

PEACE AND SECURITY

# ANTI-TERRORISM LAWS AND POWERS

An Inventory of the G20 States 20 Years after 9/11

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September 2021



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Authoritarian states such as Russia, China, Saudi Arabia, and Turkey continue to use the »war on terror« as a welcome justification to silence unwelcome opponents of the regime and opposition figures in their countries.



In democratic states, many of the originally temporary encroachments on privacy, such as monitoring telecommunications or recording biometric features, remain in force and have been normalized by being written into permanent law.

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After 9/11 or further attacks, political leaders in most of the countries investigated exaggerated the danger of terrorism into an existential threat to the state and thereby created a state of emergency. In the fight or even »war« against terrorism, other standards could be applied.



Authoritarian states such as Russia, China, Saudi Arabia, and Turkey continue to use the »war on terror« and the double standards of the West as a welcome justification for using all means at their disposal to silence unwelcome opponents of the regime and opposition figures in their countries.



In democratic states, many of the originally time-limited, because massive, encroachments on privacy, such as for monitoring telecommunications, storing telecommunications data, or recording biometric features, remain in force and have been normalized by being written into permanent law.

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# Foreword



The Islamist terrorist attacks of September 11, 2001, shook the world. Their goal was to strike at the heart of the Western world.. And that's exactly what they did. They deliberately targeted symbols of US economic, military, and democratic strength. Nearly 3,000 people were killed in the attacks, and more than twice that number were injured. Even today, 20 years later, September 11 has lost none of its horror.

We all remember exactly where we were and what we were doing when we heard about the attacks. The images of the two passenger planes that hit the World Trade Center in New York, of the giant cloud of dust above the collapsing Twin Towers, are etched into our memories. The attackers steered another plane into the Pentagon, the home of the US Department of Defense. The fourth crashed near Pittsburgh after courageous passengers attempted to overpower the hijackers. Presumably, it was supposed to hit the White House or the Capitol in Washington, D.C.

The aftermath of September 11 continues to shape global politics and societies around the world to the present day. Public attention is currently focused on the bitter end of the NATO mission in Afghanistan. However, the consequences of 9/11 for security laws in many parts of the world also merit attention and a thorough review. It is these consequences that form the focus of the present study.

After 9/11, many states had reason to subject their security architecture to critical analysis. The fact that the al-Qaeda terrorist network was able to prepare and successfully carry out such devastating attacks over a period of several years and in different countries without being detected and hindered pointed to serious failures. In Germany, too, we had to face the uncomfortable question of whether our counterterrorism measures were sufficiently effective. The three key figures around Mohammed Atta who were involved in the attacks had lived and studied in Hamburg. It was here that they had become radicalized in the extremist Salafist environment of

the al-Quds mosque. It was from here that they had established contact with al-Qaeda. And it was to here that they returned after meeting Osama bin Laden in Afghanistan to plan the attacks.

Thus, there was an understandable interest in the United States, Germany, and other democratic states in implementing security policy reforms and strengthening the defense against threats. At the same time, however, there was also the understandable concern that the profound shock could lead to overreactions, that disproportionate measures would be adopted which would extend executive powers of intervention too far and impinge too much on citizens' civil liberties.

To what extent have these fears proven to be well founded? Have the Western democracies and constitutional states betrayed their own values in the very process of trying to defend them against terrorist attacks? There is no straightforward answer to these questions. However, it is important that we ask ourselves these questions. After all, they are the starting point for any debate about how to shape security policy now and in the future—and about the state of our democratic and constitutional protection and control mechanisms. The present study makes a valuable contribution to this debate. It provides an illuminating overview of the counterterrorism measures taken and maintained by the G20—including Germany and the EU—over the past two decades.

When it comes to evaluating recent security legislation specifically in Germany, two points, in my opinion, should be kept in mind. First, I think it would be mistaken to interpret the relevant laws enacted over the past two decades solely as a reaction (or even an overreaction) to 9/11. It is true that the 9/11 attacks provided the occasion for some far-reaching reforms of the security architecture. However, other factors also played an important role—including, in particular, progressive digitalization: If extremists are increasingly shifting their criminal activities to the Internet and communicating via digital channels and platforms, then our security authorities must in principle be present there as well. In addition, Germany also faced a growing right-wing extremist threat. The campaign of terror of the so-called National Socialist Underground (NSU), the murder of the Christian Democrat politician Dr. Walter Lübcke in 2019, and the deadly terrorist shootings in Halle and Hanau in 2019 and 2020 show that, currently, right-wing extremism probably represents the greatest threat to our peaceful and open society. Our state must counter this threat—not only, but also with security policy measures.

Secondly, voices are also to be heard in Germany that immediately call for new security measures whenever a sensational



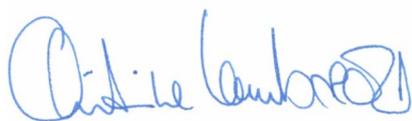
Christine Lambrecht

Photo: Thomas Köhler/photothek

criminal act is committed—be it a terrorist attack or some other crime. However, a reflexive expansion of the powers of the security authorities does not lead to greater security. A thorough analysis is always required: Are there in fact new security risks? And can these in fact be effectively limited through new official powers? Without such an analysis, an expansion of official powers is definitely the wrong path to follow. Instead of »more freedom through more security,« the result would be »less freedom without any increase in security.«

Thus, Germany is not entirely immune to overzealousness in security policy either. At the same time, however, there is every reason to be confident that our liberal constitutional order is also equal to this particular challenge. The Federal Constitutional Court is a pillar of strength when it comes to defending fundamental freedoms against unjustified security claims. In the past, it has consistently affirmed the limits of legislative powers in security matters. In particular, it determined that some of the measures taken in the wake of 9/11 were unconstitutional—for example, the authorization to shoot down hijacked passenger aircraft, parts of the counter-terrorism database, certain kinds of online searches, and the law on the retention of telecommunications data. In addition, we have an active civil rights movement in Germany that is mobilizing against a blind expansion of security powers and is using democratic means to exert effective influence on politics.

This study is a further impressive example of this. It calls to mind once again the famous truth uttered by Benjamin Franklin: »Those who would give up essential Liberty, to purchase a little temporary Safety, deserve neither Liberty nor Safety.«



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# ABSTRACT

In response to the terrorist attacks of September 11, 2001, almost all of the members of the G20, comprising the nineteen most important industrialized and newly industrializing countries and the EU, passed anti-terrorism laws of their own. In order to protect their citizens, these laws also restrict their personal freedoms to the present day and extend the powers of the executive branch, in particular the law enforcement agencies, in the name of national security. Under autocratic regimes, parliaments and courts have in any case little power and controlling authority; but once a terrorist threat has been declared to be a national crisis, democratic states also restrict the checks and balances that are supposed to secure individual liberties.

The focus of this comparative study is on national laws and measures in the context of the fight against terrorism. It examines whether, in the countries studied, penal regulations have either been modified or newly created, and whether new military legislation provides the relevant legal framework, or whether counterterrorism operations have even been conducted in a legal vacuum. Accordingly, the measures taken by states are either aimed at prosecuting crimes that have already been committed or, instead, at preventing possible attacks.

The study yielded a number of worrying findings and supports forward-looking conclusions: After 9/11 or further attacks, political leaders in most of the countries investigated inflated the danger of terrorism into an existential threat to the state and thereby created a state of emergency. In the fight or even »war« against terrorism, new criminal offenses were added to the penal code in many jurisdictions and harsher penalties were imposed. In some countries, governments went so far as to declare martial law and the US even turned its Guantánamo naval base into an extralegal zone.

The alleged security provisions implemented by the individual countries cover a correspondingly broad spectrum. Even in democratic countries, they range from police measures based on constitutional principles and criminal law to the abduction and torture of individuals suspected of terrorist activities in violation of international law. Autocratic regimes such as Russia, China, and Turkey continue to use the »war on terror« to justify using all means at their disposal to silence the opposition in their countries.

The historical memory of the horrors of previous military regimes ensures that, by contrast, younger democracies, such as Argentina and Brazil in South America, as well as Japan and South Korea in East Asia, are extremely vigilant in protecting the personal freedoms of their citizens through a system of checks and balances. To date, the leaders of these countries have also largely withstood international pressure,

especially from the United States, to implement stricter counterterrorism guidelines.

In most other countries, anti-terrorism laws were enacted swiftly in response to the new threat situation, but initially only for a limited period on account of the serious restrictions on freedom. But even 20 years later, these measures still have not been revoked. Many of the laws and directives that were passed in an exceptional situation are still in force and, in the meantime, have even been expanded, in part in response to further terrorist attacks.

Last but not least, in Western countries, too, many of the originally time-limited, because massive, encroachments on privacy, such as to monitor telecommunications, store telecommunications data, or record biometric features, remain in place and have been normalized by being written into permanent law.

These findings are all the more worrying as they suggest that additional security measures, such as the severe restrictions on freedom in the fight against the COVID-19 pandemic, could also be made permanent and further destabilize the balance of security, freedom, and democracy that has been under threat since 9/11.

Table 1

## Overview of the anti-terrorism laws of the G20 states

Country	Significant domestic Islamist terrorist attacks	Relevant anti-terrorism laws before 9/11	Essential anti-terrorism laws after 9/11	Retained
<b>ARGENTINA</b>	None	1984 Law for the Defense of Democracy (Ley 23.077)	<ul style="list-style-type: none"> <li>• 2001 Anti-Terrorism Law (Ley 25.520)</li> <li>• 2007 Law Prohibiting the Financing of Terrorism (Ley 25.268)</li> <li>• 2011 Anti-Terrorism Law (Ley 26.734)</li> </ul>	Yes Yes Yes
<b>AUSTRALIA</b>	None		<ul style="list-style-type: none"> <li>• Between 2001 and 2019 over 80 new security laws enacted (»hyper-legislation«)</li> <li>• 2019 Criminal Code Amendment (Sharing of Abhorrent Violent Material) Act</li> <li>• 2019 Counter-Terrorism (Temporary Exclusion Orders) Bill</li> <li>• 2020 Australian Citizenship Amendment (Citizenship Cessation) Act 2020 (Act 88)</li> </ul>	Yes Yes Yes Yes
<b>BRAZIL</b>	None		<ul style="list-style-type: none"> <li>• 2013 Organized Crime Act (12.850)</li> <li>• 2016 Anti-Terrorism Law (13.260)</li> </ul>	Yes Yes
<b>CANADA</b>	None		<ul style="list-style-type: none"> <li>• 2001 Anti-Terrorism Act (ATA, Bill C-36)</li> <li>• 2002 Public Safety Act</li> <li>• 2013 Combating Terrorism Act (Bill S-7), which reinstated ATA provisions that were due to expire and introduced additional amendments to the Criminal Code</li> <li>• 2013 Nuclear Terrorism Act (Bill S-9)</li> </ul>	Yes Yes Yes Yes
<b>CHINA</b>	None		<ul style="list-style-type: none"> <li>• Various security laws, which were later consolidated into:</li> <li>• 2015 National Security Law (NSL) and Counter-Terrorism Law (CTL)</li> <li>• In 2017, the government of the Xinjiang Autonomous Region passed a special law to combat religious extremism</li> </ul>	Yes Yes Yes
<b>FRANCE</b>	Jan. 1, 2015 (Paris) Nov. 13, 2015 (Paris) July 14, 2016 (Nice)	Law of September 9, 1986	<ul style="list-style-type: none"> <li>• Law of November 15, 2001, updated by:</li> <li>• Law of March 18, 2003, updated by:</li> <li>• Law of March 9, 2004, updated by:</li> <li>• Law of January 23, 2006, updated by:</li> <li>• Law of December 21, 2012, updated by:</li> <li>• Law of November 13, 2014, updated by:</li> <li>• Law of July 24, 2015</li> <li>• 2015 State of emergency, extended six times and only lifted two years later, on October 31, 2017; however, some emergency measures were converted into a permanent law:</li> <li>• 2017 Law on Strengthening Internal Security and Counterterrorism (<i>Projet de loi renforçant la sécurité intérieure et la lutte contre le terrorisme, SILT</i>)</li> <li>• 2020 Law to Reinforce Respect for Republican Principles</li> <li>• 2021 Bill for a new anti-terrorism law to strengthen the provisions of the Intelligence Act of July 2015 and the Law of October 31, 2017 (SILT)</li> </ul>	Yes Yes Yes Yes Yes Yes Yes Yes/No Yes Yes Still open
<b>GERMANY</b>	Dec. 19, 2016 (Berlin)	1977 Law on the Suspension of Contacts	<ul style="list-style-type: none"> <li>• 2001 Act Amending the Law on Associations (Security Package I)</li> <li>• 2002 Act on Combating International Terrorism, aka Counter-Terrorism Act (Security Package II)</li> <li>• 2009 Act on the Prosecution of the Preparation of Serious Violent Offenses Endangering the State (GVVG)</li> <li>• 2015 Act Amending the Prosecution of the Preparation of Serious Violent Offenses Endangering the State (GVVG-Änderungsgesetz)</li> <li>• 2016 Act to Improve Information Exchange in the Fight Against International Terrorism</li> <li>• 2020 Removal of the time limit on the originally fixed-term security laws that had been passed after September 11, 2001, and had already been extended several times subsequently</li> </ul>	Yes Yes Yes Yes Yes Yes
<b>INDIA</b>	Nov. 26–29, 2008 (Mumbai)	1963 Unlawful Activities (Prevention) Act; 1967 Unlawful Activities (Prevention) Act; 1985 to 1995: Terrorist and Disruptive Activities (Prevention) Act	<ul style="list-style-type: none"> <li>• 2002 Prevention of Terrorism Act</li> <li>• 2008 National Investigation Agency (NIA) Act</li> <li>• 2019 Amendment to the Unlawful Activities (Prevention) Act of 1967</li> <li>• 2019 Amendments to the NIA Act of 2008</li> </ul>	No Yes Yes Yes

Country	Significant domestic Islamist terrorist attacks	Relevant anti-terrorism laws before 9/11	Essential anti-terrorism laws after 9/11	Retained
<b>INDONESIA</b>	Dec. 24, 2000 (Jakarta and eight other cities) Oct. 12, 2002 (Bali)		<ul style="list-style-type: none"> <li>• 2002 Anti-Terrorism Law (ATL)</li> <li>• 2003 Counter-Terrorism Law</li> </ul>	Yes Yes
<b>ITALY</b>	None		<ul style="list-style-type: none"> <li>• 2001 Law No. 438</li> <li>• 2005 Law No. 155</li> <li>• 2016 Law on the Implementation of the Terrorism Provisions of the EU Council and the United Nations</li> <li>• 2015 Decree-Law No. 7: Urgent Measures for the Fight Against Terrorism, Including International Terrorism</li> </ul>	Yes Yes Yes Yes
<b>JAPAN</b>	None		<ul style="list-style-type: none"> <li>• 2001 Anti-Terrorism Special Measures Law (ATSML)</li> </ul>	Yes
<b>MEXICO</b>	None		<ul style="list-style-type: none"> <li>• 2018 Comprehensive legislation</li> <li>• 2019 Asset Forfeiture Law</li> </ul>	Yes Yes
<b>RUSSIA</b>	September 1, 2004 (Beslan)		<ul style="list-style-type: none"> <li>• 2006 Federal Law No. 35-EZ on Countering Terrorism</li> <li>• 2006 Decree No. 2 116 on the reorganization of the responsibilities of the security agencies in combating terrorism</li> <li>• 2006 Decree No. 662 on cooperation with security agencies</li> <li>• 2007 Decree No. 352 on the use of weapons and military equipment by the Russian Armed Forces to combat terrorism</li> <li>• 2007 Federal Laws Nos. 51-03 and 275-03 on countering money laundering and terrorist financing</li> </ul>	Yes Yes Yes Yes Yes
<b>SAUDI ARABIA</b>	Nov. 9, 2003 (Riyadh)		<ul style="list-style-type: none"> <li>• Initially no anti-terrorism legislation</li> <li>• 2014 King Abdullah issued a decree against foreign fighters and a new anti-terrorism law</li> </ul>	Yes
<b>SOUTH AFRICA</b>	None	1998 Regulation of Foreign Military Assistance Act	<ul style="list-style-type: none"> <li>• 2001 Financial Intelligence Centre Act</li> <li>• 2005 Protection of Constitutional Democracy Against Terrorist and Related Activities Act (POCDATARA)</li> </ul>	Yes Yes
<b>SOUTH KOREA</b>	None		<ul style="list-style-type: none"> <li>• From 2001 to 2016, over ten anti-terrorism laws were passed, most of which expired again with the respective legislative terms; however, the existing laws were consolidated and strengthened by:</li> <li>• 2016 Act on Anti-Terrorism for the Protection of Citizens and Public Security (Act No. 14071)</li> <li>• 2016 Amendment of Act on Prohibition against the Financing of Terrorism and Proliferation of Weapons of Mass Destruction</li> </ul>	Yes/No Yes Yes
<b>TURKEY</b>	Nov. 20, 2003 (Istanbul)	1991 Counter-Terrorism Law (CTL, No. 3713)	<ul style="list-style-type: none"> <li>• 2005 Amendment of legislation in the field of criminal law, including the Turkish Criminal Code (No. 5237), the Criminal Procedure Code (No. 5271) and the Law on Execution of Penalties and Security Measures (No. 5275)</li> <li>• 2013 Law on the Prevention of the Financing of Terrorism (No. 6415)</li> </ul>	Yes Yes
<b>UNITED KINGDOM</b>	July 7, 2005 (London) May 22, 2017 (Manchester)	2000 Terrorism Act	<ul style="list-style-type: none"> <li>• 2001 Anti-Terrorism, Crime and Security Act (ATCS Act)</li> <li>• 2005 Prevention of Terrorism Act</li> <li>• 2006 Terrorism Act</li> <li>• 2011 Terrorism Prevention and Investigation Measures Act</li> </ul>	Yes Yes Yes Yes
<b>USA</b>	Sept. 11, 2001 (New York and Washington, DC/ Virginia)		<ul style="list-style-type: none"> <li>• 2001 Authorization for Use of Military Force</li> <li>• 2001 Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act (PATRIOT Act); initially authorized for a limited period, subsequently reauthorized several times (2005, 2006, 2011 and 2015) and in part tightened further</li> <li>• 2001 Executive order extending a National Security Agency (NSA) surveillance program (PRISM)</li> <li>• 2002 Homeland Security Act</li> <li>• 2004 Intelligence Reform and Terrorism Prevention Act on the reorganization and coordination of the work of 16 US intelligence services (by the Director of National Intelligence)</li> <li>• 2005 Detainee Treatment Act</li> <li>• 2008 Foreign Intelligence Surveillance Act (FISA) Amendments Act to ensure that all pending proceedings against telecommunications companies could be dismissed</li> <li>• 2012 Reauthorization of the FISA Amendments Act for continued wide-ranging surveillance powers with little judicial oversight</li> <li>• 2015 USA Freedom Act, enabling continued unhindered spying on foreigners</li> </ul>	Yes Yes Yes Yes Yes Yes Yes Yes

Country	Significant domestic Islamist terrorist attacks	Relevant anti-terrorism laws before 9/11	Essential anti-terrorism laws after 9/11	Retained
<b>EUROPEAN UNION</b>	Nov. 3, 2004 (Madrid) March 22, 2016 (Brussels) August 17, 2017 (Barcelona) In addition, various other attacks in the above-mentioned EU countries		<ul style="list-style-type: none"> <li>• 2001 Council Common Position 931/2001 and Council Regulation No. 2580/2001 to implement UN Security Council Resolution 1373 (2001)</li> <li>• 2002 Council Regulation 881/2002 to implement a number of other UN resolutions on combating terrorism into the European legal framework</li> <li>• Since 2002, the EU has adopted a series of further framework decisions and directives on cooperation in the field of serious crime, in accordance with the principle of mutual recognition of judicial decisions, so that these can be adopted into the national law of the Member States:</li> <li>• Council Framework Decision 2002/584/JHA on the European arrest warrant and the surrender procedures between Member States;</li> <li>• Council Framework Decision 2002/465/JHA on joint investigation teams;</li> <li>• Council Framework Decision 2003/577/JHA on the execution in the EU of orders freezing property or evidence;</li> <li>• Directive 2014/41/EU of the European Parliament and the Council regarding the European Investigation Order in criminal matters;</li> <li>• 2015 Additional Protocol to the Council of Europe Convention on the Prevention of Terrorism</li> <li>• Directive 2017/541 of the European Parliament and the Council on combating terrorism</li> </ul>	Yes  Yes  Yes

# INTRODUCTION

The nation state on our modern conception is supposed to provide law, security and welfare.<sup>1</sup> By providing these services, the state can obtain in return, to put it in Weberian terms, legitimacy—namely, the widespread conviction among the population that it provides something worthy of support.

Nevertheless, the territorial state remains vulnerable. In particular, it has great difficulty in defending its territory against asymmetric threats from non-state actors who do not have a territory to protect themselves and in mobilizing the understanding and support of the population for this purpose. Non-state terrorist actors such as al-Qaeda threaten the security, and thus the very essence, of Western territorial states.

The terrorist attacks of September 11, 2001 shook the free democratic constitutional order of the United States of America to its foundations and were therefore also seen as an attack on this order. In the wake of these attacks, the state was assigned a special protective function in defending fundamental American values—even at the cost of placing restrictions on individual freedoms, the so-called civil liberties.<sup>2</sup>

When faced with a national threat, the attention and expectations of the citizens are focused on the acting, executive authority. The executive branch is granted additional powers in order to provide security. Whereas under autocratic regimes parliaments and courts exist only in appearance and do not exercise any control over executive power, in democratic states the so-called checks and balances are also thrown out of kilter in the face of imminent threats. This is doubly problematic, especially since the basic principle of competing, mutually controlling state powers also is especially important for safeguarding individual liberties.

After the 9/11 attacks, the protection of the state has acquired increased importance at the expense of the protection of individual liberty not only in the United States.<sup>3</sup> The invocations and heightened perception of terrorist threats

now serve to justify any extension of state power for the sake of protecting citizens. In many places, this has created a climate of acceptance of restrictions on civil liberties and violations of international human rights norms, such as the right to personal liberty, the right to be free from arbitrary arrest and detention, the right to counsel and a fair trial and the right to privacy.

Above all, the 9/11 attacks have changed the perceptions and self-image of American society. Its fundamental confidence in its own strength as the only remaining superpower gave way to the consciousness of vulnerability in the »homeland.«<sup>4</sup> Last but not least, the attacks on the World Trade Center and the Pentagon also destroyed symbols of the economic and military power of the United States. The perception of one's own vulnerability triggered an immense need for security, protection and action. In the initial condition of general uncertainty and disorientation, there were loud calls for state authority.

US President George W. Bush then duly called for a new, active strategy: »America is no longer protected by vast oceans. We are protected from attack only by vigorous action abroad, and increased vigilance at home.«<sup>5</sup> In the United States, unlike in Europe, the September 11 attacks were understood as acts of war rather than as terrorist acts. America has been at war ever since.

This perception was reinforced by the international response to the attacks. On September 12, 2001, the NATO Council invoked the mutual defense clause in accordance with Article 5; on the same day, the United Nations Security Council adopted a resolution (UNSC Res. 1368) granting the United States the right of self-defense.

In this context, the fundamental constitutional principles of state security and individual liberty, among others, were reassessed within the framework of martial law. This development has proved all the more problematic because the practice of America's liberal open society, which still served as a model at the time, also influenced the worldwide perception of the democratic rule of law and international legal and regulatory conceptions.

<sup>1</sup> See Arthur Benz, *Der moderne Staat: Grundlagen der politologischen Analyse* (Munich: Oldenbourg Verlag, 2008); Gunnar Folke Schuppert, *Staat als Prozess: Eine staatsrechtliche Skizze in sieben Aufzügen* (Frankfurt am Main: Campus, 2009).

<sup>2</sup> The most important civil liberties—understood in what follows as synonymous with individual or personal freedoms—are guaranteed by the first ten amendments to the US Constitution. These principles, which are also known as the Bill of Rights, were incorporated as an integral part of the Constitution on December 15, 1791. After the Civil War, further amendments were added, the fourteenth being especially important for the protection of the individual liberties of »any person,« regardless of citizenship, on account of its due process or equal protection provisions.

<sup>3</sup> See Hendrik Hegemann, »Freiheit und Sicherheit in liberalen Demokratien nach 9/11,« in *Aus Politik und Zeitgeschichte (APuZ)*, 71(28–29) (July 12, 2021): 22–28.

<sup>4</sup> This was also expressed in the opening sentence of a leading article in the *National Journal*, whose August 10, 2002, issue was devoted to the question of security: »On the morning of September 11, 2001, America's sense of security collapsed along with the twin towers of the World Trade Center.« Sydney J. Freedberg, Jr. and Siobhan Gorman, »National Security: Are We Safer?« in *National Journal*, August 10, 2002.

<sup>5</sup> George W. Bush, »Address before a Joint Session of the Congress on the State of the Union,« January 29, 2002 <https://georgew-bush-whitehouse.archives.gov/news/releases/2002/01/20020129-11.html>

Table 2  
The most serious terrorist attacks in Europe since 9/11

Date	City	Fatalities	Injured
Mar. 11, 2004	Madrid	191	1800
July 7, 2005	London	52	784
July 22, 2011	Oslo/Utoya	77	75
Jan. 7, 2015	Paris	12	12
Nov. 13, 2015	Paris	130	413
Mar. 22, 2016	Brussels	32	270
July 14, 2016	Nice	86	433
Dec. 19, 2016	Berlin	13	48
May 22, 2017	Manchester	22	119
Aug. 17, 2017	Barcelona	15	104

Attacks with more than ten fatalities (attackers are not included in the figures in each case).

Source: Global Terrorism Database (GTD), <https://www.start.umd.edu/gtd/>

In response to the 9/11 terrorist attacks, many countries passed anti-terrorism laws, placing restrictions on civil liberties and expanding law enforcement powers in the name of national security. The US has been the foremost driver of counterterrorism legislation, not least through the UN Counter-Terrorism Committee.<sup>6</sup> As early as September 28, 2001, the UN Security Council ratified Resolution 1373, which called on all UN member states to adopt anti-terrorism laws and prevent suspected terrorists from crossing national borders. All asylum seekers were supposed to be screened for terrorist links in their countries of origin. Henceforth, those who finance, plan, support or commit terrorist acts were to be denied a safe haven. The financing of terrorist acts and the recruitment of terrorist groups were to be prevented and made into punishable offenses. In October 2001, the Financial Action Task Force on Money Laundering (FATF) issued special recommendations to prevent the financing of terrorism. These international legal agreements called upon states to align their counterterrorism policies with international practices that were largely determined by the United States.

However, further terrorist attacks, not least in Europe (see **Table 2**), have also led, especially in the countries concerned, to a further intensification of the security measures already taken following 9/11. Particularly in view of the threats posed by the so-called Islamic State (IS), the UN Security Council issued another resolution (2178) in September 2014 obliging all states to impose severe penalties on, for example, intended travel for the purpose of preparing terrorist attacks. Furthermore, information and communications that could serve the purpose of recruiting terrorists were also criminalized. Nevertheless, the Security Council failed to provide a workable definition of terrorism in connection with this norm. This meant that the leaders of different regimes had a free hand

to justify the internationally demanded aggravated criminal offenses as they saw fit with »violent extremism« or »radical conduct that could lead to acts of terrorism.«<sup>7</sup>

**The following country case studies of the group of twenty most important industrialized and emerging countries (G20)** examines a corresponding working hypothesis: Many of the anti-terrorism laws were enacted swiftly and initially for limited periods of time in response to 9/11, and they strengthened executive powers in their respective national contexts. But even 20 years on, these measures still have not been revoked. Many of the laws and directives which were passed in an exceptional situation are still in force and subsequently were even expanded, in part in response to further terrorist attacks (for an overview, see **Table 1**).

The examination of legislation in the G-20 countries, comprising 19 states and the European Union (EU), provides a representative overview that covers different regions as well as different forms of government. The aim is not so much to trace the arguments and political developments leading to the legislation in the respective countries; rather, it is to provide an overview,<sup>8</sup> without any claim to completeness, of those measures that have now survived in many places for two decades following 9/11. Illustrative examples will be used to show the permanent restrictions on civil liberties that have resulted in the respective countries.

**The comparative focus** is on national laws<sup>9</sup> and it will examine whether, in the countries studied, criminal legal

<sup>6</sup> See Ariana Vidaschi and Kim Lane Scheppele (eds.), *9/11 and the Rise of Global Anti-Terrorism Law: How the UN Security Council Rules the World*. Cambridge (New York and Melbourne: Cambridge University Press, 2021); C. S. R. Murthy, »The UN Counter-Terrorism Committee: An Institutional Analysis,« FES Briefing Paper, September 15 (New York: Friedrich-Ebert-Stiftung (FES), 2007).

<sup>7</sup> Kent Roach, »Comparative Counter-Terrorism Law Coming of Age,« in Roach (ed.), *Comparative Counter-Terrorism Law* (New York: Cambridge University Press, 2015), pp. 1–14, here pp. 2–3.

<sup>8</sup> Even just listing all German laws would make it impossible to see the proverbial forest for the trees; a comprehensive list of the »Federal Counter-Terrorism Laws since 2001« is provided by the Scientific Service of the German Bundestag: <https://www.bundestag.de/resource/blob/550308/137d54a4de57d2fa520377f60dc5d44d/WD-3-024-18-pdf-data.pdf>

<sup>9</sup> Saferworld, *The Rise of Counter-Terrorism at the United Nations: Two Decades Later* (Berlin and London: Friedrich-Ebert-Stiftung and Saferworld, 2021).

regulations have either been modified or new ones created, whether new military legislation provides the legal framework or even whether counterterrorism operations have been conducted in a legal vacuum. A closely related issue is the choice of measures taken by states that serve either to prosecute crimes committed or instead to prevent possible attacks. Finally, the study will determine whether the measures and power shifts taken in the state of emergency, which were initially fixed-term, continue to exist in the individual countries, and thus have been perpetuated and normalized.

**The study yielded a number of worrying findings that allow for forward-looking conclusions:** After 9/11 or further attacks, political leaders in most of the countries investigated exaggerated the danger of terrorism into an existential threat to the state and thereby created a state of emergency. In the fight or even »war« against terrorism, other standards could be applied. In many places, new criminal offenses were added to the penal code and more severe penalties were imposed that would normally be virtually unthinkable for ordinary offenses. Some governments went so far as to apply martial law. The US even created an extralegal zone at its base in Guantánamo, declaring the »unlawful combatants« to be outlaws, as in the old days in the Wild West.

In an existentially threatening situation, the populations of many countries were more willing to entrust the state with extraordinary powers and expected it to take special, and above all preventive, measures that would have been all but inconceivable in normal times. The alleged security measures of the individual countries cover a broad spectrum. They range from police measures based on constitutional principles and criminal law to the abduction, in violation of international law, of suspected terrorists who were detained without trial by the US in secret prisons in allied autocratic countries. There, the prisoners were subjected much harsher torture methods, so-called enhanced interrogations, than the »waterboarding,« the torture method of simulated drowning, practiced by US security agencies themselves.

These failures, especially on the part of the United States, as the leading power, destroyed much of the credibility with which Western democracies could have intervened against the even more brutal and arbitrary practices of authoritarian states. It is noteworthy that US-sponsored Saudi Arabia, from which 15 of the 19 9/11 attackers came, did not initially pass any anti-terrorism legislation. Only after the scare that the »Arab Spring« in the winter of 2010 triggered in Riyadh as well, did the ruling dynasty use the threat of terrorism as a pretext to issue counterterrorism decrees to prosecute »infidels« and critics of the regime as terrorists and suppress the criticism of the peaceful opposition. Russia, China, and Turkey continue to use the »war on terror« and the double standards of the West as a welcome justification for using all means at their disposal to silence unwelcome opponents of the regime and opposition figures in their countries. Referring to alleged terrorist threats, the Chinese leadership, for example, is continuing to combat »internal enemies« and suppress the Uyghurs in Xinjiang, among others.

It is not a coincidence that younger democracies, such as Argentina and Brazil in South America and Japan and South Korea in East Asia, whose populations and rulers in some cases still have vivid memories of the horrors of previous military regimes, today all the more jealously guard their personal liberties and the protection provided by checks on power. To date, the leaders of these countries have also largely withstood international pressure, especially from the United States, to implement stricter counterterrorism guidelines. For those who are now revered as freedom fighters in these countries at the time were branded as terrorists and were persecuted, imprisoned, tortured, or killed.

In the (system) comparison with former and current dictatorships, the practices of Western intelligence agencies, first and foremost the National Security Agency (NSA) and the Central Intelligence Agency (CIA), seem to be trifling offenses. But anyone who, like Edward Snowden, wants to uncover and curb abuses of power by the state must expect to be branded and persecuted as a criminal or even a traitor in the so-called West as well.<sup>10</sup> American intelligence services in particular are not exactly squeamish in this regard. Not even the parliamentary oversight bodies, which are supposed to prevent abuses of power by the secret services, are safe from the surveillance attacks and manipulations of agencies such as the CIA. Even Senator Dianne Feinstein, who was always supportive of the work of the US secret services, became a victim of CIA attacks when the committee she chaired examined the effectiveness of torture practices by the security services. Feinstein posed the fundamental question for a liberal democracy that has not yet been answered—namely, whether the CIA's activities can be monitored by Congress in the future or »whether our work can be thwarted by those we oversee.«<sup>11</sup>

In other countries, too, governments and security agencies flouted the democratic separation of powers or acted in secret and entirely without parliamentary authorization or legal control. After 9/11, many legislators in any case adopted a belligerent posture; many parliaments granted the executives expanded powers and scopes for discretion, some of which were only corrected by courts.

For example, the USA PATRIOT Act, which remains in force, allows the American security agencies, among other things, extensive access to bank and financial records as well as house searches without the knowledge of the individual concerned. In other Western countries, too, many of the originally time-limited, because massive, encroachments on privacy, such as for monitoring telecommunications, storing telecommunications data, or recording biometric features, remain in force and have been normalized by being written into permanent law. Especially in Germany, this habituation

<sup>10</sup> For a more detailed account, see Glenn Greenwald, *No Place to Hide: Edward Snowden, the NSA, and the US Surveillance State* (London: Penguin Books, 2015).

<sup>11</sup> Dianne Feinstein, »Statement on Intel Committee's CIA Detention, Interrogation Report,« March 11, 2014, <https://www.feinstein.senate.gov/public/index.cfm/2014/3/feinstein-statement-on-intelligence-committee-s-cia-detention-interrogation-report>

process, the »creeping and ultimately dangerous restructuring« of state security policy, has met with criticism.<sup>12</sup>

These findings are all the more worrying as they suggest that further security measures, such as the severe restrictions on liberty in the fight against the COVID-19 pandemic, could likewise continue and further destabilize the balance of security, freedom, and democracy that has been under threat since 9/11.

# 1

## ARGENTINA

The legacy of the state terrorism exercised by the previous military dictatorship has meant that, since the introduction of democracy in Argentina in 1983, its citizens have been extremely sensitive and government officials have been very cautious in combating Islamist terrorism, which in any case has not been virulent in Latin America to date, and have taken care to relinquish as few personal freedoms as possible. During Argentina's military dictatorship from 1976 to 1983, arbitrary detentions, torture, and executions of opposition figures were commonplace, regardless of whether those concerned were merely students and intellectuals engaging in peaceful protests or militant opponents of the regime. Terrorizing its subjects was an effective way for the military junta to maintain its power. While on the one side, the state apparatus spread fear and terror among the population, on the other side, political opponents used all available means, including violent ones, to combat this oppressive regime. The anti-terrorism policy of Argentina's army and intelligence services was primarily directed against the communist Ejército Revolucionario del Pueblo (ERP). Furthermore, anyone who protested against the military committee, the Junta Militar, that seized all state power in March 1976 was deemed to be a terrorist. The president was removed from office and the parliament was dissolved. Political activities and parties were also banned and the constitution was suspended. The Supreme Court was replaced by a military tribunal. With the introduction of democracy in December 1983, an initial change was made to the legal framework regarding terrorism. Significantly, the law passed on August 22, 1984 (**Ley 23.077**) was called the »**Law for the Defense of Democracy**.« The aim was to prevent regimes of terror in the future by placing limits on state action.

Although Argentina had not suffered any international terrorism—with the exception of two bombings in the 1990s against Jewish institutions (the Israeli Embassy in 1992 and a Jewish community center in 1994), both suspected to have been masterminded by Iranians—the Argentine government

came under pressure from the United States following the 9/11 terrorist attacks to enact a stricter **Anti-Terrorism Law**, namely **Ley 25.520**. Nevertheless, this law, which was enacted on December 3, 2001, protected personal liberties and did not sacrifice them unduly for security. Under this law, defendants retain their constitutional rights. Intelligence services can only conduct investigations with the permission of a judicial authority. Furthermore, a court order is required to intercept or eavesdrop on oral, written, or electronic communications or to disclose personal information. The law regulates in detail on what grounds and in what form wiretapping may be conducted; the requisite court order is only valid for 60 days and can be extended by another 60 days. The data thus obtained must be destroyed if no criminal proceedings are initiated. There is a basic prohibition on the collection of personal data on religion, ethnicity, private actions, or political opinions.

In response to further international pressure, especially from the United States, Argentina had to tighten its legislation. Among other things, the obligations of the Financial Action Task Force (FATF) required an amendment to the penal code. Otherwise, Argentina would have been placed on the »black list« of non-cooperative states in the fight against terrorism. For the economically weakened country, this would have entailed severe difficulties in the area of trade and investment. The **Ley 25.268** passed on July 4, 2007, formally referred to the prohibition of »terrorist financing,« but the amendments to the penal code went far beyond the issue of financing. Thus, among other things, the criminal offense of belonging to an »illegal terrorist organization« was also created. Members of such an organization could now be punished with five and up to 20 years' imprisonment; those who provided aid or money faced five to 15 years' imprisonment. The Anti-Terrorism Law of December 28, 2011, the **Ley Anti-terrorista (26.734)**, increased these penalties even further, doubling the minimum and maximum penalties in each case. A problematic feature, however, is that this tightening is not limited to violent terrorist offenses but can be applied to any offense under the penal code. Now, any criminal offense can be punished by double the original penalty laid down in the penal code.

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<sup>12</sup> Kai Biermann, »Überwachung: Das Wasser kocht schon,« in *Die ZEIT* online, November 6, 2020, <https://www.zeit.de/politik/deutschland/2020-11/ueberwachung-terrorismusgesetz-fingerabdrucke-ausweis-freiheit>

## 2

## AUSTRALIA

Australia's role as one of the closest military and intelligence allies of the US in the »Global War on Terror« has made it into a target of increased terrorist attacks. In an effort to preempt imminent or potential attacks, Australian security agencies conducted over a dozen major, and over 40 minor counterterrorism operations between September 2014 and December 2019 alone, in the process bringing charges against nearly 100 individuals.

In order to demonstrate the country's ability to defend itself to its population—and not least also to its American coalition partner—the Australian government enacted a host of new anti-terrorism laws or modified existing ones. Between September 11, 2001 and November 2007, a new law was enacted on average every seven weeks. By the end of September 2019, **more than 80 new security laws** had already been put in place. This legislative actionism, dubbed »**hyper-legislation**« by critical observers, has continued into the present. It is not only the number of laws, however, but also their extensive scope and massive encroachments on personal freedoms that set Australia apart among the Western democracies.

One month after the terrorist attacks in Christchurch in March **2019**, the Australian parliament passed the **Criminal Code Amendment (Sharing of Abhorrent Violent Material) Act**. The law adds new offenses to the Criminal Code related to online content. Internet service providers and content service providers are liable to prosecution if they fail to remove »abhorrent violent« material—defined as depictions of murder or attempted murder, terrorist acts, torture, rape, or kidnapping—»within a reasonable time,« whose extent, however, is not specified.

To counter the threat posed by returning terrorist fighters, the Australian government has enacted further laws. In September **2020**, the **Australian Citizenship Amendment (Citizenship Cessation) Act 2020 (Act 88)** was enacted to address concerns that the existing counterterrorism legislation did not cover several high-risk offenders, such as former Australian IS fighters in Syria or Iraq who have returned to Australia. The law expanded the number of individuals the government can investigate and prosecute for terrorist activities by backdating the previous deadline of December 12, 2015, to May 29, 2003. The security agencies are now conducting investigations against more than 230 people in Australia for supporting terrorist groups that have been involved in the Syria-Iraq conflict. Over 250 Australian passports have been canceled or applications for passports have been rejected in this context. The **Counter-Terrorism (Temporary Exclusion Orders) Bill**, which was also passed in **2019**, even authorizes the Prime Minister to bar Australian citizens from re-entering the country for up to two years if they are suspected of having fought for or otherwise

supported a terrorist organization abroad. Thus, a visit to suspicious areas, such as Mosul in Iraq, could also present businessmen or tourists with major difficulties in explaining themselves and with problems with the security services when returning to their home country.

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## 3

## BRAZIL

Brazil is another country where the historical experience of a military dictatorship continues to shape attitudes and legislation in dealing with terrorism to the present day. Brazil's government officials, among them former guerrilla fighters who were persecuted, imprisoned, and tortured as terrorists by the henchmen of the military junta that ruled from 1964 to 1989, continue today to resist pressure from the United States and international organizations to enact more effective counterterrorism legislation. Since the country has so far been spared terrorist attacks, Islamist terrorism is not in any case perceived as a threat in Brazil. Rather, it is feared that aligning itself closer with the US in the fight against Islamist terrorism could make the country a target for terrorist attacks in the first place.

In the absence of specific anti-terrorism legislation, Sunni extremists have in the past been released or prosecuted for other crimes, such as forged residence permits. Even in the run-up to the Summer Olympics in Rio de Janeiro in 2016, a terrorism suspect named Ibrahim Chaiboun Darwiche, who had received three months' training by the Islamic State (IS) in Syria and had undergone sniper training after returning to Brazil, could not be arrested and charged for terrorist activities. A legal precedent had to be made so that Brazilian police could keep the terror suspect away from airports and sports arenas.

Brazil's constitution does declare terrorism to be a serious crime that does not allow for bail after an indictment nor for petitions for clemency or amnesty for convicted offenders. But there is no corresponding legislation that would enable the security services to prevent potential attackers, for example by intercepting telecommunications or through infiltration. It is significant that, in Brazil, terrorism has only been defined in

connection with compensation for victims of terrorist attacks. The definition is vaguely worded, and it is up to the Minister of Defense to determine whether an attack was committed with a terrorist intent.

The **Organized Crime Act (12.850)**, which was passed in **2013**, can be applied to »international terrorist organizations.« However, this legislation leaves open which characteristics qualify an organization as a terrorist one. Among other things, this lack of specification has been criticized by the United States, the European Union, and the United Nations. Thus, the Financial Action Task Force (FATF) criticized Brazil for not adequately criminalizing and preventing the financing of terrorism.

Nevertheless, international pressure, especially from the United States, has meanwhile ensured that Brazil has also lent international conventions domestic legal force. In March **2016**, the **Anti-Terrorism Law (13.260)** established terrorist activities, such as recruitment and training, as criminal offenses. In the same year, the terrorist financing was also criminalized and it became possible to freeze the assets of suspected terrorists.

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# 4 CANADA

After 9/11, the Government of Canada undertook an immediate assessment of existing federal laws, including the Criminal Code, the Canada Evidence Act, and the Proceeds of Crime (Money Laundering) Act. To more effectively combat terrorism, this and other legislation was amended on October 15, **2001**, by the **Anti-Terrorism Act (ATA, Bill C-36)**. On November 20, 2001, the government proposed further comprehensive changes, which were also approved by Parliament and confirmed by Royal Assent on December 18, 2001.

The ATA amended the National Defense Act to authorize the Communications Security Establishment (CSE) to provide technical and operational support to federal law enforcement and security agencies. Information may now also be provided to or acquired from foreign intelligence services.

The ATA amended the Proceeds of Crime (Money Laundering) Act (PCMLA) to mandate the Canadian financial intelligence unit, the Financial Transactions and Reports Analysis Centre of Canada (FINTRAC), to assist law enforcement and the

Canadian Security Intelligence Service (CSIS) in combating and detecting terrorist financing. The PCMLA was accordingly renamed the Proceeds of Crime (Money Laundering) and Terrorist Financing Act.

In addition to using information from foreign financial intelligence units, FINTRAC is also authorized to enter agreements with Canadian federal agencies or provincial governments to access their databases maintained for the purposes of law enforcement and national security. In addition, on June 12, 2002, banks and other financial intermediaries were required to report suspected cases of terrorist financing.

The ATA also enacted the Charities Registration (Security Information) Act (CRSIA), which conferred wide-ranging powers on the Minister of Public Safety and the Minister of National Revenue. Investigations are initiated when information from the criminal police suggests that an organization is using its resources, directly or indirectly, to support terrorist organizations. These investigations are automatically submitted to the Federal Court for judicial review.

The ATA enabled more extensive investigative measures. Since then, electronic monitoring is no longer considered a last resort, to be used only after all other measures have been exhausted. In addition, the maximum duration of a wiretap authorization was extended from 60 days to one year. In addition, affected suspects can be informed only three years after the conclusion of surveillance in connection with a terrorist crime. Moreover, the authorities are also allowed to use forensic DNA technology in investigations and prosecutions.

Some of the ATA provisions—such as investigative detention—were initially subject to a sunset clause: Without an extension agreed to by both houses of parliament, the provisions would have expired. However, after several years of parliamentary maneuvering, a new law, the **Combating Terrorism Act (Bill S-7)**, ultimately reinstated the expiring provisions on April 25, **2013**, and made further amendments to the Criminal Code to grant the Canadian security agencies additional powers, for example to investigate individuals who leave or attempt to leave the country to commit a terrorist offense. The **Nuclear Terrorism Act (Bill S-9)**, which entered into force on June 19, **2013**, made further amendments to the Criminal Code to establish four new criminal offenses related to nuclear terrorism. Even before that, the **Public Safety Act, 2002** introduced stricter controls on hazardous materials and technologies and facilitated data exchange between airlines and federal agencies.

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## 5

## CHINA

The Chinese government considers terrorism to be one of the »Three Evils,« along with religious extremism and separatism. The three interrelated »evil forces« are regarded as threats to the country's national security and regional stability. Since the late 1980s, the cultural and religious differences between the Uyghurs and the Han Chinese have been seen as a threat to national unity. Uprisings in Xinjiang, the autonomous region in northwestern China where most Uyghurs live, reinforced this perception of a threat.

Less than three months after 9/11, on November 29, **2001**, in an official **document entitled »Terrorist Activities Perpetrated by 'Eastern Turkistan' Organizations and their Links with Osama bin Laden and the Taliban«** the Chinese leadership duly affirmed a connection between the Uyghur ethnic minority and Islamist terrorism. China was also ultimately able to convince the international community that the »Eastern Turkistan Islamic Movement« (ETIM) represented a threat to the security of China and the world. With an executive order (US Executive Order 13224) of September 23, 2001, and with the UN Security Council Resolution 1390 (of January 16, 2002), the United States and the United Nations, respectively, declared the previously little-known Uyghur group a »terrorist organization.«

After 9/11, the Chinese government made numerous incremental changes to its criminal law—in part to implement international guidelines, such as those against terrorist financing—that were only consolidated into a **National Security Law (NSL)** and a **Counter-Terrorism Law (CTL)** in **2015** in an attempt to systematize the country's counterterrorism efforts.

The **Counter-Terrorism Law** was intended to improve the flow of information between security institutions and render their operations more efficient. The lead agencies in the fight against terrorists and separatists are the Ministries of State Security and of Public Security, the Supreme People's Procuratorate and the Supreme People's Court. A national leading institution on counterterrorism efforts subject to the State Council and a national counterterrorism intelligence center were newly created. In December 2015, China had already appointed its first anti-terrorism envoy from the ranks of the Ministry of Public Security.

Under the law, all telecommunications companies and Internet service providers, including foreign companies, are required to assist the government in preventing and investigating terrorist activities. The police were given even more powers to conduct »technical investigations« and »secret detentions.« Evidence obtained in the course of technical investigations, i.e., undercover operations, is also admissible in court. Secret detentions allow the police in addition to confine individuals suspected of terrorist crimes at a designated

location without issuing a detention notice to the family if doing so could jeopardize the investigation.

Furthermore, citizens have a patriotic duty to serve as informants in the »people's war on terror.« The media also operate in a state of war: their coverage of attacks and government countermeasures has been restricted. In addition, China's anti-terrorism law authorizes, among other things, the People's Armed Police and the People's Liberation Army to conduct anti-terrorism operations abroad if necessary.

Domestically, too, units of the People's Police and People's Liberation Army ensure law and order. In addition, in the Xinjiang Autonomous Region, the so-called Production and Construction Corps is involved in counterterrorism. The paramilitary and economic divisions of this organization operate agriculture, mining, and industrial enterprises.

In March **2017**, the **Xinjiang** government passed a **special law to combat religious extremism**, including regulations on the education of children. In response to an IS propaganda video in which a militant had issued threats against China in Uyghur, China's President Xi Jinping called at the National People's Congress in Beijing for a »great wall of steel« to be built around Xinjiang.

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## 6

## FRANCE

France has wide-ranging legal regulations to combat terrorism. Each of them was established in the wake of attacks, initially in 1986 in response to a series of terrorist attacks, such as those by the Popular Front for the Liberation of Palestine (PFLP), the Abu Nidal Organization, and the Armenian Secret Army for the Liberation of Armenia, or ASALA.

The 9/11 attacks, together with the bombings in Madrid in March 2004 and in London in July 2005, and the attacks on home soil since 2015, prompted numerous other anti-terrorism laws.

The basis of the French counter-terrorism legislation is provided by the **Law of September 9, 1986**, which, in the meantime, has undergone several revisions, especially since the 9/11 attacks, such as with the **Law of November 15, 2001**, the **Law of March 18, 2003**, the **Law of March 9, 2004**, the **Law of January 23, 2006**, the **Law of December 21, 2012**, the **Law of November 13, 2014**, and the **Law of July 24, 2015**.

After the deadly attack on the editorial office of the French satirical magazine *Charlie Hebdo* in January 2015 and the likewise Islamist-motivated attacks in Paris on November 13 of the same year, in which another 130 people lost their lives and hundreds more were injured, the French government even declared a **state of emergency**. During the state of emergency, military courts tried offenses that normally fall under the jurisdiction of jury courts. Prefects were permitted to conduct house searches on suspects at any time and to ban gatherings when it was feared that they would lead to riots. The state of emergency was extended a total of six times and was lifted only two years later, on October 31, 2017.

This did not mark the end of all emergency measures, most of which were cast into permanent law. In October 2017, the **Law on Strengthening Internal Security and Counterterrorism** (Projet de loi renforçant la sécurité intérieure et la lutte contre le terrorisme, **SILT**) came into force, which included a variety of amendments to the penal code and added numerous measures that had previously only been permissible under a state of emergency.

In December 2020, the Council of Ministers adopted the **Law to Reinforce Respect for Republican Principles**, which includes new criminal offenses against hate on the Internet and a ban on home schooling. Prefectures were granted enhanced powers to monitor and, if necessary, disband radicalized associations.

Just five days after a police officer was stabbed to death by an assailant in Rambouillet, southwest of Paris, on April 28, 2021, the French government presented the bill for its **new anti-terrorism law**. It aims to strengthen the provisions of the **Intelligence Act of July 2015** and the **Law of October 31, 2017 (SILT)**. The proposed law would allow security agencies to use algorithms to systematically monitor the Internet activity of suspicious individuals. It would also make it easier for the police to search the homes of terror suspects. Even after their release from prison, convicted terrorists would continue to be monitored and would be subject to conditions, such as being banned from attending certain gatherings.

In France, there is no authority dedicated exclusively to combating terrorism. Rather, all services that can contribute to the prevention of terrorist acts are mobilized. On the other

hand, prosecution in France is centralized at the *Tribunal de grande instance*, a judicial authority in which expert judges are specialized in the trial, conviction, and sentencing of terrorist offenses.

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# 7

## GERMANY

When it comes to prosecuting and preventing terrorist acts, Germany relies in the national context on the existing constitutional framework and the tried and tested instruments of criminal law. Already in the course of the fight against the Red Army Faction (RAF), a new criminal offense, namely membership of a terrorist organization, was added to the Criminal Code (Section 129a StGB) in 1976, and the Law on the Suspension of Contacts was enacted in 1977. Germany does not have a separate procedure for prosecuting terrorism. Individuals who are suspected or have been convicted of terrorist offenses have the same rights as all other defendants, for example during questioning, at trial, and concerning the possibility of appealing against court rulings.

In Germany, the competences for combating terrorism are spread across a number of federal agencies. The Chief Federal Prosecutor (GBA), the Higher Regional Courts (OLG), and the Federal Court of Justice (BGH) are responsible for prosecuting terrorist acts. Furthermore, the Federal Criminal Police Office (BKA) and the State Criminal Police Offices (LKA) also support law enforcement. Together with the Federal Police (BPol), they also perform preventive tasks, as do the intelligence services: while the Federal Intelligence Service (BND) obtains information abroad, the Federal Office for the Protection of the Constitution (BfV) and the Military Counterintelligence Service (MAD) are responsible for domestic intelligence gathering. The Federal Financial Supervisory Authority (BaFin) and the German Financial Intelligence Unit (FIU), which is part of the BKA, are the lead agencies in combating terrorist financing.

After 9/11, the federal government initially passed two comprehensive »security packages« to enable the security agencies to engage in preventive measures, for example, to obtain information on travel movements, financial flows, or the behavior of suspects. To make automated data comparison more efficient, certain social data, among other things, were included in so-called dragnet investigations (i.e., computer surveillance).

The first **Act Amending the Law on Associations**, known as the **Security Package I**, of December 4, **2001**, now allows religious communities and ideological societies to be banned if their goals or activities are aimed at criminal acts or are contrary to the constitutional order or to understanding between nations. This abolished the »religious privilege« that had previously applied under the Law on Associations, according to which no restrictions could be placed on religious communities. Subsequently, several organizations were banned, such as »The Caliphe State« (on December 8, 2001) and »Al-Aqsa e. V.« and »Hizb-ut Tahrir« (on January 15, 2003).

With the **Security Package II**, the **Law on Combating International Terrorism (in short: Counter-Terrorism Law)** of January 9, **2002**, many security statutes from different areas were brought into line with the new threat. Extensive powers, such as to collect information from airlines, credit institutions, and telecommunications services, which the intelligence agencies were initially accorded »temporarily,« were extended until further notice in December 2015 following an expert review.

In August **2009**, the **Act on the Prosecution of the Preparation of Serious Violent Offences Endangering the State (GVVG)** added three new provisions to the Criminal Code. It stipulates that anyone who initiates or maintains contacts with a terrorist organization, prepares serious acts of violence that endanger the state, or issues instructions to do so, is liable to prosecution. The **Act Amending the Prosecution of the Preparation of Serious Violent Offences Endangering the State (GVVG-Änderungsgesetz, GVVG-ÄndG)** of June **2015** now also criminalizes foreign travel undertaken with the intention of facilitating terrorism. Furthermore, the financing of acts of terrorism was criminalized.

In order to improve the exchange of information in the fight against terrorism, including with foreign intelligence services, the **Act to Improve Information Exchange in the Fight Against International Terrorism** entered into force on July 30, **2016**. Moreover, in order to improve international cooperation, Germany has signed and ratified all thirteen UN anti-terrorism conventions. The German government supports the work of the Counter-Terrorism Committee (CTC) of the UN Security Council, which examines the implementation of sanctions in UN member states. Germany is also a member of the Financial Action Task Force on Money Laundering (FATF), whose nine specific recommendations on counterterrorism have been implemented in Germany.

In **November 2020**, the Bundestag, with little public fanfare, **made permanent** the **originally fixed-term laws** that had been passed after 9/11 and had already been extended several times subsequently.

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# 8

## INDIA

Terrorism has not only been an issue in India since September 11, 2001. Since the 1980s, insurgents in the Kashmir region have unnerved the Indian population. Nevertheless, the quality and quantity of attacks have increased since 9/11. However, the terrorist attacks perpetrated by ten Pakistani men from the Lashkar-e-Tayyiba terrorist group in Mumbai between November 26 and 29, 2008, which claimed the lives of 164 people, have remained in the collective memory.

The lead counterterrorism agency is the Department of Internal Security, which is located in the Ministry of Home Affairs. A Joint Intelligence Committee coordinates and analyzes information from the Research and Analysis Wing (RAW), which collects foreign intelligence, and the domestic intelligence sources of the Intelligence Bureau (IB). The operational unit in counterterrorism is the Central Reserve Police Force. The unit has been accused by human rights organizations of overextending its powers, especially in dealing with the Muslim population and Kashmiri separatists.

The legal framework for the activities of the security agencies is provided by three national laws. The first, the **Unlawful Activities (Prevention) Act**, was enacted as early as **1963** to give the central government powers to crack down on separatist movements and ensure India's sovereignty. In the meantime, **between 1985 and 1995**, a second law, the **Terrorist and Disruptive Activities (Prevention) Act**, was in force.

The third law, the **Prevention of Terrorism Act of 2002**, was the immediate response to the 9/11 terrorist attacks. It allowed the detention without trial of suspected terrorists and gave the security agencies extensive powers to prevent terrorism. Because of public protests against the abuse of power by the security agencies, the law was **repealed for the time being in 2004**. Nonetheless, lawmakers have continued to try to reinstate the legislation piecemeal ever since.

Even after the Mumbai attacks, it has remained politically difficult in India to enact a more comprehensive security law that addresses the needs of the country's diverse ethnic and religious groups. Nevertheless, in **February 2015**, India **banned the IS** and stepped up online monitoring of social networks to counter the threat of radicalization in India. In **August 2019**, the **Unlawful Activities Prevention Act of 1967** was **amended** to allow individuals to be designated as terrorists. Furthermore, in 2019, the Indian Parliament passed **amendments to the National Investigation Agency (NIA) Act of 2008** to allow the NIA to conduct terrorism investigations abroad and improve international cooperation in prosecuting criminals

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# 9

## INDONESIA

Indonesia is the largest predominantly Muslim country in the world; almost 90 per cent of its population is of the Muslim faith. The country has been confronted by terrorism since the 1970s, in particular by the »Free Aceh Movement« on the island of Sumatra. The separatist group is devoted to the violent imposition of a more radical view of Islam. Under the military dictatorship of General Haji Mohamed Suharto (from 1967 to 1998), other opponents of the regime who were branded as »terrorists« were also fought with all means in a legal vacuum.

Aside from domestic terrorists, the country is also threatened by foreign terrorists. Already before 9/11 on Christmas Eve 2000, al-Qaeda (and Jemaah Islamiyah) spread fear and terror with their attacks in Indonesia, especially among the Christian sections of the population. Following the 9/11 attacks in the United States and (six days) after the Bali bombings of October 12, **2002**, an **Anti-Terrorism Law (ATL)** entered into force. The ATL amended Indonesia's penal code to make it possible to address the threat of terrorism within its borders with more effective law enforcement methods.

However, state measures against Islamic organizations, even those involved in acts of terrorism, remain a politically sensitive matter in a predominantly Muslim society. Thus, Jemaah

Islamiyah, an organization with close ties to al-Qaeda, has still not been officially banned in Indonesia. Neither does the **Counter-Terrorism Law** in force since **2003** criminalize either support for or membership in a foreign terrorist organization. Even a general ban on IS cannot be enforced in Indonesia on the basis of existing law.

The 2003 counterterrorism legislation can be regarded as marking progress in the rule of law, since it assigned responsibility for counterterrorism to a national police force that is institutionally independent of the military, the Indonesian National Police (POLRI), and codified its powers and measures in combating terrorism in law. Nevertheless, the military continues to be used in combating radicalized groups in conflict zones and for intelligence gathering. Similarly, the police employ maximum force, frequently outside the new legal framework, against members of militant groups operating in the country, such as the Mujahidin Indonesia Timur (MIT). The anti-terrorist unit »Densus 88« has regularly conducted operations in which wanted terrorists or terror suspects have been arrested or killed. Its »shoot first, ask questions later« approach has been criticized by human rights organizations, as have alleged torture and deaths in police custody.

At the same time, Indonesia's prisons continue to be seen as breeding grounds for national and global terrorism. Later IS militants were first inspired by the jihadist ideas of other inmates and were recruited for IS in prison. Indonesians fighting for IS in Syria, for example, participated in preparatory support groups in prisons before their departure.

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# 10

## ITALY

Even before the attacks of September 11, 2001, in the United States, the Italian security agencies had been targeting the activities of international terrorist groups in Italy which were suspected of planning criminal acts abroad as well. However, the new situation of uncertainty prompted government officials to take new legislative action. Under **Law No. 438**,

which was passed directly after 9/11, anyone who participates in or promotes terrorist groups is liable to prosecution in Italy; providing means of communication or accommodation for members of a terrorist group is already a criminal offense. Accordingly, the security agencies received broader powers to conduct undercover operations and to monitor telecommunications and financial transactions.

At the request of the prosecutor, a court may issue an order if there is »sufficient circumstantial evidence« to suggest that a terrorist crime has been committed, attempted, or planned. Wiretap operations may be extended beyond an initial period of 40 days if the court deems this necessary to continue the investigation. The information thus obtained can serve as evidence in court.

**Law No. 155 of 2005** approved additional »urgent measures to fight international terrorism« to address, among other things, active recruitment and training for terrorist purposes. This also enabled Italy to fulfill the requirements of international cooperation in the fight against terrorism. In August **2016**, the terrorism provisions of the Council of Europe and the United Nations acquired legal force in Italy as well. Previously, on February 18, **2015, Decree No. 7** opened up further measures for combating international terrorism, including allowing the Italian police and armed forces to participate in international peacekeeping and stabilization missions in fragile states.

Nevertheless, in Italy the military does not have responsibility for terrorism cases. The National Anti-Mafia and now Anti-Terrorism Prosecution Office, as the central judicial authority, is authorized to conduct nationwide investigations. It also maintains a national database of terrorism cases that are investigated and prosecuted by regional prosecution offices. Decree-Law No. 7 of 2015 extended the mandate of the former National Anti-Mafia Prosecution Office, which had previously focused on organized crime, to terrorism cases. The staff of the Prosecutor General now also has access to all files maintained in connection with terrorism cases, which are handled by the relevant regional prosecution offices. These can also cooperate with the police. Like organized crime cases, terrorism cases are investigated, prosecuted, and brought to trial by independent district attorneys (who coordinate with each other and issue instructions to police) and by independent judges. It is also a matter for the judiciary, in accordance with the principles of proportionality and subsidiarity, to order and review measures that are detrimental to fundamental rights, such as privacy and freedom of movement.

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# 11

## JAPAN

Japan has a long tradition of politically motivated acts of violence that, from the present-day perspective, can be described as terrorism. As early as the mid-19th century, samurai secret societies and also later, in the 1930s, violent national-conservative resistance movements fought against the foreign domination of the country. On May 15, 1932, Japan's Prime Minister Inukai even fell victim to a terrorist attack by right-wing naval officers. In the recent past, in the 1960s, 1970s, and 1980s, the Japanese Red Army (JRA) sought to bring about regime change in the spirit of communist world domination through acts of violence against representatives of the state and attacks abroad. The sarin gas attacks in the Tokyo subway on March 20, 1995, perpetrated by an apocalyptic sect called Aum Shinrikyo, which killed twelve people and seriously sickened more than 5,500 others, marked the second time that the civilian population was affected on a larger scale, after a similar attack in Matsumoto had killed seven people and injured 144 others.

Japanese citizens were also affected by the 9/11 attacks; more than two dozen Japanese employees of Fuji Bank lost their lives in the South Tower of the World Trade Center. Japan's participation in the US-led Global War on Terror meant that Japanese civilians were also targeted by Islamists and were captured and beheaded in Iraq. The shock experienced by the Japanese public was all the greater when, in January 2015, another kidnapping of Japanese civilians by representatives of the Islamic State (IS) in Syria ended in bloodshed and the beheadings were carried out on camera to generate maximum publicity.

Meanwhile, other historical experiences, namely Japan's militarism during the Second World War and the resulting pacifist post-war constitution of the country and its citizens, explain why today's government leaders have nevertheless remained hesitant in dealing with terrorist threats and are more concerned to prevent the emergence of another military state in the country. Significantly, in Japan, the police and its intelligence network also play the leading role in investigations of terrorist attacks.

Attacks motivated by terrorism are seen in Japan as isolated acts, a deviation from the norm of peaceful coexistence that should be upheld and maintained as far as possible by pacifist means. The Japanese government has also repeatedly demonstrated its willingness to pay ransom money or to

release imprisoned attackers in exchange for the release of hostages, although this practice has met with sharp criticism from the international community.

Despite all the criticism, to date Japan has not passed an anti-terrorism law in which, for example, a definition of terrorist acts would provide the basis for corresponding criminal prosecution or even prevention by the security services. Even in the face of new terrorist threats, Japan has not passed any new laws but has only made moderate modifications to existing ones. Nevertheless, after the 9/11 attacks, pressure from the United States and the United Nations led Japan at least to transpose the international guidelines on combating the financing of terrorism into national law. Even more rapidly, namely immediately after the attacks in October 2001, the **Anti-Terrorism Special Measures Law (ATSML)** authorized Japan's participation in the international war against terrorism. But because of its pacifist constitution, this was more a matter of symbolically standing by its protecting power, the United States, on which Japan's military security depends in the face of the much greater threats posed by China and North Korea.

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# 12

## MEXICO

Mexico does not regard terrorism as a major threat to its security. However, it has to take into account the concerns of the United States, on which it is not only economically dependent. The southern neighbor of the USA has so far »only« been unsettled by drug terrorism, most recently by the Morelia grenade attacks in 2008, the Guanajuato and Hidalgo shootings in 2009, and the Monterrey casino attack in 2011. Nonetheless, US homeland security officials fear a possible link between terrorist organizations in the Middle East and Mexican drug cartels. Cooperation between US and Mexican security agencies is correspondingly close.

To date, the Mexican government has mainly relied on the counterterrorism regimes of other countries, in particular US security measures, to thwart potential threats. Nevertheless, in response to US and international pressure, the Mexican Congress passed a comprehensive **Asset Forfeiture Law** in July 2019. The law provides Mexican prosecutors with

more powerful tools to seize assets of illegal origin and those that could be used to finance crimes. Among other things, bureaux de change and stockbrokers were also required to avoid using funds that could finance terrorism. The legislation implements the United Nations' »asset forfeiture model.«

The Mexican Attorney General's Office (FGR) is responsible for investigating and prosecuting terrorist offenses. Based on the **legislation of November 2018**, the FGR has been reorganized and professionalized. Since then, the lead agency for detecting, deterring, and preventing terrorist threats has been the Center for National Intelligence (CNI), which is housed in the Ministry of Interior, in what is known as the Secretariat of Security and Citizen Protection.

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# 13

## RUSSIA

Russia was affected by terrorism even before September 11, 2001. In September 1999, terrorist attacks on apartment buildings in the cities of Buynaksk and Volgograd and in the capital Moscow injured over 500 people and claimed the lives of nearly 300. Radical Islamic Chechen rebels, who Russian security services believe were supported by al-Qaeda, shocked the Russian population even more severely when they took over 1,200 people hostage in a school gymnasium in Beslan on September 1, 2004, and held them for three days, injuring over 700 and killing 330; 186 of those killed were children.

The fact that fewer terrorist attacks have been carried out in recent years is credited by the Russian security authorities to the new security laws, which above all facilitated preventive measures. The core of Russian counterterrorism legislation is **Federal Law No. 35-EZ on Countering Terrorism** of March 10, 2006. This law authorized the Russian armed forces to counter terrorist threats—also beyond national borders. In addition, the security agencies were granted extensive powers internally, for example for telephone and Internet surveillance, the evacuation of persons or for quarantine measures. Under Russian law, the Supreme Court can classify Russian and international organizations as terrorist. For example, on June 2, 2006, the organizations »Jund al-Sham« (Soldiers of Greater Syria) and »Islamic Jihad« and their activities were banned.

Further decrees were subsequently issued to implement this law. **Decree No. 2 116** of February 15, **2006**, reorganized and centralized the responsibilities of the security agencies in combating terrorism. A new **National Anti-Terrorist Committee (NATC)** was created, whose chairman is also ex officio the director of the Federal Security Service (FSS) of the Russian Federation. The NATC is home to both the units of the anti-terrorist commissions (ATCs), whose task is to coordinate preventive counterterrorism measures, and the operational headquarters (OH) responsible for law enforcement. According to **Decree No. 662** of November 11, **2006**, cooperation with security agencies may also be financially rewarded. **Decree No. 352** of June 6, **2007**, regulates the use of weapons and military equipment by the Russian armed forces in the fight against terrorism.

Russia has also been active in the multilateral framework, especially in the international UN context. Together with the United States, Russia launched, among others, the **Global Initiative to Combat Nuclear Terrorism (GICNT)** in July **2006**, and has supported other international initiatives to ensure that nuclear materials do not fall into the hands of terrorists.

Furthermore, the recommendations of the **Financial Action Task Force on Money Laundering (FATF)** on curbing money laundering and terrorist financing have been adopted into Russian law (**Federal Law No. 51-03** of April 12, **2007**; **Federal Law No. 275-03** of November 28, **2007**).

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# 14

## SAUDI ARABIA

Until he was killed in Pakistan on the night of May 2, 2011 by an elite American unit, the terrorist leader Osama bin Laden, who achieved global fame following the 9/11 attacks, pursued the goal of using terrorist attacks to coerce the leadership of Saudi Arabia, in particular, to end the presence of American troops in his homeland. The bombing of the US compound in Riyadh in 1995 already bore bin Laden's signature, as did the terrorist attacks on the US Embassy in Nairobi (Kenya) in 1998 and on the USS Cole in Yemen in 2000. But it was the 9/11 attacks that turned Osama bin Laden into the most wanted international terrorist—and from then on also the target of Saudi security agents.

After 9/11, the Saudi royal family came under massive pressure, in particular from its military protecting power, the United States, to take domestic action against suspected terrorists and terrorist sympathizers. After all, 15 of the 19 attackers came from Saudi Arabia; in the attacks toward the end of the 1990s already, the majority of the al-Qaeda suicide attackers were from Saudi Arabia. Moreover, the state religion of the Saudi royal family, radical Islamic Wahhabism, is considered a breeding ground for international terrorism, especially by Western intelligence services.

Despite further terrorist attacks on its own territory, for example in Riyadh on November 9, 2003, the royal house in Saudi Arabia, which enjoys the protection of the United States, represented one of the few exceptions in the Arab world by **initially failing to pass any anti-terrorism legislation**. In the course of its strategic cooperation with the leading Western power, the United States, Saudi Arabia's leaders nevertheless proceeded with utmost severity against suspected terrorists in a legal vacuum. In the »War on Terror,« Saudi security agencies were also urged to use harsh policing measures. This led to the detention of numerous individuals and even of their families, and also to mass arrests of suspected extremists, especially of former foreign fighters who had been in Afghanistan, Chechnya, and Bosnia.

Last but not least, many »enemy combatants« from Saudi Arabia were also interrogated, tortured, and dehumanized at the American base in Guantánamo on Cuba—beyond the protection of international and US human rights laws. Guantánamo is still viewed as a symbol of Muslim humiliation in Saudi society. In the eyes of Islamists and the Saudi public, this approach to the »War on Terror« made al-Qaeda an organization with which to sympathize, a credible representative of all Muslims threatened by Western power and culture.

In the meantime, support for al-Qaeda increased; after arrests of vocal clerics and activists, further attacks were carried out, not least on targets in Saudi Arabia, in order to defy Saudi state power as well. The al-Qaeda attacks in Riyadh in 2003 were the prelude to a series of further bombings inside and outside the kingdom. Thus, there have been repeated suicide attacks on housing complexes for foreign workers. Violent and, in many places, deadly raids on homes in which al-Qaeda supporters were suspected to be hiding were commonplace. Following the 2003 bombings, the Saudi security forces arrested more than 600 suspects. During the raids, they also managed to confiscate numerous explosive devices and destroy the infrastructure of some groups. In 2006, further raids were conducted, resulting in the arrest of over 800 individuals with alleged links to terrorist activities.

Many of those arrested between 2003 and 2006 have admitted their crimes and publicly »repented,« including a number of well-known clerics who showed their remorse on national television. In addition to arrests, more severe penalties, under which offenders face fines of up to two million US dollars and prison sentences of up to 15 years, have also helped to stem terrorist financial flows.

This reportedly prevented an attempted al-Qaeda attack on the Interior Ministry building in 2004. It is an irony of the Saudi counterterrorism campaign that another assassination attempt on Prince Mohammed bin Naif, the head of counterterrorism in Saudi Arabia, took place in 2009, at a time when security agencies were already experimenting with softer strategies for preventing violence. This attack led to a shift in public opinion and since then the insurgents have been seen less as upholders of true Islam and more as threats to national stability.

Alarmed by the series of protests, uprisings and revolutions in the Arab world that began in December 2010, the so-called Arab Spring, the royal family in Riyadh has also increased security measures to protect the stability of the regime against »foreign« terrorists. In February **2014**, King Abdullah issued a **decree against foreign fighters** and a new **anti-terrorism law**. A month later, numerous organizations were classified as »terrorist,« including Hezbollah, which cooperates with Iran. Under the expanded definition of »terrorism« of the Ministry of Interior, atheism and other challenges to the Saudi state religion and royal family are now also punishable. Since 2017 and the ascension of Muhammad bin Salman to the throne, even anyone who portrays the king or the crown prince negatively has been persecuted and punished as a terrorist.

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# 15 SOUTH AFRICA

The country at the southern tip of the African continent is known to be a base of operations for Islamist terrorists from which attacks in other countries have been organized and financed. As early as 1999, the Islamist Khalfan Khamis Mohamed, one of the masterminds of the 1998 bombing attacks on the US embassies in Tanzania and Kenya that killed more than 200 people, was arrested in Cape Town. But it was not until 2016 that the government in Pretoria acknowledged that Islamist terrorism also poses a direct threat to South Africa. In addition, Islamist activities in the region, especially in Mozambique, pose a security problem for South Africa.

Under the **Regulation of Foreign Military Assistance Act** enacted in **1998**, nationals can be prosecuted for supporting or joining terrorist organizations. In order to comply with international counterterrorism obligations after September 11, 2001, South Africa made the financing of terrorism subject to prosecution, in addition to terrorist acts in the narrower sense, with the **Financial Intelligence Centre Act of 2001** and the **Protection of Constitutional Democracy against Terrorist and Related Activities Act (POCDATARA) of 2005**.

This provides the legal basis for the National Prosecuting Authority (NPA) to investigate cases of terrorism and international criminality. Terrorism cases are supposed to be prosecuted in a decentralized manner and prosecutors based in the provinces to be given the opportunity to gain experience. To this end, the Gauteng-based Priority Crimes Litigation Unit (PCLU) of the NPA has returned the prosecutors seconded to the central unit to their former provincial duties and reassigned terrorism cases to lawyers in the judicial districts where the crimes were committed. Although the PCLU retained an oversight role, it gave provincial public prosecutors considerable autonomy in prosecuting terrorism cases.

When it comes to preventing acts of terrorism, on the other hand, South Africa relies on central units. The lead agencies are the Crimes Against the State Unit within the Directorate for Priority Crime Investigation (DPCI/HAWKS) and the State Security Agency (SSA). A special police unit of the South African Police Service (SAPS) is trained in counterinsurgency and hostage rescue.

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# 16 SOUTH KOREA

South Korea's owed its initial experience of terrorism to its conflict-ridden relations with its northern neighbor. After the Korean War between 1950 and 1953, North Korean agents even made several attempts to assassinate sitting South Korean presidents. Following the November 29, 1987 bombing of Korean Air Flight 858, in which 115 people lost their lives, the US government also branded the North Korean regime a state sponsor of terrorism in 1988.

Just as in the demarcation from the hostile state to the north, in the domestic sphere conservative politicians and state-controlled media also labeled regime critics who advocated freedom of speech and assembly and protested for workers' rights, for example, as »red« or »pro-North Korean« »terrorists.« Meanwhile, with the transition from the military regime to democracy in 1987, anti-communist narratives ceased to be opportune for discrediting protesting workers and students. In present-day South Korea, the terrorism discourse serves as a substitute for an anticommunism narrative that is increasingly obsolete, also for demographic reasons, and was traditionally used by authoritarian rulers to justify political repression. The new democratic constitution established a constitutional court and an independent judiciary, which also facilitated a vibrant civil society and new political culture with more liberal legislation. In the aftermath of the 9/11 terrorist attacks, however, the state authorities were once again granted numerous powers that restrict personal liberties.

Between 2001 and 2016, more than ten counterterrorism laws came into force, most of which expired with their respective legislative sessions. The activities of the legislator were motivated primarily by international events, most notably by 9/11 or by ensuring the security of the Asia-Pacific Economic Cooperation (APEC) summit held in South Korea in 2005. The associated measures seemed particularly imperative in view of the South Korean military presence in Iraq. Last but not least, the terrorist attacks in Madrid in 2004 and in London in 2005, the hijacking of Korean ships by Somali pirates since 2006, and the UN Security Council Resolution 2178, drafted in the wake of the rise of the Islamic State in 2014, have also spurred legislative activity. Given the rise of global terrorism and the fact that South Korea, unlike most OECD countries, had not yet enacted any comprehensive anti-terrorism legislation following 9/11, even the Korean Bar Association argued for the need for new legislation.

The **Act on Anti-Terrorism for the Protection of Citizens and Public Security (Anti-Terrorism Act, Act No. 14071)**, which entered into force on March 3, **2016**, can be regarded as a consolidation and tightening of the various previous laws. The newly enacted law does stipulate that crimes are punishable under the Criminal Code. Thus, no specific penalty clause was created for terrorist acts, such as founding, joining, or inciting to join a terrorist organization or providing financial support to terrorists. However, the Anti-Terrorism Act strengthens the powers of investigation authorities in dealing with terrorism. The National Intelligence Service (NIS), police, and supreme prosecutors' office are considered »related agencies,« all of which have the authority to conduct »counterterrorism.« Counterterrorism activities go beyond the scope of normal investigative procedures; they range from information gathering to armed coercive measures. Whereas for ordinary crimes information gathering is strictly limited to obtaining evidence of a specific crime, however, under the Anti-Terrorism Act, the associated agencies may gather information for the purpose of preventing possible terrorist attacks. To prevent abuses, the law also created institutional arrangements for monitoring and regulating

counterterrorism measures. However, the collection of information is not authorized by independent courts, but by the prime minister, to whom the relevant agencies report. These weaker requirements were not sufficient to allay fears that the Anti-Terrorism Law could also serve as an instrument to monitor the general population and criminalize regime critics as terrorists.

Nonetheless, South Korean government officials can point to the fact that national counterterrorism laws are based on international legal regulations to combat terrorism. On March 29, **2016**, the **Act on Prohibition against the Financing of Terrorism and Proliferation of Weapons of Mass Destruction**, which was already **enacted in 2007, was updated** to transpose the International Convention for the Suppression of the Financing of Terrorism into national law.

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# 17 TURKEY

When the British consulate and the London bank, HSBC, were blown up by suicide bombers in Istanbul on November 20, 2003, Turkey also was directly affected by the Islamist terrorism of al-Qaeda. Prior to that, Turkey had long struggled with domestic terrorism, particularly the Revolutionary People's Liberation Party/Front (DHKP/C), which was founded in 1994 and opposed Turkey's Western ties to the United States and NATO. Since Turkey's involvement in the Iraq War in 2003, the DHKP/C has stepped up its attacks in Turkey.

In Turkey, the Kurdistan Workers' Party (Kurdish: *Partiya Karkerên Kurdistanê*, or PKK) is also considered a terrorist separatist movement, especially since it called for an independent Kurdish state in 1984. Numerous acts of armed violence are attributable to the PKK, including the killing of Turkish soldiers and the kidnapping of Turkish politicians. Nevertheless, the United Nations has not classified the PKK as a terrorist organization.

To combat terrorism, Turkey enacted a special counterterrorism law (**Counter-Terrorism Law, CTL, No. 3713**) as early as April 12, **1991**, and also included some relevant provisions in the Criminal Code and Criminal Procedure Code. As a result, **numerous legal provisions in the field of criminal law** were also **amended**, including the Turkish Criminal Code (No. 5237), the Criminal Procedure Code (No. 5271),

and the Law on the Execution of Penalties and Security Measures (No. 5275). The new regulations have been in force since June 1, **2005**.

The principle of mandatory prosecution is anchored in the Turkish criminal justice system: Under Turkish law, prosecutors have a monopoly on the initiation of criminal proceedings. If, at the end of the investigation phase, the evidence gathered suggests sufficient grounds to suspect that a crime has been committed, the prosecutor prepares the indictment. The Law on the Execution of Penalties and Security Measures (No. 5275) regulates the special treatment of terrorist offenders with regard to their detention and their rights as prisoners. It grants an exception to the principle of attorney-client privilege according to which the lawyer's documents and files relating to the defense and his or her records of meetings with the client are confidential. If there are reasonable grounds for suspicion that a lawyer is acting as an intermediary between members of a terrorist organization, it may be ordered that a security officer must be present at meetings. Documents exchanged between the attorney and defendant may be examined by the judge. The judge or, in cases of imminent danger, the public prosecutor may also decide to have the correspondence by telecommunications intercepted and recorded. The judge may also order a search of suspects' computers and records. In addition, the right of convicts to send or receive mail (whether letters, fax messages, or telegrams) is restricted to prevent communication between members of terrorist organizations.

The **Law on the Prevention of the Financing of Terrorism (No. 6415)** of February 16, **2013**, implemented relevant UN resolutions (1267, 1988, and 1989). The law established an Assessment Commission for Freezing of Assets. Chaired by the President of the Financial Crimes Investigation Board (MASAK), this commission deals with requests from domestic and foreign security agencies to freeze assets and also organizes claims by Turkey on other countries.

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# 18

## UNITED KINGDOM

Most suspected terrorists are prosecuted and convicted in the United Kingdom in accordance with generally applicable criminal statutes. However, the UK also has some »terrorist offenses,« such as those related to financing and support for terrorist groups or activities.

As part of the fight against terrorism in Northern Ireland, this legal basis was established prior to September 11, 2001, with the **Terrorism Act 2000**. This law stipulates that groups that the Secretary of State determines are concerned with terrorism (»concerned in terrorism«) may also be banned. In the interest of national security or to prevent or detect serious crimes, the Secretary of State can also use an arrest warrant to authorize »intrusive surveillance« by the security and intelligence agencies. The Terrorism Act also extended the powers of the police, for example to stop and search pedestrians and vehicles. However, if powers are to be exercised for more than 48 hours, they must be approved by a senior officer and confirmed by the Secretary of State. Similarly, customs and immigration officers received expanded counterterrorism powers, for example, to stop, request identification from, question, search, and detain individuals in airports and hoverports. They no longer need special permission to demand information about passengers or crew from ship or aircraft owners.

Under the **Anti-Terrorism, Crime and Security Act (ATCS Act)**, enacted directly following the 9/11 attacks on December 14, **2001**, »authorised officers« (that is, constables and customs or immigration officers) may seize cash if they have reasonable grounds to suspect that it is connected with terrorism. Forfeited cash must be released within 48 hours unless a magistrates' court issues an order authorizing continued forfeiture for up to three months. Under the ATCS Act, assets may also be frozen if a person, a company, or a country poses a risk to the UK economy or to the life or property of UK nationals or residents. Furthermore, the law grants more extensive powers in the regulation of aviation security and the retention of communications data.

After four suicide bombers linked to al-Qaeda killed a total of 52 people and injured more than 700 others in attacks on the London Underground and a double-decker bus on July 7, 2005, the British government legalized further intensified measures. The **Prevention of Terrorism Act 2005** allowed for the imposition of »control orders« on individuals believed to be involved in terrorist activities. These preventive orders, which imposed one or more obligations on a suspected person, regardless of nationality, were intended to limit, interrupt, or at best prevent his or her involvement in terrorist activities. Infringements of control orders without reasonable excuse constituted an offense punishable by a fine or imprisonment for up to five years, or both. With the **Terrorism Prevention and Investigation Measures Act 2011** these »control orders« were repealed.

In any case, the Terrorism Act 2000 allows a constable to arrest a person he or she suspects of being a terrorist. The **Terrorism Act 2006** extended the maximum period of detention without charge of terrorist suspects from 14 to 28 days. In addition, the 2006 Terrorism Act makes a number of other activities punishable: for example, anyone who glorifies terrorism, encourages it, including by disseminating terrorist publications, communicates terrorist techniques, or manufactures or possesses radioactive materials is liable to prosecution.

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## 19

## USA

The United States responded to the terrorist attacks of September 11, 2001, on the American »homeland« by seeking to externalize the danger, i.e., to keep it as far away from its own borders as possible. In the »Global War on Terror,« US President George W. Bush and his executive deployed military and legal assets to combat the al-Qaeda masterminds of the attacks, who were suspected to be in Afghanistan, and their Taliban supporters, initially through the allied-backed Operation Enduring Freedom (OEF). The later preventive war against Iraq, declared in spring 2003 in violation of international law, corresponded to an analogous reinterpretation of the law at home. Legal means were henceforth regarded as weapons, as further »arrows in the quiver« of the executive branch to prevent possible future attacks, and no longer just for criminal prosecution, as the then Attorney General John Ashcroft explained the new legal understanding of the American executive branch before the Senate Judiciary Committee in December 2001. From the perspective of the Bush administration, the prevention function took precedence over the functions of legal due process and the rule of law. This reorientation had knock-on effects on the relationship between personal freedoms and security: Preventing future terrorist attacks often came at the expense of individual freedom. What is more, the so-called Ashcroft doctrine of prevention threatened to render null and void the basic safeguards on personal liberties ensured by the system of mutually controlling powers.

Faced with a national threat, congressional representatives and senators were in any case firmly behind the commander-in-chief. With the **Authorization for Use of Military Force** of September 14, **2001**, Congress granted broad authority to the president and the executive branch acting on his behalf to use all »necessary and appropriate force« against anyone the White House determined »planned, authorized, committed or aided« the 9/11 attacks. US governments have subsequently used this legislative blank check to justify a range of counterterrorism measures, including military operations, targeted killings with drones, National Security Agency (NSA) wiretap operations, and the detention and torture of terror suspects. The US courts, too, more or less

held back, not wanting to tie the President's hands as long as the »War on Terror« continued. »For in times of war, the laws fall silent« (»inter arma enim silent leges«) was already the maxim of the Roman Empire. To date, the justices of the US Supreme Court have admonished only the most serious violations of constitutional principles, such as habeas corpus rights for detainees.

Most of the operations of the American security services were carried out in a legal vacuum: suspected terrorists were pursued worldwide, apprehended, taken to the US naval base at Guantánamo in Cuba or to CIA black sites, or were deported in the course of »extraordinary renditions« from friendly countries to countries such as Egypt. For these autocratic regimes had more practice in using even tougher interrogation and torture methods than the simulated drowning, known as »waterboarding,« practiced by US services themselves. International criticism and, above all, the US Supreme Court have nevertheless ensured that in **2005**, with the **Detainee Treatment Act**, at least the practice of torture of persons under custody or control of the US government was stopped. In contrast, Congress prevented Barack Obama, who later became US president, from dismantling the Guantánamo detention center, which was likewise shameful for the former model democracy, and transferring the detainees to the regular civilian or military criminal justice system in the United States. Nevertheless, under Obama's command, many terrorist suspects were also targeted by deadly drone strikes and summarily executed. To this day, the deaths of many innocent civilians are accepted as so-called collateral damage.

US officials continue to deny foreigners the same human rights as American citizens. To avoid unduly restricting the personal liberties of American citizens in the name of security, many of the measures in the **Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act (PATRIOT Act)**, passed on October 25, **2001**, were initially time-limited; however, since then they have been reauthorized and, in some cases, tightened several times (2005, 2006, 2011, and 2015). The comprehensive package of laws to combat global terrorism, which was adopted by Congress with a large, bipartisan majority barely six weeks after the 9/11 attacks, still forms the legal basis for the extensive surveillance activities of the 16 national intelligence agencies, as well as those of the private security companies that gather and analyze information on behalf of the secret services.

The 9/11 attacks generated an enormous need for security and therefore gave then US President George W. Bush a largely free hand, which he also used to adapt the domestic US government apparatus in line with the »National Strategy for Homeland Security.« In **2002**, the **Homeland Security Act** created the Department of Homeland Security (DHS) to put the Bush administration's security vision into action. A large number of units from other departments were integrated into this new Department of Homeland Security comprising two dozen federal agencies with about 180,000 employees and an annual budget of 40 billion US dollars. »Homeland

security« should not be confused with »homeland defense«: The former is the primary responsibility of the Department of Homeland Security; the latter falls under the jurisdiction of the Department of Defense. Both ministries are supposed to ensure »national security« under the supreme command of the president. Among other things, authority was redistributed between the Department of Homeland Security and the State Department, the US foreign ministry. The latter, through the Bureau of Consular Affairs, continues to be responsible for issuing visas. However, it is the responsibility of the Department of Homeland Security to establish guidelines for issuing visas and to monitor their implementation by sending its own staff to consulates and embassies. As a result, the de facto responsibility for issuing visas on the ground, as well as the inspection of subsequent entry into the US (by Customs and Border Protection), was transferred to the Department of Homeland Security. This led to restrictions on the movement of people and goods.

Still greater transatlantic problems arose when details came to light of a **National Security Agency (NSA) surveillance program (PRISM)** which had already been expanded by presidential **executive order** in **2001** and had long been kept secret, and which was used to spy even on members of the government of supposedly friendly states. Those affected, including the German Chancellor, should not have been surprised that the sovereignty of their states, and even their personal privacy, had been disregarded when even American citizens, and not least their elected representatives, were no longer safe from their own secret services.

After the *New York Times* exposed NSA wiretapping in late 2005 and numerous class and individual lawsuits were filed against cooperating telecommunications companies, US lawmakers responded in **2008** with the **Foreign Intelligence Surveillance Act (FISA) Amendments Act** to ensure that all pending cases against telecommunications companies could be dismissed. The **FISA Amendments Act**, reauthorized by Congress in **2012**, continued to grant the government broad surveillance powers with scant judicial oversight.

It is true that a reform was passed in June **2015**—two years after Edward Snowden, a former technical consultant of the US intelligence services, revealed that Americans were also being targeted by large-scale surveillance programs. However, the so-called **USA Freedom Act** only applies to American citizens. Foreigners may still be spied upon without hindrance. The mass storage of telephone call records of American citizens is now being taken over by the telephone companies. In future, security services such as the NSA are only supposed to be able to access the data after approval by a special non-public court.

But the surveillance apparatus has other ways of monitoring the behavior of American citizens. Intelligence services are not only able to observe communications on social networks, but also to influence them and disrupt undesirable political movements. Among other things, they create dossiers on leaders within social movements and try to defame them with discrediting information, according to the testimony of

intelligence expert Erich Schmidt-Eenboom. Thus, US intelligence services also targeted investigative journalists and media that criticized their practices. Anyone who exposes the abuse of state power and seeks to curb it must expect to be branded and persecuted as a criminal, or even as a traitor to their country.

The **Intelligence Reform and Terrorism Prevention Act**, passed in **2004**, created the position of the Director of National Intelligence to coordinate the work of the 16 US intelligence agencies. It was thanks to the information that Edward Snowden disseminated via the media that the public also gained an insight into the structure of the individual units and the tasks and financial resources assigned to them. The Central Intelligence Agency (CIA), the National Security Agency (NSA), and the National Reconnaissance Office (NRO) received the lion's share of the 52.6 billion US dollars allocated to the »intelligence community« for the fiscal year 2013, accounting for over two thirds of the total budget. About 20 per cent of the more than 107,000 employees of the total apparatus comprising 16 federal agencies are employed in military functions (about two thirds of them at the NSA), but the majority are entrusted with »civilian« tasks.

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# 20

## EUROPEAN UNION

The European Union (EU) is playing a leading role in the fight against terrorism under the »third pillar« of its sphere of competence, namely police and judicial cooperation in criminal matters. Immediately after the September 11, 2001 attacks, the EU adopted its **Council Common Position 931/2001** and **Council Regulation No. 2580/2001** to implement

UN Security Council Resolution 1373 (2001). Furthermore, **Council Regulation 881/2002** of May 27, 2002, transposed a number of other UN counterterrorism resolutions into the European legal framework.

With the **Council Framework Decision 475** of June 13, 2002, the EU provided a common definition of the terms »terrorist offence« and »terrorist group« for EU member states to transpose these concepts into their national law. As a result, it has promoted a fundamental harmonization of national legislation among the Member States. The EU has issued a number of other framework decisions and directives on cooperation in the field of serious crime, in accordance with the principle of mutual recognition of judicial decisions, so that these can be adopted into the national law of the Member States:

- **Council Framework Decision 2002/584/JHA** of June 13, 2002, on the European arrest warrant and the surrender procedures between Member States;
- Council Framework Decision 2002/465/JHA of June 13, 2002, on joint investigation teams;
- **Council Framework Decision 2003/577/JHA** of July 22, 2003, on the execution in the EU of orders freezing property or evidence;
- **Directive 2014/41/EU** of the European Parliament and the Council of April 3, 2014, regarding the European Investigation Order in criminal matters.

As early as November 6, 2007, the **Commission adopted a further package of proposals** aimed at improving the EU's capabilities in the fight against terrorism. This elevated the training or recruitment of terrorists and public provocation to commit terrorist crimes to criminal offenses. Almost ten years later, on March 15, 2017, the European Union adopted a directive to combat terrorism, namely **EU Directive 2017/541**. EU member states were given a deadline until September 8, 2018 to transpose it into national law. This directive enjoins them to extend the scope of their criminal law to cover terrorist threats and activities within the EU. It followed the adoption in 2015 of the **Additional Protocol to the Council of Europe Convention on the Prevention of Terrorism**, which sought to implement a 2014 UN Security Council Resolution (UNSC Res. 2178) within the Council of Europe legal framework.

EU Directive 2017/541 covers a wide range of terrorist offenses, some of which had already been recognized in international, as well as in many domestic, regulations. These include classical offenses related to terrorist acts (Article 3), as well as »related« offenses of »public provocation« to engage in terrorism (Article 5), providing or receiving training for terrorism (Articles 7 and 8, respectively), »travelling ... for the purpose of terrorism« (Article 9), terrorist financing (Article 11), and aiding, abetting, attempting, or facilitating these offenses (Articles 10 and 14).

The national agencies of the Schengen area can use the **Schengen Information System (SIS)**, which contains information on persons and property useful in combating

terrorism, such as alerts for persons to be searched or arrested and records of stolen passports or vehicles. The SIS has been replaced by **SIS II**, which, among other things, allows the use of biometric data.

Likewise, the exchange of information via **Europol** helps to pool resources and improve evaluations. The EU police authority, based in The Hague in the Netherlands, supports national authorities in investigating terrorism cases through operational analyses (analytical work files, AWF) and strategic analysis, such as the annual Terrorism Situation and Trend Reports. Europol also coordinates the »Check-the-Web« analysis project, which monitors and analyzes activities on the Internet for evidence of radicalization and recruitment.

In addition to the Madrid group, the **Committee of Counter-Terrorism Coordination Centres (CCCAT)**, another specialized counterterrorism unit, the **Council of the European Union Working Party on Terrorism (TWP)**, was created to facilitate the exchange of intelligence information.

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