A CRIMINAL JUSTICE COMPARATIVE: POST-9/11
ANTI-TERRORISM LEGISLATION WITHIN
LEGAL TRADITIONS

A Thesis
Presented to the
Faculty of
San Diego State University

In Partial Fulfillment
of the Requirements for the Degree
Master of Science
in
Homeland Security

by
Nicholas Joseph Miller
Fall 2010
SAN DIEGO STATE UNIVERSITY

The Undersigned Faculty Committee Approves the

Thesis of Nicholas Joseph Miller:

A Criminal Justice Comparative: Post-9/11 Anti-Terrorism Legislation within

Legal Traditions

[Signatures]

Jeffrey McIlwain, Chair
Homeland Security Program

Eric Frost
Homeland Security Program

Michael Wheat
Criminal Justice Program

Apr, 15, 2010
Approval Date
DEDICATION

This thesis is dedicated to the lives of the courageous and innocent who have been killed by al-Qaeda and its allies since al-Qaeda declared war on the United States in 1996.
ABSTRACT OF THE THESIS

A Criminal Justice Comparative: Post-9/11 Anti-Terrorism Legislation within Legal Traditions
by
Nicholas Joseph Miller
Master of Science in Interdisciplinary Studies: Homeland Security
San Diego State University, 2010

The purpose of this study is to identify and compare international anti-terrorism legislation which occurred as a direct result of the terrorist attacks on September 11, 2001. More specifically, the study identifies anti-terror legislation which was passed in various countries, each with different legal traditions, and analyzes the comparisons. The study includes the five major legal traditions. Only of the countries subject to the selection for analysis is on the United States’ “State Sponsor of Terror” list. All other nations are allied states in the Global War on Terror.

This thesis finds that certain nations were more active in passing legislation, certain nations passed no legislation immediately attributable to 9/11, and anti-terrorism legislation in different nations have similar topics despite political differences. Additionally, this thesis discovered that anti-terrorism legislation greatly varies from nation to nation. The implications are that September 11, 2001, caused nations from all legal traditions to examine the weaknesses in their nations’ legislation and pursue efforts to eliminate them.
# TABLE OF CONTENTS

<table>
<thead>
<tr>
<th>Chapter</th>
<th>Title</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>INTRODUCTION</td>
<td>1</td>
</tr>
<tr>
<td>2</td>
<td>METHODS/DATA</td>
<td>4</td>
</tr>
<tr>
<td></td>
<td>Parameters of the Study</td>
<td>4</td>
</tr>
<tr>
<td></td>
<td>Legal Traditions</td>
<td>6</td>
</tr>
<tr>
<td></td>
<td>The Common Law Legal Tradition</td>
<td>6</td>
</tr>
<tr>
<td></td>
<td>The Civil Law Legal Tradition</td>
<td>7</td>
</tr>
<tr>
<td></td>
<td>The Socialist Law Legal Tradition</td>
<td>8</td>
</tr>
<tr>
<td></td>
<td>The Sacred Law Legal Tradition</td>
<td>9</td>
</tr>
<tr>
<td></td>
<td>Hybrid Legal Traditions</td>
<td>10</td>
</tr>
<tr>
<td>3</td>
<td>MODEL COUNTRIES</td>
<td>11</td>
</tr>
<tr>
<td></td>
<td>Common Law Nations</td>
<td>11</td>
</tr>
<tr>
<td></td>
<td>United States of America</td>
<td>11</td>
</tr>
<tr>
<td></td>
<td>United Kingdom</td>
<td>12</td>
</tr>
<tr>
<td></td>
<td>Australia</td>
<td>13</td>
</tr>
<tr>
<td></td>
<td>Civil Law Nations</td>
<td>14</td>
</tr>
<tr>
<td></td>
<td>Germany</td>
<td>14</td>
</tr>
<tr>
<td></td>
<td>France</td>
<td>15</td>
</tr>
<tr>
<td></td>
<td>The Netherlands</td>
<td>17</td>
</tr>
<tr>
<td></td>
<td>Socialist Law Nations</td>
<td>18</td>
</tr>
<tr>
<td></td>
<td>Russia</td>
<td>18</td>
</tr>
<tr>
<td></td>
<td>China</td>
<td>20</td>
</tr>
<tr>
<td></td>
<td>Poland</td>
<td>21</td>
</tr>
<tr>
<td></td>
<td>Sacred Law Nations</td>
<td>22</td>
</tr>
<tr>
<td></td>
<td>Saudi Arabia</td>
<td>22</td>
</tr>
</tbody>
</table>
ACKNOWLEDGEMENTS

I have had the extraordinary opportunity to work with brilliant people throughout the development of my thesis. Enough cannot be said about the members of my committee. Jeffrey McIllwain has been a professor and a tour guide, but, most importantly, a mentor. Eric Frost is a man who would do anything for his students; thankfully, I am privileged to be one of them. Michael Wheat has provided me with guidance in life and valuable insight into the legal world which I would have had no access to otherwise. Brian Liang inspired me to strive for the stars and convinced me that drive and determination make anything possible. Thank you all for taking time out of your hectic days to allow a lowly graduate student to come to your office and harass you. Every one of you has the ability to strengthen people’s self-motivation through inspiration and enthusiasm. You all have had an inspirational effect on my life. Thank you all very much.
CHAPTER 1

INTRODUCTION

The purpose of this study is to identify anti-terrorism legislation attributed to September 11, 2001, and compare this legislation across nations in different legal traditions. It is important to compare anti-terrorism legislation across the globe because the term “Global War on Terrorism” (GWOT) implies that nations throughout the world need to cooperate in the criminal justice realm to better combat terrorism. Nations have aligned themselves in order to better confront stateless enemies that take advantage of protections provided by specific civil liberties in order to attack their enemies and advance their ideology. These nations united in order to better confront terrorism and to alleviate international bureaucratic obstacles that previously enabled terrorists to thrive and obstructed the ability of the state to prevent terrorist activities.

Nations of the world have developed under different circumstances over different periods of time. Some societies have been conquered and colonized yet remain steadfastly committed to a historical culture of norms and values. Some societies date back thousands of years, while others are merely a few hundred years old. Despite the difference in historical development, at least one common trait exists: law. Law provides a framework for human behavior. Law identifies certain activities as illegal, permits certain activities, and, in certain nations, levies sanctions up to death for certain illegal activities. However, the fact that law governs societies of the world does not infer that all nations have the same laws and legal tradition. To the contrary, just as societies have developed differently, so have the legal traditions from which nations derive their law. For the purpose of this study, twelve nations have been selected, based on not being identified as a “State Sponsor of Terror,” and an ally to the United States in the GWOT, in order to represent themselves within their legal tradition. A thirteenth, Sudan, was selected despite its presence on the “State Sponsor of Terror” because of it’s reliance on Sharia law. The nations include:

- The United States
- United Kingdom
The nations have been subdivided into the five dominant legal traditions as originally defined by Damner and Fairchield. For purposes of this thesis, the legal traditions include:

- Civil Law
- Common Law
- Socialist Law
- Sacred Law
- Hybrid Systems (which are a combination of two or more of the previously identified legal traditions)

Nations considered to be a part of the West have largely had some legal response to combat terrorism since it became apparent that the West was under attack on September 11, 2001. The primary response from many nations was to enact new legislation that would better enable the nation’s ability to prevent and combat terrorism. Legislation that passes in response to, and soon after, a critical incident becomes a controversial issue because it may be viewed by some as necessary and by others as an unnecessary overreaction. By separating nations into the legal traditions that they represent, we can assess how different legal traditions approached counter-terrorism legislation, and what legal components transcend legal traditions in post 9/11 legislation.

This study is not meant to be an all encompassing analysis of the anti-terrorist legislation that has been processed in the model nations. Rather, the study identifies the characteristics of the legal traditions; identifies the characteristics of each nation as identified
by the U.S. State Department and/or Central Intelligence Agency (CIA) World Fact Book; and identifies legislative activity attributed to the events of September 11, 2001, in specific model nations.
CHAPTER 2

METHODS/DATA

PARAMETERS OF THE STUDY

The terms legal system and legal tradition are often used interchangeably, though they are not synonymous. Legal system refers to the agencies, procedures and rules that make up how a country makes laws, enforces laws, and dispenses justice. Legal tradition is a broader term used to describe understand the legal system as well as the cultural and historical influences that have influenced that system.¹ There are many legal traditions that have existed throughout history. However, there are four dominant traditions in the world today. This study focuses on the four main contemporary legal traditions along with a fifth legal tradition known as the hybrid legal tradition. The main legal traditions are the common law, civil law, socialist law, and sacred law legal traditions. Hybrid legal traditions are legal traditions that have been developed through the incorporation of aspects from more than one legal tradition. This fifth legal tradition needs to be included in this analysis because certain nations that play an important role in combating terrorism fall into the category of the hybrid legal tradition.

Thirteen nations have been selected and divided into the legal traditions that they represent and serve as model nations for each. Obviously, language barriers exist that prevent sources in other locations from being accessed and analyzed. Fortunately, the near-worldwide availability of the Internet allows analysis of English versions of legislation and/or summaries and information on the legislation regardless of country. When it proved to be impossible to obtain the legislative works, the nation was not dropped from the study because the unavailability of information may be telling of a certain legal tradition. Rather,

secondary sources such as newspaper articles, journal and law review articles, books, Internet research, and information obtained from embassies were relied upon to provide data.

The model nations are not meant to represent each legal tradition as a whole. Other nations within the tradition may have done more or less to combat terrorism post-9/11. This study is merely an analysis of the major anti-terrorism legislation attributed to 9/11 in each of the model nations and in no way is supposed to identify which legal tradition is better or worse at combating terrorism. It only intends to analyze how they reacted.

Several nations passed comprehensive legislation into law in response to the 9/11 attacks. This will be the only body of legislation under analysis for these nations. If a nation did not have a comprehensive response similar to the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act (USA PATRIOT Act) in the United States or the Anti-Terrorism Law in the United Kingdom, smaller alterations to criminal code and/or smaller legislative works meant to combat terrorism are used as the legislation for analysis. Also, many nations passed legislation that amended or otherwise changed existing legislation. These laws may be mentioned but will not be included in the analysis. Thus, the PATRIOT Act II is not included in this study. However, if a model nation passed small pieces of legislation attributed to 9/11, then passed subsequent legislation that more thoroughly combated terrorism, both works are mentioned for the analysis because this study is meant to be a study of the initial major anti-terrorism legislation (relative to each nation) post-9/11. The smaller pieces of legislation will be examples of the nations’ initial legislative response, while more comprehensive legislation will serve as an example of major legislative efforts attributed to 9/11.2

2 Legislative works were analyzed except where legislation is not obtainable for public viewing. In that instance, summaries and information about the legislation is relied upon. This method is used by Dammer and Fairchild who have done a fantastic job of outlining and defining the basics of these legal traditions. Their book Comparative Criminal Justice Systems, 3rd ed., is the base for the identification of the legal traditions and how the selected model countries fit into these traditions. Other comparative models exist but for purposes of this study the model used by Dammer and Fairchild is the best. Unless otherwise identified, all information in the next section comes from their book. For examples of other models see:

LEGAL TRADITIONS

The following section identifies the five legal traditions used to group model nations in this study. Characteristics identified include historical, geographical, and cultural development that influences the current disposition of the legal tradition.

The Common Law Legal Tradition

Common law’s roots date back to eleventh century England under the King of England, William the Conqueror, who set up a centralized court system known as the King’s Court. The King’s Court was a system in which judges traveled through the far-reaching areas of the empire to settle disputes amongst freemen. Cases with political implications were made in favor of the King in order to strengthen authority, while conventional cases were decided upon using common sense and the consideration of local norms and laws. Arguably, the most influential aspect of the King’s Court in the common law legal tradition of today is the establishment of precedence. Precedence is a term used to describe the consideration of previous court case decisions on current cases. The judges of the King’s Court made decisions in cases based on previous, similar court case outcomes. Decisions in these cases began to be known as the common law because they were common to all Englishmen. The consideration of previous court case outcomes is a crucial feature in today’s common law societies. The use of precedence is the defining feature of case law.

Case law can be used in court cases today to strengthen or weaken arguments in presiding cases and new case law can be established using case law. This is illustrated by the Supreme Court and its interpretation of the constitutional cases it hears and decides upon. Cases that reach the Supreme Court often reference case law and the decisions made by the Supreme Court become examples of case law for lower courts to reference.

---

3 Dammer and Fairchild, *Comparative Criminal Justice Systems*, 56.
4 Ibid.
The Civil Law Legal Tradition

The civil law legal tradition influences many nations in regions such as Western Europe, Latin America, Africa, and the Far East. This tradition is based on written code. The origins of this legal tradition can be dated to the old Roman Code of Justinian that was established in the sixth century BC at the request of the Byzantine emperor who wanted to codify and compile the existing law in the Roman world. The Institutes of Justinian, which dealt mostly with family, property, torts, and contracts, were the result. As Rome conquered lands and spread its culture, its civil legal tradition spread with it. This legal tradition has been in use since the Code of Justinian and has incorporated many characteristics of the differing civil law systems in many different nations. The Roman law, of Emperor Justinian, was the origin of the civil law legal tradition, but is not the only influence on today’s civil law legal tradition.

The canon law of the medieval Catholic Church developed from the divine law of the Catholic Church, but it also incorporated Roman law. Canon laws pertained to spiritual and church matters and are dated to the fourth century A.D. Commercial law followed and was developed in Europe at the time of an expanding trade industry in order to regulate the trade of goods between cities and nations. Commercial law was observed by much of Europe; however, not all nations enforced the codes.

The Napoleonic code of early nineteenth century France is arguably the most influential set of codes in today’s civil code legal tradition. These codes were drawn up incorporating Roman law, canon law, and commercial law. The new codes were written to incorporate private property rights and to regulate relations between people throughout portions of Europe and, by extension, to European colonies. The political and military success of Napoleon Bonaparte further spread the civil law legal tradition. Thus, the Napoleonic code has been practiced around the world for two centuries.

---

5 Ibid., 52.
6 Ibid.
7 Ibid., 53.
The German Law of the People that was established in 1870 is similar to the modern French code in that it incorporated Roman law and post-feudal ideas. The main difference with the French code is that the German Law of the People is the end result of a massive scholarly effort to study previous law in order to develop a philosophy of law. The scholarly effort produced a rational basis for legal development.

Today’s civil law legal tradition has evolved from early centuries and has mutated with simultaneously existing codes of law along with codes of law that were influenced by previous codes. The main characteristic of civil law, which survived the centuries and defined the legal tradition itself, is a written code of laws. Case law has very little influence in the civil law legal tradition. The letter of code law is to be followed, despite any previous cases that may have fallen under any specific law within the code. Thus, the written law is the primary reference in these societies and in any court proceedings. This is the glaring difference when comparing civil law to common law.

The Socialist Law Legal Tradition

The socialist law legal tradition is the youngest legal tradition. It can be traced only as far back as the twentieth century. Socialist law grew out of the civil code tradition and developed after revolutions in Russia and China. These two nations, along with the influence of Marxist-Leninist ideology, have been the driving force for the socialist law legal tradition to separate itself from the civil code legal tradition. Theory behind socialist law includes the idea that “the law should be an instrument in the creation of a new socialist society rather than simply a way of settling disputes or dealing with criminal deviance.” Under socialist law, personal property rights do not exist, as the socialist law legal tradition identifies that property be owned by the state or agricultural co-operatives; thus, crimes against individuals are crimes against the state. The socialist law legal tradition reached its peak during the height of the Cold War. Since the end of the Cold War, and the breakup of the Soviet Union, the socialist law legal tradition has had a hard time differentiating itself from the civil law legal tradition. Although the socialist law legal tradition has lost popularity in terms of how

---

8 Ibid., 68.
many nations apply it, Russia and China, two of the most influential nations in the world, are still considered to be part of this tradition. The fact that these two influential nations abide by the socialist law legal tradition justifies its analysis in this study.

The Sacred Law Legal Tradition

The sacred law legal tradition is based on a sacred text or body of religious doctrine. In the sacred law legal tradition, there is no clear separation between the religious and legal. Although several faiths have historically contributed to various nations’ legal systems, Islamic law is clearly the most influential in many nations today, so it represents sacred law in this study. Typically, sacred law dictates aspects of life not addressed in other legal traditions. From who is in political power to how a commoner conducts personal hygiene, life is directly affected by religious doctrine. A devout belief in a superior being and the responsibility of humans to act according to the word of the deity as written is the dominant characteristic of sacred law.

The sacred law legal tradition is the doctrine of law in many Muslim dominated states and the Middle East. The Qur’an is the foundation of Islamic law. Of specific importance in Islamic law is the Shari’a, which is a major foundation of Islamic law. Shari’a, which is often was originally regarded as “the path” or “the way” because it is much more than just law. Shari’a gives guidance on every part of life including criminal law, economics, marriage, and moral matters including prayer and pilgrimage. It is derived from a specific 500 verses in the Qur’an which fundamentalists believe are the immutable commandments of God. For purposes of this study when Shari’a is discussed, it will be discussed as an extreme form which is a fundamentalist application.

One of the main differences between sacred law nations and many Western nations, which alternatively have been influenced by the Bible, is that Western nations remain secular, whereas sacred law nations take “the word of God” directly from religious doctrine.

---

9 Ibid., 65.


and make it the law of the land. In the sacred law legal tradition, laws are not created by a legislature but are created by God and then are enforced and adjudicated by man.

**Hybrid Legal Traditions**

Hybrid legal traditions are characterized by influences from more than one tradition. Many nations that fall into a certain legal tradition are still influenced by other legal traditions. Even sacred law nations have been influenced by centuries of other legal tradition, which influence how similar matters are handled. Yet, hybrid nations go one step further. Hybrid nations have taken characteristics from legal traditions and implemented them into their system so as to create a unique legal tradition. Imperialism and war, capitalism, modernization, dictators shoring up power, and revolutions, are several of the situations that contribute to nations creating hybrid legal systems. The most common form of a hybrid nation is one that borrows both common and civil law characteristics. The best example of a hybrid nation is Japan, which blends civil law, customary law, and the Anglo-American common law. For purposes of this study, Japan and Egypt will be used as model nations for the hybrid legal tradition.
CHAPTER 3

MODEL COUNTRIES

The following section identifies the model nations used in this study. In order to be considered a model country for this study, the initial qualification was that the country was not a state sponsor of terrorism, as defined by the U.S. State Department (with the exception of Sudan which was selected based on its application of Shari’a). Nations were also selected based on their legal tradition, so that a sample could be developed within each tradition. This section outlines the model nations’ characteristics, including location, size, population, demographics, political influences, governmental structure, their relationship with the United States, and their efforts in the GWOT. The information in the following section is provided by the U.S. State Department Country Background Notes, except for the information on the United States, which is provided by the CIA World Fact Book.12

COMMON LAW NATIONS

The following section identifies the historical, geographical, and cultural characteristics of the United States, the United Kingdom, and Australia. Together, these nations represent three of the most influential nations in the West, as well as the Common Law legal tradition in this study.

United States of America

The United States of America has officially been recognized as a nation since the Treaty of Paris in 1783. It sits on the North American continent between Canada and Mexico and has expanded to the point that its area and population are both the third largest in the world. The United States is home to a highly educated population of nearly 301 million people of a diverse ethnic mix. The population consists of a European majority, followed by African American, Asian, and Hispanic minorities, which are steadily growing. English is the

12 The U.S. Department of State does not produce Background Notes on the United States.
most widely spoken language, while Spanish is the second most common language. A vast majority of the population is Christian, although Judaism and Islam are the largest non-Christian faiths.

The government of the United States of America is officially regarded as a Constitution-based federal republic. The Constitution became effective March 4, 1789, and contains the Bill of Rights that guarantees citizens’ basic rights and freedoms. The U.S. Constitution has been a model for (re)developing nations’ efforts to model its governmental structure. The Constitution creates a separation of powers that includes the executive branch that is headed by the U.S. President, a bicameral legislative branch that includes Congress and the House of Representatives that represent the general population, and the judicial branch that is headed by the Supreme Court that interprets the constitutionality of legal cases and laws. The Democratic and Republican Parties are the most powerful parties in the United States, yet the Independent Party, the Green Party, the Libertarian Party, and others often appear on national ballots.

The U.S. economy is market oriented and is the largest and most productive economy in the world. The U.S. economy is very resilient despite terrorist attacks, recessions, and depressions. The largest business sectors include managerial, professional, technical, sales, and office support. Predominant U.S. trade partners include Canada, Mexico, Japan, China, the United Kingdom, and Germany. Compared to European nations, the unemployment rate is quite low.

Since September 11, 2001, the United States has increased its efforts to combat terrorism and is currently at the forefront of the GWOT. It has also engaged in Operation Enduring Freedom in Afghanistan and leads a coalition of the willing on the war in Iraq. The United States has and maintains strong ties throughout the nations of the world to promote economic prosperity, basic human rights, and security.

**United Kingdom**

The United Kingdom is a ninety-three million square mile territory in the Northern Atlantic that is home to a slowly growing population, estimated to be above sixty million in 2004, for the first time in history. The United Kingdom is composed of a variety of nations. Centuries of resistance have subsided (outside of the inconsistent armed struggle in Northern
Ireland through the twentieth century), allowing for the emergence of one of the strongest economic forces in the world. Currently, the United Kingdom is regarded as the fifth largest economy in the world.

Although nearly every ethnicity, religion, and language is present in the territory, the most predominant ethnicities are British, Irish, West Indian, and South Asian. The predominant religions are Anglican (Church of England), Roman Catholic, Presbyterian (Church of Scotland), and Islamic. The most popular languages spoken are English, Welsh, Irish, Gaelic, and Scottish Gaelic.

The government of the United Kingdom is defined as a constitutional monarchy, which has no written constitution but is characterized partly by statutes, common law, practice, and “traditional rights.” Similar to the United States, there are executive, legislative, and judicial branches of the government in which many political parties participate. Unlike the United States, the judicial branch cannot review the constitutionality of legislation. The United Kingdom and United States developed a close relationship as allies after World War I which continues today. Consequently, the United Kingdom is the most powerful ally of the United States in the GWOT.

**Australia**

Australia is a three million square mile continent that is home to a growing population, currently around twenty-one million people. A vast majority of the population is of Christian, European descent, due to the large flow of immigration since the English settlement in 1788. However, in recent years, refugees from Southwest Asia, Africa, and the Middle East have been migrating to the continent. The government of the nation is similar to that of the United States in that it is a democratic, federal-state system and its constitution was written similarly to that of the U.S. Constitution. Major differences between the governments of Australia and the United States are that Australia recognizes the British monarch and is part of the Commonwealth, though Australia does maintain its independence. Also, Australia’s constitution does not contain a “bill of rights.” Several political parties exist within the political spectrum, yet there are three parties ranging from conservative to near socialist that dominate. Currently, the conservative leaning Liberal Party/Nationals are in power and have been in power since 1996.
This system of government has been successful in terms of its use of the market economy. Due to a vibrant and aggressive trade industry with many countries, most notably the United States, Japan, China, and South Korea, Australia has experienced over a decade of sustained economic growth. Australia has maintained close ties with the United States and the two nations have relied upon each other for defense support. Australia participated as a nation in the coalition of the willing.

**CIVIL LAW NATIONS**

The following section identifies the historical, geographical, and cultural characteristics of Germany, France and The Netherlands. These three nations compose the Civil Law legal tradition model nations for this study.

**Germany**

Germany’s population of eighty two million highly educated people must share a little more than 137,000 square miles, which is comparable to the state of Montana. Along with Germans, Danish, Slavic, and nearly seven million foreign residents compose the population of Germany. Included in the seven million foreign residents is a population of 31,000 residents who are believed to be members of Islamic organizations with extremist ties. The foreign population is largely due to two factors: an influx of immigrants during the 1950s to fill labor voids and refugees seeking safe haven from unpleasant conditions in their home nation. These residents of Germany find it extremely hard to naturalize, despite relaxed citizenship laws since 2002. The two primary religions in Germany are Roman-Catholic and Protestant, with roughly twenty six million people claiming each denomination. The third largest religion is Islam, with a worshiping population of about 3.2 million people.

Economically, Germany is doing very well. Germany has the world’s third largest economy, and it is by far the largest in Europe. Despite Germany’s strong economic status, the unemployment rate is high. Still, the economy is slowly growing and is heavily supported by its export industry with France, the United States, and the United Kingdom.

---

Germany’s government is officially classified as a federal republic and is parliamentary. Its “Basic Law” was adopted in 1949 by Western Germany (Federal Republic of Germany) that was then under U.S., United Kingdom, and French control. East Germany (German Democratic Republic) became a separate entity under the influence of the Union of Soviet Socialist Republics (USSR) and it did not adopt the “Basic Law” until 1990. Under the “Basic Law,” there are executive, legislative, and judicial branches of government. Unlike the United States, Germany’s president has very little power. The position that retains executive power is the Chancellor. The federal judicial system is independent and the highest court is the Federal Constitution Court. Many political parties participate in politics in Germany, including the Christian Democratic Union, the Social Democrat Party, the Free Democrat Party, the Left Party, and the Greens.

The government of Germany has ventured deeply into relations with the European Union (EU), yet retains a close relationship with the United States. As a member of the North Atlantic Treaty Organization (NATO), the United Nations (UN), and the Organization for Security and Co-Operation in Europe (OSCE), Germany has established itself as a player in international politics. Although Germany was not a part of the coalition of the willing, Germany and the United States are allies for security, peace, freedom, and prosperity. Germany has contributed thousands of troops to Afghanistan and the two nations have worked diligently together to combat terrorism and to expand the global economy. Germany is considered a vital participant in the GWOT.

**France**

At a size of 220,668 square miles, France is the largest nation in Western Europe and is comparable in size to the state of Texas. Sixty-one million people, largely composed of Celtic and Latin backgrounds, call France home. France is diverse ethnically, including Teutonic, Slavic, North African, Sub-Saharan African, Indochinese, and Basque minority groups. Although Roman Catholic is the predominant religion, Islam is the second most popular religion in France, and Judaism is a distant third. It is estimated that more than one million Muslims immigrated to France from French colonized holdings in North Africa during the 1960s and 1970s. This immigration accounts for the nearly six million strong Muslim population that presently live in France. Interestingly, France is home to the largest
Muslim and Jewish populations in Europe. Tense social and economic conditions have lead to several uprisings, including protests and riots, in the last three years.

France has the fifth largest economy in the world. It is a growing economy characterized by fluctuating unemployment rates, an agricultural industry second only to the United States, and a strong trading relationship with the United States and the EU. The government controls a large portion of the French economy, with shares in many sectors of industry. Despite a privatization movement in the last fifteen years, which has been accompanied by economic reform, centralized control of the economy has persisted.

The current government of France is a republic and is headed by President Nicolas Sarkozy. France is governed by a constitution, adopted September 28, 1958, which established separate executive, legislative, and judicial powers to govern the nation. The executive branch is manned by the president, who wields great power, which includes naming the other member of the executive branch, the prime minister. The legislative branch is a bicameral parliament, while the judicial branch is composed of three courts: the Court of Cassation, the Council of State, and the Constitutional Council. Each court has a separate and specific role in interpreting law. Another distinction from the U.S. judicial branch is that the French Constitutional Council only takes on cases that have been referred to it by parliament, the prime minister, or the president. Some of the primary political parties that are present in France’s political landscape are the Union for a Popular Majority, the Union for French Democracy, the Socialist Party, the Communist Party, the National Front, and the Greens.

Due to its size, location, economy, membership in EU organizations, extensive former colonial holdings, being a charter member of the UN, and being a permanent seat holder of the UN Security Council, France is a leader in Europe and has relations with all regions of the world. France is a strong supporter of efforts to promote Middle East peace, which is illustrated by their support for four UN resolutions on Iraq and their demand for Iran to abandon all nuclear intentions. Due to its prior colonization of parts of Africa, France has also contributed aid, military support, and social stability to Africa. Additionally, France has been looking to capitalize on the exponential growth of the Chinese economy and continues to have strong ties with Japan and Southeast Asia.

France is a nuclear power and is trying to develop a smaller, professional military to replace its current cumbersome military. France is one of the main contributors of troops to
NATO. These troops are currently used primarily for peacekeeping missions in the Middle East and Africa. France works closely with the United States in disrupting terrorist organizations and has brought to justice hundreds of people with terrorist ties. Although France did not agree with the United States’ decision to remove Saddam Hussein from power, the two nations remain allies with close ties and continue to work together in the GWOT and other foreign policy issues.

The Netherlands

The Netherlands is a small country of about 16,000 square miles and a population of 16.3 million people. The majority of the population is Dutch and come from a Germanic-Gallo-Celtix mixture due to centuries of being invaded, conquered, and ruled by other European powers. The minorities that are the most abundant in The Netherlands are of Moroccan, Turkish, Surinamese, and Indonesian backgrounds.

The most popular religions in The Netherlands are Roman Catholic, Protestant, and Muslim, while the official language is Dutch. Economically, The Netherlands is on an upswing after several years of inconsistency in the early years of the twenty-first century. Privatization and deregulation have contributed to the growing economy. The nation is heavily dependant on its services industry and maintains a strong adherence to a free trade economy. While its main trading partner is the EU member states, the United States and The Netherlands are important investors in each other’s economy and invest hundreds of billions of dollars annually.

The Dutch government is currently a parliamentary democracy under a constitutional monarch. Their constitution dates back to 1848 but has been amended several times throughout the proceeding decades. The Netherlands has set up a society that is dedicated to the protection of individual and political, and religious freedoms, as well as the right to free speech. The monarch is the executive chief of state, while the prime minister is the head of government. Together with the cabinet they form the executive branch of government. The Queen’s role in the executive branch is basically ceremonial. The legislative branch is a bicameral parliament consisting of two houses: the First Chamber and the Second Chamber. The highest court in the judicial branch is the Supreme Court, while a lower system of
federal courts is responsible for, among other things, appeals. Several political parties, ranging from religious conservatives to socialists, participate in the political environment.

The Netherlands is a member of the EU, the UN, NATO, OSCE, the Council of Europe, and the World Trade Organization (WTO), as well as several other multilateral organizations. They are supporters of international anti-drug trafficking and organized activities that strive to curb monetary flow to terrorist organizations. Thus, they are strong supporters of the international mission to defeat terrorism and of international peacekeeping missions. The Netherlands have contributed troops to both Iraq and Afghanistan and believe that a close relationship with the United States will ensure security domestically and abroad.

**SOCIALIST LAW NATIONS**

The following section identifies the historical, geographical, and cultural characteristics of Russia, China, and Poland. These nations are the Socialist Law legal tradition model nations used in this study.

**Russia**

Encompassing 6.5 million square miles, Russia is the largest nation in the world. It is nearly twice the size of the United States, yet due to its climate and various areas unbecoming of inhabitation, Russia’s population of 142 million people is roughly half that of the United States. Additionally, its population is declining, due to deaths far outnumbering births on an annual basis. Cardiovascular disease, a rapidly increasing HIV/AIDS epidemic, and substandard health care have contributed to the working males’ life expectancy being only sixty years of age. This trend is expected to continue for the foreseeable future and will likely cause extreme economic difficulties and difficulties professionalizing the military (as desired by the government).

The official language is Russian, although over 140 languages are spoken. Nearly one hundred percent of the population of Russia is literate. The population is expected to operate within the market economy Russia adopted after converting in the 1990s from a centrally planned economy. Currently, the economy is growing at a rate of six percent per year, as trade with the EU, China, and Japan has allowed the economy to operate near capacity and in a surplus since 2003. Credit for this growth rate is largely attributed to the rising costs of
energy and oil/petroleum, which have also allowed Russia to have more influence internationally, particularly with its neighbors.

Russia’s government is officially a federation and its constitution was adopted December 12, 1993. The Russian constitution is similar to the U.S. Constitution in that the government allows for freedom of religion, equal representation of religion under the law, and the separation of state from religion. Similarly, the constitution also sets up three branches of government. They include the executive (president and prime minister), the legislative (Federal Assembly), and the judicial (Constitutional Court, Supreme Court, Supreme Court of Arbitration, and Office of Procurator General) branches. The executive branch is far more powerful than the legislative branch and, unlike the United States, it does not include a vice president. Numerous political parties have participated in Russian elections since 1993, including United Russia, the Communist Party (KPRF), the Liberal Democratic Party (LDPR), the Homeland (Rodina) Bloc, the Union of Right Forces (SPS), and Yabloko.

Although human rights have improved since the fall of the Soviet Union, there are still deficiencies. These deficiencies are seen specifically in terms of military policy in Chechnya, regulated religious rights, and in the criminal justice system where jury trials are becoming more common and prison conditions remain at sub-international standards. The media has been largely nationalized so the scope dissenting opinion is extremely narrow.

Since the fall of the Soviet Union, Russia has inherited not only the debt of the Soviet Union but the former Soviet Union’s seat on the UN Security Council. Russia has become a member of the OSCE and the Euro-Atlantic Partnership Council (EAPC) and has signed a Partnership and Cooperation Agreement with the EU. These memberships and agreements have given Russia the power to become a major participant in international politics and the GWOT. Since 1994, Russia has been involved militarily in the Republic of Chechnya, where a separatist group has utilized terrorist tactics against the underpaid, oversized, and disease-ridden Russian military. The separatist group has been identified by radical Muslim factions as “brothers in arms.”

Russia and the United States have experienced strained relations in recent years due to issues including a missile defense system the U.S. wants to place in Europe, and Iranian and North Korean nuclear agendas.
China

China is a 3.7 million square mile country that is home to an expanding population, currently at 1.3 billion people. The majority of citizens are classified as Han Chinese, while minorities consist mostly of Zhuang, Manchu, Jui, Miao, Yi, Mongolian, Tibetan, Buyi, and Korean. Mandarin is the overwhelming dialect spoken, but Mongolian, Tibetan, Uygur, Turkish, and Korean languages are spoken in regions of the nation where there are large concentrations of minorities. Officially, China is an atheist nation. However, some organized religions are permitted. The majority of citizens who practice religion are Buddhist. A large portion of the population practices Taoism, Islam, Protestantism, or Catholicism. The increasing population of China is a concern and policies have been implemented to try and curb their exponential growth. The literacy rate in China is low when compared to counterparts in Europe and the United States. However, China’s education system has been steadily improving with the rapid growth of the economy.

Economically, China is revitalized and experienced consistent growth for nearly twenty-five years. Currently, China has the fourth largest economy in the world. This growth directly coincides with the government relaxing economic regulations and encouraging entrepreneurial participation in a more market friendly economy. Thus, unemployment rates are at record low levels. The majority of the population is in the agriculture and forestry economic sectors, but the industrious sector provides a far greater stream of revenue. The bursting economy has lead to China being one of the world’s largest consumers of energy.

China is officially a communist party-led state and is officially called the People’s Republic of China. Their constitution is dated December 4, 1982, and although it guarantees certain basic human rights, the constitution is often ignored and/or circumvented by the government. The executive branch of government is composed of the president and vice president, the legislative branch is unicameral, and the judicial branch is composed of the Supreme Court. The Chinese Communist Party’s highest body is the Party Congress, which is supposed to meet at least once every five years. The year 1979 was a turning point for the legal system, as an effort has since been made to professionalize occupations in the criminal justice system and more clearly define illegal activities.

China itself is a nuclear power, yet China has been playing a major role in six-party talks, dedicated to curb the North Korean nuclear program. China has also been an outspoken
opponent of Iran’s nuclear efforts. These positions and efforts, combined with the more open economy and efforts to improve human rights, have allowed China-U.S. relations to be cordial. China has expressed their support of the GWOT and anti-terrorism activities by cooperating with the United States. Though China did not contribute any military support in Afghanistan or Iraq, China has dedicated money to the efforts.

**Poland**

Poland is a nation comparable in size to New Mexico, with a population estimated to be 98% Polish. The remaining two percent of the population is German, Ukrainian, Belorussian, and Lithuanian. The population is estimated to be 38.5 million and stagnant. Several religions are present in Poland. However, Roman Catholicism is by far the dominant denomination. Other religions include Eastern Orthodox, Unitarian, Protestant, and Judaism. A vast majority of the population is educated.

Officially, Poland’s government is a republic. The constitution of the nation was adopted May 25, 1997. The constitution sets up a government with checks and balances between the executive and legislative branches and, amongst other things, guarantees civil rights. The right to free speech, press, and assembly are some of these rights. The executive branch is composed of the president and the prime minister, the legislative branch is bicameral, and the Supreme Court is the highest court in the judicial system. The political parties that currently dominate in Poland are the Law and Justice Party, the Civic Platform, the Self-Defense, the Democratic Left-Alliance, the League of Polish Families, and the Polish Peasant Party. Free elections are held and transfer of power has become nonviolent. Although Poland has made great strides in the last decade to become a democratic nation with a market economy, a history of communism has left a trail of socialist based justice.

The economy of Poland has been consistently growing since the early 1990s. Despite this growth, there has been a high unemployment rate, but signs show a good likelihood of this being reduced in recent years. There is a heavy reliance on the service industry and because of their strong economic growth, they joined the EU in 2004. Poland, like Germany, seems to be one of the most attractive markets in Europe for foreign investors.

Although they are already a member of NATO, Poland’s top national security goal is to further integrate with NATO and other Western European defense, economic, and political
institutions, while continuing to modernize and reorganize its military. The military has been armed and supplied with machinery by the United States and has served side by side with the United States in Operation Enduring Freedom and Operation Iraqi Freedom.

**Sacred Law Nations**

The following section identifies the historical, geographical, and cultural characteristics of Saudi Arabia and Sudan. These two nations represent the Sacred Law model nations for this study.

**Saudi Arabia**

Saudi Arabia is an arid; desert country in the Middle East whose land mass is close to one fifth the size of the United States. Saudi Arabia is home to nearly twenty seven million people, ninety percent of whom are Arab. Arabic is the official language and is overwhelmingly the predominant language spoken by the growing population; it is estimated that nearly twenty percent of the population is illiterate.

Saudi Arabia is regarded as the birthplace of Islam. Not coincidentally, Islam is the official religion of Saudi Arabia. Since the alliance of Abd Al Aziz Al Saud, who was a local ruler, and Muhammad Abd Al-Wahhab, who was an Islamic reformer in the mid-eighteenth century, Islam has been intertwined with governance in Saudi Arabia and their relationship helped to create a new political identity incorporating Shari’a.

The current government of Saudi Arabia is regarded as a monarchy, with a Council Ministers and a Consultative Council, since several regions unified September 23, 1932. Based on the adoption of the Basic Law in 1992, the country of Saudi Arabia officially became a monarchy and the Holy Qur’an became the constitution, which is governed by the Shari’a. The Basic Law also dictated that all the kings who come to power and all governing princes shall be descendants of Abd Al Aziz Al Saud. Under the current governmental structure, the king composes the executive branch, while the legislative branch is composed of the Consultative Council. The judicial branch includes the Supreme Council of Justice and the Islamic Courts of First Instance and Appeals. Any legislation is by resolution of the Council of Ministers and the Shura Council, ratified by royal decree, and must be compatible with the Shari’a. The population must adhere to a strict and conservative lifestyle defined by
an extreme interpretation of the Shari’a. Because of the central government, there are no national elections or political parties for the general population to participate in.

Oil has driven the economy of Saudi Arabia since World War II and currently contributes to a steadily growing economy, which the government is trying to diversify and modernize. Agriculture and industry have begun to have an impact on the economy, but the largest known oil reserves in the world exist in Saudi Arabia so the Kingdom continues to be the world leader in oil exports. Thus, it is in Saudi Arabia’s economic interests to maintain positive relations with oil-producing nations, as well as nations that are heavy consumers of oil, including the United States.

Saudi Arabia and the United States have several similar interests, including regional and oil security. The United States has supplied Saudi armed forces with machinery, weapons, and training in order to promote these common interests. Close relations between the two nations are beneficial in the GWOT. Despite close relations, there are many in the Saudi government and society that are actively funding and supplying al-Qaeda.

Sudan

Sudan is the largest country in Africa and is comparable in size to the portion of the continental United States east of the Mississippi River. It is a generally flat nation which shares borders with ten nations and the Red Sea. The population of Sudan is currently estimated at 39.4 million and is one of the most diverse on the African continent. There are two distinct major cultures; Arab/Muslim in the north and African/Christian in the south. Yet, there are hundreds of ethnic and tribal subdivisions. Although Islam is the official religion, Christianity and indigenous beliefs are observed by minority sects. Arabic is the official language but English and indigenous dialects are spoken by some Sudanese. The majority of labor is agricultural as a result of a poor education system and low literacy rates.

Sudan gained its independence in January 1956 and continues amidst conflict and civil war. An Arabic and Islamization campaign including the incorporation of Shari’a law into the penal code continues to develop. As a result, Sudan is used as a safe haven for militant radical groups and personnel including Osama Bin Laden prior to his relocation to Afghanistan. In 2005 Sudan adopted a new constitution under the Provisional Government; the Government of National Unity (GNU). The new constitution provides for power sharing
and declares Sudan as a democratic, decentralized, multi-cultural, multi-ethnic, multi-religious, and multi-lingual state. The Sudanese constitution provides for three branches of government; executive, legislative, and judicial. The executive branch includes the president, the first vice president, and vice president. The president serves as the prime minister, head of state, head of government, and commander in chief of the armed forces. The legislative branch is comprised of the National Assembly and the Council of States. The National Assembly abides by a power sharing formula providing the National Congress Party the majority of seats while the Council of States allows for two appointed representatives from each of the nations’ states to represent the public. The judicial branch is comprised of the High Court, Minister of Justice, Attorney General, and civil and special tribunals. A military coup in 1989 and subsequent ban on political parties resulted in inconsistent party association which continues today.

Sudan’s economy is growing as a result of increasing oil production. Despite the economic upturn, a majority of the population remains below the poverty line with a GDP of $2,500. Other than oil reserves the nation’s natural resources include, natural gas, gold, and iron ore. Trade partners include the European Union, Egypt, Saudi Arabia, Persian Gulf States, China, Malaysia, South Korea, Canada, Italy, Germany, and other African nations. China, Russia, and Libya supply Sudan with a majority of its military equipment.

The 1967 Arab-Israeli war, political assassinations, the Sudanese backing of Iraq’s invasion of Kuwait, and it’s harboring of radical militants strained relations with the United States. Although Sudanese officials publicly stated opposition to international terrorism after 9/11, Sudan has not supported a widening of the effort against international terrorism. Thus, Sudan remains on the “State Sponsor of Terror” list. Despite differences in policy, the United States has donated billions of dollars in humanitarian aid to the Darfur region.

**HYBRID NATIONS**

The following section identifies the historical, geographical, and cultural characteristics of Egypt and Japan. These two nations serve as model nations for the Hybrid system legal tradition.
Egypt

Egypt is a vast desert region in North Africa that is split by the Nile River. It is home to a growing population, currently at seventy eight million people, which makes it the most populated nation in the Middle East and North Africa. Egyptian is the predominant ethnicity, but Bedouin Arab and Nubians are small minorities. The populace is almost exclusively Muslim and, despite several historical centers of higher learning, highly illiterate. Egypt has an on-again off-again relationship with Israel and plays a central role in the geo-politics of the Middle East.

The government of Egypt is officially classified as a republic. It has maintained its independence since the United Kingdom relinquished possession of Egypt. The constitution of Egypt was developed in 1971 and it establishes a strong executive branch comprised of numerous vice presidents and a prime minister. The legislative branch of government is composed of the People’s Assembly and the Shura Council and the judicial branch of government is headed by the Supreme Constitutional Court. The main political parties in Egypt include the National Democratic Party, which currently is ruling and is headed by President Hosni Mubarak; the New Wafd Party; the Liberal Party; the National Progressive Unionist Grouping; and the Nasserite Party. The Muslim Brotherhood is an unofficial political party, due to the constitution disallowing political parties to be based on religion, yet they remain organized and powerful.

The Egyptian legal system is based on European concepts, including the legal code, which is derived largely from Napoleonic code. Yet, marriage and personal status are based predominantly on the Shari’a and/or other religious laws. This combination is what allows Egypt to be considered a “hybrid” nation.

Egypt is a strong nation economically and militarily. The economy is continuing to grow. Despite heavy public sector influence, the private sector has been allowed to have more involvement in the economic process over the past decade. A majority of the labor is engaged in farming and agriculture. Its major trade partners include the EU, the United States, Japan, and other markets in the Middle East. Egypt’s armed forces are some of the largest in the Middle East and are in possession of technology and machinery from many nations, including the United States. Egypt remains a key ally of the United States in the
GWOT, is an important player in the Middle East peace process, and continuously is involved in UN peacekeeping.

**Japan**

Japan is a nation comprised of many mountainous islands that are subject to frequent volcanic eruption and tectonic plate activity. The main islands of Japan include Kyushu, Shikoku, Honshu, and Hokkaido, and when combined with the nearly 3,000 other smaller islands that are included in Japan’s sovereign territory, the total area is comparable in size to California. Japan is home to 127.5 million people, but the population is slowly declining. Almost a homogenous nation, the largest minority is of Korean decent, yet they make up less than one percent of the population. Nearly one hundred percent of the population is literate and practice some form of Shinto or Buddhism. Japanese is the primary language for citizens and the government of Japan.

Japan’s government is officially a constitutional monarchy, with a parliamentary government. Shortly after World War II, on May 3, 1947, Japan adopted a constitution, under which it currently resides today. This constitution set up a government with a prime minister serving as head of the government and a bicameral Diet in the legislative role. The judicial system’s highest court is the Supreme Court and the system itself is a civil law system based on the model of Roman law. The legal code is drawn from customary law, civil law, and the Anglo-American common law. This setup is what enables Japan to be classified as a hybrid system of legal traditions. Within this system of government, there are several political parties that are prevalent. They are the Liberal Democratic Party, the Democratic Party of Japan, the New Clean Government Party, the Japan Communist Party, and the Social Democratic Party.

The adoption of the constitution in 1947, the proceeding political activities, the fine education system, and the economical ventures of a privatized free market economic society have allowed Japan to become the second largest economy in the world. With great presence in the global economy, Japan has become a powerful nation on the global stage. As a member of the UN (they are currently the second largest financial contributor) since 1956, Japan assumed a role of stabilizing power in the Far East. Japan has been the target of radicalized religious segments, endured terrorist attacks in a subway by the Aum Shinryko
cult in 1995, and has been at odds with North Korea due to North Korean espionage, Japanese territorial rights, kidnapping of Japanese citizens, and missiles being launched over Japanese territory. With a reliance on Middle Eastern oil, Japan is a major financial contributor to the stability of Iraq and Afghanistan.

Japan and the United States have a long-standing security relationship. Japan has allowed a U.S. military presence in Okinawa for decades and is of great importance to U.S. security in the East. Since 9/11, Japan continues to be an ally and a member of the “coalition of the willing.”
CHAPTER 4

ANTI-TERRORISM LEGISLATION

Resolution 1373 of the UN Security Council required all states to ensure that terrorist acts, including the financing of terrorism, “are established as serious criminal offences in domestic laws and regulations and that the punishment duly reflects the seriousness of such terrorist acts.” This UN resolution is the motivational tool several nations used to enact legislation in order to combat terrorism. The following section identifies anti-terrorism laws attributed to this UN resolution and/or 9/11. Major sections of the legislation are identified for cross legal tradition comparison.

COMMON LAW

The following section identifies, defines, and describes the characteristics of the legislative body of work for the United States, the United Kingdom, and Australia. These nations had similar legislative responses to 9/11 in that they passed large bills or acts which amended many elements in existing criminal codes.

United States of America

The PATRIOT Act was introduced into Congress on October 23, 2001, and signed into law by President George W. Bush on October 26, 2001. The PATRIOT Act is a catalyst for debate over civil liberties and security in the United States. The PATRIOT Act has at times pitted political party members on the same side of the aisle against each other.

The PATRIOT Act is a 10 Title, 352-page piece of legislation designed to strengthen the government’s ability to combat terrorism by amending the United States Code (USC), including the Foreign Intelligence Surveillance Act (FISA) of 1978, the Victims of Crime Act of 1984, the National Security Act of 1947, and the International Emergency Economic

Powers Act of 1977. Also, as part of the PATRIOT Act, but also as a stand alone Act of Congress, the International Money Laundering Abatement and Anti-Terrorist Financing Act 2001 was introduced as Title III.

Officially, the purpose of the PATRIOT Act is “to deter and punish terrorist acts in the United States and around the world, to enhance law enforcement investigatory tools, and for other purposes.”\textsuperscript{15} It was written to bypass certain criteria that must be met in a criminal investigation in order to obtain sensitive information in regard to terrorism. One example of this is that the PATRIOT Act streamlined the government’s ability to obtain information theoretically associated with terrorism, as no certification of a connection to terrorism is now necessary. Rather, a statement by the Federal Bureau of Investigation (FBI) that certain desired records are for an investigation “to protect against international terrorism or clandestine intelligence activities” will suffice.\textsuperscript{16} Additionally, personnel under investigation do not have to be connected with terrorism. This is an amendment to the USC that previously allowed the government to obtain the records if they could certify that it had “reason to believe that the person to whom the records pertain is a foreign power or agent of a foreign power.”\textsuperscript{17} There are a plethora of similar modifications to USC in the PATRIOT Act.

According to Charles Doyle, who is a Senior Specialist in the Congressional Research Service American Law Division:

The Act gives federal officials greater authority to track and intercept communications, both for law enforcement and foreign intelligence gathering purposes. It vests the Secretary of the Treasury with regulatory powers to combat corruption of U.S. financial institutions for foreign money laundering purposes. It seeks to further close our borders to foreign terrorists and to detain and remove those within our borders. It creates new crimes, new penalties, and new procedural efficiencies for use against domestic and international terrorists.\textsuperscript{18}


\textsuperscript{17} 50 U.S.C. § 1862.

The following overview of each title of the PATRIOT Act comes from Jonathan R. White’s book *Terrorism and Homeland Security*.\(^\text{19}\)

**Title I, Designed to Enhance Domestic Security:** Creates a counterterrorism fund, increases technical support of the FBI, allows law enforcement to request military assistance in certain emergencies, expands the National Electronic Task Force, and forbids discrimination against Muslims and Arabs.

**Title II, Designed to Improve Surveillance:** Grants authority to federal law enforcement agencies to intercept communication about terrorism, allows searches of computers, allows intelligence agencies to share information with criminal justice agencies, explains procedures for warrants, creates new definitions of intelligence, allows for roving wiretaps, and provides for expanding intelligence gathering. The PATRIOT Act has a sunset clause: If not renewed by Congress, it will automatically expire.

**Title III, Designed to Stop Terrorism Finances:** Grants expanded powers to law enforcement agencies to seize financial records, provides access to financial records, forces transactions to be disclosed, and expands investigative power in money laundering.

**Title IV, Designed to Protect U.S. Borders:** Outlines measures to protect the borders, tightens immigration procedures, allows foreigners to be photographed and fingerprinted, and gives benefits to victims of terrorism.

**Title V, Enhances Investigative Powers:** Provides a reward program, calls for sharing of investigative findings among law enforcement agencies, extends Secret Service jurisdiction, and forces educational institutions to release records of foreign students.

**Title VI, Designed to Compensate the Families of Public Safety Officers Killed During a Terrorist Attack:** Provides monetary relief to the families of officials killed on the job preventing, investigating, or being a victim of a terrorist attack.

**Title VII, Designed to Expand the Information Sharing Network:** Provides for the expansion of law enforcement’s nationwide information exchange, the Regional Information Sharing System (RISS).

Title VIII, Strengthens Criminal Laws: Defines terrorist attacks, defines domestic terrorism, provides the basis for charging terrorists overseas, criminalizes support for terrorism, criminalizes cyber-terrorism, allows investigation of terrorism as racketeering, and expands bioterrorism laws.

Title IX Improve Intelligence: Directs the Director of the CIA to establish priorities and requirements for foreign intelligence and to assist the Attorney General in dissemination of intelligence gathered physically or electronically.

Title X: Contains miscellaneous addenda.

The PATRIOT Act was enacted in the aftermath of 9/11 when support of the government was extremely high, and both the government and citizens of the United States felt something needed be done in order to prevent similar events from occurring. The intent of the PATRIOT Act is to prevent terrorist activities by increasing law enforcement capabilities and increasing punishments for those associated with terrorist activities. The Patriot Act has caused some to have the opinion that the amendments are “intrusive” and “unnecessary.” Some of the amendments created concern that the legislation was passed in knee jerk fashion at a time when the nation was vulnerable. Defenders of the Patriot Act believe the amendments were necessary in order to properly prevent terrorist activities and protect the lives of Americans. The most controversial amendments include the investigative powers granted to investigative authorities which streamline the ability for authorities to collect intelligence on personnel including American citizens, who are believed to be associated with terrorist activities. However, the few really significant changes in investigative authorities and criminal law were made subject to a three-year sunset provision.20

United Kingdom

The United Kingdom has a diverse population, including a large Muslim presence. After 9/11, the government took the view that as an ally of the United States, a state of  

emergency affecting the life of the nation existed. As a result, the Anti-Terrorism Crime and Security Act (ATCSA), which is a fourteen part act, became law on December 14, 2001. This act updated previous legislation, including the Terrorism Act of 2000 and has sunset clauses that must be renewed every fifteen months. Part IV, which was controversial because of its detention element, has since been updated by the Terrorism Act of 2005. However, the ATCSA is the primary legislative response attributable to 9/11 in the United Kingdom. Thus, it is the legislation considered in this study.

According to the United Kingdom Home Office website, the ATCSA was introduced in order to “provide stronger powers to allow the police to investigate and arrest terrorist activity and other serious crime.” The measures are intended to:

- cut-off terrorist funding
- ensure that the government departments and agencies can collect and share information required for countering the terrorist threat
- streamline relevant immigration procedures
- ensure the security of the nuclear and aviation industries
- improve security of dangerous substances that may be targeted or used by terrorists
- extend police powers available to relevant police forces
- ensure that European obligations are met in the area of police and judicial co-operations and international obligations to counter bribery and corruption

More specifically, according to Colin Nicholls, who is a Queen’s Counsel and specializes in international crime, the ATCSA contains measures against terrorist funds, including forfeiture, irrespective of whether proceedings have been brought for any offence, and the making of freezing orders against such funds, including those of foreign governments and non-UK residents; provisions for the disclosure of information by public authorities for the purpose of facilitating the work of the intelligence services; power of the Home Secretary to certify a non-UK national a “suspected international terrorist” and to order his

---


removal from the UK, or if this is prevented, his ditto detention indefinitely without charge, if the Home Secretary reasonably believes his ditto presence is a risk to national security; measures to ensure the security of the nuclear, chemical and aviation industries and dangerous substances, including power to remove unauthorized persons from airport restricted zones and aircraft; the extension of police powers, including the taking and indefinite retention of fingerprint records for purposes of terrorist investigation and the removal of items believed to be worn for concealing identity; the retention of communications data by communications service providers for access by law enforcement agencies, not including the contents of communications; strengthening of the law relating to international corruption to include bribery of foreign public officials and making it an offence for any UK national to perform acts abroad which would amount to corruption if committed in England; the implementation of the third pillar of the European Union so that EU wide anti-terrorist measures on policing, extradition and sentencing can be effected; and the re-introduction of an offence of general failure to disclose information about terrorism.23

The United Kingdom has a history of combating terrorism and creating anti-terrorist legislation due to conflict with Northern Ireland. Despite history, the government of the United Kingdom viewed themselves as vulnerable in the aftermath of 9/11. They responded by enacting the ATCSA in December 2001 which amended some of the previously enacted anti-terrorism legislation. The new act was created with the intention of disrupting terrorist activity and other serious crimes by increasing abilities to investigate and arrest those associated with terrorist activities. Similar to the Untied States’ PATRIOT Act, amendments were created to increase police investigative powers, remove some of the institutional bureaucracy preventing information sharing between investigative agencies, and prevent terrorist funding. It also has sunset clauses which must be renewed every fifteen months. This act has also come under scrutiny by those who believe the act violates certain basic human rights regarding the detention of individuals with no trial.

**Australia**

Australia has not historically had to combat terrorism. Therefore, before September 11, 2001, there were few laws dedicated as anti-terror measures. Despite the lack of terrorist

activities on its soil, Australia came to the conclusion that changes to its criminal code were necessary after 9/11. A package of legislation was introduced in March of 2002, which was primarily responsible for amending the Criminal Code Act of 1995. One of the included bills was the Security Legislation Amendment (Terrorism) Bill 2002. This amendment included the definition of a “terrorist act.” Per the Security Legislation Amendment, the definition of terrorism in Australian legislation is now:

an act or threat done with the intention of advancing a political, religious, or ideological cause that:

(a) involves serious harm to a person;
(b) involves serious damage to property;
(c) endangers a person’s life, other than the life of the person taking the action;
(d) creates a serious risk to the health or safety of the public or a section of the public; or
(e) seriously interferes with, seriously disrupts, or destroys, an electronic system; and the action is done or the threat is made with the intention of;

(i) coercing, or influencing by intimidation, the government of the Commonwealth or a State, Territory or foreign country, or of part of a State or foreign country; or

(ii) intimidating the public or a section of the public.24

Another bill included in the package was the Australian Security Intelligence Organisation Legislation Amendment Bill 2002 No. 2, which was dedicated to improving intelligence gathering by amending the Australian Security Intelligence Organisation Act of 1979. Its purpose was to:25

- re-incorporate terrorism within the definition of “politically motivated violence”;
- permit personal searches to be authorized in conjunction with search warrants; and
- provide a power to detain, search and question persons before a prescribed authority.

A vital aspect of the other bills included the Suppression of the Financing of Terrorism Bill 2002 (the Terrorist Financing Bill), which also amended the Criminal Code of


25 Ibid.
1995 and outlawed specific actions associated with the direct financing of terrorist acts, as well as the reckless donations that lead to aiding terrorist intent. Similar to conspiracy, no terrorist attack has to occur for financial providers to be found guilty of committing a crime under this legislation. In the event that money was provided to groups associated with terrorist intent, the provider can be found guilty under this legislation even in the absence of prior knowledge of the terrorist connection. Also, border security was addressed by the Border Security Legislation Amendment Bill 2002, which primarily amended the Customs Act of 1901 in a manner to include possible maritime or aeronautical terrorist attacks, as well as to bolster the ability of the customs officer to search and seize property possibly connected to a terrorism plot or act.

Other components of the anti-terrorism package are:

- The Criminal Code Amendment (Anti-Hoax and Other Measures) Act 2002 (the Anti-Hoax Act) made using postal services to carry out a terrorist attack, threat, or hoax an offense.
- The Criminal Code Amendment (Suppression of Terrorist Bombings) Bill 2002 outlined terrorists’ use of explosives and outlawed such acts.
- The Telecommunications Interception Legislation Amendment Bill 2002 enabled interception warrants to be granted to investigate “an offence constituted by conduct involving an act or acts of terrorism.”

Similar to the previously identified Common Law nations, Australia responded to 9/11 with a package of legislation which amended the current Criminal Code. A significant component of the new legislation is a definition of “terrorist act.” The new definition includes activities associated with the advancement of political, religious, or ideological beliefs which threaten people, places, or infrastructure, and include intentions of coercion of the government, or intimidation of the public. The major alterations to the Criminal Code are in the intelligence gathering abilities of the proper authorities, and financing of terrorism. Australian government provided increased intelligence gathering abilities by allowing personal searches in conjunction with search warrants, while enabling the detention and questioning of individuals with suspected links to terrorism. As a result of the legislation, financing of terrorism without intent to finance terrorism is now punishable by law.

---

26 Ibid.
Common Law nations all passed amendments that faced much criticism in regard to civil rights and new powers vested in government authorities. Major themes of legislation which are common in these nations include increased investigative powers for the government, and the attempted prevention of terrorist funding.

**CIVIL LAW**

The following section identifies, defines, and describes the characteristics of the legislative bodies of work for Germany, France, and The Netherlands. These nations displayed varying levels of legislative response to 9/11 ranging from Germany’s package of amendments to The Netherlands which did not devise any legislation in response to 9/11.

**Germany**

9/11 Terrorists were able to use Germany as a safe haven, and a center for moving personnel, finances, and goods before 9/11. Germany’s liberal asylum policies and generous privacy and civil liberty protections rendered surveillance almost useless. After 9/11, Germany changed its approach to radical Islamic terrorism. It now views terrorism as its primary security threat and views itself as the potential target of attack.\(^\text{27}\) Thus, Germany instituted policy and legislative reforms in order to make it more difficult for terrorists to continue to operate as if 9/11 never happened.

Germany’s initial legal response to 9/11 was to identify the weaknesses in the law that allowed the terrorists to live and plot the attacks. The initial legal response to 9/11 included the passage of two packages of anti-terrorism laws. The first package was passed in November of 2001 and took effect in January of 2002. The Law on Fighting Terrorism is the title given to this package of amendments to preexisting statutes. These include:\(^\text{28}\)

- Increased investigative powers for the police, intelligence and security services, including greater access to personal, financial and immigration data, broader investigative powers and expanded powers to monitor resident extremists;

---


- Tougher visa and border control regulations to prevent extremists traveling into Germany, including introduction of bio-metric data for passports and visas;
- Increased vetting of those in security-sensitive occupations;
- Greater protection for critical infrastructure.

Francis T. Miko, who is a Specialist in International Relations, Foreign Affairs, Defense, and Trade Division for the Congressional Research Service, identifies the purposes of both packages in *Germany’s Role in Fighting Terrorism: Implications for U.S. Policy*. According to Miko, the purpose of the initial package of laws was to identify the loopholes in laws that enabled terrorists to raise and move money while living in the nation largely unnoticed. The reforms included:

1. The immunity of religious groups and charities from investigation or surveillance by authorities was revoked, as were their special privileges under right of assembly, allowing the government greater freedom to act against extremist groups.
2. Terrorists could now be prosecuted in Germany, even if they belonged to foreign terrorist organizations acting only abroad.
3. The ability of terrorists to enter and reside in Germany was curtailed.
4. Border and air traffic security were strengthened.

The second package improved the effectiveness and communication of intelligence and law enforcement agencies at the federal and state levels. The new laws provided the German intelligence and law enforcement agencies greater latitude to gather and evaluate information, as well as to communicate and share information with each other and with law enforcement authorities at the state level.

France

Prior to 9/11, France already had some of the strongest counter-terrorism laws in Europe. The laws were enacted after a wave of Algerian Islamic terrorist attacks in the 1990s. Due to the presence of these laws, information on new French anti-terrorism measures post-9/11 is scarce. However, through the University of Pittsburgh School of Law and one

29 Francis and Froelich, “Germany’s Role in Fighting Terrorism.”
30 Ibid.
British Broadcast Company (BBC) News website, the researcher has been able to find the little information available on the immediate reaction by the French government.

On October 31, 2001, the French National Assembly approved a series of anti-terrorism amendments to a larger security bill. The measures, initially introduced in the French Senate on October 16 by Interior Minister Daniel Vaillant, were scheduled to remain in force until December 31, 2003. They gave the police expanded powers to search private cars, monitor communications, and heighten security in public places.\(^{31}\) The Green Party and the Communist Party did not support the measures for fear that they infringed on civil liberties.

In November of 2005, France passed additional anti-terrorism legislation after social unrest in the Fall of 2005. The bill vastly increased the state’s powers of electronic surveillance of its citizens through the use of closed-circuit cameras in public places, the recording and monitoring of Internet activity, and the retention of data that must be made available to the state.\(^{32}\) The bill also extended the amount of time police could question suspects. However, for purposes of this study, these measures will not be considered since they were not 9/11 inspired.

### The Netherlands

The Netherlands has had a long history of respect for religious, cultural, and judicial tolerance. The Netherlands’ government has shown a reluctance to legislate in a manner which creates an image that it will target people or groups of any certain creed. As a result, it lacked significant anti-terrorism laws as of September 11, 2001. This enabled the Netherlands to be a safe haven for terrorist groups and their supporters pre-9/11.\(^{33}\) Terrorists used Amsterdam and Rotterdam as “central bases in the West from which they garnish[ed] funds, recruit[ed] activities from local Muslim youth cultural groups, and purchase[ed] funds, recruit[ed] activities from local Muslim youth cultural groups, and purchase[ed] funds, recruit[ed] activities from local Muslim youth cultural groups, and purchase[ed] funds, recruit[ed] activities from local Muslim youth cultural groups, and purchase[ed]

---


highly sophisticated arms in the world’s largest trading hub: Rotterdam harbor.\textsuperscript{34} Dutch law did not allow for the investigation or incarceration of supporters of terrorist groups unless it could be proven that their efforts directly contributed to terrorist activities. This was the situation in the Netherlands until March 2007 when the Netherlands government finally passed specific anti-terrorism legislation.

The legislation was not in response to 9/11 but in response to the murder of moviemaker Theo van Gogh in November of 2004. According to Ernst Hirsch Ballin—the Dutch Justice Minister:

The freedom to move to places where they (terrorists) can be a danger to public security and to people or specific persons can be limited. This is not something like administrative detention—that is not included in our legislation—but we are confident that it will support the fight against terrorist crimes in an appropriate manner.\textsuperscript{35}

The new legislation intends to prevent people who are suspected by the police and/or intelligence services from being at a certain place at a certain time or from the vicinity of a certain building or person. Also, suspects can be made to report to a police station on a regular basis. This legislation was not in response to 9/11. Thus, the legislative effort is not considered for this study.

**SOCIALIST LAW**

The following section identifies, defines, and describes the characteristics of the legislative bodies of work for Russia, China, and Poland. These nations had varying degrees of legislative response to 9/11. China and Poland had a similar focus within their legislative response to 9/11. There is no available information suggesting Russia created legislation to combat terrorism in the wake of 9/11.

**Russia**

Russian anti-terrorism legislation is the result of its ongoing conflict in Chechnya. Available research does not suggest that Russia made any legislative response as a direct

\textsuperscript{34} Ibid., 1.

result of 9/11. However, Russia has been operating under the Federal Law on Fighting Terrorism since 1998 and an increase in attacks by Chechyn militants, including the school massacre in Beslan in 2004, resulted in a change in policy. The school massacre led the Russian parliament to adopt a far-reaching anti-terrorism plan that called for broadening the powers of all agencies involved in the fight against terrorism and threatened officials with punishment if they failed to prevent attacks. The anti-terrorism plan read that “all institutions of civil society and all branches of authority must become consolidated in order to resist this evil.”

In March of 2006, new-anti-terrorism legislation was signed by President Vladimir Putin and passed by the Russian Duma. The legislation kept and broadened the provision that allowed the Russian police and military authority to tap telephone conversations and control electronic communications in the vicinity of counter-terror operations. The legislation provided the military with the power to shoot down hijacked planes that threaten public places or strategic facilities. Russia has also ratified the International Convention for the Suppression of Acts of Nuclear Terrorism, which was proposed by Russia after several years of negotiations with other countries. However, since the legislative actions were due to the Chechyn conflict and not 9/11, they will not be considered in this study.

China

Following the attacks of September 11, 2001, the Chinese government took the opportunity to amend legislation already in place to combat what it views as domestic terrorism. The Chinese government intensified its crackdown on Uighur opponents of Chinese rule and others branded as “ethnic separatists” in the Xinjiang Uighur Autonomous Region (XUAR) in the west of China. These separatist groups are accused by the Chinese government as being groups that jeopardize social stability in China and threaten the security

---


and stability of related countries and regions. In order to further provide safety from these separatist groups, amendments to the “Crimes of Endangering Public Security” section of the “Criminal Law” were made. China’s legislative body felt it necessary to make amendments “to punish terrorist crimes, ensure national security and the safety of people’s lives and property, and uphold social order,” despite the presence of provisions in the law for punishment of some terrorist actions. Consequently, the Standing Committee of the National People’s Congress (NPC) adopted amendments to the Criminal Law of the People’s Republic of China on December 29, 2001.

There are two amendments to Article 120 of the Criminal Law. They include:

- Increased sentences for people who “organize or lead a terrorist organization” and/or people who “fund terrorist organizations or individuals engaging in terrorist activities.”

Additionally, amendments to Articles 114, 115, 125, and 127 of the Criminal Law were made and include the punishment for the “dissemination,” or “illegal manufacturing, trading, transporting or storing,” or “the stealing or seizing or plundering,” of “poisonous or radioactive substances or contagious-disease pathogens.”

Prior to the amendments made, Article 191 of the Criminal Law dealt with illegal financial operations associated with outlawed activities such as smuggling activities. Amendments were made to include terrorist activities to this article. Increased punishments were included in the amendments and can be applied to those who are engaged in a terrorist organization, as well as other groups engaged in illicit activities.

Article 291 of the Criminal Law is dedicated to the punishment of persons disturbing social order. Article 291 was amended to include “whoever seriously disturbs social order by disseminating false explosive, poisonous or radioactive substances or contagious-disease pathogens, or by fabricating threats or information about an explosion or biological or radioactive threat, or by knowingly disseminating fabricated threats or messages.”

---


40 Ibid.

41 Ibid.

42 Ibid.
Poland

Information regarding Polish anti-terrorism legislation is limited at best. It seems there have been very few anti-terrorism legislative efforts in Poland post-9/11. This may be attributed to the preexisting criminal code that outlaws terrorist activities in general. Poland’s criminal code criminalizes “behavior possessing character of terrorist acts.” Activities associated with this include assault against a unit of the Armed Forces; causing a large-scale threat or danger to the life or health of many persons or property; illegal manufacturing, possession, or trade in explosive or radioactive materials; causing damages to the environment; and participating, establishing, or managing an organized group or association with the purpose of committing a crime or treasury offence. However, there has been an effort to broaden the scope of the criminalization of behavior possessing character of terrorist acts.

There have been legislative efforts in weapons control and regulating weapons of mass destruction post-9/11 that are not regarded as anti-terrorism legislation, but which will be used to combat terrorist activities. They include:

1. The Gene Law of October 2001 creates a legal basis to regulate contained use and deliberate release of genetically modified organisms (GMO), as well as the export and transit of GMOs, with a goal to protect the environment and human health.

2. The Law of 21 June 2002 on Explosives for Civilian Use regulates the issuance, acquisition, and transportation of explosives. It also mandates permits for certain activities related to explosives.

This is the extent of the Polish legislation post-9/11. Prior to 9/11, Poland possessed a criminal code which broadly outlawed activities associated with terrorism. Apparently, Polish government believed the existing criminal code to be sufficient in order to combat terrorism. Thus, Poland did not create large bodies of legislation containing amendments to existing criminal code as the U.S. and U.K did. However, the subject of Poland’s minimal response to 9/11 is comparable to China’s in that they focused legislative efforts on

---

44 Ibid.
45 Ibid.
preventing certain pathogens and materials from being used by terrorists. Poland’s minimal response is more than what can be identified as Russia’s legislative response which is not identifiable.

**SACRED LAW**

The following section identifies, defines, and describes the characteristics of the legislative bodies of work for Saudi Arabia and Sudan. It seems these two nations were limited in their ability, or preferred not to pass legislation which was dedicated to combating terrorism post 9/11.

**Saudi Arabia**

Wahhabism is the official sect of Saudi Arabia. According to an excerpt written by Stephen Schwartz in the book *Radical Islam’s Rules: the Worldwide Spread of Extreme Shari’a Law*, this brand of Islam rejects Islamic tradition and 1,000 years of Islamic jurisprudence as established in the four established Sunni legal schools. It is based on a crude and ultrasimplistic version of the shari’a. Saudi Arabia has dedicated immense resources to imposing this version of shari’a on world Islam.46 This radical version of shari’a did not prevent Saudi Arabia from creating legislation to combat terrorism post 9/11. Legislation was developed in the Kingdom in order to help prevent terrorism post 9/11. However, it may have enabled legislators to believe that a large legislative response was unnecessary and thus, limited the legislative response. Saudi Arabia’s anti-terror legislative efforts post 9/11 are minimal at best. Saudi Arabia’s initial reaction was to implement UN Security Council Resolution 1373 in October 2001. Like many other nations, the Saudi’s legislative efforts post 9/11 focused on the prevention of funding for terrorist activities. Saudi Arabia’s initial legislative response was dedicated to creating oversight which would monitor financial transactions possibly affiliated with terrorist activities. In 2003, the Anti-Money Laundering and Anti-Terrorist legislation created the Financial Investigations Unit (FIU). Financial institutions are to notify this unit of any suspicious transactions (suspicious is undefined).

---

Later that year, in the fall of 2003, the Saudi government passed a new cash-carrier law that restricted individuals from transporting cash or precious metals worth more than 60,000 Saudi riyals ($16,000) into or out of the Kingdom. Although this law may be used to prevent funding reaching those involved in terrorism, it was not their initial legislative response and will not be considered in this study.

**Sudan**

Evidence is lacking that Sudan passed anti-terrorism legislation post 9/11. This is attributable to several factors. Primarily, Sudan is a nation continuously in a state of civil war. It seems most of the political effort is dedicated to halting civil war, attempting to prevent atrocities against humanity, and creating stability within the government. Some parties responsible for the civil war include groups that use their political influence with the intent to create an Islamic state where the population is subjugated to their extreme version of Shari’a law. These groups envision establishing an Islamic state in Sudan under an extreme fundamentalist version of Shari’a law and subsequently spreading the same brand of Islam throughout the world. The groups in Sudan with these intentions include the Muslim Brotherhood and the National Islamic Front (NIF) amongst others. Although these groups are not officially in a position of political power, personnel in key positions of the Al-Bashir government were previously NIF military cadre. The NIF created the Council of Forty, which has no existence in legislation yet still directs the policies of the state, controls the army and security affairs, and supervises the economy and media through a network of NIF cadres. They are in direct opposition of non-Muslims, and moderate Muslims whom the Muslim Brotherhood and NIF view as dissidents. The moderate Muslim’s and non-Muslims have intentions to establish a nondiscriminatory Islamic state, as well as bring Shari’a into conformity with contemporary world developments.

---


49 Ibid, 92.
Outside the spectrum of civil war and political turmoil, other issues exist which have contributed to Sudan not enacting anti-terrorism post 9/11. In September 1983 the Numeiri regime pushed for further imposition of Shari’a laws. One of the developments of these laws was that the army and police were given extra powers to arrest and detain suspects, enter private houses without warrants, and open private mail. The fact that such powers continue to exist in the current theocratic constitution contributes to a mentality that enough power is vested in law enforcement in order to thwart criminal enterprise. The current regime has displayed little motivation to create legislation outside of Shari’a law. In 1993 a fatwa was issued by NIF regime religious leaders which rings similar to Osama bin Laden’s 1996 fatwa encouraging the killing of American citizens. The fatwa states “jihad war should be waged against non-Muslims until they are killed or enslaved.” This fatwa has contributed to the continuous violence and civil war in Sudan. It is not likely that a nation which has political and social turmoil, combined with a government in which members have a vested interest in establishing an Islamic caliphate under extreme Shari’a law through jihad, would enact anti-terror legislation inevitably targeting people with like minded ideology. It can be assessed that this is the reason Sudan and Saudi Arabia had similar legislative reactions to 9/11, being that Sudan made no legislative effort and Saudi Arabia’s was minimal.

**Hybrid Legal Traditions**

The following section identifies, defines, and describes the characteristics of the legislative body of work for Egypt and Japan. These nations have incorporated characteristics from a multitude of legal traditions. Egypt has historically encountered more domestic terrorist related events than Japan. Consequently, when compared to Japan, Egypt possessed more anti-terrorism legislation on 9/11. Thus, Japan’s response to 9/11 may be viewed as being more extensive.

---

50 Ibid, 91.

51 Ibid.
Egypt

Since 1958, Egypt has sporadically applied Emergency Law No. 162. However, Emergency Law No. 162 of 1958 has been in effect since the assassinations of President Anwar Sadat in 1981 and repeatedly renewed every few years. Amongst other features, Emergency Law No. 162 officially places Egypt in a state of emergency, allows law enforcement to arrest and detain individuals indefinitely without charge, censors media, and prohibits public demonstrations. Despite Egyptian government operating in a state of emergency, Egypt has suffered attacks from several domestic armed groups, including the Muslim Brotherhood and Egyptian Islamic Jihad.

In 1992, Egypt passed the Anti-Terror Decrees (Law No. 97) after experiencing increased political violence by these armed Islamic groups. Article 86 of Law No. 97 defined terrorism as:

any use of force or violence or any threat or intimidation resorted to by the perpetrator in implementation of an individual or collective criminal undertaking aimed at disturbing public order or jeopardizing the safety and security of society, which is of such nature as to harm persons or sow fear among them or imperil their lives, liberty or security; or of such nature as to damage the environment, or to damage, occupy or take over communications, transport, property, buildings or public or private realty; or to prevent or impede the exercise of their functions by public authorities or places of worship or institutions of learning; or to thwart the application of the Constitution or the laws or regulations.52

The law sets up a situation where ordinary offences such as participating in a group defined as illegal previously in law, possessing materials that are deemed to be in support of these groups, or helping to spread the ideology of these groups have significant penalties if associated with terrorism. These strict penalties include the death penalty and/or hard labor depending on the nature of the offense.

Because Egypt had an extensive array of penal code articles that outlined the criminal offenses in association with terrorism, they have had to do little tinkering with their policies to combat terrorism post-9/11. However, they have made a concerted effort to combat money laundering in association with terrorism since 9/11. The most prominent effort in regards to

anti-terrorism law or policy in Egypt since 9/11 is the Promulgating Anti-Money Laundering Law (Law No. 80) of 2002. Since money laundering is of great importance to radicalized groups, the law was specifically written to combat money laundering in order to stop the cash flow to terrorist organizations. Specifically, the Promulgating Anti-Money Laundering Law is a tool to prosecute individuals and/or organizations involved in money laundering in relation to terrorist activities as defined in Article 86. Also prosecutable under the law are crimes of

- narcotic production, smuggling, transportation; hijacking means of transportation; detention of individuals; unlicensed importation, or manufacturing of weapons and explosives; all crimes mentioned in Book II of the Egyptian legal code Chapters (1), (2), (3), (4), (15), and (16); money theft and usurpation, and swindling and perfidy; fraud and deceit, and debauchery and prostitution; crimes against the environment using dangerous waste; and organized criminal activity under international treaty.\(^{53}\)

In order to combat these crimes, the Promulgating Anti-Money Laundering Law established an independent unit in the National Bank to be notified of and monitor suspected acts of money laundering. The unit established a database and shares information with foreign governments.

**Japan**

Shortly after September 11, Japan pledged its support of the United States. This cannot be viewed as a surprise because the United States and Japan are tied together economically and view each others’ security interests as their own. Although Japan made no significant changes to the Code of Criminal Procedure, counter-terrorism measures were enacted as a result of September 11. Legislative measures related to terrorist financing were introduced to ensure that Japan complied with its obligations in international law.

A series of reforms were introduced that considerably strengthened surveillance and control of money flows related to terrorism, together with the targeting of terrorist financing. Most significantly, a series of amendments were made to the Foreign Exchange and Foreign Trade Law in order to implement the more effective control of criminal assets. These powers were utilized to freeze assets of

---

\(^{53}\) Law No. 80 for 2002 Promulgating Anti-Money Laundering Law.
groups identified by the UN Security Council as associated with the Taliban and al-Qaeda.\(^{54}\)

No comprehensive anti-terrorism law was introduced.\(^{55}\) It should be noted that there was little pressure from the Japanese public or the United States to pass comprehensive anti-terrorism legislation. A possible reason for this lack of demand may be attributed to the strong investigative powers legislated by the Diet for law enforcement and a view that criminal law already was strong enough to combat terrorism. On October 29, 2001, the House of Representatives and the House of Councilors passed a package of bills to allow for the deployment of the Special Defense Forces (SDF). The most significant legislation was the Anti-Terrorism Special Measures Law (ATSML), which provides the legal basis for the overseas deployment of Japanese forces in the context of counter-terrorism operations. The ATSML is significant for many reasons within the Japanese legal infrastructure because it creates constitutional dilemmas related to the deployment of the Japanese SDF.

The purpose of the ATSML is “specifying certain ‘response measures’ that enable Japan to contribute actively and effectively to the efforts of the international community to prevent and eradicate international terrorism, thereby ensuring the peace and security of the international community including Japan.”\(^{56}\) This includes:

- measures Japan implements in support of the activities of the armed forces of the US and other countries which aim to eradicate the threat of the terrorists responsible for the 9/11 attacks and thereby contribute to the purpose of the Charter of the UN; and,
- measures Japan implements in a humanitarian spirit based on the relevant resolutions of the UN.\(^{57}\)

The ATSML identifies three “measures to be taken” that pertain to Article 3 of the law. They are (1) cooperation and support activities, (2) search and rescue activities, and (3) assistance to affected people. The basic principles of the ATSML state that the government of Japan shall implement cooperation and support activities, search and rescue activities,


\(^{55}\) Ibid.

\(^{56}\) ATSML, Article 1.

\(^{57}\) Fenwick, “Japan’s Response to Terrorism Post-9/11.”
assistance to affected people, and other necessary measures in an appropriate and swift manner, thereby contributing actively and on its own initiatives to the efforts of the international community for the prevention and eradication of international terrorism and ensuring the peace and security of the international community, including Japan.\textsuperscript{58} The threat or use of force is not permitted and can only be implemented in Japanese territory or the high seas, airspace above, and the territory of foreign countries only if the country has given permission. The ATSML was also written with a sunset clause and must be re-approved by the Japanese Diet every two years.

CHAPTER 5

ANALYSIS

The following section provides analysis of model nations within each legal tradition. It is apparent that there are common legislative features within each legal tradition. Also apparent is the varying degree of response within some legal traditions, and across legal traditions.

THE COMMON LAW LEGAL TRADITION

Several observations present themselves when comparing the Common Law nations’ anti-terrorism legislation. All three nations had a legislative response occurring no later than 7 months after 9/11. The prompt response can be attributed to several factors. First, these nations are part of western civilization which is a primary target for radicalized fundamentalist Muslims who yearn for an Islamic Caliphate and a return to Islamic dominance throughout the world. As a target seeing radicalized ideology manifest itself in attacks on 9/11, motivation for leaders to protect their countrymen significantly increased. This motivation was not limited to the executive branches of government. Legislators began an effort to examine and alter existing legislation with the intent to prevent further attack. Secondly, each nation has an established and stable government consisting of a democratically elected legislative branch that is capable of a quick legislative turnaround. The motivation to respond and the governmental stability that characterizes the Common Law nations allowed for each nation to create legislation altering existing criminal code enabling them to extend powers deemed necessary to prevent further attacks. The product of these nations’ legislative efforts had similarities in scope. Each nation altered its criminal code to improve law enforcements ability to gather intelligence and share it, while targeting terrorists’ ability to finance activities. The fact that each nation faced civil liberty questions and challenges is a reflection of its democratic nature where dissent is innate and necessary. Legislators in the United States and United Kingdom anticipated civil liberty issues while
developing anti-terror legislation and built in sunset clauses to certain portions of the legislation which expire unless otherwise renewed.

The main difference between the legislative efforts of the common law nations is the intent of the legislation. The PATRIOT ACT’s intent includes “to deter and punish terrorist acts in the United States and around the world.” As stated the focus of the United States’ initial legislative response to 9/11 included provisions to proceed with efforts internationally in order to combat terrorism. This is unlike the legislative counterparts of the United Kingdom and Australia. Although both the U.K. and Australia included provisions to combat the financing of terrorist activities, which can be an international effort, they did not include language stating that the intention of the legislation provides the ability to expand efforts internationally.

Another interesting difference between these legislative bodies is Australia included the definition of a terrorist act in one of its amendments. This is attributable to the fact that Australia has not historically experienced terrorist attacks on its soil. Prior to 9/11, they did not have terrorist acts defined in legislation. These are the glaring differences in legislation from nations which view themselves as being allies against the perpetrators of the 9/11 attacks.

**THE CIVIL LAW LEGAL TRADITION**

The civil law nations in this study offer a sample of anti-terrorism legislation which varies significantly. Because of major loopholes in legislation, Germany and The Netherlands were both locations used to plot the attacks of 9/11. Germany had anti-terror legislation in place prior to 9/11 and France possessed strong anti-terror legislation due to social unrest in the 1990’s. The Netherlands had next to nothing.

When looking at Germany’s response, it is more like the response of the common law nations than that of the civil law nations in that Germany’s legislative response to 9/11 was enacted within four months of the attacks on 9/11 and came in the form of two amendment packages amending pre-existing criminal code. Also, these packages increased investigative

---

powers for law enforcement, streamlined communication between law enforcement agencies, incorporated new technology to increase border security, and terrorist prosecution was unhindered to a certain extent. These features bear similarity to those of the Common Law nations’ legislation. German government deemed it necessary to increase investigative powers and curtail financing for terrorist activities by giving the proper authorities greater access to personal data of those persons and groups believed to have connections to terrorist activities. It may be assessed that German authorities viewed the façade of religion as a way to hide threats to German security. In order to monitor those who use religion and immunity as a shield for breeding terrorist intent, Germany removed immunity of investigation from religious groups.

On 9/11 France possessed counter terror legislation which was some of the strongest anti-terror legislation in Europe. However, France acknowledged the terrorist threat and adjusted accordingly. French legislators created amendments which expanded investigative powers (to private vehicles), communication monitoring, and heightened security in public places. It can be assessed that 9/11 did not influence France to amend their criminal code in a more significant manner because leadership in France deemed their legislation to be sufficient in order to prevent terrorist attacks within its borders. This assessment can be made due to more extreme legislative measures made in the wake of social unrest in France during the Fall of 2005.

Despite terrorists using their nation as a hub for developing terrorist activities, The Netherlands did not respond to 9/11 by creating new anti-terror legislation. They did not make changes to criminal code despite the fact that they possessed weak anti-terror measures when compared to Germany, France, and other nations within this study. Similar to France, it took an event on its home soil for The Netherlands’ legislators to respond with more extensive anti-terror legislation. It may be assessed that despite terrorists’ willingness and ability to take advantage of civil liberties, The Netherlands legislators did not believe adjustments would prevent attacks. Overall within this legal tradition, Germany responded to 9/11 with the most extensive legislative effort while France viewed it’s anti-terror legislation as needing only minor amendments to prevent further terror attacks. The Netherlands did nothing until minimally altering their almost non-existent anti-terror legislation when they directly encountered terrorism within their borders.
THE SOCIALIST LAW LEGAL TRADITION

The existing information on the three nations in the Socialist law legal tradition sample was sparse. It is apparent that Russia and Poland did not respond with anti-terror legislation as a direct result of 9/11. Russian anti-terror legislation existed prior to 9/11 due to an ongoing domestic conflict with Chechnya. It can be assessed that Russian authorities viewed their legislation as suitable to prevent terrorist attacks within their borders. This assessment can be made because a major increase in anti-terror legislation in Russia did occur after terrorists took over a school in Beslan and a massacre ensued. This is similar to the U.S. in the Common Law tradition, and the Netherlands and France in the Civil Law tradition.

Within the Socialist tradition China had the most extensive legislative response to 9/11 despite the fact they had anti-terror legislation prior to 9/11. China’s legislative response to the 9/11 attacks amended it’s existing criminal code in a manner which effectively increased punishments for those organizing, funding, leading, or participating in terrorist organizations. The threat which China intended the legislation to immediately target was a domestic separatist sect in the western region of China but can be used against anyone who does not abide. A major concern for Chinese legislators was the separatist organization’s ability to obtain and utilize chemical, poisonous, and radiological agents. Their concern is displayed by the new punishments established for activities including false statements and hoaxes associated with these agents. It may be assessed that although China may not have viewed them as an immediate target of al-Qaeda but the importance of legislative reform was appreciated and loopholes in legislation were addressed reducing the assessed risk.

Poland’s efforts were minimal at best. Legislation existed prior to 9/11 which made certain activities associated with terrorism illegal. However, the legislation is vague. The Gene Law of October 2001, and the Law of 21 June 2002 is considered anti-terrorism legislation but the focus of the legislation is not dedicated to combating terrorism. The Gene Law gives legal basis for regulating modified organisms containment, release, and transport, while the Law of 21 June 2002 regulates civilians’ use of explosives. Obviously terrorist’s tactics may include these elements should they be allowed to obtain them. These laws are very specific in nature when compared to China and nations in other legal traditions. It may
be assessed that Poland’s view and opinion of its anti-terror legislation was minimally changed by the attacks on 9/11.

**THE SACRED LAW LEGAL TRADITION**

Evidence gathered for this study suggests that the Sacred Law legal tradition is the tradition which collectively did the least in terms of anti-terror legislation reform post 9/11. Saudi Arabia made an effort to show the world that they rejected terrorism by adopting UN Security Council Resolution 1373 following the attacks of 9/11. They also subsequently adopted reforms to prevent terrorism funding. However, the anti-terror legislative effort was minimal. Saudi Arabia has long been accused of exporting terrorism and is associated with the spread of its brand of extreme Shari’a. Sudan made no effort to reform its existing criminal code and the assessment is that the unstable political and economic climate in the nation had a direct impact on any possible effort. Also, Sudan is a nation with powerful internal political influences that desire the imposition of extreme Shari’a on the citizens of Sudan and the population throughout the world. This association is in direct conflict with anti-terror legislation.

The association with extreme Shari’a is the glaring similarity between Egypt and Sudan. The assessment is that powerful political influences with ties to extreme Shari’a and/or terrorism in each nation prevent legislators from enacting legislation which may hinder terrorist operations and ultimately prevent the ability to spread extreme Shari’a. Although each nations association with extreme Shari’a may have contributed to a lack of anti-terror legislation, it cannot be assessed that it is more difficult to pass legislation in the Sacred Law legal tradition than other legal traditions. It can be assessed that the motivation to develop anti-terror legislation never existed in these nations and the necessary anger and disgust never materialized to create momentum to adopt and enforce legislation. This study suggests it is near impossible to enact anti-terror legislation where there is an association between the government of a nation and an extreme brand of Shari’a.

**HYBRID LEGAL TRADITIONS**

Egypt and Japan had varying levels of response to 9/11. It can be assessed that the differences are attributable to the historical infrequency of each nation experiencing terrorist
activity. Historically, Egypt has encountered frequent terrorist attacks from domestic groups and foreign influences. Before 9/11, legislation was in place to target the armed Islamic movement to decrease terrorist activity within Egypt’s borders. Emergency Law No. 162 increased arrest and detention authority for law enforcement; terrorism was well defined, and association with certain activities was outlawed and characterized as terrorist related. As a result, Egypt was not in a position where they had to scramble to create a major piece of anti-terror legislation. What they did was target the funding and financing of terrorist activities through the creation of the Promulgating Anti-Money Laundering Law. This law allowed certain activities to be prosecuted as terrorist activity based on the financial provisions which enabled terrorist activity to occur. Based on Egypt’s level of legislative response to 9/11, Egypt believed the legislation and authority in place was adequate except for the ability to combat financing of terror.

Historically Japan has not consistently experienced terrorism. Despite this difference with Egypt, Japan had a similar legislative response in that they too targeted terrorist financing. However, Japan had a much more extensive legislative response. It can be assessed that their response was due to the lack of experiencing terrorist attacks. Japan did not create a comprehensive bill, but amendments to the Foreign Exchange Law, the Foreign Trade Law, and the Anti-Terrorism Special Measures Law (ATSML) went so far that the amendments created constitutional dilemmas regarding the deployment of forces. Japanese legislators saw it necessary to be able to deploy its forces under circumstances not previously allowed. These constitutional dilemmas required Japan to take similar action as the U.S. and the United Kingdom and place sunset clauses in the legislation.

There are varying levels of legislative response to 9/11 within the legal traditions. Some nations believed their legislation to be inadequate to prevent terrorist attacks and responded by amending criminal code in extreme fashion. Major legislative responses are best represented in the Common Law legal tradition in which each nation in this study made significant legislative changes. As a result of prior experience combating terrorism, nations like France, Egypt, and Russia believed their anti-terror legislation to be sufficient to prevent terrorist attacks. Out of these nations, Egypt did make minor changes in order to combat the financing of terror. Minor changes are characteristic of nations that believed their anti-terror legislation to be sufficient to prevent imminent attack. Most nations within this study made
minor legislative changes in areas where they believed their nation was left vulnerable. Nations like Australia and Japan have not historically dealt with terrorist activity so they possessed very little anti-terror legislation on 9/11. Their responses may be viewed as being more comprehensive due to this fact. The Netherlands, Russia, Poland, and Sudan are nations which can be viewed as having no legislative response to 9/11. Amongst the nations which did make changes, the most common topics addressed by nations enacting new legislation included the targeting of finances; and the increased authority of law enforcement in the areas of surveillance, investigation, and detention.
CHAPTER 6

CONCLUSION

The purpose of this study is to allow for the analysis of anti-terrorism legislation across national and legal tradition lines. This analysis is important because the GWOT is an international effort with implications across the globe. This study offers analysts the ability to make assessments regarding legislative actions a nation may take following a terrorist attack. Nations with different legal traditions have been thrust into a confrontation that can require new legislation or an adjustment of current legislation, in order to thwart terrorist activities and bring those responsible for the activities to justice. Legal traditions guide and influence the way nations develop, approve, and enforce legislation. Operating within a certain legal system, nations comply with unique cultural and historical factors when developing, approving, and enforcing new legislation. Although this study is not an all encompassing evaluation of anti-terror legislation, the methods and data used allow analysis that can be used to identify nations, legal traditions, and their anti-terror legislative response to 9/11.

Using an example developed by Damner and Fairchild, this study focuses on the four main legal traditions, a fifth hybrid system, and thirteen model nations. The model nations are used to represent their legal tradition’s ability and proclivity to produce or alter legislation in order to combat terrorism. Several nations produced large legislative works comparable to the PATRIOT Act. Other nations made smaller alterations to legislation that they viewed as adequate for the “current” threat. The post-9/11 initial major legislative efforts of the model nations were used in order to draw characteristic comparisons, not to determine which response was correct. In order to draw comparisons, this study needed to identify and define each legal tradition, as well as the cultural and historical influences that have affected its development and ability to produce anti-terror legislation.

It is apparent that the model nations in the Common Law legal tradition produced the most encompassing legislative acts in response to 9/11. The topics included within each nation’s legislation were generally similar to its counterpart within the legal tradition. An assessment may be made that these democratic nations, as part of the westernized civilization
directly targeted by radicalized fundamentalists, had governments stable and motivated enough to effectively produce the required tools for a proactive law enforcement response in order to combat terrorism. Ironically, they were able to make these legislative responses because the ability to create such legislation exists, but in the wake of 9/11 they were of the mindset that their anti-terror legislation was inefficient in preventing further attacks. Thus, the U.S. created the PATRIOT ACT, the United Kingdom created the Anti-Terrorism Crime and Security Act, and Australia created multiple amendments to its criminal code. When compared to other legal traditions, the Common Law legal tradition had more nations with major legislative responses. This may be attributable to the fact that they are historical allies and one nation was the direct recipient of the 9/11 attacks. It can also be assessed that nations abiding by the Common Law legal tradition principles are able to make extensive anti-terror legislative efforts when deemed necessary. These efforts include sunset clauses which protect against the abuse of civil rights.

The Civil Law legal tradition in this study offers the greatest internal variation in terms of legislation pre-9/11 and post 9/11 response. France had strong anti-terror laws, Germany’s were weaker and The Netherlands’ were non-existent. This exemplifies a similarity to the Common Law legal tradition in that nations are enabled to create large bodies of anti-terror legislation. France’s strong anti-terror legislation as a result of violence in the 1990’s is a prime example of strong anti-terror legislation. When compared to the Common Law legal tradition, the nations in the Civil Law legal tradition did not respond with the same large legislative responses. They made minor changes to pre-existing criminal code predominantly increasing police investigative powers, electronic surveillance capabilities, and monitoring financial transactions. It can be assessed that the Civil Law legal tradition allows for quick legislative response, as Germany’s response showcases, and this legal tradition encourages the ability to possess strong anti-terror legislation as France’s legislation on 9/11 display’s. The ability of the Civil Law legal tradition to pass strong anti-terror legislation is a similarity with the Common Law system.

The nations of the Socialist legal traditions did very little to alter their legislation. China made changes in an effort to prevent separatist movements from within its nation. Their effort can be viewed as being the most extensive anti-terror legislation effort from within these two nations. Poland responded with legislation that could be used to combat
terrorism but was not written with the sole purpose of defending against terrorism. Russia
had strong laws which they developed as a result of their conflict with Chechnya, but after an
attack in their nation responded with more stern legislation. It may be assessed that nations
within this legal tradition have the ability to create strong anti-terror legislation when they
believe they are a threat. The tendency within this legal tradition is to respond when a threat
from within is present, or an attack against them is made. Proactive, preventive legislation
may be made as displayed by China’s response and Russian legislation created after the
Beslan school massacre. As little as the nations of the Socialist Law legal tradition did after
9/11, they did more than the nations of the Sacred Law legal tradition. Saudi Arabia
complied with the U.N. Security Council by adopting security resolution 1373 and creating
legislation to combat terrorist funding. Sudan did nothing. The assessment here is that an
association with extreme Shari’a will hinder a nation’s ability to create anti-terror legislation
since extreme Shar’a is often the root of terrorist attacks. Sudan’s civil war and weak central
government prevent them from doing almost anything.

The Hybrid nations in this study offer varying degrees of response. Japan responded
to 9/11 with a more comprehensive plan while Egypt, as a result of experiencing terrorism
from within, possessed strong anti-terror legislation and thus had to make minor adjustments.
It is worth note that Japan’s relationship with the Common Law nations may have had an
influence on their response to 9/11. They made adjustments in order to better prevent and
respond to terrorist attacks utilizing their restricted armed forces. Egypt and Japan followed
suit with many of the nations that made adjustments and enacted legislation to prevent the
financing of terrorist activities.

Assumptions cannot be made that extensive legislative changes mean nations are
better equipped than other nations to combat terrorism. Legislative responses suggest that
nations are better equipped to combat terrorism than they were prior to the legislation being
passed into law. The predominant response from nations in this study was to alter existing
current criminal code in order to include certain activities as being terrorist related, and to
prevent funding for terrorist activities. When considering all nations, legal traditions, and
legislative efforts identified in this study, it becomes apparent that there is no correct, proper,
or required level of legislative response. The need, ability, and willingness to alter legislation
in order to combat terrorism depend on a multitude of factors. These factors include
historical, cultural, and economical factors and political and international alliances. Despite each nation’s differing level of legislative response to 9/11, this study makes it apparent that, retrospectively, nations around the world identified themselves as being vulnerable to terrorist activity. The question that this study cannot answer is, after making legislative efforts, are these nations less vulnerable now?


