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strategy origins, problems, and prospects

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**NAVAL  
POSTGRADUATE  
SCHOOL**

**MONTEREY, CALIFORNIA**

**THESIS**

**THE EUROPEAN UNION COUNTER-TERRORISM  
STRATEGY: ORIGINS, PROBLEMS, AND PROSPECTS**

by

Lea T. Kirkwood

December 2006

Thesis Advisors:

Maria Rasmussen  
Rafael Biermann

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**THE EUROPEAN UNION COUNTER-TERRORISM STRATEGY: ORIGINS,  
PROBLEMS, AND PROSPECTS**

Lea T. Kirkwood  
Major, United States Air Force  
B.E.D., Miami University, 1992  
M.B.A., Georgetown University, 2004

Submitted in partial fulfillment of the  
requirements for the degree of

**MASTER OF ARTS IN SECURITY STUDIES**

from the

**NAVAL POSTGRADUATE SCHOOL  
December 2006**

Author: Lea T. Kirkwood

Approved by: Maria Rasmussen

Rafael Biermann  
Thesis Advisors

Douglas Porch  
Chairman, Department of National Security Affairs

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## **ABSTRACT**

The European Union (EU) published its first Counter-Terrorism Strategy in December of 2005. After four years of reacting to the major terrorist attacks in the United States in 2001, Madrid in 2004, and London in 2005, the EU has enacted a substantial body of counterterrorism measures across multiple functional areas. The implementation of these actions, however, has not always been consistent or timely, due to a number of issues, including public threat perception, concern over social tensions, and competing national priorities. These roadblocks to a successful counterterrorism policy were often discovered upon new terrorist attacks and a renewed evaluation of EU counterterrorist activity. After the London bombings, the United Kingdom held the EU Presidency and immediately set to work on a strategy to counter terrorism, both similar and subordinate to the 2003 European Security Strategy, which specifically listed terrorism and weapons of mass destruction among the top five threats to the EU. The new strategy of 2005 outlines EU efforts over the long term and provides a tool for public information. Despite the EU's embrace of its new strategy, the document has many shortcomings. Evaluation of this strategy against a series of counterterrorism best practices accumulated from the work of functional and scholarly experts shows several areas in which the effectiveness of this strategy to successfully affect terrorism is severely limited. In all, the European Union Counter-Terrorism Strategy serves limited use as a strategy document, but does serve to guide the EU's efforts in fighting terrorism, as well as deepen EU integration in security affairs and in justice and law enforcement.

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## I. INTRODUCTION

### A. THE EVOLVING ROLE OF THE EUROPEAN UNION IN COMBATING TERRORISM

European nations have a long history of terrorism within their borders. They likewise have substantial counterterrorism lessons learned and the resulting national legislation to combat terrorism according to their experiences.<sup>1</sup> Most European nations have also embarked upon the path of integration within the European Union (EU). This integration has accelerated since the end of the Cold War, with the signing of the Maastricht Treaty of European Union (TEU) in 1992 and subsequent treaties to enable deeper integration.<sup>2</sup> The threat of terrorism demonstrated in the attacks in the United States in 2001, in Madrid in 2004, and in London in 2005, has elevated the visibility and importance of the fight against terrorism to the EU level. Thus, the deepening integration of the EU has also come to include the collective fight against terrorism. However, the EU as an institution is not set up to allow a cohesive response to terrorism; it must rely on the Member States to enact and implement policy. Any EU effort to fight terrorism has, therefore, to be agonizing and time-consuming, indeed the result of a delicate compromise.

The EU published its first strategy for fighting terrorism in December 2005.<sup>3</sup> Before, the EU pursued counterterrorism policies through collective statements about terrorism and coordinated actions to strengthen intra-institutional and international efforts to fight terrorism. The newly published Strategy should bring form and focus to these efforts. As such, the ability of the EU Counter-Terrorism Strategy to function as a “strategy” is of key concern. An analysis of this document is necessary to outline the ways and means that the EU employs in the fight against terrorism to “make Europe

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<sup>1</sup> Paul Gallis, Summary of “European Counterterrorist Efforts: Political Will and Diverse Responses in the First Year After September 11,” Congressional Research Service, RL31612, October 17, 2002.

<sup>2</sup> Subsequent treaties include the Treaty of Amsterdam in 1999 and the Treaty of Nice in 2003. “Treaties and Law,” European Union website, [http://europa.eu/abc/treaties/index\\_en.htm](http://europa.eu/abc/treaties/index_en.htm) (accessed November 16, 2006).

<sup>3</sup> Council of the European Union, Presidency and the Counterterrorism Coordinator, “The European Union Counter-Terrorism Strategy,” Document 14469/4/05 REV 4, November 30, 2005, <http://register.consilium.europa.eu/pdf/en/05/st14/st14469-re04.en05.pdf> (accessed November 26, 2006).

safer.”<sup>4</sup> Understanding the statements and measures from the collection of EU agreements preceding the Counter-Terrorism Strategy will lay out its antecedents. Furthermore, tracing the momentum and direction of EU counterterrorism efforts in the wake of major terrorist attacks will provide a basis for judging the utility of the EU Strategy and the activities that might follow. Challenges to progress, including implementation and coordination issues, will further complete the setting, identifying gaps in the EU scheme. Finally, an evaluation of this Strategy against an array of benchmarks created from decades of experience in fighting terrorism will provide a meaningful assessment of the prospects for this Strategy to affect the fight against terrorism. The examination of origins, implementation issues, and expectations from this initial Counter-Terrorism Strategy will indicate its significance or relevance in the EU’s fight against terrorism.

As a published strategy document, the European Union’s Counter-Terrorism Strategy provides insights into how the EU members intend to fight terrorism together. Since the EU is a supranational institution and not a sovereign state and since the Common Foreign and Security Policy (CFSP) of the EU and its Justice and Home Affairs (JHA) pillar are still, though decreasingly, based mainly on intergovernmental cooperation, the question of how twenty-five sovereign Member States intend to plan and work together becomes all the more important and convoluted. It is a perplexing matter for both insiders and observers alike. Insiders, working within the Union, have participated in and facilitated the process, as events have unfolded and interaction has increased. Outside observers include both European citizens watching the interplay between their national governments, and non-EU organizations and partner nations who have not shared the same experience of working together in a supranational organization. Thus, this Strategy should prove useful to distill to all parties where the EU is going as a whole, how the national players have joined forces, as well as how the EU would interact

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<sup>4</sup> Council, “The European Union Counter-Terrorism Strategy,” 14469/4/05 REV 4, 2.

on the world stage with international partners. This Strategy statement is of paramount importance since, as a core element of the “West,” Europe is a prime target of transnational terrorism.<sup>5</sup>

This Strategy is an important component of the overarching European Security and Defense Policy (ESDP), with the European Security Strategy<sup>6</sup> (ESS) of December 2003 serving as a guiding or framework document. As such, the ESS serves to reinforce Europe’s standing in international politics. Since the end of the Cold War, the members of the EU have embarked on a path towards designing a CFSP, thus becoming a stronger and more viable actor on the world stage, economically, politically, and militarily—although to differing degrees. Europe is increasingly exercising its “voice” through the EU, creating overarching strategies and collaborative mechanisms at the intergovernmental level, including in the field of counterterrorism. By publishing a strategy, the intended message is to present the EU as a major actor in the fight against terrorism. However, the fact that the Member States are still the Principals and the EU the Agent, using the EU as an instrument to coordinate their internal and external security policies, undermines the prospects for this effort. The intention of this Strategy as a catalyst or as a consolidator for the EU members should be investigated to more clearly determine what can truly be expected from such a document and its signatories.

The Counter-Terrorism Strategy continues Europe’s efforts to fight terrorism through multilateral channels, but remains, as other EU endeavors, entirely subject to implementation by the Member States. Efforts at the institutional level reveal a tenuous balance between the desired collective European action and national prerogatives. Documenting a plan under these conditions seems uncertain in any true measure as a strategy, or in successfully fighting terrorism. The true test is the ongoing translation of strategy to the operational and tactical levels, over which the EU has little control. Nonetheless, an overarching strategy could provide a strong, collective, if not complete, counterterrorism roadmap. However, this “late” Counter-Terrorism Strategy, developed

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<sup>5</sup> Timothy Garton Ash, *Free World: America, Europe, and the Surprising Future of the West* (New York: Random House, 2002), 138.

<sup>6</sup> Council of the European Union, “A Secure Europe in a Better World: European Security Strategy,” December 12, 2003, <http://www.consilium.europa.eu/uedocs/cmsUpload/78367.pdf> (accessed November 13, 2006).

only after four years of counterterrorism action plans, seems to offer little in the way of strategic underpinning or future direction. Such efforts are at best a step forward on the path to a truly collective EU counterterrorism effort.

## **B. CURRENT LITERATURE ON EU APPROACHES TO COMBATING TERRORISM**

Prior to December 2005, there was no published strategy document on how the EU was to fight terrorism. The EU had created guiding documents in the form of declarations, action plans of ongoing cooperative activities, or statements made by EU officials. While the EU did publish its European Security Strategy in 2003 that addressed terrorism as a key threat to Europe,<sup>7</sup> there was no immediate follow-up to better address this security risk.

In the years between the terrorist attacks of 9/11 and the publishing of this Strategy, there have been three schools of thought regarding the EU and terrorism: the internal camp, the naysayers, and the integrationists. The internal camp, intergovernmentalists within the EU and specifically from the office of the EU Counter-Terrorism Coordinator within the European Council, repeatedly stressed that terrorism is a large problem for Europe and the “West” as a whole, but that implementation and effectiveness of any counterterrorism measure rested squarely on the shoulders of EU Member States. The EU acted only as a facilitator.<sup>8</sup> From this point of view, the EU has both accepted its limited power and responsibility for effective policy, and accepted Member State authority by advocating the primacy of national autonomy in security affairs. Furthermore, this position could be deemed a more modest approach from a supranational institution, recognizing its own limitations to affect progress in the fight against terrorism.

The second position is that of the naysayers. This group advocated that while EU policy for counterterrorism is a noble idea, it is essentially a “paper tiger,” impotent to effect any real change and stop terrorism on the continent. This group includes scholars such as Paul Wilkinson, Oldrich Bures, Gustav Lindstrom, and Ferruccio Pastore, among others; as well as news media outlets, like the British Broadcasting Company (BBC),

<sup>7</sup> Council, “A Secure Europe,” 5.

<sup>8</sup> Gijs de Vries, “The European Union’s Role in the Fight Against Terrorism,” *Irish Studies in International Affairs* 16 (2005), 7-8.

who purport that the EU is practically hamstrung by its own institutional structure and by its lack of collective political will.<sup>9</sup> This position rested partially on the fact that the EU is not a unitary actor with the power to ensure implementation of actions. EU counterterrorism efforts also do not fit strictly within one pillar of EU policy. Counterterrorism actions range across two of the three pillars of the EU, the second pillar of CFSP and the third pillar of JHA. These two pillars are organized to facilitate intergovernmental coordination and cooperation.<sup>10</sup> Unlike the first pillar of the Economic Communities which does not require unanimous decisions to enact economic policy,<sup>11</sup> the second and third pillars both require consensus among all members. However, the EU holds no real power to enforce these measures, despite their unanimous agreement. This position also reflects the notion that EU decisions do not necessarily produce uniform understanding and implementation. Consensus as the “lowest common denominator” approach will not likely garner significant gains in the fight against terrorism.

The third position is supported by those integrationists who believed in the benefits and potential of a more integrated Europe. This group includes proponents such as Paul Gallis, Louis Golino, and Michael Jacobson; and seconded by media outlets such as EurActiv, an independent media portal for EU affairs, that advocate that the EU is increasing its role in counterterrorism for the long haul and attempting to muster its

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<sup>9</sup> See Oldrich Bures, “EU Counterterrorism Policy: A Paper Tiger?,” *Terrorism and Political Violence* 18, no. 1 (Spring 2006): 57-78; Kirsty Hughes, “The EU’s Jumbled Anti-terror Plan,” *BBC News*, December 14, 2005, <http://news.bbc.co.uk/go/pr/fr/-/2/hi/europe/4529174.stm> (accessed June 5, 2006); Gustav Lindstrom and Burkard Schmitt, *Facing Terrorism: European Perspectives and Strategies* (Paris: EU Institute for Security Studies, 2004); Ferruccio Pastore, Jörg Friedrichs, and Alessandro Politi, *Is There a European Strategy against Terrorism? A Brief Assessment of Supra-national and National Responses* (Rome: Centro Studi di Politica Internazionale, 2005); and Paul Wilkinson, *International Terrorism: The Changing Threat and the EU’s Response*, Chaillot Paper no. 84 (Paris: EU Institute for Security Studies, 2005).

<sup>10</sup> Fiona Hayes-Renshaw and Helen Wallace, *The Council of Ministers*, (Basingstoke: Palgrave Macmillan, 1996), 274-5; and Brian Cassidy, “EURIM Guide to Decision-Making in the European Union after Amsterdam,” *European Informatics Market*, <http://www.eurim.org/EURGUIDE.html> (accessed September 7, 2006).

<sup>11</sup> In the first pillar, a “qualified majority voting” scheme was adopted to facilitate development of the single European market. This scheme does not require consensus but instead uses a formula of weighted voting rights allocated to the Member States and recognizes rule of the majority of the votes. Voting rights are not assigned by any quantifiable statistics. Thus, QMV does not necessarily correlate to a majority of Member States or a majority of the EU populations. *Euroknow: A Concise Encyclopedia of the European Union*, s.v. “Qualified Majority Voting,” <http://www.euro-know.org/dictionary/q.html> (accessed November 13, 2006).

(collective) political will for greater effectiveness.<sup>12</sup> These integrationists claim that EU common actions and policies have been and continue to be critical to the continued deepening of EU integration. They further posit that the combined efforts of the Member States are furthering pan-European opportunities to fight terrorism as well as organized crime throughout the Union. Their notion of increasing integration also in this field is vital to the ongoing expansion of a web of capabilities that would preserve national prerogatives towards fighting terrorism within national boundaries, but would also develop the EU as a community of nations that together enact a real force to combat terrorism.

The lone voice to address the implications of the EU Strategy document since its release was a previous British government official and current professor, David Omand. He advocates the critical need for a strategy in fighting terrorism. He further notes that in the wake of the London bombings and during the British Presidency, this EU Strategy was at least a way for Britain to “play the quiet strategist” to vector the fight against terrorism in the days following Europe’s second large terrorist attack.<sup>13</sup> The fact that there have been no significant evaluations of the Counter-Terrorism Strategy since its publication could mean that this vector was either too “quiet” or not meriting significant evaluation. The significance of this Strategy remains altogether unexplored.

### **C. NEED FOR ANALYSIS OF THE EUROPEAN UNION COUNTER-TERRORISM STRATEGY**

Since publishing this first official Counter-Terrorism Strategy, there has been virtually no political or academic debate on the document now that it is down on paper. There has been no evaluation of the continuity of purpose or discussion about the goals

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<sup>12</sup> See Gallis, “European Counterterrorist Efforts”; Louis R. Golino, “Europe, the War on Terrorism, and the EU’s International Role,” *The Brown Journal of World Affairs* 8, no. 2 (Winter 2002): 61-72; Michael Jacobson, “The Bush-EU Meeting: More Than a Symbolic Gesture on Counterterrorism?,” Washington Institute for Near East Policy, Policy Watch no. 959, February 17, 2005, <http://www.washingtoninstitute.org/templateC05.php?CID=2257> (accessed November 26, 2006); and various EurActiv reports and informational pages, to include: “EU to Streamline Anti-terrorism Strategy,” March 19, 2004, <http://www.euractiv.com/en/justice/eu-streamline-anti-terrorism-strategy/article-114843> (accessed June 6, 2006); “Terrorism Threat: Much Talk but How Much Action?,” March 8, 2005, <http://www.euractiv.com/en/justice/terrorism-threat-talk-action/article-136504> (accessed June 6, 2006); and “Anti-terrorism Policy,” May 28, 2006, <http://www.euractiv.com/en/justice/anti-terrorism-policy/article-136674> (accessed May 28, 2006).

<sup>13</sup> David Omand, “Countering International Terrorism: The Use of Strategy,” *Survival* 47, no. 4 (Winter 2005-2006), 111.

and objectives of this Strategy. Is it assumed just “declaratory”? Is it assumed correct? Does it change anything? Is it more than the summing up of previous policy statements? Will it actually serve as a guiding document for the future counterterrorism efforts of the twenty-five Member States? Would it even have been pursued as aggressively if the United Kingdom had not been attacked and if the United Kingdom had not held the EU Presidency in the six months following the trigger event? The lack of response seems to indicate a broad nonchalance about this subject as a whole. This could be expected from the public and perhaps the media, since only a relatively small percentage of Europeans have viewed terrorism among the top two issues facing their respective nations.<sup>14</sup> However, there also lacks an international and academic discussion. What can be expected of such a strategy under these conditions?

In addition to the important implications for how this Strategy may influence future counterterrorism policy, there is also an academic value. Analyzing and evaluating this Counter-Terrorism Strategy adds another layer of analysis in multiple disciplines, in security studies as a whole, and within the areas of counterterrorism and supranational institutions. While the EU’s effort to fight terrorism has been the subject of much scholarly literature, to date, there has been little actual analysis of the Strategy document since published in 2005. Analyzing the origins and evolution of this Strategy, as well as the document’s content itself, paired with an evaluation against well-established counterterrorism lessons, will provide an appraisal that has heretofore not been accomplished. This critical analysis will contribute to the study of EU counterterrorism efforts by making an evaluation of how well the EU publication may live up to its claim as a “strategy.” This will also provide academic value in determining the significance of this Counter-Terrorism Strategy as to enhance strategic studies, and thus, contribute to future strategy formulation and effectiveness.

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<sup>14</sup> From 2003 to 2006, between 10-19 percent of Europeans named terrorism as one of the two most important issues facing their nation. European Commission, “Eurobarometer: Public Opinion in the European Union,” Standard Eurobarometer no. 59 (Spring 2003), 7; no. 60 (Autumn 2003), 9; no. 61 (Spring 2004), 22; no. 62 (Autumn 2004), 23; no. 63 (Spring 2005), 25; no. 64 (Autumn 2005), 20; and no. 65 (Spring 2006), 8, [http://europa.eu.int/comm/public\\_opinion/index\\_en.htm](http://europa.eu.int/comm/public_opinion/index_en.htm) (accessed November 26, 2006).

## **D. METHODOLOGY**

This thesis will evaluate the implications for the EU Counter-Terrorism Strategy by comparing the Strategy to established benchmarks. EU efforts will be used as a case study, focusing on progression and scope of action. Official EU documents will be analyzed by content, through agreements adopted, language used, timing and context, and scope and implementation of actions. Documents will include declarations, framework decisions, common positions, press statements, action plans and updates, implementation reports, strategies and preceding negotiations thereof, Council minutes, opinion polls, terrorist event reports, and other contributing documents from the European Commission and the European Parliament. The content of the Strategy document will be analyzed according to language, scope, context, and relation to preceding EU actions. The EU counterterrorism approach will then be compared to benchmark criteria for counterterrorism strategy as gleaned from the study of historical experiences and the accumulated lessons learned. The results of this analysis will define the strengths and weaknesses of this Strategy and its prospects to combat terrorism.

## **E. ORGANIZATION OF THESIS**

This thesis steps through the evolution of EU counterterrorism efforts, then analyzes the actual Strategy, and ends with an evaluation of the approach against benchmark criteria for counterterrorism strategy. To begin, Chapter II outlines the actions of the EU immediately following each of the three major terrorist attacks: in 2001 in the United States, 2004 in Madrid, and 2005 in London. Each attack heralded a surge of activity by the EU in enacting increased and broader cooperative measures to fight terrorism. However, the implementation of these expansive actions encountered some problems. The challenges impeding implementation will be highlighted, including delays due to differences in threat perception, political will, concern over social tensions, and national bureaucratic processes. Adding to the challenges in implementation are shifts in public opinion, and problems in tracking and tracing the significant number of actions across evolving EU objectives and among at first fifteen, then twenty-five EU Member States.<sup>15</sup> Chapter III evaluates the Strategy document itself, reviewing its intent,

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<sup>15</sup> The EU had fifteen member nations until 2004, when ten new members joined, bringing its ranks to twenty-five. "European Union Member States," European Union website, [http://europa.eu/abc/governments/index\\_en.htm](http://europa.eu/abc/governments/index_en.htm) (accessed November 7, 2006).

evaluation of the threat, the methods planned to affect terrorism, responsibility for and implementation of measures, as well as the oversight of EU efforts to be provided by the array of EU institutions and agencies. In Chapter IV, a range of benchmark criteria is introduced from scholars and experts in the field of counterterrorism. These criteria are compared against the EU Strategy and its accompanying actions to determine alignment with lessons learned and best practices. Finally, a conclusion of how well the EU document and approach fit as a strategy is provided, outlining both strengths and weaknesses, and prospects for future success in fighting terrorism.

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## **II. EU COUNTERTERRORISM ACTIVITY BEFORE THE STRATEGY**

### **A. INTRODUCTION**

The EU increased its counterterrorism activity in the four years between the terrorist attacks of 9/11 and the formulation of the Counter-Terrorism Strategy. While work has been ongoing among the different EU institutions and Member States, there have been times when the level of activity surges, adding more counterterrorism actions to existing EU measures and broadening into new cooperative arenas. There also have been times in which the level of activity seems to decrease and implementation lags. Beginning with the attacks on the United States in 2001, and following suit after the attacks in Madrid in 2004 and in London in 2005, the EU reaction to these events surges at each point and tends to level off or lag after some time has passed. This chapter reviews each of these surge periods and the different mechanisms that the EU included in its approach to fight terrorism. The chapter then reviews some of the challenges created from the surges in activity, such as Member State follow-through in implementing EU measures at the national level, waning public support, and the complexity of keeping track of the numerous EU activities. As the chapter concludes, the reactive nature of the EU in fighting terrorism<sup>16</sup> will prove unmistakable and will confirm the need for a continuous and consistent approach to combat terrorism.

### **B. SURGES IN EU COUNTERTERRORISM ACTIVITY**

The greatest surges in EU activity to fight terrorism have occurred in the periods immediately following a major terrorist attack in the West. These surges have included declarations made by the EU Council stating the EU approach, cooperative actions to enact this common approach to terrorism, and supplemental actions taken to increase information flow and consistency across the Union. “The prevalence of a ‘sense of urgency’ pattern which had dominated decision-making”<sup>17</sup> following each attack is

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<sup>16</sup> Gustav Lindstrom, “The EU’s Approach to Homeland Security: Balancing Safety and European Ideals,” in *Transforming Homeland Security: U.S. and European Approaches*, ed. Esther Brimmer, (Washington, DC: Center for Transatlantic Relations, 2006), 117.

<sup>17</sup> Monica den Boer, *9/11 and the Europeanisation of Anti-Terrorism Policy: A Critical Assessment*, Policy Paper no. 6 (Paris: Notre Europe, 2003), 22.

representative of the distinctly reactive nature of the EU in addressing terrorism.<sup>18</sup> “There are pressures for collective action”<sup>19</sup> to push EU leaders to reach agreements and common positions; pressures brought to bear by the death and destruction of terrorism. The surges of reaction to terrorism culminated in the creation of an EU-wide Strategy to combat terrorism.

### 1. After 9/11

In the aftermath of the terrorist attacks in the United States, the EU embarked upon several initiatives to fight terrorism. These initiatives included a plan of action to be taken by Member States and within EU institutions to fight terrorism;<sup>20</sup> agreement on a definition of what constitutes terrorism and the individuals and groups who perpetrate these acts,<sup>21</sup> which had theretofore not been done within the EU;<sup>22</sup> and the adoption of a framework decision to outline the EU’s approach to terrorism<sup>23</sup> in support of the TEU commitment to create an “area of freedom, security, and justice.”<sup>24</sup> As will be discussed, the activity after these actions significantly decreases, concluding the first surge of counterterrorism activity.

Ten days after the attacks, following an extraordinary session of the EU Council to “give political orientations for EU Strategy” to fight terrorism,<sup>25</sup> the EU announced its support to the United States, pledged its cooperation in fighting terrorism, and stated its

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<sup>18</sup> Lindstrom, “The EU’s Approach,” 117.

<sup>19</sup> Karen E. Smith, “EU External Relations,” in *European Union Politics*, ed. Michelle Cini (Oxford: Oxford University Press, 2003), 242.

<sup>20</sup> Council of the European Union, “Conclusions and plan of action of the Extraordinary European Council meeting on 21 September 2001,” Document SN 140/01, [http://ue.eu.int/ueDocs/cms\\_Data/docs/pressData/en/ec/140.en.pdf](http://ue.eu.int/ueDocs/cms_Data/docs/pressData/en/ec/140.en.pdf) (accessed November 26, 2006), 1-3.

<sup>21</sup> “Council Common Position of 27 December 2001 on the application of specific measures to combat terrorism (2001/931/CFSP),” *Official Journal of the European Communities*, L344 (December 28, 2001): 93-96.

<sup>22</sup> Harald Müller, *Terrorism, Proliferation: A European Threat Assessment*, Chaillot Paper no. 58 (Paris: EU Institute for Security Studies, 2003), 5.

<sup>23</sup> “Council Framework Decision of 13 June 2002 on combating terrorism (2002/475/JHA),” *Official Journal of the European Communities*, L164 (June 22, 2002): 3-7.

<sup>24</sup> “The Consolidated Version of the Treaty on European Union,” *Official Journal of the European Communities*, C325 (December 24, 2002), 11.

<sup>25</sup> Michael Emerson and Daniel Gros, *Issues for Europe—Post-11 September*, Policy Brief no. 8 (Brussels: Centre for European Policy Studies, 2001), 7.

intention to “step up its action against terrorism.”<sup>26</sup> From this extraordinary meeting, the Council also approved a Plan of Action to Combat Terrorism. This action plan highlighted five key areas on which the EU and its Member States would focus its cooperative efforts.<sup>27</sup> This action plan came very quickly on the heels of the attacks, quite possibly because it did not need to start from scratch. Some in the EU began thinking about combating terrorism before the 9/11 attacks. At the Tampere European Council, 15-16 October 1999, the Council mentioned joint investigative teams as a means to fight terrorism and called for breaking down extradition barriers.<sup>28</sup> At the Santa Maria da Feira European Council, 19-20 June 2000, the Council “expressed [their] abhorrence” for terrorist acts and vowed to “reinforce” and “enhance” cooperation in fighting terrorism.<sup>29</sup> In early 2001, the European Parliament commissioned a report to outline what an appropriate EU role in the fight against terrorism would look like. The recommended role included adopting baseline criminal definitions and punishments for those deemed terrorist; following up on Conclusion 35 of the Tampere European Council regarding extradition barriers; creating a “European search and arrest warrant”; and establishing mutual recognition procedures among Member States for criminal matters.<sup>30</sup> This Parliamentary Report was deemed a first step in collectively addressing what the EU described as the new international terrorism.<sup>31</sup> These pre-9/11 EU considerations likely served as a convenient starting point for post-9/11 actions.

The first plan included the preceding EU actions which were already in progress or under consideration, but “their practical implementation was painfully slow.”<sup>32</sup> In addition, the plan of action also included existing United Nations’ (UN) conventions

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<sup>26</sup> Council, “Conclusions and Plan of Action,” SN 140/01, 1.

<sup>27</sup> Ibid.

<sup>28</sup> Council of the European Union, “Tampere European Council Presidency Conclusions,” October 15-16, 1999, [http://europa.eu.int/council/off/conclu/oct99/oct99\\_en.htm](http://europa.eu.int/council/off/conclu/oct99/oct99_en.htm) (accessed November 5, 2006).

<sup>29</sup> Council of the European Union, “Santa Maria da Feira Presidency Conclusions,” June 19-20, 2000, [http://ue.eu.int/ueDocs/cms\\_Data/docs/pressData/en/ec/00200-r1.en0.htm](http://ue.eu.int/ueDocs/cms_Data/docs/pressData/en/ec/00200-r1.en0.htm) (accessed November 5, 2006).

<sup>30</sup> Graham R. Watson, “Report on the Role of the European Union in Combating Terrorism (2001/2016 (INI)),” Document A5-0273/2001, July 12, 2001, <http://www.europarl.europa.eu/omk/sipade3?PUBREF=-//EP//NONSGML+REPORT+A5-2001-0273+0+DOC+PDF+V0//EN&L=EN&LEVEL=1&NAV=S&LSTDOC=Y> (accessed November 26, 2006), 18.

<sup>31</sup> Ibid., 9.

<sup>32</sup> Bures, “EU Counterterrorism Policy,” 59.

against terrorism, which were still in need of either ratification or implementation by EU member states.<sup>33</sup> However, the action plan went beyond the baselines provided and included the following measures:

1. Enhancing police and judicial cooperation: (a) introduce a European arrest warrant and adopt a common definition of terrorism, (b) draw up a common list of terrorist organizations and presumed terrorists, and (c) immediately share useful data regarding terrorism with Europol and set up a specialist anti-terrorism team;

2. Developing international legal instruments—immediately implement all existing international conventions against terrorism;

3. Putting an end to the funding of—take necessary measures to combat financing of terrorist activities, including following the money laundering directive, freezing assets, and ratifying of the UN Convention on the Suppression of the Financing of Terrorism;

4. Strengthening air security—take necessary measures to strengthen air transport security; and

5. Coordinating the EU’s global action—the General Affairs Council will assume the role of coordination and provide impetus for fighting terrorism, including reporting at the next Council meeting.<sup>34</sup>

The actions that broke new ground for EU cooperation included: naming terrorists and their supporting organizations, specifying terrorist financing as a requirement for fighting terrorism, and underscoring the obvious need, in the wake of 9/11, for the strengthening of air security. The breadth of this action plan created a veritable “inventory of counterterrorism measures, activities, and instruments of the EU.”<sup>35</sup> Finally, the last objective for this action plan called for “global action,” implying that the EU efforts are not limited only to actions of the EU member states.<sup>36</sup> These new guiding

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<sup>33</sup> Council, “Conclusions and Plan of Action,” SN 140/01, 1-3; and Kristin Archick, “Europe and Counterterrorism: Strengthening Police and Judicial Cooperation,” Congressional Research Service, RL31509, October 15, 2004, 2.

<sup>34</sup> Council, “Conclusions and Plan of Action,” SN 140/01, 1-3.

<sup>35</sup> Doron Zimmerman, “The European Union and Post-9/11 Counterterrorism: A Reappraisal,” *Studies in Conflict & Terrorism* 29, no. 2 (March-April 2006): 127.

<sup>36</sup> Council, “Conclusions and Plan of Action,” SN 140/01, 1-4.

principles for EU counterterrorism efforts were significantly more proactive and required greater cooperation than any agreements or recommendations made before 9/11. Spurred on by the tremendous impact of the United States attacks, these steps showed a desire for more action in fighting terrorism within the EU by further strengthening Member States' integration and a demonstration that the EU "can take radical action quickly."<sup>37</sup>

The EU published another "declaration" on 19 October 2001.<sup>38</sup> This declaration largely reiterated the EU's previous stance and referenced the actions that had already begun under the five objectives listed in the action plan. It went on to request immediate implementation of the activities listed in the action plan.<sup>39</sup> While all these items had been set in motion, this declaration desired their implementation faster and more emphatically than had previously been declared. It is believed that this restatement in more pressing and deliberate terms was deemed necessary because of other international activities following 9/11. Two other international organizations had taken steps in addressing terrorism. First, the "UN had entered the fray," creating new resolutions on information-sharing and terrorist financing. Second, the North Atlantic Treaty Organization (NATO) had invoked Article 5, confirming that the attacks on the United States were considered an attack against all NATO members. The United States and coalition partners had also begun its campaign to eliminate the Al Qaeda organization in Afghanistan.<sup>40</sup> This wave of support for the United States and against the terrorists might have caused the Council to re-evaluate the EU's initial response and restate the EU's intentions more emphatically.

In December 2001, the EU agreed to a definition of terrorism and a list of terrorists and terrorist organizations. This was the first such agreement made by the EU,

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<sup>37</sup> Malcolm Anderson and Joanna Apap, *Striking a Balance between Freedom, Security and Justice in an Enlarged European Union* (Brussels: Center for European Policy Studies, 2002), 2.

<sup>38</sup> Council of the European Union, "Declaration by the Heads of State or Government of the European Union and the President of the Commission: Follow-up to the September 11 Attacks and the Fight against Terrorism," Document SN 4296/2/01 REV 2, October 19, 2001, [http://ec.europa.eu/justice\\_home/news/terrorism/documents/conseil\\_gand\\_en.pdf](http://ec.europa.eu/justice_home/news/terrorism/documents/conseil_gand_en.pdf) (accessed November 26, 2006).

<sup>39</sup> *Ibid.*, 2-3.

<sup>40</sup> C. Fijnaut, "The Attacks on 11 September 2001, and the Immediate Response of the European Union and the United States," in *Legal Instruments in the Fight against International Terrorism: A Transatlantic Dialogue*, ed. C. Fijnaut, J. Wouters, and F. Naert (Leiden: Martinus Nijhoff Publishers, 2004), 26-27.

in effect determining what actions and which persons or groups are the targets for the “application of specific measures to combat terrorism.”<sup>41</sup> It defined a terrorist act by the intention of the perpetrators, “which, given, its nature or its context, may seriously damage a country or an international organisation, as defined as an offence under national law.”<sup>42</sup> It also contained an annex, naming twenty-nine individuals and thirteen groups.<sup>43</sup> This list was contentious from the start given that certain groups were included and others were not, which led to conclusions that it was heavily influenced by political issues.<sup>44</sup> The list was soon updated and, in 2005, grew to forty-five individuals and forty-seven groups deemed terrorist.<sup>45</sup>

In June 2002, after almost nine months of review, debate, and revision, the EU completed work on the Framework Decision to Combat Terrorism. The decision

<sup>41</sup> “Council Common Position,” L344/95, 93.

<sup>42</sup> This definition was quite broad and general in terms. In comparison, the U.S. Federal Code states: “Terrorism includes the unlawful use of force and violence against persons or property to intimidate or coerce a government, the civilian population, or any segment thereof, in furtherance of political or social objectives.” The U.S. National Strategy for Combating Terrorism significantly expounds upon this legal definition, as well. In contrast, the UN does not have an agreed definition. Ibid; and “Title 28 Code of Federal Regulations (C.F.R.), Sec 0.85,” Electronic Code of Federal Regulations, Government Printing Office website, <http://ecfr.gpoaccess.gov/cgi/t/text/text-id?type=simple;c=ecfr;cc=ecfr;sid=8d700a1bec6019be638273d2a765a2ca;idno=28;region=DIV1;q1=terrorism;rgn=div8;view=text;node=28%3A1.0.1.1.27.1.1> (accessed November 30, 2006); White House, “National Strategy for Combating Terrorism,” [http://www.whitehouse.gov/news/releases/2003/02/counter\\_terrorism/counter\\_terrorism\\_strategy.pdf](http://www.whitehouse.gov/news/releases/2003/02/counter_terrorism/counter_terrorism_strategy.pdf) (accessed November 15, 2006); and “Definitions of Terrorism,” United Nations website, Office on Drugs and Crime, [http://www.unodc.org/unodc/terrorism\\_definitions.html](http://www.unodc.org/unodc/terrorism_definitions.html) (accessed November 30, 2006).

<sup>43</sup> This list is considered modest in comparison to both the Terrorism Knowledge Base that lists 440 active terrorist groups as of December 1, 2001, and the U.S. list that included twenty-eight terrorist groups in the month following the 9/11 attacks. Ibid., 95-96; “Groups,” *The Terrorism Knowledge Base*, <http://www.tkb.org/AdvancedSearchResults.jsp?searchType=group&ideology=0&activity=Active&countryCd=0&grpAttacks=grpAttacksOptionAny&imageField.x=30&imageField.y=9> (accessed November 30, 2006); and U.S. Department of State, “2001 Report on Foreign Terrorist Organizations,” <http://www.state.gov/s/ct/rls/rpt/fto/2001/5258.htm> (accessed November 5, 2006).

<sup>44</sup> The initial list did not include the Popular Front for the Liberation of Palestine (PFLP), Hamas, or Hizballah in the Middle East, nor did it include the Kurdish Worker’s Party (PKK) in Turkey or the Revolutionary Armed Forces of Colombia (FARC) in Colombia. There was much outrage voiced from the victims of the violence enacted by these groups. The Colombian president was stupefied by this omission and quickly highlighted that the FARC had attacked a church, killing 199 civilians on the very day that the EU list was released. Bluma Zuckerbrot-Finkelstein, “European Attitudes Toward Hamas and Hizballah,” American Jewish Committee Counterterrorism Watch, 2006, [http://www.ajc.org/site/c.ijITI2PHKoG/b.1070369/k.43C1/European\\_Attitudes\\_Toward\\_Hamas\\_and\\_Hizballah.htm](http://www.ajc.org/site/c.ijITI2PHKoG/b.1070369/k.43C1/European_Attitudes_Toward_Hamas_and_Hizballah.htm) (accessed May 28, 2006); and Joanne Mariner, “The EU, the FARC, the PKK, and the PFLP: Distinguishing Politics from Terror,” FindLaw’s Legal Commentary, May 13 2002, <http://writ.news.findlaw.com/mariner/20020513.htm> (accessed December 13, 2005).

<sup>45</sup> “Council Common Position 2005/847/CFSP of 29 November 2005 updating the Common Position 2001/931/CFSP on the application of specific measures to combat terrorism and repealing Common Position 2005/725/CFSP,” *Official Journal of the European Union*, L314 (November 30, 2005): 41-47.

emphasized several preceding agreements that involved fighting terrorism, including conclusions from the Tampere and Santa Maria da Feira European Councils, as well as other counterterrorism documents, such as the Parliamentary Report on the Role of the European Union in Combating Terrorism and the Commission communication to the Council and the European Parliament, evaluating the progress towards the “area of freedom, security, and justice.”<sup>46</sup> While including the December 2001 definition of terrorism, the Framework Decision also addressed penalties for those who commit and support terrorist acts, jurisdiction and prosecution, victims’ assistance, and implementation and reporting. The implementation article calls for compliance within eighteen months.<sup>47</sup> The framework decision was very short in length, but obviously attempted to paint a broad brush to cover all aspects of counterterrorism avenues.

The two plans of action published in December 2001 and July 2002, continued to strengthen the EU approach. Most notably, they expanded efforts to include active cooperation on police and judicial matters. Although an update to the action plan was published in November 2002, it did not show significant additions.<sup>48</sup> To reinforce this leveling of activity and in fact show a lull in activity, which is discussed in the next section, there were no updates to the action plans published in 2003.<sup>49</sup> There was ongoing

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<sup>46</sup> “Council Framework Decision,” L164, 3.

<sup>47</sup> *Ibid.*, 3-6.

<sup>48</sup> Council of the European Union, General Affairs and External Relations Council, “European Union Action Plan to Combat Terrorism—Update of the Roadmap,” Document 13909/1/02 REV 1, November 14, 2002, <http://register.consilium.europa.eu/pdf/en/02/st13/13909-r1en2.pdf> (accessed November 26, 2006), 4-52.

<sup>49</sup> Cornelius Boer, EU General Secretariat, email message to the author, October 24, 2006.

activity on the existing actions, as documented in the JHA meeting minutes,<sup>50</sup> but it was not documented as agreed in six-monthly updates to the action plan, which were to be reported to the EU Council. Thus, the initial response to 9/11 produced “an unprecedented wave of policy interventions” representing a “giant leap forward” in EU cooperation and which “were suddenly regarded as more feasible and important” than before the attacks.<sup>51</sup>

Although visibility on counterterrorism actions seemed to lag during 2003, there were other developments taking place within the EU Council. The attacks of 9/11 drove the EU to step up its efforts to make ESDP operational, such that the EU could be a more capable partner for the United States.<sup>52</sup> However, the disagreements between Member States over U.S. action in Iraq created more disparity in how to proceed.<sup>53</sup> It was clear, though, that the EU needed to re-evaluate its concept of security.<sup>54</sup> The EU adopted the ESS in December 2003.<sup>55</sup> This overarching Strategy was developed by the EU’s High Representative for the CFSP.<sup>56</sup> It lists the five key threats: terrorism, proliferation of weapons of mass destruction (WMD), regional conflicts, state failure, and organized crime. There is no priority assigned to these threats; although, it does state that WMD

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<sup>50</sup> Various items that were included in the action plans in 2002 continued to see progress in 2003. In fact, some were approved by the Justice and Home Affairs Council without debate. Council of the European Union, “2489<sup>th</sup> Council Meeting, Justice and Home Affairs,” Document 6162/03 (Presse 42), February 27-28, 2003, [http://ue.eu.int/ueDocs/cms\\_Data/docs/pressData/en/jha/74719.pdf](http://ue.eu.int/ueDocs/cms_Data/docs/pressData/en/jha/74719.pdf) (accessed November 26, 2006); Council of the European Union, “2514<sup>th</sup> Council Meeting, Justice and Home Affairs,” Document 9845/03 (Presse 150), June 5-6, 2003, [http://www.consilium.europa.eu/ueDocs/cms\\_Data/docs/pressdata/en/jha/76100.pdf](http://www.consilium.europa.eu/ueDocs/cms_Data/docs/pressdata/en/jha/76100.pdf) (accessed November 26, 2006); Council of the European Union, “2529<sup>th</sup> Council Meeting, Justice and Home Affairs,” Document 12762/03 (Presse 278), October 2-3, 2003, [http://ue.eu.int/ueDocs/cms\\_Data/docs/pressData/en/jha/77479.pdf](http://ue.eu.int/ueDocs/cms_Data/docs/pressData/en/jha/77479.pdf) (accessed November 26, 2006); Council of the European Union, “2538<sup>th</sup> Council Meeting, Justice and Home Affairs,” Document 13747/03 (Presse 308), November 6, 2003, [http://ue.eu.int/ueDocs/cms\\_Data/docs/pressData/en/jha/77849.pdf](http://ue.eu.int/ueDocs/cms_Data/docs/pressData/en/jha/77849.pdf) (accessed November 26, 2006); and Council of the European Union, “2548<sup>th</sup> Council Meeting, Justice and Home Affairs,” Document 14995/03 (Presse 334), November 27-28, 2003, [http://ue.eu.int/ueDocs/cms\\_Data/docs/pressData/en/jha/78090.pdf](http://ue.eu.int/ueDocs/cms_Data/docs/pressData/en/jha/78090.pdf) (accessed November 26, 2006).

<sup>51</sup> Den Boer, *9/11 and the Europeanisation*, 1.

<sup>52</sup> Alistair Shepherd, “Irrelevant or Indispensable? ESDP, the ‘War on Terror’ and the Fallout from Iraq,” *International Politics* 43, no. 1, 72.

<sup>53</sup> *Ibid.*, 71-2.

<sup>54</sup> *Ibid.*, 71.

<sup>55</sup> Council, “A Secure Europe,” 3.

<sup>56</sup> *Ibid.*, 3; and “Homepage of Javier Solana,” European Union website, [http://www.consilium.europa.eu/cms3\\_applications/applications/solana/index.asp?lang=EN&cmsid=246](http://www.consilium.europa.eu/cms3_applications/applications/solana/index.asp?lang=EN&cmsid=246) (accessed November 5, 2006).

may well be the “greatest threat to our security.”<sup>57</sup> And the combination of terrorists with WMD is “the most frightening scenario.”<sup>58</sup> The remainder of the document addresses objectives for addressing these threats, building security for a more peaceful international society, and what these imply for policy.<sup>59</sup>

The ESS was the “first strategic document ever of the EU” and was a “milestone for EU external action.”<sup>60</sup> Providing a “comprehensive or holistic approach to security,”<sup>61</sup> the ESS provides a sort of baseline authority for the Council to later develop other lower level strategies, such as one to counter terrorism. “Strategy should function as a tool for policymakers, as a set of guidelines for day-to-day policymaking.”<sup>62</sup> The ESS provides a top-down approach to balance the bottom-up approach taken with the creation of the action plans. The ESS also supports the fifth objective made in the first action plan immediately after 9/11, as a global actor to “coordinate global action.”<sup>63</sup> The themes of the ESS set a precedent for security-related endeavors within the EU, and built the EU’s confidence in this new arena.<sup>64</sup> Although the ESS was much more broad-based than just counterterrorism issues, the Council’s focus on the development of this document could have contributed to the EU’s lack of attention to the counterterrorism action plan. Upon approving the ESS, the EU requested immediate follow-up in four key areas to support the implementation of this new Security Strategy, one of which was terrorism.<sup>65</sup> As the first-ever EU Strategy, it lays the groundwork for future more targeted strategies.<sup>66</sup>

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<sup>57</sup> Council, “A Secure Europe,” 3-4.

<sup>58</sup> Ibid.

<sup>59</sup> Ibid., 6-14.

<sup>60</sup> Sven Biscop, *The European Security Strategy: A Global Agenda for Positive Power* (Burlington, VT: Ashgate Publishing, 2005), viii.

<sup>61</sup> Gerrard Quille, “The European Security Strategy: A Framework for EU Security Interests?,” *International Peacekeeping* 11, no. 3, (Autumn 2004), 422.

<sup>62</sup> Biscop, *The European Security Strategy*, 129.

<sup>63</sup> Council, “Conclusions and Plan of Action,” SN 140/01, 1-3.

<sup>64</sup> Alyson J. K. Bailes, *European Security Strategy: An Evolutionary History*, Policy Paper No. 10 (Stockholm: Stockholm International Peace Research Institute, 2005), 20.

<sup>65</sup> Other areas for follow-up include: effective multilateralism centered on the UN, Middle East regional strategy, and policy for Bosnia and Herzegovina. Council of the European Union, “Brussels European Council, 12 and 13 December 2003, Presidency Conclusions,” Document 5381/04, February 5, 2004, <http://register.consilium.europa.eu/pdf/en/04/st05/st05381.en04.pdf> (accessed November 26, 2006), 22.

<sup>66</sup> Biscop, *The European Security Strategy*, 130.

The creation of a baseline Strategy documenting the EU approach to security could be seen as “the Union gaining the physical ability and political confidence to use military means while still maintaining its overall character as a civilian actor.”<sup>67</sup> However, the content of the document leads to the conclusion that the ESS does not quite fit the traditional idea of a strategy, used most often with military strategy in mind, which is:

To define actual goals and set up priorities to achieve policy objectives, describe which means can be used, and under what conditions, to fulfill that specific purpose. The ESS does not offer even the roughest guideline as to the situation in which EU forces could be called upon to operate.<sup>68</sup>

The ESS does accomplish the critical task of gaining consensus on a European security agenda, but does so more as a strategic concept, vice an actual strategy.<sup>69</sup> It also lists the current and expected threats to the EU, including terrorism and WMD. The ESS discussion of these threats is minimal, especially when compared to the National Security Strategy of the United States which discusses terrorism throughout the text.<sup>70</sup> The EU threat assessment shall be reviewed more thoroughly in the next chapter. However, the ESS “is vague when it comes to the ends to be attained and virtually silent about how the capabilities can be used to exert influence.”<sup>71</sup> Also with regard to exerting influence, the ESS looks to the Member States to choose how to use the means to deal with the threats. Thus, the challenge of the ESS lies more in the implementation preferences of the Member States,<sup>72</sup> leaving the prospects of the ESS still questionable pending degree and success of implementation.

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<sup>67</sup> Adrian Treacher, “European Integration in 2005: The Security and Defence Dimension,” Young Europeans for Security, <http://www.yes-dk.dk/YES/index.php?option=content&task=view&id=165&Itemid=173> (accessed March 16, 2006).

<sup>68</sup> Asle Toje, “The 2003 European Union Security Strategy: A Critical Appraisal,” *European Foreign Affairs Review*, 10 (2005), 120-21.

<sup>69</sup> *Ibid.*, 131-32.

<sup>70</sup> White House, “National Security Strategy,” <http://www.whitehouse.gov/nsc/nss.pdf> (accessed December 2, 2006), 5-7, 13-17, and 26-31.

<sup>71</sup> *Ibid.*, 132.

<sup>72</sup> Quille, “The European Security Strategy,” 436.

## 2. After Madrid

On March 11, 2004, the commuter rail system in Madrid was attacked by radical Islamists during the morning rush hour, killing 191 people and injuring over 1,800.<sup>73</sup> Following the apparent lull (or diversion) in activity during 2003, the surge of activity after these attacks proved even more expansive than the surge in 2001/2002, showing a renewed EU dedication.<sup>74</sup> Again, there was a declaration condemning the attacks and reaffirming the need to work together to fight terrorism, which included a Solidarity Clause affirming collective assistance to any EU nation attacked.<sup>75</sup> There was also a revised and expanded action plan,<sup>76</sup> a tracking mechanism for national implementation of actions,<sup>77</sup> and a new post created within the EU Council Secretariat to coordinate counterterrorism efforts.<sup>78</sup> Although the EU recognized the threat and felt the impact of the attacks on the United States, the attacks on Madrid (i.e., attacks on the EU homeland) compelled the EU community to focus greater attention on the issue.<sup>79</sup>

As in 2001, the Council made a declaration of EU intentions against terrorism. This declaration again relayed the EU's resolve to fight terrorism, offered support to

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<sup>73</sup> "Timeline: Madrid Investigation," *BBC News*, April 28, 2004, <http://news.bbc.co.uk/1/hi/world/europe/3597885.stm> (accessed December 1, 2006).

<sup>74</sup> Archick, "Europe and Counterterrorism," 3.

<sup>75</sup> The Solidarity Clause reads: "In the spirit of the solidarity clause laid out in Article 42 of the draft Treaty establishing a Constitution for Europe, the Member States and the acceding States shall accordingly act jointly in a spirit of solidarity if one of them is the victim of a terrorist attack. They shall mobilise all the instruments at their disposal, including military resources to: prevent the terrorist threat in the territory of one of them; protect democratic institutions and the civilian population from any terrorist attack; and assist a member State or an acceding State in its territory at the request of its political authorities in the event of a terrorist attack. It shall be for each Member State or acceding State to the Union to choose the most appropriate means to comply with this solidarity commitment towards the affected State." Council of the European Union, "Declaration on Combating Terrorism," March 24, 2004. <http://www.consilium.europa.eu/ueDocs/cmsUpload/DECL-25.3.pdf> (accessed August 29, 2006), 18.

<sup>76</sup> Council of the European Union, "EU Plan of Action on Combating Terrorism," Document 10586/04, June 15, 2004, <http://register.consilium.europa.eu/pdf/en/04/st10/st10586.en04.pdf> (accessed November 26, 2006).

<sup>77</sup> Council of the European Union, Presidency, "EU Plan of Action on Combating Terrorism—Update," Document 16090/04, December 14, 2004, <http://register.consilium.europa.eu/pdf/en/04/st16/st16090.en04.pdf> (accessed November 26, 2006).

<sup>78</sup> "Fight against terrorism," European Union website, [http://www.consilium.europa.eu/cms3\\_fo/showPage.asp?id=406&lang=EN&mode=g](http://www.consilium.europa.eu/cms3_fo/showPage.asp?id=406&lang=EN&mode=g) (accessed September 16, 2006).

<sup>79</sup> Archick, Summary of "Europe and Counterterrorism."

victims, and planned to build on existing cooperation.<sup>80</sup> It referenced the newly penned ESS and its identification of terrorism as a key threat to the EU. It further called for the creation of new terrorism-specific “substrategies” and “for the development of an EU long-term Strategy to address all the factors which contribute to terrorism.”<sup>81</sup> The declaration also urged Member States to “implement fully and without delay” the previously agreed legislative measures.<sup>82</sup> This inclusion confirms that there were indeed challenges in transposing EU measures into national law, slowing down activity to fight terrorism, which is discussed later in this chapter. The declaration also called on the Council to consider further collective action with new and more detailed proposals, and laid out the new objectives for a revision of the action plan.<sup>83</sup> Eighteen pages in total,<sup>84</sup> this declaration both expanded and deepened the EU approach to fighting terrorism.

In addition, this declaration also included a Solidarity Clause against terrorism.<sup>85</sup> This clause not only claims that the EU Member States will work together to fight terrorism, but also that each member will “mobilize all available means, including military resources, if one of them is a victim of a terrorist attack.”<sup>86</sup> This was considered a “powerful statement of solidarity against terrorism,”<sup>87</sup> and was added to the December 2004 action plan.<sup>88</sup> This clause also echoed the EU Solidarity Clause in the proposed EU Constitution,<sup>89</sup> affirming this commitment in the fight against terrorism. Since this clause also extends to military means, it could also be comparable to Article 5 of the Washington Treaty for NATO, whose “swift implementation [following the attacks on

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<sup>80</sup> Council, “Declaration on Combating Terrorism,” March 24, 2004.

<sup>81</sup> *Ibid.*, 2.

<sup>82</sup> *Ibid.*

<sup>83</sup> *Ibid.*, 4-5.

<sup>84</sup> *Ibid.*, 18.

<sup>85</sup> *Ibid.*, 2 and 18.

<sup>86</sup> Council, “EU Plan of Action,” 10586/04, 5.

<sup>87</sup> Wilkinson, *International Terrorism*, 32.

<sup>88</sup> Council, “EU Plan of Action,” 16090/04, 5 and 49.

<sup>89</sup> The EU draft Constitution states: “Should a Member State be the object of a terrorist attack or the victim of a natural or man-made disaster, the other Member States shall assist it at the request of its political authorities. To that end, the Member States shall coordinate between themselves in the Council.” “Implementation of the Solidarity Clause,” Article III-329, European Union website, [http://europa.eu/constitution/en/ptoc76\\_en.htm#a420](http://europa.eu/constitution/en/ptoc76_en.htm#a420) (accessed December 1, 2006); and Pastore et al., “Is there a European Strategy against Terrorism?,” 7.

the United States] demonstrated [NATO's] shared solidarity.”<sup>90</sup> This new EU Solidarity Clause created a familiar standard within the context of terrorism for the EU institution and significantly enhanced the ESDP.

Along with this Solidarity Clause, there was another marked increase in cooperative action. The declaration redefined the EU's counterterrorism objectives. These included:

1. To deepen the international consensus and enhance international efforts to combat terrorism;
2. To reduce the access of terrorists to financial and economic resources;
3. To maximize the capacity within EU bodies and member States to detect, investigate, and prosecute terrorists and to prevent terrorist attacks;
4. To protect the security of international transport and ensure effective systems of border control;
5. To enhance the capability of the European Union and of member States to deal with the consequences of a terrorist attack;
6. To address the factors which contribute to support for, and recruitment into, terrorism; [and]
7. To target actions under EU external relations towards priority Third Countries where counterterrorist capacity or commitment to combating terrorism needs to be enhanced.<sup>91</sup>

The next action plan realigned previous activity and created new actions along these seven strategic objectives. This document also merged all existing documentation on counterterrorism from various organizations into “one streamlined document—a useful step towards elimination of duplication of work.” The plan was “ambitious,”<sup>92</sup> reflecting the degree to which the attacks “injected a greater sense of urgency into EU efforts to boost police and judicial cooperation with the EU and improve EU external

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<sup>90</sup> “Countering Terror after 11 September: Early Lessons, Future Challenges,” *The Military Balance* 102, no. 1 (1 October 2002), 237.

<sup>91</sup> Council, “EU Plan of Action,” 10586/04, 5. (numbers used in lieu of bullets)

<sup>92</sup> Wilkinson, *International Terrorism*, 31.

border controls.”<sup>93</sup> Intended to be a living document that would capture progress as a snapshot in time, the plan was to be updated and reported regularly.<sup>94</sup>

The consolidated action plan was markedly different from its predecessors. It enveloped border security, consequence management, and third country havens into the realm of counterterrorism cooperation. It also embarked on a bolder path for the EU as a global actor in the fight against terrorism by “maximiz[ing] the capacity within EU bodies,” “enhanc[ing] the capability of the European Union,” and “target[ing] actions under EU external relations.” Another layer of detail was added by including EU bodies among those responsible for, and capable of, affecting counterterrorism efforts. The image of the EU as more of a “global actor” was thus bolstered, as stated in the ESS and in the initial framework decision after 9/11,<sup>95</sup> vice the image of Europe as a “political pygmy,”<sup>96</sup> as it has been criticized for its lack of effective power in the face of national prerogatives and protection of sovereignty. Under normal circumstances, such a suggestion to further empower the EU might have been dismissed by the Council; however, in the face of such deadly terrorist attacks on the EU proper, the Member States repeatedly agreed to expanded actions. The crisis of Madrid created an environment of fear whereby nations would agree to measures that would increase the power of the Union. While this agreement does not assume any degree of surrender of national sovereignty, it certainly opens the door to subtle shifts in European power distribution in the future.<sup>97</sup>

In December 2004, approximately nine months after the Madrid attacks, there was more expansion of the action plan, although mostly to facilitate closer coordination.<sup>98</sup> One significant addition was the Hague Program. Between the June and December 2004 plans, the Council approved the Hague Program on strengthening freedom, security, and

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<sup>93</sup> Archick, Summary of “Europe and Counterterrorism.”

<sup>94</sup> Council, “EU Plan of Action,” 10586/04, 7.

<sup>95</sup> Council, “A Secure Europe,” 1, and Council, “Conclusions and Plan of Action,” SN 140/01, 1-4.

<sup>96</sup> Simon Duke, *The Convention, the Draft Constitution and External Relations: Effects and Implications for the EU and Its International Role* (Maastricht: European Institute of Public Administration, 2003), 3.

<sup>97</sup> Biscop, *The European Security Strategy*, viii.

<sup>98</sup> Council, “EU Plan of Action,” 16090/04.

justice, which included the objective to “repress the threat of terrorism.”<sup>99</sup> This was reflected in a new action to enhance information sharing.<sup>100</sup> The plan also claimed completion of the EU’s first strategy to combat the terrorism of financing which was also approved by the Council in December 2004.<sup>101</sup> It included reference to the Conceptual Framework on the ESDP, which was adopted by the Council in 2004.<sup>102</sup> Intentions for an ESDP contribution to fighting terrorism from the 2002 Seville Council meeting included: aiding in conflict prevention and providing international assistance, sharing intelligence, and developing a common threat assessment.<sup>103</sup> The Conceptual Framework adopted by the Council listed four main areas encompassing civilian and military actions: (1) *prevention* via crisis management and intelligence gathering; (2) *protection* of hard and soft targets; (3) *response/consequence management*; and (4) support to *third countries*.<sup>104</sup> While the ESDP can support the fight against terrorism, it is not perceived to be “at the core of [EU counterterrorism] efforts.”<sup>105</sup> However, the ESDP is still evolving and it remains to be seen how this support materializes. Given Europe’s preference for nonmilitary measures, some observers suspect its contribution may be negligible.<sup>106</sup> Collectively, these additions represent the EU members’ follow-through on their promises of greater coordination to affect terrorism, but they also increased the scope of action significantly, where effective implementation, or even tracking, seems overwhelming.

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<sup>99</sup> Council of the European Union, Presidency, “Draft Multiannual Programme: ‘The Hague Programme; Strengthening Freedom, Security and Justice in the European Union,’” Document 13993/04, October 27, 2004, <http://register.consilium.europa.eu/pdf/en/04/st13/st13993.en04.pdf> (accessed December 1, 2006), 3.

<sup>100</sup> Council, “EU Plan of Action,” 16090/04, 23.

<sup>101</sup> Ibid., 13; and Council of the European Union, Secretary General/High Representative and the Commission, “The Fight Against Terrorist Financing,” Document 16089/04, December 14, 2004, <http://register.consilium.europa.eu/pdf/en/04/st16/st16089.en04.pdf> (accessed December 3, 2006).

<sup>102</sup> Ibid., 2; and Council of the European Union, Coreper, “Conceptual Framework on the ESDP Dimension of the Fight against Terrorism,” Document 14797/04, November 18, 2004, <http://register.consilium.europa.eu/pdf/en/04/st14/st14797.en04.pdf> (accessed December 1, 2006).

<sup>103</sup> Council of the European Union, “Seville European Council, 21 and 22 June 2002, Presidency Conclusions,” Document 13463/02, October 24, 2002, <http://register.consilium.europa.eu/pdf/en/02/st13/13463en2.pdf> (accessed November 26, 2006), 3-34.

<sup>104</sup> Council, “Conceptual Framework,” 14797/04, 7-8.

<sup>105</sup> Zimmerman, “The European Union,” 137.

<sup>106</sup> Shepherd, “Irrelevant or Indispensable?,” 79.

To address the mass of required action, another change in the action plan following the attacks in Madrid was the inclusion of a tracking tool for national implementation. Member State transposition of EU measures into national law was “slow, poor, and inadequate”;<sup>107</sup> many of the actions were yet to be implemented three years later when Madrid was attacked.<sup>108</sup> The EU sought to highlight the lagging implementation by Member States and added a tally of national compliance—a “scoreboard.” This mechanism tracked the individual status of Member State implementation of EU decisions.<sup>109</sup> Several entries show that implementation is incomplete because of varying Member State’s governmental processes.<sup>110</sup> The scoreboard only generally relays, however, the reason for the implementation delay. Footnotes for actions that have not been fully implemented point to where legislation is in process; it does not delve into the potentially contentious realm explaining political or other reasons for nonimplementation. Overall, the use of the scoreboard raises the visibility of Member States’ progress in doing what they agreed to do.

The EU also sought to increase oversight and accountability for these actions. After Madrid, the Council appointed its first Counterterrorism Coordinator, Gijs de Vries, to work under the EU High Representative, oversee the EU’s total counterterrorism effort, and report to the Council.<sup>111</sup> The creation of this position was the result of the EU’s acknowledgement that measures had not been enacted as agreed in the 2002 Framework Decision.<sup>112</sup> Implementation had encountered delays due to slow national machinery, civil liberties concerns, resource limitations, and waning political support in the absence of an attack (at that time) on the homeland.<sup>113</sup> “This was,” explains Kristin

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<sup>107</sup> Bures, “EU Counterterrorism Policy,” 70.

<sup>108</sup> Anja Dalgaard-Nielsen, “Transatlantic Homeland Security: Why, What, and How?,” in *Transatlantic Homeland Security: Protecting Society in the Age of Catastrophic Terrorism*, ed. Anja Dalgaard-Nielsen and Daniel S. Hamilton, (New York: Routledge, 2006), 8.

<sup>109</sup> This is similar to the “scoreboard” adopted in 1997 by the EU to track single market implementation by Member States. It is now adapted to the counterterrorism front as well. Council, “EU Plan of Action,” 16090/04, 1 and 47-51; and European Commission, “Internal Market Scoreboard,” [http://ec.europa.eu/internal\\_market/score/index\\_en.htm](http://ec.europa.eu/internal_market/score/index_en.htm) (accessed September 20, 2006).

<sup>110</sup> Council, “EU Plan of Action,” 16090/04, 47-51.

<sup>111</sup> “Fight Against Terrorism.”

<sup>112</sup> “Council Framework Decision,” L164, 3-6.

<sup>113</sup> Archick, “Europe and Counterterrorism,” 11-17; and Gallis, Summary of “European Counterterrorist Efforts.”

Archick, “the key rationale for establishing a new EU Counterterrorism Coordinator tasked with overseeing and promoting member state compliance.”<sup>114</sup>

Like criticism of other EU efforts at fighting terrorism, the creation of this position also garnered attention and questions about its potential efficacy: “Doubts about the function of the Coordinator arose at the outset when de Vries himself conceded that his role is restricted; and unless he has the same power as the member states in terms of control over police and other law-enforcement agencies, his office cannot work effectively.”<sup>115</sup> Despite this attempt to create an overseer, herder, and synergist to the vast array of counterterrorism policies, the position came with limited staff and no authority to carry out the harmonization of efforts. Among the factors limiting his potential effectiveness are also inherent limitations of responsibility within the EU in fighting terrorism; difficulty in producing an EU threat assessment given Member States’ concern over sharing sensitive information; and existing bilateral relationships within the Union that sideline the coordinator.<sup>116</sup> His success, therefore, lies entirely in his ability to persuade the Member States to “prioritize security and coordinate with other relevant actors.”<sup>117</sup> The role of Counterterrorism Coordinator, while good in theory, is less promising when considering these factors that severely limit De Vries’ range of action to do his job. In a statement just one year after his appointment, De Vries “admitted that there is little still not enough cooperation between the member states on counterterrorist measures and there is little the EU can do without this.”<sup>118</sup> The position of Counterterrorism Coordinator added accountability for tracking actions, but not for implementing actions.

The attacks in Madrid prompted more activity to fight terrorism than ever before. The agreement on the Solidarity Clause and the creation of the Coordinator position

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<sup>114</sup> Archick, “Europe and Counterterrorism,” 11.

<sup>115</sup> Alok Rashmi Mukhopadhyay, “EU Counter-Terrorism Coordinator Office: A Non-Starter?,” Observer Research Foundation, 2005, <http://www.observerindia.com/analysis/A170.htm> (accessed November 2, 2006).

<sup>116</sup> Ibid.

<sup>117</sup> Dalgaard-Nielsen, “Transatlantic Homeland Security,” 9-10.

<sup>118</sup> Sarah Laitner, “EU Counter-terrorism Chief’s Efforts Hampered by Turf Wars,” *Financial Times*, March 7, 2005; <http://www.nexis.com/> (accessed November 26, 2006); and “Terrorism Threat: Much Talk but How Much Action?”

within the EU Council Secretariat signaled the EU's intention for more concerted attention to both ongoing coordination and to potential cooperation in the wake of attacks. All the EU initiatives taken in response to the Madrid attacks revitalize its efforts to fight terrorism. However, some of the root causes for lagging implementation were not resolved by these innovations; overcoming them depends on the Member States.

### **3. After London**

On July 7, 2005, four suicide bombers attacked London's public transit system during morning rush hour, killing fifty-two people and injuring more than 770.<sup>119</sup> On the heels of the second major international terrorism attack in Europe, there were again a number of initiatives undertaken by the Council. First, there was another declaration decrying the attacks, upholding solidarity, and reiterating its determination and commitment to fight terrorism by accelerating implementation of the action plan and other previously agreed commitments.<sup>120</sup> The implementation was to be reviewed at the December 2005 Council meeting, where a "reinforced" action plan was to be presented.<sup>121</sup> This declaration also called for the development of a "global counter-terrorism strategy," although at the level of the UN.<sup>122</sup> The response of the Council repeated largely what was declared since 9/11. Five years after the shock of 9/11, the EU believes that it has the right approach to collectively fight terrorism, but acknowledges that the approach needs improved execution.

The London attacks came at the beginning of the EU six-month Presidency of the United Kingdom. Given the UK's significant experience with terrorism, although different in nature than the threat posed by Al Qaeda, compounded by the attacks in its own capital, it was to be expected that the United Kingdom would take a more proactive position in combating the threat. Since the first EU actions after 9/11, UK public officials pressed for faster and more thorough action and cooperation against terrorism. For

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<sup>119</sup> "7 July Bombings," *BBC News*, [http://news.bbc.co.uk/1/shared/spl/hi/uk/05/london\\_blasts/what\\_happened/html/default.stm](http://news.bbc.co.uk/1/shared/spl/hi/uk/05/london_blasts/what_happened/html/default.stm) (accessed December 1, 2006).

<sup>120</sup> Council of the European Union, "Extraordinary Council Meeting, Justice and Home Affairs," Document 11116/05 (Presse 187), July 13, 2005 [http://ue.eu.int/ueDocs/cms\\_Data/docs/pressdata/en/jha/85703.pdf](http://ue.eu.int/ueDocs/cms_Data/docs/pressdata/en/jha/85703.pdf) (accessed November 26, 2006), 6.

<sup>121</sup> *Ibid.*, 9.

<sup>122</sup> *Ibid.*

example, David Blunkett, UK Home Secretary in 2001, “urged the EU to get on with introducing a draft of new counter-terrorism measures as quickly as possible.”<sup>123</sup> After the Madrid attacks, the House of Lords EU Select Committee issued a report criticizing the convoluted array of EU counterterrorism measures, the delay in appointing a Europol<sup>124</sup> director due to Member State “bickering,” and the weak role given to the new Counterterrorism Coordinator.<sup>125</sup> Most recently, after the London attacks, British officials viewed the debate between security and civil liberties as “undermin[ing] the effort by the [EU] to form a collective front against terrorism.”<sup>126</sup> A spokesman for the British government put it more bluntly: “the liberals who are holding things up need to ask themselves if they want the right to civil liberties or the right not to be blown up on the way to work.”<sup>127</sup> Despite the UK’s determined attitude towards fighting terrorism, the UK EU Presidency would not be able to impart these national preferences on the EU, but it would at least allow the United Kingdom to guide the Strategy’s development.<sup>128</sup>

Immediately following the attacks, the Counterterrorism Coordinator and the Council of Permanent Representatives to the European Council (Coreper)<sup>129</sup> began discussions on how to update the EU’s approach.<sup>130</sup> Within four months after the attacks, the EU Presidency and the Counterterrorism Coordinator presented a draft Counter-Terrorism Strategy to the Coreper. The proposal “Towards a Counter-Terrorism Strategy for the European Union”<sup>131</sup> was intended to fulfill two objectives: (1) create a longer-

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<sup>123</sup> “EU Must Act Fast on Terror—Blunkett,” *BBC News*, 20 September 2001, [http://news.bbc.co.uk/2/hi/uk\\_news/politics/1553851.stm](http://news.bbc.co.uk/2/hi/uk_news/politics/1553851.stm) (accessed May 19, 2006).

<sup>124</sup> Europol is an official EU organization facilitating Member State cooperation in police and customs matters. *Glossary*, s.v. “Europol,” European Union website, [http://europa.eu/scadplus/glossary/europol\\_en.htm](http://europa.eu/scadplus/glossary/europol_en.htm) (accessed November 18, 2006).

<sup>125</sup> “Terrorism Threat: Much Talk but How Much Action?”

<sup>126</sup> Dan Bilefsky, “EU Agrees to Terror Rules amid Discord,” *International Herald Tribune* (Europe), December 1, 2005, <http://www.iht.com/articles/2005/12/01/news/eu.php> (accessed October 26, 2006).

<sup>127</sup> *Ibid.*

<sup>128</sup> Omand, “Countering International Terrorism,” 111.

<sup>129</sup> The Coreper is a forum of EU member state ambassadors and serves to flesh out proposals to be presented to the Council. *Glossary*, s.v. “Coreper,” European Union website, [http://europa.eu/scadplus/glossary/coreper\\_en.htm](http://europa.eu/scadplus/glossary/coreper_en.htm) (accessed November 8, 2006).

<sup>130</sup> Council of the European Union, Presidency and the Counterterrorism Coordinator, “Towards a Counter-Terrorism Strategy for the European Union,” 13613/05, October 21, 2005, <http://register.consilium.europa.eu/pdf/en/05/st13/st13613.en05.pdf> (accessed November 26, 2006), 1.

<sup>131</sup> *Ibid.*

term approach for the EU to follow in the fight against terrorism, and (2) provide the public with a succinct explanation as to EU counterterrorism efforts. This intent would also prove useful in gearing national action towards the common goal.<sup>132</sup> The aim was to complete negotiations on this proposal and present it to the Council at the close of the UK Presidency. Indeed, after several months of discussions and revisions, a final document was approved in December 2005, the end of the UK Presidency.<sup>133</sup>

The new EU Counter-Terrorism Strategy encompasses a full range of actions to fight terrorism.<sup>134</sup> It lays out a strategic commitment to fight terrorism, focusing activities around four pillars: *prevent*, *protect*, *pursue*, and *respond*.<sup>135</sup> It also outlines the facilitating role of the EU and its “cross-cutting contributions” to the four pillars.<sup>136</sup> It further introduces a rough notion of political oversight to be provided by a combination of EU bodies, including the Council, the European Parliament, and the European Commission, in cooperation with the Counterterrorism Coordinator.<sup>137</sup> Basically, all major EU institutions would have some degree of responsibility for oversight of this Strategy to ensure accountability.<sup>138</sup> This document will be evaluated in more depth in the next chapter.

Due to the development of the new Strategy and the reworking of counterterrorism objectives, the update to the action plan was delayed. After the Strategy was approved, the action plan was reworked to align with the four pillars contained therein. The revised plan was released in February of 2006. This plan provided another major overhaul, although it was roughly the same size as before, indicating that most of the actions were previously included in the action plan, but not necessarily under the

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<sup>132</sup> Council, “Towards a Counter-Terrorism Strategy,” 2.

<sup>133</sup> Council of the European Union, “2696<sup>th</sup> Council Meeting, Justice and Home Affairs,” Document 14390/05 (Presse 296), December 1-2, 2005, [http://www.consilium.europa.eu/uedocs/cmsUpload/JHA\\_1-2.12.05.pdf](http://www.consilium.europa.eu/uedocs/cmsUpload/JHA_1-2.12.05.pdf) (accessed November 26, 2006).

<sup>134</sup> Council, “The European Union Counter-Terrorism Strategy,” 14469/4/05 REV 4.

<sup>135</sup> *Ibid.*, 2-3.

<sup>136</sup> *Ibid.*, 4.

<sup>137</sup> *Ibid.*, 5.

<sup>138</sup> Council, “The European Union Counter-Terrorism Strategy,” 14469/4/05 REV 4, 5 and 17.

same objective or to the same extent.<sup>139</sup> One major update to the plan called for action on the newly adopted strategy to combat radicalization and recruitment, which was adopted in December 2005, the same month as the Counter-Terrorism Strategy.<sup>140</sup> This was the second specific strategy that the EU approved, prior to the overall Counter-Terrorism Strategy. The initial Council declaration highlighted the need for a more concerted effort for implementation of existing actions and agreements. The lack of growth in the action plan items reflected this focus on consolidation. Given that four years had passed since the first EU plan of action and the agreed measures were already wide-ranging, continuing to focus on existing measures appeared more efficient.

While the actions taken after the London bombings do not readily appear to be as significant as after the attacks in the United States and in Madrid, the surge in activity here has a different character. The adoption of the new Strategy is crucial. It represents a tremendous step towards further integration. It encompasses the wide range of previously taken EU actions and integrates the institutional and national contributions. It put all the concepts in one place for the first time. Indeed, it would likely fulfill the role intended as an explanatory document for public consumption and comprehension of EU counterterrorism efforts.<sup>141</sup> Coming after the ESS and addressing the first threat stated therein, the Strategy to fight terrorism was the logical next step.

### **C. CHALLENGES TO PROGRESS**

The vast measures taken by the EU in the surges of activity following the three major terrorist attacks in the past five years have placed a significant responsibility on Member States. There have been some social issues that made EU members disinclined to accept the reality of the threat. Public opinion during this time generally did not ascribe a high priority to fighting terrorism. The number and scope of EU measures to be transposed into national legislation were, and continue to be, enormous. Other issues also inflict stress on the implementation process. The administrative demands alone, of

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<sup>139</sup> Council of the European Union, Presidency and the Counterterrorism Coordinator, "EU Action Plan on Combating Terrorism," Document 5771/1/06 REV 1, February 13, 2006, <http://register.consilium.europa.eu/pdf/en/06/st05/st05771-re01.en06.pdf> (accessed November 26, 2006).

<sup>140</sup> Ibid., 3; and Council of the European Union, Presidency, "The European Union Strategy for Combating Radicalisation and Recruitment to Terrorism," Document 14871/1/05 REV 1, November 24, 2005, <http://register.consilium.eu.int/pdf/en/05/st14/st14781-re01.en05.pdf> (accessed December 3, 2006).

<sup>141</sup> Council, "Towards a Counter-Terrorism Strategy," 13613/05, 2.

tracking an effort of this magnitude and scope, have proven challenging. The compounding of issues of national sovereignty and status create a continuing challenge for the EU as its counterterrorism efforts evolve and mature.

### **1. Implementation Hurdles**

The renewed fervor to combat terrorism in the wake of 9/11 overcame the stagnation that had plagued counterterrorism actions, “catapult[ing] these issues to the top of the European agenda.”<sup>142</sup> There were initially high hopes that the majority of the EU measures would be transposed and enacted through Member State national laws within about a year.<sup>143</sup> However, willingness of EU members to cooperate in fighting terrorism “does not always translate into common action.”<sup>144</sup> Despite the post-9/11 surge, the activity soon languished. As mentioned earlier, there were no updates to the action plan for combating terrorism in 2003. While there was other work being done, both as documented in the JHA meeting minutes and in the release of the ESS at the end of 2003, the attention given specifically to terrorism seemed to fade as time passed and Europe distanced itself from the horror of 9/11. Thérèse Delpech observes: “The events of 11 September moved all Europeans [and] military operations were far from over in Afghanistan. . . . [And yet] Europeans began to lose their focus.”<sup>145</sup> There are several reasons for this loss of focus. Among the reasons noted by scholars for the decrease in counterterrorism activity in the 2003 time frame are: location of attacks, threat perception, potential social tension, national preferences, and national bureaucratic processes.

First, even though Europeans felt 9/11 was an attack on the West and not only on the United States, the attacks had not taken place in Europe.<sup>146</sup> Europeans were observers of what happened across the Atlantic—far from Europe—causing much less of an emotional impact than on the U.S. East Coast. Thus, the attacks were still not “local” to

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<sup>142</sup> Nora Bensahel, *The Counterterror Coalitions: Cooperation with Europe, NATO, and European Union* (Santa Monica, CA: RAND, 2003), 34.

<sup>143</sup> “EU Must Act Fast on Terror—Blunkett.”

<sup>144</sup> Smith, “EU External Relations,” 242.

<sup>145</sup> Thérèse Delpech, *International Terrorism and Europe*, Chaillot Paper no. 56 (Paris: EU Institute for Security Studies, 2002), 7.

<sup>146</sup> *Ibid.*, 7.

the European populace. This failure to relate cultural proximity to potential physical proximity is also highlighted in that “even the fact that three of the four September 11 suicide pilots were recruited from the heart of Europe did not generate the same sense of urgency in Europe that prevailed in the U.S.”<sup>147</sup> Therefore, European leaders were not compelled to react as sharply to the attacks as did the United States.

Second, the Europeans had enjoyed a “long peace” since 1945,<sup>148</sup> believing this to be the most peaceful and prosperous period in Europe’s history.<sup>149</sup> They had also fallen into a sense of deep relief after the end of the Cold War,<sup>150</sup> which had caused enormous anxieties, among many Europeans, of Europe becoming a nuclear battlefield of superpower confrontation. With the enlargement of the EU and of NATO following the end of the Cold War, Europe had experienced tremendous community-building, whereby all nations had “equal rights and obligations—never in its history has Europe come this close to being whole and free.”<sup>151</sup> It was hard to believe that they could fall prey to threats of such magnitude as they had lived under in the prior decades;<sup>152</sup> that the post-Cold War world could be “not safer, but potentially more dangerous.”<sup>153</sup> Concerning threat assessment, terrorism was now also being addressed at the multinational level as opposed to exclusively within the individual nations. However, the general challenge of intelligence sharing between nations, much less between fifteen or twenty-five nations,<sup>154</sup> also contributed to the lack of a concrete EU threat assessment. Thus, the only EU-wide threat assessment was subjective, based upon individual perceptions and not upon a consolidated, detailed intelligence product.

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<sup>147</sup> Rohan Gunaratna, “The Post-Madrid Face of Al Qaeda,” *The Washington Quarterly* 27, no. 3 (Summer 2004), 91-92.

<sup>148</sup> John Lewis Gaddis, “The Long Peace: Elements of Stability in the Postwar International System,” *International Security* 10, no. 4 (Spring 1986), 100.

<sup>149</sup> Council, “A Secure Europe,” 1.

<sup>150</sup> Bernard Jenkin, “The War Against Terrorism, the EU’s Response, and the Future of NATO,” Heritage Lecture 735, paper presented in Washington DC, February 13, 2002, 2.

<sup>151</sup> Ash, *Free World*, 191.

<sup>152</sup> Delpech, *International Terrorism and Europe*, 7.

<sup>153</sup> Jenkin, “The War Against Terrorism,” 2.

<sup>154</sup> Magnus Ranstorp, “The European Terror Challenge,” *BBC News*, March 24, 2004, <http://news.bbc.co.uk/2/hi/europe/3563713.stm> (accessed May 19, 2006); and Angus Rozburgh, “Q&A: Counter-terror Czar,” *BBC News*, March 24, 2004, <http://news.bbc.co.uk/2/hi/europe/3550543.stm> (accessed November 12, 2006).

Scholars also claim there are other practical reasons for the lull in activity. One claim is that the European leadership did not want to cause panic and potential ethnic tensions within Europe's Muslim minorities<sup>155</sup> by drawing much attention to the potential threat within national borders. The integration of nonnative minorities has challenged Europe for several decades, with Europe falling short time and again.<sup>156</sup> Europe's success with integrating minorities has been limited and these alienated minorities, particularly Muslim minorities, had perpetrated the terrorist acts in Madrid and London.<sup>157</sup> This integration deficit in the European minority communities, including Muslim or Arab communities, could have played a part in convincing European leaders of the sensitivity of the issue. The pursuit of measures that could be seen as targeting EU minorities might stir up larger issues within their populations. The desire for stability and peace through conflict-avoidance, therefore, contributed to delays in measures which could have contributed to fighting terrorism, as they would also have impacted poorly integrated minorities in the same communities.

Member States may also impede implementation for reasons of national preferences. Under the pressure of recent terrorist attacks, the EU was able to enact increasingly significant and far-reaching counterterrorism measures that before seemed less feasible.<sup>158</sup> The peer pressure to do something to stop the terror, encouraged by the

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<sup>155</sup> Delpech, *International Terrorism and Europe*, 7.

<sup>156</sup> Ash, *Free World*, 71.

<sup>157</sup> Francis Fukuyama, as quoted by Walter Pincus, "Don't Ignore Western Europe, Terrorism Expert Warns U.S.: Many Muslims Are Alienated by Multicultural Continent's Inability to Assimilate Them, Dean at Johns Hopkins Says," *The Washington Post*, September 8, 2005, <http://www.nexis.com/> (accessed November 26, 2006).

<sup>158</sup> Anderson and Apap, *Striking a Balance*, 2, and Den Boer, *9/11 and the Europeanisation*, 1.

spikes in public concern over terrorism,<sup>159</sup> resulted in a greater willingness to take steps in collective counterterrorism action. “Technicalities could not stand in the way of the ‘new policy’.”<sup>160</sup>

Italy’s reluctance to sign-on to the EU Arrest Warrant following 9/11 is a case in point. Spain had the EU Presidency for the first half of 2002, shortly after the attacks. As Spain had an active domestic terrorist element (Euskadi Ta Askatasuna or Basque Homeland and Freedom—ETA),<sup>161</sup> it had a vested interest in encouraging cooperation in the fight against terrorism. Holding the EU Presidency, Spain was seen to engage in “plenty of arm twisting” with Italy, which was finally “publicly shamed into accepting” the EU Arrest Warrant.<sup>162</sup> However, Italy’s national preference shone through when it was the last EU member to implement this action;<sup>163</sup> doing so only after the London attacks (four years on) and under UK pressure to extradite a suspect in a failed suicide bombing of the London underground transit system.<sup>164</sup>

Also impeding implementation is the sheer effort of creating legislation quickly among multiple national bureaucracies. “It is natural,” say Ferruccio Pastore et al., “for a structured cooperation among national administration[s] to require a long process.”<sup>165</sup> The momentum of 9/11 was lost by the time it took to fully transpose EU actions into national legislation and operating procedures.<sup>166</sup> Once national legislation is set in

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<sup>159</sup> In Autumn 2004, 27 percent of Europeans surveyed ranked terrorism among the top three EU priorities. The high percentages in Spain and the United Kingdom, 48 and 49 percent respectively, contributed to this spike. In Autumn 2005, 23 percent of Europeans surveyed ranked terrorism among the top three EU priorities. The high percentages in Spain, the Netherlands, and the United Kingdom, 31, 40 and 34 percent respectively, contributed to this spike. European Commission, “Eurobarometer,” no. 62 (Autumn 2004), 32-3; and no. 64 (Autumn 2005), 20 and 99.

<sup>160</sup> F. Verbruggen, “Bull’s-eye? Two Remarkable EU Framework Decisions in the Fight against Terrorism,” in *Legal Instruments in the Fight against International Terrorism: A Transatlantic Dialogue*, ed. C. Fijnaut, J. Wouters, and F. Naert (Leiden: Martinus Nijhoff Publishers, 2004), 309.

<sup>161</sup> *Ibid.*, 300.

<sup>162</sup> *Ibid.*, 309.

<sup>163</sup> “Terrorism Threat: Much Talk but How Much Action?”

<sup>164</sup> “New Warrant May Speed Extradition,” *BBC News*, July 31, 2005, [http://news.bbc.co.uk/2/hi/uk\\_news/4732219.stm](http://news.bbc.co.uk/2/hi/uk_news/4732219.stm) (accessed November 18, 2006).

<sup>165</sup> Pastore et al., “Is There a European Strategy against Terrorism?,” 8.

<sup>166</sup> Lindstrom and Schmitt, *Facing Terrorism*, 2.

motion, it can get “bogged down.”<sup>167</sup> Thus, the implementation report of December 2005 records several initiatives to have started in the national process, which are still not complete years after their agreement at the EU level. Even if each member does take the necessary measures in a timely manner, there remains “uneven implementation, leading to a heterogeneous impact on domestic criminal law and a differentiated implementation schedule.”<sup>168</sup>

Delays can also be attributed to resource limitations, since social and economic priorities may trump counterterror efforts within national budgets.<sup>169</sup> Furthermore, the effectiveness of EU measures is critically dependent on the capacity of the Member States to implement each measure.<sup>170</sup> Each member’s interpretation of measures to be enacted<sup>171</sup> leads to variations in national legislation. Thus, implementation at the national level has encountered many hurdles and will continue to do so because of differences in national preferences and national bureaucracies.

These reasons coalesced to decrease activity in countering terrorism more than one year after 9/11. This finding is supported by EU actions to attain higher visibility of implementation, like the scoreboard<sup>172</sup> measuring, tracking, and documenting national implementation and the creation of a Coordinator position to facilitate and track collective action.<sup>173</sup> Despite specific insight into issues of national preference, the EU scoreboard and the work of the Counterterrorism Coordinator shows the EU’s initial evaluation of counterterrorism policy, beginning with the EU’s own ability to affect national implementation.

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<sup>167</sup> Gallis, “European Counterterrorist Efforts,” 110; and Council of the European Union, Justice and Home Affairs Council, “Implementation of the Action Plan to Combat Terrorism-Scoreboard,” December 1, 2005, [http://www.consilium.europa.eu/ueDocs/cms\\_Data/docs/pressData/en/jha/87255.pdf](http://www.consilium.europa.eu/ueDocs/cms_Data/docs/pressData/en/jha/87255.pdf) (accessed November 16, 2006).

<sup>168</sup> Den Boer, *9/11 and the Europeanisation*, 22.

<sup>169</sup> Gallis, “European Counterterrorist Efforts,” 36.

<sup>170</sup> Frank Gregory, “The EU’s Response to 9/11: A Case Study of Institutional Roles and Policy Processes with Special Reference to Issues of Accountability and Human Rights,” *Terrorism and Political Violence* 17, no. 2 (Winter 2005), 105.

<sup>171</sup> Martha Crenshaw, *Terrorism and International Cooperation*, Occasional Paper Series 11 (New York: Institute for East-West Studies, 1989), 2.

<sup>172</sup> Council, “EU Plan of Action,” 16090/04, 1, 47-51.

<sup>173</sup> “Fight Against Terrorism.”

## 2. Public Support

While the evolution of EU action plans lagged throughout 2003 due in part to implementation issues, the ebb and flow of public opinion in representative democracies has an additional impact on counterterrorism decision-making. The EU has its own polling mechanism, Eurobarometer, to maintain awareness of European public opinion.<sup>174</sup> Overall, EU citizens feel that counterterrorism measures are best handled at the EU level,<sup>175</sup> but terrorism is not seen as the top EU priority, relative to other concerns. In the two years following the terrorist attacks of 9/11, between 89 and 91 percent of the European population agreed terrorism should be an EU priority.<sup>176</sup> This feeling continued but was perhaps better qualified in future surveys as Eurobarometer changed its survey methods. In 2004, Europeans were asked to mark from a prepared list the top three priorities upon which the EU should focus. The percentages indicating terrorism among these top priorities ranged between 19 and 27 percent, but never ranked above the fourth highest position of what the EU should consider a top priority.<sup>177</sup> The issues that typically ranked higher include unemployment, poverty and social exclusion, the maintenance of peace and security in Europe, and organized crime and drug trafficking. While this question was not framed that way until 2004, the surveys show two spikes where higher percentages of people believed terrorism should be among the top three priorities for the EU. The two spikes occur immediately following the Madrid

<sup>174</sup> The Eurobarometer conducts semiannual surveys of all EU countries.

<sup>175</sup> Between Fall 2001 and Fall 2005, 78 to 85 percent of Europeans believed that counterterrorism decisions should be made at the EU level. Between Fall 2003 and Spring 2006, between 49 and 61 percent of Europeans believed the EU was having a positive effect on the fight against terrorism. European Commission, "Eurobarometer," no. 56 (Autumn 2001), 52; no. 57 (Spring 2002), 67; no. 58 (Autumn 2002), 110; no. 59 (Spring 2003), 95; no. 60 (Autumn 2003), 66 and 70; no. 61 (Spring 2004), 24; no. 62 (Autumn 2004), 26 and 34-35; no.63 (Spring 2005), 28; and no. 64 (Autumn 2005), 100-101.

<sup>176</sup> In Spring 2002, "fighting terrorism" tied "maintaining peace and security in Europe" and "fighting unemployment" for the highest ranked priority, with 90 percent each. In Autumn 2002, 91 percent of Europeans surveyed named terrorism, peace and security, and unemployment of equal priority. In Spring 2003, maintaining peace and security in Europe earned the highest percentage of survey responses, 91 percent of responses, with terrorism tied with unemployment and "fighting poverty and social exclusion" trailing close behind at 90 percent. In Autumn 2003, terrorism tied peace and security as the second highest priority, with 89 percent of survey respondents, with unemployment taking the lead, with 90 percent of respondents naming it an EU priority. Question: "I am going to read out a list of actions that the European Union could undertake. For each one, please tell me, if in your opinion, it should be a priority or not?" European Commission, "Eurobarometer," no. 57 (Spring 2002), 73 and B57-8; no. 58 (Autumn 2002), 57 and B65-6; no. 59 (Spring 2003), 58 and B53-4; and no. 60 (Autumn 2003), 11 and B14-5.

<sup>177</sup> Question: "From the following list of actions, could you tell me what should be, for you, the three actions that the European Union should follow in priority?" European Commission, "Eurobarometer," no. 62 (Autumn 2004), 32; no. 63 (Spring 2005), 31; and no. 64 (Autumn 2005), 99.

and London attacks, garnering 27 and 23 percent respectively. Despite increases in concern for terrorism, these spikes in percentages did not change the overall standing of terrorism among the top priorities.<sup>178</sup> Terrorism remained no higher than fourth place in the priority list. These data reflect increases in the EU population's concern over terrorism immediately following terrorist attacks, but its overall priority among other issues remained the same.

The ebbs and flows of public support for EU efforts in fighting terrorism are also reflected in how EU citizens think their own country should prioritize terrorism. Since the Spring of 2004, Eurobarometer has measured what Europeans think are the top two issues for their individual country. The aggregate of opinions for national priority of terrorism are similar to how Europeans prioritize terrorism in the EU. In the two and a half years that this question has been surveyed, combating terrorism has ranked as high as fourth and as low as eighth, garnering between 10 and 16 percent, as an EU average. Again, issues such as unemployment, the economy, and crime consistently rank higher.<sup>179</sup> Likewise, there have been two spikes raising the priority of terrorism. The first was in the fall of 2004, following the Madrid attacks, the second in the fall of 2005, following the London attacks.<sup>180</sup> In the next six-monthly survey, following both the Madrid and London attacks, terrorism dropped back down in priority. Thus, there is a remarkable coincidence of increasing and waning national concerns about terrorism and the ebb and flow of EU action on terrorism.

The data on threat perception of terrorism shows a similar disparity in the surveys conducted by Transatlantic Trends. While surveying less than half of the EU countries,

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<sup>178</sup> The Autumn 2004 survey result was driven upward by the Spanish and UK responses, 48 and 49 percent respectively. Eurobarometer notes that the spike following the London attacks is slightly skewed due to significantly higher percentages in countries that had been hit by terrorism: UK rose from 14 to 34 percent; Netherlands rose from 22 to 40 percent; and Spain, although dropping from its previous high of 59 percent following its own attacks, remained higher than average with 31 percent. Although not hit with a terrorist attack on the scale of the UK or Spain, the murder of Dutch film-maker Theo van Gogh in the Netherlands by a Muslim extremist occurred on November 2, 2004, during this survey period. *Ibid.*; and Jeremy Paxman and Gavin Esler, "Van Gogh Murder," *BBC News*, November 2, 2004, <http://news.bbc.co.uk/2/hi/programmes/newsnight/3975693.stm> (accessed November 12, 2006).

<sup>179</sup> European Commission, "Eurobarometer," no. 59 (Spring 03), 7; no. 60 (Autumn 03), 9; no. 61 (Spring 2004), 22; no. 62 (Autumn 2004), 23; no. 63 (Spring 2005), 25; no. 64 (Autumn 2005), 20; and no. 65 (Spring 2006), 8.

<sup>180</sup> European Commission, "Eurobarometer," no. 62 (Autumn 2004), 32; and no. 64 (Autumn 2005), 99.

mostly Western European, the results show that between 94 and 96 percent of respondents feel terrorism is a top threat to Europe over the next ten years.<sup>181</sup> However, when asked, in 2005 only, how likely the individual respondents felt they were to be personally affected by international terrorism (among others) the result was a much less resounding 51 percent.<sup>182</sup> While Europeans do consider international terrorism a threat to Europe, far fewer consider this threat affecting their own personal safety.

The lag in support for counterterrorism is equally significant for both the EU and Member States. Since it is the Member States that must implement the actions, a decline in public concern over terrorism may inhibit the willingness of national leaders to spend time and money on EU-agreed counterterrorism legislation as well as funding national contributions to EU institutions that conduct counterterrorism and coordination functions. However, the Member States must prioritize these activities and fully implement EU measures in order for the EU counterterrorism efforts to even have a chance at proving successful. Support of the public constituencies is essential to convince national legislatures that terrorism is a priority. However, given that the spikes in support of counterterrorism do not last long, the implementation may continue to experience jerks and starts.

### **3. Tracking and Tracing of Actions**

The ability to keep track of a multitude of action items is also an essential challenge for the EU. The tracking of actions becomes increasingly more difficult when actions are lacking complete information, cannot be traced between action plans, and

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<sup>181</sup> The Transatlantic Trends is published by the German Marshall Fund of the United States and the Compagnia di San Paolo (Italy) and conducts annual surveys of some EU member states. In 2002, six of fifteen EU countries were surveyed (Italy, France, Germany, Great Britain, the Netherlands and Poland), in 2003, Portugal was added, and in 2004, nine of twenty-five EU countries were surveyed (adding Slovakia and Spain). Question: "I am going to read you a list of possible threats to Europe in the next 10 years. Please tell me if you think each one on the list is an extremely important threat, an important threat, or not an important threat at all." The threat of international terrorism consistently ranks highest as the most important international threat. From 2002 to 2006, this priority ranged from 94 to 96 percent of respondents listing it as "important" or "extremely important" (changed to "very important" in 2006) for Europe. The majority of respondents naming terrorism as extremely/very important: 64 percent in 2002, 70 percent in 2003, 71 percent in 2004, 60 percent in 2005, and 76 percent in 2006. "Transatlantic Trends: Topline Data," German Marshall Fund of the United States and the Compagnia di San Paolo (Italy), 2003, 19-21; 2004, 14-20; 2005, 15-21; 2006, 20-37; <http://www.transatlantictrends.org>. (accessed November 26, 2006); and "Worldviews 2002: Comparing American and European Public Opinion on Foreign Policy: Transatlantic Key Findings Topline Data," The Chicago Council on Foreign Relations and the German Marshall Fund of the United States, <http://www.worldviews.org>, 32-5.

<sup>182</sup> "Transatlantic Trends: Topline Data," 2005, 24.

when the action plan itself becomes too large and cumbersome.<sup>183</sup> For many years, the action plans served as the only regularly updated document to track progress of agreed EU measures. Therefore, it would be advantageous to have a comprehensive document, with complete information for each item to tell the whole story of where the EU stands in implementing the plan. However, from the beginning, there were challenges in getting to a reliable level of information and accuracy, perhaps both for both information gathering and political sensitivities. The June 2002 action plan fell short in providing a comprehensive level of detail in that not all entries were complete.<sup>184</sup> Some did not list forthcoming work.<sup>185</sup> The lack of prescribed deadlines is also problematic, with vague projected completion dates, such as “urgent,” “ongoing,” or “none.”<sup>186</sup> The level of detail provided does improve with subsequent plans. However, not all missing information is filled in, and it is more random and piecemeal.<sup>187</sup> The incomplete nature of the entries attributes to the ongoing challenge of assessing status and implementation of the wide array of counterterrorism activities.

The lack of continuity between action plans also impeded tracking of actions over the years. When action plan objectives change several times and actions are realigned under new objectives, there must be a way to show which items remain basically the same and which items are new. The actions cannot be easily traced between plans when

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<sup>183</sup> The December 2001 action plan contained 68 action items. It grew to 190 action items by the February 2006 action plan. This does not account for actions which were removed due to completion or other reasons not specified in the plans. See action plans in the list of references.

<sup>184</sup> Council of the European Union, General Affairs and External Relations Council, “European Union Action Plan to Combat Terrorism—Update of the Roadmap,” Document 10773/2/02 REV 2, July 17, 2002, <http://register.consilium.europa.eu/pdf/en/02/st10/10773-r2en2.pdf> (accessed November 26, 2006).

<sup>185</sup> For example, Objective 15 lists “European arrest warrant.” This objective was adopted by the Council; however, there is no follow-up work listed, nor is the action closed. Another example is “freezing of assets.” The report says it is agreed but “subject to a number of parliamentary reservations and re-consultation of the European Parliament”; however, there is no forthcoming work listed. *Ibid.*, 13.

<sup>186</sup> *Ibid.*, 2-32.

<sup>187</sup> Council, “European Union Action Plan,” 13909/1/02 REV 1, 4-52.

the basic numbering system shifts due to changing objectives.<sup>188</sup> These shifts occur mostly in revised action plans immediately following major terrorist attacks and the accompanying surge in activity reinventing the EU approach.<sup>189</sup> The absence of this tracing mechanism leads to confusion and endless searching to obtain a status update.

Finally, the consolidation of actions made the action plan larger and more difficult to manage, and also led to less detailed information for each individual action. Although the objective of the action plans was to combine all actions into “one streamlined document,”<sup>190</sup> it became too large and unfocused. In the initial drafts of the EU Counter-Terrorism Strategy document, the Presidency and the Counterterrorism Coordinator recommended streamlining the document, making it more concise and “leaving the focus on the most important and relevant measures.”<sup>191</sup> This was later rebuffed by the Coreper whereby there was “substantial support” to retain the comprehensive, but long version of the action plan.<sup>192</sup> Thus, the challenges of tracking such a large document will remain.

The complexities in maintaining and updating the action plan of EU counterterrorism activities have proven to be a challenge. The completeness of the plan and the ability to trace items between updates is essential to ensure that progress is made

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<sup>188</sup> For example, item 1.1.3 on interaction with the CFSP working group becomes 1.1.1. Item 1.1.1 on coordination with General Assembly is removed altogether even though it was never listed as achieved or near completion. Item 1.1.2 on CFSP coordination with the Counterterrorism Committee remains the same in the new plan. Item 5.2.1 strengthening the protection of citizens, from the June 2004 plan, becomes 5.4 in the December 2004 plan. Another example, Item 2.2.3 of the June 2005 plan, calls for the establishment of a list of entities (persons and groups included) to which restrictive financial measures would apply. This action item was seemingly accomplished already with the establishment of an electronic database on entities to which financial sanctions were applicable. While the action was not deemed achieved at the time, it was not listed in the February 2006 plan. An example of a closed action item, item 2.2.1, from the June 2005 plan, to establish a specific intelligence capacity regarding terrorism financing within the Situation Center (SitCen), the EU’s intelligence coordination center, was achieved in September 2004 and was removed from the February 2006 action plan. Council, “EU Plan of Action,” 10586/04, 8-9 and 64; and Council, “EU Plan of Action,” 16090/04, 9 and 34; Council of the European Union, Presidency and the Counterterrorism Coordinator, “EU Plan of Action on Combating Terrorism—Update,” Document 9809/1/05 REV 1 ADD 1, June 10, 2005, <http://register.consilium.europa.eu/pdf/en/05/st09/st09809-re01ad02.en05.pdf> (accessed November 26, 2006), 6-7; and Council, “EU Action Plan,” 5771/1/06 REV 1.

<sup>189</sup> Council, “EU Plan of Action,” 10586/04; and Council, “EU Action Plan,” 5771/1/06 REV 1.

<sup>190</sup> Wilkinson, *International Terrorism*, 31.

<sup>191</sup> Council of the European Union, Presidency and the Counterterrorism Coordinator, “The European Union Counter-Terrorism Strategy,” Document 14469/05, November 15, 2005, <http://register.consilium.europa.eu/pdf/en/05/st14/st14469.en05.pdf> (accessed November 26, 2006), 2.

<sup>192</sup> Council of the European Union, Presidency and the Counterterrorism Coordinator, “The European Union Counter-Terrorism Strategy,” Document 14469/1/05 REV 1, November 22, 2005, <http://register.consilium.europa.eu/pdf/en/05/st14/st14469-re01.en05.pdf> (accessed November 26, 2006), 2.

over time. The comprehensive version of the action plan will likely continue, due to member support. The challenge of accurate tracking will also continue, due to EU manpower limitations and bilateral relationships. The way forward rests upon locking down the action plan and its objectives and emphasizing the need that Member States provide adequate status information.

#### **D. SUMMARY**

Following each of the terrorist attacks in the United States, Madrid, and London, there have been surges in activity by the EU, which increased the scope and depth of counterterrorism efforts. Statements in the form of framework decisions or declarations were made after each attack, not only condemning the attacks but also reaffirming the EU's resolve to fight terrorism collectively. In addition, group cohesion was reinforced further after the Madrid attacks by agreeing to a Solidarity Clause for mutual support should one member be attacked. The EU created a position to coordinate and monitor counterterrorism activity, although with limited power to do so. Finally, as the capstone document, the Counter-Terrorism Strategy combines all these efforts into one coordinated picture to solidify the EU approach for the long term. All these acts represent an incremental but undeniable trend of increasing cooperation and coordination in fighting terrorism.

The EU efforts to monitor implementation of counterterrorism actions are as complex as the action plans. Individual and collective threat perceptions influence the perceived need for national legislation, as well as the willingness to implement actions without brewing conflict within their own minorities. Bureaucratic cooperation also varies between countries and takes time to arrange. Member States are also conscious of public opinion, which often ranks social issues higher than terrorism, for resources to implement. Finally, there are administrative difficulties in tracking such a sizable action plan with limited resources and power, and in the face of constantly changing objectives. Some difficulties will further be resolved by sticking to the baseline objectives laid out in the new Counter-Terrorism Strategy. However, some difficulties will remain, as EU Member States continue to come up against required tradeoffs for national priorities due to resource limitations and public preferences. Assuming no new attacks and no constraints to counterterrorism effort, the future for action item implementation must rely

on time to allow the required processing within national bureaucracies, to apply subtle but recurring reminders in the six-monthly updates, and to engrain the new standards or levels of agreed cooperation. Although issues with implementation and enforcement persist, the forward progress achieved by the EU in the four years following 9/11 represents a commendable effort. Seeing how each increment is taken in direct response to a terrorist attack reinforces the observation of the reactive nature of EU counterterrorism efforts.<sup>193</sup>

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<sup>193</sup> Lindstrom, "The EU's Approach," 117.

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### **III. THE EUROPEAN UNION COUNTER-TERRORISM STRATEGY—ANALYSIS OF THE DOCUMENT**

#### **A. INTRODUCTION**

In order to assess any aspect of the EU Counter-Terrorism Strategy,<sup>194</sup> it is essential to look at, and become familiar with, the actual text of the document. The stated goal of the Strategy and the targeted threat should vector the EU's intentions. The ways in which the EU plans to address this threat and achieve its goal will frame the EU's approach, as will the means through which the EU can create a set of cooperative tools. Familiarization with the vector, language, specificity, and scope of the Strategy as agreed to by all twenty-five Member States will provide the fundamental baseline from which further analysis, comparisons, and conclusions will take shape. This chapter will review the intent or goal of the Strategy, the threat perception upon which the Strategy is based, and ways in which the EU plans to enact this approach. It will then review the primary responsibility for enacting the Strategy, actions given priority, and the EU outline for assuring that all counterterrorism efforts are subjected to democratic oversight. The document should provide a consolidated approach for EU counterterrorism.

#### **B. INTENT**

The EU Counter-Terrorism Strategy states at the very beginning its strategic commitment: "To combat terrorism globally while respecting human rights, and make Europe safer, allowing its citizens to live in an area of freedom, security and justice."<sup>195</sup> Four aspects of this statement stand out:

1. The statement begins with the goal of the Strategy, "to combat terrorism." However, the goal of combating terrorism lacks specificity. While the EU would obviously want to avoid future attacks on its citizens and property, this goal does not state but merely infers this real desire. The stated goal is lacking a specified desired result. It could be presumed that the most desirable result of the EU's efforts would be to eliminate terrorist attacks. Since to completely eliminate the threat is highly unrealistic, as the EU

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<sup>194</sup> Council, "The European Union Counter-Terrorism Strategy," 14469/4/05 REV 4.

<sup>195</sup> *Ibid.*, 2.

states later in the Strategy,<sup>196</sup> the goal might then be to reduce or minimize terrorist attacks. However, that is not the goal; the goal is merely to combat terrorism. From the outset though, this use of an action verb and the concise wording show an attempt by the EU to succinctly state its intended purpose for the Strategy.

2. The strategic commitment then states that this goal must be accomplished “globally.” This qualifier has two perspectives, which have been included in previous EU counterterrorism documents. First, to “combat terrorism globally” leaves no mistake about where the EU sees its realm of action. The EU intends to act wherever necessary, not just among its membership or within its own national boundaries. This aspect is reflective of the ESS statements of the EU as a global actor.<sup>197</sup> Second, this also infers a requisite degree of cooperation with other nations throughout the globe and with international organizations. The reiterative notion throughout all the EU declarations is that the fight against terrorism must be global,<sup>198</sup> calling on the UN and other countries and regional groups of countries as necessary partners. The combined understanding of the word “globally” creates the two-way synergy of fighting terrorism both with the EU pushing beyond its borders and pulling in cooperation from other institutional and national partners. The inclusion of the global dimension of the fight against terrorism is reinforced in this strategic commitment statement.

3. The straightforward reference to the importance of human rights immediately follows the stated goal. The first draft of the Strategy did not include this clause on human rights.<sup>199</sup> The second draft included it, but it was at the end of the statement.<sup>200</sup> The third draft saw its movement from the end of the strategic commitment to near the beginning, where it stayed through the final version of the document.<sup>201</sup> Thus, the

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<sup>196</sup> Council, “The European Union Counter-Terrorism Strategy,” 14469/4/05 REV 4, 15.

<sup>197</sup> Council, “A Secure Europe,” 1.

<sup>198</sup> Council, “Conclusions and Plan of Action,” SN 140/01, 1 and 3; Council, “Declaration by the Heads of State or Government,” SN 4296/2/01 REV 2, 2 and 5; Council, “Declaration on Combating Terrorism,” March 24, 2004, 1; and Council, “Extraordinary Council Meeting,” 11116/05, 9.

<sup>199</sup> Council, “Towards a Counter-Terrorism Strategy,” 13613/05, 3.

<sup>200</sup> Council, “The European Union Counter-Terrorism Strategy,” 14469/05, 3.

<sup>201</sup> Council, “The European Union Counter-Terrorism Strategy,” 14469/1/05 REV 1, 3; and Council, “The European Union Counter-Terrorism Strategy,” 14469/4/05 REV 4, 2.

addition, movement, and final placement of the clause on human rights indicate an overarching preference for ensuring that human rights concerns are paramount in how the EU fights terrorism and for wanting that preference to be specifically identified.

The TEU, which founded the EU and its basic structure as it exists today, incorporates elements assuring protection of human rights. Listed among the founding principles of the Treaty of Rome in 1957, the main precursor to the TEU, and expanded in the TEU enacted in 1993, is the premise that the protection of human rights is both integral to the principles of the Union and is to be reflected in external policies.<sup>202</sup> Since the protection of human rights was already a fundamental principle of the EU, it would, of course, be incorporated into any EU counterterrorism activities.

From a different perspective, this principle is so fundamental to the institution itself that it would seem unnecessary to reiterate it in individual EU strategies. In the end, the likely impetus of this inclusion would have been the continual struggle within national and supranational structures to balance counterterrorism measures with preservation of civil liberties and human rights.<sup>203</sup> The establishment of the EU as a multilateral institution makes it no more immune to the pitfalls of balancing security concerns with civil liberties than any nation-state. While the EU may defer responsibility to the Member States for implementation of counterterrorism measures and thus the protection of human rights while enacting those measures, it cannot disavow its responsibility to uphold basic human rights within its own structures.<sup>204</sup>

The concern over human rights endures because there is no perfect or automatic balance that fits all cases and all preferences over time. In the mid-1990s, civil rights groups within the EU voiced concerns over data collection and protection measures used

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<sup>202</sup> “Promotion of Human Rights and Democratization in the European Union’s External Relations,” European Union website, [http://ec.europa.eu/comm/external\\_relations/human\\_rights/intro/index.htm](http://ec.europa.eu/comm/external_relations/human_rights/intro/index.htm) (accessed 1 Nov 2006).

<sup>203</sup> David Veness, “Terrorism and Counterterrorism: An International Perspective,” *Studies in Conflict & Terrorism* 24, no. 5 (September 1, 2001), 414; and Victor Comras, “Proposed New EU Anti-Terrorism Strategy Likely to be Controversial,” The Counterterrorism Blog, December 5, 2005, [http://counterterror.typepad.com/the\\_counterterrorism\\_blog/2005/12/proposed\\_new\\_an.html](http://counterterror.typepad.com/the_counterterrorism_blog/2005/12/proposed_new_an.html) (accessed May 16, 2006).

<sup>204</sup> Peter Chalk, *West European Terrorism and Counter-Terrorism: The Evolving Dynamic* (New York: St. Martin’s Press, 1996), 148.

by EU institutions such as Europol.<sup>205</sup> These concerns continued in 2000 with debates about the compatibility of counterterrorism laws and human rights.<sup>206</sup> After the attacks on 9/11, “in some countries, debates [had] sharpened over the balance between security and civil liberties.”<sup>207</sup> There was commentary that the emergence of stronger police and judicial cooperation was overshadowing individual rights, such that “from the individual’s point of view, there seems more emphasis on security than freedom.”<sup>208</sup> As an observation of U.S. counterterrorism measures taken after 9/11, some European Scholars argue “that the fast adoption of a wide range of measures may have been at the expense of a cautious consideration of human rights, privacy and effects on the free movement of persons.”<sup>209</sup> All these examples demonstrate how sensitive European elites are concerning the compatibility of counterterrorism measures with human rights protection.

4. The last aspect of this strategic commitment is the confinement of the area of concern to the homeland, Europe; and the people to protect, Europeans. Specifically, the purpose is to “make Europe safer, allowing its citizens to live in an area of freedom, security and justice.”<sup>210</sup> There is no larger statement of purpose that would extend the benefits of fighting or reducing terrorism to other regions or to enlarge the region of protection beyond European interests. As a regional organization, the EU focuses on Europe, but this limited range diminishes the notion of the EU as a global actor. Since the EU is a multinational institution, of the geographical size and economical impact of other nations that are powerful enough to act globally, it perceives its role as more overarching.<sup>211</sup> However, here the EU portrays the collective nation-state vice global actor by desiring protection within its regional boundaries. Thus, the strategic commitment as laid down in the first sentence of the Strategy indicates both a limitless

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<sup>205</sup> Chalk, *West European Terrorism*, 155.

<sup>206</sup> Veness, “Terrorism and Counterterrorism,” 413.

<sup>207</sup> Gallis, “European Counterterrorist Efforts,” 1.

<sup>208</sup> Anderson and Apap, *Striking a Balance*, 2.

<sup>209</sup> Den Boer, *9/11 and the Europeanisation*, 2.

<sup>210</sup> Council, “The European Union Counter-Terrorism Strategy,” 14469/4/05 REV 4, 2.

<sup>211</sup> In 2003, the EU declared it was “inevitably a global actor” due to its large population of over 450 million and its economic productivity, which accounts for one quarter of the world’s Gross National Product. Council, “A Secure Europe,” 2.

and a limited scope on different levels. It calls for a global scope of action focused upon a very broad goal of combating terrorism; yet, the area to be affected is quite limited: the EU homeland.

### **C. THREAT PERCEPTION**

Since the title of the document itself states that this is a strategy to counter terrorism, and following the stated goal to combat terrorism, it should be a foremost requirement to define what exactly the EU considers terrorism, how and why it threatens the EU, and why it is necessary and important to fight this threat. However, the document is very brief in discussing the threat of terrorism. The Strategy states:

Terrorism is a threat to all States and to all peoples. It poses a serious threat to our security, to the values of our democratic societies and to the rights and freedoms of our citizens, especially through the indiscriminate targeting of innocent people. Terrorism is criminal and unjustifiable under any circumstances.<sup>212</sup>

After the first cursory statement that terrorism is a “serious threat,” later in the document it claims more ominously that it is “the main threat.”<sup>213</sup> However, the Strategy does not define what terrorism is, nor does it define who is a terrorist. Neither is there any reference to any EU (or other) source for such definition or notion for what this Strategy is targeting. By 2005, the EU already had an established definition of terrorism<sup>214</sup> which it could have referenced. In the beginning of the document, the EU does briefly touch on the global environment and how terrorists exploit it to their ends, but this does not compensate for the overall lack of adequate threat assessment explicitly defining the need for the Strategy.<sup>215</sup> This lack of adequate definition makes the document much less persuasive as a stand-alone strategy.

Traditionally, Europe has followed the lead of the United States with respect to security. “Europeans’ positions are defined firstly in relation to American policy, and not with respect to a truly European threat assessment,”<sup>216</sup> as Nicole Gnesotto critically

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<sup>212</sup> Council, “The European Union Counter-Terrorism Strategy,” 14469/4/05 REV 4, 6.

<sup>213</sup> *Ibid.*, 6-7.

<sup>214</sup> Discussed in Chapter 2. “Council Common Position,” L344/95, 93-96.

<sup>215</sup> *Ibid.*, 6.

<sup>216</sup> Nicole Gnesotto, Preface to *Terrorism, Proliferation: A European Threat Assessment*, Chaillot Paper no. 58, by Harald Müller (Paris: EU Institute for Security Studies, 2003), 5.

asserts. However, in the wake of the U.S. approach to combating terrorism—primarily unilateral, focusing on military means, and in 2003, increasingly pre-emptive per the U.S. invasion of Iraq—the transatlantic rift that has evolved following the end of the Cold War seemed to signal a new abyss in transatlantic alignment.<sup>217</sup> While some governments were staunch supporters of the United States and its military campaigns, others were much less assured of the approach.<sup>218</sup> European public opinion of the United States, its leadership, and its President decreased markedly from 2002 to 2004, and continued through 2006. Many Europeans no longer desired U.S. leadership in world affairs.<sup>219</sup> As such, the traditional European positioning relative to the United States now took on a different meaning, whereby Europeans increasingly position themselves apart from the United States and its approach to terrorism. The EU treatment of the threat of terrorism is likewise in contrast with the U.S. description in its National Strategy for Combating Terrorism, with its extensive and overarching discussion of the threat.<sup>220</sup> The strains in the Transatlantic Alliance would necessitate a much more autonomous framing of this EU security perspective.

However, disagreeing with the U.S. approach and agreeing on a different concept is a substantial challenge for the EU. Despite the existence of predecessors like the terrorism definition or the ESS, there is no recollection of these documents or further elaboration in the Counter-Terrorism Strategy. The closest the Counter-Terrorism Strategy document comes to specifically referring to terrorists and WMD is in the last of the four pillars for EU action, buried among twenty-six key priorities listed throughout the Strategy.<sup>221</sup> Even then, it references only the need to work with partners and provide

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<sup>217</sup> Nicole Gnesotto, “EU, US: Visions of the World, Visions of the Other,” in *Shift or Rift: Assessing US-EU Relations after Iraq*, ed. Gustav Lindstrom (Paris: Institute for Security Studies, 2003), 23.

<sup>218</sup> Michael Cox, “Beyond the West: Terrors in Transatlantia,” *European Journal of International Relations* 11, no.2 (2005), 207.

<sup>219</sup> Sixty-four percent of Europeans saw U.S. leadership in world affairs as desirable in 2002, whereas 31 percent saw it as undesirable. By 2004, only 36 percent saw it as desirable, and 58 percent saw it as undesirable. Likewise, public opinion of U.S. leaders as desirable dropped from 64 to 36 percent, and approval of President Bush, specifically, dropped from 38 to 21 percent, in this same 2002 to 2004 time period. “Transatlantic Trends: Key Findings 2006,” The German Marshall Fund of the United States and the Compagnia di San Paolo (Italy), <http://www.transatlantictrends.org>. (accessed November 26, 2006), 5.

<sup>220</sup> White House, “National Strategy for Combating Terrorism,” 5-10.

<sup>221</sup> Council, “The European Union Counter-Terrorism Strategy,” 14469/4/05 REV 4, 9, 11, 14, and 16.

technical assistance to other countries to stop terrorists from acquiring WMD.<sup>222</sup> The reduction of the “greatest threat”<sup>223</sup> mentioned in an overarching security document to a “key priority” among dozens in the subordinate security document creates inconsistency between these two presumably aligned strategies.

The EU has yet to produce a single definitive terrorism threat assessment to specifically determine who and to what extent terrorism threaten the EU and its Member States.<sup>224</sup> In 2001, the EU approved and began producing an unclassified report consolidating all unclassified information regarding terrorist attacks and trend information, as provided by the Member States and analyzed by Europol. The report was intended for the European Parliament but was forwarded to the Council as well.<sup>225</sup> This, too, could have added to at least the modicum of threat perception identified in the Strategy document. However, given that this report is unclassified, it likely did not include details and inferences that would be made within a national or integrated intelligence organization. As such, the degree of threat perception released for public consumption could be significantly different from any internal threat assessment.

Attempts to come up with a credible threat assessment have run into the same problem. An EU Institute for Security Studies (ISS)<sup>226</sup> paper attempted “to fill the gap” in EU threat assessment.<sup>227</sup> Since it is available in the public domain, it includes only publicly available information. Other ISS papers have also addressed terrorism and its

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<sup>222</sup> Council, “A Secure Europe,” 11.

<sup>223</sup> Ibid., 3-4.

<sup>224</sup> Gregory, “The EU’s Response to 9/11,” 106.

<sup>225</sup> Council of the European Union, Working Party on Terrorism, “Non-confidential Report on the Terrorist Activity in the European Union from October 2003 to October 2004,” Document 7237/05, March 14, 2005. <http://register.consilium.europa.eu/pdf/en/05/st07/st07237.en05.pdf> (accessed November 26, 2006), 1 and 3; and Council of the European Union, Europol, “Non-confidential Report on the Terrorist Activity in the European Union from October 2004 to October 2005,” Document 8195/1/06 REV 1, May 11, 2006. <http://register.consilium.europa.eu/pdf/en/06/st08/st08195-re01.en06.pdf> (accessed November 26, 2006), 1 and Annex 3.

<sup>226</sup> The Institute for Security Studies (ISS) is an semi-autonomous think tank created by the EU in 2001 and organized under the Second Pillar, Common Foreign and Security Policy, to “help create a common European security culture, to enrich the strategic debate, and systematically to promote the interests of the Union.” It is, therefore, not included in the circle of EU official organizations that would be privy to classified information to thoroughly analyze the terrorist threat to the EU. “About Us,” European Union Institute for Security Studies, <http://www.iss-eu.org/>. (accessed November 26, 2006).

<sup>227</sup> Gnesotto, Preface, 5.

effect on Europe, and they have provided constructive criticism for EU actions against terrorism; but again, since they are in the public domain, they cannot compensate for an internal threat assessment. One Chaillot Paper published in October 2005 supported this claim by referencing the stated desire for increased information-sharing of intelligence assessments. The report recognized, though, that this is not likely because of inhibitions for sharing raw intelligence gathered by sensitive methods and sources.<sup>228</sup> Intelligence is among “the least publicized, yet most effective, parts of the counterterrorist efforts.”<sup>229</sup> The light handling of such a fundamental element by the EU leaves the basis for the Strategy to counter such a threat on a weak footing.

#### **D. FOUR COUNTERTERRORISM PILLARS**

The EU builds its Strategy to combat terrorism upon four pillars: *prevent*, *protect*, *pursue*, and *respond*.<sup>230</sup> One Polish newspaper noted the UK influence on the Strategy, since the UK held the Presidency during its development.<sup>231</sup> The four EU pillars are highly reflective of the counterterrorism strategy of the United Kingdom, which outlines “four linked campaigns (the four P’s): prevention, pursuit, protection, and preparation.”<sup>232</sup> The prevalence of terrorism in the United Kingdom, both as a haven and recruitment base, makes the United Kingdom possibly the most affected of all the EU members.<sup>233</sup> Given the UK’s history of urging the EU to do more to fight terrorism, it was thought that the United Kingdom could lead the Council to “a meeting of minds at the European level on strategy.”<sup>234</sup> The resulting EU pillars indicate an obvious nod to the UK strategy, but are tailored for the EU level and degree of implementation capacity. Each pillar will now be discussed individually.

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<sup>228</sup> Wilkinson, *International Terrorism*, 34-35.

<sup>229</sup> Jeffrey D. Simon, *The Terrorist Trap: America’s Experience with Terrorism* (Indianapolis, IN: Indiana University Press, 1994), 385.

<sup>230</sup> Council, “The European Union Counter-Terrorism Strategy,” 14469/4/05 REV 4, 3.

<sup>231</sup> “Polish Expert Praises EU’s Counterterrorism, Common Security Policy Efforts,” *BBC Worldwide Monitoring*, February 10, 2006, from *Gazeta Wyborcza* website, Warsaw, in Polish, February 8, 2006, <http://www.nexis.com/>. (accessed July 25, 2006).

<sup>232</sup> Omand, “Countering International Terrorism,” 113.

<sup>233</sup> Delpuch, *International Terrorism and Europe*, 16.

<sup>234</sup> Omand, “Countering International Terrorism,” 111.

1. *To prevent people from turning to terrorism.* This pillar draws from several of the previous versions of EU objectives to combat terrorism. It incorporates the March 2004 objectives “to deepen the international consensus and enhance efforts to combat terrorism,” “to address factors which contribute to support for, and recruitment into terrorism,” and “to target actions under EU external relations towards priority Third Countries where counterterrorist capability or commitment to combating terrorism needs to be enhanced.”<sup>235</sup> Specifically, the Strategy names promoting good governance, dissuading radicalization, and developing multicultural dialogue.<sup>236</sup> This complements the ESS objective on building security. The EU believes by tackling the root causes, radicalization and recruitment into terrorism can be fended off.<sup>237</sup> Al Qaeda is specifically mentioned, since “this type of terrorism currently represents the main threat to the Union as a whole.”<sup>238</sup> According to the Strategy, this is mainly a challenge for (1) public diplomacy to limit the rhetoric that there is a “clash of civilizations” and to help change the perception of national and European policies; (2) community, travel, and internet monitoring to prevent incitement and access to terrorist training; and (3) promoting “good governance, human rights, and democracy as well as education and economic prosperity” both within and outside the EU.<sup>239</sup> This pillar also reflects on European challenges to successfully integrate the immigrant minority communities. Although it is acknowledged that people turn to terrorism all over the world, and thus there is need for global cooperation and assistance, the majority of this effort is geared towards prevention within the EU.<sup>240</sup>

2. *To protect citizens and infrastructure.* This pillar is geared towards reducing vulnerability of key targets, including physical and electronic infrastructure, transport and soft targets (people) alike, as well as securing borders and reducing the impact of an

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<sup>235</sup> Council, “Declaration on Combating Terrorism,” March 24, 2004, 9.

<sup>236</sup> Council, “The European Union Counter-Terrorism Strategy,” 14469/4/05 REV 4, 9.

<sup>237</sup> *Ibid.*, 3 and 7.

<sup>238</sup> This is a more severe version of the threat perception than was in the introductory mention of terrorism where it was merely a “serious” threat. Here it mirrors more closely the priority of terrorism as laid out in the ESS. *Ibid.*, 6-7; and Council, “A Secure Europe,” 3.

<sup>239</sup> Council, “The European Union Counter-Terrorism Strategy,” 14469/4/05 REV 4, 7-9.

<sup>240</sup> *Ibid.*, 9.

attack.<sup>241</sup> It solidifies previous objectives for “strengthening air security,”<sup>242</sup> and “to protect the security of international transport and ensure effective systems of border control.”<sup>243</sup> It moves beyond these to include the whole of critical infrastructure protection.<sup>244</sup> This pillar is perhaps the most quantifiable of all EU pillars in actual implementation because physical security measures engage tangible targets, such as borders and transport systems. However, these systems are also very large and complex and cannot be completely locked down or secured. Coordinating efforts to protect these systems also become reliant upon the imprecise art of intelligence. Real-time intelligence, and sharing of that information, is necessary to complement physical security measures. Collecting and disseminating actionable intelligence can become challenging and difficult to implement, especially in democratic societies where civil liberties are paramount.<sup>245</sup>

3. *To disrupt terrorist activity and pursue terrorists across borders.* This pillar incorporates multiple previous objectives: “enhancing police and judicial cooperation,” “developing international legal instruments,” “putting an end to the funding of terrorism”;<sup>246</sup> “to maximize the capacity within EU bodies and Member States to detect, investigate, and prosecute terrorists and to prevent terrorism attacks,” “to deepen the international consensus and enhance international efforts to combat terrorism,” and “to reduce the access of terrorists to financial and economic resources.”<sup>247</sup> Since terrorists do not operate within national constraints, actions to disrupt and pursue terrorists require coordination throughout the Union.<sup>248</sup> This pillar lists actual objectives: “to impede terrorists’ planning, disrupt their networks and the activities of recruiters to terrorism, cut off terrorists’ funding and access to attack materials, and bring them to justice, while

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<sup>241</sup> Council, “The European Union Counter-Terrorism Strategy,” 14469/4/05 REV 4, 3 and 10.

<sup>242</sup> Council, “Conclusions and Plan of Action,” SN 140/01, 3.

<sup>243</sup> Council, “Declaration on Combating Terrorism,” March 24, 2004, 9.

<sup>244</sup> Council, “The European Union Counter-Terrorism Strategy,” 14469/4/05 REV 4, 11.

<sup>245</sup> Philip B. Heymann, *Terrorism, Freedom, and Security: Winning without War* (Cambridge, MA: MIT Press, 2003), 160.

<sup>246</sup> Council, “Conclusions and Plan of Action,” SN 140/01, 1-2.

<sup>247</sup> Council, “Declaration on Combating Terrorism,” March 24, 2004, 9.

<sup>248</sup> Council, “The European Union Counter-Terrorism Strategy,” 14469/4/05 REV 4, 3 and 12.

continuing to respect human rights and international law.”<sup>249</sup> These objectives do not relay any new direction for EU action. This pillar does, however, emphasize the collective nature of these efforts—“Member States will also focus on the security of the Union as a whole.”<sup>250</sup> This requirement highlights the shared responsibility of all Member States for the collective security of the Union—a kind of peer pressure to implement national policies and actions for the good of all.

This pillar also recognizes that a threat to Europe can come from outside the EU. Thus, it emphasizes not only the EU role, but also the “global dimension,” for which it references international law through UN antiterrorism conventions and assistance to priority nations to make the fight more globally inclusive and complete.<sup>251</sup> In this way, the Strategy shifts to a more international concept of a “secure world” because of the inference to the EU as more of a global actor.<sup>252</sup>

4. *To manage and minimize the consequences of a terrorist attack.* This pillar also recalls a previously enacted objective from March 2004, when the EU agreed in the Solidarity Clause to assist one another in the event of an attack and “to enhance the capability of the European Union and of Member States to deal with the consequences of a terrorist attack.”<sup>253</sup> How the EU and its Member States respond to an attack is fundamental, since, as the Strategy admits, “we cannot reduce the risk of terrorist attacks to zero” and “attacks can have effects across EU borders.”<sup>254</sup> The EU’s shared database for resources and assets will facilitate not only European mutual assistance, but will also be useful to assist other priority third countries and international organizations, including the UN, in consequence management. These resources serve as the back-up plan if the Member State’s response mechanisms prove insufficient. This also reinforces the EU’s role as a facilitator and not a principal agent.

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<sup>249</sup> As in the first pillar regarding the prevention of radicalization, the EU had already adopted a “comprehensive strategy for combating terrorist financing” prior to an overarching Counter-Terrorism Strategy. *Ibid.*, 14.

<sup>250</sup> *Ibid.*, 12.

<sup>251</sup> *Ibid.*, 10-11.

<sup>252</sup> Council, “A Secure Europe,” 1.

<sup>253</sup> Council, “Declaration on Combating Terrorism,” March 24, 2004, 2 and 9.

<sup>254</sup> Council, “The European Union Counter-Terrorism Strategy,” 14469/4/05 REV 4, 2 and 15.

## E. MEMBER STATE RESPONSIBILITY

As a Union and not a sovereign state, the EU Strategy notes that the Member States are primarily responsible for meeting the challenges addressed in each pillar.<sup>255</sup> This responsibility has been reiterated time and again by EU officials and especially by the Counterterrorism Coordinator. However, the EU also asserts its voice in these four pillars (and Member State action) by highlighting the crosscutting roles through which the EU as a Union can add value to the actions taken by the Member States. These crosscutting roles are: “strengthening national capabilities, facilitating European cooperation, developing collective capability, and promoting international partnership.”<sup>256</sup> Most of these involve sharing knowledge to cross-breed best practices and draw the Member States closer together through use of EU bodies, such as Europol, Eurojust,<sup>257</sup> Frontex,<sup>258</sup> the Monitoring and Information Centre,<sup>259</sup> and the Joint Situation Centre.<sup>260</sup> This increasing unity may also (perhaps informally) create more uniformity across national practices, making future EU action and policy more cohesive and efficient.<sup>261</sup> Finally, the EU is well-formed to interact with other international organizations such as the UN, and also to work through the UN and with third countries in a coordinated manner to deepen international consensus. The EU may work with larger third countries, such as the United States, since, as a corporate actor, it can negotiate

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<sup>255</sup> Council, “The European Union Counter-Terrorism Strategy,” 14469/4/05 REV 4, 7-12.

<sup>256</sup> *Ibid.*, 4.

<sup>257</sup> Eurojust is an official EU organization facilitating Member State cooperation in investigations and prosecutions, including extradition and EU arrest warrants. *Glossary*, s.v. “Eurojust,” European Union website, [http://europa.eu/scadplus/glossary/eurojust\\_en.htm](http://europa.eu/scadplus/glossary/eurojust_en.htm) (accessed November 30, 2006).

<sup>258</sup> FRONTEX is an official EU agency coordinating the management of external borders. “European Agency for the Management of Operational Cooperation at the External Borders (FRONTEX),” European Union website, [http://europa.eu/agencies/community\\_agencies/frontex/index\\_en.htm](http://europa.eu/agencies/community_agencies/frontex/index_en.htm) (accessed December 2, 2006).

<sup>259</sup> The Monitoring and Information Centre is an official EU organization providing a 24-hour control center for civil protection support and information. “The Monitoring and Information Centre (MIC),” European Union website, <http://ec.europa.eu/environment/civil/prote/mic.htm> (accessed December 2, 2006).

<sup>260</sup> The Joint Situation Centre (SITCEN) is the official EU organization for intelligence analysis and crisis monitoring. Thomas Christiansen and Sophie Vanhoonacker, “At a Critical Juncture? Present and Future Challenges Facing the Council Secretariat,” paper presented at the Connex Thematic Conference ‘Toward a European Administrative Space,’ London, United Kingdom, November 16-18, 2006, 9.

<sup>261</sup> Gregory, “The EU’s Response to 9/11,” 106.

more as an equal partner. The EU may also work with smaller third countries to which it may provide substantial aid and assistance. It will, however, take more cohesion to be fully credible on the global stage as a fully capable Union.<sup>262</sup>

The one aspect of responsibility that is, perhaps, implied but not stated is that of measuring effectiveness. Through all the declarations and action plans to combat terrorism, many references are made to monitoring progress and tracking implementation by Member States. However, no mention is made of measuring effectiveness. If a strategy seeks to address a threat, then the strategy should be effective to achieve the intended result. The fact that the goal of this Strategy is “to combat terrorism,” may be naively interpreted to mean that the EU wishes only to engage in the fight, and therefore, merely agreeing to and implementing measures would suffice. However, this is assuredly not the desired effect. Likewise, the concept of responsibility seems to make the assumption that measures against terrorism are automatically effective in impeding or reducing terrorism. After five years, at least some counterterrorism activities could be measurable to some extent. Yet, this obvious necessity is not included in the EU Strategy, indeed in the entirety of the EU approach to fighting terrorism.

On the whole, the EU verbiage is deliberate but also nonspecific. The EU is a large organization with an extensive area of concern and limited power at the supranational level to act.<sup>263</sup> This limited power and acknowledgement that terrorism and its risks cannot be completely eliminated<sup>264</sup> indicates an unfavorable starting position for the EU. The Strategy expresses the desire to “constitute a comprehensive and proportionate response to the international terrorist threat,”<sup>265</sup> but relies upon its Member States to enact this response. The EU is mainly in an overall coordinating role in framing collective actions and its focus is with its own affairs. Overall, the EU Strategy does not make elaborate promises that the EU itself cannot fulfill; it remains rather modest, that is realistic in this respect.

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<sup>262</sup> Gregory, “The EU’s Response to 9/11,” 107.

<sup>263</sup> Den Boer, *9/11 and the Europeanisation*, 22.

<sup>264</sup> Council, “The European Union Counter-Terrorism Strategy,” 14469/4/05 REV 4, 15.

<sup>265</sup> *Ibid.*, 10-11.

## F. KEY PRIORITIES

The EU Strategy does not list goals and objectives; instead it lists “key priorities” after the discussion of each pillar,<sup>266</sup> twenty-six in total. These are actions already taken and ongoing, but nothing new. This is the same issue that the Council faced in creating other Common Strategies on Russia (June 1999), Ukraine (December 1999), and the Mediterranean (June 2000), following the Treaty of Amsterdam in 1999, whereby the statements consisted of “broad objectives, merely restating what the EU is already doing.”<sup>267</sup> The EU began laying out actions for fighting terrorism after the September 11 attacks and implemented semiannual action plans and status reviews after the March 11, 2004, attacks in Madrid. It also had recently adopted strategies to address individual aspects of fighting terrorism, such as the strategies for countering radicalization and recruitment and for terrorist financing, mentioned above. The first draft of the Strategy did not include these key priorities, but instead called for a more concise action plan as an addendum to the Strategy.<sup>268</sup> This was quickly reversed since there was “substantial support for maintaining the current longer and comprehensive Action Plan.” Adding key priorities into the Strategy thus provided a way to impart greater importance upon specific counterterrorism actions.

While these key priorities do describe what needs to be done in response to various aspects of fighting terrorism, they are not more than as a snapshot in time. This approach could severely limit the ability of the Strategy to function as a document of principle, because it could be out of date or partially irrelevant in the coming months or years. The “key priorities” listed for each pillar do not convey any strategic action that was not already in progress, nor are they listed in a manner that identifies them as key functional areas or effects to be gained. They are listed more by their individual program

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<sup>266</sup> Council, “The European Union Counter-Terrorism Strategy,” 14469/4/05 REV 4, 9, 11, 14, and 16.

<sup>267</sup> “The Amsterdam Treaty: A Comprehensive Guide,” European Union website, <http://europa.eu/scadplus/leg/en/lvb/a19000.htm> (accessed December 2, 2006); “Common Foreign and Security Policy,” Delegation of the European Commission to Japan website, [http://jpn.cec.eu.int/union/showpage\\_en\\_union.cfsp.php](http://jpn.cec.eu.int/union/showpage_en_union.cfsp.php) (accessed December 2, 2006); and Smith, “EU External Relations,” 237.

<sup>268</sup> Council, “The European Union Counter-Terrorism Strategy,” 14469/05, 2.

name or the action taken. This treatment does draw some attention to these particular actions in that they are listed in the actual Strategy apart from the masses listed only in the action plan, but the emphasis is marginal.

#### **G. DEMOCRATIC ACCOUNTABILITY**

The document includes a closing section on democratic accountability. This section holds that the Strategy, like the action plans, will be reviewed every six months “to consider progress together and promote transparency and balance in the EU’s approach.”<sup>269</sup> The inclusion of the democratic accountability section underwent a transformation between the different revisions of the Strategy document. In the initial proposal, it was specifically laid out that various EU institutions would provide oversight for enactment of the Strategy and counterterrorism activities.<sup>270</sup> However, towards the latter revisions, the specificity was reduced and broad overarching statements were added to describe how oversight was to be conducted, to include a High Level Political Dialogue on Counter-Terrorism, which allows both the European Commission and the European Parliament to provide input and feedback on counterterrorism efforts.<sup>271</sup> This inclusive dialogue is reflective of the significant coordination through which EU counterterrorism measures have undergone since the 2004 Madrid attacks.<sup>272</sup>

The EU is an evolving multilateral institution with little actual authority to force its Member States to enact its will. Nonetheless, since “all aspects of anti-terrorism policy and operations should be under the overall control of the civil authorities and, hence, democratically accountable,”<sup>273</sup> this may be the reason why this section was included. This accountability can also bring to light human rights problem areas.<sup>274</sup> While the oversight function neither limits nor enhances EU counterterrorism efforts, it does mirror accountability in national governments. The European Council is adopting a system of checks and balances to monitor its collective performance in enacting the Strategy. This would heighten visibility and transparency among the Member States and the European

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<sup>269</sup> Council, “The European Union Counter-Terrorism Strategy,” 14469/4/05 REV 4, 17.

<sup>270</sup> Council, “Towards a Counter-Terrorism Strategy,” 13613/05, 6.

<sup>271</sup> Council, “The European Union Counter-Terrorism Strategy,” 14469/4/05 REV 4, 17.

<sup>272</sup> Archick, “Europe and Counterterrorism,” Appendix B.

<sup>273</sup> Wilkinson, *International Terrorism*, 39.

<sup>274</sup> Gregory, “The EU’s Response to 9/11,” 108.

population, to be aware of the strengths and weaknesses of its efforts, and thus the security of Europe. The democratic accountability function in this Strategy both serves to strengthen public confidence by adopting oversight functions at the EU level and facilitates more visibility to ensure that the EU is accountable for its agreed actions.

## **H. SUMMARY**

The EU Strategy is both specific and generic. It specifies actions taken and in progress and features some higher priorities from among the numerous items from the action plans. It also highlights the EU's commitment to protecting human rights in the fight against terrorism. For the first time, it outlines a democratic oversight mechanism for accountability, serving to protect the democratic values inherent in the Union. Within the limited powers of the EU, in this regard, the Strategy is also specific about the responsibility of implementation falling to the Member States. In contrast, the Strategy comes across as generic in some critical aspects. First and foremost, the goal is not to eliminate, avoid, or even reduce terrorism, it is merely to fight it, with perhaps the assumption that the true desired end state will come to fruition. The Strategy is also generic in the definition and assessment of the threat to which the EU is responding. The goal and the threat are elements that must be most concrete in order to apply appropriate measures to affect the desired end state; these are both lacking in this document. This Strategy is a lofty, if measured, endeavor for an institution with still limited powers in security and defense.

## IV. STRATEGIC POTENTIAL

### A. INTRODUCTION

Terrorism has been around for centuries and will continue into the foreseeable future. With the vast accumulation of experience, there is a body of knowledge within the Western world that has taken account of the most effective approaches to fighting terrorism. Experts and scholars continue to relay these lessons. However, national preferences will always trump lessons learned, if it is perceived that gains can be realized in doing so. The EU, with its vast experience with terrorism among its Member States, has attempted to enact a Counter-Terrorism Strategy that is both purposeful and useful. In seeking to adopt a strategy to deal with the foremost threat facing European security, it encounters some limitations based in its own structure. The EU Strategy will now be evaluated according to general principles advocated by experts and scholars. The analysis of the Strategy will focus on: goal, threat, intelligence, decision-making and control mechanisms, and execution methods. The analysis also considers the overriding principles of safeguarding democratic values, ensuring public support and political will, and multilateral support and participation. The consideration and inclusion of all these criteria will allow an evaluation of the likely prospects for the EU Counter-Terrorism Strategy to counter terrorism.

### B. THEORY—STRATEGY, GRAND STRATEGY, AND POLICY

The concept of strategy has different levels from which it can affect change and be gauged. According to Martha Crenshaw, the overall “policy” is the political goal to be attained; it is that from which the strategies flow. Strategies in general are lower level approaches to achieve an overall policy goal. Policy is affected by “grand strategies,” which are “complex, multifaceted, and directed toward a distant time horizon. It establishes a framework that coordinates the objectives of individual strategies.”<sup>275</sup> Grand strategy involves all resources that can be brought to bear to affect the desired outcome. “[A grand strategy] determines what the State’s vital security interests are,

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<sup>275</sup> Martha Crenshaw, “Terrorism, Strategies, and Grand Strategies,” in *Attacking Terrorism: Elements of a Grand Strategy*, ed. Audrey Kurth Cronin and James M. Ludes (Washington, DC: Georgetown University Press, 2004), 76.

identifies critical threats to them, and specifies the means of dealing with them.”<sup>276</sup> Grand strategies are further divided into specific strategies that deal with individual aspects of the grand strategy. “A strategy requires a precisely specified political objective,” and outlines the *ways* (actions) and *means* (resources) that will sufficiently produce the desired *ends* (goal).<sup>277</sup> Although traditionally considered with regard to military operations, any strategy should provide this level of specificity, applicability, and feasibility.

The EU structure reflects awareness of these levels of policy and strategy, although not always in full measure. In the case of the EU, policy can be equated to the notion of the CFSP that endeavors to attain the “area of freedom, security, and justice,” as laid out in the TEU.<sup>278</sup> The ESS could suffice for the concept of a grand strategy, having laid out the top five threats to European security and discussed overall objectives to address these threats.<sup>279</sup> The EU Counter-Terrorism Strategy would thus be assumed to fill in as a specific strategy under the ESS grand strategy. These assignments fit quite nicely in the grand scheme. However, EU endeavors do not completely fill in the full measure of each level. The EU Counter-Terrorism Strategy’s “specified political objective,” the desired *ends*—“to combat terrorism”<sup>280</sup>—is not indicative of a measurable end state. The approach does outline the *ways* to combat terrorism, or affect a reduction in terrorism, via the common tools that it seeks to develop and use in its fight. However, the *means* to affect the implementation of these tools are not within the power of the EU to directly control, and implementation by the Member States is inconsistent.

“Common strategies,” says Karen E. Smith, “must add value to what the EU is doing already, and should clearly set priorities.”<sup>281</sup> The value added from the Counter-Terrorism Strategy could lie in the strategic commitment to focus efforts, or in the mere publishing of a document to which everyone can understand and reference for future

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<sup>276</sup> Crenshaw, “Terrorism, Strategies, and Grand Strategies,” 75.

<sup>277</sup> *Ibid.*

<sup>278</sup> “The Consolidated Version of the Treaty on European Union,” C325, 11.

<sup>279</sup> Council, “A Secure Europe,” 2-10.

<sup>280</sup> Council, “The European Union Counter-Terrorism Strategy,” 14469/4/05 REV 4, 2.

<sup>281</sup> Smith, “EU External Relations,” 237.

efforts. However, as stated earlier, the Strategy does not necessarily outline anything new that was not already in progress when approved. Even the Strategy's twenty-six "key priorities" reflect short-term activities, but no long-term objectives to be attained. The value must lie in the establishment of another baseline document, further cementing EU integration in matters of security and its role in combating terrorism. However, the "cemented" EU role is merely as facilitator. Implementation problems continue due to the influence of, and variation in, the preferences of the Member States, forcing only individual national priorities due to resources limitations.<sup>282</sup>

Only five years after 9/11, and after two major attacks on EU soil, the EU Counter-Terrorism Strategy is the first attempt to solidify a collective approach to terrorism. Despite a concerted effort to get all the EU members on the same page, the expectations can be only so high for such a complex entity. The attempt to entrench collective counterterrorism concepts in a strategy document falls short of a complete strategy. The stated goal does not reflect the actual desired measurable *ends* to be achieved. For the long haul, it remains to be seen if the process continues and builds a robust and useful toolkit of *ways* to engage the threat. Moreover, implementation will continue to be subject to availability and diligent application of Member State *means* or resources to support full use of the EU tools. Philip Heymann observes, "Experience to date reveals how far short of best practice the international community is in taking a strategic approach to countering international terrorism."<sup>283</sup>

### **C. UPHOLDING ESPOUSED PRINCIPLES**

Any effort taken by an organized society, be it a state or an institution, needs to adhere to its own espoused principles, so that the society and values themselves are not destroyed in the very attempt to protect them from terrorists.<sup>284</sup> The EU Strategy should thus be consistent with the EU's fundamental democratic principles and not undermine them. According to the third pillar of the TEU (JHA) and according to the concept of "Liberal Democratic Acceptability," any EU Strategy should be limited and well-defined—"not beyond what is demanded by the exigencies of the situation and directed

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<sup>282</sup> Barry R. Posen, "The Struggle against Terrorism: Grand Strategy, Strategy, and Tactics," *International Security* 26, no. 3 (Winter 01/02), 43.

<sup>283</sup> Omand, "Countering International Terrorism," 108.

<sup>284</sup> Heymann, *Terrorism, Freedom, and Security*, 159.

only against the terrorists themselves.”<sup>285</sup> The EU seeks to do this by defining exactly what offenses are considered terrorist acts and by outlining what penalties shall be enacted for such acts across all EU Member States.<sup>286</sup> The hard part is in unearthing these acts before they cause death and destruction, without going beyond what is needed to preclude the actual attack. Impinging on civil liberties has been a constant concern for Europeans as they move deeper and deeper into counterterrorism cooperation. It is hard to determine limits in fighting terrorism, and many European nations have diverging views of where the line should be drawn.<sup>287</sup> When a major attack is successful, the immediate response is to do more than before, in the hope that the next attempt will be unsuccessful. The EU seems to have reached a level of action that includes a full complement of measures. Implementation is still not complete, nor will it be for some time. In fact, some measures are not estimated to be enacted until 2008.<sup>288</sup> Since the EU believes that terrorism will always exist,<sup>289</sup> concern over a “strategy that respects law and is concerned for life, liberty, and unity,”<sup>290</sup> will continue to be subject to debate for their conformance to liberal democratic principles.

The concern for human rights protection over counterterrorism measures is ongoing.<sup>291</sup> The fact that the EU has increased measures to fight terrorism after each major attack presumes that its application of counterterrorism measures has been appropriate. Despite the vast experiences many EU countries have with fighting terrorism,<sup>292</sup> their particular circumstances and corresponding approaches have been

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<sup>285</sup> Chalk, *West European Terrorism*, 144.

<sup>286</sup> “Council Common Position,” L344/95, 93-96; and “Council Common Position 2006/380/CFSP of 29 May 2006 updating Common Position 2001/931/CFSP on the application of specific measures to combat terrorism and repealing Common Position 2006/231/CFSP,” *Official Journal of the European Communities*, L144 (May 31, 2006), 25-29.

<sup>287</sup> Den Boer, *9/11 and the Europeanisation*, 1.

<sup>288</sup> Hughes, “The EU’s Jumbled Anti-terror Plan.”

<sup>289</sup> Council, “The European Union Counter-Terrorism Strategy,” 14469/4/05 REV 4, 15.

<sup>290</sup> Philip B. Heymann, *Terrorism and America: A Commonsense Strategy for a Democratic Society* (Cambridge, MA: MIT Press, 1998), 154.

<sup>291</sup> Concerns over compatibility of counterterrorism laws prior to 9/11 and human rights provisions were raised before the current wave of Islamic extremist terrorism came to the fore. Veness, “Terrorism and Counterterrorism,” 413.

<sup>292</sup> Gallis, Summary of “European Counterterrorist Efforts.”

quite distinct.<sup>293</sup> The six countries that had counterterrorism legislation on the books before 9/11<sup>294</sup> have already had to deal with the challenge of balancing security and liberty. EU-wide counterterrorism activities require reconciliation with both norms that have developed through national experiences with terrorism and the lack of any norms in countries that had never had to deal with terrorism or counterterrorism measures. The quick reactions to terrorism, exemplified by the United States and in the EU surges following attacks in Europe, demonstrate why oversight is essential.<sup>295</sup> The “need for constant supervision and oversight”<sup>296</sup> is no different from the national level. The EU has made provisions for this oversight in the Counter-Terrorism Strategy.<sup>297</sup> The exercise of oversight over time should increase transparency, to provide reassurance to the public that democratic values are being upheld or to correct EU missteps as they occur.

#### **D. GOAL**

The goal of a strategy should provide a “precisely specified political objective,”<sup>298</sup> per Martha Crenshaw. Again, the EU goal, “to combat terrorism,” is not measurable and is vaguely worded. The likely preferred outcome is that terrorism is reduced. The EU Strategy does state the goal succinctly; but the goal is obtuse and does not relay what is to be achieved. The ability to measure a desired outcome is also dependent upon the ability to clearly identify the need for strategy. The appropriate and detailed description of a goal to counter a threat requires a similarly detailed description and analysis of the threat. This matter of description shall be the next point of discussion. This vague goal confirms, Omand’s perception that “there is not yet sufficient common international understanding at the European or transatlantic level of what we are really fighting and what strategy we are following.”<sup>299</sup>

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<sup>293</sup> Den Boer, *9/11 and the Europeanisation*, 1.

<sup>294</sup> France, Germany, Italy, Spain, Portugal, and the United Kingdom had antiterrorism laws in place. Archick, “Europe and Counterterrorism,” 2.

<sup>295</sup> *Ibid.*, 2.

<sup>296</sup> Chalk, *West European Terrorism*, 156.

<sup>297</sup> Council, “The European Union Counter-Terrorism Strategy,” 14469/4/05 REV 4, 5, and 17.

<sup>298</sup> Crenshaw, “Terrorism, Strategies, and Grand Strategies,” 75.

<sup>299</sup> Omand, “Countering International Terrorism,” 115.

## E. THREAT

The threat assessment is the backbone of security strategy because it details the causes of the threat and potential impacts. David Veness affirms, “A critical success factor in the development of counterterrorism has been the recognition of the problem and an understanding of its implications.”<sup>300</sup> Furthermore, Philip Heymann adds “that the threat of terrorism cannot be completely eliminated.”<sup>301</sup> The EU recognizes this fact in the Strategy, although it does not state so until discussion of the fourth pillar. This acknowledgement, in keeping with its “light treatment” of the terrorist threat, is not mentioned in the beginning of the Strategy but is buried in the document. Despite recognition that terrorism cannot be eliminated, it is imperative to define the threat. Many European nations are very familiar with terrorism, and some are only now learning, each having its own conception of terrorism and how it threatens that nation. The collective agreement of what constitutes terrorist acts was a solid first step in defining the threat.<sup>302</sup>

The repeated collective statements that terrorism is a threat and that the EU should fight it collectively, also in some way reaffirm the threat and internalize both the collective threat and collective counteraction. Inclusion and prominence of terrorism in the first-ever EU Security Strategy also reinforce its existence and priority. However, this threat is not quantifiable because there is no actual assessment that synthesizes detailed intelligence information into one product, into one EU assessment of the threat. Moreover, “a successful European counterterrorism strategy is one that thinks and plans ahead, addressing the threats likely to be posed by the next generation of terrorists.”<sup>303</sup> Given that there is no threat assessment at all precludes the opportunity to plan for potential future threats, because they have not been postulated. The absence of any real terrorism threat assessment may not impede current EU efforts given the recent terrorist attacks in Europe. These attacks provide a short-term substitution for a threat assessment, offering proof of the terrorist threat. However, as time passes and assuming no new

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<sup>300</sup> Veness, “Terrorism and Counterterrorism,” 412.

<sup>301</sup> Heymann, *Terrorism and America*, 154.

<sup>302</sup> “Council Common Position,” L344/95, 93-96.

<sup>303</sup> Akiva Lorenz, “The European Union’s Response to Terrorism,” *The Institute for Counter-Terrorism*, May 1, 2006, <http://www.ict.org.il/articles/articleDet.cfm?articleid=564> (accessed May 16, 2006), 5.

terrorist attacks, the threat may grow hollow. It remains to be seen how the European populations and how EU Member States' leadership continue down the path to further integration for more effective counterterrorism cooperation with no ongoing impetus to require such extensive actions.

#### **F. CATASTROPHIC THREATS**

The threat of catastrophic terrorism is not a new phenomenon,<sup>304</sup> but is a newly advertised phenomenon. The nexus between terrorism and WMD (chemical, biological, radiological, and nuclear weapons [CBRN]) compose the direst threat to EU societies.<sup>305</sup> Since the early 1990s, “fears of [CBRN] terrorism have been in the minds of government and experts, but have remained unknown to the wider public.”<sup>306</sup> The horrific events of 9/11 have prompted experts to foretell the combination of terrorism for mass casualty effect with chemical and biological weapons.<sup>307</sup> This disastrous possibility necessitates a high priority of intelligence gathering on CBRN.<sup>308</sup> EU efforts on this issue are likely not for public dissemination. However, the minute inclusion of WMD in the Strategy seems oddly out of proportion with the priority received in the ESS and by expert opinions. The EU may deal with this threat through existing nonproliferation measures, and within EU Member States. Again, if such is the case, it is not referenced in the Strategy to provide assurances of “comprehensive and rigorous counter-proliferation measures.”<sup>309</sup>

#### **G. POLITICAL WILL AND PUBLIC SUPPORT**

Political will is crucial to success in fighting terrorism.<sup>310</sup> The EU is still an evolving institution, a unique polity of pooled sovereignty. While agreement on actions to combat terrorism has proven swift following terrorist attacks,<sup>311</sup> actual national

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<sup>304</sup> Ian O. Lesser, “Countering the New Terrorism: Implications for Strategy” in *Countering the New Terrorism*, (Santa Monica: RAND, 1999), 127.

<sup>305</sup> Council, “A Secure Europe,” 3-4.

<sup>306</sup> Delpech, *International Terrorism and Europe*, 25.

<sup>307</sup> *Ibid.*, 25.

<sup>308</sup> Heymann, *Terrorism and America*, 155.

<sup>309</sup> Wilkinson, *International Terrorism*, 48.

<sup>310</sup> Veness, “Terrorism and Counterterrorism,” 413.

<sup>311</sup> Anderson and Apap, *Striking a Balance*, 2.

implementation has been slow.<sup>312</sup> The transposition of EU measures into national legislation takes time.<sup>313</sup> As Charles Kupchan remarks:

Even under the best of circumstances, processes of integration and amalgamation are slow and difficult; after all, the states coming together to form a new polity are being asked to give up what they cherish most—their sovereignty and autonomy.<sup>314</sup>

A good deal of the sovereignty transferred by Member States is subject to public opinion and national priorities. If the public does not see value in counterterrorism efforts or perceives other issues as being of higher priority, national governments will not be inclined to enact EU measures against national public opinion and support.

“Political will is important,” notes Omand, “in both the long and the short term. If it is to be effective, it needs to be sustained.”<sup>315</sup> Providing the public good information is essential to this end.<sup>316</sup> The population needs to believe that counterterrorism actions are “both necessary and effective.”<sup>317</sup> European constituencies tend to believe fighting terrorism is important but not as important as social issues.<sup>318</sup> They, likewise, believe that counterterrorism policy should be made at the EU level, although only about half are satisfied with EU counterterrorism efforts.<sup>319</sup> Despite this preference of EU action against terrorism, national implementation will always lag in priority to more immediate concerns affecting “social” security and quality of life.<sup>320</sup> The reactive nature of the EU

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<sup>312</sup> Bures, “EU Counterterrorism Policy,” 59.

<sup>313</sup> Archick, “Europe and Counterterrorism,” 11.

<sup>314</sup> Charles A. Kupchan, *The End of the American Era: U.S. Foreign Policy and the Geopolitics of the Twenty-first Century* (New York: Random House, 2002), 140.

<sup>315</sup> Veness, “Terrorism and Counterterrorism,” 413.

<sup>316</sup> Omand, “Countering International Terrorism,” 115.

<sup>317</sup> Chalk, *West European Terrorism*, 150.

<sup>318</sup> European Commission, “Eurobarometer,” no. 61 (Spring 2004), 22; no. 62 (Autumn 2004), 23 and 32; no. 63 (Spring 2005), 25 and 31; no. 64 (Autumn 2005), 20 and 99; and no. 65 (Spring 2006), 8.

<sup>319</sup> As surveyed between Fall 2001 and Fall 2005, between 78 and 86 percent believe that counterterrorism decisions should be made jointly at the EU level. However, only 49 to 61 percent see the EU role as positive. European Commission, Eurobarometer no.56 (Autumn 2001), 51; no. 57 (Spring 2002), 66; no. 58 (Autumn 2002), 110; no. 59 (Spring 2003), 95; no. 60 (Autumn 2003), 66 and 70; no. 61 (Spring 2004), 24; no.62 (Autumn 2004), 26 and 34-35; no.63 (Spring 2005), 28; and no. 64 (Autumn 2005), 100-101.

<sup>320</sup> Archick, “Europe and Counterterrorism,” 11.

in responding to terrorist attacks<sup>321</sup> also calls into question any ability for a consistent level of public support. “Surges of actions whose costs often exceed their benefits” are not only questionable in their ability to be effective against terrorism,<sup>322</sup> but also impress only short-term priorities on the general populace. The management of public expectations, highlighted as an objective for the EU Counter-Terrorism Strategy, is important for this purpose.<sup>323</sup> The shifting level of attention terrorism has received in reaction to terrorist attacks cannot be entirely eliminated, but a permanent EU effort, via a published and actively pursued strategy to “keep the public informed,”<sup>324</sup> will perhaps create a more uniform and consistent perception of the EU approach to combating terrorism. “We are still at a relatively unsophisticated stage in our thinking,” says Omand, “of how to present internationally and domestically what will be a long campaign.”<sup>325</sup> However, this message will aspire to create a sustained level of public support for counterterrorism efforts.

Over time, the political will and public support for EU action have increased. “As it has done over the past five decades,” argues Kupchan, “Europe is then likely to muster the will to take its next step forward.”<sup>326</sup> As the EU takes more assured steps in integration, demonstrating its collective political will, so too will EU political power strengthen. But this will not be a quick process—“the legitimation of a supranational realm of politics always lags considerably behind the evolution of supranational institutions, which itself is a laborious and incremental process.”<sup>327</sup> What is most important to build this political will is to show the EU citizens and indeed the rest of the world that CFSP and its constituent strategies are “truly alive and ‘kicking’.”<sup>328</sup> The necessary prerequisite is that Member States demonstrate the political will to follow up

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<sup>321</sup> Lindstrom, “The EU’s Approach,” 117.

<sup>322</sup> Heymann, *Terrorism, Freedom, and Security*, xii.

<sup>323</sup> Heymann, *Terrorism and America*, 158.

<sup>324</sup> Omand, “Countering International Terrorism,” 107.

<sup>325</sup> *Ibid.*, 110.

<sup>326</sup> Kupchan, *The End of the American Era*, 140.

<sup>327</sup> *Ibid.*, 141.

<sup>328</sup> Knud Erik Jørgensen, “Making the CFSP Work,” in *The Institutions of the European Union*, ed. John Peterson and Michael Shackleton (Oxford: Oxford University Press, 2002), 217.

on commitments they signed up to.<sup>329</sup> When the continued activity and support within the organization is unwavering, conviction that EU efforts are sincere will further solidify.

## **H. INTELLIGENCE**

Thorough and sound intelligence is deemed by some as the most important factor in combating terrorism.<sup>330</sup> It is an obvious priority in any counterterrorism strategy.<sup>331</sup> The EU does include actions to share intelligence between Member States and EU agencies. However, this level of cooperation is far below what would be considered thorough. Since EU agencies, such as Europol, depend on intelligence from the Member States, and since “governments often share only ‘sanitized’ intelligence,”<sup>332</sup> the real measure of requisite intelligence is never achieved at the institutional level. As is normally the case in information-sharing, this disparity is due to national protection of intelligence sources and methods.<sup>333</sup> As stated earlier, this is a primary reason why there is no EU threat assessment.<sup>334</sup> The intelligence needed to bring terrorists to justice seems to be evolving, but a counterterrorism strategy should also be led by intelligence<sup>335</sup> to provide substance behind the actions being taken. Currently, this sharing must occur between Member States, since the EU has no individual and consolidated intelligence organization to collect and produce finished intelligence to support the counterterrorism measures taken at the EU level.

## **I. CENTRALIZED CONTROL**

The cohesion provided by an integrated control mechanism in the fight against terrorism is crucial to a strategy’s success.<sup>336</sup> The cohesion is hard to attain on the EU level. As Knud Erik Jørgensen explains:

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<sup>329</sup> Jørgensen, “Making the CFSP Work,” 217.

<sup>330</sup> Heymann, *Terrorism and America*, 156; and Omand, “Countering International Terrorism,” 115.

<sup>331</sup> Veness, “Terrorism and Counterterrorism,” 415.

<sup>332</sup> Lorenz, “The European Union’s Response,” 5.

<sup>333</sup> Archick, “Europe and Counterterrorism,” 11.

<sup>334</sup> Gallis, “European Counterterrorist Efforts,” 110.

<sup>335</sup> Wilkinson, *International Terrorism*, 47.

<sup>336</sup> Veness, “Terrorism and Counterterrorism,” 415.

Paradoxically, the institutional structure of the CSFP is at the same time very centralized and very decentralized. It is centralized in the sense that most policy-making is carried out within the Council, including its various agencies, and decentralized in the sense that Member State governments play a crucial role.<sup>337</sup>

The EU's counterterrorism efforts fall under the auspices of the High Representative for CFSP, and are subject to the same paradox. Within this second pillar, and also in the third pillar for JHA, decision-making takes place within a structure of "intergovernmental bargaining" between Member States to reach consensus agreements.<sup>338</sup> Since the EU Member States "view greater cooperation in the law enforcement and judicial fields as a crucial step on the road to further European Integration,"<sup>339</sup> their commitment to the overall fight against terrorism over the long term might be strengthened.<sup>340</sup> This will also apply to the ESDP which is only seven years old and rapidly expanding.

Initial aspirations for counterterrorism policy were in part limited by insufficient political consensus.<sup>341</sup> Although many high priority and high visibility items have been enacted, others await agreement. The EU Evidence Warrant, a natural complement to the EU Arrest Warrant that has already been implemented and tested,<sup>342</sup> has only recently found consensus.<sup>343</sup> There is no mechanism to push through items, critical or not, with less than unanimous agreement, in a manner corresponding to the first pillar of the

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<sup>337</sup> Jørgensen, "Making the CFSP Work," 217.

<sup>338</sup> Den Boer, *9/11 and the Europeanisation*, 22,

<sup>339</sup> Gallis, "European Counterterrorist Efforts," 110.

<sup>340</sup> *Ibid.*, 10.

<sup>341</sup> Pastore et al., "Is There a European Strategy against Terrorism?," 7-8.

<sup>342</sup> "First EU Arrest Warrant Executed," *BBC News*, January 22, 2004, [http://news.bbc.co.uk/2/hi/uk\\_news/3421755.stm](http://news.bbc.co.uk/2/hi/uk_news/3421755.stm) (accessed November 13, 2006).

<sup>343</sup> The EU Evidence Warrant would allow law enforcement to seek evidence from within other EU Member States. "There was controversy over whether the offence should be one which is criminal in both the state seeking the evidence and the state where the evidence is sought ("dual criminality"). The compromise reached, in line with the European arrest warrant, was that there would be a list of 32 offences for which the "dual criminality" defence could not be invoked." "Brief – EU Evidence Warrant to Go Ahead," *EurActiv.com*, October 27, 2006, <http://www.euractiv.com/en/justice/brief-eu-evidence-warrant-go-ahead/article-135987> (accessed December 2, 2006); and "UK EU Presidency Scorecard," *BBC News*, December 21, 2005, <http://news.bbc.co.uk/2/hi/europe/4533268.stm> (accessed May 19, 2006).

European Communities.<sup>344</sup> In most cases, the second and third pillars both still require unanimity to enact decisions. The terrorist attacks and the surges of counterterrorism actions have required greater cooperation in an attempt to contain the threat. Although “states are increasingly regarded as less able to exercise traditional sovereignty over high security issues such as terrorism and their capacity to manage may decline, their role in international coordination is still pivotal,”<sup>345</sup> as they are still generally able to impart their will within the decision-making process. The degree of centralized control provided by the EU is one of only guidance, with the Member States still holding the authority to impede consensus and action.

## **J. DECENTRALIZED EXECUTION AND COORDINATION**

Strategy must also determine responsible actors and measure progress to determine effectiveness.<sup>346</sup> The EU Strategy decentralizes execution by allocating overall responsibility for implementing EU agreed measures to the Member States. Time and again this delegation is reiterated. However, without effective sanctions, it is by nature imperfect, even if the EU is tracking implementation. The inconsistent execution among Member States creates cracks in EU efforts for a united front against terrorism. The structure of decentralized execution has not assured actual implementation. Furthermore, coordination is ad hoc. Problems with Member States not coordinating with the Counterterrorism Coordinator’s office and the ongoing reliance on bilateral arrangements between Member States signal that coordination is not as sweeping or prevalent as implied by collective agreements.<sup>347</sup> All the EU members follow their own national interests; thus, “the key challenge in counterterrorism lies in coordinating the contribution of people not on the [EU] payroll.”<sup>348</sup> But coordination is crucial at a time when fighting

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<sup>344</sup> In the first pillar, a “qualified majority voting” scheme was adopted to facilitate development of the single European market. This scheme does not require consensus but instead uses a formula of weighted voting rights allocated to the Member States and recognizes rule of the majority of the votes. Voting rights are not assigned by any quantifiable statistics. Thus, QMV does not necessarily correlate to a majority of Member States or a majority of the EU populations. *Euroknow: A Concise Encyclopedia of the European Union*, s.v. “Qualified Majority Voting,” <http://www.euro-know.org/dictionary/q.html> (accessed November 13, 2006).

<sup>345</sup> Den Boer, *9/11 and the Europeanisation*, 19.

<sup>346</sup> Omand, “Countering International Terrorism,” 115.

<sup>347</sup> Mukhopadhyay, “EU Counter-Terrorism Coordinator.”

<sup>348</sup> Veness, “Terrorism and Counterterrorism,” 415.

today's terrorism requires intense international coordination of "hard counter-terrorist measures such as law enforcement and intelligence cooperation [to] contain the threat."<sup>349</sup>

The execution of counterterrorism measures among the Member States and the coordination of efforts have been less than thorough. Neither have these efforts been subject to evaluation at the EU level to determine if their implementation, however limited, has proven effective. Despite the fact that the data might not yet be available, there is no mention of beginning any evaluation of effectiveness thus far. EU action plans track only implementation and progress. The real test of decentralized execution and coordination is not only whether it is done or not, but also if it works. Perhaps, this is a future step for the EU to take; but for now, the measure of any contribution must be tempered with the knowledge that the effectiveness of actions taken has yet to be evaluated.

#### **K. MULTIFUNCTIONAL APPROACH**

The fight against terrorism requires an all-encompassing approach mobilizing resources across the spectrum of action. "To win the struggle against Al Qaeda you need to win the intelligence war and use law enforcement agencies worldwide as well as organize cooperation in the finance sector, civil aviation industry, private sector and between the public and private sectors," Wilkinson argues, and it must "employ the education system, religious and community leaders, and the mass media in a battle of ideas."<sup>350</sup> "The strategy must be multi-pronged," in other words go far beyond a military response.<sup>351</sup> The EU is very well designed to deal with this array of tasks. It has learned the necessity of enacting a multifunctional approach to fighting terrorism. This is seen through the expansion of objectives and actions each time there was a surge in activity. The plan eventually grew to incorporate a full complement of measures, and not just include those that were most obvious or urgent following an attack. This full range of measures provides security "by protecting global networks, promot[ing] economic growth, protect[ing] the constitutional rights of our citizens, [and] promis[ing] credible

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<sup>349</sup> Jonathan Stevenson, "Pragmatic Counter-terrorism," *Survival* 43, no. 4 (Winter 2001-2002), 35.

<sup>350</sup> Wilkinson, *International Terrorism*, 18 and 47.

<sup>351</sup> *Ibid.*

alternatives to the terrorist lie.”<sup>352</sup> The need to include a cross-cultural dialogue to “engage with European Muslims”<sup>353</sup> also speaks to the expanse of actions taken to combat terrorism. The EU has adopted a multifunctional array of counterterrorism measures to combat terrorism.

#### **L. MULTILATERAL APPROACH**

The EU has engaged in a multilateral approach to fight terrorism. As Wilkinson affirms, “The first prerequisite for an effective strategy must be that it is genuinely multinational.”<sup>354</sup> The EU by definition is multinational. Beyond the EU framework, the strategy must engage Muslim nations, too.<sup>355</sup> This is important for the cross-cultural dialogue that the EU and the Member States must engage in to give credence to European efforts to address their poor record of integration. Engaging both within their own communities and with other nations across cultures will at least enable greater understanding, avoid misperception, and prepare the ground for meaningful cooperation. The EU reiterates its intention to coordinate with other international organizations, such as the UN, to partner with other key nations, like the United States, and to assist third countries in fighting terrorism and its causes.<sup>356</sup> These collaborative efforts show that the EU truly perceives this as a comprehensive multilateral cooperative effort. Collaboration with the international community will facilitate another “essential underpinning—effective international liaison and agreement,”<sup>357</sup> to enact like-minded initiatives to combat terrorism. The multilateral approach of the EU is promising, but with the EU lagging itself in implementation, expectations for international efforts must remain reserved.

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<sup>352</sup> James Jay Carafano, “The Death of Neutrality: U.S. and European Convergence in Fighting the War on Terrorism,” Heritage Lecture 956, paper presented at the 1<sup>st</sup> Iberian Conference on Homeland Security, Lisbon, Portugal, May 2, 2006, 4.

<sup>353</sup> Peter R. Neumann, “Europe’s Jihadist Dilemma,” *Survival* 48, no. 2 (Summer 2006), 79-81.

<sup>354</sup> Wilkinson, *International Terrorism*, 47.

<sup>355</sup> *Ibid.*, 47.

<sup>356</sup> Council, “The European Union Counter-Terrorism Strategy,” 14469/4/05 REV 4, 7.

<sup>357</sup> Omand, “Countering International Terrorism,” 115.

## **M. SUMMARY**

The cumulative lessons learned from past efforts to counter terrorism create a base of comparison for current EU efforts. This analysis shows how some aspects of EU counterterrorism follow recommended best practices and where it falls short. The Strategy contains both a direct statement for public consumption and to focus Member States, and provides the tools to take coordinated action. It also seeks to reinforce the democratic principles espoused by the EU. This Strategy benefits from the ongoing EU integration efforts and from a proven imminent threat to garner the political will to take collective action. The EU also benefits from its structure of decision-making in the field of counterterrorism, whereby all decisions are taken centrally by the EU Council. The multiple surges of EU reaction to terrorist attacks have also created a full complement of counterterrorism functions that are executed not by the EU, but by the members. Finally, the EU both benefits from and furthers its multilateral approach by expanding its counterterrorism efforts to allow international cooperation. These embedded elements of the EU effort contribute to the strategic potential of this Strategy.

Yet, the EU Strategy also falls short in a number of counterterrorism best practices. The Strategy also has several missing elements which impedes success in fighting terrorism. The EU's stated goal and assessment of threat are both severely lacking in the EU document, as is any discussion of the worst threat imaginable: that of terrorism using WMD. Furthermore, the EU has no consolidated intelligence source to address these and other intelligence needs. The EU's power to affect many of the actions it approves is also severely lacking. Instead, reliance on Member States to implement actions, and in such a way as to protect civil liberties, often leaves gaps in combating terrorism. The missing pieces from the EU Strategy present compelling arguments questioning the EU's effectiveness in fighting terrorism.

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## V. CONCLUSION

### A. INTRODUCTION

The release of the EU's first published strategy to combat terrorism garnered no significant public analysis addressing the potential of this Strategy. Fighting terrorism is a key component of European security, as is the deepening of EU integration for the continued development of the European "area of freedom, security, and justice."<sup>358</sup> The combined impact of EU actions taken after the terrorist attacks in 2001, 2004, and 2005, contributed to the fight against terrorism and increased the range and depth of EU integration within the second (security) and third (justice and law enforcement) pillars. This thesis has reviewed the formation of these measures through the surges of activity in response to terrorist attacks. It has further identified the problems that have arisen. These gaps weaken the EU's collective front against terrorism. Recognizing the EU learning process, through previous EU efforts, provides the origins of the Strategy as well as forecasts potential problems in fighting terrorism. In creating an EU Strategy, the main idea was to create a long-term plan for EU counterterrorism efforts and to convey this consolidated approach to the European population.<sup>359</sup> The Strategy further solidifies EU integration in the field of counterterrorism, but when measured against counterterrorism lessons learned proves less persuasive in its ability to be effective as a strategy.

### B. ORIGINS OF THE STRATEGY

Preceding EU counterterrorism actions forged the Strategy document. The TEU enabled the pursuit of a full range of counterterrorism action;<sup>360</sup> and the ESS built the foundation by providing the first "strategy" document addressing the security threats to Europe, terrorism and WMD first among them.<sup>361</sup> The EU Council asked that primary follow-up efforts from the ESS should include fighting terrorism.<sup>362</sup> The creation of EU positions to specifically shepherd security and counterterrorism efforts, via the High Representative for the CFSP and the Counterterrorism Coordinator, also emphasized the

<sup>358</sup> "The Consolidated Version of the Treaty on European Union," C325, 11.

<sup>359</sup> Council, "Towards a Counter-Terrorism Strategy," 13613/05, 2.

<sup>360</sup> Chalk, *West European Terrorism*, 143.

<sup>361</sup> Biscop, *The European Security Strategy*, viii; and Council, "A Secure Europe," 1-4.

<sup>362</sup> Council, "Brussels European Council," 5381/04, 22.

importance of these areas.<sup>363</sup> The coincidence of the UK attacks and the UK Presidency of the EU in 2005 allowed considerable British influence on the structure and nature of the counterterrorism pillars.<sup>364</sup> Given the extensive British experience fighting terrorism and the unique multicultural challenges within its own borders,<sup>365</sup> this was perhaps not a bad lead to follow. It was, of course, tempered by the collective will of the Council, but still the main overarching ideas reappear in the four pillars. The ongoing public debate over the balance between counterterrorism efforts and civil liberties was also reflected in the Strategy, with the priority given to human rights protection.<sup>366</sup> Finally, the action plans provided an existing pool of measures, from which to draw the “key priorities” for the EU’s long-term plan.<sup>367</sup> Every element of the Strategy can be directly traced to a point of origin within the EU institution or its preceding counterterrorism actions.

### C. PROBLEM AREAS

In working towards increased EU integration and more expansive counterterrorism efforts, the EU has encountered a number of challenges. The most important hurdle is the delay in reaching consensus on more controversial counterterrorism actions that may still need to be added to the EU’s approach, such as the EU Evidence Warrant which would align national standards of evidence across the Union.<sup>368</sup> However, the most frequent challenge thus far has been the uneven and slow implementation of agreed EU measures.<sup>369</sup> This challenge stems from the inability of the EU to mandate implementation in the timing and manner most useful to the EU. Delays have occurred because of national preferences, priorities, and bureaucracies. Implementation has also been affected by public opinion reflecting that social issues are

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<sup>363</sup> “Fight against Terrorism”; Archick, “Europe and Counterterrorism,” 11; and “Homepage of Javier Solana.”

<sup>364</sup> Omand, “Countering International Terrorism,” 113.

<sup>365</sup> Delpech, *International Terrorism and Europe*, 16.

<sup>366</sup> Veness, “Terrorism and Counterterrorism,” 414; Comras, “Proposed New EU Anti-Terrorism Strategy”; and Gallis, “European Counterterrorist Efforts,” 1.

<sup>367</sup> Council, “The European Union Counter-Terrorism Strategy,” 14469/4/05 REV 4, 9, 11, 14, and 16.

<sup>368</sup> “UK EU Presidency Scorecard.”

<sup>369</sup> Lindstrom and Schmitt, *Facing Terrorism*, 2.

of higher priority for national attention and resources.<sup>370</sup> All these issues have made the fight against terrorism less thorough across the Union. These challenges are further exacerbated by the formidable task of tracking the extensive list of actions, with limited coordination among the Member States and the small staff afforded the Counterterrorism Coordinator.<sup>371</sup> Most of the problems in the EU's counterterrorism effort stem from sources that the EU in its current form cannot remedy. These problems will carry over into the new Strategy, limiting its efficiency and effectiveness.

#### **D. STRATEGIC PROSPECTS**

The EU endeavors to be an effective means towards closer European integration benefiting both its member nations and its citizens. The choice to create strategies to focus EU efforts towards these ends shows a serious intent to move forward. The role of the EU remains nonetheless limited by the organizational constraints that protect national prerogatives in the areas of security and law enforcement. The role of the EU as merely facilitator to these ends precludes its ability to enact any strategy in the traditional sense. The EU intent in using the term "strategy" seems to be more geared towards laying down the concepts from which the Member States will act. In this way, the EU provides tools and guidelines; but in the end, the document does not fit the traditional notion of a strategy.

##### **1. Evidence of Strategic Potential**

As analyzed, the EU Strategy holds potential to positively affect the fight against terrorism. The document relays its intent and backs up that intent with EU-wide action. The overarching strategic commitment serves as a clear, concise message for public understanding of the EU effort. This commitment also serves as a reminder to Member States of the shared commitment to fight terrorism and in such a way as to preserve the democratic principles they hold dear. The prominence of human rights protection serves to quell concerns over counterterrorism measures toppling civil liberties. The "key priorities"<sup>372</sup> set apart from the multitudes of items in the action plans feature these items

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<sup>370</sup> Delpech, *International Terrorism and Europe*, 7; European Commission, "Eurobarometer," no. 59 (Spring 2003), 7; no. 60 (Autumn 2003), 9; no. 61 (Spring 2004), 22; no. 62 (Autumn 2004), 23; no. 63 (Spring 2005), 25; no. 64 (Autumn 2005), 20; no. 65 (Spring 2006), 8; and Posen, "The Struggle against Terrorism," 43.

<sup>371</sup> Mukhopadhyay, "EU Counter-Terrorism Coordinator."

as critical to the Strategy's execution. Moreover, the decision to publish this commitment in a document called a "strategy" calls attention to its overall perceived importance. The contribution of the document to provide a focus for EU counterterrorism efforts is significant. At the very least, the Strategy provides the tools and the overarching framework to fight terrorism according to liberal democratic values.

The collective aspect of the EU Strategy positively affects the degree of integration and coordinated action against terrorism. The EU's "cycle of progressive institutionalization" gives some insight and credence to the declared aspirations to fight terrorism together.<sup>373</sup> Unanimous EU actions against terrorism offer proof of the centralized decision-making mechanism, which make it highly potent as an element of effective counterterrorism strategy.<sup>374</sup> In contrast to EU central decision-making is the decentralized execution through the Member States. Decentralized execution, which includes using multifunctional and multilateral approaches, reinforces the EU's alignment with acknowledged counterterrorism best practices. The broad range of counterterrorism measures taken to build the current EU approach boosts potential for combating terrorism, as does the EU's broad foundation of international partners. The integrated nature of the EU provides for significant collective political will within the existing EU structure and across actions and allies. The EU Strategy and approach to fighting terrorism embodies several of the attributes deemed by experience as necessary to combat terrorism effectively.

## **2. Missing Pieces**

In contrast, the EU Strategy also reveals sincere deficits in fighting terrorism. The intended goal, as stated, is neither precise nor measurable. The threat is not given enough detailed attention to provide a complete picture of what the Strategy is to fight, and furnishes an unusually light treatment of the most serious threat of WMD terrorism. Underpinning this weakness is the lack of a unified intelligence capability within the EU

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<sup>372</sup> Council, "The European Union Counter-Terrorism Strategy," 14469/4/05 REV 4, 9, 11, 14, and 16.

<sup>373</sup> Pastore et al., "Is There a European Strategy against Terrorism?," 5.

<sup>374</sup> Den Boer, *9/11 and the Europeanisation*, 19.

from which an actual threat assessment could be produced and pursued. These weaknesses impair the Strategy's ability to forge a robust campaign to fight terrorism globally.

Other missing pieces that preclude an optimistic perspective of the EU Strategy involve challenges to implementation. "The EU is not a federal state, and lacks the mandate to fight terrorism—it can only coordinate actions."<sup>375</sup> The EU is reliant upon the Member States to supply the resources and to implement actions, and to do so in compliance with the EU's democratic principles. Political will may decline when a Member State is obligated to implement actions that are inconsistent with national experiences, or with more pressing national priorities. National interpretations and implementation timelines create an uneven cluster of counterterrorism measures, uncertain in their actual efficacy. Gustav Lindstrom and Burkard Schmitt explain, "While progress has been made in the fight against terrorism, current policies and tools are not adequately developed to counter the new terrorism."<sup>376</sup> The EU decentralized structure endures numerous problems with implementing EU actions quickly or consistently. The result is an uncertain conglomeration of activities with incidental potential for success.

### **3. Future Prospects**

The EU Counter-Terrorism Strategy has many areas in which it fulfills counterterrorism best practices, and several areas in which it does not. J. Wouters and F. Naert assert, "The EU has for a long time believed that the so-called 'piecemeal' approach in the negotiation and conclusion of antiterrorism conventions is the most successful way to proceed."<sup>377</sup> The TEU provides the necessary means for the Member States to pursue a "truly integrated and coherent anti-terrorist policy."<sup>378</sup> This document "binds the EU to a single long-term counterterrorism strategy."<sup>379</sup> Notwithstanding its shortcomings, this Strategy is another milestone in the deepening of EU integration.

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<sup>375</sup> Lorenz, "The European Union's Response," 4

<sup>376</sup> Lindstrom and Schmitt, *Facing Terrorism*, 4.

<sup>377</sup> J. Wouters and F. Naert, "Shockwaves through International Law after 11 September: Finding the Right Responses to the Challenges of International Terrorism," in *Legal Instruments in the Fight against International Terrorism: A Transatlantic Dialogue*, ed. C. Fijnaut, J. Wouters, and F. Naert (Leiden: Martinus Nijhoff Publishers, 2004), 591.

<sup>378</sup> Chalk, *West European Terrorism*, 143.

<sup>379</sup> Bures, "EU Counterterrorism Policy," 60.

However, with the various missing pieces, the EU must realize the limitations of this document. It simply is not a complete strategy. Its transition into a complete strategy would require changes in the EU institutional structure to enable it to function with top-down authority; this is not the manner in which the ESDP functions. Any far-reaching divergence from intergovernmental decision-making in the second and third pillar is highly unlikely because it would impose on the sovereignty of the Member States. However, even with its limited prospects to positively affect terrorism, the Strategy remains a building block for EU integration.

The highest potential for this Strategy lies in maturation and collective learning of EU efforts. It is a process that has already begun with the evolution of action plans. As more actions are implemented by Member States and integration is deepened ever more, the current gaps in implementation will start to fill in. EU agencies involved in fighting terrorism will continue to establish themselves and their expertise. As these elements mature, they will learn and become more effective.<sup>380</sup> Given no significant shifts in power within the EU structure, the collective learning will become the enhancing feature of the EU approach, making EU action more concerted and coordinated, and potentially leading to increased effectiveness. From the EU perspective, the Strategy is desirable. Despite its limitations, akin to the evaluation of the ESS,<sup>381</sup> it does function well as a strategic concept, providing a general vector and a breadth of counterterrorism measures. With the EU Strategy guiding Member State actions, and Member States implementing them, a new collective body of knowledge and experience will emerge both at the institutional level and between Member States. This collective knowledge will “reflect cumulative experience in the field—a kind of counter-terrorism handbook.”<sup>382</sup> This will constitute the EU Strategy’s utility and effectiveness.

It remains to be seen how the EU Counter-Terrorism Strategy will evolve. The strengths and weaknesses in the document do not imply that it will survive serious challenges or endure for a long period of time. The continued integration of the EU will

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<sup>380</sup> Jeffrey W. Knopf, “The Importance of International Learning,” *Review of International Studies* 29 (2003), 206-7.

<sup>381</sup> Toje, “The 2003 European Union Security Strategy,” 131-32.

<sup>382</sup> Boaz Ganor, *The Counter-Terrorism Puzzle: A Guide for Decision Makers*. (New Brunswick: Transaction Publishers, 2005), 44.

certainly put more meaning behind the wealth of counterterrorism actions. However, the Strategy remains vulnerable to unforeseen events that will trigger new but potentially different directions in the EU's fight against terrorism or against a new or next generation threat. The criteria mentioned here will likely remain the same to determine potential effectiveness of the Strategy or any successor. What will likewise remain the same is the critical determination of what role the EU chooses to play in its evolution as a multinational institution and the approach it collectively takes in addressing future threats.

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