The Contribution of Border Security Agencies in the War on Terror

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The Rise of "Hyperterrorism"

In recent years, an important transformation has taken place in the international security environment. The attacks on the World Trade Center and the Pentagon on 11 September 2001 provided the most dramatic evidence of this shift. In the words of François Heisbourg, the post–Cold War interregnum of soft power and defence diplomacy has been eclipsed by the rise of "hyperterrorism" – that is, the terrorism of mass destruction.[189] This threat comes principally from nonstate actors and is new by virtue of the fact that such groups today have both the will and the capacity to carry out terrorist attacks on an unprecedented scale.[190]

The gas attack in the Tokyo subway in March 1995 was a first indication of this change, but since then developments in technology have made it even easier for nonstate groups spread across the world to communicate and coordinate their actions and to gain access to knowledge that in the past was the preserve of national security agencies and government bureaucracies.[191] A recent example of this was the avowal made by Pakistani nuclear scientist A. K. Khan, that he had leaked secrets to Iran, Libya, and North Korea. This discovery in turn uncovered the existence of an elaborate nuclear proliferation network, suggesting that what was in the past closely guarded state secrets are increasingly filtering into the public domain. With the collapse of secular ideologies such as Arab nationalism, space has been left for the emergence of nihilistic doctrines of religious fundamentalism. "Political terrorism" of the kind practiced by the FLN in the Algerian war against France or by the PLO in the 1970s has been replaced by messianic terror without political content.[192] Combined with the technological developments that

189 François Heisbourg, "Quelles Menaces pour l'Europe," *A.F.R.I.* 3 (2002).

190 See the interview in *Le Monde*, with François Heisbourg and Hubert Védrine, "Pourquoi le Térrorism?" *Le Monde* (26 March 2004).

191 *ibid.*

192 92 See "One Man's Terrorist is Another Man's Terrorist," Andrus Öövel (unpublished, 2000).

have facilitated international communication and information sharing, contemporary groups such as Al Qaeda now have both the will and the means to carry out attacks on an unprecedented scale.

Counterterrorism Strategies Post-9/11

In the light of this threat, it is evident that conventional methods of defence are of little use. Standing armies and conventional weapons were developed in order to respond to territorial threats. As such threats have receded – at least in Europe – it follows that responses must also evolve. Generally, it is recognized that defence strategies should be preventive rather than reactive. That is, the aim should be not to deal with terrorist attacks as and when they occur, but rather to prevent terrorists from being able to organize them in the first place.[193] Such preventive strategies must have at their core an effective system of intelligence gathering. The centrality of intelligence in the fight against terrorism has long been recognized by specialists. Writing in 2000, Paul Wilkinson argued that

> High quality intelligence is the heart of the proactive counterterrorism strategy…It has been used with notable success against many terrorist groups. By gaining advanced warning of terrorist-planned operations, their weaponry, personnel, financial assets and fund-raising tactics, communications systems and so on, it becomes feasible to preempt terrorist attacks, and ultimately to crack open the terrorist cell structure and bring its members to trial.[194]

However, in observing the counterterrorism strategies existing at the time, Wilkinson concluded that

> Sadly, such high levels of international cooperation against terrorism are hard to find. Just as the lack of intelligence sharing between uniformed and nonuniformed security agencies often damages national counterterrorism responses, so international mistrust and reluctance to share information often vitiates an effective international response. *The most useful enhancements of policy to combat terrorism, at the international level, need to be made in intelligence gathering, by every means available, intelligence sharing, intelligence analysis and threat assessment.*"[195]

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[193] See the U.S. Government's *National Security Strategy*, September 2002 (accessed at http://www.whitehouse.gov/nsc/nss.pdf). See in particular chapter 5, "Prevent Our Enemies From Threatening Us, Our Allies and Our Friends, with Weapons of Mass Destruction," 13–17.

[194] Paul Wilkinson, "The Strategic Implications of Terrorism, " from *Terrorism and Political Violence. A Sourcebook*, edited by M. L. Sondhi, Indian Council of Social Science Research (Haranand: India, 2000).

[195] *ibid*., my emphasis.

The events which followed 9/11 have corroborated Wilkinson's words. On the one hand, the criticism of U.S. government policy concerning the attacks has tended to focus on the work of the intelligence agencies and on the lack of coordination and clash of priorities between the CIA and the FBI. On the other hand, policy developments since the attacks have focused on rectifying these intelligence failures and on the need to increase interagency cooperation.

In Europe, the response has similarly been focused on intelligence measures and the need for greater cooperation. At the conclusion of the extraordinary European Summit on 21 September 2001, EU leaders presented a counterterrorism strategy made up of seven points. These points included: strengthening antiterrorist legislation, increasing cooperation among magistrates across EU member states, increasing cooperation and coordination of operations by the security services of EU member states, broadening EU-US cooperation, and tackling the financing of terrorism.[196]

Following the terrorist attacks in Madrid in March 2004, the emphasis on intelligence and cooperation was taken even further. In the Declaration on Combating Terrorism adopted at the EU summit held after the attacks, the measures included the creation of a counterterrorism "tsar" responsible for overseeing the EU's antiterrorism activities, the integration of an intelligence structure on terrorism within the Council Secretariat, deepening the use made of existing EU bodies such as Europol, Eurojust, and the Police Chiefs Task Force, and a move toward adopting a database of persons convicted for terrorist activities and other serious crimes.[197]

In this context, the most significant aspects of the EU legislation concerning terrorism are set out below. While much of the strategy does not involve border security organizations directly, the remainder of the paper will highlight in which areas border guards can play a role.

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[196] Described in Dr. Willy Bruggeman, "Security and Fighting Organized Crime and International Terrorism," Catholic University of Leuven & Deputy General Director of Europol, December 2002.

[197] See "The European Terror Challenge", at http://news.bbc.co.uk/1/hi/world/europe/3563713.stm.

Figure 1: EU Anti-Terrorism Strategy:[198]

- Council Regulation (EC) No. 2580/2001 of 27 December 2001: freezing of funds, financial assets, economic resources of terrorist groups
- Council Regulation (EC) No. 881/200 of 27 May 2002: adds an annex list of persons, groups related to Al Qaeda
- Council Common Position 2001/930/CFSP of 27 December 2001: freezing of funds, financial assets, prevention terrorist acts, denial of safe haven, bringing to justice, prohibition free movement across borders
- Council Common Position 2001/1931/CFSP of 27 December 2001: Adds also to list (29 persons and 13 groups)
- Council Common Position 2002/402/CFSP of 27 May 2002: prohibits supply, sale, and transfer of arms to Al Qaeda, Taliban, and related groups
- Council Framework Decision 2002/475/JHA of 13 June 2002: Initial definition of terrorist offences, minimum penalties for terrorist offences
- Council Framework Decision 2002/584/JHA of 13 June 2002: European Arrest Warrant
- Council Framework Decision 2002/465/JHA of 13 June 2002: Joint Investigation Teams (JIT)
- March 2004: Appointment of Gijs de Vries as EU Terrorism Tsar

It is within this context of an emerging counterterrorist strategy based on interagency cooperation and intelligence sharing that border security agencies have an important role to play. In the light of the changes in the security environment, and the rise of nonterritorial threats, the most violent of which being hyperterrorism, border security agencies have also had to adapt themselves. In the past, and certainly in a Europe that was divided by an Iron Curtain and still marked by the memories of World War I and II, border security was above all composed of defensive strategies based on the idea of defending the border line. It was an extension of a broader national defence strategy aimed at preserving

[198] EU antiterrorism strategy and legislation from 2001 to 2004. Details on legislation drawn from presentation made by Marcel H. van Herpen, entitled "After Madrid 3/11: Does Europe Do Enough in the War on International Terrorism?", CICERO Foundation seminar on Justice and Home Affairs, "The Role of Europol and Eurojust in Combating International Organized Crime," Paris, 13 May 2004.

territorial integrity, and was either carried out directly by military units or by organizations organized along military lines. In short, border guards were either literally or metaphorically soldiers. They were not policemen.

In the post–Cold War period, border security in Europe has seen a number of profound changes. With the collapse of the Soviet Union, the likelihood of territorial conflict in Europe has greatly receded. At the same time, the developments that have opened the way to hyperterrorism have also been partly responsible for the emergence of other transborder threats, such as organized crime and illegal migration. In response to these threats, border security organizations have had to rewrite their missions and strategies. It is this adaptation that puts them in the front line in the war against terrorism.

Cooperation and Intelligence Gathering in Border Security

The main shift in strategy has been from defending the border line to a defence that extends across four tiers. In the past, border security was focused on defending the border line from territorial threats, the extreme example of which was the French Maginot mentality in the interwar period or the Berlin Wall during the Cold War. However, in the post–Cold War period, at least in Europe, security threats have shifted away from territorial threats and are now perceived to be far more diffuse (they have been "deterritorialized"). For instance, organized crime and illegal trafficking are activities that take place across borders, and require policing as much inside a state as along its border line. The four tiers model was developed by the EU as a way of capturing this change. Now the role of the border police is not only to guard the border, but also to liaise with third countries and to maintain close ties with internal security agencies (such as the national police). In this context, terrorism is a perfect example of a diffuse threat, which is difficult to pin down and requires not just manpower and equipment on the border but activities "beyond the border line."

As set out in the EU's Schengen Catalogue on Border Management, these four tiers are:

- Activities in third countries, especially in countries of origin and transit, including the collection of information by liaison officers as well as the key role of the consular post abroad in the process of issuing visas
- International border cooperation

– Measures at external borders: border management (border checks and surveillance)
– Further activities inside and between the territories of the Schengen States[199]

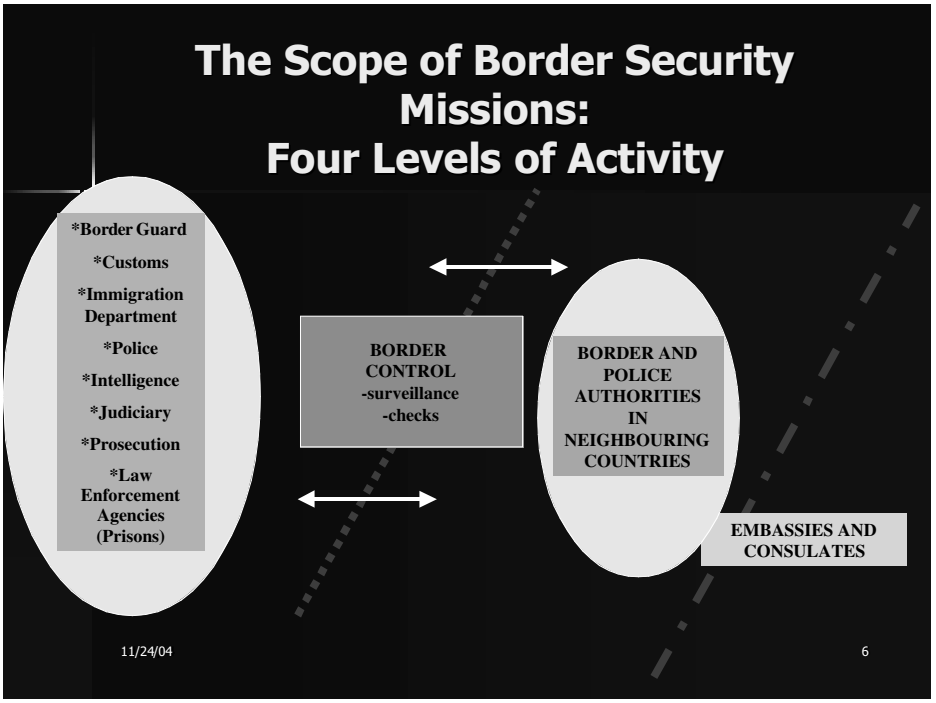

Figure 2: Four Tires in Border Security

Underlying these four tiers is the idea of cooperation. For instance, on the issue of illegal migration, a number of initiatives have been launched that have brought European border guard agencies and other security agencies together. Under the Belgian presidency of the EU, a law enforcement operation called the High Impact Operation was organized. This operation took place on the borders that are now, after the 1 May enlargement, the EU's new external borders. The goal behind this initiative was to develop the contacts between the border security authorities of existing EU member states and those of future member states. Under the Spanish presidency, two similar operations were organized, Operation RIO and Operation Pegasus. The former focused on the use of air-

199 *EU Schengen Catalogue, External Borders Control, Removal and Readmission: Recommendations and Best Practices*, Council of the European Union (February 2002), 11.

ports as transit points for illegal migrants, and the latter on the use of shipping containers as means of transporting illegal migrants. All these activities took place with the support of Europol and demonstrated the capacity for border guard agencies to cooperate with other actors in the combating of common threats such as those of illegal migration. Similar cooperation initiatives could be launched as part of a broad counterterrorism strategy.

Along with cooperation, border guard agencies are also capable of contributing to the intelligence requirements of the new counterterrorism strategies. With the close cooperation established between border guard agencies and embassies and consulates in third countries, such agencies are well placed to contribute to the dismantling of terrorist cells in third countries. Such terrorist cells could be made subject to intelligence and investigation activities carried out by border guard services. At the same time, border guard agencies have a great deal of information valuable to national security actors, above all the police. For instance, the Schengen Catalogue on Border Management makes the following recommendation on intelligence activities:

> A two-way information exchange should be arranged between central and local levels of the border management authority. The local authorities should be instructed to gather information on illegal immigration and other cross-border irregularities, analyze it locally, and pass it on to the central level. The central level should compile all information country-wide, process it into usable form, and deliver it to local authorities to be used as a tool for tactical risk analysis and operational planning.[200]

Additionally, the Schengen Catalogue outlines as a best practice the establishment of "a network of intelligence liaison officers…to connect different units and different organizational levels."[201]

A graphic illustration of possible cooperation between border guard authorities and intelligence organizations is set out below.

The figure above on intelligence cooperation illustrates the role that border guards can have in intelligence gathering, a central plank of most countries' antiterrorism strategies. While border guards are not themselves specialized intelligence-gathering authorities, if a border guard organization is independent and has its own command and control structure (such as Germany, Finland, and Hungary), then it will also have its own intelligence units. These should cooperate closely with other intelligence agencies. The controlling and surveying of borders places border guards in a special position concerning the collection of intelligence on who is entering and exiting the country. This is what could be of use to other services.

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[200] *EU Schengen Catalogue,* 19–20.
[201] *ibid.*, 9.

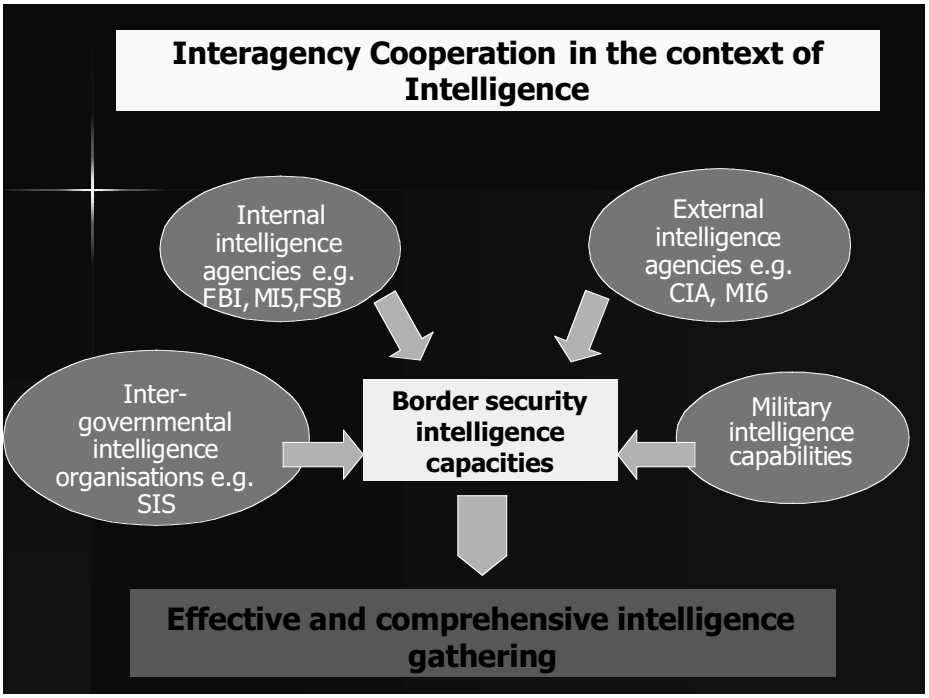

Figure 3: Interagency Cooperation in Intelligence

Clearly, such intelligence operations and data flow management can be put to use in counterterrorism strategies.[202] Similar strategies could be envisaged in the field of antiterrorism. Information on the identity of those crossing the border is essential for national police services investigating the presence of terrorist suspects on national territory. With carefully coordinated information sharing measures, and by providing various actors with access to their intelligence, border security organizations can play an important role in preventing terrorist attacks. In the words of a paper produced by DCAF's International Advisory Board for Border Security, "border guards should be the primary sensors for information that will be systematically developed to countrywide strategic assessments of risks and threats."[203]

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202 This kind of progress has already been made in the field of organized crime, with the cooperation of the International Crime Investigation Cooperation Centre (NEBEK), Europol, and the South Eastern European Crime Investigation Centre (SECI).

203 Jukka Savolainen et al., "Benchmarking Border Management in the Western Balkans Region," paper produced by the DCAF International Advisory Board for Border Security (2004), 40.

Cooperation and the Quality Cycle

A way of understanding the gains from cooperation is in terms of a quality cycle. This cycle describes the relationship between manpower, resources, and the public expectations that shape the strategies and goals of individual institutions. A graphical illustration of the quality cycle is given below:

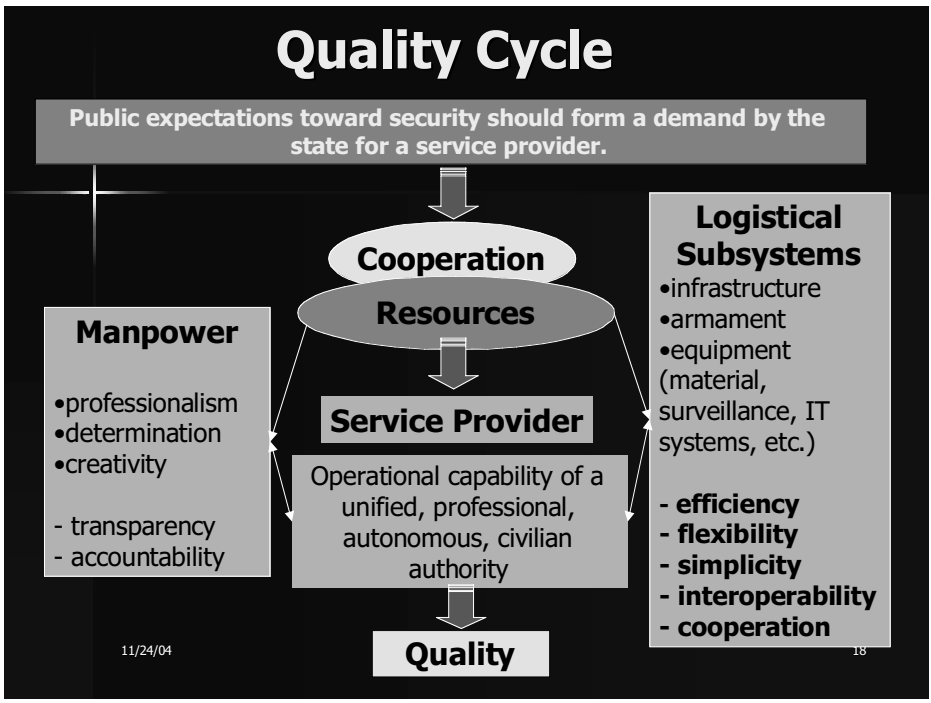

Figure 4: Quality Cycle in Border Security[204]

As a general principle and not just in border security, national governments should base their strategies on public expectations. These expectations include living in a secure environment, which means that national governments demand security from service providers and channel the necessary resources to these areas. Resources should be divided between manpower and logistical support systems. Logistical support

[204] In order to improve the quality of the work of border guards, it is possible either to increase the resources available or to use existing resources more effectively. The latter is the aim of cooperation, so cooperation becomes a means of achieving improvements in quality. The figure also illustrates a particular definition of quality, namely that which keeps the public happy and is in line with their expectations.

consists of a series of subsystems, which are infrastructure, armament, and equipment (material and IT). The principles to be applied to logistics are efficiency, flexibility, simplicity, interoperability, and cooperation. Regarding manpower, the principles are professionalism, independent decision making, and creativity, and the methods to be followed are transparency and accountability.

If the resources channelled to the service provider generate the results expected by the public, we can say that quality has been achieved. This applies to border security and to most government-funded activities in the security sector as much as in healthcare and in education.

When there is a quality problem, it means that there is a gap between the provision of the service and the expectation of the citizens. To solve a quality problem, there are generally two options: increase resources or improve the utilization of existing resources through increased cooperation. In border security, a simple increase in resources is rare, especially as border security services are always competing for funds both with other authorities in the security sector and with other areas of state responsibility such as health and education. A more realistic option is to increase cooperation, though this requires both will and a degree of strategic thinking that sees where opportunities for cooperation exist.

In the case of terrorism, the public expects that security agencies are capable of dealing with the threat. An example of a quality problem is in the public debate taking place in the United States over intelligence failures related to the 9/11 attacks.

Conclusion

At present, Europe has the possibility to anticipate such problems and to act now to prevent future attacks. The response to the Madrid bombings outlined above suggests that some progress has already been made. However, opportunities remain with respect to an integration of border security capacities into the overall antiterrorism strategy. The wide scope of the border guard mission means that border guards are involved in a number of different activities, from intelligence gathering to cooperation with embassies in third countries. In all these different activities there exists the possibility to cooperate with other security actors and to achieve important quality improvements as a result.

This is the challenge for border security services, and makes border guards important actors in the fight against terrorism.