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Securing the European homeland:

The EU, terrorism and homeland security

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The Venusberg Group

The Venusberg Group is a high-level network of security and defense experts from across Europe brought together by the Bertelsmann Stiftung. The group was formed in early 1999 following a meeting that took place at a hotel on the Venusberg in Bonn, close to the Petersberg where in 1992 European leaders established the basis for EU defence. Since then meetings have frequently been held to examine the future of EU foreign, security and defense policy. Two Venusberg Reports have been released thus far: "Enhancing the European Union as an International Security Actor. A Strategy for Action" (2000) and "A European Defense Strategy" (2004). The Venusberg Group now prepares a third report which will put forward a "European Foreign Policy Strategy".

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Introduction

The end of the East-West antagonism not only paved the way for European unity – it also ushered in new challenges to European security. On top of the list ranks international terrorism which has demonstrated its destructive potential in attacks such as "9/11" (New York, Washington), "3/11" (Madrid) and "7/7" (London). Also high on the threat list is organized crime which inflicts damage on economies as well as on people (e.g. trafficking, prostitution, drugs). Furthermore, an increasing amalgamation of terrorism and organized crime can be observed. For instance, international terrorism is financed to a certain degree by money originating from criminal businesses, and criminals find good customers in terrorists willing to purchase any item which they deem necessary for their actions (e.g. passports, explosives). By turning the single market into a single market of crime, terrorists and criminals seem to make better use of the boundless opportunities the European space provides than European states do.

The European Union is quite aware of the dangers international terrorism and organized crime pose. Therefore it is not surprising that the European Security Strategy lists these two threats among the five key challenges to European security. What might come as a surprise, though, is the fact the EU and its member states arrived at both quick and substantial responses to these key challenges. In the wake of the Madrid bombings, for example, the Declaration of Combating Terrorism, the update of the EU Action Plan to Combat Terrorism and the Hague Program were adopted. The recent attacks in London also triggered a vast array of proposals ranging from the traceability of explosives to cross-border police cooperation to the retention of communication data.

Despite all the proposals, plans and activities, European answers to terrorism and organized crime still exhibit shortcomings. The same holds true for homeland security. Thus far, European actions were mainly event-driven and therefore reactive; a clear-cut strategic response of the Union is still to emerge. Besides, as shown by the demands which followed the London attacks, there are also several quite important areas where additional action is required. Furthermore, there is still room for enhancing cooperation between the various services and agencies dealing with counterterrorism, law-enforcement and consequence management. Last but clearly not least, there is a gap between the adoption of actions on the European level and their implementation on the national level due to which some of the agreed mechanisms and instruments such as the European Arrest Warrant cannot unfold their potential.

The following contributions provide detailed discussions of the European Union's activities in the fields of counterterrorism, the fight against organized crime and homeland security and put forward suggestions on how to further improve Europe's capabilities in these three areas:

Daniel Keohane examines the Union's activities in the field of counterterrorism. He describes several major steps the EU has taken in this respect over the last couple of years as response to the attacks in New York/Washington and Madrid. He also points out several shortfalls and suggests measures to enhance EU's ability to cope with terrorism.

Jörg Monar discusses the potential benefits supranational, i.e. European police and in-

telligence institutions might have for Europe's ability to fend off terrorism and organized crime as well as the problems associated with such institutions.

John L. Clarke describes the measures the European Union has initiated concerning homeland security and outlines promising developments as well as pitfalls hampering the further development of EU's capabilities.

Klaus Brummer takes up some of the key findings of the contributions and outlines three crucial issues which should deserve closer scrutiny in the future discussion about Europe's approach to counterterrorism and homeland security.

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The EU and international terrorism*
Daniel Keohane

Introduction: A new challenge for EU security policy

EU officials often point out that, unlike other international organizations, the EU offers a unique mix of foreign policy instruments and experiences. For instance, the Union can organize aid workers, judges, civil administrators, police and soldiers for the same operation. The best example of this 'holistic' approach to security is the EU's current presence in Bosnia, which mixes peacekeeping with political and economic reconstruction.

The main operational idea behind the EU foreign minister position, contained in the now 'frozen' constitutional treaty, was to further develop this type of cross-institutional coordination. The foreign minister would have resulted from a merger of two existing posts: that of the Council's High Representative for foreign policy, currently held by Javier Solana, and that of the Commissioner for external relations, now Benita Ferrero-Waldner. The aim of this merger was to create a clearer 'persona' for the EU on the international stage, and to ensure that the EU better coordinated the two sides of its foreign policy: diplomacy and security (largely the responsibility of the Council) and foreign aid (managed by the Commission).

The threat of international terrorism raises some new operational and institutional challenges for the EU's security policy: how to join up its foreign, defense and internal security policies.[1] The European Security Strategy, a document agreed by EU governments in December 2003, says that: "Europe is both a target and a base for such terrorism… Concerted European action is in dispensable". The strategy makes a particularly pointed reference to the danger of terrorist groups using biological, chemical or even nuclear bombs on European soil. The document goes on to recommend that the EU should take a broad approach to dealing with terrorism, as "none of the new threats is purely military; nor can any be tackled by purely military means… Dealing with terrorism may require a mixture of intelligence, police, judicial, military and other means".[2]

Since terrorist bombs killed 191 people in Madrid in March 2004, EU politicians have argued strongly in favor of greater European cooperation in fighting terrorism. In the EU terrorists – but not policemen – can move easily across national frontiers. Furthermore, al-Qaeda-style cells operate across the globe and may attack anywhere in Europe, and on a much greater scale than long-established European terrorist groups such as ETA and the IRA. Thus the argument runs that the EU should take on a greater role in helping the member-states to monitor and prevent cross-border terrorist activities in Europe and beyond.

International terrorism is not the only security challenge facing EU governments. They are currently training Iraqi security forces, keeping the peace in the Balkans, Afghanistan and parts of Africa, and trying to convince Iran not to build nuclear weapons. EU governments are also concerned about failing states, such as Sudan and Congo, and the problems posed by organized crime. However, as the Madrid attacks demonstrated, terrorism – in particular radical

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* This report was finalized shortly before the London attacks occurred (the editor).
[1] These are more formally known as the Common Foreign and Security Policy (CFSP), the European Security and Defence Policy (ESDP) and Justice and Home Affairs (JHA).
[2] European Council, Brussels, December 12 2003, "A secure Europe in a better world – European Security Strategy". The document was also published by the EU Institute for Security Studies in January 2004.

Islamist terrorist groups – remains a serious threat in Europe and beyond.

One nightmare scenario for European security officials would be to discover, after a terrorist attack, that another EU government had crucial information about the suspected attacker. For instance, Mohamed Daki, a German-based Moroccan national, knew members of the 'Hamburg cell' that carried out the September 11, 2001 attacks in the US. The German police questioned Daki three weeks after the 2001 attacks, but they could not find any evidence to arrest him, and they lost track of him. In April 2003 the Italian authorities arrested Daki in Milan for trying to recruit terrorists to fight Americans in Iraq. But the Italians were unaware of the German intelligence about Daki until they arrested him. Furthermore, the Italians discovered that Daki was planning to leave Milan for another EU country when they eavesdropped on a call to him from a man in Syria. The caller informed Daki that he had been detected by the Italians and told him to "move yourself to France and await orders".[3]

In the aftermath of a major terrorist attack, it is also conceivable that the 25 EU governments would seal their national borders. Currently, 13 EU member-states plus Norway and Iceland form the vast passport-free travel zone known as the 'Schengen area', and most of the remaining EU members plan to join it in the coming years.[4] However, if Paris, for example, suffered a devastating terrorist attack, similar to the 2001 attacks in New York – or worse a nuclear, biological or chemical attack – there is every reason to assume that the French government would immediately close its borders, just as the US did in 2001. Other EU governments would be likely to follow suit. In that case terrorism

would have undermined one of the core rights of EU membership, the freedom of movement across the Union.

There are many things the EU can do, and is doing, to help member-states counter terrorist groups. But the EU's ability to tackle terrorism is limited for at least two reasons. First, the EU is not a national government. It cannot arrest or prosecute terrorists, nor can it use spies or satellites to track them. Local policemen and national intelligence officers carry out most counterterrorism work, such as infiltrating cells and arresting suspects. During cross-border investigations, governments conduct most of their work bilaterally, rather than at the EU level. National intelligence services are often loath to share information with more than one other government.

Second, the EU's difficulties are compounded because 'counterterrorism' is not in itself a defined policy area. In its broadest and fullest sense 'counterterrorism' spans a number of policy areas. It requires action from every government department, not only from those charged with law enforcement, border control, and foreign and defense policy. Finance ministries need to track terrorist funding, health ministries should have stockpiles of vaccines, environment ministries should protect infrastructure, and education ministries should fund research into Islamic groups. National governments find it hard to coordinate their own ministries and agencies involved in counterterrorism. Trying to coordinate the collective efforts of 25 governments at the EU level is exponentially more difficult.

This paper focuses on the internal security, foreign and defense policy parts of the EU's anti-terrorism efforts. The paper does not

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[3] Tim Golden, Desmond Butler, and Don Van Natta Jr., 'Terror suspects slip through Europe's jurisdictional cracks', International Herald Tribune, March 23 2004.
[4] Britain, Ireland and the ten member-states that joined the EU in 2004 are not yet members of the Schengen area.

discuss other aspects of Europe's fight against terrorism, such as the role of business, education, and tackling social exclusion. In addition, the paper does not address the crucially important topic of how governments should balance human rights and security.

There is a paradox in the EU's role in counter-terrorism. On the one hand, the governments agree in principle that cooperation at the EU level is a good thing because of the cross-border nature of the terrorist threat. On the other, they are slow to give the Union the powers (such as investigation and prosecution) and resources (such as spies and money) it would need to be truly effective. This is because security policy – especially protecting citizens – goes to the core of national sovereignty, and governments are reluctant to give the EU powers that could interfere with their existing laws and national security practices. The EU is working hard to coordinate national anti-terrorism policies, but it is only just starting to pursue its own counterterrorism policies.

1. The EU's role in counter-terrorism

EU member-states first started working together on terrorism in 1979, when they established the Police Working Group on Terrorism. The group brought together senior police officials to compare methods for combating the IRA in Britain and Ireland, the Red Brigades in Italy, and the Baader Meinhof gang in Germany. The growth of cross-border organized crime and soccer hooliganism in the 1980s further accelerated pan-European police cooperation. Member-states made police cooperation a formal EU policy area in the Maastricht treaty of 1991.

After the 2001 attacks in the US, EU governments directed more resources at the fight against terrorism. They created an EU-wide arrest warrant, agreed on a common definition of 'terrorism' and a common list of terrorist groups, and drafted rules for joint operations between national police forces. Governments gave Europol, the EU police agency, extra resources and set up a counter-terrorism task force consisting of national police officers. The governments also created Eurojust, the EU's nascent law enforcement agency, to help national magistrates work together on cross-border investigations. And the 'European External Borders Agency' in Poland is about to start its work to encourage cooperation between national border guards.

In November 2004, the EU's interior and justice ministers, who work together in the justice and home affairs (JHA) council, agreed on a four-year plan known as the 'Hague program'. The plan covers all aspects of their security and justice cooperation, which should be implemented by 2008. A number of measures contained in the Hague program should prove useful in the fight against terrorism. For example, EU governments have agreed that by 2008 a national police officer has the right to access information held by law enforcement agencies in other countries. The governments have also asked the Commission to draft proposals for sharing air passenger data, and for improving the security of storing and transporting explosives and chemicals. Furthermore, the interior ministers decided that they "should have the leading role" in the EU's fight against terrorism, although they intend to take "into account" the views of EU foreign ministers.[5]

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[5] European Council, Presidency Conclusions, November 4/5 2004. http://ue.eu.int/uedocs/cmsUpload/EU_4.5-11.pdf

In March 2004, only three days before the Madrid bombings, the EU's foreign and security policy chief, Javier Solana, finished an internal report on the EU's counterterrorism efforts. The report identified three major shortfalls: some member-states were not implementing EU agreements, such as the common arrest warrant; the EU lacked sufficient resources to play a meaningful role in counterterrorism; and coordination between EU officials working on law enforcement, foreign and defense policies was poor.

In the aftermath of the Madrid attacks, with the approval of the member-states Solana appointed Gijs de Vries as the EU's 'counter-terrorism coordinator'. However, de Vries has virtually no powers, apart from that of persuasion. He has no budget and cannot propose legislation; nor can he chair meetings of national justice or foreign ministers to set the anti-terrorism agenda. His first job is to define the EU's counterterrorism role and to encourage greater coordination of national policies at the EU level. For example, the member-states and the Council secretariat have drawn up an extensive list of over 150 measures that the governments and EU institutions should undertake, known as the EU counterterrorism 'action plan'.[6] De Vries audits the progress of these measures and tries to cajole the member-states to implement them, but he cannot force the governments to act. For example, the final country to implement the common arrest warrant, Italy, only did so in April 2005, even though it was agreed in late 2001. A senior EU official told this author that de Vries faces an uphill struggle because "only ten of the 25 governments take his role seriously and listen to what he says". Despite these drawbacks, de Vries has successfully pushed the EU into

developing some new counterterrorism policies. For example, the EU has adopted new laws to curb terrorist funding and is pushing third countries to sign up to United Nations conventions for improving international legal cooperation.

In addition, de Vries should encourage greater cooperation between the Commission (which drafts legislation on a range of measures such as tackling terrorist financing) and the Council (where national interior and foreign ministers meet to decide EU policies). Commission officials in the justice and home affairs directorate already try to coordinate the other Commission directorates that have a role in counterterrorism. These range from the internal market directorate, which proposes legislation on curbing money laundering, to the research directorate, which finances the development of advanced security technologies like observation satellites. But some Commission officials are suspicious of de Vries, since he works for the national governments in the Council. They fear that, as an 'agent' of the governments, de Vries will try to limit the Commission's role in EU counterterrorism efforts.

The institutional obstacles to effective EU counterterrorism policies do not stop there. A plethora of other institutions and committees have a role in different aspects of EU counter-terrorism policies, and de Vries should also coordinate these. They include not only Europol and Eurojust, but also the terrorism working group (which brings together national interior ministry officials), a foreign policy 'working group on terrorism' (composed of national foreign ministry officials) and the police chiefs' task force. A UK House of Lords report, published in March 2005, summed up the enormous challenge facing de Vries: "In

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[6] European Council, 'EU plan of action on combating terrorism - Update', December 2004.
http://ue.eu.int/uedocs/cmsUpload/EUplan16090.pdf.

an area where clarity of roles and responsibilities is vital, we found the structures within the EU for combating terrorism complex and confusing."[7] The report recommends that de Vries should not only coordinate the whole EU system, but that he should also propose how to rationalize and streamline the existing committees and institutions.

The House of Lords points out that the proliferation of EU committees could have been prevented if Europol had established itself as the lead institution in EU counter-terrorism efforts. But Europol has not been able to claim such a lead role, in part because some national police forces, and all national security and intelligence services, do not share information with Europol. Nor do the EU governments take Europol's role seriously enough. For instance, Europol did not have a director between June 2004 and February 2005, due to a dispute between France and Germany, both of which wanted to have 'their' candidate appointed.

To help overcome its institutional complexities, the EU should create a cross-institutional body, a European Security Committee (ESC). The primary role of the ESC would be to advise European heads of government on security matters. The chairmanship of the ESC should alternate between the EU's High Representative for foreign policy and the chair of the JHA ministerial council. An alternating chair would guarantee that ESC members addressed the concerns of both internal and external security decision-makers. The other permanent members of the ESC should include the counterterrorism coordinator, the chief of the EU military committee, the director of Europol, the justice commissioner and the head of the EU's Situation Centre. The chairman could ask other officials to attend, such as national intelligence chiefs or the aid commissioner, when relevant. The ESC should meet at least monthly, and report to the European Council, the quarterly summits which bring together EU heads of government.

The ESC would identify and quantify threats, and suggest responses. If EU heads of government received the same threat assessments, they would be more likely to agree on a coordinated response. For example, the ESC could provide the European Council with a long-term anti-terrorism strategy (see next chapter), drawing upon the full resources of the EU and its member-states. Or the ESC could focus on more specific issues, like the movement of terrorists in and out of EU territory via the Balkans. But the ESC would not employ 'euro-spies' to gather intelligence and would rely on the EU's Situation Centre for information. The ESC would not be a panacea, but it would make it easier for the EU to coordinate its internal and external security policies.[8]

The EU does not, and probably never will, run its own counterterrorist operations. It is the member-states alone that carry out anti-terrorist operations. But measures such as the common arrest warrant show that the EU can help the governments in their efforts to identify, extradite and prosecute terrorists. Just as importantly, the EU encourages smaller groups of governments to cooperate more closely on joint investigations and prosecutions. For example, in 2004 France and Spain set up a combined counterterrorism unit, composed of judges and policemen, to run joint operations. The British and Irish governments have long experience of joint operations tracking IRA and loyalist terrorist groups, and signed an agreement in February 2005 to deepen their anti-terrorism collaboration.

[7] House of Lords, European Union Committee, 'After Madrid: the EU's response to terrorism', March 2005.
  http://www.publications.parliament.uk/pa/ld200405/ldselect/ldeucom/53/53.pdf.
[8] Daniel Keohane and Adam Townsend, 'A joined-up EU security policy', CER Bulletin, December 2003/January 2004.

This type of inter-governmental cooperation does not only take place on a bilateral basis. Since May 2003, the interior ministers from the five biggest EU member-states (Britain, France, Germany, Italy and Spain) have met regularly to discuss their counterterrorism efforts, in the so-called G5 group. Other multinational groupings include the Benelux countries, the 'Salzburg group' (Austria, the Czech Republic, Poland, Slovakia and Slovenia; Ukraine participates as an observer), and the Baltic Sea task force (Denmark, Estonia, Finland, Germany, Iceland, Latvia, Lithuania, Norway, Poland, Russia, Sweden). And a number of Mediterranean countries have started pooling their coastguards and have held joint sea exercises, not only to track terrorists, but also drugs, weapons and people smuggling gangs. The EU rightly encourages these types of flexible arrangements to encourage better cross-border cooperation on the ground, rather than solely trying to hammer out general principles between the 25 governments in Brussels.

2. An EU counterterrorism strategy

The EU has been slow to build an effective institutional infrastructure for counter-terrorism and EU governments have been sluggish at implementing parts of the counterterrorism action plan. But what the EU needs most of all is a clear counterterrorism strategy to guide and inform the work of the disparate EU institutions and the member-states. The EU's plethora of committees and its action plan of 150-plus measures are useful. But the institutions will not have much affect over the long-term unless they work towards the same well-defined objectives. The European Council, which brings together the heads of EU governments, should take the lead and agree on an EU counterterrorism strategy as soon as possible.

As a first step EU governments need to agree on the nature of the threat from Islamist terrorism. Are most Islamist terrorists part of the al-Qaeda network, aiming to establish a new Muslim caliphate? Or are some of them motivated by more specific local grievances, such as corrupt pro-Western regimes in countries such as Egypt, or a perception that some EU governments are anti-Muslim? Philippe Errera, the deputy director of planning at the French foreign ministry, argues that Europe and the US face three overlapping 'circles' of threat from Islamist terrorism.[9] The first circle consists of the core members of the al-Qaeda network, its leaders – like Osama Bin Laden – and its members, such as those who carried out the attacks of September 11 2001. Western governments cannot, and should not, negotiate with these people. They should concentrate solely on capturing or eliminating them. However, Errera points out that even if all core al-Qaeda members were captured, the Islamist terrorist threat will not disappear. He argues that the world is entering into a 'post-al-Qaeda' phase of terrorism. In a similar vein, Jason Burke, a British journalist, asserts that "al-Qaeda is more lethal as an ideology than as an organisation".[10]

In the second circle are ethno-nationalist groups in places such as Kashmir, Chechnya and Lebanon. These groups share some of al-Qaeda's Islamist ideology but their primary objectives are local rather than global. Some of them have already established contacts with al-Qaeda (the Kashmiri Lashkar-e Taiba and some Chechen nationalists), while others may do so in the future (for example,

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[9] Philippe Errera, 'Three circles of threat', Survival, Spring 2005.
[10] Jason Burke, 'Think again: al-Qaeda is a global terrorist organisation', Foreign Policy, May/June 2004.

Hezbollah in Lebanon and the Palestinian Islamic Jihad). Aside from monitoring possible links between al-Qaeda and these local groups (such as joint training camps or weapons trading), western governments should concentrate on encouraging local solutions to each conflict, to ensure that these groups do not 'go global' with al-Qaeda's help. Some European governments have broad experience of dealing with ethno-nationalist terrorists, such as ETA in Spain and the IRA in Ireland and Britain. They have developed a three-pronged strategy designed to disrupt the terrorists, encourage the political wings of these groups to enter into regular politics, and address the underlying issues that gave rise to the terrorist groups. These strategies should be useful models for the governments involved in these conflicts.

The third circle, Errera says, is the least understood and potentially the most dangerous. It consists of freelance 'jihadists': Islamist terrorist groups or individuals, based any where in the world, who may or may not be inspired by Bin Laden, and may have no direct connection with the al-Qaeda network. Errera suggests that this type of group was responsible for the Madrid bombings. The former director of the CIA, George Tenet, described this phenomenon to the US Senate Armed Services Committee in 2004: "[They] are redefining the threat we face. They are not all creatures of Bin Laden, and so their fate is not tied to his. They have autonomous leadership, they pick their own targets, they plan their own attacks."[11]

No one knows for sure how many terrorists belong to such jihadist groupings; the numbers could amount to a few hundred or many thousands. An Italian magistrate told this author: "These types of terrorists have no set profile. They are often European nationals, well-educated, have no criminal record, do not practice a religion; nor have they given any prior signal that they intend to carry out terrorist acts." The main aim for Western governments should be to ensure that these groups do not grow significantly from thousands to tens of thousands. To achieve this, EU governments need to find answers to two key problems: how better to integrate Muslims into European society; and, along with the US, how to encourage democratic reform throughout the Middle East. Obviously, neither social integration nor Middle Eastern democratic reform will take place quickly or easily. Moreover, governments need to emphasize that social integration and democratic reform are worthwhile goals on their own merits and should not be pursued solely as part of a counterterrorism strategy.

During the Cold War, the basic idea behind the US strategy for countering Soviet power was 'containment', and its nuclear weapons strategy was based on the concept of 'deterrence'. Similarly, based on Errera's threat assessment, the overall aim of an EU counterterrorism strategy should be 'isolation'. The EU should try to isolate potential terrorists from their supporters, supplies and targets – whether they are al-Qaeda members, ethno-nationalists or jihadists – both in Europe and around the world. EU governments, therefore, need to develop a multi-faceted long-term approach – mixing political, judicial, police, diplomatic and even military means – at home and abroad. A strategy of isolation should have three tactical elements: integration; investigation; and insulation.

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[11] Cited in Errera, op cit.

⇨ **Integration**

The EU is one of the most successful attempts to bring together people from different countries. However, the EU does not tell its member-states how to socially integrate their disparate citizens, nor should it. EU governments are already well aware of the difficulties of social integration, particularly – but not only – assimilating growing numbers of Muslim citizens in some EU countries such as Austria, Germany, France and the Netherlands. However, the EU can encourage countries to learn from each other's experiences. In addition, EU policies can play a small symbolic role in helping to reduce the perception of alienation among some European Muslims. The eventual accession to the EU of Turkey, Bosnia-Herzegovina and Albania, countries with large Muslim populations, would show that the EU is not anti-Muslim. It would also prove that many predominantly Muslim countries are well-functioning, tolerant democracies – a precondition for EU entry.

In its foreign policy, the EU should also seek to reduce the support base for Islamist terrorists across the Muslim world, especially in the greater Middle East, by encouraging the spread of democratic, economic and legal reforms. The EU has been very good at inducing legal, democratic and economic reforms in countries that want membership. It should try to use a similar approach with Middle Eastern countries, which will not join the Union, but have close trade, aid and diplomatic links with the EU.[12] The EU is already trying to foster greater cultural understanding between Europe and the Muslim world. For example, the EU is talking to Pakistan and Indonesia about initiating a 'dialogue among religious communities' – a

conference has been scheduled with the Indonesian government for July 2005. The EU should go further in supporting this dialogue. For instance, the EU could fund academic exchange programs between European universities and those in the Muslim world, modeled on the hugely successful 'Erasmus scheme' (a student exchange program between European universities).

⇨ **Investigation**

The EU should do more to encourage governments to improve their law enforcement cooperation and practices. EU governments should not only think about how they gather and share intelligence, but also how they go about capturing, arresting and prosecuting terrorists. EU measures such as the common arrest warrant should help the member-states to increase judicial cooperation. In addition, Eurojust should help national prosecutors to coordinate cross-border terrorist investigations. But some member-states do not use Eurojust for cross-border cases which restricts that institution's usefulness – Cyprus, Greece, Italy, Luxembourg and Spain have yet to implement the 2002 decision to set up Eurojust.

In addition, EU governments should consider how to develop international law enforcement cooperation. The EU is pressing United Nations (UN) governments to adopt a common definition of terrorism and to reform their laws and security practices. Many countries in other parts of the world do not have terrorism laws, nor have they signed up to all UN counterterrorism agreements. The UN has 12 conventions in total for the fight against terrorism. But only 57 of the UN's 191 members are party to all of them, while 47

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[12] Mark Leonard, 'Why Europe will run the 21st century', Fourth Estate, 2005.

countries have ratified fewer than six. However, such EU attempts lack credibility as long as EU governments themselves refuse to sign and ratify them. Only five of the 12 UN counterterrorism conventions have been signed and ratified by all 25 EU governments. Belgium and Ireland have not yet ratified the 1997 convention on suppressing terrorist bombings; the Czech Republic and Ireland have not ratified the 1999 convention on terrorist financing. Gijs de Vries has managed to convince the six members of the Gulf Cooperation Council to step up efforts at curbing terrorist funding, starting with the UN convention on this issue previously only Bahrain has already signed and ratified it.[13] EU governments should also collectively deepen their intelligence and law enforcement cooperation with key third countries, such as Egypt, Indonesia, Morocco, Pakistan and Saudi Arabia.

⇨ **Insulation**

'Insulation' covers areas like protecting citizens and critical infrastructure, such as power stations and railway lines, from terrorist attacks; ensuring that governments can provide relief quickly in the event of an attack (see next chapter); and preventing the theft of explosives and weapons-of-mass-destruction (WMD). EU governments should not only think about how to 'insulate' potential targets in their own countries. They should also consider how they could help other countries to protect their critical infrastructure. For example, if terrorists attacked cross-border oil pipelines in the volatile Caucasus region, they could cut energy supplies to EU countries. The EU has already stepped up its funding for the UN's nuclear and chemical weapons watchdogs,

the International Atomic Energy Agency (IAEA) and the Organisation for the Prohibition of Chemical Weapons (OPCW), which seek to prevent such weapons from falling into the hands of terrorists. The Union has also agreed several initiatives with Russia on destroying Russian nuclear and chemical stockpiles.

EU defense ministers have already agreed in principle that their armed forces should be prepared to respond to crises outside Europe, including terrorist attacks. There are conceivably some longer-term scenarios in which EU governments would have to contemplate intervening militarily to hamper terrorist activities. For example, if the Pakistani state collapsed, the military high command could lose control of its nuclear facilities, and there would be a danger that terrorists secured atomic weapons. In this case, European governments, along with the US, may need to intervene militarily to secure the nuclear plants.

3. Implementing an EU strategy: intelligence, emergencies and foreign policy

The 25 governments cannot implement an EU counterterrorism strategy overnight. They are struggling to put into practice many of the measures already agreed. For instance, the German constitutional court (BVerfG) is currently considering a case which demonstrates the EU's difficulties in balancing individual civil liberties with security. In November 2004, Germany was about to send Mamoun Darkazanli, a German-Syrian citizen who is suspected of financing al-Qaeda, to Spain. Madrid had requested Darkazanli's extradition using the EU common arrest

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[13] The six members are Bahrain, Kuwait, Oman, Qatar, Saudi Arabia, and the United Arab Emirates.

warrant. One of the key arguments used by Darkazanli's lawyers is that the European arrest warrant violates the German constitution on human rights grounds.

Traditionally, a suspected criminal can only be extradited if the crime he is accused of is an offence in both countries. The EU arrest warrant comes with a list of crimes that warrant extradition. But this list is vague – for example, it includes 'sabotage' which is not a crime in Germany. So in theory a German national accused of something that is not a crime in Germany could be sent to another EU country for trial. In addition, Germany has very liberal rules on detaining suspects, and Darkazanli could easily try to escape. Spain has much tougher anti-terrorism laws, and if he were extradited Darkazanli would not be allowed to roam free around Madrid under Spanish practices. The German BVerfG must therefore consider if Darkazanli's human rights would be adversely affected if he were extradited to Spain.[14]

Even with these difficulties, the EU should move more quickly with its counterterrorism efforts in some specific policy areas. Gijs de Vries has had some success in developing specific policies, for example on curbing terrorist funding. The European Parliament is currently reviewing an EU directive on money laundering, which would impose controls on cross-border transfers of amounts greater than €10,000 – a significantly lower threshold than in most countries around the world. But, if the EU is to implement a wide-ranging strategy of isolating terrorists, it must develop its policies in other areas. The three priority areas for EU counterterrorism cooperation in the near future should be: information sharing (part of investigation); responding to emergencies (insulation); and

making counterterrorism a foreign policy priority (integration). In each of these areas there are a number of things the EU can and should do to help the member-states.

⇨ **Intelligence cooperation**

Reliable information is the key to preventing terrorist activities. The EU already has a number of databases which contain information on terrorism. These include the Schengen Information System (which collects information on people entering the Schengen area) and Eurodac (a database of asylum-seekers). The EU is also setting up a Visa Information System, and the European Commission has proposed to set up a centralized criminal record database. These databases are all helpful, but the existing systems are not able to exchange information with each other, since they use different types of technology. The EU should ensure governments are able to compare and exchange information between all databases.

A non-EU body, the 'Club of Berne', brings together the heads of all 25 EU national intelligence services, plus those from Norway and Switzerland. In 2001 the intelligence heads set up the counterterrorism group (CTG) to coordinate their work in this area. The CTG cooperates closely with the EU, although there are no formal links – most national intelligence services are reluctant to give the EU any formal role. After the Madrid attacks, Austria and Belgium proposed that the EU should set up a European version of the CIA in the US. However, there is no chance of the EU creating an intelligence agency with its own 'euro-spies' and satellites. The G5 governments, which are the EU countries with the greatest intelligence

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[14] On July 18, 2005, the BVerfG declared the law ("European Arrest Warrant Act") which should have implemented the European Arrest Warrant void (the editor).

resources, are strongly opposed to such a move fearing it would result in leaks. Their intelligence agencies would rather share their most sensitive information with just a few countries. In March 2005, the G5 decided to create a common data bank of anyone suspected of having a connection to terrorist organizations, and to establish a single point of contact for information on the theft or loss of weapons and explosives.

Even so, all 25 governments have agreed that the EU's Situation Centre should provide them with strategic analyses of the terrorist threat. SitCen is located in the Council secretariat and reports to Javier Solana. It brings together national experts to analyze intelligence assessments from the member-states (rather than raw intelligence). The national officials decide what information they want to send to SitCen. Previously, SitCen analysts only assessed threats emanating from outside EU territory. Since January 2005 they have combined those external assessments with information from internal security services and from Europol.

This small development is significant because SitCen can encourage EU foreign, defense and internal security officials, as well as national security services, to better coordinate their thinking on the terrorist threat. One of the problems for national security establishments is that they are organized along internal and external lines. In Britain MI5 collects information on potential threats in the UK, while MI6 analyses the rest of the world. Because al-Qaeda is a global network, this type of territorial approach is ill-suited for a comprehensive understanding of the threat. To overcome these divisions, the British government set up a joint terrorism analysis centre (JTAC) in 2003, bringing

together representatives from the 11 government departments and agencies that are involved in different aspects of counter-terrorism. The JTAC is designed to encourage officials to join up their disparate information and approaches. Spain and Germany are currently copying this British model. The advantage of the EU's SitCen is that it already uses this joined-up approach.

⇨ **Emergency response**

If a terrorist attack occurs, governments have to mobilize ambulances, firemen, police and sometimes soldiers as quickly as possible to provide relief to the victims. They also have to ensure that crucial public services, such as power stations and railway lines, are disrupted as little as possible. After the Madrid attacks, EU governments signed a 'solidarity clause', pledging to help any EU country that fell victim to a terrorist attack. The EU already has a response centre, located in the Commission's environment directorate. It is supposed to coordinate the assistance offered by EU governments in case of natural or man-made disasters inside the EU. It was active, for instance, during the floods in Central Europe in August 2002, and the forest fires in Portugal and France in August 2003.

However, the capacity of the response centre is very limited. Before the Italian government revoked his candidacy for the job of justice commissioner in November 2004, Rocco Buttiglione suggested that the European Commission should create a 'homeland security' directorate, based on the US Department of Homeland Security. For example, if Berlin suffered a biological attack, Germany's neighbors could be affected – infectious agents can travel easily

through the air – and there would be a need for an EU-level response. A homeland security directorate would seem to be an obvious place to organize an EU-level response to cross-border terrorist attacks. However, the Commission does not have any police forces, soldiers or emergency services. Only national governments have these resources and can decide how to use them, and they are not willing to cede any powers in this area to the Commission.

Instead the governments have agreed to participate in a 'peer review process' of their emergency response capabilities and practices. This process should encourage the governments to share best practices, and build up collectively their emergency response capacities. The process should also help governments to think of ways they can help each other during an emergency. For example, if there were a terrorist attack in Strasbourg, and German fire engines crossed the border to help, would the German fire hoses fit into French water pumps? To assist this process, Gijs de Vries presented some recommendations to the EU governments last December, and the European Commission is currently drawing up a database of the capacity of each member-state to provide emergency relief and protect its critical infrastructure.

The European Commission spent just over € 6 million on civil protection in 2003. EU governments are presently negotiating the outlines of the next EU budget, which will run from 2007 to 2013. As part of its proposals for that budget, the Commission wants to set up a 'security research program'. This program could fund a variety of advanced technologies that would help national officials to cope with terrorist attacks.[15] For example, increased access to secure satellite-based communications, imagery and navigation technology would help police, emergency response services and armed forces to coordinate their actions in response to a terrorist attack. The Dutch government ran an anti-terrorism drill in April 2005, code-named 'Bonfire', which simulated a terrorist attack at a concert. One of the main flaws the exercise exposed was a lack of communication between government services. The Swedish government has already decided that its police, soldiers and emergency services will employ a joint communications system to overcome exactly this type of problem. The security research program could also fund other technologies which could help the 25 EU governments to detect terrorists. For instance, sophisticated iris scans could make it easier for border officials to identify terrorists. The Commission wants this security fund to have a minimum budget of € 1 billion a year (the total EU budget is currently about € 100 billion).

Finally, EU governments also need to discuss further the internal aspects of their defense policy, in particular how to prevent or respond to chemical, biological or even nuclear attacks. For instance, EU governments should hold more joint emergency response exercises – the EU has had only one major exercise, called EURATOX, in 2002 – and build up their vaccine stockpiles.[16] The EU needs to avoid competition with NATO in this area, which already plays an important role coordinating cross-border defense cooperation, including military responses to emergencies. For example, NATO radar planes patrolled Portuguese airspace during the 2004 European football championship. EU officials should discuss with their NATO counterparts how to compliment their mutual efforts.

[15] Carl Bildt, Mike Dillon, Daniel Keohane, Xavier Pasco and Tomas Valasek, 'Europe in space', CER, October 2004.
[16] Gustav Lindstrom, 'Protecting the European homeland – the CBR dimension', EU Institute for Security Studies, July 2004.

⇨ EU foreign policy and counterterrorism

The overwhelming focus of EU counter-terrorism efforts so far has been on internal law enforcement. But the EU also needs to put counterterrorism at the centre of its relations with other countries. The European Commission often includes anti-terrorism clauses in its agreements with other countries, which usually cover a whole range of issues, such as human rights, development assistance and trade. But the counter-terrorism parts of these agreements are so vague as to be meaningless. The Commission has started giving money to a few countries, for the express purpose of improving their ability to curb terrorists and to protect their critical infrastructure. Pilot schemes have been inaugurated with Pakistan, Indonesia and the Philippines. But EU officials admit that these programs have had "mixed results" so far.

Aside from money, some EU governments also offer counterterrorism training to soldiers and police from non-EU countries. The UK, for example, is training members of the Pakistani security forces in counterterrorism techniques. EU JHA ministers agreed in November 2004, as part of their Hague program, to establish a network of national counterterrorism experts to train security forces in other countries. But most EU countries cannot afford to send many trainers abroad, and there is little coordination of those that do.

These types of training programs should be expanded for two reasons. First, European experts can help other countries to reform their legal and security practices – a team of EU magistrates is currently in Georgia helping that government reform its judicial system.

Second, training missions abroad should help EU governments to deepen their intelligence cooperation with key countries in the fight against terrorism, such as Pakistan. But for the EU to expand these types of training programs would require money. For example, this summer the EU will start training 770 Iraqi magistrates, police and prison officers, on a budget of € 10 million over 12 months. EU governments, therefore, should give Javier Solana and Gijs de Vries a counterterrorism training budget, of say € 50 million a year, to pay for more EU national experts to train police and security forces in third countries.

More generally, in their efforts to tackle the root causes of Islamist terrorism, European governments need to re-think long-term policies towards the greater Middle East. During the 1970s, 1980s, and 1990s Europe and the US were quite effective at promoting peaceful democratic change in Latin America, Central and Eastern Europe and much of East Asia by linking human rights and democratic change to the overall economic and political bilateral relationship. However, Europe has not even tried this kind of approach in any systematic way with the Middle East. As one senior EU official told this author: "There is an element of a Greek tragedy about American and European policies towards the Middle East. The US talks a good game about promoting democracy, but it has lost much political capital because of its military action in Iraq and is perceived by many in the Arab world to be ill-suited to bring about demo-cratic reform in the Middle East. The Europeans have a much stronger 'brand name' in the Middle East, and should be better placed to encourage democratic reforms, but they do not seem to want it badly enough."

Many Europeans have criticized America's attempt to project democratic values through the military invasion in Iraq. But they have tended to overlook American non-military efforts in the region, such as the $293 million Washington has spent on the Middle East partnership initiative since 2002, to support economic, political, and educational reform efforts in the Middle East. The Europeans are much more reluctant to explicitly link their trade, aid and diplomatic policies in the Middle East with bringing about more democratization there. For example, between 2003 and 2006 the EU is spending an impressive € 5 billion on the 'Euro-Mediterranean partnership' (also known as the 'Barcelona process'), which brings together the 25 EU governments and 12 countries from North Africa and the Middle East. But most of this money is spent on traditional development programs, such as infrastructure projects, and only € 10 million is spent on assisting democratic reform. The EU should do more to encourage democratic reform throughout the Middle East. As Javier Solana wrote in March 2005: "Things are stirring in the Middle East. There is a sense of possibility and optimism as a crescendo of voices calls for more pluralism, more accountability and, yes, more democracy. With its history of peaceful revolution, its large market and its aid budget, Europe has a unique role to play. The time has come to answer Europe's democratic calling in the region."[17]

4. Conclusion

Since the Madrid bombings, the EU has had mixed results in developing its counterterrorism policies. The EU's counterterrorism action plan, which the member-states updated in December 2004, looks impressive on paper. It contains over 150 measures, covering the whole series of counterterrorism cooperation, from emergency response to curbing terrorist funding. But the EU does not have the powers, such as investigation and prosecution, to tackle terrorism like a national government. The EU can help governments to identify, extradite and prosecute terrorists, but it is only slowly developing its own anti-terrorism policies.

For example, the EU has made some progress in encouraging governments to improve their police and judicial cooperation, and some aspects of their information sharing. But national police and spies carry out most counterterrorism work, and often collaborate with their peers in other countries on an informal basis, rather than through EU channels. Regrettably, national governments still tend to see EU agreements, such as the common arrest warrant, as useful – but not necessarily crucial – in their fight against terrorism.

But there is still much the EU can do to help the member-states with their counterterrorism efforts. As Gijs de Vries has advocated, the EU should take on a greater role in encouraging the member-states to build up their capacity to respond to terrorist attacks. And the governments should make counterterrorism a greater priority for EU foreign policy. The EU's focus on counterterrorism has been mainly on internal law enforcement policies; but international cooperation is crucial in the fight against terrorism, and the EU should work more closely with other countries.

The EU also needs a counterterrorism strategy most of all to guide the work of the disparate EU institutions and the member-states. The

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[17] Javier Solana, 'Europe's leading role in the spread of democracy', Financial Times, March 14 2005.

EU's countless counterterrorism committees and extensive action plan will not have much long-term impact unless they are all working towards the same basic aim. The central goal of an EU counterterrorism strategy should be to isolate potential terrorists both in Europe and around the world. Achieving this goal will not be easy, as it will require EU governments to have a multi-faceted long-term approach at home and abroad. If the EU could develop the counterterrorism parts of its law enforcement, foreign and defense policies, based on an agreed strategy, then the Union could start to become a much more effective counterterrorism actor.

There is no doubt that international terrorism is a threat to European and global security. Terrorist attacks like those carried out in the US in 2001, Indonesia in 2002, Turkey in 2003 and Spain in 2004, demonstrate the seriousness of the threat. To defeat international terrorism requires governments around the world to cooperate on a wide range of policy areas, from law enforcement to foreign and defense policy. In Europe the EU is the obvious place for its 25 member-states to join up their efforts to monitor and prevent cross-border terrorist activities. European officials rightly point out that the EU can bring together political, judicial, police, diplomatic and even military means, all of which have a role to play in the fight against terrorism. But it is also true that the EU's security policies (internal and external) are young and relatively untested. More effective European counterterrorism policies will show Europe's citizens that the EU has a vital role to play in protecting their security, as well as contributing to a more secure world.

Does the European Union need a "European Bureau of Investigation" and a "European Intelligence Agency"?*

Jörg Monar

(1) The „freedoms" of the internal market and the abolition of controls at internal borders have de facto created a single „area" for cross-border crime presenting particular opportunities for organized crime and terrorism. The EU's response has been the construction of an „area of security" as core part of the „area of freedom, security and justice" (AFSJ).

(2) In principle, two different methods of construction of this area of security can be used:

The „cooperation method" aims at facilitating and improving cooperation between national law enforcement authorities and legal systems, using primarily instruments such as mutual recognition of judicial decisions, minimum harmonization of criminal law, information exchange between law enforcement authorities and coordination of operations and training.

The „integration method" aims at creating an integrated legal, institutional and political framework, using primarily instruments such as higher level of harmonization of criminal law, central agencies with comprehensive data processing and intelligence gathering powers, central planning and implementation of operations, this ulti-

mately through officers with EU-wide law enforcement powers.

(3) So far the construction of the EU's „area of security" has been mainly based on the „cooperation method", with a major emphasis on mutual recognition (European Arrest Warrant), minimum harmonization (limited to common definitions of serious forms of crime and minimum/maximum penalties), and the creation of agencies (Europol, Eurojust) with primarily information exchange functions, limited analysis capabilities and no law enforcement powers.

(4) The establishment of a European Bureau of Investigation (EBI) and a European Intelligence Agency (EIA) more or less in line with the US central agency model would mean a fundamental shift in the EU approach from the „cooperation" to the „integration" method. While neither the „Hague Program" nor the EU Constitutional Treaty prepare the ground for such a shift there would be some distinct advantages connected with the introduction of such agencies:

(5) A significant increase of the EU's analysis capacity: So far Europol has only limited access to data available at the national level, intelligence service data are only to a limited extent available to the SITCEN in the Council, and relevant data exchange systems (SIS, Eurodac, VIS, TECS) are not effectively interconnected. The creation of an EBI (with responsibility for all crime intelligence data within the EU) and of an EIA (with responsibility for crime intelligence outside the EU) could remedy many of

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* This outline summarizes an expert's report (written in German) which can be downloaded under
  http://www.bertelsmann-stiftung.de/cps/rde/xchg/SID-0A000F0A-8984262D/stiftung/hs.xsl/20861_20864.html.

the current intelligence gathering and analysis deficits.

(6) A significant increase of the EU's operational capacity: So far none of the EU institutions has any operational law enforcement powers, and operational activities remain the exclusive prerogative of national authorities. Joint operations of national authorities are often not sufficiently coordinated and evaluated. The introduction of an EBI and an EIA would drastically increase the EU's operational capabilities, introducing a capacity to carry out (and this more rapidly) centrally planned and implemented intelligence gathering operations both inside (EBI) and outside (EIA) of the EU as well as law enforcement operations inside the EU (by the EBI).

(7) A more effective implementation of EU wide strategies and priorities: Currently the implementation of common strategies and priorities varies considerably from one member state to the other. As central agencies an EBI and an EIA would be in a much better position to ensure effective and uniform implementation of agreed strategies and priorities in the fight against organized crime and terrorism.

(8) A better use of existing resources: Especially on the intelligence side the „parallel" existence of currently 25 different national systems means that many national teams engage in similar efforts without necessarily knowing about each other and without being able to use results already obtained by colleagues in other member states. The creation of the two central agencies

would allow for a better use of part of the available (scarce) resources. While most of the national law enforcement authorities would remain untouched, national intelligence agencies could be largely merged into the EIA.

(9) While the above advantages of the introduction of an EBI and an EIA are clearly substantial, the current state of development of the EU's political, legal and institutional order does not favor such a solution. Besides a currently obvious lack of political will to adopt a more „integrative" approach in the context of the AFSJ, the following problems would provide powerful obstacles to the establishment of such central agencies:

(10) At the EU level the establishment of the agencies would not only require major changes to the EU Treaties and more of a real „common policy" in the fight against serious forms of cross-border crime, but also the introduction of an EU police and criminal law (the latter at least for defined „EU crimes") and of an EU criminal court. As a result legal harmonization would need to go much further than at present, with major implications for the national legal systems. An effective (and responsible) operation of the EIA would require the development of the CFSP and the ESDP into fully fledged „common policies" as all member states would need to agree and back the EIA external activities. The creation of such powerful central agencies would require their embedding into a real EU executive subject to effective parliamentary control, something which is clearly not yet achieved even with the

EU Constitutional Treaty. There would also be certain risks on side of protection of fundamental rights which would require a strengthening of both judicial and parliamentary control.

(11) At the national level the creation of the two central agencies would necessitate substantial changes in domestic law – especially as regards the executive powers of agency officials – which in many cases would include changes to national constitutions. The organization and orientation of national law enforcement authorities would need to be adapted substantially to the new EU central agency model, and national intelligence agencies would ultimately most likely need to be merged into the EIA. National governments would to some extent need to realign national internal security strategies and priorities with those set at EU level for the EBI and the EIA. At least initially (the example of Europol has shown that) there are likely to be problems of trust and of friction between the EU agencies and national authorities. This as well as an inevitable degree of disruption in established working and cross-border cooperation procedures of national authorities would probably reduce for some time the overall effectiveness of national and EU action against organized crime and terrorism.

(12) It also has to be taken into account that central agencies on their own – the example of the FBI and CIA failures in connection with the 9/11 terrorist attacks has shown this – are not yet a guarantee of maximum effectiveness.

(13) In sum, the costs of establishing an EBI and a EIA would seem to be significantly higher than the benefits to be expected from such a step, at least in the current stage of development of the EU. A fundamental „system" change of the EU as a whole would be required which does neither seem politically feasible nor necessarily desirable.

(14) It seems perfectly possible for the EU to achieve progress in the fight against organized crime and terrorism even without the establishment of powerful central agencies: Substantial progress has already been made through Europol and Eurojust which could be increased further if national authorities were to cooperate with the existing EU structures more systematically than they have done so far. A full implementation of the coordination and information exchange objectives laid down in the latest version of the Action Plan against terrorism and in the Hague Program would also add considerable value. The full implementation of the availability principle as regards information exchange (provided for 2008) and the establishment of the special standing Council committee entrusted with operational coordination on internal security provided for by Article III-261 of the Constitutional Treaty will be of particular importance in this respect.

European Homeland Security: Promises, Progress and Pitfalls

John L. Clarke

Introduction:
Securing the European Homeland – a Cautionary Tale

Though it appears that it has taken the recent attacks in London to bring it home, there can no longer be any gainsaying that Europe is under attack. Given the open nature of European society, the target of the attacks is not only national governments, but also the fabric of European, and, by extension, Western culture. Europe's great experiment in creating an ever-closer union is itself a target, for if terrorists succeed, they may convince large segments of European society that security is indeed divisible; that safety can be purchased through accommodation to terror; and that guns, guards and gates are the only tools available to societies to defend themselves. This is the unfortunate conclusion one must draw to if Europe is not able to summon the courage and resources to respond as a union to these challenges. This study examines how Europe, and specifically the European Union, has responded over the past decade to these challenges and how the EU is measuring up to the new range of threats presented by terrorists and catastrophic attacks.

It is a cautionary tale, for while Europe's political leaders clearly recognize the threats and the dangers they pose, the record of Europe's accomplishment has not proceeded as rapidly as the threat has grown. It would be most regrettable if it took an attack of catastrophic proportions to bring Europeans

to the understanding that actions, not words, are the currency understood by terrorists and that the security of one state, or city, is inextricably bound up with that of its neighbors.

While the September 11, 2001 attacks may have changed the strategic landscape for the United States with regard to the threat posed by terrorism, Europeans have long claimed to have a much greater store of experience, and therefore wisdom, with regard to these threats. After all, European countries have been confronted with a broad range of threats over the past few decades, from IRA bombings in London to ETA bombings in Madrid, as well as Corsican, Breton, South Tyrolean, Red Brigades, Red Army Faction terrorists…the list goes on.

But the Paris, Moscow, Madrid and, now, London mass transit bombings ought to have changed the perception that Europeans intrinsically know how to manage these threats in a superior and more effective manner when compared to the United States. While separatist and extremist groups posed a serious threat – and indeed, some still do – the threat posed by religiously motivated extremist groups is fundamentally and qualitatively different.

The advent of mass casualty suicide attacks and the ever-present threat of an attack with weapons of mass destruction have, or should have, changed the calculus. The European threat-based approach of managing threats as they arise and relying on law enforcement procedures in dealing with them has now been called into question. The extent to which this approach relies on timely and high quality intelligence has been highlighted by the failure of the intelligence services to

detect and prevent recent attacks. While Europe is, understandably, far from adopting the capabilities-based approach of the US, its threat-based approach, as outlined in this study, is clearly in need of a major shift in direction and focus.

This is of particular importance in a Europe of 25 members, with its transparent borders and ease of movement. For the fact is that the struggle against terrorism in Europe remains very much a national effort, despite the rhetoric of the common EU approach, with its action plans and initiatives, to the contrary. Nearly all of the important steps taken to quell terrorism are found at the level of the member states, particularly in the judicial and law enforcement areas. As this study will demonstrate, Europe, and the EU in particular, does not lack for plans and programs in the area of fighting terrorism. But it does lack the ability to carry out many of these programs, as the EU lacks the power of a national government to implement these programs. Cross border cooperation, while hugely important and growing, remains largely informal.[1] It is a sad testament that it remains easier for a terrorist to cross borders in Europe than it is for a policeman in pursuit of his duties.

The problems begin with terminology. There is little agreement on where public security ends and counterterrorism begins. Indeed, the terms themselves create confusion. Commentators and academics routinely employ the terms "antiterrorism" and "counterterrorism" and, even, "fighting terrorism" and "combating terrorism" nearly interchangeably. From an operational perspective, this creates the potential for serious misunderstanding, as these terms have quite different operational contexts.

Antiterrorism should be understood to mean primarily defensive measures, such as security patrols and observation technology, as well as the hardening of potential targets. Counterterrorism, on the other hand, is best understood as meaning active measure to interdict and preempt potential terrorist attacks. Counterterrorism measures may employ not only law enforcement activities but also offensive military operations where appropriate. As to fighting and combating terrorism, they are largely devoid of any operational context and serve principally as literary devices whose resonance is found largely among the media.

These distinctions are of great importance when discussing homeland security as this concept embraces a broad and comprehensive array of anti- and counter terrorist measures. Yet the term homeland security affords us the most comprehensive concept for addressing these issues, even if this term carries its own difficult baggage.

1. Europe, the US and Homeland Security: Mutual Misunderstanding

"Homeland security" is of distinct US coinage. As such, the term tends to sit uneasily with Europeans, partly because it comes from across the Atlantic, partly because it was conceived by a US administration whose rhetoric tends to antagonize many European polities and partly because it contains vague but worrisome implications for personal privacy. But the principal difficulty is that the logic of a comprehensive homeland security approach would require Europe's political leaders to make some unpalatable decisions. To secure one's domestic territory in a global

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[1] Keohane, Daniel, «The EU and Counter-terrorism», Centre for European Reform, London, 2005, p.2.

sense against terrorist attack, as both US and EU leaderships now aim to do, requires a mobilization of all available means to prevent those attacks or, at a minimum, an elaboration of policy that takes into account all those means. This would embrace, of course, the possible uses of intelligence assets and military resources to prevent or deal with the consequences of a terrorist attack which would require that policy-makers review all of their options, to include military ones, if they are to produce effective policy in this area.

Moreover, homeland security, as currently construed in the US, remains outside the purview of the organs of the European Union. It is not, in the EU view, a defined policy area, particularly as it spans a number of policy domains in the EU, such as Justice and Home Affairs, as well as defense and security policy.[2] This renders any formal review problematical, as it would invariably involve a review and harmonization of 25 national homeland security policies.

Such a review has thus far proven extraordi-narily difficult in a union of 25 national governments, and particularly among those with long histories of independent foreign and military action. True reform would, inevitably, involve transferring real power and authority, such as investigational and prosecutorial powers, from the national governments to Brussels. Any hint in Brussels of EU responsibility or authority for internal security within the member states remains official anathema in many capitals. The bombings in Madrid and London have aroused much rhetoric that this must change, but little seems to have been really accomplished as yet.

Instead of directly confronting these threats with the necessary institutional adaptations, many EU policymakers use a less confron-tational language. They don't refer to home-land security. Europeans prefer terms such as "domestic security", "public security" or, even, "internal security", despite the historical implications of these terms. They refer to "security for the citizen" or "an area of justice, freedom and security" for the EU. These terms are seen to offer both political and pragmatic advantages compared to an ostensibly more hard-edged, comprehensive, US concept of homeland security.

The political advantage is: the Europeans conceive the fight between good and evil in the world, and their political vision and approach to it, in ways that substantially diverge from those of the United States.[3] Due to its own more recent and brutal history, the Old World has drawn certain lessons. According to this logic, Europe is beyond an automatic reliance on brute force; it shies away from direct confrontation in favor of dialogue and positive incentives-based persuasion; it favors the collegial; it seeks the mantle of legitimacy conferred by multi-lateral versus bilateral solutions; it hands out generous amounts of foreign aid unen-cumbered by restrictions; and it is always careful in its rhetoric to stress the need for sustainable growth and a fair division of wealth among nations as the keys to inter-national stability and respect for human rights.[4]

This world-view rather neatly stands the EU in sharp contrast to a United States that, rightly or wrongly, is increasingly viewed from abroad as a military bully in a china shop that smashes whatever it wants, whenever it wants in the name of national security. This

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[2] Keohane, ibid., p.3.
[3] See Kagan, Robert, «Power and Weakness», Policy Review, June 2002.
[4] Tigner, Brooks, «The High Hanging Fruit of EU Homeland Security», unpublished, p.2.

line of thinking allows the EU to float on the idea that the security of its homeland is not quite as susceptible to attack as that of the United States.

Despite Europe's 30-year battles with domestic terrorism (Spain, Italy, France, Northern Ireland, etc.) and despite the horrific events of the March 2004 bombings in Madrid and those in London in July 2005, there is no denying a certain tendency among a large segment of Europe's polity that, if it can keep the terminology of its rhetoric fine-tuned just so, if it can combine this with the right kinds of humanitarian and development aid, if it can manufacture enough dialogue with potential enemies, if it can placate largely unassimilated domestic minorities, and keep its political distance from the US, then it will defuse or at least minimize the terrorist threat to Europe.[5]

The great danger with this approach is that it provides the opportunity for terrorists to succeed where the Soviet Union failed: in persuading many in Europe that the security of the western Alliance is divisible, that Europe can achieve a separate accommodation with the common enemy, and that a close security relationship with the United States has become a liability instead of an asset. As the events in Spain have shown, governments can be persuaded to alter their policies along these lines. The significantly divergent threat assessments of the US and its European (and Canadian) allies is evidence that this approach offers much promise for terrorists bent on causing irreparable damage to the western alliance.

The EU's preference for "security of the citizen" over "homeland security" is not of particularly great utility as a basis for es-

tablishing a policy for counter- and anti-terrorism. But it is Europe's own concept, designed to accommodate an agenda that reflects the homeland security policy goals which 25 national capitals have been able to agree upon, if somewhat reluctantly, and which can only be achieved at the level of the EU.

Together, these two terminological devices go some way toward explaining why the EU has ragged fissures in its homeland security policy. Europe's careful choice of words and slogans yields two concrete observations about its homeland security obligations and why these fissures exist. One is the obvious fact that the European continent is surrounded on three sides – southern, southeastern and eastern – by instability, poverty, dubious political regimes and cultural-religious societies that have too little in common with Europe's long and arduous march to secular democracy. Europe also possesses sizeable minorities that remain largely unassimilated into the national societies in which they live. The EU is an institution riddled with policy gaps, split responsibilities, power struggles between national and EU authorities, divisions of policy labor, legal restrictions of nightmarish complexity precluding rapid implementation of homeland security decisions and, lastly, contradictions in doctrine that have a direct bearing on the development and implementation of homeland security across the EU.

As a result of these two factors – fear of provoking potential enemies and the EU/national institutional atomization – there is no open and healthy discussion in Europe by its politicians, bureaucrats, diplomats and its military hierarchies about how to carry out the EU's commitment to create a "security of the citizen."[6] These actors tend to avoid the

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[5] Tigner, ibid., p.4. See also Clarke, John L., «Is Transatlantic Security Divisible? Securing the Transatlantic Homeland», EuroFuture, Summer 2004, p.54.
[6] Tigner, p.3.

subject, making oblique references to scenarios that imply a vague future need for more coordination between national security institutions, they explore and perhaps even agree one bilateral security arrangement or another, they work up a paper exercise or two, or issue impressive-sounding initiatives. But what Europe lacks is serious preparation for the new kinds of terror threats, replete with active cross border planning and including realistic exercises involving security and military forces.

To be fair, a terrorist-engineered event whose impact spread across multiple frontiers in Europe, particularly involving the use of weapons of mass destruction would un-avoidably create chaos, regardless of the level of planning and preparation. But a response mechanism that cannot automatically rely on pan-European security and military forces and logistics and which is not predicated on clear pre-defined security forces command chains that account for all of Europe's internal frontier regions will lead to "anarchy". Europe is not prepared in this regard.

This is not to say that Europe is doomed to ineffectiveness. It is not. There are cause-and-effect lags on both sides of the Atlantic. Indeed, in certain policy areas the EU is moving faster than the United States, which cannot guarantee the inviolability of its own borders and which faces enormous logistical and administrative challenges in fusing its 22 national agencies and 180,000 government workers into an effective Department of Homeland Defense.[7] The EU's law enforce-ment agencies have a long, if informal, tradition of working together, a cross-border practice that is now spreading to other national agencies and ministries of the 25 member states. For example, cooperation in

setting up common databases among its judicial and border control authorities in the fight against terrorism is making good progress. The EU is also consolidating its coordination of civil-emergency response networks and identifying national inventories of medical supplies, transport equipment and other stocks that can be shifted from one member state to another for disaster relief.[8]

But national sovereignty remains the greatest barrier to increased cooperation. National sovereignty is an old issue in Europe but it is a tenacious one. Nonetheless, it is under slow but steady attack via the EU's inexorable, if sometimes imperceptible, march into policy domains that have been the exclusive remit of individual countries. The evident failure of the EU constitution may retard this process, but it will not end it. Europe's national bureaucracies and its politicians know this. Some sense it instinctively and accept the inevitable; others demand a clawing back of EU authority. Many member states are doing their best to prevent this and, in the short term, they may succeed in winning tactical skirmishes. The recent bombings in London have conclusively demonstrated that great dangers exist in Europe, including the danger of suicide bombers. It remains, however, to be seen how the continent responds. Many are calling this Europe's wake-up call; but they did that after the 2004 Madrid bombing as well, to little avail. Given this unfortunate situation, it is worth recalling how Europe has approached the issue of homeland security in historical context.

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[7] For an elaboration of the US approach, see Clarke, John L., «The United States, Europe and Homeland Security: Seeing Soft Security Concerns through a Counterterrorist Lens», in Aldis, Anne and Graeme P. Herd, Soft Security Threats and European Security, New York 2005, pp.117-138.
[8] Tigner, p.4.

2. The Evolution of EU Homeland Security

As in the United States, the fall of the Berlin Wall and the Cold War's end meant Europe could focus on the less contentious problems of domestic security such as organized crime, illegal immigration, drug-running networks and money laundering activities. While the instability and tensions produced by the Balkan wars of the mid-1990s certainly contributed to – and continue to exacerbate – these headaches, the region's security defaulted to NATO militaries to sort out, leaving the EU to spend the large part of the 1990s refining legislation to tackle its more prosaic domestic challenges and trying to push national law enforcement agencies to work more closely together. Driven in equal measure by a need to crack down on financial crime and a desire by its member states to squeeze undeclared tax revenues, for instance, the EU passed a series of directives to clamp down on bank secrecy and money laundering.[9] It also spent considerable energy encouraging more cooperation among national judicial authorities, though the effect of that campaign remained rather limited until the end of the decade.

Perhaps more significant from the point of view of shared domestic security was the decision in 1992 to create Europol, the pan-European policy agency in The Hague.[10] This was a step in the right direction, though a limited one since Europol was not given the authority to request information from national law enforcement agencies; its role was merely to facilitate/coordinate requests coming from national authorities. But it prefigured more significant cross-border law enforcement developments to come.

In the same fashion, the Schengen countries, named after the Luxembourg town where their agreement was signed in 1985, began allowing citizens to circulate freely within their collective territory. To enable this, a common database of visa files, known as the Schengen Information System (SIS), was developed. This would lay the groundwork for later EU decisions to exploit this database and link it to new ones for homeland security applications.

Despite the above formal moves, cross-border judicial and law enforcement cooperation in Europe throughout the 1990s tended to remain voluntary, ad hoc and based on non-binding political agreements. Information was provided and coordinated among national authorities according to a case at hand, though often not very quickly. Intelligence agencies, both military and civilian, continued to go their own way and did not enter the policy picture.

Three events changed this. One was the agreement by EU leaders in Tampere/Finland in October 1999 on a new agenda of home affairs objectives. Part of the reason behind this was a recognition that cross-border cooperation in home affairs and judicial matters was not working very well, or at least not fast enough to keep up with the EU's unfolding single market and the criminal elements taking advantage of its increasingly borderless internal structure. The other reason was the EU's looming enlargement in 2004 to take in a large chunk of Central Europe. Worries in EU capitals about the newcomers' porous borders and corruption were a major spur behind their decision to tighten cooperation.

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[9] See Directive 91/308/EEC of the Council of 10 June, 1991 on prevention of the use of the financial system for the purpose of money laundering, EU Official Journal L 166, 28/06/1991, p. 0077 - 0083; and the subsequent amending Directive 2001/97/EC of 4 December, 2001, Official Journal L 344 , 28/12/2001, p. 0076 - 0082.

[10] For the history, structure and functioning of Europol, see http://www.europol.eu.int.

The five-year Tampere agenda laid down a wide range of objectives, both political and legislative, in order to tighten cooperation among the EU nations' judicial and law enforcement authorities, while guaranteeing civil liberties. These covered measures to create a common policy on asylum and immigration; integrated management of the EU external frontiers, including the formation in 2005 of an EU border management agency; harmonization of law enforcement instruments; and better use of Europol and other international fora to fight cross-border crime and regional terrorism within the union such as Spain's Basque separatist rebels.

Initial progress on Tampere was slow, however, until the second event came along – the September 2001 terrorist attacks – which catalyzed Europe's home affairs agenda, causing Tampere to accelerate dramatically. EU leaders quickly adopted an action plan for fighting terrorism since it was evident the EU would not be able to cooperate effectively or quickly enough with the United States or other international actors in matters of surveillance, intelligence, law enforcement and other security imperatives unless it first vastly strengthened internal coordination among its member states.[11] A second and perhaps more embarrassing spur was the fact that US intelligence agencies traced many of the logistical links supporting the 9/11 attacks to terrorist operatives based in EU countries.

One consequence of this re-energized Tampere program was that European Commission emerged determined to deflect US designs to impose some of its homeland security imperatives on Europe, particularly via Washington's use of bilateral divide-and-conquer techniques. A good illustration of this was the US administration's moves in 2002-

2003 to strike accords with individual EU nations to bind them to its maritime Container Security Initiative – moves blocked by the Commission and replaced with an overarching EU-US agreement.[12] This, however, was more a tactical measure by EU authorities rather than one of substantive opposition: both sides of the Atlantic largely agree on the ways their bureaucracies must work together to counter terrorism. Indeed, the EU later issued its Port Security Directive, designed to enhance the security of 780 ports in the EU.[13]

Other measures included the setting up of the EU's Monitoring and Information Center (MIC) as a pan-EU rapid alert system enabling one member state to centrally alert all others of natural and man-made disasters. This was followed in May 2002 by two complementary rapid alert systems, BICHAT and ECURIE, for biological and radiological events, respectively.

In addition, the EU agreed to establish a common border management agency, designed to commence operations in 2005. This organization, known as the European Agency for External Borders, is headquartered in Warsaw and designed to encourage the cooperation of national border security agencies. Another key measure now in force involves the establishment of the Europe-wide arrest warrant, which came into force on March 1 2004. This has recently been the subject of much interest with the case of Mamoun Darkazanli, a Syrian-German national and suspected al-Qaeda member who was wanted by Spanish authorities. On July 18, 2005, the German Constitutional Court struck down a German law designed to implement the European arrest warrant, thus rendering the

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[11] See www.euractiv.com/Artilce?tcmuri:29-136674-16&type=LinksDossier (accessed 7 May 05).
[12] See European Commission press release of November 11, 2003 (IP/03/1565) announcing the agreement in principle, which led to formal signatures three months later.
[13] See www.euractiv.com/Article?tcmuri=tcm:29-134414-16&type=News (accessed 20 June 05).

extradition case moot. This case has seriously complicated the development of European judicial cooperation on terrorist matters. Plans for a similar warrant regarding the use of evidence was approved by the justice and home affairs council in February 2005 but has not, as yet, been implemented.

The third galvanizing event and the one with the most ramifications for Europe's homeland security agenda was the March 11, 2004 bombings in Madrid, which killed 191 and wounded another 1,800. As fate would have it, the bombings occurred in the same year the EU was due to review and update its Tampere agenda. The result was to accelerate that review and to produce yet another strengthened five-year set of home affairs objectives. Approved by national leaders in November 2004 when the Dutch government held the EU's rotating six-month presidency, it is known as The Hague Program. It essentially builds on and expands Tampere's objectives for the period 2005-2010.

The program's overriding focus is on establishing a common immigration and asylum policy for the member states. The Hague Program calls for the EU to: make police information available between all EU countries (threats to the security of another EU state must be communicated immediately); address the factors that contribute to fundamentalism and to the involvement of individuals in terrorist activities; make greater use of Europol, the EU's police office, and Eurojust, EU's judicial cooperation body; and ensure greater civil and criminal justice cooperation across borders and the full application of the principle of mutual recognition. It seeks to ensure that the upgraded Schengen Information System (SIS II) is operational by 2007, as well as trying to

improve the sharing of other intelligence related to security.[14]

An updated Action Plan was also approved by the Commission in December 2004. It focuses on seven principal areas, including working to counter terrorist financing; enhancing the role of Eurojust and Europol in the fight against terrorism; establishing a central database of visa applications; setting up emergency response unit (ARGOS); and establishing measure to protect energy, health, transport and communications infrastructures.[15]

Perhaps the initiative that has gained the most attention was the appointment of Dutchman Gijs de Vries to the new post of 'counterterrorism coordinator' and the tasking of Javier Solana, the EU's top official for security and defense policy, to widen cooperation among national intelligence services across the EU. In the interim, much criticism has been heaped on this decision, with many noting that the coordinators office has no power and no funding authority, thus significantly weakening the position.

3. London, 2005

Most recently, a special meeting of the interior ministers of the member countries was called in July 2005 by the UK presidency, in the immediate aftermath of the London underground bombings. While none of the measures called for in the declaration are new, deadlines have been brought forward for a number of them. It should be noted that more than half of the items in the action plan have resulted in decisions at the EU level; the difficulties lay largely in implementation. For example, by December 2005, a decision

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[14] See www.eurative.com/Article?tcmuri=tcm:29-130657-16&type=LinksDossier (accessed 13 July 05).
[15] See http://register.consilium.eu.int/pdf/en/04/st14/st14330-re01.en04.pdf (accessed 13 Jul 05).

should be reached on the European evidence warrant; a program in place for managing the protection of critical infrastructure, as well as common procedures for the response to and management of terrorist attacks especially if more than one member is involved.[16] This sense of urgency is most welcome; but, again, the EU track record is not encouraging, particularly given the lack of momentum brought about by the constitutional crisis.

4. Homeland Security Challenges for Europe: Key Concerns and Recommendations

⇨ **Intelligence and Warning**

Collecting and sharing intelligence remains a major obstacle to European homeland security efforts. A proposal by Austria and Belgium to develop a Europe-wide intelligence agency has not progressed, as it has encountered resistance on the part of other members. This has been compounded by certain difficulties of intelligence sharing on the national level; Germany, for example, has consistently encountered problems in sharing intelligence among the sixteen provincial-level (Länder) interior ministries (who are responsible for most police functions in Germany) as well as with the federal-level interior ministry.

However, progress has been achieved in the ongoing attempts to reconcile differences in the various crime, immigration and terrorist warning data banks, particularly the SIS II and the Eurodac data banks. In addition, there have been reports of low-visibility counterterrorism

centers, such as the so-called "Alliance Base", said to be located in Paris, in which intelligence agents and special operations force personnel are able to combine resources and plan operations. These facilities permit intelligence officers to see law enforcement documents from their own countries, which in many cases would be prohibited by national law.[17]

In addition, the establishment of a round-the-clock situation center at the EU has been instrumental in increasing the warning capabilities of the member states, as they are now able to share warning data. Warning remains a problem area, as evidenced by the lack of warning in advance of the London attacks. Indeed, British authorities actually downgraded their warning level in the weeks preceding the attacks.[18]

What is clear is that the level of intelligence "sharing" (a term disliked by intelligence professionals) must increase, even if politics require that it remain largely informal. In particular, a lessons-learned function, focused on intelligence failure, ought to be instituted. Moreover, the wall between security intelligence and law enforcement, while key to the protection of civil liberties, must be reviewed and procedures instituted to allow for some level of permeability, consistent with maintain an acceptable balance between security and liberty. In addition, changes to national laws should be considered to enable legal investigations to use intelligence generated by security services in terrorism-related cases.[19] Given the potential threat of catastrophic terrorism, the current opaque nature of these walls is no longer acceptable, and some of this information must be shared not only by national officials but also with international partners. It is simply unacceptable that cross-border

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[16] See www.eurativ.com.Article?tcmuri=tcm:29-142468-16&type=news.
[17] Priest, Dana, «Help from France Key in Covert Operations», Washington Post, 3 July 2005, p.1
(accessed at UK Rephttp://www.washingtonpost.com/wp-dyn/content/article/2005/07/02/AR2005070201361.htmlort).
[18] Sciolino, Elaine, «Linked Risk and Iraq» N.Y. Times, 18 July 2005 (accessed at http://www.iht.com/ articles/2005/07/19/news/alert.php).
[19] See Falkenrath, Richard, «Europe's Dangerous Complacency», Financial Times, 7 July 2004
(accessed at http://www.brookings.edu/views/op-ed/fellows/falkenrath20040707.htm).

cooperation is easier for those bent on destruction than it is for those charged with securing the homeland.[20]

⇨ **Critical Infrastructure Protection**

Critical infrastructure, which encompasses systems such as energy, water, public health, telecommunications, finance and banking, agriculture, and other systems such as chemical plants, represent potential targets for terrorist attacks. As much of the infrastructure in Europe, as in the US, is in private hands, responsibility for protecting these systems must necessarily be a joint public-private undertaking. Moreover, much of the infrastructure in Europe is interconnected. For example, an energy system in one country could have a devastating effect in other countries.

Key to protecting these systems is an accurate assessment of the criticality and vulnerability of the systems. Databases to support these assessments must be developed. The EU is lagging behind the US in this area, as much of the key infrastructure has yet to be catalogued. Even the basic concept of what constitutes critical infrastructure can vary from country to country. The European Commission recently authorized Euro 140 million for the period 2005-2010 to identify and prioritize vulnerabilities to critical infrastructure.[21] This is an important start to this effort, but much more effort and money will be required to ensure the security of critical infrastructure across Europe. It is equally important to develop common assessment criteria, so that intelligent risk management decisions can be made on which systems are most in need of protection on a Europe-wide basis.

⇨ **Transportation Security**

In the aftermath of the mass transit bombings in Madrid and London, much attention has been focused on the security of transportation systems. To an even greater extent than in the US, Europeans depend heavily on mass transit. That these systems are highly vulnerable is well known; recent events have shown that it is nearly impossible to provide total security for these systems while at the same time ensuring the convenience, efficiency and accessibility that makes these systems so useful. Moreover, a significant portion of European transportation originates in one country and terminates in another, or passes through several states, making a coordinated response essential.

While much attention has been focused on underground rail systems, other parts of the transportation network remain vulnerable, notably bridges and tunnels, rail transportation of hazardous materials as well as aviation security. While much has been done to enhance aviation security, it remains vulnerable due to the large number of unsecured general aviation facilities. Nevertheless, transportation security remains a bright spot on the European homeland security scene. European standards have been consistently higher than those of the US, although port security remains an area in which improvement is needed. One area that would yield immediate benefit is an enhanced passenger awareness program, built on the lessons learned from Madrid and London.

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[20] For a discussion of the challenges of intelligence cooperation in Europe, see «The Fight Within», The Economist, 23-29 July 2005, pp.27-28.
[21] See New Defense Agenda, «Strategic Priorities for Protecting Europe's Infrastructure Against Terrorism» (accessed at http://www.forum-europe.com/publication/NDA_SOD_27June2005.pdf).

⇨ **Catastrophic Terrorism**

Europeans seem not to take the threat posed by terrorist employment of weapons of mass destruction (here defined as the use of chemical, biological, radiological or nuclear weapons, or CBRN weapons) as seriously, or likely, as do Americans. Much of the US homeland security effort is focused on the prevention of and recovery from these kinds of attacks while the European focus seems to be more on the kinds of high explosive attacks seen in Madrid and London – despite the fact that police in several countries have uncovered plans for such attacks.[22] This is not to say that national governments have not considered these possibilities and taken some measures to assure a response capability; but there has been little consideration and action at the level of the EU. There have been a number of studies conducted in recent months on the state of Europe's preparedness, particularly with regard to bioterrorism.[23] Another area of great concern has been the dangers posed by radiological dispersion devices (RDD), or "dirty bombs". There is significant concern in a number of European countries that terrorists may resort to the use of these devices, as their fabrication poses little problem.[24]

Some important steps have been taken at the European level, notably the formation of a CBRN defense battalion at NATO, but much of the effort in the area of defense and response to catastrophic terrorism remains at the national level.[25] Given that the employment of any of these weapons would have immediate international impact, it would seem that this is an area in which considerable progress should be made.

⇨ **Emergency Preparation and Response**

As noted above, attacks with weapons of mass destruction are likely to have significant impact not only within the target country, but also in neighboring states. As such, close cooperation between emergency response forces, particularly in the area of public health, is essential. Biological vectors, such as anthrax, or chemical contaminants can be transmitted rapidly from one city to another in Europe, and first responders must be prepared to deal with them.

While Europe has well trained and numerous emergency response organizations on the national and local level, a catastrophic event is likely to challenge even the best prepared. Thus, some level of cooperation with Europe is necessary, if only to avoid unnecessary duplication. Some lessons can be learned from efforts to rationalize military forces within Europe and apply them to emergency response forces. At a minimum, standards for emergency response equipment and train standards for personnel represent areas in which the EU could make significant progress. There are a number of voluntary organizations in Europe, such as firefighters, law enforcement and toxicologist associations, but clearly much more can be done at the EU level to provide for common standards.

⇨ **The Role of Military Forces in European Homeland Security**

One area that ought to figure prominently in Europe's response to terrorism is the role that military forces ought to play in securing the

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[22] See, inter alia, «Spain: Al Qaeda Planned Chemical Attack» Washington Times, 3 May 2005 (accessed at http://washingtontimes.com/upi-breaking/20050503-073413-4680r.htm); «UK Chemical Attack Foiled» CNN.com, 4 April 2004 (accessed at http://edition.cnn.com/2004/WORLD/europe/04/06/britain.attack.plot/).
[23] See «Countering Bioterrorism: How can Europe and the United States Work Together?», The New Defense Agenda, April 2005 (accessed at http://www.forum-europe.com/publication/EUUS_CounteringBioterrorism_April25.pdf).
[24] Italian authorities are reported to be concerned about the use of RDDs. See http://www. agi.it/english/news.pl?doc=200507161801-1127-RT1-CRO-0-NF11&page=0&id=agionline-eng.oggitalia.
[25] For more information on this battalion, see http://www.nato.int/docu/pr/2003/p031126e.htm.

common homeland. This area has received a great deal of recent attention in the US, with the establishment of a military command responsible for North America. Of interest, this is an area in which Europeans have significantly more experience than the Americans. European military forces have routinely been deployed to secure key installations and other critical infrastructure against attacks by nationalist terror groups such as the IRA and the Red Brigades. Moreover, military forces have participated in counterinsurgency and policing operations in many countries, such as Italy, Spain and the UK.

Many European countries possess specialized paramilitary forces such as the Gendarmerie, Carabinieri and Guardia Civil, which, while not necessarily designed for the purpose, have proven to be of great utility in anti- and counterterrorism operations. These forces are able to bridge the gap between military and law enforcement operations, particularly with regard to the use of force.

Curiously, the evolving European common defense and security policy makes no mention of the defense and security of the homeland. At the EU level, there is very little discussion of the employment of defense and military capabilities in any of these documents, except for incidental references to civil/military coordination for certain kinds of civil disasters. Moreover, many of the member states, such as Germany, have a broad arrange of restrictions on the employment of military forces in domestic contingencies. Thus, the employment of military forces in a domestic environment remains very much in the hands of the member states. An example of this approach is found in the member states' adoption in late 2002 of a program to

improve cooperation across the EU to guard against and limit the effects of chemical, biological, radiological and nuclear (CBRN) threats – risks that Europe's armies have long trained to deal with because of the Cold War. There is only a single reference to national military capabilities in the policy objectives listed in the document's operational annex.[26] One would imagine that this would be an area ripe for the establishment of common policy, as the defense of every member is inextricably bound up with that of its neighbors.

Conclusion

It is, perhaps, an ultimate irony: terrorists in Europe think more European than many of Europe's homeland security-related agencies.[27] They enjoy the freedoms granted them by governments and turn those liberties against those same governments. They plan attacks in one country and execute them in the next. National governments, traditionally the standard-bearers of the fight against terrorists in Europe, are finding that there are limits to what they can accomplish in an expanded EU. The stark fact of international terrorism since September 2001, and particularly its deadly impact in Europe in March 2004 and July 2005, has forced national and EU policymakers to start addressing, if gingerly, new strategic issues and to re-think older ones – issues that have military implications for homeland security, even if those implications remain unvoiced or played down in official public discourse for the time being.

It is evident that the EU does not lack for ambitious, even daring, plans, supported by careful rhetoric. The various action plans and

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[26] See Council document 14627/02 of November 21, 2002. Stating that the EU's security and defense instruments are designed only for external use and not for application inside the Union, the footnote's last sentence pretty well sums up the situation: "The use of national military capabilities and specialized units for support of the protection of civilian populations may only be provided, case by case, on a bilateral basis or through the Community mechanism."

programs promulgated by the EU address many of the weaknesses discussed here; and while many decisions have been made and programs have been introduced, record of implementation of those plans by all member states, even after the Madrid attack, and now the two attacks in London, remains problematic. Implementation, at the end of the day, rests with the member states. Each of those members has it own threat perceptions and vulnerabilities. Each will make decisions regarding European security measures based on those assessments. What Europe must avoid at all costs is that each of the members seeks its own path to security, even at the cost of security for its neighbors. The common enemies of the West know the temptations of doing so and are prepared to exploit these fissures. Europe, and America, must act together, lest security within Europe and across the Atlantic become divisible.

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[27] Munchau, Wolfgang, «Europe Must Tackle Terrorism», Financial Times, 10 July 2005, accessed at
http://news.ft.com/cms/s/930466c8-f16c-11d9-9c3e-00000e2511c8.html.

Concluding Remarks

Klaus Brummer

Efforts to augment security in Europe have increased considerably over the last couple of years. Sadly enough, catastrophic events were the driving forces for doing so. Catastrophes still seem to be the key factors for generating political will (at least temporarily) which subsequently induces action. In any case, the challenges Europe faces when dealing with counterterrorism and homeland security are as manifold as they are formidable. Required are, among others, adequate intelligence and warning mechanisms as well as means to protect critical infrastructures and to secure borders and transportation.

However, instead of further elaborating on these specific issues, and drawing on the contributions to this volume, three more general aspects seem worthwhile contemplating in this concluding chapter: (1) the different approaches the EU and the US pursue regarding homeland security; (2) the tricky business with sovereignty and implementation; and (3) the ongoing "soul searching" in Europe as to what the EU actually could/should do as well as could/should not do when it comes to guaranteeing the internal security of its member states.

1. EU and US: Different approaches to homeland security

September 11, 2001 urged the US to realize that they are not invulnerable – which came as a shock reminiscent of Pearl Harbor. Europe, on the other hand, was and obviously still is more or less "used" to being threatened as it was already the case during the Cold

War (of course by an even more lethal, i.e. nuclear threat). Notwithstanding the measures initiated in all European states to enhance internal security as a response to the terrorist threat, and despite the Madrid attack, a sense of being existentially threatened similar to the one prevailing in the US has not arisen in Europe. It remains to be seen whether the London bombings will change this.

Both the EU and the US have to find an answer as to which changes the new security threats brought about for defense. What does "passive" and "active" mean given today's key challenges? As it seems, the former is nowadays more or less a synonym for prevention. Protective measures such as the introduction of biometric passports, stockpiling vaccines or enhancing security for critical infrastructures are imperative tasks in this respect. The latter in turn aims at tackling the threats directly on the spot where they arise. Highly specialized and mobile units such as the EU battle groups seem to be a promising tool for achieving this end. However, although both approaches are entirely reasonable, the lack of (particularly financial) resources makes it all but impossible to pursue them simultaneously with similar vigor. What seems to be required instead is a concentration on one of the two approaches based on an assessment as to which approach promises to be more effective. Yet, who is to decide?

Besides, the mentioned discrepancies in threat perception are a major factor when explaining the different approaches of the EU and the US regarding homeland security. However, due to the close interconnection between American and European security – or "Western security" – diverging approaches will not only impair the ability of both sides to guarantee security in the respective territories. In addition, they are also very likely to

trigger future transatlantic rifts. The row over biometric passports can be considered as a, yet moderate, preview as to what is going to happen if another major attack on the US could be traced back to terrorists who used Europe as a safe haven.

2. The tricky business with sovereignty and implementation

If challengers and challenges do not care about borders, should the responses of European states follow suit, that is, be "European"? To name but one – though far reaching – example: Should there be a "European Bureau of Investigation" (EBI) and a "European Intelligence Agency" (EIA) to tackle terrorism and organized crime as discussed by Jörg Monar? Such institutions, equipped with similar competencies (including executive authority) as the American points of reference, would have several advantages. Among others, they are likely to increase the analysis and operational capacity of the EU. Besides, an EBI and an EIA would probably also lead to a more effective implementation of the existing European strategies to fight terrorism and organized crime.

As several advantages come along with the establishment of an EBI and an EIA, are such steps very likely to happen? Plainly, the answer is "no". The introduction of an EBI and an EIA would ask for a fundamental change in Europe's approach to the "area of security". Thus far mutual recognition, minimum harmonization and the creation of (curtailed) agencies such as Europol have been characteristic. Establishing an EBI and an EIA would demand a significant leap away from this intergovernmental approach

stressing state sovereignty toward supranationalism, i.e. integration. As a consequence legal harmonization would have to go way beyond what has been done thus far and include the introduction of a European police and a European police and criminal law. As all the issues mentioned do not rank high on the priority list of the member states – probably it is more accurate to say that they are not even on the respective lists – the establishment of an EBI and an EIA is not going to happen in the foreseeable future. Sure enough: Creating centralized agencies does not automatically yield better results anyway as the US experience suggests.

Yet, the conclusion must not be that no European answers are needed. No single European state can deal with terrorism and organized crime unilaterally. This fact is acknowledged in the European Security Strategy as well as in various other declarations, action plans and communiqués. In other words: Transnational challenges call for transnational answers.

Most importantly, member states must make better use of the instruments and mechanisms already agreed upon and established within the EU framework. For instance, one should use Europol and Eurojust more effectively. This includes a more down-to-earth expectations' management on part of the member states as to what particularly Europol can and cannot do. Widening the scope of Europol whose actions thus far are considerably limited by a lack of executive capabilities is worthwhile contemplating in this context. Europe's ability to deal with terrorism and organized crime would also benefit from a thorough implementation of the provisions concerning information exchange as laid down in the updated version

of the Action Plan to Combat Terrorism and in the Hague Program. Of major importance is also the degree to which member states will make use of the European Arrest Warrant and implement the availability principle.

This short sketch already demonstrates that there is no lack of reasonable guidelines agreed upon on the European level. There are manifold instruments and mechanisms foreseen in various programs aiming to increase coordination and cooperation as well as the ability to interoperate among the member states. What it all boils down to is the issue of implementation of existing guidelines by the member states. Any mechanism or instrument agreed upon within the EU framework will not unfold its potential unless the member states prove willing to actually use them. Thus far, and actually not being a big surprise, the impression prevails that politicians agree on action plans etc. quite easily but then are very slow – or in some cases such as the European Arrest Warrant not overly committed – when it comes to putting them into practice.

3. How much "Europeanness" is needed to make Europe more secure?

Several options as to how homeland security in Europe could be organized or realized could be conceived. One might be labeled "EU in the lead", which sees the Union as the major player in the field telling the member states how to guarantee internal security. "Disregarding the EU" represents the opposite version, with the member states making recourse solely to their national means while neglecting the European level. In between one can think of a role called "Enabling the

Member States" in which the EU contributes through various channels to the enhancement of member states' capabilities to guarantee (as far as possible) internal security.

The first option ("EU in the lead") has to be dismissed as fictitious as such a principal-agent approach with the EU being in the driver's seat is simply impossible to realize. The second option ("Disregarding the EU") comes considerably closer to what might happen – and already does happen. More often than not there is no European answer to developments threatening Europe's internal security. Instead member states prefer unilateral or bilateral actions (e.g. the so-called G5 group). These kinds of actions might one day spill-over to the European level; there is no automatism to this, though. Furthermore, such approaches are also not sufficient for effectively securing internal security in Europe as a whole. If at all, they enhance the security of some, but not of all member states. This in turn leads to an unbalanced degree of security within the borderless Union. At the end of the day this patchy level of security might backfire to the detriment of all European states.

This leaves us with the third option ("Enabling the Member States"). Clearly, member states are and will be the key players regarding counterterrorism and homeland security as only they have the means to deal with these issues (e.g. intelligence, law enforcement, consequence management). It is up to them to prevent a terrorist attack or cope with its consequences. Therefore, strengthening or in some cases even building the adequate capabilities to do so on the national, sub-national and local level should be of primary concern for each member state.

Respecting the principle of subsidiarity is of major importance. Notwithstanding or rather keeping this necessity in mind, the European level can make significant contributions to enhance the security of its member states. The following two points illustrate where this potential lies: The consequences of attacks do not stop at borders. Nor do terrorists who can freely travel within the European space once they have entered.

It is therefore necessary to enable all units which deal with the prevention of attacks or consequence management (e.g. intelligence units, police, first aid responders) not only to coordinate their activities but also to cooperate cross-nationally whenever need be. Whereas the former calls for the installation or augmentation of channels through which information can be exchanged, the latter demonstrates the importance of interoperability. Standard-setting on the European level seems to be the easiest way to achieve this objective as it would lead to common standards in 25 or more states – the will of the latter to live up to their commitments provided. Another issue worth mentioning in this context is that efforts which potentially compromise the sovereignty of a state – measures aimed at the protection of a state's internal security are very likely to have this effect – might be implemented more easily if placed under a European heading.

Whether new institutions such as a "European Bureau of Investigation", a "High Representative for Homeland Security" or a "European Department of Homeland Security" are required to enhance Europe's internal security is open for discussion. The at times not entirely promising American experiences with their newly built agencies

and departments suggest once more that new institutions are not a panacea. If done properly, tasking existing units with the relevant issues and provide them with the necessary competencies as well as financial resources and personnel might yield better outcomes. However, what should have become clear is that certain actions on the European level are indispensable in order to augment the capabilities of EU's member states in the field of homeland security. Of course, the development of a sense of "European homeland" would also help a great deal.

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