

Allied Against Terror: Transatlantic Intelligence Cooperation

BY STEFANIE PLESCHINGER

The September 11 terrorist attacks on the United States resulted in unparalleled transatlantic cooperation in the fight against terrorism. Since 2001, the member states of the European Union have made substantial efforts to coordinate their counterterrorism measures and consolidate their strategies at the EU level. As a result, the United States and relevant EU institutions have concluded a growing number of counterterrorism agreements, making the transatlantic partnership the forum for a renewed effort to defend jointly the freedom and openness of their societies.

As terrorism has evolved into a transnational phenomenon, detached from specific states and territories, international intelligence cooperation has become indispensable. Even bilateral intelligence sharing is limited in its ability to detect an increasingly mobile and global threat that could easily escape the control of any two states. As a result, cooperation between the United States and the European Union must occur through a supranational transatlantic intelligence network rather than through bilateral relations with single EU member states. In order to realize this partnership, the European Union must develop a European intelligence network to coordinate intelligence gathering, sharing, and analysis, and strengthen established EU intelligence institutions to enhance cooperation with their counterparts in the United States.

A Shared Response

The discovery of Al-Qaeda cells across Europe after September 11 and the revelation that Germany and Spain served as central planning bases for the attacks put particular pressure on EU member states to step up the fight against terrorism. The EU member states recognized the importance

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of coordinating their efforts and developing a union-wide counterterrorism strategy. The EU has led the fight against the “new terrorism,” which is distinct from the traditional threat of national terrorist groups such as Basque Homeland and Freedom (ETA) and the Red Brigade. In response to September 11, the EU member states agreed on an Action Plan on the Fight Against Terrorism, which called for explicit EU-wide counterterrorism measures and emphasized the importance of coordinating with countries outside of the European Union.¹ Under this plan, terrorists’ financial assets were frozen, and numerous suspected terrorists were arrested throughout Europe.

The EU’s recognition of the importance of joint efforts to combat terrorism resulted in the harmonization of EU member states’ laws and the acceleration of collaboration among member states’ law enforcement authorities.² In order to debilitate and freeze terrorist financing activities, the EU adopted numerous legislative and operational measures, including a new directive to extend anti-money laundering defenses to encompass terrorist financing. The EU also replaced cumbersome extradition procedures with the European Arrest Warrant to prevent terrorists from evading justice by exploiting differences in national legal systems.³ In addition, it has strengthened its relevant agencies such as the joint criminal-intelligence body, Europol, which coordinates national police and intelligence information gathering on terrorist threats, and Eurojust, which coordinates investigations and prosecutions on cross-border crimes.⁴

The terrorist bombings of March 11, 2004 in Madrid accelerated EU counterterrorism efforts, resulting in the EU Declaration on Combating Terrorism and the creation of a Counterterrorism Coordinator responsible for the implementation of the newly introduced counterterrorism initiatives.⁵ Following the bombings of July 2005 in London, the European Council adopted the EU Counter-Terrorism Strategy, emphasizing the need for a transition from “ad hoc to systematic police cooperation.”⁶ In addition, the European Evidence Warrant was introduced on June 1, 2006 to facilitate the transfer of evidence in cross-border cases, allowing for the immediate execution of a warrant issued in another member state without further court approval.⁷

Following September 11, the European Union and its member states have also considerably increased their counterterrorism cooperation with the United States, producing an unprecedented level of law enforcement collaboration, intelligence sharing, judicial cooperation, and transportation security.⁸ In particular, EU-U.S. cooperation has resulted in the establishment of various transatlantic agreements. For instance, the Agreement on Extradition and Mutual Legal Assistance expedites extradition requests, facilitates direct contact between

U.S. and European agencies, provides reciprocal access to bank records for EU and U.S. authorities, and creates joint EU-U.S. investigative teams.⁹ Additional agreements provide for the transfer of Passenger Name Records (PNR) data held by European airlines to U.S. Customs and Border Protection, and for the expansion of customs cooperation to cover container security.¹⁰ The European Union and the United States have also increased their collaboration within the fora of international organizations like the International Maritime Organization and the International Civil Aviation Organization to strengthen border control and transportation security by establishing global security standards such as the International Ship and Port Facility Security Code and the Aviation Security Plan of Action. With the aim of improving police cooperation, a new Policy Dialogue on Border and Transport Security has been implemented. In addition, U.S. law enforcement agencies and Europol have signed agreements to increase intelligence sharing, and Eurojust has established close contacts with the U.S. Department of Justice to enhance cooperation on judicial law enforcement.

INTELLIGENCE SHARING, THE MOST IMPORTANT DIMENSION OF COUNTERTERRORISM COOPERATION, REMAINS TO BE REALIZED.

At the June 2004 EU-U.S. Summit the two parties adopted the EU-U.S. Declaration on Combating Terrorism, reaffirming their commitment to cooperate in the investigation and prosecution of terrorists and in addressing the underlying factors that contribute to terrorist support and recruitment.¹¹ Meanwhile, since its establishment in March 2003, the U.S. Department of Homeland Security has engaged in ongoing dialogues with various EU institutions. Transatlantic contacts and regular meetings on all working levels have steadily increased as the respective departments on both sides of the Atlantic have been cross-linked to allow for closer cooperation. However, arguably the most important dimension of counterterrorism cooperation—intelligence sharing—remains the one area for which supranational cooperation has yet to get off the ground. Hitherto it has existed merely on a bilateral basis between the United States and individual EU member states.

Transatlantic Efforts

In response to the September 11 attacks, the governments of the EU member states encouraged their intelligence and law enforcement agencies to improve cooperation with their U.S. counterparts. Transatlantic intelligence sharing reached unprecedented volumes as joint intelligence task forces were

established and as U.S. intelligence agencies were given permission to participate closely in European counterterrorism investigations. Linked by ECHELON, a major post-WWII satellite intelligence surveillance network, the intelligence communities of the United States and the United Kingdom have traditionally worked closely together.¹² Following September 11, other EU member states were eager to establish closer relations with the United States and to engage in more comprehensive intelligence sharing to counter the global terrorist threat. Germany's *Bundespolizei*, France's *Direction Générale de la Sécurité Extérieure*, and other EU member states' intelligence services stepped up cooperation with their U.S. counterparts to investigate the terrorist activities that had led to the September 11 attacks and to prevent future attacks.

These bilateral intelligence relationships have successfully disrupted a number of terrorist cells. However, the new terrorism threat does not originate in a single state and hence cannot be precisely located; even the most effective bilateral intelligence cooperation is limited in its capacity to anticipate it. Only intelligence that derives from a global perspective will be able to detect and interpret a phenomenon that is no longer national or regional, but itself global. Transatlantic intelligence cooperation must therefore be transformed from an array of bilateral relationships between the U.S. and single EU member states into a transatlantic intelligence network at the EU-U.S. level. EU member states have demonstrated an interest in collaborating with the U.S. through an intelligence cooperation framework at the EU-level. These aspirations can be explained in the larger context of continuous Franco-German efforts to conduct foreign relations and security cooperation through EU institutions. However, U.S. relations with supranational European institutions are not perceived as a legitimate channel for cooperation on foreign and security policy, including intelligence sharing. Current U.S. intelligence partnerships are bilateral and specific to certain aspects of intelligence cooperation. While transatlantic intelligence relations are still largely formalized through bilateral treaties that have been in force for decades, the terrorist attacks of September 11 and March 11 have provided an impetus to increase intelligence cooperation at the EU-U.S. level.

As a result, in 2001 and 2002 Europol and U.S. law enforcement agencies signed two information-sharing agreements establishing a legal framework within which those authorities can share strategic information regarding threats, crime patterns, and risk assessments, as well as personal information such as names, addresses, and criminal records.¹³ The agreements were endorsed despite EU concerns that the United States would not meet its data protection standards. Similar worries caused controversy in the European Union over the Passenger Name Record (PNR) agreement. Since February 2003, the U.S. has required European airlines operating flights to or from the United States

to provide U.S. customs and border protection authorities with PNR data in their reservation and departure control systems. This requirement conflicts with European laws on data protection and specific provisions of the EU Regulation on Computerized Reservation Systems. In May 2004, the Council of Ministers nevertheless approved the conclusion of an EU-U.S. agreement on the transfer of PNR data. Based on the potential violation of EU privacy law, in September 2004 the European Parliament brought a case before the European Court of Justice against the European Commission over the agreement.¹⁴ On May 30, 2006, the Court ruled the agreement illegal, annulling the council decision, and gave the European Commission and EU member states until September 30, 2006 to renegotiate a new agreement, which will be similar but rest on a different legal basis.¹⁵

In order to enhance border and transportation security and limit the free movement of terrorist suspects, the EU and the U.S. plan to improve international information exchanges regarding lost and stolen passports as well as increase travel document security through interoperable biometric identifiers, including digitized pictures and fingerprints in passports, visas, and residence permits for third-country nationals. A November 2004 agreement between the U.S. and the EU provides for the exchange of information about aviation security technologies such as the Man-Portable Air Defense Systems (MANPADS), which provides defense for airliners against shoulder-fired surface-to-air missiles.¹⁶ In addition, a significant part of EU-U.S. intelligence sharing currently occurs under the auspices of NATO. In the area of chemical, biological, radiological, and nuclear (CBRN) terrorism and WMD, the EU Military Committee established a database of national military assets and strategies for civil protection that is shared with NATO.

BILATERAL INTELLIGENCE IS LIMITED IN ITS CAPACITY TO DETECT TERRORIST THREATS.

While these agreements reflect a willingness on both sides of the Atlantic to collaborate on counterterrorism intelligence, they also demonstrate the current nature of the “cooperative relationship” between the U.S. and the EU. The PNR agreement exemplifies the imbalance inherent in this partnership. As the U.S. extends its security measures beyond its borders, the EU, compelled to safeguard its citizens’ rights, has little room to maneuver in compromising EU privacy rules, especially when they are rooted in national legislation. In order to generate greater equality in transatlantic intelligence cooperation, it is not only necessary to develop a strong EU intelligence community that can be an equal to its U.S. counterpart, but also to establish an agenda that reflects

the security requirements and intelligence-sharing objectives of the EU. The current state of transatlantic intelligence cooperation demonstrates the prevalence as well as the limits of bilateral state-level collaboration between the U.S. and EU member states. It also reflects a slow shift toward embracing supranational cooperation in the area of intelligence and the obstacles that impede more rapid progress. While the U.S. intelligence community is theoretically capable of collaborating with EU institutions, intelligence service structures in the EU require significant development in order to maximize the results of supranational cooperation with the United States.

Toward an EU Intelligence Community

Prerequisite to effective transatlantic intelligence cooperation is a strong European intelligence community. To establish the infrastructure for successful transatlantic intelligence cooperation, the growing network of counterterrorism cooperation within the EU also needs to include intelligence collection and sharing. Since each member state could hold vital information that could prevent an attack on the EU, the creation of a European intelligence community would allow intelligence officers to exchange information quickly and plan joint operations more easily. Since intelligence is the most crucial tool in combating terrorism, it must be shared at the highest levels. The need for a European intelligence community is clear, but so are the obstacles that need to be overcome to achieve it.

An EU intelligence service's main goal should be to strengthen cooperation on intelligence collection, sharing, and analysis among national intelligence agencies and European bodies in order to provide security to all EU member states. In structuring its work, it should take advantage of the different operational and informational capacities of the member states. Intelligence tasks could be distributed based on geographical areas according to historical interests and experiences by certain member states. For example, French intelligence could focus on Africa, Spanish intelligence on South America, and the new member states could utilize their experience with former Soviet countries and the Balkans. The Council of Ministers, as the official decision making body of the European Union, would be the "target group" of intelligence reports from an EU intelligence service. Although the EU intelligence service would have to be integrated within the council structure, it would be vital to maintain a firewall between policymaking and intelligence analysis to forestall the distortion of intelligence by political agendas. The European Parliament, which would approve the EU intelligence service budget, could also be the institution overseeing the EU intelligence service.¹⁷

The European Union has made efforts toward greater intelligence sharing and the creation of a European intelligence service. To provide the EU High Representative for the Common Foreign and Security Policy (CFSP) and the Political and Security Committee of the EU with relevant information for decision making on CFSP and European Security and Defense Policy (ESDP), the EU created the Joint Situation Centre (SitCen) for intelligence analysis within the European Council Secretariat. SitCen provides strategic situation and threat assessments based on national intelligence, open sources, reports from member states and the European Commission's representations, and the EU Satellite Centre (SatCen). A Counterterrorism Unit (CT), which produces threat assessments on terrorism, complements SitCen. In addition, the intelligence division of the European military staff, which consists of officers from national intelligence agencies, generates reports to assist in the strategic planning of CFSP and ESDP.¹⁸ Appointed in March 2004, Counterterrorism Coordinator Gijs de Vries is expected to "contribute to ensure that the efforts in the field of ESDP are developed in a coordinated way with the overall EU framework."¹⁹ SitCen, in conjunction with the Counterterrorism Unit, could contribute to a synthesis of security intelligence at the EU level. However, CT initially concentrates its work only on non-EU countries since EU member states rely on national services to analyze threats within their territory. While cross-border exchanges between national security agencies are taking place through the "Club de Berne," which hosts regular meetings of the heads of EU member states' security and intelligence services, there is a lack of cross-agency cooperation with EU-level intelligence entities that must be the focus in developing an EU intelligence network.²⁰

Meanwhile, agreements between Europol and Eurojust have strengthened their operational cooperation.²¹ Member states have been required to involve Europol and Eurojust representatives in the work of Joint Investigation Teams where feasible. Moreover, EU regulations oblige member states' law enforcement authorities to provide both Europol and Eurojust with all intelligence related to persons investigated, prosecuted, or convicted for acts of terrorism. In order to establish a legal framework governing these agencies' conduct, rules on the exchange of information and cooperation concerning terrorist offences were adopted in 2005.²² Member states have also begun to adopt national general data retention measures according to a regulation that requires internet and mobile phone service providers to retain communications logs for up to three years for assessment by police and intelligence agencies.²³

The public and academic debate on the creation of an EU intelligence service has grown alongside proposals drafted in official and unofficial fora. In developing an EU intelligence service, emphasis must be placed on cooperation

in collection and sharing of intelligence and on utilizing the capacities of established intelligence cooperation networks and agencies. At the February 2004 European Council, Austria proposed the creation of a European Intelligence Agency, structured similarly to the CIA and aimed at producing MI5-type intelligence to enable the early identification of potential terrorist threats to the EU. The Austrian proposal sought an intensified exchange of intelligence on EU security threats at the EU level but was rejected by the Council because member states considered it too ambitious. Cautious and reluctant reactions to this proposal reflected concerns about the duplication of work already done by Europol and the need to implement already existing counterterrorist measures.²⁴

The five-year Action Plan for Freedom, Justice, and Security, launched by the European Commission on May 10, 2005, aims to establish the “principle of availability” as the common standard for information sharing and exchange within the EU.²⁵ Accordingly, by January 1, 2008, any information available in one member state should be available in all other member states. This principle expands the free movement of goods, services, labor, and capital that underpins the EU to include free availability of information. While this new standard provides the legal basis for increased intelligence cooperation, its implementation faces numerous challenges.

Indeed, despite the urgency and importance of collaboration and common action in countering terrorism, a host of challenges hamper EU intelligence cooperation. The EU’s institutional structure impedes effective intelligence sharing at the organizational level. The EU separates its work in the areas of Justice and Home Affairs and Common Foreign and Security Policy. This division is reflected in a gap between the collection and analysis of the EU’s internal and its external intelligence. But, to benefit from synergies of the work in both areas, especially as terrorism is no longer a purely internal or external threat, it is crucial to synthesize intelligence collection and analysis within one institutional entity on the EU level.

In addition, national sovereignty and a lack of trust impede effective open-source intelligence sharing on the EU level. France and the UK, concerned that such broad intelligence sharing would result in information leaks, are especially reluctant to share sensitive intelligence with the other member states. Intelligence collaboration thus has been limited to satellite imagery gathering and analysis through the EU Satellite Center. However, effective EU intelligence cooperation will need to comprise collaboration in signals intelligence and human intelligence and integrate them in all-source intelligence products. The exchange of intelligence between different member

states' intelligence agencies requires the gradual development of trust. Trust develops slowly, arising from increased interagency personal contacts, which can only be achieved through the collective education of intelligence staff from various agencies. Moreover, the level of trust required for effective intelligence cooperation will remain unrealized if member states preserve the right to spy on each other. A collective statement by all member states assuring that they will refrain from spying on one another, although hardly imaginable today, is indispensable for providing the foundation for trusting relationships among intelligence-sharing member states in the future.²⁶

The disparity between large and small member states' intelligence capacities poses a fiscal barrier to the creation of an EU intelligence service. The large member states with effective and similarly functioning intelligence services—the UK, Germany, France, Italy, and Spain—oppose radical changes in the current intelligence cooperation practices in the EU. On the other hand, small members without major intelligence capacities are pushing for the creation of an EU intelligence organization. The cost incurred by member states with large intelligence budgets and an effective intelligence agency would be difficult to justify based on the slim chance that a small country would provide vital information for EU security. Instead, larger member states are more likely to continue to arrange intelligence-sharing agreements among themselves. In addition, the different structures of national intelligence communities hamper cross-border and cross-agency intelligence cooperation since counterparts in different national and EU-level organizations are not always easy to identify.

Member states' concerns about spoiling privileged relationships with third countries, particularly the United States, by overriding bilateral intelligence-sharing agreements constitute a further barrier to enhanced intelligence cooperation at the EU level. To strengthen direct EU-U.S. intelligence cooperation, EU member states must compromise their bilateral relations with the United States. However, France, which aspires to increase EU autonomy, is lobbying for greater intelligence cooperation among EU member states within its Helios 2 surveillance system.²⁷ As a result, smaller member states especially perceive a dilemma between bilateral transatlantic relations and the pursuit of greater EU autonomy. Yet intelligence cooperation for the combat of terrorism requires both a strong European intelligence community and close intelligence collaboration with the United States.

The development of a European intelligence service that would synthesize the intelligence collection and analysis of the member states' intelligence agencies is a precondition for an effective partnership with the United States.

A wide range of measures have been agreed upon in the European Union to support the work of the EU member states in intelligence coordination on counterterrorism. Greater coordination must be achieved through a European intelligence cooperation network, and the role of the EU in supporting national intelligence agencies to cooperate internationally is fundamental.

Meeting the Terrorist Threat

A strong partnership between U.S. and EU intelligence communities will constitute a critical dimension of transatlantic cooperation on counterterrorism. It will provide the mechanism for collective gathering and analysis of intelligence on terrorist organizations as well as a forum for the conclusion of transatlantic agreements and the establishment of cooperation initiatives to deter the threat they pose. This partnership between equals will also serve as a foundation for a balanced dialogue on such sensitive issues as the balance between security and privacy rights, disagreements over which

FOR EU COUNTRIES, THE THREAT OF TERRORISM HAS HISTORICALLY BEEN A DOMESTIC PHENOMENON.

currently impede more substantial collaboration between both sides. Differences in U.S. and EU privacy protection laws have complicated closer cooperation especially on border and transportation security. The United States aims to conclude an overarching agreement with the European Union, establishing the adequacy of U.S. data privacy standards

in order to allow for the routine transfer of private personal data between EU and U.S. authorities. The EU rejects such proposals out of concerns for potential infringements on EU citizens' privacy rights. The arduous negotiations during the conclusion of the Europol agreements as well as the legal case brought forward by the European Parliament over the PNR agreement demonstrate the disparities between the EU and the United States regarding privacy protection.²⁸

The perceived lack of strategic culture within EU government institutions and the resulting inability of the EU to reach a quick consensus prevent closer U.S.-EU collaboration on intelligence and other security issues. Indeed, some U.S. authorities doubt the effectiveness of shifting U.S. intelligence cooperation to the EU level, since existing bilateral intelligence-sharing agreements with European Union member states have been functioning well, and broader cooperation is likely to weaken those relationships. Moreover, U.S. authorities remain skeptical about the capacity of EU intelligence-sharing networks like Europol and Eurojust given their lack of enforcement capabilities. Dif-

ferences between EU and U.S. bureaucratic cultures further impede close collaboration. While the EU will always be inclined to act according to the legal texts constituting its legitimacy, the United States is more flexible and can make decisions that conform to its interests.

Disagreements between EU member state governments and the United States also negatively affect direct EU-U.S. cooperation. Fundamental divergences regarding counterterrorism methods, U.S. preventive action in Iraq, compliance with international law, and strategies for democracy promotion might increasingly estrange the transatlantic partners and hinder the advancement of intelligence cooperation. Because of different domestic experiences with war and terrorism, dissimilarities also exist in the perception of the threat of terrorism. The United States views terrorism as an external threat, while for the European Union it has historically been a danger from inside its borders. Consequently, incompatible approaches toward combating terrorism have developed on both sides of the Atlantic. Whereas the United States believes that military means must be employed abroad to successfully wage the “war on terrorism,” the European Union remains convinced that the rule of law, economic development, and human rights enforcement provide solutions to the problem of terrorism. U.S. authorities believe that the Europeans do not take terrorism as seriously, while Europeans strongly disapprove of U.S. practices in Guantanamo and Abu Ghraib. However, the European Union and United States ultimately depend on each other in combating terrorism, and thus, it is imperative to build a firewall between the daily conduct of intelligence cooperation and potential political disagreements in order to preserve a strong partnership that will succeed in the global fight against terrorism.²⁹

The scale of the recently thwarted terrorist plot aimed at transatlantic flights departing from London exemplifies the threatening nature of global terrorism.³⁰ It has also demonstrated the crucial need to establish a cooperative international intelligence community capable of countering terrorist acts inspired by extreme fundamentalism and potentially plotted by anyone, including European citizens living inconspicuously in the suburbs of metropolitan cities. Transatlantic intelligence cooperation could form the backbone of an international counterterrorism network if both sides of the Atlantic shift their intelligence cooperation to an interregional level where the international community could potentially contribute. The prerequisite for effective transatlantic intelligence cooperation is a European intelligence network that synchronizes cross-border and cross-agency intelligence services and that strengthens relationships between EU intelligence institutions and their counterparts in the United States. The challenges to the development of a

European intelligence service and supranational transatlantic intelligence cooperation are rooted in political, cultural, and historical issues that will require patience and trust among EU member states and in the transatlantic relationship. The history of European integration and EU-U.S. relations shows a steady trend toward increased collaboration under the pressures of globalization. However, the immediate threat of global terrorism will require closer cooperation at an accelerated pace. ■

NOTES

¹ European Council, "Conclusions and Plan of Action of the Extraordinary European Council Meeting" (Brussels: SN 140/01, 21 September 2001). http://europa.eu.int/comm/justice_home/news/terrorism/documents/concl_council_21sep_en.pdf. See also: European Council, "Action by the European Union following the Attacks on 11 September" (Brussels: MEMO 01/327, 15 October 2001). <http://europa.eu.int/rapid/pressReleasesAction.do?reference=MEMO/01/327&format=HTML&aged=0&language=EN&guiLanguage=en>.

² Since January 1, 2003, the criminal laws of all EU member states have been aligned for terrorism to be prosecuted and punished equally throughout the EU.

³ European Council, "Council Framework Decision on the European Arrest Warrant and the surrender procedures between Member States" (Brussels: 2002/584/JHA, 13 June 2002). See also: Information and Communication Unit of the Directorate-General Justice and Home Affairs of the European Commission, "European Arrest Warrant to replace Extradition" (Brussels: September 2002). <http://www.justice.org.uk/images/pdfs/eurschmidt.pdf>.

⁴ For comprehensive information on EU counterterrorism measures see: European Commission and Secretariat General of the Council of the European Union, "European Union Fact Sheet: EU and the Fight against Terrorism" (Brussels: 26 June 2004). http://europa.eu.int/comm/external_relations/us/sum06_04/fact/terror.pdf.

⁵ European Council, "Declaration on Combating Terrorism" (Brussels: 25 March 2004). http://ue.eu.int/ueDocs/cms_Data/docs/pressdata/en/ec/79637.pdf.

⁶ Council of the European Union, "European Union Counter-Terrorism Strategy" (Brussels: doc. 14469/4/05 REV 4, 1 December 2005). http://ue.eu.int/uedocs/cms_Data/docs/pressdata/en/jha/87257.pdf. See also: European Council, "Action by the European Union following the Attacks on 11 September" (Brussels: MEMO/01/327, 15 October 2001). <http://europa.eu.int/rapid/pressReleasesAction.do?reference=MEMO/01/327&format=HTML&aged=0&language=EN&guiLanguage=en>.

⁷ European Commission, "Proposal for a Council Framework Decision on the European Evidence Warrant for obtaining objects, documents and data for use in proceedings in criminal matters" (Brussels: COM 2003/688 final, 14 November 2003). http://europa.eu.int/eur-lex/en/com/pdf/2003/com2003_0688en01.pdf. See also: Council of the European Union, "Council Framework Decision on the European Arrest Warrant and the surrender procedures between Member States" (Brussels: 2002/584/JHA, 13 June 2002). <http://europa.eu.int/scadplus/leg/en/lvb/l33167.htm>.

⁸ European Commission and General Secretariat of the Council of the European Union, "European Union Fact Sheet: The Fight against Terrorism" (Brussels: 25 June 2003). http://ec.europa.eu/comm/external_relations/us/sum06_03/terror.pdf.

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¹⁰ European Council, "Council Decision on the Conclusion of an Agreement between the European Community and the United States of America on the Processing and Transfer of PNR Data by Air Carriers to the United States Department of Homeland Security, Bureau of Customs and Border Protection" (Brussels: 2004/496/EC, 17 May 2004). http://europa.eu.int/comm/external_relations/us/intro/pnr_agreement0504.pdf; EU-U.S. Joint Customs Cooperation Committee, "Agreement between the European Community and the United States of America on Intensifying and Broadening the Scope of the Agreement on Customs Cooperation and Mutual Assistance in Customs Matters to Include Cooperation on Container Security and Related Matters" (15 November 2004). <http://europa.eu.int/scadplus/leg/en/lvb/l06026.htm>. See also: European Commission and General Secretariat of the Council of the European Union, "European Union Fact Sheet: Container Security" (Brussels: 25 June 2003). http://europa.eu.int/comm/external_relations/us/sum06_03/cs.pdf.

¹¹ Council of the European Union, "U.S.-EU Declaration on Combating Terrorism" (26 June 2004). http://ue.eu.int/uedocs/cmsUpload/10760EU_US26.06.04.pdf.

¹² ECHELON is a U.S. National Security Agency created and controlled global spy system that captures and analyzes satellite communication information. It is operated in conjunction with the Government Communications Head Quarters of England, the Communications Security Establishment of Canada, the Australian Defense Security Directorate, and the General Communications Security Bureau of New Zealand. These organizations are

bound together under a secret 1948 agreement, UKUSA. Through its network function, ECHELON allows the participating members to indirectly obtain information on their citizens; direct surveillance of their citizens would otherwise be unconstitutional.

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¹⁴ European Council, "Council Decision on the Conclusion of an Agreement between the European Community and the United States of America on the Processing and Transfer of PNR Data by Air Carriers to the United States Department of Homeland Security, Bureau of Customs and Border Protection" (Brussels: 2004/496/EC, 17 May 2004). http://europa.eu.int/comm/external_relations/us/intro/pnr_agreement0504.pdf. See also: European Commission and General Secretariat of the Council of the European Union, "European Union Fact Sheet: Passenger Name Record" (Brussels: 25 June 2003). http://europa.eu.int/comm/external_relations/us/sum06_03/pnr.pdf. On the development of a legal framework for the transfers of PNR data to the U.S. see: Communication from the Commission to the Council and the Parliament, "Transfer of Air Passenger Name Record (PNR) Data: A Global EU Approach" (Brussels: COM 2003/826 final, 16 December 2003). http://europa.eu.int/comm/external_relations/us/intro/apis_en.pdf.

¹⁵ European Court of Justice, "Judgment in Joined Cases C-317/04 and C-318/04: Parliament v Commission" (Luxembourg: 30 May 2006). <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:62004J0317:EN:html>.

¹⁶ Kristin Archick, "U.S.-EU Cooperation Against Terrorism," *CRS Report for Congress*, 19 January 2005, p. 3. <http://www.fas.org/man/crs/RS22030.pdf>.

¹⁷ John M. Nomikos, "The European Union's Proposed Intelligence Service," *Power and Interest News Report*, 17 June 2005. http://www.pnr.com/report.php?ac=view_report&report_id=316&language_id=1.

¹⁸ Björn Müller-Wille, "Building a European Intelligence Community in Response to Terrorism," *European Security Review*, 22 (2003). <http://www.isis-europe.org/ftp/Download/ESR%2022-Building%20a%20European%20Intelligence%20Community.pdf>.

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²⁰ Björn Müller-Wille, "Building a European Intelligence Community in Response to Terrorism," *European Security Review*, 22 (2003). <http://www.isis-europe.org/ftp/Download/ESR%2022-Building%20a%20European%20Intelligence%20Community.pdf>.

²¹ Agreement between Eurojust and Europol (9 June 2004). <http://www.europol.eu.int/legal/agreements/Agreements/17374.pdf>.

²² European Council, "Council Decision on the Exchange of Information and Cooperation Concerning Terrorist Offences" (Brussels: 2005/671/JHA, 20 September 2005). http://europa.eu.int/eurlex/lex/LexUriServ/site/en/oj/2005/L_253/L_25320050929en00220024.pdf.

²³ "Data Retention Directive" (Brussels: MEMO/05/328, 21 September 2005). <http://europa.eu.int/rapid/pressReleasesAction.do?reference=MEMO/05/328&format=HTML&aged=0&language=EN&guiLanguage=en>.

²⁴ "Lukewarm Reception to 'Euro CIA' Proposal," *Breaking News*, 19 February 2004. <http://www.breakingnews.ie/2004/02/19/story134992.html>.

²⁵ The European Commission's Action Plan for Freedom, Justice and Security entails detailed proposals for EU action on terrorism, migration management, visa policies, asylum, privacy, and security, the fight against organized crime and criminal justice. A major policy initiative, the plan represents a cornerstone of the Commission's Strategic Objectives for 2010, built around prosperity, solidarity, and security. http://europa.eu.int/comm/justicehome/news/information_dossiers/the_hague_priorities/index_en.htm.

²⁶ Björn Müller-Wille, "Building a European Intelligence Community in Response to Terrorism," *European Security Review*, 22 (2003). <http://www.isis-europe.org/ftp/Download/ESR%2022Building%20a%20European%20Intelligence%20Community.pdf>.

²⁷ Helios' intelligence-gathering assets consist of optical reconnaissance satellites providing photographic images down to approximately one-meter resolution. The Helios system is a joint French, Italian, and Spanish venture that provides data initially to the three participant states. John M. Nomikos, "The European Union's Proposed Intelligence Service," *Power and Interest News Report*, 17 June 2005. http://www.pnr.com/report.php?ac=view_report&report_id=316&language_id=1.

²⁸ Kristin Archick, "U.S.-EU Cooperation Against Terrorism," *CRS Report for Congress*, 19 January 2005, p. 3. <http://www.fas.org/man/crs/RS22030.pdf>.

²⁹ Adam Townsend, "Keeping EU-U.S. Anti-Terror Cooperation on Track," *The Economist*, 3 July 2003. http://www.cer.org.uk/articles/townsend_europeanvoice_jul03.html.

³⁰ Don Van Natta Jr., Elaine Sciolino and Stephen Grey, "In Tapes, Receipts and a Diary, Details of the British Terror Case," *The New York Times*, CLV, 53:685, 28 August 2006.