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NATO Parliamentary Assembly

**PRESERVING THE CIVIL LIBERTIES AND
FIGHTING TERRORISM EFFICIENTLY: IS IT
POSSIBLE ?**

DRAFT SPECIAL REPORT

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International Secretariat

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* Until this document has been approved by the Committee on the Civil Dimension of Security, it represents only the views of the Rapporteur.

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I. PREAMBLE

In a previous report¹ your Rapporteur proposed conclusions that are of use for this report and presented in the preamble, in 1 to 6.

1. Our belief in liberty and our vital interest in security should come together. But can they work in the same direction? Combating terrorism is the right thing to do. Being able to do it right is not exactly the same. I think being able means securing the lives and the life of the people we want to protect from terror.

2. The terrorist strikes and spreading of terror constantly imply new risks and reveal new vulnerabilities. The risk itself does not offer any kind of guidance or perspective.

3. The political decisions aimed at combating terrorism are inevitably touching the life of civilians, sometimes even speeding up changes of different aspects of their lives. It is therefore extremely important to have the vote of the people on how this new political decisions are exercised.

4. Awareness raising as regards public perception of the menace and danger posed by terrorism must be seen as a civil protection priority. Increased communication and better information of the public at large must take into account the fact that public perception, as well as the objective realities following any act of terrorism are extremely difficult to evaluate and quantify. Such risks will continue to maintain a state of diffused danger, hovering around and about and almost impossible to define or pinpoint.

5. Devising clear-cut strategies for informing and alerting the population is most necessary for avoiding the feeling of a continuous terrorist menace. Its persisting pressure would represent a victory for terrorism even before it may initiate any concrete criminal action.

6. We must ensure a twofold quality against any risks associated with the prevention and fight against terrorism:

- a constant level of vigilance on behalf of the authorities;
- a high level of confidence of the population towards the authorities.

7. Hobbes noted that "the Passions of men are commonly more potent than their Reason" (*Leviathan*).

8. "It is the duty of governments, and of individuals, to form the truest opinions they can; to form them carefully, and never impose them upon others unless they are quite sure of being right. But when they are sure... it is not conscientiousness but cowardice to shrink from acting on their opinions, and allow doctrines which they honestly think dangerous to the welfare of mankind, ... to be scattered abroad without restraint..." (John Stuart Mills, *On Liberty*)

9. The fact that terrorism presents new challenges and dangers does not mean that the basic moral principles and human rights that the criminal law and the laws of war try to protect have been repealed or become moot. We must instead ask what different scheme – what third model – is appropriate to respect those principles, while still effectively defending ourselves. It is necessary to try to capture the principles those constraints serve in a new model that incorporates aspects of each of the others.

¹ Protecting civilians against terrorism within the new NATO military concept for defence

10. Perhaps reflection, debate, and experience will provide some consensus on a new legal system for terror that can one day be encoded in some new set of international conventions.

II. CIVIL LIBERTIES IN RETREAT

11. "We need honest, reasoned debate, and not fear-mongering. To those... who scare peace-loving people with phantoms of lost liberty, my message is this: Your tactics only aid terrorists, for they erode our national unity and diminish our resolve. They give ammunition to America's enemies and pause to America's friends. They encourage people of goodwill to remain silent in the face of evil". Thus does Attorney General John Ashcroft characterize critics of his tactics in investigating terrorism and challenges the patriotism of those who dissent.

12. It is not disloyal – in fact, it is a form of patriotism – to ask whether government is getting the powers most appropriate to the task, whether it is using them wisely, whether it may be missing important potential strategies.

13. But if American and European political history stands for one essential point it is that democratic debate is good and makes a democratic country stronger.

14. In the United States public signs like "Report suspicious activity" can be seen everywhere, while in the UK, the slogan is "Secure under vigilant eyes". The Orwellian tone should not go unnoticed. People should not be driven into a new social environment in which they feel the necessity to find hiding places to have privacy.

15. "I believe privacy is a fundamental right", said the candidate George W. Bush one month before his election, "and that every American should have absolute control over his or her personal information".

16. But after the September 11 attacks, the right to be left alone had to be balanced against the right to stay alive. Terror's threat is real. But as Americans grudgingly grant government more leeway to guard their lives, they demand that their protectors be especially careful to safeguard their rights.

17. Peter Buckley, of Oregon, a former Democratic candidate for Congress wrote in November 2003: "We were not allowed anywhere near any kind of position where the president, or the media which follows him, would see or hear us. This is not America. This is not the land of the free and the home of the brave. I'm a patriotic American. I want the country I was raised to believe in, a country strong enough for political discourse and debate".

18. A letter, concomitantly signed by 11 members of the House, including Representative Barney Frank, a Democrat of Massachusetts, and Representative Ron Paul, a Republican of Texas, states, in part: "As we read the First Amendment of the Constitution, the United States is a 'free speech zone'. In the United States, free speech is the rule, not the exception, and the citizens' rights to express it do not depend on their doing it in a way that the president finds politically amenable..."

19. The New York City Police Department arrested peaceful antiwar demonstrators earlier this year and questioned them about their political affiliations. The practice was finally stopped by public criticism.

20. To engage the FBI in spying on Americans who demonstrate peaceably for peace is what J. Edgar Hoover did for decades as director of the FBI. Hoover ran clandestine operations

against figures he designated as targets of the FBI's counterintelligence program, *Cointelpro*. The aim of the *Cointelpro* was not merely to monitor the targeted person but destroy him. Martin Luther King Jr. and Malcolm X were among the dissidents Hoover subjected to clandestine operations.

21. In a recent interview, now retired General Tommy Franks, who led US military invasion of Afghanistan and Iraq, told the men's lifestyle magazine *Cigar Aficionado* that if the United States were hit by a weapon of mass destruction that inflicted large casualties, the Constitution would probably be discarded in favour of a form of military government.

22. We have to understand two vital things: the delicate grandeur of American liberty and the political profile of the terrorists said recently *The Boston Globe Daily*.

23. For the past 12 months, airlines flying into the United States have given US immigration officials access to such data as credit card numbers, addresses, contact persons and any notes made by airline staff. The United States administration says this information is necessary to help track down potential terrorists.

24. The European Parliament voted, 229 to 202, in favour of the suspension of this arrangement, with 19 abstentions. The supporters of the resolution said they were concerned with the "unfair" treatment of Europeans travelling to the United States. One section of the resolution says that in the United States, "protection of privacy, although mentioned in the Fourth Amendment to the Constitution, is not regarded as a fundamental right". In fact, the Constitution does not explicitly mention a right to privacy, though the Supreme Court has defined one. As part of its own antiterrorism measures, the European Union is making requirements from foreign airlines but is demanding far less information.

25. The agreement between the United States and the European Commission calls for audits to make sure the data are handled according to the agreement.

26. Justice Stephen Breyer reminded a New York City bar association audience in 2003 that "the Constitution always matters, perhaps particularly so in times of emergency"

27. One of the few successful post-September 11 terror prosecution cases – a case in Detroit – seems to be revealing. The government that held information from the defence, and witnesses unfavourable to the prosecution were deported. The government said it was by accident. After the former lead prosecutor complained about the Justice Department's handling of the case, he found himself under internal investigation.

28. The former American vice-president Gore said: "I want to challenge the Bush administration's implicit assumption that we have to give up many of our traditional freedoms in order to be safe from terrorists. It is simply not true".

29. The administration's USA Patriot Act, passed through Congress almost immediately after September 11, enacted a broad definition of terrorism including, for example, violent acts "intended to influence the policy of a government by intimidation or coercion". The act expanded the power of government to conduct secret searches of private homes, stipulated new rules enabling government to demand records of any person's book purchases or borrowings from bookstores and libraries, and increased the government's surveillance authority.

30. Under The Patriot Act, the Justice Department has been using its new powers, which were defined as emergency provisions against terrorists, to investigate and prosecute a wide variety of more ordinary crimes, including theft and swindling.

31. Many Americans believe that the Bush administration's security policies are a justified response to the terrorist threat, that the attacks on September 11 require "a new balance between liberty and security". A CNN/USA Today/Gallup Poll from September 2003 found that only 22 percent of Americans thought the administration had gone too far in restricting civil liberties. However, two thirds said the government should not take any additional anti-terrorism steps if they further compromised civil liberties.

III. THE GUANTANAMO BAY AND OTHER DETAINEES' CASES

32. The official position of the US administration was that decisions to detain people are "based on significant evidence and made by the President of the United States. It is not based on a whim. We are respecting liberties at the highest level possible to make these judgments".

33. More than 650 prisoners were held in the administration's detention camp at Guantanamo Bay, anonymously and under harsh conditions.

34. The military tribunals the US administration wants to use to try some of its detainees are appointed by the Defense Department, and have the power to impose sentences, including the death penalty, without the normal evidentiary safeguards of the criminal process.

35. Human rights groups have challenged the decision to detain people in Guantanamo and also to hold three people in the United States, whom the Bush administration calls "enemy combatants".

36. The Guantanamo detainees were held indefinitely and in secret, with no access to lawyers, under circumstances that would be intolerable even if they were convicted criminals.

37. The Supreme Court entered a fundamental debate between individual liberty and national security by agreeing to consider whether prisoners held by the United States since the war in Afghanistan can use American courts to challenge their imprisonment. The justices agreed to hear appeals filed on behalf of two groups of detainees at the US naval base at Guantanamo Bay, Cuba.

38. Solicitor General Theodore Olson had urged the Supreme Court not to hear the detainees' appeal. His brief argued that the circuit court had properly interpreted a 53-year-old Supreme Court precedent to hold that "aliens detained by the military abroad" have only those rights that are "determined by the executive and the military, and not the courts". The Center for Constitutional Rights, in New York, took a contrary position.

39. The Supreme Court's decision not to hear this appeal comes as the Bush administration is increasingly asserting the right to conduct law enforcement in secret. It argues in the case of Jose Padilla, an American citizen accused of being part of a dirty bomb plot, that merely by labelling him an "enemy combatant", it can hold him in secret indefinitely.

40. The Third Geneva Convention, which the United States has signed and ratified, says that when there is doubt about a prisoner's status, the question is to be determined by a "competent tribunal". This means an independent one.

41. Lord Steyn, a judge of the United Kingdom's highest court said: "the prisoners were in a 'legal black hole', unable to show a neutral body that they were victims of mistaken identity or, say, to show that they were being mistreated at Guantanamo".

42. Those the government designated suspected criminals need not be treated as prisoners of war. But their treatment must be governed by the ordinary procedures and protections of the criminal practice, again modified as necessary to fit the special circumstances.

43. US officials released five of the nine British citizens detained at the prison camp at Guantanamo Bay, Cuba. The fate of other European detainees, including French, Swedish and German nationals, remains unclear. Nearly 90 detainees have been released in recent months to several countries, including Pakistan and Afghanistan, and about 650 remain. Some of the roughly 650 detainees have been held for as long as two years without being charged. To date, nearly 90 detainees have been released, and US officials have suggested that more than 100 of those deemed less dangerous might be eligible for eventual release.

44. Secretary of Defense Rumsfeld and General Gonzales have described about a dozen of the detainees as senior al-Qaeda operatives. But critics say that many, if not most, of the detainees are guilty of little beyond the bad luck to have been caught up in the chaotic aftermath of war. Most were captured in Pakistan or Afghanistan after the fall of the Taliban government.

45. More than six months after Captain James Yee, the former Muslim chaplain at Guantanamo, was arrested on suspicion of espionage, the US military has dropped the charges.

46. Recently, the US military has released 15 more people from its prison at Guantanamo Bay, Cuba, reducing the number there to 595. The 15, who were transferred to their home countries, were from Afghanistan, Turkey, Tajikistan, Sudan, Iraq, Jordan and Yemen. The Pentagon did not provide other details. Previously, 119 detainees were transferred for release and 12 others were transferred for continued detention.

47. Moussaoui, a French citizen, is the only person facing trial in a US court on charges of conspiring in the suicide attacks on New York and Washington. Moussaoui has admitted to being a follower of Osama bin Laden and to training for a terror attack. But he has denied having a part in the September 11 planning.

48. The US "war" against terrorism can have no formal end: it may last at least a generation. The danger is of two kinds, of which the first – further terrorist attacks – is obvious. The second, less obvious danger is that ignored or violated fundamental individual rights and liberties will change the character of our society for the worse.

IV. THE LEGAL FRAMEWORK

49. International lawyers are divided over whether new American practices violate any of our treaty obligations.

50. The question whether America's treatment of prisoners at Guantanamo Bay, in Iraq, and elsewhere violates international law largely depends on the interpretation of the Geneva Conventions, which are a complex series of covenants and protocols each of which was ratified by at least 156 nations. (The United States is a party to some parts of the conventions but not others; one question about which international lawyers divide is whether, because so many other nations are party to all parts of the conventions, the United States must respect even those provisions it did not ratify because they all now represent customary international law).

51. The conventions distinguish two main classes of people a nation captures in military action: those who are acting as agents of another power with which the nation is at war, and those who

are acting as civilians on their own. The latter may be prosecuted as criminals. The former must be treated as prisoners of war provided they meet other conditions: they must fight under a responsible command, carry their arms openly, wear a fixed and recognizable sign like a uniform, and obey the laws of war themselves.

52. The US administration interprets these provisions so as to allow a third category, which it calls "unlawful combatants" (a term that does nowhere occur in the Geneva Conventions) by which it means those who are not entitled to prisoner-of-war status or treatment because they do not wear uniforms or do not obey the laws of war, for example, but who may nevertheless be detained without criminal charges because they have taken up arms as part of an organized group. This interpretation has been widely challenged.

53. Our criminal process imposes harm only when that harm can accurately be described as punishment. We do not select some people to put in jail because we think they are more likely than the average citizen to commit serious crimes, though we might indeed be safer if we did that.

54. We have to ensure that those we punish are indeed guilty because running any substantial risk that a criminal defendant may be punished though innocent, only to improve the efficiency of the process of deterrence would be treating the defendant's life as expendable.

55. There is, of course, a dilemma facing democracies. Aharon Barak, President of the Supreme Court of Israel said: "Sometimes a democracy must fight with one hand tied behind its back. Nonetheless, it has the upper hand. Preserving the rule of law and recognition of individual liberties constitute an important component of its understanding of security. At the end of the day, they strengthen its spirit and strength and allow it to overcome its difficulties".

56. Terrorism currently poses two major legal problems. First, on what conditions are States authorized to respond to terrorist attacks with *self-defence*? Second, are States allowed to forestall terrorist attacks by resorting to *pre-emptive self-defence*?

57. It is suggested that the currently indeterminate legal regulation could be updated along the following lines. First, States should agree upon some new legal standards concerning *self-defence*. They could agree that (i) whenever a State is the victim of massive terrorist attacks, *self-defence* is lawful against the territory of countries that support or condone the action of the terrorist group that has launched the action, or that do not try to suppress such groups; (ii) *self-defence need not constitute an immediate response* to an armed attack in cases where it is not immediately clear from where the attack has come; (iii) States acting in *self-defence* may respond forcibly to *more than one State*, when it is manifest that the terrorist organization is harboured in, and supported by, more than one State.

58. As a countervailing factor to this extended notion of *self-defence*, States should, subsequent to their use of *self-defence*, submit for *international scrutiny* (possibly by the UN Security Council) the evidence they had available prior to resort to *self-defence* of the close link between the State attacked and the terrorist organizations at the origin of the attack.

59. In addition States should issue a prior warning to the central authorities of those States on whose territory terrorist organizations are located and which the central authorities are unable to suppress or effectively fight against. The purpose of this warning would be to ensure that civilian populations are protected as much as possible from the imminent attack in *self-defence*.

60. States acting in *self-defence* should also pay compensation to victims for any disproportionate damage they may have caused.

61. On September 12, the UN SC unanimously passed Resolution 1368 (2001), which in its preamble "recognized" the right of individual and collective self-defence. In this resolution the UN SC wavered between the desire to take matters into its own hands and resignation to the USA's decision to resort to unilateral action.

62. Analysis of States and UN practice evinces that the vast majority of States still firmly believes that the UN Charter does not allow anticipatory self-defence. However, a number of States including Israel and the USA (followed by the United Kingdom, Russia and Angola in 2003) seem to take the view that, at least in some circumstances, it is authorized. One may therefore conclude that, although the *overwhelming majority of member States* of the international community holds that under the UN Charter anticipatory self-defence is illegal, there is however a number of important States that take a contrary view. In short, *there is no universal agreement* as to the illegality of anticipatory self-defence.

63. We have to envisage the possibility of making anticipatory self-defence *lawful* beyond any doubt. To meet this requirement it is imperative to build a *set of safeguards* into the new legal regime that enable both *ex post* UN SC scrutiny of the conditions existing when the anticipatory self-defence has been resorted to, and recourse to remedies in case of abuse. In other words, if States and in particular major powers want to use this category of self-defence, they must agree in advance to comply with a *set of obligations* designed to ensure as much as possible that they should not make arbitrary use of it.

64. France passed an anti-crime law on Wednesday, giving prosecutors and police officers new powers to fight organized crime and introducing American-style plea-bargaining.

65. The law, which is opposed by most French legal associations as a violation of civil liberties, will also allow the police to pay informers, install microphones and cameras in suspects' homes, and intercept telephone and e-mail conversations. Among the hundreds of revisions to the penal code, the law will extend from two to four days the period in which suspects can be detained and questioned without charges against them.

66. "This law suddenly invades the privacy that we have fought for since the French Revolution", said Nicole Milhaud, who has practiced law for 37 years.

67. The European arrest warrant, which replaces traditional extradition agreements among European Union countries, has now taken effect, though only in the eight member states that managed to meet the deadline of January 1. The aim is to ensure that trials of suspected criminals, including terrorists, are not held up by messy extradition procedures.

68. Governments were not very eager about including specific reference to human rights in the text of the warrant documents for fear it would be used by every clever lawyer to draw out proceedings and scuttle the new and efficient procedures. A lot more work is required before reaching the level of trust necessary for the new system to operate smoothly.

69. The European arrest warrant can only work if EU member states have mutual confidence in their respective criminal justice systems – that they do, in fact, live up to international and EU human rights standards, including the European Convention on Human Rights and the EU Charter of Fundamental Rights. The European arrest warrant is an example of how there can be no security without human rights.

V. THE POLITICAL FRAMEWORK

70. We quote from The Financial Times: "Fear has been used as a basis for curtailing freedom of expression and for questioning legal rights long taken for granted..."

71. We can learn from modern history that terrorist movements, like many other human endeavours, enjoy success for a while and then can wither rather quickly away. Sometimes this is because of sophisticated negotiations leading to subtle compromises. Sometimes success comes about through police work. Sometimes, it is because repression works.

72. There is no reason why a combination of sophisticated politics and clever policing cannot make a lot of progress in defeating terrorists. We don't have to sacrifice our standards of justice to combat terror.

73. In fighting terrorism the EU has developed a multi-sectorial approach, taking into consideration both the domestic policy aspects and the external action of the Union. A reference moment in this process was the passing of the European Security Strategy, at the European Council in Brussels (12/13 December 2003)

74. The EU perceives terrorism as a "strategic threat" which is at the same time conceived as a phenomenon of the contemporary society. It is necessary to approach with priority the sources feeding terrorism: poverty, religious intolerance, social exclusion, etc.

75. We would like to mention among the EU action tasks:

- The improvement of intelligence gathering and sharing
- The co-ordination of support for the fight against terrorism towards third countries

76. But even as the Europeans closed up to confront the terror threat, they faced criticism in Washington that they were excluding Americans from their deliberations.

77. All agree that improved intelligence and efforts to address terror's origins are essential to stop terrorist attacks.

78. Romano Prodi said recently: "We must fight terrorists and be united against terrorism even if we think, interpret in a different way the effects of the Iraqi war". Terrorism must be fought violently Prodi said, but also through a broad effort to address its root causes. Foremost among these, he said, was the Israeli-Palestinian problem – a widespread view in Europe.

79. Two weeks after explosions in Madrid, the European Union went into action. Presidents and prime ministers of the 25 present and future members of the Union agreed to an ambitious package of antiterrorism measures ranging from more secure passports to the appointment of an anti-terrorist co-ordinator.

80. A joint declaration said "terrorism will only be defeated by solidarity and collective action".

81. Experts were impressed with the speed with which the EU had responded to the terrorist threat but remained uncertain as to the extent to which countries trusted each other in areas like sharing sensitive intelligence. The police around Europe should provide Europol with all relevant criminal intelligence related to terrorism as "soon as it is available", the leaders' declaration said. The laws should be in place no later than June 2004.

82. In the EU plan there is a solidarity clause: European Governments pledged to "mobilize all the instruments at their disposal, including military resources" to help EU members in case of a

terrorist attack. The solidarity agreement comes into effect "as of now". It was initially drafted as Article 42 of Europe's draft Constitution.

VI. SECURITY EQUIPMENTS

83. There are new threats in the world after 9/11, where the enemies are already inside the borders and simple weapons, such as a cutter, can paralyze a nation. The new security solution? Identifying potential terrorists before they can act and finding the weapons which some time ago would have remained hidden.

84. There is an urgent need for very sophisticated equipment for facial recognition, for detecting money laundering, coded e-mails, biological weapons and "briefcase" nuclear weapons.

85. The current evolution is too slow for such risks. Suddenly, everybody has realized our serious pitfalls concerning surveillance. It seems our intelligence agents are not able to detect and survey the terrorists efficiently.

86. We are heading towards the permanent surveillance of our enemies and ourselves. Our world is turning into a world of identity checks, surveillance video systems, fingerprints databases, electronic messagery filters and mobile phones bugging.

87. For example, how can one ensure border security along 10,000 kms? For several years, in the United States the answer was: one cannot. There is too much land and there are far too few forces to stop the men determined to enter the country. Currently, movement sensors devices, remote control cameras, night sight systems and surveillance satellites have changed the input data.

88. Due to the immense volume of transports, the harbours are probably considered the most vulnerable intrusion ways for the mass destruction weapons

89. The only aim of any new surveillance system is to efficiently detect the serious threats while maintaining the decoy systems at a negligible level. A false warning is still a false warning; warning systems require resources. After September 11, dramas due to false warnings take place on a reduced scale every day.

90. Several countries in Europe and Asia are about to introduce a card as the national ID card. It can contain the personal medical file, social insurance information and can serve as passport, train seasonal ticket, credit card, international phone card and library pass. A universal card. The e-mail account will know about the mobile phone, which will know the shopping list, which will know about the e-prescription of the pharmacy, which will know about the posted parcels, all potential data available to marketers - or hackers - thus being one step away from any official investigation.

91. What Orwell failed to foresee in his novel 1984 is the extent of surveillance in free societies, where it was not introduced by tyrants, but in the name of liberty and security.

92. Let us take for example the United Kingdom, Orwell's homeland. During the 70s and 80s, the mayor houses started timidly installing close circuit tv cameras (CCTV) on the streets, in the parks, in the railwaystations, on stadiums and in shopping areas. Then in the 90s, the Irish Republican Army's strikes and the scaring multiplication of urban attacks led to massive proliferation of CCTVs. During the last decade there were installed so many cameras that the government lost track. With more than 4 million cameras installed all over the country, the United

Kingdom is in first place worldwide in this field. The ordinary tourist visiting London, British sociologist Clive Norris estimates, is videotaped almost 300 times in one day.

93. Not to be publicly surveyed has become an exception. The public seems to approve of the cameras' presence.

94. In the 18th century, lawyer Jeremy Bentham imagined a sinister structure called *Panopticon* (a word of Greek origin, meaning „ all-seeing "). What was initially proposed as a possibly ideal constraining tool has now turned into a sort of shield protecting the free society from itself.

95. Those opposing public surveillance now offer suggestions for the policy in this field: all surveyed areas and the cameras should be listed in a public record accessible in any library or on the Internet, every surveyed area should be marked; access to records should be strictly limited, and materials showing no crimes should be stored only temporarily; a surveillance observer, designated by each community should ensure regulations enforcement.

96. In Jeremy Bentham's *Panopticon*, the people feel the overwhelming power of surveillance precisely because they never know when they are under surveillance. The new democratic version operates on the same principle. It concerns both investigation and deterrence of crimes.

97. The technology, the data protection and the way in which access to services is regulated will all need to be worked through. But politics is about taking judgments based on the world we live in, the problems that face it and the scientific advances that are coming. By embracing the need for universal ID cards now, we can safeguard liberty while ensuring the poor and excluded have their identities secured in the modern world.

98. The only goal of a surveillance system should be to detect effectively serious threats. The main questions are:

- Where privacy stops and right for surveillance is right?
- What guarantees are needed in order to protect civil liberties from the unauthorized and abusive use of the information gathered through the security systems functioning under the new regulations?

99. Those responsible for the security business are not necessarily supermen. The big ("brother") problem is that the surveillance systems function continuously and accurately but the people using them are not necessarily so.

100. It has been a long time coming. But after years of false starts, security systems based on biometrics – human characteristics such as faces, hand shapes and fingerprints – are finally taking off.

101. While biometrics may provide extra security, the costs currently outweigh the benefits in most cases. Governments either do not believe that the costs of biometrics still outweigh any potential benefits or, more likely, fearing more terrorism they simply do not care. Otto Schily, Germany's Interior Minister, recently declared his support for increased use of biometrics, asking: "How else would you propose to improve security?"

102. Biometrics can be used in two ways. The first is identification ("who is this person?"), in which a subject's identity is determined by comparing a measured biometric against a database of stored records. The second is verification ("is this person who he claims to be?"), which involves a one-to-one comparison between a measured biometric and one known to come from a particular person.

103. The results of an American government test released in March 2003 cast doubt on the accuracy of face-recognition systems. The test, called the Face Recognition Vendor Test, used systems from ten leading firms and a database of 121,589 images of 37,437 people. None of the systems worked well in a formal identification mode when shown a face and asked to identify the subject; nor did they work well when trying to recognize a face surreptitiously.

104. So it is only logical to expect biometric passports and visas to take a multibiometric approach. America has decided on a combination of finger scanning and face recognition, and Europe seems to be leaning towards the same combination.

105. Driven by the limitations of biometric technology, the critical choice is that these biometrics will be used for verification, not identification. The new border-control systems now being implemented at American border posts are merely verification systems.

106. Billions of dollars will be necessary to implement biometric systems at border-crossing points in USA - \$1.4 billion to \$2.9 billion initially, and \$700 million to \$1.5 billion annually thereafter - may mean there is less to spend on other areas of security.

107. In the long term, biometrics, by their very nature, will compromise privacy in a deep and thorough fashion. If and when face-recognition technology improves to the point where surreptitious cameras can routinely recognize individuals, privacy, as it existed in the past will disappear from public life.

108. Biometrics seems headed for dramatic growth in the next few years. Calm, public discussion of their benefits and drawbacks has been lamentably lacking. Such discussion is necessary both to prevent the waste of public money in the short term - for the most part, the private sector has been wiser in its adoption of biometrics - but also to regulate what will eventually have the potential to become a powerful mechanism for social control.

109. Only one instance so far deserves to be called cyber-terrorism. In 2000, a hacker named Vitek Boden broke into the computers of an Australian sewage plant and leaked raw effluent into rivers and parks, killing fish but no people. However, Boden was no ordinary terrorist. Not only had he helped to design and install the system that he attacked, but even with his inside knowledge he had considerable difficulty breaking in.

110. Terrorists may try more sinister acts. Malicious code has the potential to cause huge annoyance and disruption. But for people intent on carnage and terror, rather than disruption, blowing oneself up or similar low-tech methods remain far more attractive.

111. The solution could be eliminating anonymity if that is the price for security. The Internet is heading in this direction already. The sender's authentication may well be tied to a driving licence, social-security number or passport. An entire industry has sprung up to work on other forms of identification, such as the biometric scanning of irises or hands. All this may not be pleasing to libertarians, who envisioned the Internet as offering individuals the cover of relative obscurity.

112. What use is the Internet, whose whole point was to connect people, if it is balkanised into separate, walled subnets? The reality, however, is that the Internet is already balkanised.

113. To preserve freedom further anonymity could be replaced by pseudonymity. It might become legal, for instance, to have credit cards for online transactions under different names, as long as these could still be traced to the individual owner. The challenge is to set the legal hurdles for online search warrants high enough so that governments cannot abuse their power. But at the same time to keep them low enough so that criminals can be found and stopped.

114. The FBI said information typically found in almanacs that could be useful for terrorists includes profiles of cities and states and information about waterways, bridges, dams, reservoirs, tunnels, buildings and landmarks. It said photographs and maps often accompany this information. The FBI urged police officers to report such discoveries to the local US Joint Terrorism Task Force.

115; The US government urged to place armed marshals aboard American airliners, and asked other countries to do the same, expecting them to bear the cost as well. This is no longer just about security, but also about identity. Guns, armed officers and enhanced security measures are seen as elements of a uniquely American culture, which most of the world does not want to adopt.

116. Each foreign visitor to the United States travelling on a visa must have a picture taken digitally and a fingerprint scanned electronically when going through customs at airports and at 14 major seaports.

117. A program requiring many foreigners to be photographed and fingerprinted before entering the United States will be expanded to include some 13 million more visitors, the department of Homeland Security said Friday. Travellers from the 27 countries affected in the announcement have been allowed to enter the United States without a visa, provided they stay no longer than 90 days. The procedures will be put into effect by September 30 at 115 international airports and 14 seaports.

VII. INTELLIGENCE

118. The unfolding investigation into the Madrid terror bombings shows how terrorists continue to exploit a tactical advantage over intelligence agents from the European countries.

119. "There is an enormous amount of information, but much of it gets lost because of the failures of co-operation", Baltazar Garzon, the Spanish investigative judge, said. "We are doing maybe one third of what we can do within the law in fighting terrorism in Europe. There is a lack of communication, a lack of co-ordination and a lack of any broad vision."

120. The Madrid bombings, which killed 202 people and wounded 1,700, suggested that terrorists linked to al-Quaeda could not only modify their tactics, but also adopt a mind-set different from that anticipated by investigators.

121. The more diffuse terror threat played into the weaknesses of Europe's patchwork intelligence system. "The problem with intelligence in Europe is that we are far too bureaucratic and fragmented across borders," a senior German intelligence official said. "Our security is much less integrated than our business or transportation infrastructures. We also have many different languages, while the terrorist cells all speak Arabic. The extremists also move relatively freely across borders."

122. For years, European officials have talked about the need for a central repository for information about terrorist groups, but agencies have been reluctant, officials say. "If the CIA and the FBI are fighting constantly about information, how do you think it is with the French and the Germans?" a Spanish official said.

123. In this atmosphere, perhaps it is not surprising that many suspects slipped through the cracks.

124. Western governments have few Arabic-speaking agents and little capacity to infiltrate militant cells.

125. Industry scientists and western intelligence agencies have known for decades that nuclear technology was pouring out of Europe despite national export control efforts to contain it.

126. The proliferation has its roots in Europe's own post-war eagerness for nuclear independence from the United States and its lax security over potentially lethal technology.

127. Even as their own intelligence services warned that Pakistan could not be trusted, some European governments continued to help Pakistan's nuclear program.

128. At the United Nations, Annan's spokesman, Fred Eckhard, said in a news conference that the secretary general believes that it would be illegal to conduct bugging operations on the premises of the United Nations and that he would be disappointed if the United Kingdom conducted such operations.

129. Clare Short, former minister in the British cabinet said she was so certain of the surveillance that she recalled "having conversations with Kofi in the run-up to war, thinking: 'Oh dear, there will be a transcript of this and people see what he and I are saying.'"

130. "In an era of global terrorism where we know there are highly dangerous and repressive states out there developing weapons", Tony Blair said "the work of the intelligence services is even more necessary than before."

131. Information gathering is a slow complex task presupposing information fragments, their analysis, the analysis of their context, the deductive process, the stating of logical probabilities, moments of inspiration also included.

VIII. TERRORIST FINANCING

132. We do not have a clear understanding of how terrorists move their financial assets and we are still struggling to prevent the flow of money to terror groups, a new US congressional report found. The report, prepared by the General Accounting Office, the investigative arm of the Congress, also found that the Internal Revenue Service had failed to develop a formal plan for sharing financial information with the State authorities about suspected charities, and that the Treasury and Justice departments have fallen nearly a year behind in developing a plan for attacking money-laundering and issues like terrorists' use of black-market gems and gold.

133. Mark Corallo, spokesman for the Justice Department responded that: "Since Sep.11, the government has tirelessly pursued terrorist financing to great success." Tracking down terrorist financing, Corallo said, "is no easy matter, but we pursue all these leads in order to dry up the financing that makes terrorist activity possible."

134. "Tracing money in the best of circumstances is very, very difficult, and when you're talking about terrorist operations that can be carried out for \$50,000 or \$75,000, it's almost impossible," a Justice Department official said.

135. Europe has worked successfully through multilateral and bilateral channels, including co-operation with the United States, but charities remain an area of trans-Atlantic friction. It is necessary to consider new ways to handle this problem, rather than letting it fester while terrorists continue to plan new plots.

136. The financial Action Task Force, an international organization with 33 members that is based in Paris, has revised its original 40 anti-money-laundering standards and issued eight special recommendations to deal with terrorist financing. These standards have been or will be adopted by most European countries.

137. These efforts have focused primarily on the formal banking and financial sector. Further action is needed to stem terrorist use of informal financial networks, like the alternative remittance system known as *hawala*.

138. Several Islamic charities active in Europe that are suspected of funnelling money to terrorist groups are still listed by the United States and not by Europeans. Charities remain a funding loophole that can be exploited by terrorists.

139. If co-operation on these issues is to move ahead, a delicate balancing act is required between civil liberties and law enforcement priorities. It may be too much to expect top law enforcement officials or finance ministers to solve this, especially if they square off against human rights lawyers and representatives of charities and relief agencies. It may make more sense for a group of experts from diverse fields, under the auspices of a private foundation, or a select group of US and European parliamentarians, to tackle the question.

140. Investigators have uncovered details suggesting that Madrid bombings, Europe's deadliest terrorist attack in 25 years, was carried out on a slim budget by men who used a stolen van and explosives they got for free.

141. A Spanish investigator reported that the initial calculus suggested that the expenses for materials in the train bombings could have been less than \$1,000, and that the suspects identified so far appear to have lived very modestly. By comparison, FBI officials estimated that the September 11 attacks on New York and Washington cost perhaps \$500,000.

IX. CONCLUSIONS

142. The fight against terrorism cannot be a one way, unilateral war. This fight means first of all a vast international co-operation of intelligence services primarily. It is a long standing fight.

143. The current stage, that of hyperterrorism, involves defence means surpassing by far, both quantitatively and qualitatively, whatever has existed up to now in the anti-terrorist fight. This simply means the matching of means to the new reality, to the maximum degree of terrorist threat

144. Not all means are compatible with the basic purposes: the defence of civilization and democracy

145. What is the adequate balance between the democratic judiciary systems and the joint anti-terrorist response? Is it anti-terrorist efficiency and limited sovereignty?

146. If we are at war, a special type of war but nevertheless a war, then the engagement in this war must be without ambiguity. That is an international political capability able to convince and to act constantly and solitarily

147. If there is no choice other than confront the terror with resolve then everything necessary must be done. The past failings should not be an excuse for the present weakness but rather an impulse for more resolve and ability.

148. The international community and, in particular, the USA and the EU have not yet reached as low as one third of the necessary degree of preparedness fighting terrorism which would allow them to say "we have done everything possible".

149. It is important to acknowledge that knowledge about terrorism is cumulative. „Democracy promotion, if it must be carried out with fanatic zeal, ignoring the cultural traditions and the history of Islam, risks generating its own denial" (Zbigniew Brzezinski, former counsellor for national defence of the President of the USA)

150. There is no such thing as abstract right / liberty, independent of purpose or utility, as much as they are grounded on the permanent interests of man. The former Mill's idea "people are free to maximize their happiness" is today renewed. People want to maximize their security, national and individual.

151. Also, facing more terror and terrorist threats, there is no such thing as absolute certainty. All we seek is a sufficient assurance for the purposes of human life.

152. Fundamental democratic institutions like free speech, free press, parliamentary sovereignty are mechanisms for allowing experience and reason to be effectively applied to the problems the democratic society faces.

153. We often find ourselves in a sort of "media blitz". The mediatic offensive is unchaining and this way, before the events witnessed organize rationally in the minds of those who have witnessed them, the media have already conveyed images and emotions.

154. Famous writers (Mc Luhan, Baudrillard) argue that the distinction between reality and the media's representation of reality has "imploded" or "the medium is the message". The richness of the world is immense and it is extremely difficult to isolate the process of the real and to prove the real. We therefore have to admit that the basis for knowledge is contextualised. We do not abandon the rigorous scientific approach. We urge for more inquiry, more public debate, eventually acting on beliefs and eliminating prejudices.

155. We live in a world society of risk and we face a series of global aftermath that cannot be solved but within one national state. Risk is a strong motivation to do certain things that wouldn't be done by society otherwise. We must be also aware that risk does not offer a guideline or a perspective. It is essential that risk management should not bring us to the point where the state society is opposed to the civilian society. From this point of view, in our societies there is a large availability for trans-national thinking and vision.

156. It is plainly legitimate in some circumstances for government deliberately to inflict grave injuries on some people in order to lessen the risk of harm to others, even when that risk is only statistical or speculative.

157. These constraints of fair criminal procedure and these humane rules of war are important not just when a nation's constitution or its treaty obligations make them binding, but because a very large community of civilized nations thinks that either they or closely similar constraints are necessary to prevent criminal prosecution or war from becoming a crude sacrifice of some people for the sake of others, a sacrifice that would ravage rather than respect the idea of shared humanity.

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158. We should indeed pursue terrorists through any police action that is practicable, not only in one country but through international police and intelligence networks and in collaboration with willing foreign governments.

159. Terrorist societies are spread throughout the world and they command allegiances and resources far beyond those of even legendary criminal organizations like the mafia.

160. Rights are worthless – and the idea of a right incomprehensible – unless respecting rights means taking some risks. We can and must try to limit those risks, but some risks will remain.

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