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CIVIL SOCIETY'S RESPONSE TO THE CHALLENGES OF TERRORISM

A Conference Report

by Mark R. Shulman

From a Meeting held at headquarters of the Luso-American Foundation
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in conjunction with
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CIVIL SOCIETY'S RESPONSE TO THE CHALLENGES OF TERRORISM

A Conference Report by Mark R. Shulman¹

July 21, 2004

In close cooperation with the Europe in the World Network², the EastWest Institute³ convened a roundtable meeting with the Luso-American Foundation⁴ to start to address issues arising out of the challenges to civil society posed by terrorism. The group adopted a White Paper expressing these challenges and attached hereto. The chief peril of terrorism is that it takes societies off track. It does so by requiring them to dedicate resources to defend against and to prevent terrorist acts, thus taking resources from more constructive agendas. At the same time, fighting terrorism exacts a toll on freedom, liberty and security directly.

The objectives of the Lisbon meeting were:

- To **assess the response of civil society** to the challenges of terrorism and governmental responses designed to thwart it.
- To **promote synergy** and to **strengthen capacity for strategic coordination** among civil society's organizations from Europe and North America.
- To **strengthen the voice** of civil society through the promotion of opportunities across the Atlantic to gather together (possibly in a new forum) leading non-governmental organizations working to preserve civil liberties and human rights in light of governments' response to terrorism.
- To increase the efficiency and effectiveness of responses that pair civil liberties and human rights with efforts to produce a more secure world.

¹ Senior Fellow, EastWest Institute. The views expressed in this report are those of the author and do not necessarily reflect the official policy or position of the EastWest Institute. © EastWest Institute, 2004.

² **Europe in the World** is a network for advocating and mobilizing more leadership, collaboration and resources for global development. EitW aims to advocate a stronger European voice on priorities for action addressing the post-September 11 and March 11 challenges as well for governance and the Millennium Development Goals.

³ The **EastWest Institute** is a non-profit, non-partisan and independent think and do tank with offices in New York, Brussels, Prague and Moscow.

⁴ The **Luso-American Foundation** is a leading Portuguese development foundation with a significant program dedicated to promoting innovation and strengthening civil society.

Definitions

While it is important to avoid the pitfalls of labeling, defining the problems and the actors remains essential for moving forward. By framing the discourse, civil society can help expand the security dialogue beyond such facile and dangerous characterizations as “good and evil” or “Islam and the West.” At the same time, a few catchy phrases could help propagate more sophisticated and forward-looking concepts.

“**Civil society**” refers to the arena of uncoerced collective action around shared interests, purposes and values. Its institutional forms are distinct from those of the state, family and market and include foundations, think-thanks, and other non-governmental organizations. Active civil society enhances the vitality of a democracy, functioning as a transmission belt to ease the interaction between the state and the individual. Despite the generally positive connotations, not all Civil Society is good; as one participant wisely reminded the group, the Ku Klux Klan was a Civil Society organization.

A considerable portion of the discussion focused on defining the threats and the campaign to address them. Most participants agreed that the phrase “**War on Terrorism**” was neither accurate nor helpful. One participant noted, that declaring war on terrorism was roughly akin to Churchill standing up in Parliament in 1940 to declare “War on Blitzkrieg.” To declare war on a tactic begs questions such as whom one opposes, what rules apply, and what constitutes victory or failure.

Most participants agreed that *Al Qaeda* constitutes (or perhaps defines) the enemy. Given the fast-changing, diffused, and secretive nature of this organization, further agreement on definitions was elusive. For instance, some people believe that it is a religiously motivated movement (comparable to other forms of religious extremism), while others view it as a political movement akin to fascism. As one participant noted only half in jest, the differences between terrorists and us is that their means are clear, their objectives are clear, and they are willing to pay the price for what they believe.

Defining “**terrorism**” remains an inherently political process. While distinguishing between “freedom fighters” and “terrorists” is generally a political rather than a legal process, the meeting agreed that certain violent acts are criminal regardless of their motivation. Most notoriously, violence against non-combatants violates criminal

laws and humanitarian norms. And when organizations combine to commit violence for political, religious, ideological or commercial purposes (or for a mixture of reasons), laws and policies designed for investigating, disrupting and prosecuting with criminal organizations should apply. But a focus on the criminal acts themselves instead of membership in an organization facilitates dealing with the violence and avoids collective punishment that may prove ineffective and unfair. At a minimum, everyone agreed that terrorism must not be equated with Islam.

Approaches

Moreover, something of a consensus emerged that defining “terrorism” would not suffice to point the way forward. Rather than limiting the focus of Civil Society – or indeed governments – on a struggle against terrorism, the group agreed on the importance of human security. The pursuit of national security is no longer adequate. It reflects neither the transnational reality of the threats nor appropriately ambitious goals. While a definition of the appropriate goals remains elusive, such objectives as “human security,” “a secure sphere,” “common security interests,” and “**freedom from fear**” were discussed.

One speaker noted that another way to approach the responses to the challenges of terrorism is to recognize what they should **not** be. **Cowardice and appeasement** only encourage criminality and more violence. **Blind fury** and vengeance will inevitably run amok, harm by-standers and alienate new populations undermine the values one seeks to protect. And **ostrich-like delusions** that issues will resolve themselves nicely only delay the struggle while the enemy builds capacity and gains ground.

The same speaker explained that a more nuanced and ultimately successful strategy requires sensitive forms of **balancing important interests**. Privacy interests are often weighed against the need for information that will lead to the

They that can give up essential liberty to obtain a little temporary safety deserve neither liberty nor safety.

Benjamin Franklin

disruption of terrorist acts or to prosecution for having committed them. The rights of criminal defendants are frequently balanced against the needs of prosecutors to ensure justice, even where evidence has been obtained through non-traditional means. Important

dialogues between cultures run up against racism and xenophobia. And efforts to address the root causes of terrorism run up against justifications or rationalizations.

Likewise, the effort to define human security or the human **right to security** cannot be undertaken in a vacuum. As with other rights, the contentions arise out of those elements that overlap with other rights, here for instance in national self-determination, freedom of religious expression, privacy or the other interests noted in the previous paragraph. And while security remains an inherent right, it comes at a cost that democratic political processes should weigh.

The group widely agreed that the mere fact of examining or attempting to address **root causes** does not excuse or otherwise justify terrorist acts. Nor should doing so be viewed as an act of appeasement; addressing root causes can prevent circumstances that lead people to join terrorist organizations. Civil Society can and does make meaningful contributions in bridging cultural divides and supporting cultural and education work to develop respect for diversity and tolerance, virtues increasingly important in a shrinking world.



Participants of the June 7-8 Conference

Additional layers of burdens fall to democracies fighting terrorism.

International cooperation, especially in the area of sharing intelligence, inherently includes a non-democratic element. Parliamentary oversight is considerably more complicated when dealing with sharing between agencies of different countries. Likewise, in contrast to domestic policy-making international consensus about privacy and the uses of personal or health-related information implicates complex legal and ethical issues. Currently each jurisdiction has individual standards reflecting its individual experience. Establishing international standards that reflect individual countries' experience and norms and still permit the meaningful use of information to prevent terrorist acts presents enormous challenges. Among these are the problems of standards, cultures of secrecy that pervade many intelligence communities, cultural differences including languages that create additional obstacles to sharing, and a lack of basic trust that is exaggerated when it comes time to share information revealing sources and methods the release of which could have deadly effects.

Fear

Long before Franklin Roosevelt articulated the Four Freedoms in 1941, the better part of humanity had been striving for freedom from fear. People commit terrorist acts precisely to **generate fear** that is intended to drive policy changes. Since fear is the goal, we should do more to prevent and mitigate the effects of the fear inevitably generated. One participant suggested that the media work together to self-regulate the extent to which they are employed as the tools of terrorists for spreading fear. This could mean that the media agree as an industry or within certain markets to limit the coverage of the impact of terrorist acts – not to limit the public's ability to know and understand what is occurring but to limit the apparently endless cycles of replaying appalling footage to the point where it conditions panic, anxiety and eventually even stress-related physical symptoms. Quick and thoughtful responses that include carefully tailored psychological counseling as well as medical care can mitigate these effects. Foundations such as Britain's Nuffield Trust have long played leadership roles in catalyzing cooperation between and among governments, civil society and the corporate sector to improve health resilience. If terrorism is the 21st Century's Black Death, these efforts will require even greater attention. Terrorist acts can trigger fear and panic, but if handled properly, they

could generate heroics, stoicism, and resolution instead. The individual heroism demonstrated on United Flight 93, after all, most likely averted far greater traumas on September 11th, 2001. Civil Society can play important roles in conditioning these responses.

Governments also inadvertently help to **spread fear**. For instance, the US currently treats its citizens equally when it comes to funding certain resilience projects. By treating the terrorist threat faced by Wyoming's residents the same way it treats the threat to New York or Washington, DC, the government not only misdirects precious funds but also spreads the fear too widely. At the same time, governments can reduce fear by explaining contingency planning in advance of terrorist events. For instance, governments should publish information about plans to respond in the event that major terrorist attacks impede or even prevent elections from occurring as planned. Reassurance that political and governmental processes will continue not only reassures individuals but may even prevent attacks. At the same time, reassurance can play an important role in the war of ideas and help to avoid its degeneration into a clash of civilizations.

Human Rights

As the White Paper concludes, "Now more than ever, civil society must work together to expand liberty, as it is our greatest asset, our most powerful weapon." Since 9/11, governments are demonstrating increasingly disturbing tendencies to restrict rights and freedom and to degrade such powerful norms as those barring torture and inhumane treatment. Several of the participants noted that temporary derogations are bad enough, but there appear also to be trends to institutionalize the derogations. One distinguished participant noted that when a government commits torture or employs cruel, inhumane or degrading methods for interrogation or punishment, it causes some otherwise innocent or non-violent people to commit terrorist acts and weakens its own moral authority. The photographs from Abu Ghraid, one activist noted, could readily serve as Al Qaeda's most effective recruiting posters. Rights have been painstakingly accumulated over centuries, generally only as a

Freedom is nothing else but a chance to be better.
Albert Camus

consequence of the recoil from previous horrors. If progressive societies step back from their commitment to rights and liberty and fail to make clear the temporary nature of the emergency that requires this, then freedom may never reconstitute its full measure of strength.

Roles for Foundations

Private foundations have more opportunities than governments have because of the resources they have available and the freedom of scope for action. With this flexibility **foundations** have for a long time been doing a great deal to **address the root causes** and the more immediate challenges posed by terrorism. They work to increase understanding and respect in ways that goes to root causes. The Luso-American Foundation has for several years led an important initiative to promote trans-Mediterranean dialogues. The Nuffield Trust works to promote health security of individuals and populations as a prerequisite for political stability and social justice in any context. The Ford Foundation has numerous programs throughout the world promoting civil society, peace and security, and respect for human rights and the rule of law. Many foundations are also working on initiatives that cultivate respect for, tolerance of and curiosity about diversity of race, religious views and cultural attitudes.



The Garden of the Luso-American Foundation

Foundations uniquely relate to citizens through the networks of non-governmental organizations or associations. With this access, they can originate dialogues or conduct the dialogue process including the overseas reach, into the Arab countries as needed, and Turkey as well. This interface with citizens in the European Union has been a knotty problem for the European Commission that turned to foundations such as the Luso-American for help. Indeed, European foundations have included Turkish board members since their establishment, implying a dedication to dialogue that is inherent to their mission.

Working through the Europe in the World Network, European Foundations are also generating an “**expanded dialogue,**” one that reaches well beyond specifically security-oriented concerns. This work has received considerable governmental support as well, most notably from the Swedish Foreign Ministry. Among the questions it seeks to answer is “where is the Muslim leadership?” Only when Muslim leaders – and in particular respected religious leaders – speak out will the man on the street know that few of his co-religionists agree with the terrorist agenda or its tactics. Foundations are working to increase the voice of moral authority within societies and across borders. The group recognized the importance of expanding cross-cultural dialogues to forestall the spread of disaffection and the generation of more people willing to commit terrorist acts. The group agreed that **expanded civil society dialogues on security across the Atlantic and across the Mediterranean** should prove useful to building trust and greater cooperation.

Foundations are also working to **limit the effects of terrorism.** First and foremost, foundations are cleaning up their own acts. Work is being done to ensure that foundations do not provide direct material support for organizations that employ terrorism as a tool. They are working to ensure that funding does not go to projects that would amplify the impact of terrorism; fear mongering goes hand in hand with demagoguery. Finally, foundations such as Ford have long been active and successful in promoting **advocacy and research** that will reduce the incentives and opportunities for terrorism to succeed. They are working to promote an agenda that goes well beyond security to include peace, social justice and equality, once again dealing with root causes but not excusing the violation of humanitarian norms and laws.

To move forward, those assembled agreed to consult each other and to convene meetings to expand dialogues across the Mediterranean and the Atlantic, to cultivate those elements of civil society that can and should cooperate, to increase resilience and to address the causes and tools of terrorism wherever they exist. Working together, foundations and other non-governmental organizations provide some of the strategic vision, the moral authority, and the resources to focus and build on civil society's responses to the challenges of terrorism.

Common Vision

In addition to adopting the white paper, the group embraced a common vision.

Common Vision Statement

The EastWest Institute, together with the Luso-American Foundation and the European Foundation Centre – Europe in the World initiative held a conference in Lisbon on June 6-8 2004 on the topic of Civil Society’s response to the challenges of terrorism – a contribution to the transatlantic dimension of Europe in the World.

The meeting discussed ways that civil society has responded to the challenges of terrorism and government’s responses to these challenges as well as how civil society on both sides of the Atlantic and the Mediterranean can work together to preserve liberty and human dignity while also helping to promote a more secure world.

Present day security challenges for countries and peoples are no longer defined solely within the sphere of national security. Security in societies on both sides of the Atlantic and of the Mediterranean is rather determined by threats against individuals and infrastructure. The challenge to society of these threats is also a serious challenge to civil society.

Expanded dialogue among representatives of Civil Society across the Atlantic and across the Mediterranean is a critical element for the establishment of a secure sphere in which people can live their lives free from fear. This is only possible when also others are free, and when diversity is recognized as a source of creativity and strength, and individuals enjoy health, safety and the opportunity to make choices necessary for innovation and modernization.

In recognition of this conclusion, the East West Institute, the Luso-American Foundation, and the European Foundation Centre – Europe in the World initiative will:

- Consult with appropriate partners to assess the interest on both sides of the Mediterranean.*
- Convene meetings with the purpose of establishing an expanded political dialogue among transatlantic and trans-Mediterranean civil society as a basis for practical cooperation.*
- Work together to create a network that shares and pursues this common vision for a transatlantic and trans-Mediterranean security community.*

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CIVIL SOCIETY'S RESPONSE TO THE CHALLENGES OF TERRORISM
White Paper: Mark R. Shulman¹

June 2, 2004

Introduction

This White Paper has been prepared to introduce some of the issues being addressed at the forthcoming meeting on Civil Society's Response to The Challenges of Terrorism. As a launching pad for what is expected to be a wide-ranging exploratory conversation, it is intentionally provocative. Section I discusses the challenges that modern terrorism present for civil society. Section II describes some of the ways that civil society can increase cooperation among its constituent elements to better address the challenges of terrorism. Section III introduces some specific substantive issues that civil society should address.

The fetters imposed on liberty at home have ever been forged out of the weapons provided for defence against real, pretended, or imaginary dangers from abroad.

JAMES MADISON²

I. Challenges of Terrorism

In close cooperation with the Europe in the World Network³, the EastWest Institute⁴ joins with the Luso-American Foundation⁵ to start to address issues arising out of the challenges to civil society⁶ posed by terrorism. These challenges fall into three basic categories.

First, terrorist acts harm people and destroy infrastructure thus *disrupting society's normal functions* and hampering the ability of civil society to accomplish its self-determined objectives.

Second, terrorism causes governments to defend themselves and their countries, and these defensive efforts may themselves hinder or frustrate the legitimate pursuits of civil society. Most notably, governments may *reduce the sphere of liberty* in which members of society express themselves.

¹ The views expressed in this report are those of the author and do not necessarily reflect the official policy or position of the EastWest Institute.

² "Political Reflections" *The Papers of James Madison*, Vol. 17, pp. 241–242.

³ The Europe in the World is a network for advocating and mobilizing more leadership, collaboration and resources for global development. EitW aims to advocate a stronger European voice on priorities for action addressing the post-September 11 and March 11 challenges as well for governance and the Millennium Development Goals.

⁴ The EastWest Institute is a non-profit, non-partisan and independent think and do tank with offices in New York, Brussels, Prague and Moscow.

⁵ The Luso-American Foundation (Fundação Luso-Americana para o Desenvolvimento or FLAD) is a leading Portuguese development foundation with a significant program dedicated to promoting innovation and strengthening civil society.

⁶ "Civil society" refers to the arena of uncoerced collective action around shared interests, purposes and values. Its institutional forms are distinct from those of the state, family and market and include foundations, think-thanks, and other non-governmental organizations. Active civil society enhances the vitality of a democracy, functioning as a transmission belt to ease the interaction between the state and the individual.

Third, by sacrificing civil liberties, a government may unintentionally *weaken society's ability to combat terrorism* by undermining its own moral authority.

To best respond to the challenges of transnational terrorism, liberal democratic societies must live up to their own values and approach the rest of the world on the basis of the strength of these values.⁷ In this way, we contribute to creating an atmosphere in which threats are not aggravated but diminished.

Nearly three years after 9/11, it is time to evaluate ways that civil society has responded to the challenges of terrorism and ways that it may protect liberty and security by increasing cooperation among its constituent elements in order to respond to these challenges. To meet these challenges, civil society must work together more closely across borders and even oceans.

When democracies fight terrorism, they are defending the proposition that their political life should be free of violence. But defeating terror requires violence. It may also require coercion, secrecy, deception, even violation of rights. How can democracies resort to these means without destroying the values for which they stand? How can they resort to the lesser evil without succumbing to the greater?

MICHAEL IGNATIEFF⁸

In a world where the threat of terrorism knows no borders, wide international dialogue and cooperation on security related issues are indispensable. The dictates of homeland and domestic security demand that societies reach beyond the traditional counter-terrorism agendas. Highly complex, modern society is increasingly vulnerable to a variety of asymmetric security threats that menace both the public and the private sectors. Small groups or even individuals can disrupt carefully created systems on which the function of modern civilization depends. To develop and implement the most efficient and fair ways of protecting society, government, business and citizens must work together and across borders. At the same time, a wide security agenda also presents increased threats to the free flow of people, ideas, and trade. Side effects and collateral damage must be minimized.

The struggle to protect society against such threats as transnational terrorism comprehends two basic approaches: **prevention and protection**. Several of the EastWest Institute's programs deal with the preventive dimension by addressing problems at their source. The Institute's Worldwide Security Initiative (WSI) takes the other approach, improving society's ability to protect what it holds dear: liberty and the physical integrity and safety of its people and its infrastructure. Protecting society means not only improving its physical security but also bolstering the values on which it draws its vigor.

National responses alone to the threats posed by terrorism are inadequate. Terrorists reach across borders. Critical infrastructure is vulnerable to attacks from innumerable points around the world. Defensive strategies require information and

⁷ For an interesting analysis of what these societies are and what they are not, see Fareed Zakaria, *The Future of Freedom: Illiberal Democracy at Home and Abroad* (2003).

⁸ Michael Ignatieff, "Lesser Evils" *New York Times* (May 2, 2004).

resources that cannot be accumulated by one state alone. And unilateral responses may trigger resentment that feeds further terrorism. The threat of military strikes may not deter acts of terrorism that lack a return address, or whose perpetrators are unafraid of retaliation. **Integrated cross-border approaches to facing the challenges of terrorism are indispensable.** This is true for governments, business and civil society. Governments must cooperate on intelligence sharing and certain military and police operations. They must work with business to stop the flow of funds to organizations that employ terrorism. They must work with civil society to address the root causes of terrorism. Businesses must work with government and with each other to protect their systems, their infrastructure, and their people. And civil society must work together and across borders to ensure that value systems remain strong.

Europe and the United States share cultural heritages, basic values and a history of cooperation on the maintenance of international peace and security. With Russia, they control the preponderance of financial, military, and intelligence resources as well as much of the world's critical infrastructure. The perception of the threat posed by terrorism differs between these actors, and the search for common ground among Europe, Russia, and the U.S. presents an important challenge

The difference in institutional responses to the perceived threats is in itself an obstacle to cooperation. Most notably, the USA Patriot Act, the invasion of Iraq, and Russia's war in Chechnya have each incurred considerable international criticism. Ways must be found to **bridge the institutional gaps**, and to **promote a wider dialogue**. Much has already been done in areas like container security, intelligence sharing and financial flows. Much more remains undone.

At the same time, **some responses may imperil the free flow of people, ideas and trade**. Security measures that have an impact on civil liberties and human rights must be weighed carefully. Most frequently encroached upon are privacy rights and freedom of movement. **Concerns about terrorism threaten to reverse the global trend of expanding the sphere of liberty and freedom.** To permit one's enemies to force changes that curb personal freedom would be to hand them a victory without a fight.

Because of the nature of the threats, the public and private sectors must work together. Most people live, work and play in non-public spaces. The private sector owns and operates much of the world's critical infrastructure. Governments can and should introduce certain security requirements and work with the private entities to ensure compliance. The private sector must be involved early in the legislative and rule-making processes. International consultation should also play an important role to avoid unnecessary disruption for international business. Civil society must also play critical roles in helping to weigh the costs and benefits of security initiatives.

CIVIL SOCIETY'S RESPONSE

The appropriate roles of civil society in addressing terrorism are controversial. Some people still maintain that only governments can provide security to their citizens and thus that non-governmental actors should maintain a respectful distance. Indeed, since September 11, 2001, protecting society from terrorist threats has been the highest priority in the security agenda of many states. The toll in lives, property and wealth has

already been enormous. Taking the lead from the Americans, states have scaled back privacy protections; singled out ethnic and religious groups for discriminatory treatment; and attempted to carve out zones beyond the courts' jurisdiction. Following the tragic events of March 11, 2004 in Madrid, similar policies appear to be on the rise in Europe. At the same time, many states have restricted liberties and added new obstacles to the free flow of people, ideas, and trade. The struggle to thwart terrorism is very expensive, and the benefits notoriously difficult to measure.

Civil society plays some important roles in **increasing society's resilience to terrorist attacks**. Some organizations educate and train citizens and even government officials on how to prepare for attacks and how to respond when they do occur. This work ranges from training in first aid and psychological counseling⁹ to generating proposals for ways to improve contingency planning. For instance, more planning should be done for the possibility that a terrorist attack will obstruct an election. Civil society can encourage open discussion about the benefits and costs of various alternative plans. By improving the resilience of people and institutions, civil society plays important parts in strengthening overall society and perhaps even deterring attacks.

In countries with a well-developed civil society, such as those of Europe and North America, non-state civil organizations can **help to improve the governance of the security sector**, ultimately strengthening the security of citizens. Civil society can play valuable roles as **public watchdog**, checking that security sector actors are performing their tasks both within the limits assigned to them and within the general direction along society is developing. For instance, academics and research organizations might analyze domestic security policies or consider whether specific actions are in line with the government's stated objectives. Foundations and other NGOs can sponsor and launch programs to monitor the level of adherence to human rights norms and the rule of law. These exercises benefit the society as a whole by raising awareness of security issues and by increasing the range and quality of ideas to solve them. These tasks also provide an extra check and balance within the democratic system, at no additional cost for the government.

As governments mobilize to respond to the threats posed by transnational terrorism, individual organizations on both sides of the Atlantic voice concerns, advocate positions and propose solutions. However, they do this in a fragmented way, frequently speaking past one another. Some efforts are underway to organize civil society.¹⁰ **No transatlantic forum exists for them to work together to determine priorities when it comes to responding to the challenges of terrorism**. Which burdens should individuals and society accept as part of the cost of meeting the terrorist threat? Where does society draw the line between security and individual freedom, and what role should civil society play in this process? Is it possible for civil society to speak with one voice? On which

⁹ See, Anne Speckhard, Ph.D. "Inoculating Resilience to Terrorism: Acute and Posttraumatic Stress Responses in U.S. Military, Foreign & Civilian Services Serving Overseas After September 11th," *Traumatology*, vol. 8, No. 2 (June 2002).

¹⁰ See specifically CIVICUS, a global alliance and for an important perspective, Stuart Etherington, Inaugural Lecture at South Bank University, "Civil Society and International Security," September 12, 2002.

issues? No network currently exists for civil society in Europe and the United States to work together to determine the priority of issues.

Opportunities are needed for transatlantic civil society's organizations to share information, develop coordinated strategies, and eventually to deploy assets more efficiently and effectively to protect society from both the new security threats and those governmental responses that threaten the principles upon which a free and just society is organized. Many of these efforts involve exporting capacity to other countries through development assistance, training and education and direct investment. But there also remains a great deal to do at home, increasing resilience and ensuring that liberal democratic societies remain committed to those values which define and distinguish them.

II. The EastWest Institute's Contribution

An effort needs to be made to engage in a struggle for ideas. We need to convene and engage those who do not have a voice in our societies. We need to bring together governments at all levels, foundations, citizens and corporations.

“EUROPE IN THE WORLD STEERING COMMITTEE MEETING REPORT”
ON THE AFTERMATH OF SEPTEMBER 11
LISBON, MARCH 20 2004

On June 6-8, 2004, the EastWest Institute and the Luso-American Foundation is convening *Civil Society's Response to the Challenges of Terrorism: A Contribution to the Transatlantic Dimension of Europe in the World* – a roundtable planning conference – in conjunction with Portuguese Institute for International Relations and the European Foundation Centre. The choice of Lisbon as the venue was based on the understanding that its principle foundations have a tradition virtually unique in Europe of supporting the kind of transnational cooperation necessary for this sort of initiative.¹¹ The meeting's overall objectives are to enable leading organizations representatives of European and North America **civil society to share insights** and start to **develop a coherent strategy** to protect society's values and institutions in the face of the terrorist threat. It seeks to advance the goals of Europe in the World, contributing to a process of “Hope replacing Despair caused by feeling of exclusion, powerlessness and resulting perversions of ideology.”¹²

This meeting will seek to **launch a discussion between organizations on both sides of the Atlantic that represent various responsible elements of civil society**. The purpose of the dialogue is to facilitate information sharing, strategy-development, and eventually more efficient deployment of resources to defend against the real threats posed

¹¹ Lisbon was chosen as the launching site for this initiative for much the same reasons it was selected as the launch point for Europe in the World: “The choice of Lisbon as the venue was deliberate. Few foundations in Europe fund outside our continent. Portugal leads the way with the Fundação Luso-Americana para o Desenvolvimento's transatlantic mission, Fundação Oriente's cooperation with Asia and the Fundação Calouste Gulbenkian with its global outlook. Portugal is unique – it illustrates the type of foundation contribution that we should encourage across Europe.” See Europe in The World, “Steering Committee Meeting Report March 30, 2004” (April 5, 2004) p. 4.

¹² See Europe in The World, “Steering Committee Meeting Report March 30, 2004” (April 5, 2004) 1.

by transnational terror while ensuring that governmental responses remain consistent with society's values and priorities. This meeting represents a first step toward the promotion of a transatlantic network which will help bringing the civil society into the debate with policy community on the intersection of security, our ability to move people and our individual and group liberties.

The **Civil Society's Response Project** seeks to bring together European and North American civil society sectors to gain a stronger voice in a process that is government-led but affects the well-being of citizens and civil society overall. No established opportunity currently exists for transatlantic civil society to work together to determine the priority of issues related to terrorism. The main outcome we seek to bring about is to stimulate new initiatives and ideas among civil society members to influence and inform transatlantic and domestic security policies.

It is particularly fitting that this initiative occurs under the auspices of the Europe in the World with its resolution to bring foundations and others together to "cooperate not only with each other, but with other sectors of society and also complementarily and in cooperation with regional partners all over the world and in particular with their American and Russian counterparts."¹³

The creation of opportunities or possibly even a forum in which civil society can discuss its responses to the challenges of terrorism will strengthen the nonprofit sector's capacity to focus and amplify people's voices. The sector has proven its ability to provide leadership and to work as partner, advocate and defender, however, it requires better information, governance and coordination. This project will create an opportunity for leading representatives of civil society in Europe and North America to share their insights and discuss potential synergies and to optimize the use of scarce resources. The Civil Society's Response Project aims to increase these organizations' efficiency and effectiveness through the formulation of coordinated strategies that pair civil liberties and human rights with efforts to produce a more secure world.

MEETING GOALS

The objectives of the Lisbon meeting are:

- To **assess the response of civil society** to the challenges of terrorism and governmental responses designed to thwart it.
- To **promote synergy** and to **strengthen capacity for strategic coordination** among civil society's organizations from Europe and North America.
- To **strengthen the voice** of civil society through the promotion of opportunities across the Atlantic to gather together (possibly in a new forum) leading non-governmental organizations working to preserve civil liberties and human rights in light of governments' response to terrorism.
- To **increase the efficiency and effectiveness** of responses that pair civil liberties and human rights with efforts to produce a more secure world.

¹³ Europe in The World, "Steering Committee Meeting Report March 30, 2004" (April 5, 2004) 3.

III. Substantive Issues

Society inevitably will be judged by how it treats its weakest members. Resting on this judgment is the moral authority of civilization, an essential tool for self-preservation. If society wages a war on terrorism the conduct of which is unjust, then the cause will be weakened and the prospects for victory considerably dimmed. One principle mission for civil society is to ensure that liberal democratic countries remain true to those values that give them moral authority, soft power, and consequently the strength to endure the challenges of terrorism. Foremost among these tasks, is to ensure the preservation of respect for human dignity and the rights that adhere to it.

DETENTIONS

A private individual's right not to be detained without access to the civilian courts is central to the rule of law -- a first principle dating at least as far back as the *Magna Carta*.

No free man may be taken or imprisoned, or ousted of his lands, or outlawed, or banished, or hurt in any way; nor will we [the king] go against him, nor send our officers against him, save by lawful judgment of his peers or by the law of the land.¹

Following the attacks of September 11, 2001, the United States government detained several thousand people both in the United States and in territory it controls outside the country. Other governments have likewise detained an untold number of individuals on the grounds of suspicion of terrorist activity, of membership in or providing support for organizations that sponsor terrorist activity or even for purposes of so-called "fishing expeditions" in which the government has no specific reason to believe that an individual may support terrorist activity but she or he is detained anyway based on membership in a certain class of people as determined by race, religion or country of origin. Other countries have initiated similar programs, although not yet on such a large scale.

Some detainees have been charged and subsequently been convicted of terrorist acts. Others have been released, in some cases after suffering considerable indignities and hardships. Some have been deported based on minor irregularities in the immigration status. Still others have been subjected to cruel and degrading abuse and even and killed. Also disturbing is the fact that many people are being held without access to impartial courts.

At the same time, some suspected and even known terrorists have slipped through the hands of governments because of accidents, failures to communicate, international distrust or willful efforts to support terrorism. For example, several of the perpetrators of the Atocha bombings had been released by the Turkish police only a few months before

¹ *Magna Carta* (1215) Cl. 39. See also, England's *Habeas Corpus Act of 1679*; the *U.S. Constitution*, Article I, Section 9 ("The privilege of the Writ of Habeas Corpus shall not be suspended, unless when in Cases of Rebellion or Invasion the public Safety may require it."); *Universal Declaration of Human Rights* (1948), articles 9 and 10; *International Covenant on Civil and Political Rights* (1966), Article 9 ("Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law."); and 2003 draft *European Constitution*, article II-47.

March 11, 2004, because Turkish officials could not get the information they needed from certain other governments, information that would have allowed Turkey to detain and possibly convict the suspects of conspiracy. Likewise, for lack of mutual understanding and trust, organized crime specialists at the Bucharest-based Southeast Europe Cooperative Initiative cannot convince EU officials to upload their intelligence about international criminal organizations. At the same time, dangerous suspects have been “escaping” from jails in certain countries with alarming alacrity.

To cultivate an ever-expanding “area of freedom, security and justice,” intelligence and police organizations must learn to share information more efficiently and effectively. To ensure in turn that this new level of intergovernmental cooperation does not undermine society’s basic values, civil society should weigh in now – rather than merely leaving the initiative to governments and then contesting any overreach through legal challenges. Compared to the solutions that society can derive through research, careful analysis and a reasoned debate, legal challenges are an inelegant and imprecise way to establish public policy, particularly so for the most critical issues of the day. As Oliver Wendell Holmes noted a century ago:

*Great cases like hard cases make bad law. For great cases are called great, not by reason of their real importance in shaping the law of the future, but because of some accident of immediate overwhelming interest which appeals to the feelings and distorts the judgment. These immediate interests exercise a kind of hydraulic pressure*²

Civil society should continue to raise and debate key issues such as detention before courts are forced into the position of making bad law. For instance, human rights organizations are working with the US Department of Justice to improve policies bearing on detainment and interrogation. Their work could be strengthened with additional cooperation across borders.

Detaining Non-Citizens

The U.S. and its allies in Afghanistan and Iraq are currently holding an untold number of prisoners of war, “unlawful combatants,” suspects and other individuals in a variety of detention centers ranging from Camp Delta in Guantanamo Bay, Abu Ghraib, and Bagram Air Base to jails in Europe, Asia and Africa. Some of these detainees are enjoying the protections afforded pursuant to the Geneva Conventions and others are being held without recourse to established institutions of law. A number have been subject to cruel, inhuman, degrading and even deadly treatment.

Various representatives of civil society are playing important roles in determining and improving detainee conditions (including most notably the International Red Cross). Others are litigating on behalf of individual detainees. Some are lobbying for or against certain new policies. And yet, there exists no established forum for civil society to discuss what sorts of structures and policies ought to be instituted in light of the novel circumstances: a global “war” that may continue for a generation or even longer.

² *Northern Securities Co. v. United States*, 193 U.S. 197, 400-401 (1904) Holmes, J. dissenting.

Domestic Detentions

Since 9/11, fear of terrorist “sleeper cells” and additional attacks has led governments to interview and detain residents and citizens by the thousands, frequently in disregard or suspending the rights of due process. In the months following 9/11, the U.S. government detained some hundreds of aliens on the pretext of violations of immigrations laws and brought in thousands of other aliens for “voluntary questioning.”

The first phase began immediately after September 11, when more than 1200 people were arrested and detained, mostly on very dubious grounds. The Attorney General’s own Inspector General issued a 200-page report last year that was highly critical of these detentions. He concluded that most of the detentions were based on “extremely attenuated” connections to the September 11 attacks. He also cited serious violations of the due process rights of these detainees, including patterns of physical and verbal abuse.³

The average detainee was held incommunicado for nearly two months.

In the months that followed the Administration also initiated a Special Registration program directed at young men from 25 Middle Eastern and South Asian countries. This program required these immigrants, including many lawful permanent residents, to re-register with US immigration authorities, be fingerprinted, photographed, and in some cases interviewed. During the life of this program more than 82,000 people went through the re-registration process. Apparently little, if any, valuable intelligence information resulted from this massive effort. What the program did do was to further strain an already fragile relationship between US law enforcement agencies and the South Asian and Middle Eastern communities in the US. This unfortunate initiative was finally suspended last year.⁴

The government was acting at least in part on a well-founded fear, a set of concerns that may grow over time. This sort of fear may deepen in the United States and has already spread to other countries. Governments need to find better ways to question individuals, even individuals who are suspect merely on account of their religious beliefs or national origin. In the meantime, some of the most critical elements of civil society are marginalized and even prevented from cooperating to thwart terror.

Societies must find ways to accommodate security imperatives to the dictates of the rule of law. Some government lawyers have argued that the struggle to thwart terrorism provides sufficient reason to suspend habeas corpus and related rights.⁵ Yale

³ Michael Posner, “National Security After September 11: A Rights Perspective” presented to the American Bar Foundation (San Antonio, Texas: February 7, 2004).

⁴ *Ibid.*

⁵ See Steven Brill, *Newsweek*, March 4, 2003 (alleging that U.S. Attorney General John Ashcroft’s first draft of the USA Patriot Act included a provision to suspend the writ) and see the government’s position in *Hamdi v. Rumsfeld* (U.S. Supreme Court, 03-6696, ruling below: CA 4, 316 F.3d 450)(arguing that a U.S. citizen may be deprived of access to lawyer and family and imprisoned at the President’s discretion).

Constitutional Scholar Bruce Ackerman has suggested that the President be given the explicit right to declare an emergency for one week renewable for 60 days but renewable beyond that only with the support of a supermajority of Congress.⁶ At the same time, many people believe that the government already has sufficient tools for tackling terrorism. In addition to security, international human rights standards are at stake. Civil society must weigh in and raise this set of issues to an international debate.

INTERROGATION AND TORTURE

Torture is banned by convention, custom and by virtually every government in the world.⁷ And yet, the incidence of torture and other cruel, inhuman or degrading treatment appears to be on the rise, both as a matter of policy and fact, most notably among countries on the front lines of the struggle against terrorism. Numerous NGO's and various inter-government organizations are working to improve adherence to these base norms. But to date, no standing forum works to bring together civil society to discuss what and how they can cooperate to improve compliance. Moreover, compliance itself is actually more complicated than ever as certain criminal and terrorist groups intentionally blur the lines between combatants and non-combatants. As Michael Ignatieff notes:

*Taunting us until we let the dogs slip is any canny terrorist's best hope of success. The Algerian terrorists who fought the French colonial occupation in the 1950's had no hope of defeating the armies of France in pitched battle. Their only chance of victory lay in provoking the French into a downward spiral of reprisals, indiscriminate killings and torture so that the Algerian masses would rise in hatred and the French metropolitan population would throw up its hands in disgust. The tactic worked. Terror won in Algeria because France lost its nerve and lost its control of counterterror.*⁸

Letting slip the dogs of war could lead not only to deaths of innocent people but also to degradation of society to the point where society has destroyed itself in the effort to save itself.

In Iraq, we had better remember the French lesson: we cannot hope to win a war of occupation with harshness alone. We need a political strategy that undermines the terrorist claim that they are fighting a just war against military occupation. We need to turn the place back to Iraqis

⁶ Cited by Michael Ignatieff, "Lesser Evils" *New York Times* (May 2, 2004).

⁷ *The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* has been widely ratified and generally represents customary international law as well. G.A. res. 39/46, [annex, 39 U.N. GAOR Supp. (No. 51) at 197, U.N. Doc. A/39/51 (1984)], entered into force June 26, 1987. And see article 5 of the *Universal Declaration of Human Rights* and article 7 of the *International Covenant on Civil and Political Rights*, both of which provide that no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

⁸ Michael Ignatieff, "Lesser Evils" *New York Times* (May 2, 2004). See also, George J. Andreopoulos, "The Age of National Liberation Movements" in Michael Howard, Andreopoulos and Shulman *The Laws of War: Constraints on Warfare in the Western World* (1994) pp 191-213.

*quickly or we will just have created another losing front in the war on terror.*⁹

If the long-standing norms and law banning torture are to be reexamined, civil society must participate in the debate. While the International Red Cross, the Council of Europe and other NGO's continue their crucial efforts to improve adherence, there remain many other roles for increasing education, training and sensitivity to this important set of norms.

TRIALS

Where terrorists cannot be captured to face interrogation and trial, some states are turning to assassination.¹⁰ Assassination of political opponents is generally illegal under international and domestic law. On the other hand, the targeted killing of one person may be ethically defensible when compared to the other means states have for neutralizing enemies. Economic sanctions can cause thousands of innocent dead. Ironically, the fact of ever more precise weapons targeting systems is leading to a tension with the legal requirement to minimize collateral damage and the loss of non-combatants' lives. As a result of this new tension some important commentators have called for a renewed dialogue on whether states should engage in targeted killings or assassinations. States are already using this tool in an increasingly public fashion¹¹ thus adding to the urgency of a public debate.

THE MOVEMENT OF PEOPLE ACROSS BORDERS

In the context of a globalizing world, the significance of international borders is changing dramatically. In some areas, borders are being swept away, while in others they are taking on remarkable new importance as the portals of increased trade and travel. Borders may create new divides, dampen development and generate hostility. Properly managed borders can bring together cultures through the exchange of goods, capital and ideas in creative new ways. Lowering barriers can generate new jobs, reduce transaction costs, encourage trade and the exchange of ideas, and create the basis for increased regional cooperation. At the same time, however, we rely on border controls to suppress undesirable trafficking in people, illicit goods and weapons.

Various countries, regional associations and NGOs have been working to develop new methods for managing borders to optimize one value or another, traditionally balancing the concern to bolster security against an interest to facilitate trade. Unfortunately the balance has generally been cast as a zero-sum game in which increased trade inevitably reduces security. In fact, under certain circumstances, measures that facilitate trade can improve security.

⁹ Michael Ignatieff, "Lesser Evils" *New York Times* (May 2, 2004). See also, George J. Andreopoulos, "The Age of National Liberation Movements" in Michael Howard, Andreopoulos and Shulman *The Laws of War: Constraints on Warfare in the Western World* (1994) pp 191-213.

¹⁰ While establishing the facts on such a topic remains notoriously difficult, it does seem clear that Israel, the United States, and Russia among others have conducted targeted killings of individuals they have deemed to be terrorists guilty of capital crimes.

¹¹ See most notably Israel's public acknowledgment of its killing of two leaders of Palestinian Hamas, Sheik Yassin and Abdel Aziz Rantisi, the US killing of Al Qaeda leader Qaed Salim Sinan al-Harethi in Yemen and the Russian killing of Chechen president Zelimkhan Yandarbiyev.

Globalization is a complicated phenomenon. The fact of a global economy means that many jobs are lost, as national industries can no longer compete on wages for particular skills. For others, terrorism features prominently as the dark underbelly of globalization. The nodes of globalization – transnational communication and trans-border flows of goods, services and people – all offer opportunities for terrorist groups to bring their threats into people’s homelands. For the sake of securing these nodes, governments are building new barriers, requiring new visas or additional information and increasingly requiring that the information be supplied at point of origin rather than point of entry.

These obstacles have immediate and significant impact on the movement of people. Inadvertently, they have increased barriers to educational, cultural, scientific exchanges including on tourism – an industry that accounts for over four percent of the world’s gross domestic product. Civil society should discuss the costs imposed not only on business but also on the strength of societies. Exchanges such as these are important elements of both soft power¹² and its domestic cognate, social capital.¹³ At the same time, increased scrutiny and in some cases xenophobia have had a serious impact on some societies’ willingness to grant asylum and refugee status, thus diminishing the range of options for the most desperate classes of humanity.

On Europe’s new borders we have an opportunity to develop new models for managing border regimes. Rather than simply throwing up new fortress-like edifices, the EU is increasingly creating transition zones where cross border trade is encouraged and trafficking is policed, but also the regions themselves are developed to equalize opportunity, build social capital and consequently to reduce the supply of illicit goods and unwanted emigrants. This effort demands the creativity of civil society working in close cooperation with business and governments to get new systems that prevent the flow of unwanted goods and people across borders without unduly hindering the legitimate flow people, goods and ideas.

PRIVACY AND THE COLLECTION, RETENTION, SHARING AND ANALYSIS OF PERSONAL INFORMATION

Individual privacy exists in some inevitable tension with the security of a society. To complicate matters, definitions of privacy vary greatly from society to society. Generally, however, we can say that “Privacy” refers to a zone of individual expression that is protected, in particular from interference by the state. Because of the high stakes involved where weapons of mass destruction (WMD) are part of the risk calculation, governments are increasingly feeling pressure to prevent attacks through any means

¹² “Soft power is the ability to get what you want by attracting and persuading others to adopt your goals. It differs from hard power, the ability to use the carrots and sticks of economic and military might to make others follow your will. Both hard and soft power are important in the war on terrorism, but attraction is much cheaper than coercion, and an asset that needs to be nourished.” Joseph S. Nye Jr., “Propaganda Isn’t the Way: Soft Power,” *The International Herald Tribune* (January 10, 2003).

¹³ “The central premise of social capital is that social networks have value. Social capital refers to the collective value of all “social networks” [who people know] and the inclinations that arise from these networks to do things for each other [“norms of reciprocity”].” Robert D. Putnam, [Hhttp://www.bowlingalone.com/socialcapital.php3H](http://www.bowlingalone.com/socialcapital.php3H).

available. And as individuals' personal information is increasingly collected and stored for commercial purposes, governments are tempted to access it for assessing risk.

Some of these WMD are man-made devices that, if used as intended, will injure or kill many people and or destroy many things (*e.g.* dirty bombs or regular bombs on railroad tracks). Some of these WMD are devices that if used in ways other than those intended will cause widespread death and or destruction (*e.g.* turning airplanes into guided missiles). Finally, there is a class of agents that could cause massive deaths, regardless of whether launched intentionally or unintentionally (most notably infectious diseases). Defending society against each of these agents is essential and appears to require some sacrifices of privacy.

The on-going flap over the US Passenger Name Records (PNR) presents an interesting case study in some of the tensions between privacy and security. Because of its historical experience and its vigorous pursuit of individual happiness, the US notion of privacy can reasonably be summed up as "the right to be left alone."¹⁴ Europeans have diverse visions of privacy. Given Europe's long, wide-ranging and frequently painful experience, the EU's policies are contentious and different from those of the US. Even before 9/11, these differences created tensions as transnational corporations attempted to conduct business while subject to conflicting regimes. Since 9/11, the tension has increased dramatically. The US Passenger Name Records initiative demands dozens of discrete data pertaining to individuals flying to the United States. European human rights standards protect individuals from having to share this information and threaten prosecution of those companies that divulge it. Obviously, the solution cannot be found in ending flights between Europe and the US, so compromise is inevitable. On May 28, 2004, the European Commission and the US Department of Homeland Security agreed to 34 data points that must be collected and on procedures for storing, sharing and using this information. Once a challenge by the European Parliament before the Court of Justice is resolved, one can reasonably expect to put this particular issue behind us, but the tension remains. What should civil society be doing to increase the solution set so that the tension is not always met by concessions of privacy?

PNR presents but one example of a highly contested set of issues surrounding privacy. As terrorism investigations spread, as data mining becomes increasingly feasible, and as the death toll rises, pressure to cut back on privacy will increase as well. At some point, however, a society based on the primacy of the individual and driven by the passion of the human spirit will collapse into an Orwellian world of futility, fear and despair. Now more than ever, civil society must work together to expand liberty, as it is our greatest asset, our most powerful weapon.

¹⁴ Samuel Warren and Louis Brandeis, "The Right to Privacy," 4 *Harvard Law Review* (1890) 193-220.