

# ***PROTECT!***

## **CIVILIANS AND CIVIL RIGHTS IN COUNTER-TERRORIST OPERATIONS**

**Aisha Sabadia and Greg Austin**

**Policy Paper 4/2007**

### **About the Authors\***

**Aisha Sabadia** co-authored this paper while working at the EastWest Institute. Aisha graduated with a degree in Film Studies and Production (with an emphasis on documentary work) from the University of Michigan Ann Arbor. She went on to compile footage in post war Sarajevo. She previously worked at Countyline Productions for VH1 and CMT as well as CBS Local News. Aisha has also completed her requirements for International Studies at the University of California, Irvine (UCI). She interned in Washington DC under former Senator John Corzine, where her work focused predominately on the Darfur Accountability Act. Aisha was President of the Muslim Student Union at UCI and a section editor for Al Kalima (a political Middle Eastern newsmagazine at UCI).

**Greg Austin** is a Vice President and Director of the Global Security Program at the EastWest Institute. Over a thirty-year career, he has served with the International Crisis Group (Brussels), the Foreign Policy Centre (London), the Australian National University, the Australian parliament, the Australian Defence Department and an Australian diplomatic mission. He is the author of several books and numerous monographs on international security. He has a Ph.D. in International Relations and a Master's degree in International Law from the Australian National University.

The authors would like to acknowledge the comments or research support of Christine Lynch, Nima Razfar, Daniel Bautista and Stephen Sullivan. We are especially grateful to Judge Bruno Simma of the International Court of Justice for alerting us to several specific research sources.

*\* 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

In their efforts to defeat well-organized and well-armed terrorist groups, state agencies face difficult choices about how much force to use and how to distinguish between possible terrorists and the civilian populations amongst which they operate clandestinely. Terrorists lack scruples about locating themselves in or launching their operations from civilian areas.

In addressing these dilemmas, all states must acknowledge a moral obligation to protect civilians in counterterrorist operations. The protection of the social and economic infrastructure that supports daily life for civilians is as important. If states do not accept these obligations, they will be surrendering an important weapon in the fight for the hearts and minds of potential terrorist supporters.

Some states, such as the US, Britain, France, Germany, the Netherlands, Canada and Australia, have highly developed practices designed to maximize protection for civilians in counter-terrorist operations. Other states must be encouraged to conform to those standards. As importantly, there is a widespread view around the world that some of the states claiming high standards have not observed them as well as they might have. These states must reprioritize and reposition themselves on the spectrum between protection of civilians and effective use of force against known terrorists. In particular, the principle of protection of suspects in custody and the presumption of innocence must be extended, without fear or favor, even to terrorist suspects.

States are not the only ones that must act. Individuals in the security services, armed forces, judicial and corrective institutions must hold themselves accountable to a new set of priorities. This paper, one of a series on the best policies for effective counter-terrorism, recommends new efforts to inculcate in relevant officials and uniformed personnel the need to observe the protection of civilians, civil infrastructure and civil rights as a primary operational principle.

### Recommendations

This paper puts forward several measures for consideration:

1. The EU should take the lead in legislating domestically and internationally on the protection of civilians, civil infrastructure and civil rights in counter-terrorism operations.

2. States conducting counter-terrorist operations should undertake a human rights impact assessment of planned operations and monitor human rights effects of operations as they take place.
3. States should provide effective human rights sensitivity training for all their personnel engaged in counter-terrorism operations.
4. States undertaking counter-terrorism operations likely to affect adversely large numbers of civilians, including possible damage to property, should engage with civil society organizations in the relevant communities, not least if the operations are conducted in a foreign country.
5. States should see themselves as morally obliged to give as full an account as possible of civilian casualties in counter-terrorism operations.
6. The same accountability should apply to damage to civil infrastructure, and issues of compensation for loss or damage should be incorporated.
7. The same accountability should apply to repression of civil rights during counter-terrorism operations.
8. Controls on less accurate, prohibited or otherwise listed weapons judged to be inappropriate for use in civilian areas need to be improved and better enforced.
9. People suffering great loss during counter-terrorism operations should be encouraged to pursue all remedies available to them under the law, either against states, their individual officials or corporate entities.
10. Open and comprehensive reporting of counter-terrorism operations to national parliaments by officials and in national media by journalists is an essential part of protecting civilians and civil rights in counter-terrorism operations.

## CONTENTS

INTRODUCTION.....	1
RHETORIC OF WAR: MANAGING THE CONSEQUENCES.....	4
PROPORTIONALITY .....	5
LEGISLATING AT HOME FOR PROTECTION OF CIVILIANS.....	7
ACCOUNTING FOR CIVILIANS: DEAD, INJURED OR IMPRISONED .....	11
ARMS SALES AS LEVERAGE .....	13
TRANSPARENCY AND THE MEDIA.....	17
CONCLUSION .....	18

## INTRODUCTION

Counterterrorism operations are important for the sake of global, national and individual security. Just under three thousand civilians were killed in the terrorist attacks on 9-11, 2001.<sup>1</sup> In response, a global coalition of military forces, led by the US, invaded Afghanistan in an action authorized by the United Nations Security Council. The country remains occupied by UN-authorized forces because the Taliban forces that supported Al Qaida have not been defeated. By mid-2007, major newspapers were reporting rising disenchantment within Afghanistan with the civilian casualty toll and the damage to property. For example, Reuters cited analysts in Afghanistan to the effect that 'Mounting civilian casualties from US and NATO air strikes against the Taliban are undermining the West's mission in Afghanistan and helping the insurgents recruit more fighters'.<sup>2</sup>

In the US-led invasion and occupation of Iraq, beginning one year after the invasion of Afghanistan,<sup>3</sup> civilian casualties have been many times higher than in Afghanistan. There has been a wide range of estimates for civilian casualties. Estimates by Iraq Body Count put the casualties at well over 64,000.<sup>4</sup> There are higher and lower estimates. Whatever the correct figure, many people regard the death of tens of thousands of civilians as an unacceptable cost in a 'war on terror', regardless of which side killed them. The US intelligence community has assessed that the war in Iraq has had a negative effect on US security, in part because of global perceptions that US and allied forces showed insufficient regard for civilian casualties.<sup>5</sup>

This perception is responsible for a significant deterioration of the West's soft power globally, but especially in the Muslim world. This deterioration represents a security threat to the West and undermines the common goal of

<sup>1</sup> Centre for Disease Control, 'Deaths in World Trade Center Terrorist Attacks - New York City', 2001, 11 September 2002, <http://www.cdc.gov/mmwr/preview/mmwrhtml/mm51SPa6.htm>. As of August 16, 2002, a total of 2,726 death certificates related to the WTC attacks had been filed.

<sup>2</sup> Jim Loney, 'Civilian deaths undermine West's Afghan mission', Reuters, 22 May 2007, <http://www.alertnet.org/thenews/newsdesk/ISL38042.htm>.

<sup>3</sup> A total of thirty-eight nations participated with the US in the invasion and occupation of Iraq.

<sup>4</sup> <http://www.iraqbodycount.org/>, accessed 22 May 2007.

<sup>5</sup> Director of National Intelligence, 'Key Judgments of the National Intelligence Estimates 'Trends of Global Terrorism: Implications for the United States'', April 2006, [http://www.dni.gov/press\\_releases/Declassified\\_NIE\\_Key\\_Judgments.pdf](http://www.dni.gov/press_releases/Declassified_NIE_Key_Judgments.pdf). The NIE concluded that the 'Iraq conflict has become a "cause celebre" for jihadists, breeding a deep resentment of US involvement in the Muslim world and cultivating supporters for the global jihadist movement'. CIA chief, General Michael Hayden, was to comment later: 'New jihadist networks and cells, sometimes united by little more than their anti-western agendas, are increasingly likely to emerge'. See 'American Morning', CNN Transcripts, 25 September 2006, <http://transcripts.cnn.com/TRANSCRIPTS/060925/ltm.04.html>. Gen. Hayden noted that 'If this trend continues, threats to the US at home and abroad will become more diverse and that could lead to increasing attacks worldwide'.

preventing and defeating terrorism. If excessive force is used against a civilian community where terrorists live and operate, the most moderate of people within that community may begin to sympathize with the terrorist causes.

In his report of 30 March 2001, on the Protection of Civilians in Armed Conflict, United Nations Secretary General Kofi Annan called for the establishment of a 'culture of protection':

In such a culture, Governments would live up to their responsibilities, armed groups would respect the recognized rules of international humanitarian law, the private sector would be conscious of the impact of its engagement in crisis areas, and Member States and international organizations would display the necessary commitment to ensure decisive and rapid action in the face of crisis. The establishment of this culture will depend on the willingness of Member States not only to adopt some of the measures (outlined in the report) but also to deal with the reality of armed groups and other non-state actors in conflicts, and the role of civil society in moving from vulnerability to security and from war to peace.<sup>6</sup>

Terrorists do not take into account the civilians they murder. States, however, are obliged by international law to take into account civilian casualties in counter-terrorism operations by their armed forces. This obligation is not eliminated by assertion that civilian casualties are 'collateral damage'. There is a similar obligation, although not as universally accepted, in the case of police operations against people suspected of being or known to be terrorists. International law and many domestic jurisdictions offer substantial protection to citizens from arbitrary arrest or from undue seizure of or damage to their property.

In the 'war on terror', it is now long since established that the boundaries between right and wrong on these issues have become, for many participants, very blurred. According to a recently publicized US government survey of its ground forces in Iraq, only 47 percent of soldiers and 38 percent of Marines agreed that noncombatants should be treated with dignity and respect.<sup>7</sup> Less than half of soldiers or Marines said they would report a team member for unethical behavior. More than one third of soldiers would be willing to use

<sup>6</sup> Introduction to United Nations Office for the Coordination of Humanitarian Affairs: Protection of Civilians, <http://ochaonline.un.org/webpage.asp?Page=78>.

<sup>7</sup> 'Defense Department Releases Findings of Mental Health Assessment', American Forces Press Service, <http://www.defenselink.mil/news/newsarticle.aspx?id=33055>. For the full report, go to [http://www.armymedicine.army.mil/news/mhat/mhat\\_iii/mhat-iii.cfm](http://www.armymedicine.army.mil/news/mhat/mhat_iii/mhat-iii.cfm). The survey was conducted by the Mental Health Advisory Team of the US Department of Defence, which surveyed 1,320 soldiers and 447 marines between August and October 2006.

torture in order to gather information and almost half would use torture to save the life of a fellow soldier.

The US soldiers holding such attitudes are not unique in this regard. The phenomenon revealed in the survey can be found throughout the world and has been at the heart of a number of international agreements and institutions, not least the well-known Geneva Conventions that form the core of international humanitarian law. Counter-terrorist operations in the last ten years that have raised questions about the proportionality of force and the level of civilian casualties include Russia's operations in Grozny, Israel's operations in Southern Lebanon and India's operations in parts of Kashmir.

There are others, some of them ignored by media and unknown to global public opinion. Theo Van Boven, UN Special Rapporteur on Torture, reported at an ICJ meeting on clear evidence of tortures and executions as part of Uzbekistan's counter terrorism strategy after a fact-finding mission to the country.<sup>8</sup> Despite the lack of information, there is hard evidence of human rights violations against civilians in Somalia and Ethiopia and hundreds of deaths caused by the use of heavy weapons in highly populated areas as part of counter terrorism strategies.<sup>9</sup>

In October 2005, the International Commission of Jurists set up an Eminent Jurists Panel to recommend new approaches to handling the protection of human rights in counter-terrorism operations.<sup>10</sup> The Commission noted that in spite of 'an emerging rhetorical acceptance by democratic states that their fight against terrorism should not jeopardize democratic values', there was still need to elaborate in detail just 'what this means in practice for the work of the police, the military, anti-terror units and the courts'. With an eighteen-month time frame for its initial work, the Panel has so far conducted hearings in more than twenty countries and will publish a detailed report.

This EastWest Institute Policy Paper reviews some measures that might help states, military units, individual soldiers and other state officials to honor the legal obligations imposed on them to protect civilians and civil rights in counter-terrorist operations. It begins with a brief comment on the way in which war rhetoric has contributed to a blurring of the boundaries between right and wrong.

<sup>8</sup> Theo Van Boven, UN Special Rapporteur on Torture, at ICJ's conference "Human Rights and Counter Terrorism: International Monitoring Systems" [http://www.ici.org/IMG/pdf/Thurs\\_23\\_Oct\\_Afternoon.pdf](http://www.ici.org/IMG/pdf/Thurs_23_Oct_Afternoon.pdf).

<sup>9</sup> Tom Porteus for Open Democracy, "Somalia: a failing counter terrorism strategy", [http://www.opendemocracy.net/democracy-africa\\_democracy/somalia\\_strategy\\_4613.jsp](http://www.opendemocracy.net/democracy-africa_democracy/somalia_strategy_4613.jsp).

<sup>10</sup> For further information, see [http://eip.ici.org/article.php3?id\\_article=6](http://eip.ici.org/article.php3?id_article=6).

The paper starts from the presumption that liberal democratic countries are more likely to set and maintain high standards in this regard than less democratic states. Countries that do not protect civil rights in peacetime will show scant regard for them in war.

## RHETORIC OF WAR: MANAGING THE CONSEQUENCES

There are two schools of thought about the wisdom of labeling the global fight with Al Qaeda and other terrorist groups as a 'war on terror'. On the one hand, advocates of the term 'war' say that its use conveys both the seriousness of the threat and the nature of the response that is needed to contain and defeat the terrorist groups – a highly mobilized society operating with a war-time spirit that unifies citizens, the private sector and government behind the war effort. This view holds, correctly, that Al Qaeda fighters are trained killers with no respect for law, liberty or life. One implication that many people have drawn from this view is that terrorists and their supporters, including those who are technically civilians, must be treated as enemy combatants. The people who hold this view most strongly are those at the front line in the effort to detect, capture or kill terrorists and dismantle their networks.

On the other hand, opponents of the use of the term 'war on terror' strongly believe that it promotes use of military force with inadequate regard for normal civil rights. The argument is that the more serious the disregard of rights, the stronger the likely support is for the terrorist cause. This sort of conclusion has been borne out to some degree by the evidence cited in the Introduction to this paper. Further evidence emerged during EWI's Fourth Worldwide Security Conference held in Brussels in February 2007. A large number of speakers, especially members of the Club of Madrid,<sup>11</sup> representatives of Asian governments and human rights activists were highly critical of the rhetoric and policies associated with the idea of a 'war on terror'.

It should be noted that the current US government is not the only democratic country taking the view that to defeat terrorists operating in civilian communities, extraordinary measures approaching a war footing are needed. The US approach has both forerunners (Russian operations in Chechnya) and successors (Israel's operations in southern Lebanon). The US policy has wide support in many states, not least liberal democratic Australia.

There is one important difference between the nature of the fight against terrorism and the normal conduct of conventional warfare. In counterterrorism

<sup>11</sup> An association of former presidents and prime ministers of democratic governments.

strategy, the direct enemy is generally not a state but an organization and an ideological force that can be dispersed within a country or amongst several states and regions. It is impossible to root out such an enemy with conventional military operations. In order to conquer the enemy, it is imperative to undermine their ideology of violence. Even if major terrorist organizations like Al-Qaeda are dismantled, it is very likely that other terrorist cells will emerge if, in the process of dismantling it, government force is used in a way widely judged to be immoral. The most inflammatory material in the ideological debate about moral use of force is evidence of civilian casualties, abuse of civil rights and destruction of property. A counter-terrorism strategy that does not address ideology as the central element and concentrates only on military, judicial and police aspects is likely to fail.

This Policy Paper therefore provides some potential measures for states wanting to ensure that they are as well positioned in this ideological battlefield as they can be.

## PROPORTIONALITY

Counterterrorist operations lack credibility and are self-defeating when states advocating freedom resort to disproportionate force. An example of this is tragedy that unfolded in the Iraqi city of Fallujah in 2003 and 2004, including a violent insurgency and an equally violent response from occupying forces. As part of the initial invasion of Iraq in 2003, American troops from the 82<sup>nd</sup> Airborne division on April 26 and 27 moved their headquarters into the al-Qa'id elementary school and converted it into a military base. Human Rights Watch summarized the sequence of events as follows:

[Fallujah] had come under air bombardment. Local resentment was evident from the day U.S. soldiers from the 82<sup>nd</sup> Airborne Division arrived in al-Falluja, on April 23. The key turning point came five days later, on April 28, when a demonstration calling for the soldiers to leave turned violent. According to protesters, U.S. soldiers fired on them without provocation, killing seventeen people and wounding more than seventy. According to the U.S. military, the soldiers returned precision fire on gunmen in the crowd who were shooting at them.

At a protest in town two days later, a U.S. military convoy opened fire killing three persons and wounding another sixteen. Again the military said it had come under armed attack, which the protesters denied. That same night, grenades were thrown into a U.S. base in al-Falluja, injuring seven U.S. soldiers. An attack a month later, on May 28, killed two U.S. soldiers and

wounded nine. This and other attacks in late May and early June killed four U.S. soldiers and wounded twenty-one.<sup>12</sup>

The following April, four American contractors were brutally murdered. Soon afterwards, the US military led an aerial bombardment of Fallujah that resulted in the destruction of over half of the city's housing – according to the city's compensation commissioner.<sup>13</sup> The bombardment of Fallujah by US forces was called off after a global outcry against the disproportionate use of force against civilians in the military action.

The problem was one of lack of preparation for the political dilemmas the US forces would face in combating insurgents. As one study from the US Army War College found:

US forces frequently found themselves in situations where they, not unreasonably, felt compelled to respond to provocation, but where the response imposed extreme political costs. The Fallujah operation after the November 2004 U.S. presidential election had the signal advantage of destroying many car-bomb factories, but it also drove 300,000 Sunnis from their homes and completely devastated the city.<sup>14</sup>

According to Human Rights Watch, the US forces were simply unprepared to take up the constabulary and police duties they were obliged by international law to perform. They responded to too many small-scale incidents with unnecessary force. Setting up a local police force while engaging with the local Iraqis would have been far less costly in human lives and would have been the appropriate action. Though the killing of the four contractors was horrific, the disproportionate use of force in response was counter-productive.

Rather than bombing Fallujah, the more appropriate action, which the US eventually undertook, would have been to clear neighborhoods while looking for potential insurgents. This could have been made possible through consulting with local leaders, who were against Saddam's policies in the first place. Instead of just focusing on the Shi'a population, there should also have been outreach to the Sunni population in order to have Imams from both communities explain the strategic importance or military necessity of certain

<sup>12</sup> Human Rights Watch, 'Violent Response: The US Army in al-Falluja', June 17, 2003, [http://www.hrw.org/reports/2003/iraqfalluja/iraqfalluja.htm#P50\\_591](http://www.hrw.org/reports/2003/iraqfalluja/iraqfalluja.htm#P50_591).

<sup>13</sup> Mike Marqusee, 'A name that lives in infamy', *The Guardian*, 10 November 2005, <http://www.guardian.co.uk/comment/story/0,3604,1638785,00.html>.

<sup>14</sup> David C. Hendrickson and Robert W. Tucker, 'Revisions in Need of Revising: What Went Wrong in the Iraq War', US Army War College, December 2005, <http://www.strategicstudiesinstitute.army.mil/pdf/files/pub637.pdf>.

actions (i.e. why a primary school was used as a military base) where there was potential or actual lack of acceptance by the local population.

This approach of house to house searching would have been effective had the US troops developed a relationship with the people they were occupying, through respect for their cultural traditions, training in basic language skills and treating those in the areas that they occupied as friends rather than enemies.<sup>15</sup> Unfortunately, there were too many incidents in which soldiers used patterns of humiliation and degradation while searching for insurgents. Humiliation is a driver of violence. The effective training of soldiers to respect other cultures through learning about customs, religious sensitivities and the importance of respect in itself would limit humiliation. A bigger driver of violence is the large-scale bombardment of private homes to root out insurgents.

## LEGISLATING AT HOME FOR PROTECTION OF CIVILIANS

In advance of military operations, personnel in the armed forces of most countries, including the US and Israel, routinely undertake assessments of the compliance of their military plans with international humanitarian law (the laws of war). They do so by consulting their international lawyers on the question; 'Does the planned operation breach international law by exceeding military necessity and proportionality?' This is an important protection offered to civilians in existing international law and practice. The dominant element of the assessment is military necessity.

It is of some interest that a 2006 US Military Law Handbook notes in a section dedicated to the laws and principles governing US military operations in combating terrorism, that military personnel should observe the 'spirit' and letter of international law in 'all other operations' not characterized as 'armed conflict':

As a matter of U.S. policy, DoDD 5100.77, *DoD Law of War Program* states the U.S. armed forces must "comply with the law of war during all armed conflicts, however such conflicts are characterized, and with the principles and spirit of the law of war during all other operations".<sup>16</sup>

This handbook leave open the question of whether counter-terrorist operations constitute 'armed conflict' as understood in international humanitarian law.

<sup>15</sup> 'Human Security Approaches to Political Violence', Demos, July 2005

<sup>16</sup> US Army, *Operational Law Handbook*, 2006 ed., International and Operational Law Department, Judge Advocate General's School, Charlottesville, VA, [http://www.au.af.mil/au/awc/awcgate/law/oplaw\\_hdbk.pdf](http://www.au.af.mil/au/awc/awcgate/law/oplaw_hdbk.pdf).

There are two inherent shortcomings in the current practice in most states. The first is that military lawyers and commanders essentially pose the question of protection of civilians and infrastructure in a way that privileges the military plan over the possible consequences for civilians and civil infrastructure. If the plan can be justified according to military necessity, then there is no metric that allows a calculation whether it might lead to the death and injury of too many civilians. As morally complex as such a judgment might be, it is the sort of question that all combatants must ask themselves.

The second shortcoming is that while the question is always posed in advance of the operations it is not always addressed at every stage and at every level of combat. According to an assessment by a member of the US Army:

Army operational and tactical doctrine in the fields of reconnaissance, intelligence, and fire-support remain heavily biased toward the rapid, accurate, and overwhelming application of force or fires on the enemy target or objective, often coupled with the least possible risk to friendly troops and assets. Less clear, particularly at the tactical level, is any similar doctrinal emphasis on a methodology for ensuring that civilians (or other categories of protected objects) are accurately tracked and protected as much as possible throughout a dynamic battlefield environment.<sup>17</sup>

Thus, the international protections can be seen in both theory and practice to be of only limited effect in protecting civilians and civil infrastructure in armed combat.

Do states have any options for improving on this limited level of protection offered by international law?

There is clearly a need for new measures. For example, in the case of US operations in Iraq and Afghanistan, we can be confident that US military planners, commanders and lawyers exercised due diligence in assessing the legal implications of military operations, yet somehow the US strategic goal of winning the hearts and minds of the people of Iraq and Afghanistan has been badly affected by some of the combat methods used by US and allied forces. The question is whether observance of the laws of war, developed for other types of military operations, really serves the purposes of counter-insurgency warfare. Israel feels that it observed the laws of war in targeting civilian infrastructure in southern Lebanon in 2006, but the massive devastation of

<sup>17</sup> Richard J. Butler, 'Modern War, Modern Law, and Army Doctrine: Are We in Step for the 21st Century?', *Parameters*, Spring 2002, pp. 45-59, <http://www.carlisle.army.mil/usawc/Parameters/02spring/butler.htm>.

civilian housing caused by Israel's bombing campaign appeared to many as a huge political victory for Hezbollah, not just in Lebanon but around the world.

New measures would address the gap identified above: the need for a 'methodology for ensuring that civilians (or other categories of protected objects) are accurately tracked and protected as much as possible throughout a dynamic battlefield environment'. One possible mechanism for doing that would be for states to institutionalize a process for conducting a Human Rights Impact Assessment (HRIA) for counter-terrorism policies and operations.

The main purpose would be to have military planners, commanders and lawyers address the question of lawfulness from an additional perspective that would complement their consideration of the limited provisions of the laws of war. Instead of a commander simply being satisfied with the view that an operation does not breach international law simply because military necessity can be proven, an HRIA would impose an additional test of whether a planned operation breaches international human rights standards. An HRIA would provide a detailed elaboration of the human cost of the action and therefore better allow a commander to judge the political effect of an action and so its real impact on 'military necessity'. In fact, it is even doubtful whether there can be any genuinely effective or legitimate test of purely military necessity in a counter-insurgency or counter-terrorist operation, since the intrusion of politics is much greater in those than in conventional military combat.

What would it involve? The HRIA should be conducted by someone with considerable political experience, but a person who is demonstrably apolitical in terms of partisanship, and one who has no strong personal ties to the armed forces, especially the personnel engaged in the operation. The issues that should be taken into consideration can range from the legal implications of a counterterrorist operation, the extent of force that is necessary in the operation, and whether or not the operation is militarily necessary in terms of the political struggle. Another important role would be gathering information from independent, non-partisan NGOs in order to compile information on patterns of human rights abuses by military or police personnel. A good example where loss of life and massive damage to property could probably have been averted had this process been used was during the 2006 invasion of Lebanon by Israel.

An alternative suggestion, in order to avoid the 'politicization' of the HRIA by NGOs and the subsequent risk of it being sidelined by governments, is to limit the HRIA to ensuring the protection of civilians and human rights in the planning and execution of any operation. A judgment of the appropriateness of

the operation could harm the standpoint of the HRIA as an independent body with no political orientation, a position essential to its efficacy.

A HRIA could have easily foretold the high level of casualties in Lebanon if the correct information was gathered and if there had been internal debate in the Israeli government on whether a retaliation involving attacks on populated areas and directly on civilian housing would be either morally defensible or politically effective. Although it is unlikely that this process would guarantee immediate compliance, there are long-term benefits. Through the deliberative process alone, the culture of protecting civilians would start becoming ingrained. The shift from a 'negative' assessment ('is it legally defensible to do this?') to a 'positive' assessment of the likely extent of collateral damage would represent a start to this process.

This is not to say that examining military actions for their legality should be sidelined. The body that assesses preventative measures for a HRIA should also be responsible for assessing crimes committed in counter terrorist operations and ensuring that proper judicial action is taken against transgressors.

Laws pertaining to the protection of civilians and infrastructure should not only be embedded in the military but also enforced. Reckless actions by soldiers, marines or contractors should not be tolerated under any circumstance. If a state is not party to the International Criminal Court, they should at minimum incorporate domestic legislation that holds their citizens responsible for inappropriate injury or damage to infrastructure.

It would be useful for each State to incorporate a body such as an impartial and independent commission comprised of international legal experts from independent non-partisan and non-state-financed NGOs. These commissions should hold accountable those individuals accused of human rights negligence or violations, from torture to reckless casualties.

An independent, apolitical commission should have powers to interview victims and witnesses, and gather other evidence.

The predominant goal of an HRIA is to assess whether the ends justify the means. Prior to any military engagement, each soldier, general and official should take into account the level of casualties expected, the level of structural damage and the long-term effects on civilians. All of this should be documented. Observer posts and UN peacekeeping forces should be precisely accounted for in order to prevent any harm to them. There have

been too many cases in which peacekeepers have been killed, the most recent being during the Israeli invasion of Lebanon in an observer post in the Southern region.<sup>18</sup>

## ACCOUNTING FOR CIVILIANS: DEAD, INJURED OR IMPRISONED

The US policy that “we do not do body counts”,<sup>19</sup> voiced by General Tommy Franks from the US Central Command, is not a policy that the world can live by. We should do body counts, not only in order to assess how “precise” the so-called precision missiles are, but also to investigate who and which factors are responsible for any abuses of human rights. It will be extremely difficult to identify who is responsible in many cases. This is true especially in an area that has been fought over by several military units or guerrilla forces. Nevertheless, it is not impossible, as the international criminal courts have demonstrated in convicting various people in recent years for the Bosnian and Rwandan atrocities.

Accounting for detainee mistreatment is far easier. It should be a rule that any detainee that enters the detention center should be recorded. Their daily interrogations and health should also be monitored and reported on, so that there are fewer mysterious or surprising deaths in detention centers. The exposure of the human rights violations at Abu Ghraib brought forward evidence that detainees whose death certificate might have noted the cause as cardiac arrest were likely to have been the victims of torture. There was hard evidence that many detainees were victims of beatings, prolonged sleep deprivation, and being exposed nude in cold temperatures overnight.<sup>20</sup> If a soldier or guard knows that each detainee is being monitored for physical health on the principle of ‘protection’ from the time he/she steps into confinement, it will deter them from taking action that oversteps legal and moral boundaries while simultaneously saving the state from great embarrassment.

Human Rights Watch (HRW) reports similar violations in Egypt where, following the terrorist bombings in Taba (October 2005), Egypt’s State Security Agency carried out mass arrests. According to HRW, some 2400

<sup>18</sup> ‘Annan Shocked by Israeli Attack on UN Post in Lebanon’, United Nations Radio, <http://www.un.org/radio/story.asp?NewsID=4905>.

<sup>19</sup> Yahya Kamalipour, ‘Reason not Force: The questions we should be asking about the Iraq war’, Iranian.com, 3 May 2007, <http://www.iranian.com/YahyaKamalipour/2007/May/Iraq/index.html>.

<sup>20</sup> ‘AI Index: AMR 51/093/2005 US detentions in Afghanistan: an *aide-memoire* for continued action’, Amnesty International, 7 June 2005, <http://web.amnesty.org/library/index/engamr510932005>.

people remain in detention without charges and lawyers and detainees claim to have suffered torture. HRW illustrates similar cases in Tunisia, Morocco, Israel or Russia.<sup>21</sup>

Organizations such as the ICRC should be involved in recording detainee information. It is now clear that limiting of ICRC access to Abu Ghraib by US military officials was a huge political blunder. The ICRC must have unfettered access to prisons and detention centers to ensure that human rights abuses are not being committed. The exposure of human rights abuses in Abu Ghraib severely damaged the credibility of the US presence in Iraq and created fury within the Muslim world, rather than encouraging support.

The blame for the abuses at Guantanamo and Abu Ghraib does not lie solely on the military police and other soldiers, but also on the Administration for not outlining clear principles as to what constitutes torture. In order to ensure that legal boundaries pertaining to torture are not crossed, these boundaries must be strict and not open to wide interpretation. There has been a problem of mixed messages. President Bush invoked the ‘memory of the victims of 9/11’ when he said ‘it is my honor to sign the MIC of 2006 into law’,<sup>22</sup> even though that law eliminated for the detainees the fundamental right of *habeas corpus* (the right to challenge the legality of one’s imprisonment). This is one of the fundamental protections of the US Bill of Rights. According to the Military Commissions Act, ‘No court, justice or judge shall have the jurisdiction to hear or consider an application for a writ of habeas corpus filed by or on behalf of an alien detained by the US who has been determined by the US to have been properly detained as an enemy combatant or is awaiting such determinations’.<sup>23</sup> This detainee can be incarcerated up to five years without any legal representation.

Thus, the US President gave a clear signal that terrorist suspects were not entitled to equal protection before the law. It is surprising that even as late as 2006, the US Administration was unable to grasp the link between such signals and abuses like those at Abu Ghraib. The provisions of the Military Commissions Act of 2006 on use of force or threats to obtain evidence are unclear or subject to too many interpretations. For example, one section of the Act reads: ‘A statement obtained by use of torture shall not be admissible

<sup>21</sup> Human Rights Watch, Human Rights News: Counter-Terrorism: Human Rights Concerns for the 61st Session of the U.N. Commission on Human Rights. <http://hrw.org/english/docs/2005/03/10/global10302.htm>.

<sup>22</sup> See <http://www.whitehouse.gov/news/releases/2006/10/20061017-1.html>.

<sup>23</sup> Library of Congress website, [http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=109\\_cong\\_bills&docid=f:s3930enr.txt.pdf](http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=109_cong_bills&docid=f:s3930enr.txt.pdf).

in a military commission under this chapter, except against a person accused of torture as evidence that the statement was made'. Another section of the Act allows for admission of evidence obtained by 'coercion' if the military judge finds that:

- (1) the totality of the circumstances renders the statement reliable and possessing sufficient probative value; and (2) the interests of justice would best be served by admission of the statement into evidence.<sup>24</sup>

The law should be improved as to lessen the likelihood of misinterpretation in a manner in which personnel regard death, bodily harm or coercion of prisoners as justified methods of interrogation.

## ARMS SALES AS LEVERAGE

Where an arms supply arrangement exists between two countries, the sale of weapons can be used as an important form of leverage for the seller to influence the action of the buyer when it comes to abuses, such as unlawful or inappropriate attacks on civilians or civilian infrastructure. The US has taken great strides with domestic law in order to prevent the use of weapons it sells in ways that breach international standards. However these laws need to be enforced and to be further refined to adapt to the changing climate of warfare, especially counter-terrorism operations. Along with domestic laws, states should agree on international legal mechanisms to limit their gifting or selling of weapons where these are used or may be used in breach of international standards.

Six of the G8 countries are among the top 10 global arms exporters.<sup>25</sup> Of these, the US is the largest exporter of arms and has accepted an obligation to use caution in deciding which country is allowed to purchase its weapons. It took a lead on these issues as early as 1976 in its Arms Export Control Act (AECA) of that year:

In furtherance of world peace and the security and foreign policy of the United States, the President is authorized to control the import and the

<sup>24</sup> The text in this section appears twice in the Act (§ 948r.), once in connection with 'A statement obtained before December 30, 2005 (the date of the enactment of the Defense Treatment Act of 2005)', where there is no other qualification, and once in connection with A statement on or after December 30, 2005 (the date of the enactment of the Defense Treatment Act of 2005) where it is qualified by reference to the provision of that Act (section 1003) which prohibits interrogation methods that 'amount to cruel, inhuman, or degrading treatment'.

<sup>25</sup> 'The G8: Global Arms Reporters. Failing to prevent irresponsible arms transfer', Amnesty International, 13 May 2006, [http://web.amnesty.org/library/pdf/POL300112006ENGLISH/\\$File/POL3001106.pdf](http://web.amnesty.org/library/pdf/POL300112006ENGLISH/$File/POL3001106.pdf).

export of defense articles and defense services and to provide foreign policy guidance to persons of the United States involved in the export and import of such articles and services. The President is authorized to designate those items which shall be considered as defense articles and defense services for the purposes of this section and to promulgate regulations for the import and export of such articles and services. The items so designated shall constitute the United States Munitions List.<sup>26</sup>

The US can hold an individual or group criminally responsible for selling weapons to perceived hostile States or organizations. There were 59 arrests for AECA-related violations in 2001; 94 arrests in 2003 and more than 85 arrests in 2006.<sup>27</sup> In accordance with the AECA, in June 1981, President Reagan suspended the transfer to Israel of F-16s and other military systems following the Israeli air strike on the Osirak nuclear reactor in Iraq that resulted in 11 casualties (ten Iraqi soldiers and one French civilian researcher).<sup>28</sup> In 1982, the Reagan administration imposed a six-year ban on cluster bomb sales to Israel after a congressional investigation found it had used the weapons in civilian areas during its invasion of Lebanon.<sup>29</sup> (The cluster bomb is designed to spread its sub-munitions over a large area and cause destruction over a larger area than a conventional bomb. Those sub-munitions that do not explode at the time of delivery can remain in the ground as a threat to civilians for many years.)

Since the ban on export of cluster bombs to Israel was lifted, the US has continued to provide it with weapons systems, even though the State Department's human rights reports for several years (2003, 2004 and 2005) have mentioned incidents that might justify some US reaction in its arms sales policy. These include missile strikes that killed six civilians in refugee camps, the shooting (and killing) of four Palestinian children, the demolition of Palestinian homes by rocket fire; and the killing of 47 civilian bystanders in an operation to kill terrorists.<sup>30</sup>

<sup>26</sup> 'Control of arms export and imports', Title 22, Chapter 39. Subchapter 3, § 2778, US Code Collection, Cornell Law School, [http://www.law.cornell.edu/uscode/22/uscode/22\\_00002778---000-.html](http://www.law.cornell.edu/uscode/22/uscode/22_00002778---000-.html).

<sup>27</sup> US State Department, <http://www.state.gov/t/pm/rls/fs/68550.htm>.

<sup>28</sup> Ghassan Bishara, 'The Political Repercussions of the Israeli Raid on the Iraqi Nuclear Reactor', *Journal of Palestine Studies*, Vol. 11 No. 3, 1982.

<sup>29</sup> 'United States: Cut off Cluster Munition Sales to Israel. Compel Israel to Provide Strike Data', Human Rights Watch, 29 January 2007, <http://hrw.org/english/docs/2007/01/29/usint15212.htm>.

<sup>30</sup> For all versions of the State Department's Human Rights reports visit: <http://www.state.gov/g/drl/rls/hrrpt>.

In late 2006, following the Israeli invasion of Lebanon, the State Department assessed that Israel had breached or may have breached conditions imposed on it when the US agreed to export cluster bombs, and notified Congress accordingly in January 2007.<sup>31</sup> It is not clear what further action the US may have taken. One measure open to the US would be to insist that unless Israel agrees to make reparations for damage arising from inappropriate use of the bombs, the sale of arms to it (or any other State that has used US weapons in a reckless and irresponsible manner) should be banned.

Another way in which the US could use the AECA to effectively thwart irresponsible weapons use is by applying its provisions to hold weapons manufacturers accountable. The law provides for Presidential scrutiny of individual arms negotiators who might be involved in preparing to sell weapons that come under the purview of the Act.<sup>32</sup>

The Act has its flaws however. Any sale of weaponry under \$14 million is not subject to government review.<sup>33</sup> Depending on quantity, prices for an order of cluster bombs can be well below this threshold.<sup>34</sup> The US needs to consider revising the Act in a manner in which any weapons sale likely to be used indiscriminately against civilian communities should be subject to approval.

Aside from establishing tighter controls on the level of weapons sold without approval, states should consider moving to an absolute ban on weapons that are considered inhumane. Examples of such weapons apart from cluster bombs are vacuum bombs and depleted uranium projectiles. The UK has taken a leading role in promoting a ban on the use of cluster bombs. Less than a month after joining 45 other countries in a commitment to negotiate on a fast track basis to ban cluster munitions, the UK moved in March 2007 to ban the use of “dumb” cluster bombs.<sup>35</sup>

<sup>31</sup> Andrew Buncombe, ‘US attacks Israel’s cluster bomb use’, *The Independent*, 29 January 2007, <http://news.independent.co.uk/world/americas/article2193662.ece>.

<sup>32</sup> Sec. 38 of the Arms Export Control Act, 1976, [http://www.atf.gov/pub/fire-explo\\_pub/aeca.htm](http://www.atf.gov/pub/fire-explo_pub/aeca.htm):  
(3) In exercising the authorities conferred by this section, the President may require that any defense article or defense service be sold under this Act as a condition of its eligibility for export, and may require that persons engaged in the negotiation for the export of defense articles and services keep the President fully and currently informed of the progress and future prospects of such negotiations.

<sup>33</sup> Presentation ‘International Statutory and Regulatory Framework and Foreign Policy’, Defence Institute of Security Assistance Management, [http://www.disam.dsca.mil/Research/Presentations/3A](http://www.disam.dsca.mil/Research/Presentations/3A%20Legislation.ppt)

<sup>34</sup> USAF Doctrine Document Munitions Acquisition Costs, Military Analysis Network, <http://www.fas.org/man/dod-101/usaf/docs/munition-cost-11-1.htm>.

<sup>35</sup> ‘46 Nations commit to ban cluster bombs’, Land Mine Action, 23 February 2007, [http://www.landmineaction.org/resources/23%20Feb%202007-Oslo\(1\).pdf](http://www.landmineaction.org/resources/23%20Feb%202007-Oslo(1).pdf).

Another approach that might be taken, however difficult it may be, would be to encourage civilians and civil society actors such as NGOs to bring forward lawsuits in international or domestic courts against weapons manufacturers and states responsible for indiscriminate use of force. Though the results would not be immediate, once lawsuits and legal fees increased, arms manufacturers would have little option but to stop selling their weapons to countries that use them irresponsibly. States might become more inclined to start using precision technology that is less prone to ‘mistakes’ and to be less reckless when using the most destructive weapons.

In 2003, a group of Iraqi civilians filed a lawsuit in Belgium against a US military officer, General Tommy Franks, under that Belgian war crimes legislation.<sup>36</sup> The plaintiffs were reported to be either victims of cluster bombs or relatives of those who had been killed by US-delivered cluster bombs. The Belgian legislation has been consistently condemned by US officials (for much the same reason as the US has opposed ratification of the Statute of the International Criminal Court). Though the lawsuit was dismissed (the legislation now allows for dismissal if the action is not brought by a Belgian citizen), the case demonstrates several important points, not least that civilians continue to die and be maimed by cluster bombs well after delivery, and that the victims feel they need to find some redress in the international system for their suffering. It also demonstrates that unless and until the US finds a more acceptable approach to use of such weapons in civilian areas, it will continue to face international criticism.

At the multilateral level, the United Nations has taken important steps to control the trade of arms where the weapons may be used in breach of international standards. In October 2006, the UN’s Disarmament Committee voted (139 in favor to 1 against, the US, with 24 abstentions) to create a “comprehensive, legally binding instrument establishing international standards in the trade on conventional arms”. The draft text calls on the Secretary General to establish a group of governmental experts to examine the feasibility, scope and draft parameters for such an instrument in 2008.<sup>37</sup> The motivation for this effort has come largely from civil society groups appalled by the death and destruction imposed on civilian communities by states or armed groups in recent decades.

<sup>36</sup> ‘US general “war crimes” case filed’, BBC, 14 May 2003, <http://news.bbc.co.uk/2/hi/europe/3026371.stm>.

<sup>37</sup> International Arms Treaty Aim of Draft Resolution, General Assembly: GA/DIS/3335, <http://www.un.org/News/Press/docs/2006/gadis3335.doc.htm>.

## TRANSPARENCY AND THE MEDIA

Governments have a responsibility to be transparent. In order for the public to weigh in on the moral conscience of counter-terrorist operations, the media needs free rein to publish information on counter-terrorism operations being conducted as well as on the lives of military personnel that are dying or wounded as a result. Without this, citizens cannot decide whether the methods used are excessive or whether their government has just cause to continue the fight.

The need for transparency has to be weighed against the need to protect classified sources and sensitive intelligence methods. States are obliged to maximize their intelligence knowledge, including through interrogation, as a means of protecting their own civilians and their military personnel. Wherever that balance between transparency and secrecy, or between legitimate pressure and illegitimate coercion in interrogations is found in particular cases, two principles must remain paramount. First, the accountability of a democratic government before its parliament and people demands the greatest possible transparency while protecting sources and methods. Second, tendencies to impose a policy of censorship to avoid scrutiny or embarrassment should be resisted, not least because they will ultimately be counter-productive in most cases.

During the era of the Vietnam War, the citizens of the US had unprecedented access to images and documents pertaining to the war as well as the number of troops and civilians killed in the line of duty. As American journalist Helen Thomas writes, "The stunning photographs from the Vietnam War are engraved in our memory. Remember a little Vietnamese girl running down the road aflame from a napalm bomb?"<sup>38</sup> Such brutal imagery and information, brought into their living room through television sets, shocked the American people, and helped to inspire a global anti-war movement. Since Vietnam, as written in a 2003 article by the *Washington Post*, "presidents have worried that their military actions would lose support once the public glimpsed the remains of US soldiers arriving at air bases in flag-draped caskets".<sup>39</sup> The newspaper noted that to address this problem, the Bush administration had "ended the public dissemination of such images by banning news coverage and photography of dead soldiers' homecomings on all military bases". When it became apparent that the Pentagon was 'hiding' coffins, there was

<sup>38</sup> 'Pentagon Lifts Ban on Casket Photos', *Seattle Post Intelligencer*, [http://seattlepi.nwsource.com/opinion/236385\\_newthomas14.html](http://seattlepi.nwsource.com/opinion/236385_newthomas14.html).

<sup>39</sup> 'Curtains Ordered for Media Coverage of Returning Coffins', *Washington Post*, <http://www.washingtonpost.com/ac2/wp-dyn?pagename=article&contentid=A55816-2003Oct20>.

widespread public outrage. In August of 2005, the US ban on media coverage of military caskets was lifted and families were allowed to make the decision on whether or not caskets should be shown.<sup>40</sup>

This kind of censorship, however, is not unique to the US. Curiously, the controversy surrounding the Pentagon in 2005, did not prevent Canadian Prime Minister Stephen Harper from imposing a similar ban in April 2006 against showing caskets and funeral services of Canadian troops killed in Afghanistan.<sup>41</sup> The new policy followed a significant increase in the number of Canadian casualties during Harper's first few months in office – more than had been seen since Canada's initial deployment in 2002.<sup>42</sup> Despite public outcry against his censorship policy, Harper's defense was also similar to that delivered in 2001 by the US, claiming, "it's about what's in the best interests of the families".<sup>43</sup> Public knowledge of the scale and human impact of war casualties is an essential and minimal requirement for democratic oversight of the 'war powers' of its government.<sup>44</sup>

## CONCLUSION

In Kofi Annan's final speech as UN Secretary General, he praised the US as a historical 'vanguard of the global human rights movement'. However he also said that the US position as a global champion of human rights 'can only be maintained if America remains true to its principles -- including in the struggle against terrorism'.<sup>45</sup> 'When it appears to abandon its own ideals and objectives, its friends abroad are naturally troubled and confused.' Mr Annan also emphasized that Washington's current position in the world gives it 'a priceless opportunity' to entrench the principles of democracy at a global level. The US, the UK and other key global powers have the opportunity and the obligation to spread a culture of protection of civilians, and it is necessary to spread this culture to all countries. The protection of civilians should be

<sup>40</sup> 'Pentagon Lifts Ban on Casket Photos', *ibid*.

<sup>41</sup> 'Media ban on Return of Dead Soldiers', Reporters Without Borders, 27 April 2006, [http://www.rsf.org/article.php3?id\\_article=17469](http://www.rsf.org/article.php3?id_article=17469).

<sup>42</sup> There were more casualties between 15 January 2006 and 21 April 2006, than there had been since Canada's initial deployment to Afghanistan in 2002, according to CBC article 'In the line of duty: Canada's casualties', 25 May 2007, <http://www.cbc.ca/news/background/afghanistan/casualties/total.html>.

<sup>43</sup> 'Harper on defensive over media ban on return of dead soldiers', CBC News, 25 April 2006, <http://www.cbc.ca/canada/story/2006/04/25/soldiers-return-media060425.html>.

<sup>44</sup> For a useful discussion of this, see 'Transcript: War Against Iraq and the Australian Democratic Deficit', a public seminar hosted by the ANU's National Institute of Government and Law & Graduate Program in Public Policy, 6 February 2003, [http://law.anu.edu.au/niss/iraq\\_trans.pdf](http://law.anu.edu.au/niss/iraq_trans.pdf).

<sup>45</sup> Full text of Kofi Annan's final speech, BBC News, 11 December 2006, <http://news.bbc.co.uk/2/hi/americas/6170089.stm>.

inclusive of all civilians, even those that reside in a State that is harboring terrorists. Observance of this principle would not only benefit the civilians but also the countries that are trying to limit terrorist acts.

A missing element in counter-terrorist operations of states has been acceptance of the need for a systematic approach that every soldier, general and official should take into account: does the end justify the means? Since it would be unreasonable for most to arrive at a fully informed decision on that question in all cases of combat or police work, states must provide their servants with more adequate means of understanding those relationships. Military and other personnel have to know what effect their actions will have on civilians, on their security and on the infrastructure that supports their daily life.

This paper has laid out a number of practical recommendations to shape understanding of the effect that counter-terrorism operations have on civilians. One main recommendation is creation of a system of Human Rights Impact Assessments. Even if the actual implementation of such a system would be difficult, the process would establish the idea firmly that a primary principle of counter-terrorism operations has to be the protection of civilians and civil rights.

It is not practical to expect a leadership effort by the US on the new policy initiatives recommended in this paper, at least in the near term. The mood domestically is not right and internationally, US credibility on these issues is somewhat tarnished. By contrast, the European Union (EU) is capable of taking the lead immediately in implementing the paper's recommendations. As an organization, it has high credibility and the necessary resources to do so. Both the EU and US should build on the work on counter-terrorism and human rights currently being undertaken by the under the auspices of the International Commission of Jurists.

### Recommendations

1. The EU should take the lead in legislating domestically and internationally on the protection of civilians, civil infrastructure and civil rights in counter-terrorism operations.
2. States conducting counter-terrorist operations should undertake a human rights impact assessment of planned operations and monitor human rights effects of operations as they take place.

3. States should provide effective human rights sensitivity training for all their personnel engaged in counter-terrorism operations.
4. States undertaking counter-terrorism operations likely to affect adversely large numbers of civilians, including possible damage to property, should engage with civil society organizations in the relevant communities, not least if the operations are conducted in a foreign country.
5. States should see themselves as morally obliged to give as full an account as possible of civilian casualties in counter-terrorism operations.
6. The same accountability should apply to damage to civil infrastructure, and issues of compensation for loss or damage should be incorporated.
7. The same accountability should apply to repression of civil rights during counter-terrorism operations.
8. Controls on less accurate, prohibited or otherwise listed weapons judged to be inappropriate for use in civilian areas need to be improved and better enforced.
9. People suffering great loss during counter-terrorism operations should be encouraged to pursue all remedies available to them under the law, either against states, their individual officials or corporate entities.
10. Open and comprehensive reporting of counter-terrorism operations to national parliaments by officials and in national media by journalists is an essential part of protecting civilians and civil rights in counter-terrorism operations.

## BOARD OF DIRECTORS

---

### CHAIRMAN OF THE BOARD

**George F. Russell, Jr.**

*Chairman Emeritus*

Russell Investment Group, Russell  
20-20

---

### FOUNDER, PRESIDENT & CEO

**John Edwin Mroz**

---

### MEMBERS

**Urban Ahlin**

*Chairman, Committee on Foreign  
Affairs*

Parliament of Sweden

**Martti Ahtisaari**

*Former President of Finland*

**Jerald T. Baldridge**

*Chairman*

Republic Energy Inc.

**Marshall Bennett**

*Partner*

Marshall Bennett Enterprises

**Thor Björgolfsson**

*Chairman*

Novator

**Peter Castenfelt**

*Chairman*

Archipelago Enterprises, Ltd.

**Maria Livanos Cattau**

*Member of the Board of Directors*

Petroplus Holdings AG

Switzerland

**Mark Chandler**

*Chairman and CEO*

Biophysical

**Emil Constantinescu**

*Former President of Romania*

**Joel Cowan**

*President*

Habersham & Cowan

**Francis Finlay**

*Chairman and CEO*

Clay Finlay, Inc.

**Ólafur Ragnar Grímsson**

*President of Iceland\**

**Stephen B. Heintz**

*President*

Rockefeller Brothers Fund

**R. William Ide III**

*Partner*

McKenna Long & Aldridge LLP

**Wolfgang Ischinger**

*Ambassador*

Embassy of the Federal Republic  
of Germany in the United Kingdom

**Sigrid RVC Kendall**

*Managing Partner*

Kendall-Verwaltungs-GmbH

**Richard M. Kessler**

*President*

Empire City Capital Corp.

**Rudi Lamprecht**

*Member of the Managing Board*

Siemens AG

**James A. Lash**

*Chairman*

Manchester Principal LLC

**Mark Maletz**

*Senior Fellow*

Harvard Business School

**Michael Maples**

*Former Executive Vice President*

Microsoft Corporation

**Peter Maurer**

*Ambassador*

Permanent Mission of Switzerland  
to the United Nations

**Thomas J. Meredith**

*Co-Founder and Principal*

Meritage Capital, L.P.

**Ivan Mikloš**

*Member of the Slovak Parliament*

**Frank Neuman**

*President*

AM-TAK International

**Ahmet Mucahid Oren**

*Chief Executive Officer*

Ihlas Holding, A.S.

**Ross Perot, Jr.**

*Chairman*

Perot Systems Corporation

**Vladimir Plasil**

*President*

Alta, Co.

**John Richardson**

*Development Advisor*

Madariaga European Foundation

**Louise Richardson**

*Executive Dean*

The Radcliffe Institute for Advanced  
Study, Harvard University

**Laurent M. Roux**

*President*

Gallatin Wealth Management, LLC

**Ramzi H. Sanbar**

*Chairman*

Sanbar Development Corporation,  
S.A.

**Armen Sarkissian**

*President*

Eurasia House International

*Former Prime Minister of Armenia*

**Leo Schenker**

*Senior Executive Vice President*

Central National-Gottesman, Inc.

**Rockwell A. Schnabel**

*Founder, Director and Chairman  
Sage Capital Inc.  
Former Ambassador of the  
USA to the European Union*

**Hilton Smith, Jr.**

*President and CEO  
East Bay Co., Ltd.*

**Elizabeth Symons**

*Former Minister of State  
Foreign and Commonwealth Office  
(UK)*

**Henrik Torgersen**

*Executive Vice President  
Telenor*

**Robert Verrue**

*Director General for DG -  
Taxation and Customs Union  
European Commission*

**António Vitorino**

*Former EU Commissioner  
for Justice and Home Affairs*

**Matthias Warnig**

*Managing Director  
Nord Stream AG*

**Igor Y. Yurgens**

*First Group Vice President  
Renaissance Capital  
Chairman  
Center for Development of  
Information Society*

---

**NON-BOARD COMMITTEE  
MEMBERS****Tulio Cedraschi**

**John A. Roberts, Jr.**  
*President and CEO  
Chilmark Enterprises L.L.C.*

**J. Dickson Rogers**

*President  
Dickson Partners, L.L.C.*

**George Sheer**

*Founder & CEO  
International Consulting Group,  
USA*

**Bengt Westergren**

*Senior Vice President of AIG  
Companies  
American International Group (AIG)*

---

**CHAIRMEN EMERITI****Berthold Beitz**

*President  
Alfried Krupp von Bohlen und  
Halbach-Stiftung*

**Ivan T. Berend**

*Professor  
University of California at Los  
Angeles*

**Hans-Dietrich Genscher**

*Former Vice Chancellor  
and Minister of Foreign Affairs*

**Donald M. Kendall**

*Former Chairman & CEO  
PepsiCo Inc.*

**Whitney MacMillan**

*Former Chairman & CEO  
Cargill, Inc.*

---

**DIRECTORS EMERITI****Jan Krzysztof Bielecki**

*Chief Executive Officer  
Bank Polska Kasa Opieki S.A.  
Former Prime Minister of Poland*

**William D. Dearstyne**

*Former Company Group Chairman  
Johnson & Johnson*

**John W. Kluge**

*Chairman of the Board  
Metromedia International Group*

**Maria-Pia Kothbauer**

*Ambassador  
Embassy of Liechtenstein to  
Austria, the OSCE and the United  
Nations in Vienna*

**John J. Roberts**

*Senior Advisor  
American International Group  
(AIG)*

**Daniel Rose**

*Chairman  
Rose Associates, Inc.*

**Mitchell I. Sonkin**

*Managing Director  
MBIA Insurance Corporation*

**Thorvald Stoltenberg**

*President  
Norwegian Red Cross*

**Liener Temerlin**

*Chairman  
Temerlin Consulting*

**John C. Whitehead**

*Former Co-Chairman  
Goldman Sachs & Co.  
Former U.S. Deputy Secretary of  
State*

---

**CO-FOUNDER****Ira D. Wallach**

*(1909 – 2007)*

\*On leave for government service

## **CONTACTS**

*EWI Brussels Center*  
Rue de la Loi, 85  
4<sup>th</sup> Floor  
Brussels 1040  
BELGIUM  
32-2-743-4610

*EWI Moscow Center*  
Tverskaya Street 24/2  
5<sup>th</sup> Floor  
125009, Moscow  
RUSSIAN FEDERATION  
7-495-699-7577

*EWI New York Center*  
700 Broadway  
2<sup>nd</sup> Floor  
New York NY 10003  
USA  
1-212-824-4100

**[www.ewi.info](http://www.ewi.info)**