMP searched a reporter's house and office while investigating damaging leaks made against Mr Arar. According to the Commission of Inquiry into the Actions of Canadian Officials in Relation to Maher Arar (2006b:257, 263), Justice O'Connor concluded that the leaks were

... an example of how some government officials, over an extended period of time, used the media to put a spin on an affair and unfairly damage a person's reputation. Given the content of the released information, only individuals with access to classified information could have been responsible for the leaks. The obvious inference is that this was done to paint a picture they considered favourable to the Canadian government or to themselves. ... It is disturbing that there are officials in the Canadian public service who see fit to breach the public trust for their own purposes in this way. It is disappointing that, to date, no one has been held accountable.

The leaks of information in relation to Mr Arar demonstrate how security officials can abuse their access to classified information to protect themselves and how a person can be devastated by a process of guilt by association and rumour.

The Arar inquiry had a factual mandate to investigate and report on the actions of Canadian officials in relation to Arar's detention in the US, his deportation to Syria, his treatment in Syria, and his return to Canada. Both the governments of Syria and the US declined invitations to participate in the inquiry. Large portions of the inquiry were conducted without Mr Arar or his lawyers or the media being present because of concerns about national security confidentiality. Many of the witnesses from the RCMP, CSIS and Canada's department of foreign affairs were called to give public testimony.⁵⁰ In September 2006, the first part of the Arar report was released. It concluded that the RCMP shared inaccurate and unreliable information about Mr Arar with American officials without restricting its subsequent use by the US. These American officials probably used and relied on this information in their decisions to detain Mr Arar in New York and remove him to Syria where he was tortured and detained for a year before being released. Furthermore, the commission concluded that statements made by Mr Arar while in Syria were

subsequently distributed to the RCMP and CSIS and heightened suspicions about Mr Arar's involvement in terrorism and that, despite the statements' probably being a product of torture, the organisations showed a lack of support for Mr Arar's return to Canada (Arar Commission 2006b:13–16). The Canadian government immediately accepted all the recommendations of this first report and subsequently appointed a commission of internal inquiry to examine the actions of Canadian officials in relation to three other Canadian citizens, Abdullah Almalki, Ahmad Abou-Elmaati and Muayyed Nureddin. These commissions of inquiry can be important instruments of accountability, however, they are not adequate substitutes for permanent and independent review bodies that have the ability to review national security activities that are increasingly integrated within the Canadian government and with the actions of other governments.

The Arar Commission issued a second report of recommendations for enhanced review of the national security activities of the RCMP and other agencies involved in national security. It recommended that the Commission for Public Complaints against the RCMP (CPC), which has jurisdiction to review the way in which the RCMP handles public complaints against individual officers, have increased powers to conduct self-initiated independent audits of the RCMP's national security activities. To discharge this role, the CPC should have access to secret information. In addition, the Arar Commission recommended that the Security Intelligence Review Committee (SIRC), a special review agency created in 1984 with broad powers not only to respond to complaints but also to audit the legality of CSIS's activities, should be extended to the national security activities of Canadian customs, immigration and foreign affair officials, as well as to the agency that reports on terrorism financing. An interesting SIRC feature designed to prevent the use of security intelligence for partisan political advantage is that the Prime Minister is required to consult with the leaders of all opposition parties before appointing SIRC members. This process has led to SIRC having members who are affiliated with all major political parties.⁵¹

The Arar Commission recommended that review bodies be able to share information and conduct joint reviews on the basis that review match and keep pace with the nature of national security activities (Arar Commission 2006a).⁵² Unfortunately, the government has not agreed to implement these recommendations. The government recently indicated that it will, however, introduce new review mechanisms to satisfy the objectives set out by the Arar Commission. These objectives include the need to ensure that secret national security activities conform to law and other standards of propriety; the safeguarding of accountability, public trust and confidence; and the review itself not impair national security. Any new review process that does not give independent review bodies full access to secret information and the ability to conduct self-initiated and joint reviews with other review bodies will fall short of the recommendations of the Arar Commission.

Review and audit of national security activities are of particular importance to Canada's diverse Muslim communities of about 600 000 members. Individuals in those communities may suspect but not be aware that they are subject to scrutiny from the state.

They may, for various reasons relating to employment, social stigma and lack of citizenship, be reluctant to complain about the treatment they receive from police or security intelligence agents. At present, there are no independent review bodies that can examine the national security activities of foreign affairs, customs, immigration and terrorism financing officials. Although review of national security powers by non-partisan independent agencies will focus on the propriety of state actions, it may also contribute to the efficacy of the state's actions. Targeting the wrong people not only threatens civil liberties but also wastes limited resources. Similarly, the alienation of Muslim communities by insensitive or heavy-handed tactics that inspire fear and distrust may dry up sources of information and cooperation. Tactics such as racial and religious profiling offend equality values but may also be counter-productive to the task of identifying potential terrorist plots.

Another major public inquiry on national security matters being held in Canada is the inquiry into the 1985 terrorist bombings of Air India. The Air India Inquiry was appointed in 2006 after the controversial acquittals in 2005 of two Sikh-Canadians charged with conspiring to commit the bombings which killed 331 people in what was the world's worse act of aviation terrorism before 9/11. If the Arar case represents a narrative about the possible harms of anti-terrorism investigations, the Air India case represents a counter-narrative about the harms of failures of the state's anti-terrorism efforts.

In 1985, CSIS was a new security intelligence agency that had a number of suspected Sikh separatists and terrorists under surveillance, but this measure was unable to stop bombs from being on two airplanes that originated in Canada. Many concerns have arisen about a lack of cooperation between CSIS and the RCMP in the investigations and about CSIS's subsequent destruction of its audio-tapes of wiretaps on the prime suspect in the case. There are also concerns about the adequacy of the protection provided to witnesses in the Air India trial⁵³ and the charitable status enjoyed by Sikh separatist groups.

Concerns have been expressed that Canada did not really internalise the tragedy of the Air India bombings which, on a per capita basis, was the Canadian equivalent of 9/11. India commissioned a judicial inquiry into the bombing in 1986 whereas Canada took this step only 20 years later. A preliminary study completed in late 2005 by a fact finder appointed by the Canadian government addressed the controversial issue of whether the Canadian response would have been different had the victims not been mainly Indo-Canadian. Rae (2005:4), fact finder and former Premier of Ontario, 'found no evidence of racism on the part of anyone in a position of authority'. Concerns about discrimination can affect both excesses of anti-terrorism activities and failures to prevent terrorism, which may target minority communities.

Cross-cultural roundtable on security issues

Another part of the emerging focus on effective review of the national security activities of the Canadian state is an outreach to minority communities who may feel aggrieved by the state's security activities. As part of its 2004 national security policy, Canada created Cross-Cultural Roundtable on Security Issues.

The matter featured on page two of the 50-page national security policy reads as follows (Canada 2004:2):

The Government needs the help and support of all Canadians to make its approach to security effective. Therefore, it will introduce new measures to reach out to communities in Canada that may be caught in the 'front lines' of the struggle against terrorism.

To this end, the Government is creating a Cross-Cultural Roundtable on Security, which will be comprised of members of ethno-cultural and religious communities from across Canada. It will engage in a long-term dialogue to improve understanding on how to manage security interests in a diverse society and will provide advice to promote the protection of civil order, mutual respect and common understanding. It will be a partnership with all communities to work to ensure that there is zero tolerance for terrorism or crimes of hate in Canada. The roundtable will work with the Minister of Public Safety and Emergency Preparedness and the Minister of Justice.

The roundtable's goal of promoting 'zero tolerance for terrorism and crimes of hate' reflects the orientation of Canada's post-9/11 ATA that added many new crimes of terrorism to Canada's Criminal Code but also, in recognition of the post 9/11 rises in hate crimes, added a new crime of hate-motivated mischief to religious property and provided enhanced provisions for the deletion of hate propaganda from the Internet. To be sure, many minority communities had genuine concerns about hate crimes in the wake of 9/11 and stand to suffer from acts of terrorism and their aftermath. Nevertheless, the focus on terrorism and hate crimes is only partial even from a security perspective because Canada's Muslim and other communities have expressed concerns about discriminatory law enforcement and intelligence practices. Proposals were made to add an anti-discrimination clause to Canada's ATA by Irwin Cotler, a noted human rights lawyer, who was at the time a backbencher in the then governing Liberal party, but these calls were not heeded (Cotler 2001).⁵⁴ Cotler was the Minister of Justice when the 2004 National Security Policy was released, but interestingly the focus of the Cross-Cultural Roundtable remained on achieving 'zero tolerance' of terrorism and hate crimes, but not 'zero tolerance' on the use of racial or religious profiling or other discriminatory law enforcement practices by state officials. It is unlikely that outreach to minority communities on security issues will be successful if they do not engage all the concerns that these communities may have about Canada's security policy.

After a public call for nominations, the Ministers of Public Safety and Justice appointed 15 members to the Cross-Cultural Roundtable in February 2005. The roundtable is chaired by Dr Zaneer Lakhani, a medical doctor and a member of Edmonton's Ismaili community; it includes representatives from many other Canadian minority communities and represents the various regions of Canada. Concerns have been raised, however, that the roundtable does not include members of the large Muslim communities of the urban centres of Toronto, Montreal or Ottawa as they have been the focus of several high-profile and controversial national security investigations. Although the

roundtable could be praised for not associating only Muslims with security issues and for broadly defining minority representation, it can be criticised for not appointing members from those communities who are, at present, most directly affected by the government's national security activities.

The roundtable's mandate was defined by the Department of Public Safety and Emergency Preparedness as follows: 'To engage Canadians and the Government of Canada in an ongoing dialogue on national security in a diverse and pluralistic society.' It is to accomplish this mandate by

... providing insights on how national security measures may impact Canada's diverse communities, promoting the protection of civil order, mutual respect and common understanding, and facilitating a broad exchange of information between the government and communities on the impact of national security issues consistent with Canadian rights and responsibilities.⁵⁵

The roundtable has not so far emerged as an active presence. It has held some meetings and issued short statements deploring the bombings in London on 7 July 2005 and condemning terrorism as not reflective of the 'moral principles of our religious and ethnic communities' after 17 people were arrested in Toronto in June 2006 on various terrorism charges.⁵⁶ Concerns have been expressed that the roundtable is not sufficiently independent from government to act as an effective form of outreach to minority communities. To be successful, the Cross Cultural Roundtable will have to establish a reputation for independence and critical distance from government.⁵⁷

The idea of engaging minority communities on security issues is good because it can help increase public confidence and support and provide critical feedback on the state's national security activities. Outreach, as well as increased emphasis on independent review of the state's national security activities, is consistent with that which Professor Makinda (2006:31) defends as a sustainable long-term security approach 'based on institutions, development and social justice' as opposed to short-term uses of 'political suppression and military force'.

CONCLUSION

Although Canada has avoided some of the excesses of American, British, or Australian anti-terrorism policies, its record is far from perfect and there will be continuing challenges to human rights and freedoms in the years to come. Although there was a lively debate about the criminal law reforms of the ATA, much greater reliance was placed on the broader immigration law powers of IRPA in the years immediately after 9/11. Immigration law powers of investigative detention were used in Operation Thread, and six security certificates have been issued against terrorist suspects, four of whom are from North Africa. Security certificates can result in indeterminate detention, and the Supreme Court has regrettably not definitely ruled out the possibility that a non-citizen might be deported to face the substantial risk of torture. Nevertheless, Canadian courts have so far refused to invoke the

exceptional circumstances that would allow non-citizens to be deported to a substantial risk of torture. Although the Supreme Court held in 2007 that security certificates were unconstitutional, it gave the government a year to respond. It is possible that a British-style special advocate system will not allow for effective challenge of the intelligence used by the state to support security certificates given the need for lawyers to consult with their clients about the substance of the state's case.

Reliance on immigration law as anti-terrorism law means that threats to liberty will not be distributed equally throughout Canadian society and that non-citizens will be exposed to greater risks than citizens. The ultimate remedy under immigration law is deportation, which may only displace the problem of terrorism to regions such as Africa. Reliance on either criminal law or immigration law opens the real possibility of false negatives and false positives that either fail to apprehend terrorists or that apprehend the innocent. It also ignores the risk that acts of terrorism, such as the 1985 Air India bombings, may be committed by Canadian citizens. There are signs that Canada is relying less on immigration law as anti-terrorism law as no new security certificates have been issued against suspected terrorists since 2003. Criminal charges were laid against suspected terrorists in 2004 and again in 2006. In both of these cases, however, the accused were Canadian citizens and therefore the use of security certificates was not an option.

The public safety policy pursued in Canada since 2004 has the virtue of stressing target hardening and emergency preparedness as a means to both prevent and lessen the damage that can be caused by terrorism and other security threats. It conceives of security broadly as all risks to human security, including those from natural disasters and from terrorism. The all-risk approach to national security may be a means for African nations to integrate current concerns about terrorism with broader development goals. Canada's evolving national security policy is emphasising the need for independent review of the state's national security activities to ensure that security and law enforcement agencies respect rights and do not abuse their powers. Again, such an emphasis on independent review of enhanced national security powers could help build capacity and state accountability in Africa. Canada's broad all-risk national security policy, combined with independent and effective review of the state's often secret security activities, offers some hope that increased energies spent on counter-terrorism could protect other aspects of human security, including human rights and emergency preparedness. Emergency preparedness can assist in damage mitigation and recovery, should an act of terrorism or some other harm occur, and may assist in preventing counterproductive panics and overreactions. Independent and effective review of the state's national security activities can help build an accountability culture that values human rights.

NOTES

1 See generally the following: Roach, K 2007. Terrorism offences and the Charter: a comment on *R v Khawaja*. *Canadian Criminal Law Review*, 11(273).

- 2 A subsequent and similar regulation that was enacted notwithstanding the provisions of Canada's then statutory bill of rights sunsetted or expired on April 30, 1971. See generally Saywell, J 1971. *Quebec 70*. Toronto: University of Toronto Press; and Berger, T 1981. *Fragile freedoms* Toronto: Clarke Irwin, ch 7.
- 3 On the influence of the British legislation in many countries, especially in the Commonwealth, see Roach, K 2006. The post 9/11 migration of Britain's Terrorism Act, 2000. In S Choudhry (ed), *The migration of constitutional ideas*. Cambridge: Cambridge University Press, 395 ff.
- 4 Bill C-36 introduced October 15, 2001, s 83.01.
- 5 For essays largely critical of the proposed, and this aspect in particular, of the definition of terrorism, see Daniels, Macklem, and Roach eds 2001. *The security of freedom: essays on Canada's anti-terrorism bill* Toronto: University of Toronto Press. See also Daubney, D et al (eds) 2002. *Terrorism, law and democracy: how is Canada changing after September 11*. Montreal: *Les Editions Themis*; Special issue 2003. *National Journal of Constitutional Law*, 14:1 ff. For an account of how various groups including unions, churches, charities and Aboriginal people criticised the bill and the impact these criticisms made on the legislative process, see Roach, K 2003. *September 11: consequences for Canada*. Montreal: McGill Queens University Press, ch 3. For an account of civil society engagement with the enactment of the South African anti-terrorism law see Harrison, F 2007. In search of a counter-terrorism strategy: the role of civil society. In Okumu, W and Botha, A (eds), *Understanding terrorism in Africa: in search for an African voice*. Pretoria: Institute for Security Studies, p 129.
- 6 *Criminal Code of Canada*, RS [1985] C-46, s 83.01(b) now defines as a terrorist activity: an act or omission, in or outside Canada,
 - i) that is committed
 - A) in whole or in part for a political, religious or ideological purpose, objective or cause, and
 - a. in whole or in part with the intention of intimidating the public, or a segment of the public, with regard to its security, including its economic security, or compelling a person, a government or a domestic or an international organization inside or outside Canada, and
 - ii) that intentionally
 - A) causes death or serious bodily harm to a person by the use of violence
 - B) endangers a person's life
 - C) causes a serious risk to the health or safety of the public or any segment of the public
 - D) causes substantial property damage, whether to public or private property, if causing such damage is likely to result in the conduct or harm referred to in any of clauses A) to C) or,
 - E) causes serious interference with or serious disruption of an essential service, facility or system, whether public or private, other than as a result of advocacy, protest, dissent or stoppage of work that is not intended to result in the conduct or harm referred to in any of clauses A) to C)
 - F) and includes a conspiracy, attempt, or threat to commit any such act or omission, or being an accessory after the fact or counseling in relation to any such act or omission, but, for greater certainty, does not include an act or omission that is committed during an armed conflict and that, at the time and in the place of its commission, is in accordance with customary international law or conventional international law applicable to the conflict, or the activities undertaken by military forces of a state in the exercise of their official duties, to the extent that those activities are governed by other rules of international law

For greater certainty, the expression of a political, religious or ideological thought, belief or opinion does not come within paragraph (b) of the definition 'terrorist activity' in subsection 1 unless it constitutes an act or omission that satisfies the criteria of that paragraph.
- 7 *Public Order Regulations*, SOR/70-444, s 3.
- 8 The fullest defence of the ATA is contained in Cohen, S 2005. *Privacy, crime and terror: legal rights and security in a time of peril*. Toronto: Lexis-Nexis.
- 9 *Security of Information Act*, RS [1985] c 0-5, as amended by SC 2001, c 41, s 25.
- 10 ATA, s 83.01(1)(b.)
- 11 *Criminal Code*, s 83.05.
- 12 However, for an argument that this would violate the presumption of innocence, see Paciocco, D 2002. Constitutional casualties of September 11. *Supreme Court Law Review*, 16(2d):199.
- 13 *United Nations Suppression of Terrorism Regulations* 2001 (SOR 2001-360). October 2.
- 14 ATA, s 83.05(6)(a), 83.06.
- 15 ATA, s 83.3.
- 16 *Protection of Constitutional Democracy Against Terrorism Act* s12.
- 17 *Application under s 83.28* [2004] SCC 42.
- 18 S/Res/1624 (2005).
- 19 See generally, Sajo, A (ed) 2004. *Militant democracy*. Amsterdam: Eleven Publishing.

- 20 On the use of anti-terrorism laws in Africa against journalists see Tynes R 2006. US counter-terrorism policies in Africa are counter to development. *African Security Review*, 15(108):112.
- 21 *Criminal Code of Canada* s 83.01(1.1).
- 22 *Criminal Code of Canada* s 320.1.
- 23 *Criminal Code of Canada* s 430(4.1).
- 24 After the closed meeting, then Prime Minister Martin said, 'It is very important that the government respond, to show that we recognize the truth of their statement so we can build on that statement.' See the following: Imams promise PM to help root out extremism 2005. *Globe and Mail*, 28 July:A4.
- 25 Those who advocated such a clause included Irwin Cotler, a noted human rights lawyer, who was subsequently appointed Canada's Minister of Justice. See Cotler, I. Thinking outside the box: foundational principles for a counter-terrorism law and policy. *The Security of Freedom*.
- 26 For some suggestions, see Roach, K. The three year review of Canada's Anti-Terrorism Act: the need for greater restraint and fairness, non-discrimination and special advocates. *University of New Brunswick Law Journal* 54(308):322-26 on which this section draws. See also Bill C-296 2004. *An act to eliminate racial profiling*. 1st sess, 38th parliament (first reading November 18).
- 27 The court stated that 'it may once have made sense to suggest that terrorism in one country did not necessarily implicate other countries, but after the year 2001, that approach is no longer valid' (*Suresh v Canada*:para 87). The court went on to stress the global nature of terrorism and Canada's interest in international cooperation. It also stated that 'preventive or precautionary state action may be justified; not only an immediate threat but also possible future risks must be considered' (*Suresh v Canada*:para 88).
- 28 IRPA s 58(1)(c).
- 29 IRPA s 57(2).
- 30 *Project Thread Background: reasons for detention pursuant to s 58(1)(c)* nd.
- 31 IRPA s 58(1)(C).
- 32 Also see the following: Review clears RCMP in 2003 terror probe 2006. *Toronto Star*, 23 March.
- 33 IRPA s 81.
- 34 *Harkat v Canada* [2007] FC 416 (denying application to modify conditions) ; *Harkat v Canada* [2007] FC 508 (temporary stay against deportation to Algeria).
- 35 Section 78(e) of IRPA provides that at the government's request 'the judge shall hear all or part of the information or evidence in the absence of the permanent resident or the foreign national named in the certificate and their counsel if, in the opinion of the judge, its disclosure would be injurious to national security or to the safety of any person'. Section 78(h) provides that 'the judge shall provide the permanent resident or the foreign national with a summary of the information or evidence that enables them to be reasonably informed of the circumstances giving rise to the certificate, but that does not include anything that in the opinion of the judge would be injurious to national security or to the safety of any person if disclosed'.
- 36 CEA s 38.14
- 37 On these causes of wrongful convictions, see Federal Provincial Territorial Heads of Prosecution Committee Working Group 2004. *Report on the prevention of miscarriages of justice*, September. The Federal Court in *Re Charkaoui* [2004] FCA 421, paras 17-18 indicated that the detainee was recognised in photographs by two terrorists as having been present in training camps in Afghanistan, but no detail is provided on the conditions and methods of identification. On the frailties of eyewitness identification and proper procedures for using multiple photos for identification purposes see Cory, P 2001. *The inquiry regarding Thomas Sophonow*. Winnipeg: Queens Printer.
- 38 Although a refugee applicant facing the risk of torture is entitled to heightened due process in terms of written reasons from the minister for the deportation, the minister's decisions as to whether a person faces a substantial risk of torture or is a threat to the security of Canada will only be overturned by the courts if they are patently unreasonable.
- 39 The United Nations Human Rights Committee subsequently indicated that the deportation of Ahani before it had decided the complaint violated Canada's obligations under the International Covenant on Civil and Political Rights and reaffirmed the absolute prohibition on torture under international law. *Ahani v Canada*. Communication No1051/2002: Canada 15/06/2004 CCRP/C/80/D/1051/ 2002. See generally, Roach, K 2005. Constitutional, remedial and international dialogues about rights: the Canadian experience. *Texas International Law Journal*, 40:537.
- 40 See Botha, A 2006. *Politics and terrorism: an assessment of the origin and threat of terrorism in Egypt*. Institute for Security Studies paper 131, December, p 20.
- 41 Note the methodology and orientation of the report has been criticised by many in Canada. 'US terror study "crude," "inexpert."' *Toronto Star*, 17 February 2004.
- 42 See also Whitaker, R 2002. Refugee policy after September 11: not much new. *Refugee*, 20(4):176 for an argument that 'refugee policies in Canada have long been formulated within a discourse that gives a privileged place, an overriding priority to national security' and that in Canada 'military tribunals would be unnecessary, not because Canada is more liberal than the US, but because it is more restrictive in the protection of national security information in court'.
- 43 *The 9/11 Report*, 12.3.
- 44 SC 2004, c 15.
- 45 Part 1 allows emergency directions when necessary to deal with immediate risks to safety, security, health and the environment in relation to aeronautics; Part 3 in relation to environmental protection; Part 6 in relation to health; Part 9 in relation to food and drugs; Part 10 in relation to hazardous products; Part 15 in relation to navigable waters; Part 18 in relation to pest control products; Part 20 in relation to quarantines; Part 21 in relation to radiation emitting devices; and Part 22 in relation to shipping.
- 46 'This system is capable of responding to both intentional and unintentional threats. It is as relevant in securing Canadians against the next SARS-like outbreak as it is in addressing the risk of a terrorist attack.' See the following: Canada 2004. *Securing an open society: Canada's national security policy*, April, p 10. For a defence of an all-risk national security policy see Roach, K 2003. *September 11: consequences for Canada*. Montreal: McGill Queens Press, ch 7. Also see Makinda, S 2006. Terrorism, counter-terrorism and norms in Africa. *African Security Review* 15(19):24.
- 47 SC 2004, c 15. For example, Part 5 of the act amends the *Department of Citizenship and Immigration Act* to permit the sharing of information with other governments and foreign organisations, and Part 11 allows the collection and disclosure of information for national security purposes under IRPA. Part 17 extends the government databases and agencies that can be consulted in relation to terrorist financing.
- 48 For the terms of reference and the work on this ongoing inquiry see <http://www.iacobucciinquiry.ca/en/documents/index.htm>
- 49 For the terms of reference and the work on this ongoing inquiry, see <http://www.majorcomm.ca/> The author is the Director of Research (Legal Studies).
- 50 Transcripts of public hearings available at <http://www.ararcommission.ca>
- 51 CSIS Act s 34(1).
- 52 The author was a member of a five person research advisory committee for this report. Both of the Arar Commission's reports are available at <http://www.ararcommission.ca/eng/index.htm>
- 53 For similar concerns with respect to acquittals of those charged in the 2002 bombing of the Paradise Hotel in Kenya, see Okello, E 2007. The arrest and prosecution of terrorist suspects. In W Okumu and A Botha (eds), *Understanding terrorism in Africa: in search for an African voice*. Pretoria: Institute for Security Studies, pp 107-108.
- 54 The author, along with his colleague Sujit Choudhry, unsuccessfully proposed an amendment to the ATA to define and prohibit discriminatory profiling and provide remedies for such acts. See Choudhry, S and Roach, K 2003. Racial and ethnic profiling. 41 *Osgoode Hall LJ* 1.
- 55 Terms of reference available at <http://www.psepc-sppcc.gc.ca/prg/ns/ccrs/ccrstor-en.asp>
- 56 News Release 2006. 5 June. Available at <http://www.psepc-sppcc.gc.ca/media/nr/2006/nr20060605-en.asp>
- 57 For a fuller examination, see Roach, K 2006. National security, multiculturalism and Muslim minorities. *Singapore Journal of Legal Studies*, 405.

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