

German and U.S. Counterterrorism Efforts: More in Common Than Meets the Eye

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Brief Analysis

U.S. president George W. Bush heads to Europe next week, where he will meet with European leaders, including German chancellor Gerhard Schroeder. While Bush and Schroeder will certainly spend time discussing and attempting to iron out the differences between the two countries, it is also a good opportunity for the two sides to point out and build upon similarities in their counterterrorism efforts to date.

Aggressive Law Enforcement Approach

Since September 11, Germany—like the United States—has adopted an increasingly aggressive approach to dealing with Islamic terrorist threats. This shift toward a more aggressive approach began immediately after the September 11 attacks, when the German government conducted over 200 counterterrorism raids. More recently, in late January 2005, German authorities arrested two suspected al-Qaeda members, charging them with belonging to a foreign terrorist organization. German authorities believe that they were planning suicide bombings in Iraq and, perhaps even more disturbingly, alleged that the two also tried to purchase a small amount of enriched uranium. These arrests followed an even larger-scale series of raids in early January, in which 700 police officers in six cities in Germany arrested 22 suspected terrorists. The German authorities seized items including forged documents and extremist literature. The chief state prosecutor has stated that some of those arrested had ties to Ansar al-Islam.

In addition, as in the United States, counterterrorism is now a top law enforcement priority, and law enforcement actions and prosecution have become an increasingly important part of Germany's preventive measures. The German intelligence services have been coordinating and sharing information with law enforcement at a far earlier stage than in the past; consequently, the law enforcement agencies are able to take action much earlier.

Post-September 11 Legal Changes

As in the United States, some of these arrests and more aggressive law enforcement have been possible because of German legal changes made since September 11. Prior to September 11, significant legal barriers restricted Germany's ability to target Islamic fundamentalism. The German government was limited in its ability to investigate religious groups, and at that time it was not illegal to plan a terrorist act outside Germany or to be a member of a foreign terrorist organization. The Germans have passed two primary pieces of counterterrorism legislation since the September 11 attacks: the first in October 2001 and the second in January 2003. A third package will likely be sent to the parliament in the next few months. The changes in the first two packages were designed, in part, to make

it harder for terrorists to operate relatively freely in Germany. The most significant changes addressed the loopholes described above by: allowing authorities to prosecute members of terrorist organizations, even if those organizations are based outside Germany; and enabling the government to investigate and ban religious groups.

Centralization and Coordination

Another similarity is that Germany, like the United States, identified decentralization and the lack of coordination between their intelligence and law enforcement entities as key areas in which changes were needed. Both decentralization and barriers between law enforcement and intelligence were concepts integrated into Germany's national security apparatus in the wake of World War II. This was an effort to prevent a centralized authority from assuming too much power or gathering or possessing too much information. While Germany has a federal law enforcement agency, policing, in particular, was considered a state matter, and authority for law enforcement resided primarily with the sixteen states ("lander" in German). The federal agency had very limited ability to exert control over the state level agencies. In addition, separation between intelligence and law enforcement was considered to have the force of constitutional law. Coordination and cooperation were made more difficult by the fact that every one of Germany's sixteen states has its own intelligence and its own law enforcement agency.

Otto Schily, the German federal interior minister, has made significant efforts to overcome these barriers and improve cooperation between intelligence and law enforcement entities. In December 2004, Schily established a central intelligence center in Berlin at which all federal and state intelligence and law enforcement agencies have a presence (though there is still some separation between law enforcement and intelligence entities in the center, as is required by law). The Germans are also in the process of creating an index database that will contain the names of suspected terrorists and will be accessible to all intelligence and law enforcement agencies. This will require a change in law because of the legally required separation between law enforcement and intelligence entities. This change might be included in a third legislative package mentioned above. Schily has also made efforts to improve coordination and cooperation between intelligence and law enforcement entities by moving their various headquarters to Berlin (with the exception of a major part of the federal law enforcement agency). Before the relocation to Berlin, Germany's federal intelligence and law enforcement agency headquarters were scattered throughout the country, once again a post-World War II system designed to avoid the centralization of power.

Difficulties in Prosecution

Germany's increasingly aggressive efforts to use the criminal justice system to target suspected terrorists, however, have run into some of the same problems the United States has encountered. For example, Ihsan Garnouai, a Tunisian national, is currently on trial in Berlin, accused of attending an al-Qaeda training camp in Afghanistan and of recruiting individuals in Berlin to carry out attacks against Jewish and U.S. targets in Germany. The case has reportedly been plagued by problems, with prosecutors unable to lay out many details of the planned attacks, including such facts as what the targets were or who was to participate. After several months of trial, the judge suggested that the prosecutors drop the terrorism-related charges and attempt to proceed on the charges unrelated to terrorism (tax evasion and forgery). Beyond the difficulties in the prosecutions themselves, there have been many cases in which the government encountered problems even before attempting a prosecution. On numerous occasions, German authorities have arrested individuals they suspected were terrorists but eventually released them for lack of evidence.

Common Problems, Common Solutions

President Bush should take this opportunity to demonstrate that the two sides are not as far apart in their approaches to fighting terrorism as has been publicly portrayed. One hopes that pointing out the similarities in approaches and difficulties faced would go a long way toward demonstrating to skeptical American and German

audiences that the public portrayals of the other have often been two-dimensional. Ideally, focusing on the areas in common would help convince the U.S. public that the Germans have taken significant steps in their counterterrorism efforts since September 11. It might also help counter the German public perception that the United States has abandoned the rule of law and is using only military means to fight this conflict. Once the United States and Germany can focus on the common ground, it should make it far easier for both to build upon these areas of commonality and tackle the similar problems they have faced on a collaborative basis.

Michael Jacobson, a Soref fellow at The Washington Institute, served as counsel on both the congressional and independent commissions investigating the September 11 attacks. ❖

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