

# Human Rights Advocacy and the Institutionalization of U.S. “Counterterrorism” Policies Since 9/11

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Anniversaries are complex moments. Pausing to reflect on the events of 9/11 compels us to recall the lives lost, the harms experienced, and the long personal and communal shadows that these losses left on the United States and the [93 other countries](#) who count their nationals among the dead. We are equally required on this 20th anniversary to account for the responses to the horror of that day. The legal, political, military, and economic reactions to the attacks on the Twin Towers and the Pentagon have spanned the globe and they continue to the present. This reflection pauses to contemplate the human rights response to 9/11 and the legacy of counterterrorism free from human rights constraint.

September 11 spawned a new era of perpetual warfare, and the efforts of ugly disengagement from that war footing continue today in Afghanistan and beyond. The immediate aftermath of the attacks was defined by a collective moment of global condemnation and solidarity. The day after the attack with the pall of smoke and ash setting over New York, the U.N. Security Council gathered and [declared](#) international terrorism a threat to peace and security. Before the end of September 2001, a sweeping and powerful Chapter VII [resolution 1373](#) was [adopted](#) by the Council. This legislative resolution created precise and defined obligations for member States of the United Nations to thwart and prevent terrorism, void terrorism financing, protect borders, and hold terrorists accountable for the acts they had

perpetrated. It also established a new powerful architecture of counterterrorism within the United Nations, with the creation of the Counter-Terrorism Committee and its implementing body the Counter-Terrorism Executive Directorate.

In the absence of an agreed definition of terrorism underpinning all of this expansion, these institutional and normative tectonic shifts had more than a hint of dolos to them: terrorism was everywhere and nowhere, it was to be defined by States, and could be everything and nothing. Part of the story for the next 20 years is the consolidation and expansion of this architecture and these norms with the seepage of counterterrorism to sustain securitization, facilitate authoritarianism, weaken the rule of law, and undermine democracies in truly every corner of the globe.

As these new organizing structures of global, regional, and national counterterrorism were becoming embedded, the U.S. response to the events of 9/11 was marked by a tsunami of violent and systematic human rights abuses. To the international community, President George W. Bush declared, “Either you are with us or you are with the terrorists.” As the nomenclature of a “global war on terror” was adopted and mainstreamed, torture memos were produced, torture was widely and egregiously practiced, individuals were rendered across borders, a detention camp was established in Guantanamo Bay, Cuba, military commissions were established, surveillance expanded and ethnic and religious profiling was magnified, and the assault on civil liberties and human rights righteously led by the United States appeared to be comprehensive and unstoppable.

With the value of hindsight, two patterns appear obvious to me now. The first is the extraordinary fortitude of some human rights advocates in the United States who continued – despite the costs of confrontation at that moment, when “rallying around the flag” was the demanded response – to try to vindicate the fundamental rights to life, to freedom from torture, and to a fair trial, and to rally against abductions and legal black holes. In parallel, one can see how long it took for that civil liberties response to mobilize more broadly, and how difficult it was to gain traction and cross from contestation to successful challenge. That time gap was the product of the uncommon cost of the terrorist attacks on the fabric of civic and legal life, a readjustment factor that is well-known to those of us who have lived in societies experiencing sustained violence for a long time. As many commentators have observed, the shift from a Bush to Obama administration had less fundamental effect than some had expected on the nature and form of waging of a “war on terror” even if that particular nomenclature was abandoned.

It is also clear now, as we look back 20 years later, that in many ways domestic legal and political success in challenging the fundamentals of the “war on terror” was limited. Some measures of those limitations include the continued operation of the legal black hole that is the detention facility at Guantanamo Bay, Cuba where 39 men remain detained, the vast majority of whom have never been charged with any crime; the failure to rescind the USA Patriot Act; the ongoing, largely untrammelled surveillance of ordinary citizens and the collection of vast amounts of metadata justified by security rationales that are rooted in the post-9/11 datafication of counterterrorism practice; the de facto amnesties (and in some cases promotions) provided to those who had committed, ordered, and enabled systematic torture; the regularization of drone strikes across multiple conflict sites institutionalizing what many human rights experts consider extrajudicial execution under the fiction of a rational executive. All of these practices reveal only a fraction of the human and human rights costs of normalized U.S. counterterrorism policy post 9/11.

I also observe that as time moved further away from the cataclysmic moments of 9/11, the interest of the general American public and civil society more broadly in calling out and naming costs and insidious harms that followed from the “war on terror” waned. One might have expected the opposite – that the public would be less tolerant of rights infringements and of emergency powers after the shock and trauma of 9/11 receded in time. Doing human rights work in the context of counterterrorism is never easy. Those who defend rights, including the rights of those who transgress societal norms through the most deplorable violence, are often seen as “fellow-travelers” of terrorism rather than defenders of essential values in democratic societies. There were few human rights wins post 9/11, and many civil liberties organizations struggled to maintain funding and support to continue engagement on defending human rights in counterterrorism contexts. There is also a plain truth that many organizations grew tired of this work – the uphill battle to undo the normalization of securitization is not sexy, and it has few allies, particularly when security sector and political stakeholders of various stripes are aligned on the value of counterterrorism. And the road ahead may become even more uphill: There is a very uncomfortable reality that as the United States now turns away in its foreign policy focus from counterterrorism to great power competition, there is less and less hope that the structural problems of normalized counterterrorism will be undone, and will rather become part of the arsenal of “doing law and order” at home.

Meanwhile, the rest of the world was taking note, learning the lesson that the language of counterterrorism was enabling, legitimizing, and accepted. In this way, the architecture created and supported by the United States starting in 2001 paved the way for an unfolding global expansion of counterterrorism. The result of that growth has been the stifling of human rights, the choking of civil society, and the weakening of the rule of law on every continent. It is not by accident that counterterrorism regulation has expanded and deepened across the globe in the past 20 years, with tranches of national legalization efforts which are broad, imprecise, and highly opaque on what precisely constitutes terrorism. In this vein, defending women's rights has been defined as terrorism, arguing for the protection of the environment is terrorism, pro-democracy movements are terrorists, humanitarian protection supports terrorists, and civil society actors are engaged in terrorism when they call their governments to account.

Twenty years of an enabling and permissive environment on terrorism regulation has created a permissive and enabling ecosystem in which the invocation of the word “terrorism” has been sufficient to justify government overreach and retaliation in most regions of the globe. In this highly challenging global environment – a distinct legacy of the export of the “war on terror” – civil society advocates continue to do their work in the most difficult of circumstances, naming the misuse and abuse of counterterrorism. Many of them are imprisoned, threatened, harassed, and even killed for calling out such abuses.

Still, it states the obvious that 20 years on from 9/11, there are real terrorist threats to be addressed – but the terminology of terrorism itself has become cheapened by systemic abuse and misuse. And so, where do we go now?

The answer lies in a genuine reckoning on the use and abuse of counterterrorism measures and institutions. It would require at the national level, starting in the United States, a commitment to “dealing with the past,” setting aside the convenient pact of forgetting about the systematic human rights abuses that followed the tragedy of 9/11, holding perpetrators accountable in meaningful ways, and sending a much needed global signal that counterterrorism measures are not a convenient cover for war crimes, crimes against humanity, and systematic violations of human rights. It would require the United States to take a cold hard look at the legacy it has bequeathed to the world in the form of enabling counterterrorism measures that neither counteract terrorism nor protect society. Globally, a good place to start would be reform of the work of the United Nations Counter-Terrorism Committee

and the Counter-Terrorism Executive Directorate to ensure that States cannot use counterterrorism as a chimera to systematically violate human rights and undo the rule of law. Another essential step is for States to commit to adequate funding and independent oversight of the U.N.’s counterterrorism architecture to ensure that counterterrorism is effective, human rights compliant, and not impinging or undermining the core work of the organization. In parallel, this would send a strong signal to member States that independent and human rights-based oversight of counterterrorism is essential to prevent the scale of misuse that we have seen normalized and accepted over the past two decades. More than anything else, 20 years on from 9/11 we need less counterterrorism and severely pruned back institutions, practices, and norms. Post 9/11 counterterrorism has, in many respects, not been delivering security, and has certainly not protected the rights and dignity of those who need it most in countries where violence and harm require complex, difficult, and long-term solutions. Undoing this legacy of 9/11 is not easy, and it would be easy to pretend it is unnecessary. But some exports should be recalled, and the human rights-free export of counterterrorism is not a 9/11 legacy the United States should want to preserve.