

**European Security and Counter-
Terrorism**
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European Security and Counter-Terrorism

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Since 11 September 2001, the EU and the United States have both been confronted – in very similar ways – by a new type of threat: Islamic terrorism organized on a global scale by a network of non-state actors structured in cells and located in approximately sixty countries. The attacks in Madrid (11 March 2004) and London (7 July 2005) as well as the failed plot to blow up civilian aircraft flying between Heathrow airport and the US (August 2006) furnish the brutal proof of the vulnerability of Western societies in the teeth of this new scourge. The urgency of European coordination in the struggle against terrorism is difficult to overstate, as is the need to coordinate counter-terrorist activities between the EU and the US. But the problems and the challenges are abundant. Interior Ministries are not in the habit, to put it mildly, of cooperating across frontiers. Systems of criminal justice in different member states are not always compatible. Intelligence services jealously cling to the fruits of their own activities. Between 2001 and 2004, the EU made genuine efforts to transcend these structural, institutional and juridical constraints. But it was only after the Madrid bombings in March 2004 that these efforts began to come together. Despite the inherent weaknesses of cooperation in the field of “Justice and Home Affairs”, increasingly Draconian measures were taken to demonstrate the member states’ political commitment to take on the challenge of a form of terrorism which crossed borders more easily than did European public authorities themselves. In so doing, the EU provoked a backlash from human rights organizations. How could the correct balance be struck between repression and protection? What was the best method of coordinating policy areas as distinct and as different as immigration, refugee and asylum policy, international crime-fighting, border control and counter-terrorism? Above all, how could the requirements of immediate responses to terrorist attacks and the long-term solution to terrorist causes best be articulated? This latter question above all gave rise to a difference in strategic approach

between the US, which tended to prioritize the former objective, and the EU, which strove – at least rhetorically – to focus on the latter. In the following pages, I aim to analyze the distinctiveness of the EU’s approach to counter-terrorism by setting it in the framework of a transatlantic comparison.

Three basic differences between the EU and the US can immediately be brought out:

- The tension between the two sides of the Atlantic in terms of threat assessment – in particular the extent to which the new post-9/11 terror is or is not perceived as qualitatively different from previous types.
- The distinctiveness of EU counterterrorism since 9/11 – both in terms of what *has* been accomplished and in terms of the structural limitations to a specifically EU role in counterterrorism – contrasts markedly with the centralizing capacity of the US.
- Despite the administrative and juridical/legal cooperation which has been concluded between the EU and the US from early 2004 onwards, there have been continuing differences of strategic approach in terms of the overall understanding of the terrorist phenomenon. One of the key differences has been the EU’s penchant for “soft” approaches and the US’s continuing reliance on military power.

1. “Old Terrorism” and “New” Terrorism

The first substantive point to make is that there is a major difference between the “old-style” terrorism with which Europe has been familiar for over a century, and the new “super-terrorism” epitomized by Islamic fundamentalism¹. Two key differences stand out among many crucial distinctions. With most old-style terrorism (anarchism being the exception that proves the rule), there was a clear political demand, usually concerning a limited geo-strategic space, and the possibility of political negotiation. With super-terrorism, none of that is true. The by-word is “the rifle and jihad alone. No

¹ Ken Booth & Tim Dunne (eds.) (2002), *Worlds in Collision: Terror and the Future of Global Order*, New York, Palgrave; Jan Oskar Engene (2003), *Terrorism in Western Europe: Explaining the Trends Since 1950*, London, Edward Elgar; Lawrence Freedman (ed.) (2002), *Superterrorism: Policy Responses*, Oxford, Blackwell; Brian Jenkins (2001), *Terrorism: Current and Long-Term Threats*, Santa Monica, Rand

negotiations, no conferences, no dialogue”². Secondly, with old-style terrorism, the objective, in the words of Brian Jenkins, was “a lot of people watching, not many people dead”. With super-terrorism, the maximization of death is a policy objective and the acquisition of WMD perhaps only a matter of time. It is not surprising, therefore, that counter-terrorism, as a consequence, has had to change both its methods and its approaches quite fundamentally. This it has done – on both sides of the Atlantic.

The second substantive point, however, is that Europe has refused to follow the US in declaring a “global war on terror” (GWOT)³. In his address to the joint session of Congress on 20 September 2001, President Bush not only declared “war” on “terrorism with a global reach”, but he also made the remark which was to infuriate friends and allies around the world: “Every nation, in every region, now has a decision to make. Either you are with us, or you are with the terrorists”⁴. This black-and-white approach to the world was widely regarded in Europe not just as “simplistic” (French foreign minister Hubert Védrine), but, in the words of the eminently establishment UK historian Sir Michael Howard, as a “terrible and irrevocable error”⁵. According to Howard, “to declare war on terror, or even more illiterately, on terrorism, is at once to accord terrorists a status and dignity that they seek and that is undeserving.” Worse still, he argued, the “war” cannot be “won” militarily, but the public will expect precisely such an outcome. And that is to some extent what has happened. Despite official Bush administration disclaimers noting that this is not a war like any other, it has, in the words of Andréani, now “acquire[d] a strategic reality”. The “war” has been extended beyond terrorism to “rogue states” along the “axis of evil” (Bush) but also, potentially, to a longer list of states now categorized as “outposts of tyranny” (Rice)⁶. Furthermore, that war – particularly the

² Andrew McGregor, “Jihad and the rifle alone: ‘Abdullah’ Azzam and the Islamist Revolution”, *Journal of Conflict Studies*, 23/2, Fall 2003

³ For a comprehensive European critique of this quintessentially American notion, see Gilles Andréani, “The ‘War on Terror’: Good Cause; Wrong Concept”, *Survival*, 46/4, Winter 2004-2005, pp. 31-50.

⁴ Speech available at: <http://www.whitehouse.gov/news/releases/2001/09/20010920-8.html>

⁵ Michael Howard, “What’s in a Name? How to Fight Terrorism”, *Foreign Affairs*, 81/1, January/February 2002

⁶ This war psychosis is aptly epitomized by the remark attributed to Radek Sikorski of the American Enterprise Institute: “Baghdad is for wimps. Real men go to Tehran”.

one being fought in Iraq – has succeeded in *attracting* terrorists in numbers unseen in the past. It has in short *created* a “war” between terrorists and the US which did not previously exist, a development which is now officially recognized by US intelligence sources⁷. All this has been widely perceived in Europe not only as regrettable, but also as highly counter-productive. It has, in effect, according to many Europeans (and some Americans⁸) amounted to a massive distraction from the “real” fight against terrorism in general and against Al Qaeda in particular⁹.

The July 2005 reports that the Bush administration has decided to re-brand its “war” under the new acronym SAVE (*Struggle Against Violent Extremism*)¹⁰ merely underlined the continuing gulf between the two sides. The fact that it took the Bush administration over four years to begin to emphasize that the “struggle” should be “more diplomatic, more economic, more political than it is military”¹¹ (Gen. Richard Myers) cut little ice with most Europeans. UK officials attempted at a 8 June 2005 Special Operations seminar in Tampa, Florida to demonstrate that British experience of heavy-handedness in Northern Ireland had led to the conclusion: “Kill five, recruit ...how many?”. But they suspected their US audience of being deaf to such wisdom and doubted that US officials genuinely believe that military instruments should take a back seat. They saw few signs of the US accepting to assume anything but a leading role in the ongoing struggle¹². This US acronymic shift (from GWOT to

⁷ [National Intelligence Council], *Mapping the Global Future: Report of the National Intelligence Council's 2020 Project*, Washington DC, CIA, 2005, pp.93-95: <http://www.foia.cia.gov/2020/2020.pdf>. For a European view of this report, see Philip Stephens, “An American Map of the Future Bush cannot ignore”, *Financial Times*, 21 January 2005. See also: Anthony H. Cordesman, *Iraq's Evolving Insurgency and the Risk of Civil War*, Washington DC, CSIS, 2006 (327 pages), accessed at: http://www.csis.org/index.php?option=com_csis_pubs&task=view&id=3304

⁸ This was a point John Kerry made repeatedly towards the end of his election campaign...

⁹ See, on this, Harald Muller, *Terrorism, proliferation: a European threat assessment*, Paris, EU-ISS, 2003 (Chaillot Paper 58); Philip H. Gordon & Jeremy Shapiro, *Allies at War: America, Europe and the Crisis over Iraq*, Washington DC, Brookings, 2004

¹⁰ Or, in some versions, G-SAVE (G being for Global, rather than for God!). See Eric Schmitt & Thom Shanker, “New Name for ‘War on Terror’ reflects wider US Campaign”, *New York Times*, 26 July 2005; Fred Kaplan, “Say G-WOT?”, *The Slate*, 26 July 2005.

¹¹ In fact, this message was made clear in the February 2003 paper, *National Strategy for Combating Terrorism* (<http://www.whitehouse.gov/news/releases/2003/02/20030214-7.html>) as early as page 1: “The struggle against international terrorism is different from any other war in our history. We will not triumph solely or even primarily through military might”.

¹² Robert Fox, “GWOT is history. Now for SAVE”, *The New Statesman*, 8 August 2005

SAVE) was accompanied by the appointment of Karen Hughes as undersecretary of state for “public diplomacy”. Ms. Hughes told Senators during her confirmation hearings that she planned to turn around America’s image in the Islamic world through astute deployment of the four Es (engagement, exchanges, education and empowerment)¹³. The challenge may prove greater than she believes. A major challenge for the Europeans is to convince their US allies that a holistic new approach to “new” terrorism is essential. Unfortunately, the Europeans, though convinced that a holistic approach is the right way to go, are still trying to figure out how the different parts of the whole fit together.

2. The Distinctiveness of EU concepts of “counter-terrorism”

What is the distinctiveness of the European approach to contemporary counter-terrorism? In the immediate aftermath of 9/11, the EU held extraordinary meetings of both the Justice and Home Affairs Council (20 September 2001) and the European Council (21 September 2001). These meetings stated that the fight against terrorism had become a “priority objective” of the EU. Although the emphasis in these early days was clearly on intelligence sharing, on judicial and police cooperation, as well as on measures against terrorist financing, it was already clear that the Union considered that a key dimension of the fight against terror must be a new approach to the EU’s relations with third countries – particularly in the developing world. While supporting US efforts to track down the perpetrators of 9/11 on the basis of UNSC 1368, the EU also stated its intention “systematically to evaluate [its] relations with third countries in the light of the support which those countries might give to terrorism”, noting that:

“The integration of all countries into a fair world system of security, prosperity and improved development is the condition for a strong and sustainable community for combating terrorism.”

Thus a twin track policy of immediate reaction/riposte and long-term international dialogue and negotiation was set in motion. This has been the main feature of the EU’s approach ever since. A cardinal feature of this long-term approach has been its

¹³ Anne Applebaum, “Think Again, Karen Hughes”, *Washington Post*, 27 July 2005

tight cooperation with the United Nations. As EU counter-terrorism coordinator Gies de Vries told the UN Counter-Terrorism Committee in June 2005,

“The EU regards the role of the UN in meeting and overcoming this challenge as vital. We are committed to supporting you in this, through unequivocal implementation of UN conventions and resolutions, through political and moral support in the world for the UN's role and, wherever possible, through practical co-operation on the ground.”

In 2004-2005, EU and UN teams jointly visited Morocco, Kenya, Algeria and Albania to identify counter-terrorism assistance programs, and EU member states pledged an additional 20 billion euros to help the UN meet its Millennium Goals by 2010. In addition, the EU strongly supported the rapid adoption of the UN's Comprehensive Convention against terrorism and the universal ratification of the 13 existing UN Conventions in the field¹⁴. At least at the level of rhetoric, the EU appears to be prioritizing the structured attack against the root causes rather than a tactical onslaught against the symptoms. The US, on the other hand, tends – at least overtly – to minimize this pathway¹⁵.

Although the US *National Strategy for Combating Terrorism* document draws attention to what it calls “underlying conditions” – such as poverty, corruption, religious and ethnic strife – which help foster terrorism, the emphasis is much less on these conditions per se than on the fact that terrorists can “exploit” them to attract recruits¹⁶. The EU *Declaration on Combating Terrorism* of March 2004 is much more explicit in stressing the need to adopt a long-term strategy to address root causes¹⁷. This difference can be detected also in the respective post-9/11

¹⁴ http://ue.eu.int/uedocs/cmsUpload/06_23_final_1373.pdf It is noteworthy that the very first item on the EU's 150 point Action Plan involves “support for the key role of the UN” in counter-terrorism.

¹⁵ There is only one explicit mention of the UN in the US *National Strategy* document (p.11), although there is frequent reference to UNSC 1373 (28 September 2001) on international cooperation against terrorism

¹⁶ *National Strategy for Combating Terrorism*, pp. 6 & 22, available at: <http://www.whitehouse.gov/news/releases/2003/02/20030214-7.html> .

¹⁷ Accessed at: <http://ue.eu.int/uedocs/cmsUpload/79635.pdf>

Objective 6. “to address the factors which contribute to support for, and recruitment into terrorism”. It is noteworthy that, in the combined US-EU *Declaration* of June 2004, key issues mentioned in the EU document (“the links between extreme religious or political beliefs, as well as socio-economic and other factors, and support for terrorism”) were dropped, to be replaced by objectives such as the promotion of “democracy, increased trade and freedom”.

strategies of the two sides towards the tactical use of development aid in addressing terrorism. US aid, in addition to enjoying a 38% increase, has been more tightly targeted at countries that are perceived foyers of terrorist recruitment in the dual hope that economic assistance will both reduce recruitment and help foster good governance, leading to better relations between the countries targeted and the US. Afghanistan, Iraq and Pakistan are prime examples. EU aid, on the other hand, has not changed its basic philosophy which is and always has been one of reducing poverty for its own sake. And it has not shifted focus to those countries that are believed to be hot-beds of terrorist recruitment. This amounts to a “long-term view that supporting institution-building and economic growth outside the current security hotspots will save new regions from becoming states that could breed terrorism five to ten years down the road”¹⁸. However, this first, long-term strategy of attacking the problem at the root exists mainly at the level of rhetoric¹⁹. No agencies or government departments have been established to deal with it; no armies of officials are toiling away in offices trying to get to grips with it. It remains a vital statement of principle. But acting on it is a challenge which remains in the hands of history rather than of human actors.

On the other hand, the second track of the EU’s counter-terrorist strategy (immediate regulatory responses) has mobilized actors and officials by the thousands. Although a certain amount was accomplished between 2001 and 2004 in the EU’s coordinated campaign against terrorism²⁰, and although in the *European Security Strategy* document published in December 2003²¹, terrorism was identified as the first of five key threats to European interests, implementation and above all coordination of anti-terrorist measures was initially patchy and inadequate. In a report issued in March 2004, Javier Solana noted that “the instruments are poorly

¹⁸ [Center for Strategic and International Studies], *The Transatlantic Dialogue on Terrorism: Initial Findings*, Washington DC, August 2004, p.10. This report highlights the points of agreement and disagreement between the US and the EU over the struggle against terrorism.

¹⁹ Moreover, it should be noted that in most lists of issues to be addressed, it usually figures close to the bottom (6th out of the EU’s seven objectives).

²⁰ See: *European Union Factsheet: the EU and the Fight Against Terrorism* (update February 2005) available at <http://ue.eu.int/uedocs/cmsUpload/europa.pdf>

²¹ See *A Secure Europe in a Better World* available at <http://ue.eu.int/uedocs/cmsUpload/78367.pdf>

used and/or poorly understood by law enforcement and judicial authorities in some member states”²². It was not until the terrorist bombings in Madrid on 11 March 2004 that the Union ratcheted up its counter-terrorism activities considerably, notably with the appointment of an EU Counter-Terrorism Coordinator, Gjis de Vries, whose main task was to ensure maximum coordination between the EU’s Ministries of the Interior and Justice. On 25 March 2004, the EU published a *Declaration on Combating Terrorism*, which announced a revised plan of action involving seven strategic objectives²³ and around 150 initiatives. The Action Plan²⁴ is audited and updated every six months (most recently in June 2006). A comprehensive JHA package (*The Hague Programme*) was adopted in November 2004 at a special European Council meeting. Its objectives were summarized thus:

“The European Council considers that the common project of strengthening the area of freedom, security and justice is vital to securing safe communities, mutual trust and the rule of law throughout the Union. Freedom, justice, control at the external borders, internal security and the prevention of terrorism should henceforth be considered indivisible within the Union as a whole.”

The highly problematic issue of *indivisibility* will be assessed below. By the time of the European Council meeting in Brussels in December 2004, substantial progress was being reported in the following key areas: the fight against financing of terrorism; law enforcement cooperation; border and transport security; external relations; intelligence cooperation; protection of critical infrastructure; a long-term strategy to address issues of radicalization and recruitment of terrorists. On 25 May 2005, the long-awaited *European Agency for the Management of Operational*

²² As late as March 2004, five EU countries had failed to adopt the EU-wide arrest warrant, three countries had failed to approve the common definition of terrorism and only nine countries had adopted the framework decision on joint investigation teams. Solana report accessed via www.statewatch.org/news/2004/mar/10eu-intel-centre.htm

²³ 1) to deepen the international consensus and enhance international efforts to combat terrorism; 2) to reduce the access of terrorists to financial and other economic resources; 3) to maximize capacity within the EU bodies and Member States to detect, investigate and prosecute terrorists and prevent terrorist attacks; 4) to protect the security of international transport and ensure effective systems of border control; 5) to enhance the capability of the EU and of Member States to deal with the consequences of a terrorist attack; 6) to address the factors which contribute to support for, and recruitment into terrorism; 7) to target actions under EU external relations towards priority Third Countries where counter-terrorist capacity or commitment to combating terrorism needs to be enhanced. Accessed at:

<http://ue.eu.int/uedocs/cmsUpload/79635.pdf>

²⁴ <http://ue.eu.int/uedocs/cmsUpload/web097781.en.pdf>

Cooperation at the External Borders of the Member States (aka “European Border Agency” or “Frontex”) began work in Warsaw with a list of six very specific tasks²⁵.

A superficial comparison of the EU’s *Declaration on Combating Terrorism* (March 2004) and of the US *National Strategy for Combating Terrorism*²⁶ (February 2003) suggests that the two blocs are very much on the same wavelength. Indeed, there is nothing in one side’s approach which is not replicated in some form or another in that of the other side. Both recognize, for instance, that this is a long-term strategy, that it cannot lead to sudden “victory” or “defeat”, and that military instruments constitute but a small part of the overall thrust. At a meeting in Dromoland Castle, Ireland, on 26 June 2004, EU and US leaders issued the *EU-US Declaration on Combating Terrorism*²⁷, which reads like a perfect synthesis of the two national documents, structured according to the seven strategic objectives of the EU text. There is no doubt that EU-US cooperation on counter-terrorism has been substantial and growing ever since 9/11. Intelligence sharing has been more intense and more effective than ever before – and this has high-level Franco-US flows, which President George W. Bush acknowledged to have been crucial. Cooperation between law-enforcement agencies and prosecutors has been massively stepped up. On 25 June 2003, the two sides concluded an *Extradition and Mutual Legal Assistance Agreement* facilitating extradition for many more offenses than previously²⁸. Despite serious European misgivings, agreement was reached in May 2004 on communication of *Passenger Name Records* (PNRs) in connection with international travel. In September 2004, wide-ranging agreements were reached on the safety of container transport (the *Container Security Initiative*), including extensive customs cooperation and the facility for US officials to check container cargoes *in European ports*. Joint US-EU investigative teams are being planned. A

²⁵ coordinate operational cooperation; training of national border guards; risk analyses; development of research; assisting member states with technical and operational facilities; organizing joint return operations. <http://europa.eu.int/scadplus/leg/en/lvb/133216.htm>

²⁶ *National Strategy for Combating Terrorism*, p.1, available at: <http://www.whitehouse.gov/news/releases/2003/02/20030214-7.html> .

²⁷ Available at: http://ue.eu.int/uedocs/cmsUpload/10760EU_US26.06.04.pdf

²⁸ There is a special clause (Article 13) on capital punishment which makes it clear that the EU will not extradite an offender if s/he would be subjected to the death penalty.

wide-reaching *Policy Dialogue on Border and Transport Security* is attempting to narrow the gap on issues such as sky-marshals and biometric data. Substantial legal and banking cooperation has been agreed on countering terrorist financing. New measures have been agreed for cooperation in response to the consequences of terrorist attack, including one with CBRN contaminants. This amounts to a substantial package of agreements, many of which would have been virtually unthinkable only five years ago. However, what measure of agreement has been reached is essentially limited to the legal, administrative and technical aspects of counter-terrorism – rather than harmonizing or reinforcing the strategy itself.

Moreover, recent events suggested that the public authorities in Europe acted with undue haste in signing binding agreements with the US. In the UK on 9 November 2005, the House of Commons threw out Tony Blair’s proposal to extend the length of arrest without charges to 90 days, precisely on the grounds that this constituted an unnecessary further swing of the pendulum in the wrong direction²⁹. On 30 May 2006, the *European Court of Justice* threw out the agreement between the EU and the US on the transfer of passenger name records, nullifying both the Commission’s judgment that transferred data was adequately protected in the US and the Council’s decision to authorize the transfer of the data³⁰. The year 2006 also witnessed a major row between the two sides of the Atlantic over CIA secret prisons and rendition flights leading to the highly damaging Council of Europe report published in early June³¹. In other words, the transatlantic nexus, from one perspective, went from tense to worse.

3. Limitations to EU anti-terrorist coordination.

The EU-US agreements on counter-terrorist legislation outlined above look very impressive. However, it is important to understand the real limitations to

²⁹ “Blair Bashing”, *The Economist*, 12 November 2005, p.13 and “After the Defeat”, *Ibid.*, pp.59-60

³⁰ “Growing European Rejection of Bush’s Phony ‘Terrorist’ Rules. EU court scraps passenger data transfers to US” <http://www.tbrnews.org/Archives/a2368.htm>

³¹ Council of Europe: Parliamentary Assembly, *Alleged Secret Detentions and Unlawful Inter-State Transfers Involving Council of Europe Member States*, 7 June 2006, accessed at: <http://www.washingtonpost.com/wp-srv/world/specials/coerenditionreport.pdf>

coordination of EU activities on this front. A recent study argues that the EU is severely hampered in its collective campaign against terrorism by two major factors. First, the EU is not a state, can neither arrest nor prosecute terrorists, nor use spies and satellites to track them. The vast majority of counter-terrorism work is done at nation-state level, and even cross-border cooperation is conducted overwhelmingly at bilateral rather than at EU level. It is this situation that much of the flurry of legislation since 2004 aims to correct, but practice is running several steps behind theory. Secondly, and probably more importantly, “counter-terrorism” spans a vast number of policy-areas involving most government departments. To quote Keohane: “National governments find it hard to coordinate their own ministries and agencies involved in counter-terrorism. Trying to coordinate the collective efforts of 25 governments at the EU level is exponentially more difficult”³². Another major study concurs: “the EU’s counter-terrorism effort has been more aspirational than substantive”³³.

Some of the challenges facing coordination may seem paradoxical. For instance, the EU’s “counter-terrorism coordinator”, Gies de Vries, has no effective power other than his own gifts of persuasion. He has no money, cannot propose legislation and cannot chair meetings of EU justice or foreign ministers in an effort to set the counter-terrorist agenda. As with so many aspects of EU integration, the member states have understood the logical necessity of coordination, have established a position to facilitate it, but have then balked at giving the post-holder the political clout effectively to carry out his/her mission³⁴. Not only does de Vries struggle to facilitate coordination between the Commission and the Council, but he also has to navigate the inter-agency rivalries between bodies such as Europol, Eurojust, the EU’s Terrorism Working Group (comprising national interior ministry officials), the Police Chiefs Task Force, the EU Counter-Terrorism Group

³² Daniel Keohane, *The EU and Counter-Terrorism*, London, CER, May 2005, p.3. For a shorter version of these same arguments, see IISS, “The EU’s role in counter-terrorism: coordination and action”, *Strategic Comments*, Volume 11, Issue 2, March 2005

³³ Jonathan Stevenson, *Counter-terrorism: containment and beyond*, OUP, 2004 (IISS “Adelphi Paper” 367), p.53

³⁴ The limits to the real powers of the HR-CFSP, Javier Solana, constitute another interesting case.

(comprising national internal intelligence officials), the EU's Situation Centre and many others. Several proposals have been formulated with a view to creating a transnational body with genuine authority for counter-terrorism, from bodies as diverse as the UK House of Lords³⁵ and private think-tanks³⁶. Yet these are unlikely to have the desired effect. Reluctance on the part of national authorities to share information too widely put paid to proposals in the wake of the Madrid bombings to establish a European-style CIA. All five major EU intelligence-gathering countries (UK, France, Germany, Italy, Spain) refused to contemplate such a move. However, the fact that those same countries have, since May 2003, organized regular coordination meetings of their interior ministry officials (the G-5) demonstrates that they are not opposed to cooperation for its own sake. In March 2005 they took a step further and established a joint terrorist alert communications system, based in Granada. Such measures are highly contentious for civil and human rights organizations³⁷ -- despite the fact that, to date (including with respect to the London bombings of July 2005), they have proved relatively ineffectual.

The fundamental problem here is precisely the notion of “indivisibility” used in the *The Hague Programme* referred to earlier. The package of policy areas concerned covers a vast range of issues and actors and cannot so easily be rendered operationally “indivisible”. Just to take two obvious categories of activities, terrorism and immigration, the problems of “indivisibility” are immediately obvious. Immigration policy has become indissociable from other – technically quite distinct – policy areas, including refugee policy, asylum policy and policy on transnational crime, particularly human trafficking. As a result of various wars of destabilization around the EU's frontiers, “normal” pressures on migration have been joined since 1989 by massive pressures from refugees (the Balkan conflicts alone created approximately 3 million) and from asylum seekers. In addition, over the past decade, a growing activity in “people-trafficking” has added to these pressures, three routes

³⁵ House of Lords, European Union Committee, « After Madrid : the EU's Response to Terrorism », March 2005, available at: <http://www.publications.parliament.uk/pa/ld200405/ldselect/lddeucom/53/53.pdf>

³⁶ Daniel Keohane & Adam Townsend, « A joined-up EU security policy », *CER Bulletin* December 2003/January 2004.

³⁷ Eg <http://www.cybertime.net/~ajgood/places.html>

in particular being thriving highways for illegal migration³⁸. The task of simultaneously attempting both to coordinate and to disaggregate responses to these different migratory pressures is nigh on impossible. Elsewhere in this volume, Didier Bigo addresses the specifics of that problem³⁹. If we take the other end of the spectrum – terrorism – we can see immediately that “indivisibility” poses as many problems as it solves. A recent article by Philippe Errera identified “three circles of threat” from Islamist terrorism⁴⁰ which are currently being confused and conflated in operationally unhelpful ways, to some extent in response to George Bush’s remark, in an interview with Bob Woodward, that, being a baseball fan, he needed a “scorecard”. The three circles identified by Errera are: 1) the Al Qaeda leadership; 2) Locally based groups sharing some of Al-Qaeda’s ideology but which remain “territorialized” in important ways; 3) *Jihadist* individuals or groups of individuals who should be considered “home-grown bottom-up franchisees” of the greater Islamist cause. The July 2005 London bombers and the August 2006 airline plotters are classic examples of this latter circle. They are arguably the biggest problem of all and yet probably have the least to do with immigration. These groups need to be understood – and tackled – in very different ways. Moreover, the relationship between policies appropriate to dealing with these different counter-terrorist challenges on one hand, and immigration policy on the other is tenuous at best, non-existent at worst. As one study suggests, the effective coordination of immigration policy is taking place in rather ad-hoc fashion as a mix of policy transfer modes characterized by unilateral emulation, adaptation by externality, and conditionality – rather than as a result of “top-down” decision-making emanating from the spate of recent legislation on counter-terrorism⁴¹.

³⁸ Valsamis Mitsilegas, Jorg Monar and Wyn Rees *The EU and Internal Security*, Palgrave/Macmillan 2003; see also, Wyn Rees, “The External Face of Internal Security”, in Christopher Hill and Michael Smith (eds), *International Relations of the European Union*, Oxford University Press, 2005

³⁹ Didier Bigo & Elspeth Guild (eds.), *Controlling frontiers: free movement into and within Europe*, Ashgate, April 2005 ; Didier Bigo, *Les nouveaux enjeux de l’(in)sécurité en Europe : terrorisme, guerre, sécurité intérieure, sécurité extérieure*, Paris, L’Harmattan, 2005.

⁴⁰ Philippe Errera, “Three Circles of Threat”, *Survival*, 47/1, Spring 2005

⁴¹ Sandra Lavenex & Emek M. Uçarer, “The External dimension of Europeanization : the case of immigration policies”, *Cooperation and Conflict*, 39/4, 2004

4. Ongoing differences between the EU and the US

Philippe Errera, in his evaluation of the “three circles of threat”, concludes by asking whether counter-terrorism has the ability to bind together the approaches, methods and fates of the US and the EU in a way comparable to that of communism during the Cold War. He concludes – somewhat pessimistically – by suggesting that this might prove impossible, “but we cannot know until we have tried”⁴².

There is no doubt that there continues to be a major difference of opinion between the two sides over the “newness” of the “new terrorism”. United States officials tend to view the terrorism as exemplified by al-Qaeda or the *jihadist* phenomenon as “fundamentally different” from any prior threats faced by nations, while the Europeans tend to see it as more of an “evolutionary phenomenon” than a dramatic shift in the nature of the threat⁴³. Paradoxically, this argument can also be turned on its head in that Europeans, reacting to *evolution*, have themselves evolved very rapidly in their approaches to understanding and managing terrorism since 9/11. On the other hand, the US, which sees things as *fundamentally different*, also tends to apprehend the threat in very traditional ways. The US has tended, over the decades, to see threats as coming from a single identifiable source which has the US in its sights (USSR, China). Today, that “source” – the new *specific enemy* – is identified as a “general war on America” associated with particular regimes. Donald Rumsfeld has named it the “new fascism”. As Richard Aldrich has argued, Condoleeza Rice, in her testimony to the National Commission on Terrorist Attacks against the US,

“The US and our allies are disrupting terrorist operations, cutting off their funding, and hunting down terrorists one by one. Their world is getting smaller. The terrorists have lost a home-base and training camps in Afghanistan. The governments of Pakistan and Saudi Arabia now pursue them with energy and force... Because we acted in Iraq, Saddam Hussein will never again use weapons of mass destruction against his people or his neighbors. And we have

⁴² Philippe Errera, “Three Circles of Threat”, *Survival*, 47/1, Spring 2005, p.85

⁴³ Martha Crenshaw, “The Transatlantic Campaign Against Terrorism,” Speech Delivered to NATO Conference on “New Tasks and Responsibilities” (July 11, 2005)
<http://www.nato.int/docu/speech/2005/s050711h.htm>.

convinced Libya to give up all its WMD-related programs and materials. And as we attack the threat at its sources, we are also addressing its roots”⁴⁴.

European countries in general, on the other hand, associate the recent upsurge with the consequences of long-term neglect of or failure in the Middle East in general. At the most general level, this helps account for the major difference whereby the US believes it is appropriate to respond to the new terror with military instruments, whereas the EU tends to see terrorism as a phenomenon to be handled with *almost every other instrument*. After 9/11, this latter approach seemed for a brief moment to become the received wisdom: what was required above all else was intelligence sharing and law-enforcement cooperation. Since al-Qaeda was internationally networked and decentralized, the response of the “international community” would have to be similar: multilateral, multilevel, cooperative, piecemeal, patient, and above all *sharing*. However, the US attack on Iraq, which derived directly from the Rice/Bush approach noted above (*states are still primarily responsible for terrorist attacks*) prevented such a consensus from setting in. The US attack on Iraq was intended to put a stop to one major purveyor of terrorist activities (including the dangers of WMD). It would also suck into the Iraqi space large numbers of the global *ihadists* so that they could be collectively killed by military means. That in its turn would make the world love the US and would help Middle Eastern states to democratize. The result, as we now know, has been precisely the opposite. And yet the US *Quadrennial Defense Review* for 2006 defines the key instrument in the global war on terror as being special operations forces engaged in kinetic and low-visibility military operations all around the world. This, to a large extent, explains (while it does not justify!) the continuing reluctance of European countries to help out in Iraq – even though serious destabilization in the Middle East would have a more immediate and direct effect on European interests than on US interests.

Beyond the differences over the GWOT outlined above (p.4), there are many other European criticisms of the way the Bush administration has conducted this “war”. One serious objection has been to the Bush administration’s clear policy of

⁴⁴ Condoleeza Rice, Opening remarks to the National Commission on Terrorist Attacks upon the United States, 8 April 2004.

forging “coalitions of the willing” instead of using the existing structures and resources of the Atlantic Alliance⁴⁵. The slogan “the mission determines the coalition”, with its unilateralist connotations, has been profoundly disruptive of NATO. Indeed, in its rush to prosecute the GWOT, the US is perceived by many Europeans (and by even more Americans) as having, in effect, abandoned multilateralism and sounded the death-knell of NATO.

Another major objection formulated by Europeans has been against the Bush doctrine of “preemptive war” as outlined in the *US National Security Strategy* of September 2002. Not only is this perceived as having abandoned the strategic approaches of deterrence and containment which characterized the post-1945 world, but it is considered to have blurred the necessary distinctions between state and non-state actors and the most effective ways of dealing with them. This has, in effect, succeeded in undermining the solidarity of the “West’s” strategy against terrorism. Moreover, to the extent to which the war in Iraq has been perceived in Europe as a “mistake”⁴⁶, one major consequence has been seen as an increase in terrorist recruitment rather than a decline, the creation of a less stable rather than a more stable Middle East and the exacerbation rather than the improvement of relations between the “West” and Islam⁴⁷. As EU External Relations Commissioner Chris Patten put it in a speech to the European Parliament on 15 September 2004, “Is the world today safer than before the overthrow of the appalling Saddam? Is global terrorism in retreat? Are we closer to building bridges between Islam and the West? Is the world’s only super-power more widely respected? Have the citizens in our democracies been treated in a way that will encourage them to give governments the benefit of the doubt next time they are told that force needs to be used preemptively to deal with an imminent threat? I simply pose the questions.

⁴⁵ See, on this, Jolyon Howorth et alii, “L’Impact sur les Organisations de Défense du Concept de ‘Coalition de Circonstance’”, Paris, IFRI/DAS, 2004, 84 pages

⁴⁶ In a January 2005 BBC poll, as many as 80% to 90% of respondents in many European countries believed this to be the case.

⁴⁷ François Heisbourg, “A Work in Progress: the Bush Doctrine and its Consequences”, *The Washington Quarterly*, 26/2, Spring 2003, 75-88; Lawrence Freedman, “Prevention, not Preemption”, *The Washington Quarterly*, 26/2, Spring 2003, 105-114; Jolyon Howorth, “The US National Security Strategy: a European View”, in Roland Dannreuther & John Peterson (eds.), *Security Strategy and the Transatlantic Alliance*, London, Routledge, 2006, pp.30-44

Honorable Members will have their own answers.”⁴⁸ Indeed, the EU – a region in which Islam is a growing presence – is appalled at the extent to which the Bush “war” on terror has been perceived as a war against Islam, thus fuelling *jihadist* tendencies among youth and other groups⁴⁹.

Connected to this criticism has been widespread concern across Europe about US approaches to “winning the peace” in Iraq. The US has embarked on a crusade for democracy whereas the EU has sought – in areas outside its immediate purview (where it has in fact been the greatest force for the export of democracy that the world has ever seen) – to settle for greater stability. The US has been perceived as having badly misjudged the challenge of democratization in Iraq and has been (perhaps unfairly) accused of wishing to move far too quickly towards an “exit strategy”⁵⁰. Although the EU stated from the outset that its ESDP instruments would play a part in the campaign against terrorism⁵¹, and although it has regularly insisted that a military component will be a necessary part of that campaign⁵², it has never explained in any detail what specific role it foresees for military instruments. This remains an unanswered question in the EU’s approach to counter-terrorism. It is yet another – significant – contrast to the approach adopted by the US.

A further area of European criticism has focused on US disregard for the norms of international law both with respect to the Geneva Convention and with respect to human rights⁵³. There has been considerable disquiet about the *Patriot Act* and its restrictions on human rights and basic freedoms – all of which are explicitly protected in the EU Constitution’s *Charter of Fundamental Rights*. This is a theme which is regularly – albeit

⁴⁸ See also Chatham House Middle East Programme Report, *Iraq in Transition: Vortex or Catalyst?*, London, RIIA, September 2004.

⁴⁹ “bin Laden [...] has been able to capitalize on the growing resentment of the Muslim diaspora, especially in Europe.” [Center for Strategic and International Studies], *The Transatlantic Dialogue on Terrorism: Initial Findings*, Washington DC, August 2004, p.6.

⁵⁰ Simon Chesterman, “Bush, the United Nations and Nation-Building”, *Survival*, 46/1, Spring 2004; Toby Dodge, “A Sovereign Iraq?”, *Survival*, 46/3, Autumn 2004.

⁵¹ At the Extraordinary Council Meeting of 21 September 2001, the EU already stated that the effectiveness of the fight against terrorism would require “making the ESDP operational at the earliest opportunity”.

⁵² This was first made explicit in the Declaration on the Contribution of the CFSP, including the ESDP, to the Fight Against Terrorism issued as Annex V to the Presidency Conclusions of the 22 June 2002 Seville European Council

⁵³ Adam Roberts, “Law and the Use of Force after Iraq”, *Survival*, 45/2, Summer 2003, 31-56; Christopher Greenwood, “International Law and the ‘war against terrorism’”, *International Affairs*, 78/2, April 2002

diplomatically – brought up by visiting EU counter-terrorism officials in the US⁵⁴. It has also constituted the main concern of European analysts of the impact of the GWOT on basic freedoms and human rights⁵⁵. In part, this difference stems from yet another asymmetry. European countries have traditionally experienced terrorism as a domestic, national or at most a continental phenomenon. The US experience has been the opposite: the vast majority of attacks have come from global networks, attacking US facilities almost anywhere in the world except within the continental US (9/11 was the exception that proved the rule).

All EU statesmen expressed their desire to engage in a fresh start with the Bush administration after the November 2004 elections⁵⁶. The “charm offensive” tour of Europe conducted by Condoleeza Rice in early 2005 set the scene for an even more constructive visit by George W. Bush in February. In his speech in Brussels, the President thanked his European allies for their “strong cooperation in the war on terror”⁵⁷. He was politely applauded. Two weeks later, Bush announced his support for the EU strategy of “constructive engagement” with Iran. Comment across Europe remained cautious. Editorialists welcomed the new tone of the Bush-2 administration and speculated that a new period of convergence was not impossible. Since then, however, analysts have awaited, with impatience, firm evidence of a breakthrough towards a new era of transatlantic harmony. There is still a very long way to go.

Conclusions: EU/US Counter-Terrorism post-London – signs of hope ?

⁵⁴ Thus Gjis de Vries on his first visit to Washington in May 2004: “we must be careful to preserve and protect the rights and liberties, the principles and values terrorists are seeking to destroy” (CSIS speech 13 May 2004, pp.2-3).

⁵⁵ Monica Den Boer, *9/11 and the Europeanisation of Anti-Terrorism Policy: A Critical Assessment*, Paris, *Notre Europe*, Policy Paper 6, September 2003.

⁵⁶ See, for example, “A Letter to America” written by French foreign minister Michel Barnier, *Wall Street Journal* 8 November 2004 and Thomas Ferenczi, “L’Union Européenne veut adresser un message positif”, *Le Monde*, 21 January 2005

⁵⁷ See Bush’s speech at the Concert Noble in Brussels, 21 February 2005, accessed at: <http://www.whitehouse.gov/news/releases/2005/02/20050221.html>

After the deadly bombings in London on 7 July 2005 and the failed bombings on 21 July, both UK and European authorities introduced draconian new measures to counter the new threat of what *Le Monde* called “Kamikazes Maison”⁵⁸. At the extraordinary meeting of the JHA Council on 13 July, a twenty-five point plan was outlined to strengthen the pursuit and investigation of terrorists across borders, most of which involved stepping up implementation of existing plans⁵⁹. France announced plans to reintroduce border checks on passports, with Spain rapidly following suit⁶⁰. The UK government introduced new legislation ranging from self-evident measures (such as the prevention of foreign supporters of terrorism from entering Britain) to more controversial proposals to criminalize not only direct incitement to terrorism, but anything which appeared to “condone”, “glorify” or “justify” terrorism anywhere in the world. The deportation of “extremists” – apparently to be defined as individuals holding “what the government considers to be extreme views” – and the adoption of harsher measures against naturalized (as opposed to native-born) individuals, was deplored not only by human rights organizations but also by *The New York Times*⁶¹. It seemed as though EU authorities, in their haste to be seen by their public to be doing something robust to crack down on terrorism, were engaged in a headlong dash along the same lines as their strategies prior to 7 July.

Many of these measures in fact enjoyed widespread public support in the UK. To a certain extent, the UK (one of the last bastions of liberal humanitarianism) had begun to align its counter-terrorism culture with that of a country like France which, under its “zero-tolerance” Minister of the Interior Nicholas Sarkozy, has for some time been uninhibitedly expelling (mainly to North Africa) Muslims found to be advising on how to beat one’s wife in a “correct Islamic fashion”, calling Jews “apes” or inciting *jihad*. However, cooler heads have wondered whether the remedy will not prove to be worse than the symptom. A UK government report in May 2004

⁵⁸ “Home-Grown Kamikazes” – *Le Monde* editorial, 15 July 2005

⁵⁹ http://ue.eu.int/ueDocs/cms_Data/docs/pressData/en/jha/85703.pdf

⁶⁰ Michel Radu, “London 7/7 and its Impact”, Philadelphia, Foreign Policy Research Institute, Volume 6, No.5, 26 July 2005

⁶¹ Editorial “Tony Blair’s Antiterrorism Package”, *New York Times*, 19 August 2005

suggested that there could be up to 10,000 active “Al-Qaeda” supporters in the country. Similarly, a joint Home Office and Foreign Office report estimated that “only” 1% of UK Muslims were potential terrorists – a figure which comes to around 16,000⁶². The danger was that draconian legislation would produce precisely the result that UK specialists discovered in Ireland: terrorist recruitment would simply accelerate⁶³. This was to some extent the reasoning behind the rejection, by the UK House of Commons, of Tony Blair’s proposal to extend the length of arrest without charges to 90 days⁶⁴. Any attempt to render “indivisible” the entire range of policies covered by *The Hague Programme*, in which terrorists, immigrants, asylum-seekers, refugees, people-traffickers and drug lords are covered by the same “freedom justice and security” program is likely to prove operationally counter-productive.⁶⁵

Given all this, one might have expected that the ongoing clashes I referred to earlier would simply exacerbate the difficulties in EU-US cooperation. My final point (which introduces a glimmer of hope into the discussion) is that, paradoxically, the summer of 2006 may have witnessed the first signs of a return of the pendulum towards greater protection of human rights as well as greater cooperation between the US and the EU. The whole range of issues referred to above (Blair’s defeat; the PNR debacle, the CIA renditions scandal as well as the ongoing Iraq imbroglio) had two results. In Europe they restated some basic principles about the tipping point between human rights and homeland protection. As Gies de Vries noted, in a January 2006 speech otherwise devoted to outlining the many ways in which the EU collectively was coordinating its counterterrorist activities, core values are nevertheless a fundamental pillar in the overall campaign: “qualified majority voting, stronger democratic and judicial control, and better protection under the ECHR are indispensable to fight terrorism effectively”⁶⁶. There

⁶² David Leppard & Nick Fielding, “The Hate”, *Sunday Times*, 11 July 2001.

⁶³ [IISS], *Islamist Terrorism in London: Unsettling Implications*, *Strategic Comments*, 11/5, July 2005: “intercommunal tension fuelled by tough intelligence and law enforcement efforts, and the implementation of more intrusive counter-terrorist legislation, could make radicals all the more inclined towards violence in the medium term.”

⁶⁴ “Blair Bashing”, *The Economist*, 12 November 2005, p.13 and “After the Defeat”, *Ibid.*, pp.59-60

⁶⁵ In a major editorial in *Le Monde*, Jean-Marie Colombani offered ten fundamental lessons which he hoped would help Europeans to learn to “live with terrorism” – “Vivre avec le Terrorisme”, 27 July 2005.

⁶⁶ Gies de Vries, “The European Union and the Fight against Terrorism”, Seminar of the CER, Brussels, 19 January 2006

were also signs of a similar reassessment in the US. There was growing awareness in the US intelligence community that the balance had swung far too far in favor of military dominance of the intelligence world and that quality actionable intelligence had suffered greatly as a result. The first half of 2006 in fact saw an ever greater monopoly of US intelligence activities by the Pentagon, despite the recent creation of the national intelligence directorate. According to an IISS report published in June 2006, the Department of Defense succeeded in retaining control over some 80% of the federal intelligence budget and in cutting the national intelligence director, John Negroponte, out of the military chain of command. Yet the new CIA Director General Michael Hayden insisted that the Agency should see it as a “top priority” to share information with foreign partners. While this was not (quite) a shift from a “need to know” approach to a “need to share” approach, it did betoken recognition that excess jealousy in guarding intelligence has proven counter-productive. Hayden also embarked on a campaign to claw back greater control over the intelligence budget and activities for the civilian agencies. This meshes well with the statutory requirement under which Negroponte operates, which is to assert ever greater civilian control. As the IISS *Strategic Comment* put it:

“Hayden’s clear-eyed preoccupation with maintaining the high tempo of intelligence collection on emerging threats while simultaneously improving intelligence analysis, coupled with his premium on intelligence sharing, suggests tangible movement within the US national security system in the direction of greater operational interdependence [...] The US and its partners may be settling into a new epoch of collegiality in the intelligence realm”⁶⁷.

After a rather shaky start, there were some signs in late 2006 that both the EU and the US were beginning to learn some of the basics of cooperation in counter-terrorism. But there was still a very long way to go.

⁶⁷ IISS, “Cooperative intelligence: renewed momentum?”, *Strategic Comments* Vol.12 Issue 4 May 2006