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## Editor's Note:

Europe has evolved beyond a simple geographic location; it is more than a set of institutions or a common economic area. Instead, Europe is a pervasive Idea based on notions of citizenship (re: political and social inclusion), human rights and justice, shared economic growth and prosperity and responsibility. These are not the current characteristics of Europe, they form the basis of its destination, and it is essential for those living in Europe to begin the lengthy processes of recognising the impact the successful imbedding of such an Idea, into the fabric of international relations, may have on the dynamics of international behaviour, while guarding against those internal and external forces which are out-of-sync with the demands of 21<sup>st</sup> century citizens.

It is a difficult task to convince largely apolitical publics of the stakes involved in the event of either the success or failure of the Idea of Europe, and the question of how to proliferate such notions becomes paramount. There are a great deal of pressures facing European citizens ranging from purely economic, to political and social, and there are very few avenues available for those concerned with the future of Europe to traverse. Since the majority of Europeans are literate, and genuinely care about the nature of their societies, the news media has been able to take root and assists in forging and then reinforcing ideas and is partially responsible for both positive and negative understandings of the EU and its place in Europe and the world. However, reliance on the news media is not enough. Scholars are also partially responsible for engaging with publics, to provide, or participate in, forums meant to present issues of significance and weigh their consequences in a fair and honest manner. On 20 November 2009, the Centre for Security Studies (C4SS) at Metropolitan University Prague did just that. Under the stewardship of Oldrich Bures, the C4SS organised a public conference entitled simply: Europe at Sixty, which was designed to bring European scholars together, in Prague, to discuss the peaks and valleys in the long process of European integration and to gauge where Europe is heading.

This conference was unique for a number of reasons, not least because of its location; Prague, since in many ways it symbolised the 'normalisation' of the Czech Republic within Europe. To be sure, the Czech Republic has always belonged to Europe, yet like the other Central and East European states, had been excluded – by the force of the USSR and the political dynamics of the Cold War – from assuming its rightful place as an equal participant in the European project. And yet, on 20 November 2009, roughly two decades removed from the Velvet Revolution, and scholars gathered from France, the UK, Italy, Germany, the Netherlands, Slovakia, and the Czech Republic to take a step forward by engaging with the interested public, students and other scholars and therefore to act as a conduit of information about the Idea of Europe and its practical implications.

It is on this point that I welcome you to CEJISS 4:1: a Special Issue largely based on the Europe at Sixty conference. Within this issue, you will find five articles that were presented during the conference: Christian Kaunert commences this issue with an exploration of the potential supranationalisation of EU counter-terrorism efforts. This is followed by Sarah Leonard who, while also examining EU counter-terrorism efforts, offers insights into the EU's use of migration controls as a policy option in the fight against terrorism. Oldrich Bures' contribution provides an important additive to understanding the nuanced political swaggering involved in constructing a viable EU that reflects the interests of European citizens, states and the EU itself. This is done by evaluating differences in threat perception (re: when it comes to terrorism) found among EU members, though Bures' findings are significant in other areas of EU competence as well. The final two articles from the Europe at Sixty conference; by Francesco Guimelli and Jan Martin Rolenc (et al) investigate and evaluate a 'soft power' tool increasingly deployed by the EU: sanctions. Guimelli's work concentrates on so-called targeted sanctions while Rolenc (et al) deals with EU sanctions policy more broadly. Taken together, these articles assist in understanding the *actorness* of the EU and, by extension, its role in current international relations.

In addition to the articles based on the Europe at Sixty conference, CEJISS 4:1 contains six full-length research articles covering: potential Georgian membership in NATO (Stephen Herzog), US-EU counter-terrorism cooperation (Bryan Groves), a depiction of European and US behaviour in a multipolar international system largely determined by Asian states (Milos Balaban), democracy assistance (Richard Lappin), the Bush administration's conduct in combating terrorism (Jan Ludvik) and sub-state participation in international health-care cooperation.

While there is a degree of difference between the articles in the Special Issue and the regular Research sections of CEJISS 4:1, they should taken together and understood as contributions to wider, international debates since it is the combined intellectual works within Europe and beyond, that will assist in propelling international relations forward.

I warmly welcome you to CEJISS 4:1 and look forward to your feedback.

Mitchell A. Belfer



Editor in Chief  
CEJISS

## **Towards Supranational Governance in EU Counter-Terrorism? – The Role of the Commission and the Council Secretariat<sup>1</sup>**

**Christian Kaunert<sup>2</sup>**

### **Introduction**

Since the events of 11 September 2001 (9/11), it has been argued by some scholars that security has become the dominant force in the European Union's Area of Freedom, Security and Justice (AFSJ). As a result, there has been an active debate on the 'securitization' of the new threats, such as refugees and migrants (Bigo 1996, 1998a, 1998b, 1998c, 2001, 2002; Guild 1999, 2002, 2003a, 2003b, 2003c, 2004, 2006; Guiraudon 2000, 2003; Huysmans 2000, 2004). In this context, 'securitization' refers to the theoretical suggestion that refugees and migrants are presented as security threats, based on the framework by the so-called 'Copenhagen School' (Buzan 1991; Buzan et al. 1998; Wéver 1993, 1995). This would lead us to hypothesise that an EU competence in security areas matters increasingly, and, given the importance of the terrorist attacks of 9/11, 03/03, and 07/07, EU competences in countering the terrorist threat, matter most significantly.

Yet, if one reviews the area of EU counter-terrorism, there are diverging opinions as to which extent EU competences matter in the fight against global terrorist threats (Reinares, 2000; Dubois, 2002; den Boer & Monar, 2002; Guild, 2008; Mitsilegas & Gilmore, 2007; Occhipinti, 2003; Deflem, 2006; Bures, 2006, 2008; Gregory, 2005; Zimmermann, 2006; Friedrichs, 2005; den Boer, Hillebrand and Nölke, 2008; Müller-Wille, 2008; Spence, 2006; Bossong, 2008; Kaunert, 2005, 2007, 2009, 2010). On the one hand, the EU has been characterised as a 'paper tiger' (Bures, 2006, p. 57) and thus an ineffective counter-terrorism actor. On the other hand, scholars point out that the EU has

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taken great strides towards increasing integration and encouraging co-operation between member-states since 9/11 (Zimmermann, 2006; Kaunert, 2007, 2010). Zimmermann (2006, p. 123) asserted that ‘on 21 September 2001, the Union prioritised the fight against terrorism, and accelerated the development and implementation of measures deliberated on prior to the events of 9/11.’ Yet, Zimmermann (2006, p. 126) makes an important caveat to all EU action in the field of counter-terrorism: ‘[...] the Union does not have a ‘normal’ government at the supranational level with all the requisite powers, competences, and hence, capabilities of regular government; it is not a federal European state.’ This means, *a priori*, one would not necessarily expect EU institutions to provide significant leadership in counter-terrorism.

EU counter-terrorism policy itself has also begun to receive much scholarly attention. The *Journal of Common Market Studies* published a special issue on this topic in January 2008. The introductory article (Edwards and Meyer, 2008, p.1) suggests that the entire ‘governance of the European Union has been changed through its responses to international terrorism.’ However, counter-terrorism, while clearly one of the most crucial security policy fields within the EU, is also one of the most complicated areas in institutional terms and can encompass measures across all three pillars prior to the Lisbon Treaty, which entered into force on the 01 December 2009. Therefore, it is important to keep in mind the pre-Lisbon cross-pillar character of the EU counter-terrorism policy when drawing conclusions on the role of EU institutions from the following analysis, as they can only be generalised to the pillar concerned. Despite this note of caution, this article suggests that some limited generalisable arguments can be made.

In the pre-Lisbon third pillar of the EU, counter-terrorism involved a number of criminal justice instruments, of which the European Arrest Warrant (EAW) and the EU definition of terrorism are amongst the most important (Kaunert, 2007, 2010), with a particular emphasis on the European Arrest Warrant, which has been the flagship instrument of the EU. Firstly, the EAW abolishes the term extradition, and replaces it with the term ‘surrender’ (Douglas-Scott, 2004). The national judicial authorities will be responsible for its enforcement, thus virtually excluding political decisions by excluding the national executives from the decision-making process (Wagner, 2003a, p.707). Secondly, the legal effect of this measure is subject to the jurisdiction of the European Court of Justice (Peers, 2001) if member states sign a declaration approving of this. The Commission chose to create the arrest warrant by means of a framework decision, one of the third pillar instruments introduced by the Treaty of Amsterdam, which is binding on the member states as to the result to be achieved, leaving national authorities the choice of form and method of transposition (Peers, 2001; Wagner, 2003a, 2003b). Thirdly, the EAW abolishes the principle of double criminality for serious offences, (Douglas-Scott, 2004). Thus, an arrest warrant may not be contested on the basis that it is for an activity not

criminalised in the surrendering member states. In addition, the arrest warrant is applicable to all offences on a list, and not just terrorist offences. This applies to 32 different categories of crimes, thus, virtually all crimes apart from petty crimes. Examples of these categories of crime are: participation in a criminal organisation, terrorism, human trafficking, sexual exploitation of children and child pornography, and also corruption, fraud, money laundering, and making counterfeit money. The argument of this article is that the Commission has been instrumental in persuading EU member states to adopt the EAW, which under normal circumstances outside the 9/11 framework, would have been difficult to swallow for most member states.

Furthermore, inhibiting the funding for terrorist groups is of particular importance in the fight against international terrorism (Gilmore, 2003); primarily dealt with pre-Lisbon first and second pillar instruments in the EU. The Commission has the exclusive right to initiate proposals on terrorist financing with regards to first pillar provisions. The article suggests that it used this power and successfully persuaded the Council of Ministers and the European Parliament to approve its proposed laws. In addition, together with fifteen 'old' EU Member States, it is also a member of the FATF itself. Legislative measures with terrorist financing implications include the 'Protocol to the Convention on Mutual Assistance in Criminal Matters', as well as the so-called 'second anti-money laundering Directive', and the 2005 'third anti-money laundering Directive' which repealed the previous two directives. In addition, it also integrated a number of associated measures aimed at implementing the FATF requirements: (1) Regulation (EC) No 1889/2005 on the control of cash entering or leaving the Community (which implements SR IX on cash couriers); (2) Regulation (EC) No 1781/2006 on information on the payer accompanying transfers of funds; and (3) Directive 2007/64/EC on payment services (PSD) in the internal market, which provides the legal foundation for the creation of an EU-wide single market for payments.

On the other hand, the Council Secretariat was vital in facilitating the transposition of the binding resolutions of the UNSC at the EU level. To this purpose the Council Secretariat exerts an important role within the intergovernmental setting of the Council of Ministers, to be precise in the Common Foreign and Security Policy (CFSP) context of the second pillar. One of the cornerstones in the fight against terrorist financing is the regime of targeted financial sanctions foreseen by UNSC resolutions. Following the precedent of the UNSC Resolution 1267 concerning Al-Qaeda, Osama Bin Laden and the Taliban and Associated Individuals and Entities, the EU has adopted and implemented an ad hoc set of rules to transpose UNSC Resolution 1373 in the context of the second pillar. Since the adoption in 1999 of Resolution 1267, the EU has already been applying certain sanctions on Al Qaeda and Taliban suspects in accordance with the list drawn up by the UN 'Al-Qaeda and Taliban Sanctions Committee.' Yet, after 9/11 the implementation of Resolution 1373, whose most

important component is the ‘freezing of assets’ provision, required imposing freezing measures against whatever terrorist group, not only against Al-Qaeda and the Taliban.

The article suggests that, despite the central place EU Member States continue to have in the in the policy-making process, EU supranational actors, in particular the European Commission and the Council Secretariat<sup>3</sup> (Christiansen, 2002; Kaunert, 2005, 2007, 2009, 2010; Stetter, 2007), have exerted a considerable influence in shaping the current design of the EU counter-terrorism policy. Thus, the article engages with the arguments made by intergovernmentalists that the supranational institutions are ‘late, redundant, futile and even counterproductive’ (Moravcsik, 1999a, p.270). This article argues that the Commission and the Council Secretariat played a very active and significant role – the role of a supranational policy entrepreneur. Admittedly, counter-terrorism is a policy sector in which the European institutions have rarely taken the lead, nor consistently been active. Yet, increasingly this view has become challenged (Kaunert, 2007, 2009, 2010). The argument of this article is to suggest that this signifies a step towards increased supranational governance in EU counter-terrorism policy.

The article will proceed in four stages. The first section will provide a brief outline of the debate on the political role of the European Commission and Council Secretariat as a supranational policy entrepreneur, and the precise framework used for this analysis. The second section will analyse the normative environment which EU decision-makers have been operating in since the 9/11 attacks. The third section will demonstrate the empirical findings within the case study of the EAW. The fourth section will examine the extent to which the Commission and the Council Secretariat have been instrumental for the EU counter-terrorist financing regime. Finally, the article will conclude that the European Commission and the Council Secretariat have been significant in the process of European integration in ‘high politics’, which has implications on how scholars of the European Union need to conceptualise the powers of this supranational institution.

## **The European Institutions as a Supranational Policy Entrepreneur (SPE)?**

The debate on supranational policy entrepreneurship falls within the dispute between intergovernmentalists (Hoffman, 1966; Moravcsik, 1993),

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<sup>3</sup> The Council Secretariat is here assumed to be a supranational institutional actor following the interpretation given by Christiansen (2002, p.35) according to which ‘in spite of the official nomenclature, the Council Secretariat is clearly an institution, possessing a formal structure with a set of internal rules and administrative practices which regulate the work of a body of permanent staff. And it is located at the European level, possessing a high degree of institutional autonomy and may therefore be regarded as supranational.’

supranationalists (Haas, 1958; Stone Sweet and Sandholtz, 1997; Stone Sweet et al., 2001), and institutionalists ‘somewhere in between’ (Pollack, 1997, 2003; Tallberg, 2002, 2003, 2006, 2008; Beach, 2004, 2005; Kaunert, 2005, 2007, 2009, 2010) concerning the role of supranational institutions in the process of European integration.

This article suggests a framework of supranational policy entrepreneurs (SPE), which is often referred to by the academic literature that discusses the role of institutions in European integration (Moravcsik, 1999a; Pollack, 2003; Beach, 2004, 2005; Stone Sweet and Sandholtz, 1997; Stone Sweet et al., 2001). The concept of a political entrepreneur is grounded in the works of Kingdon within the context of US politics. Kingdon (1984, p. 173) suggests an evolutionary policy-making model starting with the identification of a problem (first stream), which is then followed by a search for alternative solutions (second stream) and a decision among these alternatives (third stream). On some occasions, a ‘policy window’ opens for the adoption of certain policies. Policy entrepreneurs, ‘*advocates [...] willing to invest their resources – time, reputation, money*’ (ibid, p. 188), stand at this window in order to propose, lobby for and sell a policy proposal. Kaunert (2007, 2009) has further extended this framework to constructivist insights of norm construction and norm entrepreneurship, widely discussed in the international relations literature (Finnemore, 1996a, 1996b; Finnemore and Sikkink, 1998).

Why is this important? At the political bargaining stage (the politics stream), where decisions amongst different alternatives are taken, the EU is dominated by member states’ preferences and interests, especially by the Council of Ministers in the third pillar decision-making process. In principle, this would indicate the benefits of a liberal intergovernmental analysis for the policy area. In this view, European integration can best be explained as a series of rational choices made by national leaders and dominated by national interests (Moravcsik 1998, 1999a, 1999b). Thus, EU integration occurs due to: (1) a change in interests within the member states; or (2) the result of a grand political bargain. International institutions are merely there to bolster the credibility of interstate commitments (Moravcsik, 1998, p.18) by ensuring that member states keep their promises and thus dare to agree to a mutually favourable solution without the fear of ‘free-riders.’

But where do member states’ national interests and preferences come from? Moravcsik (1998) assumes national interests to be exogenous of the EU process. The interests of the member states are stable before they come to the bargaining table. However, it does not seem reasonable to assert that preferences are exogenous. The EU has created a system whereby member states continuously interact at different levels. The claim that this would not change preferences over time appears doubtful. Even within the context of the international system with less social interaction amongst states, Katzenstein (1996) has demonstrated convincingly how norms and values shape national

interests. Constructivist literature clearly showed how these norms change over time (Finnemore, 1996a, 1996b; Finnemore and Sikkink, 1998).

Yet, if national interests and preferences are shaped by different norms and values, as argued in this article, this implies that a fourth stream – the norm stream – is underlying the three other streams. Norms consequently influence the definition of political problems, the search for policy alternatives, and finally the national preferences in the politics stream where decisions are taken. How can norms be constructed and how can they be observed? Firstly, actors provide reasons for action. The SPE constantly pushes for his reasons for action to become accepted as a norm, albeit in competition with other actors. This is the first stage of norm creation in the norm life cycle as described by Finnemore and Sikkink (1998), and is followed by the norm socialisation stage. Eventually, a norm becomes the dominant norm. Consequently, SPEs are important in the social construction and reconstruction of norms that steer the political movement of the other streams.

Kaunert (2007, 2009) suggests the ways in which political entrepreneurs can achieve this:

1. First mover advantage: SPEs need to come in faster with their proposals than their rivals.
2. Persuasion strategy: as mentioned above, in order to achieve acceptance, other actors need to be convinced by the reasons for the action proposed.
3. Alliances: it is vital for the SPE to form initial alliances with other powerful actors to create a bandwagon effect, whereby more actors will join the ‘winning team.’

This article will move from the argument that ‘institutions matter’ (Beach, 2004, 2005; Bailer, 2004; Elgström and Jönsson, 2000, 2005; Tallberg, 2002, 2003, 2006, 2008; Lewis, 2005, 2008). Specifically, it will apply the useful model elaborated by Kingdon (1984) as further developed by Kaunert (2007, 2009) and it also will take into account Lewis’ insights on norms (2005, 2008). In the following section, the role of the Commission and the Council Secretariat in the policy-making process of EU counter-terrorism are analysed in detail.

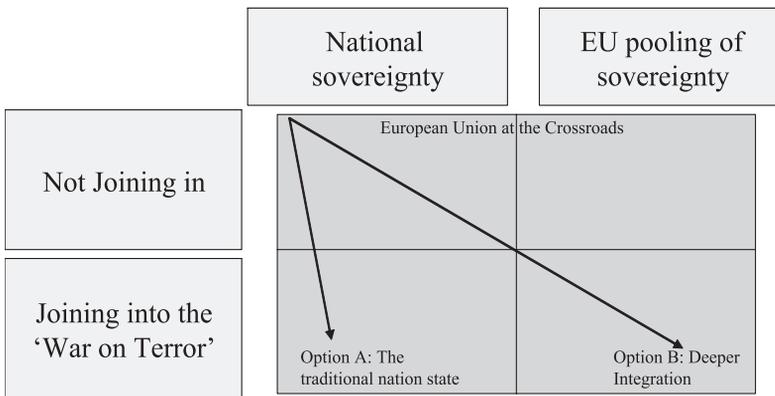
## **Evaluating the Normative Environment after 9/11: The Commission in Action**

This section argues that the Commission managed to play the significant role of an SPE because it constructed its formal proposals on EU counter-terrorism within the context of the emerging policy norm of the ‘war on terror.’ The proposals, which in its initial state would have been difficult to swallow for most member states in the mere context of ‘fight against crime’ even after the Tampere Council Summit 1999, were politically constructed to become an important instrument in the ‘war on terror.’ In this way, the norm to participate

in the war on terror (via EU mechanisms) was used strategically to convince the majority of member states of the political merits of increased EU counter-terrorism cooperation. Thus, the Commission (and the Council Secretariat in EU-CTF) managed to play the role of an SPE and persuaded member states to promote European integration in EU counter-terrorism.

Put simply, social and legal norms up until the Tampere Council Summit had evolved on two axes (Kaunert, 2005): (1) whether the EU should be legislating at all in the Area of Freedom Security and Justice (AFSJ); where the normative debate had been structured between those wishing to preserve national sovereignty and those wishing to pool sovereignty at the EU level, and (2) what the aims and purposes of such a legislation are. This article suggests that regarding EU counter-terrorism matters, it is precisely this second dimension that was at the heart of the debate.

Figure 1: September 11 – The EU at a normative crossroads



The Tampere European Council Summit 1999 marked one of the most critical junctures in the history of the Area of Freedom, Security and Justice (AFSJ) (Occhipinti, 2003). While the Commission is not widely credited to have set the political agenda, it appears to have pushed important elements of its agenda into the Tampere conclusions (Occhipinti, p. 82), such as the use of a 'scoreboard' system (interview CON3, 2004) to monitor a timetable of progress towards each of the goals and objectives. This scoreboard was then used throughout the five year programme as an instrument to exert pressure on member states if progress was lagging behind. However, the Commission also strategically used the openness of the Tampere conclusion on counter-terrorism matters in order to push for much more significant proposals than member states initially asked for.

The adoption of the principle of mutual recognition of judiciary decisions is often seen as the major advance for European integration in criminal justice

matters. Wagner (2003b) claims that this principle may play a role ‘similar to the 1979 Cassis de Dijon judgment of the European Court of Justice [...] which paved the way for the internal market.’ In fact, according to Wagner (2003a) the Spanish government and the Commission both worked successfully on establishing this principle at the EU level, which had already been included in a series of Spanish bilateral treaties with Italy, France, the United Kingdom, and Belgium. This could be an indicator for Commission influence already at this early stage in the member state preference formation.

September 11, 2001, had a significant impact on the norms of decision-makers in Europe. In simple terms, there were four general choices of direction available to the EU. The first option for EU member states may well have been to not join the ‘war on terror’ and continue to operate as before, adhering to the traditional principle of national sovereignty. This is represented by the first quadrant in the matrix. However, given the still positive state of transatlantic relations between Europe and America, this would have necessitated a clear rupture in relations. Hence, it was always unlikely to occur. The second option for EU member states would have been to build a counterweight against America’s war and therefore not join in. Yet, in order to realise being a counterweight to the USA, the EU would have had to integrate more politically. For the same reason as the first option, this was also unlikely to happen.

This means that the norm to join the ‘war on terror’, which emerged after September 11, 2001, would make it difficult not to support the United States. The only realistic options at this point in time were Option A and Option B. Option A represents what nation states in Europe have traditionally practised for a very long time. This implies supporting the United States, while at the same time maintaining national sovereignty in the AFSJ. A good example here would be the provision of intelligence to the United States government without any change of structures in intelligence relations. Option B represents the new option for European nation states. It implies full support to the United States and its ‘war on terror’, while restructuring the foundations of internal security relations in the EU. In essence, as argued in this article, the latter option was the one that was pursued by the European Commission and approved by the Council.

The political norm that the international community needed to join the war against terrorism emerged with the attacks on the US on 11 September 2001. A close examination of the war discourse shows how the norm emerged, and ultimately made it difficult to do anything other than join it. This demonstrates the fact that, ultimately, the EU had to support the USA – even if more in appearance than substance. In fact, the appearance of support would increase peer pressure for EU member states to adopt EU counter-terrorism policy in the end.

The platform for the emerging norm to join the ‘war on terrorism’ was first established with Bush’s ‘act of war speech’ (BBC News, 12.09.01). In this, he declared: ‘The deliberate and deadly attacks, which were carried out yesterday

against our country, were more than acts of terror. They were acts of war.’ [...] ‘This enemy attacked not just our people but all freedom-loving people everywhere in the world.’ [...] ‘We will rally the world.’ [...] ‘This will be a monumental struggle of good versus evil, but good will prevail.’ One should note the significant pressure for countries to adopt the norm to fight the ‘war on terror.’ Bush defined appropriate action in terms of fighting in the ‘war against terrorism’, and made an even stronger case by distinguishing between ‘good and evil.’ Later, Bush (BBC News, 12.09.01) enforced this emerging norm by stating that ‘you are either for us or against us.’ Thus, the political pressure is such that the appropriate course of action became defined in its support of the US.

In speaking to the European Parliament, the Commissioner responsible for the Area of Freedom, Security and Justice (formerly better known as Justice and Home Affairs), Antonio Vitorino, remarked (FT, 06.12.01): ‘Terrorist acts are committed by international groups with bases in several countries, exploiting loopholes in the law created by the geographical limits on investigators and often enjoying substantial financial and logistical resources. Terrorists take advantage of differences in legal treatment between States, in particular where the offence is not treated as such by national law, and that is where we have to begin.’ Vitorino made the link that was established earlier very clear. In order to combat terrorism, these measures were vital (ibid). Therefore, in Vitorino’s view, anyone opposing these measures behaved out of line, inappropriately, and effectively supported terrorism indirectly by not closing the legal loopholes. The Commission moved extremely fast to make this link.

In conclusion, the norms changed demonstrably in the few weeks after 11 September 2001, and the Commission acted as an SPE in this process. It played the role of a strategic ‘first mover’ in order to shape the debate in a way that placed the EU at the centre of Europe’s ‘war on terror.’ It also assessed very well politically how the norm environment would produce political pressure on member states to act. Consequently, the European Commission and its Commissioner Vitorino proposed action which clearly demonstrated its support for the United States and its ‘war on terror’ (interviews COM10, COM25 and CON7).

## **The Commission and the European Arrest Warrant**

In the case of the European Arrest Warrant, the Commission followed this normative change in the political environment up politically with a very timely proposal. This proposal for the policy had already been under preparation for about two years before it was launched. Vitorino initially intended to launch it under the Spanish Presidency in the first half of 2002 due to Spain’s strong support of the issue in order to solve its own problems with the ETA terrorists. Yet, with the emerging norm of the ‘war on terror’, it became apparent that fast action was required. Ministers in the AFSJ would be under intense pressure

to behave appropriately and settle their differences. Vitorino remarked: ‘If we do not get agreement, and it should be a substantial agreement to cope with the global threat, it will be difficult to explain to the public why we failed.’ (FT, 06.12.01)

Therefore, the Commission’s strategy was for the arrest warrant to be presented as an anti-terrorist measure and to be amalgamated with other such measures, such as the Framework Decision on the Definition on Terrorism. During research interviews, this strategy could be triangulated from the information provided by the interviewees, as follows: Firstly, officials in the Commission (COM10, COM14, COM20, and COM25) confirmed the political decision to bring the proposal of the EAW forward, as indicated above. Officials in the Directorate-General JHA under Sir Adrian Fortescue had to work at full speed over the weekend before the proposal for it to be approved by the College of Commissioners on 19 September 2001 (Occhipinti, 2003, p. 149; also confirmed by interviews COM10 & COM25). The timing was crucial in order to construct the EU response to the ‘war on terror.’

Secondly, the official who drafted the proposal (interview COM20) confirmed the fact that there had been work on it for almost two years, which included bilateral meetings with the different member states, with national lawyers, academics and NGOs. Nonetheless, all these meetings made it very clear that the different national views were very, very far apart. These disagreements covered the most basic features of the EAW, including the maintenance of the principle of double criminality, the preservation of some political interference and even the choice of the legal instrument. All national representatives (interviews PR1 to PR24) had serious misgivings about the drafts of the EAW. This number is far larger than was commonly suggested by the reporting media, who mainly pointed to Italy. However, it seems clear that France, Ireland, the UK, Luxembourg, and even the Presidency at the time - Belgium - had severe political problems with significant parts of the draft. In the end, the Commission made the political decision to have a completely new extradition system and to convince member states through constructing the EAW into the ‘war on terror.’

Thirdly, Commission officials accepted the fact that the speed of the negotiations was ‘revolutionary’ (interview COM10 in particular, but also COM20). This is perceived to have been in connection with the political mood of ministers, who desperately wanted to demonstrate action (COM10), and were persuaded by the Commission that the EAW had to be part of an anti-terrorist package. Subsequently, the Extraordinary (Emergency) European Council held in Brussels on 20/21 September set in motion a series of nine measures proposed by the Commission, of which the most notable items were the EAW and the definition of terrorism. This displayed the sense of action that national ministers wanted. At the same time, it managed to blur the boundaries between the different contents – terrorism and crime more generally. The drafters of the

EAW (interviews COM20 & COM12) accepted this fact. ‘The European Arrest Warrant is not a specific instrument to fight terrorism, but to fight crime’ (ibid).

The European Arrest Warrant (EAW) was politically adopted by the Laeken Council summit on 14-15 December 2001, with the formal legal adoption in June 2002 under the Spanish presidency. The first post 09/11-opportunity for Justice and Home Affairs (JHA) ministers to start negotiations on the ambitious anti-terrorist agenda in the Council was during its regularly scheduled session of 27-28 September 2001 in Brussels. It was of vital importance for the Commission to ensure the support of the six months rotating Presidency of the Council for the European arrest warrant. In particular, there is one specific reason why the Commission needed to persuade the Belgian Presidency. Not only are Presidencies important in their gate-keeping and drafting roles, but the Belgians were known to be opposed to the European Arrest Warrant (EAW) before it was proposed by the Commission. This is a fact that was not only confirmed by the Belgian delegation, but also reiterated by other national delegations (interviews PR1, PR3, PR5 and PR8), the Commission (interviews COM10 & COM20), and, in particular, staff of the Council Secretariat (interviews CON3 & CON7). The Belgian Justice Ministry was particularly opposed to the EAW (interview CON7), and this fact was known to the European Commission before the negotiations. This was one of the reasons why the Commission initially wanted to propose the EAW under the Spanish presidency six months later (interview COM12). In these circumstances, it was a strategic gamble on the fact that it would manage to persuade Belgium in order to achieve greater EU integration in the area of criminal justice.

In the end, how did the Commission persuade Belgium? Firstly, it exploited a split between the (then) Belgian Prime Minister, Guy Verhofstadt, and his own Justice Minister, Marc Verwilghen (interview CON7). During the preparations of the Council agenda, the instructions of the Justice Ministry that were given to their staff were aimed to slow down progress in order to prevent the adoption of the EAW. In order to solve this potential problem, Vitorino personally intervened at the Prime Minister level (interview CON7). In this struggle, the Prime Minister was convinced of the necessity to incorporate the EAW into the anti-terrorist agenda in order to advance to the EU’s role in the ‘war on terror.’ It was only this direct intervention by the Belgian Prime Minister within his own national delegation that changed the negotiating stance of the Presidency. During the course of the negotiations, both the Belgian Presidency and the Council Secretariat greatly supported the Commission in its effort to persuade the other reluctant member states to adopt the European arrest warrant. This was the essential first stepping stone to success for the Commission as a supranational policy entrepreneur.

As part of the strategy to persuade the big member states, the Commission lobbied the United States. The Director-General of the Commission, Fortescue (European Voice, 27.09.01), had been part of an EU delegation meeting with Colin Powell, the US Secretary of State, in Washington the week after the

events of September 11. As a result of the terror attacks, Fortescue mentioned the fact that the EU and the US could be drawn together by co-operating. Moreover, a letter (ibid) was sent to Washington asking President Bush how the EU could assist America. Bush's reply in the form of a five-page letter angered several member states, but it gave the Commission another reason to press for the smooth adoption of its own proposals. Bush provided a long list of 47 demands covering judicial and diplomatic co-operation and other issues (BBC News, 22.10.01). Extradition processes from the EU to America should also be streamlined, the letter requested. Most importantly, the letter asked the Union to ease extradition procedures internally. Again, welcome support for the Commission's cause. Leonello Gabrici, the Commission's Justice and Home Affairs spokesman, argued that 'the things that we are doing against terrorism... will simplify life for the Europeans and make it easier for us to co-operate with the United States' (BBC News, 22.10.01).

The final part of the Commission strategy involved persuading reluctant member states, especially Italy. This was achieved through a re-enforcement of the norm to join the 'war on terrorism' and by putting considerable peer pressure on Italy from within the Council and the European Council (The Times, 07.12.01). Italy was the last member state opposed to the European Arrest Warrant at that time. However, the Commission and its allies amongst the member states, especially Belgium, were quick to apply peer pressure on Berlusconi. Commissioner Vitorino declared that 'we cannot be held hostage to Council unanimity' and indicated that the 'Council might try to proceed without Italy by using the option of enhanced co-operation to allow the 14 member states to go ahead' (Occhipinti, 2003, p.171). Marc Verwilghen - the Belgian Justice Minister who initially opposed the EAW - warned Italy that the Laeken meeting on December 14-15 would be 'very difficult' for Silvio Berlusconi and that his behaviour was 'incomprehensible.' The German Interior Minister Otto Schily also complained that 'the Italian position is completely unacceptable' (ibid).

In the end, the pressure applied on Berlusconi paid off, and Italy abandoned its opposition (Irish Times, 12.12.01). Italy's official reversal of policy came during a visit to Rome on 11 December 2001 by Verhofstadt, the (then) leader of the Presidency. However, this section showed how the Commission and its ally – the Belgian Presidency – were able to organise pressure by hinting exclusion and by applying it in order to push for the Commission's proposal for the European Arrest Warrant. This is the reason why the European Arrest Warrant provides an excellent example of the Commission as an effective SPE.

## **Counter-Terrorism Financing and the Commission and the Council Secretariat**

This section argues that the Commission and the Council Secretariat managed to play the significant role of SPEs in dimensions of the first and the

second pre-Lisbon pillar as well. The Council Secretariat and Commission have been demonstrably significant in designing and implementing international standards for fighting terrorist financing in the most coordinated and effective way. The Council Secretariat constructed its influence predominantly within the intergovernmental context of implementing UN resolutions through the Council of Ministers, whereas the Commission played a significant role regarding supranational cooperation in relation to FATF recommendations.

Yet, the implementation of these international standards, framed in the context of the UN and the FATF, necessitates clear pooling of national sovereignty at the EU level. Surprisingly, EU Member States, despite their traditional reluctance to hand over powers to European institutions in areas as deeply entrenched in national sovereignty as counter-terrorism, recognised that a collective implementation at EU level can add value in dealing with that demand more effectively (interview CON5). Furthermore, two additional factors added to this perception of a European added value. On the one hand, some national governments, some which were not previously familiar with terrorism, lacked the original primary legislation necessary to adopt some of the instruments to implement the provisions (*ibid*). On the other hand, the EU had consistently been committed in the past to aligning itself to FATF and UN decisions, as well as implementing both UNSC resolutions and FATF recommendations into EU legislation. Both of these reasons contributed to the EU as a whole seeking to be ‘an exemplary implementer’ (Eling, 2006).

Thus, the Commission and the Council Secretariat both managed to play the role of an SPE and persuaded member states to promote European integration in countering terrorism financing matters. The use of the term ‘persuasion’ here is applied slightly differently to both EU institutions. While the Commission had to persuade Member States of the merits of the policy, the Council Secretariat acted more as a facilitator, given that UN resolution 1373 is binding in international law. However, despite this, Member States were persuaded to use the framework of the European Union in order to fulfil their international legal obligations, which they could have done at the national level only if they so wished. EU commitment in the field was subsequently reinforced by the shock of the terrorist attacks in Madrid on 11 March 2004. The ‘solidarity’ Declaration on Combating Terrorism of 29 March 2004, agreed upon by the European Heads of State and Government (European Council 2004), again strongly emphasised the need ‘to reduce the access of terrorists to financial and other economic resources’ and ‘to address the factors contributing to the support for and recruitment into terrorism.’

The European Commission managed to play the significant role of an SPE in the first pillar area of implementing the FATF Special Recommendations at EU level. It persuaded EU member states to promote European cooperation in the field of countering terrorist financing, where EU engagement was so far rather limited, and thereby it contributed to shape the current design of EU-CTF

regime. Indeed, the FATF Nine Special Recommendations require the extension of the EU anti-money laundering regulatory framework in order to also include the offence of terrorist financing. Given that cooperation at the EU level during the 1990s focused more on transnational organised crime rather than on terrorism, those actors in charge with anti-money laundering tasks could broadly rely on the experience from that field.

Especially the Commission utilised its expertise and competence from dealing with money-laundering in order to initiate legislation related to terrorist financing. The Commission has the exclusive right to initiate proposals on terrorist financing with regards to first pillar provisions linked to financial crime. Consequently, it used this power and successfully persuaded the Council of Ministers and the European Parliament to approve its proposed laws. In addition, together with fifteen 'old' EU Member States, it is also a member of the FATF itself. The Directorate-General of the Commission DG Markt leads the European delegation in these negotiations. It seeks to coordinate EU Member States as much as possible negotiations start, despite their obvious jealousy to protect their national prerogatives.

Since the 2001 attacks, especially in the initial months of major political pressure for action, the Commission has been able to accelerate the adoption of some legislative measures with terrorist financing implications that were already under discussion before 9/11. Amongst these are included the 'Protocol to the Convention on Mutual Assistance in Criminal Matters'<sup>4</sup>, which provides for the exchange of information between Member States concerning bank accounts held by any person who is subject to criminal investigations. The protocol represents a considerable improvement of cooperation in the fight against economic and financial crime. Furthermore, the Commission pushed also for the adoption of the so-called 'second anti-money laundering Directive'<sup>5</sup>. While controversial negotiations on the Directive had been ongoing since the summer of 1999, the Commission demonstrated particular skill in pushing this initiative through the 'window of opportunity' (den Boer, 2006) after 9/11. It used the close link between money laundering and terrorist financing in order to push the European Parliament to agree on the text already approved by the Council. The second anti-money laundering Directive was adopted at the conciliation stage in December 2001 and thereby amended the earlier 1991 Directive.

The success of this legislation has clear similarities with the Commission's policy entrepreneurship in the adoption of the European Arrest Warrant. The EAW, which in its initial state would have been difficult to swallow for most

<sup>4</sup> Council Act (2001/C 326/01) of 16 October 2001 establishing, in accordance with Article 34 TEU, the Protocol to the Convention on Mutual Assistance in Criminal Matters between the Member States of the EU, OJ C326, 21.11.2001.

<sup>5</sup> Council Directive (2001/97/EC) of 4 December 2001 amending Council Directive 91/308/EEC on the prevention of the use of the financial system for the purpose of money laundering, OJ L344, 28.12.2004.

member states in the mere context of ‘fight against crime’ that was prevalent in the 1990s, was politically constructed to become an important instrument in the ‘war on terror.’ In the same way, the emerging international norm of joining in the ‘war on terror’ made it necessary to adopt the directive to counter-terrorist financing, even though it seemed implausible to adopt these instruments in the ‘fight against money laundering’<sup>6</sup>. In this way, the norm to participate in the war on terror (via EU mechanisms) was used strategically to convince the majority of member states of the political merits of the second anti-money laundering directive, and it allowed the Commission to use member states’ peer pressure to convince the reluctant member states to participate. Thus, the Commission managed to play the role of an SPE and persuaded member states to promote European integration in counter-terrorist financing.

This process was pushed even more strongly when, in 2004, the Commission prepared a far-reaching Communication focused on the prevention of and the fight against terrorist financing through measures to improve the exchange of information, to strengthen transparency and enhance the traceability of financial transactions. Most of the elements included in the Communication were inserted also in the 2005 ‘third anti-money laundering Directive’<sup>7</sup> which repealed the previous two directives. The ‘third directive’ also made the title ‘terrorist financing’ more explicit, and, once again, reaffirmed the EU objective to comply with FATF standards. It clearly incorporated most of the latest version of the FATF Recommendations (as revised in 2003) into Community legislation.

On the other hand, the Council Secretariat was vital in facilitating the transposition of the binding resolutions of the UNSC at the EU level. To this purpose the Council Secretariat exerts an important role within the intergovernmental setting of the Council of Ministers, to be precise in the Common Foreign and Security Policy (CFSP) context of the second pillar. One of the cornerstones in the fight against terrorist financing is the regime of targeted financial sanctions foreseen by UNSC resolutions. Following the precedent of the UNSC Resolution 1267 concerning Al-Qaeda, Osama Bin Laden and the Taliban and Associated Individuals and Entities, the EU has adopted and implemented an *ad hoc* set of rules to transpose UNSC Resolution 1373 in the context of the second pillar. Since the adoption in 1999 of Resolution 1267, the EU has already been applying certain sanctions on Al Qaeda and Taliban suspects in accordance with the list drawn up by the UN ‘Al-Qaeda and Taliban Sanctions Committee.’ Yet, after 9/11 the implementation of Resolution 1373, whose most important component is the ‘freezing of assets’ provision, required imposing

<sup>6</sup> However, it needs to be remembered that, tied to the end of the cold war and the fear of organised crime, the EU was able to adopt money-laundering instruments. In fact, the EU adopted its first directive on money-laundering in 1991.

<sup>7</sup> Council Directive (2005/60/EC) of 26 October 2005 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing, OJ L309, 25.11.2005.

freezing measures against whatever terrorist group - and not only against Al Qaeda and Taliban.

Consequently, the EU decided to establish its own autonomous system for identifying and designating individuals and organisations under suspicion of terrorism (but not included under the 1267 sanctions regime). In order to do this the Council adopted a Common Position (2001/931/CFSP) on the joint bases of Articles 15 and 34 TEU in December 2001. The Common Position lays clearly down the criteria for listing persons, groups or entities suspected of having links with terrorism and of being involved in terrorist acts, as well as defining the actions that amount to a terrorist act.

This was complemented by a Council Regulation (EC) No 2580/2001, adopted under Articles 60, 301 and 308 TEC, implementing the EC law aspects of the foreign policy aspects of the Common Position. The EC Regulation provides for the freezing of all funds, other financial assets and economic resources belonging to the persons, groups and entities listed in the Common Position and coming from outside the EU. Furthermore, all the persons, groups and entities listed in the Common Position are subject to enhanced measures taken in the field of police and judicial cooperation in criminal matters. The need to adopt a first pillar regulation alongside of a second/third pillar common position was necessitated by the fact that an asset freeze represents a hindrance to the Community provision for the free movement of capital. This would have been prohibited by EC law without this regulation. Thus, with the Common Position and the EC Regulation, the EU addressed both foreign policy and criminal law matters.

In charge of the strictly intergovernmental workings concerning the procedures of listing and de-listing of terrorist suspects is the Council Secretariat-Directorate General E for EU external affairs, which is supported by the Commission-DG External Relations. The Council Secretariat has over time been acquiring substantial functions in the intergovernmental areas of CFSP. This is equally true for some areas of police and criminal justice cooperation; EU Member States were reluctant to empowering the Commission in those sensitive fields. It is for these reasons that, since 1999, the Council Secretariat on behalf of the Council – which decided to rely on it for implementation – has taken the lead in implementing UNSC Resolution 1267 and in updating EU legislation in accordance with relevant changes to the UN ‘blacklist.’ This legacy has clearly influenced the post-9/11 institutional and organisational arrangements chosen for managing the implementation of Resolution 1373. In this area, the Council Secretariat plays a very significant executive role and is endowed with the delicate responsibility to assist the *ad hoc* working group created within the Council responsible for managing the EU blacklist. Thus, it can be argued that the Council Secretariat managed to play the significant role of an SPE through its influence within the intergovernmental context of the Council of Ministers; thereby facilitating the promotion of European cooperation in countering terrorist financing.

## Conclusions

In conclusion, this article demonstrated two points. Firstly, European integration is possible in areas of ‘high politics’, areas at the very heart of the nation state. Despite the central place EU Member States continue to have in the policy-making process, EU supranational actors, in particular the European Commission and the Council Secretariat, have played a significant role in shaping the current design of the EU counter-terrorism policy. Thus, the article refuted arguments made by intergovernmentalists that the supranational institutions are ‘late, redundant, futile and even counterproductive’ (Moravcsik, 1999a, p. 270).

The Commission and the Council Secretariat have been very active players – exerting the role of a supranational policy entrepreneur. On the normative level, the Commission in particular managed to contribute significantly to embedding EU countering-terrorism policy into a European policy response to the US led ‘war on terror.’ This significantly contributed to member states preference building. Consequently, the Commission and the Council Secretariat played the role of SPEs, as defined by Kingdon (1984) and further elaborated by Kaunert (2007). This clearly adds to the growing body of literature that suggests that European institutions can be important players in Justice and Home Affairs areas (Kaunert, 2007, 2009, 2010), as well as in other first pillar areas, such as telecommunications (Fuchs, 1994, 1995), equal opportunities (Mazey, 1995), and research (Peterson, 1995).

However, it needs to be acknowledged that there are limitations to the arguments in the article. The Commission and the Council Secretariat have acquired the capacity to act as SPEs as demonstrated by the cases in this article. This implies a (potentially) significant role in the legislative process, even in institutionally difficult terrain such as counter-terrorism. However, the thesis is limited to the legislative process. In opposition to the first pillar, in the second and third pillar, the Commission cannot take member states to the ECJ for failure to transpose legislation properly or on time as would be the case in infringement proceedings under the TEU<sup>8</sup>. While the Commission and the Council Secretariat can act as SPEs regarding legislative innovation, the same does not apply regarding the implementation of EU policy at the national level. Thus, despite this increase in supranational governance in EU counter-terrorism, this process is still ongoing and far from complete. Let’s see where this process takes us with the ratification of the Lisbon Treaty, which entered into force on the 01 December 2009, as well as the adoption of the Stockholm Programme – the work programme for the EU in the Area of Freedom, Security and Justice for the next five years.

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<sup>8</sup> However, with the entry into force of the Lisbon Treaty on the 01 December 2009, the pillar structure is abolished; this will eradicate this problem to a very significant extent.

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- European Voice: article on 27.09.01

# The Use and Effectiveness of Migration Controls as a Counter-Terrorism Instrument in the European Union

Sarah Leonard<sup>1</sup>

## Introduction

Since the terrorist attacks on 11 September 2001, the issue of the linkages between security concerns, in particular terrorism, and asylum and migration policies in the European Union (EU) has received an increasing amount of scholarly attention (see Guild, 2003a; Guild, 2003b; Baldaccini and Guild, 2007; Boswell, 2007; Bigo and Tsoukala, 2008; Chebel d'Appolonia and Reich, 2008a; Givens et al., 2009; Winterdyk and Sundberg, 2010). Most scholars have argued that security concerns have led to the strengthening of border controls and the tightening up of asylum and migration policies in Europe, at both the national and EU levels. As a result, it has become more difficult for asylum-seekers to receive international protection and for would-be migrants to legally move to another country (see notably Bigo and Tsoukala, 2008; Chebel d'Appolonia and Reich, 2008a; Givens et al., 2009). Thus, the impact of security concerns, including terrorism, on the EU asylum and migration policy has been rather well-documented to date. However, less attention has been given to the related, albeit different, question of the role of migration controls in the EU's counter-terrorism policy.

To a certain extent, this reflects a broader trend in the literature on counter-terrorism, which tends to focus more on counter-terrorism strategies such as the use of force or intelligence gathering than on other measures such as migration controls (see, for example, Martin, 2006; Harmon, 2008). This is actually intriguing, when one considers the potentially significant role that migration

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controls can play by allowing, or not, the entry into a specific country of persons seeking to commit terrorist acts (Bullock et al., 2006: 205). In addition, the issue of migration controls may have been particularly neglected in studies of the EU counter-terrorism policy because of the commonly held perception that European countries rely less on such measures than other countries, the United States in particular (Chebel d'Appollonia and Reich, 2008b: 7).

As a consequence, the present paper aims to address this specific issue of the role of migration controls in the EU counter-terrorism policy. By 'migration controls', it is meant the controls that are exercised on those wishing to enter the territory of a specific country, such as visas and controls at the physical border sites. In the context of the EU, where internal border controls have been abolished – with a few exceptions<sup>2</sup> –, 'migration controls' refer to the controls exercised on non-EU nationals wishing to cross the external borders of the Member States of the EU (also known as 'third country nationals' in EU policy).<sup>3</sup>

The article starts by tracing back the inclusion and development of migration controls as one of the EU counter-terrorism policy instruments. Then, it examines the various migration control measures that are currently used by the EU to fight terrorism, as well as their effectiveness. As this is a very dynamic policy area, the following section examines several measures that are currently being negotiated by EU policy-makers as an indication of the new migration control measures that may become part of the EU counter-terrorism policy in the future. After showing that migration control measures have become increasingly important in the EU counter-terrorism strategy, the paper questions the extent to which this is a positive policy development when one considers both the effectiveness and the negative externalities of increased migration controls.

## The Role of Migration Controls in the EU Counter-Terrorism Policy

The development of EU cooperation on counter-terrorism is a relatively recent phenomenon. Although operational cooperation on issues of internal security such as terrorism already began in the 1970s amongst European states

<sup>2</sup> Five states (France, Germany, Belgium, the Netherlands and Luxemburg) decided to abolish controls at their internal borders by signing the Schengen Agreement in 1985, which was followed by the adoption of the Schengen Convention in 1990 and led to the creation of the 'Schengen area.' Schengen provisions were later brought into the EU framework with the adoption of the Amsterdam Treaty. However, the United Kingdom and the Republic of Ireland never joined the Schengen area. Nowadays, it comprises 25 states – all the EU Member States, apart from the United Kingdom, the Republic of Ireland, Cyprus, Romania and Bulgaria, as well as three states that are not members of the EU (Norway, Iceland and Switzerland).

<sup>3</sup> Although EU nationals seeking to enter the EU after a stay outside the EU are subject to border controls, those are different from the migration controls that are examined in this article. EU immigration policy provisions do not apply to EU citizens, as they are subject to other legal provisions relating to free movement in the EU.

within the TREVI Group, it is only in 1993 that cooperation on terrorism was formally included in the EU framework with the adoption of the Treaty of Maastricht (Mitsilegas, 2009b: 10). However, for a few years, EU achievements in this policy area remained rather modest for a variety of reasons, a detailed examination of which is beyond the scope of this article (Argomaniz, 2009). It suffices to say that the events of 11 September 2001 gave a significant impulse to the development of EU activities against terrorism (Bures, 2006; Zimmermann, 2006; Argomaniz, 2009; Kaunert, 2007; 2010). The analysis of the role of migration control measures in the EU counter-terrorism policy will therefore focus on post-9/11 policy developments.

In the first phase of the development of the EU's post-9/11 response to terrorism, migration controls were not identified as a priority. Some measures relating to migration controls, such as the reinforcement of controls at external borders, the establishment of a network for exchanging information on visas issued and the improvement of the input of alerts into the Schengen Information System (SIS) (see below) were mentioned in the Anti-Terrorism Roadmap adopted on 26 September 2001. However, those were listed alongside 43 other measures and were not given much substance. Also, whilst the deadline for the reinforcement of controls at external borders was identified as 'as soon as possible', no deadline was stipulated for the other two measures. In addition, migration controls had not been identified as a priority by the European Council when it met in an extraordinary session on 21 September 2001 'in order to analyse the international situation following the terrorist attacks in the United States and to impart the necessary impetus to the actions of the European Union' (European Council, 2001a: 1). The European Council Conclusions and Plan of Action identified the priorities for the development of the EU counter-terrorism policy as follows: (1) enhancing police and judicial cooperation; (2) developing international legal instruments; (3) ending the funding of terrorism; (4) strengthening air security and (5) coordinating the EU's global action. Thus, strengthening migration and border controls was not identified as a priority in the first phase of the development of the EU's post-9/11 response to terrorism. In the first months following the terrorist attacks, the EU rather focused on enhancing police and judicial cooperation on counter-terrorism amongst EU Member States, with the adoption of important instruments such as the Framework Decision on Combating Terrorism and the European Arrest Warrant, and tackling terrorist financing (see Kaunert, 2007; 2010).

The Declaration on Combating Terrorism, adopted on 25 March 2004, in the wake of the terrorist attacks in Madrid, represented a turning point with regard to the use of migration controls in EU counter-terrorism. For the first time, migration control measures were clearly identified as a priority in the development of the EU counter-terrorism policy. Section 6 of the Declaration was entitled 'Strengthening border controls and document security' and called for '[expediting] work on measures in this area', including the establishment of the

European Borders Agency, the adoption of a Council Directive on the obligation of carriers to communicate passenger data and the adoption of proposals for the incorporation of biometric features into passports and visas. In addition, Section 5 of the Declaration on 'Building on existing cooperation' emphasised the importance of 'maximising the effectiveness of information systems', most of which (Schengen Information System (SIS), Visa Information System (VIS) and EURODAC) contain data pertaining to asylum and migration matters as will be explained in greater detail below. In addition, Annex 1 of the Declaration identified seven strategic objectives for the EU to combat terrorism, the fourth of which was 'to ensure effective systems of border control' (European Council, 2004: 15). There were two main reasons for the increased emphasis placed on migration controls as an instrument of EU counter-terrorism. First of all, the location of the March 2004 terrorist attacks - on European soil, in contrast with the attacks on 11 September 2001 - had a profound effect on the EU counter-terrorism policy. These events accelerated the development of the EU counter-terrorism policy and led to a considerable expansion of its scope (Argomaniz, 2009; see also Lugna, 2006; Bossong, 2008). Secondly, the fact that most perpetrators of the Madrid terrorist attacks were non-EU nationals (first-generation migrants from Morocco in this case) led EU policy-makers to give increased attention to migration controls as a dimension of EU counter-terrorism.

In the revised Plan of Action on Combating Terrorism adopted in June 2004, the importance of ensuring effective systems of border control was once more presented as one of the seven EU strategic objectives to combat terrorism (Council of the European Union, 2004). In addition, as this Action Plan was considerably more detailed than any of its predecessors, the objectives of the EU in this policy area were presented in greater detail for the first time and most of them were assigned deadlines for their completion. In addition to this Plan of Action on Combating Terrorism, which was to be updated every six months, the EU adopted a Counter-Terrorism Strategy in December 2005. It is based on four pillars: 'prevent', 'protect', 'pursue' and 'respond.' 'Prevent' refers to activities aiming to tackle the root causes of terrorism, whilst 'protect' concerns activities aiming to decrease the vulnerability of people and infrastructures to terrorist attacks. 'Pursue' refers to the investigation of terrorist activities, whilst 'respond' concerns the reactions to terrorist attacks (Council of the European Union, 2005). Again, migration control measures were given a prominent place under the 'protect' heading as evidenced by the following excerpt of the EU Strategy:

We need to enhance protection of our external borders to make it harder for known or suspected terrorists to enter or operate within the EU. Improvements in technology for both the capture and exchange of passenger data, and the inclusion of biometric information in identity and travel documents, will increase the effectiveness of our border controls and provide greater

assurance to our citizens. The European Borders Agency (Frontex) will have a role in providing risk assessment as part of the effort to strengthen controls and surveillance at the EU's external border. The establishment of the Visa Information System and second generation Schengen Information System will ensure that our authorities can share and access information and if necessary deny access to the Schengen area (Council of the European Union, 2005: 10).

In addition, under the heading 'pursue,' it was noted that 'the development of new IT systems such as the Visa Information System and the next generation Schengen Information System, while safeguarding data protection, should provide improved access to those authorities responsible for internal security thereby widening the base of information at their disposal' (Council of the European Union, 2005: 13). Thus, the 2005 EU Counter-Terrorism Strategy confirmed the increasing importance of migration controls as an EU counter-terrorism instrument.

Since then, an increasing number of migration control measures have been included in reports on the implementation of the EU Action Plan on Combating Terrorism and in updated versions of the Action Plan. On the one hand, this testifies to the growing importance of migration controls as an EU counter-terrorism instrument. On the other hand, it is important to emphasise that not all EU migration control measures contribute to the fight against terrorism, contrary to what their inclusion in EU counter-terrorism documents seems to suggest. The main purpose of most migration control measures is to prevent irregular migration, rather than fighting terrorism. Indeed, in recent years, several measures have been adopted to enhance cooperation on external border controls amongst Member States and to strengthen border controls. In the area of external border management, the main aim of the EU is to develop an integrated management of the borders, with a view to ensuring a high and uniform level of control of persons and surveillance at the external borders. 'Integrated Border Management' (IBM) covers all the activities of the public authorities of the Member States relating to border control and surveillance, including border checks, the analysis of risks at the borders, and the planning of the personnel and facilities required.<sup>4</sup>

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<sup>4</sup> This concept has influenced the development of the Area of Freedom, Security and Justice since the adoption of the Tampere programme in 1999 and was precisely defined by the Council in 2006. The Council Conclusions on Integrated Border Management outlined the five main dimensions of IBM: (1) border control, which includes border checks, border surveillance and relevant risk analysis and crime intelligence; (2) the detection and investigation of cross-border crime; (3) the 'four-tier access control model' (which includes activities in third countries, cooperation with neighbouring third countries, controls at the external border sites, and inland border control activities inside the Schengen area); (4) inter-agency cooperation for border management and international cooperation; and (5) coordination and coherence of

Consequently, it can be argued that only some of the EU migration control measures significantly contribute to the EU's fight against terrorism. For example, the creation of FRONTEX (the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union) has often been presented by the EU as a significant step forward in the development of the EU counter-terrorism activities. However, its main competences are in the area of border security rather than counter-terrorism. One of its main responsibilities is to coordinate joint operations with Member States at the external borders of the EU Member States in order to prevent irregular migration. Given that it is highly unlikely that prospective terrorists would be attempting to reach the EU on one of the unseaworthy boats in the Mediterranean on which the attention of FRONTEX has been focused in the last few years, this type of activities cannot be seen as combating terrorism. The Agency also carries out risk analyses and follows up research relevant for the control and surveillance of borders. It is possible that the Agency may deal with terrorism issues when conducting these activities, but this has actually not been the focus of its work to date (Leonard, 2009). It is therefore important to identify migration control measures that contribute to combating terrorism amongst all EU migration control measures. In the next two sections, this article examines the migration control measures that are currently part of the EU counter-terrorism policy and those that are presently being negotiated in the EU and might become part of it in the future. Rather than following the all-inclusive approach characterising EU counter-documents, the article focuses on the border control measures that can make a substantial, rather than tangential, contribution to the EU's fight against terrorism.

## **Current Migration Control Measures used by the EU to Fight Terrorism and their Effectiveness**

There are currently three main migration control measures that significantly contribute to fighting terrorism in the EU: the cooperation on visas, the sharing of Advanced Passenger Information (API) and checks at the EU external borders. The remainder of this section examines each of them in turn and briefly comments upon their effectiveness.

### **EU Cooperation on Short-term Visas**

Before examining EU cooperation on visas, it is important to define a visa as a document issued in the country where an individual resides (or where he originates from) by the country to which (s)he wishes to go. Visa cooperation amongst EU Member States has been mainly prompted by the abolition of

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the activities of the Member States and institutions, as well as other bodies of the Community and the Union.

internal border controls within the Schengen area<sup>5</sup>. Lifting these internal border controls meant that the holder of a visa to one of the Schengen countries was also able to freely travel to any of the other Schengen countries. This situation led EU Member States to increase their cooperation on various aspects of their visa policies. It is important to emphasise at this stage that EU cooperation on visas focuses on short-term visas (i.e. three months), such as the visas given to tourists or businessmen, although EU Member States also cooperate on some specialised visa documents (Hobolth, 2010). The key-issues on which EU Member States cooperate are the list of countries whose nationals must have a visa to enter the EU, the procedures for issuing visas, as well as the definition of a uniform visa format. Since 2001, there have been two visa lists: one 'white' list, listing countries whose nationals are not required to have a visa to enter the EU, and a 'black' list comprising the countries whose nationals are required to have a visa to cross the external borders of the EU. As of 2008, the black list comprised 130 countries (i.e. almost all the countries in the Middle East, South Asia, Central Asia and Africa). The procedures and conditions for issuing visas are defined in the Visa Code (Regulation EC 810/2009), which has recently recast previous legislation such as the old 'Schengen Decisions' and the Common Consular Instructions. In order to be granted a visa, applicants must possess valid travel documents and may be asked to justify (and document) the purpose of their visit and means of subsistence. In addition, they must not be registered in the Schengen Information System, which is a database that became operational in 1995 to support the implementation of the rules governing the Schengen area. This database notably contains alerts for the purpose of refusing entry. According to Article 21 of the Visa Code, 'particular consideration shall be given to assessing whether the applicant presents a risk of illegal immigration or a risk to the security of the Member States.' The same article also requires consulates to specifically verify that 'the applicant is not considered to be a threat to public policy, internal security or public health (...) or to the international relations of any of the Member States.' In other words, from the point of view of the fight against terrorism, the officials processing a visa application are required to ensure that the applicant does not represent a security risk, such as a terrorist risk. This is done through security controls such as a search of the entry refusal files in the Schengen Information System, as well as the consultation of the central authorities of the countries concerned.

## **EU Sharing of Advanced Passenger Information (API)**

Further specific controls apply to persons travelling by air to the EU. Council Directive 2004/82/EC of 29 April 2004 requires Member States to establish an obligation for carriers to transmit, at the request of the authorities responsible for carrying out checks on persons at external borders, by the end of check-in,

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<sup>5</sup> See footnote 2.

information concerning the passengers they will carry. This ‘advanced passenger information’ (API) comprises the following: the number and type of travel document used, the nationality, the full names, the date of birth, the border crossing point of entry into the territory of the Member States, the code of transport, the departure and arrival time of the transportation, the total number of passengers carried on that transport and the initial point of embarkation.

## **Checks at EU External Borders**

All third country nationals are subject at entry to a ‘thorough check’ according to the Schengen Borders Code. In addition to examining the travel documents and their validity, border guards verify the purpose and length of stay of the travellers and whether they possess sufficient means of subsistence. They also systematically search the Schengen Information System and national databases to check that travellers from a third country do not represent a threat to public policy, internal security, public health and the international relations of the Schengen states. In other words, it is tested whether several criteria are met through questions put to the travellers. Border guards also manually stamp the travel documents of third country nationals crossing the external border in order to indicate the date and place of entry and exit.

## **How Effective are these EU Migration Control Measures in Fighting Terrorism?**

EU institutions regularly state that reinforcing migration controls, such as border controls, and EU cooperation in this policy area is important for combating terrorism. For example, a Communication of the European Commission in 2008 argued that ‘[b]order surveillance has not only the purpose to prevent unauthorised border crossings, but also to counter cross-border crime such as the prevention of terrorism’ (Commission of the European Communities, 2008b: 3). According to the Council (Council of the European Union, 2009), ‘[EU Member States] need to enhance protection of [their] external borders to make it harder for known or suspected terrorists to enter or operate within the EU.’ At the same time, the European Commission has also been seen as expressing some scepticism towards the effectiveness of migration controls in combating terrorism:

[in] view of the latest terrorist acts in the EU, it can be noted that the perpetrators have been mainly EU citizens or foreigners residing and living in the Member States with official permits. Usually there has been no information about these people or about their terrorist connections in the registers, for example in the SIS or national databases (Commission of the European Communities, 2008a: 10).

To date, there has not been any systematic assessment of the effectiveness of migration control measures as an EU counter-terrorism instrument. It is nevertheless possible to offer some reflections on the effectiveness of the instruments presented above. With regard to EU cooperation on short-term visas, and with respect to travellers from the countries that are still subject to the visa obligation, the visa application system involves a first security check that is conducted before travellers have left their country of origin or residence. In theory, this type of checks can contribute to combating terrorism. However, this is difficult to assess because of the lack of availability of precise information. Data on the numbers of visas applied for and refused is available. According to Hobolth (2010), the annual refusal rate across the EU has been about 7% in the last few years. However, data documenting the reasons for which visas have been refused has not been readily available to date, as EU Member States refusing to grant a short-term visa have traditionally not been legally obliged to motivate their decision. It has therefore been impossible to identify the number of persons who have been refused a visa because they were assessed as posing a security (terrorist) threat to the EU.<sup>6</sup> Thus, one can argue that, in general, EU cooperation on short-term visas contributes to the EU fight against terrorism because it ensures that EU states share information on persons to whom entry should be refused, including on grounds of national security, and that such persons are subsequently refused a visa. From that viewpoint, EU visa cooperation may contribute to decreasing the terrorist threat in the EU. However, to date, it has been impossible to know how many prospective terrorists have been refused a visa, as not even the number of visas refused on security grounds has been made publicly available. Consequently, it is impossible to assess the precise contribution that short-term visa cooperation has made to the EU's fight against terrorism.

Assessing the extent to which external border checks contribute to fighting terrorism in the EU is no easier task. One of the key-aspects of these checks is the search of the Schengen Information System (SIS) to verify that travellers have not been signalled by a Member State for the purpose of denying entry. This system registers alerts regarding third country nationals who have been refused entry to the Schengen area, wanted persons, and persons to be put

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<sup>6</sup> However, this may change in the future as the recently adopted Visa Code (Regulation EC 810/2009) establishes for the first time rules relating to the motivation of refusal of a visa. From 5 April 2011 onwards, the authorities processing short-term visa applications will be required to motivate their refusal decision by filling in an EU standard form. The standard list of grounds for refusal notably comprises 'one or more Member State(s) consider you to be a threat to public policy, internal security, public health (...) or the international relations of one or more of the Member States.' If EU statistics on the grounds for visa refusal are published, it will therefore be possible to gain a better understanding of the number of persons who are refused visas on the ground of internal security, although it is unfortunate in that respect that 'internal security' is part of a broader category, which comprises three other grounds for refusal.

under protection. According to the website of the EU institutions (*Europa*), as of 2008, SIS contained more than 17 million records, the vast majority of which concerned lost or stolen items (e.g. identity documents). There were more than one million records concerning wanted persons, the majority of which were third country nationals who should be denied entry under Article 96 of the Schengen Convention. However, it is difficult to assess how many of these persons represent a terrorist threat, as some Schengen Member States also create records for persons whose application for asylum has been rejected (and not only for persons representing a significant threat to national security and public order). Again, this makes it extremely difficult to assess the effectiveness of border checks in the EU counter-terrorism policy. This is not to say that the current EU migration controls do not contribute to combating terrorism at all. They may have prevented prospective terrorists from reaching the EU. However, such a success is, by definition, extremely difficult to document. Thus, to date, the effectiveness of migration controls as an EU counter-terrorism instrument has not been demonstrated yet. The extent to which the various types of migration control measures adopted by the EU contribute to combating terrorism is not known and is actually very difficult to assess.

## **A Future Strengthened Role for Migration Controls in the EU Counter-Terrorism Policy? Current Debates in the EU**

Despite the difficulty to assess the effectiveness of migration controls as a counter-terrorism instrument in the EU, the European Commission has been pressing ahead with various proposals to increase EU migration controls, which are notably, albeit not exclusively, justified with regard to their contribution to the EU's fight against terrorism. As a result, the importance of migration controls as a dimension of the EU counter-terrorism policy is set to grow even further once these instruments are adopted and implemented. Amongst the most important and relevant measures outlined below, one can note that several concern the development of databases containing data pertaining to asylum and migration matters, as well as their interconnection under the banner of 'interoperability' (see De Hert and Gutwirth, 2006).

### **The Development of Increasingly Sophisticated Databases and their Interconnection**

In addition to a second generation of the Schengen Information System (SIS II) handling biometric identifiers, a Visa Information System (VIS) is to be set up to improve the implementation of the common visa policy, consular cooperation and consultation between the central visa authorities. Its main purposes are to verify the authenticity of the visa and the identity of its holder on entry.

The VIS will record the following data: alphanumeric data on the applicant and on the visas requested, issued, refused, annulled, revoked or extended; photographs; fingerprint data; and links to previous visa applications and to the application files of persons travelling together. The creation of the VIS was decided by a Council Decision in 2004. It was subsequently decided to give designated national authorities responsible for the prevention, detection or investigation of terrorist or other serious criminal offences, as well as Europol officials, access to VIS data through central access points (European Union, 2008). Member States considered that the information contained in the VIS may be necessary for the purposes of preventing and combating terrorism (as well as other forms of serious crime) and that it should therefore be available provided that the conditions set out in the Decision are fulfilled. Access to VIS data will normally only be granted after a duly reasoned request has been made. Only in urgent cases will verifications of the requests be carried out ex-post. In addition, personal data may be transferred to third countries or to international organisations for the purpose of preventing and detecting terrorist and other serious offences. In such cases, the consent of the Member State that entered the data into the VIS will have to be obtained.

However, despite all these legislative developments, it is important to note that the VIS is still not operational yet. The starting date of its operations has been postponed several times because of technical problems affecting the development of both the central system and VIS preparations at the national level, in three countries in particular. In order to support the implementation of the VIS, a group of 'Friends of the VIS' was established in October 2008, which is chaired by the Presidency of the Council and comprises a senior official of each state participating in the VIS, as well as a representative of the European Commission (Council of the European Union, 2008). Its main aim is to ensure the coordination of all the measures to be taken by Member States to ensure the implementation of the VIS, including the use of the system for checks at external borders and the monitoring of all technical testing activities. Despite all these efforts, the implementation of the VIS is still significantly delayed. A report from October 2009 indicates that 'the start of operations of the VIS will be delayed beyond September 2010' (Council of the European Union, 2009: 2), whilst the European Commission indicates that the VIS will be 'fully operational in 2012 at the earliest' (Commission of the European Communities, 2008: 3).

In addition, the European Commission submitted a proposal for the access of authorities responsible for internal security matters and Europol to information contained in EURODAC in September 2009. EURODAC is an existing EU database that stores the fingerprint data of asylum-seekers at the time of their request for asylum. It was created in order to facilitate the application of the Dublin Regulation, which determines the Member State responsible for examining an asylum application by comparing the fingerprints of asylum-seekers.

By comparing fingerprints, Member States can determine whether an asylum-seeker or a foreign national found illegally present within a Member State has previously claimed asylum in another Member State, or whether an asylum applicant entered the Union territory unlawfully. According to the European Commission, the law enforcement authorities of some Member States consult national databases containing fingerprint of asylum-seekers for criminal investigations and ‘consider the hit rate significant’ (Commission of the European Communities, 2009: 2). This has therefore prompted the Commission to table a proposal to ensure that law enforcement authorities can compare fingerprint data with the fingerprint data of the other EU Member States through the use of EURODAC. This proposal is currently under negotiation in the Council working groups. However, it has been sharply criticised, notably by the European Data Protection Supervisor who deplored that it ‘[constitutes] a further step in a tendency towards giving law enforcement authorities access to data of individuals who in principle are not suspected of committing any crime’ (European Data Protection Supervisor, 2009: 5; emphasis in the original).

### **An EU Passenger Name Record (PNR) System**

In addition, the establishment of an EU Passenger Name Record (PNR) system is currently under discussion, following the presentation by the European Commission of a Framework Decision on the use of Passenger Name Record (PNR) data for law enforcement purposes (Commission of the European Communities, 2007). The Commission has presented this EU PNR system as a major tool in the fight against terrorism and organised crime (Commission of the European Communities, 2008: 4). According to its Impact Assessment study, this system would be extremely useful by (1) allowing for the identification of known terrorists and criminals (by running the PNR data against alert systems), passengers connected to a known terrorist or criminal, and ‘high risk passengers’ (according to specific characteristics and behavioural patterns or risk intelligence) and (2) by providing intelligence on travel patterns associations after a terrorist attack (Brouwer, 2009: 4). This proposal and its subsequent versions rewritten by the Council have proved very controversial as they raise many issues concerning data protection and human rights (Brouwer, 2009). Compared to the API covered by the 2004 Directive, the PNR data would be more extensive. Another major difference between the two instruments is that the 2004 Directive concerning the API only requires the transmission of data in response to a prior request, whereas the proposed PNR Framework Decision includes the obligation of systematically transmitting the required data for each flight concerned. This Framework Decision is still under negotiation at the time of writing.

Thus, despite the uncertainty as to the effectiveness of migration controls as EU counter-terrorism instruments, a considerable number of proposals relating

to migration controls are currently under negotiation in the EU that have largely been justified in terms of their contribution to counter-terrorism. Should they be adopted, they would further strengthen the importance of migration controls as an EU counter-terrorism instrument. It is therefore particularly important to further reflect upon the issue of their effectiveness, which also has to be balanced against their negative externalities.

## **‘The Right Way to Go?’ Effectiveness versus Externalities of Migration Controls as an EU Counter-Terrorism Instrument**

As is the case with other counter-terrorism instruments, such as measures targeting terrorist financing, the effectiveness of migration controls to combat terrorism is still open to question. To date, the EU institutions have not provided any analysis of the impact and success of using migration controls in the fight against terrorism. Nevertheless, it is important to emphasise that it is particularly challenging to assess the effectiveness of migration controls to combat terrorism. This is because the best indicator of their success is the *absence* of terrorist attacks. However, it is impossible to conclusively prove that a terrorist attack did not take place because of one specific counter-terrorism instrument, rather than another, as information on non-existent terrorist attacks is by definition scarce. Nevertheless, it is important to consider this issue of effectiveness given the significant impact of some of the migration control measures adopted on important issues such as privacy and data protection.

Given these challenges, how might one attempt to evaluate the effectiveness of migration controls in the EU counter-terrorism policy? For the reasons explained above, it is not possible to measure the precise impact of migration controls on combating terrorism in the EU, but one can nevertheless examine whether such measures are likely to have a positive impact by tackling an important cause for concern. In that respect, data gathered and presented by Europol in its annual *EU Terrorism Situation and Trend Reports* (TESAT Reports) can shed light on the extent to which migration controls are an effective instrument in the EU’s fight against terrorism. Table 1 presents figures of the number of failed, foiled and successfully executed terrorist attacks per type of terrorist groups in 2006-2008. It shows that the overwhelming majority of planned or successful terrorist attacks in the EU are due to separatist terrorist groups (84.8 %). A closer look at the TESAT Reports shows that the vast majority of these attacks occur in two countries, namely Spain and France, and are claimed by, or attributed to, Basque and Corsican separatist groups respectively. In Spain, ETA (*Euskadi Ta Azkatasuna*) uses violence to promote the independence of the Basque region, whereas groups such as the *Front National de Libération de la Corse* seek the independence of Corsica from

France. Given that the ethno-nationalist goals pursued by these groups are rather local and do not have a global scope, they recruit locally. It seems highly unlikely that individuals would have to cross the external borders of the EU to commit the terrorist offences associated with these separatist terrorist groups. Migration control measures are therefore inadequate instruments to prevent most terrorist attacks that take place in the EU. From this viewpoint, it can be argued that the use of migration controls by the EU to fight terrorism can only have very limited effectiveness given the nature and characteristics of the most active terrorist groups in the EU.

*Table 1: Number of failed, foiled and successful executed attacks in all EU Member States per year (2006-2008) and per type of terrorist group*

Year	Islamist	Separatist	Left-wing	Right-wing	Other or not specified	Total
2006	1	424	55	1	17	498
2007	4	532	21	1	25	583
2008	0	397	28	0	90	515
<b>Total (%)</b>	<b>5 (0.31 %)</b>	<b>1353 (84.78 %)</b>	<b>104 (6.52 %)</b>	<b>2 (0.12 %)</b>	<b>132 (8.27 %)</b>	<b>1596 (100 %)</b>

*Sources: Europol (2007; 2008; 2009)*

Nevertheless, it is important to acknowledge that any analysis should not only consider the occurrence of terrorist attacks, but also their severity. Separatist terrorist groups in Spain and France generally aim to cause material damage (Europol, 2008). In contrast, the attacks carried out by Islamist terrorist groups generally aim to cause mass casualties (Hoffman, 2006). Thus, although the number of Islamist terrorist attacks in the EU - be they successful, failed or foiled - has been rather limited over the last few years, their political impact has been significant. This is because of the high number of casualties caused by successful Islamist terrorist attacks, as demonstrated by the attacks in Madrid (2004) and London (2005). Although some of the perpetrators of these terrorist attacks were 'home-grown terrorists', some were third country nationals who crossed the EU external borders at some point. From that viewpoint, one may therefore argue that migration controls may be a useful counter-terrorism tool to prevent these individuals from entering the EU territory and execute deadly terrorist attacks. Even if the number of terrorist incidents associated with that type of terrorist groups is small, it is particularly important to prevent them because of the higher risk of mass casualties inherent to them.

However, this possible increase in security – which is impossible to conclusively demonstrate, as explained earlier – has to be put in balance against the negative effects of the strengthening of migration controls. Using an economics

concept, the latter can be referred to as ‘negative externalities’, that is, the costs experienced by unrelated parties – i.e. all the third-country nationals who are not involved in terrorist activities in this case. One can identify three main categories of negative externalities. First of all, the strengthening of migration controls has made it more difficult to travel and enter the EU, including for some *bona fide* travellers without any connection to terrorism.<sup>7</sup> This has notably been well-documented by scholars examining the development of the EU cooperation on visas (Bigo and Guild, 2003; 2005; Trauner and Kruse, 2008). In addition, it can be argued that using migration controls as a counter-terrorist instrument may have a harmful effect on the relations between various ethnic groups in multicultural societies by presenting asylum-seekers and migrants as potential terrorists (Guild, 2003a; 2003b). Finally, the development of migration control measures to fight terrorism raises significant questions with regard to the right to privacy and data protection. An increasing number of personal data concerning third-country nationals wishing to enter the EU is already being collected and stored. This trend will be reinforced if the new EU instruments currently under discussion are adopted and enter into force. In addition, as has been explained before, there have been several moves towards interconnecting various databases that contain some sensitive data and that were originally designed for different purposes than the fight against terrorism. This is a controversial development with regard to data protection (Mitsilegas, 2007; Mitsilegas, 2009a).

## Conclusions

This article has demonstrated that migration controls have become an increasingly important component of EU counter-terrorism policy over the last few years. After the terrorist attacks on 11 September 2001, strengthening EU cooperation on migration controls was identified amongst various actions to be taken, but was not given any priority. It is only after the terrorist attacks in Madrid in March 2004 that it was identified as a strategic objective in the EU fight against terrorism. Since then, this dimension of the EU counter-terrorism policy has continued to grow in importance. This trend is set to continue in the future, as a significant number of proposals regarding migration control measures are currently being negotiated in the EU.

However, this article has showed that the development of these initiatives has not been justified by any systematic analysis of the success of migration controls as a counter-terrorism instrument. The EU has not demonstrated the

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<sup>7</sup> It is important to note that the European Commission has implicitly acknowledged this problem when tabling a new ‘border package’ in February 2008 (Commission of the European Communities, 2008). It has suggested addressing it by taking measures to facilitate border crossing for *bona fide* travellers, such as the introduction of a ‘Registered Traveller’ status and a simplified and automated border check.

effectiveness of migration controls in the fight against terrorism, although this article has acknowledged the considerable challenges inherent to such a demonstration. Nevertheless, whilst it is unclear to which extent reinforced migration controls contribute to combating terrorism, it has become increasingly evident that they have negative externalities, notably as far as the right to privacy and data protection are concerned. The creation of an expanding number of databases containing data pertaining to asylum and migration matters and the emphasis put on their 'interoperability' for use in the fight against terrorism are particularly good examples. Given the lack of robust justification for and demonstration of the effectiveness of using such instruments for fighting terrorism, it might therefore be argued that resources and energy may be better spent by focusing more closely on those involved in terrorist activities, through the enhanced sharing of intelligence for example, rather than adopting measures negatively affecting all third-country nationals indiscriminately.

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# Perceptions of the Terrorist Threat among EU Member States

Oldřich Bureš<sup>1</sup>

## Introduction

The European Union's (EU) efforts in the fight against terrorism have already been analysed in a number of scholarly articles and edited volumes.<sup>2</sup> While differing substantially in their scope, depth and focus, most analyses have identified important gaps and shortcomings of the nascent EU Counterterrorism policy, which effectively came into being after the September 11, 2001 (9/11) terrorist attacks in the United States (US). Some of the available literature offers important insights and suggestions for closing of the existing gaps but virtually nobody has yet addressed the arguably key shortcoming of the current EU counterterrorism policy – the lack of a shared perception of the contemporary terrorist threat among EU members.

From a security studies perspective, shared understanding of the nature and gravity of the security threat is a key prerequisite for the design and execution of any security policy. The EU members, however, still differ in their analyses of both the nature and salience of the threats posed by contemporary terrorism. This paper offers five explanations why this is the case. Firstly, history matters and when it comes to terrorism, EU members differ substantially both in their historical records and their current experiences. Secondly, while there is general consensus, within the literature, that Europe is, currently, not only terrorists' base and a potential target, but also a terrorist incubator, the exact nature and novelty of the terrorist threat, both external and "home-grown," are still debated. Thirdly, demography matters and given the current immigration

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<sup>2</sup> For a good literature review, see the special issue of *Journal of Common Market Studies*, 46, no. 1 (January 2008).

and natality patterns among the EU's members, it is bound to matter even more in the years to come. Fourthly, Eurobarometer public opinion polls reveal that the public perceptions of the terrorist threat vary across the EU and it is possible to identify a few specific explanations why this has been the case. Fifthly, the EU lacks a genuine baseline terrorist threat assessment which makes the development of a common terrorist threat perception rather difficult, if not impossible. Finally, it is important to note that while most EU politicians and a majority of EU members' citizen perceive terrorist threats differently, they at least tend to agree on a negative definition of (counter-) terrorism.

## Past and Contemporary Terrorist Threats in Europe: Statistical Data

While, for some EU members, terrorism is nothing new, for many others it represents a relatively novel security threat.<sup>3</sup> Naturally, past (in-) experience with terrorism shapes the current EU members' perceptions of the terrorist threat. Before 9/11, only six EU members had perceived terrorism as a threat to the extent that they actually defined it as a serious crime and/or national security threat.<sup>4</sup> But even among these six countries, there have been quite different terrorist threat perceptions and legislative responses to it. To some extent, this was due to the differences among the terrorist groups operating in Europe:

In France we have always thought ... that the Islamic threat was a dangerous one and that the Algerian problem was not a political, diplomatic or bi-lateral problem for France, but was the premise of a much more global threat. That was not perceived by all our partners.<sup>5</sup>

In Germany and Italy, however, there were good reasons to worry less about Islamist terrorist groups and more about ideologically motivated groups such as the Baader Meinhof gang/Rote Armee Faktion and the Red Brigades. Similarly, the primary security threats in Spain and Great Britain were not Islamist terrorists, but the Irish Republican Army (IRA) and the Euskadi Ta Askatasuna (ETA), which both committed acts of terrorism in the name of national self-determination. The remaining EC/EU members had much less

<sup>3</sup> See for example Fernando Reinares (ed.) *European Democracies Against Terrorism: Governmental Policies and Intergovernmental Cooperation*. (Burlington, US: Ashgate Publishing Company, 2000), Paul Wilkinson, *Terrorism and the Liberal State* (London: Macmillan, 1986), Juliet Lodge, "Terrorism and the European Community: Towards 1992," *Terrorism & Political Violence* 1, no. 1 (January 1989): 28-47.

<sup>4</sup> United Kingdom, France, Germany, Italy, Portugal and Spain.

<sup>5</sup> Jean-Louis Bruguière, Premier Vice-Président chargé de l'Instruction, Coordination de la section anti-terroriste, Palais de justice, Paris, cited in Edwards, Geoffrey, and Christoph O. Meyer. "Introduction: Charting a Contested Transformation." *Journal of Common Market Studies* 46, no. 1 (January 2008):7.

experience with terrorism of any kind, although some of them were occasionally used as convenient logistics areas, back-offices, and recruiting grounds. This was also confirmed by some interviewed EU officials, although some have also indicated that things are changing over time so for example the differences between the “old” and “new” members have become “less visible in the recent past and Sweden and Denmark, also distant three years ago, are now more concerned due to their own experiences.”<sup>6</sup>

When it comes to contemporary experiences with terrorism in Europe, the latest available and comparable<sup>7</sup> statistical data provided by EU members to Europol for 2007 referred to a total of 583 attacks (up by 24 percent from 2006), 1044 arrested suspects (up by 48 percent from 2006) and 331 convictions for terrorism charges in the EU. As in the past, the vast majority of attacks (517, e.g. 88 percent) were claimed or attributed to Basque and Corsican separatist terrorist groups in Spain and France, respectively.<sup>8</sup> The vast majority of these attacks were arson attacks aimed at causing material damage. The prototypical terrorist suspect in 2007 was a male EU citizen between 23-43 years of age.<sup>9</sup> Given the following discussion, it is important to highlight that, with regard to Islamist terrorism, only two failed and two attempted attacks were reported for 2007. As in 2006, these attacks took place in the UK (two cases), Denmark and Germany (one case each) and they all “mainly aimed at causing indiscriminate mass casualties.”<sup>10</sup> It is also interesting to note that in 2007, court proceedings in relation to Islamist terrorism had the highest acquittal rate: 31 percent of the defendants in EU members were found not guilty.<sup>11</sup>

In 2008, EU members reported a total of 515 failed, foiled or successfully perpetrated attacks, which represents a 24 percent decrease from 2007. 397 terrorist attacks were claimed or attributed to separatist terrorist organisations and 98 percent of these attacks took place in France and Spain. Overall, 1009 individuals were arrested in the EU for terrorism-related offences in 2008,<sup>12</sup> with an average age, as in 2007, at 35 years. The majority of the suspects were arrested for membership in a terrorist organisation. During 2008, 359 individuals were

<sup>6</sup> Interview with an anonymous EU Official, October 2008.

<sup>7</sup> The available data is comparable only since the publication of TE-SAT 2007 due to the introduction of a new methodology for its compilation.

<sup>8</sup> Europol, *Terrorism Situation and Trend Report 2008*, 10-16.

<sup>9</sup> Out of 418 individuals tried on terrorist charges in 2007, only 34 were women. 69% of those arrested for terrorist offences were EU citizens. Their average age was 35 years, with two thirds being 23-43 years of age.

<sup>10</sup> Europol, *Terrorism Situation and Trend Report 2008*, 10-16.

<sup>11</sup> Europol, *Terrorism Situation and Trend Report 2008*, 13. Left-wing and separatist terrorism both had an acquittal rate of approximately 20 percent.

<sup>12</sup> The number of arrests reported by the UK for 2008 included for the first time the arrests related to terrorism in Northern Ireland, which were not included in previous years. For this reason, no comparison can be made. For the rest of the member states, however, the total number of arrests decreased by 11 percent from 2007 to 2008. If the UK arrests are included, the total number of arrests in 2008 is still 4 percent lower than in 2007.

tried on terrorism charges in the EU in a total of 187 proceedings. Twenty-nine percent of the verdicts were acquittals. With regard to Islamist terrorism, only one attack was reported by the UK and it was carried out by a single offender (a so-called “lone wolf”) inspired by local extremists. However, the relatively high number of arrests relating to Islamist terrorism (187 out of 1009)<sup>13</sup> indicates a substantial amount of law enforcement activities, which also reflects the fact that “although the majority of EU members have not been targeted by Islamist terrorists, some report that the perceived threat remains high or even estimate that the risk of an attack has increased.”<sup>14</sup> According to the authors of Europol’s 2009 *Terrorism Situation and Trend Report* (TESAT), this is primarily because: a) the number of persons associated with “home-grown” Islamist terrorist groups is rising in the EU (a majority of the arrested individuals belonged to small autonomous cells rather than to known terrorist organisations); b) the continued military presence in Iraq and/or Afghanistan; and c) the continued accusations of anti-Muslim attitudes.<sup>15</sup> The report also stated that:

1. The threat emanating from Islamist terrorism inside the EU is linked, to a certain extent, to the developments in conflict zones and politically unstable countries, such as North Africa, the Sahel region, Iraq, Somalia, Yemen, Afghanistan, Pakistan, but also India;
2. Afghanistan and Pakistan seem to have replaced Iraq as preferred destinations for volunteers wishing to engage in armed conflict;
3. Eastern European Member States, which reported a generally low threat from Islamist terrorism, nevertheless highlighted the risk that they may be used as a logistical base for terrorists operating outside of the EU. The majority of these countries also reported on the potential risk that their countries may be used as transit countries by terrorists trying to enter other EU countries;

<sup>13</sup> The number of member states which reported arrests related to Islamist terrorism decreased from 14 in 2007 to ten in 2008. These were Belgium, Denmark, France, Germany, the Republic of Ireland, Italy, the Netherlands, Slovakia, Spain and Sweden. The majority of the arrests took place again in France and Spain, with 78 and 61 arrests, respectively. As in 2006 and 2007, the majority of the arrested suspects came from North African countries, most notably Algeria, Morocco and Tunisia, although the share of Moroccan and Tunisian citizens in the numbers of arrests halved as compared to 2007.

<sup>14</sup> Europol, *Terrorism Situation and Trend Report 2009*. 2009 <[http://www.europol.europa.eu/publications/EU\\_Terrorism\\_Situation\\_and\\_Trend\\_Report\\_TE-SAT/TESAT2009.pdf](http://www.europol.europa.eu/publications/EU_Terrorism_Situation_and_Trend_Report_TE-SAT/TESAT2009.pdf)>, 17. Accessed 25.6.2009. These fears were especially apparent in the UK – in November 2007, the British Security Service was looking at no fewer than 2 000 individuals posing a direct threat to national security. “Intelligence counter terrorism and trust”, speech by the Director General of the British Security Service, p. 5., cited in Europol, *Terrorism Situation and Trend Report 2008*, p. 21.

<sup>15</sup> Europol, *Terrorism Situation and Trend Report 2009*, 17-19.

4. EU-based suspects continue providing logistical support to Islamist terrorist groups and networks based outside the EU;
5. Islamist recruitment activities have largely been driven underground and radicalization activities have moved from mosques and other public places into private spaces;
6. Prisons and the Internet continue to be locations of concern regarding this phenomenon;
7. Islamist groups generate more money than non-Islamist groups.<sup>16</sup>

As highlighted in figure 1, Europol analysts were correct to observe that “due to large fluctuations, a clear trend in the numbers of failed, foiled and successful terrorist attacks cannot be established” for the entire EU for the most recent time period where comparable statistics are available for all EU members.<sup>17</sup> Nevertheless, at least two trends do stand out rather clearly from the aforementioned statistics: 1) the numbers of arrested suspects are relatively independent of the occurrence of terrorist activities, which indicates the existence of a continuous terrorist threat in Europe; 2) the threat of terrorism is likely to remain diverse, with different EU members being confronted with different international organised groups, locally inspired groups, as well as “lone wolves.”<sup>18</sup>

Europol’s statistics largely correspond to recent findings presented by Eurojust, which registered 39 new operational terrorism cases in 2008. Spain, France and the UK were the most requested countries for terrorist cases, while five out of the six coordination meetings on counterterrorism issues were organised by Italy. Interestingly, however, the 2008 Eurojust Annual Report also revealed that fundamentalist terrorist groups continue to be prevalent in the investigations referred to Eurojust, followed by separatist groups. This trend was confirmed by the information on terrorism verdicts sent to Eurojust by the national authorities of EU members due to their information sharing obligations regarding terrorist offences. Half of the submitted verdicts in 2008 related to fundamentalist terrorist groups (190 out of a total of 384 verdicts), while only 148 verdicts refer predominantly to separatist groups. Only 10 EU members reported verdicts from court proceedings for terrorism: Belgium, Denmark, France, Germany, Ireland, Italy, the Netherlands, Spain, Sweden, and the UK. The results of court proceedings in 2008 show that EU members reported an average sentencing, on convictions, of slightly less than ten years. Noteworthy are the high conviction rates in Germany, France and Italy. The

<sup>16</sup> Europol, *Terrorism Situation and Trend Report 2009*, 17-24.

<sup>17</sup> Europol, *Terrorism Situation and Trend Report 2009*, 39.

<sup>18</sup> Europol, *Terrorism Situation and Trend Report 2009*, 39-40.

average acquittal rate has slightly decreased since 2007 (from 27 percent to 23 percent).<sup>19</sup>

## Contemporary Terrorist Threat in Europe: The Scholarly Debates

The available scholarly literature confirms several of the aforementioned Europol and Eurojust's findings. To begin with, there is a large consensus that, since the end of the cold war, the scales of the international terrorist threat to Europe have tilted from "a staging ground to a potential Disneyland of soft targets."<sup>20</sup> The terrorist attacks in Madrid and London indicate that especially the "old" EU members have moved up the terrorist value chain to become a core target. Due to their support of the UN-sanctioned invasion of Afghanistan and the US-led invasion of Iraq, the "new" EU members have also moved up on the list of potential terrorist targets, although probably still not as high the UK or Spain. According to senior counterintelligence officials, classified intelligence briefings, and wiretaps:

[J]ihadists extended their European operations after the roundups that followed September 11 and then again, with fresh energy, after the invasion of Iraq. Osama bin Laden now provides encouragement and strategic orientation to scores of relatively autonomous European jihadist networks that assemble for specific missions, draw operatives from a pool of professionals and apprentices, strike, and then dissolve, only to regroup later.<sup>21</sup>

Experts have also pointed out that these new European jihadist networks should not be compared with the older, ideologically motivated European terrorist groups, such as the Baader-Meinhof Gang in Germany, Action Directe in France, or the Red Brigades in Italy, because they enjoy what Marxist terrorists long sought but always lacked: a social base.<sup>22</sup>

Moreover, this base is growing rapidly, in part thanks to the war in Iraq and, even more importantly, due to the failure of several EU members to sufficiently integrate their growing Muslim populations (see table 3). As one American observer put it:

Europe's track record of engagement with Islam over the last 1,350 years is not encouraging. Although exploring some new initiatives, Europeans

<sup>19</sup> Eurojust, *Eurojust Annual Report 2008*. 1.10.2009 <[http://www.eurojust.europa.eu/press\\_releases/annual\\_reports/2008/Annual\\_Report\\_2008\\_EN.pdf](http://www.eurojust.europa.eu/press_releases/annual_reports/2008/Annual_Report_2008_EN.pdf)>, 22-23.

<sup>20</sup> Doron Zimmermann, "The European Union and Post-9/11 Counterterrorism: A Reappraisal," *Studies in Conflict & Terrorism* 29, no. 2 (2006): 139.

<sup>21</sup> Robert S. Leiken, "Europe's Angry Muslims," *Foreign Affairs* 84, no. 4 July/August 2005, 20.5.2006 <<http://www.foreignaffairs.org/20050701faessay84409/robert-s-leiken/europe-s-angry-muslims.html>>.

<sup>22</sup> Leiken, "Europe's Angry Muslims."

today seem inclined to pursue a status quo approach at home and abroad, preferring caution, predictability, control, and established structures over the boldness, adaptability, engagement, and redefined relationships that the new situation requires. A similar mind-set is evident among Europe's Muslim population.<sup>23</sup>

While it may be misleading to speak of a single European Muslim community given the ethnic diversity and cleavages within Muslim communities arising from sectarian, socio-political and generational splits, and the non-hierarchical nature of Islam itself, it does appear that especially younger Muslims in the EU increasingly identify first with Islam rather than with either their family's country of origin or the European country in which they now reside:

Younger Muslims are adopting attributes of the European societies in which they were born and raised, such as language; socialization through schooling; and, in many cases, some of the secular perspectives of the country in which they reside. Yet, generally they do not feel part of the larger society nor that they have a stake in it. . . . [They] are willing to integrate and respect national norms and institutions as long as they can, at the same time, maintain their distinct Islamic identity and practices. They fear that assimilation, that is, total immersion into European society, will strip them of this identity. Yet, this is the price many Muslims increasingly see European governments and publics demanding: to have Europe become a melting pot without accommodation by or modifications of the existing culture.<sup>24</sup>

It is therefore not surprising that despite the growing number of Muslims holding an EU members' citizenship (see table 2), available studies and public opinion surveys find that second- and particularly third-generation Muslims are less integrated into European societies than their parents or grandparents were. A survey conducted in France, for example, revealed that Muslim identification with Islam was stronger in 2001 than it was in 1994 or 1989, with the number of those declaring themselves "believing and practicing" Muslims increasing by 25 percent between 1994 and 2001.<sup>25</sup> In another public opinion poll, three-fourths of French Muslim respondents considered the values of Islam to be compatible with those of the French Republic, but only one-fourth of those under 25 shared that view.<sup>26</sup> Conversely, a poll conducted around the same time indicated that 62 percent of the general French population believed that

<sup>23</sup> Timothy M. Savage, "Europe and Islam: Crescent Waxing, Cultures Clashing," *The Washington Quarterly* 27, no. 3 (Summer 2005): 26.

<sup>24</sup> Savage, "Europe and Islam: Crescent Waxing, Cultures Clashing," 30.

<sup>25</sup> Open Society Institute, "Monitoring Minority Protection in EU Member States," 2002, 22.05.2008 <<http://www.eumap.org/reports/2002/eu>>, 76.

<sup>26</sup> *Le Figaro* survey cited in Savage, "Europe and Islam: Crescent Waxing, Cultures Clashing," 43.

the values of Islam were not compatible with those of the French Republic.<sup>27</sup> In a 2002 survey conducted in Germany, 19 percent of respondents said that Muslims should not be allowed to practice their religion in Germany, 43 percent voiced doubts about Islam's capacity to be tolerant, and 67 percent said that, when practicing their religion, Muslims should be more respectful of the views of the German public.<sup>28</sup>

While we lack similar opinion polls data from other EU members, a number of observers have concluded that many Muslims tend to seek a physical presence in Europe but no accommodation with European society. Leiken, for example, even suggested that:

As a consequence of demography, history, ideology, and policy, Western Europe now plays host to often disconsolate Muslim offspring, who are its citizens in name but not culturally or socially. In a fit of absentmindedness, during which its academics discoursed on the obsolescence of the nation-state, Western Europe acquired not a colonial empire but something of an internal colony, whose numbers are roughly equivalent to the population of Syria.<sup>29</sup>

Although this is a somewhat hyperbolic statement, it is apparent that increasing numbers of Europeans see Muslims as a direct challenge to the traditional values and public policies of their societies. This is well demonstrated by the heated controversies over the headscarf, the construction of mosques, and the teaching of Islam in schools, which are by no means limited to France and Germany. These debates reveal that the Muslim presence in Europe is perceived as a challenge to domestic social unity and national cohesion, or what the Danish sociologist Ole Waever calls "societal security."<sup>30</sup> The influential British weekly *The Economist* has already warned that this "could be a huge long-term threat to Europe"<sup>31</sup> and others have coined a name for it: "Islamophobia."<sup>32</sup> While the core issue behind this phenomenon is clearly identity (e.g. the perceived cultural threat Islam poses to the European way of life, and vice versa from the perspective of European Muslims), the threat is also framed in terms of economics (e.g. jobs and social welfare benefits) and, most importantly here, security (e.g. terrorism).

<sup>27</sup> Jerome Cordelier, "IPSOS-LCI-Le Point Poll: Islam Is a Worry for the French," *Le Point*, 16.05. 2003.

<sup>28</sup> Ulrich von Wilamowitz-Moellendorff, "Was Halten die Deutschen von Islam?" Konrad Adenauer Foundation working paper, May 2003. Cited in Savage, "Europe and Islam: Crescent Waxing, Cultures Clashing," 43.

<sup>29</sup> Leiken, "Europe's Angry Muslims."

<sup>30</sup> Ole Waever, "Societal Security: The Concept," in *Security: A New Framework for Analysis*, ed. Barry Buzan, Ole Weaver and Jaap de Wilde (Boulder, CO: Lynne Rienner Publishers, Inc., 1998).

<sup>31</sup> "Forget Asylum-Seekers: It's the People Inside Who Count," *The Economist*, 08.05. 2003.

<sup>32</sup> Savage, "Europe and Islam: Crescent Waxing, Cultures Clashing," 44.

At present, there are roughly 15 to 20 million Muslims in the EU and there is some strong evidence that al-Qaeda operatives in Europe are increasingly local citizens, rather than non-EU nationals, such as those who carried out the London bombings in 2005.<sup>33</sup> A Nixon Center study of 373 radical Muslim terrorists arrested or killed in Europe and the US from 1993 through 2004, for example, found out that an astonishing 41 percent were Western nationals, who were either naturalised or second generation Europeans, or were converts to Islam. More specifically, the study found twice as many terrorists who were French as Saudis and more Britons than Sudanese, Yemenites, Emiratis, Lebanese, or Libyans.<sup>34</sup> Another US study estimated that of the approximately 660 original detainees from 42 countries held by the US in Guantanamo, more than 20 were citizens of at least six different West European states, and perhaps a similar number were permanent residents, while only two detainees were US citizens.<sup>35</sup> On a similar note, Michael Radu of the Foreign Policy Research Institute reported that since 9/11, European countries have arrested 20 times more terrorism suspects than the US,<sup>36</sup> and yet another recent study estimated that between ten and fifteen thousand British Muslims are supporters of Al Qaeda or related groups and found that eight out of ten British Muslims believe that the war on terrorism is a war on Islam.<sup>37</sup> As usual, caution is necessary when interpreting all this data but there is a growing amount of evidence suggesting that there may be something about the European environment that contributes to certain Muslims embracing terrorism.

For their part, taking into account the aforementioned figures, several US experts on terrorism have already stated that “the greatest threat to the United States from Al Qaeda, its affiliated groups, or those animated by Al Qaeda’s ideology, emanates today from Europe.”<sup>38</sup> While many Europeans may not

<sup>33</sup> Daniel Keohane, “The Absent Friend: EU Foreign Policy and Counter-Terrorism,” *Journal of Common Market Studies* 46, no. 1 (January 2008): 136.

<sup>34</sup> Steven Brook and Robert S. Leiken, “The Quantitative Analysis of Terrorism and Immigration: An Initial Exploration,” *Terrorism & Political Violence* 18, no. 4 (December 2006): 503-21.

<sup>35</sup> Savage, “Europe and Islam: Crescent Waxing, Cultures Clashing,” 33.

<sup>36</sup> Cited in Frederick S. Kempe, “Europe’s Middle East Side Story,” *The Wall Street Journal*, 29.07. 2003.

<sup>37</sup> Cited in Peter Bergen, “Al Qaeda in Europe and the US” *The NYU Review of Law & Security*, Special Issue Summer 2005: 25-27, <[http://www.lawandsecurity.org/publications/specialissueeurope\\_000.pdf](http://www.lawandsecurity.org/publications/specialissueeurope_000.pdf)>. (Accessed 1.4.2008).

<sup>38</sup> Peter Bergen, “Al Qaeda in Europe and the US,.” *The NYU Review of Law & Security*, no. Special Issue Summer 2005: 25-27, 1.4.2008 <[http://www.lawandsecurity.org/publications/specialissueeurope\\_000.pdf](http://www.lawandsecurity.org/publications/specialissueeurope_000.pdf)>. Specifically, Bergen suggested the following four explanations to back up this claim: “The first is that there is little or no evidence of American “ sleeper cells” found in the US since the 9/11 attacks. Second, the most significant Islamist terrorist plots in the United States in the past decade have generally not involved “ sleeper cells,” but rather terrorists who have come into the US from abroad, often from Europe. Third, in 2004, we saw with the Madrid attacks and the disruption of serious terrorist plots in London that there are European sleeper cells that have the ability and motivation to carry out major

see European Muslims as the greatest security threat to the US or their own home countries, security officials and terrorism experts in European countries do acknowledge that the recruitment of extremists, as well as their organisation and planning and decision-making in Europe is increasingly done within each country's borders. A chief terrorism investigator in Milan, for example, stated that "almost all European countries have been touched by recruiting [of Islamist extremists]," including, improbably, Norway, Switzerland, Poland, Bulgaria, and the Czech Republic.<sup>39</sup> It is, therefore, increasingly difficult to disagree with those who claim that Europe has indeed given birth to its own, home-grown terrorist threat.<sup>40</sup> But even among the terrorism experts, there are still debates about the exact nature and novelty of this new threat.

According to Philippe Errera from the French Foreign Ministry, for example, Europe faces three overlapping "circles" of threat from Islamist terrorism. The first circle consists of the core members of the Al Qaeda network and its trained associates. In the second circle are ethno-nationalist groups in places such as Kashmir, Chechnya and Lebanon, which share some of Al Qaeda's Islamist ideology, but have primarily local or national goals. The third circle is the least understood, yet potentially the biggest and most dangerous, group of so-called "freelance jihadists." These can be Islamist terrorist groups or individuals, based anywhere in the world, including various Western societies, who may or may not be inspired by Bin Laden, and may have no direct connection with the Al-Qaeda network. While no one knows for sure how many "freelance jihadists" are there in Europe (the numbers could amount to a few hundred or many thousands), Errera argues that they become radicalised in a relatively short span of time and then act without orders and explicit training.<sup>41</sup>

Robert S. Leiken, Director of the Immigration and National Security Program at the Nixon Center, has argued that, broadly speaking, there are just two types of jihadists who are primarily located in Western Europe – "outsiders" and "insiders." The former are:

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terrorist operations, and even, perhaps, to attack the United States itself. Fourth, the European threat from militant jihadists will likely increase over time as declining European populations are replaced by rising Muslim immigration into Europe, a combination of circumstances that is generating, and will continue to generate, rising Muslim alienation in many European countries, and a significant amount of backlash against Muslim immigrant in countries such as the Netherlands." For similar arguments, also see Robert S. Leiken, "Europe's Angry Muslims," *Foreign Affairs* 84, no. 4 July/August 2005, 20.5.2006 <<http://www.foreignaffairs.org/20050701faessay84409/robert-s-leiken/europe-s-angry-muslims.html>>.

<sup>39</sup> Armando Spataro, cited in Leiken, "Europe's Angry Muslims."

<sup>40</sup> Mark Huband, "Europe's "Home-Grown" Terrorism Threat." *The NYU Review of Law & Security*, Special Issue Summer 2005: 25-27, <[http://www.lawandsecurity.org/publications/specialissueeurope\\_000.pdf](http://www.lawandsecurity.org/publications/specialissueeurope_000.pdf)>. (Accessed 1.4.2008); Robert S. Leiken, "Europe's Angry Muslims," *Foreign Affairs* 84, no. 4 July/August 2005, 20.5.2006 <<http://www.foreignaffairs.org/20050701faessay84409/robert-s-leiken/europe-s-angry-muslims.html>>; Savage, "Europe and Islam: Crescent Waxing, Cultures Clashing," 25-50.

<sup>41</sup> Philippe Errera, "Three Circles of Threat," *Survival* 47, no. 12 (2005): 71-88.

[A]liens, typically asylum seekers or students, who gained refuge in liberal Europe from crackdowns against Islamists in the Middle East. Among them are radical imams, often on stipends from Saudi Arabia, who open their mosques to terrorist recruiters and serve as messengers for or spiritual fathers to jihadist networks. Once these aliens secure entry into one EU country, they have the run of them all. They may be assisted by legal or illegal residents, such as the storekeepers, merchants, and petty criminals who carried out the Madrid bombings.<sup>42</sup>

In contrast, the “insiders” are a group of alienated citizens, second- or third-generation children of immigrants, like van Gogh’s killer Bouyeri and his associates, “who were born and bred under European liberalism.” Leiken points out that “no Chinese wall separates first-generation outsiders from second-generation insiders; indeed, the former typically find their recruits among the latter.” He does, nevertheless, also argue that “many of these first-generation outsiders have migrated to Europe expressly to carry out jihad” and suggests that “[i]n Islamist mythology, migration is archetypically linked to conquest.”<sup>43</sup> Since Muslims already constitute the majority of immigrants in most Western European countries, including Belgium, France, Germany, and the UK, it is not surprising that talk about the connection between immigration, asylum abuse and terrorism is rising in several EU members:

The Dutch reaction to van Gogh’s assassination, the British reaction to jihadist abuse of political asylum, and the French reaction to the wearing of the headscarf suggest that Europe’s multiculturalism has begun to collide with its liberalism, privacy rights with national security. Multiculturalism was once a hallmark of Europe’s cultural liberalism, which the British columnist John O’Sullivan defined as ‘free[dom] from irksome traditional moral customs and cultural restraints.’ But when multiculturalism is perceived to coddle terrorism, liberalism parts company.<sup>44</sup>

Since 2001, issues of immigration have indeed started to play an increasingly important role and they are nowadays actually changing the very party systems of several EU members. As Savage pointed out, not only have the growth and visibility of Europe’s Muslim population given new life to radical

<sup>42</sup> Leiken, “Europe’s Angry Muslims.”

<sup>43</sup> Leiken, “Europe’s Angry Muslims.” The last claim is based on the following argumentation: “Facing persecution in idolatrous Mecca, in AD 622 the Prophet Muhammad pronounced an anathema on the city’s leaders and took his followers to Medina. From there, he built an army that conquered Mecca in AD 630, establishing Muslim rule. Today, in the minds of mujahedeen in Europe, it is the Middle East at large that figures as an idolatrous Mecca because several governments in the region suppressed Islamist takeovers in the 1990s. Europe could even be viewed as a kind of Medina, where troops are recruited for the reconquest of the holy land, starting with Iraq.”

<sup>44</sup> Leiken, “Europe’s Angry Muslims.”

right-wing parties, which have played on xenophobia and popular fears of Islam but, just as important, advances by parties of the far Right (e.g., Belgium's Flemish Bloc, the British National Party, Denmark's People's Party, Jean-Marie Le Pen's French National Front, and Italy's Northern League) have led to right-leaning adjustments in the political priorities of mainstream European parties.<sup>45</sup>

Alternatively, according to David C. Rappoport, EU members (as well as other countries around the world) are now facing a "fourth wave" of modern insurgent terrorism that can be distinguished from previous forms of transnational Muslim fundamentalism in terms of its goals and its territorial scope.<sup>46</sup> Unlike Hamas or the national state-formation terrorism with transnational character of the Palestinian Fatah, the shared ideology of "fourth wave" terrorists is global *jihad* against infidels, which has as its long-term goal the political unification of "the Muslim nation" by re-establishing the caliphate, "stretching from extreme west of the Mediterranean basin to south-east Asia."<sup>47</sup> More immediately, according to Gunaratna, the inspiration is the radicalisation and mobilisation of Muslims worldwide,<sup>48</sup> which provides the basis for what Olivier Roy calls "globalized Islam" – militant Islamic resentment at Western dominance, anti-imperialism exalted by revivalism.<sup>49</sup>

Finally, a number of experts has also pointed out that the emergence of radicals from within European countries is transforming the terrorist threat profile. For example, referring to Mr. van Gogh's death, Edwin Bakker, a terrorism expert at the Netherlands Institute for International Affairs, suggested the following: "Terrorism is understood to be events like September 11. But then we have somebody who kills a guy on a bike. So we weren't prepared for anything." He also stressed that the fragmentation of the network once connected to Al Qaeda made the need for cross-border co-operation even greater, as investigations focus on previously unknown individuals who are in the process of radicalisation, rather than people arriving from abroad.<sup>50</sup> This assessment appears to be shared by several European counterterrorism authorities, who also saw the killing as a new phase in the terrorist threat – one that raised the specter of Middle East-style political assassinations as part of the European jihadist arsenal and disclosed a new source of dan-

<sup>45</sup> Savage, "Europe and Islam: Crescent Waxing, Cultures Clashing," 35.

<sup>46</sup> David C. Rapoport, "The Four Waves of Modern Terrorism," in *Attacking Terrorism. Elements of a Grand Strategy*, ed. Audrey Kurth Cronin and James M. Ludes (Washington, D.C.: Georgetown University Press, 2004).

<sup>47</sup> Fernando Reinares, "Conceptualizing International Terrorism,," 01.09.2005, Real Instituto Elcano, 20.5.2006 <<http://www.realinstitutoelcano.org/analisis/802.asp>>.

<sup>48</sup> Gunaratna, Rohan (2005) 'Responding to the Post 9/11 Structural and Operational Challenges of Global Jihad.' *Connections Pfp Consortium Journal*, Spring Issue. Cited in Edwards and Meyer, "Introduction: Charting a Contested Transformation," 5.

<sup>49</sup> Cited in Leiken, "Europe's Angry Muslims."

<sup>50</sup> Cited in Huband, "Europe's "Home-Grown" Terrorism Threat."

ger: unknown individuals among Europe's own Muslims.<sup>51</sup> Some have also warned that a key new factor is the number of recruits of European racial type, who have converted to Islam. To date, this group is numerically small, but it has nevertheless thrown-up a number of radical elements who have found their way into extremist circles.<sup>52</sup> Moreover, some have pointed out that while, to date, conversion to Islam has been a minor factor in the increased Muslim presence in Europe, making up less than one percent of all Muslims in Europe, conversions could develop as a new and potentially significant source not only of the growth of the Muslim presence in Europe but also of its voice and visibility if Islam gains official recognition, becomes more established and institutionalised in Europe.<sup>53</sup>

## Demography Matters

The different terrorist threat perceptions among EU members can be better understood if Europe's political demography is taken into account. Although exact figures are hard to come by because EU members' censuses rarely ask respondents about their faith,<sup>54</sup> and some still do not recognise Islam as an official national religion (see table 2), it is clear from the available data that France has the numerically largest Muslim population in the EU (over 6 million), followed by Germany, the United Kingdom, the Netherlands, Bulgaria, Italy, and Belgium (with several hundred thousands of Muslim in each – see table 3). In contrast, nine EU members – mostly, but not exclusively from Eastern Europe, have relatively small Muslim populations (ten thousand or less). Given the differences in the overall population size, it may be more appropriate to have a look at the percentage of the Muslim population out of the total for each country. Here a different picture emerges (see table 3), with the top two spots occupied by two new members – Cyprus and Bulgaria (18 and 12 percent), followed by France and the Netherlands (10 and 6 percent) in third and fourth place, respectively. This ranking may also be useful for understanding the radicalisation processes of different Muslim communities across the EU. While French, Dutch, British and Danish Muslims have frequently made the headlines since 9/11 when it comes to (the lack of) their integration into larger populations, the spread of extremisms and, in some cases, even the resort to violence and/or terrorism, little has been written about the Cypriot, Bulgarian, Slovenian or Austrian Muslim communities. While it is certainly important to understand the dynamics of smoky coffeeshouses in Rotterdam and Copenhagen, makeshift

<sup>51</sup> Leiken, "Europe's Angry Muslims."

<sup>52</sup> Huband, "Europe's "Home-Grown" Terrorism Threat."

<sup>53</sup> Savage, "Europe and Islam: Crescent Waxing, Cultures Clashing," 28.

<sup>54</sup> Belgium, Denmark, France, Greece, Hungary, Italy, Luxembourg, and Spain, actually bar questions on religion in censuses and other official questionnaires. Timothy M. Savage, "Europe and Islam: Crescent Waxing, Cultures Clashing," 26.

prayer halls in Hamburg and Brussels, Islamic bookstalls in Birmingham and “Londonistan,” and the prisons of Madrid, Milan, and Marseilles, it is at least as crucial to understand the situation of Muslim populations elsewhere in Europe, where there has been much less talk about the rise of militant Islamist groups. Overall, however, it is clear that regardless of what criteria one selects for comparison, the differences among EU members are quite substantial.

According to many analysts, however, more important than the current numbers is the trend that is emerging. They point out that the Muslim population in Europe more than doubled in the last three decades, and the rate of growth is accelerating. By 2015, according to Omer Taspinar, Europe’s Muslim population is expected to double, whereas Europe’s non-Muslim population is projected to fall by at least 3.5 percent.<sup>55</sup> Looking further ahead, conservative projections estimate that, compared to today’s 5 percent, Muslims will comprise at least 20 percent of Europe’s population by 2050.<sup>56</sup> Some even predict that one-fourth of France’s population could be Muslim by 2025 and that, if trends continue, Muslims could outnumber non-Muslims in France and perhaps in all of Western Europe by mid-century.<sup>57</sup> Although these projections may seem incredible at first glance, they may not be totally off the mark given the following trends:

1. Although most European countries closed their doors to legal labor immigration already in the 1970s, some 500,000 legal immigrants (primarily family reunification cases) and 400,000 asylum seekers still arrive in the EU each year. According to the International Organization for Migration, Muslims make up a large and increasing proportion of both groups, coming primarily from Algeria, Morocco, Turkey, and the former Yugoslavia.<sup>58</sup>
2. Although no reliable data exists, Muslims probably also make up a significant proportion of illegal immigrants to the EU, estimated in the range between 120 000 and 500 000 annually.<sup>59</sup>

<sup>55</sup> Omer Taspinar, “Europe’s Muslim Street,” *Foreign Policy*, March/April 2003, 7.

<sup>56</sup> Savage, “Europe and Islam: Crescent Waxing, Cultures Clashing,” 28.

<sup>57</sup> John L. Esposito, “Introduction: Modernizing Islam and Re-Islamization in Global Perspective,” in *Modernizing Islam: Religion in the Public Sphere in the Middle East and Europe*, ed. John L. Esposito and Francois Burgat (New Brunswick, N.J.: Rutgers University Press, 2003), 11; Savage, “Europe and Islam: Crescent Waxing, Cultures Clashing,” 28.

<sup>58</sup> International Organization for Migration, *World Migration Report 2000* (Geneva: IOM, 2000), 195. Interestingly, in 2000 another UN study projected that, to counterbalance their increasingly greying populations, EU Member States would annually need 949,000 migrants to maintain their 1995 populations; 1,588,000 migrants to maintain their 1995 working-age populations; or 13,480,000 migrants to maintain their population support ratios (the ratio of people aged 15–64 to those aged 65 and older). Department of Economic and Social Affairs Population Division, United Nations Secretariat, “Replacement Migration: Is It a Solution to Declining and Aging Populations?” 21.03. 2000, 02.06.2008 <<http://www.un.org/esa/population/publications/migration/migration.htm>>.

<sup>59</sup> International Organization for Migration, “Facts and Figures on International Migration,” *Migration Policy Issues* no. 2 (March 2003): 2, cited in Savage, “Europe and Islam:

3. The Muslim birth rate in Europe is currently more than three times that of non-Muslims.<sup>60</sup> Thus, already today, approximately 50 percent of Muslims in Western Europe were born there.<sup>61</sup>

As in the past, however, the projected increases of Muslim populations are unlikely to occur in all EU members to the same degree. As indicated in table 1, the recent increases in Europe's Muslim population have primarily occurred in a few Western European countries with liberal refugee and asylum seeker policies (Austria, Denmark, the Netherlands, Sweden, and Norway, which is not a Member of the EU). In contrast, the indigenous Muslim populations in south-eastern Europe, have declined by some 15 percent during the past 20 years (due, among other things, to Turkish emigration from Bulgaria) and in Central and Eastern Europe, Muslim populations remain virtually nonexistent. This may change once the living standards in the "new" EU members catches up to the rest of the EU, but it is more likely that in the near future, much of the Muslim migration will be directed to countries like Spain, Italy, and perhaps Greece, e.g. other old EU members with more porous borders, the close proximity to countries of migration, and the highest number of illegal residents.<sup>62</sup>

## Public Perceptions of the Terrorist Threat: The Eurobarometer Opinion Polls

Despite the fact that governments and publics of EU members tend to view and respond to all Muslims as an undifferentiated whole and Islamophobia is not limited to Western Europe only, the exact nature and gravity of the threat from both Islamist, as well as non-Islamist, terrorism is still perceived differently across the EU. This is well reflected in the Eurobarometer public opinion polls. For example, when asked to list the two most important issues facing their home country at the moment, the priority given to terrorism (albeit not necessarily international terrorism only) by EU citizens' in the period from 2003-2007 was 5 percent or lower in 20 EU members (see table 5). In five EU members (Denmark, Italy, the Netherlands, Spain, and the UK), however, the terrorist threat was perceived as being rather salient in the same time period, reaching as may as 43 percent in Spain. These five countries together bring the EU-wide average up to 13 percent for the 2003-2007 period and they also make up for much of the difference that appears to exist between the "old" members (EU15) and the "new" members that acceded after 9/11. While on first sight the respective averages may suggest that people in the former EU15 are much more concerned about terrorism than people in the new members (13 percent

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Crescent Waxing, Cultures Clashing," 28. Savage also points out that the words "Muslim" and "immigrant" are nowadays virtually synonymous in a number of EU Member States.

<sup>60</sup> Christopher Caldwell, "The Crescent and the Tricolor," *Atlantic Monthly*, November 2000, 22.

<sup>61</sup> Savage, "Europe and Islam: Crescent Waxing, Cultures Clashing," 28.

<sup>62</sup> Savage, "Europe and Islam: Crescent Waxing, Cultures Clashing," 29.

vs. 3 percent), this is largely due to the high scores for Denmark (21 percent), Spain (43 percent), Italy (11 percent), the Netherlands (17 percent) and the UK (23 percent). The Scandinavian countries, Belgium, Greece, Austria, and Portugal exhibit percentages comparable to the new members.

A closer reading of available data suggests that the high terrorist threat perception is limited to a few members, where actual terrorist attacks (Spain, UK) or repeated terrorist threats (Denmark, the Netherlands) already took place. This confirms that, as before 9/11, past (in)experience with terrorism shapes the current EU members' perceptions of the terrorist threat. However, it is also apparent that even in countries with a substantial history of terrorist threats and/or actual attacks, the priority given to terrorism tends to decrease over time, as the memories of the most recent attack fades and the salience of other issues (crime, unemployment, inflation fears etc.) rises. On a more general level, this last point is also illustrated in table 4, which depicts the EU15 citizens' fear of international terrorism in 2001 and 2002. While comparable data is not available due to the 2003 Eurobarometer's survey question changes, the available data for 2001-2002 period shows a drop of fear of international terrorist attack in all old members except for Italy and the UK. Thus, when it comes to explaining the different terrorist threat perceptions among EU members, past terrorist attacks and domestic developments that generate repeated threats of terrorist attacks (e.g. the publication of prophet Mohamed's caricatures in Denmark) are the real explanatory variables. The date of accession to the EU, in contrast, has little explanatory value.

A number of additional findings derived from Eurobarometer's data are worth noting when it comes to the future of EU efforts to fight terrorism. Firstly, EU-wide, the importance of terrorism as one of the most pressing issues faced by EU members is slowly but surely decreasing over time. Secondly, with the possible exception of several months following the 9/11 attacks, terrorism also never became a prime concern for EU citizens in any of the EU members, except for Spain and the UK. The top places have traditionally been occupied by issues such as unemployment, the economic situation, and healthcare. Outside of these purely social and/or economic issues, crime is the only security-related concern that has been consistently mentioned as a major anxiety by just under a quarter of Eurobarometer's respondents. Thirdly, although it may sound surprising given the numerous shortcomings of the EU counterterrorism policy discussed in other volumes,<sup>63</sup> a majority of EU citizens have a positive perception of the Union's role in combating terrorism. In fact, the available data produced by Eurobarometer indicates that the majority of EU citizens see EU efforts to address the terrorist threat more positively than EU actions in any other area of concern,

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<sup>63</sup> For a good review, see the special issue of *Journal of Common Market Studies*, 46, no. 1 (January 2008).

including unemployment, the economic situation, healthcare, or crime (see figure 2 and figure 3). Finally, in stark contrast to national sovereignty concerns exhibited by the political and bureaucratic elites in many members, Eurobarometer data indicates that since 9/11, there is widespread consensus among European citizens, in all EU members, that decisions regarding the fight against terrorism should be made jointly within the European Union.

Professional scepticism is, of course, in order when it comes to interpreting the data provided by Eurobarometer. As Edwards and Meyer noted:

There is little doubt that since 9/11 some politicians and in particular JHA ministers have reacted, and in part also contributed, whether deliberately or unintentionally, to public anxiety about terrorism through their public communication and legislative initiatives. The creation of an emergency discourse at home and in Europe has allowed them in some instances to bend legal constraints and political opposition to measures that expand the resources and competences of law-enforcement services.<sup>64</sup>

Pointing out that the majority of counterterrorism measures adopted after 9/11 in the context of the Action Plan are in fact multi-purpose legislation, which failed to gather sufficient support among European citizens before 9/11, several scholars have argued that the terrorist threat has been exaggerated for instrumental and strategic reasons.<sup>65</sup> A useful summary of this argument has already been provided by Edwards and Meyer and a lengthier citation from their work therefore seems appropriate:

Fear of terrorism is as much a function of official communication as it is the result of the attacks themselves. In quantitative terms, the risk of falling victim to a terrorist attack was 33 times smaller than dying of meningitis, 822 times than being murdered for non-political reasons and 1,833 times less likely than being killed in a car accident. Yet, according to the Transatlantic Trends survey, 74 per cent of American and 66 of European respondents (of the nine countries surveyed) thought it was 'likely' or 'somewhat likely' that they would be 'personally affected' by terrorism in the next ten years. The director of Europol writes that the terrorist threat is the most serious ever, but the latest report of terrorist activities in 2006 contains mainly terrorist acts causing minor material damage. Of course, statistical probabilities and public risk assessments follow different logics and cannot be expected to be identical, but the politics of risk perceptions are such that, with regard to

<sup>64</sup> Edwards and Meyer, "Introduction: Charting a Contested Transformation," 18.

<sup>65</sup> See Didier Bigo, "Liberty, Whose Liberty? The Hague Programme and the Conception of Freedom," in *Security v Freedom? A Challenge for Europe's Future*, ed. Thierry Balzacq and Sergio Carrera (Aldershot: Ashgate Publishing Company, 2006), 35-44; Thierry Balzacq, "The Policy Tools of Securitization: Information Exchange, EU Foreign and Interior Policies," *Journal of Common Market Studies* 46, no. 1 (January 2008): 75-100.

terrorism, no residual risk seems acceptable and therefore security is never in sufficient supply.<sup>66</sup>

At the same time however, it is important to keep in mind the insights from the pre-9/11 literature on terrorism, which reminds us that what terrorists want is lot of people watching, but not necessarily dying.<sup>67</sup> The actual numbers of terrorist attacks and their victims may therefore be only of secondary importance because what really matters is the so-called “irrational anxiety,”<sup>68</sup> which makes individual EU citizens believe that they will be the next victim of a terrorist attack, even though statistically speaking it indeed may be 1 833 times more likely that they will be killed in a traffic accident. Thus, while certainly far from being perfect, Eurobarometer surveys concerning terrorism and counterterrorism related issues do offer at least some unique and useful public opinion data which can and should be used to complement both the official EU and national levels of counterterrorism discourse analysis.

## Lack of a Common EU Terrorist Threat Assessment

Another reason why the EU members have different perceptions of both the nature and the gravity of contemporary terrorist threats is due to the fact that no independent common terrorist threat assessment is currently available at the EU level. Taking into account the different historical experiences and demographic trends in individual EU members, it is hardly surprising that the national threat assessments vary, sometimes considerably. Some argue that these variances are natural and unavoidable because the terrorist threat is objectively different in the individual EU members.<sup>69</sup> This in turn also implies that EU-wide terrorist threat perception is highly unlikely to emerge. Others, however, have suggested that terrorism can be viewed as a form of political communication by means of threat and actual violence,<sup>70</sup> whose impact depends on how it is being perceived and reacted to by those to whom it is addressed. In other words, the extent to which terrorism is seen as a grave security threat depends on a process of social construction, which is inherently intersubjective and takes place *among* various actors and audiences.<sup>71</sup> As Edward and Meyer pointed out,

<sup>66</sup> Edwards and Meyer, “Introduction: Charting a Contested Transformation,” 17-18.

<sup>67</sup> Brian M. Jenkins, “Terrorism and Beyond: A 21st Century Perspective,” *Studies in Conflict & Terrorism* 24, no. 5 (Sept-Oct 2001): 321-27.

<sup>68</sup> Marc Nicholson, “An Essay on Terrorism,” *American Diplomacy*, 19.08.2003.

<sup>69</sup> Personal conversation of the author with Björn Müller-Wille at the ISA 2008 Annual Convention.

<sup>70</sup> Isabelle Duyvesteyn, “How New is the New Terrorism,” *Studies in Conflict & Terrorism* 27, no. 5 (2004): 439-54.

<sup>71</sup> Barry Buzan, Ole Weaver, and Jaap de Wilde, *Security: A New Framework for Analysis* (Boulder, CO: Lynne Rienner Publishers, Inc., 1998).

Responses to a given threat will depend on how it is interpreted: as an unprecedented, imminent, large-scale, deadly risk linked to fanatical foreigners who ‘hate us for what we are’, or, as a crime committed by a group with distinct ethnic and social characteristics, radicalized by identifiable and resolvable social and political grievances and motivated by both short and long-term goals.<sup>72</sup>

This implies that neither the security threats, nor the responses to them, have an “objective” independent reality on their own. Thus, if terrorist threat perceptions are indeed inter-subjective social constructs, they are largely shaped on the available information, existing knowledge, and prevailing expectations. A common EU-wide perception of the terrorist threat may therefore emerge if there is a) enough information regarding the nature and gravity of terrorist activity in all EU members, and b) a common baseline terrorist threat assessment mechanism exists to process the available data and turn it into “common EU knowledge” about the terrorist threat.

Thus far, however, information sharing among the EU members has been far from perfect and primarily takes place outside of EU’s structures. Since Europol does not have the mandate to gather intelligence on its own, and lacks both trust from the national intelligence and law enforcement agencies and a common threat assessment methodology, the EU has neither the data nor the means to generate knowledge that could significantly influence how terrorism is perceived in Europe.<sup>73</sup> Consequently, terrorist threat perceptions are rather inward-looking and vary considerably from one member to another and different national security authorities are “neither willing nor able to coordinate their efforts to provide security efficiently.”<sup>74</sup>

As long as EU citizens and policy-makers do not have access to an authoritative EU-wide terrorist threat analysis at the strategic level, domestic developments and past national (in-) experience with terrorism will remain the key variables in the construction of perception of both the terrorist threat and the corresponding counterterrorism policies. In the age of global terrorism however this is bound to be an unsatisfactory state of affairs. As one analyst put it, “whereas previous forms of terrorism in Europe have generally been bounded by national borders, the non-hierarchical, networked, cross-border character of jihadist terrorism transformed fundamentally the characteristics

<sup>72</sup> Edwards and Meyer, “Introduction: Charting a Contested Transformation,” 6.

<sup>73</sup> Europol does produce an annual EU Terrorism Situation and Trend report but it must rely on data supplied by the national police and intelligence agencies. Oldrich Bures, “Europol’s Fledgling Counterterrorism Role.” *Terrorism and Political Violence* 20, no. 4 (Winter 2008): 498–517.

<sup>74</sup> Müller-Wille, *For Our Eyes Only? Shaping an Intelligence Community Within the EU*, 12.

of the threat.”<sup>75</sup> As such, even the national agencies of the biggest EU members are simply incapable of monitoring, evaluating and responding to all possible terrorist threats within the territory of the EU and they should not be expected to do so. Consequentially, both the public and policymakers in the EU members are unlikely to ever fully grasp both the country-specific and transnational terrorist threats before their own homeland is directly affected. Under these circumstances, it is also extremely difficult, if not impossible, to agree on and implement a coherent EU counterterrorism policy.

## Point of Consensus: Terrorism Is Not an Occasion for War

To be fair, it is important to note at this point that while there is no common EU-wide terrorist threat perception, it appears that most European politicians and a majority of EU members’ citizen do at least agree on what terrorism is not – an occasion for war. Although for some Europeans the Madrid and London bombings undoubtedly represented a watershed event comparable to the 9/11 attacks in the United States as they brought the realisation that the EU is a target for Islamist, and increasingly home-grown, terrorists, most Europeans have continued to reject the “war model” of fighting terrorism and prefer to think about terrorism as of another, albeit special, category of serious crime.

The available literature offers several explanations why this has been the case. Therese Delpech claims that most Europeans do not accept the idea of a “war” on terrorism because they are “used to dealing with this phenomenon with other methods (intelligence services, police, justice), and have not really taken in the consequences of the magnitude of the change wrought by the events of 11 September 2001.”<sup>76</sup> Others have argued that Europe’s past counterterrorism experience is getting in the way of adapting to the current terrorism threat and some even accused the governments of fighting yesterday’s war:

In their strategies, both Europeans and Americans are still responding to their last terrorist attacks, and are not doing enough to prevent future ones. The attacks of September 11th 2001 convinced Americans that Islamist terrorism is an existential threat, and that their enemies are located abroad, primarily in the greater Middle East. Europe’s enemies might be located abroad too; but since they have not yet struck in Europe on a scale comparable to the September 11th attacks, EU governments are much more focused on the threat within Europe and on preventing bombings like those carried out in Madrid in 2004. Consequently, EU governments do not yet see the

<sup>75</sup> Javier Argomaniz, “Counter-Terrorism Policy-Making in the EU,” School of Politics & International Relations, University of Nottingham, 2008, 118.

<sup>76</sup> Therese Delpech, *International Terrorism in Europe*. Chaillot Papers No. 56 (Paris: Institute for Security Studies, December 2002), 21.

terrorist threat as an existential one, and their past experiences of European terrorism have in some ways blinded them to the different nature of the Islamist terrorist threat today.<sup>77</sup>

Not all commentators however see Europe's past counterterrorism experiences as a burden and/or a blinder. Some posit that Europeans actually worry greatly about terrorist attacks on their soil, but generally feel that terrorism is a long-term challenge that can hardly be addressed by military means. This view was perhaps best espoused by Gilles Andréani, the former head of policy planning in the French Foreign Ministry, when he argued that the US war on terror is "a good cause" but the "wrong concept."<sup>78</sup> In Keohane's view, this criticism is partly, but not only, based on Europe's history with terrorist groups:

EU governments have learnt that terrorism is a means rather than an end. In other words, European governments try to focus not only on the types of attacks that terrorists intend to carry out, but also on why these people become terrorists and why sections of society support them; and they generally agree that terrorism can only be defeated with a long-term political approach.<sup>79</sup>

The other likely underlying thinking behind Andréani's remark reflects the opinion of many Europeans that the US-led war in Iraq has increased, rather than diminished, the threat from radical Islamist terrorism. Here, once again, the demography of Europe clearly matters.

But even more importantly, this whole debate lends further support to the aforementioned constructivist claim that responses to a given threat depend on how it is interpreted in the first place: While the Bush administration declared a "global war on terror" on an enemy that was portrayed as fanatical and evil and needed to be defeated ("Either you are with us, or you are with the terrorists"<sup>80</sup>), European perceptions of the terrorist threat have been more varied and inward-looking.<sup>81</sup> Here it is especially useful to look to the European Union, whose position arguably reflects an intermediate European stance to the extent that its 2003 European Security Strategy (ESS) lists terrorism only as one of several grave threats and argues that it "arises out of complex causes, including the pressures of modernisation, cultural, social and political crises

<sup>77</sup> Keohane, *The EU and Counter-Terrorism*, 12-3.

<sup>78</sup> Gilles Andréani, "The War on Terror: Good Cause, Wrong Concept," *Survival* 46, no. 4 (2004): 31-50.

<sup>79</sup> Daniel Keohane, "The Absent Friend: EU Foreign Policy and Counter-Terrorism," *Journal of Common Market Studies* 46, no. 1 (January 2008): 134-5.

<sup>80</sup> George W. Bush, *Address to a Joint Session of Congress and the American People*, September 2001, The White House, 20.5.2006 <<http://www.whitehouse.gov/news/releases/2001/09/20010920-8.html>>.

<sup>81</sup> Edwards and Meyer. "Introduction: Charting a Contested Transformation," 7.

and the alienation of young people living in foreign societies.”<sup>82</sup> The ESS also states that this phenomenon is also part of our own society and while it also describes international terrorism as linked to “violent religious extremism,”<sup>83</sup> which seeks weapons of mass destruction and unlike “traditional terrorist organizations” is ultimately not “ready to abandon violence for negotiations,”<sup>84</sup> it places a much stronger emphasis on “effective multilateralism,” “prevention” and “non-military means” than the US 2002 National Security Strategy.<sup>85</sup>

## Concluding Remarks

The Treaty on European Union stipulates that one of the key objectives of the European Union is to provide citizens with a high level of safety within an area of freedom, security and justice.<sup>86</sup> In December 2003, the European Council adopted a “European Security Strategy,” where terrorism heads the list of threats facing EU members, and which proclaims that concerted European action against terrorism is “indispensable.”<sup>87</sup> Already in November 2001, the European Council adopted an Action Plan on Combating Terrorism and an EU Counterterrorism Strategy was agreed in December 2005, following the terrorist attacks in Madrid and London. Despite the limited competences for fighting terrorism at the EU level, a March 2007 Commission memorandum listed 51 adopted and 33 proposed pieces of legislation as well as 22 Communications and 21 reports under the heading of the fight against terrorism.<sup>88</sup> Although “counterterrorism” is not yet a clearly defined area and in its broadest and fullest sense, it spans across a number of policy areas across all of the EU’s three pillars, the aforementioned set of legal and institutional measures are nowadays commonly referred to as the “EU counterterrorism policy.” Moreover, according to the EU’s first Counterterrorism Coordinator, the fight against terrorism is changing “the role and functioning of the European Union” insofar as the Union adopts an increasingly operational role.<sup>89</sup>

<sup>82</sup> European Council, *European Security Strategy*. 12.12. 2003, 14/04/2004 <<http://www.consilium.europa.eu/uedocs/cmsUpload/78367.pdf>>, 3.

<sup>83</sup> European Council, *European Security Strategy*, 5.

<sup>84</sup> European Council, *European Security Strategy*, 4.

<sup>85</sup> The White House, *National Security Strategy of the United States of America*. 2002, 12.02.2003 <<http://www.whitehouse.gov/nsc/nss.pdf>>.

<sup>86</sup> Article 29.

<sup>87</sup> European Council, *European Security Strategy*. 12.12. 2003, 14/04/2004 <<http://www.consilium.europa.eu/uedocs/cmsUpload/78367.pdf>>, 3.

<sup>88</sup> European Commission, *Commission Activities in the Fight Against Terrorism*, MEMO/07/98. 12.03. 2007, 30.05.2008 <<http://europa.eu/rapid/pressReleasesAction.do?reference=MEMO/07/98&format=HTML&aged=0&language=EN&guiLanguage=en>>.

<sup>89</sup> Gijs De Vries, *The European Union and the Fight Against Terrorism*, Presentation of the EU Counter-Terrorism Coordinator at the Seminar of the Centre for European Reform. 19.01. 2006, <<http://www.consilium.europa.eu/uedocs/cmsUpload/060119CenterEuropeanReform.pdf>>.

In this paper, however, I have identified a major shortcoming of EU-level efforts to cooperate more closely in the fight against terrorism – the lack of a shared perception of the contemporary terrorist threat among EU members. This is due to a number of factors, including different historical records, ongoing scholarly debates concerning the exact nature of the contemporary terrorist threat, demographic trends and the current immigration and natality patterns in EU members as well as the absence of a genuine baseline terrorist threat assessment, which all make the development of a common terrorist threat perception rather difficult, if not impossible. While EU members do, at least, share the opinion that (counter-) terrorism is not an occasion for war, this “negative” consensus is not likely to be sufficient for the design and execution of an EU counterterrorism policy worthy of the name.

The ongoing debates concerning both the novelty and gravity of the post-9/11 terrorist threat may therefore not only explain the lack of consensus concerning the most appropriate response(s) to it, but also the key dilemma of the EU’s counterterrorism policy: the need to cooperate more closely to fight terrorism and the reluctance to agree on, and/or duly implement, centralised solutions at the EU level. Due to the persistence of this dilemma, when even the “windows of opportunity” created by the 9/11, 3/11 and 7/7 terrorist attacks were not compelling enough for EU politicians to offer a clear answer, the EU “cannot ensure that a European citizen living in a proclaimed area of freedom, security and justice enjoys the same level of protection – not just in terms of actual risks and safeguards, but in terms of the governing instruments that are applicable to a given national territory.”<sup>90</sup> Undoubtedly, this is in part because of the political sensitivity of counterterrorism which goes to the very heart of national security. At the same time however, both academic research and foiled terrorist attacks confirm the continued presence of the terrorist threat in Europe, confirm that national level responses to contemporary terrorist threats are woefully insufficient. Thus, as one Commission official put it, “we can only hope that politicians [in EU members] will not need another 3/11 to take terrorism seriously.”<sup>91</sup>

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<sup>90</sup> Edwards and Meyer. “Introduction: Charting a Contested Transformation,” 22.

<sup>91</sup> Interview with Commission Officials, DG JLS, October 2008.

*Table 1: Growth of Muslim Populations in EU Member States*

	Muslims populations in 2007		Muslims populations in 1982	
	<i>Muslim population</i>	<i>Muslims % of total population</i>	<i>Muslim population</i>	<i>Muslims % of total population</i>
Austria	344,391	4.20 %	80,000	1.10 %
Belgium	415,689	4.00 %	350,000	3.60 %
Bulgaria	893,389	12.20 %	1,700,000	19.30 %
Cyprus	141,922	18.00 %	155,000	24.40 %
Czech Rep.	10,229	0.10 %	NA	NA
Denmark	202,320	3.70 %	35,000	0.70 %
Estonia	5,264	0.40 %	NA	NA
Finland	20,654	0.40 %	NA	NA
France	6,371,819	10.00 %	2,500,000	4.60 %
Germany	3,213,639	3.90 %	1,800,000	2.90 %
Greece	139,182	1.30 %	160,000	1.60 %
Hungary	3,201	0.03 %	NA	NA
Ireland	20,135	0.49 %	NA	NA
Italy	814,068	1.40 %	120,000	0.20 %
Latvia	384	0.02 %	NA	NA
Lithuania	2,682	0.08 %	NA	NA
Luxembourg	9,604	2.00 %	NA	NA
Malta	3,000	0.75 %	NA	NA
Netherlands	994,237	6.00 %	400,000	2.80 %
Poland	3,850	0.01 %	22,000	0.10 %
Portugal	35,121	0.33 %	NA	NA
Rumania	44,552	0.20 %	65,000	0.30 %
Slovakia	3,051	0.06 %	NA	NA
Slovenia	48,222	2.40 %	20,000	1.10 %
Spain	930,308	2.30 %	120,000	0.30 %
Sweden	270,933	3.00 %	30,000	0.30 %
United Kingdom	1,640,958	2.70 %	1,250,000	2.20 %

*Sources: The 2007 data for Belgium, Italy, Spain, and Sweden where 2007 data comes from BBC Muslims in Europe: Country guide 2005, <http://news.bbc.co.uk/2/hi/europe/4385768.stm>. The 2007 data for Hungary comes from the Hungarian Central Statistical Office 2007, [http://www.nepszamlalas.hu/eng/volumes/26/tables/load4\\_1\\_1.html](http://www.nepszamlalas.hu/eng/volumes/26/tables/load4_1_1.html). The 2007 for all remaining EU MSs comes from the US Department of State Background notes 2007 and/or International Religious Freedom Reports 2007. The*

1982 data for all countries comes from M. Ali Kettani, *Muslim Minorities in the World Today* (London: Mansell Publishing Ltd., 1986). NA = no data available.

Table 2: Muslim Citizenship and Recognition & Rank of Islam as a Religion

	Muslim citizenship - % of total Muslim population (2003)	Official recognition of Islam	Rank of Islam among major religions
Austria	28 %	Yes (1979)	3rd
Belgium	NA	Yes (1974)	2nd
Bulgaria	100 %	Yes	2nd
Cyprus	100 %	Yes	2nd
Czech Rep.	NA	Yes (2004)	4th
Denmark	11 %	No	2nd
Estonia	NA	Yes	5th
Finland	NA	Yes (1980s)	4th
France	60 %	Yes (2002)	2nd
Germany	15 %	No	3rd
Greece	22 %	Yes (1923)	2nd
Hungary	NA	No	5th
Ireland	NA	No	3rd
Italy	7 %	No	2nd
Latvia	NA	Yes	5th
Lithuania	NA	Yes	5th
Luxembourg	NA	No	3rd
Malta	25 %	Yes	3rd
Netherlands	50 %	Yes (1988)	3rd
Poland	NA	No	4th
Portugal	NA	Yes (1976)	2nd
Rumania	100 %	Yes	4th
Slovakia	NA	No	5th
Slovenia	NA	Yes	4th
Spain	NA	Yes (1992)	2nd
Sweden	15-30 %	Yes (1979)	2nd
United Kingdom	60 %	No	3rd

Source: Timothy M. Savage, "Europe and Islam: Crescent Waxing, Cultures Clashing," *The Washington Quarterly* 27, no. 3 (Summer 2005): 25-50

Notes: NA = data not available. Recognition = official state recognition of Islam. Where known, year of recognition is provided in parentheses. Rank = rank among

*the five major religions: Catholic, Islamic, Jewish, Orthodox, and Protestant. Muslim citizenship = % of Muslims holding citizenship out of the total Muslim population in the country.*

*Table 3: Muslim Population in EU Member States as % of Total Population*

Country	Total population	Muslim population	Muslim population % of total
Cyprus	788,457	141,922	18.00 %
Bulgaria	7,322,858	893,389	12.20 %
France	63,718,187	6,371,819	10.00 %
Netherlands	16,570,613	994,237	6.00 %
Austria	8,199,783	344,391	4.20 %
Belgium	10,392,226	415,689	4.00 %
Germany	82,400,996	3,213,639	3.90 %
Denmark	5,468,120	202,320	3.70 %
Sweden	9,031,088	270,933	3.00 %
United Kingdom	60,776,238	1,640,958	2.70 %
Slovenia	2,009,245	48,222	2.40 %
Spain	40,448,191	930,308	2.30 %
Luxembourg	480,222	9,604	2.00 %
Italy	58,147,733	814,068	1.40 %
Greece	10,706,290	139,182	1.30 %
Malta	400,000	3,000	0.75 %
Ireland	4,109,086	20,135	0.49 %
Finland	5,238,460	20,654	0.40 %
Estonia	1,315,912	5,264	0.40 %
Portugal	10,642,836	35,121	0.33 %
Rumania	22,276,056	44,552	0.20 %
Czech Republic	10,228,744	10,229	0.10 %
Lithuania	3,575,439	2,682	0.08 %
Slovakia	5,447,502	3,051	0.06 %
Hungary	9,956,108	3,201	0.03 %
Latvia	2,259,810	384	0.02 %
Poland	38,518,241	3,850	0.01 %
EU-27	490,428,441	16,582,804	3.30 %

*Sources: The 2007 data for Belgium, Italy, Spain, and Sweden where 2007 data comes from BBC Muslims in Europe: Country guide 2005, <http://news.bbc.co.uk/2/hi/europe/4385768.stm>. The 2007 data for Hungary comes from the Hungarian*

Central Statistical Office 2007, [http://www.nepszamlalas.hu/eng/volumes/26/tables/load4\\_1\\_1.html](http://www.nepszamlalas.hu/eng/volumes/26/tables/load4_1_1.html). The 2007 for all remaining EU MSs comes from the US Department of State Background notes 2007 and/or International Religious Freedom Reports 2007.

Table 4: EU Citizens' Fear of International Terrorism (2001–2002)

	BE	DK	DE	EL	ES	FR	IR	IT	LU	NL	AT	PT	FI	SE	UK	EU15
2001	78	79	85	91	90	91	83	92	84	76	70	90	69	83	83	86
2002	76	77	75	86	82	88	82	92	85	69	62	85	67	78	85	82

Note: For 2001–2002 period, the exact question was: “Here is a list of things that some people say they are afraid of. For each of these, please tell me if, personally, you are afraid of it, or not?” The answers indicate the percentage of people who answered this question positively for “international terrorism.” Data prior to 2001 is not available because terrorism was not included on the list. Data after 2002 is not available because Eurobarometer surveys no longer included the same question.

Sources: Eurobarometer surveys no. 56 (2001) and no. 58 (2002).

Table 5: EU Citizens' Perceptions of the Salience of the Terrorist Threat (2003–2007)

	BE	CZ	DK	DE	EE	EL	ES	FR	IR	IT	CY	LV	LT	HU	LU
2003	4	NA	12	3	NA	4	51	9	2	9	NA	NA	NA	NA	7
2004	6	4	20	4	2	2	59	10	6	17	3	2	3	5	10
2005	5	3	32	4	3	1	31	10	6	11	1	2	1	2	4
2006	6	1	28	2	2	3	36	4	5	9	7	0	1	2	4
2007	4	3	17	11	1	2	37	6	4	7	2	0	1	1	3
Avg. <sup>1</sup>	5	3	21	5	2	2	43	8	5	11	3	1	2	3	6

	MT	NL	AT	PL	PT	SI	SK	FI	SE	UK	BG	RO	EU15	NMSs <sup>3</sup>	EU25 <sup>2</sup>
2003	NA	4	4	NA	3	NA	NA	2	3	17	NA	NA	12	NA	NA
2004	2	12	5	6	4	3	4	5	6	28	5	4	18	5	16
2005	2	40	3	3	1	2	5	5	6	34	5	4	16	3	14
2006	1	19	2	3	2	2	2	3	5	17	5	4	11	2	10
2007	1	9	9	2	2	1	5	1	2	17	1	2	9	2	7
Avg. <sup>1</sup>	2	17	5	4	2	2	4	3	4	23	4	4	13	3	12

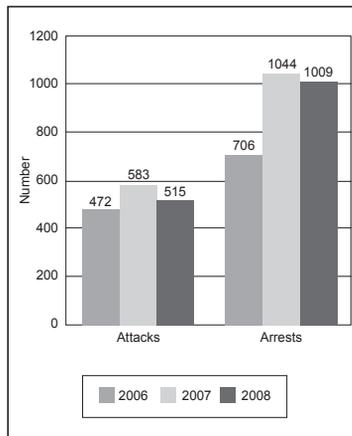
Notes: For 2003–2007 period, the exact question was: “What do you think are the two most important issues facing (OUR COUNTRY) at the moment?” As in the 2001 and 2002 Eurobarometer surveys, those questioned would still be shown a list of

things some people say they are afraid of, but they were asked to select a maximum of two things only. Thus, the answers indicate the percentage of people who named “terrorism” as one of the two most important issues facing their country. Data prior to 2003 is not available because Eurobarometer surveys did not include the same question.

<sup>1</sup> Five/four years average. <sup>2</sup>EU27 data for 2007. <sup>3</sup>Only the 2007 data includes figures for Rumania and Bulgaria in EU and New Members States (NMSs) totals.

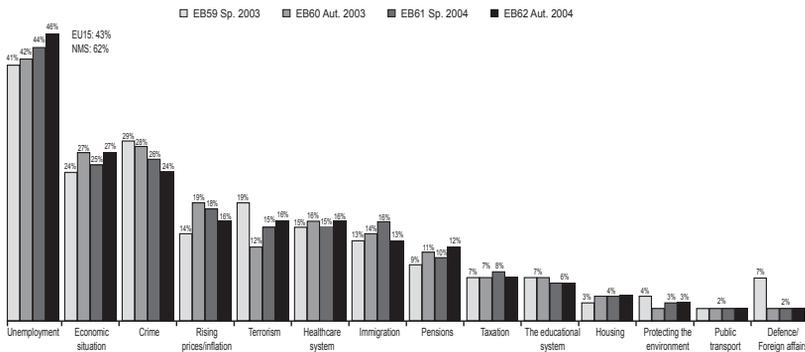
Sources: Eurobarometer surveys no. 60 (2003), no. 62 (2004), no. 64 (2005), no. 66 (2006), no. 68 (2007).

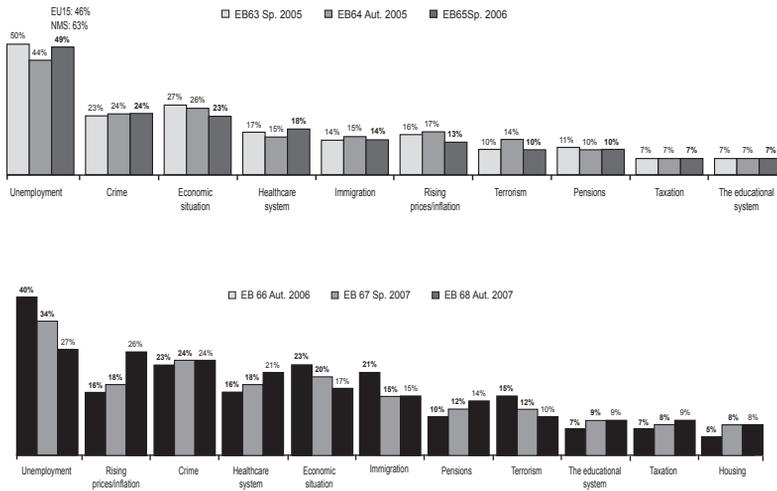
Figure 1: Number of failed, foiled or successful attacks and number of arrested suspects in EU MSs (2006–2008)



Source: Europol, Terrorism Situation and Trend Report 2009

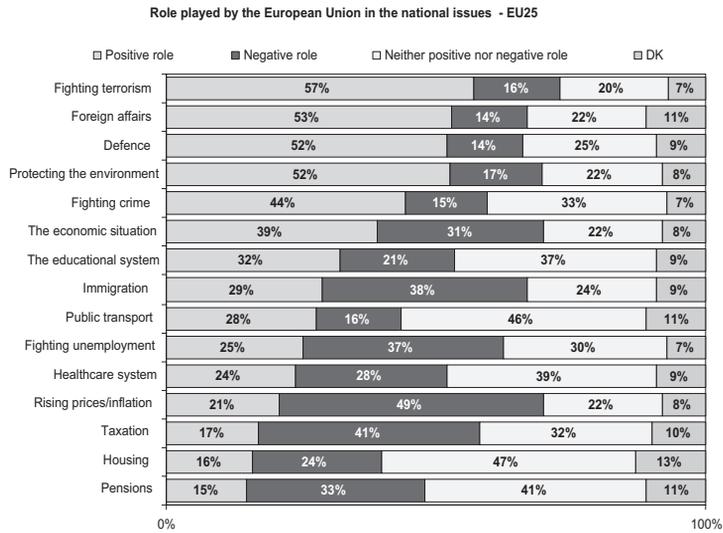
Figure 2: Two most important issues facing EU Member States according to EU citizens (2003–2007)





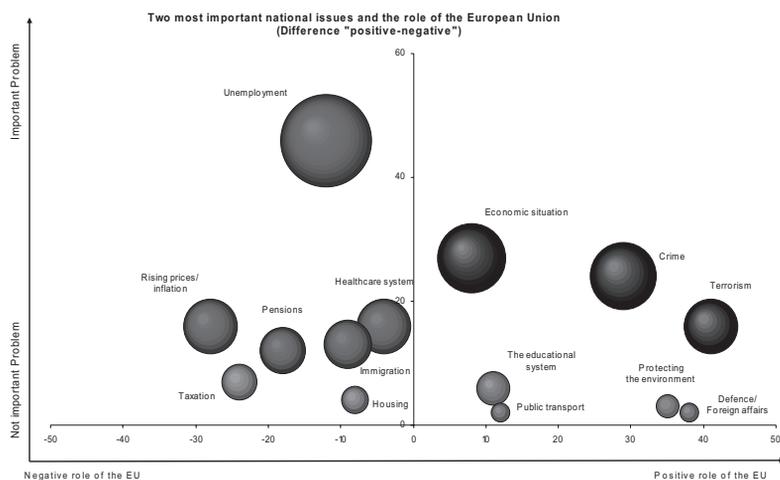
Source: Eurobarometers no. 62 (2004), no. 65 (65), and no. 68 (2007).

Figure 3: Role Played by the EU in National Issues



Source: Eurobarometer no. 62 (2004), p. 25.

Figure 4: Two Most Important National Issues and the Role of the EU



Note: This chart summarises the two sets of information: on the one hand, the importance of the various problems facing the EU MSs countries (Y-axis) and, on the other hand, the perception of the role played by the European Union in combating these problems (X-axis). The size of the bubbles varies according to the importance attached to the issue in question. In other words, the bigger the bubble, the more important the issue. Source: Eurobarometer no. 62 (2004), p. 27.

# **Bringing Effectiveness into the Debate: A Guideline to Evaluating the Success of EU Targeted Sanctions**

**Francesco Giumelli<sup>1</sup>**

The relevance of international sanctions has increased since the end of the Cold War as states and international organisations have resorted to this foreign policy tool more frequently than in the past. The European Union (EU) has contributed to this trend by using sanctions in more than twenty different occasions since the early 1990s and the new form of targeted sanctioning developed in the past fifteen years, which aims at individuals and non-state entities rather than at entire states, has presented legal challenges that were unknown before. In particular, the need of ensuring the right to a due process and effective remedy to listed individuals and companies has attracted much attention from scholars and practitioners. Indeed, a decision taken by the Council of Ministers to prevent the travel or to freeze the assets of EU citizens without proper prosecution and trial might very well violate their freedom of movement or their right to property as granted by Community law. However, although such a debate is extremely important, the overemphasis on these legal challenges appears to have overshadowed other crucial political aspects of the problem, such as the need for a thorough discussion on sanctions' effectiveness.

The objective of this article is to include effectiveness in the debate on the targeted sanctions of the EU. This research acknowledges the several problems in elaborating clear indicators for success and therefore its main goal is to identify general guidelines according to which the effectiveness of targeted sanctions can be assessed. First, sanctions are policy tools that can have specific effects and their success should be decided only after a realistic evaluation of whether they met their expected results. Second, the type of target influences

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what type of sanctions can bring the highest contribution to the overall strategy. Finally, sanctions should be considered as unsuccessful only if an alternative course of action could have yielded better results. Sanctions can coerce, constrain and signal targets in foreign policy, so that different contexts could be best suitable for one or another type of measure. EU sanctions could certainly be better evaluated through the adoption of this taxonomy.

The analysis of the EU sanctioning policy in theory and practice provides us with enough evidence to lay down the foundations for a general approach to measure the effectiveness of sanctions. Indeed, effectiveness is an intricate concept and this analysis intends to enrich this debate by identifying extensive categories of analyses that would allow for comparisons, measurements and the categorisation of sanctions. The tripartite conceptualisation also creates a set of specific and diverse expectations for each type of sanction, so that more precise assessments can be drawn. Criteria to assess the success of targeted sanctions are lacking, and this article's main goal is to contribute to solve this problem.

This article is divided in three sections. The first part presents the foreign policy tool-box of the EU and places sanctions in the overall framework of the Common Foreign and Security Policy (CFSP) by reviewing both the legal bases for what the EU calls "restrictive measures" and the crises wherein sanctions were adopted. The second section introduces the ongoing debates and the legal challenges in European courts after the imposition of targeted sanctions and elaborates on the concepts of effectiveness by outlining both guiding principles to assess success and by creating the tripartite taxonomy to facilitate this task. Finally, the concluding part of the article summarises the main argument and discusses the potential benefits that would be obtained by the adoption of this approach to measuring the effectiveness of EU restrictive measures.

## Foreign Policy Instruments

Since the signing of the Maastricht Treaty, European integration advanced from the idea of a single market to that of a political union.<sup>2</sup> The three pillar structure of the Union ensured that every aspect of a state-like institution would be shaped by EU bodies so that foreign policy could not avoid the process of *brussellisation*, wherein "foreign policy issues are more and more discussed, and decided, by institutions and people based in Brussels rather than in national capitals."<sup>3</sup>

<sup>2</sup> Helen Wallace, William Wallace, and Mark A. Pollak, *Policy-Making in the European Union* (Oxford: Oxford University Press, 2005), 435-438.

<sup>3</sup> Karen E. Smith, *European Union Foreign Policy in a Changing World*, Second Edition (Cambridge; Malden, MA: Polity Press, 2008), 38, who is citing David Allen, "Who Speaks for Europe? The Search for an Effective and Coherent Foreign Policy", in John Peterson and Helene Sjursen, eds, *A Common Foreign Policy for Europe?* (London; Routledge, 1998).

As a purely intergovernmental matter, cooperation between member states took place through common positions and joint actions designed to harmonise foreign actions and to promote coordinated responses to common challenges. The entry into force of the Maastricht Treaty (November 1993) granted the European Council with the power of delineating the strategic objectives of the Union and gave the competence to elaborate policies to act to the Council of Foreign Ministers. Indeed, these innovations and the need to carry out an efficient foreign policy led EU institutions to expand the list of foreign policy options at their disposal in the economic, diplomatic, and military spheres.

The economic sphere of foreign policy-making can be divided into positive and negative measures. Concerning positive economic instruments, the EU has developed a wide range of measures that share the principle of providing certain economic benefits in exchange for deeper or stronger cooperation in areas of mutual interest. For instance, the EU can opt to sign cooperation or association agreements, to provide specific development aid and to grant special exceptions that open EU market areas to poor countries, also known as the General System of Preferences (GPS) program. According to Smith, the EU has created a hierarchy of partners, formed by the closer ones (Turkey, South-East European countries, the Cotonou agreement partners, the Euro-Mediterranean partners and the European Economic Area countries) who are linked by association agreements and others established either through cooperation agreements or by “lighter” associations.<sup>4</sup>

Other forms of economic foreign policy tools are related to development assistance, which is run, since 2001, by EuropeAid (including the European Development Fund, the total budget for EuropeAid Cooperation Office [AIDCO] was EUR 9.3 billion in 2008), and also through the provision of loans to certain countries by the European Investment Bank (only in 2008, the EIB has provided loans to third countries for over EUR 6 billion).<sup>5</sup> Concerning negative measures, aside from the decisions to impose sanctions that will be fully described below, decisions to suspend the above mentioned economic cooperation and aid could be forms of statecraft to be included in the category of negative measures. Notable examples include the suspension of aid flows to signatory states of the Cotonou Agreement that are accused of human rights violations.<sup>6</sup>

Due to these advancements, the EU is now able to embark on a series of diplomatic efforts that strengthen its international *actorness*. With the Amsterdam Treaty, the position of the High Representative for the CFSP was established

<sup>4</sup> Smith, *European Union Foreign Policy in a Changing World*, 58.

<sup>5</sup> *EuropeAid Comparative Study of External Aid Implementation Process. Final Report.*, Project No. 2007/145369 - Version 1, edited by HTSPE Limited and GFA Consulting Group (2007), 29.

<sup>6</sup> Stephen R. Hurt, “Co-operation and Coercion? The Cotonou Agreement between the European Union and ACP States and the End of the Lomé Convention”, *Third World Quarterly* 24, no.1 (2003): 171.

and Javier Solana was appointed to the post. Solana represented the EU in the international *fora* and carried out sensitive diplomatic functions in international crises. The Council has also created the roles of Special Envoys and Special Representatives in order to strengthen cooperation with third parties, and assist them with the resolution of crises. The first appointments date back to 1996 when Aldo Ajello was dispatched to the African Great Lakes' region and Miguel Angel Moratinos to the Middle East. Other forms of diplomatic instruments that have been employed by the Council as CFSP measures are those of issuing demarches and diplomatic recognitions, advancing peace proposals, dispatching cease-fire monitors and election observers.<sup>7</sup> Finally, the Amsterdam Treaty allowed the EU to conclude agreements in the area of the former third pillar (police and judicial cooperation in criminal matters), such as counter-terrorism agreements against terrorist financing or readmission agreements with Morocco, Sri Lanka, Macao, Hong Kong, and Albania, among others.

Finally, following the Saint-Malo (1998) declaration, the EU has also developed military instruments with the creation of the ESDP. After the crisis in Kosovo in 1998/1999 that confirmed the EU's inability to act in certain contexts, France and the UK proposed to establish a common rapid reaction force and a contingent of up to 60 thousand soldiers that could be deployed within 60 days by 2003. With the Headline Goals 2010, the EU has reached full capability to carry out both civilian crisis management missions and EU peace missions. Overall, the EU has initiated 23 missions since 2003.<sup>8</sup>

The civilian missions of the EU focus on four priority areas: policing, strengthening the rule of law, strengthening civilian administration and civil protection. For instance, the largest mission it presently manages is EULEX in Kosovo, and its main objective is to sustain the creation of a sustainable and functional rule of law system that includes about 2600 people.<sup>9</sup> The very first ESDP mission was that of the European Union Police Mission (EUPM) in Bosnia and Herzegovina (BiH) in 2003 that supported the creation of policing arrangements under BiH ownership in accordance with best European and international practices.<sup>10</sup> To date, there are eleven ongoing civilian missions run by the EU. Besides its civilian missions, the EU also is involved in military missions, being currently responsible for operations in Bosnia-Herzegovina, Guinea-Bissau, the Democratic Republic of Congo (DRC) and EU NAVFOR, also known as Operation *Atalanta* off the Somali coast.<sup>11</sup>

<sup>7</sup> Smith, *European Union Foreign Policy in a Changing World*, 63.

<sup>8</sup> Giovanni Grevi, Damien Helly, Daniel Keohane, eds., *ESDP: The first 10 years (1999-2009)* (Institute for Security Studies of the European Union, 2009).

<sup>9</sup> Grevi, *ESDP: The first 10 years (1999-2009)*, 353.

<sup>10</sup> *Ibid.*, 161.

<sup>11</sup> Council of the European Union, *European Foreign and Security Policy (ESDP)*. 2008, European Union, 31 January 2010 <<http://www.consilium.europa.eu/showPage.aspx?id=268&lang=EN>>.

A final element worth mentioning in the foreign policy tool-box, is the creation of ad-hoc agencies to assist the EU to achieve CFSP objectives: the European Defense Agency, the EU Institute for Security Studies and the EU Satellite Centre. Combined with the creation of the European Security and Defense College (ESDC) in 2008, the many actions noted above confirms that the EU has invested time and resources to utilise a full range of foreign policy tactics that could be used to pursue the foreign policy objectives indicated in the Treaties. The development of an advanced policy of restrictive measures must also be included in this context.

## Literature Survey: The EU Sanctioning Policy and Practice

The very act of sanctioning is among the oldest foreign policy tools. Since Thucydides described how Athens denied the city of Megara the access to its market in order to force the small city-state to join the Delian League, many studies analysed crises wherein various forms of sanctioning were adopted. The siege on Masada, the Napoleonic embargoes on England, and the restrictions imposed on Italy after its invasion of Ethiopia are all comparable episodes that show how sanctioning has always been an important option in foreign policy. Hence, in the attempt to create a common foreign and security policy, the EU could not avoid to include targeted sanctions in its foreign policy tool-box.

The EU can impose sanctions by receiving UN Security Council resolutions, by enforcing article 96 of the Cotonou Agreement<sup>12</sup> as mentioned above, and through autonomous decisions taken under the CFSP umbrella. Since the early 1980s, the EU has decided for the autonomous adoption, namely without receiving input from the UN, of restrictive measures on more than 40 occasions.<sup>13</sup>

This present analysis focuses on the political relevance of the EU and is limited to the autonomous sanctions that are imposed as CFSP decisions. In reality, the sanctioning practices of the EU could date back to both the Treaty of Rome or to the signing of the “London Report” in 1981 but for the purposes

<sup>12</sup> “Partnership Agreement Between the Members of the African Caribbean and Pacific Groups of States of the One Part, and the European Community and Its Member States, of the Other Part, Signed in [...] on [...] ([...] Agreement),” Art. 96, [Http://Ec.Europa.Eu/Development/Icenter/Repository/Agr01\\_en.Pdf](http://Ec.Europa.Eu/Development/Icenter/Repository/Agr01_en.Pdf) (2000).

<sup>13</sup> Joakim Kreutz, “Hard Measures by a Soft Power? Sanctions Policy of the European Union 1981-2004,” *Bonn International Center for Conversion Paper* 45 (2005); Seth. G. Jones, *The Rise of European Security Cooperation* (Cambridge: Cambridge University Press, 2007), 96-135; C. Portela, “The Efficacy of Sanctions of the European Union: When and Why Do They Work?” (PhD diss., European University Institute, 2008).

of this study the second pillar in 1992 is taken here as the starting point of the EU's sanctioning policy.<sup>14</sup>

International restrictive measures are foreign policy decisions that need to be approved unanimously by the Council as established by Chapter 2, Title V, of the Treaty Establishing the European Union (TEU).<sup>15</sup> The list of the types of sanctions that can be imposed by the EU is long,<sup>16</sup> although the most common ones are financial restrictions, commodity and service boycotts, arms embargoes and travel bans.

The treaty assigns different roles to different actors according to the type of measure. Whereas trade and financial sanctions have to be implemented with a Council Regulation according to article 75 (financial restrictions), 215 (economic restrictions), and, at times, 352 of the Treaty on the Functioning of the European Union (TFEU),<sup>17</sup> visa bans and arms embargoes have to be implemented by the adoption of national legislation. In other words, the former are dealt with by the EU, while the latter by its members. Arms embargoes are an exceptional case to article 352 due to a provision on national security that has been part of the Treaties since 1957.<sup>18</sup> In case of financial or economic restrictions, the Commission needs to elaborate a Regulation and the Council has to approve it with a qualified majority.<sup>19</sup>

Restrictive measures can be imposed by the EU under the CFSP umbrella. The President or a member of the Council, assisted by the Council Secretariat or by the Commission, can make a proposal regarding the imposition of restrictive measures. The Treaty of Lisbon provides for the possibility of joint proposals from the Commission and the High Representative as well. The proposal is received by the geographical groups assigned to deal with the target and analysed also by the Foreign Relations Counsellors Working Group (RELEX), and by the Political and Security Committee (PSC). Subsequently, it is the Committee of Permanent Representatives (COREPER II) that has the responsibility of drafting a common position to be submitted to the Council for its final ap-

<sup>14</sup> Kreutz, "Hard Measures by a Soft Power? Sanctions Policy of the European Union 1981-2004," 9.

<sup>15</sup> This information as well as the other references to TEU and TFEU regards the Consolidated Version of the Treaties after the entry into force of the Treaty of Lisbon.

<sup>16</sup> Diplomatic sanctions (expulsion of diplomats, severing of diplomatic ties, suspension of official visits); suspension of cooperation with a third country; boycotts of sport or cultural events; trade sanctions (general or specific trade sanctions, arms embargoes); financial sanctions (freezing of funds or economic resources, prohibition on financial transactions, restrictions on export credits or investment); flight bans; and restrictions on admission.

<sup>17</sup> Please note that the Articles in the Consolidated Version after the Nice Treaty were 60 (now 75 TFEU), 301 (now 215 TFEU) and 208 (now 352 TFEU).

<sup>18</sup> Art. 57 in the Treaty of Rome, now art. 346 of the TFEU.

<sup>19</sup> While the Council had to pass a Council Regulation with unanimity under the previous treaties, the Lisbon Treaty provides for the application of the qualified majority voting even in cases where targets are individuals and non-state entities.

proval. Monitoring is delegated to competent authorities (e.g. Central Banks and Finance Ministries of State members in case of financial restrictions), while the evaluation and eventual modification of ongoing measures are considered by the RELEX, COREPER and the Council.

The sanctioning policy has received growing attention in recent years, and three documents were approved by the Council to improve the mechanisms for deciding whether to adopt and how to implement sanctions. The first document is the “Guidelines on implementation and evaluation of restrictive measures (sanctions) in the framework of the EU Common Foreign and Security Policy.” Approved on December 2003 and updated on December 2005, the document contains definitions and principles on how to design restrictive measures, important information in regards to the different types of restrictions that can be imposed and on how to measure their effectiveness.<sup>20</sup>

The main principles that inspired the adoption of this foreign policy tool are presented in the second relevant key document of the EU restrictive measures’ policy: the “Basic Principles on the Use of Restrictive Measures (Sanctions)”, which was approved by the Council in June 2004, and maintains that the EU should impose sanctions in accordance with the UN, but also autonomously whenever necessary and appropriate to pursue the objectives of the External Relations of the EU. In any case, the document called for the use of targeted sanctions aiming at both minimising the unintended consequences of comprehensive measures on civilians and maximising the impact on those responsible for misconducts. This was the beginning of the EU’s official adoption of the so-called “smart sanctions.”<sup>21</sup>

Finally, the third document is a text on the implementation of restrictive measures that was initially passed in December 2004 and it is periodically reviewed by the Council. It regards the aspects of the implementation of restrictive measures and the latest version of “The EU Best Practices for the Effective Implementation of Restrictive Measures” was approved in April 2008. This version contains relevant information on how to identify the designated individuals or entities and on the administrative modalities for freezing assets and banning products, including the procedure on how to grant exceptions and exemptions to the measures.<sup>22</sup>

As decisions taken under the CFSP umbrella, EU restrictive measures are adopted in order to achieve the objectives set by article 22 of the TEU. These objectives include but are not limited to: the duty to safeguard its values and

<sup>20</sup> European Union, Council of the European Union, “Guidelines on Implementation and Evaluation of Restrictive Measures (Sanctions) in the Framework of the EU Common Foreign and Security Policy,” 15114/05 (Brussels, 2 December 2005).

<sup>21</sup> David Cortright and George A. Lopez, *Smart Sanctions: Targeting Economic Statecraft* (Lanham, MD: Rowman & Littlefield Publishers, 2002).

<sup>22</sup> European Union, Council of the European Union, “Update of the EU Best Practices for the Effective Implementation of Restrictive,” 8666/1/08 (Brussels, 24 April 2008).

security; to consolidate and support democracy; to preserve peace; to foster the social development of developing countries; and to promote good governance in the international system.

According to the Basic Principles, EU restrictive measures should be adopted in support of efforts “to fight terrorism and the proliferation of weapons of mass destruction and as a restrictive measure to uphold respect for human rights, democracy, the rule of law and good governance.”<sup>23</sup> On the same matter, the “Guidelines” remind us that “the restrictive measures do not have an economic motivation.”<sup>24</sup>

The categorisation of the Basic Principles is a good starting point to present the EU’s adoption of sanctions. In the timeframe considered, the EU imposed restrictive measures in cases of human rights promotion, crisis management, the fight against terrorism and non-proliferation of nuclear weapons. In general, the most frequent imposition of restrictive measures was in response to human rights violations or to counter attempts at undermining democratisation processes, further confirming that the EU behaves as a normative power using normative means (i.e. targeted measures are employed to minimise the humanitarian consequences) towards normative ends (i.e. promote democracy and human rights).<sup>25</sup> The second most frequent context wherein the EU has decided to adopt sanctions is that of crisis management. It is important to note that this category includes the compensatory measures imposed on the US and Libya to protect European companies from the possible consequences of the Helms-Burton Act and UN Security Council Resolution 883. The following table offers the details for both concluded and ongoing EU restrictive measures.

EU Restrictive Measures by Crisis*				
	Human Rights	Crisis Management	Non-proliferation	Terrorism
ONGOING				
Belarus	X			
US		X		
Libya		X		
Moldova		X		

<sup>23</sup> European Union, Council of the European Union, “Basic Principles on the Use of Restrictive Measures (Sanctions),” 10198/1/04 (Brussels, 7 June 2004), 2.

<sup>24</sup> European Union, “Guidelines on Implementation and Evaluation of Restrictive Measures (Sanctions) in the Framework of the EU Common Foreign and Security Policy,” 4.

<sup>25</sup> Ian Manners, “Normative Power Europe: A Contradiction in Terms?” *Journal of Common Market Studies* 20, no. 2 (2002): 235-58; Nathalie Tocci, ed., *Who Is a Normative Foreign Policy Actor?* (Brussels: Centre for European Policy Studies, 2008).

Zimbabwe	X			
Iran			X	
Ex-Yugoslavia		X		
Macedonia		X		
Terrorist List				X
Burma/Myanmar	X			
China	X			
Uzbekistan	X			
TOTAL	5	5	1	1
CONCLUDED				
Indonesia		X		
Comoros	X			
Afghanistan				X
Azerbaijan		X		
DRC	X			
Nigeria	X			
Sudan (1)				X
Sudan (2)	X			
Libya				X
CONCL.	4	2	0	3
TOTAL	9	7	1	4

*\*Own elaboration.*

The current situation confirms the trend of the past seventeen years since the EU is presently adopting five sanctions regimes due to human rights protection, five to manage crises, and only two based on issues of counter terrorism and the proliferation of nuclear weapons.

“Sanctions *a la carte*” could be a catchy label to describe how the EU has recurred to the different types of restrictive measures in the multiplicity of crises. Since the end of the Cold War, the Council has decided autonomously to impose 14 arms embargoes, 10 asset freezes, 7 commodity and service boycotts, and 14 travel bans. However, the figures on ongoing regimes limit the strength of this finding as they show a more balanced picture with the EU currently handling 6 arms embargoes, 7 assets freezes, 6 commodity and service boycotts, and 8 travel bans as summarised in the following table.

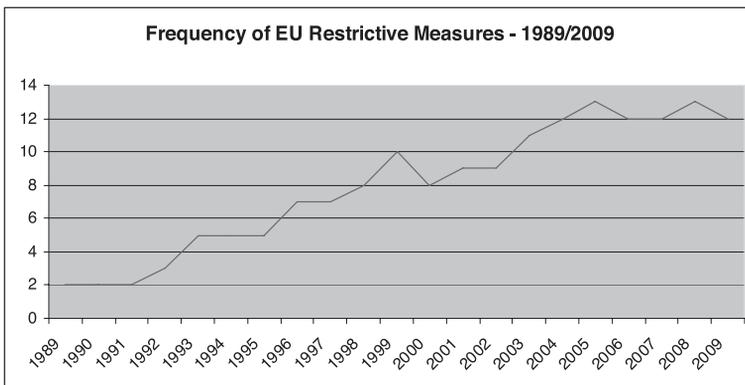
EU Restrictive Measures by Type*				
	Arms Embargo	Freezing of Funds	Comm. or Serv. Boyc.	Travel Ban
ONGOING				
Belarus		X		X
US			X	
Libya			X	
Moldova				X
Zimbabwe	X	X	X	X
Iran	X	X	X	X
Ex-Yugoslavia		X		X
Macedonia		X		X
Terrorist List	X	X	X	X
Burma/Myanmar	X	X	X	X
China	X			
Uzbekistan	X			
TOTAL	6	7	6	8
CONCLUDED				
<i>Belarus</i>				X
<i>Indonesia</i>	X		X	
<i>Comoros</i>		X		X
<i>Afghanistan</i>	X	X		X
<i>Azerbaijan</i>	X			
<i>DRC</i>	X	X		X
<i>Nigeria</i>	X			X
<i>Sudan (1)</i>	X			
<i>Sudan (2)</i>	X			
<i>Libya</i>	X			X
CONCL.	8	3	1	6
TOTAL	14	10	7	14

\*Own elaboration.

This evidence leads to a further generalisation on EU sanctioning, as the Council seems to prefer arms embargoes and travel bans to asset freezes and

commodity and service boycotts. In part, this could be related to the fact that arms embargoes and travel bans look “softer” in comparison to other forms of sanctioning, as confirmed by an EU official who had the impression that the EU was inclined to adopt assets’ freeze and commodity boycotts only in extreme conditions or in the presence of serious violations of international obligations.<sup>26</sup>

The development of a sanctioning policy is one of the elements that contributed to the growing importance of the EU as an international actor in the past decade.<sup>27</sup> Following a similar trend to the one experienced by the UN in the 1990s,<sup>28</sup> the frequency in the adoption of sanctions has increased over time, in particular since the end of the Cold War. Indeed, the figure went from a mere 2 cases in 1989 to the current number of 12 cases as seen in the following graph\*:



\*Own elaboration.

Sanctions have been adopted by the Council for a variety of reasons and in a variety of contexts. The EU has imposed restrictive measures on targets in North America, Europe, Asia and Africa, while only the Latin American peninsula is the only region that was not targeted by the EU’s sanctioning policy under article 15 of the Treaty. This wide adoption notwithstanding, the effectiveness of the restrictive measures was neglected by the debate, which focused on other important but less political matters as illustrated in the following paragraph.

<sup>26</sup> EU official in discussion with the author, April 2008.

<sup>27</sup> Anthonius W. de Vries and Hadewych Hazelzet, “The EU as a New Actor on the Sanctions Scene,” in *International Sanctions: Between Words and Wars in the Global System*, ed. Peter Wallensteen and Carina Staibano (London, New York, NY: Frank Cass, 2005), 95-107.

<sup>28</sup> David Cortright and George A. Lopez, *The Sanctions Decade: Assessing UN Strategies in the 1990s* (Boulder, CO: Lynne Reiner Publishers, 2000).

## Ongoing Debates on EU Targeted Measures

Despite the wide adoption of EU restrictive measures demonstrates its growing importance in the organisation's CFSP goals, the debate carried out both by practitioners and scholars seems to focus on procedural matters rather than on their effectiveness.<sup>29</sup>

Certainly, the evolution from comprehensive to targeted sanctions presents serious legal challenges to both international and domestic legal systems. On one hand, the decision to harm individuals in foreign states stands in clear contradiction to the international system's nonintervention principle. On the other hand, the decision to penalise individuals might prevent the fulfillment of certain rights granted by domestic or regional legal systems.

While the former has not been taken up by the literature of sanctions, the domestic implications of targeted sanctions has instead monopolised the debate in the recent years. The most prominent example of this trend is the report published by the Watson Institute for International Studies at Brown University on legal challenges related to the adoption of targeted sanctions.<sup>30</sup> This last report is a brilliant and extensive review of the most important legal implications that regional and national courts have recently faced. Among the actors considered in the report, the EU receive much attention since many cases have been brought up before the Court of First Instance (ECFI) and the European Court of Justice (ECJ). Indeed, individuals have the right to ask for the annulment of EU decisions that violate due process, the right to a hearing and effective remedy principles. Initially, since the ECFI tended to deny *all* requests by claiming its lack of competence or authority, the EU did not intensify efforts to modify and establish clear procedures to uphold the rights to a due process and effective remedy. However, this trend has changed and the Courts have posed fundamental challenges to the contemporary practice of targeted sanctions.

One of the most well-known cases in this regards is the Kadi and Al Barakaat decision of the Court of Justice, delivered in September 2008. Yassin Abdullah Kadi from Saudi Arabia and the Al Barakaat foundation, located in Sweden, were included in the UN's counter-terrorist list and their financial assets were frozen. Kadi and Al Barakaat appealed against the EU regulation that implemented the resolution of the Security Council by claiming their right to property and right to defense. After the case was rejected, as it was considered inappropriate by the ECFI since it was not empowered to question matters of *jus cogens* (i.e. UN Security Council resolutions), the ECJ upheld the appeal and annulled the regulation that froze the assets of the applicants on the basis of

<sup>29</sup> Only Portela, "The Efficacy of Sanctions of the European Union: When and Why Do They Work?" goes to this direction.

<sup>30</sup> Thomas J. Biersteker and Sue E. Eckert, *Addressing Challenges to Targeted Sanctions. An Updated of the "Watson Report"* (Providence, RI: Watson Institute for International Studies, 2009).

patent violation of the rights of the defense and the right to be heard, including the right to have access to the motivation of the listing. Thus, the ECJ decided that the assets of Kadi and Al Barakaat were to be unfrozen within 3 months had the Council not acted to solve such procedural irregularities.<sup>31</sup> To date, the names of Kadi and Al Barakaat are still on the UN's counter-terrorist list even though they brought their case up before the ECFI again. The crucial aspect of this case law is that the ECJ established the principle that even the resolutions of the Security Council can be reviewed by European courts in case they contrast with Community law.

Another case took place in January 2009, when the Council delisted the People's Mojahedin Organisation of Iran (PMOI). This case was slightly different from the aforementioned since the PMOI appealed because their rights of information were violated and because the national courts of the proposing state decided to remove PMOI from the terrorist list. A first ruling of the ECFI annulled the decision of the Council that failed to inform PMOI about the reasons motivating its listing, but the organisation remained targeted because the Council was given the opportunity to remedy. Following a decision of the UK government to de-list PMOI, the Council based the motivation to deny delisting based on the decision of a French prosecutor to open an investigation against PMOI. Nevertheless, when the French government failed to provide the classified information to the ECFI, the Council decided to remove the Iranian organisation from the list.<sup>32</sup>

A further delisting case regards Jose Maria Sison, founder of the Communist Party of the Philippines (CPP) and its armed wing, the New People's Army (NPA). The CPP and NPA were included in the list in 2001, and Sison appealed against the freezing of his funds in the forms of savings and social benefits at first in 2005, but the ECFI did not annul the council regulation. Subsequently, Sison appealed against the decision of the European Union to base the listing on previous rulings of Dutch courts that condemned Sison for crimes linked to his political militancy. In fact, the Court rulings were not based on terrorist accusations, and therefore they could not be used by the EU to justify his name's presence on the counter-terrorist list. Thus, the ECFI annulled the Council's decisions insofar as they regard Sison.<sup>33</sup>

Whereas some of these challenges took the legislators by surprise, a wide set of legal concerns were already included in the decisions in order to adopt sanctions. For instance, the EU is well aware of the consequences of violating

<sup>31</sup> *Yassin Abdullah Kadi and Al Barakaat International Foundation Vs. Council of the European Union*, No. Joined Cases C-402/05 and C-415/05 P (Court of Justice 3 September 2008).

<sup>32</sup> Philippa Runner, "EU Ministers Drop Iran Group from Terror List," *Euobserver.Com*, 26 January 2008.

<sup>33</sup> *Jose Maria Sison Vs. Council of the European Union*, No. Case T-341/07 (Court of First Instance of the European Communities (Seventh Chamber) 30 November 2009)

the World Trade Organisation (WTO) or trade agreements, therefore sanctions are not decided in contrast to previously signed international treaties.

The EU also acknowledges that the imposition of sanctions might have a counter-productive effects and it has therefore contemplated the possibility to grant exception and exemptions in case there is a direct humanitarian consequence on targeted individuals and when the measure does not allow targeted individuals to meet international obligations.<sup>34</sup>

For instance, if a targeted individual is in need of medical assistance in the European Union, then the Council can grant exceptions and allow their entry even in the presence of a travel ban, as verified in the case of Germany opening its borders to Zakirjon Almatov, the Uzbek interior minister.<sup>35</sup> Another exception is the granting of visas in case listed individuals have to attend international meetings that are held by EU members as part of their duties as government officials.<sup>36</sup> This exception was applied when Transnistrian officials who needed to attend meetings in Europe were allowed to participate in the negotiation of the peace process with Moldova at the OSCE headquarters in Vienna.

Each exception has to be assessed on a case-by-case basis and the competent authorities are requested to do so in accordance with the overall spirit of the restrictive measure. The guidelines underline that if ‘there are grounds to grant an exemption from one restrictive measure (e.g. financial restrictions) this does not by default justify granting an exemption from another measure (e.g. restrictions on admission) which affects the person or entity concerned.’<sup>37</sup>

The “Best Practices” specify another instance when exemptions can be granted, namely the legal obligation of targeted individuals or entities to satisfy creditors. Under request either by the target or by the interested parties, the competent authorities can provide access to frozen funds although there must be a legal obligation that links the creditor with the targeted individual or entity, an evaluation of the existence of any risk of circumvention (i.e. if creditor’s links with the designated person or entity are such as to raise suspicions), and a verification that the request was not presented in multiple countries.<sup>38</sup>

These decisions combined with the growing concern of further legal problems have created a tension between the need of improving the sanctioning practices so to avoid legal challenges and the discomfort created by the use of

<sup>34</sup> European Union, “Guidelines on Implementation and Evaluation of Restrictive Measures (Sanctions) in the Framework of the EU Common Foreign and Security Policy,” 9.

<sup>35</sup> “Uzbekistan Surprised by EU Move to Extend Sanction,” *EurorAsianet.Org*, 14 November 2006.

<sup>36</sup> European Union, “Guidelines on Implementation and Evaluation of Restrictive Measures (Sanctions) in the Framework of the EU Common Foreign and Security Policy,” 6.

<sup>37</sup> European Union, “Guidelines on Implementation and Evaluation of Restrictive Measures (Sanctions) in the Framework of the EU Common Foreign and Security Policy,” 9.

<sup>38</sup> European Union, “Update of the EU Best Practices for the Effective Implementation of Restrictive,” 22.

a foreign policy tool of doubtful efficacy and complex implementation. On the one hand, the EU has responded to the judgements of the Courts in a proactive way. For instance, the right to be heard and the right of proper communications have been granted to the applicants who felt these rights were denied to them. Furthermore, the sole right to appeal against Council's decisions at the Court of First Instance and the European Court of Justice in Luxembourg is a fundamental step taken to guarantee the possibility to an effective remedy and to be de-listed in case of wrongful listing. Nevertheless, the EU has been reluctant to impose restrictive measures also due to low degree of attention over the discussion regarding the criteria to determine their success. This article attempts to bridge this gap.

## Are Sanctions Effective? Bringing Politics into the Debate

The quick explanation for the very few contributions on whether EU sanctions work could be found in the complexity of the problem. Indeed, measuring the effectiveness of foreign policy tools has always been a difficult task as seen in the past debate on whether sanctions work.<sup>39</sup> However, the lack of clear indicators for success/failure does not have to prevent the debate from starting. When political science demonstrates its limits of "soft science" and it is accepted that clear indicators for success are not likely to be delineated, the elaboration of general principles and guidelines should be the basis for any evaluation.

The first set of considerations to understand success should regard the expected impact of sanctions since each kind of restrictive measure has different effects.<sup>40</sup> Travel bans are mostly related to individuals and they are likely to have two types of impacts. The first effect is to create personal discomfort to targeted individuals as they usually belong to the social group who can afford to travel to Paris and London or can take advantage of long weekends in Rome or Madrid. Furthermore, when government officials are forbidden to carry out official visits or are prevented from having bilateral negotiations with

<sup>39</sup> David A. Baldwin, *Economic Statecraft* (Princeton, NJ: Princeton University Press, 1985); Gary C. Hufbauer, Jeffrey J. Schott, and Kimberly Ann Elliott, *Economic Sanctions Reconsidered: History and Current Policy*, 2d ed. (Washington, DC, Uppsala: Institute for International Economics, 1990); Robert A. Pape, "Why Economic Sanctions Do Not Work," *International Security* 22, no. 2 (Autumn 1997): 90-136; Robert A. Pape, "Why Economic Sanctions Still Do Not Work," *International Security* 23, no. 1 (Summer 1998): 66-77; David A. Baldwin, "The Sanctions Debate and the Logic of Choice," *International Security* 24, no. 3 (Winter 1999/2000): 80-107; and Gary C. Hufbauer et al., *Economic Sanctions Reconsidered: History and Current Policy*, 3d ed. (Washington, DC: Peterson Institute for International Economics, 2007).

<sup>40</sup> Impact and effect are treated as synonyms here. See below for the difference between impact/effect and effectiveness/success.

their foreign counterparts, they are also denied the possibility of concluding international agreements that may strengthen their domestic positions.

The freezing of one's assets can also have a twofold impact. Just like any personal measure, the freezing of foreign accounts may create a private discomfort to the daily routine of targeted individuals and families. The assumption is that listed individuals would comply with the demands in order to have their benefits back, but this of course depends on the demand and on the benefits that these individuals would acquire by not complying with them. The second effect is to undermine the operational capacity so to slow down the activities of targets. Under this perspective, even the concept of effectiveness could be influenced since the temporal difference between what happens and when it should have happened makes a good indicator for success.

Differently, the impact of arms embargoes is emboldened in the reduction of the flow of weapons to affected regions. The rationale is based on both ethic and practical grounds since it would be morally questionable to provide the means that indirectly cause civilian casualties. On the other hand, the lesser number of weapons flow into one region, the lower will be the military capacity to launch and sustain any operations and the lower will be the number of human rights violations. Thus, the impact of reducing the number of weapons in a crisis might not always translate into an effective adoption of restrictive measures. For instance, at the onset of any situation of a conflict, the warring parties already have a certain endowment of weapons at their disposal, and it is plausible to assume that the aggressor has a larger quantity of arms since it was already preparing for an attack. In such situation, an arms embargo may facilitate the aggression by maintain a given power equilibrium and, in fact, favor the "bad side."

Finally, the decision to boycott a certain commodity or a service can affect the power distribution within a society or, in the most extreme conditions, the economic sustainability of governments and societies. The impact has to be adequately distinguished from effectiveness even in this case, since the halting of trade in certain sectors could also increase the likelihood of failing states or could favor the emergence of other elites who could trigger an internal struggle for power, situations that would be more likely to lead to higher economic, political and human costs. The boycotting of goods and services aim at "making the life of the bad guys harder" through the denial of products and knowledge that would allow them to achieve their objectives timely.

This analysis is useful in distinguishing the concept of impact from that of effectiveness. While the former pictures the direct consequences of a restrictive measure against its targets, effectiveness refers to the potential positive contribution to the overall strategy goals that sanctions can have if they are properly used under favorable circumstances. The concept of effectiveness is wider than the one of impact because the former encompasses direct and indirect, tangible and intangible consequences. This differentiation implies that

policy-makers should run a pre-assessment analysis before using sanctions for an accurate projection of what contexts are likely to emerge, although knowing that the desired impact does not guarantee effectiveness.

Once the desired impact is determined, then policy makers in Brussels should concentrate on the analysis of whether sanctions will strengthen or weaken both themselves and their targets. The literature offers numerous contributions that define sanctions as cheap talk and, therefore, damaging for the reputation of senders. In other words, if the discourse on the adoption of sanctions points at imposing restrictive measures instead of committing ground troops because the crisis is not salient enough to the senders, then its credibility would be profoundly damaged. On the other side, a simple modification to the sanctions regime such as adding people to the list might strengthen the target instead of weaken it.

Finally, a last level of evaluation should consider the “comparative utility” of sanctions.<sup>41</sup> Sanctions are often criticised because they are not effective in changing the behavior of targets, although the same detractors frequently fail to come up with better alternatives to sanctions. This consideration is of a fundamental importance to assess the success of EU restrictive measures because it is not sufficient to criticise the fallacies of one policy unless it is not clear what other decisions could have led to a better *status quo ex post*.

A way of integrating these considerations is to define effectiveness by looking at the contribution of sanctions to foreign policy objectives. This method assumes that foreign policy actors, namely the EU in this case, almost never attempt to achieve foreign policy objectives without adopting a multiplicity of tools simultaneously. Under this perspective, a restrictive measure would not be the sole determinant for success as stated in the *Guidelines*: “In general terms, restrictive measures are imposed by the EU to bring about a change in policy or activity by the target country, part of country, government, entities or individuals, in line with the objectives set out in the Common Position.”<sup>42</sup> Thus, a more appropriate analytical analysis would not limit the scope of sanctions to the sole behavioral change of targets, but in fact it should assume that restrictive measures can, at least, serve three different purposes.

First, sanctions can coerce and they are imposed with the objective of making a target’s behavioural change more likely through the imposition of a bearable cost in exchange of political compliance. Second, there are constraining sanctions that aim at limiting the capabilities of a target in order to prevent it from achieving its goals or, in other words, they intend to make the life of

<sup>41</sup> David A. Baldwin, “The Sanctions Debate and the Logic of Choice,” *International Security* 24, no. 3 (Winter 1999/2000): 80-107; Meghan O’Sullivan, *Shrewd Sanctions: Statecraft and State Sponsors of Terrorism* (Washington, DC, Upssala: Brookings Institution Press, 2003).

<sup>42</sup> European Union, “Guidelines on Implementation and Evaluation of Restrictive Measures (Sanctions) in the Framework of the EU Common Foreign and Security Policy,” 4.

targets “more difficult.” Finally, the third category is the one of signalling sanctions, which are designed to send messages to audiences, whether domestic or international, spanning from strong condemnation, to support or simply to symbolic consideration.<sup>43</sup>

These three sanctions’ purposes have mainly an analytical value, but in the real world the same case of restrictive measures can play the three functions with a different intensity in different moments in time. Although their analytical value is clear, this categorisation emphasises the differences of EU sanctioning cases from which designing and implementation could greatly benefit. The consistent adoption of restrictive measures is shown in the database below, where the twenty-two autonomous sanctions that the EU has imposed since the end of the Cold War are classified by purpose.

EU Sanctions episodes since the end of the Cold War to 2008 classified per purpose (Giumelli, “Coercing, Constraining and Signaling. Explaining UN and EU Sanctions after the Cold War”, 179.)		
<i>Coercion</i>	<i>Constrain</i>	<i>Signal</i>
Belarus US Libya (2)	Indonesia Moldova Zimbabwe Iran Ex-Yugoslavia Macedonia Comoros Terrorist List	Afghanistan Azerbaijan Belarus Burma China DRC Libya (1) Nigeria Sudan (1) Sudan (2) Uzbekistan
3	8	11

This categorisation looks at the purpose of restrictive measures defined as in what ways the target(s) is (are) influenced<sup>44</sup> and this approach is very useful as defining what success is becomes an easier task. Under this light, sanction’s effectiveness should be defined as the degree of achievement of their purpose. This method solves two problems at once. First, it eliminates the dichotomy success/failure of sanctions that could not be evaluated otherwise but looking at the behavioral change of the target and, second, it brings into the picture the

<sup>43</sup> Please note that signaling sanctions can also change the behavior of the target, but the causal link is not based on the material loss undergone by the target. For a full description of the three categories, see Francesco Giumelli, “Coercing, Constraining and Signaling: Explaining UN and EU Sanctions After the Cold War” (Ph. D. diss., University of Florence, 2009).

<sup>44</sup> Robert J. Art, “To What Ends Military Power?” *International Security* 4, no. 4 (Spring 1980): 13.

potential alternatives that the EU could deploy either together or in alternative to the imposition of targeted measures.

## Conclusion

The EU's sixtieth anniversary was celebrated with the entry into force of the Lisbon Treaty, which marks a level of integration that certainly has exceeded most expectations envisioned in the creation of the Coal and Steel Community and in the signing of the Treaty of Rome. Especially since the EU's political union in 1992, the process of integration has included also the creation of a common foreign policy, which greatly contributes to the strengthening of the EU's presence in the international stage as a unitary actor.

It is within this present context that the establishment of a common foreign policy tool-box is enriched by targeted sanctions, which could be crucial in a world of growing disorder, rising costs of military missions and fundamental changes in the structural characteristics of the international system. The EU's increasing adoption of sanctions and its efforts in establishing clear procedures for designing, imposing, enforcing and lifting the so called "restrictive measures" deserve to be further studied and discussed. The targeted measures adopted by the EU such as travel bans, arms embargoes, assets freeze, commodity and services boycotts are used to deal with a multiplicity of crises and with different goals, proving their great utility as foreign policy instrument.

For reasons that go beyond the purposes of this article, the wide adoption of EU restrictive measures has not sparked a debate on their effectiveness, which has rather focused on the procedural matters and legal consequences of imposing targeted sanctions on individuals and non-state entities. Although these issues are worth investigating, this article wants to bring the attention to the effectiveness of sanctions, especially since political decisions must be able to identify whether they do accomplish their overall goals.

Determining the success of sanctions is a difficult matter as precise indicators may be either too specific for useful generalisations or the number of factors influencing the events may be too high. However, there are three main principles that should be part of any discussion attempt on this matter. First, a specific analysis of the impact of sanctions would contribute to bridge the gap between expectations and consequences of restrictive measures. Second, a target analysis should precede the imposition of measures that could, in fact, strengthen targets and weaken the senders. Third, any decision is good or bad only according to its alternatives and therefore any evaluation of the success of sanctions cannot avoid the scrutiny of what could have happened without sanctions and of which foreign policy tool could have yielded better results. This article outlines a system of classification of sanctions that can sustain the EU efforts to develop a coherent common and foreign security policy through the gradual acquisition of the conventional state's foreign policy tool-box.

Once the EU has identified both the type of crisis and the targets of its policy, restrictive measures could then be imposed to signal, constrain or coerce states as well as non-state entities and individuals. When the purpose of restrictive measures is clear, then their evaluation becomes an easier task. For instance, the cases of Zimbabwe or Iran shall be considered at least partially successful since international pressures have had important effects pertaining to power sharing agreements in the Southern African country and in regards to the street protests in Teheran. A clearer understanding of what sanctions can and cannot achieve is useful also because their design could substantially improve. Indeed, if a target analysis shows that coercive sanctions are not likely to bear fruit, the best cost/effective measure would be of a signaling type. Such move would provide the EU with a lever on targets without the exposition to criticisms claiming lack of resolve. The discussion over sanctions' success is still far from being over and it is thanks to the ongoing discussion that sanctions will change and improve. Under this light, the EU surely cannot disregard the debate over effectiveness since it is by far the most politically relevant of all.

# Assessing the Effectiveness of EU Sanctions Policy

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## Introduction

While the European Communities (ECs) has applied autonomous sanctions for many years, their character has significantly changed since the 1990s. Such changes may be the result of the transformation of the ECs into the European Union (EU), and to the creation of its second pillar; the Common Foreign and Security Policy (CFSP). On the other hand, the EU's ongoing attempts at gaining increased importance on the international level – promoting itself as a key player in international politics – may also form a key motivation. Finally, the changes to EU sanctions policy may reflect wider international efforts to improve sanctions instruments and to increase the effectiveness of particular sanctions regimes.

An intensive debate on sanctions was invoked among both scholars and practitioners in the second half of the 1990s. Despite that much attention has been paid to the new shape of international sanctions policy, and some scholarly work<sup>2</sup> has dealt with the new European sanctions policy as well, the intensity

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<sup>2</sup> Kreutz 2005, de Vries, Hazelzet 2005, Eriksson 2005, Sick 2001 et al.

and impact of the aforementioned motives has been, thus far, underdeveloped. This work tries to fill the gap in the current state of scholarship in one important aspect: it examines to what extent recent changes in EU sanctions policy interrelate with ongoing international efforts to increase sanctions' effectiveness. It demonstrates that in EU sanctions policy exist processes, which can be assessed as advancements of its effectiveness, although the EU does not set itself such an explicit aim in any of its core documents.

However, the extensiveness and comprehensive character of the recent and contemporary European sanctions policy does not allow full coverage of the topic and hence the scope of this work is limited in two ways. First, the changes to the EU sanctions policy framework are evaluated as a whole; this work does not attempt to evaluate the effectiveness of individual sanctions measures imposed by the EU. Second, it only focuses on economic sanctions<sup>3</sup> which have undergone perhaps the most obvious change in the past years. It does not take into account other types of sanctions measures such as diplomatic, communication, cultural and sporting boycotts, (etc).

To fulfil this aim, this work proceeds as follows: the first section discusses the issue of economic sanctions effectiveness from a theoretical perspective. It introduces key variables determining the impact (success or failure) of concrete international sanctions arrangements. The second section summarises general reform shifts at the level of the United Nations (UN) based on a set of manuals for practitioners presented to the UN Security Council (UNSC) in 2001-2002 and 2006-2009, and their coherence with the key theoretical criteria. In section three the development of EU sanctions policy is summarised. Finally, section four seeks to reflect on the main moves toward increased effectiveness in documents, published in 2004-2006, creating a new form of European sanctions policy. It also deals with additional issues concerning effectiveness, arising after 2006 with the application of the first economic sanctions regimes reformed in the 1990s, and contrasts them with how they are addressed in new reports submitted to the UNSC, and to what extent they are considered in European institutions.

As one of the first contributions to the issue under examination, this work is based on an analysis of primary documents. The overview of the broad international trends in sanctions policies is based, as noted above, on expert reports adopted by a series of international meetings at the UN: Targeted Financial Sanctions: A Manual for Design Implementation (2001), Design and Implementation of Arms Embargoes and Travel and Aviation Related Sanctions: Results of the "Bonn-Berlin Process" (2001), Making Targeted Sanctions Effective: Guidelines for the Implementation of the UN Policy Options (2003),

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<sup>3</sup> Economic sanctions include both trade (embargo, boycott, tariff increase, tariff discrimination, quotas, dumping etc.) and capital measures (freezing of assets, aid suspension, controls on capital movements etc.).

and Strengthening Targeted Sanctions through Fair and Clear Procedures (2006, 2009). The analysis of the shift in European sanctions policy is largely derived from the Basic Principles on the Use of Restrictive Measures (Sanctions) (2004),<sup>4</sup> Guidelines on Implementation and Evaluation of Restrictive Measures (Sanctions) in the Framework of the EU CFSP (2005),<sup>5</sup> and EU Best Practices for the Effective Implementation of Restrictive Measures (2008).<sup>6</sup> A limited range of theoretical sources are used as a starting point in the initial section of this work.

## Effectiveness of International Economic Sanctions Regimes – A Theoretical Perspective

While the effectiveness, success and/or utility of economic sanctions and their importance among foreign policy tools have been discussed extensively since the times of the US President Woodrow Wilson, neither states nor international organisations or scholars have had an available and clear criteria for the evaluation of imposed economic sanctions so far. This may be attributed to the fact that, among the numerous contributions to sanctions research, studies of a single or a few particular sanctions regimes prevail. Contributions attempting to generalise individual findings are relatively rare. Among the few exceptions, identifying some political and economic factors which improve the chance of positive outcomes of particular sanctions steps, long-term research conducted by the Peterson Institute for International Economics is of special importance. Their research is derived from 174 cases of US economic sanctions targeted at state units between World War I and 2000, further divided into 204 observations. The research is, according to its authors, based on “the most detailed dataset on the global use of sanctions.”<sup>7</sup> After its *first* publication (1985), the final report by the Peterson Institute, entitled “Economic Sanctions Reconsidered: 3<sup>rd</sup> Edition,” initiated a broader debate together with critical examination by other scholars.<sup>8</sup> Subsequent research, and later editions of the report, reflect the major objections, and incorporate them into its conclusions. Thus, the most up-to-date edition (2007) reflects a broader scholarly agreement tested on a representative sample of cases.

The Peterson Institute report suggests that prior to imposing sanctions, the sender should be aware of the vulnerability of the target and its view of costs related to the change of its behaviour; should evaluate long-term sustainability of the sanctions regime and should consider whether sanctions shall succeed if imposed unilaterally or whether a broader coalition of countries is necessary.

<sup>4</sup> Council doc. 10198/1/04.

<sup>5</sup> Council doc. 15114/05.

<sup>6</sup> Council doc. 8666/08.

<sup>7</sup> Hufbauer et al. 2007, p. 3.

<sup>8</sup> Cf. especially Pape 1997, 1998 and Baldwin, Pape 1998.

In addition, the first edition of the report identified nine patterns which should be taken into account by foreign-policy makers when they attempt to improve effectiveness of the entire sanctions framework. In accordance to the outcomes of the following debates, as well as in response to new developments in international politics, they were later reduced to the following seven points:

1. inverse proportionality sanctions – goals:<sup>9</sup> sanctions are more capable of contributing to desired outcome when their goals are more modest;
2. good relations of the sender with the target:<sup>10</sup> effectiveness is higher when sanctions are imposed on a friend-state or a close trading partner;
3. higher compliance of democratic regimes:<sup>11</sup> democratic regimes are more sensitive to economic sanctions than autocratic regimes. Autocratic regimes may be more vulnerable due to their political and economic weakness but empirical evidence of this correlation is limited;
4. direct proportionality of economic cost on part of the target and effectiveness:<sup>12</sup> effectiveness is likely to increase with economic costs to the target;
5. no direct relation between effectiveness and number of senders:<sup>13</sup> effectiveness is not directly proportional to the number of sender countries. Higher numbers of sender countries strengthens political signals and economic threats, but the real impact of sanctions may be limited by compromises when searching for agreement among senders;
6. appropriate use of sanctions:<sup>14</sup> some cases cannot be solved by the use of sanctions and it is necessary to deploy other measures against the target, such as covert action, quasi-military measures or military operations. However, in these cases sanctions may contribute to the overall success of the action;
7. necessity to consider domestic costs:<sup>15</sup> costs imposed on domestic constituencies of the sender must correlate with expected benefits of sanctions so that the sanctions are not undermined by a lack of public support.

Another set of recommendations, of a general nature, were presented by Cortright and Lopez in 2000.<sup>16</sup> They focus on the intensive sanctions activity of the UNSC in the 1990s. Their methodology seems to be “softer” than the approach developed by the Peterson Institute as they compare twelve applied regimes

<sup>9</sup> Originally, the recommendation for policy-makers reads: “Don’t bite off more than you can chew” (Hufbauer et al. 2007, p. 162).

<sup>10</sup> “Friends are more likely to comply than adversaries” (Ibid. p. 163).

<sup>11</sup> “Beware autocratic regimes” (Ibid. p. 166).

<sup>12</sup> “Slam the hammer, don’t turn the screw” (Ibid. p. 168).

<sup>13</sup> “More is not necessarily merrier” (Ibid. p. 172).

<sup>14</sup> “Choose the right tool for the jobs” (Ibid. p. 175).

<sup>15</sup> “Don’t be a cheapskate or a spendthrift” (Ibid. p.176).

<sup>16</sup> Cortright, Lopez 2000.

and follow three criteria: 1) Political effectiveness of UN sanctions (success in pressuring the target; not expressed numerically but rated as high, moderate, low or none); 2) Humanitarian impacts; and 3) Special factors (e.g. restrictive measures applied by regional organisations, military operations). Ultimately, the authors offer 24 policy recommendations, some of which are specifically directed to UN sanctions and the UNSC; some are of general importance and might be relevant for European sanctions policy as well. They include:

1. flexible application of sanctions, within a framework of carrot-and-stick diplomacy designed to resolve conflicts;
2. pressures targeted against decision-making elites responsible for wrongdoing, sanctions designed so that deny assets and resources of value to decision-making elites;
3. avoidance of measures causing unintended humanitarian hardships, conduct of humanitarian assessment reports and streamlining of humanitarian exemption applications;
4. weighing third party impacts;
5. employing more precise technical terms and definitions in documents (the SC resolutions) imposing sanctions;
6. identification of specific policy changes – conditions for lifting the sanctions;
7. enhancement of the transparency of work of sanctions committees.<sup>17</sup>

Regarding other contributions devoted to sanctions effectiveness, most deploy data collected by the Peterson Institute and concentrate on a specific group of sanctions; economic sanctions aimed at state units. Diplomatic sanctions or financial sanctions against non-state actors and individuals are typically excluded. Their attitudes to the issue of sanctions effectiveness differ as they build on different theoretical and methodological bases. Since they use different optics to examine the issue, their results vary. Within the frameworks of political economy<sup>18</sup>, public choice theory<sup>19</sup>, game theory<sup>20</sup> bargaining theory<sup>21</sup> or pure statistics,<sup>22</sup> scholars attempt to assess existing sanctions regimes to find general conclusions concerned with particular conditions influencing the effectiveness of sanctions. Other authors concentrate on the issue of how the

<sup>17</sup> Cortright, Lopez 2000, pp. 221–259; D. Cortright and G. Lopez, together with L. Geber-Stellingwer, E. Fackler, S. Persinger and J. Weaver returned to the topic in November 2009 (Cortright et al. 2009). They summarize the efforts of the UN to improve listing and de-listing procedures.

<sup>18</sup> Seiglie 1997, Chul 2005, Kryvoi 2007.

<sup>19</sup> Kaempfer, Lowenberg 1988, Kaempfer, Lowenberg 1989, 1999.

<sup>20</sup> Morgan 2005, Tsebelis 1990.

<sup>21</sup> Morgan, Schwebach 1997.

<sup>22</sup> Dashti-Gibson et al. 1997.

success of sanctions regime depends on particular circumstances, re: on institutional structures of a targeted state,<sup>23</sup> the duration and conclusion of sanctions<sup>24</sup> the interception of salience of sanctions in sending and targeted states,<sup>25</sup> or compare the effectiveness of unilateral and multilateral sanctions.<sup>26</sup> In addition to the theoretical advancements introduced in this initial section, international economic sanctions practice (sanctions policies, regimes) has changed substantially since the mid-1990s. The most remarkable points in the development of sanctions are studied in the following section.

## Reforms of International Sanctions Regimes: A Practical Perspective

In the 1990s, international society, responding to difficulties with applying classical economic sanctions instruments, struggled to develop new sanctions designs. The process moved from case-specific innovation to a general trend of imposing so-called smart (targeted) sanctions.<sup>27</sup> The new tendencies were remarkable as far as embargoes and boycotts are concerned. In their new form, embargoes and boycotts are intended to limit the *needs* of the wealthiest social strata and of political elites. Therefore, they aim at arms and other military goods, articles of luxury or other commodities, the absence of which does not affect common people in the target country. Simultaneously, the use of smart sanctions enables international society to better respond to new types of conflicts – internal rather than international – and, in addition to the legitimate establishment, it hits unofficial military and paramilitary groups which are often the guiltiest of violent operations. When using targeted sanctions, imposing states expect that the administrative burden connected with the sanctions regime observance control is reduced. The supervision of smaller range of commodities is simpler, cheaper and more acceptable to the general public.

Unlike trade sanctions, financial measures such as accounts freezing, investment bans or debiting charges are targeted in their very nature. However, new requirements have recently appeared in a close relation to the phenomenon of international terrorism. Like embargoes and boycotts, also financial measures have to be imposed on non-state groups and persons suspected of propagation and support of terrorist activities. From a territorial point of view, one can distinguish between blanket sanctions (imposed on a whole country, some of them

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<sup>23</sup> Lektzian, Sprecher 2007.

<sup>24</sup> Dorussen, Mo 2001.

<sup>25</sup> Ang, Peksen 2007.

<sup>26</sup> Bapat, Morgan 2009.

<sup>27</sup> Weiss 1999, Cortright, Lopez 2002, Staibano 2005.

aimed at concrete regions of a target country or at specific subjects) and global sanctions (imposed on certain groups or persons whatever their locale).<sup>28</sup>

There are several new legal and administrative demands on states when imposing such enhanced sanctions. According to Biersteker (et al.), the new practice of targeting requires that states:

possess the legal authority to implement the UN Security Council resolutions; designate an administrative agency to oversee implementation; disseminate information to those affected by sanctions; undertake compliance activities; decide upon exemptions and exceptions as appropriate; administer frozen assets; and pursue enforcement actions where sanctions are breached.<sup>29</sup>

These requirements may be considered general aspects of targeted sanctions implementation at the national level; there are also several sector-specific ones, such as administration of frozen assets by financial measures.

Both the general and specific requirements for targeted sanctions were discussed and specified at a series of international expert meetings in Switzerland and Germany between 1998 and 2000.<sup>30</sup> The seminars in Interlaeken, Switzerland in March 1998 and 1999 focused primarily on financial sanctions, and led to the drafting of the so-called Interlaeken Report, *Targeted Financial Sanctions: A Manual for Design Implementation*. The report was presented to the UNSC in October 2001.

Despite the fact that the report has a single aim – to promote fast, full and consistent implementation of UN-authorized financial sanctions across UN member states – it includes two packages of recommendations. One is devoted to the UN as the creator of individual sanctions regimes which should develop its sanctions policy in a consistent and the simplest manner possible. Particularly, it suggests common definitions of core terms and standardised texts of sanctions resolutions from preamble, through objectives of sanctions, exemptions and exceptions, participation of other international organisations, creation of sanctions committees, petitions for removal from list of targets, reporting, monitoring, appeals to states, non-liability for compliance with sanctions, to sunset clause. The other package addresses the major obstacles to effective sanctions implementation at the national level – a lack of legal authority necessary to implement the requirements of the UNSC resolutions in many UN member states, and a great variation among implementation and enforcement. It suggests several steps for improvement in the legal framework, designation of an administering agency or agencies, development and dissemination of

<sup>28</sup> Anthony 2002.

<sup>29</sup> Biersteker et al. 2005b, p. 58.

<sup>30</sup> The sessions brought together representatives of governments, the UN and other international organisations, as well as scholars.

information, compliance initiatives, consideration of exemptions, administration of assets, and enforcement efforts.<sup>31</sup>

The subsequent meetings in Bonn (November 1999) and Berlin (December 2000) paid attention to arms embargoes, travel bans and aviation sanctions. They established four Expert Working Groups which elaborated the report Design and Implementation of Arms Embargoes and Travel and Aviation Related Sanctions: Results of the “Bonn-Berlin Process.” The report was presented to the UNSC together with the Interlaeken Report. It consists of similar packages of recommendations, such as the Interlaeken Report, with some specialists deriving a different nature for the sanctions measures it deals with.<sup>32</sup>

A third step in the sanctions reform process was an initiative of the Swedish government to launch a series of different types of international meetings in 2002-2003 to deal with the implementation of targeted sanctions. During the Swedish meetings, more than 120 experts created the report Making Targeted Sanctions Effective: Guidelines for the Implementation of the UN Policy Options, submitted to the UNSC in February 2003.<sup>33</sup> The report was also presented by the head of the expert team, Peter Wallensteen, to the EU’s Committee for the Common Defence and Security Policy two months later.<sup>34</sup> The report consists of a series of detailed recommendations to the UNSC and the UN Secretariat aimed at better communication and coordination between particular actors participating in sanctions creation, and more effective monitoring of sanctions implementation. However, there are also numerous conclusions relevant for states. Especially Part III, entitled: Supporting Member State Capacity to Implement Targeted Sanctions, stresses the importance of capacity-building and training programs at the level of states, and suggests that the implementation of sanctions could be enhanced by model law, as well as best practices comparison.<sup>35</sup>

Since then, new challenges emerged in a close connection to the implementation of new counter-terrorist measures. They were particularly related to the rights of targeted individuals, an issue not considered when targeted sanctions were first being introduced. Thus, the governments of Switzerland, Germany and Sweden supported further research on smart sanctions, crowned in 2006 with the emergence of a so-called Watson Report entitled: Strengthening

<sup>31</sup> Biersteker, Eckert, Halegua, Romaniuk 2001, 2005a.

<sup>32</sup> Biersteker, Eckert, Halegua, Romaniuk 2005a, Wallensteen, Staibano, Ericsson 2003.

<sup>33</sup> Wallensteen, Staibano, Eriksson, Mikael 2003.

<sup>34</sup> The *Guidelines on Implementation and Evaluation of Restrictive Measures (Sanctions) in the Framework of the EU Common Foreign and Security Policy* (Council doc. 15114/05) reflect this ongoing search for reaching an increased effectiveness in Art. 16: “In designing and implementing its legal instruments, the EU can draw on its own experience in designing and implementing restrictive measures regimes and on the work carried forward in other fora, e.g. the Interlaeken, Bonn – Berlin and Stockholm processes, as well as the experiences of the UN in this field.”

<sup>35</sup> Wallensteen, Staibano, Eriksson 2003, *About the Stockholm Process* (S.1.), Biersteker, Eckert, Halegua, Romaniuk 2005a.

Targeted Sanctions through Fair and Clear Procedures. The report searched for improvements regarding four principal aspects of the due process: notification, access, fair hearing and effective remedy.

In 2009, the Watson Institute – where the 2006 report was prepared – published its updated version. Instead of recommending further reform steps, it contended a balance of positives and negatives to possible new improvement measures. As far as implementation of UN sanctions regimes is concerned, the updated version of the report concentrated on: national reviews of the lists of target groups and persons before sanctions are adopted at national level; conduct of retrospective hearings at national level, with a statement of case made available to designated individual(s) and the state proposing the listing given opportunity to respond; and national- or regional-level designations in lieu of UN listings.<sup>36</sup> Both reports paid significant attention to judicial review of UN sanctions in UN member states and before European Courts (besides the European Court for Human Rights, also the decisions of the Court of First Instance and the European Court of Justice were mentioned<sup>37</sup>). The following sections will, in a similar vein, focus on the practice of EU sanctions policy.

## Basic Features of EU Sanctions Policy

EU sanctions policy has its root in the EU's founding treaties, representing exemptions from the principles of the common market (when implementing UNSC sanctions). The main feature of the European sanctions policy, until the 1990s, was its reactive character, as it mainly implemented UN sanctions, on both the Community and national legislative levels. Several types of sanctions were covered by existing national legislations (re: arms embargoes and travel sanctions),<sup>38</sup> however, by the end of the 1980s, new advancements in integration policies, as well as new trends in sanctions regimes induced changes to the direction of EU legislation.

Since the 1990s, significant change has occurred to EU sanctions policy, with the Maastricht Treaty establishing the CFSP and providing an impetus for a more uniquely EU direction in international affairs. Since then, the EU has applied autonomous sanctions much more frequently; outnumbering instances of UN and Organisation for Security and Cooperation in Europe (OSCE) sanctions (cf. Figure 1). Therefore some authors consider the EU a new actor on the sanctions scene<sup>39</sup> or point out to the shift from soft power to hard power.<sup>40</sup>

<sup>36</sup> Biersteker, Eckert 2009.

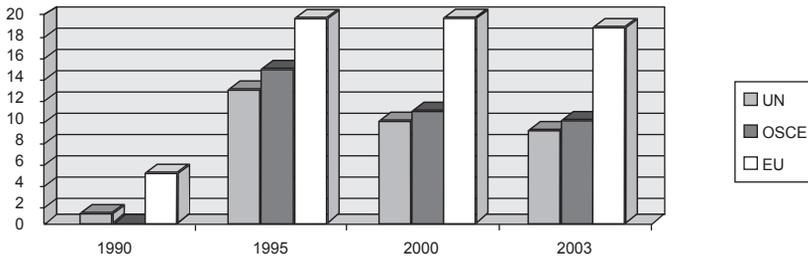
<sup>37</sup> Especially three “pilot” cases are examined closely: Kadi (T-315/01, C-402/05, T-85/09), Al Barakaat (T-306/01, C-412/05, T-45/09) and PMOI – People’s Mojahedin Organisation of Iran (T-228/02, T-256/07, T-284/08).

<sup>38</sup> Wallenstein, Staibano 2005.

<sup>39</sup> De Vries, Hazelzet 2005.

<sup>40</sup> Kreutz 2005.

Figure 1: Sanctions imposed by the UN / OSCE / EU in 1980–2003



Source: Kreutz, Joakim. 2005. *Hard Measures by a Soft Power? Sanctions Policy of the European Union*. Bonn: Bonn International Center for Conversion, Paper 45, p. 15.

Currently, the EU is able to apply almost all types of sanctions:<sup>41</sup> diplomatic sanctions (i.e. expulsion of diplomats, severing of diplomatic ties, suspension of official visits); suspension of cooperation with a third country; trade sanctions (i.e. general or specific trade sanctions, arms embargoes); financial sanctions (i.e. freezing of funds or economic resources, prohibition on financial transactions, restrictions on export credits or investment); flight bans; and restrictions on admission. Compared to national legislations, the EU legislation bears several advantages – it minimises the risk of different interpretations among member states and impedes distortions of competition in a market without internal borders.<sup>42</sup> However, in applying boycotts of sporting or cultural events, the EU has no exclusive competence; here it may act as a coordinator at best.

Generally speaking, sanctions are an instrument of a diplomatic and/or economic nature, which seeks to bring about a change in activities and/or policies such as violations of international law or human rights, or policies that do not respect the rule of law or democratic principles.<sup>43</sup> According to the Treaty on the European Union (TEU), the objectives of EU sanctions policy within the CFSP framework were (ex Article 11 TEU)<sup>44</sup>: (re: these were the objectives of the CFSP not a particular EU sanctions policy)

1. to safeguard the common values, fundamental interests, independence and integrity of the Union in conformity with the principles of the United Nations Charter;

<sup>41</sup> Nevertheless, the Union's official terminology uses the term *restrictive measures* instead of sanctions, as "many players within the EU have not been too keen to use sanctions as an instrument of foreign policy." De Vries, Hazelzet 2005, p. 96.

<sup>42</sup> De Vries, Hazelzet 2005, p. 96.

<sup>43</sup> *Sanctions or restrictive measures* 2009.

<sup>44</sup> This paragraph was not adopted into the new Article 24 of the Treaty of Lisbon (TL) which replaced the Article 11 of the original TEU.

2. to strengthen the security of the Union in all ways;
3. to preserve peace and strengthen international security, in accordance with the principles of the United Nations Charter and the Helsinki Final Act, and the objectives of the Paris Charter, including those on external borders;
4. to promote international cooperation;
5. to develop and consolidate democracy and the rule of law and respect for human rights and fundamental freedoms.

There are several legal instruments which enable the EU to implement autonomous sanctions – Common Positions and Joint Actions at the Union level, and Regulations at the Community level. Common Positions are adopted under ex Article 15 of the TEU (now Article 29 TEU), requiring unanimity from EU member states in the Council. If a Common Position provides for a reduction or interruption of economic relations with a third country, i.e. introduces economic and/or financial sanctions, implementation at the Community level is governed by ex Article 301 (now Article 215 of the Treaty on the Functioning of the European Union; TFEU) and, where financial restrictions are concerned, ex Article 60 of the Treaty Establishing the European Community (TEC; now Article 75 TFEU) applies. In these cases, the Commission is required to make a proposal for a Council Regulation which the Council can adopt by qualified majority.

In the last decade, the most dynamic aspect of EU sanctions policy has been in the area of economic and financial sanctions, and most are targeted (smart) sanctions. Targeting is usually imposed on governments of third countries, or non-state entities and individuals (re: terrorist groups and individual terrorists).<sup>45</sup> This trend in sanctioning reflects the Treaty of Lisbon (TL) which institutes external measures against natural or legal persons, or groups, or non-state entities (Article 188 TL), together with the introduction of judicial review of decisions (by the Court of Justice of the ECs) subjecting an individual or entity to restrictive measures (Declaration 25 LT).

## Effectiveness in EU Sanctions Policy

At this point, it is necessary to present the key documents which have recently shaped European sanctions policy (Basic Principles 2004, Guidelines 2005, Best Practices 2008), and evaluate if any moves towards enhanced sanctions effectiveness can be traced within their framework. The evaluation will take the form of figures comparing recommendations, both theoretical and practical, both on sanctions creation/adoption and implementation, and

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<sup>45</sup> Where sanctions target persons, groups and entities which are not directly linked to the regime of a third country, Art. 60, 301 and 308 TEC have been relied upon. In such cases, adoption of a Regulation by the Council requires unanimity and prior consultation with the European Parliament.

their reflection in the respective EU documents. The reflections, are further commented on at the end of this section, as well as in the conclusion of this work.

The Basic Principles on the Use of Restrictive Measures (2004)<sup>46</sup> established autonomous EU sanctions which should be implemented, above all, to support the fight against terrorism, increase the respect for human rights, democracy, law, and good governance. The document is brief (only 10 articles) and – in contrast to Guidelines and Best Practices – has not yet been modified. The Council should try to enlist the support of other actors for EU autonomous sanctions (Article 4). In any case, the autonomous sanctions represents a decision of the EU and their implementation cannot be strictly bound to other states or UN support. Restrictive measures are presented as a foreign-policy instrument. The possibility of use of coercive measures under the UN Charter is mentioned as a next step after restrictive measures (Article 5). Targeted sanctions should affect responsible elites and avoid negative consequences for common people (Article 6). Sanctions should be applied flexibly (Article 8) and should be regularly reviewed (Article 9).

The Guidelines on Implementation and Evaluation of Restrictive Measures (Sanctions) in the Framework of the EU CFSP (2005)<sup>47</sup> provide guidance on common issues concerning the imposition of sanctions. The first version of the Guidelines was adopted in 2003.<sup>48</sup> Introductory provisions of the Guidelines (Article 1) remind about important characteristics of EU sanctions policy: The Guidelines form a formal framework for the implementation of sanctions. However, they may be applied only *after* a political decision was made and it was decided on the imposition of sanctions. This first decision – whether to apply the sanctions or not – is of a strictly political nature and is not governed by the Guidelines.

The comprehensive part II of the Guidelines deals with basic principles: Objectives of sanctions (Article 4), targeting of sanctions (Articles 14-16), the creation of sanctions lists, exemptions (Articles 24 and 25) and the implementation of UN resolutions (Articles 33-39). The last, brief sentence of the provision of Article 9 contains a general statement that measures imposed must be proportionate to their objective. The Guidelines mention listing procedure as a formal issue: they recall the need to respect fundamental rights (Article 17) but, further, they are particularly concerned with identifying information (Articles 20-23). De-listing is not touched upon at all. Article 26 emphasises the need for an exchange of relevant information concerning the implementation and application of restrictive measures between member states.

<sup>46</sup> Council doc. 10198/1/04.

<sup>47</sup> Council doc. 15114/05.

<sup>48</sup> Council doc. 15579/03.

In part III, the document presents standard wording and common definitions which may be used within the CFSP, hand in hand with legal instruments (Regulations, Common Positions) when implementing restrictive measures (sanctions). Part IV – Monitoring and Evaluation of Restrictive Measures – defines the mandate of the Sanctions Formation of Foreign Relations Counsellor Working Party (RELEX/Sanctions) established in 2004.<sup>49</sup>

The EU Best Practices for the Effective Implementation of Restrictive Measures (2008),<sup>50</sup> provides practical guidance and recommendations on issues arising in the implementation of financial sanctions which appeared to be used intensively since the 1990s. The first version of the Best Practices appeared in 2006,<sup>51</sup> it was updated in 2007,<sup>52</sup> and the current text was adopted in 2008.<sup>53</sup> The Best Practices are to be considered non-exhaustive recommendations of general nature (Article 3). They are kept under constant review (Article 2), they supplement the Guidelines and focus on key elements in the implementation of sanctions (Article 4). In Part A, they deal with targeted restrictive measures (Articles 5-16), including the de-listing, although only generally (Article 17). Parts B, C and D are devoted to freezing of funds and economic resources (Articles 18-53), humanitarian exemptions (Articles 54-61), and prohibitions on the provisions of goods and services (Article 62). Finally, Part E presents a vision of ideal coordination and cooperation among member states, EU institutions and expertise groups (Articles 63-78). The different recommendations on sanctions adoption and implementation in the Guidelines, Basic Principles and Best Practices reflect Figures 2 and 3.

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<sup>49</sup> Council doc. 5603/04.

<sup>50</sup> Council doc. 8666/08.

<sup>51</sup> Council doc. 10533/06.

<sup>52</sup> Council doc. 11679/07.

<sup>53</sup> Council doc. 8666/08.

*Figure 2: Reflection of Theoretical Recommendations in EU Documents*

Sanctions creation / adoption (Hufbauer et al. 2007, Cortright - Lopez 2000)	Reflection in the EU documents (Basic Principles 2004, Guidelines 2005, Best Practices 2008)	Sanctions implementation (Cortright - Lopez 2000)	Reflection in the EU documents (Basic Principles 2004, Guidelines 2005, Best Practices 2008)
Inverse proportionality sanctions—goals	NO, in fact (aims are overreaching, e.g. restore international peace etc.)	Flexible application of sanctions	YES (Basic Principles: Art. 8)
Good relations sender—target	NOT solved, actually	Targeted pressures	YES (Basic Principles: Art. 6)
Democratic regimes more likely to comply	NOT solved, actually	Conduct of humanitarian assessment reports and third party assessment studies	NOT solved, actually
Proportionality costs for the target—effectiveness	Generally, YES (Guidelines: Art. 9 in fine mentions the “proportionality of measures”), NOT for particular sanctions regimes	Streamlining of humanitarian exemption applications	YES (Guidelines: Art. 24, Basic Principles: Art. 6, Best Practices Art. 54-61)
No direct relation effectiveness—number of sending countries	NO, in fact (Basic Principles: Art. 4)		
Appropriateness of sanctions	NOT solved, actually		
More precise technical terms and definitions	YES (Guidelines: section III)		
Identification of the specific policy changes for sanctions to be lifted	Only on a general level (general statement), not for particular sanctions regimes (Guidelines: Art. 4)		

Figure 3: Reflection of practical recommendations in EU documents

Sanctions creation / adoption (Interlaeken, Bonn-Berlin, Stockholm, Watson)	Reflection in the EU documents (Basic Principles 2004, Guidelines 2005, Best Practices 2008)	Sanctions implementation (Interlaeken, Bonn-Berlin, Stockholm)	Reflection in the EU documents (Basic Principles 2004, Guidelines 2005, Best Practices 2008)
Common language (definitions of key terms)	YES (Guidelines: Section III)	Appropriate legal framework (model law)	YES (especially in Guidelines)
Standardised design of sanctions resolutions	YES (Guidelines: Section III)	Administering agency (agencies)	YES (Council, RELEX/ Sanctions)
Consideration of exemptions and exceptions	YES (Guidelines: Art. 24, 25, Best Practices: Art. 54-61)	Development and dissemination of information	YES (Guidelines: Art. 26, Part IV, Best Practices: Part E)
Financial sanctions targeting also elites and their supporters	YES (Guidelines: Art. 14)	Enforcement efforts	More or less, YES (Basic Principles: Art. 5)
Listing and procedures of de-listing	YES (Listing: Guidelines: Art. 17, De-listing: Council 0826/1/07 REV 1, Best Practices: Art. 17)	Compliance initiatives	YES (Guidelines: Art. 4)
		Best practices comparison	NO
		Better communication and coordination between actors involved in sanctions policy	YES (Guidelines: Art. 26, Best Practices: Art. 62-77, Art. 35)
		More effective monitoring of sanctions implementation	Generally, YES (Basic Principles: Art. 9, Guidelines: Part IV, Best Practices: Art. 66)

Source: Biersteker, Thomas J., Eckert, Sue E., Halegua, Aron, Romaniuk, Peter, Reid, Natalie. 2001. *Targeted Financial Sanctions: A Manual for Design and Implementation. The Swiss Confederation in cooperation with the United Nations Secretariat and the Watson Institute of International Studies*, Wallenstein, Peter, Staibano, Carina, Eriksson, Mikael (Eds.). 2003. *Making Targeted Sanctions Effective. Guidelines for the Implementation of the UN Policy Options*. Uppsala: Uppsala University, Department of Peace and Conflict Research. Available at: [http://www.reliefweb.int/rw/lib.nsf/db900sid/LGEL-5KEE3/\\$file/upp-sanction-2007.pdf](http://www.reliefweb.int/rw/lib.nsf/db900sid/LGEL-5KEE3/$file/upp-sanction-2007.pdf) [25-1-2010],

Hufbauer, Gary Clyde – Schott, Jeffrey J., Elliott, Kimberley Ann, Oegg, Barbara. 2007. *Economic Sanctions Reconsidered*, 3rd edition. Peterson Institute for International Economics: Washington, Biersteker, Thomas J., Eckert, Sue E. (Eds.). 2006. *Strengthening Sanctions through Fair and Clear Procedures*, White Paper Prepared by the Watson Institute Targeted Sanctions Project. Providence: Watson Institute of International Studies, Brown University. Available at: [http://watsoninstitute.org/pub/Strengthening\\_Targeted\\_Sanctions.pdf](http://watsoninstitute.org/pub/Strengthening_Targeted_Sanctions.pdf) [19-1-2010], Cortright, David, Lopez, George A. 2000. *The Sanctions Decade: Assessing UN Strategies in the 1990s*. Boulder – London: Lynne Rienner Publishers., *Basic Principles on the Use of Restrictive Measures (Sanctions)* (Council doc. 10198/1/04), *Guidelines on implementation and evaluation of restrictive measures (sanctions) in the framework of the EU Common Foreign and Security Policy* (Council doc. 15114/05) and *EU Best Practices for the effective implementation of restrictive measures* (Council doc. 8666/08)

As seen in Figure 2, most theoretical, i.e. those which appeared in scholarly debates dealing with sanctions (policy) effectiveness, recommendations regarding sanctions creation/adoption have not yet been reflected in European sanctions policies (relevant documents). The only exception is the need for more precise technical terms and definitions touched upon in the Guidelines, section III. Recommendations on sanctions implementation have been more successful in this regard, with the only exception of humanitarian/third party assessment of sanctions.<sup>54</sup> In contrast, more practical experiences, in the form of recommendations by expert meetings (their conclusions and reports), initiated by some governments (namely by Germany, Sweden and Switzerland), has had a much more substantial impact on sanctions policies as seen in Figure 3. The only recommendation which seems not to have been incorporated into the sanctions documents is the requirement for best practices comparison.

Here it is necessary to highlight, even if inconsistent with the aims of this work, that it seems that EU sanctions policy not only reflects, to a certain extent, theoretical and practical standards but it can be a source of inspiration for others at the same time. This is confirmed by the scholarly attention devoted to the decisions of the European Court of Justice and the Court of First Instance regarding the de-listing (off sanctions lists) processes (cf. note 36<sup>55</sup>). Another point of inspiration may be the formal de-listing procedure introduced by the UN following the EU: in 2006 the UN founded a contact office for accepting the de-listing requests (Focal Point for De-listing),<sup>56</sup> in December 2009 unanimously created the post of an Ombudsperson to handle de-listing issues.<sup>57</sup>

<sup>54</sup> A common-sense explanation for the difference could be that virtually no political entity (neither the EU, nor the UN) shall voluntarily set conditions for its own political decision-making. There can be a stricter framework for sanctions implementation but not for the decision about their adoption.

<sup>55</sup> The cases presented are just the first three decisions which have been followed by other.

<sup>56</sup> Resolution 1730 (2006).

<sup>57</sup> Resolution 1904 (2009).

## Conclusion

The evidence provided throughout the paper suggests that there have been some moves and processes which can be assessed as advancements of the EU's sanctions policy effectiveness. However, the EU does not set itself the aim explicitly – sanctions effectiveness as such is not treated in any of its relevant documents. There are also evident differences between the success of theoretical recommendations, presented in scholarly writings, and more practical ones, resulting from expert meetings supported by some governments. It is also a question as to what extent the EU reflects the overall effort for sanctions effectiveness on the international scene and how much the EU shapes the international agenda in the area.

The evaluation contained in the previous section suggests that quite a gap exists between theoretical recommendations on sanctions effectiveness and the respective European sanctions policy, especially at the moment of “sanctions creation/adoption.” Except for the vast study carried out by the Peterson Institute for International Economics,<sup>58</sup> whose final political recommendations act as a starting point for this work, dozens of other studies and articles mostly representing theoretical contributions to the issue.<sup>59</sup> Policy recommendations contained in the Peterson Institute's study give political decision-makers a hint about whether or not to apply sanctions. In fact, such political processes cannot be bound by exhaustive criteria, and no-one can expect that any sanctioning state or organisation would define exact terms for its own decision-making process. On the EU level, the Basic Principles (2004) provide general limitations for autonomous EU sanctions. “Wide-open” and “soft” formulations and universal provisions do not create any real restrictions for EU sanctions policy.

A different situation occurs after a decision is taken and sanctions are imposed. The stage of “sanctions implementation” attracts intensive attention from scholars and official institutions. They build on an observation that states, the UN, the EU and other sanctioning actors tend to use targeted sanctions. That is why they have formulated recommendations pertaining to the creation of sanctions lists, listing and de-listing procedures, humanitarian exemptions, cooperation, monitoring of sanctions, and defining of a clear legal frame, (etc). The analysis of the key EU documents on sanctions shows that EU sanctions policy largely responds to conclusions formulated during the Interlaken, Bonn-Berlin and Stockholm processes as well as generally corresponding to the recommendations directed to UN sanctions regimes.<sup>60</sup>

To conclude, this work suggests that the development of EU sanctions policy obviously reflects the past, practical experience and perhaps there is

<sup>58</sup> Hufbauer et al. 2007.

<sup>59</sup> E.g. Mayall 1984, Lektzian, Sprecher 2007, Kaempfer, Lowenberg 1988, Kaempfer, Lowenberg 1989, Kaempfer, Lowenberg 1999.

<sup>60</sup> Laid down by Cortright, Lopez 2000 and Biersteker, Eckert 2006.

some political learning process, even if implicit, leading to increased effectiveness of the policy underway. Simultaneously, a substantially wider gap exists between scholarly knowledge and EU policy in the respective field. Why this is so and what the consequences are for both, European sanctions effectiveness and the respective theory is an issue for further research. Also the question how the development of European sanctions policy influences international standards, namely the UN sanctions framework, remains open.

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# Western Values and Strategic Interests? Evaluating Potential Georgian Membership in NATO

Stephen Herzog<sup>1</sup>

Since the Russian-Georgian conflict in August 2008, the Republic of Georgia's potential membership in NATO has been a hotly contested issue. Unfortunately, the arguments on both sides of the debate often rely on catch-phrases such as "vibrant democracy" and "corrupt authoritarianism" without referencing the Atlantic Alliance's established enlargement criteria. I attempt to provide the proper structural context to the debate by examining the issues through the lens of the Washington Treaty, the 1995 "Study on NATO Enlargement," and the Alliance's 1999 Membership Action Plan (MAP) criteria. This article is an analysis of domestic and international Georgian political conduct and security concerns that aims to evaluate the country's readiness for NATO membership. I argue that despite Georgia's ongoing process of democratisation and Alliance strategic considerations, the country does not yet meet the criteria for receiving a MAP and gaining admission to NATO.

## Georgia-NATO Relations before the 2008 Conflict

Tbilisi's relations with NATO began shortly after Georgia gained its independence from the USSR. Overwhelming fear of Russia compelled Georgian leaders to strengthen ties with the West and to join NATO's North Atlantic Cooperation Council (later the Euro-Atlantic Partnership Council, or EAPC) in 1992.<sup>2</sup> Despite this movement toward the West, following an embarrassing 1993 defeat against Abkhazian separatists, (then) Georgian leader Eduard

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<sup>2</sup> In fact, fear of Russia was so prevalent in Georgia in the early 1990s that the country's mainstream press asserted that several powerful earthquakes "were engineered by Russia at secret underground laboratories." [Jaba Devdariani, "Georgia and Russia: The Troubled Road to

Shevardnadze agreed that the country would join the Commonwealth of Independent States (CIS) in exchange for Russian peacekeeping assistance.<sup>3</sup> This action introduced a second Russian peacekeeping contingent to Georgia, joining forces serving in the Joint Control Commission monitoring mission in South Ossetia. Shevardnadze also consented to the construction of Russian bases on Georgian soil.

From 1994–2002, Georgia took a number of steps away from the CIS toward further integration with NATO. Tbilisi became a member of the Alliance’s Partnership for Peace (PfP) in 1994 and contributed 150 soldiers to NATO’s Kosovo Force (KFOR) peacekeeping operations in 1999.<sup>4</sup> Since 2001, Georgia has been the site of annual PfP military exercises and has contributed to NATO operations in Afghanistan.<sup>5</sup> In addition, Shevardnadze refused to renew the CIS Collective Security Treaty in 1999, but Georgia remained a member of the organisation until August 2009. Georgia officially announced its intention to join NATO at the November 2002 EAPC Summit in Prague.

After the 2003 Rose Revolution and his subsequent election as president, Mikheil Saakashvili moved to expand Georgia’s relationship with the Alliance. In October 2004, Georgia and NATO agreed to an Individual Partnership Action Plan (IPAP) designed to increase cooperation and to oversee the reforms necessary for Alliance membership.<sup>6</sup> Saakashvili’s efforts paid dividends as (then) US President George W. Bush lobbied for Georgia to receive a MAP – alongside Ukraine – at NATO’s Bucharest Summit in April 2008. Bush, who had referred to Georgia as “a beacon of liberty,” received support from Bulgaria, Canada, the Czech Republic, Estonia, Latvia, Lithuania, Poland, Romania, Slovakia, and Slovenia.<sup>7</sup> The former Soviet Republics and satellites among these countries called upon NATO to extend a MAP to Georgia to protect the

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Accommodation,” in *Statehood and Security: Georgia after the Rose Revolution*, ed. Bruno Coppieters and Robert Legvold (Cambridge, Massachusetts: MIT Press, 2005), p. 157.]

<sup>3</sup> Here I refer to Shevardnadze as the “Georgian leader” because he became the *de facto* head of state after the successful *coup d’état* against President Zviad Gamsakhurdia in January 1992. After the *coup*, Shevardnadze served as chairman of Georgia’s State Council. Georgia held its first post-*coup* presidential contest in November 1995, resulting in Shevardnadze’s election to the presidency.

<sup>4</sup> Jim Nichol, “Georgia [Republic]: Recent Developments and US Interests,” in *Georgia after the Rose Revolution*, ed. Gabriel C. Monson (New York: Nova Science Publishers, 2009), p. 21; this book chapter is an expanded version of a US Congressional Research Service Report.

<sup>5</sup> *Ibid.*

<sup>6</sup> NATO, “Individual Partnership Action Plans,” updated 31 October 2008, available from: <http://www.nato.int/issues/ipap/index.html>.

<sup>7</sup> George W. Bush quoted in Jenny Booth, “Bush hails Georgia as a ‘beacon of liberty,’” *The Times Online* (London), May 10, 2005, available from: <http://www.timesonline.co.uk/tol/news/world/article520811.ece>; Agence France Press (AFP), “Open door to Ukraine, Georgia, say Eastern NATO states, Canada,” March 20, 2008, available from: <http://afp.google.com/article/ALeqM5jdZbjHcFjlr6c0anD6wKyp408dUw>.

country from Russian domination. Germany and France led the opposition, raising concerns about the status of Georgian democracy, minority rights, and borders with Russia. The Benelux countries, Hungary, and Italy supported the Franco-German position.<sup>8</sup> NATO did not award MAPs to Georgia and Ukraine, but the Bucharest Summit Declaration indicated that both countries would become members of the Alliance if they made progress in several key reform areas.<sup>9</sup>

## Implications of the Russian-Georgian Conflict

Georgia appeared to be on the road to NATO accession until the Russian-Georgian conflict.<sup>10</sup> On the night of August 7, 2008, following months of clashes between Georgian security forces and separatists in the disputed province of South Ossetia, Saakashvili ordered a comprehensive assault on the Ossetian capital of Tskhinvali. Russian President Dmitry Medvedev quickly sent troops to the region, denouncing Georgian actions as “a gross violation of international law” and citing the responsibility to protect Russian peacekeepers and Ossetian holders of Russian passports.<sup>11</sup> Medvedev and Prime Minister Vladimir Putin later accused Georgia of committing genocide.

The conflict had disastrous consequences, as it spread to Abkhazia and mainland Georgia and involved around 11,000 Georgian and up to 30,000 Russian troops.<sup>12</sup> Military operations ceased on August 12 after the French Presidency of the European Union (EU), under Nicolas Sarkozy, brokered a preliminary ceasefire; a final agreement entered into force on August 16. When the ceasefire took effect, Russian troops had repulsed the Georgian army from South Ossetia and Kremlin tanks had reached the outskirts of Tbilisi. The report of the EU fact-finding mission to Georgia estimates that the violence left 850 people dead and 2,300-3,000 wounded, while documents from the Council of Europe’s Commissioner for Human Rights report the displacement of approximately

<sup>8</sup> Travis Bounds and Ryan Hendrickson, “Georgian Membership in NATO: Policy Implications of the Bucharest Summit,” *Journal of Slavic Military Studies*, Vol. 22, No. 1 (January 2009): p. 23.

<sup>9</sup> NATO, “Bucharest Summit Declaration,” 3 April 2008, available from: [http://www.nato.int/cps/en/natolive/official\\_texts\\_8443.htm](http://www.nato.int/cps/en/natolive/official_texts_8443.htm).

<sup>10</sup> For a comprehensive and impartial discussion of the Russian-Georgian conflict see: Report of the Independent International Fact-Finding Mission on the Conflict in Georgia, Vols. 1-3, (Brussels: European Union, September 2009); for a shorter, less objective, but also informative recounting of the events see: Charles King, “The Five-Day War: Managing Moscow After the Georgia Crisis,” *Foreign Affairs*, Vol. 87, No. 6 (November/December 2008): pp. 2-11.

<sup>11</sup> Dmitry Medvedev, “Statement on the Situation in South Ossetia,” August 8, 2008, Moscow, available from: <http://www.rusmission.org/news/287>.

<sup>12</sup> Report of the Independent International Fact-Finding Mission on the Conflict in Georgia, Vol. 2, pp. 214, 216.

138,000 people.<sup>13</sup> Furthermore, the Organisation for Security and Cooperation in Europe's (OSCE) post-conflict evaluation extensively chastises both sides for indiscriminate fire and inadequate protection of civilian noncombatants.<sup>14</sup>

Serious questions arose from the conflict. Would Russia have intervened if Georgia had been a member of NATO? What did the conflict mean for Georgia's bid for membership in the Atlantic Alliance? Saakashvili offered his perspective on the issue, alleging that "the Russian invasion was aimed at frightening NATO off" and that it showed precisely why the Alliance should allow Georgia to join.<sup>15</sup>

US presidential nominees John McCain and Barack Obama agreed with this position and called on NATO to offer Georgia a MAP and a fast-track path to membership. On August 12, 2008, McCain went further, declaring, "Today, we are all Georgians."<sup>16</sup> Many Central and Eastern European (CEE) officials agreed, including (then) Czech Prime Minister Mirek Topolánek, who compared Russia's involvement in Georgia to the USSR's 1968 Prague Spring invasion.<sup>17</sup> Several commentators argued that Georgian membership in NATO would protect a democracy from a resurgent, imperialistic Russia. Evidence for this stance included allegations that Russia threatened Georgian sovereignty by moving troops into the capital region and that many attacks on Tbilisi's military infrastructure were unnecessary and intended only to inflict punitive damage.

Despite US and CEE insistence, there was strong Western European opposition – particularly from France, Germany, and Spain – to fast-track NATO membership for Georgia. The conflict suggested that extending Article 5 security guarantees to Georgia presented the real possibility of NATO going to war with Russia. The poor performance of Georgia's armed forces also indicated that Tbilisi might be a net consumer of Alliance security.<sup>18</sup> A statement from

<sup>13</sup> Ibid., p. 223; Commissioner for Human Rights of the Council of Europe, *Report on Human Rights Issues Following the August Armed Conflict* (Strasbourg: Council of Europe, May 2009), p. 5.

<sup>14</sup> For the OSCE's full report see: OSCE: Office for Democratic Institutions and Human Rights (ODIHR), *Human Rights in the War-Affected Areas Following the Conflict in Georgia* (Warsaw: ODIHR, November 2008), available from: [http://www.osce.org/documents/odihr/2008/12/35656\\_en.pdf](http://www.osce.org/documents/odihr/2008/12/35656_en.pdf).

<sup>15</sup> Mikheil Saakashvili quoted in Zdeněk Kříž and Zinaida Shevchuk, "Georgia on the Way to NATO after the Russian-Georgian Armed Conflict in 2008," Czech University of Defence, *Journal of Defence & Strategy*, Vol. 9, No. 1 (June 2009): p. 105.

<sup>16</sup> John McCain quoted in "McCain: 'Today, we are all Georgians,'" *Boston Globe*, August 12, 2008.

<sup>17</sup> Mirek Topolánek, "Czech PM Says Georgian Conflict 'Worse' Than '68 Soviet Invasion," interview by Radio Free Europe/Radio Liberty, 21 August 2008, available from: [http://www.rferl.org/content/Czech\\_PM\\_Says\\_Georgian\\_Conflict\\_Worse\\_Than\\_68\\_Soviet\\_Invasion/1192858.html](http://www.rferl.org/content/Czech_PM_Says_Georgian_Conflict_Worse_Than_68_Soviet_Invasion/1192858.html).

<sup>18</sup> Adam Eberhardt, "The 2008 Russia-Georgia War over South Ossetia – The Policy of the Russian Federation and Its Consequences," *The Polish Quarterly of International Affairs*, No. 3 (2008): p. 3.

the September 2008 meeting of the newly formed NATO-Georgia Commission confirmed that Georgia would still become a NATO member, but it called for further democratic reforms and stopped short of extending a MAP to Georgia.<sup>19</sup>

Since the conflict's immediate aftermath, there have been notable changes in the NATO-Georgian relationship. In December 2008, NATO replaced Georgia's IPAP with an Annual National Program (ANP), marking a new stage of intensified cooperation and dialogue.<sup>20</sup> German Chancellor Angela Merkel and French President Nicolas Sarkozy have both indicated that they support Georgian NATO membership if Tbilisi undertakes the appropriate reforms. The US position on the issue also appears to have shifted; in July 2009, President Barack Obama stated that countries seeking to join NATO must do so with public support and the ability to make military contributions to the Alliance.<sup>21</sup> NATO's April 2009 Strasbourg-Kehl Summit Declaration reiterated that Georgia would eventually join the Alliance, but staunch Kremlin opposition and recognition of Abkhazia and South Ossetia as independent states continue to complicate the issue.<sup>22</sup>

The majority of Georgians support Saakashvili's efforts to bring Georgia into the Atlantic Alliance. Soon after the Russian-Georgian conflict, 87 percent of Georgian adults were in favor of NATO membership, but the number had fallen to 75 percent by June 2009.<sup>23</sup> Those opposed fear that NATO will force Georgia to renounce its claims to Abkhazia and South Ossetia and that future deployments of Alliance forces in the country could make Georgia a target for Russian retaliation and Iranian missile strikes.<sup>24</sup>

It appears that NATO will eventually accept Georgia as a member, but the timeframe for such a decision remains uncertain. In upcoming meetings of the NATO-Georgia Commission, Alliance officials will evaluate Georgian

<sup>19</sup> NATO, "NATO-Georgia Joint Press Statement," 15 September 2008, Tbilisi, available from: <http://www.nato.int/docu/pr/2008/p08-115e.html>.

<sup>20</sup> Some analysts have suggested that Georgia may bypass a MAP and join the Alliance after making reforms under the auspices of its ANP. However, even Giorgi Baramidze, Georgian State Minister for Euro-Atlantic Integration, has acknowledged that the country will still need a MAP to become a NATO member. [Molly Corso, "Georgia: Moving on Toward NATO without a MAP," *Eurasia Insight*, December 3, 2008, available from: <http://www.eurasianet.org/departments/insightb/articles/eav120308.shtml>.]

<sup>21</sup> STRATFOR, "US-Russian Summit: Negotiating NATO Expansion," July 7, 2009.

<sup>22</sup> NATO, "Strasbourg-Kehl Summit Declaration," 4 April 2009, available from: [http://www.nato.int/cps/en/natolive/news\\_52837.htm?mode=pressrelease](http://www.nato.int/cps/en/natolive/news_52837.htm?mode=pressrelease).

<sup>23</sup> International Republican Institute, *Georgian National Study: September 29-October 5, 2009* (Washington: International Republican Institute, 2009), available from: [http://www.iri.org/eurasia/georgia/pdfs/2009\\_November\\_23\\_Survey\\_of\\_Georgian\\_Public\\_Opinion\\_September\\_29-October%205\\_2009.pdf](http://www.iri.org/eurasia/georgia/pdfs/2009_November_23_Survey_of_Georgian_Public_Opinion_September_29-October%205_2009.pdf), p. 39.

<sup>24</sup> US Congressional Research Service, *Georgia [Republic] and NATO Enlargement: Issues and Implications*, by Jim Nichol (Washington: CRS, 2008), p. 5; *Ibid.*, *NATO Enlargement: Albania, Croatia, and Possible Future Candidates*, by Vincent Morelli et al. (Washington: CRS, 2008), p. 16.

progress on implementing ANP reforms and the country's eligibility for a MAP. An evaluation of Georgia's readiness for a MAP should not depend on visceral perceptions of Georgian democracy and strategic importance; instead, it should focus on NATO's often overlooked, but well-defined, criteria for enlargement.

## Democracy

The Washington Treaty, the 1999 MAP criteria, and the 1995 "Study on NATO Enlargement" explain the conditions which states must meet to join NATO. The Preamble to the Washington Treaty declares that member states of the Alliance are "founded on the principles of democracy, individual liberty, and the rule of law," and the MAP criteria and 1995 study note that potential NATO members must adhere to these principles.<sup>25</sup> I will analyse Tbilisi's readiness for a MAP by evaluating Georgian political dynamics vis-à-vis NATO's basic principles, starting with democracy.<sup>26</sup>

Georgia is certainly one of the most democratic states in the Caucasus and Central Asia, and its Constitution declares that the country is a democratic republic.<sup>27</sup> However, the head of the OSCE election monitoring team in Georgia remarked that the 2004 presidential election did not occur in "a truly competitive environment."<sup>28</sup> The OSCE's report on the election points to the misappropriation of state funds to benefit Saakashvili's candidacy.<sup>29</sup> Following widespread protests against his administration in fall 2007, Saakashvili resigned and called early elections in 2008. According to most observers, Georgians re-elected Saakashvili in a relatively fair contest. Irrespective of these improvements, Freedom House characterises Georgia as "Partly Free" and excludes it from a list of electoral democracies, citing voter intimidation, elite corruption, and violence against political opposition.<sup>30</sup> Recent poll data compiled by the Institute for Policy Studies in Tbilisi indicates that only 22.2 percent of Georgians

<sup>25</sup> For the full text of these three documents see: North Atlantic Treaty, 4 April 1949, TIAS 1964, 34 UNTS 243; NATO, "Membership Action Plan," 24 April 1999, available from: <http://www.nato.int/docu/pr/1999/p99-066e.htm>; Ibid., "Study on NATO Enlargement," September 1995, available from: [http://www.nato.int/cps/en/natolive/official\\_texts\\_24733.htm](http://www.nato.int/cps/en/natolive/official_texts_24733.htm).

<sup>26</sup> I spend more time analyzing democracy in Georgia than individual liberty and the rule of law for the simple reason that the latter two principles are subsets of democracy.

<sup>27</sup> Constitution of Georgia, preamble.

<sup>28</sup> Craig Jenness quoted in OSCE: ODIHR, "2004 presidential election," February 2004, available from: <http://www.osce.org/odihr-elections/14466.html>.

<sup>29</sup> OSCE: ODIHR, *Georgia: Extraordinary Presidential Election 4 January 2004* (Warsaw: ODIHR, February 2004), available from: [http://www.osce.org/documents/odihr/2004/02/2183\\_en.pdf](http://www.osce.org/documents/odihr/2004/02/2183_en.pdf), p. 1.

<sup>30</sup> Freedom House, *Freedom in the World 2009* (Washington: Freedom House, 2009), available from: <http://www.freedomhouse.org/template.cfm?page=363&year=2009&country=7612>.

view their country as a democracy and only 22.6 percent believe that there is equality under the law.<sup>31</sup>

These statistics do not reflect well on Tbilisi's democratic bona fides, but we should not forget about the challenging socio-political environment that Saakashvili faced when he became president. The Rose Revolution occurred because of the endemic corruption under Shevardnadze, which manifested itself in widespread fraud during the 2003 legislative elections. After his election in January 2004, Saakashvili inherited a struggling economy, sweeping corruption, popular distrust of government, and weak state institutions. Transparency International ranked Georgia 133 out of 145 countries it assessed for its 2004 Corruption Perceptions Index, a tie with Turkmenistan and the Democratic Republic of the Congo.<sup>32</sup> In addition, Georgian policy analyst Ghia Nodia notes that the government lacked the capability to tax large segments of the population, resulting in a situation where public revenues "constituted only 11.2 percent of Georgia's GDP, compared to nearly 50 percent among European Union countries."<sup>33</sup>

Saakashvili understood that improving this state of affairs would require effective governance, but he was willing to do so at the expense of democratic values. It is true that Saakashvili and his United National Movement (UNM) began an ambitious agenda of revamping the education system, attracting foreign aid and investment, and rooting out corrupt officials. However, in the midst of the revolutionary fervour of 2004, Saakashvili pushed a series of constitutional amendments through Parliament that centralise power in the hands of the president. These amendments included Article 73, which allows the president to issue legally binding decrees and to dissolve Parliament.<sup>34</sup> Article 93 enables the president to approve the government's budget by decree after dissolving Parliament.<sup>35</sup>

At the beginning of Saakashvili's tenure as president, his retraction of a key campaign promise facilitated a situation where these amendments were not even necessary to ensure passage of his agenda. During the 2004 presidential campaign, Saakashvili had promised to eliminate Article 50.2 of the Constitution, which requires political parties to receive 7 percent of the votes in legislative elections to receive seats in Parliament.<sup>36</sup> This point is particularly

<sup>31</sup> Nana Sumbadze, "Saakashvili in the Public Eye: What Public Opinion Polls Tell Us," *Central Asian Survey*, Vol. 28, No. 2 (June 2009): pp. 187, 191.

<sup>32</sup> Transparency International, *Corruption Perceptions Index 2004* (Berlin: Transparency International, 2004), available from: [http://www.transparency.org/policy\\_research/surveys\\_indices/cpi/2004](http://www.transparency.org/policy_research/surveys_indices/cpi/2004).

<sup>33</sup> Ghia Nodia, "Georgia: Dimensions of Insecurity," in Coppieters and Legvold eds., p. 67.

<sup>34</sup> Constitution of Georgia, art. 73, sec. 1.

<sup>35</sup> *Ibid.*, art. 93, sec. 6–7.

<sup>36</sup> *Ibid.*, art. 50, sec. 2; Irakly Areshidze, *Democracy and Autocracy in Eurasia: Georgia in Transition* (East Lansing, Michigan: Michigan State University Press, 2007), p. 195.

controversial because Georgia has a number of regional and smaller national political parties. Saakashvili abandoned his promise before the 2004 legislative elections, and apart from the UNM, only the conservative New Rights-Industry alliance won seats, gaining 7.56 percent of the votes.<sup>37</sup> Saakashvili even alleged that fraud occurred in several areas where the conservatives fared well and sought to nullify the results in these districts. Fortunately, other UNM leaders rejected this plan, which would have excluded the conservatives from Parliament.<sup>38</sup> The 2008 elections produced a more balanced legislature, but Article 50.2 remains in the Constitution.

Under Saakashvili, Georgia also has a mixed record on minority rights issues. Ethnic Georgians comprise about 70 percent of the population; Abkhazians, Armenians, Azeris, Ossetians, and Russians are the largest ethnic minority groups.<sup>39</sup> Since coming to power, the UNM has cracked down on perpetrators of religious violence against minorities that do not belong to the Georgian Orthodox Church.<sup>40</sup> Moreover, the government allows the teaching of minority languages in schools. Levels of minority rights in Georgia are admirable when compared to other former Soviet Republics like Uzbekistan and Tajikistan, but considerable space remains for improvement. Many minorities do not speak Georgian, the sole national language, thus excluding them from politics. The OSCE reports that only 8 of the 150 members of Parliament come from minority backgrounds.<sup>41</sup> Fluency in Georgian is even a requirement for government employment.<sup>42</sup>

Clear gaps exist between the democratic ideals of the Georgian Constitution and the realities of modern Georgia. Robert Legvold, an expert on the post-Soviet states, provides one possible explanation for the anti-democratic aspects of Saakashvili's presidency:

[T]he problem appears to stem from the nature of the Georgian public's stake in the Western model: it accepts the democratic model, because it wants to be Western to affirm its independence from Russia. In this chain, however, a commitment to the liberal Western model is for security's stake, not because of an attachment to the model's intrinsic worth.<sup>43</sup>

<sup>37</sup> Areshidze, p. 233.

<sup>38</sup> *Ibid.*, p. 232.

<sup>39</sup> Nichol, "Georgia [Republic]: Recent Developments and US Interests," p. 21.

<sup>40</sup> Nodia, pp. 76-78.

<sup>41</sup> OSCE: ODIHR, *Ethnic Minorities in Georgia: Current Situation* (Warsaw: ODIHR, October 2008), available from: [http://www.osce.org/documents/odihr/2008/10/33699\\_en.pdf](http://www.osce.org/documents/odihr/2008/10/33699_en.pdf), p. 2.

<sup>42</sup> Julie George, "The Dangers of Reform: State Building and National Minorities in Georgia," *Central Asian Survey*, Vol. 28, No. 2 (June 2009): p. 145.

<sup>43</sup> Robert Legvold, "Introduction: Outlining the Challenge," in Coppieters and Legvold eds., p. 10.

Saakashvili's own rhetoric seems to support Legvold's argument. In a 2008 speech at the Munich Conference on Security Policy, he stated, "We decided that democracy and integration into the Euro-Atlantic alliance would be the basis of our stability, our security, and our economic prosperity."<sup>44</sup> Saakashvili appears to see an inextricable connection between democratisation and national security. If the possibility of NATO membership serves as the impetus behind Georgian democracy, this may indicate a shallow commitment to liberalism and explain problems in democratic consolidation. It also suggests that the West has significant leverage to push for reforms in Georgia.

The 2013 presidential election will be a serious test of Georgia's commitment to Western style democracy. Since its independence, Georgia has never had a democratic transition of power. Shevardnadze overthrew Zviad Gamsakhurdia in a bloody *coup d'état*, and Saakashvili came to power following the peaceful Rose Revolution. The Constitution limits the president to two consecutive five-year terms, making Saakashvili ineligible for re-election in 2013. Sceptical observers speculate that the 41 year-old Saakashvili will refuse to leave office, amend the Constitution so that he can serve additional terms, or rule through a puppet until he becomes eligible to run again in 2018.

In spite of Georgia's ongoing transition to democracy, the country's democratic credentials fall short of Western standards. Liberal democracies should demonstrate a commitment to lively political debate, minority rights, and leadership transitions at the ballot box instead of the streets. Not all NATO states have flawless democracies, but Georgia's numerous democratic shortcomings demonstrate inadequate preparation for a MAP.

## Individual Liberty

The second core value of the Atlantic Alliance – as enumerated in the Washington Treaty, "Study on NATO Enlargement," and MAP criteria – is individual liberty, a subset of democracy. Individual liberty includes freedom of action and expression. Article 18.1 of the Georgian Constitution reads: "Liberty of an individual is inviolable."<sup>45</sup> By most accounts, Saakashvili's government does not interfere in the lives of ordinary Georgian citizens, but some of its actions do not correlate with the language of Article 18.1.

The controversial arrest of former Defence Minister Irakli Okruashvili raises questions about the government's tolerance for freedom of speech. In a September 2007 television interview, Okruashvili accused Saakashvili of corruption,

<sup>44</sup> Mikheil Saakashvili, "Speech to the Munich Security Conference," February 9, 2008, Munich, available from: <http://www.securityconference.de/konferenzen/rede.php?sprache=en&id=214&>

<sup>45</sup> Constitution of Georgia, art. 18, sec. 1.

human rights abuses, and even ordering assassinations.<sup>46</sup> Saakashvili quickly had Okruashvili arrested on charges of corruption dating back to his tenure as a cabinet member. The imprisonment of Okruashvili served as a mobilising force for over 100,000 protestors who demanded Saakashvili's resignation from September–November 2007.<sup>47</sup>

The government's response to the demonstrators showed a dubious commitment to freedom of expression. On November 7, 2007, security forces and masked police beat anti-Saakashvili hunger strikers and protestors in front of Parliament.<sup>48</sup> Following further protests, Saakashvili resigned on November 25; Georgians re-elected him on January 20, 2008. There have been a multitude of opposition protests since the election, and in July 2009, Saakashvili said that protests could occur "without any obstacles."<sup>49</sup> The most recent reports of government violence against demonstrators surfaced in June 2009.

Outside of government responses to political opposition, some commentators allege that the media had more freedom during Shevardnadze's reign than it does under Saakashvili. This claim has a tinge of irony, as mass media allowed the UNM to rally support to their cause during the Rose Revolution. Furthermore, Article 24.2 of the Constitution declares: "Mass media shall be free. The censorship shall be impermissible [*sic*]."<sup>50</sup> However, Georgian analyst Irakly Areshidze contends that the government has forced national media to adopt a culture of self-censorship. Areshidze claims that officials frequently threaten journalists who cover the administration unfavourably, and that television station owners who do not "toe the government line" risk losing their broadcasting licenses.<sup>51</sup> The US State Department's 2008 Human Rights Report on Georgia does not fully support Areshidze's assertions and says the Georgian media environment was "relatively free" in early 2008. The document does note "a noticeable weakening in freedom of the media" following the May 2008 legislative elections.<sup>52</sup> This assessment is negative but shows clear improvement from November 2007, when police raided Imedi TV for broadcasting opposition messages and footage of anti-Saakashvili demonstrations.

<sup>46</sup> "Okruashvili Breaks Silence by Lashing Out at Saakashvili," *Civil Georgia* (Tbilisi), September 25, 2007, available from: <http://www.civil.ge/eng/article.php?id=15861>.

<sup>47</sup> Marina Muskhelishvili, Ivane Javakhishvili, and Gia Jorjoliani, "Georgia's Ongoing Struggle for a Better Future Continued: Democracy Promotion through Civil Society Development," *Democratization*, Vol. 16, No. 4 (August 2009): pp. 697-698.

<sup>48</sup> For a summary of the events of November 7, 2007 see: Human Rights Watch, *Crossing the Line: Georgia's Violent Dispersal of Protestors and Raid on Imedi Television* (New York: Human Rights Watch, 2007).

<sup>49</sup> Saakashvili quoted in "Saakashvili Pledges More Democratic Reforms," *Civil Georgia*, July 21, 2009, available from: <http://www.civil.ge/eng/article.php?id=21262>.

<sup>50</sup> Constitution of Georgia, art. 24, sec. 2.

<sup>51</sup> Areshidze, pp. 250-254.

<sup>52</sup> US State Department, *2008 Human Rights Report: Georgia* (Washington: State Department, February 2009), available from: <http://www.state.gov/g/drl/rls/hrrpt/2008/eur/119080.htm>.

Saakashvili's government appears to be coming to terms with opposition protests and independent media coverage. Because legitimate concerns remain, NATO would be wise to delay the MAP process to test the government's commitment to individual liberty. After all, reports of media censorship only date back to 2008, and images of security forces beating demonstrators emerged as recently as June 2009.

## The Rule of Law

The last key principle in the Preamble to the Washington Treaty is the rule of law. The Alliance's MAP criteria state that "[a]spirants would also be expected to demonstrate commitment to the rule of law and human rights."<sup>53</sup> The language of the Georgian Constitution corresponds with this objective; the Preamble declares the country a "rule-of-law based social State," and Articles 6 and 7 call for adherence to international law and human rights standards.<sup>54</sup> Nevertheless, despite reforms, Saakashvili's government needs to improve upon several international and domestic issues related to the rule of law.

On the domestic front, the UNM has made remarkable progress reducing corruption and reforming Georgia's police forces. Transparency International now ranks Georgia 66 out of 180 countries on its Corruption Perceptions Index, placing Tbilisi ahead of NATO members Albania, Bulgaria, Greece, and Romania.<sup>55</sup> Due to the rooting out of corrupt officials, Areshidze says that in 2005 average Georgians could finally begin to receive public services without paying bribes.<sup>56</sup> The government has also implemented new police training programs and efforts to remove dishonest officers from the streets. Regardless of these reforms, polls show that only 33.1 percent of Georgians trust the government.<sup>57</sup> Among other reasons, some of this apprehension may stem from Saakashvili's 2004 campaign to imprison allegedly corrupt business executives and former Shevardnadze administration officials. Some Georgians supported these actions, but the opposition accused Saakashvili of using the judicial system to neutralise his opponents.

Structural changes to the Georgian judicial system since the Rose Revolution could both enhance and hinder the rule of law. Parliament approved a judicial code of ethics in 2007, a move aimed at ensuring transparency. Further, one of Saakashvili's 2004 constitutional reforms, an amendment to Article 86, established the Supreme Council of Justice of Georgia, which

<sup>53</sup> NATO, "Membership Action Plan."

<sup>54</sup> Constitution of Georgia, art. 6-7.

<sup>55</sup> Transparency International, *Corruption Perceptions Index 2009* (Berlin: Transparency International, 2009), available from: [http://www.transparency.org/policy\\_research/surveys\\_indices/cpi/2009/cpi\\_2009\\_table](http://www.transparency.org/policy_research/surveys_indices/cpi/2009/cpi_2009_table).

<sup>56</sup> Areshidze, p. 157.

<sup>57</sup> Sumbadze, p. 189.

monitors the performance of judges.<sup>58</sup> The Supreme Council has the power to dismiss judges. However, the president appoints half of the Council's members, presenting the possibility that the head of state could remove judges with whom he disagrees.<sup>59</sup> The new code of ethics and Supreme Council could strengthen the rule of law but only if the executive decides not to push his agenda upon the judiciary.

Another rule of law issue revolves around whether or not the Georgian army complied with international law during the Russian-Georgian conflict. The OSCE condemned both Georgia and Russia for their disproportionate use of force. However, the EU's post-conflict report dismissed Russian claims of Georgian troops committing genocide against Ossetians as "propaganda."<sup>60</sup> Human Rights Watch (HRW) also could not find evidence to substantiate the Russian allegations.<sup>61</sup> HRW commended Georgian troops for some of their efforts to protect women and children in South Ossetia from shelling but reprimanded them for looting and causing collateral damage with cluster munitions.<sup>62</sup> The available evidence suggests that while Georgian troops did not take all necessary precautions to protect civilians, egregious stories of soldiers burning churches, throwing grenades at non-combatants, and raping Ossetian women simply lack credibility.

Georgia's most serious rule of law concern may well be the instability in the Caucasus and Central Asia, which creates a haven for transnational crime. Particularly pronounced smuggling activities occur in Abkhazia and South Ossetia and frequently spread into mainland Georgia. The country has long been a hotbed for the global sex trade, but after the removal of the Taliban, Afghan narcotics began to pour into the breakaway provinces via drug trafficking networks operating out of Turkmenistan.<sup>63</sup> The combination of narcotics and human trafficking has produced a sharp increase in HIV/AIDS cases. Authorities around the country have also recovered small arms intended for Chechen separatists in Russia, as well as radioactive materials including weapons grade uranium and strontium-90.<sup>64</sup>

<sup>58</sup> Constitution of Georgia, art. 86, amend. 1.

<sup>59</sup> Ibid.

<sup>60</sup> Report of the Independent International Fact-Finding Mission on the Conflict in Georgia, Vol. 2, p. 187.

<sup>61</sup> Human Rights Watch, *Up in Flames: Humanitarian Law Violations and Civilian Victims in the Conflict over South Ossetia* (New York: Human Rights Watch, 2009), pp. 71-73.

<sup>62</sup> Ibid., pp. 61-69.

<sup>63</sup> Svante E. Cornell, "The Growing Threat of Transnational Crime," in "The South Caucasus: A Challenge for the EU," ed. Dov Lynch, European Union Institute for Security Studies, *Chaillot Papers*, No. 65 (December 2003), pp. 31-34; to contextualize the magnitude of drug use in Georgia, Cornell notes that Shevardnadze even "estimated that one ton of heroin is consumed in Georgia annually."

<sup>64</sup> Ibid., pp. 35-37.

Rule of law reforms differentiate the Saakashvili and Shevardnadze administrations. The UNM has achieved impressive police and anti-corruption reform results, but NATO officials should push for additional substantive changes. These reforms should include further anti-corruption initiatives, steps to reduce executive power over the judiciary, training programs to improve the professionalism of the Georgian military, and a far-reaching strategy to secure national borders against transnational criminal networks.<sup>65</sup>

An examination of Georgia's adherence to NATO's principles of democracy, individual liberty, and the rule of law reveals that Tbilisi must implement broad reforms to reach the standards required to attain a MAP. Alongside value-based criteria, several strategic issues regarding Georgia's membership bid deserve consideration.

## Protection from Russia

Proponents of fast-track NATO membership for Georgia argue that the Alliance should provide Tbilisi with security against Russia aggression. The precedent exists for this contention in the post-Cold War era, as NATO admitted several former Eastern Bloc states that sought protection from the Kremlin. After all, NATO is a collective security organisation intended to defend democracies from external powers. During the Cold War, NATO prevented Western Europe from falling under the influence of communism.

Few observers would deny that Georgia faces a continuing security threat from Russia, but this situation may actually prevent Tbilisi from quickly joining NATO. The "Study on NATO Enlargement" states that applicants with "external territorial disputes ... must settle those disputes by peaceful means in accordance with OSCE principles. The resolution of such disputes would be a factor in determining whether to invite a state to join the Alliance."<sup>66</sup> The MAP criteria also reflects this sentiment. Article 5 of the Washington Treaty commits member states to the defence of other members in the event of an attack. Responses to aggression could even involve strikes with forward-based US tactical nuclear weapons in Europe. When other former Soviet bloc states joined NATO, they did not have active border disputes with Russia. Had Georgia been a member of NATO when Saakashvili attempted to reassert authority over South Ossetia, the Alliance might have found itself at war with Russia.

<sup>65</sup> A strategy on border security will likely require European assistance to help broker Russian-Georgian cooperation. Without the consultation of Russia, such a strategy risks the creation of a security dilemma with the breakaway provinces of Abkhazia and South Ossetia.

<sup>66</sup> NATO, "Study on NATO Enlargement."

## Resolution of Ethnic Conflicts

The breakaway provinces of Abkhazia and South Ossetia present an additional challenge to Georgia's bid to join the Atlantic Alliance. These provinces account for about 15 percent of Georgian territory; they have their own militaries, and Russia, Nicaragua, and Venezuela recognise them as independent states. For the moment, the security situation in Georgia remains calm and the EU Monitoring Mission (EUMM) has a mandate to oversee continued peace between government and separatist forces. However, before receiving a MAP, candidate states must "settle ethnic disputes ... including irredentist claims."<sup>67</sup>

Several commentators correctly note that not all NATO member states are free of ethnic separatist organisations, including the Basque Homeland and Freedom (ETA) in Spain and the Kurdistan Workers' Party (PKK) in Turkey.<sup>68</sup> The difference between these situations and that of Georgia lies in the fact that the ETA and PKK lack strong state supporters, and they do not control territory recognised as independent by some countries. In addition, the PKK emerged after Turkey was already a NATO member, and the MAP criteria came about 17 years after Spain had joined the Atlantic Alliance.

## Energy Security

Another reason to award Georgia a MAP could be the country's importance as an energy corridor for Caspian Sea oil. Georgia is of vital importance to the Baku-Tbilisi-Ceyhan (BTC) pipeline, which supplies energy to the United States and several European members of NATO. Up to a million barrels of oil flow through the pipeline daily, and Svante Cornell of the Central Asia-Caucasus Institute believes that its construction marked a crucial step away from European energy dependence on the Kremlin.<sup>69</sup> Georgia expert Lincoln Mitchell disagrees, arguing that the BTC pipeline has an exaggerated importance and may "only provide about 1% of the world's oil."<sup>70</sup> Regardless of the pipeline's value, NATO's enlargement criteria never mentions energy security. Arguments for Georgia to join the Alliance based on its role in providing energy

<sup>67</sup> Ibid., "Membership Action Plan."

<sup>68</sup> For the key points of the argument as to why Georgia should be allowed to join NATO without resolving its internal conflicts see: Temuri Yakobashvili and Jonathan Kulick, "Can Georgia Join NATO Without Solving the Conflicts in Abkhazia and South Ossetia?," German Marshall Fund of the United States, Black Sea Trust for Regional Cooperation, *Black Sea Papers*, No. 3 (October 2007).

<sup>69</sup> Cornell, *Georgia after the Rose Revolution: Geopolitical Predicament and Implications for US Policy* (Carlisle, Pennsylvania: Strategic Studies Institute, 2007), p. 10.

<sup>70</sup> Lincoln Mitchell, "Georgia's Story: Competing Narratives since the War," *Survival: Global Politics and Strategy*, Vol. 51, No. 4 (August 2009): p. 98.

to the West might also be reasons to invite Russia and Iran to join NATO – both laughable scenarios.<sup>71</sup>

## Military Reform

Tbilisi's poor military performance in the Russian-Georgian conflict raises the spectre of Georgian inability to contribute to Alliance security. Prior to earning a MAP, candidates must be able “to contribute to collective defence” and “to pursue standardization and/or interoperability.”<sup>72</sup> At first glance, Georgia does not qualify for a MAP under either standard. In less than a week of fighting, Kremlin forces destroyed 30 percent of Georgian military equipment; three of Tbilisi's five army divisions; both of Georgia's key military bases; and devastated the country's navy and air force.<sup>73</sup> Additionally, low levels of English fluency could hinder Georgian military interoperability with NATO troops.

Despite outward appearances, evidence points to Georgia's ability to contribute to NATO missions. Analysis of Tbilisi's performance against the Russian military produces unreliable conclusions, as few of the Alliance's 28 members could effectively wage war with Russia. As a PfP member, Georgia has supplied troops to NATO's KFOR mission in Kosovo and International Security Assistance Force (ISAF) in Afghanistan. Only 173 Georgian troops currently serve in ISAF, but Tbilisi's past contribution to US operations in Iraq highlights the country's military potential.<sup>74</sup> Before returning home during the Russian-Georgian conflict, 2,000 troops served in Iraq, the third largest national contingent behind the United States and Britain. Furthermore, in South Ossetia, Georgian communications disruption teams were quite effective against the Russian army.<sup>75</sup>

The notion that Georgia lacks the capabilities to contribute to the Alliance is also not consistent with other membership decisions. Luxembourg has little ability to defend other states, and Albania, a new NATO member, has extensive English language interoperability problems. However, if Georgia joins the Alliance, Tbilisi will have to reduce its disproportionately sized 37,000 person

<sup>71</sup> This argument also applies to many other issues revolving around Georgia's strategic importance. Because of its location, Georgia could serve as a bridge between the Atlantic Alliance and Central Asia, perhaps yielding greater Westernization in the region alongside mutual economic benefits. However, the location of a country does not substantiate deviation away from NATO's established enlargement criteria.

<sup>72</sup> NATO, “Membership Action Plan.”

<sup>73</sup> Pierre Razoux, “What Future for Georgia?,” Research Division, NATO Defense College, *Research Paper*, No. 47 (June 2009), p. 2.

<sup>74</sup> Ministry of Defence of Georgia, “Peacekeeping Mission,” 16 November 2009, Tbilisi, available from: <http://mod.gov.ge/index.php?page=77&lang=1&type=1&Id=325>.

<sup>75</sup> Carolina Vendil Pallin and Fredrik Westerlund, “Russia's War in Georgia: Lessons and Consequences,” *Small Wars & Insurgencies*, Vol. 20, No. 2 (June 2009): p. 407.

armed forces and move towards a smaller, more professional military.<sup>76</sup> The country's 2008 military expenditures of 8.11 percent of GDP must also shrink closer to the Alliance's standard of 2 percent of GDP.<sup>77</sup>

Of the strategic issues relevant to Georgian membership in NATO, only the country's military potential bodes well for its quest to join the Atlantic Alliance. Tensions with Russia and ethnic conflicts hurt Georgia's eligibility for a MAP, while questions of Western energy security should not factor into NATO's decision calculus on the matter.

## Conclusion

Many supporters of Georgia's potential membership in NATO subscribe to a simplified narrative: NATO should protect Georgia – a burgeoning democracy – from a range of security threats including an aggressive, resurgent Russia. Upon examination through the lens of Alliance enlargement criteria, this narrative actually provides several reasons why Tbilisi should not receive a MAP in the near-term future. Georgia is indeed democratising and Saakashvili's reforms continue to move the country toward upholding the principles of democracy, individual liberty, and the rule of law. But to measure up to Western standards, Tbilisi must make substantial progress on issues such as minority rights, border security, and allowing space for political debate. Furthermore, the Alliance's enlargement criteria call for the pre-MAP resolution of ethnic conflicts and external rows. The purpose here is to prevent the extension of Article 5 security guarantees to states whose disputes may lead NATO into a war.

To be fair, NATO has made some questionable enlargement decisions in the past. Bulgaria and Romania entered the Alliance in 2004 despite high levels of government corruption, and Spain's commitment to democracy was dubious when it joined in 1982. Regardless of these decisions, in the case of Georgia, NATO should adhere to its codified enlargement criteria in order to maintain its credibility as a promoter of democracy and to avoid unnecessary conflict with Russia. In the mean time, Alliance members – particularly the United States – should reallocate much of their military aid for Georgia to initiatives bolstering independent media, civil society, and other democratisation efforts.

The prospect of NATO membership has triggered sweeping reforms in Georgia and will continue to allow the Alliance to exert pressure on Saakashvili for further democratisation. Because Georgia does not yet meet the criteria for a MAP, the current ANP offers NATO an interim vehicle to push for reform and to assess the government's commitment to Alliance principles. NATO and

<sup>76</sup> Mindia Arabuli, "Amendment to the Law on 'Approval of the Number of the Georgian Military Forces,'" Ministry of Defence of Georgia, *Today Defence*, No. 13 (July 2008): p. 1.

<sup>77</sup> World Bank, "Military expenditure (% of GDP)," 2009, available from: [http://datafinder.worldbank.org/military-expenditure?cid=GPD\\_42](http://datafinder.worldbank.org/military-expenditure?cid=GPD_42).

the EU can also act as mediators between Moscow and Tbilisi, which may produce an understanding on the status of Abkhazia and South Ossetia. This would prove to be difficult, but it is not impossible, as it is in the interests of the Kremlin to address instability on Russia's periphery.

NATO promised Alliance membership to Georgia at Bucharest, and in the future the country may very well join the West pursuant to Article 10 of the Washington Treaty – the basis behind NATO's open-door policy. The Alliance should award Georgia with a MAP only if Saakashvili shows a stronger commitment to liberal democracy, abandons bellicose anti-Russian rhetoric, and peacefully tries to resolve Georgia's territorial disputes. Once Georgia receives a MAP, one of the conditions for its membership in the Alliance must be the first democratic transition of power in Tbilisi. As time goes on, the Georgian people may begin to fear that their country will never join NATO. Perhaps these worries will cause the government to undertake a more ambitious reform agenda and the public to pressure their leaders for further democratisation.

# Moving Together Toward an Uncertain Future: US-European Counterterrorism Vision, Responses & Cooperation Post-9/11

Bryan Groves<sup>1</sup>

## Introduction

The lead-up to the Iraq War, and its conduct, highlighted significant differences in transatlantic perspectives, capabilities, and methods. While terrorism has generally been America's central fixation since 9/11 (until the recent economic recession), Europe sees terrorism as only one of several important threats today, with proliferation of weapons of mass destruction (WMD), failed states, regional conflicts, and organized crime among the other top tier threats.<sup>2</sup> The US possesses a comparative advantage in intelligence gathering and kinetic strike capability. Its military strength has enabled the US to favor this method as its main tool in waging its "global war on terrorism" (GWOT), now referred to by the Obama administration as "Overseas Contingency Operations."<sup>3</sup> On the other hand, Europe's tendency toward the employment of troops for nation-building and peacekeeping missions is in line with its strengths and preferences. European countries also favor an extensive consensus building period of diplomatic maneuvering to establish a widely accepted multilateral response to threats. America under the Bush administration, however, insisted

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<sup>1</sup> The views expressed herein are those of the author and do not reflect the official policy or position of the United States Military Academy, the Department of the Army, or the Department of Defense.

<sup>2</sup> *European Security Strategy*, 12 December 2003, p. 3-4.

<sup>3</sup> Scott Wilson and Al Kamen, "Global War on Terror is Given New Name," *Washington Post*, March 25, 2009, available at <<http://www.washingtonpost.com/wpdyn/content/article/2009/03/24/AR2009032402818.html>>

on remaining unconstrained even if key allies did not accept its position on important matters, such as the use of force against Iraq.<sup>4</sup>

These divergent “strategic cultures”<sup>5</sup> led some pundits to herald the coming death of the transatlantic alliance.<sup>6</sup> Since the Iraq invasion however, the US and Europe have continued to partner effectively in Afghanistan. This apparent contradiction could lead one to question the overall prospects of transatlantic counterterrorism cooperation in the post-Iraq world. Yet the outcome is not really in doubt. Beyond the short-term outlook in Afghanistan, the long-term forecast is positive despite US-European differences over the Iraq War and the urgency of and methodology for fighting terrorism. The projection is favourable because Europe and America fundamentally share a common threat and common interests. They also share many values, a history of successfully working together against threats, both in the Cold War and during the first Gulf War (1990/1). So, both the past and the present indicate that the transatlantic partnership will weather its challenges, contrary to those who focus on short-term challenges.

During the eight (+) years since 9/11 however, transatlantic tension levels were often high and details were less clear as to what the immediate and mid-term future held. Many times when America and Europe experienced successes, they came largely at the tactical and operational levels. The main sticking point between administrations on either side of the Atlantic has involved differing perspectives on the strategic considerations that elude easy measurement. Should terrorists acts be viewed through a criminal lens or be seen as an act of war? What does this difference portend for a government’s counterterrorism policies and the status afforded to captured terrorists? What role, if any, should enhanced interrogation, electronic surveillance, financial tracking and seizures,<sup>7</sup> torture, renditions, and secret detention facilities play? Should countries utilise preemptive or preventive wars to safeguard their citizens? What level of threshold is necessary to determine the immediacy of a threat? What priority should governments give counterterrorism in the context of their foreign policy endeavours? What roles do non-military instruments of power and states’ values play in counterterrorism efforts? Is there a trade-off between security and liberty? How can governments balance human rights with security considerations?

<sup>4</sup> Lawrence F. Kaplan and William Kristol, *The War Over Iraq: Saddam’s Tyranny and America’s Mission*, p. 92.

<sup>5</sup> Heinz Gartner and Ian M. Cuthbertson, *European Security and Transatlantic Relations After 9/11 and the Iraq War*, p. 183-185.

<sup>6</sup> Elizabeth Pond, *Friendly Fire: The Near-Death of the Transatlantic Alliance*.

<sup>7</sup> Former Director of the CIA, Porter Goss, mentioned these three items as the most important tools in America’s counterterrorism arsenal in a speech in Sanibel, Florida in February 3, 2010.

These are some of the key questions at the heart of the differences between the counterterrorism approaches taken by America and Europe during the Bush administration. President Obama has closed a portion of that gap, primarily in the area of rhetoric, values, and utilising civilian courts to try terrorists, yet some differences remain. Throughout the remainder of this paper I explore aspects of these questions while looking at the general approaches taken by administrations on each side of the Atlantic. I start by establishing a common definition of terrorism and examining why American labels for their counterterrorism endeavours are flawed. This is an important starting point as it affects how governments define success and what their constituents expect. After outlining why counterterrorism is so important to the US today, I look at differences in American and European perspectives and changes that both sides have implemented in their bids to hunt terrorists and protect their citizens. Next I highlight counterterrorism success stories, joint efforts, and provide policy relevant recommendations for further improvement. Finally, I conclude with reflections on future prospects for transatlantic counterterrorism cooperation and success.

## Definitions

Various scholars and politicians view terrorism (and counterterrorism) differently. Some see it as specific to non-state actors, while others see states as capable of committing terrorism against their citizens. Critics of that view argue that states may commit *acts* of terrorism, but that a definition of *terrorism* should apply only to non-state actors. As most view terrorism in this light, I adhere to this perspective and will use the following definition for terrorism as the basis for my references to it throughout this paper. Terrorism involves violence or the threat of violence by non-state actors against non-combatants to influence a wider target audience to accomplish a politically motivated objective.<sup>8</sup> Counterterrorism involves the broad spectrum of operations designed to combat the actions of groups committing acts for this purpose and in this manner. A comprehensive counterterrorism effort should include intelligence operations, law enforcement actions, freezing of the financial assets of terrorist organisations, a robust messaging campaign, surgical military operations, and coordination with allies on every front.<sup>9</sup>

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<sup>8</sup> This definition was the one utilized by Professor Stuart Gottlieb of Yale University in his *Terrorism and Counterterrorism* course, Spring 2007.

<sup>9</sup> Professor Stuart Gottlieb of Yale University was the first person I heard articulate these counterterrorism facets. He did so while I was a student in his *Terrorism and Counterterrorism* course, Spring 2007.

## The Importance of the Slogan

Counterterrorism rhetoric is significant because it defines the mission; it shapes American and international perspectives about the tasks at hand, and is meant to be a reflection of US values. It impacts how the world views the US and whether other countries support American endeavours in the ‘war,’ and to what extent. Finally, it becomes the ultimate measure of success.

Former President Bush’s response to the terrorist attacks on 9/11 was the “global war on terrorism (GWOT).” The choice of terminology is understandable but problematic.<sup>10</sup> It is understandable because there are terrorists around the world and because the tremendous psychological effect of 9/11 drove the US to respond on a massive scale. It is problematic because terrorism is a tactic and it is impossible to defeat a tactic. Additionally, by calling it a ‘war,’ the US overemphasised military aspects<sup>11</sup> and confers combatant status on the terrorists it is fighting.<sup>12</sup> The Bush administration realised that the slogan carried some bad connotations and officially changed it to “the global struggle against violent extremism.”<sup>13</sup> The second Bush slogan indicated that the struggle was against an amorphous idea, rather than a concrete group of people. Thus, to win it, the US would presumably have to eradicate violent extremism – also an impossible task.<sup>14</sup> The Obama administration’s new slogan refers to the Iraq and Afghanistan wars as “Overseas Contingency Operations.”<sup>15</sup> This term avoids some of Bush’s pitfalls, but indicates that the problem is located abroad. This connotation is problematic at a time when the US is experiencing a rise in the number and qualitative nature of home grown terrorist incidents, or those otherwise involving American citizens. Incidents like the Najibullah Zazi NYC subway plot,<sup>16</sup> the Major Nidal Malik Hassan shooting at Fort Hood, the

<sup>10</sup> LTC Reid Sawyer, “Hot Coffee-Hot Topics Talk on Terrorism and Evaluating the Effectiveness of America’s Counterterrorism Efforts Since 9/11,” Yale University, Fall 2007.

<sup>11</sup> Fred Kaplan, “Say G-WOT? Terror Attacks, Taliban Resurgence, Suicide Bombs—Obviously, It’s Time to Change the Slogan,” July 26, 2005.

<sup>12</sup> Tom Parker, Iranian Humans Rights Documentation Center Executive Director, during a dinner talk to Studies in Grand Strategy students, February 20, 2008.

<sup>13</sup> Fred Kaplan, “Say G-WOT? Terror Attacks, Taliban Resurgence, Suicide Bombs—Obviously, It’s Time to Change the Slogan,” July 26, 2005. Despite the change in the slogan, GWOT remained the slogan most commonly used during the remainder of the Bush administration, and in some circles, even to the current day.

<sup>14</sup> Josh Bradley, Robert Berschinski, John Frick, and I discussed this topic at various times during the Spring of 2007.

<sup>15</sup> Scott Wilson and Al Kamen, “Global War on Terror is Given New Name,” *Washington Post*, March 25, 2009, available at <<http://www.washingtonpost.com/wp-dyn/content/article/2009/03/24/AR2009032402818.html>>.

<sup>16</sup> *Associated Press*, “Police Interrogate Colo. Man in Suspected NYC Subway Plot,” September 18, 2009, available at <[http://www.lawofficer.com/news-and-articles/news/2009/09/police\\_interrogate\\_colo\\_man\\_in\\_suspected\\_nyc\\_subway\\_plot.html](http://www.lawofficer.com/news-and-articles/news/2009/09/police_interrogate_colo_man_in_suspected_nyc_subway_plot.html)>.

David Headley Mumbai case,<sup>17</sup> and the first two Americans to become suicide bombers,<sup>18</sup> albeit overseas,<sup>19</sup> demonstrate the growing domestic terrorism problem in the US. Additionally, it is improper for Obama to refer to the ongoing operations in Iraq and Afghanistan as “contingencies” when he inherited them in full swing. So, with its self imposed label of what it is undertaking, the US has set itself up for failure, improperly identifying both the problem and its solution. A better slogan would be “the struggle against radical extremists and their ideology” with the added caveat that, although the struggle is likely a permanent one, we should measure success by continual improvement in key areas. A couple of the key areas are cooperation between countries and nations’ defences against terrorists. Another involves progress in crippling the leadership, financial backing, sanctuary, and ultimately the ideological support for terrorist activity. Significant and steady improvement in each of these areas will tip the balance in this struggle in favour of the more progressive societies and away from extremists.

## The Significance of Terrorism for the US Today

The magnitude and nature of the attacks on September 11<sup>th</sup> rocked American perceptions on several levels. America was attacked on its own soil, from within its own borders, and the result was that more people died than in any other single terrorist attack in history – even more than died in the infamous attacks on Pearl Harbour on December 7, 1941.<sup>20</sup> Americans’ sense of invulnerability vanished as they realised that their relatively isolated geographic location was no longer enough to protect them. What if terrorists obtained WMD and the means to deliver them? Surely 9/11 would pale in comparison. The number of casualties might not be confined to the thousands; millions of Americans might die in a single attack. This was simply unacceptable to the American psyche.

So, just as Congress declared war immediately after Pearl Harbour, so too did it authorise the President to use military force against those responsible for perpetrating the attacks on 9/11.<sup>21</sup> Once again the struggle would be global;

<sup>17</sup> “US Man David Headley Denies Mumbai Plot Charge,” *BBC*, January 28, 2010, available at <[http://news.bbc.co.uk/2/hi/south\\_asia/8484450.stm](http://news.bbc.co.uk/2/hi/south_asia/8484450.stm)>.

<sup>18</sup> Michael B. Farrell, “A US Pipeline for Jihad in Somali?,” *The Christian Science Monitor*, December 30, 2009, available at <<http://www.csmonitor.com/USA/Society/2009/1230/A-US-pipeline-for-jihad-in-Somalia>>.

<sup>19</sup> Two Americans from the Somali Diaspora outside Minneapolis traveled to Somali to conduct “martyrdom operations” (be suicide bombers). At least 20 more have gone to fight in the Somali jihad.

<sup>20</sup> Hal Lindsey, “Pearl Harbour vs. 9-11: The Key Difference,” January 16, 2003, available at <[http://www.wnd.com/news/article.asp?ARTICLE\\_ID=30512](http://www.wnd.com/news/article.asp?ARTICLE_ID=30512)>, (accessed April 6, 2008).

<sup>21</sup> Richard F. Grimmet, “CRS Report to Congress: Authorization For Use Of Military Force in Response to the 9/11 Attacks (P.L. 107-40): Legislative History,” January 16, 2007, available at <<http://www.fas.org/sgp/crs/natsec/RS22357.pdf>>, (accessed April 6, 2008).

only this time the war would be longer and the perpetrator was not a state actor – nor would it be the only target.<sup>22</sup> Bush painted the parameters of this war in black and white terms: either “you are either with us or against us.”<sup>23</sup> Al Qaeda and the Taliban regime in Afghanistan, which provided the former sanctuary, were the immediate targets. States that harboured terrorist groups or assisted them in any way were next.<sup>24</sup>

Many in the US have said that 9/11 changed everything.<sup>25</sup> Because of the aforementioned affects, it changed US foreign policy priorities, elevating counterterrorism and putting America on the offensive. It also resulted in the most significant reorganising of the US government since the 1947 National Security Act.<sup>26</sup>

## European vs. US Perspectives

The debate over the use of force in Iraq was the first occasion in the post-9/11 world where sharp differences between American and European perspectives were seen clearly. Although European countries differed in their views, several major players were reluctant to use force in Iraq to enforce UNSC resolutions and to eliminate the perceived threats of WMD. While some Central and Eastern European countries were eager to support the US, in return for financial assistance and support for their bids to join NATO, France and Germany led the resistance to Bush’s push for war.<sup>27</sup> Even the British wanted a second UNSC resolution explicitly authorising the use of military force.<sup>28</sup>

While Bush refused external constraints on America’s ultimate decision on Iraq, Europe saw the UN as the final authority. This was consistent with their historical and cultural experiences. In practical terms, comparatively weak mili-

<sup>22</sup> America’s active involvement in WWII was less than five years, measured from the US Declaration of War on December 8, 1941, until Japan’s formal surrender aboard the USS Missouri on September 2, 1945, ending World War II. As of September 11, 2009, the US had already been engaged in the “Global War on Terrorism” for eight years.

<sup>23</sup> President George W. Bush, “You are either with us or against us,” *Joint News Conference with French President Jacques Chirac*, November 6, 2001, available at <<http://archives.cnn.com/2001/US/11/06/gen.attack.on.terror/>>, (accessed April 6, 2008).

<sup>24</sup> President George W. Bush, “Address to the Nation,” September 11, 2001, and “Address to a Joint Session of Congress and the American People,” September 20, 2001, available respectively at <<http://www.whitehouse.gov/news/releases/2001/09/20010911-16.html>> and <<http://www.whitehouse.gov/news/releases/2001/09/20010920-8.html>>, (accessed April 6, 2008). President Bush repeated this theme numerous times over a long period, but these citations indicate that it was part of his thinking from the beginning.

<sup>25</sup> Garrick Utley, “Did 9/11 Change Everything?,” September 6, 2002, available at <<http://edition.cnn.com/2002/US/09/06/ar911.changed.america/>>, (accessed April 6, 2008).

<sup>26</sup> US Department of State, “National Security Act of 1947,” available at <<http://www.state.gov/r/pa/ho/time/cwr/17603.htm>>, (accessed April 6, 2008).

<sup>27</sup> Rick Fawn and Raymond Hinnebusch, *The Iraq War: Causes and Consequences*, p. 49–70.

<sup>28</sup> *Ibid*, p. 37–48.

tary strength meant that European nations could not invade Iraq by themselves. Europe's belief in the effectiveness of international institutions and a desire to constrain the US, establish a multi-polar world, and increase the legitimacy of American foreign policy actions led to greater reliance on and elevation of the UN as the ultimate decision making body.<sup>29</sup>

While the US played a key role in founding the UN, its relative military strength and the urgency of the post-9/11 environment persuaded Bush that he must take preemptive action to safeguard America. Hence he insisted on his chosen path, with or without a second resolution, and with or without the support of major, traditional allies. An ad hoc "coalition of the willing"<sup>30</sup> replaced the standing alliances formed in NATO over fifty years.<sup>31</sup>

Additionally, the US under Bush viewed terrorism as an act of war, while Europeans tend to view it as a crime.<sup>32</sup> Europe has a more protracted history of terrorism on its soil than the US does, though on a smaller scale than 9/11. This is especially true of Britain's battle against the Irish Republican Army (IRA) and Spain's struggle against Basque separatists, though Germany has faced terrorist attacks through the Red Army Fraction and Italy from the Red Brigades. Additionally, the timing of recent terrorist attacks in Europe (the 2004 Madrid train bombings and the 2005 London public transportation bombings) reinforces European perspectives on terrorism. Because these two events occurred after the invasion of Iraq, Europeans accurately interpreted them in that light. The Spanish thought they were bombed because of their military involvement in Iraq. The bombings were timed to occur just before Spanish elections to influence voters as they headed to election sites. The Spanish got the message and elected the opposition candidate. The new Prime Minister, Jose Luis Rodriguez Zapatero, quickly followed through on his promise to remove all Spanish troops from Iraq. Other European countries followed his lead. Hungary, Iceland, Portugal, the Netherlands, Norway, Italy, Slovakia, and Lithuania all redeployed their troops between 2004 and 2007 due to the length and unpopularity of the war, domestic politics, and to safe-guard against being targeted by terrorists.

<sup>29</sup> Professor Jolyon Howorth, in his *Europe, the US, and the Iraq War* course, Spring 2008.

<sup>30</sup> John King, "Bush: Join 'coalition of the willing,'" November 20, 2002, available at <<http://edition.cnn.com/2002/WORLD/europe/11/20/prague.bush.nato/>>, (accessed April 6, 2008).

<sup>31</sup> Wyn Rees, *Transatlantic Counter-terrorism Cooperation: The New Imperative*, p. 28-52.

<sup>32</sup> Professor Stuart Gottlieb demonstrated in his *Terrorism and Counterterrorism* course that President Clinton viewed terrorism as a crime. He further explained how that perspective led to less extensive, more reactive responses that emphasized law enforcement and the judicial process. This is a view that Europe has shared, though since 9/11 they have become more proactive in their attempts to prevent terrorist attacks. Bush's view of terrorism as a war against the US translates into a greater focus on a response in military force. Discussions related to this topic have also arisen during Professor Jolyon Howorth's *Europe, the US, and the Iraq Crisis* course.

The British did not respond in the same fashion, thanks largely to (then) Prime Minister Blair's ardent support for Bush and the Iraq War. However, in 2007 even the British gradually began to turn over control of the southern areas of Iraq they controlled, mainly in Basra, to Iraqi troops. The British plan was to withdraw their troops from Iraq and focus their attention to Afghanistan. The British explained this plan by indicating that the low level of violence in their areas of responsibility and the competency level of the Iraqi Army units there warranted this move. On the other hand, increased violence in Afghanistan against Al Qaeda and Taliban fighters necessitated greater focus and bore clear relevance to global counterterrorism efforts. An enemy resurgence in Basra in 2008 led the (then) British Defence Secretary Des Browne to postpone the proposed drawdown until the situation stabilised.<sup>33</sup> Nevertheless, the gradual European transition out of Iraq reflects their perspective that America controls Iraq and that actions there are peripherally related to counterterrorism.

## US Counterterrorism Changes, Post-9/11

The US and the EU each took a number of key actions, post-9/11, designed to increase their effectiveness in counterterrorism actions. Most US actions were structural or military in nature. Bush established the Department of Homeland Security (DHS)<sup>34</sup> and reorganised twenty-two federal agencies under it.<sup>35</sup> Congress created the Transportation Security Agency (TSA) with the Aviation and Transportation Security Act to stiffen security procedures at American airports and for other modes of transportation.<sup>36</sup> In April 2002, Bush announced the creation of Northern Command (NORTHCOM) to assist the DHS, TSA, and FBI in protecting the homeland. While the American military had established Regional Combatant Commands (RCC) for other areas of the world, prior to 9/11, it did not have a unified command in charge of military related homeland defence and civil support operations in North America.<sup>37</sup>

Congress and Bush together appointed the bipartisan 9/11 Commission to evaluate US preparedness for, and response to, the terrorist attacks of 9/11, and

<sup>33</sup> *Sky News*, "Brit Troop Withdrawal From Iraq Delayed," April 1, 2008, available at <<http://news.sky.com/skynews/article/0,,91211-1311359,00.html>>, (accessed April 6, 2008).

<sup>34</sup> President George W. Bush, "Address to a Joint Session of Congress and the American People," September 20, 2001, available at <<http://www.whitehouse.gov/news/releases/2001/09/20010920-8.html>>, (accessed April 6, 2008).

<sup>35</sup> Office of Management and Budget: The Executive Office of the President, "Department of Homeland Security," available at <<http://www.whitehouse.gov/omb/budget/fy2005/homeland.html>>, (accessed April 6, 2008).

<sup>36</sup> "TSA: Our History," available at <<http://www.tsa.gov/research/tribute/history.shtm>>, (accessed April 6, 2008).

<sup>37</sup> US NORTHCOM, available at <[http://www.northcom.mil/About/history\\_education/history.html](http://www.northcom.mil/About/history_education/history.html)>, (accessed April 6, 2008).

to recommend steps that could help America “guard against future attacks.”<sup>38</sup> Bush followed one of its major recommendations and created the Director of National Intelligence (DNI).<sup>39</sup> This came as part of the Intelligence Reform and Terrorism Prevention Act and folded all other US intelligence agencies under one centralised organisation, the Office of the DNI. Its mandate was to bring the intelligence agencies together, facilitate crosstalk, and speed-up intelligence sharing, eliminating the intense rivalries between them.<sup>40</sup> Congress passed the Patriot Act to update the Foreign Intelligence Surveillance Act (FISA)<sup>41</sup> and strengthen America’s ability to combat terrorism through technical means and greater legal freedom. The Patriot Act eliminated the wall that prevented intelligence sharing between officials oriented on criminal investigations and those geared toward intelligence operations.<sup>42</sup> This modification eliminated one of the primary US failures that allowed Al Qaeda to successfully carry out the terrorist attacks on September 11<sup>th</sup>.

In addition to organisational changes, the US also invaded Afghanistan and Iraq to depose the Taliban and Hussein regimes. Together these changes demonstrated America’s commitment to addressing terrorism as a foreign policy and domestic priority. They also illustrate the US focus on structural change and military operations, but sparse attention paid to winning the long fight against terrorism, which involves preventing the spread of radical Islamic ideology.<sup>43</sup>

## European Counterterrorism Changes Before and After 9/11

Prior to 9/11, Europe saw a need to strengthen its capacity for counterterrorism, other policing activities, and investigations. It sought to accomplish this through greater coordination. The ratification of the 1993 Treaty on European Union set the foundation for such lateral cooperation. The renaming of its third pillar from Justice and Home Affairs to Police and Judicial Cooperation in Criminal Matters (PJCC) demonstrated the importance the EU placed on police

<sup>38</sup> National Commission on Terrorist Attacks Upon the United States website, available at <<http://www.9-11commission.gov/>>, (accessed April 6, 2008).

<sup>39</sup> *The 9/11 Commission Report*, July 20, 2004, p. 411-415, available at <<http://govinfo.library.unt.edu/911/report/911Report.pdf>>, (accessed April 6, 2008).

<sup>40</sup> *Ibid.*, and Office of the Director of National Intelligence website, available at <<http://www.dni.gov/>>, (accessed April 6, 2008).

<sup>41</sup> Elizabeth B. Bazan, “CRS Report for Congress: The Foreign Intelligence Surveillance Act: An Overview of the Statutory Framework and Recent Judicial Decisions,” p. CRS-1, available at <<http://www.fas.org/irp/crs/RL30465.pdf>>, (accessed April 6, 2008).

<sup>42</sup> Professor Stuart Gottlieb, during his *Terrorism and Counterterrorism* course at Yale University, Spring 2007.

<sup>43</sup> *The 9/11 Commission Report*, July 20, 2004, p. 374-382, available at <<http://govinfo.library.unt.edu/911/report/911Report.pdf>>, (accessed April 6, 2008).

and judicial cooperation, under which terrorism and other criminal matters were organised.

The EU gave these concerns additional emphasis with the 1995 creation of the European Police Office (Europol) “to improve the effectiveness of policing authorities in member states and strengthen cooperation between them.”<sup>44</sup> Europol was to strengthen European states by encouraging cooperation on the exchange of information, analysis of intelligence, investigatory capacity, and computerising data. Its area of emphasis includes the prevention and combating of terrorism, drug trafficking, nuclear and radioactive material, money laundering, and other serious crimes.<sup>45</sup>

The post-9/11 creation of the European Arrest Warrant (EAW) and Eurojust in 2002 added even more focus on coordination. The EU took these two measures in recognition of the increased importance and complexity of coordination in light of an increased international terrorism threat and the projected expansion of the EU. The EAW replaced the national extradition systems between European states, speeding extradition “by requiring national judicial authorities to recognise, with a minimum of formalities, requests made by the judicial authority of another member state for the arrest and surrender of a person.”<sup>46</sup> The aim of Eurojust is to increase authorities’ abilities to investigate and prosecute serious cross-border crime.<sup>47</sup> To ensure the aim is met, the EU established a system for reviewing these mechanisms to evaluate their effectiveness in facilitating their desired ends. Finally, the EU developed the European Security Strategy (ESS) in December 2003 to parallel the US National Security Strategy (NSS)<sup>48</sup> and outline its shared strategic security goals.

The EU took these measures to increase cooperation among its member states and with the US as it relates to counterterrorism. There is however an important difference between increased coordination and enhanced capabilities. Yet, it is likely that the former will lead to the latter. Increased, more rapid coordination enables greater maximisation of laws and disrupts terrorist organisations. It facilitates governments’ ability to find terrorist leaders and remove them from society before they complete planning for, and/or conduct, a terrorist act. Better information-sharing also helps officials ensure convictions of terrorists and speeds-up investigations; freeing government personnel to move onto other tasks.

<sup>44</sup> Heinz Gartner and Ian M. Cuthbertson, *European Security and Transatlantic Relations After 9/11 and The Iraq War*, p. 95.

<sup>45</sup> *Ibid.*, p. 95.

<sup>46</sup> *Ibid.*, p. 96.

<sup>47</sup> *Ibid.*, p. 96.

<sup>48</sup> *Ibid.*, p. 96.

## Post-9/11 Successes

Since initiating changes, the US and European countries experienced some significant counterterrorism successes; some the result of unilateral efforts while others are due to joint endeavours. Their efforts have yielded fruit in terms of killing and capturing terrorists, freezing their financial accounts, destroying terrorist training camps in Afghanistan, and preventing several major terrorist attacks. For instance, the US Federal Bureau of Investigation (FBI) disrupted a sleeper cell of Muslim radicals who trained at Al Qaeda training camps in Afghanistan after 9/11, and US officials captured individuals plotting a terrorist attack on Fort Dix, NJ. Military operations have killed or captured many of Al Qaeda's top lieutenants, such as Khalid Sheik Mohammed, the mastermind of the 9/11 attacks, and Abu Musab al-Zarqawi, the former leader of Al Qaeda in Iraq, responsible for escalating the violence in that country following the American-led invasion. More recently, US officials arrested four men connected to the Newburgh Plot<sup>49</sup> as well as David Headley for his reconnaissance role in the November 2008 Mumbai attacks conducted by Lashkar-e-Toiba (LeT) operatives. Finally, in what some have described as the most serious threat to the American homeland since 9/11, law enforcement officials interdicted Zazi,<sup>50</sup> who was in his final preparation for carrying out an attack against New York City subways.

European states have also experienced counterterrorism successes since 9/11. A few of the more notable successes involved British and German police efforts. British officials arrested a handful of individuals suspected in the subway and bus bombings of July 7, 2005 and the Glasgow Airport attack.<sup>51</sup> Meanwhile, in what is known as the Sauerland Plot, Germans arrested "three Islamic militants suspected of planning large-scale terrorist attacks against several sites frequented by Americans,"<sup>52</sup> including the Ramstein Air Force Base, one of the largest US overseas military bases.

<sup>49</sup> Doyle Murphy, "4 Newburgh Men Arrested in Plot to Shoot Down Military Planes, Bomb Synagogue," *Times Herald Record Online*, May 21, 2009, available at <<http://www.recordonline.com/apps/pbcs.dll/article?AID=/20090521/NEWS/905210342>>. The Newburgh Plot involved a plan to shoot down an aircraft at Stewart Airfield in Newburgh, New York and a plot to bomb a Jewish Center in New York City.

<sup>50</sup> *Associated Press*, "Police Interrogate Colo. Man in Suspected NYC Subway Plot," September 18, 2009, available at <[http://www.lawofficer.com/news-and-articles/news/2009/09/police\\_interrogate\\_colo\\_man\\_in\\_suspected\\_nyc\\_subway\\_plot.html](http://www.lawofficer.com/news-and-articles/news/2009/09/police_interrogate_colo_man_in_suspected_nyc_subway_plot.html)>.

<sup>51</sup> *CBS/AP*, "Police Chase Glasgow Attack Suspects," July 1, 2007.

<sup>52</sup> Mark Landler and Nicholas Kulish, "Police Arrest 3 in German Terror Plot," September 5, 2007.

## Joint Counterterrorism Efforts, Post-9/11

While the Iraq War has been the largest point of transatlantic contention since September 11<sup>th</sup>, counterterrorism operations in Afghanistan constitute the major area of cooperation. As a result of a fragile yet undeniable success in Iraq, a new American President,<sup>53</sup> and a renewed emphasis on the *right war*, transatlantic cooperation has once again become more visible. Disagreements over America's decision to use force against Hussein – that reversed some of the post-9/11 support it had enjoyed – has faded into the background. Although domestic politics ensures that some tension remains, the friction is certainly less palpable now than it was only a few years ago.

Recent developments in Afghanistan are one clear indicator of the trajectory of transatlantic counterterrorism cooperation. Following Obama's December 2009 announcement regarding a troop surge of 30,000 in Afghanistan, NATO allies have pledged additional troops as well. Together the total comes close to the 40,000 for which GEN McChrystal initially asked.

An earlier, yet related example of the resiliency of the transatlantic partnership is evidenced by the outcome of Germany's September 2009 parliamentary elections. Going into the elections there was concern that the Germans, many of whom are discontent with their involvement in Afghanistan, would elect more liberal candidates, leading to a coalition government that would decide to announce a timeline for redeployment of all Bundeswehr troops. The former Foreign Minister and Social Democratic Party (SPD) leader, Frank-Walter Steinmeier, who ran against Angela Merkel, had already declared his intention to do just that if elected chancellor.<sup>54</sup>

This result would have presented strategic challenges to NATO's efforts in Afghanistan. It would have meant a loss of the third largest contingent of troops, numbering nearly 4500, and stretch American and NATO forces thin as they attempted to cover this new area with an already limited number of troops. In addition to the loss of manpower, it would signal a fracturing of the coalition at a critical juncture in the campaign. That signal may have further emboldened the Taliban (among other enemy combatants), complicating American and Afghani efforts to negotiate with moderate Taliban elements. German withdrawal would have likely sent shock waves through other members of the coalition,

<sup>53</sup> President Obama is widely thought to project an entirely different, fresh, and humble demeanor (than George W. Bush). This may have contributed to his selection as the 2009 Nobel Peace Prize recipient. One of the reasons cited for his selection was his contribution to a "new climate in international politics." *CNN*, "Praise and Skepticism Greet Obama's Nobel Peace Prize," October 9, 2009, available at <<http://edition.cnn.com/2009/WORLD/europe/10/09/obama.nobel.international.reaction/>>.

<sup>54</sup> Patrick Donahue, "German SPD Anoints Gabriel Leader After Election Loss," *Bloomberg.com*, November 13, 2009, available at <[http://www.bloomberg.com/apps/news?pid=20601100&sid=ar\\_zbF3MAePE&refer=germany](http://www.bloomberg.com/apps/news?pid=20601100&sid=ar_zbF3MAePE&refer=germany)>.

particularly Britain, the second largest troop contributor after the US, which also faces persistent domestic opposition to involvement in Afghanistan.

German redeployment would have left a significant security gap along Afghanistan's Northern front – an area that, until summer 2009, had been relatively quiet. During July and August 2009, Taliban and Uzbek groups [members of the terrorist groups Islamic Movement of Uzbekistan (IMU) and the Islamic Jihad Union (IJU)] made a strategic decision to open a third front against the coalition, in addition to the enemy's Southern and Eastern operations. This move indicated the Taliban's relative strength, that they had fighters to spare, and could afford to move people from their traditional stronghold in the South. It also demonstrated that they understood the political ramifications at stake by applying pressure on the Germans. The German elections have come and gone however, and the conservative government led by Merkel remains in power and committed to the Afghan mission, even moving to bolster their troop levels by another twenty percent.<sup>55</sup> Hence, the transatlantic partnership survived another test, one of the most significant ones under the Obama presidency.<sup>56</sup>

On the prevention side, joint counterterrorism efforts between the US and European authorities thwarted a 2006 terrorist plan to use liquid explosives to explode transatlantic airliners en route from the UK to the US; an attack that could have caused more deaths than 9/11.<sup>57</sup> As for joint agreements, they signed a Passenger Name Record (PNR) sharing agreement in July 2007 after more than three years of negotiations.<sup>58</sup> The European Commission, concerned about protecting the freedom of its citizens, was reluctant to allow airlines leaving Europe to share data with American officials. The US wanted passenger data in advance to facilitate its ability to pre-screen individuals entering the US. This was in response to tightening security and combating terrorism following the 9/11 terrorist attacks. The European Commission and the US initially reached a deal in May 2004 that was to last three and a half years, despite reservations from the European Parliament.<sup>59</sup> The agreement was overturned by a European Court of Justice ruling in May 2006.<sup>60</sup> The 2007 agreement demonstrates

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<sup>55</sup> *Deutsche Welle*, "Germany Approves Troop Increase for Afghanistan," *Afghanistan Conflict Monitor*, February 2010, available at <<http://www.afghanconflictmonitor.org/germany/>>

<sup>56</sup> Much of the information in the preceding four paragraphs draws on research and writing I did as part of a team from West Point's Combating Terrorism Center that deployed to Afghanistan during July and August 2009. While there we took a strategic look at the militant landscape, as influenced by external actors. That research resulted in briefs we gave to elements of the US Army, GEN McChrystal, and Ambassador Eikenberry.

<sup>57</sup> US and Asian authorities also foiled a terrorist plan to conduct a similar attack on multiple airliners flying from the Philippines across the Pacific to the US in 1995.

<sup>58</sup> European Union, Delegation of the European Commission to the USA, "EU-US Passenger Name Record (PNR) Agreement Approved," July 23 2007.

<sup>59</sup> *DHS Fact Sheet*, "US-EU Passenger Name Record Agreement Signed," May 28, 2004.

<sup>60</sup> John Ward Anderson and Keith L. Alexander, "Court Voids US-Europe Passenger Agreement," May 31, 2006.

perseverance by both the EU and US to reach a lasting deal and also indicates that compromise and future security cooperation on counterterrorism efforts is possible over the long term, despite differences. However, the Christmas Day 2009 underwear bomber, Umar Farouk Abdulmutallab, demonstrated that there remains substantial room for improvement in airport security procedures, America's No Fly Lists, and international cooperation.<sup>61</sup>

## Recommendations

Beyond tactical and operational victories, to win the long term fight will require a comprehensive and united global effort. It requires using all elements of national strength to decapitate terrorist organisations<sup>62</sup> and drain their finances, but also to undermine their passive support base<sup>63</sup> and win the war of values.<sup>64</sup> The EU and the US are the most plausible leaders of such a holistic effort. Between them, the technical resources they command, the experience they have, and their power projection capabilities makes them well suited for the mission. But more than this, it is their values which have been fundamental in past cooperation and past victories, and it will be those same values which will underpin success in the long fight against international terrorism.

Prior to the Obama presidency, the set of shared values in counterterrorism efforts had not been as robust as needed for lasting success. European-US differences over what constitutes torture and the extent of citizens' civil liberties

<sup>61</sup> *BBC*, "Profile: Umar Farouk Abdulmutallab," January 7, 2010, available at <<http://news.bbc.co.uk/2/hi/americas/8431530.stm>>.

<sup>62</sup> Dr. Leonard Weinberg and Dr. Arie Perliger, "How Terrorist Groups End," *CTC Sentinel*, February 2010, Vol. 3, Iss. 2. In their piece, Weinberg and Perliger draw on the works of terrorism expert Audrey Cronin and show that the capture or killing of group leadership is the manner by which most terrorist groups meet their demise. This method leads to the end of 30.6% of terrorist groups as opposed to the second greatest factor, repression by authorities (21.9%), and the third greatest factor, group abandoning terrorism in favour of non-violent tactics (12.5%). Despite the success that Cronin, Weinberg, and Perliger's data indicates decapitation strategies have usually enjoyed against terrorist groups, the wars in Iraq and Afghanistan have shown that simply killing Al Qaeda's leaders, or that of other terrorist groups, does not inevitably lead to the rapid demise of the group. My analysis of this discrepancy is that in some cases and especially those where the leadership structure is hierarchical, the decapitation strategy can be very effective. However, in cases like Al Qaeda where the group's organization is more decentralized, decapitation efforts may not be as effective. Such efforts may still disrupt the group's activities and attack planning temporarily, but are insufficient to overcome unfavourable perception of the strikes among local populations. This poor perception is due to favourable views of the terrorist group, bad views of the government, and occasional collateral damage caused by government strikes. Together these factors serve as a recruitment tool and regeneration mechanism for decentralized groups that often outpaces governments' abilities to decapitate their leadership.

<sup>63</sup> Professor Stuart Gottlieb in lecture during his *Terrorism and Counterterrorism* class at Yale University, Spring 2007.

<sup>64</sup> Prime Minister Tony Blair, "A Battle for Global Values," *Foreign Affairs*, January / February 2007, Volume 86, Number 1, p. 79-90.

were two indicators in this realm. Additionally, the failure to reach a compromise on the inclusion of US military members as subject to the International Criminal Court (ICC), while understandable from the American perspective, undermined that organisation's legitimacy, as well as that of the US.

Under Obama the US is seeking to take a more multilateral approach. This means regarding the EU and its members as partners, not as *Old Europe*, whose opinions may be disregarded.<sup>65</sup> In part, toward this end, America should encourage its citizens, from an early age, to develop a less US-centric perspective and to study cultures and learn foreign languages. Especially important are Middle Eastern and Asian languages; as these are spoken in regions where military operations are currently underway, and where future phases of the war against Islamic extremists are likely to be waged. Even if the US were able to stay out of overseas endeavours and not *need* such linguistic and cultural expertise, the understanding such study would promote throughout the government and its citizenry would likely result in better foreign policy decision-making.

The US also needs to develop a robust force capable of complimenting the military toward the successful execution of nation building efforts. The spectrum of these activities includes a wide range of activities spanning peace and conflict, including intelligence operations, humanitarian assistance, law enforcement and criminal investigation, economic reconstruction, diplomatic partnerships, and institution building. Most of these are outside the scope of the military's skill set and unrealistic to expect it to perform well, especially in environments where all these activities may be needed on any given day. A force composed largely of civilians – diplomats, aid workers, construction and other contractors, economists, Foreign Service officers, lawyers, and business leaders – along with police personnel and specialised military units, would be better suited to accomplish the task of winning the peace after traditional military elements win the major battles. This stabilisation force would have to be deployable in the same way that the military is. Professor Thomas Barnett from Harvard University has mentioned a similar idea to this type of stabilisation force. Former Secretary of State Condoleezza Rice recognised this need as well when she changed a State Department policy to enable forced deployments of Foreign Service officers to combat zones. Despite this change and a civilian “surge” of approximately one thousand personnel to Afghanistan, it is not enough to be decisive – either in terms of numbers or with regard to the variety of expertise needed. Whether America fights future wars for reasons related to democracy promotion or not, it would still benefit from a stabilisation force of this nature that could promote US interests abroad and assist other states' economic and political transitions to ones marked by freedom, good governance, the rule of law, and human rights.

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<sup>65</sup> Secretary Donald Rumsfeld, “Outrage at ‘old Europe’ remarks,” January 23, 2003, available at <<http://news.bbc.co.uk/2/hi/europe/2687403.stm>>, (accessed April 7, 2008).

Strategic communications is a third area where America is particularly weak. Terrorist groups like Al Qaeda are adept at getting their message out in a timely fashion and in segmenting the message to different audiences. The US gets bogged down in political correctness and in bureaucratic processes required for obtaining approval of messages. The US (and its allies) need to be first with the truth. This applies to the battlefield and elsewhere. When not first, the US cedes the information war to the enemy, allowing propagandic versions of the story to be accepted as truth by the pertinent audience. Once this has happened, it does not matter what the US says. Whoever is first is believed; the others are discarded. Likewise, the US need not be afraid to hold up the mirror to terrorist groups, shining the light on their brutal acts and the inconsistency between their words and deeds.<sup>66</sup> One example of where American military and governmental officials could exploit this is when there are discrepancies between the Taliban code of conduct and their actions.<sup>67</sup> They are either inconsistent, the Taliban leadership cannot control their people, or it is not the Taliban conducting certain operations. In any case, they are weaker, less unified, and less legitimate than the US and local Afghans think.

For Europe's part, they need to publicly support the US when they agree with American policies. Doing so will often be less politically expedient in the short-term for them domestically, but will prove beneficial in the medium- to long-terms. Publicly insulting America undercuts US legitimacy, reducing its ability to lead international counterterrorism efforts. This results in less than optimal global counterterrorism coordination and technology sharing. It also means some countries will be less prepared to fight terrorism than they would be with strong American leadership. This will hurt Europe in the long run as the *first line* of its defence faces threats from individuals or terrorist groups that other countries could have resolved.<sup>68</sup>

As transatlantic partners, Americans and Europeans should utilise existing international and security organisations versus ad hoc coalitions of the willing because they will be more successful in the long run.<sup>69</sup> This is because they are better organised, share similar values on a wide variety of issues, have established, agreed upon rules for various contingencies, and are more enduring. The US should also fully support the European Rapid Reaction Force because it is in America's interest to have a more globally engaged Europe, able and willing to shoulder increased responsibility for all security matters. Increased European

<sup>66</sup> This is an idea I first heard LTC Reid Sawyer espouse during the summer of 2009. He is the Director of the Combating Terrorism Center at the United States Military Academy at West Point.

<sup>67</sup> Ibid.

<sup>68</sup> *European Security Strategy*, 12 December 2003, p. 6.

<sup>69</sup> Steve Schifferes, "US names 'coalition of the willing,'" March 18, 2003, available at <<http://news.bbc.co.uk/2/hi/americas/2862343.stm>>, (accessed April 7, 2008).

capacity can result in increased European partnership with America and more lasting success in the global struggle against terrorists and their ideology.

## Conclusion

Despite some US and European successes, the heavily one sided approach of the US (toward the use of military force) and (perceived) dubious ethics of counterterrorism policies under Bush was a fundamental factor endangering the long-term legitimacy of global counterterrorism efforts. The resulting differences between the EU and US during the Bush administration were the second most important weakness. Obama's ascension to the White House appears to have changed European perspectives of US counterterrorism intentions and actions. Obama facilitated this change, in part, through a more humble demeanour, engaging European countries as equal and valued partners, and ordering the withdrawal of American military units from Iraq.<sup>70</sup>

This struggle extends beyond Iraq and Afghanistan, however. It is one in which the West and the world must exhibit integrity and the moral superiority of the counterterrorist cause. To be successful, governments must do this at global and local levels.<sup>71</sup> Sir David Omand, former British security and intelligence coordinator, affirmed this when he indicated a need to redefine national security to include a set of ethical guidelines that governments should follow to be effective in foreign policy and counterterrorism endeavours.<sup>72</sup> This is important because it will facilitate governments' ability to eliminate the causes of terrorist grievances, win the passive support base away from terrorists, and better balance governmental powers and civil liberties,<sup>73</sup> thereby experiencing greater counterterrorism success in the fight of our generation.

This coincides with Obama's strategy for combating terrorism and offering a counter-narrative than that offered by Al Qaeda and other terrorist groups. Specifically, Obama has moved to end enhanced interrogation practices and secret detention centres, to close Guantanamo Bay, to try terrorist in American civilian courts, and to provide a timeline for America to commence redeployment from Afghanistan – demonstrating that it is not a permanent occupation force. While each of these actions has tactical and operational implications, some of which are negative, Obama's bet is that together they will have a stra-

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<sup>70</sup> The withdrawal of the American military from Iraq is something that would have occurred regardless of the Presidential administration, but because of the timing and his consistent stance of the Iraq War, historians will credit President Obama for ordering and accomplishing it.

<sup>71</sup> RAND, "US Counterterrorism Strategy Must Address Ideological and Political Factors at the Global and Local Levels."

<sup>72</sup> Sir David Omand, "Redefining National Security: Six Points of Departure," February 21, 2008.

<sup>73</sup> Professor Stuart Gottlieb talked about this in lecture during his *Terrorism and Counterterrorism* course at Yale University, Spring 2007.

tegitally positive effect in shaping American policy, communicating its values to the rest of the world, and reducing the traction available for terrorist groups to draw upon in the fight for the uncommitted.<sup>74</sup>

Time and historians will pass final judgment, but Obama's moves will certainly reduce some of the unfavourable and unintended consequences<sup>75</sup> of past American counterterrorism policies and actions. The key will be to ensure the country maintains adequate pressure through a proactive stance in the pursuit of terrorists at home and abroad, despite the value-based actions that some claim will only make America less safe.<sup>76</sup> In the midst of the debate over what America's counterterrorism policies should entail, however, let no one forget that the US will not *win* the war alone. If the war against Islamic extremists is to be relegated to a manageable level on a permanent basis, it will be through consistent efforts on the part of national and religious leaders the world over, many of whom America cannot influence directly. Hence, Obama's gamble is a good one, given the increased military presence in Afghanistan and dramatic increase of drone strikes in Pakistan.<sup>77</sup> The balance of these actions may not result in a stable, democratic, and transparent government in Afghanistan, however, they should maintain pressure on key terrorist groups, reduce their sanctuary, and restore traditional American values – factors important for sustained transatlantic cooperation and the long term strategic success of global counterterrorism endeavours.

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<sup>74</sup> Ambassador-at-Large, Daniel Benjamin, pointed out these factors and this intention when I questioned him about what concrete steps the Obama administration is taking to counter the terrorist narrative. The setting was a speech he gave at the International Peace Institute (IPI) at the UN Plaza, March 1, 2010.

<sup>75</sup> Martha Crenshaw uses the term “unintended consequences” in her edited volume, *Terrorism in Context*.

<sup>76</sup> Former Vice President Dick Cheney has made this claim on TV talk shows during the fall of 2009.

<sup>77</sup> Peter Bergen and Katherine Tiedemann, “Pakistan Drone War Takes A Toll on Militants—and Civilians,” *CNN*, October 29, 2009, <<http://edition.cnn.com/2009/OPINION/10/29/bergen.drone.war/>>. The American military's use of drones to strike terrorists and Taliban targets in Pakistan has dramatically increased during President Obama's tenure compared to the levels of attacks during the Bush presidency.

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# Europe and the United States in the “Asian” 21<sup>st</sup> Century: The Political, Economic and Security Context<sup>1</sup>

**Miloš Balabán<sup>2</sup>**

## Introduction

While, at the western end of Eurasia, most European states are taking part in a great experiment; broadening and deepening their political, economic and security integration within the EU, at the eastern end of Eurasia, an experiment of no less importance is underway. China, the world’s most populous great power (a relatively poor, centrally controlled country) is being transformed – in a historically short time – into a politically and economically powerful, mature and respected global actor. Over the past three decades, from the beginning of economic reforms in 1978, China has gradually risen to become the third strongest economy in the world (as per GDP), and it can be expected that within the next 20 years it will, by the same measurement, become the world’s leading economy (see Table I).

*Table 1: Shares in global GDP (in % using PPP)*

Country	1995	2007	2020	2030
USA	21.7	19.4	18.3	16.6
China	5.5	10.1	17.7	22.7
Japan	8.3	6.0	4.6	3.6
India	3.1	4.3	6.9	8.7
Russia	2.8	2.9	3.1	2.7

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EU-27	24.5	20.8	18.6	15.6
France	3.6	3.0	2.5	2.1
Germany	5.3	3.9	3.2	2.5
United Kingdom	3.4	3.1	2.9	2.5

Source: *The Economics Intelligence Unit – taken from Charles Grant’s “Can Europe and China shape a new world order?” London, Centre for European Reform, 2008.*

However, as in the case of many other countries, China’s success also has negative implications. Still, it is clear that whatever happens in a country with an estimated 1.4 billion inhabitants it will decisively impact the future of the international political and physical environment. While some 400 million people have been *rescued* from the trap of poverty and joined the growing army of the middle class – demonstrating an attractive example of Chinese soft power; one which a number of developing countries look up to – the rapid rise of China greatly strains the country’s industrial, agricultural, transportation and welfare infrastructure, and further degrades the natural environment. Moreover, economic change often results in social and ethnic tensions. Still, due to China’s centralised political system its development strategy seems to be working and is likely to remain manageable over the long term.<sup>3</sup>

A number of projections and economic forecasts for the next 20-25 years indicate that the rise of China may be symptomatic of a larger phenomenon: the rise of new global and regional actors outside the transatlantic area which has dominated world politics and economics for roughly 500 years. This primarily concerns the countries of South and East Asia, as this is the region where the most profound changes are unfolding. Japan is no longer the only Asian economic marvel. It has been joined by India, Vietnam, Singapore, South Korea and Indonesia. The rise of Asia was thoughtfully explored by Lawrence Summers (economist and former US Treasury Secretary) who noted that during the industrial revolution the standard of living rose at a rate of 50% (est.) during a person’s life span, Asia’s current growth rate represents an unprecedented 100-fold (that is, 10,000%) rise in standards of living during one life span.<sup>4</sup>

The overall shift of the global centre of gravity is likely to be further accentuated by the impact of the global economic crisis since forecasts estimate that the US and European 60% share of the total volume of the global economy will

<sup>3</sup> For more information on the internal and economic development of China see Balabán, M. (2008): *Megatrendy světového vývoje* < [http://publication.fsv.cuni.cz/attachments/281\\_031%20-%20Balaban.pdf](http://publication.fsv.cuni.cz/attachments/281_031%20-%20Balaban.pdf)>, p. 9, 13-19.

<sup>4</sup> Mahbubani, K (2008): *Ring in the Asian Century*, Los Angeles Times, 19 February 2008, <<http://articles.latimes.com/2008/feb/19/opinion/oe-mahbubani19>>.

be significantly reduced. 2009 became the first year in which the economies of developing countries took credit for nearly 100% of global economic growth.<sup>5</sup>

## The End of Unipolarity and the Diffusion of International Influence

Political punditry supported by statistical data shows that the so-called *unipolar moment*; the period characterised by the US's global hegemony following the end of the Cold War and the breakup of its main Cold War rival, the Soviet Union, is finally over.<sup>6</sup> The present world is moving towards a multipolar configuration due to the emergence of new global and regional centres of power. While the US remains the strongest world power, its position is increasingly becoming a "first among equals." The *unipolar moment* ended because of serious mistakes and failures of American foreign policy throughout much of the 2000s. These include the dubious war in Iraq, mismanagement in the Global War on Terror (GWOT), the protracted conflict in Afghanistan and the closely related issue of Pakistani stability, the rejection of the Kyoto Protocol on greenhouse gas reduction, excessive consumption of mineral resources and America's key role in triggering the global economic crisis. Indeed, Henry Kissinger's prognosis, in *Does America Need a Foreign Policy?* that American dominance would remain a reality of life both in the short and medium-term perspective, is no longer self-evident.<sup>7</sup>

Yet, the US still plays an important role in the formation of the multipolar world and it would be a simplification to call the current stage of international relations "post-American." That the interests of today's main powers are, more or less, in harmony brings an element of stability to the not-quite-conflict-free process of transforming the international system into one marked by multipolarity. This is underscored by the fact that, taken together, the key powers – the US, China, the EU, Japan, Russia and India – have over half of the world's total population, generate about 65% of the global GDP and have an 80% share in worldwide arms spending. At the same time, as Richard Haass points out, the present world no longer operates according to the traditional multipolar model.<sup>8</sup> More players are visible: in addition to states there are global international organisations, especially the UN, but also the International Monetary Fund (IMF), the World Bank (WB), and even the Organisation of Petroleum

<sup>5</sup> Alliance Reborn: An Atlantic Compact for the 21st Century, p. 2, <[http://transatlantic.saisjhu.edu/Publications/nato\\_report\\_final.pdf](http://transatlantic.saisjhu.edu/Publications/nato_report_final.pdf)>.

<sup>6</sup> The term *unipolar moment* was coined in 1990 by Charles Krauthammer in "The Unipolar Moment," *Foreign Affairs*, Vol. 70, No. 1, America and the World 1990, pp. 23-33.

<sup>7</sup> Kissinger, H. (2002): *Does America Need a Foreign Policy?* (Czech transl.), Jiří Buchal, BB Art, Prague, 2002. p. 234.

<sup>8</sup> Haass, N.R. (2008): The Age of Nonpolarity, *Foreign Affairs*, May/June 2008, <<http://www.foreignaffairs.org/20080501faessay87304/richard-n-haass/the-age-of-nonpolarity.html>>.

Exporting Countries (OPEC), whose ability to determine the price of oil lends it significant leverage.

Regional integration processes are also gaining momentum, a fact reflected in the emergence and strengthening of political, economic and military integration blocs. The most obvious examples are the EU and NATO, but they should not overshadow the rising influence of non-Western actors' associations such as the Association of Southeast Asian Nations (ASEAN), the Shanghai Cooperation Organisation (SCO), the African Union (AU), the League of Arab States (LAS), the Cooperation Council for the Arab States of the Gulf (CCASG), the Economic Community of West African States (ECOWAS), or the South American Common Market (MERCOSUR).

The range of international actors is broader still and the global economy is heavily influenced by the activities of transnational corporations (TMCs) whose economic power is often greater than individual states.<sup>9</sup> Moreover, TMCs have established a system of economic relations through which they regulate global investment, finances and trade flows, giving them significant global political leverage. This is especially evident of companies active in oil and gas mining and transportation (e.g. Exxon Mobil), banking (e.g. ING Group) and the automobile industry (e.g. Toyota Motors). Influence is also wielded by some global NGOs (Greenpeace, Transparency International), the media (including Internet portals) which shape political attitudes and opinions of political communities (e.g. CNN, BBC, Al-Jazeera, You Tube) and armed movements with varying degree of hierarchy, centralisation and coordination, which can impact the security and economic situation on global as well as regional scale (e.g. Al Qaeda, pirates). On the whole, influence is more diffused than ever.

Despite the above, the influence of states, and especially the principal world powers, is still dominant. The deepening of global economic interactions substantially heightens these powers interdependence, which may reduce the risk of major conflicts or confrontations between them. Of course, the pursuit of national interests may lead to political and even military tensions, however, mutual dependence and growing linkages between the principal international powers are cemented by the fact that they are almost forced to cooperate in tackling the global challenges which invariably affect them all such as: environmental degradation, the proliferation of nuclear, biological and chemical weapons (NBC), regional conflicts, and the dangers of transnational organised crime (TOC) and international terrorism. A strong example of dialogue between the world powers is the current Strategic Economic Dialogue (SED) between the US and China, which is not a *strategic partnership* – China, it seems, does not yet aspire for greater geopolitical responsibilities – but rather a set of bilateral

<sup>9</sup> See the *Fortune Global's* list of the world's top 500 largest companies (available at < [http://money.cnn.com/magazines/fortune/global500/2006/full\\_list/](http://money.cnn.com/magazines/fortune/global500/2006/full_list/)>).

negotiations meant to better coordinate Sino-US policies of mutual benefit.<sup>10</sup> Such dialogue and the recognition of shared (among the great powers) interests does not imply the harmonisation of foreign policies and there remains many controversial issues that cloud relations between Western and non-Western actors, primarily between the West and Russia and China and their allies.

Indeed, many Western political circles continue to promote the idea of a “Greater West,”<sup>11</sup> reflecting the relative success, over the past fifty (+) years, of the model of Western-style liberal democracy which has spread far beyond the transatlantic region and became the basis of political legitimacy in places like Japan, India, South Korea, and throughout Latin America and specialists, such as Garton Ash, termed such an ideological proliferation as depicting a *post-West* chapter of international relations.<sup>12</sup>

In contrast however, Russian and Chinese political orientations and concepts stress that the “Greater West” model cannot be seen as the *only* model, and that the current multipolar world offers alternative approaches. For instance, the Russian and Chinese approach of *state capitalism* or the idea behind the “Beijing Consensus,” which encourages developing countries to cultivate their economies more gradually; with the state maintaining controlling stakes, and that political and cultural changes should be preceded by well-organised market reforms. This approach is the very opposite of the long-dominant “Washington Consensus” whereby the governments of developing states attempt to rapidly privatise state-owned businesses, unconditionally support the free-market, deregulate, and reduce public spending. Representatives of developing states tend to view the latter more sceptically, especially in light of the global economic crisis. Brazilian President, Luis de Silva, even said that “this crisis was caused by the irrational behaviour of white people with blue eyes, who before the crisis appeared to know everything and now demonstrate that they know nothing.”<sup>13</sup>

It is yet unclear as to whether the economic crisis will prove the accuracy of Kagan’s prediction that the multipolar world will witness the emergence of two hostile alliances: one encompassing the Western democracies which will continue to promote liberal democracy; and an “axis of autocracies” led by China and Russia, with the rivalry between these two blocs reminiscent of the Cold War.<sup>14</sup>

At present, Kagan’s prediction seems well off-the-mark considering the economic interdependence of the West (US, EU) to both Russia and China.

<sup>10</sup> This framework of US-Chinese relations has also been informally called G2.

<sup>11</sup> Russian Foreign Affairs Minister, Sergei Lavrov, has called this concept a version of the “end of history.”

<sup>12</sup> Ash, G.T. (2006): *Free World* (Czech transl.). Paseka, Prague – Litomyšl 2006.

<sup>13</sup> Blackwill, D.R.: *The Geopolitical Consequences of the World Economic Recession – A Caution*, p. 2.

<sup>14</sup> Kagan, R. (2007): *End of Dreams*, Policy Review, August – September 2007, Hoover Institution.

Moreover, the West, like Russia and China, pragmatically collaborate with many autocratic regimes in the Middle East and Central Asia to ensure the steady supply of energy resources, particularly oil and natural gas. Kagan's "axis of autocracies" is further devalued when viewed in light of Russia's and China's increasing cooperation with the democratic states of India and Brazil in the BRIC grouping. Finally, a new Cold War within this multipolar world would be a very unwelcome scenario for a number of new regional powers whose rise depended, and continues to depend, on peaceful international interactions.

## The Second World

The list of emerging regional powers is long and includes countries in the Middle East (Turkey, Egypt, Israel, Saudi Arabia, Iran), Central, Eastern and Southern Asia (India, Pakistan, South Korea, Indonesia), Latin America (Mexico, Brazil, Argentina, Venezuela, Chile) and Africa (Nigeria, South Africa). The rising importance of these countries in global politics is also due to many of their inclusion to the Group of 20 (G20) platform of the world's most advanced and dynamically developing states (Argentina, Brazil, India, Indonesia, South Korea, Mexico, Saudi Arabia, South Africa, Turkey). For Khanna, these countries represent the "Second World,"<sup>15</sup> located somewhere between the First World of economically developed states (where he places the US, EU and China), and the Third World of poverty. According to Khanna, the Second World is seeing heightened rivalry between individual powers competing for influence, however traditional geopolitical rivalry has largely been replaced by a system of *free* competition where Second World countries can choose the great power they align themselves to, and often vacillate between two or more. Here, a parallel may be drawn to the Non-Aligned Movement (NAM) during the Cold War, whose ambition was to pursue policies that would not be wholly dependent on either the US or USSR, or the blocs controlled by them.

When seeking working alternatives to the two Western centres of power (the US and EU), the Second World countries may increasingly turn to BRIC, the association of **B**razil, **R**ussia, **I**ndia and **C**hina which, when taken together, represent 25% of the world's landmass and 40% of the global population. The term 'BRIC' was first used in 2001 by O'Neill, and his concept, theoretical at the time, has (in the course of a few years) become a geopolitical and economic reality, confirmed on 16 June 2009 by the premier summit of the four countries' heads of state and government in Yekaterinburg, Russia. It is predicted that these four should, within between two and five decades, catch up with, and in some respects even overtake, the most developed countries of the world in economic terms. According to data from the International Monetary Fund (IMF) in 2007, the economic potential of the BRIC states represents some 12%

<sup>15</sup> Khanna, P. (2008) *The Second World*, Random House, New York, 2008.

of global GDP (compared to 8% in 2000), and by 2040-2050 their GDP will be higher than the (then – 1997) G7 (the US, Canada, the UK, France, Germany, Italy and Japan).<sup>16</sup> It is worth delving deeper into the BRIC countries actual and potential impact on international economics and, by extension, political structures to be able to fully appreciate the international dynamics at play.

## BRIC: Inversed and Assessed

### China

China is likely, by the late 2020s, to emerge as the world's leading economic and military power. At present, China produces two thirds of global output in industrial and household products such as: copying machines, shoes, toys and microwave ovens; it produces half the world production of cement, DVD players, digital cameras and textiles; one third of the global output of steel, DVD-ROM discs and desktop computers; and one fourth of all mobile phones, television sets and car radios. Additionally, China heavily invests into science and research seen through data on the growth of Chinese scientific and research potential. In 2006 the US bore a 32% share of global R&D expenses, compared to China's (relatively) modest 13%, but currently the average yearly growth in R&D spending is 17% in China as opposed to 4-5% in the US, Japan and the EU.<sup>17</sup> An OECD report notes that China has already overtaken Japan in R&D spending, and is now second, trailing the US.<sup>18</sup>

There are a number of clear indicators of China's growing investment into R&D, which are beginning to bear fruit. For instance, China is a leader of **clean technologies**<sup>19</sup> – which is internationally important since it is also one of the world's main polluters – is a positive step and speaks of the focus of Chinese R&D projects; maintains an **independent space programme** – it is only the third state, after the USSR (Russia) and the US to independently launch manned space flights (2003, 2005, 2008) – and its **Internet usage**, which is quickly spreading throughout China, testifies to the formation of “soft infrastructure”, important for fostering business and spreading information (see Table 2).

<sup>16</sup> Global Trends 2025: A Transformed World. The National Intelligence Council's 2025 Project (2008).

<sup>17</sup> A poll taken among 104 “business leaders” who were asked to identify the three most attractive target countries for R&D investment lists: 1) China 39%, 2) the US 29%, 3) India 28%, 4) the UK 24%, 5) Germany 19%, 6) Brazil 11%, 7) Japan 10%, 8 and 9) France 9%, Italy 9%, and 10) Czech Republic 8%. See: The Rise of the Multi-Polar World, Accenture, <[http://www.accenture.com/NR/rdonlyres/FDE9A8E7-6839-472B-8C9E-957DD6DF1B76/0/MultiPolar\\_World\\_final.pdf](http://www.accenture.com/NR/rdonlyres/FDE9A8E7-6839-472B-8C9E-957DD6DF1B76/0/MultiPolar_World_final.pdf)>, p. 26.

<sup>18</sup> See Financial Times 3 December 2006.

<sup>19</sup> Interesting comments on this trend were made by Thomas L. Friedman, in New York Times, 26 September 2009 <[http://www.nytimes.com/2009/09/27/opinion/27friedman.html?\\_r=1](http://www.nytimes.com/2009/09/27/opinion/27friedman.html?_r=1)>.

*Table 2: Number of Internet users in China*

Year	Number of users	% population
2000	22,500,000	1.7%
2001	33,700,000	2.6%
2002	59,100,000	4.6%
2003	69,000,000	5.4%
2004	94,000,000	7.3%
2005	103,000,000	7.9%
2006	137,000,000	10.4%
2007	162,000,000	12.3%
2008	253,000,000	19.0%
2009	338,000,000	25.3%

Source: < <http://www.internetworldstats.com/asia/cn.htm> >.

Finally, the volume of China's foreign currency reserves, which makes up more than one-fourth of global reserves (\$2.13 trillion dollars in July 2009), indicates the power of the Chinese economy. It is estimated that nearly half of this money is allocated in US government bonds, which makes China the US's biggest creditor. It also has large gold reserves (1054 tonnes). A key medium and long-term question for China is over how to secure the necessary oil supplies, as oil consumption grows at the annual rate of 7.5%; seven times faster than in the US.<sup>20</sup> This question is being answered in the geopolitical awareness of China, which is quickly translating its economic power into political partnerships with both established (Saudi Arabia, Iran) and relatively new (Sudan, Nigeria, Kazakhstan) oil producing states.

## India

Although less organised and markedly slower than China, India too is cornering a niche within the international economic and political realm and in contrast to China is forging economic growth through the development of cutting-edge sectors of the economy – information and communication technologies and business outsourcing.<sup>21</sup> A number of large Western firms have transferred their

<sup>20</sup> Since 1993 the People's Republic of China is no longer self-sufficient as oil producer. As early as 2005 it covered 43% of all its needs from imports, with its daily consumption (6.5 million barrels) ranking second (since 2004) after that of the United States .

<sup>21</sup> This segment of the service sector represents about one third of the GDP; services as a whole make up approximately 60% GDP, agriculture accounts for approx. 20% GDP and industry for the remaining 20% (CIA World Factbook).

production capabilities, especially in Information Technologies (IT), to India and expert estimates suggest that the country currently has a 28% share in the global “outsourced” labour in this area. India’s geopolitical influence is also growing due to its potential role as a bridge between the West and the East, as Mahhubani, predicts in *The New Asian Hemisphere: The Irresistible Shift of Global Power to the East*.<sup>22</sup> These roles are coupled with the prediction (all things being equal) that by around 2025, India will become the most populous country of the world. In short, cornering the high-technology sectors, filling an important geopolitical position between the West and East and boasting a huge, youthful population, conspire to foster the political influence of India on both regional and international levels.

## Russia

Russia has a considerable potential based largely on its huge energy wealth which are being used to achieve some of its strategic economic and political goals, particularly industrial diversification and, ironically, reducing its dependence on the energy sector. Russia’s energy supplies can cushion the impact of the global economic crisis, as Russia has been the hardest hit from among the BRIC countries. Here it is worth mentioning the sheer volume of Russian energy resources. According to experts, Russia has between 10-20 billion tonnes of proven oil resources (with the present intensity of exploitation these would last for another 22-45 years) and 47 trillion cubic metres of surveyed natural gas resources (enough for the next 75 years).<sup>23</sup> This data is significant not only for understanding Russia’s importance in international energy security, but also to understand Russia’s prospects of long-term cooperation with China and India in satisfying their increasing energy needs (in the case of China they are expected to increase by 150% until 2020),<sup>24</sup> and must thus be understood as producing a strong incentive for cooperation between these powers.

<sup>22</sup> Mahhubani, K., (2008): *The New Asian Hemisphere: The Irresistible Shift of Global Power to the East*, Public Affairs, 2008.

<sup>23</sup> Musatov, V. (2008): “O sovremennoi energeticheskoi politike Rossii, Mezhdunarodnaya zhizn,” no. 11/2008, p. 98. In the same article, Musatov provides the volume of predicted oil and gas resources: 44 billion tonnes of oil and 127 trillion cubic metres of natural gas. If these prognoses are confirmed by drilling, its oil resources would last Russia for another 100 and its gas resources for 200 years.

<sup>24</sup> This cooperation may be significantly strengthened by China’s participation in the project of the East Siberia – Pacific Ocean (VSTO) oil pipeline from Taishet in East Siberia to Kozmino on the Pacific coast. Based on a Russo-Chinese agreement from February 2009, the pipeline should branch off to the Chinese city of Daqing. To secure the construction of the branch, China lent the Russian companies Rosneft and Transneft \$15 and \$10 million (USD) respectively for this purpose. In return, Russia will supply China with an annual 15 million tonnes of oil from 2013 to 2030.

## Brazil

Similar to Russia, Brazil is rich in natural resources. In 2006 it gained autarky in the production and consumption of oil and oil products so that the Brazilian economy is not directly affected by fluctuating oil price in the global market-place; an advantage further supported by the widespread use of bio-ethanol for car fuel. It is predicted that if Brazil successfully develops some major Santos Basin oil fields, that would yield dozens of billion tonnes of oil, it may become the world premier exporter of oil by 2020.<sup>25</sup> Brazil is also attempting to strengthen its position as a regional leader in Latin America, a role justified by its economic and geopolitical leverage.

## Expanding the Role of BRIC

The growing geopolitical and economic role of BRIC, and the closer co-operation of the four powers, symbolises the potential of large non-Western actors to increasingly promote their own political and economic agendas on the international level. Indeed, one of the BRIC responses to the global economic crisis (and the role the US played in its commencement) was a proposal to reduce dependence on the US Dollar as the recognised global reserve currency, which was proposed by Russia and China at the Yekaterinburg Summit. Given the global economic order, this was a political gesture, since neither the Chinese Yuan, nor the Russian Rouble is, as yet, able to replace the US Dollar in purchasing power or convertibility. Still, the growing economic power of BRIC, especially of China, may conceivably cause a decline in the US Dollar's international significance.<sup>26</sup>

The BRIC countries can increasingly be expected to follow their own, independent policies in relation to key global issues such as energy security, the mitigation of climate change, the proliferation of NBC and the fight against terrorism.

Turning to some of more geopolitical indicators of the growing power of BRIC, it is necessary to consider the growing military potential of this group. The *2009 SIPRI Yearbook* contains a top ten list of states with the highest arms spending from 2008 which ranks: China (2), Russia (5) and India (10), whose

<sup>25</sup> Global Trends 2025: A Transformed World. The National Intelligence Council's 2025 Project (2008). <[http://www.dni.gov/nic/PDF\\_2025/2025\\_Global\\_Trends\\_Final\\_Report.pdf](http://www.dni.gov/nic/PDF_2025/2025_Global_Trends_Final_Report.pdf)>, p. 35.

<sup>26</sup> An interesting analysis of this problem (and one that has provoked many responses) was published by the American economist Michael Hudson ("De-Dollarization and the Ending of America's Financial-Military Hegemony. The Yekaterinburg Turning Point"). He says e.g. that Yekaterinburg will come down in history as the place of death not only of the last Russian tsar, but also of the American empire. The analysis is available at <<http://www.globalresearch.ca/index.php?context=va&aid=13969>>. Its edited version was published on 15 June 2009 in Financial Times <[http://www.ft.com/cms/s/0/16e9f3e8-5944-11de-80b3-00144feabdc0.html?nckick\\_check=1](http://www.ft.com/cms/s/0/16e9f3e8-5944-11de-80b3-00144feabdc0.html?nckick_check=1)>.

arms spending figures together represent almost 12% of the global total.<sup>27</sup> As for Brazil, it maintains the largest army in Latin America (it ranks 62 in arms expenses and in 2008 it spent \$15,477 million (USD) on defence). The rapid increase of China's military capabilities is particularly remarkable; reflected by both a qualitative and a quantitative (double-digit) growth of military spending and also by the restructuring of the Chinese People's Liberation Army (CPLA).<sup>28</sup> Special emphasis is being placed on the development of China's air and naval forces; a signal that China is beginning to consider potential military engagement beyond its territory; in the Pacific, the South China Sea and the Indian Ocean.

## The Shanghai Cooperation Organisation (SCO)

Any discussion of the military-strategic potential of the three Eurasian BRIC powers (Russia, China and India) is incomplete without gauging the impact of the Shanghai Cooperation Organisation (SCO). Founded in 2001, the SCO includes Russia, China, Kazakhstan, Kyrgyzstan, Tajikistan and Uzbekistan and India, Iran, Pakistan and Mongolia, have observer status. The SCO, in its present form, includes nearly half of the world's population and a very significant geographical portion of Eurasia, three giant economies, huge energy resources, and four countries with nuclear arsenals. Leonid Ivashov (President of the Russian Academy of Geopolitical Issues and a former official of the Russian Defence Ministry) noted that the SCO could become the basis of a "continental geopolitical union."<sup>29</sup> Even at present, it forms a kind of geopolitical axis in Russian and Chinese international relations; enabling the two countries to enhance their political, economic and military influence on a large part of Eurasian territory, despite the fact that their approaches differ in relation to certain SCO aims.<sup>30</sup> In any case, the geopolitical potential of the SCO is

<sup>27</sup> The top ten list of countries with highest arms spending: 1. USA (USD 607 billion, 41.5% of the total arms spending worldwide), 2. China ( 84.9/ 5.8% – a SIPRI estimate), 3. France (65.7/4.5%), 4. United Kingdom (65.3/4.5%), 5. Russia (58.6/4.0% – a SIPRI estimate), 6. Germany (46.8/3.3%), 7. Japan (46.3/3.2%), 8. Italy (40.6/2.8%), 9. Saudi Arabia (38.2/2.6%), 10. India (30.0/2.1%).

<sup>28</sup> The rise in Chinese military spending (in millions of USD – estimate) is documented also by SIPRI data(< <http://milexdata.sipri.org>>): 1995: 14,987; 2000: 44,911; 2005: 52,199; 2006: 52,199; 2008: 63,643. According to the prognostic study of the US National Intelligence Council, "Mapping Global Future" (2004), the Chinese military budget may reach USD 250 billion in 2025, thus becoming the second largest in the world after the US

<sup>29</sup> Ivashov, L.: *Geopoliticheskiye gorizonty Rossii*. *Mezhdunarodnaya zhizn* no. 5/2007, p. 46).

<sup>30</sup> The main controversy concerns the balance between the security and economic dimension of the SCO. There a clear trend toward "economisation" of the organization's activities, but this trend is favoured mainly by China, which wants to use SCO to penetrate Central Asian markets to ensure new stable supplies of energy resources and markets for its products, an effort that can be clearly seen even today. This brings China into a certain conflict with Russia. While Russia does not deny the importance of strengthening the economic dimension of the

mentioned in one of the scenarios put forward in a November 2008 study of the US National Intelligence Council, “Global Trends 2025: A Transformed World,” which sees the SCO as one of the possible alternatives to the West, more specifically to NATO, for ensuring security in Central Asia.<sup>31</sup>

## Economic Meltdown and Cooperative Blocs

International relations are also transforming due to the current economic crisis, which Dennis Blair (Chief of the US Central Intelligence Service), called the number-one threat to the country’s national security. This is clearly connected to the fact that China, as a principal strategic rival to the US, has taken advantage of its comparatively favourable economic situation to further strengthen its global economic (and, by extension, political and security) influence (China increased its GDP by 6% in 2009, while the US GDP dropped by 2.8%). China invests its billion-dollar reserves in major business acquisitions around the world. From May 2008 to January 2009, Chinese firms invested more than €10 billion to purchase controlling stakes in about 130 foreign companies. Thanks to the declining market value of many Western companies, China now ranks second on the list of mergers and acquisitions, having overtaken Germany and the US. It focuses primarily on acquisitions in strategic areas such as information technologies, financial services and energy.<sup>32</sup>

China is not the only non-Western actor focusing on foreign acquisitions. Russian statistics also reflect this trend: in 2008 Russian individuals and corporations invested \$114 billion (USD) abroad, even though direct investment was less than 20% of this sum (70% were in the form of business loans).<sup>33</sup> For

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SCO (here it is worth mentioning e.g. the proposal of Russian ex-president and current prime minister, Vladimir Putin, to form a SCO “energy club” that would coordinate the energy policies of the SCO member states, both suppliers and importers), within this framework it prefers the vision of the SCO as a primarily military-strategic organization, a concept that would strengthen the Russian role in Central Asia, a priority area of Russian economic and security interests. For more details see Balabán, M (2008): *Zahraniční a bezpečnostní politika Ruské federace v závěru první dekády 21. století a její předpokládaný vývoj (Foreign and security policy of the Russian Federation in the late 2000s and its prospective development)*, *Vojenské rozhledy* no.4/2008, p 79-93.

<sup>31</sup> Global Trends 2025: A Transformed World. The National Intelligence Council’s 2025 Project (2008), < [http://www.dni.gov/nic/PDF\\_2025/2025\\_Global\\_Trends\\_Final\\_Report.pdf](http://www.dni.gov/nic/PDF_2025/2025_Global_Trends_Final_Report.pdf) >, p. 4, 38-39.

<sup>32</sup> As early as 2005, the Chinese company Lenovo bought IBM’s PC production for \$1.25 billion (USD). In 2007 the Chinese invested billions of dollars in Morgan Stanley and the Blackstone Group. In February 2009 the Chinese state company Minmetals bought the world’s second largest zinc producer, the Australian mining firm Oz Minerals, for USD 2.6 billion. Having declared bankruptcy in June 2009, the biggest American automobile company, General Motors will sell its well-known brand, Hummer, to a Chinese firm, Sichuan Tengzhong Heavy Industrial Machinery.

<sup>33</sup> Central European Weekly (Analytical Newsletter for Central Europe, Germany, The Balkan & The Baltic States), no. 21/2009.

example, Gazprom, Russia's largest company (ranked 14 in the top 500 of the world's largest firms) invested its capital in energy companies in Germany, France, Austria, Bulgaria and Serbia.

Such non-Western actors also form other influential economic groups. The Association of South East Asian Nations (ASEAN), which includes 10 Asian countries,<sup>34</sup> has taken inspiration from the EU, and is planning to create a single market with the free movement of goods, services and investment capital by 2020, and is not ruling out the prospect of a single currency.<sup>35</sup> Mahbubani highlights that ASEAN functions as a kind of integration nucleus for other platforms of regional political and economic cooperation such as ASEAN Regional Forum (ARF), Asia-Pacific Economic Cooperation (APEC) and East Asia Summit (EAS), thus balancing the influence of China in the region. However, ASEAN does communicate with China, and other important Asian states, Japan and South Korea, within the ASEAN+3 platform.

China is also supportive of the creation of a pan-Asian free-trade zone that would include, in addition to the ASEAN countries and China,<sup>36</sup> India, Japan, South Korea, Australia and New Zealand. With a population of 2 billion people, such a zone would be of greater economic importance than either the EU, or the integrated markets of the US, Canada, Mexico and Chile within the North America Free Trade Agreement (NAFTA).

The global economic crisis has sped-up the transformation of international relations which has resulted in a redistribution of global economic and political power. However, the ultimate 'settling of the dust' will take a relatively long time. Rogov came to the conclusion that the shocks experienced by the US economy would lead to a major restructuring of the US financial and economic systems, which could take between 10-20 years. Despite this, the US would no longer be able to play the same leading role (in the global economy) as it had done after WWII.<sup>37</sup> Indeed, as argued throughout this work, a new configuration of international authority is emerging in the shape and activities of informal, but influential associations of the world's key economies.

It may be argued that the new era of global governance began with the transformation of the originally informal platform of the twenty most advanced and dynamically developing countries, the G20,<sup>38</sup> into a new centre of global

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<sup>34</sup> ASEAN groups together Brunei, the Philippines, Indonesia, Cambodia, Laos, Malaysia, Myanmar, Singapore, Thailand and Vietnam.

<sup>35</sup> However, compared to the EU, ASEAN is still a much weaker bloc. Its aggregate annual GDP is USD 883 billion, while the Union's GDP reaches USD 13.5 trillion.

<sup>36</sup> Mahbubani also concludes that China's focus on strengthening economic ties with the ASEAN countries is meant to prevent the US from using ASEAN to besiege and "contain" China.

<sup>37</sup> Krizis kak katarzis, *Mezhdunarodnaya zhizn* no.12/2008, p. 10.

<sup>38</sup> G20 groups together Argentina, Australia, Brazil, China, France, Germany, India, Indonesia, Italy, Japan, Canada, Korea, Mexico, Russia, Saudi Arabia, South Africa, Turkey, the United

economic governance. This was reflected in the results of two G20 summits: the December 2008 Washington Summit, and the April 2009 London Summit. The principal outcome of these two summits was the recognition of the developing countries' political and economic equality vis-à-vis the developed world, whenever political decisions are made on the future course of the global economy. The participants of the London Summit agreed on concrete measures to stabilise global financial markets, on economic stimuli to encourage growth, and a series of reforms that should prevent another financial and economic crisis. It was also decided to speed up reforms of international financial institutions such as the IMF and World Bank, which must take greater account of the economic power of China and other developing economies. It is no longer acceptable that the EU's voting power within the IMF should be nine times that of China.<sup>39</sup>

The rising importance of the G20 raises the question of the future role of the G8; the existing group of the major Western countries and Russia. The G8 and G7 undoubtedly played an important part in shaping the post-Cold War global political agenda, including the management of crises within the global economy.<sup>40</sup> This was reflected in the annual G8 meetings of heads of state and government. However, given the trends of global development, it has become increasingly relevant to ask whether G8 is not a closed club, representing Western culture and approaches, but which does not reflect global realities, especially the rising economic importance of China and India.<sup>41</sup> In fact, the Chinese economy has already eclipsed the economies of two G8 members, Italy and Canada, and the combined population of China and India is almost three times the size of that of all the G8 members combined. The global economic crisis has shown that the involvement of China in particular – but also of the other developing economies – is vital for tackling the key economic problems of global development. Former Canadian Prime Minister, Paul Martin, partially responsible for initiating the G20, concluded that it is time for the G20 to take over the mission of the G8.<sup>42</sup> Such a transformation is unlikely to be an automatic or even smooth process. The G8 is still a vitally important political platform for debating and deciding on the right course of international action

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Kingdom and the United States. The EU is also represented by the presiding country and the European Central Bank.

<sup>39</sup> At present China has 3.7% votes in the IMF compared to the French 4.9%, although the Chinese economy is now 50% larger than that of France.

<sup>40</sup> Until 1997 the G7 included the US, Canada, United Kingdom, France, Germany, Italy and Japan. In 1997 it changed to the G8 with the accession of Russia, supported by the then-President of the US, Bill Clinton.

<sup>41</sup> Hoge, F.J. (2004): A Global Power Shift. Is the United States Ready? *Foreign Affairs*, no. 4/2004, <<http://www.foreignaffairs.org/20040701facomment83401/james-f-hoge-jr/a-global-power-shift-in-the-making.html?mode=print>> p. 4.

<sup>42</sup> Martin, P. (2008): Time for the G20 to take the mantle from G8. In Kitton, J., Koch, A.: *Growth, innovation, inclusion: The G20 at ten*. University of Toronto, Mark Centre for International Studies, 2008.

on a wide range of issues such as: alleviating the impact of environmental degradation, the non-proliferation of NBC weapons, reducing global poverty, the fight against AIDS and counter-terrorism. On the other hand, the G20 focuses primarily on global economic issues. But the problem of greater G8 representativeness *is* on the agenda. The G8 is itself divided as to the best way to better reflect the changed international environment. The first proposal is for the G8 to undergo a radical and rapid enlargement process. Italy, as the host of the 2009 G8 Summit, suggested the creation of a G14 or a “super G8,” which would be formed by granting full membership to the five fastest developing economies: China, India, South Africa, Mexico and Brazil. Another approach, “engagement rather than expansion,” using the G8 + 5 format, is preferred by Germany, which suggests inviting the above countries to G8 summits, but refrain from granting them full membership. In any case, the legitimacy of the G8 will no longer depend on the political decisions of existing members, but on the approach adopted by the two fastest rising powers – China and India. If they reach for full membership, the G8’s legitimacy would be enhanced; if they prefer not to, it may be assumed that the importance of the G8 in its current form would likely decline.

The above conclusion may be taken as another indicator of global changes; forcing the EU and US to adapt to new geopolitical and geo-economic realities. Meanwhile, a realistic estimate of the situation is, notwithstanding the West’s diminished importance and many internal political and economic problems, that there are still numerous empowering factors that can enable it, even in the long term, to be an equal partner to the states and blocs in the “rising East.” The remainder of this work is devoted to gauging the attributes of the EU and US and surmise their longevity.

## **Down but not Out: The US and EU into the 21<sup>st</sup> Century**

### **The US**

The US remains the world’s leader in science and research, and since R&D is among the key indicators of a country’s level of economic development and its prospects within the global economy, it is clear that the US should not be so rapidly discounted. In 2007, the US spent \$342 billion (USD) on science and research, a sum representing one third of all spending allocated to this field in the world’s most developed countries. 65% of this money came from the private sector, 29% from federal and local budgets, and 6% from universities and non-profit organisations. 44% of Nobel Prizes go to American scientists.

It is also revealing that the US share of futuristic industries is immense and forms a major part of its economy. Industries such as nanotechnology are led

by the US where there are more specialised nanotechnology centres than in all the world's other nanotechnology leaders (Germany, the UK, and China) combined. The US is also a biotechnology leader and in 2005 profits from the practical use of biotechnologies reached almost \$50 billion (USD). These reflect a part of the competitive advantage enjoyed by the US in the quality of its tertiary education. A 2006 analysis by the London Centre for European Reform noted that the US invests some 2.6% of its GDP into college and university education, compared to the average 1.2% in Europe, and 1.1% in Japan.<sup>43</sup> The US, whose population makes up only 5% of the world's total, have 7-8 universities in the world's top-ten list.

Additionally, it is worth mentioning some example from the Obama administration, which when faced with the need to alleviate the deep economic crisis, recognised how crucial investment into R&D is for maintaining the US's international position. Attention is being centred on the transition to, and incorporation of, new technologies, with an emphasis on environmental aspects, renewable energy resources, healthcare, education and information technologies. In his speech at the National Academy of Sciences (27 April 2009), Obama announced his intention to spend an annual 3% of the US GDP on science and research. To paraphrase his words, this percentage is to be the largest investment into scientific and technological progress in the whole of US history. Obama also promised to double the budgets of federal research institutions and provide tax breaks to support research. The focus is on research into energy resources, a logical concomitant of the effort to rebuild the traditional energy architecture that has depended mainly on oil and gas. This is a key long-term task. The November 2008 study of the US National Intelligence Council, "Global Trends 2025: A Transformed World", estimates that it will take 25 years before the new technologies are developed and can be put to broader practical use.<sup>44</sup>

In line with the above-mentioned goals, the Obama administration also announced its intention to gradually lower arms spending from the current 4.8% to 3% of the GDP. This approach is in-sync with Obama's larger budgetary strategy which not only envisages a rise in government spending, but also restructuring how the money is spent, favouring welfare functions (welfare policy, education, healthcare) over more traditional functions (defence, homeland security). By contrast, in most EU countries the "welfare-to-traditional" ratio is about 10:1, in the US under Bush it was 3:1, and Obama's declared aim is to bring it to 7:1. Obama seems to realise that maintaining the US's global status requires a strengthening of, or in the US case, the *creation* of the welfare state: if the US comes to be identified by an increasing debt burden, poor healthcare or rather

<sup>43</sup> Lambert, R., Butler, N. (2006): The future of European universities. Renaissance or Decay. Centre for European Reform, London, 2006.

<sup>44</sup> Global Trends 2025: A Transformed World. The National Intelligence Council's 2025 Project (2008). <[http://www.dni.gov/nic/PDF\\_2025/2025\\_Global\\_Trends\\_Final\\_Report.pdf](http://www.dni.gov/nic/PDF_2025/2025_Global_Trends_Final_Report.pdf)>, pp. viii – ix, 47, 49.

its virtual inaccessibility for millions of people, a deteriorating or non-existent public services sector and growing social inequality, then US soft power could be greatly diminished.

## The EU

Conversely, the EU's soft power approach is a great asset in the competition between the principal global players. Political and economic stability, a working welfare state model, emphasis on a clean environment, and security for its approximately 500 million citizens, makes the EU an attractive social, political and economic model. Ranking the US as 1, the Global Competitiveness Index (2008-2009) compiled by the World Economic Forum includes five EU members among its ten most competitive countries: Denmark (3), Sweden (4), Finland (6), Germany (7), and the Netherlands (8). To put these rankings into perspective, the four BRIC countries were ranked as: China (33), India (53), Russia (54), and Brazil (67).<sup>45</sup>

The EU is also playing an indispensable role in the fight against environmental degradation, and the impacts of climate change. The formation of a post-Kyoto system is a key challenge, high on the scale of urgency. The EU is also a leading provider of development and humanitarian aid, accounting for more than 50% of its global volume. Another significant feature of European integration – one that has global repercussions and has not perhaps been fully appreciated by Europeans – is the development of global standards for producing a wide range of goods, from cars to children's toys. Its effect has been enhanced by the fact that the EU is the world's largest goods importer. Exporting countries (in Asia for example) are being forced to conform to often very strict EU standards, which can be seen as another manifestation of the European soft power and security since some business practises, such as the use of child labour, are outlawed.<sup>46</sup>

As a process that has been going on for more than fifty years, European integration seems to be the strongest tool that can assist the EU and Europeans succeed in the competition between global and regional powers, both in the near and more distant future. In fact, the EU already serves as a model for the integration of other regions such as Asia, Latin America and Africa. Deepening and broadening integration, and reaching consensus among the current 27 members is an extremely complex process when it comes to such issues as the best model of economic development (and currently another closely related issue, namely what type of measures should be taken to eliminate the impact of the economic crisis), foreign and security policy, relations with the

<sup>45</sup> <<http://www.weforum.org/en/initiatives/gcp/Global%20Competitiveness%20Report/index.htm>>.

<sup>46</sup> Grant, C. (2009): *Is Europe doomed to fail as a power?*, Centre for European Reform, London, 2009, p.3.

US, Russia and China or the best way to achieve energy security. There is no scope here for analysing thoroughly all the aspects of the above problems, but it is necessary to keep in mind the challenges presented by the creation of a unified Europe as a full-fledged world power. Robert Cooper, advisor to Javier Solana, the EU High Representative for Foreign and Security Policy, believes that the key question is whether **the EU may be a world power without being a state.**<sup>47</sup> The adoption of the Lisbon Treaty in all EU countries is another step enhancing the political and security integration of Europe, but even this will not be enough to equalise the Union's status with that of the other global powers. Especially compared to the US, China and Russia, the Union is likely to remain at a disadvantage, even in the more remote future.

## Conclusion

While this work surveyed some of the trends in international political and economic relations, its main objective was to demonstrate the acute changes underway; changes that are reshaping the contours of the international system and the dynamics of interaction. While it is clear that the 21<sup>st</sup> century is shaping up to be centred in Asia, the EU and US still maintain important positions within the new multipolar configuration and are able to contribute to its stability and prosperity while protecting their values and material interests. That said, this work pointed to some worrying trends that need to be addressed by the EU and US and it was the main goal of this work to act as an inspiration for further debate on the particular roles that could and should be played by the West in international relations largely determined by non-Western states.

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<sup>47</sup> Grant, C. (2009): *Is Europe doomed to fail as a power?*, Centre for European Reform, London, 2009, p. 33.

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# What We Talk About When We Talk About Democracy Assistance: The Problem of Definition in Post-Conflict Approaches to Democratisation<sup>1</sup>

Richard Lappin<sup>2</sup>

## Introduction

Since the early 1990s, one of the most striking characteristics to emerge in post-conflict peacebuilding has been the prime position assumed by democratisation; an approach we can term post-conflict democracy assistance. This focus has hinged on an unerring belief that democratic governance, provided by periodic and genuine elections, offers the most effective mechanism for managing and resolving societal tensions without recourse to violence (Annan 2001; Boutros-Ghali 1992, 1996). Indeed, the benefits of post-conflict democracy assistance have been promulgated for its capacity to advance peace, development and human rights (Jarstad 2006; Lappin 2009; Rich and Newman 2004), and it has been embraced at the highest stratum of peacebuilding with, for example, Boutros-Ghali declaring that ‘peace, development and democracy are inextricably linked’ (1996: 116).

Yet despite its growing recognition, the term has rarely been clearly or comprehensively defined. Typically the term is used with the assumption that the reader will automatically understand the meaning; however, such casual usage can cause confusion and lead to serious misconceptions about what the actual practice involves. This article seeks to bring greater clarity to our understanding of post-conflict democracy assistance in the following four sections. The first section begins by tracing the emergence of democracy assistance as

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<sup>1</sup> The title of this article is taken from the title of a short-story collection by Raymond Carver, *What We Talk About When We Talk About Love*.

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a distinct foreign policy instrument, the reasons why its popularity grew after the Cold War and how it has become an embedded feature of post-conflict peacebuilding. Second, the article highlights the unique characteristics of post-conflict democracy assistance as a distinct foreign policy tool and distinguishes it from other approaches linked to democratisation. Third, the core problems that have developed as a direct result of definitional uncertainty over what democracy assistance entails are outlined. Finally, the article concludes by positing that the current ambiguity that surrounds the discourse on democracy assistance threatens not only the credibility of the approach, but that it also reflects a lack of thinking on the part of the international community as to what type of democratic end states are envisioned and what the appropriate means are to best achieve those ends.

## The Emergence of Post-Conflict Democracy Assistance

Although democracy assistance did not assume a distinct profile in Western foreign policies until after the Cold War, its roots can be traced back further. Several sources have pointed to US sponsored electoral programmes in the Caribbean following the Spanish-American War in the early 20<sup>th</sup> century, Woodrow Wilson's promise to 'make the world safe for democracy' in the aftermath of the First World War, and political assistance, such as constitution writing and civic education, to Japan and Germany following the Second World War (Burnell 2000a; Carothers 1999: ch.2). One interesting element of all of these early examples of democracy assistance is that they all occurred in post-conflict contexts.

The period of decolonisation during the 1950s and 1960s provided a further precursor to contemporary democracy assistance, with many European countries exporting their own models of democracy to their former colonies. At the same time several countries began to introduce democracy and human rights clauses into their foreign aid packages, such as 'Title IX' of the 1966 US Foreign Assistance Act, which linked foreign aid to participatory politics. The profile of democracy assistance was significantly enhanced by the election of Ronald Reagan to the US presidency. In 1983 Reagan established the first specific US democracy promotion institution, the National Endowment for Democracy (NED), and consistently spoke with passion about the values of democracy and his vision of a 'global democratic revolution' (Reagan 1988). However, despite the rhetorical enthusiasm of Reagan, perceptions of external support for democracy during the Cold War were typically viewed with pessimism. Samuel Huntington (1984: 218) declared that 'the ability of the US to affect the development of democracy elsewhere is limited,' whilst Robert Dahl (1971: 209-210), argued that:

Policy makers in a country like the United States who may wish to transform a country from a hegemonic or mixed regime into a polyarchy [i.e. a liberal democracy] face formidable and complex problems, not least of which is our lack of knowledge about the long causal chains running from outside help to internal conditions to changes of regimes.

However, the end of the Cold War (1989-1991), and the seeming triumph of liberal democracy contributed to a widespread ideological consensus that liberal democracy, irrespective of internal preconditions, was the best political system available. As Fareed Zakaria (2004: 13) commented, democracy ‘has become the standard form of government for all mankind.’ This viewpoint found its most famous expression in Francis Fukuyama’s (1992) *The End of History* thesis and, although contentious, its emphasis on democracy as the optimum form of governance was broadly accepted and seamlessly translated into peacebuilding strategies. As Eric Brahm (2004) has written, ‘once warring sides have reached a ceasefire, democracy is seen as uniquely suited to provide a peaceful means for power and influence.’ Expectations of the central role of democracy in peacebuilding were made evident in a string of policy statements made in both the US and Europe. For example, Bill Clinton (1995) declared that ‘ultimately the best strategy to ensure our security and to build a durable peace is to support the advance of democracy everywhere.’ In 2001, the EU declared its ‘determination to promote stable, democratic environments, founded on the full enjoyment of human rights’ (Council of the European Union 2001). Similarly, Kofi Annan (2000) has stated that ‘there are many good reasons for promoting democracy, not least – in the eyes of the United Nations – is that, when sustained over time, it is a highly effective means of preventing conflict, both within and between states.’ Moreover, these words were supported by formal institutions. The Electoral Assistance Unit was established by the UN in 1991, whilst in 1990 the OSCE created a similar organ, the Office for Free Elections, with an understanding that ‘pluralistic democracy [is a prerequisite]... for progress in setting up the lasting order of peace, security, justice and co-operation’ in Europe (CSCE 1990).

In turn, theories expounding the role of external democracy promotion became increasingly fashionable. One such argument is that the widespread presence of democracies can serve as agents of diffusion which spread international norms of democracy (Huntington 1991; Starr 1991). The concept of diffusion has been summarised in policy statements, such as George W. Bush’s (2003) declaration that ‘a new regime in Iraq would serve as a dramatic and inspiring example of freedom for other nations in the region.’ Indeed, in an increasingly globalised world of advanced technology, travel and communications, it has become ‘increasingly difficult even for highly autocratic regimes to prevent demonstration effects reaching their own society’ (Burnell 2000c: 7). Additionally, there has been a notable increase of

literature concerning the value of military intervention to promote democracy, and although some authors are in support of this (Peceny 1999), the majority remain sceptical about the long-term benefits (Bueno de Mesquita and Downs 2006). Moreover, the Westphalian principle of non-interference has been subject to reinterpretation, with rights to democracy and peace now frequently trumping state sovereignty (Buxton 2006). For example, the OSCE declare that ‘participating states emphasise that issues relating to human rights, fundamental freedoms, democracy, and the rule of law are of international concern ... and do not belong exclusively to the internal affairs of the state concerned’ (CSCE 1991). All of these factors have provided a platform for deliberate external efforts to foster democratisation to be pursued more vigorously.

Democracy assistance organisations themselves were also influenced by the wider external context. Democracy was arguably already on the march and Huntington’s (1991) ‘third wave’ thesis famously illustrated how a multitude of states were already taking the democratic leap from as early as 1974. In fact, since the 1960s, it is estimated that there has been more than 120 episodes of democratisation in nearly 90 countries (Kapstein and Converse 2008: 57). This trend is further supported by Freedom House who have measured global trends in freedom and democracy since 1972 and report that both have demonstrated a steady increase in the past 35 years. Accompanying this already existing trend towards democracy, was a growing recognition of individual human rights. Within this area, civil society organisations, such as Amnesty International, have grown exponentially in the past twenty years and have reached across national borders in their efforts to promote the respect of individual rights. The impact was evidenced in international law, with both the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights coming into force in 1976. Similarly, the US, often viewed as a leader of the ‘free world,’ witnessed a Congress that passed 25 pieces of legislation linking foreign policy to human rights under the presidency of Jimmy Carter (Burnell 2000a: 37). The growing recognition of international human rights is seen by many to provide a solid foundation for democracy assistance. As Hans Peter Schmitz (2004: 408) states, ‘transnational activists diffuse democratic principles, support domestic allies, and exert pressure on authoritarian regimes.’

It can therefore be argued that a reverse causation was also occurring with democratic openings challenging established democracies to respond. As Carothers (1999: 44) explains: ‘the natural tendency to focus on the effects of democracy aid on democratisation in recipient countries overlooks the equally important causal relationship in the other direction – democratisation producing democracy aid.’ Indeed, in many respects the approach of democracy assistance can often be described as reactive rather than proactive. Thus, an understanding of the emergence of democracy assistance requires an appreciation of how

global events cause the democracy assistance community to respond to external stimuli (Burnell 2008: 428).

*Figure 1: The Global Spread of Democracy (Freedom House 2009)<sup>3</sup>*

The Global Spread of Democracy							
Year	Total No. Countries	Free		Partly Free		Not Free	
		No.	%	No.	%	No.	%
1972	151	44	29	38	25	69	46
1979	161	51	32	54	33	56	35
1989	167	61	37	44	26	62	37
1999	192	85	44	60	31	47	25
2009	193	89	46	62	32	42	22

## Towards an Improved Understanding of Post-Conflict Democracy Assistance

By the end of the 1990s, the term ‘democracy assistance’ had acquired increased and extensive usage in academic literature and become a natural part of the rhetoric of the development programmes and foreign policies of Western countries. Yet, despite this growing recognition, the term has rarely been clearly or comprehensively defined. Typically, the term is used with the assumption that the reader will automatically understand the meaning; however, such casual usage can cause confusion, especially as other terms can be used to describe similar phenomena, such as the often used umbrella term of ‘democracy promotion,’ as well as a host of other variants including ‘development aid,’ ‘political aid,’ ‘democracy support,’ ‘democracy aid,’ and ‘support for democratic development’ (Burnell 2000c: 3). As such, it is critically important that researchers are cognizant of the breadth of meaning attached to democracy assistance by different people and practice precision in their own usage and definition of the term. Indeed, if we are unable to achieve accuracy in our terminology, the utility of the approach, both in theory and in practice, will ultimately be undermined.

Democracy assistance can be most accurately defined as the non-profit transfer of funds, expertise, and material to foster democratic groups, initiatives and institutions that are already working towards a more democratic society (De Zeeuw and Kumar 2006: 20). These transfers are usually funded through governmental development agencies, such as the United States Agency for

<sup>3</sup> It is widely considered that ‘Free’ typically correlates to a stable, mature democracy, ‘Partly Free’ to a partial democracy, and ‘Not Free’ to an autocracy.

International Development (USAID) the European Instrument for Democracy and Human Rights (EIDHR), or the UK's Department for International Development (DfID). The programmes themselves are undertaken by a diverse group of inter-governmental organisations (IGOs), non-governmental organisations (NGOs) and, to a lesser extent, through bilateral agreements. Chief amongst the IGOs are the Organisation for Cooperation and Security in Europe (OSCE), the European Union (EU), and the Organisation of American States (OAS). The most prominent NGOs include the Carter Center, the International Foundation for Electoral Systems (IFES) and the Centre for Electoral Promotion and Advice (CAPEL). In addition, within a given country, there will also be a range of local counterparts who receive democracy funding including electoral commissions, state institutions, civil society groups, media groups and political parties.

In defining democracy assistance, it is paramount that the distinction between democracy *assistance* and democracy *promotion* is established. Although democracy promotion is often used interchangeably with democracy assistance, the latter should be recognised as only a small and distinct part of a much broader democracy promotion approach. As the table below illustrates, democracy promotion comprises several instruments, both positive and negative, both explicit and implicit, of which democracy assistance is only one distinct part. On the negative side, there is direct military action, which includes armed intervention to promote democracy and can be either explicit (to install a democratic regime, as in Afghanistan) or implicit (to curb an anti-democratic regime, as in the first Iraq war). In addition, there is also the explicit tool of negative political conditionality, or 'naming and shaming', in which membership from international organisations may be suspended, economic sanctions applied, and embargoes enforced.

On the positive side, there is the implicit instrument of classical development aid which seeks to foster improved socioeconomic conditions which may consequently lead to democratic developments. Additionally, there is the positive instrument of international interim administrations, as was the case in East Timor, where the democratic transition is directly controlled and managed in its entirety by international actors. There is also the explicit instrument of positive political conditionality, which can include offers of membership in intergovernmental organisations, security guarantees, or economic and trade benefits.

Finally, on the positive side, there is the distinct instrument of democracy assistance. Democracy assistance differs from all other forms of democracy promotion in several important ways. First, it is distinct from military action insofar that it does not 'enforce' democracy, and from international interim administration insofar that it does not 'manage' democracy. Second, democracy assistance is directed primarily and exclusively at fostering democracy, as opposed to classical development aid in which democracy is usually only a secondary concern. Third, democracy assistance is distinct from positive political conditionality insofar that it encompasses direct and active measures,

rather than passive tools. Democracy assistance can be further differentiated from political conditionality insofar that it is neither a reward nor a punishment, neither a carrot nor a stick, but rather a ‘booster’ to internal groups already working towards democratisation. Democracy assistance is not concerned with ‘exporting democracy’ (Schraeder 2002) or ‘spreading democracy’ (Hobsbawm 2004) irrespective of the readiness of a given country; rather, democracy assistance explicitly recognises that ‘the primary motive force for democratisation is and must be internal to the country in question’ (Burnell 2000c: 9), and that the exclusive intention is ‘to help domestic actors achieve what they have already decided they want for themselves’ (Carothers 2007b: 22). Democracy assistance is therefore a very precise instrument within a broader democracy promotion paradigm.

*Figure 2: Democracy Promotion Instruments (Table developed from: Huber 2008: 46)*

	Explicit Instruments	Implicit Instruments
Positive Instruments	<ul style="list-style-type: none"> <li>• Democracy assistance</li> <li>• Positive political conditionality</li> <li>• International interim administrations</li> </ul>	<ul style="list-style-type: none"> <li>• Classical development aid</li> </ul>
Negative Instruments	<ul style="list-style-type: none"> <li>• Negative political conditionality</li> <li>• Military action</li> </ul>	<ul style="list-style-type: none"> <li>• Military action</li> </ul>

## Problems Resulting From Definitional Uncertainty

Establishing the definitional clarity of democracy assistance is an important step towards understanding how three core problems have developed as a direct result of definitional uncertainties in democracy promotion terminology. The resultant problems concern, imprecise democracy assistance data, a neglect of the inherent limitations of democracy assistance, and the fostering of negative perceptions of democracy assistance.

### Imprecise Democracy Assistance Data

The lack of definitional concreteness over what may be classified as democracy assistance has meant that ‘the available data concerning how much and by whom remains relatively soft, variable in quality and far from complete’ (Burnell 2000b: 339). Typically, different countries and organisations use different classifications and indicators to define and record democracy assistance. Moreover, these figures are often merged into standard development projects, thus presenting major complications for the disaggregation of precise and

direct democracy assistance from broad development statistics (Crawford and Kearton 2002; Green and Kohl 2007: 159; Knack 2004: 266). In one of the few detailed cross-national studies of democracy assistance, Richard Youngs *et al.* (2006: 21) lamented that ‘no standard or easily comparable classification of political aid existed across states’ and, worryingly, that several countries had to compile the data upon request. Therefore, even seemingly comparable data, such as that from the Creditor Reporting System (CRS) of OECD-DAC, can be decidedly misleading due to the inability to accurately disaggregate the data.

Furthermore, as democracy has become increasingly associated with post-conflict peacebuilding, almost any international assistance effort that addresses any development or peacebuilding issues can arguably be labelled as ‘democracy assistance.’ In their study, Youngs *et al.* (2006: 21), note that ‘many states included in their democracy and governance categories aid projects that could not be reasonably said to have any meaningful bearing on political reform.’ Whilst Burnell (2000b: 339) has posited that some development agencies simply renamed their traditional development programmes as ‘democracy assistance’ to demonstrate that they were in tune with fashionable governance themes.

Such fastidiousness on the boundaries of what should be considered as democracy assistance is not to undermine the impact that broader development assistance can have on democratisation. As Steve Finkel *et al.* (2007: 410) explain, indirect assistance ‘may promote modernisation, encourage better economic performance, and foster class transformations, all of which may have long-term implications for democratic development.’ However, the concern is that such a broad definition can lead to an expansive laundry list of things which ‘assist’ democracy, such as general poverty alleviation or the building of schools. Burnell (2000c: 12) claims that, although at times beneficial, this is problematic because ‘if democracy assistance is defined as whatever helps democratisation directly or indirectly, sooner or later, then our sense of it could be so generous as to undermine the value of the term.’ Carothers (2000: 188) offers a route out of this dilemma in his argument that democracy assistance should be considered all aid ‘for which the primary purpose, not the secondary purpose or indirect purpose, is to foster democracy in the recipient countries. It does not therefore include economic and social aid programmes.’ As it stands though, the lack of consistency in defining democracy assistance means that there is no precise baseline data in which meaningful evaluations of post-conflict democracy assistance can be drawn.

## **Neglect of the Inherent Limitations of Democracy Assistance**

A second problem that has been exacerbated by an inexact usage and understanding of the democracy assistance term has been a neglect of the inherent

limitations of democracy assistance. Democracy assistance terminology has been increasingly employed by foreign policy communities and has created an appearance that it is a much stronger force than it truly is. The high expectations for democracy in helping to foster peace are evident in the very formulation of peace agreements. Many peace agreements, such as the 1992 Chapultepec Agreements of El Salvador and the 2002 Global and All-Inclusive Agreement of the Democratic Republic of Congo, stress the central role of democracy and affirm that elections will be held within a given timeframe as an illustration of a country's transition towards peace. This focus on elections – often at the neglect of issues such as security sector reform, corruption, economic stimulus, or reconciliation – places an unenviable burden on the democratisation process. For their part, democracy assistance organisations, often at short notice and often with little time for preparation, have become the actor of first resort for all prospective transitions, irrespective of the countries suitability or likelihood of sustaining democracy.

The imbalanced focus on democracy in post-conflict peacebuilding is amplified by a tendency of democracy assistance organisations to focus on success stories and overestimate their capacity to initiate change. Until recently, the USAID website declared that (quoted in Knack 2004: 252):

There were 58 democratic nations in 1980. By 1995, this number had jumped to 115 nations. USAID provided democracy and governance assistance to 36 of the 57 nations that successfully made the transition to a democratic government during this period.

Although the need to emphasise the positive aspects of their work in order to secure future funding may be understandable, such statements can severely skew the reality of democracy assistance. As Stephen Knack (2004: 252) explains, 'obviously the fact that many aid recipients have become more democratic does not by itself imply cause and effect.' Indeed, democratisation studies have historically focused on internal considerations as the key factors in a country's democratic transition, with attention given to areas such as: economic modernisation (Lipset 1959: 17; Przeworski et al. 2000); a history of pluralism (Reychler 1999); class structures (Moore 1966; Rueschemeyer et al. 1992); levels of education (Hadenius 1992; Rowen 1995); degree of ethnic fragmentation (Linz and Stepan 1996); religion (Hadenius 1992; Zakaria 2004: 148-150); the legacy of colonialism (Bernhard et al. 2004; Bratton et al. 2004); the prevalence of Western values (Huntington 1997: 6). Democracy assistance, therefore, is rarely the overriding reason, but it can help a country move more quickly in a direction that it is already going. As Carothers (2004: 60) reminds us, democracy assistance 'is at most a facilitator of locally rooted forces for political change, not the creator of them.' These sentiments are particularly salient to collapsed post-conflict states which offer few favourable internal pre-conditions for democratisation.

Additionally, within a post-conflict context, democracy assistance may have to play a subordinate role to the aims of the broader peace process (Lyons 2002: 221). As Krishna Kumar and Jeroen de Zeeuw (2006: 14) stress, ‘the promotion of democracy is not necessarily the only goal, and there are circumstances under which the international community has to make compromises in pursuit of competing objectives, such as avoiding a resumption of war.’ Indeed, it is worth stressing that although democracy assistance may have assumed a more central and influential role in the foreign policy of western states, it has not become *the* central organising principle (Carothers 1999: 37; Smith 2007: 132). Sometimes, democracy assistance may be complementary to a wider foreign policy, but at times it will also come into competition with other, stronger economic and security interests. For example, in the US, democracy assistance funding remains a fraction of other areas of public spending such as defence,<sup>4</sup> whilst the country maintains strong relations with several undemocratic, but strategically important, regimes such as Saudi Arabia, China and Egypt.

## Negative Perceptions of Democracy Assistance

The incoherency and inconsistency of democracy promotion policies in general – and what should qualify as democracy assistance in particular – has led to the intensification of the final problem; negative perceptions of democracy assistance (Smith 2007: 129). Although democracy assistance has become increasingly more visible in foreign policies, it has also been accompanied by a rising suspicion about the motives behind this embracement of democracy. Jennifer Moore (2007) has detailed how the democracy ‘brand’ has been damaged by people manipulating the name for interests which have very little connection to people power, whilst Carothers (1999: 3) claims that pro-democracy rhetoric ‘has sometimes been used deliberately to obscure a contrary reality.’ Although applicable to many states and intergovernmental organisations, this critique is most commonly directed at the US. Here, Barbara Rieffer and Kristan Mercer (2005) have documented how the Spanish-American War, the Vietnam War, and the invasion of Iraq, were all justified by the US as being in the name of democracy, precipitating scepticism about external efforts to support democracy both domestically and in target countries. Indeed, Bush’s persistent association of democracy assistance with the Iraq War and regime change did much to malign the concept and help to foster a perception in many parts of the world that democracy assistance was a mere euphemism for aggressive US interventionism. As Hobsbawm (2004) acerbically comments, ‘one should always be suspicious when military powers claim to be doing favours for their victims and the world by defeating and occupying weaker states.’

<sup>4</sup> The US defence budget is typically estimated at above \$400bn, in comparison to the most optimistic estimations of US democracy assistance, which estimate an absolute maximum of \$1bn.

Additionally, the consistent prioritisation of economic interests over democracy has also tarnished the image of external assistance. Examples include US commercial cooperation with the Argentine junta during the 1970s and 1980s and the EU's Common Agricultural Policy (CAP). As Rieffer and Mercer (2005: 390) comment, Western countries 'benefit from protectionist policies and subsidies even though these policies may hurt the long-term economic viability – and thus democratic prospects – of these partially democratic developing countries.' The continuing positive relations between Western countries and undemocratic regimes have further amplified concerns that the new focus on democracy assistance is essentially a euphemism for traditional realist foreign policies. This is somewhat unfortunate, as just because democracy is a low priority in one country, does not mean that democracy assistance projects in all other countries are not serious or have ulterior motives. Nevertheless, this has resulted in a situation where the overall concept of democracy assistance is often cast in a negative light before the actual substance of a programme is even examined. As Carothers (2007a: 11) notes in respect of the US:

The sad, mildly ironic reality of the Bush approach to democracy promotion is that it may represent the worst of both worlds: It has soured people all around the globe, and many in the United States as well, on the very legitimacy and value of US democracy promotion, despite having involved only a limited engagement in democracy promotion.

## What Model of Democracy (Assistance)?

The definitional ambiguity that surrounds democracy assistance conceals a more profound disagreement over the very nature of democracy itself. If the international community is to address the problems already cited with the democracy assistance terminology, then it is fundamental that they also confront – or at least acknowledge – the problem of defining democracy. For when all is said and done, we still need to be able to answer the question: 'what democracy are we assisting?'

Does the international community favour a minimalist model of democracy based on Joseph Schumpeter's concept of an 'institutional arrangement for arriving at political decisions in which individuals acquire the power to decide by means of a competitive struggle for the people's vote' (1947: 269)? Certainly several other influential authorities favour a minimalist, electoral-based approach (Dahl 1971; Huntington 1991: 7; Przeworski et al. 2000). Or does the international community prefer a more expansive, maximalist definition of democracy which emphasises the normative underpinnings and the substantive virtues of democracy which stresses the importance of participation, citizenship, and political activity (Barber 1984: xiv; Held 1996; Young 2000: 3). We might also ask to what extent is there space for local appropriations

of democracy? And to what extent do these local interpretations skew our (Western) understanding of democracy and the benefits it is intended to bring to peacebuilding? (Karlstrom 1996; Paley 2002)

Naturally, the merits and limitations of the various models of democracy – and how each may contribute to peacebuilding – demands a far greater exploration that goes beyond the remit of this article. However, the values and assumptions that are attached to democracy by international organisations have been left largely unexplored (Jarstad 2006; Lappin 2009). Democracy remains a fundamentally contested term, and one which can have a far reaching impact on post-conflict democracy assistance. As Wim Van Binsbergen (1995: 6) states, if democracy means different things to different people, ‘the process of bringing about or enhancing democracy, may refer to distinct and quite different phenomena.’ Luc Reyhler (2001: 216) concurs, arguing that ‘the dispute over the operational definition influences the transformation process to a large extent.’ Moreover, the definition of democracy that organisations are working towards can play a significant role in evaluating strategies, establishing funding priorities, and deciding when a country has reached an adequate level of democracy.

## Conclusion

This article has examined the emergence of democracy assistance as a distinct foreign policy tool in post-conflict peacebuilding. Moreover, it has shown how definitional confusion between democracy assistance and other democracy-oriented concepts, presents grave problems that threaten to undermine the practice of post-conflict democracy assistance. A lack of clarity, consistency, and consensus, as to what democracy assistance entails has diminished our ability to evaluate democracy assistance effectively (due to imprecise data), has created unrealistic expectations of what democracy can achieve in post-conflict environments (due to a neglect of internal factors of democratisation and broader foreign policy objectives), and has resulted in a general negative perception of democracy assistance (due to the misappropriation of the term to include elements such as military force or economic sanctions). The political consequences of the lack of definitional clarity are therefore considerable. Indeed, not only does it possess the potential to severely undermine the successes and credibility of post-conflict democracy-assistance, but it also reflects a fundamental deficit in our thinking about what type of democracy we are assisting and how we should assist it. If the international community can not articulate the democratic end goals it envisions, the likelihood of formulating effective democratic means will remain improbable.

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# Questioning the Dominance of Military Means: The Bush Administration's Fight against Terrorism<sup>1</sup>

Jan Ludvík<sup>2</sup>

## Introduction

This work is devoted to investigating the variety of approaches that the US presidential administration of George W. Bush deployed to counter terrorism following 9/11. This topic deserves special attention because Bush's approach to fighting terrorism is often misconceived as primarily or even only, military in nature. This perception, well established within public and to some extent scholarly discourses, significantly influences international views of the United States' foreign policy. Furthermore, it can undermine understandings of terrorism and counterterrorism, more generally, which may have the adverse impact of heightening ambiguities over what consists of each. The 2009 change of presidential administrations produced extremely high expectations for a subsequent change of policy, including a different tract to the Global War on Terror (GWOT). The accession of the new administration offers an opportunity to *close* an era – the Bush administration and GWOT – and reflect on its impact. This article is temporally limited to 11 September 2001 to 20 January 2009.

Some scholars tend to view Bush's reaction to terrorism (post-9/11) as primarily military. Jan Eichler from the Prague Institute of International Relations wrote that "Great emphasis of military means and methods of fight became dominant characteristics of Bush administration strategy."<sup>3</sup> Eichler's

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<sup>3</sup> Jan Eichler, *Terorismus a války na počátku 21. století*, (Praha: Karolinum, 2007), p. 207. For similar perceptions of Bush's counterterrorism policy see also Jeremy Pressman, "Rethinking Transnational Counterterrorism: Beyond a National Framework," *Washington Quarterly*, 30:4 (Autumn 2007), pp. 63-73; for an alternative view see also, Jeremy Shapiro and Daniel Byman, "Bridging the Transatlantic Counterterrorism Gap," *Washington Quarterly*, 29:4 (Autumn 2006), pp. 33-50.

assumption is based on the fact that the US counterterrorism strategy differed fundamentally from European approaches. According to Javier Solana, the underlying logic of such varieties of approaches to combating terrorism is based on divergence interpretations and sensitivities, among Europeans and Americans, to low-intensity threats in general terms. Europeans, given their long historical struggles against political communities which deployed asymmetrical violence, tend not to understand the so-called *new* challenges through military lenses and have been more inclusive in their approaches to dealing with terrorism, recognising that military means, on their own, will not produce sufficient outcomes.<sup>4</sup> This is particularly interesting given the (then) US government's expressed counterterrorism strategy which posited that

We will not triumph solely or even primarily through military might. We must fight terrorist networks, and all those who support their efforts to spread fear around the world, using every instrument of national power – diplomatic, economic, law enforcement, financial, information, intelligence, and military.<sup>5</sup>

It should be remembered that the extracted document was published during the lead-up to the invasion of Iraq (2003) not after the 2004 elections which are often seen as a major turning-point in Bush's foreign policy.

This paper questions public perceptions of Bush's counterterrorism strategy as being primarily based on military means. I suggest that this strategy consistently deployed various (non-military) means, such as: the countering of the financing of terrorism; the introduction or tightening of legal regulations (re: long- and short-term immigration procedures), the inauguration of the Department of Homeland Security with its various intelligence activities, and more general reforms within the US intelligence community.

This research is based on an examination of primary resources and supported by more interpretive scholarly literature and its main contribution is in its assessment of budgets; of various counterterrorism activities, to indicate the level of priority certain policy instruments that was given to respective approaches by the Bush administration. Since reliance on absolute figures may be misleading – as they indicate total monies spent, which are significant, without revealing contrasts in assigned budgets – this work is more concerned with relative budgetary data. Also, this work does not examine quantitative data-sets connected to budgeting. On the contrary, this work is based on the qualitative use of available quantitative data together with a wide set of additional empirical evidence. This assists in facilitating the connection between budgeting and other qualitative examinations which helps to understand US counterterrorism

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<sup>4</sup> Eichler, p. 220.

<sup>5</sup> *National Strategy for Combating Terrorism*, (Washington DC: Government Printing Office, 2003), p. 1.

efforts. Finally, this approach provides a rigorous methodological framework that deploys a simple data set to challenge dominant discursive misperceptions of Bush counterterrorism policy.

This work commences with broad argumentation on US military involvement within the GWOT context, and branches out to include a focus on other, related themes including: countering terrorist finances; the idea and institutionalisation of ‘homeland security;’ intelligence services, and new legislative provisions. The limited scope of this work does not allow for a discussion of all *battlefields* involved in the GWOT or corresponding US strategies; nevertheless the aforementioned represent a significant part of the US counterterrorism strategy and, as such, will help challenge the validity of the dominant discourse and perspective of US approaches, under Bush, to terrorism.

## Military Means

While beginning with an assessment of ‘military means’ may seem counter-intuitive given that this work aims to challenge the perception of the dominance of military means in Bush’s counterterrorism strategy, however it must be stressed that the goal of this work is not to deny the importance of the military in Bush’s approach to the GWOT; it was a visible and well documented part of the campaign against Islamic-inspired terrorism. There is no need to examine it broadly; substantial scholarly as well as media attention was paid to the topic. Indeed, an argument could be made that the military side of Bush’s approach received too much attention, because it overshadowed the other tools the US deployed to protect its citizens and challenge actual and would-be terrorists organisations and individuals around the world. Media attention has especially been devoted to the conflicts in Iraq and Afghanistan, which is a contributing factor in constructing a broad perception that the US prioritises the military in the GWOT.

There is a rational basis for this perception. In the summer of 2008, more than five years after the US invasion of Iraq, and seven years after the US-led coalition toppled the Taliban regime in Afghanistan, the number of US military personnel who remained deployed in these two major combat theatres exceeded 200,000. According to the Department of Defense (DoD) there were 183,100 US personnel in Iraq, including army reserves and national guardsmen. At the same time, 37,100 soldiers and marines fought the Taliban and helped to rebuild the Afghanistan within the mandate of *Operation Enduring Freedom*.<sup>6</sup> Such a robust deployment requires immense resources and has attracted substantial media attention. Requested by the Senate Committee on the Budget,

<sup>6</sup> “Active Duty Military Personnel Strengths by Regional Area and by Country,” Department of Defense, available at: <<http://siadapp.dmdc.osd.mil/personnel/MILITARY/history/hst0806.pdf>> (accessed November 12, 2008).

the Congressional Budget Office examined the funding of the US military in the GWOT and concluded that US military activities in Iraq, Afghanistan and elsewhere rose the total spending to \$752 billion (USD) since 2001.<sup>7</sup>

Based on this data one may argue that the US relied exclusively on its military in the fight against terrorist networks. However, as suggested above, reliance on absolute data when examining the importance of various counterterrorism means is insufficient. One may hardly compare the costs necessary to send 200,000 soldiers abroad for combat operations to, for example, the costs associated to freezing certain bank accounts. Differences in expenditures do not indicate degrees of importance but is the outcome of the appropriate, deployable tools themselves. It should be remembered that, even though defence spending increased significantly from the 2000 fiscal year (FY) level (\$342 billion) to \$546 billion in 2007 (FY), the DoD has disposed with huge resources and the change in resources devoted to the military during the Bush administration(s) was less than a 50% increase.<sup>8</sup>

Even though the military plays a crucial war-fighting role in counterterrorism efforts, it has number of other duties as well. For example the DoD budget for the GWOT was approximately one fourth of the overall department budget.<sup>9</sup> Armed forces' central objective is to protect the survival and sovereignty of a nation in the generally anarchic international system.<sup>10</sup> States still possess enormous resources and are able to endanger existence of other states, despite improvements in great powers relations since the end of the Cold War. The defense of US interests remains a crucial objective of the US military. To illustrate this, one may consider the cost of US nuclear forces, which are not able to be used in counterterrorism efforts. The analysis of the Center for Strategic and Budgetary Assessments estimates the financing of the US on nuclear weapons

<sup>7</sup> "War Cost Letter from CBO to Senate Committee on the Budget," Congressional Budget Office, available at: <[http://www.cbo.gov/ftpdocs/89xx/doc8971/02-11-WarCosts\\_Letter.pdf](http://www.cbo.gov/ftpdocs/89xx/doc8971/02-11-WarCosts_Letter.pdf)> (accessed July 23, 2009).

<sup>8</sup> Data is in 2005 dollars, see: *The SIPRI Military Expenditure Database*, Stockholm: Stockholm International Peace Research Institute at: <<http://milexdata.sipri.org/>>.

<sup>9</sup> "Fiscal 2008 Department of Defense Budget Released," Department of Defense, available at: <[http://www.defenselink.mil/comptroller/defbudget/fy2008/2008\\_Budget\\_Rollout\\_Release.pdf](http://www.defenselink.mil/comptroller/defbudget/fy2008/2008_Budget_Rollout_Release.pdf)> (accessed July 27, 2009).

<sup>10</sup> For a more *realist* study of international anarchy see: Kenneth N. Waltz, *Theory of International Politics*, (New York: McGraw-Hill, 1979); John J. Mearshimer, "Back to the Future: Instability in Europe after the Cold War," *International Security*, 15:1 (Summer, 1990), pp.5-56. The 'anarchical nature of the international system' is recognized by other international relations scholars as well, not only by realists. See Robert O. Keohane and Lisa Martin, "The Promise of Institutionalist Theory," *International Security*, 20:1 (Summer, 1995), pp.39-51; Alexander Wendt, "Anarchy is what States Make of it: The Social Construction of Power Politics," *International Organization*, 46:2 (Spring, 1992); and Alexander Wendt, *Social Theory of International Politics*, (Cambridge: Cambridge University Press, 1999).

and related programs to be around \$54 billion (USD).<sup>11</sup> Other factors influence the high cost of armed forces as well such as the necessary-non-military costs of Effect Based Operations, enormous expansions of air power (which play a decisive role in US military strategy), and general expenditures for research, development and the deployment of technology, which is a preferred trend in US ways of warfare.<sup>12</sup> Based on these arguments it is clear that the funding of the US military has, since the WWII period, been enormous in absolute terms. The relative changes following the beginning of the GWOT is significant as well, but should not undermine the importance of other means that the Bush administration used to counter terrorism.

## Financing Terrorism: A *Great War* under the Radar Screen?

Arguably, securing financial resources are of central importance for terrorist operations since, without them, high-profile attacks would be untenable. Therefore terrorist organisations require sufficient financial support to be able to plan, prepare and realise their operations. Despite that the resources necessary for terrorist attacks are incomparable with the billions of dollars devoted to the military interventions by the US, major terrorist attacks are still financially demanding. Localised terrorist actions probably do not require the financial support from larger, international networks such as Al Qaeda, and they can be realised with the limited resources of individual cells. But larger actions, similar to 9/11, can hardly be paid for covered with the monies of local cells. Terrorist organisations must ensure adequate fundraising for these kinds of operations, and then they must be able to transfer appropriate sums to the local cell charged with executing the attack. The 9/11 Commission estimated that “the 9/11 plotters eventually spent somewhere between \$400 000 and \$500 000 to plan and conduct their attack.”<sup>13</sup> It may be supposed that individual cells connected to Al Qaeda cannot generate this level funds without arousing suspicion, hence cooperation within the Al Qaeda network is necessary for providing finances for similar attacks. While local funding can be extremely hard to track especially as long as it relies on legal or minor criminal activities, significant money transfers from an organisation’s leadership to local cells can be possibly recognised and

<sup>11</sup> Steven M. Kosiak. *Spending on US Strategic Nuclear Forces: Plans & Opinions for 21st Century*, (Washington DC: Center for Strategic and Budgetary Assessments, 2006), available at: <[http://www.csbaonline.org/4Publications/PubLibrary/R.20060901.Spending\\_on\\_US\\_Str/R.20060901.Spending\\_on\\_US\\_Str.pdf](http://www.csbaonline.org/4Publications/PubLibrary/R.20060901.Spending_on_US_Str/R.20060901.Spending_on_US_Str.pdf)> (accessed July 27, 2009).

<sup>12</sup> See Christopher Coker, “Is There a Western Way of Warfare,” *IFS Info*, No.1, (2004), pp. 5-20; Christopher Coker, *Waging Wars Without Warriors?: The Changing Culture of Military Conflict*, (London: Lynne Rienner, 2002); and James Der Derian, “Virtuous War/ Virtual Theory,” *International Affairs*, 76:4 (October, 2000), pp. 771-788.

<sup>13</sup> *9/11 Commission Final Report*, (Washington DC: Governmental Printing Office, 2003), p. 169.

frozen. Recipients and possibly consignors may be identified and charged under criminal law or become subject of further investigation by law enforcement or intelligence agencies.

The 9/11 Commission's conclusion challenged the common perception that Bin Laden was able to provide financing for Al Qaeda from his personal resources. The Commission noted that "(f)rom 1970 through 1994, Bin Laden received about \$1 million per year – a significant sum to be sure, but not a \$300 fortune that could be used to fund jihad."<sup>14</sup> Moreover, after the US, together with Egypt among others, forced Sudan to expel Bin Laden (1996), – he purportedly left Sudan for Afghanistan – he remained almost entirely without significant financial assets and must have relied on the help of the Taliban. Bin Laden managed to overcome this situation due to his contacts to the wealthy individuals in the Persian Gulf region, especially Saudi Arabia. Al Qaeda established an effective fundraising system and generated large sums of money from Muslim charities in the Gulf region, as well as from individuals. The traditional Islamic system of informal banking known as *hawala* provided a useful vehicle for the transfer of funds.<sup>15</sup>

The American National Strategy for Combating Terrorism (2006) argued that "We have led an unprecedented international campaign to combat terrorist financing that has made it harder, costlier, and riskier for al-Qaeda and related terrorist groups to raise and move money."<sup>16</sup> US attempts to disable the financing of terrorism was identified as one of nine crucial successes in the GWOT. In fact, US authorities successfully managed to target terrorist financing and freeze number of funds that belonged to terrorists or related organisations and individuals. Despite common perceptions, the US heightened its attention to terrorist financing even before 9/11. The primary motivation behind this redirection was the Al Qaeda attacks on the US embassies in western Africa in August 1998. According to the Commission, the "Treasury Department's Office of Foreign Assets Control (OFAC) [gained] the ability to search for and freeze any Bin Laden or Al Qaeda asset that reached the US financial system. But since OFAC had little information to go on, few funds were frozen."<sup>17</sup>

After 9/11, even more attention was paid to terrorist financing and the Treasury's activities evolved in response. According to the OFAC, until 2007, \$11,324,261 (USD) which belonged to Al Qaeda and \$20,736,920 (USD) which belonged to various other international terrorist organisations' were frozen. Overall, the OFAC managed to block more than \$402 million (USD) within US

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<sup>14</sup> Initial estimates suppose that Bin Laden inherited \$300 million (USD) that he could use to fund his fight. See *9/11 Commission Final Report*, p. 170.

<sup>15</sup> *Ibid.* p. 171.

<sup>16</sup> *National Strategy for Combating Terrorism*, (Washington D.C., Governmental Printing Office, 2006), p. 3.

<sup>17</sup> *9/11 Commission Final Report*, p. 185.

territorial jurisdiction. These assets were controlled either by terrorism related individuals or organisations, or states listed as a sponsors of terrorism.<sup>18</sup>

In addition to the targeting terrorist money-flows in the US, the Bush administration also worked to ensure international cooperation in combating terrorist financing. To facilitate this cooperation, the US engaged in various multilateral negotiations and the diplomatic tools utilised in this context was instrumental in freezing assets of those engaged in terrorist activities, within the US and abroad, and must thus been seen as a positive contribution to the GWOT despite that Bush's critics tend to overlook this aspect of the US strategy. A further example of the success of this US-led initiative may be found in United Nations Security Council (UNSC) Resolution 1390/2002 that

Decides that all States shall take the following measures with respect to Usama bin Laden, members of the Al-Qaida organisation and the Taliban and other individuals, groups, undertakings and entities associated with them... Freeze without delay the funds and other financial assets or economic resources of these individuals ... including funds derived from property owned or controlled, directly or indirectly.

Within the framework of international cooperation, the Bush administration was deeply involved in the activities of the Financial Action Task Force (FATF) established created by the Group of 7 (G7). FATF facilitates international cooperation in countering money laundering; helps to set global standards in money transfers; make recommendations to states (in those areas), and helps identify *terrorist* money.

Mathew Lewitt argues that “despite these various means of raising funds, recent cases suggest that the al-Qa`ida senior leadership is lacking funds.”<sup>19</sup> Lewitt offers a number of examples of Al Qaeda leadership's – especially Ayman al-Zawahiri – attempts to raise additional monies from local cells. Saudi authorities managed to arrest 56 people who tried to raise money for Al Qaeda. Based on the above information, it is clear that the Bush administration paid special attention to combating terrorist finances, though these provisions are often neglected by the popular media. The Bush administration relied on multilateral cooperation, and worked together with others, a fact which sits

<sup>18</sup> See “Terrorist Assets Report,” Office of Foreign Assets Control, US Department of Treasury, available at: <<http://www.ustreas.gov/offices/enforcement/ofac/reports/tar2007.pdf>> (accessed July 19, 2009).

<sup>19</sup> Mathew Lewitt, “Al Qaeda’s Finances: Evidence of Organizational Decline?” *Counterterrorism Sentinel*, 1:5, (April, 2008), p.8. For additional views see also Bruce Hoffman, “Changing Face of Al Qaeda and the Global War on Terrorism,” *Studies in Conflict & Terrorism*, 27:6 (Nov./Dec. 2004), pp. 549-560; Mark Basile, “Going to the Source: Why Al Qaeda’s Financial Network Is Likely to Withstand the Current War on Terrorist Financing,” *Studies in Conflict & Terrorism*, 27:3 (May/June 2004), pp. 169-185; Audrey Kurth Cronin, “How al-Qaida Ends: Decline and Demise of Terrorist Groups,” *International Security*, 31:1 (Summer 2006), pp. 7-48.

in contrast to the multitude of critics who argue that Bush was a ‘unilateral’ President.

While it is impossible to compare that precise importance given by Bush’s administration to combat of terrorist finance with the importance given to military power; based on the above information, it should be noted that the Bush administration waged a crucial battle in the GWOT against terrorist financing. This may be compared to the war waged by military power in terms of results, despite that they are different in their respective objectives and public visibility.

## Homeland Security

Homeland Security represents other crucial level of the GWOT. Homeland security reflects the various ways the US protects US citizens, cities and assets from threats *within* the territory of the US. To facilitate coordination and improve security within the *United States* the Bush administration established the Department of Homeland Security (DHS). According to the 9/11 Commission Report the “Department of Homeland Security was established to consolidate all of the domestic agencies responsible for securing America’s borders and national infrastructure (...)”<sup>20</sup> The United States National Strategy for Combating Terrorism identifies homeland security, especially border protection, as a means to deny potential terrorists from entry into the US, as a crucial avenue to protect Americans.<sup>21</sup> The Homeland Security Act (2002), which established the DHS, set three terrorism related tasks for the new office: “(A) prevent terrorist attacks within the United States; (B) reduce the vulnerability of the United States to terrorism; (C) minimise the damage, and assist in the recovery, from terrorist attacks that do occur within the United States.”<sup>22</sup> Twenty two agencies and other institutions that were previously within various departments cognisance or made up independent agencies were to fall under the responsibility of the DHS.

The DHS budget was set at about \$40 billion (USD) in 2007; ten times less than the DoD. However, the DHS became the third largest department in the US government, with nearly 200,000 employees. This number *is* incomparable with the DoD’s personnel. When comparing the DHS to the DoD in absolute terms, it is obvious that the DoD overshadows DHS. However, as indicated in the introduction of this work, relying on absolute data is not efficient in this case and a reflection of relative data produces greater insights.

The DoD played a central role in securing the US and its international interests since, at least, WWII, and justifies its huge budget from its historical successes and, at present, does not need to demonstrate its importance to US

<sup>20</sup> *9/11 Commission Final Report*, p. 428.

<sup>21</sup> *National Strategy for Combating Terrorism (2006)*, p. 13.

<sup>22</sup> *Homeland Security Act 2002*, sec. 101.

executive or legislative branches of government. When examining relative change, it is possible to see that the DoD saw a 45% increase in its annual budget between 2001 and 2007, which is a noteworthy enhancement. During the same period however, the DHS's budget increased by 121%, significantly more than the Pentagon's.<sup>23</sup> It is thus clear that the Bush administration attached great importance to the newly established DHS, despite it not being involved in 'war-fighting.'

While key strategic doctrinal documents related to the deployment of US armed forces were drafted long before 9/11, the first National Strategy of Homeland Security was not issued until July 2002. This document was drafted by the Office of Homeland Security, the predecessor to the DHS which was established (in the White House) by Bush on October 8, 2001. Accordingly the "purpose of the Strategy is to mobilise and organise our Nation to secure the US homeland from terrorist attacks."<sup>24</sup> Similar to the DHS, this particular document was motivated by broadly defined problems within the US security apparatus including the lack of coordination and cooperation between various governmental agencies which significantly contributed to Al Qaeda's 9/11 success. The three strategic objectives identified in the 2002 Strategy for Homeland Security are repeated as the objectives tasked by 2002 Homeland Security Act to the DHS (NSHS, 2002, p. vii). This strategy also identified six major areas the US should focus on when it comes to homeland security:

1. Intelligence and Warning;
2. Border and Transportation Security;
3. Domestic Counterterrorism;
4. Protecting Critical Infrastructure and Key Assets;
5. Defending against Catastrophic Threats [only WMD's threat is concerned];
6. Emergency Preparedness and Response.<sup>25</sup>

These areas are common in nearly all understandings of homeland security, and have been similarly identified and adopted by various states including most EU members; with much success. Indeed, there have been no major terrorist attacks on US soil since 9/11 and while critics argue that this fact is overshadowed by an overall increase in the number of terrorist attacks around the world (re: Iraq and/or Afghanistan), as far as homeland security is concerned, being defined geographically, in the US,<sup>26</sup> attacks outside of US territory must be excluded when analysing the role of the DHS.

<sup>23</sup> "FY 2007 Summary Tables." Office of Management and Budget, available at: <<http://www.whitehouse.gov/omb/budget/fy2007/tables.html>> (accessed July 20, 2009).

<sup>24</sup> *National Strategy for Homeland Security*. (Washington DC: Governmental Printing Office, 2002), p. viii.

<sup>25</sup> *Ibid.* p.viii-x.

<sup>26</sup> See Homeland Security Act 2002.

There is a possible caveat to challenge the above mentioned arguments; that the role of the DHS in preventing attacks in the US may be largely unqualified. The 9/11 events occurred eight years after the last case of Islamist violence against the US on its soil – the 1993 bombing of the World Trade Center and even if the post-9/11 success of the US's defensive measures against terrorism is not simply lack of terrorists' desire to strike within the US, which, presumably is erroneous, a further exploration is necessary in order to evaluate the role of the DHS in this process. Notwithstanding the outcomes of such research, the Bush administration perceived the DHS as an important part of its counterterrorism strategy; a step that complemented other processes and approaches.

## Intelligence

Intelligence is recognised as a crucial part in securing states and their citizens from the threat posed by terrorism. For example, the 2003 European Security Strategy argues that “dealing with terrorism may require a mixture of intelligence, police, judicial, military and other means.”<sup>27</sup> The events of 9/11 demonstrated the vital role of intelligence in the protection of the state from non-state actors, such as terrorist groups. Similarly, intelligence is necessary for successful offensive actions against terrorist groups. Major shortcomings in US intelligence services and especially the lack of cooperation between agencies played a key role in the success of terrorist attacks on September 11.<sup>28</sup>

In order to solve problems of inter-service cooperation the Bush administration triggered a major reorganisation of the US intelligence system and

In 2004, the Intelligence Community launched its most significant reorganization since the 1947 National Security Act. The centrepiece is a new position, the Director of National Intelligence, endowed with expanded budgetary, acquisition, tasking, and personnel authorities to integrate more effectively the efforts of the Community into a more unified, coordinated, and effective whole.<sup>29</sup>

The extent of the reorganisation suggests that the Bush administration perceived this reform as imperative to successfully wage the GWOT, though due to the nature of intelligence work much information is confidential and reliable information as to the specific goals of the intelligence community are scarce.

<sup>27</sup> *A Secure Europe in a Better World: European Security Strategy*, (Brussels: European Council, 2003), p. 7.

<sup>28</sup> See Amy B. Zegart, “September 11 and the Adaptation Failure of US Intelligence Agencies,” *International Security*, 29:4 (Spring 2005), pp. 78-111. For further reading see Richard K. Betts, “Two Faces of Intelligence Failure: September 11 and Iraq’s Missing WMD,” *Political Science Quarterly*, 122:4 (Winter 2007/2008), pp. 585-606.

<sup>29</sup> *National Security Strategy of the United States of America*, (Washington DC: Governmental Printing Office, 2006), p. 43.

It is therefore difficult to evaluate the importance given to intelligence by the Bush administration. Paul R. Pillar rightfully argues that “in the intelligence business, failures (and apparent contradictions) make headlines, while successes generally remain secret. Failures also prompt inquiries, whereas successes go unnoticed.”<sup>30</sup>

Other authors argue that the reform of intelligence services was insufficient and it did not manage to overcome shortcomings. For example, the inability of the FBI to work as a domestic intelligence agency – not only as a criminal investigation bureau – was the subject of sharp criticism, as was the continuity of the excessive number of intelligence agencies which remained under the authority of the DoD.<sup>31</sup> The success of the reform is crucial for the future security of US citizens, but for the purpose of this study the fact that significant attention was paid to this reform by the administration is sufficient for presenting the overall argument of this work; that the Bush administration attempted to wage the GWOT in more than the simple deployment of military force. Indeed, the Bush administration would not have significantly reformed the intelligence community if it had not perceived this as a vital and necessary step. Reviewing the budget of the intelligence community offers additional evidence of the position of intelligence in the GWOT. Since the budget of intelligence is largely confidential estimations are utilised and the majority of such estimations suggests that the financing of intelligence community nearly doubled between 1997 and 2007. In absolute terms this means an increase from \$26.1 billion (USD) in 1997, when the budget was (for the last time) officially disclosed, to an estimated \$50 billion (USD) in 2007.<sup>32</sup>

## New Legislation

A number of new legislative provisions were passed as part of the US reaction to 9/11 and the majority of these were not explicitly concerned with military force. Terrorism only underwent the process of securitisation following 9/11 and currently forms the backbone of bipartisan consensus.<sup>33</sup> Nevertheless, the Bush administration had to cooperate with the US Congress to pass new legislation relevant for waging the GWOT. Perhaps the most visible and

<sup>30</sup> Paul R. Pillar, “Intelligent Design?: The Unending Saga of Intelligence Reform,” *Foreign Affairs*, 87:2 (2008).

<sup>31</sup> Richard A. Poster, *The Reorganized US Intelligence System after One Year*, (Washington DC: American Enterprise Institute, 2006), available at: <<http://www.aei.org/outlook/24213>> (accessed July 23, 2009).

<sup>32</sup> Walter Pincus, “Intelligence Budget Disclosure Is Hailed,” *The Washington Post*, October 31, p. A04.

<sup>33</sup> For the concept of securitization see Ole Waever, *Securitization and Desecuritization*, (Kobenhavn: Center for Freds- og Konfliktforskning, 1993); also see Steve Smith, “The Contested Concepts of Security,” in Ken Booth (et al) *Critical Security Studies and World Politics*. (Boulder: Lynne Rienner, 2005), pp. 27-62.

probably the most controversial piece of legislation after 9/11 was the so-called PATRIOT Act (the name is an acronym standing for: Uniting and Strengthening America by **P**roviding **A**ppropriate **T**ools **R**equired to **I**ntercept and **O**bstruct **T**errorism). The various provisions of this act empowered US security services in areas such as: intercepting communications, financial regulations powers of the Treasury Department; and the ability of security services to obtain personal information.

The purpose of this work is not to examine the many controversies surrounding this particular law, but rather to determine how it, along with other legal provisions, have been utilised by the US to combat terrorism. Indeed, it is important to note that legal provisions, such as the PATRIOT Act, were made possible not only because of the Bush administration, but also because Congress also viewed such provisions as necessary for the security of the US and its citizens. The PATRIOT Act passed with overwhelming support in the Senate (98 to 1) and in the House of Representative (357 to 66).<sup>34</sup>

In addition to the PATRIOT Act, several other legal provisions were passed to construct institutions and legal regimes able to more effectively combat terrorism. The following is a modest list of such provisions:

1. **The Aviation and Transportation Act (2001)**: This act created the Transportation Security Administration (TSA), responsible for security on all means of transportation.
2. **The Border Security and Visa Entry Reform Act (2002)**: This act sought to strengthen ports of entry to the US, construct a database of all foreign nationals living within the US and streamline Visa procedures.
3. **The Public Health Security and Bioterrorism Preparedness Response (2002)**.

Although not an ‘act,’ presidential cooperation with Congress is one of the nine successes of the Bush administration in the GWOT according to the National Strategy for Combating Terrorism.<sup>35</sup> Again, examining various laws after the 9/11 attacks falls beyond the scope of this work, nonetheless that the Bush administration used legislation to more effectively fight terrorism helps paint a more vivid picture of Bush’s approach to the GWOT and assists in challenging the perception that the Bush administration predominately relied on military force for combating terrorism.

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<sup>34</sup> See “PATRIOT Act Summary,” US Library of Congress, available at: <<http://thomas.loc.gov/cgi-bin/bdquery/z?d107:hr03162>> (accessed June 23, 2009).

<sup>35</sup> *National Strategy to Combat Terrorism*, (2006), p. 4.

## Conclusion

This work sought to challenge popular views regarding Bush's counterterrorism strategy. Based on the strong but simple combination of some quantitative information, and other empirical evidence, in a qualitative study, this work demonstrated that military operations had substantial but hardly a dominant role in the deployed US tools challenging Al Qaeda (among other terrorist groups) in the post-9/11 GWOT. Even though this methodological approach does not identify the importance that the Bush administration attached to the various means deployed to combat terrorism, the analysis conducted here demonstrates that US counterterrorism efforts relied on *many* tools and activities. Perceptions that the Bush administration's GWOT strategy was primarily military in nature are misleading and the insinuation that military force was the *only* tool prioritised is entirely inaccurate.

Upon analysis, it is clear that the Bush administration paid substantial attention to various areas and aspects of the GWOT, not *only* to military approaches. The areas dealt with in this work included: terrorist financing, homeland security, intelligence, and a number of legislative provisions, often reached with bipartisan consensus. Some (re: countering terrorist finances) represent multilateral diplomatic efforts led by the US, but significantly influenced by other countries and international organisations. Such efforts undermine dominant views which portray Bush's policies as overwhelmingly unilateralist. The shortcomings of US intelligence services highlighted by the 9/11 events triggered a major reorganisation of the intelligence community. Various provisions in homeland security, including the establishment of an independent department (the DHS) are examples of non-military steps undertaken by the Bush administration to protect US citizens from terrorism.

US counterterrorism policy during the two Bush administrations understood terrorism as a complex issue that cannot be solved only through military means. Generally, this is similar to the views Javier Solana referred to as European.<sup>36</sup> Such parity between the US and European approaches deserves further examination, and although this too falls beyond the scope of this work. The dominant perception that Bush's counterterrorism policy relied predominately on military power is fundamentally erroneous. Instead Bush, like many others, deployed military power as *part* of a broad counterterrorism strategy, and despite what one may think of the former US president, in his task to defend US territory from terrorist attack, he fared better than one may have expected given the wide criticism his 'war-fighting' receives.

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<sup>36</sup> Eichler, p. 220.

# Evaluating Sub-State Participation in the History of International Health Co-operation

Nikita Chiu<sup>1</sup>

## Introduction

The Treaty of Westphalia is often referred to as the point of departure in the history of international relations. It was in 1648 that the modern state system was established and the concept of national sovereignty born. Today, these two concepts remain essential elements that govern interstate relations. Despite that the term *international relations* implies relations between nations instead of states, it has historically been taken for granted that IR is a discipline that focuses on the relations between sovereign states. For instance, Kenneth Waltz, in his *Theory of International Politics*, acknowledged that “states are not and never have been the only international actors.”<sup>2</sup> Nonetheless, Waltz also disregarded other international actors, besides the state, arguing that so long as the international structure is defined by major states, other actors are thus non-consequential. Until recently, the predominant unit of analysis in the discipline has been sovereign states, though increasingly we see an expanding literature on non-state actors such as transnational organisations (re: the EU), NGOs (re: Amnesty International), armed groups (re: Al Qaeda), and multinational corporations (re: Microsoft).

Recently however, scholars have become increasingly interested in the role of sub-state units in international relations. Although literature on federalism, regionalism, cities and the politics of other sub-state entities are slowly expanding, sub-state actor remains underwritten when concerning their impact on international organisations, regimes and their promoted values. However, the argument that international organisations have always been the exclusive

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<sup>2</sup> Kenneth Waltz, *Theory of International Politics*, (New York: McGraw-Hill Company, 1979), p. 94.

domain of sovereign states is incorrect. Indeed, one of the very first major international organisations, the League of Nations, did not limit its membership to sovereign states. At that time, India and the White Dominion, both not yet independent from the British Empire, were admitted as members to the League. London had its seat at the League (as the British Empire), representing the interests of other colonies that were not members. Also, it is noteworthy that the small, but sovereign, state of Liechtenstein was refused admission. Article 1 of the Covenant of the League of Nations set the criteria for membership stating that “any fully self governed State, Dominion or Colony [...] may become a Member of the League if its admission is agreed to by two-thirds of the Assembly.”<sup>3</sup> The emphasis here rested on the ability of potential members to self-govern, as well as been given recognition and acceptance from fellow members. This example illustrates that the membership policy of international organisations is not neutral, or based on an objective set of criteria; it is largely an exercise of political power.

To demonstrate the presence of sub-state actors in international co-operation, this article uses the example of international co-operation in international healthcare and traces changes and developments of membership policies, to health organisations, over the past century. International co-operation in healthcare has, possibly, the longest history when compared to other international regimes. As such, an examination of international efforts in resolving global health challenges over the past century could be indicative of the changes in attitude and trends regarding sub-state involvement within the international community more generally. The assumption is that these changes reflect the different dominant states that emerged in various periods in the past century. In particular, the exclusivity of sovereign state members in participating in most forum of international co-operation was a deliberate construction that emerged after the inception of the United Nations (UN). Its emergence was a result of the emphasis on sovereignty that became institutionalised due to huge pressure for decolonisation in the post-WWII environment.

## Methodology & Research Design

This study involves researching secondary sources to outline the history of, and changes to, membership policy in the area of international healthcare co-operation as well as extensive exploration of primary sources available at the headquarters of the World Health Organisation (WHO). This work examines the list of participants in decision-making bodies, which include the annual World Health Assembly (WHA), over a selection of chosen time intervals.

<sup>3</sup> Art. 1, The Covenant of the League of Nations, See Oyvind Osterud, “The Narrow Gate: Entry to the Club of Sovereign States” in *Review of International Studies* (1997), 23, 167-184.

Two, ten-year intervals (1946-1956 and 1999-2009) will be examined in the case of the WHO.

This research adopts a broader definition of sub-state units, referring to all non-sovereign, non-centrally administered or governed units under a sovereign state as sub-state entities. When defining a sovereign state, I refer to the present legal definition: a sovereign state is one with a permanent population within a defined territory, whose government has the capacity to enter into relations with other states.<sup>4</sup> As such, sub-state units are governing or administrative units that are constitutionally subordinate to the ultimate sovereignty of their respective central governments that meet the above international standard for legal personality. This design excludes territories of contested sovereignty in general. If sovereignty of the territory in question is claimed by two competing authorities, then it is not a matter of state/sub-state relations, but one of civil conflict. This is the situation in the 1970s and 1980s between the communist regime of China and Taiwan. However, this is no longer the case as Taiwan has, in principle, accepted that it could no longer claim sovereignty over mainland China, and switched its priority to gaining recognition as a separate state instead. Failing to meet the above criteria means that the entity fails to constitute as a sovereign state. For example, though the Sovereign Order of Malta enjoys a certain legal personality, it does not constitute any permanent population within a defined territory. Thus, despite regularly attending international conferences alongside sovereign states, it is not considered a state, nor a sub-state unit in this study.

In terms of sub-state participation, there were various channels and manners in which sub-state interests were represented, and forms of participation in the two domains were subject to different membership regulations set within the two main organisations that were studied. Nevertheless sub-state participation could be generalised into three main forms:

- P1. As *formal participants* (albeit with limited rights) that are represented separately from the national central authorities. For example, associate membership of non-self-governing units in the WHO that has a more limited set of rights than full members, but nonetheless through which sub-state officials were able to participate separately from their national delegation.
- P2. As *observers* that are represented separately from the national central authorities. In this case, sub-states participate in the capacity as an *observer*, may be able to speak at conferences, but are denied voting rights and other forms of initiatives that may determine the agenda of the meetings. However, this form of participation has significant symbolic value, as the sub-state units will be present separately from their national delegations.

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<sup>4</sup> Montevideo Convention, 1933.

P3. As *representatives integrated* within national delegations. In this case, sub-state units will not be represented separately from their sovereign authorities, but rather absorbed into the national delegations. Even within this approach there are varying levels of influence from the part of the sub-states. For example, while some countries did appoint sub-state officials as formal delegates, most others would include them as mere advisers at least, and alternates at best. Unfortunately, due to resource limitation, this research could only subsume all varying level of influence under one single form for ease of evaluation.

The status of many entities vary across different times over the past century, in particular British possessions that have international legal personalities such as South Africa, Australia and Canada posed considerable challenges to defining the exact year when these countries become fully sovereign states. For these countries, decolonisation was an ongoing process and sovereignty was gradually gained, recognised and exercised. Often agreements for increasing autonomy and legislative power concluded between the British government and these entities were not explicitly stated, making it a difficult task to determine when these entities become independent in making their own decisions in the international forums examined in this research. A decision was made to consider any British Dominions sovereign the year when the Statute of Westminster was formally adopted.<sup>5</sup>

## History of International Cooperation in Healthcare

### The Classical Regime – International Sanitary Conferences

International co-ordination and co-operation in international healthcare has a long history. According to Fidler, the earliest international initiative in the area dates back to 1851, when the first International Sanitary Conference was held in France. Together with numerous conferences that ensued, this series of International Sanitary Conferences (ISC) were the first international attempt to standardise international quarantine regulations against the threats posted by three epidemic diseases: cholera, the plague and yellow fever, all of which were considered to have travelled from foreign territories to Europe through trading routes. These conferences, according to Fidler, constitute the “classical regime”

<sup>5</sup> The Statute of Westminster was a treaty that established legislative equality between the British Empire and its various self-governing dominions. For a more detailed analysis on the judicial status of these dominions, see Kenneth Clinton Wheare, *The Statute of Westminster and dominion status*, (Oxford: Oxford University Press, 1953).

in the health arena, which paved way to the later development and institutionalisation of the internationally concerted effort in tackling health threats.<sup>6</sup> The classical regime aimed to ensure the following: first, that parties to the regime would notify each other of outbreaks of the three abovementioned diseases that erupted within their own territories; second, that restriction imposed on international trade and travel in the name of disease prevention would be limited and that these restrictions should be backed by scientific evidence and public health principles.<sup>7</sup> These regulations reflected the major concerns of European nations in the 19<sup>th</sup> century: the introduction of Asiatic diseases to the continent and governments' restrictions on trade in response to contain the spread of these diseases. Prior to establishing the classical regime, individual governments responded to threats of epidemics by closing its frontiers, an approach called *cordon sanitaire*. The (then) city-state of Venice was the first to impose quarantine regulation in 1348 in face of the potential spread of bubonic plague (the Black Death) from Asia.<sup>8</sup> Needless to say, most quarantine measures that developed since varied greatly from locality to locality. When the first International Sanitary Conference was convened in 1851, we can see that out of the thirteen countries that participated, most were maritime and imperial powers that saw the need to discuss obstacles to trade posed by restricting regulations due to the threat of contagious diseases. A reasonable representation of regional balance was only found as late as 1881 when the ISC was held in Washington, 30 years after the first event was convened. Progress in reaching consensus on a binding standard of quarantine regulations was slow. It had taken the ISC forty-one years of discussions to reach a very limited convention that obliged the signatories to quarantine westbound ships that are with cases of cholera.<sup>9</sup>

## Towards Institutionalisation – l'Office International d'Hygiène publique

Despite being a pioneer in international healthcare, the ISC made little binding impact due to its *ad hoc* nature. Institutionalised forms of co-operation, with a permanent administrative body and standardised decision-making mechanism were yet to emerge. The conferences were not regularly convened, but rather only called when there were outbreaks of infectious diseases or

<sup>6</sup> See David Fidler, "From International Sanitary Conventions to Global Health Security: The New International Health Regulations" in *Chinese Journal of International Law* (2005), Vol. 4, No. 2, pp. 325-392.

<sup>7</sup> Fidler, (2005) p. 328.

<sup>8</sup> WTO, "The rise of international cooperation in health: Medical, social, political and economic history sheds light on the purpose and function of WHO" in *World Health Forum*, Vol. 16, 1995, pp. 388-93.

<sup>9</sup> Milton I. Roemer, (1993), *National Health Systems of the World: Volume II: The Issues*, (Oxford: Oxford University Press), p. 309.

when its existing regulations jeopardised the interests of the major powers at the time. For example, the Constantinople Conference was called because Egypt and Europe were beginning to see the spread of the forth pandemic of cholera; Russia called for the 1874 conference due to persisting cases of cholera found around the Black Sea and they found the harsh quarantine measures imposed on Russian ships unacceptable.<sup>10</sup> The first international endeavor to institutionalise health co-operation only came in 1907, when the powers present in Rome agreed to create a permanent body – *l'Office International d'Hygiène publique* (OIHP) to ensure better compliance to various conventions agreed at previous ISCs.<sup>11</sup> The office could be broken down into three main sections which aimed at achieving their corresponding objectives: a technical commission that aimed to further study epidemic diseases; a permanent administrative body to prepare the ISCs and administer the agreed conventions; and a centre to facilitate exchange of epidemiological information.<sup>12</sup> The twelve parties to the agreement decided to establish the office in Paris, and put the office under the control of the Permanent Committee.<sup>13</sup> The Permanent Committee was to compose of one technical expert from each participating state; voting rights however were allocated according to members' annual contribution rather than equal votes. For example, Great Britain and the USA, each paying 25 units of annual contribution, belonged to the first category and were entitled to six votes; Switzerland, on the other hand, contributing only 10 units, was put into the fourth category and was only entitled to three votes.<sup>14</sup> New, acceding parties to the agreement could choose to adjoin themselves to the six categories available, depending on the amount that they were willing to commit. It should be also noted that Committee members represented their respective countries rather than the general interest.<sup>15</sup>

Membership to the Committee was not exclusive to sovereign entities. As such, major empires enjoyed multiple representations. In addition to the delegate representing the British colonies, Britain also had another delegate separately representing India on the Committee. Moreover, as a first category country contributing 25 units to the Office's annual expense like Great Britain, British India was entitled to the same amount of votes in the body. In other

<sup>10</sup> Goodman, pp. 54-5, 58.

<sup>11</sup> At the time of its creation, the main focus of its work was on issues relating to quarantine. See Goodman, pp. 70-1, 84-106.

<sup>12</sup> Goodman, p. 84.

<sup>13</sup> The twelve contracting parties were Belgium, Brazil, Egypt, France, Great Britain, Holland, Italy, Portugal, Russia, Spain, Switzerland and the USA. Romania was presented at the conference but was not a party to the agreement. Goodman, p. 87.

<sup>14</sup> For details on categorization in accordance to units of annual contribution, see Annex: Statutes of Constitution of the International Office of Public Health, Art. 11, The Rome Agreement of 1907 Establishing the International Office of Public Health, translated from French to English in Goodman, p. 103.

<sup>15</sup> Goodman, p. 87.

words, British India, as a sub-state unit to Great Britain, maintained *equal* rights and privileges as her sovereign counterpart. However, this equality between sovereign and sub-states was only a theoretical plausibility. In reality, this unprecedented system of voting power was never put into. In its almost half century of existence, no issues were ever brought to a direct vote.<sup>16</sup>

## The Health Organisation of the League of Nations

With regard to the office's work, Goodman contends that the Office's impact was limited prior to the outbreak of war in 1914. During WWI, most of the Office's functions were halted except for the publication of a monthly bulletin that reported epidemiological information to contracting powers.<sup>17</sup> After the war, the League of Nations attempted to incorporate the Office into its Health Organisation, in accordance with Article 24 of the Covenant of the League.<sup>18</sup> A resolution was passed on 10<sup>th</sup> December, 1920 by the League to place the Paris Office under the League of Nations. However, according to the official record of the League, the "objection of the United States made it impossible [...] to place the existing OIHP in Paris under the direction of the League of Nations."<sup>19</sup> The United States, having declined to join the League, could not send their delegate to the board of the Health Organisation. They did not think it to be in their interests to put the OIHP under the new organisation, as the US was entitled to substantial amount of votes at the OIHP due to its large financial contribution to the Office. The French government was also reluctant to give up influence in what they saw as essentially a French organisation (the only official language of the Paris Office was French), but the objection was mainly seen as coming from Washington.

The original proposal was that the OIHP was to join the Health Organisation through joining as part of the General Committee. The General Committee was to compose of one delegate from each of the League of Nations member states, and one delegate from each of the non-League of Nations members that was on the Permanent Committee of the OIHP. This plan was abandoned when the French government, along with the American, objected to proceed to elect a president for the General Committee.<sup>20</sup> The subsequent solution replaced the envisioned Health Organisation with the creation of a Provisional Health Committee composed of a majority of the delegates also on the Permanent

<sup>16</sup> Goodman, p. 87.

<sup>17</sup> Ibid, p. 92.

<sup>18</sup> Article 24, All international bureau previously established under international agreement shall, subject to the consent of the contracting States, be placed under the authority of the League of Nations." Covenant of the League of Nations.

<sup>19</sup> League of Nations Official Journal, p. 1099, December, 1921.

<sup>20</sup> Goodman, p. 110.

Committee of the OIHP.<sup>21</sup> The OIHP was set to only serve as an advisory body to the League of Nations, thus maintaining its independence from the League. This proposal was accepted by both parties after having examined that such an arrangement did not exceed the capacity granted to the OIHP in co-operating with other health agencies. This was ideal for Paris as it would not infringe on OIHP's autonomy.<sup>22</sup> The matter of merging the two existing bodies came up again at the Council of the League in 1923, where the Council decided to create a mixed commission of the League's Health Committee with the Permanent Committee of the OIHP to draft a constitution for the future of the health body of the League. The final output set the Permanent Committee of the Paris Office to be the General Advisory Health Council to the League Health Organisation. A Secretariat and a Health Committee were also created. However, differing from the Permanent Committee of the OIHP, the Health Committee of the League Health Organisation was meant to serve as a technical body that reported directly to the League's Council on the work that the Health Organisation was doing and other related health issues. The number of delegates on the Committee increased and decreased over the years, but the principle was to have them partly elected by the Permanent Committee of the OIHP; and the other part elected by the Council of the League. The president of the OIHP would be the *ex officio* vice-president of the Committee. Despite the fact that these officials were elected by the OIHP and the Council of the League, they were to serve the Health Organisation in their own personal capacity. In other words, these elected officials were not delegates that represent interests of their own countries.<sup>23</sup>

In theoretical terms, the power that was given to the League Health Organisation was limited. As the decision-making power remained in the hands of the Council of the League, the Health Organisation's role was expected to be mainly advisory and subordinate to the Council. In practice however, Dubin contends that the Committee was more powerful and that its work enjoyed a high level of autonomy. Since diplomats and politicians on the Council lacked the expertise to deal with health issues, they usually endorsed the Health Committee's suggestions without much doubts and rubber-stamped its recommendations.<sup>24</sup>

Before the reform of the Health Organisation in 1936, there had been an increase in the number of advisors introduced to the Committee. Dubin interprets this as the manoeuvre of imperial powers (re: Britain and France), to gain multiple representations through assigning colonial delegates in the League's organisation. However, in principle, nationalities of the members should not

<sup>21</sup> Nine out of thirteen, *ibid*, p. 110

<sup>22</sup> *Ibid*.

<sup>23</sup> *Ibid*, p. 112.

<sup>24</sup> Martin David Dubin, "The League of Nations Health Organization" in (ed.) Weindling, *International Health Organization and Movements, 1919-1939*, (Cambridge: Cambridge University Press, 1995), p.63.

be a determining factor in decision-making given that members to the Health Committee should sit as officials in their own personal capacities rather than as representatives of their governments.<sup>25</sup> Nonetheless, and regardless of this principle, the empires tended to perceive that admission of colonial members to the OIHP, and hence, to the Advisory Council to the League's Health Organisation, would inevitably mean more influence and larger representation of the imperial interest. The record of a meeting of the Finance Committee of colonial Hong Kong aptly illustrates this point. In 1929, London approached the colonial government of Hong Kong and asked if it were willing to financially contribute to the annual subscription of joining the Permanent Committee, thus expanding British representation within the OIHP and the Health Organisation of the League of Nations. When queried about the contribution to OIHP, London explained their request,

At present there is only *one* British member on the Health Committee of the League of Nations while on the Committee of the Office International, whether acting independently or as an advisory health council of the League the absence of representatives with experience of British colonial medicine and tropical diseases, tends to make the representation of the British Empire one-sided and deficient. There are strong arguments in favour of British representation. [...] It was thought that the best arrangement would be to invite some of the larger colonies and those which are most likely to be interested in the work of the Office to contribute an equal share of the subscription. Promises of contributions of approximately £25 per annum have already been obtained from Ceylon, Nigeria, Straits Settlements and Kenya and the Secretary of State desires to know whether the Hong Kong Government will be prepared to contribute this sum or slightly more. [...]<sup>26</sup>

In this case, sub-state participation to an international organisation was actively pursued and encouraged by the British Empire, hoping that an increase in colonial membership would advance its own imperial representation.

## World Health Organisation

Another chance to redesign the architecture of international co-operation in international healthcare came after the Second World War, when the structure of the League of Nations was discussed and transformed into the newly established United Nations. The architecture of the United Nations, which emphasises the principle of self-determination and admits only sovereign nation-states, departs markedly from that of the League which largely reflected imperial dominance.

<sup>25</sup> Ibid, pp. 61 and 63.

<sup>26</sup> "Item No. 84: Miscellaneous Services: - Office International D'Hygiene Publique, Paris, \$302," *Proceeding of Hong Kong Legislative Council*, 31st October, 1929.

Originally there was no plan to renew the Health Organisation into a new body to deal with health issues in the United Nations Conference in 1945. As such, the existing Health Organisation was nearly abandoned instead of reinventing it in a new organisation as the League had done. Coincidentally, at the conference in San Francisco where the future of international institutions was discussed, three medical doctors found themselves in an international gathering of a group of world leaders that were almost exclusively diplomats and politicians. The three decided to get together for a medical luncheon, during which they agreed to discuss creating a new international health organisation on the conference agenda, oblivious to the fact that the British and US delegations had already decided, among themselves, that no health issues will be introduced to the agenda.<sup>27</sup> Regardless of the disinterest showed by Great Britain and the US, Dr. Sze Mingsze from China drafted a resolution proposing an international health conference to be held in order to discuss the establishment of an international health organisation. Subsequently Dr. Souza, representing the Brazilian delegation, and encouraged by Sze (but much to the latter's surprise), succeeded in including the word "health" in the UN Charter. The assumption was that once the word "health" was put into the Charter there would be an obligation to create a corresponding organisation.<sup>28</sup> Following the inclusion of the health aspect into the UN Charter, a declaration calling for the formation of a single health organisation was enthusiastically adopted and a resolution to establish a single health organisation and a preparatory committee was soon put to a vote in January 1946, at the Economic and Social Council (ECOSOC). It was passed by 11 votes, with 4 votes from Soviet countries opting against the resolution. Sze noted that Yugoslavia was unable to vote in favor of a resolution that they seconded due to their status as a Soviet satellite.<sup>29</sup> When the report of the Technical Preparatory Committee was submitted to the ECOSOC, along with other issues preparing the 1<sup>st</sup> International Health Conference, Sze noted again that the atmosphere turned political. The issue of which countries to invite to the conference dominated the discussions, and Sze pointed out that few of the delegations were uncertain about the status of countries like Yemen and the Trucial States.<sup>30</sup> In the end, invitations were sent to fifty-one members of the United Nations, and sixteen invitations were sent to non-UN members, three out of which did not send observers to the conference, namely Afghanistan, Romania, and Yemen.<sup>31</sup>

<sup>27</sup> Szeming Sze, *The Origins of the World Health Organization: A Personal Memoir 1945-1948*, (Florida, US: L.I.S.Z. Publications, 1982), p. 2.

<sup>28</sup> WTO, "Forum Interview with Szeming Sze, WHO: from small beginnings" in *World Health Forum*, Vol. 9, 1988.

<sup>29</sup> *Ibid*, p. 10.

<sup>30</sup> *Ibid*, p. 16.

<sup>31</sup> Goodman, p. 155.

The first International Health Conference opened on the 19<sup>th</sup> June, 1946 in New York. In addition to the presence of the (then) fifty-one UN member states and the thirteen non-UN member states, the only sub-governmental units present were from the post-war allied control authorities: the US Occupation Zone of Germany, occupied Japan, and occupied Korea all sent observers to the conference. Korea was represented by a local Director from the Bureau of Health-Dr. Y.S.S. Lee, but for US occupied Germany and Japan, they were represented by military officials; Major-General Morrison C. Stayer and Colonel Crawford F. Sams respectively. Moreover, the French and British delegations included one personnel working on colonial affairs: one official from the Ministry of the Colonies accompanied the French delegation, and one medical advisor from the Colonial Office served as an adviser to the British representation. Besides the abovementioned, no other sub-state authorities were present at the conference.<sup>32</sup> Observers to the conference were entitled to sit and speak at meetings upon invitations by the chair, but they had no rights to vote or to propose motions.

## Membership to the New Organisation

Despite that most participants, including observers, were representing sovereign entities, considerable time was spent on debating membership eligibility, and quite controversially, on the matter of associate membership as proposed by the Technical Preparatory Committee. With regard to the criteria for membership, the general principle was that it should be open to all member states of the United Nations as long as they accepted the WHO constitution.<sup>33</sup> As for States that were not members of the United Nations, the United States proposed to accept them on condition that these countries accept the constitution. The argument was that “the fight against disease should outweigh any political considerations, since the absence of any states was bound to detract from the effective operation of WHO.” Washington further pointed out that, according to international law, membership to an international organisation by no means affects recognition by other states of the admitted entities. As such, Washington saw no problems in admitting non-UN member states.<sup>34</sup> It appeared as a logical argument from Washington, considering that some years ago the United States wanted to be on the Health Organisation even though it was not a member to the League.

The US opinion on membership led the Soviet countries to introduce a counter-proposal that called for a two-thirds vote of the Health Assembly in order to admit non-UN States as members to the organisation.<sup>35</sup> The issue of

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<sup>32</sup> International Health Conference, 1946.

<sup>33</sup> WHO Official Records, Summary of the International Health Conference, 1946, p. 27.

<sup>34</sup> *Ibid.*, p. 18.

<sup>35</sup> *Ibid.*, p. 18.

membership is much less clear-cut as one would think. Seeing that the conference was set against a post-war backdrop, it was not surprising to find that Spain was excluded from the conference, and Germany and Japan were represented as territories under foreign control. Belarus went as far as to argue that the admission of Spain should not even be posted at the meeting. They recounted Spanish participation during the Second World War and Madrid's help to the Hitler's army. They charged that actions of the Fascist regime ran against the principle of peaceful progress and mutual understanding as in accordance to the Charter of the UN. The Soviet delegation backed the Belarus' claim and insisted on a two-thirds majority vote for admitting non-UN members. After much debate on the matter, the conference decided that non-UN States could be admitted to the organisation by a simple majority vote of the Health Assembly.<sup>36</sup>

Some delegates were displeased by the Soviet bloc's tendency to politicise issues at the conference. Among them included Brock Chisholm from the Canadian delegation, who was to become the first Director-General of WHO. He was against turning the forum of the new organisation into a political battleground. Coming from a medical background, he asserted, "It was important that health should be regarded as a world-wide question quite independent of political attitudes in any country in the world."<sup>37</sup>

Moreover, Chisholm, who was also on the Technical Preparatory Committee, was a major force behind the naming of the new organisation the *World Health Organisation* instead of *International Health Organisation*.<sup>38</sup> The concept behind labelling this organisation as a world organisation instead of an international organisation was the hope that this organisation could transcend national boundaries in order to collectively advance world health. The final consensus in accepting the preparatory committee's suggestion of the name came only after considerable debate. The UK wanted to call it the Health Organisation of the United Nations, but Iran, among several others, did not want membership of the organisation to be limited only to UN members, which at the time of inception, composed of only fifty-one states. Sze, representing China at the conference, explained the committee's choice of wording. He believed that the name is more universal than *United Nations* as efforts in the health domain ought to be "universal and cover a wider field than the United Nations organisation itself," and that the organisation would be one that belongs to the world as whole but not merely to nations.<sup>39</sup> It is important to take heed of the near idealistic vision that functionalism would trump politics that was shared by many members of the Technical Preparatory Committee. Tacitly, this shared belief of the group was transformed into practice through the committee's draft

<sup>36</sup> Ibid, p. 18.

<sup>37</sup> Ibid, p. 70.

<sup>38</sup> John Farley, *Brock Chisholm, The World Health Organization, & the Cold War*, (Toronto: UBC Press, 2008), p. 2.

<sup>39</sup> International Health Conference, 1946, p. 48.

constitution. The committee sincerely hoped that the organisation could be as inclusive as possible. The suggested name of the organisation, and the proposal for a wider scope of membership admission, were indicative of the group's success.

Ironically, while the Soviet bloc politicised the issue of admission for certain members and thus posed problems to the goal of universal membership, the admission of Ukraine and Belarus was itself problematic. Their admission to the UN had long been seen as a political deal to accommodate more votes for the Soviet Union, and scholars have long challenged the autonomy of the two Soviet Republics in international forums.<sup>40</sup>

## Associate Membership

Besides the matter of the politicalisation of membership admission, the other issue that dominated the debate was on associate membership. At the time of the conference, it was one of the first times when the concept of associate membership for non-sovereign entities in international organisations was publicly discussed in an international forum.<sup>41</sup> At first, Sze himself, one of those on the preparatory committee that backed the introduction of associate membership, had difficulty getting support from his own delegation. The proposal called for all territories that are “ineligible to separate membership in the United Nations, whose areas and populations are large enough, whose health problems are of world concern, and which have indigenous health administrations” be granted “all rights and privileges except voting and holding office” under Associate Membership.<sup>42</sup> The discussion showed that this type of membership was created to accommodate those non-self-governing territories ineligible for full

<sup>40</sup> The definition of a sub-state is again put to test in the case of the two Soviet Republics – Ukraine and Belarus – which enjoyed full UN membership. Membership of the two Soviet states had long been interpreted as a political compromise made by Western powers in exchange for the Soviet's agreement to join the UN. However, sovereignty of these two entities was contested in both judicial and practical terms. In legal terms, scholars pointed out that the two republics could not be sovereign since the Federal Law of the USSR prevails over state law, constitutionally speaking. In practical terms, even though the constitution stated that member republics are sovereign states that were free to exercise their state power in establishing foreign relations, almost no diplomatic exercises were undertaken by Soviet member republics, except for Ukraine and Belarus who participated in international organizations. Originally the Soviet Delegation demanded admission of all sixteen republics into the UN at Dumbarton Oaks. The demand was subsequently rejected and the US instead promised three votes to the USSR at Yalta. See Edward Dolan, “The Member-Republics of the U.S.S.R as Subjects of the Law of Nations” in *International and Comparative Law Quarterly*, Vol. 4, 1955, pp. 629-636; and Konstantyn Sawczuk, “The Ukraine: a Sovereign and Independent State? A Juridical Approach,” in *European History Quarterly*, Vol. 1, No. 4, 1971, pp. 377-396.

<sup>41</sup> Sze, p. 17.

<sup>42</sup> International Health Conference, 1946, p. 48.

membership.<sup>43</sup> In particular, there were specific adjustments to the wording in the draft constitution proposed by the Technical Preparatory Committee in order for “Trust Territories, whether administered by a single Power or by the United Nations collectively, to be admitted to associate membership.”<sup>44</sup> As such, the proposal of associate membership reflects the historical context of the time when the new international health organisation was being devised. It was an invitation to consider the representation of numerous post-war occupied areas and other regions under the UN Trusteeship Council. While debates on membership at the conference reflected and reaffirmed the United Nations’ emphasis on sovereign membership, the conference also took note of the fact that many regions were yet to fulfill the UN sovereign criteria in the immediate post-war world order. A new trend developed that prioritised sovereignty as the main criteria in joining the international forum on the one hand, yet the acknowledgement of and subsequent accommodation for those territories that were yet to meet this new standard of statehood indirectly paved way for future participation of sub-state entities in international organisations. The reason being, that the wording of the final article regulating associate membership did not limit itself only to be applicable for trusteeship or occupied countries, although at the inception of the idea these type of territories were clearly the main concern. This specific attention to post-war non-self-governing territories is also reflected by the invitations to the conference that were extended to several territories occupied by the Allied Powers. The constitution governs Associate Membership as follows:

Territories or groups of territories which are not responsible for the conduct of their international relations may be admitted as Associate Members by the Health Assembly upon application made on behalf of such territory or group of territories by the Member or other authority having responsibility for their international relations. Representatives of Associate Members to the Health Assembly should be qualified by their technical competence in the field of health and should be chosen from the native population [...]<sup>45</sup>

In the article, there was no reference to the non-self-governing nature of many post-war territories that were yet to attain full sovereignty. The categorisation of Associate Members in the constitution resembles the main attributes of sub-states that enjoy a certain level of autonomy in handling their own affairs. As the clause stipulates that application of membership should be made by the authorities on behalf of the concerning territories, it assumes that the ultimate residence of sovereignty of the territories in question is recognised, either by the territories themselves, or by the larger international community. As such, one can reasonably infer that Associate Membership is applicable not only to

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<sup>43</sup> Ibid, p. 48.

<sup>44</sup> Ibid, 19.

<sup>45</sup> Article 8, Constitution of the World Health Organization, 1946.

occupied or trusteeship territories, but also to sub-state units whose sovereignty are understood to rest elsewhere - in the central authority that they belong to. In other words, Associate Membership does not apply to territories with contesting claims of sovereignty.

In practice, however, the intention of the Technical Preparatory Committee's introduction of Associate Membership in order to make the WHO be as inclusive as possible was hardly met. Over the course of its half century in operation, there have been very few instances when the window of participation through joining as an Associate Member were exploited. According to UN records, between 1945 to 1999, there have been over 90 non-self-governing territories under UN trusteeship or were administered under foreign powers.<sup>46</sup> Britain alone was responsible to assist the transition of near forty such territories to full statehood or other arrangements of decolonisation. During the discussion on associate membership, the UK, seeing the potentially large amount of additional members to the organisation, proposed to restrict the number of associate members to only twenty. The proposal did not pass, and in hindsight such a limitation seems unnecessary considering the small number of associate members that were eventually admitted to the system. Despite the staggering number of entities that were eligible to associate membership, which was devised to meet the goal of universal membership in the domain of international healthcare, only twenty-two associate members emerged since WHO's inception.<sup>47</sup> Furthermore, it was doubtful if these admitted members could exercise the level of autonomy that they were entitled to in voicing the needs of the local population, despite foreign rule. In 1952, France applied for Associate Membership on behalf of both Morocco and Tunisia. According to the six geographical regions that were established at the First Health Assembly, Morocco as a new associate member was put under the European region, in line with Paris' preference. In the wake of France's claim over Morocco, Spain made similar request and apply for associate membership for the Spanish Protectorate Zone in Morocco the following year. Madrid however, asked to put the protectorate zone under the African region, posing administrative difficulties in placing the same population under two regions.<sup>48</sup> In both cases, the deciding forces were the colonial powers and the role of local representatives of the newly admitted associate members was questionable.

Although Associate Membership was not limited to trusteeship territories, which were the major concern when this type of membership was devised,

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<sup>46</sup> UN, "Trust and Non-Self-Governing Territories, 1945-1999," *The United Nations and Decolonization*, 10 May, 2009, <URL=<http://www.un.org/Depts/dpi/decolonization/trust2.htm>>

<sup>47</sup> Javed Siddiqi, *World Health and World Politics: The World Health Organization and the UN System* (London: Hurst & Company), p. 68.

<sup>48</sup> For politicization on the question of regional grouping, see Javed Siddiqi, "The Delineation of Regional Boundaries" in *World Health and World Politics: The World Health Organization and the UN System*, (Columbia: University of South Carolina Press, 1995) pp. 73-76.

admission of sub-state units as Associate Members almost completely died down in recent years since the Trusteeship Council ceased to exist. In the most recent 10 years that were studied, only Puerto Rico had participated twice at the annual World Health Assembly (see Fig. 1a & Fig. 1b below). Perhaps one of the obstacles for sub-states to formally participate through this type of membership was that application must be made by the central government. In this sense, even though it may be in the interest for sub-states to join, they may find it difficult to secure consent from the central authority to apply on their behalf. In fact, from studying associate members in selected years, we find that besides transitional countries, such as former colonies or protectorates that were expected to soon gain independence, there were hardly any other forms of sub-state entities.

## Conclusion

The development of international co-operation in international healthcare reveals a history of tension between functionalism and politicisation. It is a struggle between technical experts' vision of a world health order contrasted against politicians' understanding of the international system. Membership policy in this struggle has never been neutral, but rather, reflects the power of dominating actors at different times. In the early twentieth century, the formation of the OIHP and its unique, weighted voting system that correlates with Contracting Powers' contributions defer from modern understandings of sovereignty, of which mutual recognition of equality was one crucial aspect. The OIHP however, was an organisation dominated by imperial powers which were the prevalent state form at the time. When the organisation was later incorporated into the new Health Organisation of the League of Nations, OIHP's major members, in particular the British Empire, was not content with the structure of equal participation, and attempted to recruit colonies into the organisation so that they could achieve what they perceived to be an expansion of British representation. The slow process of integrating the OIHP into the Health Organisation encapsulates the transition of the old imperial system into the new world order of equality that was envisioned by the founders of the League. It also marks the changing meaning of state – from imperial states slowly moving towards the conception of the nation-state.

At the creation of a new health organisation in 1946, medical experts were successful in convincing governments to adopt the clause for associate membership and a less politicised requirement in admitting non-UN members (requiring only a simple majority of approval is one of the lowest standards among UN-affiliated agencies in admitting non-UN members). Unfortunately, despite the adoption of these regulations that favour universal membership, such regulations were rarely utilised to the advancement in including local opinions of non-sovereign sub-state entities. The impractical proposals to place

French Morocco and Spanish Morocco under two different regional bureaus are indicative of the tension between governments' political decisions and the good intention behind an inclusive approach to membership policy. Furthermore, criteria for membership became a politicised debate between the West and the Soviet Union. Meanwhile, the new emphasis on sovereign membership was contradicted by the admission of Ukraine and Belarus whose empirical and judicial sovereignty was highly questionable. In the midst of the Cold War, terms of membership were determined by the two major powers in silent conflict. In other words, the new UN stress on sovereignty, as Krasner puts it, became mere 'organised hypocrisy.'

In recent years, membership to international organisations has more or less been fixed, leaving little room for change in admitting or expelling members. Colonial entities disappeared, and the main types of sub-states left are regional entities like provinces, federal states, or autonomous regions within national borders. The participation of these entities in international relations is largely confined to integration into national delegations. As such, the determining factor rests on the willingness of central authorities to incorporate sub-state officials into their delegations.

Based on the above findings, a prediction could then be made regarding future sub-state participation in international regimes or organisations. It is unlikely that sub-state units could join as members, albeit in a more limited capacity, to established UN-affiliated international organisations, even though in principle, as in the case of WHO, the policy of associate membership is applicable to sub-state actors. As mentioned above, the admission of non-sovereign sub-state entities as associate members or as observer were mostly an accommodation made for former colonies that were set to gain independence. It is more likely however, that sub-states seek representation through joining the national delegations. And, seeing the expansion of this practice across different geographical areas and types of regimes, it appears that states have become more open to the idea of incorporating sub-state officials into their own delegations. One reason behind this trend is that participation in international organisations, especially UN-affiliated ones, have become synonymous with displays of sovereignty. Before international organisations became the dominant form of global governance, we see that major powers, at times, could refrain from joining these organisations and still be able to yield influence (re: the US trying to influence work in the Health Organisation without joining the League of Nations). Currently however, membership to international organisations has essential symbolic value; as a way of demonstrating the unity of a given state. As such, even countries that are known for their highly-decentralised federal structures (re: Belgium), choose to refrain from having multiple international representations, but instead opt for incorporating sub-state representations under the umbrella of a single delegation. Due to this development, membership to international organisations has become even more politicised. Taiwan, for

example, was only granted observer status at the WHO in 2009, after almost a decade of blockage from Beijing to attend any World Health Assembly. Despite China's sensitivity to one single representation, China surprisingly scored highest in terms of number and in percentage of sub-state officials present within her national delegations in recent years in the WHA and WHO (see Fig. 1b below). However, almost all sub-state officials came from the special administrative regions of Hong Kong and Macao, and provincial officials from mainland China were usually limited to one per year at the WHA. Nonetheless the tacit acceptance of Beijing to Taiwan's admission as observer to the WHO is an encouraging gesture that signifies Beijing's tilt towards pragmatic consideration over political concerns.

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### **Beyond Duty: Life on the Frontline in Iraq** by Shannon Meehan (with Roger Thompson)

Polity Press, 2009  
ISBN 9780745646725

**Reviewer: Katarzyna Biskup**  
**(Uniwersytet Kazimierza Wielkiego, Poland)**

Many regard *peace missions* as a type of political moral journey to a foreign country, with little regard as to the true dynamics, logistics, impacts and, for those that embark on such *missions*, motivations for offering their expertise to foreign lands and peoples. Indeed, only very few comprehend, or even acknowledge, the consequences of such *missions*. For those interested in such issues, the book *Beyond Duty: Life on the Frontline in Iraq*, a literary debut for Shannon P. Meehan; a Captain in the Public Affairs Office of his *Wounded Warriors Unit* at Fort Hood, having served as a tank platoon leader in Iraq, and Roger Thompson; a Professor of English and Fine Arts at the Virginia Military Institute, comes highly recommended.

*Beyond Duty* is written as a memoir describing a history of self-sacrifice of young soldiers fulfilling their obligations despite a variety of severe obstacles, and the book quickly gained the admiration of many scholars for its style and raw treatment of an issue which is of extreme importance and captures the spirit of war on the frontline very well. For example Tim O'Brien, winner of the National Book Award, and Mary Russell, also a distinguished author acclaim this work. Indeed, the back-cover contains O'Brien's annotation that *Beyond Duty* is a 'powerful and heartbreaking account of Lieutenant Shannon Meehan's tour of duty in Iraq, and of his decision in 2007 to call in a missile strike that claimed the lives of innocent civilians.' After contemplating the gravity of this book, it is easy to echo O'Brien's sentiment, and to delve into the moral dilemmas and implications Meehan faced. Also, Meehan's work clearly demonstrates how past situations and family traditions may affect decisions in the future and behaviours more generally and I was drawn to the realisation that our own decisions tremendously impact our psyche; poor decisions might

lead to perpetual feelings of guilt and underline an infinite number of social interactions.

While *Beyond Duty* tells a story of soldiers' service in Iraq, the main threads are *peace missions* and the ensuing conflict against so-called terrorist groups. The author's narrative captures the seemingly endless difficulties, the banalities of everyday life and the specific conditions he experienced upon coming to Iraq, and indicates that his sentiment was shared by others' – those that, like him, were sent or volunteered to contribute to their country's efforts in Iraq. This metanarrative goes hand-in-hand with Meehan's account of various terrorist groups operating in Iraq; Al-Qaeda and beyond, as he seeks to explore some remote recesses of human behaviour and relates his experiences and the challenges he faced in a clear, detailed and morally sensitive manner. The style of Meehan's narrative adds to its authenticity and makes the daunting task of relating personal triumphs and tragedies easier to achieve.

While the prologue of *Beyond Duty* sets the scene well and readers are introduced to the tragic events which, as Meehan suggests, forever altered the author's perceptions. He commences with a detailed description of the day he served as company commander on a battlefield, and noted that, from the very beginning they (he and his 'soldiers') knew it would be tough as they were ordered to besiege and essentially 'lock-down' the town of Baqubah; an order which entailed limiting the freedom of movement of the towns residents and generally raising the prospects of civilian casualties; which did in fact occur. Curiously, the order was coupled with the set priority of 'gaining the trust of local people,' which, as an occupying military force, was nearly impossible to achieve. Yet, Meehan remarks that "if we expected to be trusted, we need to extend that same kind of trust to them,"<sup>1</sup> a clear indication that Meehan was, and is, aware that trust must be reciprocal; in order to receive trust, one needs to demonstrate trust.

Against the backdrop of an ensuing military engagement, such an approach is heartening, particularly because in the fog of war few soldiers stopped to reflect on how their actions would impact on the local population. In this regard, Meehan fares very well and conveys a sense of dignity and honour as driving forces behind his actions. While the Iraq war may be a source of divergent opinions and heated debates, and one may question the larger political motivations behind the engagement, this work touches on issues related to decision-enforcers, not decision-makers and provides an alternative perspective than the masses of more conventional approaches to the war and its key rationales.

In this regard, *Beyond Duty* reads as a truly human interpretation of the soldiers stationed in Iraq for, ostensibly, peace and security-related objectives. Readers notice that the author's parents feature prominently into the text as it

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<sup>1</sup> Shannon P. Meehan with Roger Thompson, *Beyond Duty, Life on the Frontline In Iraq*, Polity Press 2009, p. 63.

is they which instilled the values which guided his ethical behaviour in one of the most trying situations in current international relations. At times however, *Beyond Duty* captures some of the morally dubious episodes faced by Meehan, and the author presents some moral dilemmas he faced where he had to make choices between the lives of his 'crew' and the innocent civilians caught up in the middle.

Ultimately however, *Beyond Duty* is a war story and explicitly deals with war-fighting. Events on the ground are vividly described and punctuated with the raw emotions felt by Meehan and his soldiers; emotions that kept them in Iraq (and fighting), and emotions that had them all longing for home while not certain to ever see it, and their loved ones again.

In all, Meehan's work surely left an imprint; it invoked sympathy (for the US soldiers and Iraqi civilians) and bitterness (at the bleakness of the situation) in me at the same time and I was left wondering whether such a sacrifice, of a whole generation of Iraqis and Americans, was worth the prize so publicly declared: democracy? This work serves as a reminder of some of the costs of war in modern times and leaves readers 'dazed and confused' over how to respond and what to think about the situation in Iraq.

## **Barriers to Democracy: The Other Side of Social Capital in Palestine and the Arab World**

by Amaney. A. Jamal

Princeton University Press, 2009

ISBN: 9781400830503

**Reviewer: Michalina Drzazga  
(Uniwersytet Slaski, Poland)**

*Barriers to Democracy* mainly focuses on the dimensions of social capital in the West Bank and the impact it has on processes of democratisation. The sociological notion of social capital has been a key concept in social sciences for a prolonged period however; the bulk of research in this field has been carried out in Western societies. Amaney A. Jamal attempts to deconstruct the common understanding of the relationship between social capital and democracy and claims that the bearing of social capital on democracy varies in different political contexts. Thus the components of social capital such as interpersonal trust and civic engagement are shaped diversely in Palestine, and for instance, in Italy. According to Jamal, civil society is not always supportive of democracy. The findings are based on a survey and a series of interviews carried out in the West Bank in 1998 and 1999. The author's research demonstrates that some civil associations may back authoritative regimes for various reasons. Jamal explains the complex associational landscape that has developed in the Palestinian National Authority (PNA). Apart from discussing the question of civil society, the author familiarises the readers with the historical and political background of the PNA. The issue of the enduring Israeli-Palestinian conflict is left aside and the focus is shifted towards the Palestinian society itself and its response to the Oslo Accords and the PNA.

Although social capital is a key word in the aforementioned publication, the reader is not provided with an explicit definition of the term. Its meaning, as adopted for the purpose of the book, may be only deduced. It seems that the concept of social capital has been broken down into two major components: interpersonal trust and civic engagement. Unlike Putman, who claims – in *Making Democracy Work* – that these two factors work together towards the strengthening of democratic polities, Jamal provides evidence that there is no such relation in the political reality of the West Bank. While Putnam's thesis

may be accurate for a democratic state, the author argues that interpersonal trust and civic engagement do not correlate positively in non-democratic entities.

One underlying reason is widespread clientelism and corruption. As Jamal's survey shows, interpersonal trust appears between clients and their patrons and do not affect people who oppose this highly non-democratic practice. Corruption and clientelism seem to function as guarantees of trust. People have confidence in the regime because the authorities care for them and support their actions in exchange for their loyalty. This mechanism applies to the West Bank's civil sector. The author states that in the 1990s pro-PNA associations were more likely to get state funding and other forms of support, while other associations – potential critics of the regime – were marginalised. This situation resulted in the politicisation of civic organisations in the West Bank. Apparently, neutral associations which deal with charity work or sports became affiliates of political factions. The Palestinian associational landscape became polarised along the axis of PNA supporters and opponents.

This split in the third sector in the West Bank leads to another variable in Jamal's research, namely support for the PNA or lack thereof among members of associations. It is worth mentioning that civic engagement in Palestine was in full bloom during the British Mandate and it took the form of local charitable groups and clubs, often religious or family based. The conflict with Israel seems to have politicised and united the associations of that time, and the Oslo Accords let them hope for a better future. Unity was shattered when the new rule turned out to be a failure. Civil activists who did not want to further compromise, and withdrew their support for the PNA, met with discrimination from the state apparatus. They felt deluded and lost trust in the PNA. What is more, the findings reveal that these people, although actively engaged in civil society, have little interpersonal trust. Despite being less trustworthy, the members of anti-PNA associations show high levels of support for democratic institutions and high levels of civic indicators such as community engagement. The data was inversed in the case of activists who accorded the PNA with their backing. As Jamal shows, the levels of interpersonal trust are higher in pro-PNA associations. At the same time these groups show low interest in the development of democratic institutions. Jamal points to the vertical structure of pro-PNA associations to explain this phenomenon. In these vertically structured organisations the members are less disposed to engage one another in seeking political change. The protection that embraces them accounts for the fact that the hierarchical status quo is maintained and the feeling of security and trust prevails. In horizontal anti-PNA associations, on the other hand, cooperation between equal individuals reinforces civic engagement but trust is low and the state is not considered a guarantor of law or order.

Besides corruption and clientelism, which considerably hinders democratic change, there are some institutional obstacles to the functioning of democracy supportive associations. Jamal diverts from Palestine to show

democracy-constraining practices in more entrenched polities and presents the political situations in Morocco, Egypt and Jordan, and the role of associations within these states. Similar to the case of Palestine, the associational terrain in the aforementioned countries is polarised. Support for the regime is rewarded with funding, while opponents often find it difficult to register their activities to operate legally. Jamal provides some examples of authoritative regimes using legislative means to impede the creation and operation of organisations that promote democracy. Other measures commonly used in such political contexts are: censorship; refusals to grant licences; as well as media smear campaigns.

*Barriers to Democracy* assists readers understand that there is no simple relationship between civil society and democracy in the Arab world. Jamal's research disproves the thesis – prevalent in Western discourses – that there is a positive linkage between these two phenomena. Among the authoritative regimes of the Arab world some civic associations prefer to support their authoritative benefactors rather than promote democracy. Pro-democracy organisations, on the other hand, may be deprived of interpersonal trust, which is considered a crucial component of current democratic state models. A key reason for this inverse correlation is that civic associations in the aforementioned Arab countries have to operate in quite different political and social conditions. In the state-centralised political context, where corruption, clientelism and patronage are the basic rules of social relations, democracy-promoting associations must struggle not to fall victim to the system. The acceptance of corrupted principles in associations generates 'bad' social capital and hinders the way to democracy.

*Barriers to Democracy* provides convincing insights into social capital in the West Bank but the focus throughout the book is on associations rather than average Palestinian people and Jamal does not limit the text to social capital. Instead, Jamal presents a necessary introduction to the polities of the Arab world and discusses some central aspects of political life in four countries providing details on political leadership, legislation and human rights. This broad perspective helps the reader to form a comprehensive image of the political situation and civil engagement in this part of the world, and makes *Barriers to Democracy* a good scholarly reading.

## **Five to Rule them All:**

# **The UN Security Council and the Making of the Modern World**

by David L. Bosco

Oxford University Press, 2009

ISBN: 9780195328769

**Reviewer: Anne Höh  
(Universität Passau, Germany)**

David L. Bosco's work entitled: 'Five to Rule Them All: The UN Security Council and the Making of the Modern World,' has positively contributed to the literature on the United Nations (UN) and international order more broadly, as well as some of the limitations of the UN, through this logical, well-organised and detailed review of the actions and internal structures of the UN. He commences his exploration at the very birth of the UN and explains its behavioral evolution until the current conflicts in Afghanistan and Iraq. In doing so, Bosco reveals the circumstances that influenced certain resolutions and decisions which include political considerations related to perceived or actual interests, but may also be based on personal sympathy or antipathy between ambassadors to the UN.

The book contains seven substantive chapters and is chronologically organised with the chapters giving a rough overview of, and corresponding to, key phases in international relations. The entire first chapter is dedicated to examining the creation of the council and Bosco describes the specific atmosphere in the aftermath of World War Two. The term 'United Nations' itself was first used as a wartime alliance against the Axis powers. When the victory of the Allies was foreseeable, the leaders of Russia, the US and UK began discussing the potential for a post-war organisation. They were aware that they made up the bulk of military power in the world and especially (then) US President Roosevelt felt responsible for creating a world-wide institution to preserve peace since the US had not been a member of the League of Nations, the UN's predecessor. Roosevelt, Churchill and Stalin met in August 1944 at Dumbarton Oaks in Washington D.C., and in February 1945 in Yalta to decide on the principles of a post-war organisation called United Nations. They did not

invite others' direct inputs but instead decided on creating a 'Security Council' consisting of 5 permanent members with veto rights over council decision. These 5 are: the US, China, Russia, the UK and France. In addition, agreement was reached to provide wider representation by way of including 6 rotating, (re: non-permanent) members, with voting rights though lacking veto power. The council *should* have the responsibility to maintain international peace and security; it *should* act to negotiate between feuding parties, and reserves the right to intervene with "any measures necessary" to keep or restore peace (S.21). Despite such a normative approach, the wording governing the structure, mandates and limitations of the council was vague. Terms like: "threat to the peace" or "act of aggression" were not specified which resulted in a form of political lethargy since there were no binds that would *require* council actions.

Since the council prioritised its energies in tackling issues of their collective or individual interests, the UN seemed as though it were going to transform into an elitist political system rather than one representing international interests rather than very narrowly defined self-interests of the 5 permanent members. In order to appease the demands of smaller countries, which rightfully sought to be included the post-WWII security architecture, a General Assembly was designed where *all* UN members could wield some influence, announce their interests and generally participate in international politics.

One of the post-world curiosities related to growing resentment to the UN council was in regard to the selection of council members and Bosco, in great detail, reveals why China and France selected since neither were truly responsible for defeating Imperial Japan or Nazi Germany, they were not seen as superpowers and both of their economic potentials were severely restricted. China and France gained much international political clout as they acquired permanent membership and veto rights and Bosco provides compelling evidence to show how this international pedestal was attained and maintained by both.

Once the council's configuration and the spirit of a General Assembly were agreed on, the structure, objectives, tools and membership issues (who could be accepted as a member and under what conditions) were enshrined in a legally binding Charter (re: UN Charter). The initial draft charter was presented to only 45 states, and after some minor changes, they signed the charter on June 26, 1945. On that date, the League of Nations formally ceased to exist and the modern UN was founded with the 5 permanent UNSC members at its helm.

Considering the structure of the UN, Bosco rightly presents the problematic of how, if at all, the UNSC members balance between their national and more international interests. Bosco goes further to assess the endowment of international decision-making powers in the hands of the 'five' and argues that all Charter signatories essentially provided the legitimate right of the UNSC to impose blockades, economic sanctions and wage wars on their behalf. Bosco notes that only under the particular conditions of post-WWII international flux

was it possible for the big powers to corner as much power as they did, and use it to forge an international order that was to benefit them more than others. Despite Bosco's concern over the acute concentration of political power into the hands of ideologically opposed 'great powers' he does stress that it maybe necessary for the great powers to maintain privileged positions as enframed in the UNSC or else they would likely work around, ignore or abandon the UN altogether; the mistake of the League of Nations and one that the UN sought not to repeat.

In addition to providing the history behind the development of the UN's structure, Bosco spends considerable time analysing some of the more defining armed conflicts that elicited UNSC involvement and the internal procedures – such as the establishment of an informal chamber to provide a venue to diplomats so they may meet outside of the public eye – these conflicts encouraged. In dealing with these issues, Bosco not only contributes through his assessment of late 20<sup>th</sup> century conflicts and the role of the UNSC (members) in those conflicts, he also offers insider-knowledge of what actually went on in 'unofficial' negotiations between UNSC members.

The book is mainly concerned with the roles of the five permanent members, especially the US, which is described as *the* major force within the UNSC. Bosco refers to the unspoken custom of selectivity; of only discussing problems of international gravity among the permanent members, and often only between the Western members (re: the US, UK and France) or between the US and (then) USSR (currently) Russia. Since the 1960s, as the Non-Aligned Movement – to which the majority of states in the General Assembly belonged – developed into a powerful lobby against such selective behaviour (re: making non-transparent decisions behind closed doors) there has been mounting pressure to change the structure of the UN's key decision-making body and as a compromise the Council extended its non-permanent seats from 6 to 10 (1965) with the number of votes required to pass a resolution raised to 9, which meant that the permanent members need at least one non-permanent members' vote to pass a resolution.

The composition of the Council does not adequately reflect global conditions; neither in population size, industrial capacities or the distribution of harder forms of power. However, since any change would have to be approved by all permanent UNSC members, due to veto power, the Council's current configuration is likely to be enduring. Even though Bosco argues that the permanent members would face acute pressure if a draft to change the Council is accepted by a two third majority in the General Assembly, it is still unlikely to yield positive results. It is also noteworthy that Bosco considers that most drafts to change the Council includes an expansion of the Council to 25 (+) members, which would complicate the diplomatic capabilities of the UNSC and retard its response times even further.

The UN and the UNSC have existed for more than 60 years and Bosco draws the conclusion that the Security Council has largely failed to fulfill its governance function, which implies maintaining peace and intervening in cases where peace is breached. Indeed, Bosco is sceptical that things will improve in the future but maintains that its secondary function; as an international concert, has, and continue to fare better. Since five of the worlds largest powers are *forced* to hold regular, even daily, meetings they can effectively deal (when the will is there) with pressing issues in a more concerted way, even if there is great discretion and a lack of public debate. Furthermore, the five are dependent on each other for a variety of resolutions and this created a special and deep relationship between the permanent members.

Although founded in the hope that WWII could be prevented by the steadfast and cooperative relationship based on mutual support and goodwill, the UNSC was unable to properly emerge as a global governance Council in any sincere manner and since its inauguration the world has witnessed a worrying number of inter- and intrastate conflicts, genocides and asymmetrical wars and the UNSC often sat on the political side-lines, unable or unwilling to prevent humanitarian tragedies and suffering (re: the massacre in Srebrenica and the genocide in Rwanda) however is was able to prevent major armed clashes between nuclear powers and could thus be said to have fulfilled a slight part of its mandate, a point raised by Bosco not so much to excuse the UNSC members, but rather to remind the public that the process of constructing an effective organ of international security is lengthy and full of complexities and that great power peace is a step forward.

*Five to Rule Them All* is a well researched book that reaches scientific standards but is also accessible and a genuinely interesting read as it is full of many examples and provides an avenue to exploring and understanding the nuances of the UNSC in a way that allows readers to more openly relate to it. In all, this book should be included in the 'must read' list of anyone concerned with the state of international affairs and the potential of the UN and the UNSC to act in-sync with the demands of the 21<sup>st</sup> century international citizen.

# **Modernizing the United Nations System: Civil Society's Role in Moving from International Relations to Global Governance**

by John E. Trent

Barbara Budrich Publisher, 2007  
ISBN: 9783866490031

**Reviewer: Marguerite Marlin  
(Carleton University, Canada)**

At first glance, John E. Trent's *Modernizing the United Nations System: Civil Society's Role in Moving from International Relations to Global Governance* appears to be a book about UN reform. In fact, it could more aptly be described as a book about reforming the UN reform process itself. Its chapters dissect the machinations and power dynamics of the UN and other international organisations. It serves as both an explanation of how civil society is playing an increasingly central role in global governance, and as a cause of the acceleration of this trend. Trent emphasises the imperative nature of UN reform, documents the impediments to previous attempts at reform from within the organisation and argues that future UN reform efforts should be spearheaded by civil society representatives if they are to be effective.

The section on the history of International Organisations is very illuminating and offers an interesting perspective on the development of such institutions: Trent's historical approach contrasts with the conventional view of these organisations having largely been built out of the ashes of the world wars, as he emphasises the importance of the development of international institutions in the early 19<sup>th</sup> century. This is relevant to Trent's overall thesis, as it highlights the historical role that civil society has played in shaping existing international institutions – a role he would like to see formalised in the current structures of global governance.

In order to provide the context for the proposed reforms to global governance, *Modernizing the United Nations System* includes many passages that highlight the need for a multilateral, collective approach to global policy. While these passages occasionally read like a laundry list of impending catastrophes and profound global inequities, the cases Trent describes are well-documented

and give a detailed picture of the most pressing concerns in the various sectors of global affairs.

Naturally, the inability of the current UN system to adequately address these pressing concerns is also a featured theme in the literature. Though Trent criticises those who deride the UN for its “irrelevance,” he acknowledges that there are some valid reasons behind the view that the UN is ineffective, which the UN cannot afford to ignore. Here Trent again shows a nuanced understanding of the politics of the UN, going beyond the usual complaints of the organisation being overly dominated by one or another group of nations. Some of the most compelling reasons he lists for the necessity of UN reform are the following:

1. The UN is geared toward preventing and halting wars between sovereign states, but its emphasis on state sovereignty makes it ill-prepared to address and work to extinguish civil wars, terrorism and despotism;
2. The new economics of globalisation now can bypass the UN, leaving it with a reduced role in global governance planning;
3. Funding for UN agencies is erratic, resulting in a limited ability to plan and budget;
4. Communication and coordination between the UN and its agencies is poor.

As a way to address these problems, many past proposals for UN reform are discussed in the literature; or, at least, they are explained – it should be mentioned that, in this section, Trent displays thorough knowledge of existing proposals and summarises them adeptly, but he does not offer much in the way of his own analysis of them. Overall, one gets the impression that the proposals themselves are not the point – that it is the inability to bring them into effect that is significant to Trent. This is particularly clear in his discussion of Kofi Annan’s attempts at UN reform, as it is the conditions for the limited success of reform (lack of political will from within the UN, an American administration hostile to UN expansion, etc.) that are analysed far more than the proposed reforms themselves.

Though it should be stressed that the variety of views represented here shows an extremely thorough knowledge of the existing literature on the subject, the sense that Trent is being conservative in expressing his own assertions is felt at some points of the book. For example, one element of *Modernizing the United Nations System* that seems lacking is the explanation of how an increased role of civil society would remedy the structural and political problems facing the UN. In some cases, this needs no explanation. For example, the fact that the budgets and scope of operations of IGOs often exceeds that of similar UN programmes is, as Trent points out, a compelling reason to believe that they would be better equipped to handle more regional operations. However, at times it seems to be almost taken for granted that NGOs and IGOs could influence the UN to be less fragmented and more representative of world populations; however, there are possible counterpoints to this view that while discussed, are

not properly refuted. For example, Trent responds to the criticism that IGOs may not be as accountable to its constituents as state governments are with the statement that “Paul Wapner argues that their mechanisms of accountability are greater than those of states or corporations.” This book could use an explanation of this argument, and might be even better served by Trent’s own arguments and analysis on the subject.

While this may be regarded as an oversight, Trent has shown a commendable attention to detail in other areas. Perhaps because of his own first-hand experience with international organisations, he avoided making vague statements on the implementation of his ideas, instead provides very specific suggestions for this purpose. Among these; the establishment of a “Consultative Assembly” for the UN is proposed, with membership coming from civil society representatives, business entities and trade unions/professional associations. Trent also promotes the formation of UN-Affiliated “Campaign Coalitions” headed by international civil society associations and would combine “a narrow focal point and high intensity of involvement with long-term collaboration.” These proposed changes would result in a more formal advisory role for civil society actors. Trent also promotes the idea that some UN activities should be managed by more regional organisations and issue-based NGOs. The EU is discussed as a possible model for UN reform – as its parliament effectively brings together states and civil society representatives in the same forum – but overt influence from this is seen as problematic, since it is based on a Western model that could be seen as subverting the identities of other political communities. Finally, although it is stated in a less categorical manner, a featured theme for reforming the UN and increasing the role of civil society is the de-emphasising of the “Westphalian nation-state” in favour of a “world community.”

This is a very dynamic contribution to the study of global governance, and while Trent is perhaps not the first to conceive of all of these ideas, he is almost certainly the first to conceptualise them in such a concrete and tangible manner. The result is a fine example of an approach to *idealpolitik* that is not satisfied with simply theorising about lofty goals, but seeks to determine the best manner in which they can be implemented.

## **Paying the Human Costs of War: American Public Opinion and Casualties in Military Conflicts**

by Christopher Gelpi, Peter D. Feaver  
& Jason Reifler

Princeton University Press, 2009  
ISBN: 9780691139081

**Reviewer: Scott Nicholas Romaniuk  
(Carleton University, Canada)**

This dense and well-written book by leading scholars on the sources of international militarised conflict and strategies for conflict resolution is a model of theoretically informed political literature. As indicated by its subtitle, the scope of this work examines ways in which the contemporary American public decides on whether to support the use of their nation's military forces internationally. Contrary to conventional views, the authors demonstrate that Americans do not respond reflexively, and solely to the number of casualties of any such conflict. Instead, the authors argue that support for continuing a military operation, or commencing a military operation in face of mounting combat-related casualties is a function of the interactive effort of two underlying attitudes: expectations about the probability that the ascribed military operation, or campaign, will successfully achieve its objectives; and the belief in the initial 'rightness' of the decision to launch a military operation.<sup>1</sup> Within a cost-benefit framework, when it comes to supporting continuing military missions in while a human death-toll rises, expectations of success are of principal importance.<sup>2</sup> Packed full of insights and synthesis, this work is a useful read for specialists and the interested public alike, and is an especially important read for policy-makers and military analysts.

The authors demonstrate that their argument utilises the voluminous survey data that are now available on this subject; they make comprehensive and efficient use of surveys administered by others. Despite that the authors present axiomatic assertions on public response to military casualties, the underlying

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<sup>1</sup> Christopher Gelpi, Peter D. Feaver and Jason Reifler. *Paying the Human Costs of War: American Public Opinion and Casualties in Military Conflicts*. (New Jersey, NJ: Princeton University Press, 2009). p. 20.

<sup>2</sup> *Ibid.* p. 2.

strength of this book is data from proprietary national surveys, which they designed and conducted from October 2003 through November 2004. This data, describing the results of some 8,588 interviews with adult Americans, represents the most extensive and detailed compilation of public attitudes toward war casualties to date.

The theories and investigations of a variety of other specialists are also considered as a means of constructing a literature-base around the issue of casualty tolerance and public attitudes toward war. The perspectives of Bruce Jentleson, Eric Larson, Steven Kull, as well as a variety of scholars including Donald Rugg, Hadley Cantril, Scott Gartner, Gary Segura, and Michael Wilkening are measured, and incorporated into this contribution. The views of the aforementioned scholars are contrasted against those of Karol and Miguel, Charles Moskos, and Charles Rangel and the authors found that their research identified expectations of success as the crucial factor in the public's attitude toward military missions.

A host of demographic factors are also presented, which previous research has shown affect casualty sensitivity. These factors are identified as: as race, gender, education, and age, with certain components tending to be positively correlated, and others being negatively. Existing literature on this topic is successfully deployed, and provides readers with a concrete empirical and theoretical context.

While much of Gelpi, Feaver, and Reifler's theoretical discussion covers familiar ground, their points are very clearly articulated. They take-on a noteworthy salience in the context of the American involvement in the war, and subsequent peace-processes in Iraq, even as two fundamental logics drive American commitment to these processes despite the human costs involved in such endeavours. Useful measurement for understanding the constraints that have been set on how American military power can be wielded is initially presented.<sup>3</sup> The authors correctly note that ever since the war in Vietnam, policy-makers in the US have worried that the American public will offer their support for military operations only if the human costs of the war – as measured in combat casualties – remain marginal. Americans cease their support for military operations that produce casualties, and voters ultimately punish political leaders who deliver such policies. Existing literature reinforces four key insights that serve as the point of departure for their study:

1. Public attitudes toward casualties are very difficult to assess and may change over time.
2. The public is not casualty phobic, but casualties do affect public support for military operations by counting as the costs in a cost-benefit calculus.

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<sup>3</sup> Ibid. p. 1.

3. A range of factors shape the elasticity of demand for military operations – the rapidity with which casualties might undermine public support in any given mission.
4. While judgments are possible about public opinion in aggregate, in fact individuals respond to casualties differently.<sup>4</sup>

The previous passage illustrates the clear language, and terminology, the authors present their readers. It also demonstrates that their focus considers some of the peripheral issues that not only affect the public (as a whole), but the multiplicity of factors that affect the individuals that comprise American domestic society. Thus, the analysis caters to a wide-range of readers who may find the subject matter interesting and applicable to their perspective of American public opinion – as external spectators or part of that public – in general.

The concept of *casualty tolerance* is eventually argued as being the most theoretically and politically useful measure of “war support” because it directly relates to the trade-off facing most Americans as they decide whether to support an ongoing conflict.<sup>5</sup> The authors demonstrate the belief that casualty tolerance is critical to understanding public pressure to withdraw from ongoing conflicts. They use this concept as their dependent variable in the later sections as they present an analysis of public support for the 2003 American invasion of Iraq.<sup>6</sup>

A unique perspective on this particular domain of public interest is presented in chapter five, where a series of hypothetical missions are raised, including, in particular, the number of casualties the US would need to defeat the militaries of Haiti, Iraq, North Korea, and China, as well as instances of sending US troops against Indonesia (East Timor), and Yemen, and so measures of *ex ante* “approval” or “disapproval” of the use of force are more appropriate than they would be in the context of ongoing conflict.<sup>7</sup> Although the authors could measure casualty tolerance for each of the theoretical scenarios of conflict, constructing the ordinal casualty-tolerance measure that was developed in previous sections of their work would add a large number of questions to the battery required for each experiment. Thus, they wisely chose to focus on *ex ante* “approval” or “disapproval” in the hypothetical missions as a way of maximising the number of substantive questions and experiments that they could fit into appropriate surveys.

Having presented an examination of hypothetical scenarios of military missions, the suggestion is made that the US public adjusts its tolerance of casualties accordingly; that the public might deem as necessary a higher level of casualties in a conflict with North Korea than it would against Iraq, because

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<sup>4</sup> Ibid. p. 15.

<sup>5</sup> Ibid. p. 99.

<sup>6</sup> Ibid. p. 99.

<sup>7</sup> Ibid. pp. 62, 82, and 110.

the military challenge is far more daunting in the former. Of critical importance is the authors' insistence that technological necessity is an important condition that serves as a caveat for everything argued in preceding chapters. Drawing on public opinion data from other countries, particularly in Europe and Japan, it is demonstrated that systematic studies of casual sensitivity of the kind that have been done in the US suggests that there is a fair degree of commonality between US and European public opinions. Of equal importance however, is that this work makes confident claims only about the nature of American public opinion in the context of paying the human costs of war and avoids suggesting the US as a prototype of democratic publics' tolerance to war.

From a research perspective two significant shortcomings may be identified in this work. The first concerns a lack of reference to resources available on existing ethnographic data, such as: Human Relations Area Files, HRAF – a strange omission for a study that deals with a military that comprises components from all measures of the ethnic-spectrum. Addressing other demographic factors in greater detail would have served to develop a clearer image of how the US military is comprised in terms of race, gender, education, and age, and to show how and why the American public responds to these factors as parallels are drawn in this regard. The second area of concern is the lack of historical responses deployed by political or military authorities in order to take action against issues raised as a consequence of public opinion, or discontent with respect to the human costs associated with military missions, especially those that have gone awry. Moreover, examples of how successful missions have shaped poor public response to government decisions to utilise the nation's military forces would have also produced interesting points to consider. Such deficiencies may disappoint interdisciplinary scholars, particularly those which focus on comparative analyses.

In sum, this contribution to the literature on public opinion's relationship to conflict in the contemporary political environment clearly exposes reasons for why the US public responds to American military missions the way it does. Far from being the final word on the subject, it is an invitation to other political scientists, social scientists, and specialists of strategic studies to further explore the public domain as it intersects with peace, conflict, and military operations endeavoured not only by the US, but others as well.

## **Europe, Globalization and the Lisbon Agenda**

by Maria João Rodrigues (editor)

Edward Elgar Publishing Ltd, 2009

ISBN: 9781848441996

**Reviewer: Vivien Sierens  
(College of Europe, Belgium)**

How can Europe's socio-economic and political development be enhanced while preserving the richness of its social protection systems? This is the key question, and challenge the Strategy of Lisbon for Growth and Employment attempted to tackle. Launched in 2000, the so-called *Lisbon Agenda* had a prime objective: to transform Europe into the most competitive and dynamic knowledge-based economy in the world, capable of sustainable economic growth with more (and better) forms of employment, and greater social cohesion by 2010. Based on a flexible and multilevel working model, the *Open Method of Coordination*, this strategy once represented a clear attempt to redefine Europe's competitive position on the global scale while respecting its welfare state values.

While the Commission launched (24 November 2009) its long awaited public consultation on the future of the Lisbon Strategy and that EU members reacted to it, this book aims to critically analyse the evolution of the different axes of this strategy; its benefits and its weak points. The book is structured around 4 main axes – the development of the Lisbon agenda at the EU-level; the diversity of national implementation of the Lisbon Treaty; its external dimension; and its implications for EU governance – corresponding to a series of workshops that were organised in Brussels and Lisbon between 2006 and 2008 on the interactions between the research and European economic agendas.

Edited and coordinated by a policy advisor for the Lisbon Agenda, Maria João Rodrigues, each section of the book is policy oriented and structured according to a similar pattern: first a chapter written by Miss Rodrigues introducing the theme, second various analytical contributions responding to this introduction and finally some concluding remarks summarising the debates. As the Lisbon Agenda was developed within the framework of close dialogue between policy-makers and the academic community, the structure of the book reflects quite well the philosophy of the agenda itself and relevant official documentation are provided in the book's Appendices.

The book's structure assists in its overall effectiveness in analysing the complexities and challenges of the Lisbon Agenda. The presentation is clear and the style is generally quite lively, even for readers unfamiliar with the thematic. Thanks to the diversity of academic and cultural backgrounds of the authors, the book manages to strike a balance between political, sociological and economic analyses. As such, the interdisciplinary approach is refreshingly welcome as it is reflecting the general philosophy of the Lisbon Agenda and provides a more in-depth analysis of each dimension of the Lisbon Strategy. For example, Pier Carlo Padoan study's, in detail, the relations between the Lisbon Strategy and the Stability and Growth Pact however one could deplore the lack of quantitative data and of concrete measurements of the policies developed under this strategy. The lack of verifiable indicators is part of a more general problem intrinsic to the implementation of the Lisbon Strategy, i.e. its lack of monitoring. The forward looking perspective is useful as it underlines the next challenges this strategy will have to tackle very soon, however after ten years, one broad mid-term review and an additional review in 2007, one could have expected to have more concrete data to discuss. The book presents more questions than it answers on how to improve the Lisbon Strategy. The development of a more efficient strategy for the next ten years will be of paramount importance for the positioning of Europe in the new multipolar world order. The short time-lapse given for the drawing of this future strategy; the current economic crisis situation; the institutional uncertainties introduced by the Lisbon Treaty; and the diversity of challenges identified in this book (i.e. the reform governance structure of this strategy) forces readers to realise that the tasks EU members' governments will face over the next months is enormous and only the future will tell us if we were ready to face this challenge or if we would pass our turn once again.

## **Political Elites in East Central Europe. Paving the way for “negative Europeanisation”?**

by Nicole Gallina

**Reviewer: Hanna Vasilevich  
(Metropolitan University Prague)**

2009 witnessed the celebration of 20 years since the collapse of communism in Eastern-Central Europe (ECE): starting with Poland’s 1988 nation-wide strike and free election of the Sejm and the legalisation of the Solidarnosc, followed by the peaceful liberalisation of the political regime in Hungary and the opening of the Hungarian-Austrian border – which allowed a large number of East-Germans to escape to Austria (May 1989) – then, on 09 November 1989, the Berlin wall was torn down, and on 17 November 1989 the Velvet Revolution in (then) Czechoslovakia replaced communist rule. 20 years later and the ECE countries (Poland, Czech Republic, Slovakia and Hungary) have successfully joined the Atlantic political and security community, reflected in their NATO membership and became members of the EU, choosing the path of democratisation and Europeanisation. But have these ‘Vysegrad’ countries succeeded in the processes they began some 20 years ago? In her book entitled: *Political Elites in East Central Europe: Paving the Way for “Negative Europeanization”?* Nicole Gallina attempts to demonstrate that, despite democratic changes in these countries which were followed by the creation of the democratic institutions; political elites have largely failed to become Europeanised. Gallina argues that the main reason for such failure lies in the fragmentation of political elites that created a significant gap between the behaviour of such political elites and the formal democratic institutions in ECE countries.

The book is composed of 8 substantive chapters, and is structured in a way that provides readers with a short introduction to the importance of analysing ECE elites, followed by a chapter devoted to the fragmentation of the political elites in ECE generally and in relation to the institutional system, and then the next four devoted to case studies of each of the Vysegrad countries. The final chapter provides an answer as to whether the Vysegrad countries’ political elites are capable of Europeanisation. It is important to briefly present each chapter as a means of weighing the success of this contribution.

The first chapter concentrates on the changes political elites faced post-1989 and Gallina suggests that in order to become Europeanised, political elites

should have turned away from the communist past. The problem she recognised within the Vysegrad group is based on the fact that Europeanisation occurred only on economic and institutional levels and few alterations to the structure and behaviour of political elites were undertaken. For instance, there was only a partial removal of apparatchiks; formal democratic institutions were, and still are, conducted using Soviet-style techniques; old elites are still employed with new governments – hindering reforms that endanger their positions – leading to a situation where new, emerging elites are unable to effectively replace older ones, a process which would likely assist in proposing, accepting and adopting reforms and more constructive forms of governance. As such, the gap between political elites and democratic institutions, caused, according to Gallina, by elite fragmentation has been widening.

The second chapter delves deeper into the idea of elite fragmentation. The core of such fragmentation is connected with the fact that “even if communist-rooted elites proved to be in the minority after 1989, they had a significant impact on the whole political system. In coexisting with old elites, the system found it more difficult to tackle critical issues, such as lustration or the reform of security services.” Communist parties have, surprisingly, not vanished. Instead they simply changed their names and transformed into new parties, this time declaring democratic values. This was endemic on the state-level in the cases of Poland and Hungary, while in the Czech Republic and Slovakia former communists became a “serious adversaries on the local and regional level.” In any case, this bred certain distrust between old and new elites, while, at the same time, the new elites were forced to adapt the old elites’ attitude that brought the communist and sometimes even pre-World War II political traditions. Gallina characterises ECE political elites’ behaviour according to four aspects:

1. Top-down and authoritarian thinking towards to public and within the political elites as well (Czech political parties leaders’ arrogance).
2. The use of emotional issues in politics (concept of nation, history and identity – case of Hungary).
3. Policy-making that can be determined as a “head-in-the-sand politics” including “culture of lying” and double standards of “talks and deeds.”
4. Policy of confrontation and non-cooperation not only with the public but also between and within the political parties.

Such behaviour led to polarisation and populism, while the latter presented one of its elements in the shape of Euroscepticism (re: the Czech Republic’s conservative ODS party). So, based on the above patterns of behaviour, Gallina notes that such political elites might “endanger and outweigh the influence of both domestic and European institutions.”

The third chapter is devoted elites fragmentation and the institutional system. In this chapter Gallina focuses on the correlation between political systems in the selected countries and their political elites. The rapid development of

democratic institutions enabled these countries to create formal political frameworks which met nearly all requirements of a democratic system. However, the political elites, whilst acting within this democratic framework, do not give up their behavioural habits and attitudes. Therefore it is common that democratic political institutions are practically *used* in favour of certain interest groups. It may be seen in the example of non-transparent and corrupt budgetary proceedings. Gallina argues that despite the creation of formal democratic frameworks, these countries did not adopt a code of elites conduct which implies that such elites cannot produce fair and democratic behaviour, which are not guaranteed by the existence of democratic institutions alone. Therefore she contrasts egoistic political elite and democratic frameworks. In her opinion, elites' conduct is characterised by

1. an authoritarian-based character,
2. a top-down understanding of politics,
3. a high reliance on political confrontation,
4. informality.

This contradicts major principles of democratic institutions, namely the rule of law, the separation of powers and cooperation. Gallina refers to the analysis of political parties in this system and states that they are closely related to state structures (clientelism) and fragmentation is facilitated by political 'noise' with multi-partism. Fluctuation of old and new elites did not solve the problems of the societies. Political elites' flexibility was rather intra-partisan and did not have any impact on the transparency of the entire political system. Thus, it was a democracy itself where democratic rules were merely ignored.

The case studies in this work commence with Poland, where there had been the strongest anti-Communist opposition which developed into a strong political force. In this case, the old political elites agreed to dialogue on transition issues and thus remained present in the democratic structures. The Polish party system can be characterised by frequent party splits and foundations (also into the 2000s). Elite system instability is reasoned by focusing on single leaders in political parties, prime ministers, and presidents. Post-communist Polish political elites, according to Gallina, are insufficiently transparent and corrupt, but reveal strong patriotism. The entire Polish political system is characterised by informal networks amongst political groups, personal rivalries, frequent changes of positions and alliances and high-level corruption.

The country's governments (after 1989) are described by their rather pragmatic approach to EU entry despite that public scepticism has been voiced over deeper integration and the development of federal EU structures. A supra-national EU was placed in opposition to national values and traditions in the context of the Poland's accession and integration into the EU. This changed during Jarosław Kaczyński's time as Prime Minister, when he stated that "the EU cannot be dominated by one single state" expressing concerns on German

domination in the EU which roots back to traditional anti-German sentiments in Poland. Relations with the EU and especially with Germany were affected by such position.

Polish elites embraced 'European political formalism' with great difficulty and Poland's reaction to Europeanisation differed depending on the nature of the EU programme. While financial aid and various EU programmes were welcomed; denationalising tendencies were sharply rejected. Therefore, "in regard to EU integration, the national issue had proved its strength vis-à-vis EU politics and was a strong uniting force for the political elite."

The next chapter is devoted to the case of the Czech Republic and Gallina posits that Czechoslovakia did not have as strong an opposition movement as *Solidarność* in Poland. After 1989 the communists had to step down and be replaced by dissidents, but they managed to organise themselves into left-leaning parties like the Czech Social Democratic Party (ČSSD). After 1993, when Czechoslovakia was peacefully divided into the Czech Republic and Slovakia, some political scientists were afraid that there were not enough professional politicians for leadership positions. So, "Czech political elites appeared immature and unqualified." Gallina states that the Czech party system consolidated around 2 big parties: the Civic Democratic Party (ODS) and ČSSD (with communist roots). The period after 1989 was also characterised by mistrust and fragmentation (for instance the ODS party-financing scandal in 1997). Gallina characterises Czech political elites as "arrogant, authoritarian, non-communicative, and without integrative qualities, adding sometimes a patriarchal features." Elite competition was "intransparent and therefore took unpredictable development." All these influenced Czech policy-making: false promises during electoral campaigns, hidden procedures in the decision-making process, evading unpleasant topics such as privatisation and corruption.

Thus the split between old and new elites led to a confrontation, which resulted fragmentation as well as new divisions and coalitions. Due to the rapid and radical emergence of a new elite, it inherited some traditions from the older one. Such strong connections to the communist party and old political elites led to fragmentation in dealing with the process of lustration and showed general tendencies of disrespecting of the legal decision on this issue, which shows, according to Gallina serious issues with the political corruption. Such tendencies resulted in an inability to fight political corruption since there was and still is such a connection. Gallina believes that it could be solved by de-politisation of anti-corruption courts and prosecutions, which however were hindered by the political elites.

Czechs are reluctant to European integration which was not prominent in Czech political discourse. So when the Czech Republic was accepted to the EU, European political debate became realistic and brought political conflicts. There was a clash between the vision of the Czech future of President Havel and the rest of political elite scepticism. Gallina states that Euroscepticism had

become an inseparable part of the ODS party identity (the party of the current Czech president Václav Klaus), which affected the process of the voting on the constitutional treaty in 2005. Such scepticism is believed to be instrumental in getting political power and obtaining personal interests.

The case of the Czech Republic is followed by Slovakia which differs significantly from the Czech one since there was no replacement of old reform-oriented elite. The old elites stayed in their positions, or even got promoted, which led to tensions with the new political elites that were not rooted in communism.

Slovak political elites are even more fragmented than in the Czech Republic; characterised by their intra-elite fragmentation and rejection of the political system. Polarisation was used as a base for the creation of the newly established Slovak independent state. According to Gallina, the politics of *Vladimír Mečiar* were autocratic and could be described by institutional weakness that outweighed political institutions in favour of his private interests. Gallina states that *Mečiar* “was the first example of an ECE autocratic populist coming to power through democratic procedure.” Such a situation lasted until 1998 when, during the elections, opposition parties managed to win 3/5 of the seats in parliament and created a united government under anti-*Mečiar* Slovak Democratic Union leadership. Such measures helped to return to democratic policy-making. A number of successful reforms were then conducted in the economic and social spheres. Fragmentation and disunity of Slovak political elites led to the readiness to “accept non-democratic actor in governing coalitions for the sake of power preservation.” Therefore the Slovak case showed that elite fragmentation was characterised by “non-accordance with democratic principles” which ended up with a non-democratic elite; a unique case for the countries of the Vysehrad group.

A characteristic case of Slovakia is the anti-Hungarian rhetoric among elites and the identification of the Hungarian minority as a threat to the existence of an independent Slovakia. Slovak nationalism and particularly anti-Hungarianism was a uniting ideology for the Slovak political elite. Another peculiarity of the country is the existence of the well-established political representation of the Hungarian minority which have been welcomed as coalition partners under the post-*Mečiar* government of *Mikuláš Dzurinda*. However, what Gallina calls national populism “was welcomed by the majority of the Slovak society and thus draw its visibility in the political rhetoric.” She argues that a characteristic feature of Slovak politics was its criminalisation which was embodied into questionable money transactions and privatisation processes.

In regard to Slovakia’s Europeanisation, the biggest achievement was the country’s accession to the EU which happened without a real public debate on the matter. However, despite some positive economic and social developments, the political elite’s tolerance toward political opposition diminished significantly. Moreover, hatred between Hungarian and Slovak politicians remained

which, in case of Slovakia, led to ‘cynical’ exclusion of the country’s Hungarians from political power in which Slovak ruling elites reached consensus.

The last case is devoted to Hungary; in this country the consensus over reforms and negotiated transition had been achieved before 1989. The political transition itself was initiated by the regime to convert their political power into economic power. Thus, old elites became defenders of the new system and tried to hide their communist past, wanting to retain at least economic power.

Political fragmentation developed by Hungarian elites has evolved into the creation of new political blocks around the Fidesz and the Hungarian Socialist Party (MSZP). Thus, elite relations were characterised by fractionalisation and bipolarisation around these two parties. Elites from this quasi-two-party system held more than 90 per cent of parliamentary seats since 2002.

In Hungary, elite confrontation which splits between “Christian, national, and collectivist authoritarians” and “secular, cosmopolitan, and libertarian individualists” seems not only to be more aggressive than in Poland but just as irreconcilable. It goes along with different visions of Hungary’s past, present and future. In confrontations, leaders’ role were strengthened. This personalisation was particularly strong within political parties as parties were mainly identified with their leader and judged accordingly. Public perception of politicians does not differ from Communist times as they are perceived as liars and politics are regarded as morally questionable activities. Most citizens react to it with passivity or a lack of interest.

Hungarian elites are characterised by strong historianisation (Consequences of the Trianon Treaty of 1920) led to the evoking and mythical construction of historic events and ideologies in daily politics. A uniting factor, despite differences, is the protection of Hungarians in the neighbouring countries with so-called status laws.

In regard of the EU integration most elites demonstrated their pro-European approaches. Scepticism was generally not associated with dangers to national sovereignty and instead Hungarian authorities attempted to Europeanise Hungarian minority and ethnic rights issue. As in other countries there was no strategic debate on EU integration and Hungary’s ‘belonging’ to the West was accepted as a fact, but no common vision of this integration was produced. Most Euroscepticism was not focused on rejecting EU membership but on views some related issues sceptically. As in other states, the EU was used to legitimise domestic policies; politicising the EU in both negative and positive ways (for instance by Ferenc *Gyurcsány*). Finally, Europeanisation did not influence the degree of polarisation and nationalism in the country.

The final chapter is devoted to answering the question of whether political elites are incapable of Europeanisation. Gallina admits that the monograph gives a rather negative picture of ECE political elites and political systems. She centres its fragmentation and argues that it had a strong path-dependent

link. So, the first result of the fragmentation is the gap between political elites and institutions which hinders their simultaneous development, often leading them in opposite ways. Having analysed four countries, Gallina claims that democratic systems were formally placed above elites but does not determine behaviour. Formal, adopted legislation conformed to democratic norms. Elites' Euroscepticism is more grounded in the Czech Republic and Poland and is not so evident in Slovakia or Hungary. Elites and publics of these countries "fear of identity loss and originality when confronted with bureaucratic measures from Brussels." Additionally, the old EU should show more support of new members in various aspects of their policies.

Political behaviour in these countries toward Europeanisation differs on the basis of the relevance of economic, social or IR factors. Gallina claims that Europeanisation should be a tool to 'weaken' nationalist voices and limit the scope for populist government activities. But the political processes in these countries are still volatile and can hardly be consolidated according to Western models, which raises the issue of whether the entire political system works at all. She believes that nationalism is used to achieve political goals; as an instrument having been developed into an important tool for the political elites securing their powers. The question of 'Negative Europeanisation' remains acute in cases where elites focus on non-democratic ways of behaviour and accordingly apply their strategies to overcoming institutional mechanisms (both nationally and internationally). The individual interests of elites are much more important for them than institutional or public interests.

Some essential factors must be presented in this regard: First, "the relationship between political division and the elite unity is important." Certain issues cause bitter political divisions, which are revealed in elite fragmentation. Second, independence of democratic political institutions from the decisive impact of the political elites is an important factor for changing fragmented political elites and to maintain cooperation and cohesion between them. So far the behaviour of the ECE elites is much rooted with their past codes of conduct and acts as an example of "negative Europeanisation." The need for elite-based reform is unquestionable. According to Gallina, "only a new elite understanding will reduce political elite fragmentation and enforce the Europeaness of ECE political elites." This may be achieved only by abandoning their past-oriented policy concepts and selfish interests – such as egoistic political and national ones. This process has to be accomplished with considerable support of the EU.

On the other hand, positive Europeanisation, may occur only if reform-minded political powers, platforms and institutions form cohesive elites in the future and consequently "sell this to the public." If the acceptance of the Western democratic model is unquestioned by the elite, it may be said that the successful Europeanisation of these countries with an existence of the elites professing Europeaness has occurred.

While the book is very well structured and logically constructed, and is obviously based on various sources, the main problem seems to be the authors' impartiality seen through the approach of labelling certain political groups or politicians as 'nationalist,' 'fascist,' 'backward-minded,' or 'outsiders' instead of demonstrating real understanding of their electoral base and *raison d'être*. A second problem concerns the one-sided view; focusing only on elites and not describing the electorates of the major political parties which often may be the key for the understanding why the people opted for this political power at this period of time, is generally misguided. Finally, Gallina uses, at times, improper terms and facts. For instance, she uses the word "diaspora" regarding Hungarians residing in the areas of the former Kingdom of Hungary which had been assigned for the neighbouring countries as a result of the Trianon Treaty. Diaspora implies migration into the new areas and means that this population group is a relative newcomer or is just a foreign for this area. Ethnic Hungarians in Romania, Serbia, Slovakia or Ukraine represent however a typical irredentist case, i.e. they are an autochthonous population of the areas separated from Hungary and thus must have at least the same rights in that areas as the representatives of the title nation of a respective state.

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