

Prosecuting terrorism: the global challenge

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Secretary General's Keynote Address on 'Terrorism and the Law: The Global Challenge'

I. Introduction: terrorism as a global problem

The events over the past two and a half years have shown that the global menace of [terrorism](#) has not subsided and that the greatest criminal threat affecting many of our lives is that presented by Radical Fundamentalist groups or networks (such as Al-Qaeda and like-minded groups) and other terrorist groups, such as ETA. In recent past, all continents and regions of the world, Africa, the Americas, Asia, the Middle East, and Europe have suffered from devastating attacks. It is no exaggeration to say that terrorism is a truly GLOBAL problem.

The attacks that occurred last weekend in Saudi Arabia are yet another reminder of the global capability that al-Qaeda has developed and of the fact that we are faced with a globalized network of like minded groups who have a common enemy. The fact that these groups are capable of furthering the jihad with limited or no direct input from Al Qaeda, is a factor that significantly aggravates the terrorist threat.

Everyone will agree that in order to curb the threat and protect the lives of citizens around the world, governments and law enforcement worldwide will have to work together not only to arrest known terrorists, but also to prevent future terrorist attacks. Today, I want to talk to you about mechanisms of international anti-terrorism cooperation. I will start by outlining how the international community (governments and national police forces) have responded to the terrorist threats in the recent past, and subsequently offer you some ideas of what is needed in the future if we are to be successful in our collective efforts.

II. Reactions to the terrorist threats on political level after September 11 and March 11).

The September 11, 2001 and March 11, 2004 attacks have propelled terrorism to the top of the international political agenda. Terrorism has been the central topic of discussion at numerous international and regional top level meetings, such as the G-8, the European Union or the United Nations or the Arab Council of Interior Ministers, to name but a few. Such high-level discussion is of course positive, as it shows determination and willingness among national and international decision makers to address the problem. But, on the other hand, it is a reactive approach to terrorism.

I am certain that all who are present today are familiar, to some extent with these discussions and the decisions that have been made during these meetings. However, in order to set the scene for my remarks today, I would like to briefly outline governments' responses to terrorism. They essentially concern the following areas.

1. **Legislative measures (national response):** Many governments have voted new laws against terrorism. The US Patriot Act, voted as a result of the September 11 attacks, is

probably the best known example. The Act includes a far-reaching reorganization of the US Law Enforcement apparatus, through the creation of the Homeland Security Department.

2. **Harmonization of national legislation (international response).** Most of the political efforts at supra state level have been directed at attempts to harmonize national legislations. This is particularly true in Europe (EU level), where the Council of the European Union has taken a variety of measures aimed at strengthening the level of cooperation: these measures include the creation of a European arrest warrant, the adoption of a model agreement for setting up Joint Investigative Teams among EU countries, and a decision on the execution in the EU of orders freezing property suspected to belong to terrorists or terrorist groups. The underlying assumption of these measures is that harmonizing national legislation is the best way for states to fight terrorism beyond their borders, as terrorists will be denied the means to exploit legal loopholes (elimination of the 'weakest links') and countries will have the means to collectively act to disrupt terrorist groups (seize their property, arrest and extradite members, and prosecute them successfully in the country that offers the best guarantee for a conviction). In addition, in March 2004, the EU appointed a Counter Terrorism Coordinator, who has been given the challenging task to coordinate member countries efforts to implement these measures.
3. **Balance between individual liberty and collective security.** A third kind of political reaction that was voiced by many government and state leaders has been to reassure the public that **increased security does not and should not imply an infringement of personal and civil liberties**. This concern is legitimate and underlines the fundamental difficulty facing any society that is currently confronted with terrorism: how can the international community defend itself against such a ruthless enemy, without overreacting and implementing too stringent measures? I underline the importance of this point, because any initiative on the part of police, governments or judicial authorities will have to strike this delicate balance.

III. **Have we been successful? Have these measures changed our fight against terrorism?**

The next question we have to ask ourselves is 'are we being successful in our fight against terrorism? Are the measures that have been adopted adequate in protecting our societies against terrorism?

Only the future will provide a definite answer to this question, but I would like to make a number of observations on both the terrorist threat and the current state of international cooperation that, hopefully, can contribute to our understanding of the issue.

1. ***Facts and observations on international terrorism:***

First remark: Between September 11, 2001 and March 11, 2004, almost every continent has been confronted by terrorist attacks.

Slide 1 of the PowerPoint presentation: Global overview of major terrorist attacks that have been blamed on al-Qaeda or related groups.

This slide provides an overview of where al-Qaeda has perpetrated lethal terrorist attacks in the last ten years. The first attack listed is the February 1993 attacks on the WTC in New York City, United States, in which six persons lost their lives and the last entry cites the shootings and hostage taking just last weekend in Khobar, Saudi Arabia. As this image clearly shows, al-Qaeda has effectively been able to strike on every continent.

Second Remark: Terrorists (as well as other criminals) have shown the ability to adapt to law enforcement efforts to apprehend them. They have the means to travel freely throughout the world, under false identities. In order to do so, they have a simple yet powerful tool at their disposal: stolen and fraudulent travel documents. Later on in this

presentation I will come back to this point and provide you with specific examples of instances in which this happened.

2. ***Facts and observations on international cooperation.***

There are, in my opinion, two major limitations to international law enforcement cooperation, which undermine its effectiveness.

The first limitation is geographical in nature. **Most successful international legal initiatives are regionally based and/or involve a limited number of countries on a bilateral or multilateral basis.** The European Union, for example, managed to reach agreement over a European arrest warrant, which so far has been implemented by 17 of the 25 EU countries. This constitutes a significant step forward in terms of cooperation, as it considerably streamlines and speeds up extradition within the EU. However, such far-reaching agreements are only possible among countries which have similar or harmonized criminal law systems. The European arrest warrant is a result of many years of work and discussion among EU countries and was only possible because there are institutional mechanisms in place that allow the EU, as a body, to make decisions that are binding for its member countries. However, everyone would agree that it is impossible to extrapolate such agreements at global level; reaching agreement on a Global arrest warrant is not a realistic goal. Which country is prepared today to vote a law that would recognize the legal value of an arrest warrant issued by ANY other country in the world and would automatically lead to the extradition of the individual in question?

This does not mean that regionally-based initiatives, involving only a limited number of countries, are not important, but they remain insufficient towards addressing a global phenomenon such as al-Qaeda. The 11 March bombings in Madrid, Spain, have unfortunately shown again that today's terrorist threats can only partly be addressed by reinforcing cooperation in Europe alone. Similarly, the investigation into the September 11 attacks demonstrated that, while the target of the attack was located on American soil, preparation had been carried out in different countries located in different regions of the world (Asia and Europe).

The second limitation is functional in nature. Most International Conventions and agreements focus on judicial cooperation rather than on law enforcement cooperation. The topic of this conference is prosecuting terrorism. However, successful prosecution of terrorist suspects implies the existence of a sound mechanism that regulates the exchange of operational police information. **For example, issuing an international arrest warrant for a person has little practical implication, if there exists no international database that police can check securely and in real time for wanted persons.** Moreover, exchange of police information does not only help with investigations of terrorist attacks, but is also crucial to prevent future terrorist attacks. If police can share data on cross-border movements of persons who are suspected merely as members of terrorist groups, the chances are that police would be able to intervene before a lethal attack occurs, thereby preventing significant loss of life.

IV. **Towards constructive and realistic global cooperation mechanisms...**

These few observations lead me to the core question on which my remarks are centered, i.e. are there ways to overcome the existing obstacles in international cooperation in the area of terrorism?

Political efforts that focus on the harmonization of legislation at a global level will continue to pose significant challenges, because of political, diplomatic and legal divergences. While this has proven successful on the regional level, it is an unreachable goal at global level, as political and legal obstacles are too difficult to overcome.

This does not mean that the idea of global cooperation should be set aside altogether. In fact, **INTERPOL's day-to-day experience shows that police cooperation and sharing of law enforcement information is possible even when other cooperation is not**, and even in cases in which there are no diplomatic relationships between the countries concerned. INTERPOL's continuing challenge is to be a truly global organization, involving police forces from ALL of its [181 Member Countries](#). In light of the current threat posed by terrorism, we cannot afford to exclude any country from our information channels, as it provides terrorists too readily with safe havens.

The pressing challenge consists of **articulating clear principles** governing global information sharing, which provide the international community **with realistic and achievable goals** when thinking about frameworks for global information exchange and law enforcement cooperation. Before we take the easy step of proposing the creation of new institutions, let us ask whether existing institutions are doing all they can to prevent and fight terrorism.

In my view, the following 9 basic principles would underpin an effective global information sharing mechanism, provided that the majority of the world's nations would adhere to them:

2. **First principle: 'Countries have an obligation to their citizens of preventing dangerous criminals from entering their country.'** This essentially implies a global acceptance of a principle that states have obligations and responsibilities towards their citizens in ensuring their security and will take necessary steps to fulfill these obligations. Although this principle appears to be evident, a thorough application of this rule by [Member Countries](#) would have important consequences. It would imply that Member Countries would commit to systemically check international databases on wanted persons, stolen travel documents, stolen motor vehicles (i.e. INTERPOL databases) at border entry points, in order to ensure that dangerous terrorists of other criminals are intercepted before being able to commit an attack. This is not happening now in a systematic fashion.
3. **'Countries have a responsibility to forewarn other countries about individuals that present a potential threat'**. This is in fact a logical extension of the first principle. Countries should not only be mindful about protection of their own citizens, but should also warn other countries about potential threats they might face. If we agree that the best way to provide homeland security for any one country is to prevent dangerous transnational criminals or terrorists from entering one's borders in the first place, then working together to enhance the likelihood of their detection, detention and apprehension before they enter any one country boundaries should be one of our primary objectives. **The practical implication is that countries have to ensure that they communicate all potentially relevant information to other countries and update international police databases in a systematic and comprehensive fashion. This is not happening now in a systematic fashion.**

Example: On 26 May 2004, a little over a week ago, the US Federal Bureau of Investigations (FBI) issued a 'Be on the Lookout' (BOLO) alert for seven known al Qaeda operatives, warning that these seven individuals 'pose a real and present danger to U.S. interests at home and abroad'. This was followed by a press conference, where US Attorney General Ashcroft presented photographs of the seven suspects and asked for assistance of the public in locating these individuals. As soon as this announcement was issued, the INTERPOL Command and Coordination Center checked our databases, and we found out that only 5 of the 7 individuals were known in our records. During the conference it was pointed out that, prior to 11 September 2001, and prior to the personal intervention of Attorney General John Ashcroft following his visit to INTERPOL's General Secretariat in Lyon, France would not have been told about 7 out of 7 of the suspected terrorists; the FBI legat network alone would have been used. In this case the FBI already provided INTERPOL with information on 5 of these suspected, and the FBI had in fact worked closely with the US National INTERPOL Bureau prior to the public announcement on the 26th of May to get the other two added to INTERPOL's databases, but it took more time than anticipated to get this information from Washington to Lyon for the purposes of creating worldwide

[INTERPOL Notices](#). It is important to note that prior to 2001, it used to take INTERPOL's network months to get information circulated worldwide about people internationally wanted through its Red Notices; now it takes days in standard cases and hours in terrorist or urgent cases. Great progress has been made, but continued vigilance is required to ensure that no suspected terrorists' names fall through the cracks.

For example, in the 26 May 2004 public announcement concerning the 7 suspected terrorists, with regard to two of the seven suspected terrorists who might be in the course of planning a terrorist attack in the United States or in any country where the United States has an embassy or businesses, a check of the INTERPOL databases by any of our [Member Countries](#) would have resulted in a negative response immediately following the announcement. Between the time of the public announcement and their names being entered into INTERPOL's database, these suspected terrorists could have sought refuge anywhere in the world outside the US. In my opinion, countries should carefully reconsider what to do when they know that identified individuals pose a clear threat; an essential precaution to take would be to ensure that INTERPOL has the relevant information in its databases before or at the same time that a public announcement is made by national law enforcement authorities.

3. **'Due diligence by states in verifying and acting upon police information':** I previously mentioned that the political impossibility of creating a global arrest warrant. However, this does not preclude countries from sharing, on worldwide basis, information about wanted persons. **Countries must ensure that data about persons, wanted for terrorism or other serious crime and considered dangerous, are stored immediately in international databases.** This includes their photographs and [fingerprints](#), data about motor vehicles they use, and particularly information about travel and identity documents they might use. This is the cornerstone of international policing. This is not happening now in systematic fashion.

In order to assist in this matter, INTERPOL has a powerful tool, which is at the disposal of police in any of our [181 Member Countries](#). INTERPOL can, on request of any Member Country, issue what we call a Red Notice or a worldwide diffusion. This essentially advises police worldwide that a certain person is wanted. It contains identifying information on the fugitive such as physical description, photograph and fingerprints if available, etc, and judicial information about the crime for which his arrest is being sought. Where time is of the essence, INTERPOL also permits its member countries to issue what are called 'Diffusions' which are much like emails containing all relevant information except photographs and fingerprints.

A Red Notice is not an international arrest warrant. While arrest warrants are issued by judicial bodies and are legally binding on the jurisdiction where they are issued, an INTERPOL Red Notice is one country's way of notifying the world through the INTERPOL network that a fugitive is being sought internationally. If any country locates that fugitive, the country that requested the Red Notice will seek the fugitive's extradition. The legal basis for INTERPOL's issuing a Red Notice is thus a valid arrest warrant by the judicial authorities in the requesting country and a commitment by the requesting country to seek the fugitive's extradition in the event of arrest or detention by another country.

However, it is an effective tool that is used intensively by law enforcement world wide. To give you an idea of the scope of these notices, allow me to give you a few numbers: in 2003, INTERPOL issued 1,397 Red Notices and more than 8000 diffusions. Last year, more than 1,900 individuals were arrested throughout the world based on INTERPOL's Notices and Diffusions.

My point is that Member Countries should never disregard the information contained in INTERPOL notices, even, if for whatever reason, the notice itself does not provide a legal basis in that country for the arrest of the individual. 'Due diligence' means that all countries should at least 'stop' a person for whom an INTERPOL Red Notice has been issued for a serious crime that could pose a danger to the life and well being of the community in which this

person might find himself. That person should be stopped, questioned and examined until such time as the police are certain that he poses no danger to the community. I have very good reasons to make such a bold statement. Countries too often make wrong assumptions on information provided by other countries. **An Example:** relationships between Libya and the United States can hardly be described as good. Yet, long before the September 11 attacks, Osama Bin Laden was already under Red Notice in the database. However, the requesting country was not the United States, nor a European country. In fact, the first country that requested a Red Notice for Osama Bin Laden was Libya, in 1998. I think this shows convincingly that law enforcement information should be judged solely on its relevance to police, and not on the basis of political convictions. Countries are not providing the police and immigration with the tools necessary to exercise due diligence when stopping a person for who an INTERPOL Red Notice has been issued.

4. **Police should have the means to communicate globally and securely. (without excluding any country for political, diplomatic or other reasons)** Obviously, if we expect an international set of principles that commits countries to systematically share police information, countries should ensure that their respective police forces have the means to do so. The technical ability to communicate among police worldwide is therefore a condition precedent to international police and judicial cooperation.

(Slide 2 of the PowerPoint Presentation: Countries connected to I-24/7.) As Secretary General, one of my foremost priorities was to provide the international law enforcement community with such a system. INTERPOL has designed and implemented a state-of-the-art global communications system that we call [I-24/7](#). 'I' for INTERPOL and '24' for 24 hours a day and '7' for 7 days a week. It allows police forces to transmit in a fast and secure manner, photographs, fingerprints, DNA profiles and other important information about individuals and crimes within a matter of seconds to our Member Countries. The roll-out of such a system in [181 Member Countries](#) is a significant challenge, but so far we have been able to connect 105 Member Countries to the I-24/7 system. But, as I stand here, 76 of INTERPOL's 181 members countries do not have access to a secure global police communication system.

5. **Countries have an obligation to proactively report internationally any travel documents (passports, Identity cards) that are stolen blank and stolen from the bearer.** The obligation to inform extends beyond wanted persons alone. It is equally important that countries share information about passports that were stolen blank or stolen from the bearer, because these are essential tools for terrorists. Passports are a question of international trust, where countries assume that the information on passports has been verified and validated by the issuing country. Therefore, any risk of violating that process should lead to immediate information sharing. Global sharing of data in passports, national identity cards, and visas is not occurring at the level it should.

(PowerPoint Slide 3: INTERPOL Member Countries participating in the INTERPOL STD database.) Currently, 41 countries are entering data in INTERPOL's Stolen Travel documents database, which now contains in excess of 1.5 million travel documents. The most recent country added to our list is Uruguay. We have made significant progress with this initiative since September 2002, when we started with 2 countries having entered 3,000 documents. However, we must recognize that this represents only a fraction of the INTERPOL global membership of 181 countries. The European Community will soon pass a decision making it mandatory for all EU countries to share stolen travel document information with INTERPOL. It is urgent that more countries participate in this effort, because **failing to share such critical information equates to allowing terrorists to carefully plan and carry out their acts.**

Let me illustrate this with an example. **(PowerPoint Slide 4 & 5 Assassination of Zoran Djindic, Prime Minister of Serbia).** On 12 March 2003, Serbian Prime Minister Zoran Djindic was assassinated in Belgrade. Shortly after the assassination, an individual named Milorad Ulemek was charged as the principal suspect. The investigation indicated that Ulemek had probably traveled widely throughout Europe to plan the assassination. Police recovered a stolen passport that he had

used. The passport was one of 100 blank Croatian passports stolen from that country's consulate in Mostar, Bosnia, in 1999. Ulemek used one of these stolen passports to the passport to travel extensively through Switzerland, Austria, the Former Yugoslavian Republic of Macedonia, Greece, Singapore and Croatia. His passport was stamped 26 times. If police or immigration officers at these borders had been able to check the passport on this individual in a global database, they would have received immediately a response signaling that this individual was traveling on a passport that had been stolen. I strongly believe that if we, as a global community, had focused more on the use of stolen travel documents by terrorists, we might have been able to prevent this assassination.

6. **Every country should have a police office, staffed 24 hours a day 7 days a week that can immediately query international databases, respond to urgent information requests from police officers in the field and act on information, received from other countries, in real time.** Critical information that can prevent attacks and save lives must be passed on in real time. It is not the case that the majority of countries around the world staff international offices 24 hours a day 7 days a week.
7. **Countries must ensure that their police forces are properly trained** in the use of communications technology and international databases and **awareness** about what can be done on the international level in terms of information exchange **needs to be dramatically raised.** For example, all police forces should know that fingerprints sent digitally at a resolution of 300 dots per inch as opposed to 500 dots per inch will prevent accurate fingerprint identifications.
8. **Countries should ensure that membership of a terrorist group constitutes a criminal offence in itself.** Countries should be able to issue arrest warrants and notify internationally suspected members of terrorist groups without having to provide proof that the person has actually committed terrorist attacks. This measure will help to significantly lower the threshold for international information sharing on terrorism and increases our chances to foil terrorist plots through an early arrest. **Taking into account the manner in which al-Qaeda and its related network operate and recruit members, it is extremely important to be able to 'flag' individuals as suspected members of terrorist groups.** Not all countries consider membership in a terrorist organization or conspiracy to be a minimal offense.

Example: (PowerPoint slide 6: the Khayata Case)

Abdulla Khayata is a Syrian national for whom the Spanish INTERPOL National Central Bureau in Madrid issued a Red Notice. As Secretary General, I have taken an interim policy decision on the interpretation of the Article 3 of our Constitution, which stipulates that 'It is strictly forbidden for the Organization to undertake any intervention or activities of a political, military, religious or racial character'.

My interim decision makes being charged with membership of a terrorist Organization a crime for which INTERPOL will hunt terrorists internationally using our Red Notices. The first country to request such a Red Notice was Spain, in November of last year. This person is suspected of being a leading member of Al Qaeda's Spanish cell. He was also in contact with other Al Qaeda members that played an important role in the planning of the 11 September attacks.

A brief overview of the chronology of events pertaining to Khayata shows how effective international police cooperation can be. Spain issued a request for red notice late October 2003.

- INTERPOL issued the Red Notice on 28 November, 2003.
- The INTERPOL General Secretariat was informed by IP Amman (Jordan) in February, 2004, that the person had been arrested a month before in Jordan. This was the first arrest based on a Red Notice issued for Membership in a terrorist group.
- After contacts between IPSPG, IP Amman, and the NCB in Madrid, the person was extradited to Spain. The IPSPG was informed by NCB Madrid on 9 February, 2004.

9. **When a terrorist attack occurs, countries should invite International Incident Response Teams to the location in which the incident occurred and allow these teams to assist with the investigations.** As you will have noticed, I have focused very much on preventing terrorist attacks in outlining the principles above. But a sound approach to terrorism requires also an ability to respond in the aftermath of a terrorist attack to prevent future terrorist attacks by the same persons or groups. It would be naïve to think that despite all of our efforts, we can prevent all acts of terrorism from happening. Al-Qaeda and related networks and groups are highly mobile and often the preparation of their attacks takes place in different countries. In many cases, the perpetrators have been trained in camps in remote locations of the world. Hence, a comprehensive investigation into a terrorist attack will involve several countries. International Incident Response Teams can provide a real added value to such investigations and provide useful information that will lead to the dismantling of terrorist support networks, provided that police have the means to liaise with their foreign counterparts. INTERPOL has acquired experience in this area by sending INTERPOL Incident Response Teams to the location of the last 13 major terrorist incidents worldwide. After the March 11 attacks, the Spanish police invited INTERPOL to send officers to assist with facilitating the exchange of information outside of Spain. We issued an international security alert concerning the modus operandi for the Madrid terrorist bombings. The role of these IRT is important: it allows the investigating officers in the concerned country to concentrate on investigating the terrorist bombings nationally while INTERPOL facilitates database checks and ensures that all international leads are fully explored. An international protocol needs to be established for when IRTs are triggered and how they should function.

Conclusion

The 9 principles that I have just outlined are simple and straightforward: In my view, all of the world's nations should attempt to reach a consensus on a number of 'minimal requirements for international police cooperation' and work towards their practical implementation, rather than focusing only on the harmonization of penal law or the creation of new institutions. Committing to these principles will help the international community a long way towards making the world safer for its citizens and businesses. These principles form a core basis and outline essential responsibilities for states and non state actors on the international level.