

**Conference Proceedings of the Expert Meeting on the
Evaluation of Counterterrorism Policies**

25 April, 2008

Netherlands Institute of International Relations ‘Clingendael’

1. Background

In the wake of 9/11, a wide range of counterterrorism measures have been implemented. These measures all share the objective that they seek to prevent attacks, protect possible targets, pursue evildoers, and respond adequately to the dimensions of a possible terrorist attack. Seven years after 9/11, both governments and governing bodies indicate that time has come to assess, where possible, the effectiveness of such measures. In the case of The Netherlands. Mr. Alexander Pechtold, member of the Dutch parliament, introduced a motion that tasked the Dutch government to analyse the proportionality of the adopted counterterrorism measures and to reflect upon its effectiveness thus far. The motion was adopted on 15 November 2007.

The Clingendael Security and Conflict Programme (CSCP) was pleased to host an expert meeting on this issue. The purpose of this specific meeting was to contribute to this debate by putting to use the input, research, ideas, and experiences of the participants for the design of such a review in order to identify both pitfalls and possibilities.

The expert meeting took place on Thursday, April 22nd 2008 and was chaired by Mr. Edwin Bakker, head of CSCP and Ms. Bibi van Ginkel, senior research fellow at CSCP. Special guest was Mr. Amos Guiora, Professor of Law at the University of Utah, and an expert on the evaluation of counterterrorism policies. In addition, a group of selected individuals was invited to attend, among which were representatives of the Dutch Parliament, the National Coordinator for Combating Terrorism (NCTb), NGOs, and the writing press. Also, a number of Clingendael researchers were present. A list of participants is included.

2. Opening

Mr. Bakker opened the expert meeting by extending a welcome to all participants on behalf of the Director of the Clingendael Institute, Prof. Dr. Jaap de Zwaan, and on behalf of CSCP. Mr. Bakker outlined the rationale behind this meeting and stressed that, in order to stimulate a lively discussion, the Chatham House rule would apply. For this reason, this report will not be a verbatim account of the meeting, but will seek to capture the discussion topically. At the same time, the contributions by Mr. Amos Guiora and Ms. Bibi van Ginkel will not be integrated into that discussion, but will be dealt with separately.

3. Contribution by Mr. Amos Guiora

Throughout his presentation, Mr. Guiora stressed the importance of ‘defining the terms’ as one of the key elements of a successful review of the effectiveness of counterterrorism policies. Without such a common understanding, the concept of ‘assessing the effectiveness of counterterrorism policies’ can mean everything to everyone, which may result in obscure and multi-interpretable approaches and outcomes. It is not until after defining these terms that a start can be made with a successful attempt to measure the aptness of a specific policy. That said, different actors have different interests in the process of defining such terms, making the effort in itself already a challenge. According to Mr. Guiora, key terms that need to be clarified at the onset of a review are effectiveness, accountability, and resilience.

In order for a certain policy to be considered effective, Mr. Guiora noted that such a policy must commonly bear a number of characteristics. First, the policy should be based on priorities. This means that those issues considered critical to harden a country against a terrorist attack should be implemented first, before moving to other, less pressing areas. Secondly, any counterterrorism policy bears costs. The government, businesses, the general public, all can suffer in a variety of ways from CT-policies. This implies in turn that any new policy should be based on a thorough cost-benefit analysis, whereby the argument can be made that the policy’s benefits

outweigh its costs. A third characteristic of an effective CT-policy is that the policy is not built on false hopes. It will never be possible to protect a country 100% against terrorist attacks. Effective policies can only reduce the impact and the likelihood of such an attack, if it were to happen. Mr. Guiora was hesitant to identify any counterterrorism policy as effective, and rather noted that a number of countries have devised policies, but are in effect merely groping in the dark. This is all the more apparent when considering that counterterrorism policies are commonly devised in response, not in anticipation of events. Thus, while CT-experts may finally have found ways to make the American homeland safer (a prerequisite after 9/11), terrorists have already shifted their attention to other parts of the world where they can also, or even better hurt American targets and interests.

Another key term in Mr. Guiora's presentation was 'accountability'. This term implies not only checking whether a counterterrorism policy was effective. It also means that policymakers devising such policies should be held accountable for their work. In the US, but also in the Netherlands, Congress (or the Tweede Kamer) has such a function. Mr. Guiora noted, however, that, in the case of the US, Congress neglects its assigned tasks on this issue and exerts no congressional oversight whatsoever. Much to the same manner, America's Congress fails in this way to review the executive decision-making process and to take appropriate measures if necessary. As the adoption of the motion by the Dutch Tweede Kamer can be understood of a signal of such interest, a final conclusion of the extent of accountability that the Tweede Kamer wants to exert cannot be drawn.

Finally, the objective to secure, outside of any counterterrorism policy, a certain amount of resilience among society was the third main aspect of Mr. Guiora's presentation. Such a resilience can be enhanced by critically reflecting on a number of issues. First, a prioritization of goals should be brought into accordance with the available resources. Secondly, plans for evacuation and rescue operations should be implemented, checked and re-checked time and again. Thirdly, a precise threat analysis is done only after the implications and the dimensions of the specific risks are understood. Only then can the government make an informed judgment on where to spend money and resources and on which risk the focus should lie. It is after critically answering and explaining such questions that a government can begin to gauge its society as resilient against attacks. Everyday life will be impacted, but should not be disrupted altogether.

After defining the terms for a review, stressing the importance of accountability throughout such a process, and asking the right questions to come to an effective policy in the first place, there are a number of steps that governments can and should take:

- A government should work with the media to explain its terms and actions;
- The government should be encouraged to think differently about counterterrorism policies, which will lead to an alteration of the debate in itself; and
- In the case of the US, the government should accept that it is currently working through *efforts*, not through a *policy* to mitigate the risks of terrorism. It should acknowledge that some events are outside of its reach, and it should also accept that terrorism has become part of everyday life.

4. Contribution by Ms. Bibi van Ginkel

Ms. van Ginkel's presentation was structured along two key subjects. The first part of her speech touched upon the costs of terrorism in general, while the second part dealt with one particular case of a counterterrorism policy, which effectiveness is questioned to show how easily measures are considered effective, but in effect are not.

As to the first part, Ms. van Ginkel referred to a recent report by the Copenhagen Consensus, which made the effort to attribute value to such immeasurable concepts as 'human life' or 'privacy'. By doing so, the report made a significant contribution to the assessment of the effectiveness of a counterterrorism policy in general, or a more specific CT-measure.¹ From the report, it becomes apparent that an increase in spending on CT-policies does not necessarily translate into a safer environment. Rather, terrorists have appeared time and again flexible, and find new targets to strike – targets that are not, or differently protected.

Another point in this part of the presentation was to come to an acceptance of the continuous character of terrorism. Terrorists change tactics to adept to new situations and as a result, terrorism will never cease, nor will we ever be able to develop a waterproof response to terrorism. Rather, the best policy is to mitigate the risks connected to a terrorist attack.

Finally, the considerations above appear to be missed by politicians over and over. In an attempt to appear tough on terrorism, politicians advocate some of the most draconian measures to counter terrorism. In the case of the Netherlands, this stance towards terrorism has resulted in the insertion of none less than 12 – 15 new regulations in the Dutch criminal code to fight terrorism since the attacks on 9/11.

As to the second part of the presentation, Ms. van Ginkel discussed one CT measure to underscore her points as to cost-benefits and need-necessity assessment of new regulations. The measure for discussion was the proposal to introduce a European-wide Personal Name Records-scheme, whereby airlines would be obliged to submit to European data-dissemination centres personal information on passengers. Such an effort would provide law enforcement officials to make a premature assessment as to who may constitute a security risk and who not.

This proposal is based on the assumption that there exists both a necessity to collect such data and that the transfer of such records would constitute an invaluable tool to make Europe safer from incoming terrorists. However, it is still unclear whether the assumptions above are indeed valid.² It is therefore all the more remarkable that, while questions as to need and necessity are unanswered, some politicians in the Netherlands are fervent proponents of this new proposal and would like to see it adopted sooner rather than later.

From these two discussion points, Ms. van Ginkel distilled a number of recommendations as to how to devise and execute a successful review of counterterrorism policies. In her opinion, such a review should pay heed to and build upon the following considerations and requirements:

- First, an inventory should be made of CT measures, while at the same time inventorying discernable failures within these measures;
- The interrelation of the CT measures should be mapped, which will also provide important information on the side-effects of measures on other policy areas;
- A survey should be made to point to the problem areas in relation to countering terrorism. Objectives to deal with these areas should be formulated. These objectives should moreover be result-oriented, rather than method-oriented.

¹ This report can be downloaded from www.copenhagenconsensus.com.

² See: Kuipers, F. (2008). 'Passagiersgegevens en Terrorisme: Toegang tot Reserveringsinformatie als Wondermiddel om Terroristen te weren?', in: *Internationale Spectator*, Juni 2008, p. 337-342.

- The next step would be, building upon the previous step, to identify who should take action on a CT-measure. Should this be done on a (inter) national, local, or even communal level?;
- At the same time, alternative approaches to and the coherency of measures should be continuously be part of such a review;
- From the review of these measures, it would be wise to come to a particular quality standard on which to further test measures. Questions should relate to 1] the necessity of the measure, 2] the formulation of the attempted effect, 3] the subsidiarity and proportionality of measures, 4] the legality (clear standards and terms and respect for fundamental rights) and 5] legitimacy (determinacy, pedigree, coherency and adherence);
- Policies could be adjusted by introducing sunset-clauses to new measures, starting evaluating existing measures, do more comprehensive and multi-disciplinary research and devised so as to help in the entire process of impact management. Main message is not to panic and to jump on any occasion, but to let the professionals do their job. The role of the politicians is on the overall quality of a comprehensive CT policy.

5. Discussion

The discussion generated by the contributions of Mr. Guiora and Ms. van Ginkel centred around a number of issues. Much of this debate revolved around elements conducive to a successful CT-approach. These issues will be discussed below.

5.1 *Intelligence sharing*

Any successful counterterrorism policy has to incorporate provisions as to which information can and should be made available, both to lower-level agencies or international counterparts. In tandem, such a policy should also stipulate how such information should be transferred and which provisions apply. Among the participants existed unanimity over the fact that information should be made available to appropriate agents. At the same time, scepticism existed whether intelligence agencies indeed (want to) share their information. At present, two factors inhibit such an exchange, being 1) the fear to expose the source of information; and 2) a substantial amount of distrust among agencies in general, but even among sworn allies.

5.2 *Role of the media*

Naturally, the media is of significant importance in the fight against terrorism, both as a channel for messages and opinions by the government, but possibly also as a negative driving force for radicalization. In order to avoid a detrimental role, it is paramount for the media to publish correctly about CT measures, without stirring radical sentiments. More to the point, the media should refrain from stigmatizing the Islamic faith, but rather confront the ideology of terrorists (i.e. not that of the Islam) with a 'rational mind'. In this way, the media can contribute actively to a process in which a discussion takes place within different groups of Islamic believers. For this effort, the media, it was put forward, needed to undergo a learning process. This learning process should lead to the ability to write critical pieces on terrorism through the use of arguments, not tendentious coverage.

5.3 *Counterproductive measures*

A final point of debate was the question what should be done after such a review. More specifically, one participant asked what should be done with those measures that are apparently im- or counterproductive. In response, it was argued that such measures should be abandoned as

soon as possible, whereby it should be noted that some measures are taken in conjunction with other countries, making a complete abandonment of the measure difficult. That said, virtually all participants subscribed to the idea that, if a measure was not in accordance with the rule of law; failed to incorporate an element of morality in armed conflict; and bore no sign of effectiveness, such a measure should be discarded. A case in point, according to one participant, was here the destruction of the homes of Palestinian suicide killers. Research has shown that such a deterrence-based policy failed to actually deter future terrorists and was consequently done away with.

6. Conclusion

This meeting's main objective was to encourage an exchange of ideas as to how a successful design of an evaluation attempt of counterterrorism measures could possibly look like. Such an exchange certainly occurred. Unfortunately, only one politician attended the meeting, while at the same time only one member of the organ, responsible for the to-be-performed review, the NCTb was present. In that sense, the question can be raised how a break from mere talking to concrete action can be established. At the same time, part and parcel of Clingendael's function is to stimulate the debate on these and other issues, and such *was* the net-result of the meeting. In fact, considering the fact that 'terrorism' is one of CSCP's core research areas, meetings on this, or other terrorism-related topics are to follow in the future.

Done at The Clingendael Institute,
June 4, 2008.

Frank Kuipers and Polyna Berlin