PROTECT!

BUILDING A GLOBAL NETWORK
TO COMBAT TERRORISTS

An interpretative report of the EastWest Institute's
4th Worldwide Security Conference

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* The EastWest Institute generally does not take positions on policy issues. The views expressed in this publication are those of the authors and not necessarily the views of the organization, its Board of Directors or other staff.

EXECUTIVE SUMMARY

The EastWest Institute's 4th Worldwide Security Conference brought attention to two unfortunate realities. More than half of the 600 public officials and private sector participants, all of them involved in some way in counter-terrorism, felt that we are far from winning the long-term struggle against terrorism. Secondly, there was majority support for the view that terrorists are winning the propaganda war.

The Conference demonstrated the existence of an extremely diverse array of thought, opinion, practical technique and prognosis regarding the threat of terrorism in the world today. The world is facing a resurgent al-Qaeda, and a situation in Iraq, Israel/Palestine, Lebanon, and potentially soon, Iran, which all combine to fan the embers of grievance. In contrast with the gloomy prognosis for terrorism in the Middle East and South Asia, the successes by governments against terrorists in Pacific Rim countries (Indonesia, Philippines, USA) represent something of a 'silver lining' to the dark clouds elsewhere. As for the terrorist problems in China's Xinjiang province or the Caucasus, these particular situations remain outside general public awareness, though each is clearly a threat to regional security.

The inescapable conclusion from discussions at the Conference is that a new multilateral political solution is needed to defeat globally-networked terrorism. The failure of existing international and regional frameworks to agree on common counter-terrorism policies is enough evidence of the need. The threat from terrorist use of weapons of mass destruction (WMD) presents challenges on a scale for which states, international organizations and communities are simply not prepared.

There is widespread support for new and discreet communication channels among governments, public officials, business leaders and civil society representatives, and within regional and international organizations to overcome and bypass existing political obstacles and organizational obstacles to globally-networked terrorist organizations. There is a need to overcome mistrust and to reconcile competing perceptions of how to combat terrorism.

Perceptions of injustice are a major incubator of terrorism. The world should be comfortable with radicalization that arises in response to perceptions of injustice, since freedom of thought and conscience are basic human rights. But such radicalization must be taken as the first

danger sign of an evolving terrorist threat. International actors wanting to combat terrorist threats must counter or minimize the feelings of injustice. This is a daunting challenge. At the core of combating injustice and working amongst radicalized communities lie complex social realities that are not susceptible to short-term solutions.

As much as counter-terrorism remains fundamentally political, it has other, equally central operational dimensions. The most important of these are effective intelligence, investigative, policing and judicial capacities. Where necessary, these have to be backed up by selective application of military force, especially but not exclusively by special forces and covert action forces.

Recommendations

States, business leaders and community leaders should build a new global second-track architecture, a network of networks, in the counter-terrorism field. Trust-building across the East-West divide should be an important objective.

States should convene a global summit within a short practical time frame, perhaps two years, on global controls on WMD.

States should make greater improvements in their technical coordination with each other to ensure that existing legal and operational obstacles are removed, especially regarding the extradition of terrorists and the tracing of financial flows linked to terrorist activities.

Government leaders and their counterparts in business and community groups must improve our collective security system to combat terrorism by promoting strong public-private partnerships (PPP).

States must elevate the political struggle to a much higher priority in their policies to complement actions by security agencies and military forces. States must maintain their efforts to counter terrorism by preventing attacks, but must do more to undermine the political and social networks of terrorists, and nullify their support.

TABLE OF CONTENTS

INTRODUCTION

The most revealing and provocative statement at the EastWest Institute's (EWI) 4th Worldwide Security Conference (WSC4)[1] came from a respected Western academic: "the problem is that we are not talking to al-Qaeda." The suggestion – simply unacceptable to many people – was that this was necessary in order at least to see if they would be amenable to some sort of political solution to the grievances they claimed to fight for.

This proposition highlighted the central problem of the current global framework for dealing with terrorism – a fracture between ideological standpoints. This paper aims to analyze the causes, mechanisms and effects of this fracture and to finally propose alternative solutions based on EWI's 27 years of experience and unique positioning.

The paper will provide an analysis of the current counter-terrorism situation, based partly on the work conducted at WSC4 but also drawing on EWI's body of knowledge from its other work. The analysis will firstly examine the nature of the terrorist threat before tackling the questions of definition, language and values. This will bring out the fracture between understandings of East and West mentioned above. The report will then evaluate the existing frameworks for combating terrorism, with special focus on international cooperation, including the interactions with states of private companies and non-governmental bodies.

NATURE OF THE THREAT: A GLOBAL ASSESSMENT

The past year has brought much bad news on the international security front. In April 2006, Iran announced that it had succeeded in enriching uranium and it continued to defy the international community. In July, North Korea test fired a series of missiles, followed by a nuclear test in October. The threats to peace and security in Afghanistan and Iraq increased. Military threats and military occupations seemed to dominate the world stage. Thus the question in a straw poll that opened WSC4, "Do you feel more secure today than you did one year ago?" was

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unsurprisingly answered in the negative by a clear majority of the participants.

A number of leading figures from government and recently retired senior officials who spoke at the conference supported this gloomy assessment. Though there have been "tactical successes in fighting terrorists in the preceding year, we are losing the strategic battle for hearts and minds".[2]

The Definition of Terrorism

The first and most immediate problem is lack of agreement on who is a terrorist or to which legal system they should be accountable. There is no agreement in an authoritative international body on what constitutes an act of terrorism. The disagreement on the definition of terrorism is not merely an academic preoccupation; the debate goes to the heart of current international shortcomings in counter-terrorism work.

While some strongly believe that terrorism must be defined quite precisely in order to create a code of governance for counter-terrorism, others dismiss this discussion as superfluous. They argue that criminalizing terrorism is sufficient.

Yet the two positions are not necessarily mutually exclusive. There is general consensus among security experts that, in the first place, acts of terrorism ought to be seen as criminal.[3] This perspective seeks to deny recognition of the terrorists' political agenda by the international community, and thus helps to de-legitimize such violent ideologies. Generally defining terrorism as merely illegal also allows 'acts of terrorism' to be punished under criminal laws, which are for the most part sufficient for convictions.[4] However, as discussed later in this paper, debate – and persistent controversy – ensues over whether our current legal framework is indeed capable of prosecuting terrorist activities as fully as is needed.

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[2] Saleem Vaillancourt and William Boyd, *Protect! A Summary Report of EWI's 4th Worldwide Security Conference*, EastWest Institute, New York, Brussels, Moscow, 2007.
[3] Ibid.
[4] Of course, while convicting terrorists is important as it sends out the message that terrorist plots do fail, and the ensuing punishment is a deterrent, we also need to consider, in addition to such palliative measures, how to prevent terrorism in the first place.

There is also a view, however, that the absence of a universally agreed definition of terrorism actually blurs the boundaries in politically useful ways, especially in regard to securing convictions for anticipatory crimes. The blurring has in some cases provided governments with a kind of *carte blanche* to detain terrorist 'suspects' under relatively weak legal conditions. The other side of this coin is that the inadequate provision of a definition of terrorism constrains the capacity of the state to detain 'known' terrorists and their associates. In the UK, for example, the 'control orders'[5] of the Prevention of Terrorism Act 2005 represent an attempt by the Government to act in a situation where it felt that the conventional legal system is unable to bring terrorists to account.

It is undeniable that terrorists are exploiting the lack of cohesion among states and agencies on how to process such criminals, as they exploit the slightest controversy about legal methods employed by some states.

Whose 'War on Terror'?

The definition of terrorists as 'Islamic' radicals who are 'out to get' Western society is one dominant image of terrorism in the Western world and much of East Asia. While a real threat towards Western states and their nationals does issue from some predominantly Muslim countries in the Middle East, such a definition of terrorism is nevertheless a narrow one. It overlooks the fact that many, if not most, of the victims of terrorism in recent years have been Muslim citizens and predominantly Muslim countries. Ethno-nationalist terrorism claiming a religious basis exists in many places where Islam is not the majority religion ('white Christian supremacists' in the US, Jewish extremists in Israel, and Hindu terrorists in India).[6]

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[5] "An order against an individual that imposes obligations on him for purposes connected with protecting members of the public from a risk of terrorism." (*Prevention of Terrorism Act 2005*, Her Majesty's Stationery Office, http://www.opsi.gov.uk/ACTS/acts2005/50002–a.htm#1.
[6] Terrorist attacks have occurred across, and against, many different countries and cultures; some have a claimed religious element but many do not. An Air India flight was blown up after its departure from Vancouver, Canada, killing all 329 people on board (June, 1985); the Tokyo subway system was attacked with sarin nerve gas, killing twelve and affecting 5,000 commuters (March 1995); in the worst example of domestic terrorism in the US, Oklahoma City suffered a bombing attack, which killed 168, including 19 children (April 1995); the Bali Bombing killed 202 people in an Indonesian nightclub (October, 2002); in Spain, the Madrid train bombings killed 191 (March, 2004).

China, for example, is concerned about what it perceives to be the limited and self-focused agenda of the US in *its* 'war on terror': that the American objective in countering terrorism does not extend past foreign Islamic threats to the US.[7] China's immediate terrorist security concern, however, issues from its Uighur separatists, which differs from that of the US in being a much smaller and more localized threat. According to one study, "Chinese officials generally believe that the Bush Administration's approach to counter-terrorism is overly aggressive, diplomatically impatient, and pays too little attention to the political and economic discontent in the Third World that gives rise to terror activities."[8] This view received considerable support at WSC4.

Nevertheless, it is ironic that some countries, including China, have been able to improve relations with the US on the basis of common opposition to terrorism and practical measures to defeat it.

War Rhetoric and Prevention

At the core of counter-terrorism is the essential task of not allowing terrorist violence to dictate the nature and function of our society.[9] In this effort, public diplomacy is one of the biggest weapons. Yet most governments remain weak in this area. There is widespread global skepticism toward the sort of government 'propaganda' needed in such public diplomacy campaigns. The consequent policy failures that arise from this vacuum are contributing to radicalization, when in fact they might be more readily avoided.[10] Public diplomacy specialists need more power and visibility in the war against terror.

Many leading experts in global security agree that there persists a grossly unfortunate choice of language surrounding the discussion on terrorism, especially in the United States.[11] The mistake, it is argued, is in declaring the "War on Terror" a war in the first place, as it is illogical to declare war on a tactical phenomenon. Representing terrorism as something more existential than a series of criminal acts does carry the danger of legitimizing it in the eyes of radicalized communities.[12]

The polarization that results from the creation of us-them dichotomies fuels a psychology of victimization that already exists among terrorists and their potential supporters. Al-Qaeda leverages this sense of victimization or alienation enormously. Calling efforts against terrorism a "war", then, is viewed as a mistake because it helps shapes cyclical actions and reactions that fracture East-West relations; it also dangerously weakens the protection of human rights laws.

One example of this is the judgement by the US to use special military courts to try suspects captured in Afghanistan and elswhere. The US view has apparently been that the civil court system places too great an onus on the prosecution to provide evidence, which can be largely unavailable in a 'battlefield setting'. The charge of being an enemy combatant could be proven more easily than a charge of being a member of a terrorist network. This is one source of concern among international human rights groups over the use of war rhetoric.

The alternate view is that the war rhetoric is justified. Proponents of this view argue that terrorists of the Al Qaeda type are prepared to kill on a large scale and organize themselves in a way that can only be confronted with all assets of state and civil power, including respectively military and police forces. This is not a conventional war, they argue, but a counter-insurgency war of a new kind. Moreover, they argue, the use of war rhetoric is justifiable because of the existential threat that globally-networked terrorists pose to our social, economic and political order.

HUMAN RIGHTS DILEMMAS

Several speakers at WSC4 assessed that one 'great mistake' by many governments in the response to terrorism in recent years has been the violation of human rights, especially the use of torture to obtain information. The view was that such actions legitimize terrorist propaganda, fuel radicalization and undermine the principles upon which civilized society rests. This view has been widely expressed in regard to the US but it is of note that the use of torture in fighting terrorism is practiced in many other countries, where it is a systemic problem rather than, as in the US case, an aberration. (This theme is explored in greater depth in an EWI Policy Paper, *Protect! Civilians and Civil Rights in Counter-Terrorist Operations*.)[13]

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[7] See Denny Roy, *Lukewarm Partner: Chinese Support for U.S. Counter-Terrorism in Southeast Asia*, Asia-Pacific Center for Security Studies, March 2006.
[8] Ibid.
[9] Saleem Vaillancourt and William Boyd, *op cit.*
[10] Ibid.
[11] Ibid.
[12] Ibid.

[13] Aisha Sabadia and Greg Austin, *Protect! Civilians and Civil Rights in Counter-Terrorist*

A specific example of the twists and turns of this controversy has been the US imprisonment of 22 Chinese nationals at Guantanamo Bay, despite extradition requests by the Chinese. This situation, "clearly embarrassing to the Chinese, sparked Chinese criticism that America was inconsistently showing leniency toward terrorists that were a direct threat to PRC but not US interests."[14]

A number of world leaders, including former Presidents or Prime Ministers of democratic countries, support the view that "the choice between human rights and security is a false dichotomy."[15] They make a plea to protect equally basic human rights and civil liberties and to avoid the temptation to make trade-offs between the human rights of potential terrorist victims and the civil liberties of terrorist suspects.

Ultimately, this is the only defensible and effective setting for policy.

TERRORIST NETWORKING ON A GLOBALIZED SCALE

The techniques used by terrorist and criminal organizations are developing rapidly, and in some areas are far ahead of the abilities of security forces to counter them. The 2007 State Department Report on terrorism claims, "AQ [Al-Qaeda] and its affiliated movements continue to be highly adaptive, quickly evolving new methods in response to countermeasures."[16] Of note is the use of modern communications networks, and especially the Internet, both to control finances on a global scale and to disseminate new methods. Certain easily-available technologies[17] allow for effectively untraceable communications. More commonly used technologies such as cell phones and email present such a vast amount of information to our security services that effectively monitoring them is most difficult.

In addition, credit card fraud can prove a lucrative and relatively risk free source of funding for criminal organizations. As recognized by the

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Operations, EastWest Institute, New York, Brussels, Moscow, June 2007.

[14] Denny Roy, *op cit*.

[15] Human Rights Watch, *Dangerous Ambivalence: UK Torture Policy Since 9/11*, 2 November 2006, http://www.hrw.org/backgrounder/eca/uk1106/.

[16] US State Department, *Country Reports on Terrorism 2006,* 30 April 2007, http://www.state.gov/ct/rls/crt/2006.

[17] The Free Network Project (http://freenetproject.org/) and The Onion Router (TOR) (http://tor.eff.org/) provide two high-profile examples that could effectively frustrate low-intensity surveillance.

US State Department immediately after 9/11,[18] online financial transactions allow for rapid money laundering, and the line between organized crime and funding terrorism is blurred more than ever.

The risk of the use of chemical, nuclear, biological or radiological (CNBR) weapons by non-state actors is also increasing. The poisoning of Alexander Litvinenko[19] amply demonstrates that (Western European) security systems are not capable of acting convincingly against a threat of this nature.

The origins of the terrorist threat remain complex. Whilst claims about "a form of global insurgency" are clearly warranted by the international nature of organizations such as al-Qaeda, the US State Department reminds us of the local aspect of this global phenomenon: "Thus we have seen a trend toward guerrilla terrorism, where the organization seeks to grow the team close to its target, using target country nationals"[20] (as part of a response to improved international security checks). This would indicate that the required response to the terrorist threat is not as simple as improved border security – the internal or home-grown threat is still of concern, even when dealing with internationally-networked terrorist organizations. It must also be remembered that Islamic extremism is not the only motivating factor for terrorism, nor is terrorism the only concern of security forces. Organized crime and those with 'home-grown' grievances must not be forgotten.

Thus, the global terrorism effort actually occurs on a number of discreet levels: global, regional, cross-border and national (local).[21] There are important synergies between the various levels which need to be exploited to contain and defeat terrorism.

EVALUATING INTERNATIONAL COOPERATION

At WSC4, the Executive Director of the United Nations (UN) Coordinating Committee for Counter-Terrorism, Javier Rupérez,

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[18] Richard N. Haass, Director, Office of the Policy Planning Staff, *Remarks to the National Defense University*, 21 November 2001, http://www.state.gov/s/p/rem/5508.htm.

[19] 'Scientists examine corpse of former Russian spy,' Reuters, 22 November 2006, http://today.reuters.com/.

[20] US Department of State, *Country Reports on Terrorism 2006*, Washington DC, April 2007, p.11, http://www.state.gov/documents/organization/83383.pdf.

[21] The authors are grateful to Ambassador Henry A. Crumpton for this synthesising reflection.

presented his view that the UN's role in counter-terrorism, as played by his committee, is in promoting a principally preventive discipline. This involves capacity building: providing financial, logistical and material support for security services, as well as establishing a legal framework to ensure that perpetrators are within the reach of the law. The field of operations of the UN committee represents but a small part of the global counter-terrorism mission.

Even within the European Union (EU), one of the most highly developed regional organizations in the field of counter-terrorism, there are major gaps and shortcomings in the scope of such cooperation, according to a former senior official. He cited four challenges to the current European system:

1. The gap between the public perception of weaknesses in the fight against terrorism and the actual, relatively good, track record of EU Member States
2. The need for better information exchange to support prevention activities
3. The need for evidence collected in one Member State to be admissible in another
4. The need to overcome data protection issues between the US and the EU.

According to this former official, the UN Counter-Terrorism Committee addresses just one of these in its capacity building measures. The operation of the UN as a whole is designed to increase trust between nations, but when states are seen to act unilaterally *without sanction,* not just against other states but also against principles such as 'respect for human rights and fundamental freedoms,' it is clear that both trust in the system and the public perception of the system will be undermined.

Fortunately, the UN does not pretend to be a 'world government' – this role is, if anything, forced onto it. There are a number of organizations that work to perform various vital tasks of international cooperation against terrorism and organized crime. Examples include the World Customs Organization (WCO) and the G8. The WCO promotes and oversees the vital task of facilitating international trade whilst standardizing (and improving) security efforts. The Framework of Standards to Secure and Facilitate Global Trade (SAFE Framework)

was created following 9/11, and 144 out of 171 WCO member states have expressed their intention to implement the Framework.

New Tactical Frameworks

As suggested above, the nature of the terrorist threat is changing. It is clear that our security forces need to change their objectives. From being primarily concerned with reactive measures – with bringing those who commit crimes to justice – the increasing consequences of terrorist attacks force us to move the emphasis to the prevention of attacks and to the proactive hindering of terrorist activity. It is no longer sufficient to let the security response be dictated by the threats to our societies – it is necessary to take the initiative.

This requires two prongs of action. The most important of these is to remove the wish to pursue violence, to successfully brand this activity as illegitimate and to nullify the support for terrorist causes – in short, to roll back the increasing radicalism identified in the first section of this report. This is discussed later in this paper. In the short term, however, the existing scenario must be dealt with and this requires the disruption of terrorist organizations and plans. This falls under the remit of traditional security services. Yet these services have to deal with new threats. It is to the deployment of methods and technologies required to meet the changing nature of the threat that we now turn.

Simply increasing expenditure on existing security measures is not a workable solution. In certain sectors, such as airport operations, security costs were up to around 25 per cent of operational costs in 2006.[22] It would not be possible to provide total security at any price, and the existing forums and governmental structures are much better positioned than EWI to examine traditional avenues. Rather, EWI is aptly positioned to highlight new approaches to providing security solutions – approaches that come from the private sector, from other countries and from third parties not frequently consulted through official channels. These approaches should bypass or help annul the political barriers so often faced by security proposals.

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22 Roy Griffins, ACI EUROPE Director General, quoted in ACI EUROPE press release 'European Commission report confirms the need for public funding of security,' 7 August 2006 www.aci-europe.org.

Public-Private Partnerships

One key method of improving operational performance of our security systems, highlighted at WSC3 by the Russian government, is the promotion of public-private partnerships. During its 2006 G8 presidency, the Russian Federation made the fight against terrorism one of its top priorities and developed an ambitious strategy for the establishment of solid public-private partnerships to counter terrorism and allow better and more fluid communication channels between governments and businesses.[23] Initiatives like the Russian Federation's G8-endorsed strategy offer alternative ways to build stronger partnerships to combat terrorism from multinational and cross-sector perspectives. The Second Global Forum on PPP to counter terrorism is scheduled to be held in Moscow in November 2007.

In addition to the protection of our societies against terrorist attack, the authors believe that there are other benefits to be gained. In 2005, EWI set up the EU Consortium on Security and Technology, an ongoing project investigating the benefits and furthering the progress of public-private cooperation across the EU. Some of these benefits include: more cost-effective purchasing, accurate design of systems to meet specific goals and the faster development of common standards, to name a few. Investigating these is not the goal of this paper, however it is important to note that activities undertaken to improve our security do not necessarily have to result in increased costs and administrative burdens. Acknowledging this will help identify 'paths of least resistance', where the advantages to all parties can make progress smoother and

more rapid. Once again, the primary barriers are political – issues of cost, trust and cooperation.

Cooperation between public and private sectors helps bring together the two critical halves of any procurement decision – *what is available?* and *what is required?* – and therefore develop more realistic contracts and more effective market signals for companies.

The European Commission has allocated 1.4bn Euros for security research to this end. In the view of the authors, this is precisely the right track for the EU to be taking – especially when one considers that the EU is also providing several hundred million Euros to non-member states to improve their capacities as well.[24] Nevertheless, the first disbursement of the Commission funding only provides enough for a handful of projects for demonstration, integration or capability enhancing purposes.[25]

The funded research and development is not limited to new security technologies themselves but also to the methods and techniques for interaction with these technologies, specifically development of common standards for purchasing and cross-cutting activities to better understand the interactions between security and society.[26] This is the single most important area for progress, not just on public-private partnerships but also for the industries and government departments concerned themselves – harmonizing the terms of reference for products makes their design and deployment much smoother.

Wider consultation with the technology designers themselves in the planning stages of projects would also help alleviate 'designed-in deficiencies' in processes and technologies. It is important in future projects, particularly those concerned with critical infrastructure and information sharing, that they consider both the issues of resilience and interoperability (which has to be viewed not just in the present environment but with regard to future developments and legacy systems). The involvement of private sector expertise in coming up with the requirements for the technology in the first place (rather than just being presented with a contract to bid for) could further aid with increasing the efficiency of state-owned security systems.

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[23] EWI's involvement was crucial to the success of this process endorsed by the other G8 countries and the European Union and included in the final declaration from the G8 Summit held last July 15th in Saint Petersburg. The Russian Federation chose EWI's Third Annual Worldwide Security Conference (held in Brussels on 21-23 February 2006) for the public launch of their G8 counter-terrorism strategy. Following the Conference, EWI helped the Russian Federation to co-organize a series of meetings with strong participation from select G8 government experts and business representatives to address three specific counter-terrorism issues: Cyber Security; Cross-Border Movement of People, Goods & Money; and Energy Critical Infrastructure Protection and New Technologies. The conclusions were presented in Moscow on October 11, 2006 during a one-day Seminar on "Specific Proposals for Strengthening Partnerships between Governments and Businesses to Counter Terrorism" which was organized by the Russian Ministry of Foreign Affairs again in cooperation with EWI. The final step was the First Global Forum on Public-Private Partnerships to Counter Terrorism held in Moscow, on November 28-30, 2006, which engaged high-ranking officials from the Russian Federation as well as CEOs representing leading international and national corporations.

[24] Vaillancourt and Boyd, Ibid.
[25] Security Research Call 1, 22 December 2006, http://cordis.europa.eu/fp7/dc/index.cfm.
[26] Presentation by DG ENTR to EU Consortium on Security and Technology, 18 April 2007.

In terms of the structure of the purchasing environment, the aim is to combine the expertise of the manufacturers and the end users to come to an agreement on both common standards for security technologies and a common language for describing them and assessing their functions. This not only helps clearly define *what is available* and *what is required*, but it also helps the market function. If all actors are working on the same framework, and that framework is clearly set out in public documents, it makes it far easier for new actors to enter the market. The removal of this barrier to market entry in what has been a relatively closed market (due to the sensitive nature of many technologies) would result in a fall in prices as more niche companies and consortia find themselves able to interact with public sector purchasers.

The final advantage would be not just to the private and public sectors, but to the general public as well. A more transparent market would aid in enforcing accountability on matters of public spending. This is particularly important in the security sector, where public spending on extremely large, expensive projects needs to be kept under close scrutiny at every step.

It is clear then that there are many advantages to increased public-private cooperation on security related technologies. The question is how to deliver this, especially when cooperation is required across such a vast range of industries, governmental departments and countries. In order to make rapid progress, it is necessary to take action wherever it is easiest, yet this approach risks losing sight of the much larger benefits to be gained through making politically tougher decisions. Any framework would involve examining multiple levels simultaneously and would require the consideration of each project in relation to those it interacts with, both now and in the future.

In the opinion of the authors, it is preferable that primary legislation be used as only as a last resort when setting security standards. The risk of a major terrorist incident causing a 'knee-jerk reaction' is damaging enough when confined to the activities of an executive authority[27] and entrenchment in primary legislation must be avoided. In certain rapidly advancing industries, such as cyber-security, primary legislation to outlaw articles for use in offences would prove both unworkable and prevent genuine advancement in the field[28].

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[27] The Transport Security Administration's ban on liquids on flights, for example.
[28] For example, see Section 37 of the Police and Justice Act, 2006 (UK), which amends the Computer Misuse Act, 1990, to outlaw supplying and obtaining articles for use in offences.

Police Cooperation

In February 2007, Gijs de Vries, EU Counter-Terrorism Coordinator, acknowledged that there are still great gains to be made in technical coordination across member states. Technical coordination measures fall, for the most part, under the framework outlined above for public-private partnerships. However, inter-agency cooperation does go further than technical coordination.

The success of agreements in securing the extradition of terrorists[29] and the tracing of financial flows is noticeable. Again, existing international frameworks already allow for this to take place – a possible reason why international terrorist organizations may be beginning to favor operating through 'home grown' terrorist cells.

It is one thing to ensure that systems are *able* to exchange data safely, securely, rapidly and relevantly – quite another to ensure that the legal and operational barriers are removed. Again, the European Union is facilitating advancements on this front, with the European Data Protection Supervisor attempting to provide a framework of responsibility that makes the legal barriers clear – even if this is currently causing conflict with member states attempting multilateral action[30].

Existing organizations like Interpol and Europol help overcome some of the operational barriers. For example, Interpol operates numerous international databases, including one of stolen passports and travel documents[31], whilst part of Europol's mandate is to provide operational support to the investigations of the police forces of Member States[32].

WEAPONS OF MASS DESTRUCTION

Of arguably the greatest importance to the overall security scenario are agreements to limit nuclear proliferation and to tighten the international missile trade. Even if the likelihood of terrorists gaining access to

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This has been criticized by companies and industry groups for making an everyday IT technician's software 'toolkit' effectively illegal.
[29] The European Arrest Warrant forms a good example, allowing for the rapid capture of Osman Hussain, a suspect in the London 21/7 bombings.
[30] The Treaty of Prum, signed by 15 European Member States, proposes a framework for data sharing that precedes and undermines any (as yet undecided) European framework.
[31] Interpol website, http://www.interpol.int/Public/ICPO/corefunctions/databases.asp.
[32] Europol website, http://www.europol.europa.eu/index.asp?page=facts.

nuclear weapons and advanced delivery systems is remote, the potential damage is huge. Thus, any steps that can be taken to limit this are beneficial – and would also help prevent states acquiring such weapons.

There is a strong case to be made for discussion of the future handling of all categories of WMD and missiles in one and the same forum. At the most basic level, the fact that missiles are a significant launch platform for all categories of weapons of mass destruction (chemical, biological, radiological and nuclear), as well as more conventional weapons, means that discussion of missiles in the context of any consideration of individual categories of WMD, is long overdue.

But there are several more compelling reasons. The first relates to current US national security strategy premised on the view that WMD represent a new generic threat that justifies new approaches to pre-emptive attacks. The second relates to the fact that there is an Advisory Opinion of the ICJ on the table that expresses a view on the lawfulness of the use or threat of use of nuclear weapons that has fairly clear potential application to other WMD, especially in regards to biological weapons.[33] A third relates to the current stalemate in negotiations on specific regimes to do with single classes of WMD, such as a protocol

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[33] The UN General Assembly requested an Advisory opinion from the ICJ on the legality of the use of nuclear weapons. In 1996, the Court produced an Advisory Opinion on the Legality of the Threat or Use of Nuclear Weapons, which concluded that the threat or use of nuclear weapons is generally illegal and that there is an obligation to conclude negotiations on complete nuclear disarmament. This was based mainly on the principles of humanitarian law prohibiting warfare conducted with weapons or methods which do not discriminate between military and civilians targets; which cause unnecessary suffering; are disproportionate to the act being responded to; violate the territory of neutral states; and last but not least, cause long-term and widespread damage to the environment. The Court found: 'It follows from the above-mentioned requirements that the threat or use of nuclear weapons would generally be contrary to the rules of international law applicable in armed conflict, and in particular the principles and rules of humanitarian law; ....However, in view of the current state of international law, and of the elements of fact at its disposal, the Court cannot conclude definitively whether the threat or use of nuclear weapons would be lawful or unlawful in an extreme circumstance of self-defense, in which the very survival of a State would be at stake;' ... 'The first is aimed at the protection of the civilian population and civilian objects and establishes the distinction between combatants and non-combatants; States must never make civilians the object of attack and must consequently never use weapons that are incapable of distinguishing between civilian and military targets. According to the second principle, it is prohibited to cause unnecessary suffering to combatants: it is accordingly prohibited to use weapons causing them such harm or uselessly aggravating their suffering. In application of that second principle, States do not have unlimited freedom of choice of means in the weapons they use.' http://www.icj-cij.org/icjwww/icases/iunan/iunanframe.htm.

for biological weapons control and the future of the Nuclear Non-Proliferation Treaty.

As may have been expected in such a controversial case, just about every aspect of the Court's opinion was welcomed by some and heavily criticized by others. And it must be admitted that there are various elements of it, which require further consideration and development. In particular, it would be particularly useful to elucidate on the Court's provision of a potential escape clause in "an extreme circumstance of self-defense, in which the very survival of a State would be at stake", particularly in the partial justification advanced by the US for the 'war on terror' and preemptive strikes which is based on self-defense. It would probably also be useful to consider further the status of tactical nuclear devices, particularly given growing concerns about their potential use by terrorists groups or even certain countries.

In conclusion, the primary barriers facing the effective operation of existing 'tactical' frameworks to combat terrorism and organized crime are political. Technical barriers on issues like data sharing are surmountable and are being surmounted.[34] The problems come in the form of a lack of communication (due to the complicated natures of the technologies involved) between those designing, building, operating, commissioning, using and paying for security technologies and systems. This can be surmounted by greater public-private cooperation at all stages and all levels. Privacy concerns form a more traditionally political barrier to most forms of non-technical international cooperation, and in order to overcome these it is necessary to establish a data protection architecture that is credible to those using the services. The international organizations necessary to further work on their particular topic areas also exist and perform relatively successful work.

CONCLUSION AND NEXT STEPS

The main conclusion to be drawn from WSC 4 and EWI's work on counter-terrorism over several years is the failure of existing global and regional structures to rise to all of the dimensions of the challenge presented by globally-networked terrorists intent on waging a new form of social insurgency.

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[34] Meeting on *Protection of Information and Identities*, EU Consortium on Security and Technology, 8 May 2007.

The inadequacy of current counter-terrorism efforts is reflected in the way terrorism is confronted separately at global, regional, national and local levels. Successful strategies can be found at both local and national level (e.g. in Indonesia or the Philippines), but the failure to coordinate on the global and regional levels is a dangerously weak link in the counter-terrorism effort.

The UN has proved not to be the appropriate framework for practical counter-terrorism issues. In order for concrete progress to be made, operational decisions on counter-terrorism should be transferred from the UN to more appropriate international frameworks and second track architectures that can better improve the response to rapidly evolving security situations. International frameworks – such as the UN – should be granted stronger sanction capacity in the event of actions in breach of international agreements on human rights and fundamental freedoms.

Another significant conclusion is the lack of harmonized perceptions between the new East and the West on terrorism as well as the lack of effective shared strategies on how to face security threats. Growing mistrust, opposing perceptions between the new East and the West, and mainly political obstacles prevent state and non-state actors from agreeing on specific counter-terrorism policies.

Choice of language needs a profound rethink. The 'war rhetoric' has proven to be used by terrorists to establish an us-them dichotomy that leads to a psychology of victimization and gives terrorist groups the opportunity to legitimize their terrorist actions in the eyes of potentially complicit communities.

Greater cooperation and cohesion between governing, judicial and security bodies and agencies is needed. Current lack of coordination at international and regional levels create growing disjunctions between the East and the West which terrorists can, will, and are using.

The threat from terrorist use of WMD presents challenges on a scale for which states, international organizations and communities are simply not prepared.

Next Steps

States, business leaders and community leaders must build a new global second-track architecture, a network of networks, in the counter-terrorism field. The main goals would be:

- ❑ To provide alternative and discreet communication channels among governments, and within regional and international organizations;
- ❑ To help overcome political obstacles, mistrust and opposing perceptions that prevent effective counter-terrorism cooperation from occurring;
- ❑ To stimulate fresh thinking and to build better consensus behind more effective policies;
- ❑ To bind together the non-governmental aspects of counter-terrorism work (particularly in religious communities and the business sector) with the much more readily accepted governmental aspects.

The framework should provide for the creation of small Working Groups on selected issues, both on narrow or technical topics, such as the threat of terrorist use of biological weapons, and on more general security problems, such as the response of states, business and civil society to asymmetric warfare by non-state actors. The Working Groups should meet several times a year, and engage in a variety of research, publishing and convening activities.

States must convene a global summit within a short practical time frame, perhaps two years, on global controls on WMD. This was one of the leading recommendations of the Blix Commission on WMD. The idea is challenging but essential. There would need to be intense preparation over a period of two years to force a new consensus between states that are currently diametrically opposed on key issues.

States must make greater improvements in their technical coordination with each other to ensure that existing legal and operational obstacles are removed, especially regarding the extradition of terrorists and the tracing of tracing of financial flows linked to terrorist activities.

States and business leaders must improve our collective security system to combat terrorism by promoting strong public-private partnerships (PPP). These can bring enormous benefits, not least on

18

the technical side (such as more cost-effective purchasing of security systems, more accurate designs of security systems to meet specific goals, and the faster development of common standards).

Yet central to the fight will always be the most important public-private partnership – the social contract – the relationship between the state and the individual that delivers security in return for satisfaction of the economic and social aspirations.

States must elevate the political struggle to a much higher priority in their policies to complement effective actions by security agencies and military forces. States must maintain their efforts to counter terrorism by preventing attacks, but must do more to undermine the political and social networks of terrorists, and nullify their support.

In a globalized world, the social contract is no longer the preserve of any single state. Thus, states and community leaders must work to create a new global social contract that will foster more distinctly the economic and social aspirations of those people who are currently drawn to support terrorist crimes out of disaffection with existing international order. A new world order that will contain and defeat globally networked terrorism will involve high (and difficult to attain) standards in international justice and domestic justice delivery.

This is in the longer frame of history an aspiration. To meet the threats in today's world, the goal has to be oriented around practical problem solving that mobilizes all of the necessary assets in a highly focused way specific to each terrorist threat.

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