

The West at War:

Transatlantic Cooperation in the Fight against Terrorism (Part II)

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Sep 20, 2006

ABOUT THE AUTHORS

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Brief Analysis

On September 7, 2006, Michael Jacobson, Telmo Baltazar, and Jeremy Shapiro addressed The Washington Institute's Special Policy Forum. Telmo Baltazar is the political justice and home affairs counselor for the European Commission's mission to Washington. Jeremy Shapiro is director of research at the Brookings Institution's Center on the United States and Europe and an adjunct professor of security studies at Georgetown University. Their remarks are published in [Part I \(templateC05.php?CID=2517\)](#) of this two-part series. Michael Jacobson, a former FBI intelligence analyst and counsel to the 9-11 Commission, is currently senior advisor at the Department of the Treasury. While working at The Washington Institute as a Soref Fellow in 2004-2005, he authored [The West at War: U.S. and European Counterterrorism Efforts, Post-September 11 \(templateC04.php?CID=237\)](#). The following is a rapporteur's summary of his remarks, not his words; furthermore, the opinions Mr. Jacobson expressed are his own, and not necessarily those of the U.S. government.

[Read \(templateC05.php?CID=2517\)](#) Part I of this two-part series.

The West at War focuses on both U.S. and European counterterrorism efforts from the September 11 attacks until June 2005, specifically the role of law enforcement and prosecutors in the United States and Europe. The 9-11 Commission's examination of the counterterrorism policies of Britain and especially Germany made clear that Europe did not possess the adequate tools to counter the terrorist threat prior to the September 11 attacks. Al-Qaeda's Hamburg cell produced the leaders of the September 11 hijacking teams. Prior to the September 11 attacks, German authorities were constrained by domestic factors that inhibited their ability to investigate terrorist organizations. While Europe's approach to terrorism suffered from many problems, there were also some potential lessons for the United States. In particular, the experience of Britain's domestic intelligence agency MI-5 may have possible implications for strengthening the counterterrorism capabilities of U.S. authorities.

While the most obvious threats in Europe, such as the July 7, 2005 bombings of transportation targets in London, the Madrid bombings, and the murder of a prominent journalist in Holland, have all targeted European interests, other examples have illustrated the threat to U.S. interests. In August 2004, British authorities arrested eight men and found detailed reconnaissance plans of prominent targets in New York and Washington, including the New York Stock Exchange, Citigroup Center, and the World Bank. In March 2005, French authorities arrested six Islamic extremists who had intended to attack the U.S. Embassy in Paris. Europe has also served as a recruiting hotbed for

terrorist networks and the Iraqi insurgency, a troubling development given that former recruits often return to their home countries better trained and more willing to engage in violence.

When compared to their Middle Eastern counterparts, these European jihadists pose an increased threat because of their ability more easily to gain entry into the United States, speak English, and assimilate into Western culture. Problems still remain with European counterterrorism efforts, specifically divisions among European Union (EU) member states, inadequate information sharing among authorities, and insufficient laws to prosecute terrorism suspects. These further underscore the seriousness of the terrorist threat emanating from Europe.

Despite some notions that they share little common ground, both U.S. and EU counterterrorism efforts have demonstrated similar progress with respect to law enforcement and prosecution. Motivated by a common threat after the September 11 attacks, British, German, and U.S. counterterrorism operations in particular have moved from a reactive to a proactive approach—that is, a preventative strategy fueled by aggressive law enforcement and prosecutorial action. In the United States, thousands of terrorism suspects have been arrested and hundreds prosecuted with a strategy that, according to Department of Justice officials, is modeled under a 1960s tactic designed to target the Mafia. British and German authorities are also beginning to incorporate aspects of the “broken windows” approach, arresting suspected terrorists for minor violations in hopes of disrupting large-scale plots.

This preventive approach would not have been possible without the increased information sharing between intelligence services and law enforcement that has occurred in all three countries. Within the United States, the FBI has augmented its counterterrorism capabilities by eliminating the wall between investigation and intelligence, a development also witnessed in Britain and Germany. Consequently, authorities in all three countries can now make arrests in the early stages of plots, because law enforcement has been brought into the loop.

Legal changes, specifically the USA PATRIOT Act in the United States, and similar provisions in Britain and Germany, have also occurred, giving law enforcement and prosecutors more power to prevent terrorist attacks. Additionally, control of counterterrorism efforts has been centralized in Washington, London, and Berlin respectively, with resources diverted from investigating other types of criminal activity to ensure that counterterrorism remains a top priority.

Along with sharing similar progress in confronting terrorists, American, British, and German authorities have faced common challenges. Problems have arisen in prosecuting suspected terrorists, such as having charges dropped, suspects acquitted, and convictions overturned. In response to the occasional difficulty experienced in terrorism prosecutions, authorities in the United States and Britain have chosen to handle some cases outside the criminal justice system.

The four main factors that render the prosecution process difficult are similar in both the United States and Europe. (1) There exists an increased pressure to disrupt terrorist cells in earlier stages in plots, which due to lack of evidence sometimes leads to problems in obtaining convictions. (2) The use of intelligence information in trials of terrorist suspects is problematic because such information often either is inadmissible as evidence or will compromise sensitive sources and methods. In response, authorities must weigh the costs and benefits of exposing confidential information in return for obtaining a valuable conviction. (3) Prosecuting terrorists has become an increasingly international endeavor. Frequently, terrorism suspects have ties to numerous individuals and organizations abroad, and international cooperation with foreign governments is often necessary to obtain a conviction. (4) Not all countries have laws that allow them to prosecute terrorism suspects effectively. Despite changes made since the September 11 attacks, gaps remain, and counterterrorism laws will need to be updated as the terrorist threat evolves.

Conclusions

It is important to counter the perception that American and European counterterrorism efforts are at odds. By focusing on commonalities, the U.S.-EU partnership can be enhanced to improve both tactical and strategic cooperation. An augmented role in Europe for the EU as an institution, as distinct from its member states, to coordinate counterterrorism policy among Europeans goes hand in hand with this notion, and will help develop overarching solutions to a shared challenge. Within the United States, there is an urgent need for Congress to augment its role by setting out in law to the greatest extent possible how to prosecute all suspected terrorists. During prosecutions, it is importance to maintain adequate distance between prosecutors and law enforcement authorities, so as to preserve the necessary independence of the former to make judgments about the strengths and proceedings of the case. Finally, the United States should comment less publicly on counterterrorism prosecutions and be more careful in its use of counterterrorism statistics so as to preserve the credibility that is essential for successful prosecutions.

This rapporteur's summary was prepared by Jake Lipton. ❖

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