



NATIONAL STRATEGY FORUM REVIEW

MULTILATERAL APPROACHES TO NON-PROLIFERATION OF WMD AND INTERNATIONAL TERRORISM

**THE PROLIFERATION SECURITY
INITIATIVE AND WMD
INTERDICTION ON THE HIGH SEAS**
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**CORPORATE BEHAVIOR AND
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LETTER FROM THE PUBLISHER

For many years the UN has sponsored numerous conferences on disarmament that address issues ranging from the illegal flow of small weapons to a ban on the production of fissile material for military purposes. There has been parallel movement towards strengthening multilateral regimes and treaties affecting nonproliferation of weapons of mass destruction (WMD).

Subsequent to September 11, 2001, events have occurred that add a greater dimension to disarmament discussion and nonproliferation treaties. These events include the US invasion and occupation of Iraq, concerns regarding Iran's nuclear weapons production program, and the announced North Korean nuclear weapons program. The present focus is on the political consequences of the projection of military force used to curb WMD.

The proliferation of WMD and international terrorism is a vexing global problem that dominates US foreign policy. The issue is whether the US will address the problem multilaterally or unilaterally. Two competing assumptions are made: one, that the UN has diminished political importance; and two, that the benefits of multilateral action by the US are greater than unilateral action.

A threshold consideration is how to involve the American public in the discussion of how best to respond to international terrorism and WMD. One approach may be to convene an international conference on the subject, either real or virtual, and provide the American public with an executive summary of the proceedings.

The draft conference Agenda might be:

1. The nature of the threat; vulnerability of

states; WMD and future technology.

2. International terrorism; the actors and their sponsors; funding, communications, and safe havens.
3. Prevention and intelligence gathering; communications, monitoring, and interception.
4. The economic dimension; economic sanctions (incentives and disincentives) on states; terrorism fund raising.
5. Use of military force against states that harbor terrorist organizations; international law relating to use of force (pre-emption and state sovereignty issues); interdiction of WMD components and technology.
6. Coalitions, alliances, and international organizations (UN, NATO, and European Union).

In this issue of the *National Strategy Forum Review*, we examine several agenda items. We hope to provide useful information on other related items in future issues of the *Review* and through the NSF monthly Forum lecture series.□

THE PROLIFERATION SECURITY INITIATIVE AND WMD INTERDICTION ON THE HIGH SEAS

Robert M. Chesney

The Interdiction Dilemma

In late 2002, United States officials learned that an unflagged merchant vessel – the *So San* – had left the North Korean port of Nampo bearing suspicious cargo, heading west toward an unknown destination. The *So San* eventually was intercepted on the high seas some 600 miles off the coast of Yemen by the Spanish frigate *Navarra*, part of the international coalition patrolling the Arabian Sea in search of fleeing members of Al Qaeda and the Taliban. Spanish troops boarded the *So San* by helicopter after it attempted to flee, and with the assistance of U.S. personnel eventually discovered 15 Scud missiles and 24 tanks of rocket fuel additive hidden beneath the *So San's* declared cargo of cement. The interdiction appeared at first blush to be a rousing counterproliferation success, but there was a catch – the missiles had been legally purchased from North Korea by the government of Yemen. Press Secretary Ari Fleischer accordingly explained that “[w]hile there is authority to stop and search, in this instance there is no clear authority to seize the shipment of Scud missiles from North Korea to Yemen. And therefore, the merchant vessel is being released.”

The timing was remarkable. That very day, the White House released the National Strategy to Combat Weapons of Mass Destruction (NS-CWMD), a policy paper identifying proliferation as a grave threat to U.S. national security. According to the NS-CWMD, interdiction is a

“critical part of the U.S. strategy to combat WMD and their delivery means.” But the *So San* incident dramatically illustrates an important limitation on interdiction as a tool of counterproliferation policy: decision makers may be reluctant to use the interdiction option if they lack plausible authority under international law to stop and search the target and to seize dangerous cargo discovered as a result.

Response: The Proliferation Security Initiative

This dilemma has not gone unnoticed. Speaking in Krakow in May 2003, President Bush surprised many observers by declaring a new counterproliferation initiative:

“When weapons of mass destruction or their components are in transit, we must have the means and authority to seize them. So today I announce a new effort to fight proliferation called the Proliferation Security Initiative. The United States and a number of our close allies . . . have begun working on new agreements to search planes and ships carrying suspect cargo and to seize illegal weapons or missile technologies. Over time, we will extend this partnership as broadly as possible to keep the world’s most destructive weapons away from our shores and out of the hands of our common enemies.”

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The Proliferation Security Initiative and WMD Interdiction on the High Seas

Over the following weeks, representatives of eleven states – including the United States, the United Kingdom, Spain, France, Germany, Italy, the Netherlands, Portugal, Poland, Japan, and Australia – have twice gathered to negotiate the specifics of the Proliferation Security Initiative (“PSI”), and a third meeting has been scheduled for Paris in September following PSI exercises that month in the Coral Sea. And while the details of these negotiations remain undisclosed, it is clear that PSI is a multilateral policy initiative designed to (1) create among cooperating states the coordinated intelligence and military infrastructure needed for global interdiction of WMD and missile transfers both in the air and on the sea and (2) to clarify or perhaps even generate the legal authority to carry out such operations.

Bearing in mind the *So San* incident, this essay addresses only two of the many issues raised by PSI. First, to what extent does current international law authorize interdiction of WMD and missile shipments on the high seas (in contrast to aerial interdiction, maritime interdiction in territorial waters, or port searches such as that which led to the discovery of dual use chemicals on board a North Korean vessel in Taiwan’s Kaohsiung Harbor in August 2003). Second, what are the options for expanding that authority?

The Status Quo: Current International Law on High Seas Interdiction

Notwithstanding the release of the *So San*, Under Secretary of State John Bolton recently stated that “[w]e are prepared to undertake interdictions right now and . . . there is broad agreement within the group of 11 that we have that authority.” What, then, is the status quo with respect to international law and high seas interdiction?

Any assertion of a right to stop and search a vessel on the high seas – let alone seize its cargo – is in tension with freedom of navigation, which John Negroponte once described as “perhaps our

oldest customary international law doctrine,” one without which “[m]aritime commerce as we know it would not exist.” In practical terms, free navigation means that a ship on the high seas is subject to the jurisdiction only of the state to which the ship is registered (the “flag state”), and may not be interfered with by the ships of other states. If taken as an absolute principle, then, high seas interdiction would be legal only when carried out by the target’s own flag state. PSI operations on the high seas – which inevitably will target ships registered to foreign states – would rarely meet this test.

Fortunately, freedom of navigation is subject to a few exceptions which permit boarding by the ships of other states even on the high seas. These are identified most clearly in the United Nations Convention on the Law of the Sea (the United States has not yet ratified the Convention but nonetheless accepts that its navigation provisions reflect customary international law). As discussed below, these exceptions provide authorization for PSI interdiction operations in limited circumstances.

- **Interdiction by Permission**

The Convention confirms that states may waive freedom of navigation by agreement with one another. Accordingly, an effective way to ensure that PSI operations comport with international law is to obtain from other states express permission to interdict their ships upon reasonable suspicion that they carry illicit WMD or missiles. Such permission can take the form of a treaty or exchange of diplomatic notes specifying the circumstances in which interdiction would be permitted and the consequences in the event WMD materials or missiles are discovered. The British employed this approach during the 19th Century in the course of their effort to suppress the international slave trade, and the U.S. has relied on it more recently in connection with counternarcotics.

But what if a formal agreement cannot be obtained prior to interdiction of a ship registered to

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a particular state? This situation arises routinely in the narcotics context, and U.S. practice is to seek permission on an ad hoc, contemporaneous basis – first from the master of the target vessel itself, and then if necessary the request is relayed via the State Department to the government of the flag state. These ad hoc requests are granted routinely, but for a number of reasons the formal agreement approach is preferable for PSI purposes. Under the ad hoc approach, there always is a risk that permission will be denied (especially if the flag state is Iran or North Korea). Even when granted, ad hoc requests entail a degree of delay which may enable the crew of the target to dispose of some or all of the suspect cargo. Finally, there is some question as to the propriety of the ad hoc approach given that the Convention refers to the use of a “treaty” to establish a waiver of freedom of navigation.

- **Interdiction of Stateless Vessels**

A vessel which is not properly registered to any state (either because it is unregistered or because its registry is fraudulent or defective) is a ripe target for maritime interdiction. Such ships lack nationality, and the Convention clearly establishes a right to visit such ships to inquire into their status. But can such ships be subjected to the jurisdiction of other states for purposes of searching for and seizing illicit WMD and missile technology? Some dispute the claim that stateless ships are subject to the jurisdiction of all states, but the U.S. has consistently asserted this position in other contexts (e.g., narcotics trafficking and driftnet fishing). Unfortunately, one cannot expect WMD and missile shipments will often be carried by stateless vessels.

- **Interdiction Where the Vessel in Reality Is of the Same Nationality**

Freedom of navigation of course is no shield against assertions of jurisdiction by the flag state itself, which is free to interdict ships of its own registry. In addition, where there is reasonable

suspicion to believe that the flag flown by an apparently foreign ship is false and that the ship in truth is registered to the interdicting state, a warship is permitted to stop it and confirm its nationality. Again, however, one cannot expect this scenario to arise often in the context of WMD and missile shipments.

- **Interdiction to Suppress Prohibited Activities**

The Convention specifies three types of undesirable activities justifying interference with freedom of navigation: piracy, slave trading, and unauthorized broadcasting. Proliferation concerns, in contrast, are not mentioned at all in the Convention. Does customary international law nonetheless recognize proliferation as an undesirable activity for which there is an exception to free navigation?

The answer appears to be no, although PSI itself might mark an important development in the evolution of such an exception. One could point to the statement by the U.N. Security Council in January 1992 that “[t]he proliferation of all weapons of mass destruction constitutes a threat to international peace and security.” One might also point to the complex system of treaties (in particular, the Nuclear Non-Proliferation Treaty, the Chemical Weapons Convention, and the Biological and Toxin Weapons Convention), supplier groups, nuclear weapon-free zones, and export control regimes which collectively establish a global network operating to suppress WMD proliferation. But none of the WMD treaties expressly authorize ad hoc enforcement through interdiction, and there is little or no support for a proliferation exception to freedom of navigation in past state practice (the legal significance of the 1962 Cuban Missile Crisis is the subject of considerable dispute among scholars). The absence of any such exception in the Convention itself, of course, also cuts against a WMD proliferation exception.

The argument is weaker still with respect to missile technology proliferation, for in that con-

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text the only relevant international agreement – the Missile Technology Control Regime – is merely a set of voluntary guidelines for export controls subscribed to by thirty-three member states. The *So San* incident, moreover, is a fresh example of state practice indicating that there is not a proliferation exception to freedom of navigation with respect to missiles. Accordingly, the suspected presence of WMD or missiles aboard a foreign vessel on the high seas does not – standing alone – authorize search or seizure at this time.

- **Interdiction as a Form of Anticipatory Self-Defense**

There is a final possibility. One might argue that high seas interdiction of WMD or missile shipments would be justified by “anticipatory self-defense” in at least some circumstances. Traditionally, the propriety of a claim of anticipatory self-defense has been measured by the test stated by Secretary of State Daniel Webster in connection with the famous case of the *Caroline*. The *Caroline* was an American ship destroyed in 1837 by the British on the theory that it was going to be used in aid of a Canadian insurrection. In an exchange of diplomatic notes with his British counterpart debating the propriety of this purported exercise in anticipatory self-defense, Webster famously contended that the doctrine applied only where “the necessity of that self-defense is instant, overwhelming, and leaving no choice of means, and no moment for deliberation.”

The imminence element traditionally associated with anticipatory self-defense would seem to preclude reliance on that theory to justify the PSI interdiction program, absent extreme circumstances such as a shipment bound for a state literally on the verge of engaging in hostilities with the interdicting state. But it is no longer clear whether anticipatory self-defense remains limited by Webster’s strict imminence requirement in cases involving WMD. When the Bush

Administration produced its National Security Strategy of the United States in September 2002, it proclaimed what many observers took to be a sharp departure from the traditional approach:

“We must adapt the concept of imminent threat to the capabilities and objectives of today’s adversaries. Rogue states and terrorists do not seek to attack us using conventional means. . . . Instead, they rely on acts of terror and, potentially, the use of weapons of mass destruction—weapons that can be easily concealed, delivered covertly, and used without warning. . . . The greater the threat, the greater is the risk of inaction— and the more compelling the case for taking anticipatory action to defend ourselves, even if uncertainty remains as to the time and place of the enemy’s attack.”

This interpretation triggered a fierce debate – driven largely by the war in Iraq – with some taking the view that the scope of anticipatory self-defense is now in flux and many others (especially outside the United States) adamant in their adherence to the traditional approach. Accordingly, there will be those inclined to reject the argument that PSI interdiction could ever be justified on the ground of anticipatory self-defense. Indeed, some states not strongly motivated to voice resistance to the broad reading of anticipatory self-defense in the Iraq context may react differently now if they perceive a threat to their oceangoing commerce.

For those willing to accept the argument that the WMD threat requires a more flexible interpretation, however, PSI interdictions may be justified by sufficiently exigent circumstances. Key factors in this analysis would include the identity of the intended recipient, the nature of the illicit materials, and the nexus between the shipment and the perceived danger.

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Options for Generating Additional Legal Authority

In light of the foregoing, there is some existing legal authority for PSI interdictions on the high seas, but the scope of that authority is limited. To increase it, the U.S. and its allies should consider pursuing some combination of the following strategies:

- **Expand the Permission Network** – The quickest route to enhance legal authority for PSI is to obtain the greatest possible number of formal agreements from other states waiving freedom of navigation where their ships are reasonably suspected of carrying illicit WMD or missile technology. The effort should, of course, prioritize those states whose registered ships are most likely to be involved in North Korean proliferation. The net effect would be to steadily reduce the range of relatively safe options for oceanic shipping available to would-be proliferators. And although ad hoc requests are a poor substitute for formal agreements, steps nonetheless should be taken to prepare the ground and streamline procedures for ad hoc PSI requests where no formal agreement applies.
- **Amend the Convention** – As noted, the Convention permits interference with freedom of navigation to suppress certain undesirable activities such as illicit broadcasting. An effort should be made to add illicit WMD and missile transactions to this list.
- **Amend the Proliferation Treaties** – There is a pressing need to strengthen the compliance regimes of all the WMD treaties, and to create a corresponding treaty regime dealing with ballistic missile technology. Among other things, the new and enhanced compliance regimes could provide authority for PSI interdictions in the event of an illegal WMD or missile transfer.
- **Playing the Security Council Card** – Security Council approval would eliminate all questions of authorization for PSI interdictions. But the prospects for success in that forum are highly uncertain in the face of a potential Chinese or Russian veto (the Chinese have sent mixed signals regarding PSI, with their initial negative assessment giving way to more neutral language in August).
- **Seek the Endorsement of Regional Organizations** – As part of the larger effort to establish a consensus supporting the legality of WMD and missile interdictions, PSI members could seek the approval of regional organizations such as NATO and OAS (it would be desirable to obtain ASEAN's endorsement, of course, but the prospects for doing so are weak).

A Few Words of Caution

PSI has the potential for widespread application, but for the moment it is relevant primarily as an element in the ongoing dispute with North Korea. Accordingly, any effort to enhance the legal authority for PSI raises the question whether the effort will be so provocative as to be counterproductive in the larger scheme of things. Seeking Security Council approval may be especially problematic in this regard. In contrast, it may be possible to expand the network of permission for PSI interdictions without causing undue provocation. We must also bear in mind our own long term interest in preserving freedom of navigation around the globe, an interest we pursue today in areas such as the South China Sea. In the coming years, growing regional powers may challenge freedom of navigation to our detriment, and we should consider the extent to which PSI (and especially the doctrine of anticipatory self-defense) may become a precedent to be used against us and our allies in the future. □

CORPORATE BEHAVIOR AND GLOBAL SECURITY RISK

Andrew Davenport

Although U.S. corporations have long grappled with security-related sanctions regimes, foreign corporations (and the overseas subsidiaries of U.S. corporations) have enjoyed a much freer rein regarding where in the world they can do business and with whom. The days of unfettered global operations for non-U.S. companies, however, may be ending with the emergence of an investor base -- still reeling from the wave of corporate accounting scandals and September 11 -- that is increasingly looking at the financial, reputational and moral elements of how corporate ties to global security concerns can affect share value.

As investors seek more information about corporate behavior, companies are, for the first time, encountering global security-related questions and shareholder initiatives that seek full disclosure of how companies might hit global security tripwires. Moreover, as investor influence is not limited by sovereign borders, foreign corporations are encountering pressure regarding where and with whom they do business that they have previously avoided due to the specific laws and regulations of their home country. Increasingly, shareholders are using this influence to compel companies to disclose security-sensitive activities that they believe can impact on share value.

Global Security Risk

Investor attention to corporate ties to security-sensitive issues, or so-called global security risk, has focused on two aspects of international business: 1) the risks associated with maintaining business ties to U.S. State Department-designated state sponsors of terrorism; and 2) the risks stemming from business transactions that have become implicated in the proliferation of weapons of mass destruction (WMD) and ballistic missiles.

Of primary concern to investors has been the potential financial risk to share value that global security concerns can catalyze. Loss of share value can occur for several reasons, including the imposition of U.S. sanctions, severe damage to corporate reputations, international lawsuits, military actions, shareholder activism, divestment campaigns and traditional political risk considerations. Any one of these can decrease demand for a company's stock and depress the share value of that firm. The Securities and Exchange Commission (SEC) confirmed the materiality of global security risk in May 2001 in a letter from then-Acting SEC Chairwoman Laura Unger to Rep. Frank Wolf. "The fact that a foreign company is doing material business with a country, government, or entity on the Office of

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Foreign Assets Control (OFAC) sanctions list,” she wrote, “is, in the SEC staff’s view, substantially likely to be significant to a reasonable investor’s decision about whether to invest in that company.”

The role of global security risk in corporate governance is further complicated by its asymmetric nature. In short, negative impact on share value can be severe even for business operations whose size might otherwise be considered insignificant to a firm’s bottom line. For example, being perceived by the markets as having in any way contributed to the capabilities of terrorists -- wittingly or unwittingly -- or to the proliferation of WMD would likely generate a robust negative investor reaction. This, in turn, could reduce the demand for that company’s stock and hurt share value, even if the company’s involvement represents less than 1% of the company’s overall revenues.

In cases where the objectionable behavior of a firm is less clear, the scope or size of a company’s operations helps define the degree of risk. For example, TotalFinaElf of France is invested in Iran’s South Pars natural gas field to the tune of some \$2 billion, a sum of money that should be of material interest to investors. Moreover, this particular project places the company in technical violation of the Iran-Libya Sanctions Act, thereby increasing the firm’s risk exposure.

Due to the emotion that global security risk can elicit from investors, reputational and moral considerations also play a role in investment decisions. While global security risk has not yet become a boilerplate component of the socially-responsible investing universe, recent investment initiatives in Pennsylvania and New York (as discussed below) underscore that investors are increasingly evaluating equities that have links to terrorist-sponsoring states or the proliferation

of WMD based on non-financial criteria. In large part, the emotional side to global security risk is driven by investors who, as shareholders, perceive themselves to be complicit in the activities of the companies in which they invest. Put simply, some investors identify with global security risk from a personal perspective, which can also affect the market valuation of publicly-traded companies.

To be clear, my company, Conflict Securities Advisory Group (www.conflictsecurities.com), approaches global security risk in a completely impartial fashion and takes no position on the moral aspects of corporate behavior as it relates to security-sensitive issues. Nevertheless, the moral and reputational judgments of some investors are a factor in the overall risk profile of certain companies' share values.

Institutional Investors React

Recent events and certain high-profile company examples have brought these new shareholder concerns into sharp relief. Publicly-traded companies receiving such scrutiny have included: Canada’s Talisman Energy that once traded at what some experts termed a “Sudan Discount” of some 25% below its market value due to widespread criticism of its oil interests in war torn Sudan (Talisman sold these concessions earlier this year); Petro-Canada, which has taken significant hits to share value for what its CEO has attributed to the company’s acquisition of Veba Oel, a firm with substantial interests in Libya and Syria; and South Korea’s Hyundai, which has become embroiled in scandal over its apparent transfer to North Korea of some \$200 million prior to a political summit between North and South Korea in 2000. Examples such as these have catalyzed divestment campaigns,

Corporate Behavior and Global Security Risk

negative media attention, state legislative initiatives and corporate governance efforts in the institutional investor community.

New York City's Police and Fire Department pension funds took a leading position on this new risk category in February 2003 with a press release that announced shareholder resolutions directed at three U.S. companies (i.e., Halliburton, ConocoPhillips and General Electric). After studying the companies' links to Iran via their overseas subsidiaries, the New York City Pension Fund concluded that such business ventures circumvent the spirit, if not the letter, of U.S. sanctions, thus creating risk. New York City Comptroller William Thompson, who launched this initiative on behalf of the pension systems, said, "If we are trying to eradicate terrorism, we must ensure that companies in our portfolio are not using off-shore subsidiaries to legally evade United States sanctions against terrorist-sponsoring states." Citing financial concerns, he added, "These actions also expose the companies to the prospect of negative publicity, public protests, and a loss of consumer confidence, all of which can have a negative impact on shareholder value."

The three resolutions called on shareholders to vote on the formation of a Board of Directors' committee that would review the companies' ties to terrorist-sponsoring states regarding "potential financial and reputational risk." Two of the companies, Halliburton and ConocoPhillips, sought an SEC commitment to take no punitive action were the firms to omit the resolution from their proxy materials. The SEC denied these requests and the two companies agreed to implement review processes per the wishes of New York City. General Electric included the resolution in their 2003 shareholder meeting, but it was rejected in a shareholder vote after the company

argued that their operations in Iran are legal and prudent.

The Commonwealth of Pennsylvania's General Assembly has also taken action to mitigate global security risk. The state's concern over public investments in companies that do business with terrorist-sponsoring states dates back to late 2001, when legislation was introduced that called for the state to divest itself of all companies held in portfolio with business ties to terrorist-sponsoring states. Although that bill was not acted upon by the Senate, the notion that such portfolio companies could pose a risk to state funds reemerged in 2003 with the Assembly's introduction of Resolution 263, which outlined a more nuanced, research-oriented approach to addressing global security risk. The resolution passed unanimously on May 5, 2003 in a vote of 198-0. Citing both the financial and moral concerns associated with being invested in such companies, Resolution 263 was justified by the Assembly based on a rationale that included -- though was not limited to -- the following assertions:

1. "Terrorist-sponsoring governments are known to derive critically needed revenues, equipment, technology and financing from publicly traded companies operating in their countries."
2. "It is important to avoid the possibility that the retirement dollars of public employees of this Commonwealth are contributing to the twin scourges of international terrorism and the development and proliferation of weapons of mass destruction."
3. "There is a proven risk to the share value and corporate reputation of companies doing business in terrorist-sponsoring countries."
4. "The Commonwealth needs to protect the

retirement funds of public employees from the financial risk associated with portfolio companies that have business operations in terrorist-sponsoring countries.”

A number of other initiatives have surfaced in both the public and private sectors, driven primarily by growing public awareness of this risk portfolio. Should this trend continue, it can be expected that investment professionals will be increasingly alert to the need to address global security risk on behalf their constituents and clients. In turn, this increased investor attention will apply pressure on corporations to disclose ties to global security-related concerns.

A New Influence on Corporate Behavior

The corporate community is only now learning what the investment community has known for some time: the broadening range of corporate activities considered of material interest to investors is *especially* inclusive of matters of international security. Perhaps more troublesome for corporations that prefer to be left to their own devices is the reality that it is not only the institutional investor community demanding more global security risk-related information, but it is also grassroots interests underpinning that investment community (i.e., pension system and mutual fund participants, political constituents, individual investors, etc.) that are reluctant to let this information go untreated.

This fact was made abundantly clear to Talisman Energy and Petro-Canada, which both experienced damage to share value as a result of their ties to terrorist-sponsoring states. The SEC’s acceptance of the materiality of global security risk to investors four months prior to September 11 and its reaffirmation of that

awareness in its public refusal of Halliburton and ConocoPhillips’ requests have also helped persuade companies that a major new element of corporate governance needs to be taken into consideration.

It is likely that, over time, more companies will be required to conduct reviews of their operations in terrorist-sponsoring states. For some, these reviews could merely mean documenting benign sales activities in the medical and food industries. Others, however, may result in the reevaluation of large-scale energy investments or even dual-use technology transfers that could have military as well as commercial applications for terrorist-sponsoring governments. Depending on the risk threshold of the shareholder base of any given company, certain operations could be deemed unacceptable due to the associated financial and reputational risks or for purely moral/ethical considerations. However this plays out, it seems clear that, for the first time, a number of the world’s largest corporations will be compelled to consider global security-related concerns that had previously been deemed beyond their realm of responsibility.

As most Americans now relate personally to the threats posed by the proliferation of WMD and the spread of international terrorism, more individuals, non-governmental organizations and state and local governments are seeking to play a direct role in reducing these threats. It is reasonable to expect that some of these individuals and groups will wish to ensure that their money is not implicated in the twin perils of terrorism and proliferation. How deep this new corporate governance category penetrates the investor community -- and, accordingly, the decision-making processes of large multinational corporations -- remains to be seen.□

INTERNATIONAL PREVENTION OF BIO-CRIMES

Professor Barry Kellman

Among the taboos that comprise the laws of armed conflict, perhaps the strongest, least subject to reservation or qualification, is the taboo against weaponizing disease. Bio-weapons threaten thousands of casualties and unprecedented panic levels; their indiscriminate consequences will afflict civilians as horribly as combatants. A contagious disease, e.g. plague, can turn victims into extended biological weapons, carrying an epidemic virtually anywhere. Terrorists have proven that anthrax can be fatally disseminated -- if terrorists get smallpox, the death toll and ensuing social chaos exceed calculation. More fundamentally, humanity has waged a species-long struggle against disease; to deliberately foment contagion is an act of treason -- a fundamental crime against humanity.

Despite the grave threats posed by bio-weapons, law enforcement's capabilities to prevent a catastrophe are constrained by inadequate legal authorization to detect and interdict bio-weapons preparations. Curiously, although the Biological Weapons Convention prohibits States from engaging in bio-weapons activities, it is legal in most nations for persons to acquire pathogens and weaponization equipment and to actually make a weapon. Stated more boldly: (1) weaponization of pathogens by terrorists is not now an international crime; (2) weaponization of pathogens is not a national crime under

the laws of all but a handful of nations; (3) no aspect of international law authorizes any law enforcement activity to detect or interdict preparation of bio-weapons; and (4) even if such law enforcement activity were authorized, there is no international organization and scant national capability to carry out law enforcement obligations. Without laws that criminalize bio-weapons preparations, there is no basis for law enforcement to investigate disease weaponization or for legal assistance and cooperation to combat transnational bio-weapons production and smuggling.

To enhance law enforcement poses unique challenges. First, strategies must be preventive -- to focus only on managing the consequences of a bio-attack and to limit law enforcement to post-event apprehension, prosecution, and punishment of the perpetrators will not protect many victims from disease and death. Second, effective measures must advance international cooperation. Criminal networks can transport lethal biological agents through any airport or customs checkpoint without detection; once released, a contagious outbreak will have no respect for borders. The key strategy, therefore, is to restrict access to relevant bio-capabilities and to interdict programs in progress. This strategy must be promoted both by strengthening the capacities of national law enforcement as well as by focusing the efforts of international organizations. This strategy may be termed *bio-criminalization*.

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Concept: Criminalizing Biological Weapons Activities

Enact Prohibitions: An international law enforcement system to prevent bio-crimes must assert that use, possession, production, diversion, or trans-national movement of pathogens for hostile purposes by anyone is a crime. States must enact relevant prohibitions and develop mechanisms to detect and interdict illegal activities. A preeminent virtue of criminalization is to powerfully reinforce the norm against intentional misuse of biology, clarifying that such conduct is outside the bounds of tolerable behavior, regardless of whether the perpetrator is a State or a non-State actor. Thus, weaponization of disease should be illegal everywhere. National laws should specifically disallow purported justifications that bio-weapons are legitimate in the name of national defense or to promote a political agenda. The scope of legal jurisdiction over such crimes should broadly reflect the reach of domestic law enforcement, with provisions to reach the behavior of legal entities and to enable prosecution of participants in trans-national conspiracies. And, of course, national laws should ensure that competent authorities prosecute offenders unless another State has superior jurisdiction and the offender is extradited to that State in accordance with legal process.

Require Law Enforcement Cooperation: Mutual legal assistance obligations should enable each State's law enforcement officials to work jointly with their counterparts in other States by sharing information, conducting investigations, and prosecuting apprehended terrorists. State cooperation both in gathering intelligence and using that information to prevent criminal activity is limited, however, by the absence of legal instruments, leading to gaps in prevention

of trans-national criminality. A serious problem needing immediate attention is the lack of information about national laws pertaining to biological agents and equipment. That there is no database or other repository of State laws precludes effective law enforcement and complicates development of standards and expert assistance. Worse, many States lack capabilities (technical, financial, and know-how) to implement mutual legal assistance obligations. Mechanisms should be advanced whereby States with highly developed law enforcement resources can help other States to develop necessary capabilities.

Implement Standards for Bio-Security: Criminalization requires implementation of prevention measures, including denying access to materials and equipment. Although pathogens may be collected from natural sources, weaponizing those pathogens poses substantial technical hurdles. For all but the most sophisticated bio-terrorist, it is more efficient to obtain disease strains from laboratories. States can increase security by impeding access to these sources of pathogens, which should be coded and traceable. Equipment that is critical to effective weaponization should be tagged, thereby improving law enforcement's ability to track capabilities. Legitimate entities and facilities that handle dangerous pathogens should be registered, and registration should be granted only upon adoption of rigorous security measures to prevent illicit diversion. This is important both to encourage implementation of those standards and to raise challenges for any criminal applicant. These measures include strengthening physical security and containment as well as restricting access to sensitive laboratories only to properly trained and screened persons. Licensed entities in compliance with relevant standards should be presumed to be using pathogens or critical equip-

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ment for purposes unrelated to bio-criminality. Conversely, possession of pathogens by someone lacking proper registration is necessarily a crime, without need for further evidence of malevolent intent.

Restrict and Record Pathogens Transfers: Transfer of weapons-capable pathogens should be restricted to registered entities. It should be illegal to sell or distribute pathogens to someone that has not subjected itself to the registration process. All legitimate transfers should be reported, including the name and location of both the transferor and the transferee. A database of the names and locations of registered facilities, the dangerous agents they possess or transfer, and information about those agents could enable health and law enforcement officials to identify the origin or source of a dangerous agent that causes harm to the public. Nations should fortify customs and border controls and require that pathogens in transit be tightly packaged and secure from diversion. In addition, shipments of pathogens and other potentially dangerous biologic products should comply with packaging and labeling requirements and procedures for notification of successful delivery. International organizations responsible for oversight of the transport of potentially dangerous items should assist nations and be attentive to the unique challenges of trying to impede movement or diversion of pathogens.

Detect, Investigate, and Interdict Bio-Smuggling: Pivotal to preventing a catastrophic use of bio-weapons is early detection of illegal weapons-development activities. The challenge here, from the perspective of building a rapid response capability, is how to know the unknown -- how to detect covert behavior. Relevant answers may be usefully discussed under

the rubric of *expanded surveillance*, which aims to identify anomalous conduct that hint at a need for more information. This entails gathering vast and diverse information as to where biological research and related activities are occurring. That information should be linked with data about criminal networks and smuggling operations from police and customs files. Identification of an anomaly by sophisticated analysis of database information should provoke follow-up inquiry, either by requesting clarification from a relevant State, by assigning a "task force" to gather more facts, or by authorizing an investigation. Thus, *expanded surveillance* necessarily connotes an elaborate system to gather information from wholly diverse sources, analyze that information through complex and integrated databases, and clarify or investigate anomalies. It will be crucial to know how gaining relevant information can be systematically accomplished without violating privacy or confidentiality rights.

Problem: Inadequate Law Enforcement Authorization and Capacity

Law enforcement personnel (police, customs and border officials, regulatory inspectors, etc.) comprise the primary system for effectuating *bio-criminalization*. Law enforcers must enforce bio-security measures, detect unlicensed activities that might constitute bio-crime preparations, interdict illicit efforts to use territory to transship pathogens, gather and analyze data for purposes of expanded surveillance, apprehend perpetrators, and mitigate the consequences of a bio-attack and restore order if prevention efforts fail. While law enforcement personnel bear these responsibilities in every State, only in highly developed States are they assisted by networks of professional associations, public health

systems, and emergency responders. Unfortunately, in the vast majority of States – from where bio-crimes may be more likely to emerge -- law enforcement personnel undertake these responsibilities essentially alone.

To carry out these responsibilities with maximum efficacy, law enforcement personnel need authorization and they need capability. “Authorization” refers to the legal empowerment to conduct bio-crime prevention and response functions, without which no law enforcer may legitimately act. As noted above, most States’ laws do not authorize law enforcers to conduct such functions, thereby precluding effective action. To correct this condition by implementation of proper laws and regulatory measures is necessary but is not, by itself, sufficient. Execution of relevant responsibilities demands unique capabilities that entail understanding biological science as well as the operations of research laboratories and pharmaceutical facilities. Moreover, there are challenges of knowing how to detect pathogens that are essentially invisible and are inherently dual-use. To gather, analyze, and share large amounts of technical data requires sophisticated information technology and the training to put that technology to optimal use. In the event of a bio-attack, law enforcement personnel will need sensors and diagnostic equipment and, similarly, training as to how to use it. Again, there is an unfortunate convergence that the States lacking proper authorization tend also to be most deficient in relevant capabilities.

There is also a convergence in efforts to address these deficiencies. Law enforcement personnel who propound the importance of enhanced authorization will likely perceive that they lack capabilities to carry out their new responsibilities and will demand better equipment and training. Law enforcers who receive new

equipment and training to address a profound threat will likely identify the inadequacies of existing law and put pressure on legislators to broaden authorization. Thus, efforts to advance *bio-criminalization* by strengthening law enforcement should proceed symbiotically by encouraging law reform and by equipping law enforcers.

Priorities: Implementing Bio-Criminalization

Bio-criminalization is complex and layered, compelling multilateral commitments with differentiated and mutually reinforcing responsibilities that consider the difficulties of isolating legitimate from wrongful behavior as well as considering the sovereignty of States to enforce criminal prohibitions. Altogether these commitments and responsibilities will push the margins of international law.

Specifically, a program of implementing *bio-criminalization* weaves three efforts into a resilient net that is designed to deter, to prevent, to detect, and to interdict bio-crimes without unnecessarily impeding the pursuit of legitimate science.

1. Ensure that States define and establish criminal jurisdiction with regard to prohibited conduct as well as provide each other legal assistance and cooperation.
2. Promulgate internationally harmonized bio-safety and bio-security standards for activities involving dangerous pathogens.
3. Strengthen international information-gathering and analysis capabilities to identify and investigate and thereby thwart illegal activity.

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To facilitate law enforcement, especially trans-national legal cooperation, obvious gaps that pertain to the scope of jurisdiction, procedures for extradition, and application to threats and hoaxes can and should be promptly remedied. That said, these law reform measures are substantially insufficient to prevent preparations for bio-crimes. Ascribing the status of criminality to having capabilities that might lead to actual use of deadly agents, however, raises a risk of snaring legitimate activities within the prohibitions against bio-weapons. The solution here is for States to regulate legitimate scientific activities: properly registered activities are presumptively legal; non-registered activities are presumptively criminal.

Yet, from the perspective of prioritizing an implementation strategy, the cure – to coin a phrase – may be worse than the disease, entailing a broad set of bio-security measures that, for most States, is both costly and irrelevant. For all but the few States where research and pharmaceutical use of weapons-capable pathogens is concentrated, these requirements present burdens of establishing a regulatory authority and promulgating intricate safety and protection measures; more onerous is that the police must be trained and equipped to investigate compliance and the penal system must be capable of distinguishing inadvertent shortcomings from behavior designed to cause catastrophic harm.

Of undeniable significance here is that many of these nations are facing urgent public health crises with radically insufficient resources; nature is manifesting disease terrors that far surpass the as yet only hypothetical fears associated with bio-crimes. It makes more sense to appreciate the global distribution of biological science and to impose regulatory obligations that are commensurate with potential risks. It is worth

noting in this regard that advanced biological science is proliferating – the number of States that are hosts to sophisticated laboratories is expanding, and that trend is likely to accelerate. Moreover, the expansion of biological science is outstripping effective bio-security standards.

Specifically targeted efforts to ensure consistent application of standards to evolving dangerous behaviors could achieve optimal application of law enforcement resources. Promulgation of harmonized bio-security standards, therefore, connotes creating a “bargain” between States whereby the magnitude of bio-security burdens is based on the size and risk of a nation’s life sciences activities and where acceptance of these burdens is both an incentive for and a condition of encouraging new life sciences capabilities. The security of all States could improve by integrating bio-criminalization into a broader international commitment to advance the life sciences with regulatory oversight that is targeted to promote security and consistently applied.

The active involvement of the life sciences communities, transcending national boundaries, is critical. Engagement of the scientific community in this context necessarily means coordinated interaction with the international law enforcement community that is and will be directly responsible for interdicting those who might misuse biology. Bio-criminalization policies must respect the aspirations and requirements of scientific inquiry, the economics of producing pharmaceuticals, and the exigencies of trying to enhance public health.

All of the above directly points to a central and as yet unresolved hole in the international system: there is no organization that has responsibility for implementing *bio-criminalization*. For potentially catastrophic threats, this condition is unique. Threats of nuclear crimes have

provoked extensive prevention measures that are designed and coordinated by the International Atomic Energy Agency (IAEA); threats of chemical crimes are provoking promulgation of similar measures by the Organization for the Prohibition of Chemical Weapons (OPCW). But alarms of bio-crimes ring nowhere. As previously mentioned, there is no database of relevant national laws, and no organization has the mandate to prepare it. Outreach efforts to remedy gaps in national laws or to train law enforcers have neither an advocate nor, if support for such efforts were to be available, anyone formally responsible for carrying out those efforts. More significantly, there is no body with a mandate to undertake the complex tasks of forging multilateral commitments among developed and developing States, among global sources of capital and pharmaceutical interests, among the life sciences and law enforcement communities.

The Interpol Program on Prevention of Bio-Crimes

The fact that Interpol, the 191-member international police organization, has assumed leadership for *bio-criminalization* is indicative of how measures to address global threats are increasingly perceived as law enforcement issues, in contrast to weapons control issues. Indeed, in May, the Counter-Terrorism Committee of the U.N. Security Council (CTC) was briefed by the IAEA on nuclear terrorism, the OPCW on chemical terrorism, and by Interpol on bio-terrorism – a striking display of how bio-threats are treated differently than other WMD threats. In the post-9/11 world, where terrorism has become intertwined with more traditional threats of weapons proliferation, the success or failure of Interpol's program is significant for the future of international security.

Conclusion

Bio-crimes are currently, for the most part, an abstraction. The anthrax attacks in 2001 and other isolated crimes demonstrate that concerns are not fanciful, but far more damage has been inflicted by conventional bombings and plane hijackings. Yet, the trend lines are disturbing. Unquestionably, the availability of sophisticated scientific knowledge, materials, and technology means that criminals will find it increasingly easier to wage a catastrophic bio-attack. The global expansion of bio-research and pharmaceutical sectors means that the chances are ever-growing of finding a source of weaponizable pathogens in a remote location. Perhaps most challenging in the longer term is that explosions in genetic research are opening opportunities for producing an immeasurable catastrophe that could scarcely have been imagined only a few years ago.

If the seriousness of the threat is accepted, then the necessity of international action within a legal context cannot be denied. The inherent nature of this threat is global; little can be done to seal off any country from criminal conduct or its effects. Multilateral coordination and specific delineation of responsibilities and obligations, while undeniably posing diplomatic challenges, is essential to enhance security. Ultimately, to address threats of bio-crimes demands strengthening international institutions under the rule of law. That is not an ideological argument – disease has no more respect for ideological distinctions than it does for borders – it is an unavoidable implication of biology's dangers at this time.□

US-TURKEY STRATEGIC RELATIONSHIP

Richard E. Friedman

In mid-July of this year, I interviewed fifteen top Turkish government officials in Ankara and Istanbul: elected leaders of Turkey's Parliament (governing and minority parties), military commanders, non-governmental foreign policy think tank members (former Turkish ambassadors to major states), and international journalists and commentators. These meetings were arranged by Turkey's foreign ministry.

The objective was to acquire information and gain a Turkish perspective on their strategic relationships with the US and the region. My going-in assumptions were as follows:

- The US needs to cultivate and maintain a strategic relationship with Turkey.
- The government of Turkey and its people have a long-standing positive relationship with the US and the American people, notwithstanding the Turkish parliament's rejection of a resolution that would have permitted 60,000 US troops to be stationed on Turkey's border with northern Iraq.
- Turkey is a liberal democracy and a secular, Western oriented Islamic state of 69 million people. If the US cannot maintain a mutually beneficial, strategic relationship with proven friends like the government of Turkey and

its people, the prospect for a positive US relationship with Islamic states in the region and elsewhere are dim.

Many Turkish government leaders and foreign policymakers have been stationed in the US. They are knowledgeable about the US and its foreign policy. These insights may provide valuable guidance regarding what is positive about US foreign policy, where miscalculations have occurred, and what corrective measures can be taken.

Turkey's leaders are aware that US foreign policy is being driven by the events of September 11, and that recognition of US vulnerability to international terrorism and weapons of mass destruction has focused US attention on homeland security. However, they may not be fully sensitive to the intensity of this concern in the US. The issue is whether the contemporary US focus on its homeland security will broaden into a more nuanced and calibrated foreign policy in the future. The following issues represent a Turkish perspective.

Who is Turkey?

Turkey is not a political monolith, no more so

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than the US. It is composed of constituent parts, some of which are in tension. The modern Turkish state was founded in 1923 by Kemal Ataturk, whose vision was a secular, liberal democracy with a Western orientation. His vision has flourished, although sometimes with the intervention of the Turkish military to keep it on course. Political Islam is a primary threat to Turkey. In past years, the Turkish military has used its power to protect secular Islam and prevent a drift towards political Islam and the possibility of Turkey becoming an Islamic theocracy.

Some commentators suggest that Turkey's present government (along with its ruling party, the AKP, which came into power in the general election of late 2002) is moving toward a more conservative form of Islam. However, the Turkish government supported the resolution for basing US troops in Turkey for deployment to northern Iraq. This was a major political risk for the government, because 94 percent of Turkish public opinion was opposed to the US invasion of Iraq. The resolution failed to pass in parliament by a mere three votes. This was the first political crisis for the new government and it is likely that they were not yet adept at lobbying members of parliament.

Turkey is seeking admission to the European Union (EU) in 2007. Turkey will consider revising its strategic orientation to satisfy EU admission criteria. For example, the Turkish military has sometimes played a dominant role in Turkey's internal politics and international orientation. The government may seek to curb the military's authority in northern Iraq and make it more responsive to civilian control to satisfy EU admission criteria. Notwithstanding Turkey's best efforts to comply, its admission to the EU soon is hardly a foregone conclusion.

Iraq

At this time the US invasion and occupation of Iraq dominate the US-Turkey relationship. However, it is important to look beyond Iraq and consider other long-range strategic interests of both states.

For more than a decade Turkey has been the target of terrorist attacks by the Kurdish PKK launched from Kurdish-dominated northern Iraq. Turkey has a legitimate concern about terrorism similar to that of the US. Delicate negotiations between Turkey and the PKK offering partial amnesty in return for cessation of terrorist attacks were near completion when the US invasion of Iraq intervened.

Turkey is strongly opposed to an independent Kurdish state being created in northern Iraq because of the potential for resumption of terrorist attacks and political instability on its border. Many Turkish policymakers favor an autonomous Kurdish region in northern Iraq. Oil revenues would be used to enhance the economy of the region—a basis for political stability that would diminish the likelihood of Kurdish immigration into Turkey. The proviso is that oil revenues would be shared with a central Iraq government. Opening the long dormant Iraq/Turkey oil pipeline will provide economic benefit to Iraq, the Kurdish population in northern Iraq, and Turkey. However, it is vulnerable to sabotage. Turkish troops working alongside a Kurdish constabulary force could guard the pipeline that would result in continuing oil revenues and a measure of political confidence building.

Turkey's military has had a long-standing troop presence inside northern Iraq. The July 4 incident at Sulaimaniyah where US troops detained and hooded 11 Turkish soldiers is seen as a grave insult to Turkey and its military.

US-Turkey Strategic Relationship

details of the incident are being sorted out. It is unknown whether the Turkish soldiers were an assassination squad or on routine patrol. Note:

The Turkish military is regarded by Turks as the number one institution in the country. The military is regarded as highly professional and above corruption. Consider the US reaction if the reverse had occurred, and Turkish troops had captured US troops and had treated them similarly.

Turkey has a long and enduring positive personal and commercial presence in Iraq. Turkey could be the US logistical base for rebuilding Iraq's infrastructure. Turkish companies are experienced in building and maintaining major projects at low cost. Engaging Turkish companies for infrastructure projects, manpower, and supplies would save the US a considerable amount of money and would provide a much needed stimulus to Turkey's sagging economy.

Turkey's Perception of US Foreign Policy

Turkey is a great admirer of America and America's tradition of liberal democracy. They believe that they have done a substantial amount of political heavy lifting on behalf of the US, with limited recognition and appreciation in return. A Turkish brigade fought alongside US troops during the Korean War. During the Cold War Turkey was the anchor for the US along the extensive Turkey-USSR border. The Persian Gulf War caused a mass migration of Kurdish refugees from Iraq into Turkey, yet the US did not fulfill its commitment to reimburse Turkey for the refugee expenses it incurred. Turkey has been the southern anchor for NATO in a tough neighborhood, yet NATO ignored Turkey's request for a missile defense system as the US prepared to invade Iraq.

The Turks believe that successive US administrations have taken Turkey for granted. They are puzzled at Turkey's relatively low status on the US political agenda. They believe that US foreign policymakers assume that Turkey will rubber stamp US foreign policy requests, even though it may be disadvantageous for Turkey to do so. This may account for US military planning that assumed that Turkey would permit basing of US troops in Turkey for the invasion of Iraq.

There is an enduring Turkish cultural tradition of good manners and etiquette. Although the Turks are bemused by the current US administration's robust style, they are not offended. However, they cite President Bush's statement, "my way or the highway" as symbolizing US foreign policy. Turks admire and respect US power and the willingness to project power when required. However, they expect the US as world leader to define and implement its foreign policy more subtly, particularly as it affects Turkey.

More ominous is an increasing belief among some Turkish foreign policymakers that there is a calculated US policy goal to diminish Turkey's importance, based on the mistaken US belief that Turkey is regional threat to the US. A cumulative series of minor occurrences have led them to this conclusion. For example, Turkey perceives that US foreign policy has favored Greece rather than Turkey, although Greece has been a marginal ally of the US. This was particularly evident in 1974 when Turkey sent troops to Cyprus, when US policy was pro-Greece—influenced, the Turks believe, by the strong Greek lobby in the United States. Turks are deeply concerned about the imminence of a US congressional resolution condemning Turkey for the 1915 Armenian Genocide; they regard the pending resolution as factually one-sided and a gratuitous con-

demnation of Turkey.

Turkey is ready, willing, and able to assist the US. They perceive US unilateralism as self-defeating. One Turkish observer said, "US foreign policy defines burden shifting as shifting the burden from Washington to the rest of America, rather than to other countries."

Turkey and a Strategy for the Region

Turkey is regarded by fellow Muslim states as a black sheep because it is a secular, democratic, Western oriented state. There are pressures from within and without Turkey to abandon its secular Islamic tradition. To date, there has been no significant movement in this direction. However, the Turkish people may become disaffected from the US and Europe. This, coupled with economic stagnation, could provoke increased anti-secular tension. Should this happen, it would constitute a major setback for US policy in the region. Turkey would lose its status as a role model for other states in the region, particularly Iraq.

Turkey has been a strong friend of Israel, commercially, technologically, and militarily. This strong bilateral relationship is important because it demonstrates that a Jewish state and Muslim state have common interests and can forge a mutually beneficial relationship. Turks believe that US foreign policymakers have overlooked the importance of the Turkey/Israel alliance.

Could Turkey Become a Marginal US Friend?

Notwithstanding the array of strong and enduring reasons for continuation of the positive relationship between the two states, one can

speculate on how the relationship could deteriorate. The elements follow:

- US acquiescence in the formation of an independent Kurdish state in northern Iraq which could lead to the renewal of PKK acts of terrorism against Turkey.
- Continuing economic problems in Turkey, leading to domestic instability. (There already is a perception that the US is failing to provide economic assistance and is preventing economic opportunities for Turkey in Iraq.)
- A souring of Turkey's traditional respect for US leadership.
- Rejection of Turkey's application for membership in the European Union (2007).
- An unchecked drift towards political Islam in Turkey.
- Diminution of the role of Turkey's military as protector of the principle of secular Islam in Turkey.
- Pressure from Arab states in the region for Turkey to become an Iranian style Islamic theocracy.
- Pressure on Turkey from Iran and Arab states in the region to abandon its alliance with Israel.
- A political arrangement between Turkey and Iran based on Turkey's economic necessity (oil supply and revenues).

Each of these events is unlikely, but any may be on the horizon. They are significant because, for the most part, they are avoidable and they suggest ways that the US can help Turkey maintain its political stability.

Conclusion

The case for Turkey's strategic importance to the US is apparent. Turkey's perception of present US foreign policy is important for the US-Turkey relationship and US relationships with other states. International terrorism is a shared concern. September 11 is an important event in US history, but it should not obscure other US objectives. For the Turks, the US preoccupation with homeland security, however understandable after the events of 9/11, tends to obscure broader strategic thinking on how to deal with terrorist threats faced by both countries. Two metaphors may be apt: one, the iron fist needs a velvet glove; two, US policymakers should bear in mind that President Bush's "highway" has two lanes that lead in opposite directions—to the west and to the east.

Iraq is a test case for continuing US primacy in world affairs. The issue is the durability of US power. The perspective of Turkey, a fellow western state, provides much needed guidance for US strategic thinking.

America's primacy in world affairs is based upon two fundamental factors: one, its constant power (economic and military); and two, its variable power (public willingness to support judicious projection of power and the quality of its leadership). Other western states have one or more of these factors, but no other country has the magnitude of these combined elements.

The stated US contemporary strategic objective is to combat international terrorism and prevent the proliferation of WMD. Prior to the US invasion and occupation of Iraq, it was apparent that the US needed some degree of support and cooperation from other western states which have similar strategic objectives.

For the moment, America's strategic dilemma is the need for burden shifting and burden

sharing. US economic and military resources are finite. The solution to the problem is to engage, for example, a friendly Turkey to share the US burden in Iraq. Turkey will do more than its share of heavy lifting. It is likely that Turkey's military will participate, provided that it is given a mission that is consistent with its strategic interest (something more important than protecting American troops). Turkey's government has already demonstrated its willingness to assume political risk to support the US in Iraq, notwithstanding overwhelmingly negative public opinion.

If Phase I is the two year post-September 11 "my way" doctrine, then US leadership requires a strategic transition to Phase II.

Political cover is needed for Turkey's government and parliament to overcome public opposition to Turkey's involvement in Iraq. One avenue leading toward burden sharing with Turkey (and perhaps other western states) is enlargement of the UN role and engagement of NATO's support for the US mission in Iraq and, more importantly, in the fight against international terrorism and proliferation of WMD post-Iraq. The immediate test for US leadership is its flexibility: the use of diplomacy to negotiate a UN Resolution that would recognize US leadership and "unity of command" of a multilateral military force; and how to enlist NATO's military and political power, which would require nuanced diplomacy to give France a role to play, real or imagined.

Doing business with the political arm of the UN is frustrating and, ultimately, it may prove to be impossible. NATO is an attractive alternative, or it may be used in tandem with the UN. Whatever coalition or alliance the US knits together, it must consider modifying the "my way" doctrine perception of other western states. This will require effective public diplomacy, both at home and abroad. □

RETHINKING HUMANITARIAN INTERVENTION:

Professor Kenneth Abbott and Barbara Murphy

A post-conference report of the McCormick Tribune Foundation Cantigny Conference Series

Introduction

As peacekeepers land in Liberia and the U.S. considers its level of involvement there, the issue of humanitarian intervention seems as pressing as ever. Similarly, recent debates over the need for UN Security Council authorization for military action in Iraq (taken partly for humanitarian reasons) and the UN role in pacifying and rebuilding that country pose fundamental questions about national sovereignty, legitimate authority and collective responsibility. To explore these matters, Northwestern University's Center for International and Comparative Studies convened a conference of experts on humanitarian intervention in May 2003, as part of the Cantigny Conference Series sponsored by the McCormick Tribune Foundation. The forty participants included academic specialists, former diplomats and military officers, and leaders of humanitarian NGOs. This article summarizes the deliberations of these experts on the major issues posed by humanitarian intervention.

The Duty to Respond

The concept of *humanitarian intervention* has

both legal and moral connotations. In both respects, intervention has come to be viewed in recent decades more as a "responsibility" than as a "right," a development documented in the 2001 report of the International Commission on Intervention and State Sovereignty (ICISS, www.iciss-ciise.gc.ca) entitled "The Responsibility to Protect", which was a major focus of discussion at the conference. With this shift, states and other actors have become more willing to intervene and to call for intervention in response to human rights violations and humanitarian abuses.

This growing consensus is the product of several elements, including state practice (an essential element in customary international law) and the expansion of human rights and humanitarian law. But the key development has been a striking evolution in the core concept of *national sovereignty*, which has moved from traditional Westphalian notions of the power and independence inherent in sovereignty – concepts in obvious tension with the idea of intervention – to an emphasis on sovereign *responsibility*. States have the primary responsibility to protect their own people; when they fail, the principle of non-intervention has begun to yield to a responsibil-

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Rethinking Humanitarian Intervention

ity on the part of other states to intervene, or more generally to *protect*.

The responsibility to protect is normatively complex, with at least four major elements: the nature of the obligation, its content, the conditions that trigger the duty, and the actors on whom responsibility legally and/or morally falls. Conference participants considered all of these elements. As to the nature of the obligation, philosophers distinguish two types of duty: perfect (compulsory) and imperfect (discretionary). Humanitarian intervention is undoubtedly an imperfect duty, since states are generally seen as having discretion to decide whether, when and how to intervene. Most importantly, no particular state is bound to respond in any given case. However, a state may have special responsibilities, e.g., as a result of past relationships (as with the US and Liberia) or where its actions helped create a humanitarian crisis.

In terms of content, ICISS frames the duty to protect as including three distinct stages: responsibility to *prevent* humanitarian abuses, to *intervene* when prevention fails, and to *rebuild* following intervention. Although prevention is in principle the most effective and least harmful strategy (and Iraq daily reveals the difficulties of rebuilding), public debate has centered on intervention, especially military intervention.

What criteria must be met to justify a military response? Relying on the principles of just war theory, ICISS suggests six threshold requirements, which were broadly endorsed by conference participants:

1. Humanitarian intervention must be legitimated by a just cause derived from exceptional circumstances (such as ethnic cleansing or genocide); this is essential because intervention overrides national sovereignty,

still a bedrock principle of international order.

2. The primary motivation of the intervening states must be to prevent human suffering, even if they harbor additional motives.
3. Military action must be the last resort, after all less damaging options have been exhausted.
4. The actions taken must be proportional to the need and the circumstances, in terms of such factors as intensity, scale and duration.
5. There must be reasonable prospects for success.
6. The decision to intervene must be taken by a "right authority." The Security Council is regarded as the most appropriate body, notwithstanding concerns over its limited capabilities and sometimes faulty performance. Other bodies – like the regional organization ECOWAS, now acting in Liberia -- may also be appropriate authorities in particular circumstances.

In practice, of course, it may be difficult to determine whether these requirements have been satisfied. Difficulties include gathering sufficient evidence and assessing it under uncertain standards of proof, especially in the typical setting of limited information and capricious media attention.

The discussion so far has focused on abstract standards of responsibility. Yet such standards do not always translate into practice, even when they are widely supported in principle. There exists a wide gap between the ideal of responsibility and a reality shaped by considerations of national interest. States often appear to intervene only when they see it as in their national interest to do so – e.g., to enhance their status or position

themselves morally, politically or economically – and many observers argue that this is the appropriate standard. From this “realist” perspective, responsibility is not the only or even the primary factor inspiring humanitarian action. Instead, a variety of motives (even within individual governments) lie behind any intervention, a fact only partially captured in the notion of *political will*.

Finally, even if a state accepts the duty to respond and has the political will, *resources* are a crucial issue. Although in principle humanitarian intervention is a collective responsibility, in reality few states possess the necessary military and economic capacity. Accordingly, the duty tends in practice to fall mainly on the United States and other great powers. This poses two very different risks, both difficult to control: the first is the equivalent of “donor’s fatigue,” witnessed after the disastrous Somalia intervention; the second is “disguised imperialism,” with great powers (or regional powers, or former colonial powers) using humanitarian rationales to justify interventions driven by narrow nationalistic motives.

Who Should Decide?

As this discussion suggests, humanitarian intervention hangs in a fragile balance between ideals and reality. On the question of who should authorize intervention, this dialectic is evident in the interplay between *legality* and *legitimacy*. In formal legal terms, the UN Charter vests decision authority for most cases in the Security Council. Yet in practice the Council cannot be considered the exclusive authority, because individual states and groups of states have often un-

dertaken humanitarian action without its blessing (again highlighting the link between capacity and authority). What is more, if a state responds to a pressing humanitarian need, even without legal authority, the international community may judge its action to be “illegal but necessary,” and therefore legitimate. This kind of action and response can also change international legal requirements by developing customary law.

Political legitimacy includes two main elements: procedural and substantive. Procedural legitimacy encompasses a decision by an appropriate authority like the Security Council, but it also turns on proper procedures, such as transparent deliberations and democratic accountability. Substantive legitimacy requires that an actor’s intentions and behavior be consistent with the values and norms of the international community (e.g., preventing genocide). Hence, actions having no a priori legal authority (especially when transparent and democratically accountable) can be justified by their substantive goals and results.

Who Should Act?

Even if a situation merits a humanitarian response and an appropriate authority legitimates and legalizes that response, the issue still remains, *who* exactly should carry out the intervention?

Non-governmental organizations (NGOs) dedicated to relief, aid and human rights often take the lead in responding to humanitarian crises. Their actions are legitimated by altruism and impartiality. Indeed, even though their activities are thought to be complementary (needed when other forces, especially governments, have

Rethinking Humanitarian Intervention

failed), humanitarian groups are frequently the only actors on the scene. These organizations face many troubling dilemmas: e.g., that by the act of intervening they may allow states to further ignore their responsibilities, and that their assistance can be diverted by local factions to inappropriate ends.

The other main protagonists of humanitarian action are states. As already discussed, their involvement is often marked by the logic of power and politics. The countries that intervene – and are expected to intervene – will be those with the capacity to do so, and their decisions will surely be influenced by considerations of national interest and sovereignty.

Learning from Past Experiences: Conclusions and Recommendations

Concrete cases offer insights that can help improve the process of humanitarian intervention. While space does not allow anything like a complete discussion of the many recent episodes, it is fair to say that the results have been mixed. For example, the successful intervention in East Timor is in many respects seen as a model: it was marked by rapid and forceful action by a well-equipped military force, with a clear and legitimate mandate and adequate funding. The fiasco in Somalia, on the other hand, not only failed to improve the humanitarian situation, but also caused the U.S. and the UN to pull back from humanitarian intervention. Rwanda is another highly negative example, first marked by a failure to predict and recognize genocide, then by a failure to act, with horrific consequences. In light of this record, how can the international community limit the bad experiences and increase the successes? Conference

participants suggested some possible answers:

1. Develop capable *international institutions* with specific mandates in the area. Examples might include early warning mechanisms to gather, analyze and share information on failed or failing states, programs to assess local politics and needs, and schemes for sharing responsibilities and burdens (these capacities are weak even in the UN). Institutions could also encourage preventive measures to avoid humanitarian crises. When military intervention is needed, international institutions could produce better and more credible analyses of situations on the ground, pre-mission needs assessments, and monitoring of the intervention itself, facilitating ongoing readjustments.
2. Generate *political will* to prevent and stop humanitarian abuses. To accomplish this, advocates should emphasize national security considerations, which will generally trump moral and legal arguments within national governments; identify domestic allies, which are often crucial in the formulation of foreign policy; and enlist the media, which helps determine the level of attention a crisis receives.
3. Increase the *effectiveness* of interventions. In particular, there is a growing consensus on the wisdom of sharing authority with local and regional actors, who possess superior knowledge about situations in their neighborhoods. Missions also require clearer mandates, better multilateral coordination, and stronger, more appropriate military capacities (perhaps including an international rapid response force). Aid organizations should reassert their humanitarian credentials and exercise care to protect their autonomy, independently assess the needs of a population, and constantly monitor and evaluate their activities so they are not hijacked by local factions. □

THE CONQUERORS

by Michael Beschloss

Simon & Schuster, 2002, 400 pp., \$26.95

Reviewed by Art I. Cyr

Michael Beschloss has become established as one of our most visible and influential popular historians, with a special talent for analyzing personalities and the interplay among them. His first book, *Kennedy and Roosevelt: The Uneasy Alliance*, deals with the complex and ultimately embittered relationship between President Franklin D. Roosevelt and Joseph P. Kennedy. Likewise, *Mayday: Eisenhower, Khrushchev and the U-2 Affair*, provides insightful analysis of the American president and the Soviet leader. This was followed by *The Crisis Years: Kennedy and Khrushchev, 1960-1963*. His sympathetic analysis of the recently released White House tapes of Lyndon Johnson is squarely in line with the continuing emphasis on leadership in his work.

His latest book, *The Conquerors: Roosevelt, Truman and the Destruction of Hitler's Germany*, continues this approach. Here, however, the balance of personalities is somewhat different. The book examines the relationships between FDR, and to a lesser extent his successor, President Harry S. Truman, and their Secretary of the Treasury, Henry Morgenthau.

Morgenthau, in what must now be regarded as a Washington tradition, had an electronic device installed in his office for meetings and telephone

calls. Conversations "were evidently recorded on discs" (p. 50). They do not survive, but transcripts of the recordings were available to Beschloss, providing a rich load of fresh and often highly personal material.

The Holocaust and the failure of the United States government to react to this enormous crime during the war is the principal focus. Morgenthau's intense efforts to persuade FDR to publicize the mass killings of Jews and others in Europe are discussed in detail. Morgenthau was one of many Jewish advisers and officials in the Roosevelt administration, but distinctive in his emphasis on the need to expose German atrocities.

Henry Morgenthau stands out with courage and independence in this regard. Beschloss notes that Morgenthau's long-time intensely loyal assistant, Henrietta Klotz, provided a strong, constant spur to publicize Nazi crimes. Morgenthau's son speculates that his father was, to some extent, establishing independence from the social assimilation emphasized by his own, very domineering father. Both factors were probably important, but should not be permitted to cloud Henry Morgenthau's courage in the face of indifference, and, at times, hostility to the tragedy of European Jews.

Morgenthau had a special relationship with FDR. From a privileged background himself, at

Book Review: The Conquerors

least in economic terms, he and the President and their wives were close personal friends, and the two couples often dined and vacationed together. Roosevelt from early in his career favored Morgenthau, no doubt at least in part – as Beschloss emphasizes – because of political influence to be gained with other American Jewish leaders. The post as Secretary of the Treasury, inherently very powerful, was enormously enhanced by the personal relationship.

Roosevelt freely bantered with his friend at cabinet meetings. As Beschloss reports, they traded notes like mischievous schoolboys. Morgenthau preserved at least some treasured exchanges in his personal papers, revealing that not all topics were high statecraft. Commenting on a new hat worn by Secretary of Labor Frances Perkins, the first woman member of an American Cabinet, Roosevelt scribbled “chic (k)”, to which Morgenthau penned back “cluck”.

Friendship, however, interfered not at all with Roosevelt’s policy calculations, or the extremely hard, cold eye with which he regarded apparently everyone. FDR was cautious on any public statement regarding persecution of the Jews, even though the record now clearly shows that he was well aware of the fact that mass murder was being carried out in occupied Europe. In March 1944, responding to intense pressure from Morgenthau and other Jewish leaders, the President in meeting with reporters – reading carefully from a prepared statement - publicly denounced “one of the blackest crimes of all history ... the wholesale, systematic murder of the Jews of Europe goes on unabated every hour.”(p. 59). He also created a War Refugee Board, but would not approve admission of Jewish refugees

into the U.S. or bombing of concentration camp sites.

Morgenthau also clashed with other members of the administration on treatment of Germany after the anticipated victory. He was harsh in outlook, spurred by a desire for vengeance mixed with fear of German militarism rising yet again in the future. The answer he favored was enforcing a pastoral, agricultural peace on the enemy, an approach rightly dismissed by others as impractical given the need for industry to maintain the German economy. Morgenthau combined moral clarity regarding the Holocaust with a curious utopianism on how best to deal with the enemy.

From time to time, Roosevelt tried to fence in his treasury secretary. His favored approach was always indirect, for example using Secretary of War Henry Stimson to try to persuade Morgenthau to be more flexible and pragmatic. Stimson had his own problems with FDR, whom he privately described as the worst administrator he had ever encountered, disorderly and given to setting people against one another. Meanwhile, this book reconfirms that Roosevelt maintained clear control of overall American war strategy – and planning for after the war.

There were multiple reasons for FDR to be cautious in responding to information on Nazi crimes against the Jews. Beschloss insightfully quotes Walter Laqueur’s distinction concerning Hitler’s “terrible secret” that “information” is not “knowledge”, meaning that the true enormity of the Holocaust was only clear after victory. Also present at the time was strong anti-semitism in American society. Moreover, pragmatic considerations led to a consensus among American

planners that the best way to stop mass murders was to win the war as quickly as possible.

Above all, President Roosevelt was a power player. This led to two paramount considerations during the war. First, he was focused above all else on achieving military success. Second, acutely sensitive to the anxieties of citizens who were also parents, he was determined to achieve total victory with as few American casualties as possible.

Morgenthau was not a factor in the basic strategic debate, which turned simultaneously on which region of the war to favor, Asia or Europe, and the relationships with principal allies China and the Soviet Union. Here the President and his top advisers, chief among them Gen. George C. Marshall, never wavered. Europe came first, not Asia, because continued Nazi domination of the continent meant eventual Axis world rule through control of the industrial economies and their colonies. Very high priority was given to China and the Soviet Union; each tied down enormous numbers of enemy forces. Roosevelt carefully cleared his March 1944 statement with Stalin as well as Churchill.

FDR's death near the end of the war finished Morgenthau in Washington. Where Roosevelt had tolerated and manipulated his aggressive, confrontational friend, Truman immediately clashed with him. Morgenthau likely would not have survived long in any case, but he characteristically insisted on forcing the issue of resignation. Truman colorfully expressed his low opinion of Morgenthau to others.

Beschloss rightly credits the roles of FDR and Truman in building foundations for the democracy and stability of Germany and Europe today.

Morgenthau's moral pressure during the war is his enduring, positive legacy. That generation of leaders showed a remarkable ability to plan for a post-war environment even in the face of a totally consuming, global struggle. □

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STRATEGY WATCH

A summary of recent events

June - August 2003

Asia

China reports that the Three Gorges reservoir is deep enough to enable turbines to start generating power and allow ships to resume sailing the Yangzi. In early July, 400 drown when an overcrowded ferry sinks in the Meghna River at Chandpur, **Bangladesh**. **South Korea** confirms that North Korea reprocessed a number of spent fuel rods and tested devices to trigger atomic explosions. Two of **Hong Kong's** political leaders, Regina Ip, the security secretary, and Antony Leung, the financial secretary, resign because of the government's inability to revive its economy. In Jakarta, **Indonesia**, a bomb blast kills 14 people and injures more than 100 others. An Indonesian motorcycle mechanic is found guilty of planning the Bali terror attack that killed 202 people last October and is sentenced to death. A car bomb is detonated near a Marriot hotel in **Jakarta**, Indonesia killing 10 people and injuring 150.

Middle East

Jordan holds its first elections since King Abdullah dissolved parliament two years ago. Independents won the majority of the 110 seats. **Libya's** leader Muammar Qaddafi calls for the abolition of the public sector including the oil industry, which earns 90% of the country's income, claiming it is run inefficiently. The Middle Eastern road map suffers a series of setbacks when a suicide bomber blows up a bus in **Jerusalem** killing 14 and the Israelis attempt to assassinate Abdel-Aziz Rantisi, Hamas's top political leader. American forces launch armed raids against **Iraqi** resistance groups and arrest

over 400 people including Saddam Hussein's presidential secretary, Abed Hamid Mahmud al-Tikriti. The International Atomic Energy Agency accuses **Iran** of concealing its nuclear activities. President Pervez Musharraf of **Pakistan** announces that high-level peace talks with **India** could take place later this year. UN announces that a third of Afghanistan is off limits to the UN because of a lack of security. In early June, a **Baghdad** municipal council is inaugurated as part of the American plan to set up local advisory councils. The Iraqi Governing Council is appointed. It consists of 25 members, mainly Iraqis, but maintains a religious and ethnic balance. In late July, US troops kill Saddam Hussein's sons, Qusay and Uday. **Iran** admits that Canadian journalist, Zahra Kazemi, was beaten to death after her arrest in Tehran. Ariel Sharon, Prime Minister of **Israel**, says that he will continue to build the security fence. The **Turkish** parliament passes new laws to limit the military's role in politics. In early August a car bombing at the Jordanian Embassy in **Baghdad** kills 7 and injures 28. Weeks later, a bomb attack on the UN headquarters in Baghdad kills Sérgio Vieira de Mello, the UN representative, and at least 20 other people. Hamas and Islamic Jihad claim responsibility for the attack. Ali Hassan al-Majid, also known as "chemical Ali", cousin of Saddam Hussein, is captured by coalition troops in **Iraq**. Idi Amin, the former Ugandan president, infamous for human rights abuses, died in exile in **Saudi Arabia**. Twin bomb blasts in New Delhi, **India** kill dozens and injure over 100 people.

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A car bomb is detonated near a Marriott hotel in Jakarta, Indonesia killing 10 people and injuring 150.

A bomb attack at the UN headquarters in Baghdad kills the top UN envoy to Iraq, Sergio Vieira de Mello, a UN representative and at least 20 others.

Coalition troops capture Ali Hassan al-Majid a.k.a. "Chemical Ali", cousin of Saddam Hussein, in Iraq.

Three men are arrested in Newark, New Jersey for alleged involvement in a plot to smuggle surface-to-air missiles into the United States.

Africa

In mid-June, **Liberian** rebel forces and the Charles Taylor regime agree to a ceasefire. In early July, George W. Bush tours **Africa** discussing trade, aid, and security. Charles Taylor, president of **Liberia**, is indicted for war crimes including support for Sierra Leonean rebel groups. **Burundi's** cease fire suffers a setback when rebels attack the capital of Bujumbura, and fight fierce street battles with the army. More than 170 people were killed. Rebels in **Liberia** seize two cities igniting attacks with government troops. In early August the first contingent of West African peacekeepers arrive in Liberia. Charles Taylor, president of Liberia, steps down.

Europe

Australia announces that it will work with America and Japan to stop North Korea's export of drugs and missile parts. In mid-June, **Polish** citizens vote in favor of joining the European Union. Police in **France** arrest an alleged leader of al-Qaeda who was involved in the terrorist attacks of 9/11. The European Union announces that force may be used against Iran as a last resort to halt its weapons of mass destruction program. **Czech** citizens vote in favor of joining the European Union. **Finland's** first female prime minister resigns after two months when she is accused of lying about foreign ministry documents used in the election. In **Moscow**, two suicide bombers kill 16 people at a rock concert to protest Russia's oppression of Chechens. In a public address, **Italy's** Prime Minister Silvio Berlusconi compares a German member of European Parliament (MEP) to a Nazi concentration camp guard causing German President Gerhard Schroeder to cancel his trip to Italy. **Cyprus** votes in favor of joining the European Union. The parliament of **Azerbaijan** appoints Ilham

Aliev prime minister and official heir to his ill 79-year-old father, President Heidar Aliev.

South America

In mid-June, over 70 workers are kidnapped in **Peru** at the Camisea natural-gas project by the Shining Path guerrilla movement. They are later released. **Ecuador's** oil workers cease protests against government plans to open more of the industry to private investment. **Peru** requests that Japan extradite Alberto Fujimori, its former president, to face charges of murder and kidnapping. In **Cuba**, President Fidel Castro criticizes the European Union (EU) after the EU cites Cuba's human rights abuses.

North America

In early July, the Bush administration admits that it relied on faulty information when the president accused Saddam Hussein of buying uranium from Africa. Eric Rudolph, the main suspect in the 1996 bombing at the Olympics in Atlanta, is arrested in North Carolina. The US rejects the Saudi government's request to declassify the section of the congressional report on 9/11 that may allege its involvement in the terrorist attacks. The State Department says that if Israel proceeds in building the "security wall" into Palestinian territory, the US will reduce its loan guarantees by the amount Israel spends on building the wall. In mid-August, three men are arrested, one of whom is identified as Hekmat Lakhani, a British independent arms dealer, in Newark, New Jersey, for alleged involvement in a plot to smuggle a surface-to-air missile into the United States. □

RESEARCH REPORTS

Summaries of recent articles presenting new ideas on international affairs

Can India Overtake China

by Yasheng Huang and Tarum Khanna
Foreign Policy, July/August 2003
pp. 74-81

Yasheng Huang is an associate professor at the Sloan School of Management at the Massachusetts Institute of Technology. Tarum Khanna is a professor at Harvard Business School.

According to the authors, India and China are the world's next two superpowers, and these two countries have adopted sharply contrasting models of economic development. The authors examine the likelihood that India's moderate economic development, based on "homegrown entrepreneurships", will surpass China's burgeoning economic development, based on foreign direct investment (FDI).

By relying on homegrown entrepreneurships, India is better utilizing all of its resources and providing a more stable standard of living for local business owners. As a result, free enterprise is thriving and capital markets are evolving. The authors state that many of Asia's leading firms, as rated by the *Far Eastern Economic Review*, are Indian start-up companies or offshoots of other leading Indian companies. A tradition of entrepreneurship coupled with "democracy and a decent legal system" is India's formula for stable economic development.

Huang and Khanna state that China's model of economic development appears infallible at the macroeconomic level, but if examined at the micro-level, contains many defects which may lead to eventual diminution. The authors write that China "has been far bolder with external reforms but has imposed substantial legal and

regulatory constraints on indigenous, private firms" in order to prevent private business from competing with China's state-owned enterprises (SOE's). These restrictions have cost a lot of money, paralyzed local private businesses and created a negative bias against local business owners. Also, China has to absorb the huge number of residual nonperforming loans from the early 1990's, when China's growth rates were in the double digits and Beijing invested in the state sector. According to the authors, this could limit China's future growth trajectory.

The authors question, "If India has so clearly surpassed China at the grassroots level, why isn't India's superiority reflected in the numbers?" The authors attribute this inconsistency to the nascence of India's economic reforms, a lower national savings rate than China, and 90 percent less FDI. Moreover, India has endured decades of tension with Pakistan over Kashmir, whereas China, aside from Tiananmen Square, has enjoyed twenty years of relative stability. Still, India's annual growth rate is only 20 percent lower than China's. The authors write that "the speed at which India is catching up to China is due to its own efficient deployment of capital..."

Can India overtake China? The answer to that question will not be determined for many years. At present, India is exhibiting progress in areas, where China is inefficient. If India continues its growth, and if China's economic model of development deteriorates, it will "demonstrate the importance of homegrown entrepreneurships to long-term economic development" and "show the limits of the FDI dependent approach China is pursuing." □

The Jihadist Threat to Pakistan

by Stephen Philip Cohen

Washington Quarterly, Summer 2003

pp. 7-25

Stephen Cohen is a senior fellow in the Foreign Policy Studies Program at the Brookings Institution in Washington, D.C.

Stephen Cohen examines the threat posed by radical Islamic groups in Pakistan. He identifies the various implications of this threat for the US and US strategy options for the future.

Cohen writes that there are limitations on the potential threat posed by radical Islamic parties including the role of Islam in the state. For example, Pakistanis accept that their state is Islamic, but cannot agree on which elements of Islam should dominate. There is also a lack of cohesion among the various Islamist parties that range from moderate to militant. According to Cohen, none of these groups has a fully developed global agenda despite their many common interests in Kashmir and Palestine and their distrust of the US. The chief reason for the marginality of radical Islamic groups is the “political dominance and institutional integrity of the Pakistani army.” He writes that the army is not interested in supporting the agendas of these groups and will use its power to prevent the rise of radical Islam even though the army has used these groups in the past to further its own interests.

Despite these limitations, Cohen argues that there are trends in Pakistan which might give rise to a stronger radical Islamic presence. Pakistan’s economy is deteriorating, the educational system is defunct, and there has been a rise in sectarian violence, guns and disorder. Furthermore, President Musharraf’s foreign policy objectives are “adventurist and ultimately debilitating.”

US policymakers should be sensitive to the current internal environment in determining US concerns in Pakistan. According to Cohen, the US should be aware that the long-term decay of Pakistan would provide radical groups with a larger pool of recruits; a later generation of army officers, frustrated with Musharraf’s secularism and the US, might allow an Islamic successor; a continuing US presence in Afghanistan (Pakistan’s neighbor), without positive results, could provoke negative outbursts against any governments that support the US, and if the army cannot protect Pakistan from the pressures from India, the army may sway in the Islamic direction.

Cohen writes that the best strategy available to the US at present is to insist that the Pakistani government support the moderate, secular political parties and inflict stricter punishment on the Islamic groups, parties, and leaders that have practiced violence in Pakistan. Furthermore, the US must encourage democracy in Pakistan, promote peace between India and Pakistan, support nation building in Afghanistan, and improve the benefits of US aid for the Pakistanis.

Cohen writes that Pakistan is currently a US ally in the war against terrorism, but potentially a base for Islamic radicalism, which could pose a threat to the US in the long-term. Therefore, the US must continue to work with Pakistan while addressing Pakistan’s root problems. If these conditions are ignored, Pakistan could become “one of the world’s most dangerous states.”□

Striking a New Transatlantic Bargain

by Andrew Moravcsik

Foreign Affairs, July/August 2003

pp. 74-89

Andrew Moravcsik is a Professor of Government and Director of the European Union Program at Harvard University.

Andrew Moravcsik outlines steps that must be taken by the US and Europe to reconstruct the transatlantic alliance - "complementarity, not conflict, should be the transatlantic watchword."

The tensions that arose between the US and Europe over the war in Iraq were the product of divergent views on a number of issues including threat perception and the use of military power. Neither side intends to change its view. However, Europe and the US have shared commitments to democracy, human rights, and open markets and both sides "must recognize that they benefit from the active participation of the other in most ventures."

The author offers three paths the allies could follow: (1) agree to disagree (2) part ways militarily (3) negotiate a new bargain in which American military power and European civilian power are deployed together at targets of mutual concern. The third option "promises the greatest returns." The challenge is "how to depoliticize controversial high-stake issues."

There are steps that must be taken by both countries to achieve this end. First, the US and Europe must commit to private and comprehensive consultations prior to "launching public attacks in the media." Also, they must accept that the UN Security Council is not the only forum for debate over military action. Moravcsik sug-

gests that "the prudent course would be to drop the matter and allow discussions to move ahead in other forums, as was done with the debate over Kosovo."

Beyond diplomatic reforms, Europe needs to develop "true power projection capabilities." Moravcsik writes that "proposals to remilitarize Europe are unproductive." However, Europe has many capabilities which could be used as incentives for "good behavior" on the part of the US: its success in the EU trading bloc, foreign assistance, and its leading role in peacekeeping efforts worldwide. Given these capabilities, it is essential that the US engage the UN in the reconstruction in Iraq. A stake in the reconstruction in Iraq will attract increased European aid.

The US must minimize the potential for backlash by involving Europe and the UN in the reconstruction of Iraq. A successful transition from an oppressive regime to some form of democracy is tantamount to a new transatlantic alliance. If conditions in Iraq improve, Europe participates in peacekeeping operations, and the US rethinks its approach to future military conflicts, a new transatlantic alliance "could swiftly be re-established." However, if the reconstruction process stalls and Europe remains uninvolved, US interests in the Middle East could be threatened. According to the author, "the diplomacy of the last years stands as a guide for what to avoid - and what to seek - the next time around." □

Research Reports

The US and Nigeria: Thinking Beyond Oil

by Salih Booker and William Minter

Great Decisions, January 2003

www.greatdecisions.org, pp. 43-54

Salih Booker is executive director and William Minter is senior research fellow at Africa Action, the oldest US-based Africa advocacy group.

Salih Booker and William Minter examine the long-term relationship between the US and Nigeria. There is a great potential for healthy development in Nigeria. However, the social, political, and economic fabric of the nation is falling apart at the seams. The US has vested interests in Nigeria, but it must “think beyond oil” and assess the potential within the people and the environment.

Nigeria is Africa’s most influential and densely populated nation with 130 million people. It produces more oil than any other African country and, in 2002, was ranked the fifth-largest supplier of oil to the US. The authors write that “many Nigerians, particularly those that live where the oil is produced, would say that the oil has been more of a curse than a blessing.” There have been numerous grave conflicts between groups in the Niger Delta, where the oil is concentrated, and the military, over damage to the environment.

Adding to the tension is the unequal distribution of oil revenues between the federal government and the states, the “perverse effects” of oil on the economy such as the decline in agricultural exports and manufacturing, foreign debt, corruption in public spending, the rising trend of poverty, the AIDS pandemic, the potential threat

posed by Nigerian Muslim extremists, and the increasing frustrations among the people with their government and politics.

Oil revenues can lead to development in Nigeria and, consequently, Africa, but the country lacks effective mechanisms to control them. Although the US cannot be responsible for solving Nigeria’s problems, it can help to improve current conditions by showing public support for a suspension of Nigeria’s foreign debt, which would allow funds to be used to combat AIDS and improve education; democracy and human rights; and requirements for oil companies investing in Nigeria to “provide full transparency payments to governments and government officials, accept financial responsibility for any damage to the environment, and implement international standards for environmental protection.”

If conditions in Nigeria continue to deteriorate, US interests, not only in oil, but in trade, immigration, and the region itself will suffer. The authors write that the “key test for US policy toward Nigeria is whether public pressure can force policymakers to look beyond” oil. If so, there is a great potential for sustainable benefits for both countries. □

The Protean Enemy

by Jessica Stern

Foreign Affairs, July/August 2003

pp. 27-40

Jessica Stern is a lecturer in Public Policy at Harvard's John F. Kennedy School of Government and the author of *The Ultimate Terrorists* and the forthcoming *Terror in the Name of God: Why Religious Militants Kill*.

Jessica Stern examines why Al Qaeda remains one of the most significant threats to US national security and what the US needs to do to adapt.

The factors that define the "protean nature" of the Al Qaeda network are:

- *Flexibility*. Stern writes that "over its life span, Al Qaeda has constantly evolved and shown a willingness to adapt its mission." The different cadres of moral crusaders expand their agendas to become a complex organization bound by primary objectives which include securing reliable sources of funding, attracting new recruits, and fighting the West.

- *Alliances*. Terrorist organizations such as Osama Bin Laden's International Islamic Front for Jihad against Jews and Crusaders (IIF) have begun working closely with other international groups, mainly based in Iraq and Europe, and traditional organized crime groups. The groups share funding, camps, and logistical information. The more extensive the system of alliances, the more difficult it will become for the US to detect terrorist activity.

- *Virtual Networks*. A "virtual network is a style of organization used by American right-wing extremists for operating in environments (such as the United States) that have effective law en-

forcement agencies." These are leaderless organizations that encourage small cells or individuals to carry out actions based on their respective initiative. Stern writes that the Internet has facilitated the spread of these organizations. It is a forum offering on-line training courses in the production of explosives and instructions on how to develop a terrorist cell. It also provides greater accessibility to a larger pool of recruits worldwide.

- *Modern Methodology*. Al Qaeda has redefined its methods of warfare. New approaches include surface-to-air missile attacks and chemical, nuclear, and biological weapons. Many fear that terrorist groups will recruit expert scientists with access to nuclear, biological, and chemical weapons.

Stern writes that the US government "should start thinking about how US policies are perceived by potential recruits to terrorist organizations." Washington should develop policies that will dissuade potential terrorist recruits from joining an organization. These policies should concentrate on education, economic development, and social reforms. Furthermore, the US and other Western governments must make it more difficult for terrorists to obtain new weapons and develop new methodologies by upgrading security at vulnerable nuclear sites and the global system of disease monitoring.

Stern writes that "only by matching the radical innovation shown by professional terrorists such as Al Qaeda – and by showing a similar willingness to adapt and adopt new methods and new ways of thinking – can the United States and its allies make themselves safe from the ongoing threat of terrorism." □

Research Reports

Headlines Over the Horizon

by RAND Analysts

Atlantic Monthly, July/August 2003

Analysts from the RAND Corporation examine ten national security threats that they believe “aren’t getting the attention they deserve.”

“The Israeli Security Wall”

The Israelis are constructing a 225-mile “security wall” which will separate the state from the West Bank, not in accordance with the Green Line – Israel’s pre-1967 border. The purpose of the wall is to protect Israel on its West Bank border from terrorists. While a majority of Israelis support it, Palestinians are unhappy about the wall oasis, many considering it a “land grab.” The analysts argue that the wall could cause a deeper divide between the Israelis and Palestinians and, as a result, incite further attacks on Israel.

“A Shrinking Russia”

The analysts are concerned about the declining Russian demographic. They argue that this trend will “greatly strain a country already struggling to cope with a daunting array of security challenges.” The mortality rate for young Russian men, ages fifteen to twenty-four, is three times that of American men of the same age. This is the population from which the military recruits its personnel, and without enough military personnel, Russia cannot effectively protect itself from terrorism and weapons of mass destruction.

“The Hindu-Muslim Divide”

The Indian commitment to secularism is being threatened by a group of radical Hindu nationalists who believe that the secular political state that has defined Indian politics since independence is a threat to Hindu identity. They are seeking to influence the agendas of Indian political parties such as the BJP, which has led the coalition government for five years. According to the authors, this radical movement “may force Indian Muslims – traditionally moderate and supportive of the secular state...to shift their allegiance from the state to some sort of larger international Islamic movement.”

“AIDS and African Armies”

According to the analysts, AIDS is “decimating the ranks of African armed forces.” This pandemic is the result of various factors including sexual promiscuity and illicit drug use. Loss of manpower will be detrimental to African armies and their ability to carry out their missions. The analysts write that although African armies are often the source of the problem “in many cases only they have been able to ensure national and regional stability.”

“The Tehran-New Delhi Axis”

Iran and India are unlikely allies. However, after the Cold War, these two countries discovered that they shared common goals - one of which is curbing US power. Today, a stable Afghanistan and the preservation of the Pakistani state are of great significance to both. In January 2003, Iranian President Mohammad Khatami and Indian Prime Minister Atal Bihari

Vajpayee signed an accord which focused on greater economic, scientific, and technological ties between the two countries. The effects of this relationship on issues such as the war on terrorism and political developments in Central Asia may not be in line with US interests.

“Anti-Satellite Attack”

A nuclear attack against satellites is a possibility. Russia, China, Pakistan, North Korea, and Iran may acquire the ability to carry out such attacks within the next few years. Such attacks would be highly detrimental to the US economically - the cost of fixing a satellite would be in the billions. There are also military consequences - communication and weather forecasting capabilities could be crippled. According to the analysts, such tactics could be used as “a deterrent, as a coercive threat, or to strike a painful blow against the United States and its allies” without difficulty or detection.

“Defense Industry Goliaths”

The consolidation of the defense industry could pose a major threat to the availability of all major classes of defense equipment, including surface ships, armored vehicles, and helicopters. The US is relying on one or two companies to design and/or build its military aircraft and tactical fighters. If one of these programs encounters an obstacle or fails, backup is limited.

“The Carrier Shortage”

The US has no plans to expand its fleet of twelve aircraft carriers. The campaigns in Af-

ghanistan and Iraq demonstrated the effectiveness and value of military air assaults. If events had escalated in North Korea, the analysts question whether or not the US would have been adequately prepared given that the entire fleet was employed in the Iraq war. The US needs to weigh the cost of building additional carriers given the challenges it will face in the future.

“The Indus Water Fight”

A 1960 treaty between India and Pakistan called for joint management of the region's Indus River water, but according to analysts, shrinking water levels may aggravate ongoing disputes between the two nuclear nations. Analysts write that disputes between India and Pakistan over the Indus Water Treaty could “transform” the conflict in Kashmir and threaten regional stability.

“Urban Warfare”

Fighting a determined enemy in urban environments is both challenging and costly. Defense planners are developing new technologies and systems that will enable more effective operations on the urban battlefield such as micro-robot scouts that could carry visual, auditory, chemical, and other sensors from building to building. These new technologies and systems may take decades to develop, but research has shown that many are viable.□

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How to Stop the Iranian Bomb

by Geoffrey Kemp

The National Interest, Summer 2003

pp. 48-58

Geoffrey Kemp is director of Regional Strategic Programs at the Nixon Center. He was Special Assistant to the President for the Middle East during the first Reagan administration.

Geoffrey Kemp assesses US policy options, other than the use of force, for stopping Iran's nuclear bomb program.

Kemp writes that Iran began developing a sophisticated, independent nuclear-technology infrastructure during the rule of the late Shah. The motives for the nuclear program include national ambitions, a strike force-style of "insurance policy" against the United States (which replaced the Soviet Union as a threat), and protection against the potential threat posed by the India-Pakistan conflict. Developing an independent fuel cycle is not an easy task, but Iran is making advancements to enable such capabilities to assure access to low-enriched uranium and plutonium for nuclear power reactors. Kemp argues that the US should be cautious of Iran's ambitions given that it has access to Russia's nuclear fuel, and it has the world's second largest natural gas reserves and fifth largest oil reserves. It does not need nuclear power projects for electricity generation.

Adding to suspicions over their nuclear program is Iran's support of terrorism. It provides the largest financial and military support for Hizbollah, which is considered one of the most dangerous terrorist organizations by the US government. According to the author, many Iranians "regard their support for Hizbollah as one of

their great successes."

There is no easy way to stop Iran's nuclear program or its support for terrorist organizations, but threatening to destabilize the regime will do more harm than good. According to the author, the US can try to thwart Iranian efforts through a "concerted policy of cooperative containment." This will require multilateral operations involving the EU, the UN Security Council, China and Russia. The US must be flexible in its policies toward Russia given its commercial interests in Iran and its plans to build a nuclear reactor at Bushehr. In turn, Russia should make concessions regarding US security considerations. The UN Security Council must determine whether or not Iran is in violation of the Nuclear Non-Proliferation Treaty (NPT). The EU can provide an incentive to Iran such as inclusion in the Trade and Cooperation Agreement (TCA) which would require that Iran collaborate on fighting terrorism, weapons of mass destruction, and aiding the Arab-Israeli peace process.

Iranian leadership must be convinced that the security of the regime will not be threatened if they abandon terrorism and their nuclear program. This can be achieved through rapprochement with the US and the international community. The US should not delay or it might miss the opportunity for cooperation. □

Privacy in the Age of Terror

by Mary De Rosa

Washington Quarterly, Summer 2003

pp. 27-41

Mary De Rosa is a senior fellow at the Center for Strategic and International Studies (CSIS). Previously, she served as special assistant to the president and legal advisor on the National Security Council staff and as special counsel at the Department of Defense.

Mary De Rosa writes that the “diffused” nature of today’s terrorist networks poses a new threat to US intelligence. There is a need for more effective intelligence gathering and information-sharing domestically and worldwide. However, she writes that “mistrust of a powerful government is part of the US heritage.” US citizens are apprehensive that the US government might abuse its increased access to private information. De Rosa examines the current system for privacy protection and suggests revisions for a new framework.

According to the author, it is necessary to understand the history of domestic intelligence activities in the US in order to understand the current system of privacy and security. For decades, the Federal Bureau of Investigation (FBI), the Central Intelligence Agency (CIA), and the National Security Agency (NSA) conducted domestic intelligence activities that “included open-ended surveillance and disruption of legitimate activities of civil rights and antiwar organizations.” In 1976, the Church Committee, chaired by Senator Frank Church (D-Idaho) published a report entitled *Intelligence Activities and the Rights of Americans*. The committee found that the intelligence community overlooked the

abuses of privacy and US civil liberties. De Rosa identifies several examples including the FBI’s infiltration of various civil rights groups without any indication of criminal activity or Communist ties and the FBI campaign to discredit Dr. Martin Luther King Jr. from 1963 until his death. In addition to the abuses, the Church Committee found inefficiencies in the oversight and supervision of the intelligence community. According to the author, “information was often collected and disseminated to serve the political interests of a particular intelligence agency or administration to influence social policy and political decisions.”

De Rosa writes that the current system of privacy protection has restrictions and prohibitions that limit governmental access to private information. However, some of these restrictions have been relaxed and new changes have been implemented since September 11th. For example, Attorney General Ashcroft’s May 2002 revisions to Attorney General Guidelines permit the FBI to collect public information about US residents and conduct surveillances in public places without any indication of criminal activity. These reforms increase the level of vulnerability among US citizens and, consequently, distrust of the US intelligence community.

De Rosa writes that the answer to improving the system of privacy protection is to revise the framework. These revisions include:

- *Emphasize the integral role of systemic oversight.* Individuals in the intelligence community must understand what is acceptable and what is not.
- *Use technology to protect privacy.* Technology can be used to filter data, limit access to

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data, and ensure the accountability of personnel who have access to data.

- *Increase periodic congressional oversight of privacy protection.* The oversight role of Congress, although minor, is very important. Congress is more inclined to openness because of its political character.
- *Inform the public about intelligence guidelines and practices.* The public should know what the government is doing with the information it gathers.

The new threat posed by terrorists has ushered in a new age of fear among US citizens. The US intelligence community must be sensitive to the public. However, the government should not be constrained to the point of marginalizing effectiveness. A new system of privacy protection is required. Americans must remember the lessons of the past and “adapt those lessons to a new environment.”□

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