

Editor's Note

Terrorism has long been a form of using violence toward innocent people to achieve political goals. With the end of the bipolar international system following the collapse of the Eastern Bloc and the demise of the Soviet Union, the world witnessed the emergence of non-state actors (e.g., transnational terrorist organizations) that have largely benefited from the instability and uncertainty that prevailed in the international system. Terrorism has soon gained a global dimension and became one of the essential threats to international security and stability. Governments that have not rejected terrorism entirely as an instrument of their “war by proxy” strategies to attain their foreign policy objectives, and continued to treat the terrorist organizations as freedom fighters, helped considerably the terrorist groups to flourish and to be organized at global scale.

It is necessary to treat terrorist organizations as illegal entities as well as to construct new international cooperation frameworks to fight against terrorism with the contribution of all the concerned nations, which is indeed the entire world. Because, it must be acknowledged that no nation in the world can be immune to terrorism. Unless all the peace-loving states combine their concerted efforts, every nation may face sooner or later the perils of terrorism.

The Centre of Excellence-Defence Against Terrorism (COE-DAT) provides an important platform for governments from the time of its inauguration in June 2005 where individual national efforts could be united against this new globalizing threat. The COE-DAT contributed increasingly to building up valuable expertise, information and specialization on global terrorism within NATO and partner countries. The *Defence Against Terrorism Review* (DATR) is aimed to be an integral part of these efforts. Scholars and experts from various regions and the cultures of the world, studying terrorism as an international phenomenon, will find a new platform to share their knowledge and accumulation and to conduct a fruitful academic debate.

The first issue of DATR consists of seven articles. The first article titled “Terrorism with Its Differentiating Aspects” by Sertaç Başeren discusses the typologies of terrorism with particular emphasis on “state sponsored terrorism”. The second article, written by Kimberly Thachuk, titled “Countering Terrorist Support Structures” analyzes the worldwide financial structures sponsoring terrorist organizations and their activities. Thachuk produces very important policy recommendations as to how to fight financial resources of terrorist organizations. The Third article is written by Dominika Svarc titled “Military Response to Terrorism and the *Jus ad Bellum*”. Svarc examines in her article the legal dimensions of the use of military power at the international scale in the fight against terrorism. This aspect of fighting terrorist networks have always been debated and Svarc provides a very informed framework within which the debate remains on a healthy track. The fourth article by Davide Casale, titled “EU Institutional and Legal Counter-terrorism Framework” discusses the institutional and legal developments within the EU concerning counter-terrorism strategies. The fifth article, written by Shreen M. Mazari, titled “Analysis on Future of Terrorism” provides a sound analysis of the three trends developing separately and influencing the increase of the terrorist threat. The Sixth article by Bassam Tibi,

titled “Countering Ideological Terrorism” examines “political Islam” as a political ideology and its links with political violence and terrorist organizations. The last article by Şener Dalyan titled “Combating the Financing of Terrorism: Rethinking Strategies for Success” analyzes the terrorist organizations’ financial operations and their links with the organized crimes.

DATR starts its life as an academic publication with this first issue and will continue to contribute to the like-minded efforts against terrorism, which is a crime against humanity.

Mustafa Kibarođlu
Editor in Chief

Dear Readers,

The Centre of Excellence – Defence Against Terrorism (COE–DAT) was established with the vision of being NATO’s subject matter expert in terrorism, which is the most prominent threat to our security today. Up to now the Centre has carried out a series of activities including courses, panels, conferences, workshops and symposiums, all of which have brought together renowned experts and scholars from around the world in order to share their knowledge on the lesser known aspects of terrorism.

The *Defence Against Terrorism Review (DATR)* which is being launched by the Centre as a bi-annual academic publication is a great opportunity to reach out to all parts of the world with the articles that will reflect different perspectives on the complex phenomenon of terrorism.

I am confident that the *DATR* will also serve the ultimate goal of achieving global cooperation, which is the *sine qua non* condition of the struggle against terrorism. It is worth remembering in this regard what the great leader Atatürk had once said: “*Mankind is a single body and each nation a part of that body. We must never say “what does it matter to me if some part of the body is ailing?” If there is such an illness, we must concern ourselves with it, as though we ourselves had that illness.*”

I would like to thank the staff of the COE–DAT for taking such an initiative. I would also like to take this opportunity to thank all the authors who shared their invaluable knowledge experience with the readers.

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General
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Terrorism with Its Differentiating Aspects

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Abstract. *Terror and terrorism are of many types, and this study focuses on political terrorism. Although this should be condemned whatever its political rationale, the international community is not united. This paper goes on to analyze the position of terrorism in terms of state terror, international relations, internal affairs, and transnational relations. State sponsorship is a particularly serious problem as it gives considerable advantages to the terrorists. Even democratic countries have shown an unfortunate willingness to tolerate terror in lesser ways. The stages through which ethnic terrorism may pass are illustrated. Finally, religiously-inspired terrorism is discussed. The study draws attention to the loose structures and anti-globalization message of al-Qaeda.*

Keywords. Terrorism, state terrorism, separatist terrorism, state sponsorship, state support, al-Qaeda

Introduction

The aim of this study is to assess the concept of terrorism within the period of its recent changes, to diagnose the problems of today's situation through exposing the new characteristics of this type of violence, and thereby to seek to find solutions.

If we were to attempt to research the roots of 'terror' from an historical perspective, it would be possible to go all the way back to Cain killing his brother Abel. Then we could talk about what Hasan Sabbah did at Alamut Castle, too. History is full of rather impressive terror incidents. One of the most impressive would be the murder in Bosnia of Archduke Franz Ferdinand, the heir to the Austro-Hungarian throne. Terror has had just as significant effects on Islamic history as well. The murder of the holy caliph Ali caused Islam to divide into sects. However, we wish to examine 'terrorism', with the features that distinguish it, and specifically the changes it has undergone over the last four decades. In other words, we will take into account the effects of terrorism upon the

contemporary political system, and we will evaluate the subject's development over the last four decades.¹

In terms of its etymology, the word 'terror' comes from the Latin word 'terrere', meaning 'to frighten, to terrorize, to intimidate'.² In Turkish, *tedhiş*, a word of Arabic origin, can be used with the same meaning as *terör*.³ Terror can manifest itself in an individual action, just as it can occur in a mass violent action precipitated by chance.⁴ Indeed, it is mostly unpredictable, and it is not organized or systematic. For this reason, neither an individual action nor a series of incidents emerging by chance can be termed 'terrorism'. In order to talk about terrorism, what is needed is a series of terror incidents which are interconnected and directed at a certain political target: 'Terrorism is a strategic approach which, for political purposes, identifies itself with a method which includes the use of organized, systematic and continuous terror.'⁵

2. The Determining Issues of Actions in the Form of Terrorism

In order that this study can expose the changing features of terrorism in a simple way, it is appropriate that we locate the determining issues of actions in the form of terrorism, and then make a valid definition. To find out these determining issues, it is possible to refer to the categories of reason, intention, and purpose, which are found in the principles of penal law.

As seen in figure 1, in political terrorism the perpetrator claims to be motivated by a political rationale. The content of that rationale, that is to say the political view of the perpetrator, makes not difference to the fact that he is a political terrorist. The reasons he gives may reflect any kind of viewpoint of a political nature. This assessment expresses an opinion with which the author of this paper agrees, but which, unfortunately, is not one which is universally accepted. The terrorist who commits the most unforgivable crimes on one side of a border can be seen as a national freedom fighter when he crosses the border. The best place to find typical expressions of these various approaches, which lead to contrasting definitions, is in the publications of the United Nations General Assembly Ad Hoc Committee on International Terrorism. To take an example from the 1970s, according to Algeria, Guinea, India, Congo, Mauritania, Niger, Syria, Tanzania, Tunisia, North and South Yemen, Yugoslavia, Zaire and Zambia, which have a common view on what terrorism is, any definition should not undermine national liberation struggles.⁶ According to

¹ When we evaluate this period of four decades in respect of Turkey, we can identify four great waves of terror. The first is Armenian terror, the second is the terrorism that arose from right-left conflicts which date back to the 1970s. The third is the PKK and separatist terror, and the last wave is 'reactionary' terrorism. See Kongar, E., *opp. Cit.*, pp 86, 90, 92.

² Wilkinson, P., *Political Terrorism*, London, 1974, p. 9.

³ *Türkçe Sözlüğü*, Ankara, 1983, vol. 2, pp 1159, 1177.

⁴ Although there are other types of terror and terrorism, political terrorism is focused on in this study.

⁵ Bozdemir, M., 'What Is Terror and Terrorism?', School of Political Sciences Press and Publication College, 1981, v, vi. See also Wilkinson, P., (*op. cit.*), p. 17, and Crenshaw, M., 'The Concept of Revolutionary Terrorism', *Journal of Conflict Resolution*, September 1972, p. 384.

⁶ See United Nations General Assembly, 'Report of the Ad Hoc Committee on International Terrorism', *Official Records*, 28th Session, Supplement No. 28 (A/9028), New York, 1973, p. 21.

these countries, if the political reason of the perpetrators is to exercise their right to self-determination, to struggle for freedom, and to realize the aims of a national liberation movement, then there is no point in talking of them as terrorists. They note that the violence, and other assimilating actions, which colonialist regimes commit are to be regarded as terrorism in every respect.

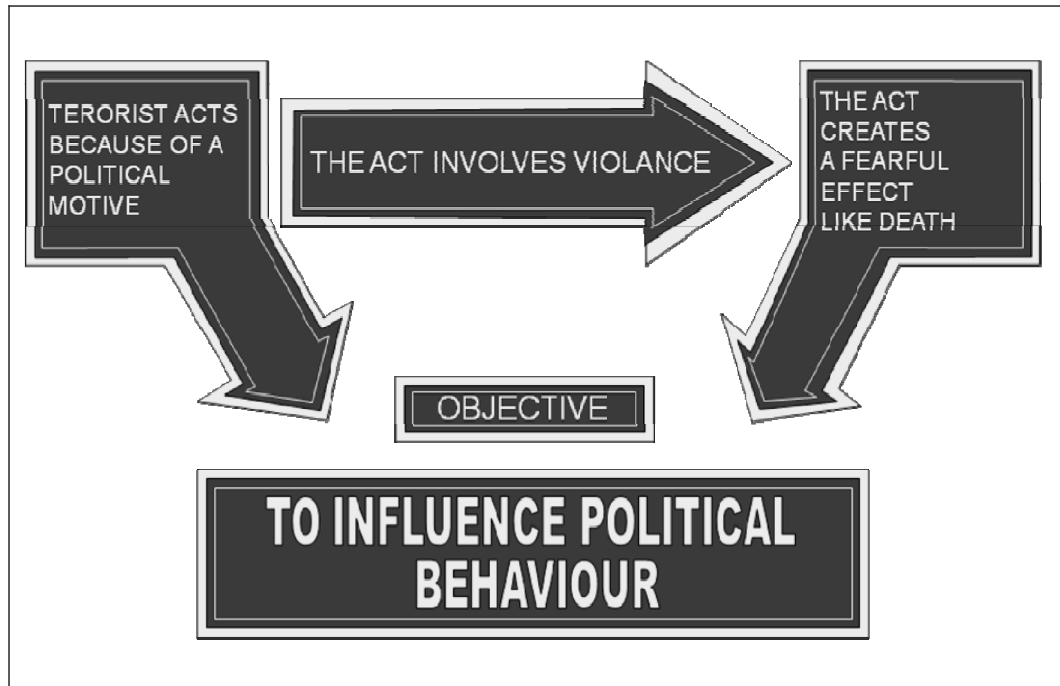


Figure 1. The determining issues of actions in the form of terrorism.

The militant who engages in an action on the basis of a political argumentation acts with violence. Here, the violence is a tool for achieving a goal as part of realizing the more distant aim.⁷ This violent action creates an advantage in favor of the terrorist. It is directed at a target which is impossible to determine beforehand, and mostly it is not related to the current political struggle, but is important in the eyes of the general public. For example, the action leads to a goal such as the murder of diplomats. The perpetrator wants to obtain a benefit beyond that goal: the aim is to

⁷ Dönmezer, S., *Kriminoloji* (Criminology), Istanbul, 1981, Chapter 6, p. 220; Bayraktar, K., *Siyasal Suç* (Political Crime), Istanbul, 1982, p. 163; Alpaslan, S., *Kriminoloji ve Hukuk Açısından Tedhişçilik* (Terrorism from a Criminological and Legal Viewpoint), Istanbul, 1983, p. 9. For a 'convenient tool' on the penal code, see Dönmezer, S., Erman, S., *Nazari ve Tatbiki Ceza Hukuku* (Theory and Practice of the Penal Code), General Section, vol. 1, Chapter 9, Istanbul, 1985, p. 409.

affect the masses. In other words, violence and propaganda are used for their affect.⁸ The most significant issue underscoring terrorism appears at this point. When the goal exemplified by the murder of diplomats through violent action is compared with the goal which is achieved in terms of its affect upon the masses, the former becomes very small, whereas the final goal is extraordinarily large. That is to say, the effect in proportion to the action is extremely large.

The act of terrorism is, by means of killing one person, to frighten millions and to have an effect upon their political preferences. Therefore, it is essential to say that the act of terrorism is a symbolic one. A direct action is not important in respect of its conclusions. It is very important for the effects which are created beyond the conclusions. In this way the action is not instrumental, but symbolic. At this point, it is useful to remember the definition of terror introduced in the 1960s: 'Terror is a symbolic action shaped for affecting political behavior by using violence or by unusual ways including the threat of violence.'⁹

Our definition of terrorism has now gained sufficient clarity. Together with this, in the course of time, with its emergence in different contexts, terrorism has become diversified and it has gained new features.

3. Terrorism in Different Political Relations

It is possible to show the political relations in which terrorism may occur through drawing a macro-model covering both national and international political ties (see figure 2).

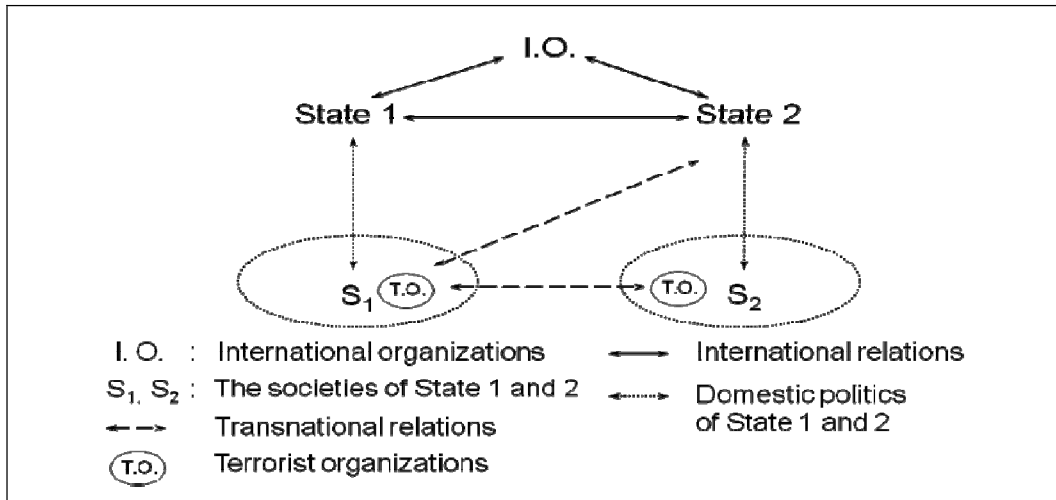


Figure 2. Terrorism in domestic and international relations.

⁸ İsen, G. B., 'Terörizm: Değişik Boyutlarda Çağdaş Bir Sorun' ('Terrorism: A Contemporary Problem with Different Dimensions'), *Journal of Dicle University School of Law*, 1983, vol. 1, pp 1, 197.

⁹ Thornton, T. P., 'Terror as a Weapon of Political Agitations', *Internal War*, Eckstein, H. (ed.), London, 1964, p. 73.

The actors in this model are states, international organizations, and terrorist organizations (the terrorist organizations are at the same time foreign policy tools). S_1 and S_2 represent State 1 and State 2, while I. O. stands for International Organizations. The relations between these are conducted according to the processes of classical international relations. Apart from these international relations, the internal policies of the countries are illustrated in the model as well. The communities of S_1 and S_2 are C_1 and C_2 . The relations between S_1 and C_1 , and the relations between S_2 and C_2 are 'internal affairs'. Additionally, there are relations in which S_1 and S_2 address each other's communities, and there are relations which exist between the different communities. These are 'transnational relations'.

Going into more detail, we will highlight the features which terrorism has acquired in respect of the various relations illustrated in this model.

4. Terrorism in Internal Politics

Terrorism in internal politics appears in the S_2 – C_2 circle in figure 2. Here, the political struggle based on violence, i.e. terrorism, has two dimensions. On the one hand, it is possible for states to use terrorism as both an internal and an external political tool in order to perpetuate their current state regime. On the other hand, it is possible for those who want to destroy the established order and to take control of power to use terrorism in their struggle against the authorities. When those in power use terrorism to shore up their position in power, this is called state terrorism. We will touch on the subject of states which use terrorism as an external political tool under the sub-heading 'State-sponsored Terrorism' in the paragraphs below.

Resorting to terrorism to perpetuate a regime at home became institutionalized in totalitarian regimes such as Nazi Germany, the former USSR, and the Eastern Bloc countries. Cambodia can also be given as an example: Saloth Sar, the prime minister from 1975–1978, was leader of the Khmer Rouge and also known as Pol Pot. He caused the death of more than one million Cambodians in his attempt to govern the country in accordance with his particular communist vision. The regimes mentioned have been consigned to history, but this has not ensured the end of this 'assimilating terrorism'. Today it is possible to identify various dictatorships which do not hesitate to make use of terrorism in order to control their homelands. Considerable levels of torture and inhumane treatment are typical evidence of this situation.

There is a causal relationship between this terrorism and the terrorism that is committed by people in a struggle against the *status quo*, which seeks to destroy the established order and seize power. The latter we can call straightforward terrorism. State terror may precipitate this terrorism against the state, or this terrorism may lead to state terror. If the states involved have ethnic disputes, and if these become caught up in the above-mentioned struggle, there is inevitably a strong possibility of civil war.

a. Ideological Terrorism

Terrorism is in the service of ideologies, too. The majority of terror organizations emerging in the 1970s had Marxist features, and they identified themselves as parts of a revolutionary and anti-imperialist movement. The Red Army Faction (RAF), which emerged in 1968 and lasted until 1998, the Brigade Rosse (BR), which emerged in 1969 and lasted until 1982, and the

Revolutionary 17th November Organization, which opposes Turkey, and which emerged in 1975 and still exists, are the most important examples. The Revolutionary Armed Forces of Columbia (FARC), established in 1966, the Ejercito de Liberacion (ELN), which was established in 1965, and the Sendero Luminoso (SL), established in Peru in 1969, might also be listed in this category. In Turkey this kind of terrorist organization existed as well. Actually, some of them are still active and constitute a considerable threat to Turkish security and political order.

In Europe, organizations with extreme left-wing ideologies left the arena in the 1980s, when their places were taken by organizations with ideologies of the extreme right. In Germany, as is well known, many right-wing extremist organizations have appeared, some of which are neo-Nazi. These groups use violence as their means, and they consider Turks to be their prime targets. The killing of five Turks in Solingen by setting fire to their house is one example of terrorist violence which cannot be forgotten easily.

b. Ethnic Terrorism

The spreading of western values in the world, which we call globalization, results in the crumbling of older political structures. In the wake of this political disintegration come ethnic conflicts and the ethnic terrorism which is a part of these struggles. Ethnic terrorism can be used as a tool by separatist movements, and it can turn into the terrorism of ethnic civil wars.

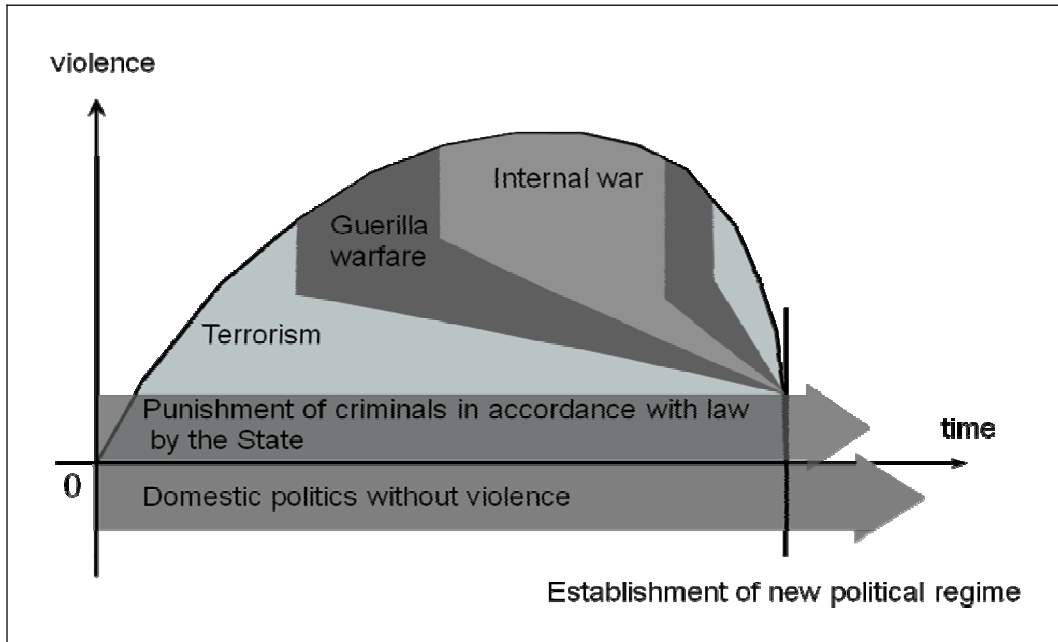


Figure 3. Stages of the response to terrorism against the state.

In this context, it might be beneficial to evaluate this kind of terrorism according to a process in which different types of political violence emerge. In figure 3 the changes in social cohesion and the political regime are assessed, which may involve adapting or suspending the normal constitution, and which may lead to civil war.

In this process, which begins with violence rising to abnormal levels, in excess of the political violence which is to be expected in a society, terrorism may be encountered at every stage.¹⁰ As the process evolves, due to the suppressive and revolutionary terrorism which mutually rise, political violence grows increasingly and, at its highest level in terms of growth, it starts a steep decline and finishes when it reaches a normal or tolerable level of violence in the new order. Although not always the case, we find the elements of terrorism, guerilla warfare, and war in this political struggle. Theoretically the process may take place with only one of these, terrorism, guerilla warfare, or war, being present. Still, types of political aggression do not appear as alternatives to each other; practically speaking, most of the time they co-exist in a complementary manner.

During ethnic civil wars, often genocide or ethnic cleansing policies are pursued, thus forcing the ethnic groups which form part of the nation to leave their homes. Predictably, the means resorted to are terror, mass killing, and rape. These wars result in great numbers of refugees and casualties to an extent not comparable with the other types of terrorist activity. This struggle within the state has two important dimensions with respect to International Law: the state of emergency legislation (problems which exist before the state of emergency are left outside the scope of the study), and the legal status of armed conflicts which lack an international dimension. In this respect, the relation of the subject to International Law appears in the human rights dimension. Two topics are to be studied therefore: states of emergency and non-international armed conflicts (seen from the viewpoint of humanitarian laws). These humanitarian laws, which can be defined as laws for armed conflicts, prohibit terrorism. At this point it is appropriate to comment that the Geneva Convention is the document which expresses human rights regarding non-international armed conflicts most precisely, and the additional protocols prohibit terrorism. Not every act of ethnic violence develops into ethnic civil wars and mass terrorism. Some separatist terrorist groups lack a basis in the community but, although they are unable to initiate ethnic struggles, they succeed in surviving. The way to impede these terrorist organizations from provoking widespread terrorist activity is directly linked to the existence of a functioning liberal democracy in the country. Democracy does not mean the collapse or separation into different political parts of the state. International Law as it is experienced does not manifest itself in the collapse of the states, but in the continued territorial integrity of the countries. On the other hand, democracy does not necessarily imply that separatist political currents are included in the legal political system. Democracy does not mean ending the unitary structure of the state as well.

¹⁰ The term 'abnormal violence' refers to violence which is unacceptable in respect to the legal, political and social rules of the society in which the crimes of terrorist nature are committed. In this context, it does not apply to the terror which the established regime uses in line with legal rules in order to protect itself.

5. Terrorism in International Politics

Up to this point, in order to keep the discussion simple, international relations have not been included in this analysis. But the subject is almost never this clear-cut. In the real world terrorism will involve at least one international dimension which traverses the national borders (sponsorship from another nation, issues of the nationality of the perpetrator or victims, the place where the crime is committed, etc.). Now it is time to go back to our macro-model in figure 2 and add this new element. Another state may be involved in the armed conflicts that are not international. In this new dimension S_1 may intervene in C_2 , or S_2 in C_1 , and support terrorism there, or even cause it to happen in places where it previously did not exist.

It is possible for states to use terrorism as a tool in external politics, just as they use it in internal politics. Many examples of this have been observed in the recent past. Formerly the Soviet Union and Eastern Bloc countries provided support to terrorist organizations. Although the amount of support from these countries declined after the Cold War, it has not completely ceased.

The support which countries lend to terrorists as a tool for those countries external politics can range from simple types of help to full-scale sponsorship. Today this situation is mostly observed in the Middle East. State-sponsored terrorism, in other words terrorism under the direction of states, is very important due to the fact that states can provide weapons with greater fire-power, money, intelligence and training possibilities, so this type of terrorism is extremely dangerous and destructive. With the help of sponsorship, terrorist attacks may no longer be on the level of symbolic actions, and they may become far more destructive in terms of the immediate outcome of the attack. Again, as part of states' vital support, they may provide safe havens for terrorists, to which they can escape from law enforcement authorities. It becomes much harder to combat terrorism when there is this kind of support. Sponsoring of terrorism by states is also dangerous as this provokes conflicts between states.¹¹ Turkey was only able to end the support that Syria gave to the PKK by showing its determination to exercise its right of self-defense.

Democratic states may also support terrorism for various reasons, although the support given by these countries usually does not reach the level of sponsorship. Democratic states sometimes allow terrorist-related activities for the commercial benefits they may bring.¹² Sometimes they resort to state terrorism as a means of fighting against terrorism, and sometimes they support governments which perpetuate their rule by using terrorist methods. Groups which try to topple regimes also strike at those foreign governments which are seen as rivals, and this may result in the globalization of internal conflicts. Even though they may not sponsor it, for a state to overlook terrorist activities within their borders which harm other states does not conform well with the duty each state has to prevent activities which harm other states. The conditions in Iraq, which is occupied by the USA, are well known. Nonetheless, permitting or overlooking the presence of the PKK in this country is not acceptable.

¹¹ Wilkinson, P., 'Why Modern Terrorism? Differentiating Types and Distinguishing Ideological Motivations', *New Global Terrorism*, Kegley, W. C. (ed), 2003, p. 126.

¹² *Ibid.* p. 128.

6. Global Terrorism and Terrorism That Seeks Religious Legitimization

Throughout history religious fanatics have resorted to terrorism and tried to legitimize this with appeals to religious beliefs. Neither religious fanaticism nor the use of terrorism as an expression of that fanaticism are confined to any one religion. Although all major religions in the world oppose terrorism, it is possible to find examples of attacks conducted by believers in each religion, attacks which they try to legitimize on the basis of their scriptures. One of the most horrifying examples of this kind of terrorism was the Inquisition, and the trials which took place to find and punish those who defied Catholic beliefs. The president of Israel, Yitzhak Rabin, was murdered by a Jewish fanatic who claimed he was fulfilling the orders of God.¹³

Today it is mostly the terrorism which seeks its justification in Islam that is in the foreground. This should not be allowed to result in fear of Islam. In America the media, without any evidence, blamed Islamic groups for the bombing of the Alfred Murray Federal Bureau in Oklahoma, but the truth turned out to be otherwise.¹⁴ Connecting religious legitimization of terror to Islam is very wrong and the results will harm everyone. Still, denying the existence of such religiously-inspired terror organizations in Islam, and the serious nature of the situation, is not possible.

There is no state which sponsors or controls these groups. They present the characteristics of sub-state actors, which act freely in the international dimension (equivalent to the terrorist organization in figure 3 striking S_1). The ties which constitute the organization are very loose. In the case of some of the terrorist plots it is clear that organic organizational structures was non-existent. Fanatics who are influenced by the news reflected by the media, people with no former organizational connections, can be seen to have become active and engaged in crimes in the name of the organization. As seen in the September 11 attacks, the outcome of the action is grave enough to cause serious security problems.

Although religion is being used to legitimize the act, a political factor also exists. Al-Qaeda is trying to force the USA to withdraw from Saudi Arabia and the entire Gulf region. It also wants to destroy the regimes which are seen as collaborating and betraying 'true' Islam. Al-Qaeda affiliates want to gather all Muslims around a pan-Islamic caliphate which would rule in accordance with the rules of real Islam.¹⁵ This new terrorism is being used to fight against globalization, which means the domination of western values in the world. 11 September 2001 was a very typical example of this. Usama Bin Laden was a warrior created by the United States of America against the Soviet Union, when the latter invaded Afghanistan during the Cold War era. When seen in this light, the September 11 terror was not only a matter of achieving certain results. We need to recognize that the source of these attacks lies in globalization, in the form of the Cold War for example.¹⁶ The targets of the September 11 attacks were also striking in their symbolism. The Pentagon symbolizes the military power of the United States of America, and the Twin Towers of the World Trade Center in New York symbolize the economic dominance of international

¹³ Ibid. p. 122.

¹⁴ Ibid. idem.

¹⁵ Ibid. p. 124.

¹⁶ Kongar, E., *Küresel Terör ve Türkiye, Küreleşme*, Huntingdon, 11 Eylül, İstanbul, 2002, p. 81.

capital.¹⁷ Even though the attacks seemed to strike America, in fact they were an assault on the globalization process as a whole. The United States of America was attacked as they are the leader of this process.¹⁸ In order to end global terrorism, which has now become a grave threat, we need to eliminate its reasons. With this in mind, it would be useful if the US provided an example of political stability, peace and prosperity.

Presenting Turkey as a moderate Islamic state does not go along with the country's secular structure. Expecting a more positive approach along these lines at this point is extremely misguided, and impossible to accept if democracy in Turkey is to last and improve. It is obligatory that one consider different measures to impede the radicalization of the region.

7. Conclusions

Terrorism, which is in principle an affect-based political struggle, is used both in internal and external politics. The different circumstances in which terrorism has been used have caused it to diversify and acquire different characteristics. The creation of new types, possessing different features in new dimensions, does not end the uses made of terrorism in longer-established contexts. In other words, the new political circumstances mean that we observe a terrorism that is used in different dimensions, and terrorism with different characteristics.

In totalitarian regimes, which constitute the most important source for state terrorism, widespread torture shows that different types of dictatorship continue to use state terrorism in order to perpetuate their existence. Especially these countries use terrorism in external politics as much as they use it in their internal affairs. Although their number has declined, there are still states which sponsor terrorism. Terrorism with this kind of support is more destructive and harder to prevent.

Resistance based on violence against globalization creates global terrorism. In this respect, organizations which resort to terrorism are not under the control of any state. They present us with an organization and actor identities, but beyond these the ties which make up the group are extremely loose. They try to legitimize their destructive actions with religious argumentation.

Terrorism is no longer a marginal phenomenon. Every kind of terrorism has become less specific and more destructive. Nonetheless, ethnic mass terrorism, which manifests itself in ethnic civil wars, is still incomparably the most destructive terrorism type.

¹⁷ Ibid., idem.

¹⁸ Ibid., idem.

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Countering Terrorist Support Structures

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Abstract. *Terrorist groups have manipulated the underbelly of globalization and its discontents to their great advantage. Confronting terrorism will require an understanding of the three main critical pillars of support upon which terrorists rely for their continued survival: financing, corruption, and citizen support. This study illustrates how the criminal and terrorist communities cooperate. An example of this paper's four policy recommendations is that governments should reduce the volume of hawala transactions by making formal methods of transferring money more attractive. In the section on citizen support, this study acknowledges that Muslim criticisms of western attitudes are not completely without merit, for example the cartoon pictures of the Prophet Mohammad published in Denmark belittled and stereotyped Muslims. Countering terrorism will require a concerted effort on the part of the international community to develop strategies that simultaneously tackle these problems in a holistic and comprehensive fashion.*

Keywords. Terrorism, counter-terrorism, terrorist support structures, global terrorism, terrorism financing, hawala system, criminality, corruption, citizen support for terrorism.

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Introduction

Countering terrorism today requires consideration of a wide range of potential and real factors brought to life by an insidious underbelly of globalization.² While long the scourge of international society, states the world over are increasingly being assaulted by a fresh crop of highly disciplined, technologically savvy non-state actors such as terrorists, organized crime, pirates, and valueless international entrepreneurs who engage in a wide range of illicit activities. Each of these categories is armed with a spiraling array of technology that creates new opportunity for a type of mischief, peculiar to this age, that threatens to undermine society as we know it.

The resulting conundrum for international civilized society is finding the right methodologies to counteract non-state enemies while remaining cohesive and cooperative in the interests of international order. At the heart of the problem is the unfortunate fact that transnational threats increasingly weaken the cooperative spirit between states while simultaneously strengthening their stranglehold on their host nations. While states squabble over counterterrorism measures, opportunistic terrorists are loosing what is akin to a deadly virus that will, slowly and methodically, but inevitably kill their hosts. The only alternative is for states to intensify both multilateral and bilateral cooperation to become unified in the battle against international thugs and thieves.

The influence of these non-state actors causes roles and relations on the international stage to become increasingly blurred and confused. Some states do harbor terrorists, mafia bosses do manipulate state actions, terrorists have been voted into office, criminal enterprises do contribute to the funding of terrorists, and terror tactics are effectively used by some criminals. With such an atmosphere of near global anarchy, it hardly comes as a surprise that along with every other non-state actor, terrorists have resorted to a myriad of schemes to survive and thrive. Not only have they generated a variety of money-making schemes including running legitimate businesses and exploiting charities, they have also delved into criminal conspiracies previously considered the sole enterprise of organized crime groups.

Further, the lack of official sponsorship has meant terrorist groups have sought political and popular support for their activities. When successful, this endeavor is a windfall. By employing the dual strategies of exploiting weak and corruption-riddled states while at the same time appealing to disaffected and marginalized citizens for sympathy and support, a number of terrorist groups have been able to efficiently and effectively carve out safe havens from which to conduct international operations with relative impunity. Because this problem has become so pervasive, it is now one that the global community must tackle head on. Indeed, counterterrorism strategies at the state level will have little success if not undertaken with significant international support and cooperation. It is not so much a question of tactics either. Each state can likely kill a requisite number of terrorists efficiently. The true test will be for a long-term strategy that has far-reaching consequences at both the state level and within international society. Thus rather than prioritize counterterrorism measures or adopt short-term quick-fix tactics, a holistic, long-term strategy is required to comprehensively address the resilient infestation of terrorism.

² Kimberley Thachuk "Globalization's Sinister Underbelly" in *The Global Century* Washington, D.C.: National Defense University, 2002.

The Main Pillars of Terrorist Support

Arguably, there are three critical pillars of support upon which terrorists rely for their operations and existence: finances; impunity; and, citizen support/passive acceptance for their activities. While these categories are likely bolstered by other factors, they represent a three-legged stool upon which is balanced the success of terrorist conspiracies and the survival of the members of their groups.

With respect to finances, which are a critical first pillar of support, understanding the sources of the funds as well as the methods by which the money is moved and manipulated is critical to erecting barriers to that flow. In a globalized economy, terrorist groups would find international operations next to impossible to conduct without the ability to raise and move money.

The second pillar, impunity, is most often a result of corrupt and weak governments that are susceptible to exploitation by terrorists and their allies. Presumably, the easiest path to plot terrorist conspiracies free from the scrutiny or interference by state authorities is to buy the silence, if not the allegiance, of those willing to rent their public offices. In this regard terrorists have used methods long employed by organized crime to gain access to weak states and then manipulate their sovereign status and governments into serving as fronts for their international criminal schemes.

Once firmly entrenched and armed with the funding, citizen backing, or at least tacit public acceptance, becomes the final pillar of support. Acceptance and or compliance by the citizenry is often comprised of complex and overlapping psychological and sociological conditions that may differ not only between countries, but even amongst regions or cities within countries. Factors such as political culture, historical legacy, religious prominence, the role of the media, disparate economic conditions, traditions of leadership, and so forth all play a vital role in the extent to which terrorists are enabled. Further, these particular conditions are important in terms of whether or how terrorists recruit and train new members from amongst the host population.

These three factors are most often interrelated; therefore strategies that address them in a stove-pipe fashion will likely fail. For example, to tackle only issues of terrorism finance eschews the fact that many terrorist money-generating schemes rely on public support and the oft-paid for willingness of corrupt officials to look the other way. Moreover, public support is often garnered by terrorist groups who provide services and quasi-government functions to gain sympathetic allies where weak governments are unable or unwilling to do so. Understanding and integrating strategies for combating terrorism requires a careful survey of the factors that underlie it, but more importantly those which sustain it. Attention to the details will ensure that the three main pillars of terrorist support are addressed simultaneously. In so doing the careful balance upon which terrorists rely is more apt to become unstable and unreliable rather than simply shaky.

1. TERROR FINANCES***Criminal Activity***

With state sponsorship for terrorism at an all time low, many terrorist groups have turned to criminal schemes to fund their day-to-day operating expenses, purchases of equipment and information, and for training, communications and travel. Like many organized criminal schemes,

terrorists' crimes have a quick turn-around and can raise significant cash. In a number of cases, it might be difficult to discern exactly who constitute the terrorist groups and who constitute the organized crime groups, their criminal activities are so similar. Indeed, there is speculation that there are *ad hoc* connections between segments of the two "communities" for the purposes of raising capital. While some terrorists' money sources still include contributions and donations, sale of publications (both legal and illegal), and funds derived from legitimate business enterprises, individual donors tend to be focused on particular groups—notably those associated with, or patterned on, al Qaeda. Terrorists without that sort of sponsorship increasingly have turned to criminal transactions for quick cash.

There are at least four main criminal activities traditionally thought of as being the domain of organized crime that now are money-generating activities of terrorist groups. These include any number of lesser crimes such as extortion, kidnapping, gambling, trade in counterfeit goods, shake-downs, document forgery, bank robbery, identity theft, credit card fraud and so forth.³ Most tend to be *ad hoc*, informal arrangements that rather than being strategically or purposefully perpetrated, are simply the quickest and easiest options for making a lot of cash. In addition to money laundering and money manipulation, the four main criminal activities that sustain terrorism are:

- A. *Narcotic Trafficking*
- B. *Arms Trafficking*
- C. *Human Smuggling and Trafficking*
- D. *Smuggling of WMD*

The profits from criminal activity are immense. While impossible to quantify accurately, it is estimated that between two and five percent of the world's gross domestic product or approximately \$600 billion to \$1.8 trillion annually is involved in illicit financial transactions. Drug trafficking alone nets between \$300 and \$500 billion, with trafficking in humans amounting to approximately \$7 billion, counterfeiting between \$150 and \$470 billion, computer crimes \$100 billion and trafficking in small arms comprising between \$1 and \$4 billion of the "gross criminal profit".⁴ It is unclear how much of this largesse contributes to terrorism, but it is clear that some does, and it is likely a considerable amount.

Many of the associated enterprises demonstrate sinister terrorist motives. For example, in November 2002 the FBI helped to halt two major drugs for arms deals. In the first case, an American and two Pakistanis were attempting to trade five metric tons of hashish and 600 kilograms of heroin for four Stinger anti-aircraft missiles, which they were planning to send to al Qaeda operatives.⁵ In the second case, four members of the paramilitary organization, the United

³ Financial Action Task Force on Money Laundering *Report on Money Laundering Typologies 2001*: 19.

⁴ Bossard Andre "The Basic Principles of Money Laundering" in *Crime and Justice International* Vol. 15, No. 26, March 1999:1; Richard L. Armitage, Deputy Secretary of State "Remarks at International Conference on Pathbreaking Strategies in the Global Fight Against Sex Trafficking", February 25, 2003.

⁵ "Feds Break up Drug Smuggling Linked to Terrorist Groups" *New York Times* November 6, 2002.

Self-Defense Forces of Colombia were planning to trade \$25 million in cash and cocaine for five containers of Warsaw Pact weapons.⁶

Further, the terrorists behind the Madrid bombings financed themselves from money earned almost exclusively from trafficking hashish and ecstasy. They paid for their explosives by trading hashish and cash with a former miner. When police raided the home of one of the terrorists they seized 125,800 ecstasy tablets, which turned out to be one of the largest illicit drug hauls in Spanish history. In all, Spanish authorities recovered about \$2 million in drugs and cash from the group—meanwhile the attack itself cost only about \$50,000.

The Madrid scheme was likely only the tip of the drug financing iceberg. According to the U.S. State Department at least a dozen of the world's 25 largest terrorist groups have ties to drug traffickers around the world.⁷ Some of these terrorist groups include the Revolutionary Armed Forces of Colombia (FARC), the United Self-Defense Groups of Colombia (AUC), the National Liberation Army (ELN), the Shining Path, the Palestinian Islamic Jihad, Al Qaeda, the Islamic Movement of Uzbekistan, Hizbollah, the Kurdistan Worker's Party (PKK), the Basque Fatherland and Liberty (ETA), the Liberation Tigers of Tamil Eelam, and Abu Sayyaf.

Besides drug trafficking, to raise capital, terrorist groups engage in a variety of intricate, at times almost convoluted, schemes involving numerous countries. The perpetrators are as complex to follow as their machinations. For instance, in June 2003, Italian financial police targeted some forty sites in and around Milan arresting five Tunisians and a Moroccan. The suspects, an imam among them, were accused of providing financial and logistical support to the Algerian Salafist Group for Preaching and Combat (GSPC). The charges against them ranged from false accounting, engaging in illegal immigration, receiving counterfeit documents, abetting and financing a terrorist organization and trafficking in stolen cars. They are also believed to have been running legitimate businesses as fronts to raise money for terrorist purposes.

In an almost surreal twist, along with other counterfeit criminal operations that pirate everyday goods such as condoms, repackaged medicines such as Viagra with expired shelf lives, toiletries such as Armani and Chanel perfumes, Head and Shoulders shampoo and Olay cream, chocolates and other food products, spare car parts, and compact discs, al Qaeda has been linked to a scheme in which counterfeit Vaseline is moved from Dubai to Britain.⁸ According to the OECD, counterfeiting accounts for approximately 7% of world commerce. At present the terrorist enterprise share of counterfeited goods is unknown.

Nevertheless, one reason to be concerned is that the counterfeiting and smuggling trade has tended to be perceived as a 'victimless crime' and, therefore, not high on the law enforcement priority list. Yet, the U.K.'s Organized Crime Task Force reports that in 2000 alone, state revenue losses from fuel smuggling and counterfeit tobacco products between Northern Ireland and the

⁶ The weapons cache included 9,000 assault rifles, 300 pistols, 53 million rounds of ammunition, 300,000 grenades and some rocket-propelled grenade launchers. "Feds Break up Drug Smuggling Linked to Terrorist Groups" *New York Times* November 6, 2002.

⁷ For recent trends, see for example, United Nations Office for Drug Control and Crime Prevention *World Drug Report 2005*.

⁸ "Massive Haul of Counterfeit Goods" *BBC News* July 26, 2002.

Irish Republic by the paramilitary groups of Northern Ireland were \$568 million. One of the benefits for criminals of smuggling counterfeit goods has been that to date the penalties for those caught are less serious than for drug trafficking. Hence, while the paramilitaries have been known to bring shipments of heroin from suppliers in Southern Spain, counterfeit tobacco products from Eastern Europe have netted similar profits but with less risk. In the case of the Provisional Irish Republican Army (PIRA), it is estimated that between \$1 million and \$15 million is needed to sustain terrorist campaigns. The PIRA's estimated fundraising capacity from smuggling counterfeit goods and contraband is believed to be between \$7.7 and \$12.3 million.⁹

The overarching goal is of course to stop terrorist attacks before they occur. Significant treasure and human resources have been dedicated to attempting to hunt down terrorists and prove their conspiracies in courts of law. However, this is much more difficult than it sounds. In general, international cooperation against organized crime has had several generations to be tested by the world community whereas counterterrorism efforts are often highly political and therefore emotionally charged.

Policy Recommendation Number One: *work closely with international partners to cooperate on the law enforcement side to apprehend and incarcerate terrorists for criminal activity and thereby interdict terrorist plots while they are still in the planning stages.*

There is a substantial and often impossible evidentiary burden for proving a terrorist conspiracy, not so criminal activity. While criminal prosecution does not have the same political or social value as trying someone for terrorism, the result ostensibly will be that one less act of terrorism will occur. Investigating and apprehending terrorists for committing or plotting terrorist acts may take years and consume untold resources and political capital; courts require high standards of evidence for terrorist conspiracies that are often difficult to meet. To circumvent these obstacles, the fact that terrorists are engaging in criminal activity serves as an opportunity for authorities to apprehend and detain them even if the connections to terrorist plots are not strong. While many counterterrorism experts argue that terrorists must be brought to justice for conspiracies and acts of terrorism, the fact is that apprehending them for criminal activity will take them off the streets and thereby impede future terrorist conspiracies. Al Capone was not caught for engaging in organized criminal activity, rather, he was indicted for tax evasion and failure to file tax returns. The eleven-year sentence that he received effectively terminated his criminal career.¹⁰

Money Movements

While engaging in both licit and illicit transactions, terrorists must be able to obscure the movements of cash, especially as they pertain to the funding of on-going illegal operations. This is important regardless of whether the money is being laundered in order to disguise its origins or to secure its clandestine distribution to interlocking cells of globally-dispersed terrorist operatives. If

⁹ "UK Threat Assessment 2002" *National Criminal Intelligence Service* (UK), July 2, 2003.

¹⁰ "Al Capone" *History Files* <http://www.chicagohs.org/history/capone.html>.

conducted through legitimate channels, the greatest obstacle terrorists face is banking reporting requirements.¹¹ Particularly since September 11, due to highly successful law enforcement efforts and stricter controls on monetary transactions, terrorists have been driven underground. This has paradoxically created a more pronounced problem for tracking terrorist money movements. There is now greater reliance than ever before on informal money laundering and manipulation networks that currently lay beyond the scope of most international money laundering agreements.

Significant also is the role of informal financial transfer systems, which go by a variety of names but are usually grouped under the term “hawala” systems, and which are widely used in the Middle East, South Asia, and Southeast Asia, the regions of greatest concern for terrorism. The hawala system evolved precisely as an attempt to evade strict exchange and capital controls and as a method for avoiding taxes and usurious bank charges. The system has served as an efficient and relatively safe and cost-effective free-market transaction instrument for decades, if not centuries, in some states. From a law enforcement and counterterrorism perspective, the problem with the hawala system is precisely the lack of a “paper trail” recording the transaction between payer and payee.¹²

While law enforcement and counterterrorism focus on the two ends of the hawala transaction, the key to understanding the hawala is the network of hawaladars that stand between the payer and payee and the mechanisms they employ to settle outstanding balances between them. The typical hawala transaction in which a resident of one country makes a payment to a local hawaladar, who then arranges payment by a correspondent hawaladar in the destination country, leaves an unsettled balance between the two hawaladars. The ways in which the balances are settled among hawaladars is central to the operation of the system. Typically, at least one of the countries involved in the hawala transaction maintains exchange or capital controls, or punitive taxation. Thus, a simple funds transfer of net balances between the two participating hawaladars is seldom possible. In fact, this is really what differentiates the hawala from banks.

The settlement of balances among hawaladars typically involves complex financial and sometimes trade transactions (often with over or under-invoicing) among multiple hawaladars, often involving transactions in third countries. This is the reason that attempts to impose regulations on hawalas are almost certainly doomed to failure. Hawalas exist to evade regulation, and, over the centuries, hawaladars have become very good at it.

Individuals and small businesses must have a way to effect cross-border financial transactions. If states and the international community wish to track movements of money, they must provide honest citizens with an efficient, legal, and economical way to conduct transactions. To promote the use of legitimate channels of commerce via a combination of the elimination of exchange and capital controls (at a minimum, controls on outgoing transfers), together with a promotion of

¹¹ Currently for movements of \$10,000 or more that appear to be ‘suspicious’ a suspicious activity report (SAR) is filed in the 101 countries of the Edgmont Group of Financial Intelligence Units that have implemented national collection centers to gather information on suspicious or unusual financial activity.

¹² In a hawala transaction, the person making the transfer makes a payment to a local hawaladar who then contacts a hawaladar in the destination country. This correspondent hawaladar makes the payment to the payee.

formal financial market services—including banks, but also savings cooperatives—to small transactions should be undertaken.¹³

Policy Recommendation Number Two: *Assist with the diversion of legitimate transactions to formal channels thereby greatly reducing the volume of transactions passing through hawalas, among which criminal and terrorist transfers are currently hidden. Over time, the reduction in volume should mean the only groups left using the hawala system will be those who need to hide the purposes of their transactions.*

2. CORRUPTION: PURCHASING IMPUNITY

Understanding and curbing corruption is a significant and often overlooked ingredient in combating terrorist activity. Corruption serves as the second main pillar of support for terrorist groups. As such it is a critical enabler which guarantees impunity for terrorist groups who must be able to safeguard the immunity from detection and prosecution of their members and maintain their operations free from interference by the authorities. Not only does corruption minimize the opportunities for state control over the activities of terrorists, it inevitably prevents real sovereignty from being exercised.

At a minimum, to operate fluidly across the frontiers of several states simultaneously, secret networks must have a guarantee of impunity from detection and apprehension. The subornation of public officials and political leaders through the use of bribery, graft, collusion and/or extortion is the vehicle by which to secure that exemption.

Allowing dishonest officials to launder corruptly acquired money serves to further complicate attempts to apprehend and deter terrorists. In essence, in laundering money derived from a bribe the corrupt official enables terrorists to deftly place a second buffer between themselves and detection; this stratum is more difficult to penetrate as it relies on the collusion of, and lies behind the cloak of, official state power. Unfortunately, it is not a matter of simply rooting out one or two corrupt officials. Successful crackdowns and tighter controls and oversight will likely herald an increase in the attempted, and successful, subornation of officials especially in states that are already susceptible to money manipulation and laundering.

As with the successful interdiction of illegal monetary transactions, that drives terrorists underground, arresting one or two compliant officials will mean only that terrorist groups will then locate still more compliant officials—in essence broadening their circle of collusion. Although this time, as was seen in countries such as Colombia in the 1980s and early 1990s, the stakes may then become higher. During this era in Colombia when simple bribery stopped working, officials were given the choice between a bullet or a bribe (the so-called “lead or silver” option) by the drug cartels. In so doing, these mafias managed to at once safeguard their illegal business activities, maintain their impunity from arrest and prosecution, and contribute to the almost complete erosion of the legitimacy of Colombian institutions. The corruption and extortion of public officials was so rampant that the state was unable to guarantee even the most basic order for its citizens. Indeed,

¹³ I am deeply indebted to Dr. Varun Sani for this valuable insight.

this is the razor's edge of corruption; what often begins as the greasing of a few palms often ends as a violent and bloody hijacking of sovereign power.

For their part, in terms of their ability to use corruption to hijack governments, terrorist groups enjoy an even greater advantage than other non-state actors such as organized criminal groups. This is so because to bolster their subornation campaigns many of today's terrorist groups have the added invaluable dimension of religious or ideological popular appeal. Indeed, terrorists are often seen as having important, overarching and long-term social goals that outweigh any negative effects their corruption might have. Indeed, if exposed, from the vantage point of public opinion this kind of corruption may not be viewed as particularly deleterious to society.

At the heart of the issue is whether the government is able to command the loyalty of the citizens or if some other group now holds sway. If the government is not itself limited by its own laws, or its members are perceived as being corrupt and above the law, or if the government is unable to compel compliance with the laws by powerful groups, the belief in the "rightness" or legitimacy of the government will be seriously lacking. In this case the death struggle may already be lost and terrorists or other power brokers may have firmly established roots in the community.

Indeed, such a setting is a magnet for private power brokers. It is much easier to operate illegal businesses, plot conspiracies, train terrorists, and bypass a system in which order is lacking and public institutions are rife with patronage and graft. When the instruments of coercion are in the hands of groups other than the government, communities become more subject to arbitrary and personally-motivated interests. In some regions an extremist quasi-government can emerge in which groups, including insurgents, drug mafias, and terrorist groups such as Hizbollah in Lebanon, the Wa in Burma, and the Tijuana Cartel in Mexico, provide "public services" such as housing, education and even justice to the people. In so doing they virtually replace the state as the governing authority in certain sectors of their countries. However magnanimous these deeds may appear to the recipients, these self-appointed leaders were not democratically chosen by the people, and act from corrupt motives. They insinuate themselves using large amounts of money coupled with some ideology and appeals to the disaffected, to breach vulnerable jurisdictions and then mold them into "states of convenience" for themselves. Such situations only serve as a breeding ground for those who are liable to take advantage of feelings of alienation and despair as was demonstrated in Afghanistan and Somalia.

Additionally, the coercive power of some sub-state groups already rivals state law enforcement agencies in a number of states; often these criminals are better equipped and outfitted than are justice officials or security forces. Some terrorist groups frequently have extensive intelligence networks that inform them of the activities of the police and military, many of whom they ultimately co-opt into their fraternity. Police are paid to provide information on planned raids, and on when arrests will occur and how investigations will proceed. Prosecutors are further bribed not to prosecute, judges not to convict and penal officials to release terrorists that do end up in jail. Such impunity translates into great power and leaves communities vulnerable to capricious rule. As a result, the citizens in these regions are often subject to as much arbitrary rule as exists in any authoritarian state. The lack of liberty and personal safety that are characteristic of both authoritarian government and corrupt states amount to the same thing, but in the latter case the coercion is simply employed by groups other than the government.

At the end of the day, these citizens are too the victims of systems of almost unchecked power in which there is a pervasive and often precarious reliance on persons rather than institutions. While such regions may have well-written and just constitutions on the formal level, at the informal level the people are subject to as much arbitrary rule as exists in any authoritarian state. Indeed, in order to prevent new extremist groups from gaining power, not only is there a requirement for a lasting and functioning government but also it must be able to take power back from local bosses and present a more visible and trustworthy authority in the lives of citizens. It is largely through this hijacking of strategic pieces of sovereignty that groups who commit conspiracies on a global scale have been able to threaten international stability and security with relative impunity.

Governments have little hope of attacking terrorist groups operating within the borders of their countries unless they first address the problem of corruption. Shortly after 9/11, Ronald Noble, the Director of INTERPOL, noted that “[t]he most sophisticated security systems, the best structures, or trained and dedicated security personnel are useless,[in combating terrorists] if they are undermined from the inside by a single act of corruption”.¹⁴ Corruption is no longer simply the greasing of the wheels of commerce—it is an insidious enabler of terrorist groups.

Policy Recommendation Number Three: *Countries must make a concerted effort to eradicate corruption in both their public and private sectors. Leaving terrorist groups with no place to plan conspiracies and conduct criminal enterprise will impede both their current and future operations by lessening the likelihood that they will be able to either penetrate or remain in any state for very long.*

3. CITIZEN SUPPORT

Countries must make a public display in the media of corrupt officials by naming those who engage in criminal acts, and contrast them with those who do not. The media can publicize the subordination campaigns mounted by terrorist groups and can point to the links between corruption, criminal activity that finances terrorism and acts of terrorism. The role of the media can be critical in this regard. It is often an essential element for advertising the government’s positive work in addressing and uncovering corruption, criminal and terrorist activities. A free press should make it easier to fight corruption.¹⁵ Finally, the media can help to build a ground swell of public support to attack those enablers of terrorism such as corruption and money laundering.

When the people know that something is being done and that corrupt behavior is being punished, from the very large abuser to the small one, public cynicism will evolve into confidence in government. It is critical that citizens understand that the rule of law is being observed, no matter the circumstance or person involved. Once confidence takes hold in the imaginations of the people, their acceptance for even the most minor offenses will diminish. In turn, the political

¹⁴ Ronald K. Noble. Chief, Interpol *Interpol Press Release*, October 8, 2001.

¹⁵ Philip Heymann, “Democracy and Corruption”, 20 *Fordham International Journal* 1996: 323, 328.

culture of corruption will be removed as a support structure for terrorist groups to manipulate at will.

Indeed it is the concept of political culture—the fundamental norms and beliefs of society—that is central to an explanation of stability and change for support of terrorist groups in any given society. Generally passed on to succeeding generations through various forms of socialization and providing a unifying societal bond, political culture refers to the general attitudes and values that individuals and societies hold toward such political institutions as the government, political parties, the judiciary and even terrorist groups and their causes. This lends itself to a brief discussion of why some people can be recruited to terrorism and why even the backing of a small percentage of citizens is a critical third pillar of terrorist support.

The question as to why people become terrorists and why so many of their fellow citizens do not condemn, but often condone, and even support, acts of terrorism is highly complex. One of the more prevalent arguments has been that poverty, ignorance and deprivation have sparked the tendency to use terrorist methods to resolve grievances. Yet this argument rings somewhat hollow. To argue that people become terrorists because they are poor and uneducated is doing a great disservice to poor people who are generally hard-working citizens struggling to provide a better future for themselves and their children. Indeed, most terrorist master-minds of the 21st century are well-educated and come from the middle and even upper classes of their societies.

What is a more plausible and perhaps more understandable stimulus is what unites the members of groups such as al Qaeda, Peru's Sendero Luminoso, the IRA, and even the now executed Timothy McVeigh. This is a sense of profound dissatisfaction with the political, economic, and/or social opportunities available in their own societies, combined with the presence of an alternative ideology (political Islam, Marxism-Leninism, Irish nationalism, and the militia movement, respectively) which gives them a vision of an alternative society, however improbable, around which to organize. In any society, feelings of humiliation, loss of dignity, loss of status, or disenfranchisement, can aggravate cultural and ethnic tensions and contribute to violent social and political movements.

After September 11 one of the disquieting questions for Americans was “why do they hate us?” In attempting to answer that question, more valuable clues for countering the support that some citizens lend to terrorists may be revealed. Opinion leaders were polled by the Pew Research Center along with the International Herald Tribune in late 2001 and some telling sentiments were brought to light.¹⁶

People in the countries polled almost overwhelmingly felt that “it is good that Americans now know what it is like to be vulnerable”. It is unclear whether such sentiments represent an unattractive, but, perhaps, understandable *Schadenfreude* on the part of the world's poor, weak, and vulnerable, or a more deep-seated hostility to American values.

They further expressed the belief that U.S. policies contribute to the widening gap between rich and poor states. This, coupled with numerous perceived and/or real historical political grievances

¹⁶ “Little Support for Expanding War on Terrorism: A multinational Survey conducted with International Herald Tribune” The Pew Research Center for the People and the Press (Washington, D.C. Pew Research Center, December 19, 2001): 1.

in which the U.S. has somehow been involved, has shaped much of the pathology of al Qaeda at the very least. In the Middle East, for example, colonialism, the inability of Arabs to prevent the formation and survival of Israel and a double standard on the part of the U.S. in supporting Israel over the Palestinians has led to deep and long-lasting resentments. Along with this has been a record of endorsing, both past and present, regimes such as those in Iran, Iraq, and Saudi Arabia, despite some shaky human rights records, and a variety of other American policies that have led to very deep bitterness, if not outrage, among many sectors of local populations. Hence, while only a few may resort to fanatical terrorist acts, others who do not condone such outrageous violence may not condemn it either.

In other words, the terrorism of this era is not only exponentially more menacing but also more effective and deadly than the familiar terrorism of the 1980s and 1990s. For disturbingly large numbers of people, the pivotal nature of the struggle and the religious aura that surrounds it generate not only an aversion to the modern world, but also a resolution to destroy it. Meanwhile, the abundance of advanced technology and other tools wrought by globalization gives those who are so inclined the capacity to inflict catastrophic damage against anyone, anywhere.

Indeed modern terrorists are driven more by hostility to trends they perceive as being inflicted upon them and over which they are (indeed really anyone is) powerless to halt—modernization, globalization, secularization, westernization, and democratization—than to any specific policies being pursued that may directly affect them. That in itself poses a significantly complicating factor in determining how to gut the support terrorists enjoy in their surrounding communities. By stereotyping the West (and most often the United States) as the root of the myriad problems confronting the Arab and Islamic worlds, terrorists and their supporting propagandists greatly expand the potential base of sympathizers, supporters and potential recruits to include virtually anyone who is unhappy with his lot in life.

Their point of view is not completely without merit if one pauses and momentarily considers the printing of cartoon pictures of the Prophet Mohammed in Danish and other European newspapers in late 2005 which led to riots and bombings all over the Muslim world.¹⁷ That this is hurtful and humiliating to Muslims seems to have completely escaped those in the West who claim that they have the right to a free press. It must be noted that while the exercise of a free press is a liberty that a great many countries enjoy, publishing derisive cartoons hardly constitutes serious reporting; rather it is a thinly veiled attempt to belittle and stereotype Muslims. Such a message only plays into the hands of terrorists who, with their already dubious and amorphous causes, are happy to stumble on new ways to prod others to action or to provide support. In February 2006, Prime Minister Abdullah of Malaysia observed, “[t]he demonisation of Islam and the vilification of Muslims, there is no denying, is widespread, within Western mainstream society”.¹⁸ What is

¹⁷ The scandal began on 30 Sept 2005 when a Danish paper published the cartoons. The problems unfolded as follows: 20 Oct 2005: Muslim ambassadors complain to Danish PM; 10 Jan 2006: Norwegian publication reprints cartoons; 26 Jan 2006: Saudi Arabia recalls its ambassador; 31 Jan 2006: Danish paper apologizes; 1 Feb 2006: Papers in France, Germany, Italy and Spain reprint cartoons; 4-5 Feb 2006: Danish embassies in Damascus and Beirut attacked; 6-7 Feb 2006: At least eight killed in Afghanistan as security forces try to suppress protests; 9 Feb 2006: Hundreds of thousands protest in Beirut.

¹⁸ “Islam-West Divide Grows Deeper” *BBC News* February 10, 2006.

more, via modern communications, incidents such as these are capable of generating almost instant and incendiary emotional appeals to violence throughout the Islamic world.

Why do prosperous, educated people become terrorists? First and perhaps foremost, it is likely that they feel they do not have the ability to realize their aspirations. In many (but certainly not all) societies, there has been a crisis of unmet political, economic, and social expectations such that citizens look upon the works of government and their society more generally with disapproval. They see a lack of credible and accountable governments, factional loyalties that tend to splinter already fractured societies, an epidemic of public offices afflicted with graft, waste and serious misallocation of public money. They also see impunity for criminals who find safe havens if they are wealthy and powerful enough to pay the tithe, and whose growing criminality, amorality, and lawlessness has caused society to become ill and further aggravate conditions of unemployment and environmental decay.

Further, despite the near-global trend toward democratization, aspects of arbitrary government remain in states as diverse as Brazil, Peru, Argentina, Indonesia, and Nigeria where universal justice is often absent and the rule of law is applied unequally. The citizens of such countries feel an increasing sense of outrage at, and alienation from, those who are meant to be serving their interests. They find they are no better off than they were yesterday or last year or even a decade ago; rather, they see an ever widening gap between themselves and those that have reaped the rewards of globalization. It is not so much that they aspire to a violent terrorist society or that they support terrorism, but they are cynical and resigned when confronted with their governments' inability or unwillingness to act as the vehicle for change. Such frustration increases public tolerance for alternative messages, no matter how illogical they may be. The terrorists' propaganda need not be complicated if the public already has reason to be outraged and demoralized, the path has already been paved; the terrorists need only add some rhetoric and back it with some zeal. Many revolutions have begun with less.

The key to a better future is the hope that it is actually possible. The more that the political culture transforms and invests in its own successful future, the less likely it is that violence will be an option for resolving social and economic dissatisfaction. The likelihood is high that private power brokers, leaders with a cause célèbre, corrupt government, and recruiters for terrorist groups will have an exponentially lower chance of securing a foothold in a society that has invested in peace, order, and prosperity for its children. This can only occur if people see that their investment will pay off and that the government will not steal it from them.

Fulfilling the hope for a better future and rectifying the crisis of legitimacy will also require government investment in a stronger state. Yet, strengthening the state does not mean strengthening only the coercive power of the state. To guarantee that social and economic stability may thrive, governments must at a minimum maintain order. In carrying out that task, security forces and police or military units should be closely monitored to ensure that they operate within the framework of the law to whose defense they are committed.

Indeed, oppressive governments become oppressive precisely because they are otherwise weak and unable to carry out essential functions efficiently and effectively. Given unlimited power, corruption is tempting; grabbing the greatest share of the state's coercive strength may be too alluring, especially when democratic processes move too slowly to resolve exigent issues. A

strong state needs an effective judiciary, effective delivery of essential services, a healthy and vibrant economy, as well as effective defense and law enforcement agencies operating within the rule of law. The use of extra-legal force by government, no matter how tempting, ultimately undermines the legitimacy of government itself. Above all, people must see there is justice in all matters of state and society even as it pertains to acts of terrorism and treatment of terrorists.

***Policy Recommendation Number Four:** Foremost consideration must be given to the rule of law in tracking, apprehending, detaining, prosecuting, and carrying out the sentences of terrorists. Further, anti-terrorist policies of liberal democracies should not involve reprisals against segments of the population thought to be sympathetic to the terrorists. If democratic governments react to violence by using indiscriminate force against certain segments of the population, they will not only be resorting to the same practice as the terrorists, but build rather than weaken whatever support the outlaw group may enjoy among members of the population.*

Above all, the greatest care must be taken to avoid humiliating people. Humiliation breeds resentment that can fester and become deep hatred over a loss of dignity that cannot be restored or rectified with any amount of money or property. Declarations of martial law and emergency measures, therefore, do not tend to strengthen the fight against violence, but rather, serve to buttress the terrorists' cause. Careful attention must also be paid to how the government treats terrorists and how this is viewed by a public supportive of, or potentially sympathetic to, the terrorists.

To slowly and carefully diminish the amount of support given to terrorists by the public, the government must appear to be doing everything for the greatest good of the society and its future. It must be a change that involves the political culture such that people decide as a whole to no longer tolerate terrorism, criminality or corruption. To slip in this regard is a loss in the favor of the terrorists; in a state infested by terrorists, government mistakes are exponentially more costly. Indeed, it might be best viewed as a zero sum game in locations where terrorists have the support of even small numbers of the public.

Government can be the guarantor of expectations such that human endeavors are possible. When a government is working well, the political process unobtrusively and continuously resolves conflict. However, when a government loses legitimacy, the citizens fluctuate between being largely indifferent and skeptical that the situation will improve, to being outraged that the government is incapable of upholding fundamental justice. In turn, this leads to the citizens seeking alternatives to resolve daily problems. As institutions increasingly lack credibility, and more crucially legitimacy, the public's enthusiasm to finance their operations wanes and private justice and alternative messages often become the favored dispute resolution mechanism.¹⁹ Public support is thus perhaps the most serious ingredient for terrorists' survival, yet the most difficult challenge for governments to address. It is a social scorecard of sorts that at once reflects how poorly governments are doing and what headway terrorists are making. Terrorists are, or pretend

¹⁹ One example of such private justice is the militia groups in U.S. that argue that since the courts are not legitimate, they have no jurisdiction over militia membership.

to be, the voice of social outrage and alienation, so it is the job of governments to reverse that image.

Conclusion

Confronting terrorism will require an understanding of the three main critical pillars of support upon which terrorists rely for their continued survival. Terrorists are highly adaptive and are increasingly successful at manipulating the weaknesses of the global system and of weak states to their advantage. In recent years many terrorists have become astute criminal operators out of necessity. They have further found the cracks in cultures that have allowed them to garner support from sympathetic populations who are disgusted with corrupt and ineffective governments.

While only a small number of disaffected people turn to terrorism, the message has spread. These non-state actors with state-like capabilities have taken advantage of the fruits of globalization: rapid communications and travel, and the ease of carrying out cross-border financial transactions. They have zeroed in on the aspects of disaffection that can be focused on globalization, western secular culture, and free market systems, all of which are perceived to be driven by a West that is painted as perverse, decayed and scornful of Muslims.

Indeed, terrorist groups have manipulated the underbelly of globalization and its discontents to their great advantage. They have not only drawn followers from alienated populations but money and material support from angry citizens. They have corrupted and usurped weak governments and perverted political cultures all for their own rather amorphous but violent purposes. To counter this will require a concerted effort on the part of the international community to develop strategies that simultaneously tackle these problems in a holistic and comprehensive fashion. The balance upon which terrorists' survival rests must be toppled; it is not enough to simply cause the structure to wobble—that merely gives terrorist groups time to adjust and regain their equilibrium. The three main pillars of terrorist support must be damaged simultaneously and irrevocably leaving these groups no alternative resources with which to rebuild their structures.

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Military Response to Terrorism and the *Jus ad Bellum*

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Abstract. In the post-Cold War security environment there have been factual developments and ambiguities that pose important challenges to the basic concepts, principles and rules of international law, especially concerning the use of force. The first part of this paper considers the option of multilateral employment of military force to prevent or to respond to acts of terrorism, and looks particularly at the Security Council's gradual enlargement of the notion of threat to international peace and security with respect to (international) terrorism. The second, and central, part of the paper then proceeds to examine the complex issue of a unilateral military response to terrorism, focusing on some its most murky features, such as: (a) the appropriate interpretation of the concept of 'armed attack' in the context of terrorist activities; (b) the requirement of attributability to States of terrorist attacks; and (c) the doctrines of anticipatory and preventive self-defence.

Keywords. International law, terrorism, *jus ad bellum*, multilateral military response to terrorism, unilateral military response to terrorism, armed attack, attributability, anticipatory self-defence, preventive self-defence.

Introduction

The post-Cold War security environment entails significant factual developments and ambiguities that pose important challenges to the basic concepts, principles and rules of international law in general, and international law on the use of force in particular. They include the increasing involvement of non-state actors, such as armed bands, insurgents and terrorist groups, in situations of armed conflict; cross-border terrorist violence; and the hostile presence of terrorist groups in foreign territory without full control. At the same time, States have started increasingly to consider the use of military force in confronting terrorist groups abroad and, occasionally, governments that harbour them.

Apart from having generated fierce debates about the efficacy of an armed response to the threat of terrorism, this trend has also raised difficult issues regarding the legal acceptability of such measures: namely, international law on the use of force, or *jus ad bellum*, seriously restricts the ability of States to resort to armed force in their international relations, save in case of an individual or collective self-defence against an armed attack, or on the basis of a Security Council authorization in case of a threat to the peace, breach to the peace, or act of aggression. Yet, since this legal paradigm has been developed on the basis of the state-centred understanding of international order, contemporary terrorist and counter-terrorist violence do not fit easily within these traditional parameters.

This paper thus examines a question central to any contemporary consideration of international law and security: under what circumstances, if any, may the use of armed force by States across national borders be a legally valid response to terrorist activities? It does so by reviewing the existing legal principles and rules on the use of force, as this author believes them to be, while at the same time considering some of the recently (re-)emerging doctrines and State practice in this area, and the extent to which they might affect the validity or the traditionally accepted interpretation of these principles and rules. The first part of the paper considers the option of a multilateral employment of military force to prevent or to respond to acts of terrorism and looks particularly at the Security Council's gradual enlargement of the notion of threat to international peace and security with respect to (international) terrorism. The second, and central, part of the paper then proceeds to examine the complex issue of a unilateral military response to terrorism, focusing on some of its most murky features, such as: (a) the appropriate interpretation of the concept of "armed attack" in the context of terrorist activities; (b) the requirement of attributability to States of terrorist attacks; and (c) the doctrines of anticipatory and preventive self-defence.

At the outset, a couple of methodological notes should be made. First, although the controversial declaration of the 'war on terrorism'¹ in the aftermath of the 9/11 attacks has stimulated this discussion, it is not the aim of this paper to evaluate the legality of any particular governmental policy or action. Rather, it attempts to evaluate the different legal dimensions of a military response to terrorism in general and abstract terms. Second, although the relevance of both strategic considerations and moral dilemmas of this thorny issue cannot be denied, these aspects are beyond the scope of this paper which centres upon the normative arguments regarding the proper response to this contemporary security threat.

Point of Departure: The Prohibition of the Use of Force

The starting point is uncontroversial: the United Nations Charter emphasizes that peace is the fundamental aim of the contemporary international community, and is to be preserved if at all

¹ 'Terrorism' is a phenomenon. Both practically and legally, war cannot be waged against a phenomenon, but only against an identifiable belligerent party. Therefore, the phrase 'war on terror' is nothing but a rhetorical device without any legal significance. The question of the legal character of the 'war on terror' has been the object of much debate in the academic community; see, eg Christopher Greenwood, *Essays on War in International Law*, (Cambridge, Cambridge University Press, 2006) 409-32; Joan Fitzpatrick, 'Jurisdiction of military commissions and the ambiguous war on terrorism' (2002) 96 *AJIL* 345, 346-50.

possible. The preamble expresses a determination of the United Nations ‘to save succeeding generations from the scourge of war’, ‘to practice tolerance and live together in peace with one another as good neighbours’, ‘to unite our strength to maintain international peace and security’, and to ensure ‘that armed force shall not be used, save in the common interest’. Article 1(1) sets forth as the primary purpose of the United Nations:

‘To maintain international peace and security, and to that end: to take effective collective measures for the prevention and removal of threats to the peace, and for the suppression of acts of aggression or other breaches of the peace, and to bring about by peaceful means, and in conformity with the principles of justice and international law, adjustment or settlement of international disputes or situations which might lead to a breach of the peace.’

The Charter then goes on to set out two fundamental principles of the United Nations. First, Article 2(3) asks States to settle their international disputes by peaceful means. Second, Article 2(4) makes it clear that:

‘All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the Purposes of the United Nations.’

Unquestionably, the prohibition of the use or threat of force articulated in Article 2(4) forms not only part of conventional² but also of general customary international law, binding all States, not only members of the United Nations.³ Moreover, it is today generally accepted that this provision reflects a *jus cogens* rule of customary international law, ‘from which no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same character’;⁴ in other words, States cannot derogate from this prohibition by virtue of bilateral or multilateral agreements.⁵

² Contained also in *inter alia* The 1933 Montevideo Convention on the Rights and Duties of States, the 1948 Charter of the Organization of American States, the 1947 Inter-American Treaty of Reciprocal Assistance, and the 1982 United Nations Convention on the Law of the Sea.

³ The International Court of Justice (ICJ) first confirmed this in *Case concerning Military and Paramilitary Activities in and against Nicaragua (Nicaragua v United States of America)* (Merits) [1986] ICJ Rep (hereinafter *Nicaragua*) [99-100].

⁴ Article 53 of the Vienna Convention on the Law of Treaties.

⁵ The view that the prohibition of the use of force in international relations is one of the most obvious *jus cogens* rules of international law is virtually without exception supported by international scholarship and jurisprudence; see, e.g. ICJ in *Nicaragua* [190]; Yoram Dinstein, *War, Aggression and Self-Defence* (Cambridge, Cambridge University Press, 3rd edition, 2004) 93-96; Christine Gray, *International Law and the Use of Force* (Oxford, Oxford University Press, 2000), 24.

This does not mean, of course, that a State cannot be militarily present or active in another State with that State's prior consent, for example with the purpose of carrying out counter-terrorist or counter-insurgency operations along the common border, provided that such agreement does not have as its explicit or implicit purpose or effect the political subordination or territorial occupation of the consenting state's territory, or is *in any other manner inconsistent* with the purposes of the UN Charter.

Thus, the effect of the provision of Article 2(4) is all-encompassing: States are prohibited from using force in international relations and from threatening others with the use of force in all but narrowly defined circumstances. The Charter explicitly envisaged only two exceptions to this general prohibition: a) collective military enforcement action taken or authorized by the UN Security Council in accordance with Chapter VII; or b) the exercise of individual or collective self-defence as outlined in Article 51 of the Charter. The legality of any military action in response to terrorism will, therefore, depend on the applicability of either of these exceptions, to which I now turn.

Collective Military Action against Terrorism

In manifesting the desire to regulate collectively and centrally the use of force between States, the members of the United Nations have delegated to that organization, specifically to the Security Council, the primary and authoritative role in the maintenance of international peace and security. The Council is fully empowered by the Charter to deal with every kind of threat that States may confront, even with military force, if necessary, for the maintenance or restoration of international peace and security (IPS). By provision of Article 39, the Council is entrusted with the exclusive authority to 'determine the existence of any threat to peace, breach of the peace or act of aggression' and upon such determination to make recommendations or to decide what enforcement measures shall be taken in accordance with Article 41 (measures short of armed force) and Article 42 that provides for the undertaking of military action:

'Should the SC consider that measures provided for in Article 41 would be inadequate or have proved to be inadequate, it may take such action *by air, sea, or land forces* as may be necessary to maintain or restore IPS. Such action may include demonstrations, blockade, and other operations by air, sea, or land forces of Members of the UN.'

Under Charter Article 43, it was envisaged that States would conclude agreements with the United Nations, enabling the Council to require troop contributions to create and carry out military enforcement operations. It was further envisaged that the strategic command of these operations was to be vested in the Military Staff Committee, established under Article 47. However, no such agreements have ever been concluded due to the political climate of the Cold War confrontations, and the Military Staff Committee never functioned as intended. Being unable directly to apply Article 42 of the UN Charter for the lack of UN armed forces at its disposal, the Council cannot actually force Member States to contribute troops to carry out military collective enforcement action, but it may *authorize* them (individually or collectively) to do so.

The Council enjoys very broad (if not unlimited) discretionary powers when determining whether a particular situation or issue is a threat to international peace and security. It does not matter whether the threat emanates from a State or from a non-state actor, such as a terrorist group, and whether it is immediate or more remote in time. Indeed, in recent years, the Council has not hesitated to characterize international terrorism in general as one of the most serious threats to international peace and security.⁶ Starting in 1992, the Council has also frequently condemned specific acts of terrorism as well as specific cases of state support for terrorism or state failure to prevent terrorist activities as a threat to international peace and security.⁷

On the basis of such determinations, the Council has often authorized non-military sanctions under Chapter VII, *inter alia* against Libya, Sudan, and Afghanistan/the Taliban regime.⁸ In the aftermath of the 11 September 2001 attacks, the Council members unanimously determined in their landmark resolution 1373 (2001) that these attacks, like all acts of international terrorism, constitute a threat to international peace and security, but stopped short of explicitly authorizing the use of force.⁹ Although the Council has not yet authorised collective enforcement action involving armed force in response to terrorism, these steps can be taken as an indication of the Council's growing recognition that military actions might in extreme circumstances be necessary when dealing with this mounting global security threat.

Given the broad political discretion the Council enjoys in acting under Chapter VII, the question emerges of how its power should be exercised when the Charter offers no specific criteria, when States see their interests so differently and when some States exercise so much more influence than others. Taking these concerns into consideration, the UN High-level Panel on Threats, Challenges and Change proposed in its 2004 report the following criteria to guide the Council's decision on recourse to armed force: seriousness of threat; proper purpose; last resort; proportional means; and balance of consequences.¹⁰

Thus, the Charter introduced a system of collective security to replace the previously almost unfettered recourse to unilateral military actions. Should a State face almost any kind of security threat, the Charter gives full authority to the Security Council as the international community's collective security voice to provide a response beginning with non-violent sanctions leading up to use of military force, in order to preserve international peace and security. After all, as Christopher Greenwood observed, 'the Charter is about keeping the peace, not about pacifism'.

⁶ UN Security Council Resolutions 1269 (1999); 1373 (2001); 1456 (2003); 1566 (2004); and 1735 (2006).

⁷ UN Security Council Resolutions 1044 (1996); 1189 (1998); 1267 (1999); 1368 (2001); 1530 (2004); 1611 (2005); and 1618 (2005).

⁸ UN Security Council Resolutions 748 (1992); 1054 (1996); 1267 (1998); 1526 (2004); and 1617 (2005).

⁹ In a non-binding resolution 1368 (2001), adopted a few days earlier, the Council expressed its 'readiness to take *'all necessary steps'* (a phrase traditionally used by the Council to authorize military action) to respond to the attacks and to combat all forms of terrorism.

¹⁰ Report of the High-level Panel on Threats, Challenges and Change, 'A more secure world: our shared responsibility' (2004) UN Doc A/59/565 [207].

Unilateral Use of Force in Response to Terrorism

Without a Security Council authorization, States may only use force in individual or collective self-defence to repel an armed attack.¹¹ The provision of Article 51 provides, *inter alia*, that:

‘Nothing in the present Charter shall impair the inherent right of individual or collective self-defence if an armed attack occurs against a Member of the United Nations, until the Security Council has taken measures necessary to maintain international peace and security.’¹²

In the context of terrorism, at least the following questions need to be considered: (a) Can a terrorist attack constitute an ‘armed attack’ within the meaning of Article 51?; (b) If so, does such an attack give rise to a right of self-defence as understood in international law? (c) If so, what are the conditions of a legitimate response in self-defence?

Terrorist Attacks as ‘Armed Attacks’

The language of Article 51 clearly postulates that self-defence is lawful only where there is an armed attack. Although the phrase ‘armed attack’ was traditionally understood as referring to the attacks by States, nothing in Article 51 or elsewhere in the Charter indicates that an armed attack can emanate *only* from States. On the contrary, the mere textual reading of Article 51 suggests that the right of self-defence makes no distinction between a State attacker and a non-state attacker. Moreover, a teleological reading of this provision indicates that the *impact* of the attack is considered more decisive than its private or public origin.¹³

It is widely accepted today that the concept of ‘armed attack’ includes acts of armed force by private actors, acting either as a tool of a State or on their own, where such acts are sufficiently grave, or in other words, where such acts are equivalent, by their ‘scale and effects’, to an armed attack by a State. This standard was first put forward by the International Court of Justice (ICJ) in the *Nicaragua* case,¹⁴ where the majority of the Court accepted that self-defence could in certain circumstances include response to non-state acts of armed force “‘of such gravity as to amount to” (*inter alia*) an actual armed attack conducted by regular armed forces’.¹⁵ In another case, the storming of the US Embassy in Tehran was regarded by the ICJ as an armed attack.¹⁶

¹¹ The term ‘self-defence’ is hereinafter used to denote both the individual and collective modes of self-defence.

¹² Charter of the United Nations, Art 51.

¹³ See also Carsten Stahn, “‘Nicaragua is Dead, Long Live Nicaragua’ — The Right to Self-defence under Art. 51 UN-Charter and International Terrorism’ in Christian Walter *et al* (eds), *Terrorism as a Challenge for National and International Law: Security versus Liberty?* (Berlin, Springer, 2004) 827-77.

¹⁴ Above n 3 [194-5].

¹⁵ UNGA Res 3314 (XXIX) (14 December 1974) Annex, Art 3.

¹⁶ *The Case Concerning United States Diplomatic and Consular Staff in Tehran (United States of America v Iran)* [1980] ICJ Rep (hereinafter *Diplomatic and Consular Staff* case) [57 and 91].

Today, most States also seem to support such interpretation of Article 51. In the aftermath of the 9/11 attacks the NATO Member States have expressed their understanding that the incident of 9/11 amounted to an 'armed attack' against the United States;¹⁷ the members of the Security Council, although not explicitly describing the 9/11 events as an 'armed attack', carefully worded resolutions 1368 and 1373 so as to affirm the inherent right of self-defence within a context of a broader response to terrorism;¹⁸ and most other States have not objected to the US-claimed right of self-defence in response to this particular attack. Although many States and legal commentators have criticized the way the US military action in Afghanistan was carried out, they tended to limit their criticism in terms of the choice of a target and the principles of necessity and proportionality rather than the question of whether an 'armed attack' by non-state actors, triggering the US right of self-defence, occurred. The same can be said about the 2006 Israeli military intervention in southern Lebanon, where most States have rejected Israel's 'disproportionate use of force' rather than its basic right to military action in response to acts by Hezbollah.¹⁹ In light of the above, it seems clear that in contemporary international law the concept of 'armed attack' has been considered broad enough to cover terrorist armed actions, provided that they reach a certain level of intensity.

Armed Response Against a State: The Attributability Requirement

Although it seems to be safe to claim that military activities of private actors may amount to an 'armed attack' within the meaning of Article 51 of the Charter, the right of the victim State to respond in a form of armed action does not smoothly extend to such scenarios. As a fundamental rule, measures of self-defence can only be directed against the attacker. Since most defensive military measures will, as a matter of fact, violate the sovereignty and territorial integrity of another State,²⁰ the main question remains whether such measures are restricted to situations where the initial attack can be attributed to that particular State. On its face, the right approach seems to be that in order to balance between one State's right of self-defence and another State's right not to be the victim of the threat or the use of force, a considerable degree of the latter's State involvement in the illegal actions must be established before a defensive military action can be launched against it. However, the necessary level of 'involvement' is not altogether clear.

It is widely accepted that for the acts of the private actors to be attributable to a foreign State for purposes of self-defence, that State must have exercised a certain extent of control over their actions. However, the necessary degree of 'control' is not altogether clear.²¹ The ICJ has

¹⁷ Press Release (2001) 124, Statement by the North Atlantic Council (12 September 2001) 40 *ILM* 1267.

¹⁸ Although the Council members did not explicitly characterise the 9/11 attacks as 'armed attacks' (but rather as a threat to international peace and security in terms of Article 39), the confirmation of the right of self-defence in this particular resolution could only mean that they considered that terrorist attacks constituted armed attacks for the purposes of Article 51 of the UN Charter. See also Greenwood, above n 1, 426-27.

¹⁹ UNSC 'Security Council Debates Escalating Crisis between Israel, Lebanon; UN Officials Urge Restraint, Diplomacy, Protection Of Civilians' (14 July 2006) Press Release SC/8776.

²⁰ The rare exceptions would be military actions on the high seas or in the international air space.

²¹ The only clear-cut scenario involves an attack committed by private actors acting in the capacity of *de jure* or *de facto* organs of a State, which is regarded as an attack of that State under international law,

developed a rather restrictive test of attributability to a State of non-state attacks. In its 1986 *Nicaragua* decision, the Court held that the acts of the Nicaraguan *Contras* could not be imputed to the United States because the latter had not exercised ‘effective control’ over each specific operation at issue.²² In the Court’s view, ‘financing, organizing, training, supplying and equipping’ or even ‘the selection of its military or paramilitary targets and the planning of the whole of its operation’ was not enough to meet the exacting threshold.²³ On the other hand, the International Criminal Tribunal for the Former Yugoslavia (ICTY) used a looser standard in its 1999 decision in the *Tadić* case, and concluded that the acts of the Bosnian Serb Army could be attributed to Serbia because the latter exercised ‘overall control’ over them, which still extended ‘beyond the mere financing and equipping of such forces and involv[ed] also participation in the planning and supervision of military operations’,²⁴ but did not necessarily mean that each illegal operation was carried out under the direct control of a State. This alternative approach had little impact on the stringent ‘effective control’ test: the ICJ itself explicitly dismissed the *Tadić* standard as too broad in its most recent decision in the *Bosnia Genocide* case,²⁵ while its *Nicaragua* standard has been reflected in Article 8 of the 2001 International Law Commission’s (ILC) draft articles on state responsibility, stating that conduct can be attributed to a State if the non-state actors were ‘in fact acting on the instructions of, or under the direction or control of, that State in carrying out the conduct’.²⁶

Alternatively, a State may be held responsible for a non-state armed attack which it *ex post facto* endorsed, either explicitly or tacitly. The ILC accepts the attributability to a State of a private action ‘if and to the extent that the State acknowledges and adopts the conduct in question as its own’.²⁷ Such a situation was found by the ICJ to have occurred in relation to the attack on and seizure by militants of the United States embassy in Tehran in 1979. In the *Diplomatic and Consular Staff* case, the Court described public statements of approval by the Iranian authorities following the takeover as creating Iran’s responsibility for that incident. According to the Court, Iran’s policy of not ending the hostage taking in order to put pressure on the United States and the compliance to this policy by various Iranian authorities which endorsed the policy on several occasions, transformed the occupation of the American embassy into acts of Iran.²⁸

even when the attack has been carried out contrary to the rules or directions of that State. For more, see Arts 4-7, ‘Draft Articles on Responsibility of States for Internationally Wrongful Acts with Commentaries’ in ILC, ‘Report of the International Law Commission on the Work of its Fifty-third Session’ (2001) UN Doc A/56/10 [hereinafter ILC Draft Articles].

²² *Nicaragua*, above n 4, [115].

²³ *Ibid.*

²⁴ *Prosecutor v Tadić* (Appeal of the Judgment) (1999) 38 ILM 1518 (hereinafter *Tadić*) [145].

²⁵ *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v Serbia and Montenegro)* (Judgment) 2007 <<http://www.icj-cij.org/icjwww/idocket/ibhy/ibhyframe.htm>> accessed 27 February 2007.

²⁶ ILC Draft Articles, Art 8.

²⁷ ILC Draft Articles, Art 11.

²⁸ *Diplomatic and Consular Staff* case, above n 16 [74]. See also Tom Ruys and Sten Verhoeven, ‘Attacks by Private Actors and Self-Defence’ (2005) 10 *Journal of Conflict and Security Law* 289, 301.

On the other hand, it has traditionally been understood that a State's assistance to private actors in the form of arms supplies, financial or other support, does not by itself make their specific attacks attributable to the supporting State and it does not render that State a legitimate target of a defensive military action by the victim State.²⁹ A fortiori, harbouring of terrorists, although a violation of certain provisions of international law,³⁰ does not justify the *reductio ad mare liberum* of the territory of the 'host State', when that State was otherwise not substantially involved in the particular attack. Similarly, a State that fails to control or prevent illegal terrorist activities on its territory can be held responsible for not having complied with its international obligations regarding international terrorism, but a mere failure to comply with its international obligations is not in itself tantamount to an armed attack attributable to that State, thus the victim State has no right to direct its defensive military actions against that State.³¹

Indeed, some States (notably Israel, the US and South Africa) have suggested in the past that were entitled to the use of force in self-defence in response to terrorist attacks by targeting terrorist bases in the host State even if no substantial involvement of that State could be proven, where that State had actively supported or knowingly harboured terrorist groups. However, most States do not seem to have shared this view: for instance, in 1985, the Security Council unanimously rejected Israel's claim that it had been entitled to use force in self-defence against the Palestinian Liberation Organisation (PLO) headquarters in Tunisia because Tunisia had knowingly harboured terrorists who had targeted Israel.³² More recently, the US military response to the 9/11 terrorist attacks was regarded by some authors as slackening the established threshold of attributability to extend the right of self-defence so as to justify actions against States which have been actively supporting or willingly harbouring terrorists.³³ Although it might seem that by securing the advance support of a large number of other States for its military action in Afghanistan the US has effectively lowered the traditionally required high threshold of involvement, it is difficult to

²⁹ See *Nicaragua* case, above n 4 [195]. Although Judges Schwebel and Jennings partly opposed this position in their dissenting opinions, the majority of legal writers as well as States seem to support it. Even Judge Jennings himself implied that 'the mere provision of arms cannot be said to amount to an armed attack' unless 'coupled with other kinds of involvement' (above n 4 [543]). See also Gray, above n 5, 98-9. For an alternative view, see Greenwood, above n 1, 424-25.

³⁰ It has been widely recognized as a customary law principle that every State is under an obligation 'not to allow knowingly its territory to be used for acts contrary to the rights of other States' (see eg *The Corfu Channel Case (United Kingdom v Albania)* [1949] ICJ Rep 22. The Security Council has also passed a number of resolutions, most notably resolution 1373 (2001), creating an international obligation on member States to deny safe haven and bring terrorists to justice. A breach of this international obligation to prosecute or extradite offenders might entitle the affected State to take proportionate countermeasures, *not* involving the use of force, against the offending State.

³¹ Given the trans-national nature of the modern terrorist networks, adopting the opposite view would create a wide range of potential target States and increase the potential of inter-state violence, contrary to the supreme goal of the international community to preserve international peace and security if at all possible.

³² Security Council Resolution 573 (1985); see also Antonio Cassese, 'Terrorism is Also Disrupting Some Crucial Legal Categories of International Law' (2001) 12 *EJIL* 993, 996.

³³ See, eg Michael Byers, 'Terrorism, the Use of Force and International Law after 11 September' (2002) 16 *International Relations* 155; Frederic Kirgis 'Israel's Intensified Military Campaign Against Terrorism' (2001) *ASIL Insight* <<http://www.asil.org/insights.htm>> accessed 28 February 2007.

determine the exact impact of this one-off support for the US legal position on the emergence of a new international norm.

A number of international legal scholars have rightly noted that while the international reaction to the 9/11 events might be indicating an emerging *trend* towards such an expansion of the concept of self-defence, it could hardly be interpreted as an ‘instant custom’, changing the standard of attributability overnight.³⁴ Apparently, the ICJ shares this view: in two of its post-9/11 decisions, the *Legal Consequences of the Wall*³⁵ and *DRC v. Uganda*,³⁶ the Court essentially reconfirmed the *Nicaragua* standard and considered the current state of international law to permit self-defence in the case of an armed attack by a non-state actor only if the attack is attributable to another State.

Admittedly, this traditional approach fails to address adequately the question as to what kind of action a victim State *is* entitled to take in response to a large-scale armed attack by non-state actors where such acts cannot be attributed to a foreign State, a question of utmost relevance in the contemporary security context characterized by terrorist threats emanating from largely independent armed groups, often operating in a territory with no effective governmental presence or authority. That is why several authors have suggested that the victim State might be justified in carrying out defensive military strikes directed only against terrorist targets in such territory within a State which failed to take adequate measures to prevent terrorists from carrying out the specific attack.³⁷ There are signs that States increasingly support this view. In a very recent case, Israel justified its invasion in southern Lebanon in July 2006 as an action carried out in self-defence in response to the kidnapping of two Israeli soldiers by Hezbollah operating in Lebanese territory. Although Lebanon officially disassociated itself from the attack, most members of the Security Council acknowledged Israel’s inherent right of self-defence against armed actions of Hezbollah; however, some members of the Council simultaneously reiterated the need to respect the sovereignty and territorial integrity of Lebanon, thus indicating their view that Lebanon *as such* was not a legitimate target of the Israeli counter-attack.³⁸

Conditions of Legitimate Response: Necessity, Immediacy and Proportionality

There are a number of authoritative views on what constitutes a legitimate self-defence. One of them is encapsulated in the *Webster formula*, formulated in the context of the UK-US *Caroline*

³⁴ Stahn, above n 13; Eric P.J. Myjer and Nigel D. White, ‘The Twin Towers Attack: An Unlimited Right to Self-Defence?’ (2002) 7 *Journal of Conflict and Security Law* 5, 7-8.

³⁵ *Legal Consequences of the Construction of a Wall* (Advisory Opinion) 2004 <<http://www.icj-cij.org/icjwww/idocket/imwp/imwpframe.htm>> (hereinafter *Advisory Opinion on the Wall*) [139].

³⁶ *Case Concerning Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v Uganda)* 2005 <<http://www.icj-cij.org/icjwww/idocket/ico/icoframe.htm>> accessed 10 March 2007 (hereinafter *DRC v Uganda*) [146].

³⁷ Markus Krajewski, ‘Preventive Use of Force and Military Actions Against Non-State Actors: Revisiting the Right of Self-Defence in Insecure Times’ (2005) 5 *Baltic Yearbook of International Law* 1. This view was also supported by Judges Kooijmans and Simma in their respective separate opinions in the *DRC v. Uganda*.

³⁸ Above n 19.

dispute of 1837, in which forcible reaction (to attacks by non-state actors) was deemed legitimate only if the ‘necessity of self-defence [was] instant, overwhelming, leaving no choice of means, and no moment for deliberation...’³⁹ and when the force used in response was necessary and proportional to the threat at hand. As Gray pointed out, the *Caroline* incident has established criteria for lawful self-defence to which ‘most [S]tates and writers still refer’ when providing justification for their military activities even after 1945.⁴⁰ The ICJ confirmed the customary character of the necessity and proportionality requirements in both the *Nicaragua* case (para. 176), and the *Advisory opinion on the legality of the threat or use of nuclear weapons*.⁴¹

Necessity demands, essentially, that all non-military alternatives of redress have been exhausted and the use of force remains the only viable option to prevent the attack or frustrate its continuation in the particular circumstances.⁴² Schachter has stressed that defensive military action cannot be deemed necessary ‘until peaceful measures have been found wanting or when they clearly would be futile’.⁴³ From this requirement implicitly follows that there must be no ‘undue time-lag between the armed attack and the exercise of self-defence’.⁴⁴ In other words, self-defence must be an *immediate* reaction to aggression; if the victim State allows time to elapse, its military reaction would appear to be an armed reprisal, which is forbidden under international law, and must thus be sanctioned by the UN Security Council. However, the immediacy requirement seems to have already been more broadly construed in practice in the age of terrorist attacks, which, to quote Greenwood, are ‘usually over and done with before the victim [S]tate is in a position to undertake a military response’.⁴⁵ Arguably, a *reasonably delayed* response should be considered legitimate ‘where there is a need to gather evidence of the attacker’s identity and/or collect the intelligence and [organise the] military force in order to strike back in a targeted manner’.⁴⁶

The third traditional requirement of customary law is that any armed response in self-defence must be *proportionate*. Although the content of this requirement is not entirely clear, the prevailing view in legal scholarship seems to be that military action must be proportionate to its defensive purpose, i.e. no more than necessary to repel the attack.⁴⁷ In other words, there must be

³⁹ Letter from Daniel Webster, US Secretary of State, to Henry Fox, British Minister in Washington (24 April 1841), reprinted in Kenneth Bourne, ed, *1 British Documents on Foreign Affairs: Reports and Papers from the Foreign Office Confidential Print*, Part I, Series C 153, 159 (University 1986).

⁴⁰ See Gray, above n 5, 105.

⁴¹ ICJ Reports (1996) 1 (hereinafter *Nuclear Weapons Advisory Opinion*) [41-42].

⁴² See, eg Michael N. Schmitt, ‘Counter-terrorism and the Use of Force in International Law’ (2002) 5 *The Marshall Center Papers* 530.

⁴³ Oscar Schachter, ‘The Right of States to Use Armed Force’ (1984) 82 *Michigan Law Review* 1620, 1635.

⁴⁴ Dinstein, above n 5: 184.

⁴⁵ Greenwood, above n 1, 422.

⁴⁶ Angus Martyn, ‘The Right of Self Defence Under International Law; The Response to the Terrorist Attacks of 11 September’ (2002) *Current Issues Brief No. 8, 2001-2002* <<http://www.aph.gov.au/library/pubs/CIB/2001-02/02cib08.pdf>> accessed 15 November 2006.

⁴⁷ See, eg Roberto Ago, ‘Addendum to the 8th Report on State Responsibility’ (1980) 2 *Yearbook of ILC* 51, 64 and 69. His view was supported, *inter alia*, by Judge Schwebel in his dissenting opinion in *Nicaragua*, above n 4, by Judge Higgins in her dissenting opinion in *Nuclear Weapons Advisory Opinion*, above n 41,

an approximation between the action and its purpose of averting the attack; the purpose of self-defence cannot be retribution, general deterrence, punishment or any other motive. According to this view, the intensity of the response *may* sometimes be disproportionate to the intensity of the initial armed attack as long as it is not designed to do anything more than what is necessary to achieve its legitimate aim to protect the territorial integrity or other vital rights of the defending State.⁴⁸

As early as 1963, McDougal and Feliciano argued that the principle of proportionality must be applied with some flexibility, according to the specifics of a particular context⁴⁹ and may under certain circumstances need to exceed the scale and scope of the first attack or the threatened attack. Similarly, although the ICJ pronouncements in *Nicaragua*, *Oil Platforms* and *DRC v Uganda* focus primarily on weighing the intensity of the defensive force against the intensity of the force defended against, the Court recognized in *Oil Platforms* that it cannot assess in isolation the proportionality of avowedly defensive action to the initial armed attack.⁵⁰ Furthermore, in *Nuclear Weapons*, the Court indicated the possibility that in cases where the stakes are higher, such as where the preservation of a State is at risk, it would take into account the overall defensive purpose in its assessment of proportionality.⁵¹

It is worth noting that in the context of terrorism, the legitimate defensive purpose might extend to the detention of the persons allegedly responsible for the attacks, and destruction of the legitimate military objectives under *jus in bello* (considered below), such as infrastructures, training bases and similar facilities used by the terrorists.⁵²

Anticipatory Self-Defence: Averting an Imminent Terrorist Attack

Another complex question to which the Charter gives no clear answer is whether unilateral military action against a *threat* of a (terrorist) armed attack may ever be justified. Before the Second World War, international customary law traditionally endorsed the idea that a State can respond to an impending attack leaving no sufficient alternative choice of means. The above-mentioned *Caroline* incident serves as a classic case confirming that a threatened armed attack may give rise to a right of self-defence, when the threat of an attack is 'instant', or in other words,

as well as by Judges Kooijmans and Simma in their respective dissenting opinions in *Congo v Uganda*, above n 36.

⁴⁸ *Ibid.* For the contrary understanding of the proportionality concept as a requirement of balance between the mode of the initial force and the mode of counter-force see, eg Dinstein, above n 5, 194; Schachter, above n 43, 1637, and Ian Brownlie, *International Law and the Use of Force by States* (Oxford, Clarendon Press, 1963) 259 and 261-64.

⁴⁹ Myers S. McDougal and Florentino P. Feliciano, *Law and Minimum World Public Order: the Legal Regulation of International Coercion* (New Haven, Yale University Press, 1961) 217.

⁵⁰ *Case Concerning Oil Platforms (Islamic Republic of Iran v USA)* 2003 <http://www.icj-cij.org/icjwww/idocket/iop/iopframe.htm> accessed 17 March 2007 (hereinafter *Oil Platforms*) [77].

⁵¹ *Nuclear Weapons Advisory Opinion*, above n 41 [42].

⁵² Cassese, above n 32, 999.

imminent.⁵³ While the *Caroline*-based doctrine of anticipatory self-defence was reconfirmed by the International Military Tribunal at Nuremberg in relation to the German attack on Norway in 1940,⁵⁴ its validity after the entry into force of the UN Charter and its general ban on unilateral force remains open to debate. The language of Article 51 makes it clear that self-defence is lawful only when an armed attack *occurs* and not as a first strike option. But the Charter does not define at which point in time an 'armed attack' begins and nothing in this provision itself implies the legality or illegality of the use of force in cases when an armed attack is *about to occur*.

In practice, States have mostly refrained from invoking the doctrine of anticipatory self-defence to justify their military actions after 1945, even when the facts of the case would allow it.⁵⁵ One rare exception is the Israel's attempt to justify its 1981 attack on the Osirak nuclear reactor under construction in Iraq as an anticipatory self-defence. While the Security Council unanimously condemned Israel's action in its resolution 487 (1981), a closer look at the debate reveals that most States refrained from explicitly rejecting (or approving) the anticipatory self-defence doctrine *per se*, but rather refused the Israeli argument that the mere construction of the reactor constituted an *imminent* threat. Although in recent years, some of the key actors, such as the US,⁵⁶ the UK,⁵⁷ Australia,⁵⁸ France,⁵⁹ and Russia,⁶⁰ have explicitly accepted its validity in case of an *imminent* armed attack, this doctrine has still not been widely accepted by States. International legal scholars have put forward numerous arguments on this issue and although there

⁵³ Above n 39.

⁵⁴ The Tribunal rejected the German argument that it had attacked Norway in 1940 in anticipatory self-defence because Germany had not acted to forestall an *imminent* invasion by the Allies, but rather to 'prevent an Allied occupation at some future date.' See *Judgment of the Nuremberg International Military Tribunal 1946* (1947) 41 *AJIL* 172, quoting John Bassett Moore (1906) 2 *International Law Digest* §2.17, 412.

⁵⁵ For instance, the Soviet-Cuban maritime quarantine imposed unilaterally by the US in the context of the 1962 Cuban Missile Crisis, which is often cited as an example of anticipatory self-defence, was never justified by the US administration in this way but in terms of a regional enforcement action previously authorized by the OAS. Similarly, Israel based its justification for the 1967 attack against Egypt on a broad construction of the starting point of an 'armed attack', rather than on the doctrine of anticipatory self-defence—it maintained that its action was an act of self-defence under Article 51 of the Charter after Egyptian forces had attacked Israel first.

⁵⁶ The National Security Strategy of the United States of America (17 September 2002) <<http://www.whitehouse.gov/nsc/nss.pdf>> accessed 8 March 2007.

⁵⁷ Statement by the Attorney General Lord Goldsmith to the House of Lords on 21 April 2004 <http://www.publications.parliament.uk/pa/ld200304/ldhansrd/vo040421/text/40421-07.htm#40421-07_spmi0> accessed 8 March 2007.

⁵⁸ Australia's Parliamentary Joint Standing Committee on ASIO, ASIS and DSD: Inquiry into Intelligence on Iraq's Weapons of Mass Destruction <<http://www.aph.gov.au/house/committee/pjcaad/WMD/report.htm>> accessed 10 June 2006.

⁵⁹ The 2002 French defence bill: Loi de Programmation Militaire 2003-2008 (11 September 2002) <<http://www.defense.gouv.fr/english/d140/inde.htm>> accessed 10 June 2006.

⁶⁰ See, eg Christopher Greenwood, 'The Legality of Using Force against Iraq' (2003) *Memorandum to the Select Committee on Foreign Affairs* <<http://www.publications.parliament.uk/pa/cm200203/cmselect/cmfaif/196/2102406.htm>> accessed 15 November 2006.

is no consensus on the topic, the prevailing view today seems to be that anticipatory self-defence is permitted in the post-Charter international law, but only in extreme circumstances, in order to preempt an *imminent* threat.⁶¹

Yet, the concept of an *imminent* threat remains without a precise definition in international law and it may be difficult ever to express the imminence of a particular threat in a legally robust fashion. The traditional *Webster* requirement of an ‘instant’ threat seems to centre on the temporal dimension of the notion and it is very stringent: it considers the threat to be imminent when the attack is just about to occur or, in other words, when an attack is ‘in evidence’.⁶² Such a restrictive requirement could hardly ever be satisfied in the context of modern warfare and the specific character of contemporary terrorism characterized by clandestine preparations and surprise attacks. Although it is difficult to assess where international law stands at the moment, it must be admitted that States may well need to use force without a prior Security Council authorization, even when an armed attack is not temporally imminent, but the threat of it is overwhelming.

However, clear and objectively verifiable criteria for evaluation of the ‘imminent’ threat would first need to be established to improve the unilateral decision-making and to reduce the risk of error. In the present author’s view, a framework governing unilateral defensive actions against the non-conventional threats could be developed taking into account the following elements: (a) the specific character of the threat, including: the magnitude of potential harm; the nature of strategies, tactics, and methods of warfare (clandestine operations, surprise attacks, sophisticated technology, non-conventional weapons); (b) the capacities and the specific hostile intent of the alleged adversary; (c) the proximity of the threat and time available for defence; (d) the likelihood of the threat being realized in case of inaction; (e) the availability of credible and convincing evidence; (f) complicity with the other Charter and customary law principles of self-defence: necessity, proportionality, duty to report to the Security Council and termination of unilateral action after the Council has taken over.⁶³

In practice, some States have developed an argument that in assessing the right of self-defence armed attacks should be viewed cumulatively, especially with regard to attacks originating from private actors. In particular, the existence of past attacks has been relied on to affirm the credibility of future attacks, thus building up the image of a continuing attack. This view seems to make sense especially in the context of terrorist campaigns, which generally consist of a series of actions that

⁶¹ See, eg Robert Jennings and Arthur Watts (eds), *Oppenheim’s International Law* (London, Longman, 9th edition, 1991). This view is shared by many other prominent commentators, including Dinstein, Greenwood, Higgins, and Schachter, and has recently been supported by the UN High-level Panel on Threats, Challenges, and Changes (see above n 10 [188]).

⁶² See Mary Ellen O’Connell, ‘The Myth of Preemptive Self-Defense’ (2002) *ASIL Task Force Papers*, <<http://www.asil.org/taskforce/oconnell.pdf>> accessed 10 June 2006.

⁶³ For similar views, see Rabinder Singh and Alison Macdonald ‘Legality of use of force against Iraq’ (2002) <<http://www.lcnp.org/global/IraqOpinion10.9.02.pdf>> accessed 25 July 2005; Abraham D. Sofaer, ‘On the Necessity of Preemption’ (2003) 14 *EJIL* 209, 220.

occur periodically over extended periods of time.⁶⁴ Mainly Israel and the United States have asserted that the right to self-defence includes the right to disrupt ongoing terrorist attacks in some circumstances, where it appears to be necessary to prevent further attacks that are anticipated on the basis of previous experience. Some leading scholars have also suggested that self-defence against future terrorist attacks may be justified where *prior* attacks have occurred and there is *clear and convincing evidence* that more attacks are planned.⁶⁵ On the other side, while the UK and France have consistently supported that view, most other members of the Security Council seem to reject the ‘accumulation of events’ theory in the context of counter-terrorist military actions.⁶⁶

Thus, it is hard to assess where exactly law stands in this regard. In any case, an important caveat must be whether the attacks can be viewed as part of a pattern and have occurred within a reasonable time-frame. While the question of ongoing campaigns with another armed attack in effect already underway conceptually differs from the questions of anticipatory self-defence *stricto sensu*,⁶⁷ prudence is crucial as the idea of a continuous right to self-defence beyond specific attacks again seems dangerously close to unlawful reprisals.⁶⁸ This applies particularly to the recent US administration’s all-inclusive open-ended rhetoric of the ‘war on terror’, intended partly to justify a permanent recourse to armed force that is in exact contradiction with the underlying rationale of the right to self-defence.

Preventive Military Strikes to Forestall Future Terrorist Attacks

Although the doctrine of anticipatory self-defence itself implies a certain re-interpretation of the traditional self-defence standards, the most radical and far-reaching post-9/11 challenge to the *jus ad bellum* has been posed by the Bush administration’s doctrine of unilateral preventive military intervention as a means of reduction or prevention of terrorist threats. Denying terrorists the sanctuary they seek in failed States is becoming a central feature of the US counter-terrorist strategies and the Bush administration had already declared its willingness to use preventive force against suspected terrorists inside a State that is incapable of policing itself or even to overturn ‘hostile regimes’⁶⁹ that willingly harbour and support terrorist activities within their borders.⁷⁰

⁶⁴ Indeed, the 9/11 attacks cannot be seen in isolation. A series of previous international terrorist attacks had been carried out against American targets including the bombing of US embassies in Kenya and Nairobi in 1998 and the attack on *USS Cole* in Aden, Yemen in 2000.

⁶⁵ See, eg Dinstein, above n 5, 219-20; Christopher Greenwood, ‘International Law and the Pre-emptive Use of Force: Afghanistan, Al-Qaida, and Iraq’ (2003) 4 *San Diego International Law Journal* 7, 23; Robert Y. Jennings, ‘The Caroline and McLeod Cases’ (1938) 32 *AJIL* 82, 87; O’Connell, above n 62.

⁶⁶ Israel-Lebanon (1968) UNYB 228; Israel-Tunisia (1985) UNYB 285; USA-Libya (1986) UNYB 247.

⁶⁷ See O’Connell, above n 62; Michael N. Schmitt, ‘Preemptive Strategies in International Law’ (2003) 24 *Michigan Journal of International Law* 513, 535-36.

⁶⁸ See also Gray, above n 5, 118-19.

⁶⁹ In his speech to the United States Congress on 20 September 2001, President Bush stressed that ‘[f]rom this day forward, any nation that continues to harbour or support terrorism will be regarded by the United States as a hostile regime’. See ‘Address Before a Joint Session of the Congress on the United States Response to the Terrorist Attacks of September 11’ (2001) 37 *Weekly Comp. Press Doc* 1347, 1349.

The main problem with this doctrine is that it seeks to remove any legal constraints on the unilateral use of force. Unlike anticipatory action, preventive strikes are not about pre-empting an immediate and credible security threat, but about foiling the unspecified threats that might occur at some uncertain time in the future. It is an offensive strategic response to a long-term threat, not a defensive tactical response to an impending attack, which is the underlying rationale of the anticipatory action.⁷¹ It is virtually uncontroversial that this doctrine radically departs from the existing regulation of the use of force.⁷² This author believes that the logic of unilateral preventive strikes against the threats-to-be should also in the future be rejected in the global order governed by the rule of law due to its many normative flaws.

To highlight just one, the US-proposed expansion of the self-defence rule lacks any conceptual and normative clarity as to the actual scope and objective criteria for its implementation. Introducing an overly vague and unlimited rule on unilateral force into international law would jeopardize the validity of the prohibition of the use of force itself. There must remain at least some objective, non-political standards by which the military actions of States can be evaluated and either supported or condemned as illegitimate. Replacing even the minimum legal standards with purely subjective and arbitrary judgments of States would mean completely denying any normative role of the international law on the use of force. Admittedly, power politics will always play an important role in the international system and the legal constraints on that power will probably never be completely free from uncertainties. But opening the way to military actions subject only to the more or less reliable threat assessments by single States, where formal legal scrutiny is impossible, could lead to an unrestricted exercise of power against some perceived threats.

Conclusion

The fight against terrorism should primarily be understood in a long-term perspective, which requires a careful reconsideration of the relationship between the rise of terrorism and deep social inequalities such as poverty, economic, social and cultural underdevelopment, lack of political pluralism and democracy, and so on. Looking at it through a military lens can thus be merely a short-term approach and not the most effective in strategic terms, or politically wise. That is why it is especially important for military force to be used only in the last resort and strictly within the limits of international law, so as not to collide with the generally accepted principles of the international system. International law on the use of force has been one of the greatest achievements of the international community in the 21st century and whilst contemporary terrorism

⁷⁰ See US National Security Strategy, above n 56.

⁷¹ The distinction is partly borrowed from Jack S. Levy, 'Declining Power and the Preventive Motive for War' (1987) 40(1) *World Politics* 82, 91.

⁷² In the classic case, Israel's 1981 attack on the half-built Osirak nuclear reactor in Iraq was roundly rejected by the Security Council, mostly on the grounds that the attack was preventive, not anticipatory, in nature. Apart from Israel and the US, most other States have expressed both political and normative resentment to the idea of preventive strikes. A vast majority of international legal scholars likewise reject this doctrine and the view was recently shared by the UN High-level Panel on Threats, Challenges, and Change (see above n 10 [188]).

carried out by largely independent private actors does not fall smoothly into its traditional paradigms, the relevant decision-makers must strive to respect and develop it further, where necessary, to ensure its continued relevance and to prevent the anarchy so eagerly pursued by the terrorists themselves.

The current international system of collective security combined with the contemporary regime of self-defence allows States to respond to terrorism fully, reactively or preventively, even with military force. In order to comply with the existing legal principles of the international community, any counter-terrorist military action should be carried out on the basis of these fundamental principles of the contemporary *jus ad bellum*:

- (1) **The recognition of the primacy of the collective security system under the UN Charter.** As much as possible, military counter-terrorist operations should be taken on a multilateral basis, which does not collide with the generally accepted principles of the international community; especially any eventual *preventive* military action should be taken *only* with the prior Security Council authorization.
- (2) **A continuing compliance with the fundamental *jus ad bellum* requirements in the exercise of self-defence.** Any State that seeks to invoke the right of self-defence should be required to meet a high standard in showing that its actions are justified due to an actual or imminent large-scale attack by terrorists; even in such situations, the victim State may direct its defensive military action against another State only if those attacks can be attributed to that State under the international law of State responsibility. In any case, armed response is legitimate only when it is both necessary to repel the attack and reasonably proportionate to both the initial threat and to its own defensive purpose. All defensive military operations must be immediately reported to the Security Council and must cease once the Council has taken the necessary steps to maintain international peace and security.

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EU Institutional and Legal Counter-terrorism Framework

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Abstract. *The 9/11 terrorist attacks in New York and Washington lifted counter-terrorism to the top of the European security agenda. The bombings in Madrid of March 2004 and in London of July 2005 proved that Europe is also a target of the new forms of international terrorism. The EU has since been trying to react to the terrorist threat with a comprehensive strategy grounded on four core objectives: prevent, protect, pursue and respond. The Union has also reshaped its institutional and legal counter-terrorist framework. The role of some EU bodies has been strengthened, while new institutional actors have been set up. The most important EU institutions in the fight against terrorism have proved to be the European Commission, Europol and Eurojust. Despite some good results achieved, lack of co-ordination and difficulties in information sharing are weaknesses that still hamper the realization of an effective intelligence and judicial co-operation. A new European common definition of terrorist offences, the introduction of the European Arrest Warrant and the use of biometrics are pioneering legal instruments in counter-terrorism. Such legal tools have enhanced the efficacy of the EU action in preventing and suppressing terrorism. On the other hand, they have raised concerns about fundamental rights and civil liberties. This paper is aimed at providing an initial evaluation of both institutional and legal aspects of the EU fight against terrorism. Whilst acknowledging the achievement of many positive results, this assessment leads also to the conclusion that the European Union has to further step up its efforts to remedy a number of inadequacies and weaknesses arising in both the institutional and legal frameworks of the EU counter-terrorism response.*

Keywords: Counter-terrorism, European Commission, Europol, Eurojust, definition of terrorism, European Arrest Warrant (EAW), Biometrics.

Introduction

The beginning of the modern era of European counter-terrorism can be located in the 1970s with the establishment in 1975 of the Terrorism, Radicalism, Extremism, and International Violence group, or TREVI group, and with the European Convention on the Suppression of Terrorism (ECST) in 1977.

The TREVI group was formed by European police officials in order to exchange information and provide mutual assistance on terrorism and related international crimes. It was initially a forum for exchanging information regarding organised crime and terrorism. It consisted of high level gatherings of Interior and Justice Ministers and top national security officials. The co-operation activities of the TREVI group were subsequently formally approved by the Ministers of Justice and Home Affairs of the then European Economic Community. The TREVI group lasted until 1992, when it was replaced by the provisions of the Maastricht Third Pillar involving immigration and asylum, policing, customs and legal co-operation.¹

Beyond TREVI, unified Europe created additional co-operative arrangements to combat terrorism, such as the Police Working Group on Terrorism and the Counter Terrorist Group. In 1993, the TREVI Group and other European institutions dealing with judicial, customs, and immigration issues were brought together in one new structure under Title VI of the Treaty of European Union.² Title VI concerned all the compensatory measures that would have to be taken once the removal of border controls between the Member States of the EU had been accomplished.³ The Maastricht Treaty also mandated the creation of the European Police Office (Europol). In 1997, a counter-terrorism preparatory group was created to formulate Europol's role in matters of counter-terrorism and Europol became operational in 1998.⁴

In spite of the increasing police co-operation through the TREVI Group and other similar organisations aimed at strengthening bilateral co-operation, it is nonetheless to underline that till the 11 September 2001 attacks in New York and Washington the European co-operation in the field of counter-terrorism remained fairly limited due to the resistance of the EU Member States to ceding to the EEC (and then to the EU) part of their sovereignty, in a delicate field such as security.⁵

¹ Peek J., *International police cooperation within justified political and judicial frameworks: Five theses on TREVI*, in J. Monar, & R. Morgan (eds), *The third pillar of the European Union*, Brussels: European Interuniversity Press, 1994, pp. 201-207.

² Treaty on European Union (TEU), Maastricht, 7 February 1992, available at: <http://eur-lex.europa.eu/en/treaties/dat/11992M/htm/11992M.html#0001000001>.

³ Benyon J., *The developing system of police cooperation in the European Union*, in McDonald W.F. (Ed.), *Crime and law enforcement in the global village*, Cincinnati, Anderson Publishing Co., 1997, pp. 103-122.

⁴ Rauchs G., and Koenig D. J., *Europol*, in Koenig D. J. and Das D. K. (eds), *International police cooperation*, New York: Lexington Books, 2001, pp. 43-62.

⁵ Wilkinson P., *International Terrorism: The Changing Threat and the EU's Response*, Institute for Security Studies *Chaillot Paper*, n. 84, October 2005 pp. 29-31.

EU Response to the Attacks of 11 September 2001

International terrorism moved to the top of the European political agenda after the plane attacks on New York and Washington. Although it was an attack aimed at America, it was perceived as an attack against the West as a whole. Consequently, all European leaders at once condemned the terrorist atrocity and promptly gave their support to the US declaring the firm intention to “stand shoulder to shoulder with America” since the fight against terrorism “is not a battle between the United States of America and terrorism, but between the free and democratic world and terrorism”.⁶ The attacks on America in 2001 and, more recently, the Madrid and London bombings in 2004 and 2005, have shown a new, different threat Europe has to face. Hence, the appearance of the new security threat of international terrorism urged the necessity of elaborating a new counter-terrorist strategy to fight a menace very different from the previous (mainly domestic) terrorism that Europe faced in the past.⁷

The attacks of September 2001 (and then in Madrid and London) showed on the international stage a new terrorism. This new form of terrorism, or “megaterrorism”,⁸ indicates a type of international terrorism, which differs from the old or domestic variant. The main features of such new terrorism are the aspiration to produce large-scale devastation, possibly through the use of weapons of mass destruction and the exploitation of religious fervour for such criminal intents. Also, new terrorists set up terrorist networks which operate worldwide. Moreover, they act through spectacular attacks preformed in an impressive “choreographed” mode.⁹

Consequently, it emerged that the Al Qaeda terrorist threat, because of its trans-national nature, can only be defeated through an equally vigorous, long-term trans-national response.

Following the 9/11 attacks the Member States of the European Union adopted a range of measures to fight terrorism. On 21 September, the European Council, during its extraordinary meeting, stated that “Terrorism is a real challenge to the world and to Europe and that the fight against terrorism will be a priority objective of the European Union”.¹⁰ This was followed by the adoption of a first comprehensive EU Action Plan to Fight Terrorism.¹¹ A detailed “Road Map” as regards the implementation of the Action Plan was drawn up in October 2004.

⁶ Blair T., *Prime Minister Tony Blair’s Statement in Response to Terrorist Attacks in the United States* – 11 September 2001, available on www.number-10.gov.uk/output/Page1596.asp.

⁷ To underline the different kind of terrorism that Europe started facing after 9/11, EU Commissioner A. Vitorino noted that “We had national terrorism, that is true, but up to 11 September we never had suicide attacks” – quoted in Szyszkowitz T., *The European Union*, in von Hippel K. (ed.), *Europe Confronts Terrorism*, Houndmills, Basingstoke [etc.], Palgrave Macmillan, 2005, p. 171.

⁸ Müller H., *Terrorism, Proliferation: a European Threat Assessment*, Institute for Security Studies, *Chaillot Papers*, n. 58, March 2003, pp. 21 ff.; available at: <http://www.iss-eu.org/chaillot/chai58e.pdf>.

⁹ Von Hippel K., *Introduction: Europe Confronts Terrorism*, in Von Hippel K. (ed.), *Europe Confronts Terrorism*, pp. 1-4.

¹⁰ Council of the European Union, *Extraordinary Council Meeting: Justice, Home Affairs and Civil Protection*, Brussels, 20 September 2001; available at: <http://ue.eu.int/uedocs/cmsUpload /12019.en1.pdf>.

¹¹ *EU Action Plan on Combating Terrorism*, last update is available at: <http://register.consilium.europa.eu/pdf/en/06/st05/st05771-re01.en06.pdf>.

A further important legal instrument to respond to the threat of terrorism was the Council Framework Decision on Terrorism. It was agreed upon at the Justice and Home Affairs Council of 6 and 7 December 2001 and aimed at improving legal harmonisation of Member States' legislations.¹²

In the wake of the terrorist attacks in Madrid in March 2004, the Justice and Home Affairs Ministers drew up an ambitious Declaration on Combating Terrorism, which was adopted by the European Council on 25 March 2004.¹³ The European Council endorsed the revised EU Action Plan on Combating Terrorism on 18 June 2004. The EU Action Plan identifies a series of measures such as joint investigation teams of police and magistrates from throughout the EU, routine exchange of information about terrorism among the Member States, a specialist anti-terrorist team within Europol and a co-operation agreement between Europol and the relevant US authorities. The Action Plan establishes high level Strategic Objectives for the EU action in preventing and combating terrorism. These include:

- To deepen the international consensus and enhance international efforts to combat terrorism (supporting the role of the UN, especially the work of the Terrorism Prevention Branch of the United Nations Office of Drugs and Crime);
- To reduce the access of terrorists to financial and other economic sources;
- To maximise capacity within EU bodies and Member States to detect, investigate and prosecute terrorists and prevent terrorist attacks;
- To protect the security of international transport and ensure effective systems of border control;
- Enhance the capability of the European Union and of Member States to deal with the consequences of terrorist attacks;
- Address the factors which contribute to support for, and recruitment into, terrorism (identifying factors which contribute to recruitment to terrorism and exploring extreme religious and political beliefs which support terrorism);
- Target actions under EU external relations towards priority Third Countries where counter-terrorist capacity or commitment to combat terrorism needs to be enhanced (including the provisions of effective counter-terrorist clauses in agreements with Third Countries).

In the aftermath of the London bombing in July 2005, an extraordinary meeting of the Ministers of Interior of Member States decided on the implementation of a series of measures already adopted as matter of urgency: the European Arrest Warrant; the strengthening of Schengen and visa information systems; biometric details on passports; combating terrorism financing; prevention of recruitment and radicalisation; greater controls on trade, storage and transport of explosives.¹⁴

¹² Council Framework Decisions on Combating Terrorism of 13 June 2002, available at: http://www.eur-lex.europa.eu/pri/en/oj/dat/2002/l_164/l_16420020622en00030007.pdf.

¹³ Council of the European Union, *Declaration on Combating Terrorism*, Brussels, 25 March 2004; available at: <http://ue.eu.int/uedocs/cmsUpload/DECL-25.3.pdf>.

¹⁴ Council of the European Union, *Extraordinary Council Meeting, Justice and Home Affairs*, Brussels, 13 July 2005; available at: http://ue.eu.int/ueDocs/cms_Data/docs/pressdata/en/jha/85703.pdf.

In December 2005 the Justice and Home Affairs Ministers approved a new European Union Counter-Terrorism Strategy,¹⁵ which aims at covering four strands of work: *Protect, Prevent, Pursue, and Respond*. Across these four categories, the strategy seeks to link strands from different policy areas and emphasise close interaction of measures at the Member State, the European and the international level. The first objective is to *prevent* people turning to terrorism by tackling the factors or root causes which can lead to radicalisation and recruitment, in Europe and internationally. The second objective of the EU Strategy is to *protect* citizens and infrastructure and to reduce Europe's vulnerability to attacks, including through improved security of borders, transport and critical infrastructure. The third objective of the Counter-Terrorism Strategy is to *pursue* and investigate terrorists across EU internal borders and globally; to impede planning, travel, and communications; to disrupt support networks; to cut off funding and access to attack materials, and to bring terrorists to justice. The fourth objective of the EU Counter-Terrorism Strategy is to prepare Member States, in the spirit of solidarity, to manage and minimise the consequences of a terrorist attack, by improving capabilities to deal with the aftermath, the coordination of the *response*, and the needs of victims.

The EU Counter-terrorism Strategy is not only a set of almost 200 counter-terrorism measures, grouped around the above-mentioned four key concepts, but it is also an attempt to set out the EU policy in the fight against terrorism in a comprehensive and consistent fashion, which is comprehensible also for the general public.¹⁶

At the operational level, the most important achievements in the EU fight against terrorism after 9/11 have been the strengthening of the role of Europol, the establishment of Eurojust and of the External Borders Agency (FRONTEX), and the appointment of an EU Counter-terrorism Co-ordinator. Among legal instruments, beyond the Framework Decision on Combating Terrorism of 13 June 2002, the most relevant have been the introduction in 2004 of the European Arrest Warrant, replacing the previous national extradition tools and, most recently, the European Evidence Warrant, creating a standard form warrant for obtaining objects, and documents in cross-border cases.¹⁷

¹⁵ Council of the European Union, *EU Counter-terrorism Strategy*, 2697th Council Meeting, Brussels 1-2 December 2005, doc. 14390/05 (Presse 296), available at <http://www.consilium.europa.eu/uedocs/cmsUpload/JHA,1-2.12.05.pdf>.

¹⁶ Den Boer M., *The EU Counterterrorism Wave: Window of Opportunity or Profound Policy Transformation?* in Van Leuween M. (ed.), *Confronting Terrorism. European Experiences, Threat Perceptions and Policies*, 2003, p. 189.

¹⁷ For a complete overview of the history of EU counter-terrorism policy see, *inter alia*: EU Council Secretariat, *The European Union and the Fight Against terrorism*, fact sheet, 9 March 2007, Brussels, available at: <http://www.eurunion.org/partner/euusterror/CounterTerrorFactsheetCoun030907.doc>; Koenig D. J. and Das D. K. (eds.), *International police cooperation*, New York, Lexington Books, 2001; De Cesari P., *The European Union*, in Nesi G. (ed.) *International Cooperation in Counter-Terrorism: the United Nations and Regional Organizations in the Fight against Terrorism*, Ashgate, 2006, pp. 207-229.

EU Institutional Counter-terrorism Framework

The most relevant institutions in EU counter-terrorism are the European Commission, Europol and Eurojust. In fact these three institutions play a major role at a legislative level (the Commission) and at the operational level (Europol and Eurojust), these two latter having as top priority in their mandate the fight against terrorism.

A number of other institutions are also part of the institutional architecture of EU counter-terrorism. The *European Counter-Terrorism Co-ordinator*, the *European Agency for the Management of Operational Cooperation at the External Borders* (FRONTEX) and the *European Joint Situation Centre* (SitCen) are also important stakeholders. Nonetheless, either they have been so recently instituted (the Coordinator), or they have little competences on counter-terrorism (FRONTEX), or there is little availability of data and a very thin relevant body of literature data (SitCen). Consequently, it is not possible to carry out a comprehensive analysis of these institutions' achievements.

The **European Commission** (EC) plays an active role in a large number of fields related to counter-terrorism policy. Primarily, the EC is the main actor in proposing new legislative tools in the areas of the Third Pillar. These proposals are the ground for the EU legislation on counter-terrorism (i.e.: the EC proposals for the Framework Decision defining the crime of terrorism and the European Arrest Warrant).

The activity of the Commission in counter-terrorism is subjected to many criticisms. As to the role the EC plays in the legislative initiative, it is maintained that the Commission lacks in coherence as well as in a consistent political guide. Furthermore, it seems that an overlapping of the roles in the area of Justice and Home Affairs does not allow the EC to act efficiently.¹⁸ A possible response to these criticisms would come from the modifications to the Justice and Home Affairs area included in the proposed European Constitutional Treaty,¹⁹ if it enters into force. In fact, this Treaty would design a new institutional scenery, rationalising the roles of different EU bodies involved in the Third Pillar areas. Furthermore, the Commission would be enabled to play its traditional role of "guardian of the treaty" also in matters concerning Justice and Home Affairs. This means that the EC would have the power to take a Member State to the Court of Justice if the State does not implement EU legislation or is late in the implementation process. Most importantly, in the decision-making process, unanimity would no longer be a requirement for the adoption of legislation concerning matters of the Third Pillar. Thus, qualified majority voting would render the legislative process much swifter and more efficient.²⁰

¹⁸ Nunes de Almeida J., Head of Directorate D1 of the Directorate General of the European Commission: Fight against Terrorism, *The European Commission in the Fight against Terrorism*, in ICLN (International Criminal Law Network, The Hague) and EULEC (European Institute for Freedom, Security and Justice, Brussels), joint co-operation, *European Co-operation Against Terrorism*, Wolf Legal Publishers, Nijmegen, 2004, p 38-39.

¹⁹ The text of the *Treaty Establishing a European Constitution* (Rome, 29 October 2004) is available at: <http://eur-lex.europa.eu/JOHtml.do?uri=OJ:C:2004:310:SOM:EN:HTML>.

²⁰ Nunes de Almeida J., *The European Commission in the Fight against Terrorism*, *op. cit.*, pp.38-39.

The European Police Office, **Europol**, was established by the Maastricht Treaty in 1992. It is an international police organisation whose objective is promoting co-operation among law enforcement authorities of the EU Member States in the fight against serious organised crime, including terrorism.²¹

Europol's specific areas of criminal investigation include the illicit trafficking in drugs, vehicles, and human beings, including child pornography; forgery of money; money-laundering; and terrorism. Priority is given to crimes against persons, financial crimes, and cyber crimes, when an organized criminal structure is involved and when the criminal activity involves two or more member states of the EU.

In fact, the reference to the offence of terrorism was not initially included in the first drafts of the Europol Convention (although it was included in article K.1.9 of the Maastricht Treaty). The addition of combating terrorism among Europol tasks is primarily due to the insistence of Spain. The Spanish government convincingly remarked that, given Europol's nature as an organisation combating international organised crime, coping with terrorism is in the core essence of Europol's mandate.²²

The main task in Europol's mandate is the collection and exchange of intelligence information with national agencies, which can then translate this information into operational actions. It plays the role of "intelligence gatherer" within what is called "intelligence-led law enforcement" at the European level.²³

The instruments of Europol in the fight against terrorism (identified since 2003 as Europol's main priority) are essentially the Counter-Terrorism Unit and, more recently, the Counter Terrorism Task Force (established as a response to the attacks of 11 September 2001) that collects and analyses data on suspected terrorists, recorded in an Analytical Work File (AWF), a record of information on international terrorists provided by Member States. In addition, Europol's mandate includes the collection of other forms of data, such as legislation on counter-terrorism, and a glossary of terrorist groups. Alongside the establishment of the Counter-Terrorism Task Force, Europol created a number of functionally specialized programs. Among these, a Counter-Terrorism Program was set up in order better to co-ordinate all Europol activities against terrorism, including information gathering and threat assessments. In its crucial task of co-ordination, Europol also sustains operational investigations by EU police and joint investigation teams.²⁴

²¹ According to the Europol Convention (art. 2.1), the objectives of Europol are "preventing and combating terrorism, unlawful drug trafficking and other serious forms of international crime where there are factual indications that an organised structure is involved". Europol Convention, 26 July 1995, available at: http://www.europol.europa.eu/legal/Europol_Convention_Consolidated_version.pdf.

²² Bunyan T., *The Europol Convention*, Statewatch 1995, p. 5; available at: <http://www.statewatch.org/docbin/europol-pamphlet-1995.pdf>.

²³ Nunes de Almeida J., *The European Commission in the Fight against Terrorism*, *op. cit.*, p. 41.

²⁴ See Schalken, T. and Pronk M., *On joint investigation teams, Europol and supervision of their joint actions*, in *European Journal of Crime, Criminal Law and Criminal Justice*, n. 10, 2002, pp. 70 ff.

Europol also issues an Annual Terrorism Situation and Trend Report (TE-SAT)²⁵. Furthermore, in the aftermath of the attacks on 11 September 2001, the Europol Operational Centre was established, with the task of providing a 24-hour service for the exchange of information.²⁶

Europol, especially through its Counter-Terrorism Task Force, has certainly achieved some good results in its counter-terrorist activities. Among these, most remarkable are the production of threat assessments with regard to terrorist groups and cells in EU Members States and a constantly updated overview of counter-terrorism measures and legislation in Europe.

However, “the impact of Europol’s strategies, including counter-terrorism operations, in terms of criminal investigations and arrests is at present difficult to estimate, not only because of the relatively recent establishment of Europol and its Counter-Terrorism Task Force, but also because Europol is very protective of the organization’s assistance in investigative activities”.²⁷ Sensitivity and confidentiality of information concerning criminal investigations and a certain degree of reluctance to make available such information make it difficult to assess the work of Europol in counter-terrorism. In 2005, an EU effectiveness study of European EU counter-terrorism policies was published, but no information from Europol was mentioned in the report.²⁸

From the little data provided it emerges that the Member States have been progressively using more of the services of Europol in their investigative activities.²⁹ It is equally worth remarking that Europol has played an active role in some significant investigations, large-scale police operations have been supported by Europol, and a large number of national investigations use terrorism analysis carried out by Europol.³⁰

²⁵ Last updated report in 2007: *EU Terrorism Situation and Trend Report TE-SAT 2007*; available at: http://www.europol.europa.eu/publications/EU_Terrorism_Situation_and_Trend_Report_TE-SAT/TE-SAT2007.pdf.

²⁶ For a more in-depth analysis of the organisation and activities of Europol see: Deflem M., *Policing World Society: Historical Foundations of International Police Cooperation*. Oxford; New York: Oxford University Press, 2002; Lavranos, N., *Europol and the fight against terrorism*, in *European Foreign Affairs Review*, 8(2), 2003, 259-275; Rauchs G., and Koenig D. J., *Europol*, in Koenig D. J. and Das D. K. (eds), *International police cooperation*, New York: Lexington Books, 2001, pp. 43-62.

²⁷ Deflem M., *Europol and the policing of international terrorism: Counter-terrorism in a global perspective*, in *Justice Quarterly*, vol. 23 n. 3, September 2006, p. 344; also available at: <http://www.cas.sc.edu/socy/faculty/deflem/zeuroterror.htm>.

²⁸ Council of the European Union, *EU counter-terrorism clauses: Assessment*, Brussels, May 11, 2005. Available at: <http://www.statewatch.org/news/2005/may/eu-terr-clauses.pdf>.

²⁹ Europol, *Annual Report (2006)*; available at: http://www.europol.europa.eu/publications/Annual_Reports/EuropolAnnualReport2006.pdf; and Europol, *EU Terrorism Situation and Trend Report TE-SAT 2007*; available at: http://www.europol.europa.eu/publications/EU_Terrorism_Situation_and_Trend_Report_TESAT/TE-SAT2007.pdf.

³⁰ Council of the European Union, *EU Plan of Action on Combating Terrorism - Update*. Brussels, May 23, 2005; available: <http://www.statewatch.org/news/2005/may/eu-terr-action-plan-may05.pdf>.

“Europol’s main problem is the imperfect flow of information from national intelligence services”.³¹ In fact, Europol can be able to fulfil the tasks in its mandate only if the relevant authorities in the Member States provide it with the necessary information. Nonetheless, in practice Member States are too frequently reluctant to share intelligence with Europol, to the detriment of an efficient European police co-operation. As a result, the European Police Office has a limited capacity for fulfilling its tasks due to the difficulties encountered in collecting and sharing information with relevant national authorities. These latter often make available too little information, showing a modest trust in Europol, while trust should be a key element of European co-operation.

Remarkably, this lack of co-operation does not seem to surface exclusively at the EU level, in the relations between Member States and Europol, since this shortcoming regrettably emerges also at the bilateral level among Member States. For instance, after the Madrid bombings, Spanish police officials refused to share information with the French authorities on the types of explosives that had been used in the attacks.³² Similarly, after a Moroccan citizen who used to live in Hamburg, Germany, was arrested by Italian authorities in April 2003 because of his association with a Milan-based Al-Qaeda cell, it turned out that the man had already been questioned by German police just few weeks after the 9/11 attacks. Information about the suspect, however, had not been shared among Europe’s police.³³ As a result, it appears that often Europol cannot be blamed for the inefficiency of co-ordination and co-operation among EU Member State agencies, as these latter appear to hinder the development of an effective European law enforcement co-operation.

The attitude of Member States of being reluctant to share information and intelligence is the first root of inefficiency in the EU co-operation in law enforcement. The reason for this attitude can ultimately be identified as mistrust, since “intelligence collectors are concerned about the security of their sources and their methods of collecting information. They fear that if these are uncovered access to future information will be jeopardised”.³⁴

Eurojust is a permanent network of national judicial authorities of the EU Member States. It was established in 2002 with a Decision of the Council of the European Union.³⁵ In establishing this new body, the Council also set its core objectives:

³¹ Dittrich M., *Facing the Global Terrorist Threat*, *op. cit.*, p. 32.

³² Kupchinsky, R., *Intelligence and police coordination in the EU*. RFE/RL Report *Organized Crime and Terrorism Watch*, Vol. 4 N. 11, April 2004. Available at:
<http://www.rferl.org/reports/corruptionwatch/2004/04/11-210404.asp>.

³³ The New York Times, *As Europe hunts for terrorists, the hunted press advantages*, 22 March 2004.

³⁴ Hojbjerg J. H., Deputy Director of Europol, Building Trust and Developing More Efficient Sharing of Intelligence in Response to and Prevention of Terrorist Attacks. The Europol Perspective, in ICLN (International Criminal Law Network, The Hague) and EULEC (European Institute for Freedom, Security and Justice, Brussels), joint co-operation, *European Co-operation Against Terrorism*, Wolf Legal Publishers, Nijmegen, 2004, p. 53.

³⁵ Council of the European Union, Council Decision of 28 February 2002, *Setting up Eurojust with a View to Reinforcing the Fight against Serious Crime*, available at:
http://eurojust.europa.eu/official_documents/Eurojust_Decision/1_06320020306en00010013.pdf.

- To improve co-operation between national authorities in the investigation and prosecution of serious crime, particularly when it is organized, involving two or more Member States;
- To stimulate and improve co-ordination of investigations and prosecutions in Member States, taking into account any request emanating from a competent national authority and any information provided by any body competent by virtue of provisions adopted within the framework of the treaties; and
- To provide expertise to Member States and the Council (through the formulation of recommendations for changes of law to improve the legal framework in the fight against organised cross-border crime).

Each Member State appoints at Eurojust a representative or “National Member” (usually a judge or prosecutor). In fact, Eurojust can be described as a team of senior lawyers, magistrates, prosecutors, judges and other legal experts seconded from every EU country.³⁶

Being a permanent network of judicial authorities, Eurojust has a key role to play in the European counter-terrorist action. After the attacks of 11 September 2001, among many counter-terrorism measures taken by the EU, the Council Decision of 19 December 2002 *on the implementation of specific measures for police and judicial co-operation to combat terrorism*³⁷ redefined the tasks of Eurojust in the EU fight against terrorism.³⁸ Following article 3 of the Council Decision, each Member State should designate a *National Correspondent for terrorism*. In accordance with its national law, each Member State shall ensure that this National Correspondent has access to all relevant information concerning and resulting from criminal proceedings conducted under the responsibility of its judicial authorities.

The tasks of Eurojust in the field of counter-terrorism, according to the Council Decision, can be divided into the following stages:

1. Organisation of National Correspondents at national level (and access to information).
2. Transmission of information.
3. Eurojust’s methods of processing the information; and

³⁶ For an analysis of Eurojust’s tasks and activities see, *inter alia*: Kennedy M., Faletti F., Knut K., *Eurojust*, speech at the AIPP Conference, Paris, 31 August 2006; available at: http://www.iap.nl.com/speeches_11th_annual_conf_2006/speech_eurojust_members_case_presentation.pdf.

³⁷ Council Decision of 19 December 2002 *on the implementation of specific measures for police and judicial co-operation to combat terrorism in accordance with article 4 of the Common Position 2001/931/CSFP*, available at: http://eur-lex.europa.eu/LexUriServ/site/en/oj/2003/l_016/l_01620030122en00680070.pdf.

³⁸ On the role of Eurojust in the fight against terrorism: Kennedy M. (Eurojust President), *Eurojust and the Fight against Terrorism*, in *European Cooperation against Terrorism: The Peace Palace, The Hague, 13 October 2004: Conference Proceedings*, Nijmegen: Wolf Legal Publishers, 2004, pp. 59-64; Coninx M. (Belgian Member of the College of Eurojust), *Eurojust and EU Judicial Cooperation in the Fight against Terrorism*, in *Legal Instruments in the Fight against International Terrorism: a Transatlantic Dialogue*, Leiden (etc.), Nijhoff, 2004, pp. 181-186; Dittrich M., *Facing the Global Terrorist Threat: a European Response*, *op. cit.*, pp. 34-35.

4. Assistance and feedback from Eurojust to Member States.

Since the execution of most of the tasks according to the Council Decision is regrettably still at a preparatory stage, so far there has not been much exchange between National Correspondents and National Members. Furthermore, a number of obstacles are encountered in the course of practical realisation of these tasks.³⁹

As to the first stage, *organization of National Correspondents at a national level*, all Member States have designated a National Correspondent, most of whom are prosecutors. Difficulties arise when it comes to the matter of access to, and collection of, all relevant information according to the Council Decision. Currently, such information is not accessible for all National Correspondents. There are several obstacles that hamper access to relevant information. The first is a lack of legal provisions for access and collection in some Member States (i.e.: Ireland, Italy, Latvia and Slovakia, have no legal provisions that can ensure that the National Correspondents will be provided with relevant information). Therefore, National Correspondents in these countries are not allowed to forward information to Eurojust, unless there is a specific *request* in a criminal case from one Member State to another country. Hence, a legal basis for access to information should be established in each Member State.

Secondly, there are also several restrictions on access in practice:

1. National Correspondents are usually dependent on operational authorities for information. If these authorities are not aware of the fact that the National Correspondent has to be informed, the Correspondent will not receive information. In several Member States there are no arrangements about who will take the initiative to inform the other;
2. Investigating judges may constitute a problem in some Member States. Because of the *secrecy of investigation*, these judges are fully independent, and they are free to decide not to communicate relevant information to the National Correspondent.

In order to avoid such restrictions, national authorities and National Members should make practical arrangements guaranteeing that National Correspondents can have access and can collect relevant information. One highly desirable possibility would be to appoint a central prosecutorial authority for terrorism, as is already the case in some Member States. When no central prosecutorial authority for terrorism exists, different prosecutors will be supervising ongoing investigations. Thus, the information will be gathered at various prosecution offices and not be centrally collected in a co-ordinated manner.

With regard to the second stage, *transmission of information* from National Correspondents to National Members at Eurojust, it emerges that Member States interpret the tasks of the Council Decision according to their national systems. In accordance to the Council Decision, information concerning and resulting from criminal procedures pertaining to terrorism and conducted under the responsibility of judicial authorities should be forwarded. This has resulted in many differences in stage, kind and means of transmission of information to Eurojust, because of the 27 different

³⁹ EUROJUST, *Eurojust's Tasks in the Area of Preventing and Combating Terrorism, Gaps between Formal Decisions and Actual Practice*, unpublished document, 2005.

national systems of Member States.⁴⁰ In order to find a solution to this problem, National Correspondents and National Members should make clear arrangements about what information is to be transmitted and at what stage. Furthermore, provisions concerning the means by which the usually high sensitive information will be communicated to Eurojust are needed.

The recent Council Decision of 20 September 2005 on “the exchange of information and co-operation concerning terrorist offences”⁴¹ tried to respond to the above-mentioned need for greater exchange of information at all stages of criminal proceedings in the area of counter-terrorism. In fact, this Decision requires a more extended exchange of information during investigations and prosecutions concerning terrorist offences (as set out in Article 1 to 3 of the 2002 Framework Decision on combating terrorism). According the provisions of this Decision, Member States have now the obligation to make sure that “information (...) concerning prosecutions or convictions for terrorist offences which affect or may affect two or more Member States (...) is transmitted to Eurojust and to Europol” (article 2) and made “available as soon as possible to the authorities of other interested Member States, taking account of the need not to jeopardise” (article 6). The rapidity and effectiveness of the process of implementation of this Decision by Member States will make it possible to assess whether the mentioned problems in the exchange of information have been overcome.

Once the information is transmitted to Eurojust, it should be very clear exactly what Eurojust should do with this information, i.e., during the third stage of its tasks, ways of *processing the information*. A clear policy on this matter has not yet been established. Therefore, in actual practice it is difficult to decide how the information should be processed, in order to give feedback and assistance to the national authorities. Of course, information received by Eurojust needs to be stored and analysed. Currently, Eurojust has no secured connection with the Member States, and does not have the technical or personnel resources to analyse large amounts of information. A closer co-operation with Europol, which is in possession of a secured system and a group of analysts, would be a possible solution.

Finally, as to the fourth point, *assistance and feedback*, what Eurojust is requested to do with collected information should be clarified.

To fulfil its main task, co-ordination of cases of serious cross-border crime and to improve the effectiveness of activities to prevent and combat terrorism, Eurojust should be able to know exactly how it should help ongoing investigations and what kind of feedback is expected. In fact, too often it is not yet clear whether Member States need co-ordination or advice. Eurojust should be a ‘*centre of expertise*’.⁴² It should have a complete overview of ongoing terrorism investigations and prosecutions, in order to give assistance and feedback to national authorities.

⁴⁰ *Ibidem*.

⁴¹ Council Decision of 20 September 2005 on the exchange of information and co-operation concerning terrorist offences, available at:

http://eur-lex.europa.eu/LexUriServ/site/en/oj/2005/l_253/l_25320050929en00220024.pdf.

⁴² EUROJUST, *Eurojust's Tasks in the Area of Preventing and Combating Terrorism*, *op. cit.*.

EU Counter-terrorism Legal Framework

As a response to the attacks of 11 September 2001, and again after the attacks in Madrid and London, the EU has created extensive legislation to help the national and European institutions better combat international terrorism within a coherent legal framework. The objects of analysis here will be the most innovative and controversial tools, namely the definition of the offence terrorism provided by the Council Decision of 13 June 2002, the European Arrest Warrant, and the use of biometrics as a counter-terrorism tool.

Several problems come into consideration with regard to the **definition of terrorism** in international law and, consequently, in European law, as a regional instrument to combat terrorism. These include a major concern with the exact legal definition of the phenomenon and of the offence of terrorism. Secondly, there arises the question of how largely the definition of the offence of terrorism should be extended. In other words, this latter is a question of identifying which behaviours have to be covered by the legal definition of terrorism, such that its perpetrators can consequently be pursued as terrorists.⁴³

The difficulty of identifying a shared definition of terrorism is reflected also in the history of European counter-terrorism. EU political documents and legislation in the past referred to terrorism without providing a (juridical) definition of the offence. After 11 September 2001, the need for a shared definition became vital⁴⁴ and the Framework Decision on Combating Terrorism of 13 June 2002 bridged this gap, introducing a comprehensive and harmonised definition of terrorism into EU legislation. This decision finally established minimum criteria describing the constituent elements of the offence of terrorism.⁴⁵

The Decision defines terrorism, differentiating it from common or ordinary crimes, focusing on the intent pursued by the criminal act. The originality of the definition is inherent in the fact that the ultimate political goal constitutes the basic criteria for distinguishing a terrorist offence from other offences. In fact, both national “common law” and “continental” systems define the incrimination of terrorism (and other offences) regardless of its aim and focusing instead on the (prohibited) acts.⁴⁶ Article 1 of the Framework Decision defines terrorist offences as “offences under national law, which, given their nature and context, may seriously damage a country or an international organization where committed with the aim of: (1) *seriously intimidating a*

⁴³ For a discussion on the definition of terrorism in international law, especially with regard to the UN response tackling this question, see Shaw M., *International Law*, fifth edition, Cambridge University Press, 2003, pp. 1048-1053, and Cassese A., *Terrorism is also Disrupting Some Crucial Legal Categories of International Law*, in *American Journal of International Law*, n. 95, 2001, pp. 993 ff.

⁴⁴ As is remarked in the *Framework Decision on Combating Terrorism* of 13 June 2002, Preamble (6): “The definition of terrorist offences should be approximate in all Member States, including those offences relating to terrorist groups”; Council of the European Union, Council Framework Decisions on Combating Terrorism of 13 June 2002, available at: http://www.eur-lex.europa.eu/pri/en/oj/dat/2002/l_164/l_16420020622en00030007.pdf.

⁴⁵ Den Boer M., *9/11 and the Europeanisation of anti-terrorism policy: A critical assessment*. Notre Europe, Policy Papers No. 6, 2003, p. 5.

⁴⁶ Saul B., *International Terrorism as a European Crime: the Policy Rationale for Criminalization*, in *European Journal of Crime, Criminal Law and Criminal Justice*, n. 11, 2003, p. 323.

population, or (2) unduly compelling a Government or international organization to perform or abstain from performing any act, or (3) seriously destabilising or destroying the fundamental political, constitutional, economic or social structures of a country or international organization.”

Alongside this set of terrorist offences, the Decision also defines three other categories of offences. Firstly, article 2 defines *offences relating to a terrorist group*, emphasizing the necessity of punishing whoever participates in a terrorist group (by supporting, funding, or contributing to the activities of the group). Article 3 describes *offences linked to terrorist activities*, namely acts preparatory to terrorist acts, such as extortion or forgery of documents. Finally, article 4 calls upon Member States to take measures also against further activities, such as *incitating, aiding and abetting*, and *attempting* terrorist offences.⁴⁷

Scholars have pointed out that the language used for such definitions appears “somewhat complex and uncertain”⁴⁸ and leaves room for opposite interpretations of the same fact. For instance, it seems that the riots in Paris and other French cities in November 2005 entailed all the constituent elements of the definition of terrorism provided by the Framework Decision. Indeed, there certainly was intimidation of the population, the government was compelled to act, and social, political and constitutional structures were endangered. Nonetheless those events were “not perceived as terrorism either in France or abroad”.⁴⁹ This example illustrates all the difficulties to contextualise a multifaceted phenomenon as terrorism in a legal definition.

Despite these criticisms, it is remarkable that for the first time in the history of European Counter-terrorism (and of international law), the Framework Decision of 2002 has provided Member States and EU institutions with a common (although to some extent vague) definition of the offence of terrorism. Such a definition will probably be refined in future legislation, but it constitutes a legal basis for upcoming legislation and gives political and judicial authorities dealing with terrorism the essential guidelines for a common understanding of the constituent elements of terrorism as a criminal offence.

The **European Arrest Warrant (EAW)** has probably been the most important piece of legislation in the EU fight against terrorism after the attacks in New York and Washington in 2001 and the most innovative legislative tool in the areas of the Third Pillar. Already in October 1999, at the Tampere Summit of the European Council, Spain and the UK worked at promoting an agreement among European Heads of State, according to which extradition “should be abolished among Member States as far as persons are concerned who are fleeing from justice after having

⁴⁷ Troosters R., *The European Union Framework Decision of 13th June 2002 on Combating Terrorism*, in ICLN (International Criminal Law Network, The Hague) and EULEC (European Institute for Freedom, Security and Justice, Brussels), joint co-operation, *European Co-operation Against Terrorism*, Wolf Legal Publishers, Nijmegen, 2004, pp. 68-72.

⁴⁸ Guillaume G., *Terrorisme et Droit International*, Lecture at the British Institute for International and Comparative Law (BIICL), London, 13 November 2003, published in the *International and Comparative Law Quarterly*, Vol. 53, n. 3, 2004, p. 537.

⁴⁹ Saul B., *Defining Terrorism in International Law*, Vaughan Lowe, ed., Oxford University Press, 2006, pp. 164-166.

been finally sentenced, and replaced by a simple transfer of such persons".⁵⁰ A political agreement was reached in December 2001 and the Framework Decision was finally adopted on 13 June 2002.⁵¹ It came into force on 1 January 2004, replacing the previous extradition procedures among Member States.⁵² The objective of the EAW is to improve judicial co-operation in the EU creating a simplified system of surrender of sentenced and suspected persons for the purposes of execution or prosecution of criminal sentences, removing the delay of bilateral extradition procedures. The EAW is based on the trust of every Member State in the legal system of each other Member State and on the mutual recognition of national courts' decisions. Hence, the European Council referred to the EAW as a cornerstone of EU judicial co-operation, in regard to the realization of a more efficient area of freedom, security and justice in the European Union.⁵³

At the practical and operational level, the implications of the introduction of the EAW are very significant. Indeed, a national judicial authority can issue a request for the arrest and the return (namely, a European Arrest Warrant) valid throughout the EU for a person accused of a serious criminal offence (punished with a penalty of at least 10 years imprisonment)⁵⁴ or for a person sentenced to at least 4 months imprisonment.⁵⁵ Consequently, the requested person has to be arrested and surrendered without delay to the requesting Member State.⁵⁶

For the offences listed in the Framework Decision, The EAW has not abolished the "dual criminality principle" (or "double criminality"), according to which, traditionally, extradition can be denied if the offence in question is not a criminal offence in the executing country.⁵⁷ Despite criticism, especially from the UK, Member States decided to retain the validity of the dual criminality principle.⁵⁸ Hence, the objection to the extradition that a conduct might be considered a

⁵⁰ Article 35 and 37 of the *Presidency Conclusions to the Tampere European Council, 15 and 16 October 1999*; available at: http://www.europarl.europa.eu/summits/tam_en.htm.

⁵¹ Council of the European Union, *Framework Decision on the European arrest warrant and the surrender procedures between Member States* of 13 June 2002, available at: http://europa.eu.int/eur-lex/pri/en/oj/dat/2002/1_190/1_19020020718en00010018.pdf.

⁵² The last Member State to implement the Common Decision on the EAW was Italy in July 2005.

⁵³ Framework Decision on the European Arrest Warrant, Preamble (6).

⁵⁴ Article 2 of the Framework Decision on the EAW lists 32 categories of criminal offences for which a EAW can be issued, including, *inter alia*, terrorism, trafficking in human beings, sexual exploitation of children and child pornography, and fraud.

⁵⁵ Framework Decision on the European Arrest Warrant, article 1.

⁵⁶ Nonetheless, article 3 and 4 of the Framework Decision define some exceptions in which the surrender can be denied. The most relevant grounds for non-execution of an EAW are: 1. The offence is covered by an amnesty in the executing State; 2. The person has already been tried in respect of the same acts (*ne bis in idem* principle); 3. The person is a minor or has not reached the age for criminal responsibility in the requested State.

⁵⁷ Blekxtoon R., *The European Arrest Warrant*, in ICLN (International Criminal Law Network, The Hague) and EULEC (European Institute for Freedom, Security and Justice, Brussels), joint co-operation, *European Co-operation Against Terrorism*, Wolf Legal Publishers, Nijmegen, 2004, esp. p. 78.

⁵⁸ House of Commons, European Standing Committee B, *European Arrest Warrant and Surrender Procedures between Member States*, 10 December 2001, available at: <http://www.publications.parliament.uk/pa/cm200102/cmstand/eurob/st011210/11210s01.htm>.

crime in one country but be legal in a different Member State has not been ruled out, and a co-operation system based on the mutual recognition of the conduct of the suspected or sentenced person as unlawful and criminal has been established.⁵⁹

Since the Member States have the general obligation to execute the EAW and surrender the person, they can no longer refuse to surrender their own nationals. All EU citizens are held responsible not only before national judicial authorities, but before courts in all Member States. As a result, an EU country will not have the right to base a denial of surrender on the fact that the alleged person is its national.

As to the effectiveness of the EAW, the European Commission has repeatedly stated that the introduction of the EAW has been a success. A first report evaluating the implementation and the impact of the Framework Decision on the EAW was released by the European Commission on 23 February 2005. The Commission underlined that, although with some delay, all Member States implemented the Framework Decision and that from the available data (2,603 warrants issued) the EAW seemed to have acquired a widespread use among national judicial authorities. Most importantly, the average time taken to execute a warrant was estimated to have reduced from more than 9 months to 43 days.⁶⁰ In a second more recent report, the Commission highlighted how the use of the EAW by Member States had increased year by year, making easier the surrender of persons between national judicial authorities in a much more shorter time than in the previous conventional system of extradition. In 2005 alone about 6,900 EWA were issued, showing that the number of requests of the EAW has risen sharply. The same trend seems to continue in 2006. Furthermore, conflicts of national laws that impeded a complete application of the Framework Decision seem to have been overcome in the years 2005-2006 by the adoption of new national legislative measures, leading to a full implementation of the provisions on the EAW.⁶¹

Criticisms of the common EAW have been particularly strong. In fact, the introduction of the EAW seemed to render it easier for the United States to obtain the extradition of a suspect, and potentially use the death penalty against him, which all European states oppose. A partial solution to this controversial matter has been provided by the Council Framework Decision: "No person should be removed, expelled or extradited to a State where there is a serious risk that he or she would be subjected to death penalty, torture or inhuman or degrading treatment or punishment", Preamble (13). Nonetheless, there remains a certain ambiguity since this provision seems to be more a declaration of principle rather than an obligation on Member States. More importantly, the

⁵⁹ See European Commission, Justice and Home Affairs Directorate, *European Arrest Warrant Replaces Extradition between EU Member States*; available at:

http://ec.europa.eu/justice_home/fsj/criminal/extradition/fsj_criminal_extradition_en.htm.

⁶⁰ European Commission, *Report based on article 34 of the European Council Framework Decision of 13 June 2002 on the European Arrest Warrant and Surrender Procedures among Member States*, Brussels, 23 February 2005, available at:

http://ec.europa.eu/justice_home/doc_centre/criminal/doc/com_2005_063_en.pdf.

⁶¹ European Commission, *Report based on article 34 of the European Council Framework Decision of 13 June 2002 on the European Arrest Warrant and Surrender Procedures among Member States*, Brussels, 11 July 2005, available at:

http://eur-lex.europa.eu/LexUriServ/site/en/com/2007/com2007_0407en01.pdf.

adoption of the EAW has raised many constitutional issues in several Member States, with the necessity for some countries to amend their constitutions.⁶² For instance, the German Constitutional Court declared void the German Act provisions that implemented the provisions of the framework decision on the EAW (decision of 18 July 2005), for they were assumed to be against fundamental rights and guarantees. It seems that the improvements to the efficiency of judicial co-operation, especially through simplified and quicker procedures of surrender, might reduce the basic rights of defence and the right to a fair trial guaranteed in Member States by their constitutional charters (besides being fundamental principles recognized in international law).⁶³ This might presumably lead in short to a conflict between the German Constitutional Court and the European institutions on the constitutional implications of judicial co-operation among Member States.⁶⁴

Such difficulties probably arise from the fact that the co-operation model employed for the adoption of the EAW is more similar to a system based on mutual recognition (of judicial decisions) rather than to a process of harmonisation of legislation in Member States, which has been the traditional model of juridical integration and development in the European Communities first and then in the EU.⁶⁵ Most likely, this is due to the attempt of Member States to preserve a strong control on criminal law matters and to impede the Commission's effort to build a European common criminal system grounded on shared rules envisaged by the project of the European *Corpus Juris*⁶⁶ or by the Commission Green Paper on the European Public Prosecutor.⁶⁷ As a result, the practical model of the EAW, based on the simple abolishment of legal barriers between Member States (negative integration) will narrow and reduce the necessary guarantees of the right of citizens to defence, to the detriment of the principle of due process, unless it is countervailed by specific trade-off measures (that have not been undertaken in the case of the EAW). In short, in the Framework Decision establishing the EAW, the Council has ruled out the option of traditional

⁶² House of Lords, European Union Committee, 30th Report of the 2005-2006 Session, *European Arrest Warrant – Recent Developments*, pp. 10-12; available at <http://www.publications.parliament.uk/pa/ld200506/ldselect/ldecom/156/156.pdf>.

⁶³ Centre for European Policy Study (CEPS), *The European Arrest Warrant, A Good Testing Ground for Mutual Recognition in the Enlarged EU?* available at: http://www.ceps.be/Article.php?article_id=295.

⁶⁴ Satzger H. and Pohl T., *The German Constitutional Court and the European Arrest Warrant, 'Critical Signal' from Karlsruhe*, in *Journal of International Criminal Justice*, n. 4 (4), 2006, pp. 686-701; See also Euractiv, *European Arrest Warrant ruled unconstitutional in Germany*, 19 July 2005, available at: <http://www.euractiv.com/en/security/european-arrest-warrant-ruled-unconstitutional-germany/article-142674>.

⁶⁵ Palladino G., *Il Mandato d'Arresto Europeo, tra Appiattimento e Preservazione della Tutela Personale*, in *Diritto e Diritti*, 2 August 2007, available at: <http://www.diritto.it/art.php?file=/archivio/24508.html>.

⁶⁶ About the project of a common *Corpus Juris*, see Delmas-Marty M. and Vervaele J. A. E. (eds.), *Le mise en oeuvre du Corpus Juris dans les Etats Membres*, Vol I, Antwerpen – Groingen – Oxford, 2000. The *Corpus Juris* is an academic private project endorsed and financed by the European Commission.

⁶⁷ The Green Paper on the European Public Prosecutor is available on the website of the EU Anti-Fraud Office (OLAF), at: http://ec.europa.eu/anti_fraud/green_paper/index_en.html.

harmonisation. Instead, it has preferred to follow the path of mutual recognition, based on co-existence and reciprocal trust among national judicial authorities. Hence, the system is based a sort of “*full faith and credit clause*” between national courts like in the US judicial system, but without the necessary counterweights there are in the US Bill of Rights.⁶⁸

It remains to investigate the implications of the use of biometric technology in the fight against terrorism. **Biometrics** is the most innovative technological tool among the counter-terrorist methods, but their efficacy in the fight against terrorism and the implications with regard to civil liberties are controversial.

Since the analysis of biometrics is related the EU counter-terrorism framework, we will refer to biometric technology according to the definitions provided by the Report on the Impact of Biometrics drafted by the Joint Research Centre (JRC) for the European Commission in 2005.⁶⁹ A biometric is a physical or biological feature or attribute that can be measured. Through the technology of biometrics individuals are recognised by means of some set of individual traits, such as voice, eyes, or fingerprints. Biometric identification and verification technologies selected by the European Commission are face recognition, fingerprint recognition, iris recognition and DNA as a biometric identifier. In short, biometrics can be defined as the “automatic recognition of a person using distinguishing traits”.⁷⁰

Following the attacks of 11 September 2001, the EU began to develop elements of a coherent strategy for the improvement of the security of identity documents using biometric identifiers. The European Council of Laeken (December 2001) and Seville (June 2002) decided that the Visa Information System (VIS) shall also include biometric identifiers with the aim of preventing “visa shopping”, improving the administration of the common visa policy and contributing to internal security and fighting terrorism.

In September 2003 the Commission presented proposals to introduce biometrics in visas and residence permits for third national countries.⁷¹ In November 2005 the European Council presented the Draft Conclusions of the Representatives of the Government of the Member States on common minimum security standards for Members States’ national identity cards.⁷² This

⁶⁸ Palladino G., *Il Mandato d’Arresto Europeo, op. cit.*

⁶⁹ The European Commission’s Joint Research Centre (JRC) Report: *Biometrics at the Frontiers: Assessing the Impact on Society*, released on 30 March 2005, available at: <ftp://ftp.jrc.es/pub/EURdoc/eur21585en.pdf>.

⁷⁰ Woodward J. D., Horn C., Gatune J. and Thomas A., *Biometrics: A Look at Facial Recognition*, Rand Documented Briefing prepared for the Virginia State Crime Commission, 2003.

⁷¹ European Commission Proposal for a Council regulation amending Regulation (EC) 1683/95 laying down a uniform format for visas and amending Regulation (EC) 1030/2002 laying down a uniform format for residence permits for third-country nationals, COM (2003) 558 Final, 24 September 2003, Brussels, available on <http://www.statewatch.org/news/2003/sep/combiometrics.pdf>; See, in particular, the Explanatory Memorandum.

⁷² Council of the European Union, *Draft Conclusions of the Representatives of the Government of the Member States on common minimum security standards for Members States’ national identity cards*, 14351/2005, Brussels, 11 November 2005, available on <http://www.statewatch.org/news/2005/nov/eu-biometric-ID-Cards-Conclusions.pdf>.

document aims at giving an impetus to the development of common standards for security features and secure issuing procedures for national ID cards.

Critics of biometrics worry that such a system, which is usually predicated on the idea of a large centralised reference database, will lead to an erosion of personal freedoms. Worries are that the use of biometrics will inevitably expand once widely implemented, both in the amount of data that will be collected and in the ways it will be used in everyday life. This is clearly a key issue with regard to the balance between liberty and security. Concerns with the protection of these basic rights are present also within the EU institutions. The European Parliament's Rapporteur on biometrics in visas, Ole Sorensen, remarked in 2004 that the proposals on the use of biometrics could be a step towards systematic and centralised storage of sensitive personal data, "which would be like using a sledgehammer to crack a nut".⁷³ At the same time, he observed that from a data protection point of view, such a central storage of biometric data might endanger the protection of civil rights, especially the right to privacy.⁷⁴

The impact of biometric technology upon the trust model between citizen and state is underlined also in the above-mentioned ECJ Report for the Commission. Fundamental concepts of trust seem to be challenged by the governmental aspirations to security. The risk is that "the emphasis changes to ordinary citizens being almost treated as criminal suspects"⁷⁵ and the right to privacy and anonymity is withdrawn. If in the short term citizens might agree to a certain extent on sacrificing their personal liberties for a more secure world, in the long term this sacrifice would become unpopular and lead to an erosion of trust in governments.

The worry is also that if biometrics become the common mode of identity recognition, biometric data will be linked to all other personal data. As a result, such data may consequently be shared with third parties for all kinds of other purposes, and sensitive information will be prone to abuse. It is also argued that through the introduction of biometric passports and ID cards, as well as new EU health cards and driving licences using biometric technology, and, within the foreseeable future, one single biometric chipped card integrating EU passport, ID card, driving licence and health card, we are moving towards a surveillance society.⁷⁶ Hence, a particularly strong need for effective privacy and data protection emerges. From this perspective, the Commission's Report points out that a reinforced legal framework for privacy and data protection may be needed in order to prevent biometrics from becoming a tool in the service of surveillance.

⁷³ Euractiv, 'Biometric Era' raises fears over privacy, 15 August 2004, available at: <http://www.euractiv.com/en/justice/biometric-era-raises-fears-privacy/article-111988>.

⁷⁴ *Ibidem*.

⁷⁵ EC's Joint Research Centre (JRC) Report: *Biometrics at the Frontiers*, *op. cit.*, p. 68.

⁷⁶ Bunyan T., *Unaccountable Europe: Unknown to most of its citizens, behind the closed doors of Brussels the European Union is making serious inroads on their privacy*, in *Index on Censorship*, No 3/2005, Special Issue, pp. 52-53.

The data protection directive of 1995⁷⁷ gives general protection for the use of personal data on individuals. However, there is recognition that technology is outstripping existing legislation. In order to find a solution, a European project to study the ethical implications of the increasing use of biometric technology was set up in the 2005 under the EU's Sixth Research Framework Programme. The project, called BITE (Biometric Identification Technology Ethics), aims at launching a social, legal and ethical debate over the use of biometrics involving all parties working in the field.⁷⁸

It is now possible to draw some **concluding remarks** from the analysis conducted of the EU counter-terrorism framework, especially with regard to the core question of this analysis, which concerns the main features, problems and perspectives of EU counter-terrorism policy at the institutional and legal level.

Due to the long history and collective experience of the fight against terrorism in Europe, the European legal and institutional structure in the area of Justice and Home Affairs was able to adapt quickly to the increased demand it faced in the wake of 11 September 2001. Although the Member States had to face a new threat in the form of international networks of terrorist groups, it can be recognised that many efforts have been undertaken and important steps forwards have been made by the European countries. Serious terrorist attacks in Madrid and London, as well as terrorism-related activity in some European countries, have reinforced public and political concern for security. European states and the European Union have responded by reshaping the institutional architecture in the area of Justice and Home Affairs (strengthening the role of Europol and setting up Eurojust) and by introducing innovative legislation against terrorism, such as the European Arrest Warrant.

The EU's broad approach made up of the four top priorities (prevent, protect, pursue and respond) is laudable because effective counter-terrorism policies need to go much further than law enforcement and external defence.

Whilst acknowledging the enhancement of effective co-operation between states to counter terrorism, it is also worth considering that the European Union has to step up its efforts further to remedy gaps and shortcomings arising in both the institutional and legal frameworks of EU counter-terrorism policies.

As for the institutional level, more co-ordination is utterly necessary. Specific criminal and therefore anti-terrorist measures are within the competence of the Member States only. The main role of the EU, therefore, is co-ordination. But, to be successful in this task the EU primarily needs a comprehensive and coherent institutional counter-terrorist framework within itself. Instead, the European institutional architecture of counter-terrorism consists of too many actors, with duplication of overlapping tasks and a number of institutions pursuing the same objectives. In

⁷⁷ European Parliament and Council Directive 95/46/EC of 24 October 1995 *on the protection of individuals with regard to the processing of personal data and on the free movement of such data*, available at: http://eurlex.europa.eu/smartapi/cgi/sga_doc?smartapi!celexplus!prod!DocNumber&lg=en&type_doc=Directive&an_doc=1995&nu_doc=46.

⁷⁸ Euractiv, *Biometrics & Democracy*, 13 May 2005, available at <http://www.euractiv.com/en/justice/biometrics-democracy-archived/article-139471>.

consequence, the process of taking the necessary decisions becomes complex and cumbersome. Paradoxically, it seems that in order to co-ordinate and lead the actions of its Member states, the EU has first to reach a much higher level of co-ordination and coherence among its own institutions tackling terrorism. A disjointed and sometimes incoherent governance of counter-terrorist activities and initiatives produces inconsistencies and contradictions and therefore weakens efforts in the fight against terrorism. One possible solution would be the reinforcement of the role of the EU Counter-terrorism Coordinator. At present his powers and competences are very narrow. He has no right to propose EU legislation, nor can he call meetings of national justice or foreign ministers to set the anti-terrorism agenda. Strengthening the powers of the Coordinator, enabling him actually to pursue the statutory objective of co-ordination, would be a major step forward towards the efficiency of the EU institutional network of counter-terrorism. The aim is to build a network of security against the network of terror. Such a network of security would require the involvement of all the relevant actors in order to achieve operational co-operation in all fields of common concern. The network would bring together the EU Member States and as well as the EU's partners. The introduction of the proposed European Constitution would be a further step towards coherence in the counter-terrorist structure for it would delineate a new, clear division of roles and competences. Once ratified, the new constitutional treaty would enable the EU to fulfil its tasks more effectively. For instance, the Council of Ministers would be able to adopt legislation in the field of counter-terrorism on the basis of a qualified majority instead of unanimity, as happens today. Furthermore, the Constitution would remarkably strengthen the role of Eurojust, which, according to the provisions of the constitutional treaty would have also the right to "*initiate criminal investigations as well as proposing the initiation of prosecutions*", superseding its current almost purely advisory role.

As to the legal aspects of EU counter-terrorism, the Council Framework Decision of 13 June 2002, approximating the definition of terrorist offences, facilitates police and judicial co-operation and aligns criminal law in Member States so that terrorism is fought and prosecuted in the same manner all over Europe. Furthermore, the existence of a common framework within the EU will also facilitate closer co-operation with third countries and the implementation of international instruments related to the prevention and suppression of terrorism. Nonetheless, the wide definition of offences in anti-terrorism legislation, including offences of membership of a terrorist organization, and offences of incitement to and apology for terrorism, could result in persons engaged in legitimate political or social dissent being branded as terrorists.

The EAW has replaced the traditional system of extradition with faster and simpler surrender procedures involving only national judicial, rather than political, authorities. But, with the introduction of the EAW, concerns about fundamental rights have emerged. Since counter-terrorist measures and the protection of human rights are not conflicting goals, but complementary and mutually reinforcing, the EU should seek to fulfil its tasks in preventing and suppressing terrorism, while complying fully with fundamental rights. Similar concerns surface over biometric technology, when used for the collection of personal data for law enforcement. In both cases, adequate safeguards have still to be established to guard against the possible detriment to fundamental civil liberties.

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Analysis on Future of Terrorism¹

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Abstract. The manner in which the US has led the war against terror has not only failed in denying political space to the terrorists, it has created more space for them. In order to examine this assertion, this paper begins with an examination of the conduct of the war. An analysis is offered of what constitutes terrorism, and attention is drawn to the OIC's distinction between terrorism and struggles against colonial rule, alien occupation and racist regimes. In concentrating on the international dimension of terrorism, the world community should not overlook the other trends: local and state terrorism. In the future the threat will continue to come, not primarily from the Muslim World, but from within Western societies, as migrant communities feel targeted and/or marginalized. To speak of "Islamic terrorism" is offensive. In a section entitled "The Linkage between Globalization and Terrorism", this paper analyses economic, cultural, and political globalization. The process has to proceed in a manner in which groups and states feel less marginalized, where all have "a level playing field". Finally, the paper addresses the question of what should be done to counter the multi-faceted terrorist threat, and a model for breaking the cycle of violence is presented. The paper appeals for a study of the root causes of the problem, for example, on the political level, the issues of Palestine and Kashmir.

Keywords. Terrorism, definition of terrorism, root causes of terrorism, marginalization, globalization.

Introduction

With war, in the traditional sense of violent conflict between states, gradually losing validity in terms of state policy—except within the context of self-defence—and with the end of bipolarity, states have been increasingly confronted with non-traditional security issues and threats. In fact, since the end of bipolarity, the traditional notion of security in terms of conventional military threats was expanded to a notion of comprehensive security—which included economic and

¹ Paper presented at the symposium "Global Terrorism and International Co-operation", COE-DAT, Ankara, Turkey, 23–24 March 2006.

environmental issues. However, even here, the state was seen as the primary actor. By the mid-nineties we saw the notion of human security creep into the security paradigm—and this put the individual as a central concern within security strategies. Unfortunately, in many ways, by having an all-inclusive security framework, the notion of security as a distinct concept has tended to be undermined. After all, if we are to include health, education and other such welfare issues within a security paradigm, then how do we distinguish the notion of security from other notions such as justice, social welfare and so on?

This is not to say that issues like poverty do not impact security within states as well as between states, but we need to maintain a certain identifiable notion of security within the language of international relations. In that sense then, while there are non-traditional security issues, I would limit these to issues within states and societies and between states that pose a threat to stability through the use of violent interaction. In other words, when poverty or ethnic differences threaten civil society and state structures, as well as interstate relations, then they enter the realm of security. So, in a sense, then this paper does treat the basic notion of security in terms of absence of violence or a fear of violence. But it also sees states as merely one set of actors within the overall international security paradigm with non-state actors becoming increasingly critical players both at national and international levels. As for the individual, it is still not clear how relevant human security is within international relations since international cooperation still tends to frame rules that undermine individual well-being in poor and developing states—as shown in the WTO arrangements and the policies of state subsidies/support programmes for agriculture in the EU and the US. So, at the end of the day, it is groups, rather than individuals, that have become important players impacting on intra and inter state relations. And many of these groups have transnational linkages in terms of recruitment and financing. This was highlighted most dramatically with the devastating terrorist attacks against US targets on September 11, 2001, which tended to focus on one growing non-traditional security concern—that of terrorism.

Assessment of the Post-9/11 War against Terrorism

Post-9/11, the international war on terrorism was declared, supported by UN resolutions, and since then it has become a priority agenda for almost all member states of the international system. Has the war been successful in containing terrorism? Although one cannot give a definitive answer to this question, especially in terms of long-term assessments, one can answer tentatively, based on the situation prevailing on the ground in terms of acts of terrorism and the fate of the terrorist networks. Within this framework, one can say that, at best, the war on terrorism has reached a stalemate.

While the massive military power of the US, aided by the international community's support for anti-terrorist conventions through the UN, has broken up and scattered the networks of the terrorist organizations; the manner in which the US has led and conducted the war against terror has not only failed in denying political space to the terrorists, it has, in fact, created more space for them. In order to examine this assertion, there is a need also to look at, briefly, the conduct of the war against international terrorism by the US.

Having identified Osama bin Laden (OBL) and his al-Qaeda as the central terrorist enemy, and the Taliban as cohorts in crime for providing sanctuary for al-Qaeda, the US, supported by the

international community, launched the war on terrorism in Afghanistan on October 7, 2001. Massive air power sent OBL and al-Qaeda on the run and toppled the Taliban government in Kabul with the surviving Taliban leadership also going underground. A massive haul of prisoners resulted and many were taken to Guantanamo Bay to be incarcerated with no trial or POW protection—as required under the Geneva Conventions. As the war in Afghanistan unfolded in the full glare of the international media, the horror of the “Daisy Cutters” and “Bunker Buster” bombs against a hapless Afghan population first began to create space for the terrorists. The killing of POWs at a camp, Qila Jhangi in Afghanistan, and the death by suffocation and shooting of prisoners incarcerated in containers of trucks added to the tales of horror relating to the conduct of the US-led war in Afghanistan. Gradually, in the face of these developments, the horror of 9/11 was diluted with a growing sense that the US was now actively targeting Muslims, both abroad and within the US. All these factors created space for the terrorists in terms of shelter and even future recruitments. The framing of the terrorist issue within a religious framework—the notion of “Islamic terrorism”—also allowed space to the terrorists on the run.

So the war on terror failed to adopt a basic strategy—that of space denial to the terrorists. After all, the war was an unconventional war with an ill-defined and mobile enemy, so the first goal should have been of military and political space denial, but this was never part of the US strategy. Sheer military power was seen as the counter to the terrorist threat. To make matters worse, the US then dissipated the focus of the war itself on the transnational network of terrorism, by moving into Iraq through an illegal invasion of a sovereign state which had no links to al-Qaeda or OBL. Bush’s invasion of Iraq also added a new dimension to the terrorism issue—that of WMD. The US began its new doctrine of the “axis of evil” and “rogue states” with WMD. That no WMD were found in Iraq has since shown the Iraq invasion for what it was—an effort to enforce regime change and control energy resources.

However, the problem was that the invasion of Iraq, with no legitimation by the UN, allowed the terrorists to expand their operational milieu; and with the US occupation of Iraq, linkages between international terrorism and local groups resisting the invasion became intertwined, with the former feeding on the anger and frustration of the latter. Also, members of the US-led “coalition of the willing” found their nationals and territories being targeted by international terrorists—as in the case of the Madrid bombings. As the President of the European Commission, Romano Prodi told *La Stampa*, in March 2004, “Clearly the fight against terrorists cannot be resolved through force. We should remember that the war in Iraq began a year ago ... The results are not good, whether we are talking about Iraq or elsewhere—Istanbul, Moscow and now Madrid.”²

Despite intelligence information to the contrary, President Bush, in his State of the Union address in January 2003 claimed: “Evidence from intelligence sources, secret communications and statements by people now in custody reveals that Saddam Hussein aids and protects terrorists, including members of al-Qaeda.”³ And this claim was persuasive enough to persuade 44% of the

² *La Stampa*, 15 March 2004.

³ Bernard Adam, “United States: Losing the War on Terror: ‘The Harder We Work, The Behinder We Get’”, in *Le Monde Diplomatique*, April 24, 2004.

US public to believe that some if not all the 9/11 hijackers had been Iraqis and 45% of the public thought Saddam Hussein was behind the 9/11 attacks.⁴ Now, however, it has come to be generally accepted that not only did Iraq have no WMD but that Saddam Hussein had no link to al-Qaeda. Ironically, post-Saddam Iraq is now seeing increasing space for al-Qaeda acting together with disgruntled elements in Iraq as well as those opposed to the US occupation.

The impact of the Iraq war on terrorist recruitment was admitted to by the CIA Director, Porter Goss, before the Senate Select Committee on Intelligence, in February 2005, when he stated that, “Islamic extremists are exploiting the Iraqi conflict to recruit new anti-US jihadists. ... These jihadists who survive will leave Iraq experienced and focused on acts of urban terrorism. ... They represent a potential pool of contacts to build transnational terrorist cells, groups and networks in Saudi Arabia, Jordan and other countries.”⁵ According to Goss, Abu Musab Zarqawi, a Jordanian terrorist who joined al-Qaeda after the US invasion of Iraq, hoped “to establish a safe haven in Iraq” from where he could operate against Western states and certain Muslim governments.⁶ And Vice Admiral Lowell Jacoby, Director of the Defense Intelligence Agency, admitted to the same Senate panel that US “policies in the Middle East fuel Islamic resentment.”⁷

The massive increase in terrorist counter attacks against American targets finally led the US government actually to abandon the publication of its annual report on international terrorism for the year 2004 which should have come out in early 2005. According to one report, the US government’s main terrorism centre concluded that there had been more terrorist attacks in 2004 than in any year since 1985—the first year covered by its publication entitled “*Patterns of Global Terrorism*”.⁸ Even in 2004, the numbers of incidents for 2003 were undercounted, which led to a revision of the publication in June 2004—two months later. What finally came out was a much higher number of significant terrorist attacks and twice the number of fatalities that had been presented in the original report.⁹

So, clearly by all accounts, international terrorism has been on the increase in the aftermath of the internationally-declared war against terrorism led by the US—both in terms of intensity and operational milieu. Of course, in his acceptance speech at the Republican Convention in 2004, in New York, Bush painted a picture which attempted to show that the war on terrorism was being won. As he put it: “*The government of a free Afghanistan is fighting terror; Pakistan is capturing terrorist leaders; Saudi Arabia is making raids and arrests; Libya is dismantling its weapons programs; the army of a free Iraq is fighting for freedom; and more than three-quarters of al-Qaeda’s key members and associates have been detained or killed.*”¹⁰ At the politico-diplomatic

⁴ Ibid.

⁵ Priest and White, “War Helps Recruit Terrorists, Hill Told”, in *Washington Post*, February 17, 2005.

⁶ Ibid.

⁷ Ibid.

⁸ Jonathan S. Landay, “Bush Administration Eliminating 19-Year-Old International Terrorism Report, *Knight Ridder*, April 15, 2005. <http://www.globalpolicy.org/empire/terrorwar/analysis/2005/0415elimreport.htm>

⁹ Ibid.

¹⁰ P. Escobar, “Why al-Qaeda Is Winning”, *Asia Times* September 11, 2004

level, there have been a plethora of global and regional conventions and agreements aimed at fighting terrorism, including focusing on the financing of terrorism, as well as a number of UN Security Council Resolutions.

However, on the other side, OBL and his deputy, Dr Ayman al-Zawahiri, as well as Taliban leader Mullah Omar, have neither been captured nor killed. al-Qaeda seems to have “gone global” and Afghanistan has yet to become truly free. Presently not only are there foreign forces controlling security, warlords still reign supreme in many regions and President Karzai, despite being elected, has his security controlled by US guards. Additionally, in Afghanistan, linkages between drugs, organized crime and terrorism have increased. As for Iraq, it is seen as under military occupation by the US and its allies and there is an almost daily increase in the intensity of terrorist attacks. In addition, both Asia and Europe have become more vulnerable to acts of terror and the Arab world is highly destabilized.

As for al-Qaeda, it has become what some have termed a “brand name”, having mutated into a “multi-headed hydra” comprising international leaders and local heads.¹¹ Worse still, with no central command or organization, any group that wishes to come into the limelight selects the al-Qaeda label or “brand”. This ensures publicity which is part of the intent of such groups. New local obscurantist groups have surfaced that have no operational links to OBL and his leadership cadres, but they state an affiliation because this intensifies the context of a specific local act of terror. Using the brand name “al-Qaeda” allows them space for recruitment and support. Equally interesting is the fact that many of the born-again obscurantists are not citizens of Muslim states but are part of first and second generation Muslims belonging to European states. As Pepe Escobar points out, members of al-Qaeda’s new elite were “either born in Western Europe—many hold a legitimate European Union passport—or came to the West while still very young and then became radicalized.”¹²

That is why there is a growing perception amongst European states that a more encompassing strategy is needed to fight international terrorism. The EU’s Romano Prodi argued that the use of military force as the main weapon in the fight against terrorism has not worked—as he put it, “Terrorism is now more powerful than ever before”.¹³ In March 2004 the EU adopted a wide-ranging counter-terrorism policy in which they recognized that they had to deal with the roots of terrorism which they saw as the “social economic and political problems in the Mediterranean and Middle East countries on which Islam fanaticism has built”.¹⁴

So, it becomes clear that, at the very least, there is a stalemate in the war against terrorism and, worse, the terrorist threat seems to be on the increase both in terms of intensity and operational milieu. The causes for this are also clear.

¹¹ Ibid.

¹² Ibid.

¹³ As cited in Ibid.

¹⁴ “EU counter-terrorism policy”, March 31, *EurActiv.com*

- To begin with, failure to deny space to the terrorists and an almost total reliance on military means to deal with the problem of terrorism have been major mistakes. Simply by using heavy weaponry as a means of reprisal against suspected states and groups will not end the problem. Asymmetrical warfare, if fought in this traditional manner, is ineffective and costly, and merely aggravates the problem.
- Terrorism itself is merely a symptom of deep-seated political and economic problems which is why there has to be a long term multiple-level strategy that includes security measures but also focuses on the root causes of terrorism, which are primarily political. Amongst the recognized causes are unresolved political-territorial disputes affecting Muslim populations—especially the Palestinian problem, Kashmir and Chechnya. A sense of deprivation and injustice creates the necessary space for the terrorists.
- Framing the terrorist issue in religious terms is equally counterproductive since terrorism has political roots. Even al-Qaeda is not proselytizing for Islam, so if the IRA's acts of terrorism were not seen as "Catholic terrorism" why should al-Qaeda's terrorist actions be referred to as "Islamic terrorism"?
- Additionally, at the tactical level, what is being seen as a continuous abuse of Muslims, Islam, its Prophet (PBUH) and its Holy Book in the US and Europe and parts of the Dominion territories, is increasing the divide between Muslims and the West and this is also creating more space for the obscurantists, by exploiting feelings of hatred and victimization that have increased amongst Muslims in Europe and the US post-9/11.
- Linking issues of WMD and regime change-democracy in Muslim states has also diluted the focus of the war against terrorism.

What Constitutes Terrorism?

Separating perpetrators of pathological violence from those who indulge in political violence, the word "terrorist"—denoting the latter—is a term that has been fastened on political enemies since the time of the French Revolution in 1789. If a political movement, which has used terror as a tactic, succeeds then the label of terrorism disappears—with many political "terrorists" of yesteryears transformed into national or revolutionary leaders, once they have succeeded in their aims! Herein lies the problem of defining terrorism on its merits, in a manner that allows it to be a punishable offence through international treaties. Certain terrorist acts have been isolated and deemed punishable by the international community through international conventions. For example, there are the international conventions on hostage taking and hijacking. But there is, as yet, no comprehensive international convention on terrorism itself, despite the ongoing efforts in the United Nations. Also, special UN committees have continuously condemned acts of international terrorism in principle, but no agreeable definition has been forthcoming. There is still no consensus on how to define terrorism.

This is not to say that acts of violent political terror cannot be identified, nor is such terrorism new to the world scene. A German, Johannes Most, pioneered the idea of the letter bomb.¹⁵ Since

¹⁵ Walter Laquer (Editor), *The Terrorism Reader*. Meridian Books, NYC; 1978.

then, many political scientists have sought to define and explain political terrorism. According to one definition, “terrorism involves the intentional use of violence or the threat of violence by the perpetrators against an *instrumental* target in order to communicate to a *primary* target a threat of future violence”.¹⁶ Interestingly, barring the distinction between instrumental and primary targets and the actual use of violence, the difference between terrorism and nuclear deterrence is very fine!

E. V. Walter, in his work on terrorism, refers to a process of terror, which he says has three dimensions: “the act or threat of violence, the emotional reaction and the social effects.”¹⁷ So, three actors are involved—the source or perpetrator of the violence, the victim and the target. The victim perishes and the target reacts to the destruction. Here, there is a distinction between the process of violence on the one hand and, on the other, an act of destruction, which is complete in itself, and not an instrument of anything else. The former—as process—comes within the category of political violence, the latter seems to be closer to the pathological, or what Chalmers Johnson calls the “non-political” terrorism.¹⁸

As long as terror is simply a means directed towards a goal beyond itself, it has to be limited in its dimensions so as to remain a process. Annihilation is not the intent of such terrorism—rather, the intent is to politically and psychologically hurt the enemy. When terror becomes unlimited and crosses the invisible line into irrationality, then it moves on from being a process to simply an end in itself—and then it loses its relevance within the political context. In a similar vein, political scientist Raymond Aron also highlights the distinction between the actual deeds of terrorists and the significance given to these acts by observers remote from the scene.¹⁹ This then brings up the issue of a third target relevant to the act of political terror—the international audience and the international victim. Aron feels that a violent act can be categorized as terrorism if the psychological effects are out of proportion to its purely physical result. However, this leaves the categorization primarily at a subjective level, of measuring the psychological impact and how far it is “out of proportion”.

It is the subjectivity brought to bear on the issue of terrorism that has prevented the international community from formulating an all-encompassing definition of terrorism. Despite the intensity of activities post-9/11 to create laws and conventions against terrorism at the global, regional and national levels, the international community has still not evolved any acceptable definition of what constitutes terrorism. International conventions have found it easier to sidestep the issue, while many of the prevailing conventions that deal with specific acts of terrorism, like the International Convention Against the Taking of Hostages and the OIC’s Convention on

¹⁶ Jordan J. Paust, as cited in Chalmers Johnson, *Revolutionary Change*. Stanford University Press, California, 1982.

¹⁷ E. V. Walter, *Terror & Resistance: A Study of Political Violence*. Oxford University Press, London; 1969.

¹⁸ Chalmers Johnson, *op. cit.*

¹⁹ Raymond Aron, *Peace & War*. Garden City, N.Y., 1966.

Combating Terrorism, focus on making a distinction between terrorism and struggles for self-determination against colonial rule, alien occupation and racist regimes.²⁰

Also, the 1973 UN General Assembly Report of the Ad Hoc Committee on International Terrorism makes a similar exemption, and this is further backed up by Article 7 of the General Assembly's 1974 Definition of Aggression, which states:

"Nothing in this definition, and in particular Article 3,²¹ could in any way prejudice the right of self-determination, freedom, and independence, as derived from the Charter, of peoples forcibly deprived of that right and referred to in the Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations, particularly peoples under colonial and racist regimes or other forms of alien domination; or the right of these peoples to struggle to that end and seek and receive support ..."

Beyond the issue of self-determination, there is also the issue of state terrorism. Many states perpetrate violence against the people of other states to send a message to their governments to fall in line "or else". An all-encompassing definition of terrorism would bring the perpetrators of such violence within the ambit of penalties for such acts. When the state in question is a major or even a super power, then the issue will arise as to who will ensure that an act of terror by that state is punished? Also, if deterrence between states fails and the threatened action is undertaken, does that also become an act of terror—especially if the action threatened is against civil society? And what of cases where, in a state of war, the laws of war and the Geneva Conventions are ignored, and massacres and revenge killings become the order of the day? It is all these issues, and the reluctance of states to give up their final right to violence, that has made it almost impossible to evolve an all-encompassing definition of terrorism.

Therefore, within the UN the focus is becoming increasingly on a way to move beyond this problem—indeed to sidestep the issue of definition and simply deal with the specifics of the acts of terrorism and their penalties. The draft (originally floated by India) of the Comprehensive Convention on International Terrorism, that continues to be under consideration in the UN, seeks to do this by simply ignoring the issue of defining terrorism specifically. Instead it just links terrorism to any person who commits an offence "unlawfully and intentionally" which is intended to cause either "death or serious bodily injury to any person" or "serious damage to a State or government facility, a public transportation system, communication system..."²² Another major

²⁰ The International Convention against the taking of hostages (came into force June 1983) clearly states that the Convention "shall not apply to an act of hostage-taking committed in the course of armed conflicts ... in which peoples are fighting against colonial domination and alien occupation and against racist regimes in the exercise of their right of self-determination, as enshrined in the Charter of the United Nations and the Declaration on principles of International Law..." (Article 12). In a similar vein, the Convention on Terrorism adopted by the OIC, in 1999, also confirms "the legitimacy of the rights of peoples to struggle against foreign occupation and colonialist and racist regimes by all means, including armed struggle, to liberate their territories in compliance with the purposes and principles of the Charter and resolutions of the United Nations" (preamble).

²¹ This article gives an inventory of the acts that are regarded as aggression.

²² Article 2 of the Working document submitted by India on the draft Comprehensive Convention on International Terrorism.

failing of this draft is that it totally ignores the exemption, internationally recognized, for struggles of self-determination—despite the fact that self-determination is a peremptory international norm.²³

Muslim states have also pointed out that the preamble of this Draft Convention contains no reference to the underlying causes of terrorism and, while there is a reference to “State-sponsored terrorism”, there is no mention of “State terrorism”. In any event, so far the Draft remains in the process of negotiations.

However, one major shortcoming in the way the international community is looking at the issue of terrorism is to focus on what is seen as “international terrorism”. Yet “international terrorism” is simply one form of the trend in terrorism, and one can identify at least two other important trends. One of the problems confronting the war on terrorism is that none of the three trends function totally independently of the others.

I – International terrorism can also be seen as transnational terrorism, with groups having linkages across national borders and subscribing to an international agenda. Included in this are members and sympathisers of al-Qaeda and some of the Taliban leadership. al-Qaeda remnants are thought to be present in the tribal belt of Pakistan, but a number of acts of terror in India also are now being linked to al-Qaeda. Also, Muslim groups fighting in Chechnya and Uzbekistan are also being lumped with al-Qaeda—at least those thought to be sheltering along the Pakistan-Afghan border. Since the US-sanctioned “jihad” against the Soviets in Afghanistan, various Muslim groups seeking political change through violent means are thought to have created linkages with each other since the US recruited Muslim fighters from across the Muslim world to fight in Afghanistan.

Within this mode of terrorism, the US policies in Afghanistan and Iraq are creating breeding grounds for supporters and sympathizers of these groups who are increasingly seen to be challenging US oppression towards Muslims. At the same time, in states like Pakistan, there is a proactive policy to isolate them from their support base. It is this policy which has led the Pakistan army to enter the tribal belt of the country for the first time since Independence. However, after sending a strong message to the tribals in the form of military action, the military has realized the need to adopt a more fruitful policy of pacification through reward and punishment so that the locals hand over the foreigners in their midst. The problem has, however, been aggravated on three counts: one, the local hospitality tradition of the tribes whereby they give sanctuary to anyone seeking it; two, many of the foreigners have been in the area since the war against the Soviets in Afghanistan and have married into local families; and, three, the violations by US forces of Pakistan’s sovereignty through military action on Pakistani territory. This creates a political issue domestically for the Pakistan government and undermines the credibility of the military in the operational area.

II – The second trend in terms of terrorism is the local, sub-national extremist groups that are prevalent across many regions. In Pakistan, for example, there has been the problem of sectarian terrorism and the state had begun outlawing many groups linked to this much before September

²³ This norm (of self-determination) is not only a part of customary international law but is also enshrined as one of the principles of the UN, as laid out in Article 1:2 of its Charter.

11, 2001. However, with a focus on transnational extremist groups, the sectarian problem has tended to take second place with the result that it has become exacerbated once again. Also, al-Qaeda has fed into this problem directly by creating linkages between itself and some of the extremist Sunni groups. The same has happened in Southeast Asia in countries like Indonesia where local terrorist groups have gained a new revival with the al-Qaeda label. In Iraq also one is seeing the linkages between local Iraqi resistance and al-Qaeda.

One of the most violent sub-national, separatist insurgencies was the LTTE movement of the Hindu Tamils in Sri Lanka. Initially, the Tamils got support from India but over the years India suffered the backlash of this—culminating in the assassination of Rajiv Gandhi. While a peace process brokered by the Norwegian government gave some hope that this over 18 years conflict would finally be resolved, at present uncertainty prevails. Over 64,000 civilians, security force personnel, and LTTE cadres have died so far in this conflict—which saw the emergence of suicide bombers as an integral part of the Tamil strategy.

III – The third terrorist trend is that of state terrorism. This has become more acute in the post-9/11 period with the US declaring its pre-emptive doctrine, invading Iraq without a UN resolution and lending support to the Sharon policy of political assassinations. Strong regional powers like India have also claimed for themselves the right of pre-emption. Even before 9/11, the issue of state terrorism dominated the discourse on Palestine and Kashmir. The international community has shown no inclination to deal with this aspect of global terrorism. Yet one of the major factors aggravating the terrorist threat across the globe is the linkage between these three broad trends.

Future Terrorist Threats

It is already becoming clear that terrorism is going to be the new unconventional war to confront the international community. The present effort to deal with terrorism through military means and the curtailment of domestic political liberties has proven to be inadequate—especially in denying political space to the terrorists. Part of the problem is that these policies have been accompanied by aggressive external policies of the US and its allies, especially towards the Islamic world. Furthermore, perceptions within the Islamic World of being targeted by the West have also been growing—especially as a result of developments in Europe and the fallout of the US occupation of Iraq. It is not only at the politico-military level that the civil societies of the Muslim World are sensing a growing targeting of themselves and their religion. At the socio-cultural level also, especially within the migrant communities of Western Europe, there is a growing cleavage between the Muslim immigrants and the indigenous populations. Polarization is becoming more evident in European states with large Muslim migrant populations. Intolerance on the part of many of the right-wing European establishments further aggravates the situation as has been reflected in the blasphemous cartoons' issue.

Within this milieu, the extremists find ready recruits, so one is bound to see the political space of what could be future terrorists increasing, especially in the West itself. As has already been seen, the new Muslim radicals are neither primarily from the Muslim World nor are they madrassah educated. Instead, as the July 2005 London bombings showed, the terrorists were British Muslims. Although efforts have been made to attribute their terrorist leanings to their brief stay in Pakistan, the fact is that they were marginalized within their own British societies. Even the

9/11 terrorists were Western educated. So for the future one will see a growing threat of terrorism coming from within Western societies as their migrant communities feel targeted and/or marginalized. The issue is primarily politico-social and requires an effort to focus on root causes so that potential terrorists never realize that potential and, instead, are coopted into the mainstream. This means that the war on terrorism has to have a new direction and emphasis.

In fact, a more holistic approach is required to deal with the terrorist threat which is going to be with us for the future because of the ease with which destruction can be caused, especially in modern, technologically-advanced societies. In this context it serves no purpose to give religious labels to what are essentially acts of political terror. There is no “Islamic terrorism” just as there was no “Catholic” or “Christian terrorism” when the IRA and Ulster Unionists were carrying out their violent struggles and before the IRA became an accepted political dialogue partner of the British state. After all, al-Qaeda is not proselytizing for Islam. However irrational, theirs is a political agenda which has expanded from getting the US out of Arab lands to a wider conflict with the US. So if the Vatican was not held responsible for the excesses of the IRA in Northern Ireland, then Islam cannot be held responsible for the actions of Muslims using violence to achieve their political goals. In fact, by bringing in Islam into the equation of terrorism, the West itself is merely creating potential new support sources for these groups amongst Muslim communities, just as the UK did for the Catholics of the US—many of Irish descent—who lined up to provide assistance to the IRA for many decades.

The framing of what are basically political struggles in religious terms has hardly helped in dealing with the problems in terms of seeking a sustainable solution. It may make demonization of the enemy easier, but it will hardly create the environment for conflict resolution. And the argument that the “Islamic” terrorists cannot be dealt with rationally because they glorify martyrdom makes no sense, because one of the largest number of suicide bombings have been by Hindu Tamils in Sri Lanka, who had committed massive acts of violence against innocent civilians and had been put on the list of terrorist organizations by many countries across the globe.

Nor does it help understand the issue of terrorism better by talking in terms of a “clash of civilizations”, in terms of an Islam versus the rest context. Huntington’s emotive “clash of civilizations” thesis added the intellectual force for this mind-set and 9/11 has provided the final “proof” of this thesis! But the lines were drawn much earlier on. As Sandra Mackey wrote in 1996:

*“The very term ‘Islamic fundamentalism’ was given common coinage at the zenith of the Iranian revolution. Since then it has grabbed and held an American public emotionally scarred by military casualties and civilian hostages in Lebanon; violence inflicted against Westerners by Islamic militants in Algeria and Egypt; fear engendered by the shadowy group that detonated a bomb in New York’s World Trade Center; and anger roused by the endless slogans of Islamic zealots that damn the West. Regardless of the range of grievances and geography of militant Islamic groups, the American mind sees the Islamic Republic of Iran as the fount of Islamic extremism.”*²⁴

²⁴ Sandra Mackey, *The Iranians: Persia, Islam and the Soul of a Nation*, New York: Plume Publishing, 1996. p. 384.

There is a basic flaw in this thesis in that it creates artificial monoliths of an Islamic civilization, a Western civilization and so on. Facts on the ground reveal the contrary. For instance, there is a diversity amongst the Western and Christian worlds. Just as Christian states come in many cultural and geographical dimensions—ranging from Latin America to Europe to Asia—so do Western “secular” democracies. There is a whole political framework now being accepted that Islam has replaced Communism as the major threat to “Western” civilization—especially the underlying concept of “secularism” on which this civilization supposedly rests. Yet the fact of the matter is that this is nothing more than a dangerous myth. So-called Western secularism is simply a reflection of Christian values.²⁵

However, the intent in this paper is not to show the long list of abuse of Muslims at different levels in the international system today. The point is that on the ground it is Muslims who are

²⁵ To begin with, secularism refers to a belief “that the state, morals, education etc. should be independent of religion” (*Chambers English Dictionary*). Yet in most Western states this is not the case—Christian values pervade their legal and moral belief systems even at the level of the state. At a very basic level, all Western states claiming to be secular—be they Northern European or North American—believe this claim when they only declare Christian holidays as national holidays. Even though people of other beliefs can claim their religious holidays, these are seen as special concessions whereas the Christian holidays are for the whole nation/country. Beyond this, the degree of “secularism” really varies from state to state and religious prejudices at the state level come to the fore every time traditional norms are challenged.

Many northern European countries consistently show their Christian credentials in the manner in which the law is applied to other religions—especially the Muslims. Take the case of Britain. Their Queen is the head of the Church of England and for an heir to the British throne marrying even a member of another Christian sect is a road fraught with difficulties, let alone marrying into another faith. More ominous is the fact that the British Blasphemy Law (it still exists) deals only with Christianity. In other words, you may blaspheme all you want against Islam—the law will not apply! Given that there is an increasing Muslim British population, one would have assumed that the British legal system would have begun to treat all its citizens equally! As for France—the whole controversy surrounding the scarf issue revealed the religious bias of the French State. Somehow French “secularism” was not threatened by Christian schoolgirls wearing crucifixes around their necks, but when Muslim schoolgirls wore scarves on their heads, the state’s educational system felt itself threatened! Prejudicial revelations like these show that it is the European psyche that is still so heavily burdened with the legacy of the Crusades that it now finds Islam an easy substitute-threat with the demise of Communism. As for Eastern Europe, their whole struggle against Communism was church-centred, so the aftermath has naturally seen persecution of the Muslims, which reached new heights of barbarity in Serbia. A similar picture was revealed in February 2002 in the Indian State of Gujarat. However, while the persecution of whole ethnic Muslim populations has gained new heights after the demise of the Soviet Union and the end of Communism in Eastern Europe, Muslims in Europe have had to face systematic persecution at the hands of European governments for a while now. For instance, the Greek State aided and abetted Greek Cypriots in their genocidal policy of *Enosis*, which entailed the mass killings of Turkish Cypriots. The remains of mass graves can be seen in what is now the Turkish Republic of North Cyprus. The most recent reflection of this prejudice against Muslims and Islam has been reflected in the US policy towards the Muslims taken prisoners in Afghanistan during the War on Terrorism and kept confined in Guantanamo Bay Cuba. Whereas international law relating to war and prisoners of war was strictly followed even for the Nazis in the Nuremberg Trials and presently in the trial of the Serbian leaders, for the Guantanamo Bay, prisoners no such laws are being accepted by the US government. Even at the micro level, when a criminal in the West happens to be a Muslim, this becomes the central point to be emphasized—as if Islam is responsible for his criminal bent. Yet, if a Christian commits a crime, the religious factor is left out.

under threat because of their religion. But coming to the point of this so-called “clash of civilizations” focusing on Islam. There really is no one monolithic “Islamic” civilization. Islam binds many diverse civilizations together through a religious bond. However, beyond that, which “Islamic” civilization is in clash with the West? After all, Islam ranges from North Africa to East Asia and there is even an OIC member in Latin America—Surinam. Now the civilization of Muslim Nigeria is totally different to the civilization of Pakistan in Southwest Asia or Malaysia further to the East. The Arab world’s cultural and historical legacies, which build its civilizational identity, are different to the Iranian civilization and the Turkish civilization ... and so on. So to talk of a clash of the West with an “Islamic” civilization makes absolutely no sense. In other words, there are many socio-political civilizations that have embraced Islam as a religion in the same way as other equally different civilizations have embraced Christianity. Even Confucianism cannot be confined to China, given the Confucian influence across East Asia. Perhaps the closest that one can talk of monolithic religio-political civilizations are the Hindu and Zionist civilizations—and both have shown an extremism and intolerance of diversities and other religious groupings.

The Linkage between Globalization and Terrorism

A major source of an increasing terrorist threat is the globalization that is taking place today. Globalization has increased the ability of obscure groups to use violence and gain international focus. Communications have allowed groups to link up and the global transfer of funds has allowed the funding of groups in one part of the world by groups in other parts in a matter of hours or days. So just as the international community has come together to share information and strategies to deal with the terrorist problem, extremist groups and fringe elements in different societies have developed the ability to support each other and share information and finances.

Beyond this, globalization itself is a growing source of terrorism, especially by disgruntled elements of different types in differing societies. To understand the impact of globalization, one needs to be clear what one means by the term itself. For the purposes of this paper, Stanley Hoffman’s typology of “globalization” is used, in order to try and understand what the West means by globalization, and to examine what, if any, is the linkage between this phenomenon and Islamism. Stanley Hoffmann has identified three types of globalization: economic, cultural and political.²⁶

The first—*economic globalization*—is a reality in terms of economic interdependence across nations, which is defined by certain rules of the game created by the powerful, but which are enshrined in international institutional frameworks such as the IMF, the IBRD (World Bank) and now the WTO—with other international norms flowing from these agreements. Here the clash, as is being witnessed increasingly, is between the haves and have-nots of the world. It is the economic disparities created by economic globalization that has created great inequalities between and within states, so that the clash has come from those who have suffered deprivation and injustice as a result of the policies and demands of international economics.

²⁶ Stanley Hoffmann, “The Clash of Globalizations”, in *Foreign Affairs* July/August 2002, p. 107.

Hoffmann's second category—*cultural globalization*—is seen as originating from technological and economic globalization which has led to the efforts to uniformize the world civil societies by selling what is basically an American-dominated Western culture as a universal culture—what many refer to as the “McDonaldization” of the world. So, the conflict here comes from those wishing to retain global diversity and local cultures. The clash here again comes from those seeking to resist being overwhelmed by the forces of global economics and “global” culture. Hence one has seen a resurgence of local cultures and languages and a condemnation of efforts at global uniformity as being one more attempt to assert American hegemony.

Which brings one to the third Hoffmann category—that of *political globalization*. This is reflected in the prevalence of one sole superpower—in politico-military terms—that is the US. Post-9/11, this aspect of globalization has come to dominate, with the US embracing economic issues also within a politico-military framework. Also, with the US moving towards increasingly unilateralist interventionism in the world, international norms and treaties created over the decades stand threatened. In many ways, the post-9/11 trend towards political globalization within the US unilateralist mode will threaten economic and cultural globalization—since it will push a global agenda through national power rather than international cooperation.

In all three Hoffman typologies, one can find a link between globalization and terrorism. To begin with, there is now very clearly the growth of transnational terrorism whereby different groups across the globe interact and learn from each other—as well as cooperating with each other. Just as states and civil societies have become more interlinked, so have marginalized groups with political agendas who feel left out of the mainstream processes; or who have reductionist agendas in the era of globalization. Nor are these links new—they have been there for decades, with the Red Brigade in Europe having their liaison with the PLO and so on. Nor was religion the binding force. Rather it was a common perception of struggling against the Establishment and against perceived injustices—all political goals.

So, as the mainstream international system has become more globalized, so has terrorism—especially with the advent of the internet and global electronic media through satellite. This is now the age of “netwar”, a term used by Bruce Hoffman to describe, “an emerging mode of conflict and crime at societal levels, involving measures short of traditional war, in which the protagonists use network forms of organization and related doctrines, strategies, and technologies attuned to the information age.”²⁷ Also, with the technical barriers broken to create global access, the weapon of the weak has become transnational—from the protests that accompany meetings of the powerful states and institutions like the IMF and IBRD to the most extreme form that led to the terrorist attacks of 9/11.

Also, the marginalization of many developing states and groups within developed states as a result of the three strains of globalization identified above have created more dissensions in civil societies and states across the globe. Terrorism has been one of the fallouts—as a weapon of the weak. The North-South divide has been further aggravated by global economic developments with the countries of the South being polarized between the haves and have-nots within their own

²⁷ Bruce Hoffman, “Terrorism Trends and prospects”, in Ian Lesser, et al, eds., *Countering The New Terrorism*. Santa Monica, California: RAND, 1999, p. 47.

countries as well as the developed-underdeveloped global divide. From the bread riots of 1976 in Egypt to the anti-IMF riots across continents inhabited by developing states, survival is the major issue for the man in the street. To make matters worse, people in these states see their natural resources being controlled by outside forces and with the state losing control over critical decisions. Nowhere is this clearer than over strategic resources like oil.

Even in developed states, there are groups who feel marginalized and out of the mainstream because they are no longer in control of their economic destinies. Hence the growth of radical, anti-global trends and ideologies both in the West and in the underdeveloped world. Radicalism of multiple types is growing as globalization continues in the direction it is going. This radicalism is not particularly “Islamic” in nature—it finds its expression in neo-Nazi movements in the West, in the rise of fundamentalist forces in countries like India, and in Muslim states turning to religion becomes the norm because religion still continues to play an important part in the lives of people in this part of the world. When that religion is perceived as being abused by groups in states where the governments are not prepared to take legal action against the guilty, then frustration and anger spills over into violence and this rages across national borders.

Add to this the Western control of global communications and the economic anger and frustration is given a cultural expression through the rejection of the trend towards trying to compel global cultural expression in Western terms. When events are also interpreted through a particular prism in terms of news and current affairs language then the dialectical pulls in non-Western societies become further exacerbated.

Finally, the political-military globalization, which in effect is a new type of imperialism, is now reflected most clearly in the new US National Security Strategy that seeks to justify a military preemptive unilateralism on the part of the US across the globe. Mr. Bush proclaimed, at West Point on June 1, 2002, “Our Nation’s cause has always been larger than our Nation’s defense”, reflecting clearly a “no-bounds” global agenda.

What has further aggravated the terrorist threat today is that terrorism has also become the instrument of the powerful states—from the US to Israel to India. And all acts of terror—barring pathological violence—have a political framework not a religious, proselytizing one.

All in all, in the future the problem of terrorism is going to become aggravated because of the growing political space still being available to terrorists. Globalization has also created many levels of the threat with linkages amongst these levels.

What Can be Done to Counter the Multifaceted Terrorist Threat?

Simply barricading oneself against the terrorist threat will not work. In other words, for the developed states to think they can barricade themselves from the rest of the world is unrealistic. Globalization, both economic and in terms of culture and ideas, is increasing movement between goods and people so fundamental liberties need to be maintained and these make all societies more vulnerable. That is why there is a need to focus on the root causes of terrorism, not simply the symptoms. In this, political dialogue and peaceful resolution of conflicts become essential tools with which to fight terrorism.

Rami Khouri has rightly pointed out that the world needs to accept “three important but uncomfortable facts” if it wants to achieve substantive results against terrorism and not just “feel-good revenge”.²⁸

- First, the Arab-Asian world, primarily Islamic, is the “heartland and major wellspring of the spectacular global terror attacks of recent years.” That is why the reasons for this have to be tackled intelligently. According to Khouri, “*The most important and recurring historical root cause of terror in, and from, the Arab-Asian region is the home-grown sense of indignity, humiliation, denial and degradation that has plagued many of (the) young men and women.*” Because the governments and societies of the region have been unable to come to grips with this, space has been allowed to states like Israel, the US and Britain to send in their armies to deal with the misperceived problems and disastrously faulty analyses.²⁹
- Second, Khouri points out that terrorism is a global phenomenon that also emanates from non-Islamic regions in the world which are not linked to Arab or the Islamic Middle East. That is why local environments and causes have to be understood, rather than linking everything to “a single, global Islamic militant ideology that is fuelled by hatred for America.” There are, in fact, historical causes that have allowed terrorism to emerge over a period of time so it is important to address the different local root causes of terror.³⁰
- Three, the existing Israeli and US policy of fighting terror militarily, which is also being adopted increasingly by other governments, can, at best, have only limited and temporary success. Especially in the case of suicide bombers, you cannot deter someone who wishes to kill himself or herself by threatening to kill them. According to Khouri, the British experience in Northern Ireland is one of the best contemporary examples of how “an intelligent, inclusive political response effectively brought an end to the terror that harsh police and military methods on their own could not stop.”³¹

There is also a need to ensure that just and legitimate liberation and self-determination causes do not become victims of the war against terrorism. After all, so many of yesterday’s “terrorists” are today venerated as freedom fighters and national heroes. That is why the war on terrorism has to be redefined within the issue’s proper political and social milieu—rather than continuing down the path of a narrowly-defined, primarily militaristic operational framework which not only failed to deny space to the terrorists but is creating increasing space for future terrorists.

Also, in an effective war against terrorism, a major prerequisite is to stop talking in terms of “Islamic terrorism”. Otherwise, mainstream Muslims will feel marginalized and victimized because of their religion and the global spread of Islam will then create what one assumes one is seeking to avoid: a clash between Islam and the US and its allies. As Dr Waseem points out, there is a danger of constructing a new collectivity: “*The world of Islam ... is increasingly understood*

²⁸ Rami G. Khouri, “Needed: A Global Strategy to Reduce, Not Increase, Terror”, in *Daily Star* (Beirut, Lebanon), September 8, 2004.

²⁹ Ibid.

³⁰ Ibid.

³¹ Ibid.

as a bunch of Muslim states that shared the broadest denominational identity with the terrorist groups. This is a grim indicator of the fact that the contemporary world is passing through the fateful process of the crystallization of an Islamic identity sans culture and tradition, history and geography, language and literature as well as public and private behaviour patterns. Here is the construction of the 'other' going on in a massive way."³² This is a most dangerous reductionism. Just as the West, led by the US, made an expedient use of Islam as a policy instrument, in the 80s, after the Soviet invasion of Afghanistan, so it is now trying to make the same expedient use of "Islamic terrorism" as an instrument of policy.

There is also a very real need to study the root causes of the problem of terrorism. Military power may deal with the immediate problem, but it can only aggravate the long-term threat. At the political level, the issues of Palestine and Kashmir need to be resolved in a manner committed to by the international community. Within this context, where democratization has taken place, the results of that democratization must also be accepted.

At the economic level, globalization has to proceed in a manner in which groups and states feel less marginalized and where more equitable norms apply—so as to give all states a "level playing field". For instance, while Europe and the US continue to subsidize agriculture in different forms, it only creates resentments to have the IMF and IBRD tell developing countries to remove all traces of agricultural subsidies. Again, access to markets is critical for developing states as is freedom of movement of professionals—given that the service sector has been brought under the trade regime.

The problem of marginalization of groups within states and of states within the system needs to be addressed. What is needed is not a forceful attempt at compelling the world to become an artificial monolith economically, politically and culturally. Unfortunately, that is what the US is presently attempting to do through its National Security Strategy in which preemption is justified on many counts ranging from ridding certain states of their weapons of mass destruction and what the US sees as unacceptable governments to imposing the free market economy and capitalism on the world at large. The heterogeneity of the world has to be recognized by the powerful and adapted to.

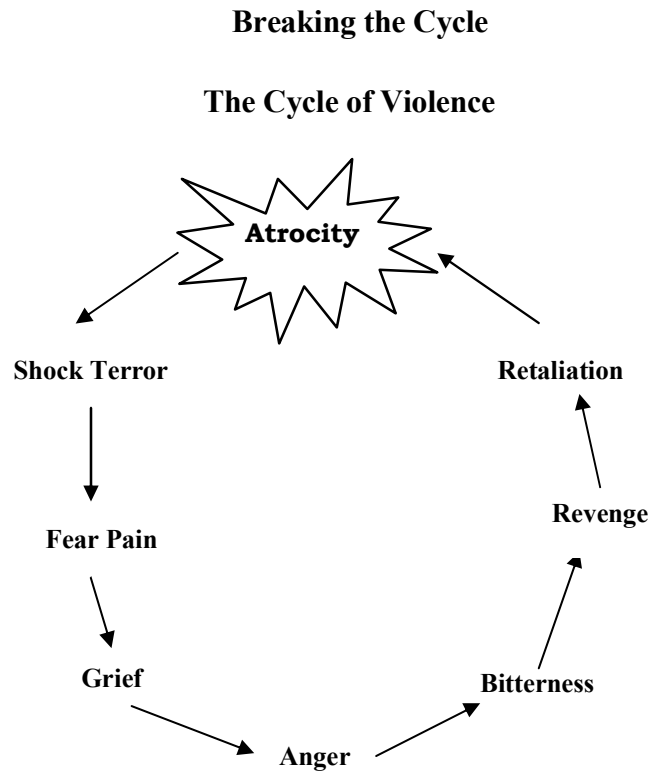
The fear of Islam as a powerful global force has to be replaced by an acceptance of this reality. Just as the world has learnt to live with a military superpower, there is a need for this superpower and its allies to accept the spiritual power of Islam for people across the globe. Cultural and political pluralism have to be accepted with greater force even as economic globalization cannot be stayed. If Islam continues to come under the sort of attack one is seeing in the Western media and amongst Western political circles, then Muslims of all shades will feel under threat and react. In fact, the debate on terrorism has to rid itself of the Islamic context, if it is to get anywhere substantive. The context of terrorism is political and that is the starting point in dealing with the issue. By removing terrorism from this false, religious context, dealing with the terrorists—including isolating them—will become much easier for states, especially Muslim states.

³² Mohammed Waseem, "Observations on the Terrorist Attacks in New York and Washington" at a Symposium on 11 September, 2001, *Terrorism, Islam and the West*, in *Ethnicities*, Vol. 2(2). London: Sage Publications, 2002, p. 139.

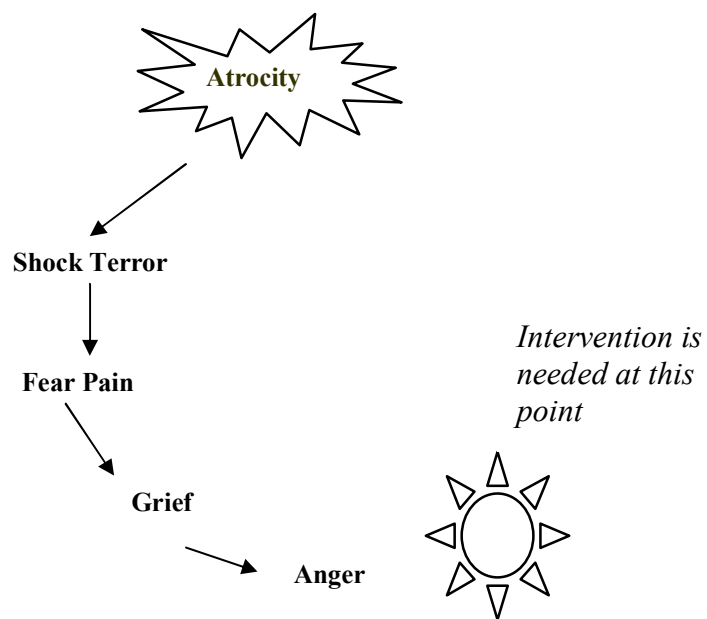
Perhaps the most critical need for dealing with the problem of terrorism is to break the cycle of violence at the correct phase. The Oxford Research Group (ORG), in a Briefing Paper on *The War on Terrorism: 12-month audit and future strategy options* (September 2002), has identified seven stages in the “classic cycle of violence” which they assert has been evident in the Palestine-Israeli conflict as well as in the different Yugoslav regional conflicts. The seven stages begin after the act of terror which leads to “shock terror” and on to “fear pain” then “grief” and on to “anger” and then “bitterness” leading to “revenge” and “retaliation” and the cycle goes on as another act of violence is set in motion (see Figures I & II). The post-9/11 “War on Terrorism” can also be analysed within this classic cycle. The ORG suggests that in order to break this cycle, intervention is needed at the stage of “anger” so that it does not go on to revenge and retaliation. Instead, a peace-keeping or peace-making intervention at the anger stage, followed by a series of other actions to contain violence through protection, de-weaponization, rule of law, bridge building, etc., can help undermine the cycle of violence (see Figure III).

Without adopting a holistic global strategy to deal with the problem of terrorism, which focuses on root causes and politico-social measures to accompany the military means, the international community will allow the terrorists continuing, if not an increasing, political space.

Figure I



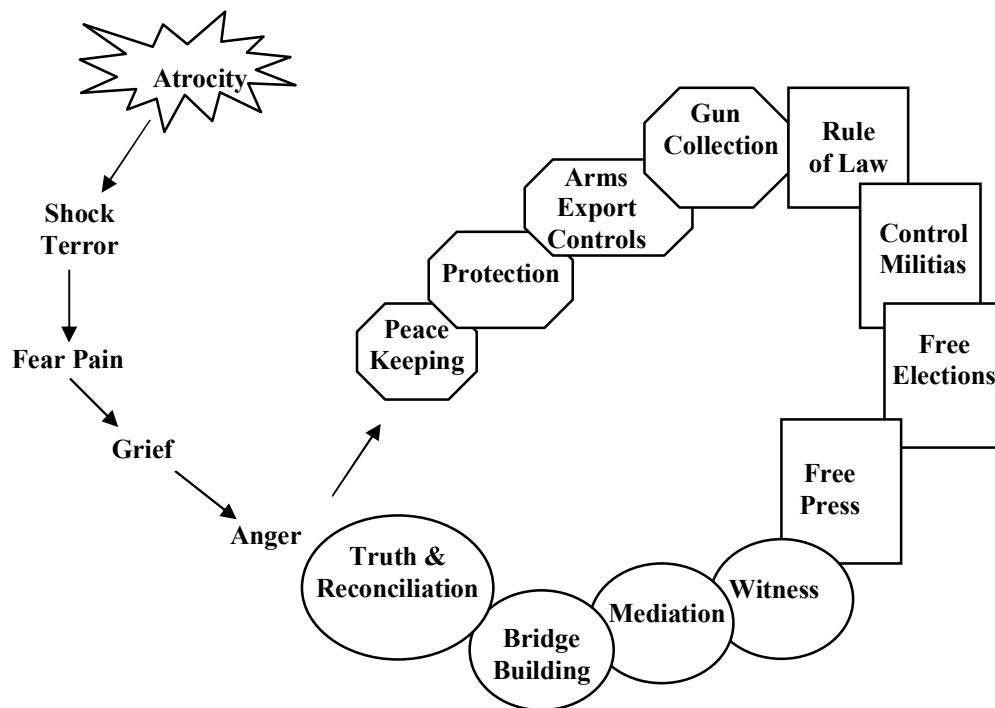
Source: Paul Rogers & Scilla Elworthy, *The 'War on Terrorism': 12-month audit and future strategy options*, Oxford Research Group, Briefing Paper, September 2002.

Figure II

Source: Paul Rogers & Scilla Elworthy, *The 'War on Terrorism': 12-month audit and future strategy options*, Oxford Research Group, Briefing Paper, September 2002.

Figure III

Transforming the Cycle of Violence



Source: Paul Rogers & Scilla Elworthy, *The 'War on Terrorism': 12-month audit and future strategy options*, Oxford Research Group, Briefing Paper, September 2002.

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Countering Ideological Terrorism

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Abstract. Political Islam can be institutional and peaceful, but there are those who support it with jihadism. This is something other than the traditional Islamic jihad. The reference of this ideology to Islam complicates the issue, for there are serious Muslims who interpret criticisms of jihadism as attacks on Islam. In recognizing that this dimension hampers the development of strategies to counter terrorism, this paper focuses on the ideology of jihadism, first to understand it, and second to think how to counter it. In the section analyzing this ideology, the conflicting visions are presented as: The Kantian views on world peace based on the existing Westphalian order, being a model challenged by the call for a *Pax Islamica*, being the vision of the jihadism of political Islam. Relating this new phenomenon which intrudes into world politics in the form of non-state actors, to international studies, one is compelled to a search for new approaches. In the study of International Relations traditional wisdoms need to be questioned and subjected to a new reasoning. Among the pertinent changes to be taken into account one faces the rise of politicized religion, which is becoming one of the major issues of international affairs. Islamism revives the identity of *umma* in Islam. However, owing to the rise of the political culture of multiculturalism in the West, the censorship of “political correctness” has outlawed the reference to the cultural origins of people, and any relating of these to, or combining them with, conflict studies. The ideology of jihadism has typically been reduced to a religious fanaticism or a mere protest against hegemonic structures. The aim of Section V of this paper is to show how migration has become an area of international studies. The German logistics related to the Hamburg cell of al-Qaida are a case in point. It is often overlooked how jihadism is spreading with the assistance of madrassas and faith schools both in the world of Islam and in its diaspora in Europe.

Keywords. Terrorism, political Islam, jihadism, counter-terrorism, Islamism and International Relations, Islamic diaspora and International Relations.

Introduction

Terrorism is the most recent new pattern of warfare addressed by Martin van Creveld as “low intensity war”, by Kalvi Holsti as “war of the third kind” and by myself as an “irregular war” of non-state actors waged without honoring rules.¹ If this warfare were not based on an ideology articulated in religious-cultural terms it would have been an easy undertaking to counter it through simple strategies of policing. A closer look at the variety of this terrorism practiced by al-Qaeda reveals with clarity the reference to religion involved—even though in an ill shape. For Islam is a faith and it by no means supports any kind of action that can be identified as terrorism, it rather prohibits it. To be sure, at issue is not a proper or an ill understanding of religion, but rather the ongoing process of a religionization of politics and a politicization of religion leading to a jihadization of Islam in an invention of tradition.² The outcome is the ideology of jihadism which is something else than the classical Islamic jihad.³ This is the basis of the ideological foundation of terrorism.

To infer from the statement made that the ideology of jihadism has nothing to do with Islam would be a wrong scriptural understanding of the issue. Jihadists are people who perceive of themselves as “True Believers”⁴ and for this reason they excommunicate those fellow Muslims from the Islamic community of the *umma*, those who disagree with them in labelling non-jihadist Muslims as *kafirun*/unbelievers to be killed.

If these facts are properly understood and placed in their context while inquiring into the ideology of Islamist terrorism addressed here as jihadism, it becomes clear that mere military strategies, not to speak of policing, are utterly insufficient instruments. To deal appropriately with the issue for combating terrorism new strategies are needed. In a contribution to the Berlin-based project on countering terrorism whose findings were published in a book edited by Martin van Creveld and Katherina von Knop, I argue that the war on terror is also a war of ideas and worldviews.⁵ It follows that the reference of the jihadist ideology to Islam complicates the issue. The war of ideas enables the jihadists to defame any countering of terrorism in addressing it in terms of a war on Islam. There are serious Muslims—that is not only Islamists—who voice this bias. In recognizing that this dimension hampers a development of strategies for countering terrorism, this paper focuses on the ideology of jihadism, first to understand it, and second to think

¹ These references are Martin van Creveld, *The Transformation of War* (New York: The Free Press, 1991), Kalevi J. Holsti, *The State, War, and the State of War* (Cambridge: Cambridge University Press, 1996), Bassam Tibi, *Conflict and War in the Middle East. From Interstate War to New Security*, 2nd enlarged edition (New York: St. Martin's Press, 1997), herein chapter 12, and the chapter by this author included in the volume *Redefining Security in the Middle East*, fully referenced in note 29 below.

² This interpretation is unfolded in my chapter on Islam in the volume *World Cultures Yearbook*, edited by Helmut Anheier and Y. Raj Isar, to be published 2007 by Sage Press, London and New York.

³ See the references in note 25 below.

⁴ Eric Hoffer, *The True Believer. Thoughts on the Nature of Mass Movements* (New York: Perennial Library, 2002, reprint of the original 1951).

⁵ B. Tibi, Countering Terrorism als Krieg der Weltanschauungen, in: Martin van Creveld and Katharina von Knop, eds., *Countering Modern Terrorism. History, Current Issues and Future Threats* (Bielefeld: Bertelsmann, 2005), pp. 131-172.

how to deal with it. In fighting the militants one needs to beware of raising any suspicion that may support the jihadist ideology that claims that Islam and its people are the target. To ensure a successful combating of terrorism the idea of jihadism should be targeted jointly in a Muslim-Western endeavor that makes clear: The war on terror is not a war on Islam.

I. Introduction

The point of departure is the insight that contemporary terrorism is a new kind of warfare. The term I have coined for it, i.e. “irregular war”, has to be supplemented with an analysis of “Religion and Terror”⁶ for interpreting the use of religious themes in a pursuit of a justification of the practice of terror in the name of Islam. In this context, the formula “politicization of religion and religionization of politics” (see note 2) has been phrased for identifying the ideological foundations of Islamist (not Islamic) terrorism. The ideology of Islamism is based on the politicization of Islam and it justifies “terror in the mind of God”. In this regard this distinction is highly relevant: Political Islam⁷ could be institutional and peaceful, but it also has a terrorist branch. It subscribes to violence and is addressed here as jihadism. It needs to be reiterated: this is something other than the traditional Islamic jihad (see note 3) for jihadism is based on an “invention of tradition”,⁸ not the tradition itself. The outstanding issues surrounding this doctrine were debated at a variety of events dealing in a policy oriented way with “transnational terrorism”: In Madrid, London, Rome, and in Monterey/California, the analysis of the ideological roots of religious extremism was established as one of the basic issue areas in the study of terrorism. This author was involved in these projects and contributed to the related findings which are pertinent for the reasoning continued in this paper on the ideological foundations of terrorism. It is an action pursued with a religious justification and legitimation.

Among the related facts in the study of the contemporary ideology of jihadism is that its history is rooted in the 20th century’s phenomenon of political Islam, which predates Bin-Ladenism by many decades.⁹ The ideology of jihadism can be traced back to the birth of the Society of Muslim Brothers in Cairo in the year 1928. This is the first movement of Islamic fundamentalism.¹⁰ In the past decades this “Brotherhood” has developed within the networking of transnational religion into an international movement also covering the Islam diaspora in Europe. The founder of this movement Hasan al-Banna published around 1930 his “*Risalat al-Jihad*/Essay

⁶ See the contributions by Bruce Lincoln, *Holy Terrors. Thinking about Religion after September 11* (Chicago: The University of Chicago Press, 2003) and Mark Juergensmeyer, *Terror in the Mind of God* (Berkeley: The University of California Press, 2000).

⁷ On political Islam see Nazih Ayubi, *Political Islam, Religion and Politics in the Arab World* (London: Routledge, 1991) and Graham Fuller, *The Future of Political Islam* (Boulder/Col.: Westview Press, 2003) and also my book referenced in note 9.

⁸ Eric Hobsbawm, ed., *The Invention of Tradition* (Cambridge: Cambridge University Press, reprint 1996) introduction, pp. 1-14.

⁹ For a content-based survey see B. Tibi, *The Challenge of Fundamentalism. Political Islam and the New World Disorder* (Berkeley: The University of California Press, 1998, updated edition 2002).

¹⁰ Richard Mitchell, *The Society of the Muslim Brothers* (London: Oxford University Press, 1969).

on Jihad”,¹¹ which is used today in textbooks for the indoctrination in the jihadist ideology. This makes it clear that al-Banna’s writings are among the major sources of intellectual terrorism. The indoctrination in jihadism is based on the al-Banna essay cited as well as on several catechisms/pamphlets authored by Sayyid Qutb. The latter was the foremost thinker of political Islam and he continues to be the most influential ideological founder of Islamism.¹² Qutb was also translated—in the underground—into Turkish.¹³ The idea of neo-jihad outlined by al-Banna was upgraded by Qutb to an idea articulated in quasi Marxist terms claiming “jihad as a permanent Islamic world revolution”¹⁴ in the pursuit of establishing *hakimiyyat Allah*/God’s rule on a global basis. This is also the ideology of a new order for the world that envisions a replacement of the Western secular Westphalian system. This claim is the substance of the challenge of jihadism. In short, the ideology of jihadism is much more than a religious extremism making use of force. It is also a concept of order for the world.

The preceding introductory remarks make clear that countering of terrorism cannot be successful if it is merely restricted to the narrow security confines of policing and of military issues. In my contribution to “Countering Modern Terrorism” waged as an irregular war by jihadist terrorists, I argue that this is also a war of ideas (see note 5). The ideological jihadism at issue seems to be more successful in this regard than the West. Many Western experts seem to underestimate the ideological dimension in the war on terror. It is often overlooked how this ideology is now spreading with the assistance of madrassas and faith schools both in the world of Islam and in its diaspora in Europe. On the grounds of this religious-Islamist ideological indoctrination a policy of recruitment is pursued by the respective Islamist organizations: first teach jihadism and then recruit. If these facts are seriously taken into consideration, then it follows that a counter-terrorism strategy needs equally to engage in this war of ideas for combating the virus of jihadism, not through power, but rather through education and enlightenment to win the hearts and souls of young Muslims in order to prevent their development into jihadis. In talking about security cooperation, one may add that the war on terror can only be successful, and won, if it becomes a joint Western-Islamic effort. A part of this war of ideas is to prove in deeds and not only in pronouncements that the Islamic perception that the war on terror is a general war on Islam is wrong.

In establishing itself on cultural and religious grounds the Islamist terrorism in question interprets Islamic jihad anew as a jihadism. This is a related dimension of Islamism, also addressed in terms of political Islam. As stated, it emerges from the contemporary politicization of religion in the countries of Islamic civilization undergoing a crisis situation. To be sure, the very same phenomenon can be observed in other world religions, the result of which is a variety of

¹¹ See Hassan al-Banna, “*Risalat al-jihad*/essay on jihad” in the collected writings of al-Banna, *Majmu’at Rasail al-Banna* (Cairo: Dar al-Da’wa, 1990), pp. 271-292.

¹² On the impact of Sayyid Qutb see Roxanne E. Euben, *The Enemy in the Mirror. Islamic Fundamentalism and the Limits of Modern Nationalism* (Princeton/NJ: Princeton University Press, 1999), chapter 3.

¹³ My post-graduate Turkish student at Bilkent University in Ankara Ayşegül Kececiler completed in 1995 this paper on the impact of Qutb in Turkey: *Sayyid Qutb and his Influence on Turkish-Islamic Intellectuals from the 70s to the 80s* (Ankara: Bilkent University 1995).

¹⁴ Sayyid Qutb, *al-Salam al-Alami wa al-Islam/World Peace and Islam* (Cairo: al-Shuruq, 1992), p. 172.

contemporary religious fundamentalisms, and not only in the world of Islam. In introducing nuances and distinctions, this phenomenon is divided by two major streams: institutional Islamism and jihadism. Unlike the exponents of political Islam of the first stream, who believe in achieving their goal, i.e. the Islamic shari'a state, through participation in the democratic game of political institutions, the latter one, i.e. the jihadists, subscribe to violent direct action believed to be fought as "terror in the mind of God" (see note 6). The related ideology of global jihad is based on an Islamist interpretation of Islamic doctrines for underpinning terrorist action with religious arguments.

Long before 9/11, in fact since the 1980s, Algeria, Egypt, Pakistan and many other Islamic countries were exposed to the security threat of jihadism posed by these "warriors of God". It is expressed in two ways: First, the call to topple the existing order, second the resort to terror, being a practice addressed in this article as "irregular war". Clearly, jihadist Islamism is therefore a threat to the existing state order, but it is also an issue that touches on international security. The call of Sayyid Qutb, the *rector spiritus* of Islamism, for a *Pax Islamica*, i.e. an Islamic world order, precedes by a few decades al-Qaida and its internationalism.¹⁵ However, the post-bipolar development is the framework that paved the way for the thriving of jihadist terrorism, which existed before. This pattern heralds a shift from Clausewitzian inter-state war to the new one of irregular warriors of neo-jihad. Based on this observation it is argued that jihadism is a challenge which requires the unfolding of adjusted patterns of new security. Among these is a strategy for dealing with the ideological foundations of terrorism. At issue is first how to respond to "terror in the mind of God", being the new post-bipolar irregular war, and second how to deal with the call to topple the international order of secular states known as the Westphalian order, and to replace it with a global Islamicate, i.e. a *Dar al-Islam* mapping the entire globe. In the present paper an effort is made to explain the substance and the background of the ideology of jihadism in the context of international security.

The ideology of jihadist terrorism is embedded in the time and space of post-bipolar world affairs.¹⁶ There are many new factors, one of which is the return of the sacred¹⁷ within the framework in of the cultural turn. Another factor is the ascendance of non-state actors in world politics resulting in the emergence of terrorist movements acting globally in this capacity as non-

¹⁵ On the Islamist *umma* internationalism, Peter Mandeville, *Transnational Muslim Politics. Reimagining the Umma* (London: Routledge, 2004), in particular chapter 6, pp. 178-191. On al-Qaida Peter L. Bergen, *Holy War Inc. Inside the Secret World of Osama Bin Laden* (New York: Free Press, 2001), herein chapter 10.

¹⁶ See the most interesting article by Daniel Philipott, The Challenge of September 11 to Secularism in International Relations, in: *World Politics*, vol. 55,1 (2002), pp. 66-95. Much earlier, Mark Juergensmeyer gave his pertinent book the title: *The New Cold War?*, with the subtitle: *Religious Nationalism confronts the Secular State* (Berkeley: University of California Press, 1993). On this subject see also B. Tibi, "Secularization and Desecularization in Modern Islam", in: *Religion, Staat, Gesellschaft*, vol. 1,1 (2000), pp. 95-117.

¹⁷ On this debate see Bassam Tibi, "Habermas and the Return of the Sacred. Is it a Religious Renaissance? Political Religion as a New Totalitarianism", in: *Religion, Staat, Gesellschaft*, vol. 3, 2 (2002), pp. 265-296.

state actors. The study of terrorism in international affairs¹⁸ is becoming in this regard a major concern of security. In this context, the terrorism branch of contemporary political Islam, i.e. jihadism, has to be placed into the new environment of international affairs in the post-bipolar development affecting recent patterns of world time. For properly dealing with this recurrent issue we need both to understand the changes occurring in international politics, in general, and political Islam itself. Jihadism as an expression of irregular war emerges in particular from this context. To be sure, the focus of this paper is on the ideology of jihadism and therefore it cannot be exhaustive; it does not claim to cover all aspects of this multifaceted complex subject matter.

In relating Islamism, and also its jihadist terrorism, as a fully new phenomenon in world politics based on the already mentioned ascendancy of non-state actors,¹⁹ to international studies, one is compelled to a search for new approaches. In the study of International Relations traditional wisdoms need to be questioned and subjected to a new reasoning. Among the pertinent changes to be taken into account one faces the rise of politicized religion, which is becoming one of the major issues of international affairs.²⁰

The matter is not only restricted to looking at concrete cases of terror legitimated as jihad in the path of God, but also to view the political discourse related to it, being the underlying ideology. This consideration leads to the insight that neo-jihad (global jihad) is not a goal in itself, but rather just a means in the pursuit of a new order in line with this discourse. The use of religion in politics underpinning the legitimation of irregular war matters to post-bipolar security not only in terms of incorporating terrorism in military studies, but also for dealing with the new phenomenon within the scope of “order”. In the tradition of Bull’s IR-work, order is viewed to be the pivotal subject of world politics.²¹ In this regard we need to take a glimpse at the discipline itself for grasping the issue and for incorporating jihadism as a new issue in the respective studies.

¹⁸ In an early contribution of 1982 to this subject, in Grant Wordlaw, *Political Terrorism* (Cambridge: Cambridge University Press, 1982, 2nd edition 1989), we find, for instance, no reference to Islam or to jihad. In contrast, recent books like Bruce Hoffman, *Inside Terrorism* (New York: Columbia University Press, 1998) deal with this issue. Among the recent contributions are: David J. Whittaker, ed., *The Terrorism Reader* (London: Routledge, 2001) and Paul R. Pillar, *Terrorism and US Foreign Policy* (Washington/DC: Brookings Inst., 2001).

¹⁹ In overcoming classical state-centered realism Joseph Nye, in his *Bound to Lead. The Changing Nature of American Power* (New York: Basic Books, 1990), distinguishes between state related, and not-state challenges/challengers; he notes “private actors ... have become more powerful”, p. 182. In so arguing Nye draws our attention to new challenges and challengers related to the rise of non-state actors. Back in 1990 the jihadist private actors were there, however, not yet visible in the West, not even to Harvard scholars; Nye does not refer to them.

²⁰ On this politicization see the contributions to the special issue of *Millennium, Journal of International Affairs* (29, 3/2000) on: Religion and International Relations, including B. Tibi, Post-Bipolar Order in Crisis: The Challenge of Politicized Islam, pp. 843-859. See also Jeff Haynes, *Religion in Global Politics* (London: Longman, 1998) herein in particular chapter 7 on the Middle East.

²¹ In his seminal work, Hedley Bull strongly places the study of order at the center of International Relations; see his classic, *The Anarchical Society. A Study of Order in World Politics* (New York: Columbia University Press, 1977), herein in particular part one. For an appreciation of Bull, see the essay “Bull and the contribution to International Relations”, by Stanley Hoffmann, in his book *World*

In continuing these introductory remarks it can be stated at first that the established discipline of International Relations is, as Stanley Hoffmann once noted, an “American discipline”. I hasten to add, a discipline “of the Cold War era”. All major schools of the discipline concurred on sharing the view of the state being the basic actor. Long before Samuel Huntington coined the term “clash of civilizations”, the French scholar Raymond Aron, who was the mentor of Stanley Hoffmann in Paris, turned our attention to the fact that bipolarity has been the “veil” concealing the real source of conflict in international politics. Aron points at “the heterogeneity of civilizations”.²² People belong, by nature and by their socialization in family and society, to cultures and civilizations, and only formally to existing states. In real states citizenship constitutes a part of the identity of the people, but in most countries of the world of Islam, states are “quasi states”, i.e. nominal states,²³ inasmuch as people’s citizenship lacks “identity”. In this context Islamism revives the identity of *umma* in Islam. Are we allowed to address this issue? Owing to the rise of the political culture of multiculturalism in the West, the censorship of “political correctness” has outlawed the reference to the cultural origins of people, and any relating of these to, or combining them with, conflict studies. The cultural worldviews are now coming back, and to the fore. Prior to September 11 it was risky to maintain that cultural differences could lead to violent conflict. This is changing slowly (see note 2). Only a few scholars dared to point to a “multiculturalism of fear”²⁴ in referring to some bloody outcome of cultural-ethnic conflicts. In this regard, this author, himself an IR scholar and a Muslim, cannot escape seeing the civilizational conflict divided between two positions: On the one hand we have those who are poised to revive the Kantian concept of world peace for establishing democratic peace in the age of post-bipolarity; on the other—and in contrast—we see those who revive Qutb’s vision of an Islamic peace²⁵ to be achieved by jihad. This option is determined by the worldview of acting in the *sabil Allah*/path of God for expanding the Abode of Islam/*Dar al-Islam* within an alleged order of the Islamicate to map the entire world. In short, the conflicting visions are: The Kantian views on world peace based on the existing

Disorders. Troubled Peace in the Post-Cold War Era (New York: Rowman & Littlefield, 1998), pp. 13-34.

²² Raymond Aron, *Paix et guerre entre les nations* (Paris: Calmann-Lévy, 1962).

²³ Robert H. Jackson, *Quasi-States: Sovereignty, International Relations and Third World* (Cambridge: Cambridge University Press, 1990). On the concept of “the nominal national state” see B. Tibi, “Old Tribes and Imposed Nation States”, in: Ph. Koury and J. Kostiner, eds., *Tribes and State Formation in the Middle East* (Berkeley: University of California Press, 1990), pp. 127-152.

²⁴ Jacob Levy, *The Multiculturalism of Fears* (New York: Oxford University Press, 2000), in particular pp. 19-39 and also chapter 2.

²⁵ See B. Tibi, From Islamist Jihadism to Democratic Peace? Islam at the Crossroads in Post-Bipolar International Politics, in: *Ankara Paper 16* (London: Taylor & Francis, 2005), 41 pages, and on democratic peace Bruce Russett, *Grasping Democratic Peace* (Princeton/NJ: Princeton University Press, 1993). The origin of the concept is Immanuel Kant, *Zum ewigen Frieden*, reprinted in: *Friedensutopien*, Zwi Batscha, Richard Saage, eds., (Frankfurt: Suhrkamp, 1979), pp. 37-82. In Islam there is a different concept of peace. On this issue see: B. Tibi, “War and Peace in Islam”, in: Terry Nardin, ed., *The Ethics of War and Peace* (Princeton/NJ: Princeton University Press, 1996 and 1998), reprinted in: Sahal Hashmi, ed., *Islamic Political Ethics* (Princeton: Princeton University Press, 2002). The reference to this classical concept for the calling for an “Islamic World Revolution for achieving Islamic World Peace” can be found in Sayyid Qutb’s work.

Westphalian order being a model challenged by the call for a *Pax Islamica*, being the vision of the jihadism of political Islam.

Underlying this conflict in world affairs on a non-state level is the above-mentioned current politicization of religion, correlating to a religionization of politics. The ideology of religious fundamentalisms²⁶ includes in its centerpiece a concept of order for remaking the world.²⁷ As stated, the envisioned order of *hakimiyyat Allah/God's rule*²⁸ is, in the new ideology, the ultimate divine political order. In a first step it should be established in the world of Islam, and on this basis afterwards enhanced to a new world order mapping the entire globe under the rule of Islam. This order facilitates ruling according to the Islamic vision of a global *Pax Islamica*. It is noteworthy that only Islamists—one is asked to be aware of the distinction between Islam and Islamism²⁹—subscribe to the view that *Dar al-Islam* ought to comprise all humanity. It is also the orthodox-Salafist worldview of Islam³⁰ that claims universality. This worldview on which the ideology of jihadism rests becomes a world-political problem articulated in the politicization of Islam.

Based on the preceding introductory thoughts, the following analysis is pursued in three steps: *First*, to establish the subject matter itself, *second* to shed light on the politicization of religion and religionization of politics that leads to the new jihadist ideology, and *third*, to outline what I term as “irregular war”, being the instrument of jihadism for establishing the new divine order they envision. The Islamist ideology revolves around these issue areas.

It should be noted here that the ideological foundations of terrorism are not well researched. In the West one encounters a variety of authors who reduce the ideology of jihadism to a religious

²⁶ The most authoritative work on this subject completed at the American Academy of Arts and Sciences is Martin Marty and Scott Appleby, eds., *The Fundamentalism Project*, 5 volumes, (Chicago: Chicago University Press, 1991-1995). The fact that Islamic fundamentalism and its jihadism are not an expression of a traditionalism, and that Islamists draw on modern technology, even adopting its accomplishments, is also treated in this project by B. Tibi, “The Worldview of Sunni-Arab Fundamentalists: Attitudes towards Modern Science and Technology”, in: vol. 2, *Fundamentalisms and Society* (Chicago: Chicago University Press, 1993), pp. 73-102. For a recent work on the use of modern technology by Islamists for terrorist ends see Gary Bunt, *Islam in the Digital Age. E-Jihad, Online-Fetwas and Cyber Islamic Environments* (London: Pluto Press, 2003).

²⁷ See the respective chapters in the part “Remaking the World through Militancy”, in: volume 3 of Marty and Appleby, eds., *Fundamentalism and the State* (Chicago: Chicago University Press, 1993).

²⁸ On this concept of divine order see the analysis and the authentic Islamist references in B. Tibi, *Fundamentalismus im Islam. Eine Gefahr für den Weltfrieden* (Darmstadt: Primus Verlag, 2000, 3rd edition 2002) chapters 2, 4 and 5. The origin of this concept is included in the—in a way—holy book of the Islamists by Sayyid Qutb, *Ma'alim fi al-Tariq/Signposts along the Road*, published in millions of copies in Arabic as well as in diverse translations to other Islamic languages. I use the 13th legal edition (Cairo: Dar al-Shuruq, 1989).

²⁹ On the basic difference between Islam and Islamism from a perspective of security studies, see B. Tibi, “Islam and Islamism: A Dialogue with Islam and a Security Approach vis-à-vis Islamism”, in: Tamy A. Jacoby and Brent Sasley, eds., *Redefining Security in the Middle East* (Manchester and New York: Manchester University Press, 2002), pp. 62-82.

³⁰ See the chapter on the Islamic worldview in B. Tibi, *Islam between Culture and Politics* (London: Palgrave, 2001), pp. 53-68.

fanaticism or extremism. Others mostly belittle political Islam and its jihadism in a viewing both in a benign manner as a mere protest against hegemonic structures in world politics. Both are wrong. The present analysis claims to uncover political Islam and jihadism as a nostalgia for a return of the Islamic history of *futuhat* conquests, becoming on these grounds a mobilizatory ideology in action. This ideology is becoming a real challenge to international security.

II. The Subject-Matter and the Scope of the Analysis

It is pertinent to note at the outset that any treatment of the subject under issue is a difficult undertaking in that the analysis needed involves breaking up taboos and thus it resembles entering an area full of mines. Nevertheless, after September 11, it has become in a way easier to speak of jihadist Islamism as a security threat. However, from an enlightened point of view, it has equally become a requirement to combat, in parallel with this, the spread of Islamophobia. However, one needs to be aware that Islamists themselves are exploiting the suspicion of Islamophobia attached to constructed images of Islam for associating any reference to Islamist activities in security studies with an alleged demonization of Islam. In the aftermath of September 11 the situation has improved and worsened at the same time. September 11 made it clear that Islamists were in action, but it unfortunately also paved the way to the revival of established clichés about Islam which relate this religion without distinction to terrorism. Among the extremes we find, on the one hand, the well-known and fashionable accusation of Orientalism hitting new heights. Those scholars who do not share the view that the terrorists were simply a “crazed gang” (E. Said), with nothing to do with Islam, have been targeted. On the other hand, we face the other extreme of imputing all evils to “militant Islam”, equating it with Islam itself. The present analysis aims at enlightening both extremes while endeavoring to introduce the analysis of the ideology of jihadism of political Islam as a political-ideological foundation of terrorism into security studies. This ideology is inspired by an Islamic nostalgia aimed at reviving Islam’s glory in the past.³¹

In fact, Islamic terrorists refer to themselves as people fulfilling the religious duty to jihad as an obligation on every Muslim. A closer look at the phenomenon shows that we are dealing with a new pattern of jihad that can be described as an “invention of tradition” (Hobsbawm, see note 8), for it is not classical Islamic jihad.³² Nevertheless—and despite clarification—we need to take the Islamic self reference of these jihadists seriously. The religious image the jihadists have of themselves as “the true believers” is not an expression of cynicism, but rather sincere true belief, even though their action might contradict orthodox religious doctrines. Understanding this is pertinent, because it is basic to the effort to enable ourselves to grasp the current historical phenomenon of the religiously legitimated terrorism under issue. The religious legitimation is neither instrumental nor does it serve as a camouflage for covering otherwise criminal acts. The

³¹ On Islamic nostalgia see John Kelsay, *Islam and War* (Louisville/KY: John Knox Press, 1993), p. 25-6. Kelsay makes clear that there is no “end of history” (see Fukuyama), but rather a return of it in a new shape, accompanied by new claims. This is the substance of Islamist nostalgia, which is not a mere romanticism.

³² See note 25 above and the article “jihad” by B. Tibi in: Roger Powers and William B. Voegelé, eds., *Protest, Power and Change, An Encyclopedia of Nonviolent Action* (New York: Garland Publishers 1997), pp. 277-281.

Islamist terrorists do not perceive their actions to be *irhab*/terrorism, but rather *jihadiyya*/jihadism, i.e. a new interpretation of religious jihad being a duty/*farida*. To reiterate: In their self-proclaimed capacity as jihadists these Islamists believe that they act as the “true believers” (see note 4). I shall take pains to shed light on religious-fundamentalist terrorism in an effort to explain Islamic-fundamentalist jihadism, while firstly placing this terrorism in the debate on warfare in terms of a new pattern of irregular war. Then, secondly, we need to relate the purport of “remaking the world” (see note 27) to jihadism as a means for achieving the goal. This creates the background for a security approach to guide the policy required for coming to terms with the challenge of jihadism on two counts: First, terrorism, and second, threatening the existing order of the state as well as world order itself.

Among the methodological grounds required for the analysis of jihadism as a security concern, we answer the above-mentioned need for introducing the study of religion into the discipline of International Relations. In addition to this requirement, the study of war needs to go beyond the legalistic constraints attached to an inter-state war (e.g. declaration of war by a state) to consider actions as a war. To be sure, traditional wisdoms no longer help in grasping the recent current of irregular war of which jihadism is a case in point. In general, we are challenged to rethink the discipline of International Relations and introduce into it many innovations. There were times in the past age of bipolarity when those scholars in “the dividing discipline”³³ of International Relations were not only separated from other scholars of thought, but they were equally divided along ideological lines and boundaries. Those among them who deal with security were disparaged as “right wingers” in contrast to the left wing IR-scholars, who focused on political economy. Aside from the political differences existing between these ideologies—now phased out in the light of the end of bipolarity—there existed a methodological distinction: Students of international security focused on the state actors and on their military capacities, whereas political economists in political science—most of them had never professionally studied economics—believed only in the relevance and priority of economic macro-structures for analysis. The global system school stretched this approach to absurdity. Clearly, in the present case no one can explain jihadism with a reference to this “global system”, unless we—as some do in an absurd manner—view terrorism as a protest movement directed against economic “globalization” run by the USA. Those who subscribe to this view unwittingly justify both jihadism and anti-Americanism.

Not only in the light of post-bipolarity, but also in that of September 11, we may discern new challenges on the rise that compel us to question both the approaches mentioned of the phased out “left and right”-scheme. This would enable us to consider new perspectives for grasping changed International Relations in general, and international security in particular. Among these challenges we see the self-assertive, civilizational “Revolt against the West”³⁴ directed against secular Western values. In considering this revolt new areas are to be brought into the study of International Relations. As already mentioned, Raymond Aron addressed this subject in terms of the “heterogeneity of civilizations”. Without a reference to Aron or his work, Huntington speaks of a “clash between civilizations”. In putting the work of both scholars alongside each other, we find

³³ Kalevi Holsti, *The Dividing Discipline* (London: Allen and Unwin, 1985).

³⁴ Hedley Bull, “The Revolt against the West”, in: Hedley Bull and A. Watson, eds., *The Expansion of International Society* (Oxford: Clarendon, 1984), pp. 217-218; on Bull see also note 21 above.

an appropriate explanation of the outstanding issue in the work of Hedley Bull, who unravels the fallacy of the so-called global village in stating that:

“It is also clear that the shrinking of the globe, while it has brought societies to a degree of mutual awareness and interaction they have not had before, does not in itself create a unity of outlook and has not in fact done so ... Humanity is becoming simultaneously more unified and more fragmented.”³⁵

Based on this observation I develop my concept of a simultaneity of structural globalization and cultural fragmentation.³⁶ The gap addressed here has been generated by the European expansion which has contributed to the structural mapping of the entire world along the lines of standards designed by the civilization of the West.³⁷ However, there was no successful overall universalization of Western values that matches with the degree of globalization reached. In short: I distinguish between the *globalization* of structures and the *universalization* of values. Thus, the globalization of structures coexists with the cultural fragmentation, i.e. with the lack of universally valid and accepted norms and values. The new challenges are related to new challengers, who are non-state actors. The revolt against Western values to which I refer (see note 16) has—more or less successfully—launched a process of de-Westernization³⁸ which starts with knowledge, values and worldviews, and only then moves to the political order itself. This makes clear the pertinence of the ideological foundations. If one stubbornly insists on the validity of the realist model in simply reducing jihadist terrorism to a problem of “rough states”³⁹ while overlooking the cultural roots of the phenomenon, then one is deprived of the ability of grasping the issue and thus of developing any proper response to it as a new security threat!

In the first place we need to understand in what way politicized religion serves in the post-bipolar time as a tool for articulating the “Revolt against the West” (norms and values). Political Islam is the frame of reference for the developing the idea of classical jihad into a new concept of terrorist jihadism against the West. This new interpretation of jihad, understood both as an ideology and as a pattern of irregular war, is related to an action that can be—in a way—addressed in the Georges Sorelian term “action directe” against the existing order. It is a terrorism which heralds the end of the classical Clausewitzian inter-state war. For neither al-Qaida nor any similar group has an army that can be combated by regular armed forces. To threaten the states that

³⁵ Hedley Bull, *The Anarchical Society* (see note 21), pp. 273.

³⁶ On this simultaneity see B. Tibi, *The Challenge of Fundamentalism* (note 9 above), chapters 1 and 5 and also B. Tibi, *Islam Between Culture and Politics* (note 30), chapter 4.

³⁷ Philip Curtin, *The World and the West. The European Challenge* (Cambridge: Cambridge University Press, 2000); see also Roger Scruton, *The West and the Rest. Globalization and the Terrorist Threat* (Wilmington/Del.: ISI-books, 2002). On the claims and on the failure as well as the future of the universalism of Western civilization, see David Gress, *From Plato to NATO. The Idea of the West and its Opponents* (New York: The Free Press, 1998), chapter 12. On the concept of de-Westernization see the reference in the next note.

³⁸ See B. Tibi, “Culture and Knowledge. The Fundamentalist Claim of de-Westernization”, in: *Theory, Culture and Society*, vol. 12,1 (1995), pp. 1-24.

³⁹ On this subject see Robert Litwak, *Rough States and US-Foreign Policy* (Washington/DC: John Hopkins University Press, 2000).

“harbor” (G. W. Bush) jihad terrorists with punishing military intervention is utterly meaningless. In particular, democratic Western states are part of the global networking of terrorism which uses migration and the related diaspora culture for providing jihadism with a “hinterland”. The German logistics related to the Hamburg cell of al-Qaida are a case in point for showing how migration becomes an area of international security studies. This insight was introduced to International Relations long before September 11, 2001 by Myron Weiner⁴⁰ and shall be integrated in section V of this paper.

In dealing with the ideology of Islamism and its political movements as an issue area of national and international security in the light of September 11, we need to take a look at Islamic civilization, out of which the jihadist groups—being inventors of tradition, and also as non-state actors—are emerging. In international politics this civilization consists of Islamic states, being members of the international community. Even though Islamic civilization is often described as the “World of Islam”, it does not constitute a world of its own in that its states are part of the international system. Only in one sense do Islamic states exist for themselves, namely as a grouping of states of a distinct civilization. These states have their own international Organization of the Islamic Conference, the OIC. Since the rise of political Islam in that part of the world, any dealing with Islamist movements has also become a policy issue in the international arena, and it is no longer merely an academic concern for the traditional students of Islam, nor of those of Middle Eastern studies. Neither those Orientalist philologists nor the cultural anthropologists in Middle Eastern studies can help in dealing with the outstanding issues. In contrast, an International Relations orientation, placing Islamism in security studies, is more promising. Underlying this view is the fact that Islamists unequivocally make clear the target of their call, i.e. the toppling of the existing order of the nation-state to be replaced by what they envisage as a *hakimiyyat Allah*/rule of God, being the substance of an Islamic state and a new world order. Again, here we do not face a simple cultural attitude, but rather the vision of an alternative political order. The issue of “*nizam Islami*/Islamic order” ranks as a top priority on the agenda of Islamism.

In contemporary history the very first Islamist movement was founded in Egypt in 1928 by Hassan al-Banna. It is the movement of the Muslim Brothers (see note 10). It was al-Banna himself who reinterpreted the doctrine of *jihad*, and thus they paved the way for jihadism in the understanding of terrorism (see note 11). In this tradition, Islamists envision in the long run an international order designed by the shari’a of Islam. The outcome is the current competition between a *Pax Islamica* and the *Pax Americana* of the West. This is the substance of the challenge of Islamic fundamentalism as related to the claim of replacing the Western Westphalian order in world politics. The repeatedly mentioned “Revolt against the West” is also characterized by an effort at de-secularization. Islamism is directed against the secular character of world politics.

⁴⁰ Relating migration to security studies is an academic approach introduced by Myron Weiner, *The Global Migration Crisis* (New York: Harper Collins Publishers, 1995), chapter 6. The Hamburg cell of al-Qaida illustrates this issue. On this see Rohan Gunaratna, *Inside al-Qaida* (New York: Columbia University Press, 2002), pp. 129-131. Furthermore see the investigative research on this subject in Germany by Udo Ulfkotte, *Der Krieg in unseren Städten. Wie Islamisten Deutschland unterwandern* (Frankfurt: Eichborn, 2003). With the guidance of the approach of Weiner, the following study on Islamic migration (in the light of September 11) was completed. B. Tibi, *Islamische Zuwanderung. Die gescheiterte Integration* (München: Deutsche Verlagsanstalt, 2002), in particular the introduction.

Therefore, at issue is a civilizational conflict in world politics, because secularization and de-secularization are related to rival civilizational worldviews and related to conflicting world political visions.

As already indicated, the 57 nation states of Islamic civilization are civilizationaly grouped in the “Organization of the Islamic Conference/OIC”—i.e. the sole regional organization in world politics established on the civilizational grounds of religion. Among these states we find only very few—and of course in a very limited sense—that can be qualified as democracies. It follows that in these states there mostly exists no opening for practicing a political opposition. Thus, the rise of political Islam is not and also cannot be expressed in institutional channels (Turkey is an exception). Islamist movements are however the basic political opposition in the world of Islam, but they are denied a realm for their activities in pursuit of their political goals in their own Islamic countries. For this reason, they act in the underground and in addition move their followers to the West to establish a hinterland for their activities of opposing superficially secular regimes at home.

The major target of Islamist movements is at present to topple existing regimes at home. This leads to the question: Can one exclusively locate Islamism in the world of Islam itself? In a widely-received essay by Michael Doran on “other people’s war”⁴¹ we find the argument that in September 2001 al-Qaida primarily wanted to hit its enemies in the world of Islam via the United States. Even though Doran’s essay is very intelligent, it overlooks or even confuses the two levels of order in the strategy of Islamism: *First*, the replacement of secular regimes in the world of Islam itself by the *nizam/system* of *hakimiyyat Allah/God’s rule*, and on that basis, *second*, the establishment of a global *Pax Islamica* via an Islamic “*thawra alamiyya/world revolution*” (see note 27). Qutb states that this is carried out by political Islam. Thus, on September 11, the levels were both confused and intermingled. It is only in this sense that one may speak of “somebody else’s war” when addressing the assault of September 11. Jihadist Islamism is both domestic (the world of Islam) and international (world politics), internationalism is intrinsic to Islamism. It uses the Islamic diaspora in the West to achieve both goals.

Now, it is an established fact that Islamists, despite their deep contempt for Western democracy, make full use of Western democratic rights for establishing the logistics for their movements in Western Europe itself.⁴² From this fact follows the need to enhance the study of Islamic fundamentalism as a security concern to include Europe itself in the scope of the analysis. I have already pinpointed the importance of the study of Islamic migration to Western Europe as part and parcel of the analysis needed for unfolding appropriate security policies. Among the

⁴¹ Michael Doran, “Somebody Else’s Civil War”, in: *Foreign Affairs*, vol. 82,1 (2002), pp. 22-42.

⁴² For this reason the weekly *Newsweek* in its issue of November 5, 2001, asked on the front page “Why do Islamists like Europe?” The answer was given in the article on Germany already in the headline: “Tolerating the Intolerable”. One reads in that article: “Bassam Tibi ... has warned for years ... no one wanted to hear that” (p. 46). If one in this context reads Myron Weiner, *The Global Migration Crisis* (note 40), one is in a position to grasp the link between migration and security. On this issue see the chapters on Islamic fundamentalism in the book by Jean-Francois Revel, *Democracy against Itself* (New York: Free Press, 1993), chapter 12, and in Michael Teitelbaum and Jay Winter, *A Question of Numbers. High Migration, Low Fertility and the Politics of National Identity* (New York: Hill and Wang, 1998), pp. 221-239.

established facts is the link between radical Islamic movements in Western Europe with al-Qaida⁴³ camps established in Afghanistan under the Taliban. Among the Islamic countries we find in addition weak states (like Yemen) or almost non-states (like Somalia) which harbored those Islamists committed to jihadism as a means of an irregular war for the realization of their goals. As already mentioned, even Western states (e.g. Germany harbors al-Qaida's networking) are important. But the rough states at issue have little significance in the study of jihadism and security, therefore, the focus continues to be on non-state actors themselves being the real challengers to security. Rough states do not act, but—willingly or unwillingly—provide their territory for the jihadists. This is not a criterion, and if it were so, then Germany would be counted among the rough states.

III. The Political and Ideological Background of Jihadism: The International Ideology of a Universal Islamic *Umma* in the Context of the Politicization of Religion

In the preceding section an outline for setting the scope of the analysis was elaborated in order to make clear that the politicization of religion underpins the justification of the call for a new Islamic order to be achieved by the irregular war of jihadism. These issues are at the center of the analysis. The jihadist threat to security in world politics has been illustrated by September 11, 2001, as an act of irregular war.⁴⁴ Well, the rise of political Islam precedes the end of the Cold War, but first, in the light of these post-bipolar developments, the study of Islamism becomes an area of *new security*. To formulate the issue with Mark Juergensmeyer, we may state that a competition between religious and secular orders is at work underlying “The New Cold War”, carried out as “Terror in the Mind of God”.⁴⁵ Prior to the broadening of the scope of jihadist activities from the domestic level of the state to an international level, the Islamic revolution in Iran created a precedent for such a development of Islamic internationalism. It also gave an incentive to Islamist terrorism. In fact, terrorism served as a foreign policy instrument for exporting Iran's Islamic revolution”.⁴⁶ This revelation in Iran motivated a few scholars to venture into studying Islam as a framework for designing a foreign policy.⁴⁷

⁴³ For more details see Rohan Gunaratna, *Inside al-Qaida* (note 40), and on the Taliban themselves, Ahmed Rashid, *The Taliban. Militant Islam, Oil and Fundamentalism in Central Asia* (New Haven: Yale University Press, 2000).

⁴⁴ On the religious legitimation of September 11 see Bruce Lincoln, *Holy Terrors* (note 6), on jihad see herein chapter 3. See also B. Tibi, “Islamism, National and International Security after September 11”, in: Guenther Baechler and Andreas Wenger, eds., *Conflict and Cooperation* (Zurich: Neue Zürcher Zeitung Publ., 2002), pp. 127-152. In my earlier book on Middle Eastern Wars (see note 1) I suggested viewing the rise of Islamic fundamentalism compels a new security approach.

⁴⁵ See Mark Juergensmeyer, *Terror in the Mind of God. The Global Rise of Religious Violence* (Berkeley: University of California Press, 2000) and his earlier book *The New Cold War* (referenced in note 16).

⁴⁶ Edgar O'Balance, *Fundamentalist Terrorism 1979-95. The Iranian Connection* (New York: New York University Press, 1997). See also B. Tibi, “Extremismus und Terrorismus als Mittel des Revolutionsexports”, in: *Jahrbuch Extremismus und Demokratie*, vol. 11 (1999), pp. 79-96.

⁴⁷ Adeed Dawisha, ed., *Islam in Foreign Policy* (Cambridge: Cambridge University Press, 1983), in particular chapter 1. See also more recently Graham Fuller and Ian Lesser, *A Sense of Siege. The Geopolitics of Islam and the West* (Boulder/Col.: Westview Press, 1995).

We need to remind ourselves of the fact that jihadism is not simply terrorism. It is much more than that, because the impact of politicized religion creating “the Challenge” touches on the existing order, and it is basically in this sense a radical threat to international security. In the tradition of Hedley Bull, the Harvard IR-scholar Stanley Hoffmann has addressed emerging “World Disorders” in terms of a post-Cold War era source of “troubled peace”. However, he failed to see the source of the emerging “new world disorder”⁴⁸ as being generated by the conflict between religious and secular order. Unlike Hoffman, this author, by coining the formula “new world disorder” refers to the real threat and equally to the inability of the Islamists to create the envisaged order, because they lack the necessary power. Nevertheless, jihadism does not remain without results. The outcome is international destabilization. It is true, in a way the irregular war of jihad helps Islamists to compensate the technological superiority of their enemy, but they fail to go beyond triggering destabilization. Jihadism leads to the creation of disorder and not to the envisaged new order of God’s rule. However, this evaluation of the jihadist irregular war is not to belittle its serious security challenge.

The claim of Islamism is to bring to expression a civilizational competition between two concepts of order, and for this reason it is argued that politicized religion leads to an international conflict. In addressing this conflict in terms of a *clash of civilizations*, Huntington made an effort to create a new thinking in International Relations.⁴⁹ A year before Huntington’s book, I, in my book “Krieg der Zivilisationen” of 1995, dealt with this issue in outlining civilizational competing concepts of order. I acknowledge my failure to introduce the concept of civilization successfully into the IR-discipline. That has been the accomplishment of Samuel P. Huntington. In my book on civilization-based conflicts in world politics, I—despite disagreement—acknowledge Samuel Huntington’s *Foreign Affairs*-article of 1993 and have discussed it at length while keeping faithful to my own approach. The major points of disagreement were elaborated further in my contribution to the book of the former President of Germany Roman Herzog, published under the title *Preventing the Clash of Civilizations*.⁵⁰ In these contributions, not only the seniority of Huntington in the debate but also his success are acknowledged. Nevertheless, one cannot be silent about the gaps in Huntington’s knowledge and the need to make corrections pertinent to placing Islam and its civilization in the study of International Relations. In this context, the argument is made that, in view of the topical and increasingly important role of Islam, the social scientists who

⁴⁸ This analysis is provided in my work of 1998, updated 2002 (as referenced in note 9 above). Also Stanley Hoffmann, in his book *World Disorders* (see note 21), employs the term “disorder”, however, without any reference to religion and fundamentalism, thus overlooking the basic issue on this topic, politicized religion in the major sources of disorder and threats to security, as shown in the present contribution.

⁴⁹ Samuel Huntington, *Clash of Civilizations and the Framing of World Order*, (New York: Simon & Schuster 1996). The idea was first published 1993 in an article in: *Foreign Affairs*. I find myself in disagreement with Huntington and therefore elaborate on the existing differences in the new edition of my book *Krieg der Zivilisationen. Politik und Religion zwischen Vernunft und Fundamentalismus*, first published 1995 (Munich: Heyne Verlag, expanded 1998 in a further new extended edition 2001), herein chapter 7, pp. 305-333.

⁵⁰ Roman Herzog *et al.*, *Preventing the Clash of Civilizations* (New York: St. Martin’s Press, 1999). This book includes B. Tibi, “International Morality and Cross-cultural Bridging”, pp. 107-126.

deal with these issues need to know more about Islam and the emergence of a “defensive culture”⁵¹ in world affairs.

The scholarly debate referred to touches on the present topic. I refer to it not only to dissociate myself from Huntington’s clash, but also to make clear my determination to refuse to join the club of those practically correct scholars who demonize Huntington. I believe his work has contributed to the debate and I find it sad to see how Huntington has been defamed as a “Cold Warrior” and even been accused of Islamophobia for pointing at political Islam as a security issue. It is not Huntington but Juergensmeyer who rightly sees an emerging “New Cold War” (note 16). The security threat of jihadism is a matter of fact, it is not a view, or a distortion by the media, or by scholars seeking a “substitute to the Soviet Union”. But the traditional students of Islam are reluctant to deal with this issue in their academic Islamic studies. These are basically the Orientalists who are philologists, historians or simply students of religion, and who thus have no authority to judge about international security. In their disciplines, as well as in cultural anthropological studies, scholars have succumbed to Edward Said’s unscholarly condemnation of “Orientalism”. Neither these scholars nor the late Said himself have a professional competence to deal with international affairs. Among Western orientalists we rarely find scholars with a professional social-scientific background. Nevertheless, these scholars have been called upon to review as authoritative “readers” project proposals submitted for the study of fundamentalism in Islam as an issue of international security. In most cases known to me, the orientalists in question turned these research proposals down with the pseudo-scholarly argument that the issue was not serious and did not deserve funding, or simply “fundamentalism does not exist; it is a construction”. This was belied by the events of September 11, which gave a blow to traditional Middle East studies, be it in the US or in Europe. In a case known to me in Switzerland, the philologist readers argued that “fundamentalism” is a product of the Western media and is not a reality. Certainly, it is not a transgression in this article to refer to this kind of treatment of the study of political Islam and security in established scholarship. The reference merely serves to show the grave obstacles standing in the way of the research on the subject matter under scrutiny in this paper. The curtailment of the right of free speech in research is a troubling disservice to scholarship in contemporary Western institutions and is therefore a serious concern.

Against all the odds, I find it, as a Muslim scholar living in Europe, but active as a scholar in the US, easier to address the jihadist security threat at the American academe than in Europe. In the US it was possible to carry out a great multimillion project for the study of fundamentalism which led to the publication of the seminal five volumes referenced above on this subject. Since September 11 it has become more than clear, and to what a great extent, that we need to pursue further the study of Islamism and international security. The inquiry into the linkages between religion and international politics showcased on Islamism and world politics is a case in point. Islamist terrorism in world politics begins with the “Iranian connection” and thus predates September 11. That is why a prominent Swiss institution for security studies has ventured into this

⁵¹ On this issue see B. Tibi, *The Crisis of Modern Islam* (Salt Lake City: Utah University Press, 1988) and also B. Tibi, *Islam and the Cultural Accommodation of Social Change* (Boulder/Col.: Westview Press, 1990, reprinted 1991).

domain.⁵² It is also worth mentioning that prior to September 11 a study group at the London School of Economics succeeded in creating a team of experts dealing with religion and International Relations in their publication (see note 3). To my knowledge it was unprecedented that at the Annual Meeting of the International Studies Association in Chicago (March 2001) some panels were allowed to be devoted to “Religion and International Relations”. In the light of the impact of September 11 it is pertinent to draw on some existing approaches to the study of politicized religion, as well as international security, and to link them to one another. The analysis of jihadism suggests that there is a need to establish new approaches in International Relations. Underlying this insight is the fact that politicized religion is among the major issues of the political crisis of order in international politics after the end of the Cold War. This is the new shape of the return of the sacred.

In considering the post-bipolar “cultural turn” in our world one can recognize a crisis of meaning growing from the crisis of modernity itself. The already mentioned lack of a universalization of Western values, along with intensifying globalization, continues to generate this crisis of meaning with world political ramifications. Globalization, but not a successful Westernization,⁵³ has been taking place worldwide. The phenomenon of the return of the sacred in a political form, being an effort at de-Westernization, is not properly understood in the West. With the formula of a “post-bipolar society”⁵⁴ Juergen Habermas provides nothing but a poor concept, without a proper knowledge of Islam, for dealing with a real phenomenon. Habermas fails to explain the resort to religion in non-Western civilizations (see note 17), because he does not understand that the competition of the secular and divine orders goes along with two worldviews opposed to one another: The ideologies of neo-absolutisms and of relativism clash with one another although they arise from the very same context.⁵⁵ We see on the one hand the politicization of religion, as showcased on Islam, assuming the shape of a neo-absolutism challenging the contemporary world order. On the other hand we see post-Christian developments emerging in Western Europe ensuing in a crisis of identity. Westernisation in the world of Islam is

⁵² Within the framework of the Geneva-based Security Studies Program the following study was completed before September 11. See Frédéric Grare, ed., *Islamism and Security. Political Islam and the Western World*, (Geneva: Programme for Strategic and International Security Studies, 1999), see herein B. Tibi, “The Failed Export of the Islamic Revolution”, contribution on pp. 63-102. It is also worth mentioning that the Swiss *Zentralstelle für Gesamtverteidigung/Office Centrale de la Défense*, back in March 1997, summoned experts on political Islam, including me, and published the brochure *Islam et l’Islamisme*, Bern 1997 (my contribution pp. 9-20).

⁵³ On de-Westernization see notes 37 and 38 above, on Westernization see Theodore van der Laue, *The World Revolution of Westernization* (New York: Oxford University Press, 1987). On globalization and culture see Roland Robertson, *Globalization: Social Theory and Global Culture* (London: Sage, 1992, reprinted four times, new printing 1998). Robertson rightly criticizes those who overlook “the relative autonomy of culture”.

⁵⁴ Juergen Habermas, *Glauben und Wissen* (Frankfurt/Main: Suhrkamp, 2001).

⁵⁵ See the proceedings of the Erasmus Foundation, Amsterdam: *The Limits of Pluralism. Neo-Absolutisms and Relativism* (Amsterdam: Praemium Erasmianum, 1994). In this Amsterdam debate political Islam is presented as a variety of neo-absolutism by B. Tibi in a paper on pp. 29-36. This volume also includes the controversy between Clifford Geertz and Ernest Gellner on culture and relativism.

receding to the benefit of a drive at de-Westernisation (see note 19) being promoted by Islamic revival. At issue are the effects of this process on a changing world order.

The contemporary neo-absolutism of political Islam claims to de-center the West and to replace its Westphalian secular order through a divine Islamic one. Jihadism is among the means for reaching this end. In this context, it is possible to understand the reference in the introductory remarks to the French social scientist Raymond Aron, who, in his *Paix et guerre entre les nations*, addresses the “heterogeneity of civilizations”. The pertinence of this issue to International Relations revolves around the existence of different world views and—along these lines—of different concepts of order. While one of them is secular, others (e.g. Islam) are based on the politicization of religion. With the exception of Western civilization, almost all other world civilizations are related to and determined by a concept of religion and the related worldview (see note 30). In the case of Islam, an Islamist concept of order is becoming a broadly accepted public choice. This concept of *din-wa-dawla*/unity of religion and state challenges the validity of the secular nation-state to the world of Islam and goes further in enhancing its claim for an Islamic order to cover world politics altogether. Again, in the intellectual tradition of the philosophical approach to International Relations presented in the work of Raymond Aron and Hedley Bull, I relate my study of religion to their study of values in international affairs. In this context, Islamism is interpreted as an expression of Islamic revival being equally political, cultural and religious. To reiterate the major findings of this inquiry: The outcome is a civilizational challenge to the world order. The Islamist claim to an alternative new order is perceived as the replacement of an alleged “Judeo-Christian conspiracy”⁵⁶ believed to be directed against Islam. Therefore it is bound to a “Revolt against the West”. In this regard I draw on Bull’s essay “Revolt against the West” (see note 16), explaining the resort to religion as a cultural-political articulation in the pursuit of de-Westernisation. In order to develop an understanding of jihadism in a world-political perspective we need to go *Beyond Left and Right*⁵⁷ and equally to overcome in the study of International Relations the burdens of the traditional boundaries of a dividing discipline. To achieve this end, in my work I operate on the following two methodological assumptions:

First, we need a serious International Relations-oriented study of religion, considering its politicization which leads to religious fundamentalism. Of course, the prevailing clichés and catchwords transmitted in the media, which convey the phenomenon at issue in terms of “fanaticism, terrorism and extremism”, ought to be contradicted, but this is not the business of the IR discipline. It is dishonest to refer to this deplorable image of Islam in the West in order to turn down the study of the jihadist threat of Islamism to world order as an expression of “Islamophobia”. Jihadism and not Islam is under issue, although this threat emerges from the politicization of Islam. The indiscriminate reference to the Saidian formula of “covering Islam” for

⁵⁶ See the allegation of “Une vaste conspiration judeo-chrétienne”, by Mohammed Y. Kassab, *L’Islam face au nouvel ordre mondial*, (Algiers: Editions Salama, 1991), pp. 75-93. Not only Islamists, also Germans (left and right) claim that September 11 was a home-made conspiracy. This is done in a dozen German anti-American bestsellers: See the special issue *Verschwörung*/conspiracy of the news magazine *Der Spiegel* 37/2003 criticising these bestsellers.

⁵⁷ Anthony Giddens, *Beyond Left and Right. The Future of Radical Politics*, (Cambridge: Polity Press, 1994).

denouncing the Western media has served as a tool for turning down any critical approach, and this is not helpful.⁵⁸ I do not defend the Western media, but the concern is the bashing of the West.

Second, the politicization addressed under point one reaches its height when it embraces Islamic universalism. The result is a concept of world order designed and articulated in divine Islamic terms. This is unique to Islam because of its universalism. For instance, the politicization of religion in Hinduism only leads to a concept of order restricted to the Hindu nation of Hindustan that is envisaged. It follows that the Hindu fundamentalist threat to security is confined to the territoriality of Hindu civilization, i.e. it is exclusively regional and pertinent to South Asia. In contrast, Islam is a universalist religion and its politicization touches on the international order. As the intellectual precursor of political Islam, Sayyid Qutb, proposed, international peace can only be based on spreading *hakimiyyat Allah*/God's rule on a global basis. The implication of this view is that there can be no world peace without the global domination of Islam. This is the articulation of an Islamist internationalism made by Qutb with a bid for a related new international order.⁵⁹ This is the ideological background of persons like Bin Laden and of globally networked movements like al-Qaida, which provide the internationalist model for all of the contemporary jihadist movements acting *fi sabil Allah*/in the path of God for establishing the Islamist order of *Pax Islamica*. It can be safely stated that the jihadist internationalism has become a security concern. To throw light on this threat surely has nothing to do with any Islamophobia.

Cultural diversity is natural and it could be enriching for humanity. However, the politicization of the heterogeneity of civilizations addressed above results in the rise of claims—as is the case in political Islam—for a political order. It does not only herewith create a challenge to the existing world order, but also leads to dividing lines that separate humanity. One should have been alerted in the 1950s, when the precursor and foremost thinker of contemporary political Islam, Sayyid Qutb, challenged the existing world order; he maintained that a deep civilizational crisis in the West was to be resolved by Islamic dominance. In his pamphleteering, in particular in his *Signposts along the Road*, and also in his *World Peace and Islam*, he proposed that only Islam is in a position to overcome this crisis and to save humanity. To be sure and to reiterate: This is the very source of the worldview of Bin Laden and of all of the al-Qaida *jihad* fighters. Clearly, this is not the view of a “crazed gang”, but rather the authoritative expression of a mainstream of jihadist Islamism in the world of Islam. Is it desirable that the Westphalian order in world politics⁶⁰ be replaced by an Islamic order? I shall come back to this question.

Hedley Bull did not know of Qutb and of his views, but he was aware of the fact that the stated civilizational “Revolt Against the West” is best “exemplified in Islamic fundamentalism”.⁶¹ In the course of the post-bipolar crisis of international order these ideas (e.g. Qutb) became more topical, enjoying a mobilization function in the world of Islam. The reference to these ideas reinforces Islam's new role as well as its appeal as a public choice as seen by the Islamists. The fact that political Islam can be traced back to the year 1928, when the Society of Muslim Brothers was

⁵⁸ Edward Said, *Covering Islam* (New York: Pantheon, 1981). There are numerous reprints.

⁵⁹ Sayyid Qutb, *al-Salam al-alami wa al-Islam* (note 14), pp. 167-199.

⁶⁰ Lynne Miller, *Global Order* (Boulder: Westview 1990), on the Westphalian system chapter 2.

⁶¹ Hedley Bull, *The Revolt Against the West* (see note 34), p. 223.

founded, provides evidence that Islamism predates the demise of the Cold War, as has already been argued. Yet, political Islam and its ideology did not acquire the assumed nature of a mobilization and their appeal before the end of bipolarity. The heterogeneity of civilizations started then to come to the fore in the shape of politicized religions. The concept of order in Islam has been given the name of *al-dawla al-Islamiyya*/the Islamic State. The reader is asked to recall that the Islamist neo-jihad in the 21st century is an effort—at times with the means of irregular war—to reach this end of realizing the new order which political Islam requires, at home and internationally as well.

In summing up the analysis accomplished in this section it can be safely stated that the foremost issue related to the pertinence of politicized religion—in Islam for International Relations, being an expression of “the revolt against the West”, is its rejection of the existing secular order and its Westphalian origins. One may ask, are we heading in a direction “Beyond Westphalia”?⁶² There is no doubt, the Westphalian order is not a sacred cow and therefore it is fully legitimate to question its existence in a changed world. However, neither the violent jihadist means of Islamism nor the ideology of *hakimiyyat Allah*/divine rule as a concept of order seem to be the appropriate alternative humanity is looking for in overcoming the crisis of the secular nation-state. For a religiously diverse humanity, no alternatives based on the political concepts of order grounded in religion can be accepted. Why? On the state level, “the *nizam Islami*/Islamic system”⁶³ is a totalitarian political pronouncement of Islamism not even acceptable to all Muslims, in particular not to those committed to freedom and democracy. Some jihadists yearn for the traditional order of the caliphate of the *Sunna*, which is not acceptable to the *Shi’a*. The exponents of political Islam believe that they in the long term perspective will prevail and be in a position to make Qutb’s vision of world peace under the banner of Islam materialize. This kind of peace is a threat to non-Muslims, who—according to the shari’a—would be discriminated against as subdued *dhimmi*s.⁶⁴ This is a violation of the human rights of non-Muslims, not—as alleged—a variety of tolerance.

To put minds at ease, of course, we are not heading towards a new political order relating to International Relations based on the politicized rules of Islamic shari’a. Clearly, on grounds of feasibility, this Islamist goal will continue to be difficult to achieve in the foreseeable future: Nevertheless, if the conclusion of this statement were that the jihadist call for an Islamic world order is practically irrelevant and meaningless, then it would be premature and wrong. On domestic and regional grounds the call for an Islamic shari’a state serves as a mobilizational device with great appeal to deprived Muslims. The result would be to destabilize and to undermine the

⁶² See the contributions in the volume *Beyond Westphalia*, ed. by Gene M. Lyons and Michael Mastanduno (Baltimore: John Hopkins University Press, 1995).

⁶³ See Salim Al-Awwa, *fi al-Nizam al-Siyasi li al-dawla al-Islamiyya* (Cairo: al-Maktab al-Masr, 1975, 6th reprinting 1983).

⁶⁴ On the discrimination against non-Muslims in the shari’a see the work of the Muslim reformist Abdullahi A. An-Na’im, *Toward an Islamic Reformation* (Syracuse: Syracuse University Press, 1990), chapter 7. Islamic shari’a contradicts individual human rights. On all counts see B. Tibi, “Islamic Law/Shari’a, Human Rights, Universal Morality and International Relations”, in: *Human Rights Quarterly*, vol. 16,2 (1994), pp. 277-299.

legitimacy of existing order. The political terrorist “action directe” of jihad on the path of God aims at establishing a *hakimiyyat Allah*/rule of God. This is much more than the rhetoric of a romantic order because it contributes to generating real disorder.

The overall assessment of jihadism provided needs to be placed in the broader debate on the study of religion and politics in our age of the cultural turn. Therefore a reference to the inquiry into religion in social-scientific terms is a part of this summing up. Let me first mention the two approaches employed in the academic literature on political Islam. We first find the approach applied by political scientists interested in religion and politics. Some focus on country studies, others on the study of Islamist movements: these are viewed as an indication of dissent and an expression of political opposition. Some scholars operate on the assumption of an instrumental use of religion by Islamists for giving their movements a religious legitimacy. I disagree with this approach and support this disagreement with my empirical survey completed among Islamists. It leads exactly the opposite assumption: The Islamist is a political man of action, this is true, but he is also a “true believer”. Jansen addresses this fact appropriately as “the dual nature of Islamic fundamentalism”.⁶⁵

There is also another approach, which looks at civilizations in history,⁶⁶ and which has been recently introduced to International Relations. These efforts are pursued without overlooking the fact that international actions and international behaviour are related to states, not to civilizational entities. However, civilizations have their own distinct worldviews and provide substance for the understanding of notions of order, war and peace as pivotal for the study of international affairs. Along civilizational patterns not only local cultures (e.g. Indonesia and Senegal), but also states can group to form entities (e.g. OIC) in world politics. Therefore the approaches of studying world civilizations and world politics can be linked to one another. Now, which approach proves more promising for studying the rise of jihadism and of its impact on international affairs in a changed world after the demise of bipolarity? Of course, this question does overlook the focus of this inquiry, namely of the politicization of religion by Islamist movements being an issue of security. There are different levels of the analysis to which the study of political religion, understood as an element of potential conflict, can be related. It is preliminary to deal with the significance of religion, ethnicity, culture, and other sources of conflict. Earlier they were ignored by subsuming them within the East-West rivalry. Since the demise of bipolarity and the bisected world of the Cold War, hitherto suppressed conflicts related to these factors are now on the rise. Islamist movements are among the new forces related to politicized religion. In fact, emerging religious fundamentalism and ethnicity cannot be properly understood without studying religion in its links to culture and ethnicity, and of course, the mapping civilizations. In addition, neither Islamic fundamentalism nor its jihadism can be viewed as passing phenomena; it is wrong to reduce these

⁶⁵ Johannes Jansen, *The Dual Nature of Islamic Fundamentalism* (Ithaca and New York: Cornell University Press, 1997), see also notes 26 and 30 above.

⁶⁶ In the first place Arnold Toynbee, in his multi-volume opus magnum, *The Study of History* (New York: Oxford University Press, 1947), and then and more recently Will Durant, *The Story of Civilizations*, 11 volumes (New York: Simon & Schuster, 1963- 1967). Leslie Lipson, *The Ethical Crisis of Civilizations* (London: Sage, 1993). On the introduction of this approach to International Relations see note 49 and 50 above.

ideologies to topicalities of current events. Experts like Gilles Kepel doing this are mistaken.⁶⁷ Currently, all regional conflicts around the world are related to the ideologies of fundamentalism or to ethnicity. In some cases, like in the Balkans, Chechnya, and Kashmir, we even find a mixture of both, merging to a kind of ethno-fundamentalism.

In conclusion, any understanding of the background of jihadism placed in a comprehensive security analysis requires a new approach open to drawing on a variety of disciplines. In this regard, religion, ethnicity, culture and civilization are the issues to be included in the study of the ideological foundations of terrorism.

IV. The Ideology of Jihadism and its Challenge as an Irregular War to Security

Traditional security studies can no longer provide adequate perspectives for studying the new challenges of irregular war and its Islamist ideology. With regard to the necessity for a new approach there have been a few promising revisionist, although too general, approaches, like the one presented by Barry Buzan.⁶⁸ However, we are still at the beginning of the road. It was an improvement when Buzan broadened the perspective in looking at security beyond the conventional military wisdoms. Then came September 11, 2001, to remind us that security studies will have to deal with the violence of terrorism in a fully new perspective. In crossing the traditional boundaries, and stepping beyond the constraints of the organized military force of the state, the place of culture, religion and ideology is acknowledged as an issue area for strategies aimed at countering terrorism.

The ideology of jihadism underlying the irregular jihad waged by warriors as non-state actors is the ideological foundation of this new terrorism. A declaration of jihad war on Western civilization by the private actor Bin Laden and his al-Qaida is a threat to international security based on an understanding of jihad with reference to a concept of a world religion. The jihadists believe in mobilizing their fellow religionists, who make up one fifth of the world population (1.6 billion of about 6 billion people in the world population), for their world revolution. All Muslims together constitute a transnational community addressed in Islam as *umma*. In their name al-Qaida has declared jihad as war, not only on the West, but also on those Muslims who do not join in. Can political Islam succeed in the political mobilization of the Islamic *umma* to put it into the service of its Islamist and jihadist ideology?

Islamists refer to religion in the pursuit of non-religious ends, and these groups constitute only a minority in the Islamic *umma*, but they (e.g. al-Qaida) are well organized and well equipped. Therefore they cannot be either ignored or belittled. Their numbers matter little, what matters is their efficiency. These groups are very capable of destabilizing and creating disorder through their means of irregular war. In what way is the new jihad an irregular war? And how can it be contained?

⁶⁷ So Gilles Kepel, *Jihad-Expansion et le Déclin de l'Islamisme* (Paris: Gallimard, 2000). For a contrast to Kepel see my introduction to the updated edition of my book *The Challenge of Fundamentalism*, referenced in note 9 above.

⁶⁸ See Barry Buzan, *People, States and Fear. An Agenda for International Security Studies in the Post-Cold War Era* (Boulder/Col.: Lynne Rienner Publ., 1991). See also note 64 below.

To be sure, Jihadism in the shape of terrorism is no longer the classical jihad of Islam,⁶⁹ it is the outcome of the politicization of religion in Islam. It follows that there is the need introduced earlier for a differentiation between Islam and “Islamism”. The latter includes jihadist fundamentalism, which creates a security concern. We should recall that Islam is a religion and it builds up the framework for the respective civilization⁷⁰ which, however, manifests great cultural and religious diversity in itself. The difference between Sunnite and Shi’ite Muslims⁷¹ is significant as the Shi’i-Sunni conflict in Iraq reveals. Add to this the great variety of religious and cultural denominations and numerous sects within Islam. In considering the cultural diversity one can see for instance that African Islam is entirely different from the pattern of Islam prevailing in Southeast Asia, or that of the Indian subcontinent. All of these varieties differ from one another and foremost from the original Arab pattern. The religious and cultural diversity addressed here is also reflected in Islamic fundamentalism throughout the world of Islam. Jihadism is a Sunni ideology.

After 9/11 some experts—with a reference to Huntington’s “Clash of Civilizations”—asserted the existence of an overall Islam collectively acting as a monolith, but they are wrong given the distinctions listed above. Even Sunni jihadist political Islamist movements are diverse. They legitimize themselves through religion for toppling existing orders, but they are not so coherent, despite their claim to an Islamic internationalism.

Despite the great diversity indicated, it can be stated that all Islamist groups adhere to similar concepts of political order based on politicized religion and shari’a-divine law. These groups are committed to an interpretation of jihad in the understanding of an irregular war. Thus, the argument for including jihadism in security studies and for developing a new security approach is based on empirically solid grounds. Some of those who refuse to include Islamism in security studies fearing an Islamophobia confuse Islam and Islamism. In our age of the “cultural turn” it is clear that cultures and civilizations play an increasingly important role in international politics in terms of identity politics. It goes beyond saying that civilizations cannot act as actors in world politics. Huntington believes that he finds a way out of this impasse in stating that each civilization can be led by a “core state”. In the case of Islam, this construct does not work for the simple reason that none of the fifty-six existing Islamic nation-states is in a position to lead the entire Islamic *umma* and its civilization. In addition, even though there are many rough states among these Islamic entities, none of them cause the real problem of jihadism. That was the greatest flaw in the planning of the Iraq war. The war there was justified by pointing at the “security threat”

⁶⁹ On the traditional origins of this concept and its current relevance see John Kelsay, *Islam and War* (Louisville/KY: John Knox Press, 1993), chapter 5 and furthermore James T. Johanson, *The Holy War Idea in Western and Islamic Tradition* (University Park/PN: Pennsylvania State University Press, 1997); see also the references in note 25 and 32 above.

⁷⁰ See Sir Hamilton A.R. Gibb, *Studies on the Civilization of Islam* (Princeton/NJ: Princeton University Press, 1962, reprint 1982) and also note 66.

⁷¹ On this Sunna-/Shi’a-conflict carried out by Shi’i movements in Iraq after Saddam’s fall see Faleh A. Jabar, *The Shi’ite Movements in Iraq* (London: Saqi, 2003). Earlier, Andrew and Patrick Cockburn, *Out of the Ashes. The Resurgence of Saddam Hussein* (New York: Harper and Collins Publ., 1999) analyzed the Saddam era.

posed by Saddam Hussein and it was falsely related it to the jihadist threat in a continuation of the war on terrorism. This state focus proved to be utterly wrong in terms of security because it overlooked the real issue. The threat is related to the jihadist movements which are all non-state actors, not to Iraq as a state. Therefore, the de-Saddamization of Iraq did not affect these groups at all, let alone any weakening of them. In contrast, jihadism and its ideology received a boost through the Iraq war. This is an empirical fact.

The interpretation of jihadism as an Islamist “Revolt against the West” is a notion which refers to a civilizational conflict being an international conflict. This is the issue which makes abundantly clear the extent to which worldviews of civilizations play a vital role in world politics. In Iraq for instance the US views the de-Saddamization as a liberation, while Iraqis condemn the US presence as a military occupation of crusaders. These are different worldviews. In considering this fact, and in continuing this line of reasoning, war is not understood here simply as a military conflict between states. In my earlier book *The War of Civilizations* (see note 49), I suggest that we consider the conflict of different worldviews and of particular sets of norms and values in the analysis of security. After all, the idea of order is always based on civilizational values. In the analysis presented in that book, conflict is viewed as revolving around the normatively different understanding of five issue areas: 1) the state, 2) law, 3) religion, 4) war/peace and 5) knowledge. Civilizations differ over these issue areas and therefore there are conflicting concepts of the world order needed. One may argue, value related conflicts have nothing to do with military capabilities, but they can nevertheless contribute to the emergence of real conflicts. At the beginning, the “war of civilizations” could be looked at as a war of values and worldviews that directly affects conflict on all three levels: domestic, regional, and international. On September 11 this kind of war undeniably assumed a military shape. It follows: Jihadism contributes to the militarization of conflicts between civilizations. This supports the idea that differences in world view, if they cannot be negotiated, could lead to an armed conflict. Now, the West is strong, but the irregular war of terrorism is the weapon of the weak, it cannot be defeated by conventional military force. The irregular war of the Islamist Intifada taking place in Palestine since September 2000 is a convincing case in point. Earlier, Israel was in a position to win all Arab-Israel inter-state wars in short time, but it is fully incapable of winning this irregular war or even of coming to terms with it.

In the light of the distinctions presented, the new security approach has to deal with the outstanding issue on two levels: First, conflicts of values which have political implications, but which cannot be settled by military means; and second, the irregular use of force by the fundamentalists which they believe they find in the “mind of God” (see note 45). It is extremely important to distinguish between these two levels at this stage of the analysis in order to shed light on the military dimension of the politicization of religion, while being wary of any involvement in Islamophobia. Nevertheless, the event of September 11, as well as the ensuing jihadist attacks in 2002/03 worldwide, have revealed how interrelated the aforementioned levels are. I have already maintained that the jihad-terrorists of al-Qaida militarized in New York and Washington value conflicts concerning “order” existing between Islamic and Western civilization. This was not the action of a “crazed gang”, but an act of irregular war by jihadism, which is a stream within Islamic fundamentalism. This resort to terrorism was an actualization of the conflict related to civilizational worldviews. In short, the value related fight over “what world order” assumes a military form. “Gangs” do not involve themselves in the business of international affairs.

The irregular war at issue is a militarization of the war of ideas. The combination of dissent over worldviews and an incalculable and unpredictable use of force results in terrorism. In this interpretation jihadism is the Islamic variety of contemporary terrorism, being the current form of the use of force by irregular warriors in a new pattern of war. To this pattern belongs the use of bodies by jihadists to assail persons and buildings of the “enemy” in their “action directe”. The major target is political; it is the order of the secular nation-state. The enemy should be demoralised and made uncertain about what lies ahead. The rejection of the secular state applies to fundamentalists in all religions. It is, however, unique to Islamic fundamentalists to go beyond the level of the nation-state in embracing the universalism of Islam and, in the course of the politicization of this universalism, call for an establishing of an Islamic world order. This belief leads to a contest of existing concepts of world order. It is on this basis that a conflict emerges between two competing concepts of world order, the prevailing secular Western and the Islamic one of God’s rule envisaged for the future. The jihadist terrorism of the Islamists is an irregular war to achieve this end. John Kelsay, a scholar of Islam, states, “in encounters between the West and Islam, the struggle is over who will provide the primary definition to the world order”. And then, on the same page, he asks who will lead the world in the future:

“Will it be the West, with its notions of territorial boundaries, market economies, private religiosity, and the priority of individual rights? Or will it be Islam, with its emphasis on the universal mission of a transtribal community called to build a social order founded on pure monotheism natural to humanity?”⁷²

For Islamic fundamentalists the answer to this question is clear, and it has been already provided by the quoted spiritual father of their ideology, Sayyid Qutb. In his *Signs along the Road* (see note 28) he states that only Islam is designed to lead the whole of humanity in a world order to be established in the years to come. It is clear that the questions asked and the answers given indicate a competition between Western and Islamist concepts of world order. At issue are normatively different understandings of the notions of war and peace, as well as law and justice. Again, this is the content of the values related to the scenario of a “war of civilizations” (see note 49) that can be averted. It follows that we are confronted not only with a new era for the study of security but also with new substance. At issue is the ideology of global jihad waged against the West in a “New Cold War” (Juergensmeyer) confrontation. Jihadism serves to escalate this conflict of worldviews through militarization to one related to the irregular war of terrorism. Thus, the politicization of religion is not simply a state of mind or a dispute over different approaches. If it were, one may prescribe “tolerance”. But this prescription does not work when violence in the form of terror is present. We have here a great security problem. Long before the world was confronted with the case of September 11 there were the earlier cases of Kosovo, Macedonia, Chechnya, and Kashmir and, of course, the *al-Aqsa Intifada* in the Middle East, in which jihadism is involved. The fight over Eretz Israel versus Islamic Palestine is related to religion and to conflicting civilizational worldviews, and in this exceptional case both are religions. Even the late secular Arafat responded by calling for Islamic jihad when Israeli tanks encircled his residence on January 26, 2002. At the time one could see him on BBC-World shouting five times in a row: “My

⁷² Kelsay, *Islam and War* (note 31), p. 117.

answer is *jihad*...”. This slogan of the declaration of an irregular war is equally most appealing and most difficult to cope with by conventional means.

To be sure, the irregular war is not exclusively based on terrorist acts committed by Islamic fundamentalists. It is a general phenomenon, regardless of the substance of conflict, and can be identified without referring to related cases. Not only in Kashmir, but also on the soil of India, Muslims and Hindus fight over their political beliefs under religious disguises. The well-known report of the destruction of the *Ayodhya* Mosque in India by terrorist acts back in December 1992 was followed by the revenge in terror of the jihadists. Similarly, the actions by the Jewish settlers in the occupied territories of Palestine (e.g. the Hebron massacre, February 1994) are avenged by Hamas and Jihad Islami. I am not seeking to minimize the threats posed by Islamic jihadists to international security when the terror of others is mentioned and differentiations are recognized. My intention is merely to locate the generalizable action in order to support the following three central observations related to the security oriented study of jihadism:

First: The problem of political order. Islamic fundamentalism, as a powerful variety of the politicization of religion, does not only bring existing cultural differences to expression. In this regard the revived worldviews touch on a concept of order with the implication of creating a gap between existing civilizations. Whereas religious fundamentalism is a global phenomenon which can be found in almost all world religions, all of them share, whatever their variations, a certain kind of family resemblance which allows generalization. However, Islamism is a very specific variety when it comes to the issue of international order. In terms of security jihadists mobilize on religious grounds and are most compelling and subsequently successful in this pursuit. Despite the need for military security measures needed to face their irregular war, we have to acknowledge that fundamentalists cannot be fought with armies alone if we are to undermine their appeal and their call for an Islamic order. For dealing with these issues we need a security approach which is neither fixated on the state, nor on the predominance of conventional military thinking and its traditional wisdoms.

Second: Holy terror and irregular war. Not all fundamentalists fight for their goals in institutions by political means. Among them we also find those who resort to violence within the framework of terrorism to enforce their concept of order. Jihadism is a variety of “terror in the mind of God” (see Juergensmeyer, note 45) which combines fundamentalism, and the related worldviews about order, including the politicization of a conflict of values, with terrorism, i.e. “holy terror”,⁷³ with irregular war.

Third: Is “Islamism” different from “Islamic fundamentalism”? In this contribution, the terms “political Islam”, Islamism, and Islamic fundamentalism are used interchangeably. This is not common, because some dispute the application of the fundamentalism concept to Islam with the intention of combating the spreading prejudice. However, this is utterly misleading. It is true, the term “fundamentalism” has been ill handled as a cliché, but it is—despite all odds—a scholarly and analytical concept for studying the politicization of religion. By using the term Islamism as an alternative to the one that refers to the global phenomenon of fundamentalism, the respective scholars are unwittingly contributing to the stereotyping of Islam by implicitly restricting the

⁷³ See Bruce Lincoln, *Holy Terror* (see note 6).

politicization of religion to it. In contrast, I argue that “Islamism” is only a depiction of a specific variety of the phenomenon of political religion addressed as a religious fundamentalism. This phenomenon does not only occur in Islam. However, jihadism, as the military dimension of this phenomenon, is specifically Islamic. It compels us to include the inquiry into Islamism in the field of security studies. The new reasoning in this field has to be addressed as “new frontiers of security”,⁷⁴ setting out from a demand to go beyond the traditional concept of security dominated by military thinking. In so doing one smoothes the way for broadening the scope and deepening the insights of the analysis to enable oneself to deal with the new pattern of irregular war being the challenge.

Jihadism is not only an ideology of religious extremism, but also a new concept of warfare. The issue is political, namely the Islamist aspiration for a new world order. With the end of the East-West confrontation it seems that conventional Clausewitzian wars are no longer likely to take place. Wars between states, and between organized, institutionalized armies, have almost disappeared, being replaced by wars waged by non-state actors as irregulars. It is suggested that this pattern is likely to prevail in the foreseeable future.⁷⁵ Therefore, most of the issues must be thought through anew. Security experts have been arguing for a long time that this change be taken into consideration, and have underscored the need for a new security approach. Scholars like Barry Buzan, and later Martin van Creveld and Kalevi Holsti, have ventured into ground-breaking studies of security and war going far beyond the fixation with institutionalized armies. Both the changed character of wars of the new kind and non-military aspects are to be emphasized more and more strongly, and they need to become central subjects of security studies. In this sense, and in this sense only, I propose to deal with the religious Islamist ideology, and with its jihadism within the framework of a new security approach. Jihadism is both a propaganda fight for a new order and an irregular war which on September 1, 2001, and the following events proved powerful. Organized armies are helpless against the terrorist acts of violent jihadists, in particular the suicide bombers among them. Prior to these recent developments, earlier events in Algeria, Egypt, Israel, Afghanistan, as well as in Xinjiang, Kashmir, Kosovo, and Macedonia make this issue clear.

One can take it for granted that the West will not be able to cope properly with jihadism and the related challenges to international security within the framework of the old state-centered approach. In earlier conflicts with other states the North Atlantic Treaty Organisation (NATO) forces were able to overpower their foes, for example the Serbian army, with its regular and armed forces in 1999. The same applied in an effort to oust Saddam in the Iraq war back in March/April 2003. In contrast, neither the religious-ethnic UÇK irregulars’ acts of revenge against the Christian Serbs and Macedonians or others, nor the irregular war against coalition troops in Iraq and in Afghanistan, could be curtailed. Another example is the already mentioned inability of the Israeli Defense Force (IDF) to cope with Intifada “against the infidels”. This understanding is currently gaining topicality in response to the irregular war of jihadism as practiced on September 11, 2001. This jihadist threat continues. The victory over the Taliban and over Saddam cannot be repeated against the jihadists in either country, or elsewhere.

⁷⁴ Leonore Martin, ed., *New Frontiers in Middle Eastern Security* (New York: St. Martin’s Press, 1999), introduction.

⁷⁵ See the reference in note 1.

In being confronted with jihadist Islamism, both as an ideology and as an international movement, one is also exposed to the fact that some parts of the Islamic diaspora in the West are being hijacked by the Islamists. Those claim to be the true representatives of the ‘true voice of Islam’. In fact they are seeking a “hinterland” for their actions. Jihadists of the diaspora abuse basic democratic rights and demonize their critics as the “voice of Islamophobia”. At issue is a camouflaging of their activities to establish their logistics in the West. Important components of Islamic jihadism exist for instance in Germany, which is a case in point. With these facts in mind, the study of security must cover an inquiry into the networking between the region of conflict itself, in this case, the world of Islam, and its extension through global migration abroad, for which the term “gated Diaspora”,⁷⁶ i.e. Islam in the West, has been coined. The denunciation of references to the conflict between political Islam and the West as an indication of Islamophobia is used as a cover to obscure these issues and it is utterly misleading and detrimental, both for the integration of Muslims and for Western security itself. After all, this kind of political correctness serves to camouflage fundamentalism and does not contribute to protecting either Muslims or democracy. In this free spirit of inquiry, the ensuing section of this study addresses the abuse of the Islamic diaspora in Europe for camouflaging the Islamic terrorists around al-Qaida’s Hamburg cell of Mohammed Atta and for facilitating the activities of these fundamentalist warriors of God in their pursuit of irregular war as jihad for a new international order based on the Islamist notion of “*hakimiyyat Allah/God’s rule*”.

V. Global Migration, International Security and the Ideology of Jihadism on the European Battlefield

Of course, there exists an alternative to Islamism for Muslims living in the West and also for Turkey in its bid to join the EU, this alternative being Euro-Islam.⁷⁷ The debate over this issue took place in many international projects. At the University of California, Berkeley a research project addressed this issue under the apt heading “Islam and the Changing Identity of Europe”. The project was conducted by two major Berkeley centers and it led to a publication under the title “Muslim Europe or Euro-Islam?”⁷⁸ If this alternative proves to be unfeasible, the Islamist dream of a “Muslim Europe”, to be accomplished piecemeal in a politics of Islamization, comes within the reach and it is a serious security threat. Underlying this assumption is the fact that the operation of al-Qaida on September 11, 2001 was carried out in New York and Washington, but it was prepared and rooted in the German Islamic diaspora. To put it bluntly: The networking of Islamism and the related supporting systems of jihadism are based and located in the Islamic diaspora in Western Europe, making of Europe a battlefield. Clearly, at issue is a small minority among the Islamic diaspora. In the case of Germany there are about 100,000 Islamists among the

⁷⁶ I borrow the term “gated diaspora” from Nikos Papastergiadis, *The Turbulance of Migration* (Cambridge: Polity Press, 2000).

⁷⁷ See B. Tibi, The Quest of Islamic Migrants and of Turkey to Become European, in: *Turkish Policy Quarterly*, vol. 3.1 (Spring 2004), pp. 13-28.

⁷⁸ Nezar al-Sayyad and Manuel Castells, eds., *Muslim Europe or Euro-Islam?* (Lanham: Lexington Books, 2002), this volume includes B. Tibi, “Muslim Migrants in Europe: Between Euro-Islam and Ghettoization”, pp. 31-52.

3.5 millions of the diaspora community. The figure is in average never more than 3 to 5%. However, the issue is not the number of jihadists, but their ability to launch a strike. Islamists are institutionally well organized, both vocal and powerful. Above all they dispose of resources and they are in the control of major mosques of the diaspora in Europe.⁷⁹

After September 11 and the crackdown on the fifty-five al-Qaida camps in Afghanistan the world knows precisely, despite all the conspiracy driven thoughts, that the Bin Laden–al-Qaida connection is not a “gang”, but rather a powerful organization of jihadist fundamentalism with a considerable logistical base in Western Europe, in particular Germany.

In another international project on “Religion in an Expanding Europe”⁸⁰ run at Cornell University, I have formulated the options in the formula “Europeanization of Islam or Islamization of Europe”. The standing of the jihadists in the Islamic diaspora is clear. In a propagandist war of ideas they reject the use of the notion of fundamentalism for indentifying those who seek the unity of religion and the state in Islam, the so-called *din-wa-dawla* concept (*din-u-devlet*), as fundamentalists. They nevertheless believe that only they draw on the true *usul*/fundamentals of Islam, and deny that any others are true believers or entitled to have any representation in the Islamic diaspora of Europe. And in this capacity they claim religious freedom as basic human right. It is sad to acknowledge that Osama Bin Laden does the same; he continues to be popular⁸¹ both in the world of Islam and in the diaspora. The language of political Islam is popular for declaring the *jihad*-war on the West. It is believed to be the language of *iman*/belief against *al-kufr al-alami*/international unbelief, and it is also used in the Koran schools in the Islamic diaspora in Germany. It is not the person of Bin Laden, but rather the symbolic incorporation of this jihad war that creates this popularity. In short, at issue is also to win the Islamic diaspora for the security battle against jihadism. In this sense we are dealing with a novelty, namely the fact that Islamist movements and the related conflicts in the world of Islam are now being exported to the West, thus concretely touching on Europe and on its own security. The Islamists come to Europe by joining the ever increasing number of asylum seekers and migrants. In this way, political Islam has been exported to the West and it is becoming a domestic European issue. Being myself a liberal Muslim, I have been warning for years that totalitarian-minded Islamists have been abusing both democratic freedoms and the European Islamic diaspora itself for establishing a logistical base for their activities in the West. Newsweek wrote after September 11 about me: “Bassam Tibi ... has warned for years that Westerners need to differentiate between good Muslims and the bad ... no one wanted to hear that, verging as it does on the politically incorrect.”⁸²

⁷⁹ See chapter VI “The Fundamentalist Abuse of the Islam-Diaspora: Western Europe a Safe Haven” in: B. Tibi, *Die fundamentalistische Herausforderung* (Munich: C.H. Beck, fully rewritten 4th edition, 2003), pp. 184-214.

⁸⁰ See Peter Katzenstein and Tim Byrnes, eds., *Religion in an Expanding Europe* (Cambridge/UK: Cambridge University Press, 2006) including my chapter on the Europeanization of Islam.

⁸¹ I agree with the editorial by Thomas Friedman. He wrote after a visit to a variety of Islamic countries: “Quietly, Many in the Muslim World Want Bin Laden to Get Away”, *International Herald Tribune*, January 24, 2002, p. 8. Yossef Bodansky, *Bin Laden. The Man Who Declared War on America* (Rocklin/Cal.: Forum/Prima Publ., 1999).

⁸² See “Tolerating the Intolerable”, in: *Newsweek*, November 5, 2001, p. 46.

Due to a wrong understanding of the concept of an “open society”⁸³ fundamentalist activities in Europe and generally in the West are mostly ignored. European politicians—despite the warnings of the security apparatus—are more concerned about political correctness and worry about being related to any conflict that would associate them with political an alleged Islamophobia. Of course, it is right to curb prejudices against non-Western cultures, and to combat all kinds of related racism and real, not alleged, Islamophobia. However, Islamophobia is one thing and a security-related containment of Islamic jihadism and its “new totalitarianism”⁸⁴ is another.

The success of Islamist networking in Europe’s civil society and the spread of the related ideology in the diaspora are evidence of the ability of the movement to establish an argument that equates the critique of jihadist Islamism with an ugly Islamophobia in a war of ideas. In particular in Germany, the media fell into this trap and assisted in protecting Islamic fundamentalism against any disclosure while overlooking the interrelation between migration and security.⁸⁵ Opinion leaders were less concerned about the enemies of open society and preoccupied with combating any expression of political incorrectness. Even liberal Muslims engaged in Islamic reform, like this author elaborating on a reformist Euro-Islam,⁸⁶ were victimized by this European drive which was perceived as an indication of alleged tolerance towards an Islam conceived in an indiscriminate way. It is no surprise that the Islamists have been giving a priority to Germany and Scandinavia for establishing their logistical bases. In particular Germany—due to its shameful past—has been the one with the highest standards of political correctness when it comes to non-Western cultures. The fate of the liberal German journalist, who disclosed the “Krieg in unseren Städten” is a telling story; he was silenced by lawsuits and arbitrary court decisions. In an earlier article of *The New York Times* republished in *The International Herald Tribune* we find an explanation for this German behavior. Germany is addressed as a “safe haven” for the Islamist.⁸⁷ In addition, *Newsweek* asked on its cover the question of: “Why terrorists like Europe”. For Germany this answer was given with the formula “Tolerating the Intolerable”. Three of the four neo-*jihad* terror-pilots came from Germany, where the finance and the infrastructure of the operation, the support system of jihadism, were located. Their accommodation was called “*Dar al-Ansar*/House of the Supporters”. The anti-terror laws legislated in Germany and the United Kingdom in 2001/2002 put European governments in position to prosecute fundamentalists legally and to curb their activities in Europe. Britain is doing well, in Germany there is little will for law

⁸³ Karl Popper, *The Open Society and its Enemies*, 2 volumes (London: Routledge and Paul Kegan, 1945).

⁸⁴ B. Tibi, *Der neue Totalitarismus. Heiliger Krieg und westliche Sicherheit* (Darmstadt: Wissenschaftliche Buchgesellschaft, 2004). On the wrong response to jihadism with the attitude of “tolerance” see my chapter in: Alice Schwarzer, ed., *Gotteskrieger und die falsche Toleranz* (Köln: Kiepenheuer & Witsch, 2002).

⁸⁵ See Myron Weiner, referenced in note 40 above and the related study by B. Tibi, *Islamische Zuwanderung* (referenced in that note as well).

⁸⁶ On this issue one reads in *Time Magazine*, December 24, 2001, p. 49: “Bassam Tibi ... who coined the term Euro-Islam insists on the integration of Europe’s Muslims”, p. 49.

⁸⁷ Steve Erlanger, “Extremists Found Safe Haven in Germany”, in: *International Herald Tribune*, October 6-7, 2001, p. 3 (published before in *New York Times*).

enforcement in this field. At any rate, there is a very long way to go before we achieve better security given that the threat continues to be there, it certainly has not abated, despite all measures. In my most recent book “The New Totalitarianism” (note 84), I argue that European awareness of the security threat is weak and far from the realities. Here we face the dilemma of security versus liberty. The Islamists came to Europe not because they liked it, as *Newsweek* ironically put it, but for using its democratic freedoms to facilitate their activities. A French author suggested the formula “democracy against itself” for depicting the issue.⁸⁸ But this formula can also be put the other way around: in combating Islamic fundamentalism in Europe one can undermine the foremost credentials of Western democracy. This is truly a predicament: how can we achieve security in stopping the intrusion into Europe of Islamic fundamentalism from the world of Islam without doing any damage to democratic rules and values? How can we defend the “open society” of the West against its new enemies in Islamist totalitarianism without succumbing to the rules of the jihadist Islamists themselves? How can we protect Muslim migrants against a collective accusation of being supportive of jihadism? These are tough questions and I do not answer them.

An essential part of countering terrorism and combating its ideology in the West is a successful integration of Islamic migrants in Europe within the framework of a Euro-Islam. This would provide an efficient means for combating fundamentalism within the confines of democracy. According to my view presented above, there are two areas in which Islamists have been successful in Europe. It is clear we need a security approach in a war of ideas to curb them. There are, however, two other areas. *First*, to dry out the support systems, and *second*, to get a grip over the institutional outlets for mobilizing parts of the Islamic diaspora in the name of ethno-religious solidarity. The so-called Islamic welfare organizations in the diaspora were and still are the camouflage of the support systems of jihadism disguised as religious associations. And some basic Islamic schools serve the development of ethno-religious solidarity, not integration into European societies. Only Euro-Islam can help reach the goal of making the Muslim diaspora in Europe immune and keep it away from the susceptibility to the Islamist ideology of terrorism.

VI. Conclusions

In concluding this paper on countering ideological terrorism serving as a legitimization of an irregular war presented as a *jihad* by the Islamists, it is argued that a new concept of security is needed for properly dealing with the outstanding challenges. In distinguishing between political organizations and real religious institutions of Muslim migrants we put ourselves in a position to draw a line between Islamic jihad fundamentalists and ordinary Muslim migrants. The new security approach had to be attached to a democratic strategy both against the ideology of jihadism and one of a clash of civilizations. Without the assistance and cooperation of Muslims in the pursuit of this strategy a war on terror can never be won. An essential part of this assistance needs to come from the Islamic diaspora itself. The supporting systems of jihadist internationalism are located in Western Europe. A line has to be drawn between Islam and Islamism for countering jihadist ideology.

⁸⁸ Jean-Francois Revel, *Democracy against Itself* (see note 42 above); on Islamic terrorism see herein chapter 12.

The painful disclosure that there were British, German and French migrant Muslims fighting both as volunteers on the side of the Taliban as well as acting as al-Qaida jihadists was alarming. Again, this is not an issue to be coped with adequately through policing. The geopolitical setup of jihadist activities is the triangle: The world of Islam, the West and the Muslim diasporic culture in Europe. In the latter issue area, i.e. in Europe, things have not been going well. Being a Muslim migrant myself, I believe, the worst case is Germany. The ethnic determination of what is *German* precludes Muslim migrants from becoming members of the core community and thus increases the appeal of political Islam to them. Being a Muslim descending from the nobility/*ashraf* of Damascus I have been treated in German society as a “guest worker” and discriminated against in my university career. For me it was not possible to become in substance a German citizen, beyond legally holding a German passport since 1976, and living in Germany for four decades. My education in rational philosophy and the knowledge of Islam help me to distinguish between Islam and Islamic fundamentalism, and also not to be affected by the appeal of a jihadist defensive culture, despite the experience of discrimination in Europe. In an interview with the German magazine *Focus* after the jihadist assaults of London, July 7, 2005, I stated bluntly: “Had I not been educated in European philosophy I would have become, in view of the discrimination I was subjected to, a jihadist fighting Europe.”⁸⁹

The bulk of the poorly educated Muslim migrants is not protected against their “othering” by European societies. This makes them an easy catch for jihad-Islamists. Earlier in this paper, my concept of Euro-Islam was presented for combating Islamism. The concept is underpinned by the conviction that it is possible to be both European and Muslim. Again, a Euro-Muslim would not be susceptible to the appeal of jihadism. It follows that the lack of integration boosts the feeling among migrants of being excluded. In fact, this is the domain in which Islamic fundamentalists find people like the Egyptian Mohammed Atta, and even the German born Moroccan Said Bahaji, who are willing to join their fundamentalist network for ideological reasons. A Muslim with a European civilizational identity would presumably not act in this manner, but rather as a guardian of Western values, not as a jihadist. But the “othering” of young Muslims migrants in treating them as aliens and denying them full membership in the polity is an indirect assistance to the ideology of Islamism which seeks to undermine any effort at integration. It is to be hoped that such an open and enlightened Islam that could unfold in Europe among Muslims will affect the triangle I mention in shaping the world of Islam itself. This part of countering terrorism is essential for the security approach needed to supplement the other areas of policing and military issues. The politics of integration of Muslim migrants would be the best security approach against jihadism.

Security is for me not a means for preserving the status quo, but for defending freedom and democracy. How can we prevent the enemies of the “open society” from abusing its freedom? Among the principles of civil society is its decoupling from the state. Islamists as religious fundamentalists (see note 26) have been successful in establishing themselves in Europe on the level of civil society applied to Islamic communitarism. In this regard we see some basic differences between France, Germany and the United Kingdom. Despite all flaws, the French model has proved to be more promising than the others for stopping the intrusion of jihadist Islamic fundamentalists into Europe. France expects from the Imams of the mosques expressions

⁸⁹ Interview with B. Tibi, *Focus*, issue 29 of July 18, 2005, pp. 150-51.

of loyalty to the constitution, democracy and the *laïcité*.⁹⁰ This is not the case in the United Kingdom or Germany. Back in 2001, after the November debate in the British parliament on Muslim Britons fighting in Afghanistan against Britain and the USA, the then British home secretary David Blunkett requested in an unprecedented manner loyalty from Muslim migrants, but the Labour politician was accused of using “right wing slogans” against Muslims, simply for requiring loyalty. After the assaults of July 7, 2005, the United Kingdom could no longer afford this “multicultural tolerance” facilitating within the multiculturalism of “anything goes” the actions of jihadism.

In concluding this analysis on the roots of ideological terrorism we have referred to the politicization of Islam in a context of a religionization of politics in order to explain jihadism as an ideology of an irregular war. In instrumentalizing democratic freedoms, but also in abusing the weakness of European values, the exponents of jihadist Islamism succeeded in finding safe haven in Europe and ideological safeguards. Fundamentalists, who are against the political integration of Muslim migrants as citizens of the heart, have been able to hijack parts of the Islamic diaspora. Integrated ordinary Muslims can become true European citizens, but Muslims at the fringe of society can be mobilized as ethnic-religious minorities for the political ends of religious fundamentalism, being the ideology of jihadist terrorism.

An ideology based on religion and culture in a political shape is an essential part of terrorism. For deterring the security threat of jihadist Islamism, we need a new approach for dealing with the triangle in question: The world of Islam, the West and the Islamic diaspora in Europe. Jihadist terrorism as irregular war is to be located in this triangle. The war against jihadist terrorism is also a war of ideas and it can neither be restricted to military means nor to a formal legal understanding of war. The war on terror cannot be declared, because one cannot declare war on invisible non-state actors.

The instruments needed for undermining Islamic fundamentalism as the ideological foundation of terrorism in the world of Islam and in Europe are multifaceted. In this contribution I have been at pains to analyze and shed light on the challenge posed by jihadist Islamic ideology to Western as well as to Islamic and to international security. Political Islam is primarily a challenge to Muslims themselves in their dealing with the outstanding predicaments of modernity. The solution for Europe lies in Europeanizing Islam⁹¹ for countering the efforts at an Islamization of Europe. In the world of Islam itself the option is either to accept the subjection to the new totalitarianism or to smooth the way through reforms for an Islamic embracing of secular democracy⁹² within the

⁹⁰ Paul A. Silverstein, *Algeria in France* (Bloomington: Indiana University Press, 2004). See also B. Tibi, *Les conditions d’Euro-Islam*, in: Robert Bistolfi and Francois Zabbal, (eds.), *Islam d’Europe. Intégration ou insertion communautaire* (Paris: Editions de l’Aube, 1995), pp. 230-234. See also the report on Dalil Boubakir, the Imam of the Paris mosque, “Muslim and French and Proud to be Both” by Katrin Bennhold in *International Herald Tribune*, March 16, 2006, p. 2.

⁹¹ B. Tibi, “Between Communitarism and Euro-Islam. Europe, Multicultural Identities and the Challenge of Migration”, in: John Docker and Gerhard Fischer (eds.), *Adventures of Identity. European Multicultural Experiences and Perspectives* (Tübingen: Stauffenberg, 2001), pp. 45-60: see also note 80 above.

⁹² On Islam’s compatibility with democracy and modernity see William M. Watt, *Islamic Fundamentalism and Modernity* (London: Routledge, 1988), and Rahman Fazlur, *Islam and Modernity. Transformation of*

framework of an open liberal Islam. This would open the way for Muslims to join the rest of the world governed by rules of democratic peace (see note 3). Democracy in Islam would help Muslims to come to terms with the rest of the world and to give up the illusion of a global Islamization. The jihadist-terrorist internationalism of political Islam is not a contribution to world peace. Terrorism⁹³ alienates Muslims from the rest of humanity; therefore, Muslim politicians are best advised to join the war on terror and to dissociate themselves from global jihad. The European approach of a democratization of the EU's neighborhood⁹⁴ is the best for countering ideological terrorism.

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⁹³ See Richard Chasdi, *Tapestry of Terrorism. A Portrait of Middle Eastern Terrorism 1994-1999* (Lanham: Lexington Books, 2002) and Paul Berman, *Terror and Liberalism* (New York: Norton & Company, 2003).

⁹⁴ See the work of the EU Think Tank CEPS edited by Michael Emerson, *Democratization in the European Neighborhood* (Brussels: Center for European Policy Studies, 2005), herein B. Tibi, Islam, Freedom and Democracy, pp. 93-117.

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Combating the Financing of Terrorism: Rethinking Strategies for Success

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Abstract. *Combating the financing of terrorism (CFT) is a core pillar of the fight against terrorism. An effective CFT can play investigative, analytical, deterrent and even preventive roles. Terrorists fund themselves from a great variety of sources. Especially since 9/11, many instruments giving power to governments to counter the financing of terrorism have been adopted. However, the achievements so far are very modest and this combat is very far from being accepted as successful. Our strategies, by addressing the challenges confronted, need to be re-examined and adapted in accordance with the new conditions so as to be effectively implemented in practice. Undoubtedly, instead of rhetorical collaboration, those strategies require real international and bilateral cooperation in the fields of intelligence sharing, police and judicial cooperation.*

Keywords. Counter-terrorism, Combating the financing of terrorism, United Nations, international instruments, listing of sources of funds

Introduction

The attacks of 9/11 triggered the global unification in combating the financing of terrorism in theory, but filling the gap between rhetoric and reality is of crucial importance.

Intrinsically, to commit a terrorist attack—even a large-scale one—does not require a large amount of funds. For instance the attacks of 9/11 cost Al-Qaeda somewhere in the range of \$400,000 to \$500,000.¹ Due to their relatively low operational cost, the financial aspects of

¹ John Roth, Douglas Greeburg, Serena Wille, National Commission on Terrorist Attacks Upon the United States, Monograph on Terrorist Financing, Staff Report to the Commission, on-line available, http://www.9-11commission.gov/staff_statements/911_TerrFin_Monograph.pdf, p. 3, (last accessed on 21 January 2007). The cost of the Istanbul bombings in 2003 was less than \$40,000. The Africa Embassy

terrorism cannot be the sole focus to stop the perpetration of future acts of terrorism. (Biersteker/Eckert, 2007a: 12)² However, limiting the resources available to terrorist groups by effective financial control may prevent some attacks from taking place; stopping the transfer of even small amounts of money may save lives, or at least can reduce the possible impact of attacks which cannot be prevented. Indeed, besides the operational costs terrorist groups need funds for “planning, recruitment, procurement, preparation, delivery of materials, communications, persuasion, propaganda, incitement, infrastructure of safe houses/sleeper cells, reconnaissance of targets, and assault on targets”.³ In addition, CFT can provide assistance in investigating how a terrorist attack has been carried out, identifying and detaining other members and supporters of the group having committed the act of terrorism, and better understanding the group’s modus operandi and organizational structure. In short, “financial controls can perform preventive, deterrent, investigative, and analytical functions, all of which are vital for curtailing acts of terrorism.” (Biersteker/Eckert 2007a:3)⁴ In other words CFT constitutes the decisive and core part of the comprehensive fight against terrorism.

The term “financing of terrorism” is defined broadly by the World Bank and International Monetary Fund (IMF) as “the financial support, in any form, of terrorism or of those who encourage, plan or engage in it.”⁵ However, as the international community has not agreed yet on a definition of “terrorism”, in terms of the provision of effective international combat, the

bombings are estimated to have cost less than \$50,000. The operational costs of 2004 Madrid bombings were initially estimated to have been only \$10,000 although the Spanish Government claimed it was above \$ 60,000. See for more information Biersteker/Eckert, 2007a:10-12. Budget for a suicide bombing is about \$1,500. “Finance and Economics: Follow the money”, *The Economist*, January 1, 2002, 87.

² It is stressed in the Preamble of the *The International Convention for the Suppression of Financing of Terrorism* that “the number and seriousness of acts of international terrorism depend on the financing that terrorists may obtain”.

³ Rudner 2006: 32-58; Third Report of Monitoring Team: 15. For instance, while Al-Qaeda spends about 10% of its income on operational costs, the rest of its incomes goes to the cost of administering and maintaining the organization, including the cost of operating and maintaining international network of cells. See Biersteker/Eckert, 2007a: 24, footnote 11.

⁴ “Last summer al-Qaida nearly executed what would have been its most devastating terror attack since 9/11. British authorities foiled the liquid explosive aviation plot, thanks in large part to critical financial intelligence, and quickly announced plans to increase the use of financial intelligence tools to disrupt terrorist operations.” See. Matthew Levitt, Blocking Terror Finances, 3 May 2007, <http://www.washingtoninstitute.org/templateC06.php?CID=1050>. The law enforcement established the first links between the hijackers and other conspirators after 9/11 thanks to financial information. See. Dennis Lormel, Testimony before the Senate Judiciary Committee, Subcommittee on Technology, Terrorism, and Government Information, 9 October 2002, available on:

<http://corprisk.timberlakepublishing.com/files> (last accessed on 17 March 2007). Financial intelligence played important role following the July 7 attacks in London and the March 11 attacks in Madrid, among others as well. (Matthew 2007). These examples demonstrate either preventive or investigative role of following the money in CFT.

⁵ “Reference Guide to Anti-Money Laundering and Combating the Financing of Terrorism”, (Washington, D.C.: The World Bank and the IMF, 2003) This term was used in the international legal meaning for the first time in the UN General Assembly’s Seminal Declaration on Measures to Eliminate International Terrorism in 1994. (Bantekas 2003: 316)

definition of financing of terrorism does not make any sense. In this paper, the term “terrorism” refers to deliberate acts of violence against civilian targets based on political, religious or ideological beliefs, with the aim of intimidating and coercing individuals and states.

This paper aims to evaluate the effectiveness of current international CFT efforts, paying particular attention to initiatives undertaken by the UN and FATF. To this aim, Chapter I briefly examines the main terrorist financing sources, ways of movement of funds and their evolution. Chapter II sets out the main international tools used and initiatives undertaken in CFT. The paper reaches a conclusion regarding the effectiveness of the CFT efforts by illustrating some of the achievements. Chapter IV outlines some of the main challenges confronted in the CFT, and Chapter V suggests some policy recommendations to increasing the effectiveness of global CFT efforts.

Main Terrorist Funding Sources

While international organizations and states are increasing their CFT efforts, which do not yet include sufficiently innovative strategies, terrorist organizations are adapting themselves easily to new funding techniques and sources. (Napoleoni 2006: 60-61)

Terrorism is funded from various sources and in many different ways. The methods and sources used vary from country to country or region to region as well as terrorist groups to terrorist groups. Especially in the past, one way of funding terrorism was the support provided by states. However, as a result of the constant response of the international community, especially of UNSC resolutions authorizing economic sanctions used to persuade state sponsors, such as Libya and Sudan, to stop their support for terrorism, state sponsorship of terrorism has diminished significantly. (Hardoin/Weichhardt 2003:11; Clunan 2006-7:574; Bantekas 2003:316) ⁶

With the decline of the state sponsorship, instead of decreasing their activities, terrorists turned towards and relied increasingly on private financing. Bantekas classifies, as this paper does, the

⁶ Due to the undeniable involvement of Libya in the Lockerbie bombing, the UNSC called on Libya to cease promptly all assistance to terrorist groups by concrete actions. Following the attempts of terrorists to murder the Egyptian president in Ethiopia, the UNSC called on the Sudanese government to refrain from supporting those terrorists. The UNSC used the term “terrorist financing” for the first time in Res. 1269 in 1999. But the aforementioned calls for it “clearly implicating state entities directly in such financing by acts and omissions such as sheltering, facilitating, funding, and failure to adopt suppressive measures.” This can be seen in the Al-Qaeda-Taliban regime relationship. Despite the fact that Al-Qaeda did not rely financially on the Taliban regime, it was dependent on its consent for the stationing and training of terrorists on the Afghan soil. (Bantekas, 2003: 316. “From its earliest days as part of the mujahedeen’s anti-Soviet effort in Afghanistan, it (Al-Qaeda) financed itself from a variety of sources—charitable contribution, direct solicitations, and state support—all with tacit and direct support of major states (including the United States). After the end of the Afghan conflict in the early 1990s, it adapted its strategy to a more diversified set of sources, continuing many of the previous sources (with the important exception of US government financial and logistical support) and adding legitimate and illegitimate business activities. With its return to Afghanistan in 1996, Al-Qaeda once again developed a mutually advantageous relationship with a state sponsor—this time with the Taliban regime ...” (Biersteker/Eckert 2007c:5)

private terrorism funding into two categories on the basis of their origin: illegal funds and legitimate funds. (Bantekas 2003:316; Clunan 2006-7:575; Samy 2006: 5-6)

The second main source of financing comes from a great variety of criminal actions, such as smuggling, almost all kinds of fraud,⁷ theft, stolen cars, drug trafficking, kidnapping,⁸ robbery,⁹ extortion, petty crime, ID theft, money laundering, and smuggling of money.¹⁰

Besides illegal funding activities, legal sources are also being used for the financing of terrorism. (Hardoin/Weichhardt 2003:11) Legitimate businesses are used by terrorist groups and their supporters either to raise funds in support of logistic and operational requirements or to cover some activities of terrorist groups and as a front for money laundering. (Chandler 2005: 3) The abuse of some charities constitutes another legitimate terrorist funding source.¹¹ Possible indirect fund transfers to terrorists from local authorities under the umbrella of legitimate business, door-to-door requests, personal donations, cultural events indirectly organized by terrorist groups, investments in stocks, real estate, sale of publications, appeals to wealthy members of the community, collection of membership dues can also be exemplified for the financing of terrorism in the sense of legitimate funding.

In order to move funds, terrorists have been using formal banking systems. As a result of the considerable steps that have been taken to supervise and monitor the money transactions through formal banking, this kind of movement of funds has been declining. However, especially the existence of off-shore financial centres with lax regulations still makes the formal banking system vulnerable to facilitation of the movement of funds across international borders. (Samy 2006:9) Besides using the formal banking system, especially through proxy account holders, terrorists predominantly have been using informal value transfer (IVTs) methods, such as *hawala*.¹² Another method of moving money, heavily used recently by terrorists, as it is seen as the most secure way of avoiding detection, is the utilization of *cash couriers*. There are numerous ways of

⁷ In his book *Illicit*, Moisés Naim argues that the terrorists behind the 1993 World Trade Centre bombing sold counterfeit t-shirts on New York City's Broadway to raise money, the terrorists behind the Madrid train bombings in 2004 sold counterfeited CDs and trafficked drugs to support their activities. Hezbollah, the Irish Republican Army, and ETA generate money through counterfeiting scams. (Kaplan, 2006)

⁸ Salafist Group for Preaching and Combat kidnapped European tourists in Algeria in 2003 and it released some of them for a ransom \$ 6.5 million, paid by Germany. See Craig S. Smith, "Tunisia is feared to be Islamist base for Algerian group (GSCP)", *International Herald Tribune*, 20 February, 2007, p. 5.

⁹ Although robbery is rare in financing of terrorism, it was the sole means of funding for the Greek November 17 organization. (Bantekas, 2003, 319)

¹⁰ Mark Rice Oxly, "Why terror financing is so tough to track down?", 8 March 2006, available on <http://www.csmonitor.com/2006/0308/p04s01-woeu.html> (last accessed on 13 March 2007)

¹¹ Lee Wolosky, a former National Security Council official, explains the situation very well: "There are nefarious charities and there are good charities with nefarious people working for them". (Kaplan, 2006)

¹² A typical hawala (transfer) system works in as follows: if a poor immigrant Pakistani worker (remitter) in the UAE wants to send money to Pakistan with a low cost and fast delivery, he goes to an intermediary (hawaladar) to organize the transfer; he pays in dollars or other convertible currency; the hawaladar in the UAE contacts a counterpart in Pakistan, who pays in rupees to remitter's family or other beneficiary. (Looney 2003:164)

travelling with large quantities of cash without raising suspicion at the border check points. In fact terrorists do not necessarily have to cross borders. As was highlighted by the London attacks, terrorists have increasingly used domestic sources in planning and funding attacks.¹³ (Kaplan 2007; Napoleoni 2006:6) Terrorists' continuous mutation, which generally keeps them a step ahead of the states authorities in raising and transferring money makes the CFT efforts to track the funds extremely difficult. (Napoleoni 2006:1)

International Initiatives to Counter the Financing of Terrorism

To evaluate the effectiveness of multilateral counter-terrorist financing cooperation, this paper briefly takes a look at the evolution and development of some international initiatives in this field. There are many legal instruments and tools to ensure that governments have the necessary framework on which to base their measures to counter the financing of terrorism.

The first concrete step taken by the UN in October 1999 was the adoption of UNSCR 1267.¹⁴ By this Resolution, the UNSC basically called upon the Taliban regime to turn Osama bin Laden over without further delay because of his indictment in the United States for the bombings of the US Embassies in Kenya and Tanzania in 1998, and called on all member states to freeze funds and other financial resources of the Taliban and Al-Qaeda, and associated entities and individuals. It also established a Sanctions Committee,¹⁵ to monitor and oversee the implementation of sanctions on Taliban-controlled Afghanistan. Pursuant to its mandate, the Sanctions Committee created and maintains a Consolidated List.¹⁶ The list, containing approximately 500 names together with de-listed individuals and entities, is the basis of the implementation of the sanctions against the Taliban and Al-Qaeda.¹⁷

¹³ Napoleoni argues that "the structure of terrorism financing is no longer trans-national, but deeply rooted in individual countries." (Napoleoni, 2006: 1)

¹⁴ "The sanction regime has been modified and strengthened by subsequent resolutions, including resolution 1333 (2000), 1390 (2002), 1455 (2003), 1526 (2004) and 1612 (2005), so that the sanctions now cover individuals and entities associated with Al-Qaida, Osama bin Laden and/or The Taliban wherever located." See <http://www.un.org/Docs/sc/committees/General.Information.pdf> (last accessed on 9 February 2007)

¹⁵ This Committee was known 1267 Committee but with the press release (SC/7865) on 4 September 2003, it declared its name as "The Security Council Committee established pursuant to resolution 1267 (1999) concerning Al-Qaida and the Taliban and Associated Individuals and Entities" and it also stated that it could also be referred to in shortened form as: "Al-Qaida and Taliban Sanctions Committee".

¹⁶ "General Information on the Work of the Committee", available on <http://www.un.org/Docs/sc/committees/General.Information.pdf> (last accessed on 9 February 2007)

¹⁷ As it is an important foundation for the CFT, and for a better evaluation of this procedure, it is necessary to know about the process of the listing and de-listing procedures. Basically the addition procedure to the list works as follows: When a state suggests a name, believing the person or entity is a member of Al-Qaeda or the Taliban, the Chairman of the Committee informs the member states about the proposal; if no member state objects to the addition of the proposed name, usually within the 48 hours silence period, this name is considered accepted and added to the list. The Sanctions Committee accepted a de-listing procedure in August 2002. According to that procedure, if someone on the list wants to be de-listed,

Although it is less known, the UNSC actually became actively involved in the global effort against Al-Qaeda nearly two years before the attack of 9/11. After the passage of UNSCR 1267, The International Convention for the Suppression of Financing of Terrorism was adopted by the UN General Assembly in December 1999.¹⁸ This Convention obliges its states parties to take appropriate measures for the identification, detection, freezing, or seizure of any terrorist-related funds as well as proceeds derived from the offences stated in Article 2. It also creates the offence of providing or collecting of funds that are to be used to carry out any terrorist act. However, the Convention has no any international enforcement mechanisms attached to it and applies only to its states parties. (McCulloch/Pickering 2005:476; Bantekas 2003: 325)

In the aftermath of 9/11, the international approach to CFT changed considerably and international initiatives have also been extended. Two weeks later, on 28 September 2001, under Chapter VII of the UN Charter, “expressing its clear intention to do something significant to stem terrorist’s access to financial support”, the UNSC unanimously adopted UNSCR 1373 which addresses directly the financing of terrorism. The Resolution, legally binding on all UN Member States, requires all members to suppress the financing of terrorism, to criminalize active or passive support for terrorists prior to a terrorist act, freeze funds expeditiously, share operational information, take necessary steps to prevent the commission of terrorist acts, deny safe haven to financiers, planners, and supporters, and provide technical assistance to enhance multilateral cooperation in that field. The resolution also calls upon Member States to sign the UN Convention for the Suppression of the Financing of Terrorism and establishes an “innovative process to implement the terms of the resolutions under the guidance of the Counter-Terrorism Committee (CTC)” (Joyner 2004: 240-241; Biersteker/Eckert 2007b: 4-5; Oudrat 2004:162) The CTC’s ultimate aim is to increase the ability of the States to fight against terrorism. Resolution 1373 targets all terrorists and terrorist organizations. But this sanctions regime does not contain any listing or de-listing procedure: the list making has been left to the Member States.

Another important and influential inter-governmental “policy-making body”, dealing with CFT, is the OECD’s Financial Action Task Force (FATF), created by the G-7 in 1989 and comprising 33 Member States. The aim of the FATF was to examine the money laundering techniques and trends, review the action which had already been taken at a national or international level, and set out the measures that still needed to be taken to combat money laundering. Less than one year after its establishment, a report containing a set of 40 Recommendations, providing a comprehensive plan of action needed to fight against money laundering, was issued by the FATF. In order to promote the national and international policies to combat money laundering, the FATF has continued to examine the methods used to launder criminal proceeds and has completed two rounds of mutual evaluations of its member countries and jurisdictions, and a third round of mutual evaluations has been commenced. It began a

he/she must apply to the government of his/her residence and/or citizenship. If that government admits the request, it should firstly bilaterally consult to the state which originally requested the designation. The aim is that both states should reach an agreement either to keep the name on the list or to submit a joint request for de-listing to the Committee. All updates of the list can be decided by the members of the Sanctions Committee through consensus. (Kruse 2003: 76.)

¹⁸ The Convention entered into force on 10 April 2002. As of 11 September 2001 only four countries had ratified the Convention, but 156 states were party to the Convention as of 19 March 2007.

campaign of “naming and shaming” jurisdictions that did not cooperate in the global counter money laundering. This campaign prompted many of those named to change their legislation in order to be removed from the list. (Clunan 2006-7: 577)¹⁹ After 9/11, moving beyond its focus on money laundering by the adoption of 9 Special Recommendations on terrorist financing, the FATF added the development of standards in the CFT to its mission.²⁰ The FATF’s recommendations are seen as “extremely persuasive soft law” with effect not only for its member states, but also non-member states. (Bantekas 2003: 319)

The IMF and World Bank developed technical assistance programs for countries to ensure compliance with the FATF’s anti-money laundering and CFT recommendations, as well as the inclusion of anti-money laundering considerations in their country evaluations.²¹ (Clunan 2006-7: 579)

Beyond these international activities some regional and sub-regional organizations, such as the EU, the African Union, the Gulf Cooperation Council, the South Asian Association for Regional Cooperation, the Association of Southeast Asian Nations and the Pacific Islands Forum, the Egmont Group have also taken an active role in CFT by endorsing UN and FATF measures. (Bantekas 2003:319)

Evaluation of the Effectiveness of the International Initiatives

In order to assess the international CFT initiatives, some indicators should be taken into account: legal compliance, the number of states that have signed the UN convention, financial intelligence units (FIUs) created, increased reporting, or international bodies joined, the amount of national and global asset freezes, technical assistance programs run and more importantly the degree to which states have changed domestic policies to be in compliance with the new international standards. (Clunan 2006-7: 578; Biersteker 2007b:16)

In terms of legal compliance, most countries have shown important progress on criminalizing the wilful provision of funds for terrorism and providing a legal basis for the expeditious freezing of the funds of terrorist organizations and individuals. Only three UN Member States had a legal basis to freeze funds quickly by 2004.²² However by late 2005, the act of financing of terrorism was criminalized in 123 UN Member States. Most states have reported changes in their administration to deal with terrorist financing; FIUs or other intra-governmental mechanisms to

¹⁹ As of 13 October 2006, there is no country in the “Non-Cooperative Countries and Territories” list. <http://www.fatf-gafi.org> (last accessed on 19 March 2007) This situation has been assessed by some as a challenge of “lack of teeth” of the FATF system, by alleging the difficulty of being convinced that all of the countries have managed to avoid the list of shame in practice. See. “*Special Report: looking in the wrong places*”, The Economist, October 20th 2005, 82.

²⁰ For those 9 special recommendations see <http://www.fatf-gafi.org> (last accessed on 9 February 2007)

²¹ As of late 2005 The IMF and World Bank had carried out more than 150 assessments of member country compliance and had provided technical assistance in more than 125 countries. (Biersteker 2007b: 13-14)

²² Testimony by Assistance Secretary of State for Economic and Business Affairs E. Anthony Wayne Before the Senate Committee on Banking, Housing, and Urban Affairs, “*State Department Role in Combating the Financing of Terrorism*”, 4 April 2006.

address the issue have been established for the first time in many countries. The total number of global member FIUs, informal trans-governmental networks to share information regarding money laundering and terrorist financing reached 102 in 2006.²³ Many countries have introduced new reporting procedures for banks and financial institutions, particularly “know-your-customer” provisions and reports on suspicious transactions. But few states have introduced measures to regulate charities, other than registration. (Biersteker, 2007b: 16-18)

The World Bank and the IMF agreed to provide technical assistance to ensure compliance with the FATF’s recommendations and inclusion of anti-money laundering considerations in their country evaluations. (Clunan 2006-7:579)²⁴

Regarding the enforcement, as it is declared by Wayne, approximately \$147.4 million had been frozen internationally and \$65 million seized in assets internationally as of 13 July 2005.²⁵ Most of this money belonged to the Taliban regime and some \$59 million seemed to be associated directly with Al-Qaeda. (Comras 2005: 8)²⁶ According to the UN High-level Panel Report,²⁷ “attempts to address the problem of terrorist financing have been inadequate. While in the three months after 11 September 2001 \$112 million in alleged terrorist funds were frozen, only \$4 million were frozen in the two years that followed. Seized funds represent only a small fraction of the total funds available to terrorist organizations. While many states have insufficient anti-money laundering laws and technical capacity, the evasion techniques of terrorists are highly developed and many terrorist funds have a legal origin and are hard to regulate.”

²³ Testimony by E. Anthony Wayne, April 2006.

²⁴ See “Twelve-Month Pilot Project of Anti-Money Laundering and Combating the Financing of Terrorism (AML/CFT) Assessments”, IMF and the World Bank Joint Report on the Review of the Pilot Project, 10 March 2004) available on <http://www.imf.org/external/np/pp/eng/2006/041806r.pdf> (last accessed on 10 March 2007) In this report, it was reported that the compliance with the FATF’s recommendations on terrorist financing was weakest in lower- and middle-income countries, and this compliance was much less for the more domestically intrusive and costly ones.

²⁵ Testimony by Assistance Secretary of State for Economic and Business Affairs E. Anthony Wayne Before the Senate Committee on Banking, Housing, and Urban Affairs, “Money Laundering and Terrorist Financing in the Middle East and South Asia”, 13 July 2005. This is the only available data concerning the amount of money, because while states have been reporting to CTC, as they are not obliged to do, they have not specified the amounts. (Third Report of the Monitoring Team, 14)

²⁶ There is no accurate information about the total amount of money terrorist organizations hold. Loretta Napoleoni, author of “Modern Jihad: Tracing the Dollars Behind the Terror Network,” estimates \$ 500 billion under terrorist organizations control, the UN estimates \$200 billion flows through informal banking systems, however a small amount of that is terrorist-related. The World Bank and IMF see the total amount at tens of billions of dollars. See for these figures David R. Francis, “The War on Terror Money”, 08.04.2004, available on

<http://www.csmonitor.com/2004/0408/p14s02-wogi.html?s=wdep> (last accessed 13.03.2007) On the other hand, according to a recent report, Osama bin Laden himself stated that current terrorist operations in Iraq were costing them about \$500,000 per month. (Chandler 2005: 2)

²⁷ Report of the High-level Panel on Threats, Challenges and Change, A More Secure World, Our Shared Responsibility, UN Document 1/59/656, on 2 December 2004, p. 47 available at <http://www.un.org/secureworld/report.pdf>

With regard to the sanctions imposed by the UNSC and the work of its CTC, as it was noted by the High-level Panel, although those initiatives have played an important role in ending the support of some states for terrorism and activating other states in CFT, the sanctions against Al-Qaeda and the Taliban are still waiting for effective support and implementation from Member States.

Throughout the world there has been important progress in domestic policies on the global willingness at the declaratory level to do something on CFT. However, material progress to date has been relatively modest and superficial. (Clunan 2006-7:579; Biersteker 2007b:20)²⁸

Main Challenges

Although the above-mentioned multilateral initiatives to some extent stimulate changes on the national level, still there have been some challenges to further progress and even some weakening of the current efforts in CFT through multilateral efforts.

The first challenge to the effective CFT cooperation is the existence of ongoing state capacity limitations to apply the global counter-terrorist financing standards. Although the capacity-building and technical assistance initiatives of the UN CTC and some other bodies have been addressing this and some progress has been achieved on the general capacity, there are still many gaps regarding some specific requirements of the UN and FATF measures. (Biersteker 2007b: 21; Oudraat 2004:163) Despite the fact that many states accept the global legal standards, the lack of political will to implement those standards in some states is the second constraint to the effectiveness of multilateral efforts.

The third challenge relates to human rights concerns about the existing UN listing and de-listing procedures. These concerns have caused a general perception that the current procedures are not adequately “fair and clear”. (Biersteker 2007b: 21-22)²⁹ There are some questions

²⁸ “Efforts to combat the financing of terrorism are costly and ineffective” See. *“Leaders: the lost trail; Counter-terrorism”*, *The Economist*, October 22 th, 2005, 13.

²⁹ Some concerns regarding the listing and de-listing procedures stated in the Report of the High-level Panel on Threats, Challenges and Change in December 2004 as follows: “The initial response by the Security Council to the terrorist attacks of 11 September 2001 was swift and impressive. ... However, the Security Council must proceed with caution. The way entities or individuals are added to the terrorist list maintained by the Council and the absence of review or appeal for those listed raise serious accountability issues and possibly violate fundamental human rights norms and conventions. The Al-Qaeda and Taliban Sanctions Committee should institute a process for reviewing the cases of individuals and institutions claiming to have been wrongly placed or retained on its watch lists.” The UN General Assembly in its September 2005 World Summit Outcome document called on the UNSC “to ensure that fair and clear procedures exist for placing individuals and entities on sanctions lists and removing them, as well as for granting humanitarian exceptions.” As a result of the perception of unfairness the implementation of sanctions has generated public oppositions in some countries such as Sweden, New Zealand and Saudi Arabia; Germany and Sweden clearly indicated their unwillingness regarding adding names to the lists; more than 50 Member States expressed their concerns about the lack of due process and transparency on the listing and de-listing procedures. See Third and Fourth Reports of the 1267 Monitoring Team available at

regarding these procedures awaiting to be answered such as: “What happens if an individual or entity is wrongly listed? How are their rights protected?” in the framework of the basic universal human rights and democratic principles. Instead of the “*innocent until proven guilty*” basic criminal law principle, this procedure changes it and follows the “*guilty until proven innocent*” idea.

Some legal concerns arising from the UN listing and de-listing procedures have been put forward in a White Paper³⁰ as follows. Firstly, since only Member States may inform and usually do not notify their listed citizens, it is not possible to accept this notification as adequate as it is vital to procedural fairness. Indeed individuals or entities should be aware of either the reasons for their designation or the procedures for applying exemptions and de-listing. The second concern is the issue of accessibility of individuals to the process. The de-listing procedure is based on the assumption that states will protect the interests of their citizens accordingly, there is always a need for individuals listed to obtain the support of a Member State to negotiate and examine their case on a bilateral basis. However, in the case of unwillingness of the state to represent the interest of its citizen, or if the petition is not sent to the Committee by any state, the de-listing process will be inaccessible to the individual and his/her rights to direct appeal of designation will not be protected. The third concern is the denial of the right to a fair trial or hearing prior to a designation or listing due to the fact that individuals or entities do not have any chance to defend themselves before the imposition of a sanction. Even after the imposition of a sanction, according to the Paper, because of the existing hierarchy and the special position of the UN and especially that of the UNSC (granted by article 103 of UN Charter), one can witness an inter-organizational hierarchy and the reluctance of some European judgments (i.e. the European Court of First Instance of the European Communities) to assess UN practices in a substantive way. Individuals can be listed with redacted statements of their case based on classified intelligence, which is not given to other Member States, the contents of the statements of the case are never made public, and a criminal conviction or indictment is not a prerequisite for addition to the list. The fourth concern is the denial of the right to effective remedy. This means that if the state petitioned by the citizen refuses to initiate the process for de-listing, there is no opportunity left for the individual. The lack of a periodic review of the listing is also another important concern arising from these procedures.³¹

<http://www.un.org/Docs/sc/committees/1267/1267mg.htm> With its report dated 16 January 2006, named Update Report No.5 The 1267 (Al-Qaeda and the 1540 (WMD) Sanctions Committee, UNSC expressed that The Committee should address the complaints about the lack of due process in designating individuals to the consolidated list and de-listing procedures.

³⁰ See for more detailed explanations “Strengthening Targeted Sanctions Through Fair and Clear Procedures”, White Paper prepared by the Watson Institute Targeted Sanctions Project Brown University and sponsored by Switzerland, Germany and Sweden Governments, 30 March 2006.

³¹ It is not possible to accept the justification invoked by some Member States to deny the right to a fair trial or hearing, that the designation of individuals or entities are not criminal charges or penalties, only administrative decisions. Indeed many effects of a wrong designation, such as significant effects on the families of listed individuals, on the employees of targeted companies, more significantly on the reputation of individuals and entities, are not less harmful than penalties imposed in criminal proceedings. Overall, these human rights concerns may potentially lead to the unwillingness of individual states to contribute to the global efforts to maintain the freeze on the assets of listed individuals and groups or

Beyond the legal challenges there are some implementation concerns arising from the listing procedure. To implement freezing actions some countries need further evidentiary requirements. The lack of sufficient identifiers is another concern hampering the implementation and enforcement of sanctions and affecting the rights of innocent people with names similar to those listed.³² Most countries have failed to take steps against business and other income-producing assets that are in the hands of identified Al-Qaeda supporters. Another important problem relates to implementation of these sanctions on the businesses and assets that are owned and administered jointly with non-designated persons. They cannot also be implemented either on those Al-Qaeda members who are not included on the list, although many of them are well-known in some countries. (Comras 2005:10)

Biersteker argues that the variation in the capacity of private sector banks and financial institutions around the world is another challenge to the effectiveness of the multilateral initiatives. Since larger financial institutions are better able to comply and manage the additional costs associated with compliance with reporting on terrorist funding, they have more competitive advantages than the smaller ones.³³ Another particular challenge “upon the UN-led efforts to suppress terrorist financing is the capacity and willingness of Member States to prepare the numerous reports to UN bodies that they are increasingly asked to provide ... Small Member States from the developing world with limited institutional capacity often have great difficulty keeping up with the demands of successive rounds of reporting.” The sixth and final challenge which is specific to the UN is the institutional lassitude and bureaucratic delay within the organization. (Biersteker, 2007b: 24-27)

Recommendations for Further Progress

There has not been any fundamental change in the response to terrorist funding since 9/11 and there have not been significant efforts to reassess the policy. National and international initiatives still focus more on the formal financial sector, without taking into consideration the fact that terrorists have heavily turned to criminal activities for raising money, and to informal finance systems and cash couriers for moving funds. Bearing in mind terrorist organizations are changing

adding new persons or companies to the lists. Additionally these concerns might undermine the whole credibility of the central tenets of UN system, especially of those related to human rights and basic individual freedoms.

³² Third Report of Monitoring Team, 11. See one of the names with no sufficient identifiers in the list: “TLA.122.01. *NAME: 1: ABDUL MANAN 2: na 3: na 4: na Title 1: Mr Title 2: Mawlawi Designation: Commercial Attache, Taliban Embassy, Abu Dhabi DOB: na POB: na *Good quality a.k.a.: na Low quality a.k.a.: na *Nationality: Afghan Pass. no.: na National identification no.: na Address: na *Listed on: 25 Jan. 2001 *Other information: na” <http://www.un.org/Docs/sc/committees/1267/pdflist> (accessed on 19 March 2007)

³³ The compliance costs for financial institutions are very high. It is estimated that to implement a global screening programme including regularly checking customer names of those who are in UN or US lists costs each mid-tier bank £3m-4m (\$5m-6m) in Britain. According to the British Bankers’ Association estimations, banks in Britain spend approximately £250 m each year to comply with anti-terror financing and money laundering regulations. For more figures see “Special Reports: looking in wrong places”, *The Economist*, 22 October 2005, 82.

their structure and financing methods, international strategies for CFT ought to be adapted accordingly. For instance Al-Qaeda “has learned to adapt, to transform itself in creative ways, and to take advantage of globalization in ways that state-sponsored defenses have not even begun to consider. No state, even the most powerful, can deal with the trans-national threat of terrorism by relying on national means alone.” (Biersteker, 2007c: 7-8, 16)³⁴

The majority of alternative remittance systems, such as *hawala* or other international value transfer systems (IVTS), perform many important social and global developmental roles and they are well-functioning beside the formal banking system in some countries. By over-reacting policies, inappropriate regulation resulting in attempts to control the IVTS can lead to some significant inadvertent consequences as was seen from the experience with al-Barakaat in Somalia. (Biersteker, 2007c: 8)³⁵ Alternative remittance systems, seen as one of the ways of moving funds in terrorist financing, should be regulated in a manner which “is proportionate to risk and appropriate to particular socio-economic environments”. Those systems should be registered and required to keep enough records. Nevertheless while enabling this, instead of focusing on the centralization of data, the primary focus should be on a traceability of transactions that is flexible enough so as not to push terrorists underground and not to make suspicious activities harder to detect. (Samy 2006: 8; Biersteker, 2007c: 18)³⁶

Similar to the IVTS, the overwhelming majority of charities are completely legitimate and carry out very important social and developmental functions. Today, although charitable activities and the diversion of funds from charitable organizations are still seen as a principal source of financing of terrorism, there is little evidence proving that they are still performing this function to the same significant level. Blanket condemnation of charities providing social welfare services is not a suitable strategy. As the possible or real abuse of charities, to some extent, is one of the main funding sources of Al-Qaeda and its affiliates there is a need for a different strategy, distinguishing the financing of humanitarian charitable networks from the ones affiliated with funding terrorists. As argued by Biersteker, this strategy should concentrate on encouraging charities to be more transparent, explaining what constitutes terrorist funding, establishing independent institutions to regulate or investigate charities, accrediting them or improving some indicators of trust so that donors can learn which charities can be trusted to deliver assistance to appropriate projects. (Biersteker 2007c:16-17)

³⁴ “The effort to choke off terrorists’ financing has been slow to adapt”. See “Special report: looking in the wrong places”, *The Economist*, 22 October, 2005, 82.

³⁵ Al-Barakaat was a financial and telecommunications business operating in approximately 40 countries and also the largest Somalian alternative remittance company using *hawala*. The US alleged that it was a channel for terrorist funds. Despite trial or conviction and lack of evidence of terrorist connection, its assets were frozen by the US after 9/11, and the company was forced to close, with millions in debt to depositors. In August 2002 the US government removed three Al-Barakaat businesses, yet this led to a financial crisis in Somalia. (McCulloch/Pickering 2005:479)

³⁶ As millions of immigrants rely on hawalas as a cheapest way to send money home, an over-regulation approach carries some risks. See “Leaders: The lost trail; Counter-terrorism”, *The Economist*, October 22, 2005, 13.

The concerns arising from listing and de-listing procedures have been mentioned above. However, with regard to the closing down of the formal financial sector for the trans-border movement of funds supporting terrorist activities, there is no doubt about the necessity of this regime provided due process is ensured. Some immediate and significant reforms of the listing and de-listing procedures at the UN to address the human rights concerns are important to enhance the effectiveness and the credibility of global efforts as well. Some of the important recommendations which will possibly increase international support in addressing the human rights concerns indicated in the White Paper are as follows: notification of individuals' or entities' listing directly by a UN body and provision of information relating to the procedures for exemptions and de-listing with a redacted statement of the case regarding the basis for listing; designation of a central administrative body within the Secretariat either to handle all de-listing and exemption requests or to inform individuals/entities of a listing; establishment of a biennial review of listings; founding of a review mechanism such as a procedure under the authority of the UNSC for consideration of de-listing proposals by expanding the existing Monitoring Team's mandate or appointing an ombudsman to serve as an interface with the UN or creating a Panel of Experts to hear requests, an independent arbitral panel to consider de-listing proposals, judicial review of de-listing decisions by an impartial and independent court.³⁷

In order to strengthen multilateral coordination and cooperation between international and regional organizations dealing with countering terrorism, including among the UN committees involving terrorism-related issues, some steps should be taken. (Biersteker 2007c:20) Most cooperation in the field of CFT takes place on a bilateral basis. There is a need for an international forum to provide international support and to exchange information and intelligence relating to the financing of terrorism. (Comras 2005: 10)

By understanding and accepting the linkage between criminal activities and terrorism, an inclusion of this reality into CFT policies is of crucial importance. Although they have long been considered as separate from each other, in order to raise funds terrorists use all kinds of criminal activities, and for utilitarian reasons sometimes close cooperation exists between criminals and terrorists.³⁸ (Shelly 2006:204; Hardoin/Wichard 2003:15) There is no doubt that an effective struggle against crime will contribute to CFT and also to the wider fight against terrorism. Therefore, in national strategies, CFT and the struggle against crime should be pursued simultaneously and in coordination with each other.

Since CFT is an extremely difficult and complex issue, it necessitates collective action either internationally among states or internally among governmental agencies and the private sector. An appropriate anti-money-laundering legal framework, a prerequisite for CFT, regulating the formal and informal financial systems, is vitally important in order to successfully disrupt terrorist financial flows. To build an institutional capacity to counter terrorist financing all relevant experts, such as prosecutors, regulators, custom agents, and bank employees, should be trained properly in financial intelligence collection and criminal investigation issues. (Clunan 2006: 571)

³⁷ See the White Paper for more information about these and other recommendations.

³⁸ For the same idea and examples to collaboration between criminal and terrorist organizations in South Asia and the Middle East see Rollie Lal, *International Herald Tribune*, May 24, 2004.

The international community, except the EU Member States, is willing to act only under UN designations. However the UN has focused the bulk of its CFT efforts on targeting groups and individuals. As the list making has been left to the Member States with UNSCR 1373 targeting all terrorist groups, there is a need to build a robust regime to attract the support of the international community to counter the financing of other terrorist organizations. Although the UN General Assembly has tried for more than a decade to agree upon it, the lack of an international consensus on a definition of “terrorism” has been one of the most significant constraints of the effective international and bilateral cooperation in the CFT, and the general fight against terrorism. (Oudraat 2004: 163) Therefore for an effective cooperation, there is an urgent need of an internationally accepted definition.

While cutting off the flow of funds, another vitally important point should be kept in mind to decide when, at which stage and in which way to stop the flow of money. Our aim is to fight against terrorism, and undoubtedly CFT is the one important component of this struggle. We should be cautious in freezing and stopping the money due to the fact that by following the flow of funds, to obtain intelligence and information about the concerned terrorist organization might be more important, because “linking people with numbered accounts is a powerful intelligence tool, often leading authorities to conduits between terrorist organizations and individual cells.” (Matthew 2007) This also demonstrates the significance of the close co-operation between all of the actors involved in the CFT.

Lastly, but foremost in importance, “countering ideological support for terrorism” with appropriate considerations should be included in CFT policies. Terrorist organizations legitimize their use of terrorist acts either to gain new members or to collect funds through using an ideology as a powerful motivation factor. And they craft their ideology by “interpreting, reinterpreting or misinterpreting religion and politics”.³⁹ (Gunaratna 2007: 21) While international initiatives focus on freezing the funds retained by terrorist groups on the one hand, on the other hand, more importantly, they should focus on disposal of ideological motivation factors, at least to cut off some of the voluntary donations at their source.

Conclusion

Since the attacks of 9/11, some important steps have been taken by the international community on CFT. To an extent, some amounts of funds used by terrorists have been seized and confiscated, many charities have been closed, and most of the states signed and ratified the UN Convention. However, as it is illustrated above, international CFT initiatives are very far from being accepted as successful. While terrorist organizations are easily demolishing barriers and adapting themselves into the new conditions continuously, it is difficult to come to the same conclusion for our strategies in the CFT. Unfortunately terrorists are a step ahead of international and national strategies.

In order to generate funds that are difficult to track through the current systems, terrorists have heavily relied on criminal activities, the utilization of domestic sources, and increasingly cash

³⁹ For eight policy considerations to counter the ideological support for terrorism suggested by Herd and Aldis see (Herd/Aldis 2007:246-252).

couriers rather than paper trail. The current CFT tools, heavily focusing on formal financing systems, need to be adapted to new changes in the financing of global terrorism, but not remaining a step behind of terrorists, and effectively implemented with a close cooperation either between states or different domestic public and private institutions within a state, and inter-governmental organizations as well.

Finally, for a more effective CFT, balancing the rights of individuals with the good of the state, our initiatives need to be undertaken in a manner consistent with the rule of law and in conjunction with the enhanced international and bilateral cooperation and intelligence sharing, better global police and judicial cooperation, the efforts to address the root causes of terrorism and to disrupt the ideological support for terrorism.

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