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Collateral damage: human rights consequences of counterterrorist action in the Asia–Pacific

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The contempt shown for human rights during the Second World War resulted in acts of barbarism so outrageous as to call fundamentally into question the assumption that non-interference in the domestic affairs of states should hold as an immutable building block of world order. This sobering realization led to the creation after 1945 of several human rights treaties and declarations, promoted either through the United Nations or through regional charters. The most significant action included establishment of the two core human rights conventions, the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the International Covenant on Civil and Political Rights (ICCPR), both of which were opened for signature in 1966 and came into effect ten years later. During the same period, anti-colonialist and anti-apartheid sentiment resulted in the International Conventions on the Elimination of All Forms of Racial Discrimination (CERD, 1966) and on the Suppression and Punishment of the Crime of Apartheid (1973), an illustration of the point that, once this global process had begun, the rights regime quickly began to shed its largely European historical origins.

International efforts continued to expand the range and type of conventions opened for signature, but were supplemented in the 1970s and 1980s by individual action on the part of many democratic states, which decided to introduce a human rights element into their foreign policies. The most determined of such states instituted bureaucratic and legislative changes in order to ensure that a human rights assessment would be made before policy decisions were taken. Having made these commitments at the individual state and international levels, domestic and transnational activists tried to ensure that the bodies that had come into being lived up to their obligations, even at a time of Cold War struggle. And in the post-Cold War era, given the presumed collapse of geopolitical and ideological confrontation and the attendant supposition that

certain sets of values concerning the well-being of individuals would now prevail more widely, the pace of normative expansion quickened.

Despite the obvious difficulties in actually enforcing greater protection for human rights, either through bilateral or through multilateral means, the second half of the twentieth century witnessed the setting of standards that were a 'summary statement of the minimum social and political guarantees recognized by the international community as necessary for a life of dignity in the contemporary world'.[1] Moreover, some monitoring of state behaviour was taking place via reporting requirements associated with several of the human rights treaties, annual meetings of UN bodies devoted to the rights regime and the records kept by major human rights non-governmental organizations (NGOs), as well as the details provided in the annual US State Department *Country reports on human rights practices*. Such activity reflected an understanding that a state's reputation no longer rested solely on its ability to exercise authority over territory and the population that resided within it, but in addition that legitimate statehood now embraced the idea of 'sovereignty as responsibility',[2] according to which a state was expected to protect core human rights in its own territory. Any gross failure in that responsibility was increasingly recognized, both by states and by interstate bodies, as a threat to international peace and security, requiring international action.[3]

This is not meant to imply that there was a widespread global consensus on the acceptability of these developments. The 'Asian values' argument of the early 1990s was a vivid reminder that some Asian governments (but not necessarily all their citizens) wanted to privilege political and cultural diversity over universalist claims, and saw the expansion of the normative agenda as an unwelcome imposition at a time of post-Cold War western triumphalism.[4] Moreover, nationalist sentiment continued to run high after the end of the Cold War, as did the concomitant belief that loyalty to the nation-state should override all other loyalties, including those relating to the individual. Nevertheless, it seemed to have been established that by the late twentieth century human rights not only had become 'the dominant moral vocabulary in foreign affairs',[5] but would remain so.

[1] Jack Donnelly, *International human rights* (Boulder, CO: Westview, 1998), p. 9.
[2] See e.g. Francis M. Deng, Sadikiel Kimaro, Terrence Lyons et al., *Sovereignty as responsibility: conflict management in Africa* (Washington DC: Brookings, 1996); and *The responsibility to protect: report of the International Commission on Intervention and State Sovereignty* (Ottawa: International Development Research Centre, 2001).
[3] See the argument made in Adam Roberts, 'The United Nations and humanitarian intervention', in Jennifer Welsh, ed., *Humanitarian intervention and international relations* (Oxford: Oxford University Press, 2004); and Nicholas J. Wheeler, *Saving strangers: humanitarian intervention in international society* (Oxford: Oxford University Press, 2000).
[4] James T. H. Tang, ed., *Human rights and international relations in the Asia–Pacific* (London: Pinter, 1995); Joanne R. Bauer and Daniel A. Bell, eds, *The East Asian challenge for human rights* (Cambridge: Cambridge University Press, 1999).
[5] Michael Ignatieff, 'Is the human rights era ending?', *New York Times*, 5 Feb. 2002. See also his books *Human rights as politics and idolatry* ed. Amy Gutmann (Princeton, NJ: Princeton University Press, 2001), and *The lesser evil: political ethics in an age of terror* (Princeton, NJ: Princeton University Press, 2004).

However, after the September 2001 terrorist attack on the United States this assumption that modern, legitimate statehood increasingly entailed the protection of basic individual human rights came under serious challenge. An apparent re-emphasis on the security of the state and its citizens rather than of the individual, and the perception that action against terrorism requires the introduction of legislation that curtails civil liberties, pose part of that challenge. The successful detection of terrorist groups—involving the gathering of intelligence, heightened surveillance, enhanced powers of arrest, and greater military and police cooperation—are seen by many governments inevitably and inherently to require constraints on the individual freedoms of citizens.

Going beyond these relatively predictable and, for some, acceptable moves, there are frequent reports of the use of unlawful methods in the interrogation of terrorist suspects. In addition, the compromises seen as necessary when framing foreign policies towards governments that, while they have poor records in the area of human rights, are deemed important in counterterrorist operations, have undercut the weight that has hitherto been accorded the human rights norm in foreign relations. International and regional organizations have passed legislation, instituted monitoring mechanisms and started to engage in capacity-building which reinforces these trends in state behaviour. Advocacy groups devoted to human rights promotion find themselves on the defensive, even in danger,[6] and divided in their assessment of how best to operate or stay relevant in the so-called 'age of terror'.

These trends have sent a signal that building a reputation for resolve in the anti-terrorist struggle, as well as the capacity to participate effectively in that struggle, have become increasingly important in the appreciation of the standing of modern states and institutions, overshadowing human rights matters. Moreover, governments have noted that a promise of resolute persistence in tracking down terrorists carries with it increased economic and military assistance and—where desired—important political support from the most powerful state in the global system, the United States. Unsurprisingly, therefore, governments that have a history of being wary of, if not hostile to, the idea of human rights have quickly sensed and acted upon the implications of this global change, seeing in it a reawakened appreciation of order over justice, and of the strong state—defined as one that can police its people and its borders—over the protected individual.

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[6] For example, in April 2003 two human rights defenders went to investigate the reported abduction of three villagers taken during the Philippine army's counterinsurgency operation in the Southern Tagalong region. They were almost immediately abducted themselves by masked men; their mutilated bodies were found the next day. See Neil Hicks and Michael McClintock, eds, 'Defending security: the right to defend rights in an age of terrorism', preliminary draft produced by Human Rights First for the 60th Session of the United Nations Commission on Human Rights, 15 March–23 April 2004, Geneva. The lawyer representing a suspect alleged to have been involved in a series of terrorist attacks in southern Thailand in January 2004 disappeared on 12 March 2004 and has still not been found: 'Torture in Thailand', *Far Eastern Economic Review*, 12 Aug. 2004, p. 13. The well-known Indonesian human rights activist Mr Munir, one of the founding members of the Commission for the Disappeared and Victims of Violence (KONTRAS), died on a Garuda airlines flight to Amsterdam on 7 Sept. 2004; later, it was discovered that his death was the result of arsenic poisoning. *Financial Times*, 11–12 Dec. 2004, p. 9.

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This article examines the Asian response to these developments. It sets out to explain why a number of states in the region have identified strongly with the counterterrorist agenda and why, in the course of that identification, some of the region's governments have sanctioned the abuse of personal security at levels that have led them to be singled out as of particular concern to those committed to the protection of human rights.

Asia and counterterrorism

Asia is a core location in the anti-terrorist campaign, containing so-called front-line and second-front states in the struggle. Since 11 September 2001 there have been several major terrorist bombings in the region, with Pakistan and Indonesia being particularly badly hit. Jemaah Islamiya (JI), a pan-Asian terrorist network with purported links to Al-Qaeda, is said to have been behind some of these bombings and to have established bases in several South-East Asian countries, as well as Australia and Pakistan. Its goals are to establish a pan-Islamic realm that encompasses 'Indonesia and Malaysia, the Muslim areas of the Philippines and Thailand and, eventually, Singapore and Brunei'.[7] In response to this, Asian governments have moved to enact new or strengthen existing anti-terrorist and national security laws, and Asian organizations such as the Asia–Pacific Economic Cooperation forum (APEC), the Association of South East Asian Nations (ASEAN), the ASEAN Plus Three (APT) grouping and the ASEAN Regional Forum (ARF) have drawn up regional plans and promised to implement regional measures designed to respond to the terrorist challenge.

US relations with a number of Asian states have strengthened as a result of counterterrorist cooperation, as witnessed by, for example, two formal visits to Washington DC by the former Malaysian prime minister Mahathir and his successor Badawi in the space of two years, where previously relations had been decidedly frosty; persistent efforts to re-establish full US contacts with the Indonesian military, despite Jakarta's failure to bring to book those in its armed forces accused of widespread human rights abuses in East Timor and elsewhere; and increased US military and economic aid to the Uzbek government, despite its having one of the most egregious human rights records in the world.[8]

Nowhere was this transformation in US policy more evident than in the case of Pakistan. From regarding it as a virtual failing or 'rogue' state—with fragile institutions and economy, a nuclear weapons capacity, and a military dictatorship in charge—the United States has tried to recalibrate Pakistan's status to that of vital partner. US aid began to flow from September and October 2001 with the lifting of tough US sanctions previously imposed as a result of the May 1998 nuclear test and October 1999 military coup. February 2002 saw

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[7] A. M. Rabasa, *Political Islam in Southeast Asia: moderates, radicals, and terrorists*, Adelphi Paper no. 358 (Oxford: Oxford University Press for the International Institute for Strategic Studies, London), May 2003, p. 9.

[8] Rosemary Foot, *Human rights and counter-terrorism in America's Asia policy*, Adelphi Paper no. 363 (Oxford: Oxford University Press for the International Institute for Strategic Studies, London), Feb. 2004.

the Pakistani president, Musharraf, make a state visit to Washington, where he was described as a 'leader of great courage and vision'. In June 2003 this was followed by the accolade of a visit to Camp David, making him the first South Asian leader ever to be invited to the US president's mountain retreat. On that occasion, Musharraf received a further pledge of $3 billion in aid over five years, half of it for military assistance; and subsequently Pakistan was designated a major non-NATO ally of the United States (as was the Philippines—another state closely aligned with America in anti-terrorist action in South-East Asia). In November 2004 the United States offered its largest arms sales package to Pakistan in 14 years, valued at approximately $1.2 billion.[9]

One regrettable consequence of these developments connected with the anti-terrorist campaign is reported increases in the levels of human rights abuse within a number of these Asian societies, especially abuses associated with personal integrity or personal security: the use of torture, detention without trial, execution, disappearances, and the like. Major transnational human rights NGOs, such as Amnesty International,[10] have expressed particular concern about Asian states allied with the United States in its counterterrorist operations, pointing to China, India, Malaysia, Pakistan and Thailand; but developments in the Philippines, Indonesia and Uzbekistan are also causing major disquiet. Pan-Asian and domestic Asian human rights organizations have voiced a similar degree of concern. For example, the Asian Human Rights Commission, based in Hong Kong, in its message on Human Rights Day in December 2004, stated its belief that human rights abuses were rising 'exponentially across Asia'.[11]

The centrality of the United States in this history of increased levels of human rights violations is dealt with below. First, it is necessary to try to uncover why a number of Asian states should be so indifferent, even hostile, to the idea of establishing strong systems that protect rights to personal security, and why their records in this field have become of such concern in the contemporary anti-terrorist era.

Asia and the violation of personal security rights

Why have violations of personal integrity in some Asian countries run at a high level for several decades—and, moreover, why have they been on the rise in the years since the terrorist attacks on US territory? This sweeping generalization should not serve to mask the good or improving levels of protection that prevail in societies such as Japan, the Republic of Korea (South Korea) and Taiwan, for example. Nor should it be forgotten that Singapore, South Korea and Brunei score well on the UNDP's Human Development Index, in data for

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[9] Ibid., esp. ch. 3; *Financial Times*, 18 Nov. 2004, p. 12.
[10] For example, Irene Khan, secretary general of Amnesty International, has stated that the organization has 'compiled evidence that shows human rights abuses are on the rise among many of the Asian countries that have allied themselves to the U.S.-led war on terror': 'Torture in Thailand', p. 14. See also Amnesty International, 'Asia and the Pacific: regional overview 2003', http://web.amnesty.org/web/, accessed 23 Aug. 2004.
[11] See the AHRC website, http://www.ahrc.org, for its statement of 10 Dec. 2004 (accessed 17 Dec. 2004).

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2002 coming just below the 'high human development' level.[12] We are also witnessing difficult but in some senses promising democratic transitions in countries such as Indonesia and Thailand, the former having successfully and peacefully staged in September 2004 the final stage of the country's first direct presidential election in a country that for three decades under President Suharto had experienced only authoritarian, one-party rule.

Furthermore, it is obviously the case that levels of abuse of personal security rights are high in other regions of the world too, and violations have also been on the rise elsewhere since 9/11: there are far too many examples of this to ignore the trend of heightened abuse,[13] not least in behaviour involving the United States. Its disregard for legal due process and international humanitarian law, and its sanctioning the use of some forms of torture against terrorist suspects, have discredited America's claim to be an upholder of human rights. Well before the shocking revelations of the mistreatment by US military personnel of people held in the Abu Ghraib prison in Iraq, US national security officials were reported in the US press as having 'defended the use of violence against captives as just and necessary'. As one official supervising the capture and transfer of alleged terrorists told a *Washington Post* reporter in December 2002, 'If you don't violate someone's human rights some of the time, you probably aren't doing your job.'[14]

However, it is also the case that a number of countries in Asia do not have records of which to be proud; and, moreover, there are certain ways in which Asia, especially South-East Asia, appears to be *distinctively* indifferent, if not hostile, to the international human rights regime, as reflected in the following summary of recent institutional developments and assessments (which does not, of course, evaluate whether these positions and decisions by Asian and non-Asian states have had any major consequences for the actual protection of human rights):

1   Among the ten member states of ASEAN, only three have ratified or acceded to the Convention Against Torture (CAT),[15] neither Thailand, nor Singapore nor Malaysia having ratified it (out of a world total of 136 signatories); and only five ASEAN members (out of about 150 states world-wide) have ratified the two major human rights covenants. Only two have ratified all six of what are regarded as the major human rights conventions.[16] Another major absentee from the CAT is Pakistan, and although India has signed the treaty it has not ratified it.

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[12] The Human Development Index measures 'three basic dimensions of human development—a long and healthy life, knowledge and a decent standard of living'. See http://hdr.undp.org/statistics/data/indic.indic_8_1_1.html, accessed 4 Oct. 2004.

[13] On Human Rights Day, 10 Dec. 2001, 17 UN special rapporteurs and independent experts of the UN Commission on Human Rights expressed serious concern over the increased levels of infringements of human rights that were being reported to them on a daily basis.

[14] *Washington Post*, 26 Dec. 2002, p. A1.

[15] The Philippines acceded in 1987, Cambodia acceded in 1992, and Indonesia ratified the CAT in 1998.

[16] Cambodia and the Philippines. Office of the United Nations High Commissioner for Human Rights, 'Status of ratifications of the principal international human rights treaties, as of 9 June 2004', www.unhchr.ch. The six are the ICESCR, ICCPR, the CERD, Convention to Eliminate Discrimination Against Women, the CAT and the Convention on the Rights of the Child.

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2   As of 1 January 2005, only three ASEAN members had signed the Rome Statute of the International Criminal Court (out of 139 state signatories worldwide) and only one of the three has ratified it.[17]

3   On the 'Political Terror Scale' drawn up by political scientists (using quantitative data derived from coding annual Amnesty International and US State Department reports in order to develop law-like statements in explaining human rights behaviour in the areas of political imprisonment, political murders, unlimited detention, torture and the like), Asia—whether defined as Asia–Pacific or South-East Asia—came out the second worst region overall after Latin America in the period 1977–96; and whereas Latin America's rating has since improved, Asia's has not.[18]

4   Unlike Africa, Latin America and Europe, Asia has no regional interstate human rights body, not even at the ASEAN level, although the prospects of such a development have been debated since 1993 and in 1996 the ASEAN states agreed to set up a working group designed to culminate in an ASEAN Human Rights Mechanism.[19]

5   Of the Asia–Pacific regional organizations that have instituted counter-terrorist measures, only those that contain non-Asian members (with one notable exception)—for example APEC, the Asia–Europe meeting (ASEM) and the ARF—couple their statements on counterterrorist measures with phrases that promise adherence to human rights covenants in the enactment of those measures. The major exception relates to the 'ASEAN–USA Joint Declaration for Cooperation to Combat International Terrorism', signed on 1 August 2002, which makes no reference at all to the need to respect human rights and due process of law, although the US secretary of state at the time, Colin Powell, did state that the United States had 'not

[17] The Philippines and Thailand have signed; Cambodia has signed and ratified. Amnesty International, http://web.amnesty.org/pages/icc-signatures_ratifications, accessed 20 Jan. 2005.

[18] Steven C. Poe, 'Does region matter in provision of the human right to physical integrity?', in David P. Forsythe and Patrice C. McMahon, eds, *Human rights and diversity: area studies revisited* (Lincoln, NB: University of Nebraska Press, 2004). (I am grateful to Professor Poe for giving me early access to his chapter.) Poe defines Asia as China, Mongolia, Taiwan, South Korea, India, Bhutan, Pakistan, Bangladesh, Burma/Myanmar, Sri Lanka, Nepal, Thailand, Kampuchea/Cambodia, Laos, Vietnam and the Philippines. Japan is put into the OECD category; but even if it is included in Asia, according to my calculations its generally excellent rating of one or two does not change the average score. The 'Political Terror Scale', developed originally by Michael S. Stohl and colleagues, rates countries on a one to five scale, where one represents countries under a secure rule of law, in which people are not imprisoned for their views, torture is rare or exceptional, and political murders are extremely rare, and five represents countries where the abuses associated with level four have been expanded to extend across the whole population, and whose leaders place no limits on the means or thoroughness with which they pursue personal or ideological goals. Data for more recent years and up to 2003 were obtained from the website of Mark Gibney at http://www.unca.edu/politicalscience/faculty-staff/gibney.html, accessed 22 Sept. 2004.

[19] The joint communiqué of the 26th ASEAN ministerial meeting held in Singapore in July 1993 declared that 'in support of the Vienna Declaration and Programme of Action of 25 June 1993, ... ASEAN should also consider the establishment of an appropriate regional mechanism on human rights': Carlos P. Medina, 'Background of the Working Group for an ASEAN Human Rights Mechanism', http://www.hrnow.org/asean/ahrm.htm (accessed 14 Oct. 2004). See also the Office of the National Human Rights Commission of Thailand at http://www.nhrc.or.th/, accessed 7 Oct. 2004.

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abandoned its insistence upon upholding human rights standards in its dealings in the region'.[20]

6 Many Asian states have resisted making reference to anything other than the economic dimensions of the concept of human security, and are reluctant to move away from a focus on the security of the state. The wariness shown towards the human security idea expresses a fear that it bears too close a correspondence with the idea of human rights.[21]

7 More positively, national human rights commissions have been established in several Asian countries, some more independent of the government than others; but this development itself serves to highlight a reluctance to establish such bodies at the regional level and a wariness of international monitoring, especially within ASEAN.[22]

The bases of indifference

The explanation for this reluctance to participate in the international human rights regime coalesces around four main interrelated and deeply rooted factors. These serve to make both external and internal pressure for the improvement of human rights protections in the area of personal integrity relatively ineffective and judicial independence over these matters somewhat hard to find. First, as noted above, the security of the state and quite frequently of the political regime itself are privileged over that of the individual. This order of priorities is attributable to the presence of many intrastate conflicts in Asia which reflect the disjuncture between territorial and ethnic boundaries. Moreover, because of this disjuncture such conflicts have potentially negative effects on relations with neighbouring states, giving rise to an enduring perception that external and internal threats are inextricably linked. According to the data produced at the Department of Peace and Conflict Research in Uppsala, Sweden, Asia has more active armed conflicts (14) than any other part of the world, a number that has been relatively stable over time.[23] The total of violent and non-violent conflicts stands at 54, ranking Asia higher than any other part of the world.[24]

A number of these conflicts, some violent and some not, involve separatist movements, which are active in China, India, Indonesia, the Philippines and Thailand, among others. These movements, many of which are of long standing,

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[20] James Cotton, 'Southeast Asia after 11 Sept.', *Terrorism and Political Violence* 15: 1, Spring 2003, p. 161; 'ASEAN–United States of America Joint Declaration for Cooperation to Combat International Terrorism', 1 Aug. 2002, http://www.aseansec.org/10574.htm, accessed 30 June 2004.

[21] Amitav Acharya, 'Human security: East versus West', *International Journal* 56: 3, Summer 2001, pp. 442–60.

[22] Maznah Mohamad, 'Towards a human rights regime in Southeast Asia: charting the course of state commitment', *Contemporary Southeast Asia*, 24: 2, Aug. 2002, pp. 230–51. See also, for the full list for the Asia–Pacific, the website of the National Human Rights Institutions Forum: http://www.nhri.net/NationalDataList.asp, accessed 7 Oct. 2004.

[23] Mikael Eriksson and Peter Wallensteen, 'Armed conflict, 1989–2003', *Journal of Peace Research* 41: 5, 2004, p. 629.

[24] Amitav Acharya, 'Human security and Asian regionalism: a strategy of localization', in Amitav Acharya and Evelyn Goh, eds, *Reassessing security cooperation in the Asia–Pacific: multilateralism and regional order* (Cambridge, MA: Belfer Center/MIT Press, 2006), p. 5 of unpublished manuscript.

are perceived in some cases to be strong enough to threaten the territorial integrity of the state. This sense of threat has prompted governments to adopt ruthless methods in dealing with their opponents, methods that have included high levels of personal abuse. Of all the factors that the quantitative studies show as being strongly influential in leading governments into sanctioning human rights violations, civil war and political rebellion carry a great deal of the explanatory weight.[25] Moreover, in many of these same countries nationalist sentiment, deriving from the colonial experience and relatively recent independent statehood, has led to a societal reluctance to challenge the government's methods for dealing with such rebellions, especially where there is a presumed threat to national unity.

One consequence of these armed conflicts and separatist rebellions is that expenditure on the military continues to rise in constant prices, per capita and as a percentage of government spending.[26] Another is that the norm of non-interference in the internal affairs of neighbouring states retains a strong grip, despite some discussion of the need to dilute it through promotion of the ideas of 'flexible engagement' and 'constructive intervention'. The majority view among state governments is that regional and domestic orders would soon unravel if this norm were weakened.

Second, the experience of colonialism, especially where an anti-colonialist nationalism has played a role in legitimating rulers since independence, has led many of these countries to equate attention to human rights with the furtherance of a western political agenda. The concept of human security has been defined in the region (including by key supporters of the concept, Thailand and Japan) predominantly as 'freedom from want' and not as 'freedom from fear', seeing in the latter too close an approximation to a western 'rights-protective notion of human security'.[27] The anti-western nationalist rhetoric of governments often finds resonance among their populations, and was at the root of the 'Asian values' argument so prominent in the early 1990s. In Indonesia, for example, this dominant rhetoric persuaded civil society activists before the mid-1980s to focus on economic, social and cultural rights to the neglect of personal rights, and to shun contact with transnational NGOs.[28] Human rights activists in Malaysia have been described as 'disempowered' if they try to base their arguments for increasing human rights protection on international standards, because governments have depicted these standards as western in origin. Foremost among the concerns of these activists is 'not to be considered pawns of the West', and this constrains them to make their demands

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[25] Steven C. Poe, C. Neal Tate and Linda Camp Keith, 'Repression of the human right to personal integrity revisited: a global cross-national study covering the years 1976–1993', *International Studies Quarterly* 43, 1999, pp. 291–313.

[26] Acharya, 'Human security and Asian regionalism', p. 3 of MS.

[27] Ibid., p. 2 of MS.

[28] Anja Jetschke, 'Linking the unlinkable? International norms and nationalism in Indonesia and the Philippines', in Thomas Risse, Stephen C. Ropp and Kathryn Sikkink, eds, *The power of human rights: international norms and domestic change* (Cambridge: Cambridge University Press, 1999).

on the government in a language that is not drawn from international human rights conventions.[29] One of the implications of this must be an increased difficulty in making these conventions better understood and appreciated in wider Malaysian society.

Third, the Asia–Pacific is a region of comparatively 'low legalization', many governments perceiving international law as imposing sovereignty costs and generally threatening to diminish national control, especially in institutional settings where there is a concentration of more powerful actors. The obvious preference for arriving at decisions through the generation of a consensus, rather than adherence to a prespecified legal obligation, indicates the desire to protect 'national prerogatives' and the tendency to view with suspicion 'external, binding constraints that might challenge internal legitimacy and political order'.[30] Furthermore, the level of rights that citizens enjoy often varies according to gender, ethnicity and religion. One author has claimed that this makes 'human rights advocacy impossible without prior societal restructuring at its most basic but politically taxing level, so as to elicit a minimal premise for human rights acceptance'.[31]

Terrorism and the impact of 9/11

A final and fourth factor explaining this phenomenon of personal abuse relates to the longstanding presence in the region of terrorist violence and its seeming upsurge since 9/11. Quantitative studies show that the best predictor of continuing repression is a history of past repression.[32] Thus, much of what we are witnessing since 9/11 should not surprise us. However, there are issues especially associated with any struggle against terrorism that lead to high levels of personal abuse, as well as others that are distinctive in this current phase of counterterrorist activity. The first group of issues is related to the nature of terrorism itself and the problems associated with its definition; the second relates to the political opportunism of a number of governments and their attitudes towards even non-violent political opposition. Finally, there is emulation of the United States and the worst aspects of its anti-terrorist behaviour—a somewhat paradoxical finding, given the prevalence of anti-western and especially anti-US sentiment and rhetoric in the region. An alternative way of understanding this evidence of emulation is to emphasize the instrumental nature of Asian state behaviour: mimicking some forms of current US behaviour connected with counterterrorism is unlikely to attract international or bilateral costs—quite the reverse, in fact.

To return to the first group of issues just identified: the ruthlessness of transnational and domestically based terrorism, reflected in incidents where

[29] Amy Gurowitz, 'Migrant rights and activism in Malaysia: opportunities and constraints', *Journal of Asian Studies* 59: 4, Nov. 2000, pp. 863–88.
[30] Miles Kahler, 'Legalization as strategy: the Asia–Pacific case', *International Organization* 54: 3, Summer 2000, esp. pp. 561–2.
[31] Mohamad, 'Towards a human rights regime in Southeast Asia', p. 246.
[32] As Poe puts it, 'last year's abuses are an excellent predictor of this year's'. See his 'Does region matter?', p. 65.

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innocents lose their lives or their limbs, is unsurprisingly a spur to extreme solutions that in some ways are understandable. Claims that the torture of terrorists is justified have been present for centuries in all parts of the world, based on the fact of the terrorists' seeming rejection of the inviolability of innocent human life and their contravention of basic principles of humanity and, in more recent times, international humanitarian law. The terrorists' indifference to a victim's suffering increases the danger that the counterterrorist will respond in kind. After the bombing of the Marriott Hotel in Jakarta, for example, the then Indonesian security minister (now president), Susilo Bambang Yudhoyono, stated: 'Those who criticize about human rights being breached must understand that all the bombing victims are more important than any human rights issue.'[33] This statement is built upon an unwarranted assumption that the protection of human rights has to be traded off against the rights of victims of terrorist acts.

Problems in defining terrorism have also played a part in prompting human rights abuse.[34] The UN has struggled for many years to settle on a definition. Final agreement has fallen victim to debates about what represents legitimate resistance, and where the limits are on the use of violence, especially in cases which some might designate as national liberation struggles. That failure to come to an agreement leaves an opening for abuse, because there is no arbiter in the form of an accepted text. This has resulted in the adoption of wide definitions of what constitutes a terrorist act in the period since September 11: for example, the Indonesian government has described such action as 'any violent act that could create terror or insecurity among the public, violate the public's freedom, cause the death of other people or cause the destruction of vital or strategic objects'. Given the known corruption in Indonesia's judicial system, the breadth of this definition is dangerous. Similarly, in an amendment to the Malaysian penal code in 2003, an act of terrorism is defined as behaviours that 'involve serious bodily injury to a person'; result in 'disruption of certain infrastructure, [or] interference with essential services'; or 'involve prejudice to national security or public safety'.[35] Again, these definitions could also be invoked against demonstrators of many different stripes.

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[33] International Peace Academy conference report, *Human rights, the United Nations, and the struggle against terrorism* (New York, 7 Nov. 2003), p. 17.

[34] Adam Roberts offers the following definition: 'the systematic use of violence and threats of violence by non-state groups, designed to force a target population or government to submit'. He goes on to elaborate: 'This in no way excludes awareness that states, too, notoriously use terror—often systematically; and that states sometimes secretly sponsor non-state terrorist groups.' 'The "war on terror" in historical perspective', Emden Lecture, given in the Examination Schools, Oxford, 7 May 2004, pp. 1–2. I am grateful to Professor Roberts for his permission to quote from this lecture.

[35] Neil Hicks and Michael McClintock, 'Defending human rights in a global "war against terrorism"', Human Rights First, preliminary draft, section on Malaysia, p. 9: http://HumanRightsFirst.org, accessed 22 Sept. 2004. See also Sanjay Gathia and Calum Crozier, 'Mapping of definitions of terrorism', paper produced by the Asian Forum for Human Rights and Development (Forum-Asia) for its workshop on 'The impact of terrorism and anti-terrorism measures in Asia', 19–20 Nov. 2004, Bangkok.

Second, many regional governments have made use of the 'global war on terror' to engage in acts of political opportunism. A 2004 Human Rights Watch report on Malaysia, for example, shows that its Internal Security Act (ISA), which allows for an initial detention period of up to 60 days, the subsequent holding in detention for two years, and then renewal of this period without judicial oversight, has led to the arrest of more than 100 individuals on terror-related grounds since August 2001. However, the government has not shown that any of those detained has engaged in illegal activity. In addition, a number of those arrested in this recent wave of detentions under the ISA have been linked to opposition parties in Malaysia, especially PAS—the Parti Islam se-Malaysia, or Islamic Party of Malaysia—which had seen a surge of support in the period immediately after the imprisonment in 1999 of Malaysia's former deputy prime minister, Anwar Ibrahim.

In the Philippines, defenders of human rights have been accused by government officials of being 'fronts' for terrorist organizations. This makes them targets of the military and paramilitary forces engaged in the south of the country,[36] and thus forces a diminution in the level of monitoring of the security forces' behaviour. China has moved with alacrity to designate its own problems with opposition in Xinjiang, Tibet and elsewhere part of the global anti-terrorist campaign. Indeed, it refers to its crackdowns as campaigns against 'separatism, religious extremism and terrorist forces', linking together what are often distinct groups with distinct agendas, such as Falun Gong and separatist activists in Tibet, Xinjiang and Taiwan, tying them all into a Chinese governmental counter-terrorist struggle. On 12 September 2004 Beijing chose to hold an anti-terror exercise in Lhasa, for no obvious security reason. This large-scale exercise involved joint operations among the army, police, paramilitary forces and militia.[37] Chinese security forces have also staged a number of such operations in Xinjiang, one jointly with Pakistani forces.[38] Beijing's political design is obvious.

The Chinese government persuaded the Bush administration in August 2002 to agree that the so-called East Turkestan Islamic Movement (ETIM) based in Xinjiang was a terrorist movement and had links with Al-Qaeda. This designation of what specialists on this north-western region of China describe as, at best, a relatively amorphous group has had a detrimental impact on the reputation of the whole, largely peaceful, Muslim separatist movement in that area, associating it with terrorist activity in support of a clear Chinese attempt to delegitimize the Uighur struggle for religious and cultural autonomy.[39] The Communist Party head of the province vowed that there would be no let-up in the battle against terrorists who, in September 2004, he claimed—on the basis

[36] Hicks and McClintock, 'Defending human rights'.
[37] Reuters, 'China holds anti-terror exercises in Tibet', 12 Sept. 2004.
[38] BBC News, 'Anti-terror exercise in W. China', 4 Aug. 2004.
[39] For a specialist analysis of the ETIM see e.g. Dru C. Gladney, 'China's minorities: the case of Xinjiang and the Uyghur People', paper prepared for the UN Sub-Commission on Promotion and Protection of Human Rights, UN Documents, E/CN.4/Sub.2/AC.5/2003/WP.16, 5 May 2003.

of no obvious evidence—were gaining ground.[40] Apparently, 'China has included a direct reference to the U.S. decision to include ETIM in the UN list of Al-Qaeda-related terrorist organizations in every single official speech, article and news report on the subject, as well as domestic references to demonstrate that the U.S. was siding with China on this issue.' Not surprisingly, China has avoided all mention of the warnings the United States has issued that the Beijing government also had to address the aspirations of peaceful Uighurs.[41]

Third, there is emulation of America. Some Asian officials have used evidence of US methods in prosecuting the anti-terrorist campaign as licence to adopt similar methods in their own countries. Those approximately 100 individuals held in custody in Malaysia on grounds of involvement in terrorism are reported to have suffered serious abuse and to have been threatened with being sent to Guantanamo Bay's Camp X-Ray if they failed to cooperate—illustrating the latter's status as a symbol that expressed 'a new acceptance of human rights violations in the name of fighting terrorism'.[42] And, in something of a contradiction of the 'Asian values' argument, Malaysia's justice minister has said that his country's ISA is now accepted in the United States and in fact that the US Patriot Act mirrors the provisions in the ISA.[43] Indonesia has set up its own version of 'Guantanamo Bay', designating Nasi island as a detention centre for 'processing' Aceh separatists.[44]

Some militaries in Asia engaged in armed struggle have described these campaigns as representing their own 'war on terrorism' against domestic opponents of several different kinds, and in some cases have emulated the 'shock and awe' tactics of the United States and the idea of having 'embedded journalists' with the troops. The Indonesian military's actions in Aceh are a case in point, Aceh separatists being equated with terrorists and human rights groups labelled separatist sympathizers.[45] Thailand's so-called 'war on drugs' in 2003, in which 2,500 suspected drug dealers were summarily killed, and the Thai military's bloody crackdown on Muslim unrest in the south of the country in April 2004 represent other instances where excessive violence has been adopted perhaps because of a belief that such behaviour mirrors that of the United States and is thereby legitimated.

Emulation of the most powerful has always been important in world politics; thus US behaviour has done untold damage, not only to the rights of those held in US detention centres, but far more broadly to the human rights regime itself, particularly in a part of the world where the hold of this norm was already

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[40] Reuters, 'China convicts 50 to death in "terror crackdown"', 13 Sept. 2004. See also Reuters, 'China army drills to curb separatism in Xinjiang', 2 Sept. 2004.

[41] Nicholas Becquelin, 'Criminalizing ethnicity: political repression in Xinjiang', *China Rights Forum*, no. 1, 2004, p. 40.

[42] Human Rights Watch, *In the name of security: counterterrorism and human rights abuses under Malaysia's Internal Security Act*, May 2004, p. 4, http://www.hrw.org/reports/2004/Malaysia/0504/ accessed 20 Jan. 2005.

[43] 'US understands reason for ISA says Rais', *Bernama*, 11 May 2002.

[44] *Jakarta Post*, 9 June 2003.

[45] Sidney Jones, 'Update on Aceh', remarks before the United States–Indonesia Society, Washington DC, 11 June 2003, http://www.usindo.org/Briefs/2003, accessed 5 Oct. 2004.

somewhat tenuous. The many vocal criticisms of US behaviour, among others by its own domestic and international human rights organizations, and notably in the US Supreme Court ruling challenging the Bush administration's claim that those held in Guantanamo are beyond US law, are having some tangible consequences. However, very few governments will give the same attention to the Supreme Court ruling as to the graphic photographs and evidence of abuse that have come out of US detention facilities.

Keeping the human rights norm alive

What, then, of the power of the human rights norm and of the international rights regime, as outlined at the start of this article? How is it being kept alive in the Asian region and elsewhere in an era when it is under fundamental challenge?

The UN has played a role in attempting to resurrect this norm, publicizing instances of abuse, reminding states of their obligations under the UN conventions (the CAT allows for no derogation from its principles, for example) and exhorting regional organizations to address the human rights consequences of the agreements on counterterrorism that they have signed.[46] In addition, the strengthening of US bilateral relationships with those governments in Asia with poor human rights records has sometimes been challenged, especially where there is a US congressional interest in a particular country and where Congress is required to sign off on certain funding decisions. The congressional human rights caucus is active and provides access to human rights organizations on a regular and extensive basis. These activist organizations, alongside the detailed annual *US State Department Country Reports* on human rights practices, provide the evidence that members of Congress use to challenge some of the executive branch's foreign policy decisions.[47]

Regional human rights NGOs, like the transnational Forum-Asia, remain vigilant despite the inhospitable climate, this organization now devoting resources to gather information on new and revised former anti-terrorist laws in the region, suggesting changes where necessary to give better protection to human rights and engaging in advocacy when evidence of abuse emerges.[48] National human rights commissions are playing a role. Thailand's has gathered testimony of torture and other forms of abuse from detained Muslim suspects; it has also

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[46] Office of the United Nations High Commissioner for Human Rights, http://www.ohchr.org/english/issues/terrorism/, accessed 30 June 2004; Counter-Terrorism Committee, http://www.un.org/Docs/sc/committees/1373/human_rights.html, accessed 30 June 2004.

[47] Examples include the continuing refusal of the US Congress to support the full-scale resumption of the military-to-military exchange programme with Indonesia (IMET) until it is satisfied with the investigation of the murder of two American teachers in Papua in 2002; the US State Department's determination in July 2004 that the Uzbek government had not made sufficient progress with a US-negotiated democracy and human rights agenda to warrant $18 million in supplementary funding; and the generally more sympathetic US treatment of and greater attention to the Uighur issue in China's Xinjiang province.

[48] See Forum-Asia (the Asian Forum for Human Rights and Development), 'Impact of Terrorism and Anti-Terrorism Measures', http://www.forumasia.org/ImpactTerandAntiTerM.html, accessed 23 Sept. 2004.

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committed itself to investigate the death or disappearance of some 100 people during the unrest in southern Thailand in early 2004.[49]

But, in general, human rights NGOs in many Asian countries are finding it hard to gain broad-based support from populations that are not questioning (and often do not have the evidence to question) the basis on which so-called terrorists are detained. These organizations generally have not found a way of addressing the security fears of their publics while making the case that human rights violations will not help with the eradication or reduction of terrorism. In addition, there is public concern about the fragmentation of ethnically diverse societies. The Indonesian military's campaign in Aceh has not been strongly attacked in the domestic arena, in part because the armed forces have maintained control over information, but also because they have portrayed the operation as vital in the struggle to maintain the territorial integrity of the Indonesian state.[50] If we accept that the domestic realm is key to ensuring progress in promoting human rights protections—that domestic civil society groups, supported where necessary by transnational human rights advocacy organizations, play essential roles in the enhancement of human rights law in particular societies—then this finding is sobering.[51]

It also suggests that the flow of recruits to the various causes that use terrorist methods will be even harder to slow. Jessica Stern, a specialist on terrorism, has noted that 'alienation, perceived humiliation and lack of opportunities make young men susceptible' to the recruiting efforts of terrorist organizations.[52] This makes it even more essential not to adopt procedures that confirm such expectations of their life experience. Adam Roberts has noted, in viewing the phenomenon of terrorism over a long historical period: 'Those who argue that torturing prisoners is a way to combat terrorism seem ignorant of how potent a justification of terrorism ill-treatment and torture has been.'[53] Moreover, actions that represent the most fundamental attacks on human dignity are horribly corrosive of all societies, including our own. As Michael Ignatieff has rightly argued in reference to strong evidence that in this current anti-terrorist era western democratic governments have been disturbingly swift in abandoning some of their fundamental principles: 'Terrorists seek to strip off the mask of law to reveal the nihilist heart of coercion within, and we have to show ourselves and the populations whose loyalty we seek that the rule of law is not a mask but the true image of our nature.'[54]

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[49] 'Torture in Thailand', pp. 13–15.
[50] Jones, 'Update on Aceh'.
[51] This is one of the major conclusions reached in Risse et al., eds, *The power of human rights*.
[52] Jessica Stern, 'How America created a terrorist haven', *New York Times*, 20 Aug. 2003, quoted in the International Peace Academy conference report, *Human Rights, the United Nations*, p. 14.
[53] Roberts, 'The "war on terror"'. He argues, too (p. 6), that the 'defining moment in the birth of modern terrorism was an event in Russia in 1878 in response to the flogging of a political prisoner'. The event was the shooting by Vera Zasulich of General Trepov, the police chief of St Petersburg, who had issued the flogging order.
[54] Ignatieff, *The lesser evil*, p. 144.