

The Post 9/11 Partnership: Transatlantic Cooperation against Terrorism

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Foreword

Since the attacks of September 2001, the United States and the European Union have worked to build effective cooperation in fighting terrorism, especially in law enforcement, border and transportation security, and terrorist financing. This has not always been easy, as demonstrated by disputes over the screening of shipping containers, and information about airline passengers. But despite these differences — and the severe tensions in transatlantic relations generally — the effort to build cooperation against terrorism has been widely regarded as one of the success stories of the U.S.-European partnership.

The key question now before the United States and the European Union is how to make these efforts at cooperation even more effective, and how to build on them so that cooperation can continue to develop in the future. In an effort to assess the current state of the U.S.-EU partnership against terrorism, and to consider how it might be developed further in the future, the Atlantic Council sent a delegation of U.S. experts to Brussels and The Hague in July 2004. The delegation met with key EU officials from the European Commission, Council of Ministers, and the European Parliament. It also met with the leadership at Europol and Eurojust, and with representatives of the Dutch EU presidency and of several member states. The group also met with U.S. officials both in Europe and Washington. This report contains the group's conclusions and recommendations for further enhancing U.S.-EU cooperation against terrorism. The report reflects the consensus of the delegation members, although not every member of the delegation would necessarily subscribe to every judgment in the report. Nor does the report necessarily represent the views of the Atlantic Council as an institution or of any of the project's sponsors.

On behalf of the Council, I would like to express great appreciation to the delegation members for their commitment to this effort and their contributions to the report. I would also like to thank the European Commission Delegation in Washington and the Embassy of the Netherlands for their assistance in arranging meetings in Brussels and The Hague. The Transatlantic Policy Network and the American Chamber of Commerce to the European Union graciously hosted the delegation for meals and excellent discussions. Finally, thanks are due to Sara Tesorieri, who did her usual masterful job of fixing schedules, planes, and meetings so that the delegation could be at the right place at the right time.

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The Post 9/11 Partnership: Transatlantic Cooperation against Terrorism

Executive Summary

On September 11, 2001, the world was introduced to a new type of terrorism, one that was truly global in its organization and its impact. In both Europe and the United States, it was immediately clear that an effective response would require new levels of cooperation across the Atlantic and around the world. The initial response was in part military, as NATO invoked its mutual defense clause for the first time ever and a military campaign began in Afghanistan. But equally important was the decision by both the European Union and the United States to boost the capacity of their domestic law enforcement agencies and judiciary to respond to global terrorism and to look for ways to cooperate with each other in doing so. Since then, U.S.-EU cooperation in combating terrorism has been one of the success stories of transatlantic relations.

It has not always been a trouble-free collaboration, however. There have been conflicts over the sharing of information on airline passengers, the need for biometric data on passports, screening of shipping containers at ports, and the use of armed marshals on airline flights. And, while both the European Union and the United States recognized the severity of the challenge presented by global terrorism, they differed considerably in their assumptions and views on the most appropriate strategy of response. Many in the U.S. government saw terrorism as something to be eradicated and military force as an effective and proportionate tool in that struggle. European attitudes, tempered by their own experience of national terrorism, tended to see terrorism as first and foremost a crime, albeit a heinous one that might require special measures by law enforcement and the judiciary. In this view, eradication is likely to prove impossible; instead governments need to balance strict protective measures with efforts to address the socio-economic roots of such violence.

Both the United States and the European Union have undertaken ambitious domestic programs aimed at strengthening their ability to meet the terrorist challenge at home. In the United States, the USA PATRIOT Act and the Department of Homeland Security have been the lead elements in a significant reorganization of U.S. government efforts in this area. In the EU, the member states have adopted — and now seek to implement — new legislation dealing with a wide array of issues, from border security and arrest warrants, to terrorist financing

and police investigations. Moreover, the pressure for additional legislation and reforms continues on both sides of the Atlantic. As a result, efforts to collaborate have sometimes been overtaken by pressures from the domestic agenda, and new domestic measures are still too frequently designed without consultation, causing unnecessary complications in the transatlantic arena. These domestic efforts have also brought to the fore a major difference between the EU and the United States: while the U.S. government can implement and enforce laws throughout the country, the EU institutions must rely on member states to do so. This has added another layer of complexity to building collaboration, as U.S. officials attempt to discern whether a bilateral or multilateral approach is likely to be most effective on each specific issue.

Despite these differences — and the increasing strains in transatlantic relations in the broader diplomatic sphere — the United States and the European Union have shared a commitment to making their evolving collaboration against terrorism a success. During the past three years, they have reached agreement on many new arrangements, such as the Container Security Initiative and Passenger Name Records (PNR), but also on terrorist financing, sharing of evidentiary information, extradition of suspected terrorists, and many others. They have built close ties between parts of their bureaucracies that had rarely been in contact before, and involving officials from working level to Cabinet secretary and European commissioner.

The question now before the United States and the EU is whether and how to build on the cooperation achieved thus far and ensure that this post-9/11 partnership continues into the future. This will not be easy. Legislation and other agreements must be implemented and enforced. Existing areas of cooperation must be extended, and collaboration in new areas must be explored and developed. The good news is that the United States and the European Union have established basic mechanisms for building cooperation through regular consultations and have successfully concluded some basic agreements. Now they must build on that beginning in four key areas.

Information and Privacy

The tension between the need for comprehensive information about potentially suspect individuals and the obligation to protect individual privacy is one of the most difficult elements — but also one of the most important — to reconcile across the Atlantic. Understandings must be reached on how to share intelligence information generated by covert methods, as well information gathered through law enforcement methods and suitable for use in a court of law. The United States and European Union must also find ways of integrating a growing number of databases while maintaining adequate protections on privacy. To date, many of these efforts have proceeded on two separate tracks, sometimes leading to incompatible practices and policies that have heightened transatlantic tensions. In the future there must be more transatlantic consultation as these policies and practices develop. In particular, the United States and the EU should:

- **Build on the experience of the PNR agreement by establishing general “rules of the road”** concerning at least three issues: time-frame and criteria for deleting information from a data base; procedures for sharing information with third parties; and establishing appropriate redress for individuals who wish to challenge information about themselves.
- **Develop procedures for the appropriate sharing of personal data between governments and the private sector.** The example of banks participating in anti-money laundering schemes may be instructive, along with the role of the national security exemption in the Safe Harbor accord.

Law Enforcement and Judicial Cooperation

Officials in both Europe and the United States acknowledge the importance of collaboration in law enforcement and judicial policy, an area that encompasses sharing information among police forces, joint investigative teams, and compatible criminal statutes and court procedures (including rules of evidence). Given that terrorists increasingly operate in international networks, law enforcement authorities must also be able to coordinate across borders. But actual progress in building that cooperation has been excruciatingly slow. As with information collection, the U.S. and European efforts have moved in parallel but largely separate tracks, with the emphasis on building collaboration within the United States and the European Union, rather than reaching out across the Atlantic. Efforts have also been hindered by persistent tensions over whether bilateral or multilateral arrangements are most effective. U.S. law enforcement has long had bilateral relationships with equivalent agencies in individual EU member states, but has been slow to recognize the shift toward cross-border cooperation in the EU. Yet, the attack in Madrid has demonstrated the need for greater cooperation in this area and provided an impetus to everyone to move forward. To reinforce this trend, the United States and the EU should:

- **Bring the multilateral legal assistance treaties (MLATs) and extradition treaty into effect as soon as possible**, reconciling them with existing bilateral agreements.
- **Launch an ongoing set of expert discussions on various law enforcement and judicial issues**, including sharing investigative and intelligence information, treatment of evidence, investigative and judicial procedures, etc. These could be reinforced by exchange programs among U.S. and EU law enforcement officials aimed at broadening their knowledge of criminal law and investigative methods on the other side of the Atlantic.
- **Re-engage with Europol** by ensuring that the new FBI liaison officer is someone knowledgeable about European law enforcement and the changes it is undergoing. But U.S. efforts will only be effective if European member states commit to making Europol a successful institution.

- **Appoint a full-time liaison to Eurojust, as a way of supporting its very practical efforts to build cooperation among judicial authorities;** this should entail the appointment of someone with a judicial or prosecutorial background and network.
- **Expand U.S.-EU cooperation into new areas of criminal investigation,** including cybercrime, trafficking in humans and drugs, and arms smuggling, not only to reinforce existing cooperation, but also to impede the terrorist networks which seem increasingly connected with these other cross-border crimes.

Borders and Infrastructure

Efforts to protect borders and key infrastructure, especially transportation facilities, have already caused controversy in the transatlantic relationship, including such issues as biometric passports and screening of shipping containers. Nevertheless there has been a developing transatlantic understanding of the importance of this issue that has led to growing cooperation. Although they lack a common land border, the United States and EU still experience a huge amount of “cross-border” traffic, both in people and goods. Along with tracking suspicious cargos and individuals, they must also protect port and transportation facilities which are vulnerable to attack. These tasks are complicated by the fact that they must involve multiple agencies with many different mandates, who must engage in several interlinking strategies. To address these challenges, the United States and the EU should especially focus on some key priorities. In particular, they should:

- **Strengthen efforts to develop global standards for technologies and procedures that can be used worldwide.** Such standards could be developed on a bilateral basis and then adopted by international standards-setting bodies.
- **Collaborate on research and development of technologies that will aid in preventing terrorism or alleviating its effects.** Separate R&D efforts may lead to the development and adoption of incompatible technologies that hinder and frustrate transatlantic cooperation.
- **Reinforce joint efforts to strengthen port security and expand this to intermodal transport networks.** In the immediate future, the priorities will include: sharing best practices; joint training of inspectors, perhaps through exchange programs; and enhancing methods of identifying high-risk vessels, especially among those who transit U.S. and EU ports without taking on or off-loading cargo. Addressing intermodal transport will be much more difficult, but enhanced cooperation on technology, procedures, and intelligence could help make vital transport networks safer.
- **Engage the private sector more fully on both sides of the Atlantic.** The private sector should not be viewed merely as the recipient of government advice and

requirements, or even simply the recipient of funds to develop new anti-terrorism technologies. Especially in terms of protecting transport networks and key infrastructure, the private sector is clearly an essential partner. Government officials in both the United States and the EU need to consider how to work with the private sector most effectively, especially given the strong corporate links across the Atlantic and the interconnectedness of the two economies. The TransAtlantic Business Dialogue may be able to play an important role in creating a stronger dialogue between U.S. and European companies on this issue.

Beyond the U.S.-EU Partnership

Even though much remains to be done in strengthening U.S.-EU bilateral efforts, it is also essential that the transatlantic partners take on a leadership role in the global fight against terrorism. Yet transatlantic differences, especially over policy toward the broader Middle East, have made it more difficult for the United States and the EU to work together in this area and have limited their credibility, especially that of the United States, in the region. Intra-European differences, and the continuing evolution of European institutions in the foreign policy arena, also hinder coordinated action across the Atlantic. Nevertheless, if the United States and the EU are to exercise global leadership, they must convince others to take specific, sometimes difficult, steps against terrorism, despite serious political differences and even suspicion about U.S. and European motives. In reaching out beyond their bilateral partnership, the United States and the European Union should:

- **Bring NATO into the transatlantic partnership aimed at fighting terrorism.** Despite the distinctly different U.S. and European views on the utility of military force in combating terrorism, NATO does have some specific strengths that it could bring to bear if permitted to fully engage in the struggle against terrorism. NATO is well placed to engage in such military operations as interdiction of suspicious cargos and perhaps even quick strikes at terrorist training camps. Engaging NATO more fully and appropriately will make the U.S.-EU partnership that much stronger and better prepared if circumstances arise in which a military response to terrorism is required.
- **Assist third countries in combating terrorism.** An effective effort at coordinating foreign assistance programs must be more narrowly focused on specific anti-terrorist measures, such as helping developing country ports to meet the port security code of the International Maritime Organization (IMO) or their airports to purchase and maintain appropriate security equipment and training. Other types of assistance aimed at generating political and economic reforms will be critical in the long-term, but the immediate focus of U.S.-EU coordination should be on building the capacity of third states to implement specific anti-terrorist measures and policies.
- **Cooperate fully in advancing anti-terrorist efforts in a range of international organizations, especially the United Nations and the G-8.** At the United Nations,

for example, the Counter-Terrorism Committee (CTC) has sought to ensure that members have effective legislation, especially in the area of preventing financial support for terrorist groups, while the G-8 has issued recommendations on a range of issues related to terrorism. The United States and the European Union should cooperate in ensuring that the fight against terrorism remains prominent on the UN and G-8 agendas, and that their recommendations are implemented as widely as possible.

- Finally, the United States and the European Union must **reach out more effectively to their most important constituency – their publics.** There is a fine line between raising awareness and involving the public as active participants in the fight against terrorism without causing undue alarm, but the United States and Europe can learn much from each other as they strive to achieve that balance. They must also boost public understanding of the extent of cooperation, both across the Atlantic and around the world. Only by increasing awareness of the successes to date can governments create a constituency for the challenges ahead, both in the struggle against terrorism and on other issues facing the post-9/11 transatlantic partnership.

The Post 9/11 Partnership: Transatlantic Cooperation Against Terrorism

September 11: The Transatlantic Challenge

On the afternoon of September 11, 2001, many Europeans watched their televisions in horror as the second plane flew into the World Trade Center in New York, and then, a few minutes later, another plane flew into the Pentagon in Washington. By the time casualty lists were finalized, between 80-90 Europeans would be among the dead. Many Europeans recognized very quickly that this was an assault not simply on the United States, but on the West and non-Islamic world, including themselves. Although several European countries already had extensive experience with terrorism, it was clear that this attack was of another magnitude, not only in terms of damage and casualties, but also in terms of the network and resources of the perpetrators. The sense of European involvement would be heightened as investigators learned that many of the September 11 hijackers had spent considerable time in Europe, especially in Germany. Clearly, this new type of terrorism could not be defeated or even controlled by the law enforcement resources of any single nation. An effective response would require new levels of cooperation both within the European Union and across the Atlantic — and, indeed, on a global level.

The European response to September 11 was immediate and backed by a public outpouring of support and sympathy. On September 12, NATO invoked Article 5 — the common defense clause — for the first time in its history. When the United States decided that the Taliban government in Afghanistan had been complicit in the attacks, European support for — and participation in — the U.S. military coalition that toppled that regime was widespread, eventually involving 70 countries in some way. Central to the European response was the remarkably speedy decision of the European Union, at a meeting of EU ministers of Interior and Justice on September 20, to adopt a series of law enforcement and judicial measures designed to facilitate cooperation against terrorism both within Europe and with the United States.

Over the next three years, the growing U.S.-EU cooperation in combating terrorism would come to be widely regarded as one of the true success stories of transatlantic relations. That cooperation would grow quickly, bringing together agencies and institutions in the United States and Europe that had never worked together before — and in some cases, had not even

existed. At U.S.-EU summits, terrorism would become a primary topic and the subject of key declarations. At the June 2004 summit, the Declaration on Combating Terrorism laid out an ambitious agenda for cooperation in this area that was widely seen as reflecting the close and successful partnership built since September 2001.

During this same period, however, transatlantic relations in the broader diplomatic sphere were plagued by increasing levels of tension and mistrust, especially during the Iraq conflict and its aftermath. Among the European public, the strong feelings of sympathy and support for the United States almost totally disappeared.¹ The fight against terrorism was not immune to these tensions; in particular, it became clear that most Americans viewed terrorism as a far more urgent danger than did most Europeans, especially before the Madrid attacks in March 2004. The U.S. government was also much more willing to consider a military response as effective, while European leaders gave more emphasis to addressing the socio-economic roots of terrorism. Despite these differences, the United States and the EU, as well as individual European governments, continued to build cooperation against terrorism, and achieved steady progress in developing mechanisms for working together.

The question now before the United States and the European Union is how to build on this successful cooperation and ensure that it continues into the future. The first step is to review recent experience, particularly those cases where successful collaboration emerged on matters that initially created tensions, such as the Container Security Initiative and Passenger Name Records. But, assuming that the fight against terrorism is an effort that will challenge the United States and Europe for the next decade and beyond, it is also important to look forward. The initial round of anti-terrorist measures is now agreed upon, although practical questions of implementation still remain. If the campaign against terrorism is to become even more effective, transatlantic cooperation must move beyond these specific and limited areas where it exists today.

Building this enhanced level of cooperation will not be easy. Even the measures already in place have revealed some important distinctions between the United States and Europe. Most importantly, the U.S. government is able to make and enforce decisions affecting the entire country, while the EU institutions can make decisions only on some issues (although an increasing number of them) and must rely on the member states for implantation and enforcement. On a more specific level, different U.S. and European practices concerning individual privacy have become a potentially significant obstacle. The distinctions between intelligence material and information admissible in a criminal court vary both across the Atlantic and within Europe, adding another element of complexity. Some anti-terrorist measures could affect the competitiveness of those businesses and commercial facilities that use them, and more stringent measures in the future could lead to genuine restrictions on the

¹ According to the Pew Research Center for the People & the Press, U.S. favorability ratings have slipped significantly from summer 2002 to March 2004. In Britain, they have fallen from 75 to 58 percent; in Germany from 61 to 38 percent, and in France from 63 to 37 percent. See "A Year After Iraq War," released March 16, 2004, <http://people-press.org>.

flow of goods and services, and perhaps even to trade-based tensions between the United States and the EU.

Domestic considerations on both sides of the Atlantic are also likely to complicate future efforts to enhance cooperation. In the United States, the continuing pressure to develop more safeguards and revamp the intelligence community (especially following the publication of the 9/11 Commission report) will absorb much attention throughout the U.S. government. It may well exacerbate a focus on protecting the United States that has often exhibited slight regard for the external impact of U.S. policy, even on those who wish to collaborate.

In Europe, the recent inclusion of ten new member states (and the prospect of several more in the next decade) and the eventual extension of the Schengen area to these new members may not only make EU decision-making more cumbersome but also present challenges to the effective and safe regulation of EU borders.² An interim Schengen arrangement has been established with the new EU members that maintains the pre-enlargement borders until the new eastern perimeters have been strengthened. Both training of border guards and physical border measures are supported by the European Commission through a range of grants and loans. Until these measures are effective, however, some EU-15 member states have actually increased security on the border with the new member states.

Despite these difficulties, however, there remains a genuine need to deepen transatlantic cooperation, and the near future will bring opportunities to expand these joint efforts. As the European Union begins to harmonize the judicial systems of its member states, it may prove possible to build greater cooperation across the Atlantic in this area. There may also be more opportunities for collaboration between the private sector and governments across the Atlantic, as well as occasions to extend transatlantic cooperation in multilateral arenas, including the United Nations, OSCE, and the G-8, and to build collaboration between the EU and NATO.

Over the next decade, and perhaps much longer, the United States and Europe will continue to face the very real threat of large-scale terrorist attacks perpetrated by global organizations and networks. To date, they have taken the first steps against that threat by building a strong partnership using a range of resources and tools — law enforcement, judicial policy, trade and financial measures, border security, and transport and facilities protection. They have done so despite other tensions in the overall transatlantic relationship and very real differences in their approaches to the nature and causes of terrorism. They now face the task of deepening that partnership and constructing a truly comprehensive, joint anti-terrorist effort. This will be a severe challenge, but real progress in fighting terrorism will only happen with that stronger U.S.-EU partnership.

² The Schengen Agreement (1985) and the Schengen Convention (1990) were incorporated into EU law in 1999 under the Amsterdam treaty. The Schengen accords created a single external frontier with a common set of border checks, while also eliminating checks at the internal borders of the signatory states. These currently include 13 EU member states (all but Ireland and the United Kingdom), plus Norway and Iceland. The ten new EU member states are expected to fulfill the Schengen requirements.

The Beginnings of Partnership

Transatlantic cooperation in fighting terrorism began immediately after September 11. Aside from the invocation of NATO's article 5, the common defense clause, most European allies quickly made clear their support for anticipated U.S. military operations in Afghanistan. As for the EU, from the beginning its efforts to strengthen its own ability to respond to this new threat was linked with the recognition that it was not only desirable, but essential, to cooperate with the United States. A joint U.S.-EU ministerial statement on combating terrorism was issued only nine days after the attacks, pledging a transatlantic partnership to "mount a comprehensive, systematic, and sustained effort to eliminate international terrorism," while the first section of the European Council conclusions on September 21 was entitled "Solidarity and Cooperation with the United States."³

Simultaneously with these pledges to cooperate, the United States and the European Union embarked on intensive — but separate — efforts to strengthen their own internal capacities to prevent and respond to terrorism. During the next three years, they would both put in place new legislation, policies, and institutions. While in many cases, these new steps would provide the basis for transatlantic cooperation and offer opportunities for enhancing that effort, they also reflected the very different U.S. and EU perspectives on this issue, and occasionally led to misunderstanding and disagreements.

In the United States, the attacks in New York and Washington provided the impetus not only for the military response against al-Qaeda's base in Afghanistan and the Taliban regime, but also for new legislation designed to give the federal government the tools to prevent another such tragedy. The USA PATRIOT Act, signed into law on October 26, just six weeks after the attacks, allowed greater information sharing between U.S. intelligence and law enforcement officials; lifted some restrictions on government surveillance; expanded federal powers in regulating U.S. financial institutions and their dealings with foreign nationals; and created new crimes and penalties related to terrorist acts. The Homeland Security Act, passed a year later in November 2002, combined a number of existing government agencies — including the Immigration and Naturalization Service, the Coast Guard, and the Border Patrol, among others — into the new Department of Homeland Security, which was mandated to protect the nation from terrorist attacks and safeguard U.S. borders. This was one of the largest reorganizations of the U.S. government in many decades, and also involved the reordering of many agencies' priorities to put a new focus on homeland security. During the next two years, additional anti-terrorist legislation would be passed, including laws dealing with bioterrorism and border security.

³ "Joint U.S.-EU Ministerial Statement on Combating Terrorism," September 20, 2001, issued during the visit to Washington of the EU High Commissioner for CFSP, Javier Solana, European Commissioner for External Relations Chris Patten, and Belgian Foreign Minister Louis Michel; and "Conclusions and Plan of Action of the Extraordinary European Council Meeting," September 21, 2001.

Despite these reforms, there continued to be pressure to examine the background to the September 2001 attack so that similar events could be prevented. In November 2002, the U.S. government established an independent National Commission on Terrorist Attacks upon the United States, with a broad mandate to examine the attacks and the response to them. The Commission's report, issued in mid-2004, included an extensive list of recommendations, including stronger border controls and enhanced security for aviation and transportation networks. The Commission also recommended a further reorganization within the U.S. government, including the establishment of a National Counterterrorism Center and of a National Intelligence Director with oversight and budgetary authority over the entire U.S. intelligence community. The Commission also stressed the importance of collaborating with others, recommending that "The United States should engage other nations in developing a comprehensive coalition strategy against Islamicist terrorism."⁴ As a result of the Commission report, another round of anti-terrorist legislation was debated in late 2004, resulting in some realignment of the U.S. intelligence agencies under a new national intelligence director.

Throughout this period, the primary emphasis in U.S. policy was on preventing another terrorist attack in the United States, rather than on cooperating with others around the world, including the European Union. The immense scale of the Homeland Security reorganization and the constant cascade of new legislation and regulations made it inevitable that U.S. policymakers would be focused domestically. But even as the U.S. administration sought to strengthen the tools available for protecting the United States, the new laws and regulations had consequences overseas. Moreover, as soon as it became clear that the perpetrators of 9/11 had planned part of their mission while resident in Germany, the U.S. government realized that cooperation with foreign law enforcement and intelligence agencies would be key in preventing further attacks.

In the European Union, the early response to September 11 also took the form of significant new legislation. For some time, the EU had been debating several measures to streamline law enforcement and judicial cooperation among the member states aimed not only at fighting terrorism, but also at stopping such crimes as trafficking in humans and the smuggling of illegal drugs and other goods. However, this effort had been plagued by a lack of urgency, and there had been little pressure to make decisions. That changed instantly on September 11, and when the European heads of state and government met on September 21, they approved a series of measures, including a common definition of terrorism; a common arrest warrant to replace extradition between member states; the strengthening of police cooperation, including establishing an anti-terrorist unit at Europol; guidelines for common sentencing of terrorists; enhancement of air transport security; and measures to address financial fraud and money laundering as sources of terrorist financing. Most of these measures were expected to become effective in January 2002, after adoption by the national parliaments. The European Council also stressed the importance of developing multilateral measures against terrorism, including

⁴ *The 9/11 Commission Report: Final Report of the National Commission on Terrorist Attacks upon the United States*, July 2004.

effective implementation of existing conventions. Finally, the Council's conclusions called for further development of the Union's Common Foreign and Security Policy and European Security and Defense Policy, noting that the stabilization of regional conflicts and an "in-depth political dialogue" with countries in such regions could help curtail the development of terrorism.

During 2002 and 2003, the European Union worked to make these commitments a reality by adopting a series of specific measures, including decisions on judicial procedures and sentencing guidelines for terrorist cases; the creation of a new institution — Eurojust — to help coordinate judicial cooperation in this area and others; mutual recognition of procedures for freezing assets in criminal cases; establishment of joint investigation teams; inclusion of anti-terrorism provisions in agreements with third countries; and others. In December 2003, the EU approved its first Security Strategy, with terrorism identified as the first of several "key threats" to Europe that required a serious foreign policy response.⁵

The terrorist attack in Madrid on March 11, 2004, produced a new level of urgency in the EU's efforts against terrorism. Meeting at the end of that same month, the European Council called for member states to treat a terrorist attack on one as an attack on all; and urged all member states to adopt any necessary measures required to implement existing EU legislation, including laws pertaining to the European arrest warrant, joint investigation teams, money laundering and confiscation of proceeds of crime; Eurojust, and other aspects of police and judicial cooperation. European leaders also identified new areas for further development of EU efforts against terrorism, including foreign policy actions, border controls, facilities and transport protection, financing of terrorism, and cooperation with third countries and multilateral institutions. Finally, they appointed Gijs de Vries as the EU Counter-Terrorism Coordinator, to "maintain an overview of all the instruments at the Union's disposal" in the fight against terrorism.⁶

Despite this new atmosphere of urgency, however, physical and operational progress in implementation of measures remained slow. A June 2004 report to the European Council reviewed the implementation of anti-terrorist measures in the member states and found some significant gaps. On the European arrest warrant, for example, despite an initial deadline of December 2003, Italy and Greece had not yet finished the process of transposing this to national legislation, while several of the new accession states were also lagging behind. Rates of implementation were even lower for other legislation. At the same meeting, however, the Council approved a revised and updated Plan of Action in fighting terrorism.⁷

⁵ "A Secure Europe in a Better World," adopted by the European Council on December 12, 2003.

⁶ European Council, "Declaration on Combating Terrorism," March 25, 2004.

⁷ As of November 1, 2004, 23 member states had completed the legislation that would allow them to implement the arrest warrant, with only Italy still not in compliance.

Since September 2001, the EU — like the United States — has introduced significant new legislation while also restructuring and creating institutions to respond to the threat of global terrorism. Also as in the United States, the EU has set out to create a comprehensive response, adopting measures in law enforcement, judicial policy, facilities and transport protection, border security, foreign policy, and others. But the EU effort has differed from that of the United States in two key areas. First, its foreign policy approach has emphasized diplomatic tools, including the use of multilateral institutions — rather than military force — while also calling for development of a long-term strategy to address the causes of terrorism. This reflects not only a different EU perspective on terrorism, but also, of course, the differing capabilities of the United States and the EU. Second, the EU effort has been less about giving law enforcement and judicial authorities new powers, but rather about enhancing cooperation across member state boundaries. This effort has been complicated by the accession of ten new members, all of whom are obligated to adopt the new anti-terrorism legislation.

But if the legislative agendas have been largely separate, the anti-terrorist effort has also fostered the development of new institutional relationships across the Atlantic, spreading far beyond the traditional foreign policy players who were the initial instigators of this cooperation. Almost immediately after September 11, terrorism was elevated to a top priority in the many regular meetings held under the auspices of the U.S.-EU New Transatlantic Agenda.⁸ By the May 2002 U.S.-EU summit, liaisons had been established between U.S. law enforcement agencies and Europol and Eurojust, an agreement on sharing some relevant law enforcement trend data had been reached, and there was greater cooperation in identifying terrorist organizations and freezing financial assets. The fight against terrorism was an even more prominent topic at the June 2003 U.S.-EU summit, with the communiqué claiming success in working together to identify and investigate terrorists, freeze their financial assets, and generally disrupt terrorist networks. That summit also saw the signing of the U.S.-EU agreements on mutual legal assistance and extradition, which provided for joint investigative teams, established conditions for sharing information in criminal matters, and expanded the possibility of extradition across a wide range of serious offences. Most recently, a highlight of the June 2004 U.S.-EU summit was the Declaration on Combating Terrorism, which outlined an ambitious agenda for the future, including working toward universal implementation of the UN Conventions on terrorism; numerous measures to eradicate terrorist financing; enhanced cooperation between law enforcement and judicial authorities; increased efforts aimed at protecting ports and other transports facilities, and at making borders more secure, as well as many other elements of a comprehensive anti-terrorist approach.

A key element in the development of U.S.-EU cooperation in this area was the construction of bridges between parties in the European Union and the U.S. government that had had minimal — if any — contact in the past. In September 2002, for example, Attorney General

⁸ The New Transatlantic Agenda, initiated in 1995, established a series of meetings between the United States and the European Union ranging from working groups at the office director level to regular ministerials and summits.

John Ashcroft became the first U.S. Attorney General to meet formally with his EU counterparts, the ministers of Interior and Justice (the JHA Council). Perhaps even more significantly, in April 2004, the Policy Dialogue on Border and Transport Security was established, bringing together relevant officials, especially from the U.S. Departments of Homeland Security, State, and Justice, along with representatives from the European Commission, the Council of Ministers, and the EU presidency, to discuss ways of improving security. Most recently, in September 2004, the U.S. Secretary of Homeland Security Tom Ridge met with European Commissioner Antonio Vitorino and representatives of the EU presidency. Later that same month, Attorney General Ashcroft met again with his European counterparts.

Resolving Transatlantic Differences

Despite the many positive statements and pledges of cooperation, and frequent meetings among officials from both sides of the Atlantic, the progress of U.S.-EU cooperation on combating terrorism has not always been smooth. Implementation of promises made has sometimes been tortuously slow. The mutual legal assistance and extradition treaties were still not in force one year after they were signed, as some EU member states had not yet completed implementing agreements with the United States, thus delaying ratification of the MLATs and extradition accords in the United States and in some member states. The sharing of information between U.S. and EU law enforcement and between U.S. and European intelligence services has always been problematic, and repeated pledges to overcome past reluctance has had only a limited effect.

Aside from these issues of implementation, there have also been some difficult disputes over specific matters. At times, these have seemed to threaten the overall atmosphere of cooperation, but there has usually been a shared determination to find some sort of resolution, even if only temporary. But these disputes have demonstrated just how difficult cooperation can be when it involves traditionally domestic matters, such as law enforcement, judicial policy, or even protection of transportation networks. The two most notable issues that have caused tensions in transatlantic cooperation against terrorism are the Container Security Initiative (CSI) and Passenger Name Records (PNR).

Container Security Initiative

The CSI, announced by the U.S. Customs Service (which later became part of the Department of Homeland Security) in January 2002, allowed containers that had been pre-screened at foreign ports to have priority in unloading at U.S. ports. The U.S. government soon began negotiations with countries with major ports over the required equipment and procedures, including the stationing of U.S. Customs officials at those ports. As these bilateral talks proceeded with EU member states (i.e., France for Le Havre, Netherlands for Rotterdam), the European Commission voiced objections, arguing that ports participating in CSI would have

unfair competitive advantages over other ports; this would distort trade and was contrary to the EU Single Market. Moreover, since customs was a long-established area of EU competence, the member states had no authority to negotiate such deals individually. The United States countered that negotiating with the EU would have taken too long, especially in view of the urgency of the security situation. Furthermore, no limits had been placed on the number of ports; once the ports already dominating transatlantic commerce had CSI arrangements in place, the U.S. government would be willing to negotiate with other ports. Nevertheless, in January 2003, the Commission initiated legal action against member states participating in CSI, eventually including eight member states. A few months later, negotiations began between the U.S. Customs Service and the European Commission Directorate for Taxation and Customs Union. A new bilateral agreement was reached after only eight months and finalized in March 2004. The previous bilateral agreements between the United States and the EU member states were subsumed under this new arrangement, and implementation of the screening and inspection procedures began.

Passenger Name Records

The PNR dispute originated, like CSI, in a desire to enhance screening and make transport more secure, although this time it required information about airline passengers rather than shipping containers. Under the Aviation and Transportation Security Act of 2001, the U.S. government began to require airlines flying into the United States to provide certain information on all passengers before landing. The Advance Passenger Information System (APIS) collected information from each passenger's reservation (the PNR), including name, address, date of birth, payment details, etc. The information varied according to what was required by each reservation system. By supplying this information, however, European carriers allegedly put themselves in violation of the European Union's privacy directive, which maintains strict controls over how private companies may maintain and share information on individual customers. European companies thus faced either fines in the United States (and possible prohibition on entry) or fines in Europe.

After considerable difficulty, the DHS and the European Commission managed to reach an agreement in principle that allowed data to be collected without violating the privacy directive. The U.S. government undertook to delete certain information (meal choices, for example, could identify an individual's religion); to maintain the information only for three and a half years; to use the data only for certain specific purposes, including preventing terrorism; and to establish a channel between the EU privacy authorities and the DHS privacy office as a means of redress for EU citizens. Moreover, the agreement must be renegotiated after three and a half years. On the basis of this undertaking, the European Commission secured a ruling from the Article 31 Committee stating that this arrangement adequately protected the privacy of EU citizens. A formal agreement was signed in May 2004.

The story is not finished, however. The European Parliament has initiated a legal challenge with the European Court of Justice, claiming that the U.S. undertaking will not provide

adequate protection for individual privacy and also that the European Commission was not competent to negotiate such an agreement without Parliamentary mandate. The Court has agreed to hear the case, but it is not expected to rule in the near future.

Three other disputes also demonstrate the difficulties in coordinating policies and regulations in order to fight terrorism, although none have achieved the visibility of CSI or PNR:

- **Skymarshals** — In late December 2003 (during the holiday flight season), the DHS proposed that airlines flying into the United States would be required to put armed law enforcement officers on specific flights identified as being at higher security risk. EU member states had maintained different practices regarding skymarshals, with some members already using them on some flights, while others had strict policies against any armed personnel on airlines. Initial European consternation at the proposal was compounded by the fact that most European governments heard about it first through press accounts and were unclear on the specifics of any new U.S. requirements. After consultations over the next month, most EU members were satisfied that they could meet the new conditions, either through skymarshals or enhanced security screening on the ground. Others, however, maintained that flights at such risk should be cancelled. Unlike the CSI case, the European Commission (which does not have clear jurisdiction in transport regulations) did not oppose bilateral arrangements between the United States and individual member states on this issue.
- **Biometric passports** — Under congressional mandate, the United States has required those visitors who enter the country with a visa to provide biometric identification data, either in the form of a passport containing such data or a thumbscan and photo upon entry (the US VISIT program). Initially, those entering the United States under the visa waiver program⁹ were exempt from these requirements, but their countries faced a deadline of October 2004 by which they were to begin issuing biometric passports. Although the EU was willing to abide by this U.S. decision, most of the member states (as well as the United States itself) were technically unable to comply in time, and in July 2004, a one year extension was granted by Congress. Expectations are that the extension debate will have to be held again in 2005 before biometric passports are available in late 2005 or early 2006. In light of the lack of availability of biometric passports, the US VISIT program was extended to individuals from the visa waiver countries as of September 30, 2004. This was a politically sensitive decision, but intensive transatlantic consultations in advance appear to have mitigated any significant negative effects.
- **Hizbollah and the terrorist financing list** — Since September 2001, the United States and the EU have generally been in agreement on which groups should be designated as

⁹ Of the 15 EU member states (prior to May 2004), all but Greece are in the visa waiver program, while among the new countries, only Slovenia is a participant.

terrorist organizations and be subject to financial sanctions. However, the EU and United States did differ over the status of Hamas and Hizbollah. Hamas is on both lists, but for some time the European Union differentiated between the military wing and the political wing. Currently Hizbollah is not on the EU list of terrorist organizations whose access to funds should be curtailed, while it is on the U.S. list.

These examples demonstrate that although the United States and the European Union have repeatedly emphasized — both in rhetoric and in agreements — their partnership in fighting terrorism, there are still many difficulties in making that partnership a reality. It is, of course, always a challenge for sovereign actors such as the United States and the EU to harmonize their policies, especially over such a broad array of issue areas and in the face of long-standing legal and regulatory practices. But these disagreements also result from distinctive transatlantic approaches to terrorism and very different domestic contexts.

It is often observed that Europeans are far less convinced about terrorism as a fundamental and global threat than are U.S. leaders and citizens. This, however, is far too simplistic an observation. Prior to September 2001, several European countries had first-hand experience with terrorism, albeit as a national or regional phenomenon, and were likely to be far more vigilant than was the United States. Since the 2001 attacks, European leaders have made clear repeatedly that the fight against global terrorism is a top priority. Indeed, in the EU's European Security Strategy, it is awarded the position of first, and most important, threat to Europe. Following the attacks in Madrid and the revelation that these were perpetrated by al-Qaeda, the importance of terrorism has escalated in European eyes. But European and U.S. approaches do differ in their judgment as to the most appropriate and effective response; and as to whether the overall strategy in responding to terrorism should be one of warfighting or risk management.

The initial U.S. response to September 11 was military in nature — the invasion of Afghanistan and the toppling of the Taliban. A more comprehensive approach involving law enforcement quickly developed, as demonstrated by the speedy passage of the USA PATRIOT Act, but responding to terrorism has continued to be a high-priority mission for the U.S. military. The emphasis on a military response has been reinforced by the war in Iraq, which has been justified in part as an element in the “war on terrorism.”

In Europe, however, even the very notion of a “war on terrorism” is suspect, especially in Germany, where the connotation of a “war” on anything is hardly positive. Nevertheless, while most Europeans agreed that a military response was appropriate toward the Taliban, it was viewed as an exceptional circumstance, and the continuing U.S. emphasis on a military response has increasingly been seen as disproportionate. For most Europeans, the war in Iraq was a distraction from the focus on terrorism, and the insistence by the U.S. administration and a few European leaders that it was part of the struggle against terrorism only enhanced the general European skepticism. In sum, except for a precisely targeted strike against an identified terrorist hideout or training camp, most Europeans view a military response as neither appropriate nor effective.

In Europe, terrorism is first and foremost a crime, which can best be addressed by crime-fighting procedures and tools, rather than overt military methods. In addition to traditional law enforcement methods, a number of EU member states (including Britain, France, Spain, and Italy) have had special procedures for terrorist investigations and prosecutions, including permitting lengthy detentions. Responding to global terrorist networks requires greater emphasis on cross-border collaboration, especially in sharing information and collaborating on investigations and eventual prosecutions. Although some European counter-terrorist units and specialist police forces can certainly be considered para-military, the overall orientation is far more weighted toward law enforcement as the appropriate response to terrorism rather than action by military forces. One result of this difference in U.S. and European approaches has been a disconnect over the potential role of NATO in fighting terrorism. While some U.S. policymakers see the Alliance as having a role in helping coordinate military training and doctrines relevant for fighting terrorism, many Europeans greet such suggestions with skepticism — not surprisingly given their doubt about a military response to terrorism generally.

Along with this emphasis on law enforcement, the European response to terrorism gives high priority to addressing the social, economic, and political circumstances that lead individuals to resort to such a strategy. EU declarations often note the importance of promoting conflict prevention in difficult regions and stability, including human rights and democracy, in third countries as an anti-terrorist strategy. While European policymakers frequently note the importance of addressing the context which contributed to terrorism, some go farther, suggesting to U.S. visitors that active engagement in building a lasting understanding between the parties of the Israeli-Palestinian conflict is part of that anti-terrorist effort.

In sum, many European experts would view terrorism as a risk that can be managed through a combination of law enforcement techniques, political negotiation, and selective (and limited) military action. Most U.S. political leaders have regarded terrorism as a topic of the utmost daily urgency since September 2001. The stated goal has been to eradicate terrorism, not manage it, and the threat of imminent danger — of being truly at war — has given rise to a willingness to bend the normal rules in order to protect the country. The difference between these strategies — warfighting vs. risk management — has had two important consequences. First, while many U.S. policymakers see detentions of foreign combatants and others at Guantanamo and elsewhere as justified given the wartime context within the United States, many European politicians and media have criticized the detentions. As a result, for a portion of the European public, Guantanamo has become a symbol of how the U.S. sense of urgency can contribute to unfortunate and extreme results. Second, the greater urgency on the U.S. side leads to more initiatives and proposals for action. This inevitably leads to a view of the United States as the constant *demandeur*, and one not always cognizant of the impact of its actions. Europe, which is struggling to implement those proposals already agreed, seems much more passive. In fact, Europe has introduced an impressive number of new initiatives since September 11, but most have created new intra-European measures and not been proposals for transatlantic cooperation.

The final — and major — element affecting the ability of the United States and Europe to cooperate on fighting terrorism is the very different domestic context that exists on each side of the Atlantic. In the United States, anti-terrorism has been a unifying priority in the domestic arena. The creation of the Department of Homeland Security has provided a focal point, and many other departments and agencies have made fighting terrorism a major part of their mission as well. Most states have appointed a homeland security coordinator and have begun to address this issue at the regional and local level. Within the European Union, however, combating terrorism is not such an overwhelming domestic priority. On the national level, many governments are focused on economic issues; others are concerned that a very overt emphasis on anti-terrorism might contribute to more tensions with Muslim immigrant communities. On the European level, the recent enlargement of the EU to 25 members and the negotiations and pending ratification of the new constitutional treaty have been center stage.

But aside from the issue of an overcrowded agenda, the European domestic context presents two other significant complications in waging a more effective campaign against terrorism. First, many of the specific measures involved straddle the dividing line between Community competence — those issues on which the EU has legal authority — and the purview of the member states. For example, the Container Security Initiative became problematic precisely because the U.S. government attempted to deal with the member states on an issue involving customs — an area viewed by the Commission as one of Community competence. Many questions of judicial precedent and criminal penalties, as well as law enforcement (such as skymarshals, for example) remain under the authority of the member states, and will remain so for the foreseeable future. As a result, very complicated procedures and information exchange arrangements have been required to deliver intra-EU cooperation while respecting member state differences. To complicate matters further, the boundary between Community and member state competences is shifting, and will shift even further if the proposed constitutional treaty enters into force.

The second complication stems from the fact that implementation of any specific measure is the responsibility of the member states, not the EU. It is as if the U.S. federal government passed legislation but then had to push each state to adopt a similar law and use local resources and personnel to implement it. Moreover, the EU has very few enforcement mechanisms: it can take a non-compliant member state to the European Court of Justice, but that can take years. Or it can “name and shame” member states, as it did in the June 2004 report tracking implementation of the European arrest warrant; a strategy that has had mixed results over the years. Thus, EU anti-terrorist policy is as much about cajoling and pressuring member states into cooperating on implementation as it is about reaching agreements with the United States.

To counter this problem, EU officials frequently urge U.S. policymakers to deal directly with the Union; not only is this more efficient than dealing with 25 member states, they claim, but it also will make the EU more credible to the member states and thus reinforce the ability of the EU to reach agreements with the United States and then enforce them. The reality is that the United States will need to deal with both the EU and the member states on most issues

involving terrorism. Even when the EU itself has the authority to negotiate, actual implementation will depend on the member state. But dealing primarily with the member states — especially on issues where the Union has competence — will lead to difficulties, as in the CSI case.

Despite these distinctive approaches to terrorism and differing domestic contexts, the United States and the EU have managed to keep their disagreements from derailing the overall trend towards cooperation. Unlike many instances in the economic arena — bananas, GMOs, or corporate taxation, for example — disputes over CSI or PNR have been accompanied by pledges to reach a quick resolution and intensive negotiations have usually led to a solution. The fact that both the United States and the EU have kept the fight against terrorism as the main priority has allowed them to work together to find at least temporary solutions to the differences that have emerged.

In the future, however, resolving transatlantic differences may become even more difficult, especially as the campaign against terrorism stretches into a decade or more. In dealing with PNR, the United States and the European Union were able to find an ad hoc balance between individual privacy and airline security. That arrangement is now under challenge, and as more databases are integrated and available to more law enforcement and government personnel, this issue is likely to be even more hotly contested. Developing an understanding about the sharing of intelligence and law enforcement information will also become more urgent, along with the development of effective cooperation between law enforcement groups. And some issues — such as the legal treatment of accused terrorists and imposition of security measures on the movement of commerce — require changes in longstanding laws, regulations, and policies.

The Next Phase

In many ways, the past three years of transatlantic cooperation against terrorism should be viewed as an initial phase in a much longer and more significant effort. Attention must now turn to implementing the agreements that have been reached and ensuring that joint declarations and statements become much more than just words. And as demonstrated by the June 2004 summit declaration — which provides an ambitious laundry list of ideas — new proposals for cooperation will continually emerge. But as U.S.-EU collaboration is extended into more and more areas, it will bump up against established policies and practices and affect the interests of many different constituencies. The good news is that the United States and the EU have now established basic mechanisms for building cooperation through regular consultations, and have successfully concluded some basic agreements. This is a solid beginning, but there is much more still to be done to achieve a comprehensive and effective joint strategy against terrorism.

As the United States and the European Union move forward in this effort, the following areas will require serious attention. Few will be surprises; indeed, the U.S.-EU summit declaration

identifies specific policy goals related to almost all of them. But those goals are far from accomplished, and officials from both sides of the Atlantic acknowledge that much hard work lies ahead. This report will consider the issues and challenges in each area that may hinder the building of effective U.S.-EU cooperation, but will also suggest some priorities and propose some specific recommendations for moving that cooperation forward into the future.

Information and Privacy

The tension between the need for comprehensive information about potentially suspect individuals and the obligation to protect individual privacy is one of the most difficult elements — but also one of the most important — to reconcile if the United States and European Union are to move forward in combating terrorism. However, “information” is a broad term, encompassing intelligence drawn from covert and other sources, often through methods not available to law enforcement; information gathered in law enforcement probes; and information collected through commercial and other private sector sources.

Much of the focus in fighting terrorism has been on the more effective use of intelligence information, especially among different agencies on each side of the Atlantic. In the United States, the 9/11 Commission has recommended a government-wide effort, including a major institutional restructuring, in order to achieve better integration and use of information. In Europe, the Joint Situation Centre (SITCEN) based within the Office of the High Representative for CFSP has been tasked with producing intelligence analyses based on information provided from across the Union. In addition, the top intelligence officials from all member states expect to meet regularly. However, it is far from clear whether these new steps in the United States and the EU will be sufficient to overcome the traditional reluctance of intelligence bodies to share information, even within one government, let alone with allies.

As for information derived from law enforcement efforts and private sector activities, officials on both sides of the Atlantic are well aware of the need for better information sharing and the development of more integrated databases. Reconciling these ambitions with the protection of individual privacy is only the most visible challenge. Efforts to make such information more useful against terrorism must also cope with technical and budgetary restraints and with the fact that any integrated database must serve multiple agencies and their disparate missions. In Europe, for example, there are currently separate databases on visa information, asylum, and customs, along with the very beginnings of an EU-wide law enforcement database. Combined, these could be a powerful anti-terrorist tool, but there are legitimate concerns about privacy, and the technical and political challenges in integrating these information systems would be significant.

A major effort is currently underway in the EU to adapt the Schengen Information System (SIS), a set of linked databases containing visa and other border-entry information maintained by all the Schengen treaty countries — a task that is made more complicated by the fact that Schengen and EU memberships are not entirely consistent. Although SIS does maintain a list

of individuals who should be refused entry into the Schengen area, that list is not necessarily consistent with any terrorist watch list, nor do all EU members have access. Plans are underway to establish SIS II, which is intended to integrate the ten new EU member states. When SIS II becomes effective in 2006-2007, plans call for information to be centralized at the Union level, with the database managed by an EU agency. Simply constructing such a database will be complex enough. Building interoperability with other databases — such as a law-enforcement information system — will be an enormously complicated task.

In the United States, there has been an effort for some time to upgrade the information collected by airlines, as all parties acknowledge the insufficiencies of the PNR system. An upgrade to the initial Computer Assisted Passenger Pre-Screening (CAPPS) program, known as CAPPS II, was proposed but then abandoned in mid-2004 out of concerns that the information would be too extensive. Instead, the U.S. government has proposed a modified version, known as “Secure Flight” which is intended to allow U.S. government personnel, rather than airline employees, to screen passengers against various watch lists.

As these descriptions of reform efforts indicate, however, U.S. and European efforts in this area are moving forward with only limited serious consultation across the Atlantic. Both efforts are largely driven by domestic considerations, with the implications for transatlantic cooperation much less of a priority. This is perhaps most recently evident in the effort of the European Commission to develop legislation establishing privacy rules for government-held law enforcement data. Currently, member states have different rules for ensuring the protection of data held by police, which complicates information sharing and the provision of evidence across national boundaries. The Criminal Data Protection Initiative is intended to overcome these problems, but U.S. officials — who have not yet been consulted on the initiative — are concerned that it will create more difficulties for sharing information across the Atlantic, fearing a repeat of the experience with the EU Privacy Directive (which governs use of data collected by the private sector).

A key requirement for the next few years will be to bring the U.S. and EU efforts at integrating information and protecting privacy closer together. The alternative will be an ever-multiplying set of incompatible databases, including those from biometric visa data, PNR data, etc. Instead of the current situation of parallel but largely separate tracks, U.S. and EU efforts must be the subject of transatlantic consultations early in the development stage. Aside from responding to developments involving SIS II, criminal data protection, or “Secure Flight,” the United States and the EU should:

- **Build on the experience of the PNR agreement by establishing general “rules of the road”** concerning at least three issues: time-frame and criteria for deleting information from a data-base; procedures for sharing information with third parties; and establishing appropriate redress for individuals who wish to challenge information about themselves. All of these issues arose during the PNR talks, but it is unclear how much of a precedent those negotiations established.

- **Develop procedures for the appropriate sharing of personal data between governments and the private sector.** This has proven to be an exceptionally difficult issue, in part because of the EU Privacy Directive's restrictions on commercial data protection and misapprehensions by EU officials that the U.S. government might sell data in the same way as U.S. companies. As in the case of SIS II, there is a move toward government control of such data for anti-terrorist purposes, but there will still be a need to access data in the private sector. Here the example of European banks participating in anti-money laundering schemes may be instructive: under specific guidelines, banks report suspicious transactions to a mixed private-sector and government board, which determines whether closer government involvement is warranted. In the case of those European companies that have signed up to the Safe Harbor accord, the national security exemption may offer a route to more flexible handling of personal data when terrorism is involved.¹⁰

Law Enforcement and Judicial Cooperation

The treaties on mutual legal assistance (MLATs) and extradition signed at the 2003 U.S.-EU summit are perhaps most indicative of the situation in this area: they offer the prospect of significantly enhanced cooperation in key areas, such as joint investigative teams, but have yet to be fully ratified. Officials in both Europe and the United States acknowledge the importance of collaboration in law enforcement and judicial policy, an area that encompasses sharing information among police forces, joint investigative teams, and compatible criminal statutes and court procedures (including rules of evidence). Given that terrorists increasingly operate in international networks, law enforcement authorities must also be able to coordinate across borders. But actual progress in building that cooperation has been excruciatingly slow.

Since September 2001, law enforcement authorities in the United States and Europe have been pushed to abandon their traditional local or national orientation, with only mixed results. As with information collection, the U.S. and European efforts have moved in parallel but largely separate tracks, with the emphasis on building collaboration within the United States and the European Union, rather than reaching out across the Atlantic. In the United States, the FBI has given increasing emphasis to an anti-terrorist mission; an evolution which has been reinforced by the recommendations of the 9/11 Commission. In the EU, there have been efforts to revitalize institutions — such as the Police Chiefs Task Force and Europol — intended to build intra-EU cooperation in law enforcement. Europol has been tasked with developing more comprehensive information sharing among member state police departments, including a database of criminal investigations. Although Europol does not conduct operations, new protocols to its charter, when ratified, would allow it request national investigations and participate in joint investigations. Eurojust, founded in 2002 and

¹⁰ The Safe Harbor accord, concluded in 2000, established principles designed to ensure the protection of personal data when it is transferred from companies operating in the EU to those operating in the United States.

only recently operational, is comprised of top prosecutors and judges from each member state, many with extensive anti-terrorist experience. It is intended to facilitate the building of an effective network of national judicial authorities and prosecutors and eventually harmonizing judicial policy and practice across a wide range of cross-border crimes, including terrorism.

These efforts have been hindered, however, by persistent tensions over whether bilateral or multilateral arrangements are most effective, as well as shortages of understanding and resources. U.S. law enforcement has long had bilateral relationships with equivalent agencies in individual EU member states, for example, between U.S. Customs and Immigration and Naturalization Service officials, and more recently the Department of Justice Joint Terrorist Task Forces, and several national European police forces. Yet, U.S. agencies have been slow to recognize the admittedly creeping shift toward cross-border cooperation in the EU. The FBI, for example, has, until recently, shown little interest in maintaining regular contacts with Europol. It should be noted, however, that the move toward multilateralism is not universally accepted within Europe, with national law enforcement often reluctant to engage with Europol. U.S. officials thus encounter a rather schizophrenic Europe, in which they are encouraged to engage with EU institutions as a means both of efficiency and giving these organizations more credibility, but are also urged to maintain and even strengthen bilateral ties, on the grounds that EU cooperation is still weak (which it is).

These tensions over bilateral vs. multilateral approaches have been reinforced by a general lack of understanding among U.S. officials about European law enforcement traditions and procedures, as well as EU processes and institutions. The traditional U.S. legal attaché system has not been able to provide enough individuals with adequate training and knowledge to be effective liaisons in the evolving context of European law enforcement. The Department of Justice has not been able to provide regular liaison with Eurojust. On the European side, limitations in financial and personnel resources are hindering the development of more effective Europe-wide institutions and thus perpetuating the bilateral emphasis. Eurojust, for example, is limited in its activities by its very small staff, even for a new institution. Europol member states have been unable to agree on a new director since early in 2004, significantly handicapping that institution. Moreover, some member states do not take advantage of the experience of returning Europol liaison officers by giving them assignments that would spread that expertise throughout their forces, but instead give them “deadend” jobs that discourage others from seeking the liaison position.

These barriers to effective cooperation have been reinforced by a few high profile cases that have exacerbated transatlantic misunderstandings. Most prominent has been the case of Mounir al-Motassadeq, a Moroccan citizen arrested and tried in Germany on suspicion of involvement in the 9/11 attacks. His initial conviction was overturned because the United States refused to allow testimony from individuals who were under detention and could possibly provide evidence in his favor. When U.S. authorities eventually did provide summaries of interrogations of those individuals, the evidence seemed to preclude al-Motassadeq’s involvement in the attacks — a development that did not boost U.S. credibility

in this area.¹¹ European officials frequently mention unspecified arrests that have been made, sometimes at U.S. behest, but that prove impossible to sustain because U.S. authorities will not or cannot provide information that qualifies as evidence in a European court. Similarly, U.S. officials sometimes complain that European officials release many suspected terrorists; a pattern that seems in part derived from a European practice of making preventive arrests.

Despite these differences, however, this is an auspicious time to push for greater transatlantic cooperation in law enforcement and judicial policy. The attack on Madrid has strengthened the connections between many European law enforcement agencies and demonstrated to everyone that a stronger “European-level” structure is essential. To reinforce this nascent trend, the United States and the EU should:

- **Bring the MLATs and extradition treaty into effect as soon as possible**, reconciling them with existing bilateral agreements. First, this will have the practical effect of providing a legal basis for joint investigative teams, sharing of evidentiary information, and other collaborative measures, as well as the transfer of accused terrorists to the relevant jurisdiction. Ratification will also help lessen the tensions over bilateral vs. multilateral efforts by providing a framework in which they can be integrated. Finally, aside from the practical implications, bringing the MLATs and extradition treaty into force will be an important symbol of the growing effectiveness of transatlantic cooperation.
- **Launch an on-going set of expert discussions on various law enforcement and judicial issues**, including sharing investigative and intelligence information, treatment of evidence, investigative and judicial procedures, etc. These will be useful in overcoming the inevitable questions that will arise in implementing the MLATs, but should also move collaboration even further forward. They could be reinforced by exchange programs among U.S. and EU law enforcement officials aimed at broadening their knowledge of criminal law and investigative methods on the other side of the Atlantic.
- **Re-engage with Europol.** In October 2004, Attorney General Ashcroft announced the re-appointment of an FBI liaison officer to Europol after that position had lapsed for some time (a liaison had been appointed immediately after September 2001, but had been withdrawn a few months later). This is a very positive step that now needs to be implemented with the appointment of an energetic individual knowledgeable about European law enforcement and the changes it is undergoing. Previous attempts to build ties with the FBI have been frustrated by Europol’s non-operational mandate. If the new liaison does not find sufficient benefit in Europol’s primary function of information collection, it may be that the FBI as a whole is not the most appropriate agency for this partnership. But these U.S. efforts will only be effective if European member states commit to making Europol a successful institution. Criticism of

¹¹ The retrial of al-Motassadeq was still underway in November 2004.

Europol as ineffective is rampant within Europe and there are shortcomings that need to be addressed. But the reluctance of police authorities to share information with Europol because it is ineffective has become a self-fulfilling prophecy.

- **Appoint a full-time liaison to Eurojust, as a way of supporting its very practical efforts to build cooperation among judicial authorities;** for the United States, this should entail the appointment of a full-time liaison in The Hague. This person should have a judicial or prosecutorial background and network, and should not be the same person appointed to Europol (that liaison should have expertise in police work). As a new institution, it is critical that Eurojust quickly develop credibility and this can best be done by active involvement by member states and the United States in its activities. Although Eurojust can only request (not mandate) investigations or information, it does have the opportunity to be effective by sharing appropriate information about investigations, illuminating obstacles to judicial cooperation, and identifying “best practices” in judicial practice as it relates to fighting terrorism and other cross-border crime.
- **Expand U.S.-EU cooperation into new areas of criminal investigation.** Both U.S. and European officials were very positive on the value of cooperation in addressing the issues of money laundering and terrorist-financing. Extending this effort into new areas — cybercrime, trafficking in humans and drugs, arms smuggling — will not only reinforce the practice of cooperation, but may also impede the terrorist networks which seem increasingly connected with these other cross-border crimes.

Borders and Infrastructure

Efforts to protect borders and key infrastructure, especially transportation facilities, have already caused controversy in the transatlantic relationship, specifically over the issues of biometric passports and screening of shipping containers. Despite these early difficulties, there has been a shared U.S.-EU understanding of the importance of protecting borders and infrastructure that has allowed resolutions — albeit sometimes only temporary ones — to be found fairly quickly. In the case of CSI, the disagreement was not over whether containers should be screened but how to do that without providing certain ports with unfair competitive advantages. As for biometric passports, the real victory was not the temporary accord currently in force, but the fact that all parties quickly agreed that biometric indicators should be included as soon as technically feasible. In fact, the experience of the past year indicates that enhanced security measures may also have benefits in other areas: container scanners installed at European ports in response to CSI have discovered so much smuggled merchandise (especially cigarettes) that the penalties and taxes have reportedly covered the costs of the scanners. Similarly, the U.S. requirement that Customs be informed of the contents of containers 24 hours before starting shipment to the United States has forced companies to tighten inventory control, with unexpected gains in efficiencies, according to some business representatives.

Most transatlantic cooperation on border security has so far been concerned with screening airline passengers and has focused on watch lists, passenger information, skymarshals, and other similar efforts. Opportunities for collaboration in protecting land borders are likely to be somewhat limited, even though both the United States and the European Union have long land borders and difficulties with illegal immigration. For the most part, the United States and the EU are proceeding on parallel, if largely separate tracks in this area. For example, while the United States is working to strengthen the Border Patrol and methods of tracking visitors while on U.S. territory, the EU is considering a proposal to establish a system of European border guards, especially as the ten new members accede to the Schengen area in the next few years. Some member states have recently suggested establishing camps for potential immigrants in various North African countries, so that individuals could be screened before entering the Union. Even though the United States and EU have given priority to tightening the security of their own borders and tracking those individuals who cross into their territory, they will still benefit from cooperation in this area. Specifically, as each develops watch lists and databases, it will be essential to develop methods of comparing information in a way that safeguards individual privacy. They will also benefit from comparing “best practices” in this area. In addition, enhanced cooperation against trafficking in humans and drugs can foster the type of joint activities (marine patrols, intelligence, etc.) that can in turn benefit anti-terrorist efforts.

The protection of infrastructure and transportation networks offers significant opportunities for U.S.-EU cooperation. All acknowledge the difficulty of protecting such infrastructure, which ranges from metropolitan transport systems used by millions of people each day — as in Madrid — to major ports and airports, and the ships and planes that transit through them. There is also a need to protect ships from piracy and other dangers as they cross the high seas with dangerous cargos, such as liquefied natural gas and various chemicals, which could conceivably be used to devastating effect if they fell into the wrong hands. Both the United States and the EU have taken a series of measures to protect transport infrastructure or networks, although much remains to be done. In some ways, the CSI dispute has proven to be a catalyst, bringing together agencies that would not have interacted before — such as the U.S. Coast Guard and the European Commission — and providing a focus on port security that has allowed some solid cooperation to develop. Eventually, the CSI program will be put in place at ports throughout the European Union, and the current EU program of aviation security inspectors will soon be expanded to port inspections. The U.S.-EU Policy Dialogue on Border and Transport Security brings together officials from the Department of Homeland Security and the European Commission, along with representatives of other agencies, to consider ways of collaborating in protecting territory and infrastructure. In September 2004, another positive step was taken in the announcement by Secretary Ridge that a Department of Homeland Security official will be posted to the U.S. Mission to the European Union.

These efforts have been hindered, however, by the very complexity of the challenge. In some cases, a particular threat can only be addressed effectively through a complex network of strategies. For example, the protection of civilian aircraft from MANPADS — manportable air defense systems, i.e., shoulder-fired missiles — involves surveillance of the area surrounding an

airport, international non-proliferation efforts, border security procedures designed to keep the manpad out of the country, and, finally, the possibility of air defense measures. Similarly, protecting “intermodal” transport systems — for example, containers that move via ship, train, and then truck — involves a multitude of different agencies and technical capabilities, even if no international borders are involved. Second, the involvement of multiple agencies and organizations can generate some unwelcome disputes. Recently, the U.S. Department of Energy has proposed a program for installing radiation detectors at various major ports in Europe. Despite the fact that CSI had just been resolved, the Energy Department’s move at first seemed likely to repeat the mistake of pursuing negotiations with individual ports rather than through the Union, and has thus been the cause of some consternation among European officials. It has also highlighted the need for a “traffic cop” — perhaps the State Department — that can encourage U.S. agencies to learn from the experience of others.

Despite these challenges, however, the United States and the European Union are both strongly committed to making progress in this area. In the immediate future, they should especially focus their efforts on working together on some key priorities. In particular, they should:

- **Strengthen efforts to develop global standards for technologies and procedures that can be used worldwide.** For example, both the United States and the EU have signed on to the International Maritime Organization’s International Ship and Port Facility Security Code (ISPC), which specifies a series of security measures that ports should enforce. Because U.S. and European ports dominate world shipping, denying entry to ships from ports that do not enforce the ISPC will provide a powerful incentive for ports around the world to upgrade their security.¹² Similarly, standards for other technologies, such as secure labels for containers, could be developed on a bilateral basis and then adopted by international standard-setting bodies.
- **Collaborate on research and development of technologies that will aid in preventing terrorism or ameliorating its effects.** The European Union has recently designated R&D funds specifically for development of technologies that might aid in the fight against terrorism, and the DHS supports similar efforts. These funds are intended to support a range of projects, from database design to the development of subway cars that are better able to withstand blasts, or even security systems for high-risk facilities. These funds will be more effective if those awarding them are aware of other innovation efforts underway on the other side of the Atlantic and can consider compatible — or at least not duplicative — projects when allocating their funds. Separate R&D efforts may lead to the development and adoption of incompatible technologies that hinder and frustrate transatlantic cooperation.

¹² The EU legislation to enact the ISPC has not yet been finalized, but is expected to be in force soon. The U.S. Coast Guard will soon be required by law to ban all ships from U.S. ports unless they come from a port with the ISPC in effect.

- **Reinforce joint efforts to strengthen port security and expand this to intermodal transport networks.** Much work has already been done in this area and despite the rough start over CSI, the will to cooperate seems very much in evidence. In the immediate future, the priorities will include: sharing best practices; joint training of inspectors, perhaps through exchange programs; and enhancing methods of identifying high-risk vessels, especially among those who transit U.S. and EU ports without taking on or off-loading cargo. Addressing intermodal transport will be much more difficult and cooperation will be complicated by differences in U.S. and EU transport systems (in the United States, for example, containers move largely by rail, while trucks are more important in Europe). But transatlantic cooperation on technology, procedures, and intelligence could help make vital transport networks safer.
- **Engage the private sector more fully on both sides of the Atlantic.** Following the September 2001 attacks, the business community has put enormous efforts into preventive security measures, as well as back-up systems that can preserve vital records and systems in case prevention fails. But for many businesses, especially the small and medium enterprises for whom security may seem a questionable expense, guidance is required in terms of basic, cost-effective steps that can provide some element of protection and continuity. But the private sector is not merely the recipient of government advice and requirements — or even simply the recipient of funds to develop new anti-terrorism technologies. Especially in terms of protecting transport networks and key infrastructure, the private sector is clearly an essential partner. Even though ownership of major energy and transport facilities is often structured very differently in Europe and the United States (one EU official estimated that 80 percent of critical infrastructure in the United States is in private hands, and only 30 percent in Europe, with the rest owned by the state) the business community is usually involved as users, customers, or contractors, even when a facility is in state hands. Protecting major facilities such as ports will clearly depend on strong cooperation between the agency that manages the port and the many private sector customers who send their goods and ships through that facility. Private sector contributions to this effort may range from implementing and enforcing security measures to gathering information about suspicious movements, cargos, and companies. For all these reasons, government officials in both the United States and the EU need to consider how to work with the private sector most effectively, especially given the strong corporate links across the Atlantic and the interconnectedness of the two economies. The TransAtlantic Business Dialogue may be able to play an important role in creating a stronger dialogue between U.S. and European companies on this issue.

Beyond the U.S.-EU Partnership

While U.S.-EU cooperation in combating terrorism has been a real success story, that partnership alone will not be sufficient in eliminating, or even effectively managing, the threat that terrorism poses in Europe, the United States, or around the world. Even though much

remains to be done in strengthening U.S.-EU bilateral efforts, it is also essential that the transatlantic partners take on a leadership role in the global fight against terrorism. This will not be easy. The last three years have seen stark differences between the United States and many European governments, including EU institutions, on relations with countries who are key to the global response to terrorism, especially in the broader Middle East. Although the United States and its allies have agreed on the outline of a program aimed at encouraging reform in that region, differences remain over the relative importance of economic reform and modernization versus political reform and democratization. The sharpest distinctions have emerged over the war in Iraq and the Israeli-Palestinian conflict and their impact on the struggle against terrorism.

Beyond these bilateral differences, two other factors discourage cooperation. First, U.S. credibility in many areas of the world is relatively low, with governments and populations suspicious that the emphasis on a military response in the U.S. fight against terrorism may be a cover for more aggressive ambitions. Some European officials note that occasionally European efforts can be more effective internationally if they are seen as independent of U.S. efforts. Second, however, Europe is far from unified on foreign policy matters, and competence is divided among the European institutions and the member states. European representation in international organizations varies, with the EU sometimes participating along side the member states and sometimes not involved at all.

If the United States and the EU are to exercise global leadership, they must reach out to others and convince them to take specific, sometimes difficult, steps against terrorism, despite serious political differences and even suspicion about U.S. and European motives. It will mean strengthening the mutual understanding and cooperation that already exists across the Atlantic on anti-terrorism so that approaches to third parties are not plagued by disunity and disagreements. In reaching out beyond their bilateral partnership, the United States and the European Union should:

- **Bring NATO into the transatlantic partnership aimed at fighting terrorism.** NATO was one of the very first institutions to declare itself part of the campaign against terrorism with its invocation of the collective defense clause on the day following the September 2001 attacks. But when the United States decided to run the campaign in Afghanistan as a coalition under U.S. command, NATO had only a very limited role until taking on the ISAF command in Afghanistan in August 2003. NATO's ability to cooperate with the EU in the anti-terrorism effort is now constrained by restrictions imposed by member states, some of whom seem concerned that NATO might eclipse the EU in this area, despite their very different talents and mandates. Those restrictions have even delayed the organization of a conference on counter-terrorism that was to be co-sponsored by NATO and the EU. Even once these specific differences are resolved, NATO's involvement will still be hampered by distinctly different U.S. and European views on the utility of military force in combating terrorism. But NATO does have some distinctive strengths that it could bring to bear if permitted to fully engage in the struggle against terrorism. NATO patrols in the eastern Mediterranean

have interdicted shipments of contraband and generally made the shipping lanes safer from attack. There may also be other instances when quick strikes at terrorist training camps or other installations may be necessary, and the NATO Response Force is specifically designed for that type of operation. In case of an attack on Europe, NATO does have an integrated command structure that may facilitate a combined response to a rogue aircraft crossing European airspace, for example. Should an attack succeed, NATO's Euro-Atlantic Disaster Response Coordination Centre could assist in coordinating the consequence management effort. There are, of course, many aspects of combating terrorism that would gain little or nothing from the involvement of a military alliance, including most of the law enforcement and homeland security issues covered in this report. But engaging NATO more fully and appropriately will make the U.S.-EU partnership that much stronger and better prepared if circumstances arise in which a military response is required, and it will remove an element of contention at the core of that partnership.

- **Assist third countries in combating terrorism.** The pledge to work together in helping other countries become effective partners in the campaign against terrorism was one of the highlights of the June 2004 U.S.-EU summit declaration. Yet, coupled with references to diminishing the underlying conditions that terrorists exploit by “promoting democracy, development, good governance, justice, increased trade, and freedom” and to “support the development of global strategies to promote increased tolerance in the world, including cross-cultural and inter-religious understanding,” this pledge seemed both overly ambitious and vague. While acknowledging that terrorism is encouraged by inequalities and repression, an effective effort at coordinating foreign assistance programs must be more narrowly focused, especially if it is to overcome the bureaucratic, financial, and political obstacles that have frustrated previous efforts to coordinate U.S. and EU aid programs. Instead, these assistance efforts should focus on specific anti-terrorist measures, such as helping developing country ports meet the IMO's port security code or their airports to purchase and maintain appropriate security equipment and training. Indeed, if the United States and the EU intend to push for international adoption of standards for anti-terrorist measures, they must also help others meet those standards. Law enforcement training and consequence management preparation will also be valuable and will provide benefits generally in those societies, including after natural disasters. Other types of assistance aimed at generating political and economic reforms will be critical in the long-term, but the immediate focus of U.S.-EU coordination should be on building the capacity of third states to implement specific anti-terrorist measures and policies.
- **Cooperate fully in advancing anti-terrorist efforts in a range of international organizations, especially the United Nations and the G-8.** As mentioned above, the impact of transatlantic cooperation in developing standards for anti-terrorist measures could be multiplied by working with international bodies with mandates to apply these standards globally. The IMO's IPSC represents an example of guidelines, largely instigated by the United States, that are now central to the U.S.-EU discussion of port

security and should be key in their assistance to third countries. Other, less technical, international organizations could also be key in the fight against terrorism. The Organization for Security and Cooperation in Europe, for example, could have an important role to play through its police training and anti-trafficking efforts. The United Nations and the G-8 have become particularly active in this area, and their efforts could reinforce transatlantic cooperation while also providing a platform for further U.S.-EU agreements to be extended to other members. At the United Nations, the Counter-Terrorism Committee (CTC) has been charged with overseeing members' implementation of resolution 1373. It has particularly sought to ensure that members have effective legislation, especially in the area of preventing financial support for terrorist groups. The CTC has recently gone through a revitalization, providing an opportune time for the United States and its European partners to use their experience in addressing these same issues to make the UN effort more effective.¹³ The G-8 group of leading industrial countries has also been increasing active in anti-terrorist efforts, although, given that its primary purpose is to meet in regular summits, it is not an institution with a capacity to execute or enforce any programs. Nevertheless, the decisions at the 2004 Sea Island Summit to launch an initiative to make air, land, and sea travel more secure and to undertake an effort to destroy excess MANPADS provide an indication of growing multilateral activity in this area. In addition, the G-8 ministers of justice and interior have issued recommendations to national governments on creating a legal framework to prevent terrorism, the use of special investigative techniques and national security intelligence information in terrorist cases, on border security and travel documents, and on building international capacity to fight cybercrime. The United States and the European Union should cooperate in ensuring that the fight against terrorism remains prominent on the UN and G-8 agendas, and that their recommendations are implemented as widely as possible.

Building a Public Constituency

If the United States and the European Union are to maintain and even expand their cooperation against terrorism, they must create a constituency for that effort both among the relevant professionals and the wider public. One of the biggest differences between the policy environment in the United States and that in the EU is the overwhelming priority of anti-terrorism in the U.S. law enforcement, security, and judicial communities. In Europe, those countries with recent experience with terrorism are similarly motivated, albeit on a national level. But within the EU, the emphasis has been on building cooperation on law enforcement and judicial matters generally, and because of the prominence of the issue in Europe, illegal immigration is perhaps as much a law-enforcement priority as anti-terrorism. If strengthened, Europol and Eurojust could be key institutions in building truly pan-European law

¹³ The CTC membership consists of the 15 UN Security Council members, so the European Union as such is not represented. However, when there is a common EU position — as there is on terrorism — European Security Council members have generally adhered to the EU stance.

and judicial communities and creating a stronger focus on anti-terrorism. They could also, along with the Commission and other European institutions, help generate European initiatives that will redress the current policy imbalance in which the United States is almost always the one proposing new measures and the EU is responding. A strong anti-terrorism constituency within the relevant European professional communities will help ensure that transatlantic cooperation is based on an equal partnership.

The United States and the EU must also develop more effective outreach to their publics. The public is certainly aware of the importance of this issue, but they have little direct involvement in preventing or responding to terrorism. Thus, a key element of any outreach effort will be providing members of the public with information they can use in some way, so that they become active, constructive participants in combating terrorism. For example, U.S. and European practices in terms of alerts and alert levels are rather different, with many European law enforcement officials skeptical that the general, color-coded alerts issued in the United States do anything other than raise anxiety. Clearly there is a role for the public, both in observing suspicious behavior (abandoned briefcases, purchases of certain materials, etc.) and in being prepared to deal with the consequences of an attack. But there is a fine line between raising awareness and involving the public without causing undue alarm and anxiety. The United States and Europe can learn much from each other as they strive to achieve that balance.

Aside from creating national awareness of, and involvement in, anti-terrorist efforts, the United States and European Union must work together to build public understanding of the extent of cooperation, both across the Atlantic and increasingly, around the world. This is essential, first, to create a constituency for greater U.S.-EU cooperation in fighting terrorism. If the United States and the EU are to build on their successful collaboration to date — and perhaps put in place some of the steps recommended here — they will require a broader base of support for those efforts, both within government and among the public. Second, after the strains of the recent past, greater public understanding of one of the success stories may help demonstrate the value of such transatlantic collaboration more generally and invigorate efforts to cooperate in other areas.

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