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SUMMING UP BY
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European Homeland Security Post-March 11th and Transatlantic Relations

Working Paper No. 17
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Chairman's Summing up

François Heisbourg*

In the oral presentation of their papers, Didier Bigo, Jeremy Shapiro and Andrei Fedorov generally highlighted their respective region's specificities rather than dwelling on the elements of commonality. Although this was in part a consequence of the European Security Forum's *modus operandi* – with its differentiated European, American and Russian perspectives, rarely in our meetings has the contrast been so clearly highlighted.

Thus, Didier Bigo emphasised the clash between the American approach and European values, with the EU's identity and sovereignty being very much at stake. The insistence of the US on technical fixes (“which are anything but technical”) and on the intelligence and military-driven fight against terrorism, was in counterpoise to a preference for a politics-driven approach and a police-cum-justice led endeavour. Similarly, the US decision to establish a Department of Homeland Security stood in contrast to the current European model.

Jeremy Shapiro, while criticising various aspects of the US policy in the field of homeland security, also noted that the US wanted to externalise the fight against terrorism (an approach that could be a positive force to the extent that it implies US cooperation with others) while imposing its own domestic solutions particularly in the judicial arena (a not-so-positive development). He highlighted that the American public (if not the elites) considers that 100% success in preventing terrorist attacks is mandatory – not necessarily a realistic assumption. But he also stressed the capacity for self-correction in the US, urging America's partners to engage with non-executive branch players in the US.

In his description of “Russia's Challenges”, Andrei Fedorov underlined the “lifetime” nature of the fight against terrorism, while voicing the risk that terrorism could be “decriminalised” to some extent if it were seen as part of a legitimate clash of civilisations. The struggle was made difficult by what he described as “black holes” in the European dimension of the fight against terrorism.

In opening the debate, the chairman put forward three issues to be considered among others in the discussion:

- Who makes the rules internationally?
- What balance should be sought between the preventive aspects of the fight against terrorism and the crisis and consequence-management dimension, notably in the face of chemical, biological, radiological and nuclear (CBRN) weapons attacks?
- How can the balance between the political dimension in the fight against terrorism and the technical/operational aspects be struck? In particular, how does one avoid a politically dangerous slide to a counter-insurgency approach (and methods!)?

In the first round of discussions, the challenge of suicide attacks drew particular attention: it was pointed out that suicide operations made the chances of 100% success in preventing terrorism unlikely, an aspect that makes such attacks quite rational from the standpoint of the perpetrators. This point is reinforced by the fact that suicide attacks greatly broaden the scope

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of conceivable terrorist operations: suicide bombers kill people, but in an intellectual sense, they also ‘kill’ analysts.

Mr Fedorov’s “black hole” analogy also drew attention: the large size of often disaffected Muslim communities in Europe, along with the porosity of the borders of countries that lie between the EU and Russia (notably in South East Europe), were mentioned in this respect. The location of Europe is in itself an element of vulnerability.

The question of what the US would have said if the events of 11 March 2004 in Madrid had happened before 11 September drew the response that the March attacks were not in the same category – the March attacks were of a pre-11 September nature. In effect, the great impact of the events in Madrid was in part the consequence of it having happened after 11 September.

The second round of discussions focussed largely on the ‘who makes the rules’ and the ‘politics of counter-terrorism’:

- How far will we move towards ‘Big Brother’ in terms of privacy and notably in terms of movement of people?
- How effective is the EU in negotiating with the US on the rules? Is the EU too reactive or inefficiently proactive?
- Are the terrorists ‘just criminals’? If some of their grievances are justified, how can we avoid the continued generation of new terrorists?
- How counter-productive are Russian counter-insurgency methods in Chechnya from the standpoint of avoiding the recruitment of terrorists?
- Can the EU and Russia cooperate on justice and home affairs, notwithstanding Chechnya?

These, and other questions drew the following responses:

- Overall, the EU has been quite effective in its negotiations with the US (albeit reacting to American initiatives rather than attempting to set the agenda). US-EU intelligence cooperation, however, is not as smooth as is sometimes portrayed: some Europeans complain about the ‘Latin American’ approach of some their US partners, with the latter casting themselves as a ‘case officer’, in an ‘information source’ relationship. Such a mode is not conducive to goodwill given the actual balance of expertise and experience between American and European intelligence and security services. Some of the Europeans have been in this game for rather longer than the Americans, with some significant successes at which to point. (These complaints did not appear to apply to the same extent in the field of military intelligence sharing.)

Whatever the case may be, there was strong European insistence not to allow judicial cooperation to be a subordinate variable of intelligence cooperation: remaining in a judicial logic provides the legitimacy that, in the long run, is of the essence in the successful fight against terrorist activities. In this context, the danger of registering large populations were highlighted by non-US participants. For instance, the fact that North African-born nationals of the EU were subjected to extra screening upon entry into the US led to the absurd situation of one million French ‘*Pieds Noirs*’ (former settlers who left North Africa at the time of decolonisation) being subjected to extra interrogation: this sort of blanket profiling is a great waste of resources. The US practice of subjecting all transit passengers simply passing through US airports on the way to and from foreign destination to full entry formalities must carry a high opportunity cost. Blanket measures are rarely

smart. Nevertheless, the point was also made that the US population is actually more concerned about privacy issues than many Europeans assume: although Americans are less worried about corporate databases than Europeans are, they tend to particularly distrust government intrusion. It was also noted that the *de facto* sharing of data tends to pre-date institutional pooling: the 'social practices' in groups such as Trevi or the Schengen Information System preceded the 'official practices'.

- Discussions between Russia and the EU are already happening if only because of the need to agree on the visa issues relating to Kaliningrad and Lithuania. The ready availability of Schengen country passports or visas for high-ranking Russian *mafiosi* needed to be factored into that discussion. Yet the shadow of Chechnya was not conducive to a good atmosphere, with no political solution in sight for many years to come.
- Finally, there was the general issue of identifying critical modes in the organisation of homeland security in order to optimise the allocation of resources: simply adding up all possible requirements for all possible contingencies was not a wise or a sustainable option.

In the last round of discussions, the issue of the lack of proactive stance from the EU came back to the scene, along with the interesting remark that a bilateral EU-US approach may not be as effective as broader multilateral approaches – the G-8 and the World Trade Organisation have proven to be quite effective in dealing with terrorism-related issues falling in their field of competence. The point was also made that one of the great difficulties we face is that from the standpoint of the terrorist, terrorism is often seen as paying off. Finally, several participants (not all American) remarked that the Europeans still hadn't understood the full meaning of 11 September. According to Richard Clarke, President George W. Bush in the first part of his tenure did not understand what former President Bill Clinton's people were saying about the 'new terrorism'. But many Europeans still haven't.

In their closing remarks, the three authors dwelled on two topics:

- The threat of a dedicated CBRN weapons attack was growing, especially the risk of a radiological attack (with its strong psychological effect), even if the pursuit of mass destruction by conventional means (as on 11 September) remains the more likely short-term eventuality.
- The police and judicial aspects of the struggle against terrorism are essential. The French adaptation of the judicial system to the specific threat of terrorism was cited as an example of how to proceed in this field.

Les politiques antiterroristes après les attentats de Mars 2002, un progrès dans la collaboration?

Un Perspective Européen

Didier Bigo*

A l'Ouest du nouveau

Beaucoup a déjà été dit sur l'impact du 11 Septembre en matière stratégique, sur la réorientation de la politique américaine à la seule lumière d'une politique de « guerre au terrorisme » et sur la mise en demeure du président Georges Bush d'être « avec les Etats-Unis ou contre eux ». Les implications de cette politique sont immenses. En terme géopolitique le dossier du Moyen Orient qui était marginal est devenu central, et contrairement à tous les discours qui avaient été tenus au moment de la guerre d'Afghanistan pour faire croire qu'il n'y avait pas de lien entre cet Islam des Talibans que l'on disait spécifique et les enjeux irakiens et israélo-palestiniens, on voit maintenant que la visée stratégique globale des Etats-Unis est d'imposer une « démocratisation » de tous les pays arabes et par extension musulman en montrant « qu'on ne badine pas avec la force ». Au-delà de cet effet direct visant à remodeler le Proche Orient et à tenir le marché du pétrole, les Etats-Unis semblent vouloir anticiper sur le développement de la Chine comme grande puissance antagoniste et assigner aux Européens le rôle de supplétifs mais pas de partenaires au sein d'une alliance équilibrée et encore moins au sein d'organisations internationales limitant leur volonté par des arguments juridiques.

Cela donne à la figure de l'ennemi potentiel un spectre très large allant de la destruction des régimes d'Afghanistan et d'Irak, à la mise sous pression de la monarchie d'Arabie Saoudite et aux vellétés de déstabilisation du Venezuela, jusqu'aux plaisanteries antifrancaises et aux jugements définitifs sur la faible importance de l'ONU. Mais tout étranger ne peut pas devenir un ennemi, surtout dans un pays comme les Etats-Unis qui a favorisé le maintien des attaches ancestrales et affectives de toutes les minorités dont il est composé. Il faut choisir et insuffler des priorités. Qui est alors l'ennemi à surveiller ? Contre qui faut-il se préparer à combattre ? La désignation d'un axe du mal est devenue une activité quasi routinière pour le Pentagone, le département d'Etat et le Homeland Security. Mais ils ont du mal à s'entendre sur les priorités. Il y a certes une « tradition ». Cet axe du mal reprend en effet en partie mais en partie seulement la liste des Etats dits Rogue States qui elle-même reprenait la liste des Etats sponsors du terrorisme des années 1970. Seulement l'axe du mal n'est plus uniquement défini par les enjeux géopolitiques interétatiques. Il s'émancipe d'une cartographie classique des régimes politiques hostiles au moment où pourtant il en étend la liste. Il faut donc ajouter les organisations d'opposition aux régimes proaméricains qui ont des capacités d'agir contre les intérêts américains, voire contre le territoire américain. Le cas du Pakistan est exemplaire. Il est à la fois considéré comme une des lieux où l'on recrute le plus des individus à même d'attaquer les Etats-Unis mais ne figure pas en première ligne de l'axe du mal. Il en va de même pour l'Indonésie ou les Philippines.

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A la liste des régimes politiques hostiles s'ajoute une liste des organisations politiques hostiles et prêtes à passer à la violence. On prête autant de pouvoir à Al Qaeda car c'est un moyen de fédérer au moins dans le discours une nébuleuse d'organisations aux intérêts différents et contradictoires en faisant croire aux capacités de « chef d'orchestre » clandestin de ben Laden et ses acolytes. C'est maintenant à ce niveau des organisations clandestines et non des régimes que l'on situe le danger le plus grave. Cela « invisibilise » l'ennemi au sens où la connexion avec un territoire donné est plus difficile à faire. Le bon vieux temps d'un ennemi puissant mais clairement localisé comme l'URSS a disparu et crée ironiquement de la nostalgie chez les conservateurs. Le Pentagone, malgré ses oppositions au département d'Etat sur la nature des opérations à conduire a toujours préféré minimiser ce hiatus. Pour lui les organisations clandestines ne sont dangereuses que si elles tirent leurs ressources de régimes politiques les appuyant et leur fournissant des armes de destruction massive. Pour frapper Al Qaeda il suffit de frapper leur logistique en Afghanistan et de poursuivre au Soudan, en Somalie tout en décourageant les Etats prêts à leur fournir des armes de destruction massive en en attaquant certains comme l'Irak. Le Homeland Security a lui une vision plus « individualisée » de la menace. Dans son rôle de protection des frontières, il ne rencontre que des individus virtuellement hostiles et difficilement détectables, pas des armées en marche pour envahir le pays. Dès lors plus la guerre ou le désordre se développe à l'extérieur, plus les raisons que des individus hostiles passent à l'acte augmentent. Le conflit irakien met en danger la lutte contre le terrorisme et la protection du territoire, la formule « guerre au terrorisme » ne résout rien.

Le général Wesley Clark, un des candidats démocrates a fait entendre sa voix autorisée sur ce chapitre en rompant le « consensus » de l'après 11 Septembre et l'unanimité en matière de politique étrangère qui a coûté si cher aux démocrates en terme d'image de marque et qui a éconduit beaucoup d'électeurs américains contre la guerre en Irak qui se sont sentis non représentés par le système des partis politiques. Le sénateur Kerry a compris l'intérêt de cette stratégie qui attaque le camp républicain sur l'Irak mais pas sur la lutte anti-terroriste. Les prochaines élections se joueront sans doute sur ce thème de la figure de l'ennemi, sur sa réelle incarnation et sur la manière de lutter contre lui, ainsi que sur la manière de traiter les Européens dans leur ensemble. Le multilatéralisme pourrait revenir sur le devant de la scène, même en cas de victoire de Georges Bush. L'ONU sera moins traînée dans la boue et on oubliera rapidement les pamphlets idéologiques qui se paraient d'atours scientifiques comme ceux de Kagan, parodiant les livres de psychologie populaire, et selon lesquels les américains comme les hommes seraient de Mars et les Européens comme les femmes de Venus.

En revanche il n'est nullement certain que l'impact des politiques américaines en matière de lutte anti-terroriste sur l'Europe se fera moins sentir, bien au contraire. Les exigences « techniques » se substitueront aux bravades politiques. Dans ce contexte, il est probable que les Etats-Unis vont continuer durablement à peser sur la coopération anti-terroriste Européenne et vont chercher à imposer « leurs » solutions au détriment des visions et des arrangements concrets que les Européens avaient formulés depuis le milieu des années 1980, dans le cadre d'arènes policières et de renseignements qui s'étaient peu à peu autonomisés avec succès des policiers américains et de leurs modèles (Bigo, 1996). Ils vont imposer leur modèle en matière de contrôle de la circulation aérienne mondiale et par là vont restructurer la libre circulation à l'échelle planétaire, en poussant chacun des Etats à revoir ses règles d'élaboration des visas, des passeports, des cartes d'identité en poussant paradoxalement à la constitution de « registres de populations » centralisés entre autorités nationales et partagés au sein de systèmes informatiques d'une nouvelle ampleur comme le SIS2 et le VIS, alors qu'ils le refusent pour eux-mêmes au nom de leurs libertés publiques. Ceci affectera profondément

la possibilité pour les Européens de fonder une identité commune en terme de liberté de circulation (ELISE, 2004). Mais cela touchera aussi les questions de souveraineté, de constitution d'un espace de gouvernance différent d'un Etat fédéral centralisé dans le cadre européen, en poussant à des solutions qui avaient été refusées explicitement – et pour de bonnes raisons – par les différents gouvernements et la Commission Européenne.

Mais la « tornade » sécuritaire venu des dirigeants américains, bien qu'acclimatée par ses supporters européens, semble avoir transformé, à défaut des pratiques, les discours et surtout les normes de l'Union Européenne, et c'est ce point central qu'il faut étudier car l'importation de discours et de propositions de réformes dites techniques pour une meilleur coordination des renseignements policiers et militaires qui apparaît a priori si légitime charrie avec elle une conception différente des rapports entre les gouvernants et les gouvernés, une vision différente des relations entre sécurité et liberté, une solution opposée au dilemme pascalien entre la force et le droit avec la préférence pour le risque d'une force sans justice qui soit tyrannique plutôt que le risque d'une justice sans la force qui soit impuissante. Plus concrètement entre le pôle de la guerre avec usage des armées et des services de renseignements et le pôle de la répression judiciaire avec usage de juges ayant des pouvoirs plus étendus, secondés par des policiers agissant à l'échelle transnationale, les américains n'ont pas hésité une seconde, en croyant un peu trop vite que la « solution » de la guerre pouvait mettre un terme à la violence politique transnationale,¹ alors qu'elle n'a fait que la déchaîner encore un peu plus. A contrario, la réponse après Madrid du gouvernement espagnol en faisant confiance à sa police et à ses juges a eu, au moins dans le court terme, des résultats bien plus efficaces. Il n'empêche beaucoup de voix plaident dans l'Union Européenne pour que celle-ci s'aligne sur les Etats-Unis, érigés en modèle d'une lutte anti-terroriste efficace, en évoquant premièrement l'importation d'un « homeland security department » aux échelles nationales et éventuellement européenne, deuxièmement la fusion des renseignements d'origine militaire et policière et l'abandon des distinctions entre les missions internes et externes au nom de la menace transverse du terrorisme, troisièmement la mise en place d'une communauté de lutte anti-terroriste inter agence mais qui serait soumise aux impératifs de la prévention, de la proactivité et donc serait avant tout la courroie de transmission des logiques des services de renseignements.

Sur tous ces points, il est nécessaire de réfléchir à deux fois avant de s'engager dans des discours « technicistes » qui masquent les enjeux politiques soulevés par la nature du système politique de l'Union Européenne que nous voulons dans le futur, et par le rôle que nous voulons donner à la libre circulation des personnes ainsi qu'aux libertés d'opinion, de publication et aux droits à la vie privée dans la société européenne en formation. La gouvernance européenne comme la société européenne seront affectées en profondeur par les choix qui seront fait en terme de centralisation des renseignements, de généralisation des technologies de surveillance de type biométrique couplée aux bases de données les enregistrant et les transmettant à travers le monde. Rentrer trop vite dans les schémas organisationnels possibles sans s'interroger d'abord sur le bien fondé des mesures est souvent le fait de comité d'experts vers lesquels les hommes politiques se retournent en période de désarroi. Notre rôle est sans doute d'inverser cette tendance et de rappeler ce qui s'est passé historiquement, ainsi que de pointer toutes ces questions complexes de choix de société que les « décideurs » voudraient oublier à tout prix afin de persuader les opinions qu'ils ont des

¹ See D. Bigo (1996), *Polices en réseaux. L'expérience européenne*, Paris: Presses de Sciences Po.

idées neuves et qu'ils sont bien en charge des problèmes, qu'ils ont transformé les situations pernicieuses en problèmes techniques qu'ils ont la capacité de « gérer », de « manager ».²

Les politiques anti-terroristes de l'Union Européenne après le 11 Septembre 2001

Les politiques antiterroristes ont-elles été transformées, améliorées depuis le 11 Septembre 2001 ? Le choc causé par cet événement, sans précédent pour les Etats-Unis, mais qui s'inscrit dans une longue continuité pour les pays européens, a-t-il modifié la manière de lutter contre le terrorisme, la définition de ce dernier et la collaboration policière?

Certains travaux récents de journalistes ainsi que plusieurs rapports internes de services complaisamment reproduits par les media affirment que tout a été radicalement transformé. Alors qu'avant il n'y avait pas de réelle collaboration entre les services de police et entre ces derniers et les services de renseignement, maintenant, grâce à la volonté politique affirmée des Etats-Unis et du président Bush et son insistance pour que l'Union Européenne se mette au diapason, les informations circuleraient, seraient mieux analysées, plus centralisées et la preuve de cette efficacité se trouverait dans l'absence d'attentat significatif sur le territoire américain et sur celui de ses alliés les plus proches, ce qui aurait obligé les terroristes à choisir des lieux plus « exotiques » comme Bali ou l'Arabie saoudite pour frapper à nouveau. Le « homeland security » assurerait la « protection » de la Nation américaine et « de son jardin - (backyard) ». Les militaires américains démantèleraient les bases internationales du terrorisme une par une, Afghanistan, Irak et demain sans doute Iran et Palestine. Bref la guerre au terrorisme serait efficace, utile et l'optimisme devrait être au beau fixe.³

Fondés souvent sur des déclarations politiques, des discours de presse et des entretiens superficiels, ces « recherches » sont plus de l'ordre de la politique de communication sans sens critique que de l'analyse des politiques à l'œuvre et de leurs difficultés. Sans vouloir prétendre à l'exhaustivité, mais à la suite des entretiens que nous menons depuis un an avec les professionnels de la lutte antiterroriste dans l'Europe entière, et ce grâce à un programme de recherche financé par la Commission Européenne : ELISE, notre jugement est bien plus nuancé et notre sentiment plus pessimiste.⁴

La collaboration entre services de police et de justice au niveau transatlantique **fonctionne mal** car les américains ont volontairement délaissé cette voie, au profit d'une approche en terme de services de renseignement, de technologie militaire et d'interventions guerrières.⁵ Au lieu de réfléchir en commun et d'essayer d'apprendre des européens, français, britanniques, espagnols et italiens, les américains ont voulu imposer un modèle qui soumet la police judiciaire et la justice aux desiderata des services de renseignement et à la recherche de renseignements tous azimut sans précaution suffisante en terme de libertés publiques, de protection des données.

² See M. Edelman (1988), *Constructing a Political Spectacle*, Chicago: University of Chicago Press.

³ Parmi bien d'autres voir l'ouvrage de Guillaume Dasquié *les nouveaux pouvoirs*, Flammarion 2003 faisant suite à ses ouvrages sur ben laden et encore plus sa prestation à France info le 11 Septembre 2003 "Comment a évolué la lutte contre le terrorisme depuis le 11 septembre 2001?".

⁴ Voir le détail du programme ELISE (European Liberty and Security) sur le site web www.eliseconsortium.org.

⁵ Pour une analyse détaillée de ce choix voir le numéro de Cultures et Conflits « défense et identités un contexte sécuritaire global » n°44 1/2002 Paris, L'harmattan, site web www.conflits.org.

La mise à l'écart des solutions judiciaires et de police judiciaire

Les services de polices nationaux qu'il s'agisse des polices nationales et de leurs brigades criminelles ou spécialisées dans l'antiterrorisme, tout comme les polices civiles à statut militaire comme les différentes gendarmeries ou les carabinieri italiens, de même que les structures européennes comme Europol ou Interpol sont sceptiques sur la grande « fusion » des informations, sur l'idée d'un « pot commun » où tout serait déversé.

La crédibilité des informations est différente selon qu'elles viennent de la justice, de la police judiciaire, de services de renseignements policiers ou d'imagerie électronique venant de services de renseignement militaires ou encore d'écoutes aléatoires de conversation sur les modalités d'échelon et du protocole Europe-FBI.⁶ Loin d'inciter à partager les informations, cette « déssectorisation » des services et de leurs homologues habituels, cet effort d'interconnexion entre réseaux de professionnels de la sécurité différents, produit des réticences.

L'usage à outrance des technologies informatiques, biométriques, pour mettre un maximum de populations sous surveillance est considérée au mieux comme inutile, au pire comme liberticide et inefficace, en multipliant les personnes à surveiller sans pour autant donner les moyens humains de surveillance rapprochée des individus connus comme les plus dangereux. L'attitude de certains services américains à l'égard de leurs collègues européens ne simplifie pas les relations, en ce qu'ils veulent gérer les processus d'analyse et de traitement des informations, décider des profils de risque et ne laisser les européens que dans les tâches de recueil d'information en amont et d'exécutant en aval. Assisterait-on alors à une « latin américanisation » de l'Europe dans ses relations avec les Etats-Unis ? C'était la formule d'un de nos correspondants. Un autre évoquait le fait que les Européens de l'Ouest étaient en train d'apprendre à leur dépend avec les Etats-Unis ce que les Européens de l'Union font au pays candidats à l'élargissement et aux Balkans : à savoir l'inégalité que ceux-ci appliquent à leur règle de collaboration, en ne partageant que les informations brutes à caractère personnel mais en se réservant l'exclusivité de l'analyse stratégique. L'asymétrie de ces relations crée de plus en plus de méfiance alors que les discours politiques ne cessent de mettre en avant la « confiance renforcée ». Mais ce leitmotiv, même s'il est partagé par les dirigeants, ne suffit pas à établir la réciprocité dans les échanges d'information qui est la première garantie d'une collaboration réussie.⁷

Si les policiers de police judiciaire se sentent mis à l'écart, l'**amertume des juges** en matière de lutte antiterroriste est encore plus grande, à quelques exceptions près de juges totalement acquis à la raison d'Etat et devenus des adjoints des enquêteurs militaires. La collaboration judiciaire effective en matière de lutte antiterroriste qui aurait pu et aurait dû se développer après le 11 Septembre 2001 a été écartée par le souverainisme américain et les difficultés techniques de concilier procédure anglo-saxonne et procédure d'Europe continentale. Les américains ont refusé de créer un réseau judiciaire qui pouvait les contraindre et ils ont préféré la voie de l'exceptionnalisme, ne faisant que des concessions très restreintes en matière de demande de la peine de mort pour les suspects d'origine d'un des pays membres de l'Union Européenne enfermés à Guantanamo ou emprisonnés aux Etats-Unis comme Moussaoui. Ils ont « saboté » en partie la mise en place d'une cour pénale internationale qui aurait pu pourtant avoir une grande légitimité en fournissant un cadre pour le procès de Saddam

⁶ Pour une analyse de qualité sur Echelon et les accords FBI-Europe (voir www.statewatch.org).

⁷ See M. Anderson (2002), "Repercussions of the Amsterdam Treaty and the Tampere Declaration on Police Institutions", *Cultures et Conflits*, Vol. 45, spring, pp.115-23.

Hussein, maintenant qu'on l'a arrêté. Ils ont bloqué les collaborations du FBI et même de la NYPD avec leurs correspondants habituels en Europe et ont imposé semble-t-il une politique restrictive des informations aux services policiers au nom de l'intérêt national américain et du risque de fuites si des éléments sensibles étaient fournis aux Européens. Ils ont préféré conduire une politique où les Cours deviennent des adjoints des militaires et de l'administration en place. Les discussions internes à l'Union Européenne sur Eurojust, le mandat d'arrêt européen et surtout l'adoption d'un *corpus juris* commun ou tout au moins convergent ont été affectées par cette politique teintée d'unilatéralisme et parfois relayée par certains pays de l'Union qui, pour d'autres raisons, étaient contre le phénomène de convergence du droit pénal, au moins pour les offenses les plus graves.

La priorité aux services de renseignements et ses dangers: Maîtriser le futur?

Les services de renseignements ont eux plus d'intérêts à présenter la collaboration antiterroriste post 11 Septembre comme un succès. Alors qu'ils étaient les premiers à être dénoncés pour leur manque de clairvoyance dans les deux mois qui ont suivi le 11 Septembre, ils ont réussi à rétablir la situation et à demander plus de moyens en personnel et en technologie, ainsi que moins de contrainte judiciaire et juridique sur leurs activités. La surveillance à distance a été grandement facilitée, qu'il s'agisse des écoutes nationales ou internationales, qu'il s'agisse de l'Internet ou du téléphone, les techniques d'infiltration ou de rémunération d'indicateurs ont été « délivrées » des contraintes judiciaires dans de nombreux pays. Les réunions entre services de renseignements ont été intensifiées et ici certains liens transnationaux ont été renforcés. Plus d'informations sensibles circulent. Mais à en croire les mémoires de Stella Remington dans « open secret », ceci n'est guère récent. On a plutôt élargi selon un de nos interlocuteurs un réseau du « Commonwealth et des Etats-Unis » à quelques pays de l'Europe continentale dont la France et l'Allemagne, et ce, malgré la position des gouvernements de ces pays contre la guerre en Irak ; le paradoxe étant que l'on a renforcé les contacts entre par exemple DST et services américains au moment même où les divergences politiques s'intensifiaient.

On a réactivé les réunions de la structure du Club de Berne créé faut-il le rappeler en 1971, et qui a connu quelques réunions supplémentaires et surtout à des échelons plus opérationnels que d'habitude depuis Septembre 2001 et Mars 2004. Ces réunions n'ont guère débouché sur une accélération effective des informations selon nos sources, mais elles ont soulevé la question de la présence ou non des membres du secrétariat général du conseil et de Javier Solana en sus des responsables des gouvernements nationaux. Nous avons eu des informations contradictoires sur la présence des américains et sur leur participation directe aux réunions mais il est certain que de hauts responsables des services US étaient dans la même ville et au même moment. Quant au club de Berne (à savoir les 15 depuis que les Grecs y ont été admis récemment, plus la Suisse et la Norvège), on évoque son institutionnalisation au sein d'une agence européenne de renseignement, un peu comme Trevi avait pu avec Maastricht se transmuter en Europol. L'idée d'un Eurorens là aussi est loin d'être neuve. Le projet fut évoqué par Mr de Kerchove dans plusieurs colloques dès 1998 mais l'actualité l'a relancé. En revanche elle gêne les tenants du développement d'Europol qui voudraient que la structure en gestation s'insère au sein d'Europol au lieu d'en devenir un concurrent potentiel. Beaucoup d'arguments ont été échangés pour savoir où localiser la coordination et la centralisation des renseignements au niveau européen, ainsi que sur la présence et le rôle des instances de Bruxelles.⁸ Mais l'on peut noter qu'il y a loin entre les discours de fusion,

⁸ Voir les débats entre De Vries, Storbeck, Patten et Solana.

centralisation ou même coordination européenne interagences et l'effectivité des pratiques où l'enjeu essentiel semble être la présence de Bruxelles dans ces groupes et leur visibilité en matière d'opinion publique. Le débat le plus important pour l'avenir est néanmoins bien présent avec la localisation des services de renseignements à l'intérieur ou à l'extérieur d'Europol et le partage ou non des mêmes banques de données.

Une fois de plus ce « débat » européen semble dérivé en partie des luttes internes aux Etats-Unis. La participation assez intensive du département de la Défense américain dans la lutte antiterroriste afin de bloquer l'expansion du « homeland security department » à l'extérieur et à défendre ses prérogatives face à un département d'Etat prônant des politiques différentes a joué un rôle clé dans la dynamique post 11 Septembre. Les stratèges américains ont développé et adapté les concepts issus de la théorie des conflits de basse intensité à la guerre contre le terrorisme en mettant en avant l'anticipation des actions de l'adversaire. Ils ont beaucoup mis l'accent sur un terrorisme utilisant des armes de destruction massive (an atomic bomb in a backpack) alors que les modalités d'action du 11 Septembre ont certes tué beaucoup mais en combinant des répertoires d'action traditionnels attentat suicide (de camions comme au Liban) avec des (détournements) d'avions. C'est cet argument qui, étant donné le caractère irrémédiable de l'action justifie de ne pas « attendre qu'il soit trop tard » et justifie du même coup des actions « proactives », des frappes « préemptives », des anticipation sur des comportements et non des actes, des décisions prise sur des « croyances » de la part des décideurs dans l'urgence et non des actes mûrement réfléchis et appuyés sur des faits. Cette dimension anticipative est pour beaucoup dans le malaise actuel sur l'opportunité de la lutte antiterroriste et sur sa légitimité. Si la guerre d'Afghanistan avait déjà suscité des réactions sur la manière dont elle avait été conduite, sur les distinctions oiseuses entre prisonniers de guerre et terroriste emmenés à Guantanamo, la guerre en Irak pose le problème des décisions politiques prises sur la base d'informations non vérifiées faute de temps et sur la base d'une peur d'agir trop tard face à une menace grave mais aléatoire et dont les capacités de « furtivité » (au même titre que les avions furtifs) sont très fortes.

On a vu au Royaume-Uni avec l'affaire du docteur Kelly et l'enquête du juge Hutton comment la prise de décision se fonde de moins en moins sur les faits mais sur les croyances et comment ceci débouche sur une compétition entre les hommes politiques, les média et les services de renseignements pour savoir qui détient la vérité, non seulement à un moment donné, mais à rebours, une fois la chaîne de causalité temporelle reconstruite. Pour le dire autrement et plus simplement : il n'y a pas, malgré les anticipations des stratèges américains de capacités de prédire le futur et de le structurer comme on l'entend. Ce n'est pas parce que l'on croit qu'il existe des armes de destruction massive prêtes à l'usage et pouvant frapper en 45 minutes qu'elles existaient forcément telles quelles au moment x, quand bien même on retrouverait des plans irakiens prévoyant un tel usage. Le fantasme de la virtualisation du réel, de l'anticipation tourne à celui de la fiction. C'est là le point fondamental à discuter. Il n'est pas vrai qu'un recueil généralisé de données brutes peut être mobilisé et filtré en temps et en heure pour éviter des événements de violence si ceux-ci n'ont pas été repéré par des techniques traditionnelles d'infiltration. C'est le mensonge grossier de l'ensemble des services de renseignements qui voudraient nous faire croire qu'ils prédiront l'avenir si nous leur en donnons les moyens techniques et si nous les laissons avoir accès à l'ensemble des bases de données publiques et privées, à partir desquels ils construiront des profils de terroristes

potentiels.⁹ Cette vision du recueil tous azimut des informations, du «data mining», est profondément dangereuse non seulement en terme de liberté¹⁰ mais aussi d'efficacité.

Trop d'information non pertinente tue l'information, et l'élaboration de « profils », en particulier via la computérisation de ces derniers par des logiciels experts, détruit la cohérence des raisonnements et « ne reconstitue pas des informations pertinentes à partir de bribes de hasard mises en commun à travers les croyances de ceux qui ont érigé les critères de profiling » (entretien). Ce que masque ce recueil tous azimut et l'accumulation dans des banques de données, c'est « l'arbitraire » des croyances des profilers à l'égard de ce qui sera utile dans le futur. Le succès dans ces communautés de renseignement de « futurologues » comme les époux Tofler qui sont à la limite entre le scientifique et le charlatan montre cette volonté de « maîtrise du futur » qui hante l'imaginaire des services et dont Philippe K Dick a bien mieux rendu compte dans sa nouvelle *minority report*.¹¹ Le film *Minority Report* a sans doute eu un succès considérable car il évoque cette ambiguïté, cette incertitude des politiques policières et plus particulièrement antiterroristes contemporaines. Il était plus simple d'être un détective après les faits, d'être un « pompier du crime » que d'être un « profiler », « d'anticiper avant l'action qui est potentiellement l'auteur d'une infraction et quels seront ces actes dans le futur ». Il faut sans doute s'adapter mais il est impossible de « policer le futur ». On ne peut pas prédire le futur et considérer qu'il faut toujours agir en fonction du « worst case scenario ». C'est une attitude paranoïaque au sens fort du terme. Il n'y a pas de sécurité absolue et la tyrannie de la surveillance n'empêche nullement l'irruption de la violence, au contraire elle favorise des vocations.

Ceci a une conséquence qui dépasse les politiques antiterroristes, c'est le mélange puissant entre fiction et réel, entre virtuel et actuel qui détruit la rationalité publique. Les attentats du 11 Septembre sont maintenant devenus un film video-dvd qui se vend au même titre que les films catastrophes d'Hollywood et par les mêmes compagnies et les mêmes moyens. Les victimes sont devenues irréelles, les ennemis surréels, les ennemis potentiels virtuellement présents partout. Comme le disait ZiZeck dans son ouvrage consacré au 11 Septembre.¹² Il est de la responsabilité des services de police judiciaire et d'une justice soucieuse du droit et des libertés de contrebalancer, si possible, cette tendance à la fictionalisation du monde.

Pour cela les solutions simples existent. Plus d'argent et plus de personnel doivent être mis à disposition des services de police judiciaire et des magistrats. On peut faciliter les techniques d'infiltration à l'étranger en rémunérant mieux les informateurs et mieux former aux langues étrangères un certain nombre d'agents. On doit faire confiance au facteur humain et se méfier du tout technologique. On doit assumer l'idée que le risque est possible et que le meilleur moyen de s'en prémunir est de renforcer les structures favorisant justice et liberté pour délégitimer l'action combattante au lieu de se tourner vers une coercition et une surveillance

⁹ Cf document ACLU sur MATRIX, la nouvelle version du Total Information Awareness Programme.

¹⁰ Voir les rapports d'Amnesty International, ACLU, les documents ELISE, les entretiens avec les responsables de protection des données à l'échelle nationale et européenne et avec de nombreux policiers.

¹¹ See Bigo, *op. cit.*

¹² See S. Zizek (2002), *Welcome to the desert of the real*, London: Verso Pluto Press.

hautement technologique. On doit raison garder et maintenir la différence entre logique de fonctionnement des services de police et de justice en refusant de les soumettre aux logiques du renseignement et de la guerre. Contrairement à de nombreux discours, nous ne sommes pas en guerre contre un ennemi intérieur et invisible qu'il faudrait éradiquer, nous sommes en lutte contre des criminels à motivation politique qu'il faut arrêter et condamner avec le large assentiment de la population.

Domestic Dilemmas US Homeland Security Policy and Transatlantic Relations

An American Perspective

Jeremy Shapiro*

The purpose of this paper is give a European audience some idea of the state and politics of homeland security in the United States and its implications for transatlantic security. There have been many public transatlantic divides on the broad issue of homeland security, but often they appear fairly technical or simply matters for hard negotiation, such as the recent controversy over passenger name records (PNR) from airlines. In many specific cases, the US and Europe have managed, even in the midst of the transatlantic explosion over Iraq, to work fairly well together on homeland security. As with the PNR problem, they have usually reached agreement and have avoided any serious public disputes to date – despite much goading by the press on both sides of the Atlantic.

Nonetheless, these surface disputes and their subsequent resolutions mask somewhat more fundamental differences between the US and Europe, which stem in part from the complex dynamics of homeland security policy in the US and from genuine domestic dilemmas that US policy-makers face. In an effort to at least expose those differences and dilemmas, this paper first explains some unique features of the domestic politics of homeland security in the US. Second, it explains some of the important changes in US homeland security since 11 September. Finally, it assesses some of the implications of all of this for transatlantic relations.

1. The domestic politics of homeland security in the US

It is often said that the US discovered terrorism on 9/11, but that the Europeans had faced and understood it for generations. This is an obnoxious statement on many levels, mostly because it is wrong in all of its particulars. The US certainly did experience and confront terrorism for decades before 9/11, dating all the way back to President Theodore Roosevelt's eerily familiar-sounding declaration of a 'war on anarchism' after President William McKinley's assassination in 1901. The US experienced a series of attacks on US interests abroad in the 1980s and 1990s, suffered domestic attacks against the World Trade Center in 1993, an aborted attack against New York City in the mid-1990s and the Oklahoma City attack that killed 168 people in 1995. Moreover, it was involved in a quite conscious pre-9/11 confrontation with al-Qaeda following the bombings of the US embassies in Kenya and Tanzania in 1998 and the attack on the USS Cole in 2000.

Similarly, Europe had certainly never experienced an attack of the order of magnitude or symbolic power of 9/11. Quantity, in this sense, has a quality all of its own. The attack on 9/11 was not terrorism as Europe knew it or understood it; previously the largest number of victims of a terrorist attack in Europe was the Lockerbie disaster in 1988 that killed 270 persons; there has been no attack of even vaguely comparable symbolic power in Europe. What 9/11 revealed to the wider public was a new kind of threat based on a newly potent

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combination of modern technology and extremist ideology. When that threat burst into the public consciousness, it was clear that it required a new and dramatic response, as both Europeans and Americans widely agreed at the time. The US and Europe have since split in some very fundamental ways on the appropriate response to this threat, particularly over Iraq. But we do not believe that they have parted company on that base notion: that the new kind and power of terrorism demonstrated on 11 September requires a response. In particular, it requires re-examining old questions of the appropriate trade-offs between liberty and security, between short-term repression of threats and long-term amelioration of root causes, and between prevention and reaction.

The basis for this re-examination in the US has undoubtedly been 9/11, and indeed the interpretation of that event serves as the justification for all of the major changes in US homeland security policies that followed. Unfortunately, this very fact points, paradoxically, to some of the problems the US government has had in translating the fear, anger and shock engendered by 9/11 into an effective long-term policy to guard the US homeland and to fight terrorism. In the first place, this is because 9/11 was not felt equally in all parts of the United States. Regionally, the attacks had a much greater effect in New York and Washington and many in the American heartland could not escape the idea that this was essentially a big city and coastal problem. Even more subtly and more unusually, the attacks fell especially heavily on the elites rather than on the public. The President, the Congress, the financial elites, and we even hasten to add, the policy analysts were directly threatened in a way they never expected to be. They were thus inspired to confront the problem to a greater degree than the general public.

Related to this issue is the odd fact of the improbability of the actual events of 9/11. From an analytical perspective, such attacks should not have been attempted or should have failed. It was an overly ambitious plan with questionable operational security. It is moreover not true that American intelligence was strategically surprised by these attacks. The US government had done an enormous amount of work on the issue of homeland security. It was spending by some measures \$20 billion a year to study terrorism, to prevent attacks, to protect critical targets and to prepare to deal with the consequences of attacks, even attacks using weapons of mass destruction (WMD). They had specifically focused on al-Qaeda as the principal threat. US government officials had even imagined and to a degree prepared for the use of airplanes in this manner. Of course, it needs hardly be said that they could have done more. But the change after 9/11 was in the prioritisation of the fight against terrorism and its perceived importance among the wider public, not in the awareness of the threat within the state security apparatus. For a society at peace, the US was enormously aware of the threat of terrorism in general and al-Qaeda in particular.

Next, the effect of the attack in New York was beyond the scope of what anyone thought possible using such means, most likely including the attackers. As one terrorism expert remarked at the time, "it never occurred to me that buildings could collapse like that". The sheer scale of the attacks meant that they required an emotional and a political response rather than a purely analytical one.

None of this, of course, lessens the reality or the tragedy of 11 September. But it does point to some of the problems of creating a homeland security policy based entirely on an essentially random event. Politically, it means that it is now very hard to argue that *any* kind of attack is impossible. No amount of logic or analysis of the threat can stand up to the stark reality of 9/11. Analytically, one can never say that any given attack is 100% guaranteed not to happen and thus politically it is very hard to prioritise policies and allocate scarce resources. In the

current environment everything seems important, even urgent. So-called ‘low-probability, high-consequence’ events are able to absorb domestic and political attention.

At first, this may seem an advantage for the government. It can do anything it wants with little interference from the usual domestic political debates that often paralyse American public policy. Yet after the initial excitement of suddenly being able to push through new laws and policies that many within the executive branch had wanted for a long time, the federal government began to realise that it had a real dilemma. The homeland can never be made 100% secure – at least in a manner even vaguely compatible with American notions of liberty and free enterprise. One can, however, spend endless amounts of money trying. As yet, there is no measure of sufficiency in US public debate. How much are we willing to spend to be how safe? This question remains unanswered; in fact, it has not even been posed in US politics.

Since 9/11, reports have come out of Washington think tanks, government agencies and official commissions with astonishing regularity detailing the myriad vulnerabilities of the US homeland and the insufficiency of the government response in each particular area both before and after 9/11. These scenarios demonstrate a degree of imaginative thinking that even the quite innovative strategists of al-Qaeda could never match. More to the point, they are often connected only to vulnerabilities rather than to threats. That is to say, each kind of attack is convincingly demonstrated to be possible, but there is often little effort to discern whether there is any particular actor in the world who has both the desire and the capacity to actually carry them out. Al-Qaeda is assumed to be willing and capable of doing essentially anything.

Each of these vulnerability analyses is perhaps individually reasonable. They always seem to make the case that an investment of just a few billion or tens of billions of dollars would fix the problem. The larger problem, as the old saying in Washington goes, is that ‘ten billion here, ten billion there and pretty soon you are talking about some real money’. Even the US with all its wealth can not begin to afford all of these investments.

All of this means that if another attack occurs (and no one can guarantee that one will not), there will have been a report warning that this specific attack could have been prevented for a few billion dollars and yet the government did nothing. Elected leaders and government officials will be blamed. Indeed, this dynamic has already taken place to a degree after 9/11, despite the essential randomness of the event and the fact the new administration had only been in office for a few months at the time. Next time, the blame game will be even harsher. Now, there is no way that the terrorists will think of something that the wider policy-analysis community has not considered. As Paul Samuelson said in a different context, “economists have predicted eight out of the last two recessions”. Similarly, terrorism analysts will continue to overly predict terrorist attacks, nearly guaranteeing that the ones that do occur will have been predicted somewhere in the flood of vulnerability analyses now emanating from Washington and elsewhere. In short, the government cannot avoid blame for any future terrorist attacks, but all of the money in the world cannot guarantee that one will not occur.

Making this problem even worse from the standpoint of the government is a continuation of the traditional American problem of ‘domestic mobilisation’. It is very hard to mobilise the American public to confront foreign problems. They have a short attention span and are traditionally and overwhelmingly concerned with domestic and local economic issues. The picture of Franklin Roosevelt in 1939-41, arguably the most powerful President in American history, essentially incapable of taking forceful action owing to domestic factors (and despite a recognised threat to American security) is an image that plagues American policy-makers.

The events of 9/11 clearly alleviated this dilemma to some degree as it did serve to mobilise the population. Nonetheless, as previously mentioned the attacks did not affect most of the country directly and as a result the effects of 9/11 are beginning to wear off already after only three years. Paradoxically, however, public apathy will not relieve the government of blame if something goes wrong. Americans demand that their leaders lead them along the correct path, even if they don't want to follow.

2. Responding to the dilemmas

So how has the US government responded to these dilemmas? There have been quite a few efforts to directly secure the US homeland since 9/11. Many of these were well begun even before the attacks, often dating from the aftermath of the bombings of the US embassies in Kenya and Tanzania in 1998. At that time, the post of national coordinator for counterterrorism was created within the White House; huge amounts of money were already being programmed and spent on the beginnings of a national ballistic missile defence system. In all, as mentioned some \$20 billion a year was being spent on what we now call Homeland Security, of which about \$13 billion went towards protection against weapons of mass destruction. It should be noted that these numbers are estimates as, before 9/11, there was no category of spending called 'Homeland Security'.

Still, after 9/11, the US government realised it had a huge and fleeting opportunity to reorganise the government to fight this problem in a manner that had long been understood to be necessary but which heretofore had been politically impossible. The organisation of the government security apparatus was a legacy of the cold war and was well understood to make little sense for dealing with the new problem of transnational terrorism. For example, border security was divided among numerous agencies and departments: the Consular Service of the State Department, the Immigration and Naturalization Service of the Justice Department, the Customs Service of the Treasury Department, the Coast Guard in the Transportation Department not to mention the Department of Agriculture, the Border Patrol, the Defense Department, and probably quite a few others yet to be discovered. These agencies were trying to control and process about 500 million legal border-crossings a year and an unknown number of illegal ones, but having little success in actually understanding what was happening. Thus, after 9/11, the US government realised that about 70,000 Saudi men between the ages of 18 and 35 had entered the US between December 2000 and August 2001, but the US government had no idea where they were.

In response, the government acted vigorously and indiscriminately, but in any case, very much in the manner that governments everywhere respond to such emergencies. The US government detained thousands of people in the search for terrorists. Many were held *incommunicado* simply through the expedient of asserting national security. The executive branch put the population on alert and proposed and passed the Patriot Act through Congress, which gave the government sweeping new powers and broke down the long-held distinctions in American law and practice between domestic and foreign intelligence and between intelligence and law enforcement.

Moreover, the federal government embarked on an immense effort, still far from complete, to link various databases within the multiple levels of government (federal, state and local) and within the private sector to provide greater 'information awareness'. These efforts reflect a widely held belief that the information necessary to prevent the 9/11 attacks existed within disparate parts of the government and within private data sources in the US. Rather than a lack of information, the problem was thought to be that no one agency or decision-maker had

had enough information and power to recognise the overall pattern and to act on the information. Thus, for example, a Terrorist Threat Integration Center (TTIC) was created as a semi-independent agency (reporting to the director of the CIA) to integrate and analyse all sources of intelligence and information pertaining to terrorism.

Of course, the most visible change is the creation the Department of Homeland Security (DHS), the biggest reorganisation of the US federal government since shortly after World War II. It brought together some 22 previously separate agencies, involving over 200,000 employees and a budget for 2004 of over \$24 billion. It includes the Coast Guard, the Customs Service, the Immigration Service, the Secret Service and the new Transportation Security Administration among others. The government also created a Homeland Security Council in the White House, analogous to the National Security Council, to coordinate homeland security policy across the government. The existence of this council expresses an acknowledgement of the inevitable fact that the DHS, despite its size and scope, still does not contain all of the governmental assets necessary for homeland security, not least the FBI, which remains in the Justice Department. Similarly, a National Joint Terrorism Task Force was created to coordinate efforts between the federal government and state and local officials, who in the decentralised US governance system cannot technically be brought under direct federal control by anything short of a change in the constitution.

Finally, there have been a variety of different efforts to deal with the consequences an attack involving WMD against the US, including the stockpiling of enough antibiotics to treat 20 million cases of anthrax and enough smallpox vaccine to inoculate the entire population.

But these actions, while certainly dramatic, are widely viewed as insufficient. Complaints vary: local officials assert that efforts to prepare the public health system and to provide them with special training and equipment for a WMD attack have not received the funding that was originally promised. Intelligence analysts point to the continuing communication problems between the FBI and the CIA, the fact that the FBI was not moved into the DHS, and that no domestic intelligence service akin to the UK's MI5 or France's DST was created. Chemical plants, foreign aviation, surface-to-air missiles, etc., all continue to be considered critical homeland vulnerabilities.

For now, the momentum has clearly gone out of government efforts to revolutionise US homeland security. As Senator John Kerry often mentions, President George Bush has failed to request funding for many of the programmes he himself put in place with great fanfare after 9/11. The government seems to view many homeland security initiatives as money sinks in which spending is very likely to be wasted without doing much to reduce the threat. As a result, such measures simply give people ammunition with which to attack the current administration for overspending and for violating civil liberties, but they will do little to protect the nation or to divert blame if anything goes wrong.

The intractability of these domestic dilemmas has created an impulse towards a few policies that aren't often thought of as strictly related to homeland security. It helps, for example, to explain the impulse towards the declaration of a 'war on terrorism'. Europeans tend to not like the use of the word 'war' in connection with terrorism and they are often uncomfortable with a generic struggle against a technique such as terrorism. The reasons for these objections are often semantically and pragmatically valid. But in the context of the desperate need to mobilise an inherently complacent and disengaged population, the 'war on terrorism' has served its purpose in the US quite effectively, despite the obvious disadvantages of the term. It has therefore been adopted across the political spectrum in the US.

More generally, the US government's response to this dilemma has been to externalise the problem – that is to move the focus of the war of terrorism abroad. This strategy re-orientes the problem to issues that can conceivably be solved and perhaps more importantly allows the government to go on the offensive and therefore to control the agenda. Because foreign policy involves issues that are less controversial domestically and require fewer violations of civil liberties, less interference in the daily lives of Americans and less sacrifice from the average American, it keeps the domestic audience interested and united, and at least minimally mobilised. Thus, despite the very high cost in terms of lives and treasure of the war in Iraq, it was still viewed at the time (perhaps inaccurately) as cheaper in the long term than continuing quixotic efforts to 're-establish' the invulnerability of the US homeland.

Externalisation also implies a strategy of pre-emption that allows the government to maintain the initiative and to set the agenda in terms of identifying and dealing with threats from abroad. No one believes that intelligence can always be accurate nor threats always identified appropriately. But a prevention policy responds both to the reality of a new threat that has a demonstrated potential for surprise and to the domestic need to take the offensive. Moreover, prevention is nothing new nor is it peculiarly American. In fact, nearly all countries that face terrorism or other direct security threats have a prevention doctrine – it is explicit, for example, in French anti-terrorism law at the domestic level and French military doctrine at the international level. The American version, particularly as stated in the September 2002 National Security Strategy of the United States, is uncomfortably explicit and generic. But the real question is not whether a prevention doctrine exists – but who can legitimately and efficiently decide when prevention is necessary. On the domestic level, both Europe and America have some legitimate and effective mechanisms for accomplishing this; on the international level, the appropriate balance between legitimacy and efficiency has not been found.

Finally, externalisation requires tighter border security to help re-establish the separation between domestic and foreign spheres along with harsh policies towards immigrants to reinforce the notion that terrorism is a foreign problem. The Patriot Act enshrined the notion that non-citizens had fewer rights under American law to privacy and due process in legal proceedings than US citizens. This action set the stage for the 'Guantanamo system' – the practice of holding non-citizens outside the jurisdiction of US courts indefinitely and without status in domestic or international law and of trying them (potentially) in military tribunals. Indeed this system reflects a widely held discomfort in the US with using the courts for dealing with national security threats. The process is, with good reason, considered too slow, too dependent on inflexible rules, too prone to leaks of valuable intelligence and too unresponsive to the needs of a rapidly evolving and essentially political threat. As a result, there have been no attempts to reform the normal judiciary to deal with terrorism and judicial instruments have not been widely used in the US war on terrorism. In fact, the 'Guantanamo system' has been extended first to US citizens captured in 'zones of hostility' and then to one originally arrested by civil authorities at the Chicago airport simply through executive assertion that he was a national security threat. Much of the Guantanamo system remains controversial in the US and is currently under review by the courts, but so far the courts have not definitively reversed any government actions.

Of course, even though largely applied to non-citizens, these measures generate vociferous condemnation from human rights groups both in the US and abroad. The US has a long and genuine tradition of respect for civil liberties that is deeply ingrained in American society. Nonetheless, there are some important caveats to this tradition. The United States also has a

tradition of temporarily suppressing civil liberties during wartime. Thus, the informal declaration of war against terrorism gave the government some breathing room and some deference from the courts, the Congress and the public to wage that war without bothering with many of the usual safeguards placed on civil liberties.

This situation has been justly labelled 'a state of emergency'. There are many aspects of it that are extremely troubling and quite questionable in their efficacy for fighting terrorism. One tries to remain measured, but it is frankly quite difficult for some to even contemplate the idea that the United States is establishing military tribunals. But, looking at it more analytically, this state of emergency is very unlikely to be permanent. The US political system characteristically overreacts, but eventually experiences a backlash and corrects itself, indeed usually overcorrects itself. Political choices made in the US about the trade-off between security and liberty are never appropriately nuanced and never permanent, rather they are nearly always excessively responsive to dramatic, visible events and thus dialectical. Thus, for example, it is quite clear that the limits placed on the ability of the CIA to cooperate with domestic agencies such as the FBI in the wake of the various CIA scandals of the 1970s were too onerous and, in the event, not suited to the transnational character of emerging threats.

On the plus side, though, this tendency to correction means that the freedom of executive action has some time limit (or failure limit) before it engenders an almost inevitable backlash, most likely in the form of a reassertion of power from the other branches of government – principally Congress and the courts. We are already beginning to see this in, for example, the decision of the US Supreme Court to consider asserting jurisdiction over the Guantanamo system and over the prison in Guantanamo Bay specifically, in the delayed blame game over 9/11 being played out right now and in the decision by Congress to dismantle the Pentagon's Total Information Awareness programme to link databases, as well as its recalcitrance over renewing the parts of the Patriot Act due to expire in 2005.

Nonetheless, these are fairly early stirrings of a backlash. For the moment, there is little sense of widespread popular outrage over the government's actions and the Democratic presidential candidate is not asserting with much consistency or strength that the government has been too harsh in its suppression of civil liberties since 11 September.

3. Implications for transatlantic relations

So what does all of this mean for Europe? Superficially, the externalisation of US counterterrorism policy has had quite positive effects on relations with transatlantic allies. Externalisation relies on cooperation and acknowledges a common interest in battling terrorism at its source. The US government has accepted that it will need military, intelligence, law enforcement and judicial cooperation with Europe, and much of the rest of the world, to even hope to make this strategy work. Indeed, no one in the US says or believes that there is a purely military or a purely unilateral solution to terrorism in general or to al-Qaeda in particular.

Moreover, since 9/11, this cooperation has proceeded fairly well with many, probably most, European countries, despite the quite vitriolic disputes over Iraq. There are many complaints on both sides, of course, but that is the nature of cooperation: what is significant is that, particularly on the level of intelligence, both sides report that contacts have increased dramatically and that they have shown some results in disrupting threats. Indeed, cooperation in counterterrorism created a new constituency on both sides of the Atlantic for keeping foreign policy differences over Iraq within certain limits. Thus, the strongest advocates within

the US government of limiting US ‘punishment’ of France over its role in the Iraqi crisis have been the intelligence and law enforcement agencies that view the relationship as important for accomplishing their jobs.

Many political and technical homeland security issues remain unresolved and they have the potential to cause upset in the relationship in the future. There is no agreement between the US and Europe on the appropriate privacy regime, for example, so they have had continuing difficulties in working out ways to exchange information such as airline passenger data. Many European countries may fail to meet the new US requirements for putting biometric data in travel documents, calling into question, on a strict reading of US law, their ability to continue in the US visa waiver programme. Europeans will no doubt but very upset to discover that the absence of biometric data on their passports mean they must soon be fingerprinted and photographed when entering the US. Moreover, all of this enters into the middle of a complex and politically fraught internal European effort to establish a European area for freedom, security and justice.

Some bigger problems for transatlantic relations remain latent, however, and come from some the premises of US homeland security policy and, in particular, the US externalisation of homeland security. Tremendous European goodwill towards the US after 9/11 has essentially been squandered by various manifestations of the externalisation policy. Similarly, US policies in Iraq and with regard to the Guantanamo system and the unwillingness of the US to encompass terrorism within normal judicial procedures have seriously strained judicial cooperation on the issue of counterterrorism. Judicial cooperation between the United States and Europe, always the most difficult type of cooperation because it involves distinct and inflexible procedures, has become, even relatively speaking, quite bad. At the same time, judicial cooperation is particularly important for dealing with terrorism. The unique nature of terrorism means that maintaining the appearance of justice and democratic legitimacy will be much more important than in normal wars or struggles. In this sense, the war on terrorism more closely resembles the war on drugs than World War II; it is unlikely to have any discernable endpoint, only irregular periods of calm. Ad-hoc anti-terrorist measures that have little basis in societal values and defined legal procedures provide little long-term basis for the necessary cooperation with other countries.

On a deeper level, the problem is that the US homeland security policy as now configured demands that other parts of the world fall into line with US domestic political needs – as evidenced in Iraq, on border control, on data exchange, etc. Such demands inevitably alienate other countries, particularly powerful countries such as those in Europe that the US desperately needs as allies for realising its long-term counterterrorism goals. Worse, if this or other problems (such as the current problems in Iraq) cause the US externalisation strategy to fail – leading to, for example, another large terrorist attack in the US – the result will not likely be a softening of US foreign policy. Rather, it will likely lead to a reinvigoration of US homeland security measures to include the creation of a ‘Fortress America’, as well as possibly uncontrolled US spending on domestic security needs and a great deal of political conflict within the US on civil liberty issues.

From a European perspective, this analysis creates some obvious issues about how to respond. Because these issues are fairly deeply rooted in genuine dilemmas in US domestic politics, they will not go away with a change of administration and the effect of foreign pressure is limited. In the US, as everywhere else, domestic needs rank first. In the US, as nowhere else, there exists a capability to resist foreign pressure, in part because of its size and power, and in part because so much of the rest of the world continues to depend on the US for security and

stability. For these reasons, to directly challenge the US on such issues is often self-defeating as many leaders (if not many publics) around the world have long recognised. Europe in particular is often divided on these matters or at least on the best way to deal with the US on such issues.

Moreover, Europe is not particularly high on the list of foreign policy priorities for the US, which is now overwhelmingly focused on the Middle East and Asia. American policy-makers who do not deal directly with European issues have become astonishingly indifferent to what European leaders or European publics think. They simply do not believe that European opinion has a material impact on the ability of the US to achieve its policy goals, at least relative to American domestic forces or events in the Middle East and Asia. Europeans will whine and complain, but in the end they will have no choice but to conform to US policy needs. They are perhaps wrong in this assumption, but they have yet to be proven so. A more unified, more muscular Europe would certainly affect the capacity to sustain this indifference towards Europe, but that degree of integration is, at best, a very long way off.

While this is a fairly pessimistic conclusion, it needs to be tempered by two previous observations. First, there are self-correcting mechanisms within the US that have, as noted, already begun to manifest themselves. Second, the US domestic political system is quite open. As many European countries have long understood, engaging with the US outside of normal executive channels, to include engagements with the legislative branch and with civil society more generally is often a fruitful exercise in the long term.

Home Security: Russia's Challenges

A Russian Perspective

Andrei Fedorov*

Home security: Russia's challenges

Home security and the struggle against terrorism is one of the most crucial issues for the Russian Federation. As stated clearly by the National Security Concept,¹³

Terrorism is a serious threat to the national security of the Russian Federation. International terrorism holds [an] open campaign to destabilize the situation in the Russian Federation...[The] struggle against terrorism, drugs and illegal trafficking should be based on the complex approach with the use of all the state structures...Based on international agreements it is necessary to build up effective cooperation with foreign states, law enforcement bodies and special services as well as cooperate with international organizations dealing with terrorism and widely use international experience.

The same logic is present in every state of the union speech by President Vladimir Putin, as illustrated by his statement that "Terrorism brings [a] threat to [the] lives of citizens and to human rights...The task of strengthening the anti-terrorist coalition is among the most important."¹⁴

According to the latest polls (April 2004), nearly 67% of Russian citizens considered terrorism as the main threat (this figure is even higher in the largest cities). The greatest concern is the possible use of chemical weapons and weapons of mass destruction. About 56% of those surveyed are sure that terrorism is a long-term threat and there is a need for a real long-term strategy to combat it.

At the same time it is interesting to note that in Russia there is a largely different understanding of both terrorism and the terrorist threat among the public than in other countries. Again, according to the latest polls (March 2004), about 60% of Russian citizens consider terrorism to be Chechen-related and there is little concern about al-Qaeda. The official line today is based on the position that Chechen terrorism is part of international terrorism and Russia's actions in Chechnya should be considered within this context.

Terrorism in the Russian Federation and the infrastructure for dealing with it

The number of terrorist attacks in Russia is growing each year – from around 20 to 25 in the early 1990s to nearly 150 in 2003 (not taking into consideration all the cases in Chechnya but counting only the main ones). There are more than 20 terrorist groups operating in the territory of the Russian Federation, with the majority of them having close links with international terrorist organisations, including al-Qaeda. In 2002-03 more than 500 people were killed and nearly 2,400 were wounded as a result of terrorist attacks; since the beginning of 2004, more than 120 people have been killed and 300 have been wounded.

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¹³ Extract from the National Security Concept of the Russian Federation, adopted in early 2000 by Presidential Decree No. 24 on 10 January.

¹⁴ President Putin's state of the union address to a joint session of parliament on 26 May 2004.

Of course there are numerous reasons for the increase of terrorist activity in the Russian Federation since the early 1990s, but the principle ones could be described as follows:

- the crash of the previous political structure without the creation of an effective socio-political system;
- an economic crisis and growing differences among various regions;
- the rise of nationalism and religious extremism in some regions;
- ethnic tensions and conflicts;
- the illegal circulation of weapons and inadequate control over military installations and hardware;
- the increased activity of criminal groups and the establishment of national criminal networks that are developing international contacts;
- various military and ethnic conflicts in the former Soviet states; and
- open borders.

Under the pressure of growing instability and the number of terrorist acts in 1993, a special terrorism article was added to the Russian Federation Criminal Code, which was slightly modified in 1997. In 1998, the Struggle against Terrorism Law was adopted by the State Duma, to which a number of amendments were later made. On 27 May 2004 the State Duma passed amendments to the Criminal Code in a second reading, to the effect that especially grave terrorist crimes will carry a minimum sentence of eight years (rather than five years).

In general, this legislation works and during 2002-03 alone more than 130 criminal cases were considered by the courts, resulting in the imprisonment of more than 700 criminals for terms ranging from five years to life.

There is no special body for home security in the Russian Federation today and responsibility for it falls among the following governmental structures:

- Ministry of Interior;
- Federal Security Service;
- Ministry of Emergency Situations;
- Ministry of Defence; and
- Security Council.

According to the current Constitution of the Russian Federation, all these bodies are directly responsible to the president, who usually has meetings with the chiefs of all the power structures twice a week, and home security issues are at the top of the agenda. In crisis situations the president is usually the main coordinator of the government's response.

For a number of reasons the Russian Security Council has not functioned properly over the last four years. Home security issues and the anti-terrorism struggle were considered only three times at its meetings. Now it is expected that with appointment of the new head of the Security Council Igor Ivanov (former Foreign Minister), there will be serious changes in the structure of the Council and it will start to play the role of a coordinating body that mainly concentrates on home security issues.

At the regional level Security Councils were created in more than 30 regions of the Russian Federation but only a few of them really work as coordinating bodies (principally in the Caucasus region and in the Southern Russia).

Efforts at international cooperation

There is also a growing understanding in Russia of the necessity of effective international cooperation for home security and the anti-terrorism struggle.

There is closer cooperation now with Europol, Interpol and other international networks. For example, the Russian Financing Monitoring Committee signed a cooperation agreement with the US Financial Crimes Enforcement Network. The same type of agreement should be signed soon with the US Treasury Department's Office of Terrorism and Financial Intelligence.

Three conferences were held in Russia from 2000 to 2003 at the invitation of the Federal Security Service (FSB), in which nearly 50 heads of foreign secret service, security and law enforcement agencies attended. The one held in May 2004 gave special attention to the prevention of terrorism involving weapons of mass destruction and advanced technology, as well as new challenges from international terrorist organisations.

A regional Anti-Terrorist Task Force was created in 2003 in the framework of the Shanghai Security Organization (which includes Russia, China and Central Asian countries), which focuses on issues related to radical Islamic groups in the region and drug trafficking from Afghanistan. Earlier this year Russia also expressed its readiness to allocate up to \$1 million to create a system similar to that of the Financial Action Task Force to cover the territory of the Commonwealth of Independent States (CIS).

The main remaining obstacles to an effective home-security policy

1. Continuation of the conflict in Chechnya, with very few chances of a long-lasting political solution

It is clear that there are close links between terrorist groups in Chechnya with international terrorist networks and that there are special relations between these groups and a number of structures from Saudi Arabia. Nevertheless, it should be recognised that the main financial sources for terrorist activities come from within the Russian Federation (i.e. the Chechen community and criminal structures).

2. The radicalisation of Islamic groups in the Caucasus area (mainly in Dagestan and Ingushetia)

At the moment there are more than 50 radical religious Islamic groups and movements operating in the region. What is the most important is the growing influence they are having on the young generation.

3. Unclear future of the CIS

The majority of the borders within the CIS are still without proper, effective control (especially the borders in the south), which is exacerbated by the continuation of military/territorial conflicts in Georgia and Moldova, as well as instability in Uzbekistan and Tajikistan. There are more than 10 million immigrants from CIS countries working today in the Russian Federation, many of whom are involved in criminal and terrorist

activities. Recent measures such as the introduction of migrant cards are only partly effective (given that in the Moscow region there are about 1.5 million illegal immigrants), but at least there is more information on the number of visitors to the Russian Federation.

4. *Ineffective cooperation between the law enforcement and security forces within the CIS*

Despite some concrete steps towards better cooperation it should be stressed that political factors continue to have too much influence (for example the Russian–Georgian conflict during recent years on the extradition of Chechen terrorists).

5. *A very high degree of corruption exists on all levels – from the bottom to the top*

Among the best examples of such corruption are that in Moscow last year more than 200,000 people were registered based on false documents; another example is that Chechen terrorists were able to bring weapons and explosives to Moscow in 2003 for the terrorist attack at the Dubrovka theatre, by bribing police officers along the way with about \$500.

6. *High level of criminality*

Russia's criminal community is becoming stronger especially at the regional level, where many well-known criminals are now expanding their power. There is also an effective infiltration of Russian criminals into international networks. Russia, together with Ukraine, became the main transit corridor of Afghan/Central Asian drugs to Europe. In 2003, the volume of the confiscated drugs increased by three times (up to 30 tonnes), but according to the Ministry of Interior this represents only 10 to 12% of the total drug supply and transit. Drug money is widely used for financing terrorist activities in Russia. The first case against a bank (*Sodbusinessbank* in Moscow) for money laundering and financing criminal activities only started in May 2004, with the FSB report that about ten banks are involved in the same criminal activity.

7. *Lack of practical cooperation with the Western law enforcement and security forces*

The problem here is that although some good steps have been taken at the top level, cooperation is still lacking at the lower levels, including the border regions (this kind of cooperation is needed first in the Kaliningrad area and on the border between Belarus and Poland).

8. *Unsatisfactory control over military hardware*

In 2002-03 more than 60 cases of stolen military hardware were reported, including machine guns, grenades and even surface-to-air portable rocket missiles. The installations of chemical weapons that are to be destroyed continue to represent a dangerous situation. At the same time, since 2001 more tough measures have been introduced for the protection of nuclear power plants, research sites and the nuclear military arsenal.

9. *Continuation of the ethnic/political conflicts in the former Soviet space*

Conflicts in the former Soviet states contribute to instability in the region, such as the unclear situation in Georgia (with the possibility of new military tensions), Islamic terrorism in Central Asia (Uzbekistan being the main goal), slow progress in the conflict in the Pridnestrovje region of Moldova and the remaining crisis in Nagorno-Karabakh.

What to do?

Russia is capable of taking more concrete steps in the anti-terrorist struggle but continues to lack an institutional framework for such efforts. An office of home security is needed in case the reorganised Security Council is not able to act properly. Other recommendations include:

- More attention is needed to the real creation of a common space of freedom, security and justice between Russia and EU, including the development of a strategic partnership in the EU-Russian ministerial troikas on justice and home affairs, and the establishment of contacts between Eurojust and the Russian General Prosecutors Office, etc. There is also a need to create a new model for border management and to continue cooperation with G-8 countries.
- A rationalisation of mutual legal assistance, including mechanisms for the extradition of criminals is needed along with the harmonisation of national legal systems with regard to terrorism.
- It is important to work towards a more common understanding of the definition of 'terrorism' and to adopt the UN's Comprehensive Convention on International Terrorism as well as the International Convention for the Suppression of Acts of Nuclear Terrorism.
- Effective measures to destroy the financial base of international terrorism must be worked out internationally, including more transparency within Russia. Greater cooperation between the private and public sectors is also necessary to combat money laundering and to increase cyber security.
- Officials responsible for home security from the US, the EU, Japan and Russia should have an effective communication mechanism, to include regular meetings to exchange opinions on existing practice. Russia is ready to take active part in such a system. Meetings of the relevant G-8 ministers should have a regular format and report to every annual summit.