

Emerging Transnational (In)security Governance

A statist-transnationalist approach

Edited by Ersel Aydinli

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3 Intelligence-sharing and United States counter-terrorism policy

James Igoe Walsh

Introduction

A top foreign policy priority of the United States is countering Islamic terrorism, especially the al Qaeda network and groups that are inspired by or collaborate with it. Accurate intelligence is crucial to this effort. Even the most effective terrorist groups like al Qaeda control far fewer resources than the states against which they direct violence. It is this asymmetry in resources that leads them to adopt the tactic of terrorist attacks, which, by targeting civilians randomly, gives attracts more attention to their grievances. It also leads terrorist groups to devote a great deal of attention to concealing their membership, sources of finance, training locations, and communications from state authorities.

Accurate intelligence allows the government to bring to bear its police, military, and other resources to disrupt a terrorist group's activities. As Derek Reveron puts it, "the war on terror requires high levels of intelligence to identify a threat relative to the amount of force required to neutralize it. This fact elevates intelligence in importance and places it on the frontline against terrorism."¹ Intelligence is most useful for elements of counter-terrorism policy that aim to disrupt such groups' recruitment, financing, security of operations, bases, movement of personnel, and so on, through actions of military, police, intelligence, and judicial arms of the state. Intelligence is also very useful for internal or homeland security if it can identify likely targets that should be better protected against attack. Operational intelligence is less important for policies aimed at reducing support for terrorist groups by, for example, promoting economic development or democracy. However, analysis that draws on secret intelligence might assist policymakers in better implementing such policies by, for example, accurately specifying the grievances that motivate terrorist groups and their supporters.

Al Qaeda's objectives and organization make it a uniquely dangerous terrorist foe, and one on which it is exceptionally difficult to collect accurate and useful intelligence. It has demonstrated its willingness and ability to launch high-casualty attacks within the United States and against American interests abroad. It sponsors or supports local terrorist movements or insurgencies around the world, including those in Algeria, Egypt, Iraq, Afghanistan, India, Indonesia, and Russia. The organization carefully selects members of high intelligence and initiative from

many nationalities, giving it the ability to lead and work with local recruits in many parts of the world, to undertake complex, carefully planned, and long-term missions, and to study and learn from its own experiences as well as those of other terrorist groups. Al Qaeda has the ability to adapt successfully to unforeseen developments. It has changed the means by which it communicates information to operatives frequently, and has maintained its planning and operations despite losing its base in Afghanistan in late 2001. And it devotes a great deal of energy to maintaining operational security.²

The fact that al Qaeda is a transnational group makes countering it even more difficult. Al Qaeda has proven that it is a terrorist organization of truly global reach, having launched attacks in dozens of countries. It has members and supporters in even more countries, giving it numerous sources of funds and recruits and multiple locations for organizing, training, and hiding its members. These include states with weak or failed governments, who are unable to counter the group, as well as those with powerful political elements that share some of al Qaeda's objectives and thus are unwilling to counter it. Al Qaeda's transnational scope has led it to adopt an organizational form that is less hierarchical than many other terrorist groups. This means that eliminating one or a few leaders of the organization in one location will not seriously disrupt the ability of branches in other locations to continue operating.³

Transnational organization also means that other countries can contribute intelligence that the United States would find costly or impossible to collect on its own. Countries in which al Qaeda operates are almost always in a better position to collect "human intelligence" from defectors or agents on the group. A common criticism of the United States intelligence community is that it has devoted too many resources to the collection and analysis of highly technical forms of intelligence – gathered, for example, from advanced satellites or communication interception systems. Other governments rely more heavily on the collection of human intelligence, and often have a cadre of trained intelligence personnel that are native to the linguistic and cultural environment in which al Qaeda operates in their country. This allows them to make connections with potential informants more easily, and to place the intelligence provided by such informants in the appropriate context. Countries in western Europe, North Africa, the Persian Gulf, and South and Southeast Asia are able to collect intelligence that the United States is unable to gather, and can engage in mutually beneficial intelligence-sharing with the United States.⁴

But some of these states also have powerful reasons to defect from promises to share intelligence with the United States. As the next section details, European governments face legal challenges to some of their foreign intelligence activities. Domestic political pressures prompt some states in the Middle East and Europe to curtail collaboration with the United States. Some countries contain religious or nationalist groups or elements of the government apparatus that are less enthusiastic about taking effective action against al Qaeda. Governments may have conflicting interests with the United States on other issues that lead them to minimize counter-terrorism cooperation. Putative counter-terror allies of the

United States may decline to take effective action against al Qaeda to avoid retaliation by the group. Some may have poorly-developed or corrupt police, judicial, and intelligence bureaucracies that are unable to take such effective action in the first place. Other governments may wish to exaggerate the effectiveness of their action against and the accuracy of their intelligence on al Qaeda in order to win the approval and support of the United States.⁵ These cross-cutting motives pose an important challenge for the United States because less than full cooperation and intelligence sharing is very difficult for it to detect. All intelligence agencies seek to ensure that their sources of information remain secret. This involves strictly limiting the distribution of such information among government officials and carefully controlling its dissemination to foreign governments. But these security measures also make it very hard for the recipients of shared intelligence to verify its accuracy. The problem for the United States is that some of the states that have the most valuable intelligence on al Qaeda are also those with the strongest incentives to defect from agreements to share such intelligence.

Yet the United States has managed to strengthen intelligence sharing arrangements with many of these countries. How, if at all, do such arrangements address concerns about defection? At one extreme, it has been rather straightforward to arrange effective intelligence sharing with countries that have the fewest incentives to defect, such as those in western Europe. In many (but not all) areas, the United States and European countries have developed mechanisms for the regular exchange of intelligence. At the other extreme, the United States has largely eschewed intelligence sharing with countries that have the strongest motives to defect, such as Iran and Syria. More interesting are the arrangements pursued with many of the remaining countries that are formally committed to share intelligence with the United States but also face substantial pressures to renege on this commitment. Here the United States has created hierarchical mechanisms that give it some ability to directly monitor and control the intelligence activities of its partner. These mechanisms provide the United States with a way to secure intelligence from partners of problematic reliability. This chapter explains how hierarchical relationships enhance intelligence sharing, and the conditions under which such hierarchy will emerge. Examining contemporary intelligence sharing through this analytical lens provides novel answers to two questions. First, it helps to explain how the United States has been able to share intelligence effectively with states that it fears would defect from more traditional, arms-length arrangements. Second, it suggests new ways of thinking about intelligence reform in the United States. Many intelligence reform prescriptions advocate the development of a more robust human intelligence collection capacity on the part of American intelligence agencies. A key rationale for this suggestion is that many other states cannot be trusted to share the relevant human intelligence that they collect. But a focus on hierarchy indicates that the United States does not base its evaluations of other states' contributions to its intelligence needs solely on their trustworthiness; instead, it can supplant trust with hierarchy. Advocates of intelligence reform thus have over-stated the costs and risks of relying on partner states to share intelligence.

Countering concerns about defection

Practically all states have declared that they oppose terrorism and have pledged to counter the actions of al Qaeda and groups connected to it. Many have made specific agreements to share intelligence on al Qaeda with the United States, typically in return for the United States itself sharing intelligence or offering its diplomatic and economic support. But some of these allies face countervailing incentives to defect from such promises to share intelligence.

Defection may be either deliberately undertaken with the approval of the relevant authorities, or involuntary in the sense that lower-level state officials engage in without such approval. A state sharing intelligence may engage in deliberate defection by fabricating or withholding intelligence, or exaggerating the accuracy of intelligence it possesses, with the goal of influencing the receiving state's policy choices. Elements within a sending government's apparatus might also be operating under the control of another power or group that controls the intelligence they pass to other states. Corruption or other administrative weaknesses might limit the state's ability to effectively collect intelligence in the first place. And sending states might also not share fully or honestly if some of their personnel who control relevant intelligence disagree on political or policy grounds with the decision to share it. States receiving intelligence can deliberately defect by passing it to a third state, which is usually prohibited by sharing agreements. A receiving state may involuntarily share intelligence in its possession with others. Individuals that have access to its intelligence may be operating under the control of a third state or other outside group and violate their government's policy by sharing this intelligence with their controllers. Alternatively, officials in a receiving state may hold policy preferences that differ from those articulated by the government, leading them to publicize or to fail to act on operational intelligence shared by another state.

States sharing intelligence cannot easily draw on two mechanisms for preventing defection that are available in other issue areas – monitoring and reputation. Governments have legitimate reasons to surround their intelligence gathering and analysis with considerable security. This makes it hard for partners to determine if they are living up to the terms of their arrangement. There is an important difference between the exchange of intelligence and the exchange of a tangible good. Tangible goods can be inspected after purchase to ensure that they conform to the buyer's expectations. But "buyers" of intelligence cannot easily monitor its partner to determine if the intelligence it provides has been collected diligently and analyzed properly. The reason is that states providing intelligence seek to secure knowledge of how they obtain and interpret intelligence from potential enemies that could disrupt or manipulate these "sources and methods." Intelligence agencies rarely reveal the full details of their sources even to other agencies of the same government. This understandable concern with security opens the possibility that shared intelligence might be of questionable reliability. States sometimes forgo the benefits they would accrue from defection in the short-run in order to maintain their reputations for honest dealing. But concerns about security also complicate efforts to reassure partners by undertaking publicly observable commitments

that, if violated, would undermine a government's reputation. The details of most intelligence sharing arrangements are kept secret from third parties. This makes it difficult for one partner to harm another's reputation through an accusation of defection, since doing so necessitates revealing details about the intelligence that has or was supposed to have been shared.

Sharing between states with weak incentives to defect should be comparatively easy to arrange. But what should the United States do when faced with a partner that possesses useful intelligence and also has strong incentives to defect? This dilemma has attracted considerable attention from those with an interest in improving counter-terrorism policy. Most counsel that the optimal solution is to reduce reliance on shared intelligence and to build the United States' capacity to independently collect and analyze intelligence on Islamic terrorism. This conventional view takes seriously the problem of monitoring for defection in an anarchic international system. It concludes from this that the safest policy is to limit intelligence sharing to trustworthy states, and to strengthen national intelligence gathering capabilities on issues where such states are in short supply.⁶ But it is not the only option open to powerful states such as the United States. It is often presented as such because of the assumption that states exist in an anarchic international environment, where each by definition retains its decision-making autonomy. The institutional arrangements states create to underpin their cooperation must be consistent with such autonomy. States may work together, but they do so at arms-length; each state independently determines, for example, if it is going to cooperate with or defect from its partners. I want to argue that under certain conditions governments have self-interested reasons for sacrificing some of their decision-making autonomy by subjecting themselves to a hierarchical relationship with a dominant state. I draw on transaction-cost economics to explain the conditions favoring the creation of such hierarchies. Transaction-cost economics seeks to explain why some economic transactions take place at arms-length in markets, while others are organized through institutions such as firms. Actors must pay costs to engage in mutually beneficial transactions – they must expend time and effort searching for goods, bargaining over the terms of the exchange, monitoring the compliance of the other party, and punishing non-compliance. The basic argument of transaction-cost economics is that actors will create hierarchical institutions to economize on such transaction costs.⁷ Hierarchical relationships have a dominant state with responsibility for making major decisions, and a subordinate state or state that agrees to comply with these decisions. A hierarchy reassures a dominant partner that others will comply with the letter and spirit of their agreement to cooperate by giving it the right to interpret the agreement, to oversee the activities of the subordinate, and the legitimate right to punish defection. Scholars have begun to apply the insights of transaction-cost economics to international politics to better understand the organization of military alliances and to explain how hierarchy in the form of colonial empires depended in part on the factors identified by transaction-cost economics.⁸

Hierarchical arrangements are most useful to participants when there exist substantial gains from cooperation, the likelihood of defection is high, and the

Table 3.1 Causes and types of intelligence sharing

| | <i>Joint Gains from Intelligence-Sharing</i> | <i>Costs of Defection</i> | <i>Governance Costs</i> | <i>Outcome</i> | <i>Examples</i> |
|-----|--|---------------------------|-------------------------|----------------------|-------------------------------------|
| (1) | Low | | | Little sharing | Telecommunications intercepts |
| (2) | High | Low | | Anarchic sharing | Sharing with European countries |
| (3) | High | High | Low | Hierarchical sharing | Sharing with Morocco, Egypt, Jordan |
| (4) | High | High | High | Little sharing | Sharing with Syria, Iran |

governance costs of creating and maintaining a hierarchy are reasonably low. Table 3.1 outlines the four most pertinent combinations of values of these variables and the intelligence-sharing outcomes that we would expect from each combination. Consider the first row, where the gains from sharing intelligence are low. Little or no sharing should take place for the simple reason that cooperation offers no benefits to the potential participants. A good example is electronic surveillance of international telephone calls and email messages that originate and are destined for recipients outside of the United States. Much of this traffic passes through networks located in the United States, which provides the authorities with the ability to capture communications without the cooperation of the countries where the sender and recipient are located.⁹ In the second row, the gains that each state secures from sharing are larger than the expected costs of defection by the other state. Sharing should be straightforward to arrange here, and the participating states should focus on developing technical mechanisms – such as shared databases, common security procedures, joint training of personnel, and so on – that allow them to exchange information efficiently.

The conventional wisdom holds that relationships resembling this second row are the only ones in which states can share intelligence. Where the incentives to defect are higher, the states should recognize this reality, forego cooperation through intelligence-sharing, and instead seek to develop autonomous national means of gathering intelligence. I want to argue that in the circumstances resembling the third row of Table 3.1, states can successfully cooperate by introducing an element of hierarchy into their intelligence-sharing relationship. Hierarchy allows cooperating states to capture the gains available from sharing intelligence by allowing the dominant state to effectively monitor the subordinate. Such a hierarchy will provide gains to both parties when the costs of creating and maintaining it are smaller than the joint gains available from intelligence-sharing. But a hierarchy will not prove worthwhile when these governance costs are too high for either state. The major costs for subordinate states is accepting limits on their

autonomy. Subordinate states accept their inferior status because doing so sustains cooperation with the dominant state. Subordinate states can receive important benefits in exchange for accepting their reduced status, such as shared intelligence, economic aid, or protection from external threats. Subordinate states would prefer to avoid the restrictions on their actions that hierarchy imposes. But this is often unrealistic; the dominant state will only agree to cooperate if the subordinate agrees to the limits that a hierarchy imposes. Participation in a hierarchy may be the best available outcome for such states.

Dominant states must pay costs to manage a hierarchy as well. They must devote resources to closely monitoring subordinates' compliance, to providing the benefits outlined in their agreement to share, and to punishing defection. For one state to effectively play the role of the dominant partner, it must control considerable political and economic resources of value to the subordinate state. Such power resources allow the dominant state to offer more valuable benefits and to more credibly threaten effective punishment when it detects defection. While dominant states are more powerful than subordinates, this does not mean that they *always* insist on creating hierarchical arrangements. Dominant states would prefer to avoid the costs associated with creating and managing a hierarchical relationship. When partnering with a state unlikely to defect, dominant states can and should agree to less hierarchy in their relationship. The dominant state must also take steps to reassure its subordinate that it will not itself defect or abuse its position of leadership. One way that the dominant state can do this is by agreeing to measures that deliberately expose them to possible defection in order to demonstrate their faith in subordinate states. For example, the dominant state can encourage partners to specialize in some aspects of the intelligence collection and analysis effort. Another mechanism is the joint development and management of intelligence assets such as listening posts or networks of agents. Both specialization and joint investments should improve the efficiency of the countries' combined intelligence effort. But they also give the subordinate state more potential to defect and thus more influence over their dominant partners. Agreeing to such riskier forms of cooperation signals to the subordinate that the dominant state is reasonably secure that their hierarchical arrangement will work effectively.

Dominant states can structure their intelligence-sharing with subordinates in three ways to monitor for and punish defection. First, the dominant state can direct and oversee some of the policies and actions of agencies in the subordinate state. The dominant state may assign its personnel to take on policymaking or operational tasks within agencies of the subordinate state. Second, personnel are usually described as some type of technical advisor, and they certainly are in a position to provide the subordinate state with relevant knowledge. But their primary loyalty is not to the subordinate state but to the dominant state that selected them and assigned them to this role. An important part of their role is to monitor the actions of the subordinate state. Their direct involvement in detailed policymaking and operations gives them street-level knowledge of how policies adopted at the national level in agreement with the subordinate state are actually being implemented by partners that may face incentives to defect. Second, the dominant state

may finance actions of the subordinate. Providing financing gives the subordinate state more resources to carry out policies that will serve its interests. But strings are always attached to such money. The subordinate state must only use the money for purposes specified by the dominant state and may be required to provide evidence that the funds are expended in the manner intended. This monitoring of spending also provides a window on other, related, actions of the subordinate state. For example, the dominant state may be concerned that the subordinate will use its funds to replace rather than supplement its own funding of some activities. The agreement to providing financing should call on the subordinate state to provide a range of budgetary data in order to address this concern. Such data is also useful to the dominant state in constructing a more comprehensive picture of the true actions and priorities of the subordinate state. Financing also provides the dominant state with an important tool with which to punish defection. It can threaten to withdraw this funding or shift it to other purposes if it discovers that the subordinate has cheated on the agreement to share intelligence. Third, dominant states can offer to train officials from and restructure bureaus in subordinate states. One objective of training and restructuring is to provide subordinate states with the technical knowledge and skills needed to implement policy more effectively. Training and restructuring can serve as an indirect form of monitoring as well. Training attempts to socialize students from other states into the goals and routines of the training state. Dominant states can also provide their partners with funds, equipment and technology, and organizational blueprints to alter the format of their agencies. The motive is to replace or supplant existing agencies that are seen as not sharing the objectives of the dominant state with new agencies that are socialized to the goals and methods of the dominant state.

Sharing intelligence on Islamic terrorism

Cooperation: Europe

Western Europe and Canada are the countries that can share much useful intelligence with the United States and face relatively few incentives to defect. Britain, France, Germany, and a few other countries have foreign intelligence services that can collect information overseas and share it with the United States. British and French intelligence are particularly strong in the Arab world and south Asia. The fact that western Europe serves as a base and target for al Qaeda and related Islamic terrorist groups means that domestic intelligence and law-enforcement agencies can provide the United States with valuable intelligence. It also means that the United States can provide these governments with intelligence it obtains elsewhere, who may then use domestic law enforcement to monitor or to detain suspected terrorists.

For the most part, western European countries have few incentives to defect from counter-terrorism intelligence-sharing with the United States. Governments in the region clearly feel vulnerable to attack by Islamic terrorist groups; Britain and Spain have suffered major attacks, and Germany, Italy, Denmark, and other

states have uncovered groups planning attacks. Countering Islamic terrorism is a top political priority for both the United States and the European Union.¹⁰ The opposition of Germany, France, and other countries to the American invasion of Iraq in 2003 has not diminished this interest in working with the United States to counter al Qaeda and related groups.

This set of interests has led European countries to regularly share analysis and operational intelligence with the United States. There has been little incentive to add hierarchy to those elements of the relationship that do not raise human rights questions. Instead, the United States and Europe have been able to trust each other to share a great deal of intelligence without direct oversight or monitoring of how the intelligence is collected and analyzed. American intelligence agencies also maintain regular contact with their counterparts in Europe. Analysts from European countries often meet with their American counterparts, and the CIA and FBI have active liaison offices in many European countries that devote much of their time to sharing intelligence. A considerable amount of transatlantic intelligence-sharing takes place in multilateral fora. The United States has access to the law-enforcement and intelligence data and analysis on terrorism maintained by the European Union's European Police Agency (EUROPOL), and EUROPOL and the United States exchange liaison officers to facilitate the exchange of information. They also regularly compare and discuss their assessments of the threats posed by various terrorist groups.¹¹ Member states use the North Atlantic Treaty Organization to exchange threat assessments and analysis as well as operational intelligence that relates to the alliance's peacekeeping operations in Afghanistan.¹² It is unusual for states to share intelligence multilaterally. The reason is that, compared to bilateral sharing, the greater number of partners makes it problematic to evaluate the accuracy of received intelligence, and difficult to control the dissemination of intelligence shared with others.¹³ The fact that the United States and European states rely on multinational mechanisms to share intelligence on terrorism indicates that concerns about defection are relatively low. At the same time, it is important not to read too much into the practice of multinational intelligence sharing, as there is little public evidence about precisely what intelligence participating countries share. It is possible that multinational sharing is limited largely to intelligence of less operational value and to less-sensitive analyses of trends in terrorism.

We know that sharing of intelligence across the Atlantic has also allowed governments to uncover terrorist activities and to interdict plans to launch attacks, although the authorities likely seek to control the release of details of such cooperation. For example, the United States shared intercepted telephone calls and email messages with German and Danish intelligence and law-enforcement agencies, allowing them to arrest Islamic militants planning terrorist attacks.¹⁴ Italian officials allowed the American Federal Bureau of Investigation to question a suspected terrorist about links to terrorist activity in the United States.¹⁵ France provided the United States with intelligence that helped to convict individuals accused on planning major terrorist attacks.¹⁶ In closing down a plot to bomb transatlantic airliners flying from London, the British government shared intelligence on the

plot with the Federal Bureau of Investigation, which followed up on leads in the United States.¹⁷ Furthermore, after each successful attack, authorities from many countries now meet on short notice to share intelligence with the goal of catching the perpetrators and learning about terrorist groups' operations and tactics. After large terrorist attacks in Madrid in 2004 and London in 2005, the Spanish and British governments both enlisted the help of the United States and other European countries. These countries provided the intelligence they possessed relevant to the investigations, used intelligence provided by the Spanish and British to investigate links to the attacks from their residents, and learned lessons about the attackers' motivations, international links, and tactics from the local governments' investigations of the attacks.¹⁸ Furthermore, there is some evidence that the United States cooperates with selected European allies to undertake joint operations based on shared intelligence. Since 2002, intelligence officials from the United States, France, and four other countries have jointly operated a counterterrorist center in Paris that not only pools intelligence but also plans and coordinates operations to monitor or disrupt terror cells. The operation is headed by a French official, funded largely by the CIA and relies on close cooperation between intelligence officials seconded from the participating countries, each of whom is assigned to take the lead in planning and implementing operations that draw on the resources of all six countries when needed.¹⁹

European governments do face pressure to defect from intelligence-sharing with the United States in cases that involve violations of human rights. Europe has a highly developed set of human rights laws, robust international monitoring and enforcement through domestic legal processes as well the European Court of Human Rights and, on some issues, the European Union, and politically important domestic constituents that place a high priority on compliance with these laws. Human rights concerns have made it more difficult for European governments to cooperate with certain practices concerning the detention and treatment of suspected terrorists and the sharing of personal data. An important objective of United States counter-terrorism policy has been to kill or to capture and interrogate senior al Qaeda members and other Islamic terrorist leaders. In many cases, this goal can only be met with the active cooperation or at least the acquiescence of states in which suspects circulate. Cooperation with these policies has been controversial in Europe. Many have objected to the treatment of detainees in facilities under American control in Guantanamo Bay, Afghanistan, Iraq, and secret prisons elsewhere. Transatlantic tension has been strongest on issues that directly involve European countries' territory or residents. These include the extra-judicial detention by the United States of suspects in Europe and their transferal or "rendition" elsewhere (one report estimates that this has occurred over a hundred times), the use of landing facilities in Europe on well over 1200 occasions to transport suspects to third countries, and secret, American-run prisons believed to be located in countries in eastern Europe that have recently joined the European Union.²⁰

This opposition has posed fewer problems for the United States than is often imagined. It appears that some governments initially cooperated with American operations to detain individuals on their territory. The widely discussed American

abduction of Abu Omar in Italy and his rendition to Egypt took place with some cooperation from the Italian intelligence service. Many European governments initially allowed United States intelligence to use their airspace and airports to transport suspects. It is unclear if security agencies in Europe were aware of the full extent of the United States' rendition operation. But cases such as those in Italy and elsewhere should have alerted them to what might be going on. The ability of citizens and journalists to later unearth and map the flight plans of many rendition flights indicates that it would not have been too difficult for European governments to grasp the scope of the program if they had been interested in pursuing this. In addition, American intelligence was able to run secret prisons in the region only with the tacit support of the host countries' governments. It was only when this became public, and threatened to expose governments to legal and political sanctions, that the Europeans began complaining loudly and backing away from cooperation. Note as well that European governments do not object to the detention of all potential terrorists, but rather the extra-judicial detention of such suspects. Many European countries have changed laws to provide the authorities with greater power to detain suspected terrorists. In some cases, where an individual is subject to multiple political jurisdictions, the countries involved have arranged that the country with the more stringent limits on the suspect's rights assume authority.²¹

Data protection laws have impeded, but in the end not prevented, the sharing of personal data with the United States. European governments or firms regularly collect two types of personal data of interest to the United States – passenger name records for individuals traveling on international airline flights and data on international financial transfers. Passenger name records (PNRs) are collected by airlines to facilitate the exchange of information on passengers using multiple carriers for the same trip. All PNRs include basic details such as the passenger's name, contact information, and itinerary. Many airlines also include additional personal information such as passport details, date and place of birth, payment details, and emergency contacts. After the September 11 attacks, American intelligence agencies requested that airlines provide archived PNRs as well as current records before the departure of flights destined for the United States. But distribution of information in PNRs is restricted by the European Union's data protection laws which prohibit the sharing of personal data with countries, such as the United States, that lack comparable data protection standards. Officials of the European Union, which determine other countries' compliance with this standard on behalf of its member states, worried that the European Court of Justice would overturn a decision to share PNRs with the United States. In 2001 the Union agreed to share such data with the United States for two years during which they undertook negotiations to bring American treatment of PNRs up to European standards. The two sides reached a temporary agreement in 2003 and a permanent arrangement the next year. The European Court of Justice did, as feared, invalidate this agreement in 2006, leading the United States and European Union to renegotiate portions of the agreement in 2007.²²

Similar concerns did not prevent Belgium from sharing financial intelligence with the United States. Brussels is the headquarters of the Society for Worldwide

Interbank Financial Telecommunication (SWIFT), which allows thousands of banks and other financial institutions from around the world to securely exchange messages regarding financial transfers. SWIFT managers secretly granted the United States the ability to access these messages after the September 11 attacks. They soon became uneasy about the legal basis of the cooperation, and persuaded the United States to place limits on its searches, to hire an independent auditing firm that ensured the data was only used for terrorism investigations, and to gain the power to veto intelligence searches they considered inappropriate. After details of this cooperation became public in 2006, Belgian and European Union privacy bodies ruled that it violated the Union's data protection rules. Few political leaders in Europe, however, were willing to advocate a stop to sharing of data with the United States. Indeed, most European governments very likely were aware of this arrangement before 2006, as SWIFT management had informed the European Central Bank and the national central banks of many western European countries of its cooperation with the United States. It was only after the program became public and attracted the criticism of data protection organizations and human rights groups that they felt the need to place the program on a secure legal foundation. The European Union and United States worked out an arrangement where SWIFT could continue to share financial information with agencies of the United States government that were certified as having procedures in place that provide privacy protections equivalent to the more stringent European Union standards.²³

From the American perspective, the human rights concerns of some western European states were a form of defection from the expectations that the two sides would engage in close intelligence sharing for counter-terrorism. Why, then, did the United States not seek to create a hierarchical relationship to prevent such defection? Two reasons seem important. First, the differences concerning data protection were rather small. European governments did not object to sharing this information with the United States in principle. Instead they wanted to ensure that the United States would not abuse the information in ways that would intrude on individual privacy. This gap proved reasonably easy to bridge, which meant that it was more effective for the United States to work out formal agreements with European countries rather than seek hierarchical control over their intelligence activities. The United States eventually negotiated an agreement on PNRs that satisfied the European Union, and the Union allowed airlines to share PNRs with the United States while these negotiations took place. European governments acquiesced to the sharing of SWIFT messages with the United States, and moved quickly to change this program and place it on a proper legal footing only when it became public. Negotiated solutions were more problematic for the treatment of detainees. One reason was that some of the activities that the United States undertook, such as, detentions without court orders, sending suspects to countries whose security services would mistreat them, and torture, violate core norms of the European human rights regime. European governments would have faced powerful complaints from domestic and international courts had they cooperated with these activities. Recognizing this, the United States altered its practices so that they did not need the active cooperation of European intelligence and law enforcement.

They stopped illegally detaining individuals in Europe, stopped using European airports to transport suspects, and closed down the secret prisons believed to be located in eastern Europe. These changes made it somewhat more difficult, but not impossible, for the United States to continue to treat suspects as it preferred. In other words, once European governments began complaining about the treatment of detainees, the United States could pursue the policy it preferred on its own at a cost that was much lower than what would be involved in exercising hierarchical control.

Hierarchy: Morocco, Jordan, Egypt

Some countries possess valuable intelligence, but are also likely to defect from promises to share fully with the United States. The United States has sought to mitigate this incentive to defect by creating hierarchical intelligence-sharing relationships. Countries that clearly fall into this category include Egypt, Jordan, and Morocco. Pakistan also has agreed to some elements of hierarchy in its intelligence relationship with the United States.

The United States can obtain two types of valuable intelligence from these countries. Many members, sympathizers, and financiers of Islamic terrorist groups live in or are citizens of these countries. Local intelligence services have the staff, cultural, and linguistic knowledge, and legal authority to collect intelligence on these individuals more effectively than the United States. Furthermore, none of these countries are democracies, and all use repression and coercion to maintain the government's hold on power. Their intelligence services are known to use torture and other harsh techniques to interrogate detainees. This is valuable to the United States' program of "extraordinary rendition" of suspected terrorists. The United States arranges for the transport of suspected terrorists detained in third countries to Jordan, Egypt, Morocco, and a few other countries, for questioning with the knowledge that interrogators will not hesitate to engage in human-rights abuses, such as torture or threats against detainees' families in order to obtain intelligence.

While the United States values intelligence-sharing with these countries, it also worries that each has reasons why it would not share fully. Government agencies, including those involved in internal security, in all of these countries, are known for corruption.²⁴ This may distract officials from pursuing or interrogating terrorist suspects aggressively; indeed, such suspects may be able to pay bribes in order to avoid capture and interrogation. American intelligence agencies also suspect that individuals involved in intelligence and internal security may sympathize with the objectives and actions of Islamic terrorist groups. The basic ideology and many of the leaders of this movement are originally from Egypt, where they struggled to overthrow secular governments for decades. Al Qaeda and related groups have also drawn considerable support from individuals in North Africa, including Morocco and Moroccans living in western Europe. Jordan is not as well known for generating popular support for Islamic terrorism, although the government worries about the development of stronger indigenous terrorists linked to al Qaeda.²⁵ In addition to these administrative problems, the domestic political climate may

create incentives for governments to avoid strong action against terrorist movements. There is some evidence that, while all of these governments see Islamic terrorism as a direct threat to their continued rule and share the desire of the United States to counter the group, support for the movement's chief political complaints and some of its objectives is shared by substantial fractions of public opinion. Furthermore, there is strong opposition to the policies that the United States pursues in the Middle East.²⁶ Concerns about these internal political dynamics might lead even autocratic governments to refrain from fully sharing intelligence on terrorist activity within their territory with the United States in order to avoid alienating potential domestic supporters.

The political situation in these three countries allows them to create a hierarchical relationship with the United States that provides benefits to both parties. While there are elements in all of these countries that are sympathetic to al Qaeda, or oppose cooperation with the United States, the governments do not share these views. Each government views itself as acutely threatened by the activities of al Qaeda and the broader Jihadist movement. This movement has targeted governments in the region as one of the key obstacles to achieving their political goals and for allying with the United States, and declares as a key goal their overthrow and replacement with Islamist governments. All of these countries have been targets of attacks carried out by or inspired by al Qaeda, and the governments view residents that support or sympathize with al Qaeda as powerful threats to their hold on office. There are thus few political differences between the official policy of governments in the region and the United States on the importance of undermining Islamic terrorist movements. This reassures the subordinate states that they can more safely cede some authority over intelligence matters to the United States, which will have less of an incentive to exploit this authority for its own particularistic objectives. The creation of hierarchical intelligence-sharing relationships is also aided by the fact that most of these governments have close security ties to the United States. This provides convenient paths through which the United States can provide its clients with rewards for intelligence cooperation. At the same time, the form of the intelligence-sharing relationship can be shaped so that the hierarchical relationship with the United States is masked from public view. The management of extraordinary rendition is a good example of this. Governments release very little information about what suspects they have in custody through this program or how they are treated. This secrecy serves the purpose of preventing al Qaeda from learning what intelligence the governments have obtained from suspects. But it also reduces the visibility of the subordination to the United States, which likely minimizes the backlash that might arise if more details were made public.

The United States has utilized the three mechanisms discussed earlier – financing, oversight, and training – to exert control over and to monitor these states. The United States provides substantial foreign and military assistance to all three countries. It is also reported to have directly subsidized the intelligence agencies of Jordan and Egypt.²⁷ American officials are closely involved in the treatment and interrogation of individuals transported to these countries for interrogation. Reports suggest that these interrogations are actually conducted by local personnel, many

of whom have linguistic skills and cultural backgrounds similar to those of the suspects. But American intelligence officials play an important role in selecting which individuals will be subject to interrogation, providing many of the questions to be asked, and closely monitoring and supervising the questioning and treatment of detainees. Some American intelligence personnel appear to serve essentially permanent positions within the intelligence agency of Jordan and play an active role in its daily activities.²⁸

This division of labor – with Americans identifying suspects, guiding the interrogations, and integrating the intelligence obtained with other sources, while local authorities are responsible for the actual detention and interrogation of suspects – serves two purposes. It maximizes the joint gains available from cooperation by drawing on the strengths of each state. The United States contributes suspects, and questions and analysis drawn from its more wide-ranging sources of information on Islamic terrorism, while the host government provides many personnel with the linguistic skills to conduct interrogations and a willingness to violate international human rights norms concerning the treatment of detainees. But the same sharing of responsibility also places the United States at some risk of defection by its partner. One advantage of this risk is that it actually provides the subordinate states some room to defect from intelligence-sharing with the United States. By providing them with some power to harm the United States, this form of collaboration may reassure the subordinate states that they are not entirely at the dominant state's mercy. At the same time, the United States does not rely on these allies for the interrogation of suspects. The most senior al Qaeda suspects appear to be detained and interrogated by American personnel in sites that are entirely under United States control in Afghanistan, Poland, and Romania. Less important suspects are subject to rendition to countries in the region. This division of responsibility may reflect concerns about the reliability of Jordan, Egypt, and Morocco to secure the more valuable intelligence that these suspects could convey to their captors.²⁹ These three countries are also among the largest recipients of United States military training. Dozens to hundreds of military and intelligence personnel from each state visit the United States for training each year, and more receive instruction from American personnel in their home countries. Such training likely includes substantial components dealing with internal security and counter-terrorism matters. The military of Egypt and Morocco play important roles in counter-terrorism policy. Furthermore, the United States has, since September 11, developed new, similar training programs that focus specifically on intelligence and counter-terrorism and that face fewer legal limitations on including personnel from countries with poor human-rights records.³⁰

The United States has sought to create a hierarchical intelligence-sharing relationship with Pakistan as well, but the Pakistani government has resisted subordination to American leadership because of domestic political concerns. Intelligence-sharing with Pakistan is very important for the United States. The most senior al Qaeda leadership operates from the country, and Pakistani agencies should be in a good position to collect intelligence on its location and activities. Many terrorist cells in other parts of the world have links to al Qaeda that run

through Pakistan, so intelligence collection there can thwart attacks planned overseas.³¹ While the potential benefits of intelligence cooperation with Pakistan are likely higher than with any other country, the risks are also very high. The military government of Pakistan clearly sees al Qaeda as a serious threat to its security, giving it powerful reasons to cooperate with the United States. At the same time, however, there are important forces that push against such cooperation or make it difficult for the country's political leadership to translate a desire for cooperation into effective practice. Elements of the country's Inter-Service Intelligence bureau and armed forces are believed to sympathize with al Qaeda or the Taliban. This political orientation, along with widespread corruption, may reduce their willingness to share intelligence on these groups or to act on intelligence shared by the United States. Furthermore, the military and intelligence services face multiple political issues that distract them from focusing on intelligence collection against al Qaeda; these include the prospect of armed conflict with India, disagreements over their role in internal politics, and seeking to maintain the current military regime in power in the face of multiple opposition movements.³² And domestic political support for close cooperation with the United States or for the vigorous use of military force within Pakistan in counter-terrorist operations further reduces the government's incentives to collect or to share intelligence. Such pressures play out, for example, in the Pakistani government's attempts to manage the country's tribal areas. The Pakistani state has never fully established its control over these areas, which border Afghanistan and are believed to be where surviving leaders of al Qaeda have their bases of operation. The Pakistani government has resisted American pressure to take aggressive action in this area. In recent years it actually reduced its military and intelligence presence in the region, hoping that respect for local tribal governance would lead the population to no longer offer refuge to al Qaeda and the Taliban. American officials identify this policy as a key reason for the continued survival of these movements.³³

The outcome of these conflicting pressures within Pakistan has been a struggle with the United States over the nature and extent of intelligence sharing. The United States has offered Pakistan considerable inducements in exchange for more closely directing and monitoring Pakistan's efforts to collect or to act on intelligence on al Qaeda.³⁴ But the Pakistani government has resisted many of these efforts. For example, Pakistan has become one of the largest recipients of United States aid in the world since 2001. Much of this financial assistance is directly tied to the country's efforts against al Qaeda. Pakistan has been the largest beneficiary by far of the United States' "Coalition Support Fund," which is used to reward or compensate countries for assisting with specific American counter-terrorism operations. This fund, which requires recipients to document their support, provides the United States with an important potential source of detailed information on Pakistan's counter-terrorism and intelligence actions. But Pakistan does not provide the United States with sufficient information to inform American evaluations of their performance, and the United States has proven reluctant to insist that Pakistan's reimbursements be clearly linked to its performance, fearing that doing so would alienate the country and reduce its interest in cooperation.³⁵ The United

States and Pakistan also regularly struggle over how to collect and to use “actionable” intelligence on the activities of al Qaeda or Taliban members. The United States has pressed that its large military operation in Afghanistan be granted some rights to cross into Pakistan to collect or to act on such intelligence. The Pakistani government has resisted, presumably fearing that American military action on its territory might complicate its exercise of authority in border regions or further inflame domestic opposition to cooperation with the United States.³⁶ The unwillingness of Pakistan to either take actions that will make it more trustworthy to the United States or to subordinate itself to American intelligence has led the United States to develop substantial autonomous intelligence capabilities in the region. These include intelligence functions attached to the American military effort in Afghanistan, the introduction of more American personnel under cover in Pakistan to collect human intelligence, and attempts to collect intelligence from satellites and communication intercepts independent of the Pakistani intelligence services.

Little sharing: Syria and Iran

There also exist countries that possess intelligence of value to the United States in its campaign against Islamic terrorism and that are likely to defect, but for whom the creation of a hierarchical intelligence sharing relationship would be too costly to develop or maintain. Syria and Iran would seem to fit into this category. Both have valuable intelligence. Syria is believed to be an important transit point for foreign fighters and funds going to support al Qaeda’s activities in Iraq. Many individuals that held prominent positions in the administration of former Iraqi dictator Saddam Hussein now live in exile in Syria; some may have connections to insurgents operating against the United States in Iraq. The Syrian and Iranian governments have active programs to collect human intelligence on developments in Iraq. They likely have sources of information that are beyond the reach of American intelligence and which could assist the United States’ military and political missions there. Iran also operates political and intelligence missions in Afghanistan that could provide useful intelligence to the United States. Some important members of al Qaeda are believed to reside in Iran, although it is not clear how much the Iranian government controls their activities and contacts overseas. These individuals may have intelligence on the group’s activities that would interest the United States.

Profound policy differences, of course, are the major barrier that prevents these states from sharing such intelligence with the United States, and would keep the United States from trusting the content of any intelligence these countries would share. The United States and Syria differ over the latter’s conflictual relationship with Israel, intervention in Lebanon, and possible support for insurgents in Iraq. American relations with Iran are troubled by accusations that Iran is developing nuclear weapons, supports terrorism, and intervenes in Iraqi and Afghan politics in ways that counteract United States efforts in these countries. The fact that these differences influence each country’s core interests in the region and beyond make hierarchy a too costly solution to the problem of defection. The United States would

have to make major policy sacrifices in order to tempt either Syria or Iran into allowing it to supervise their intelligence activities. Conversely, such supervision would make these countries very vulnerable to American defection in the form of interfering in their internal political affairs or their ability to collect intelligence overseas.

It is not surprising, then, that what intelligence sharing that has taken place with Iran or Syria has been episodic, occurring when the countries perceive that they face an immediate threat in common with the United States. Such cooperation has not been sustained beyond such shared threats, nor does it appear to have been institutionalized in formal sharing arrangements that lay out expectations about what intelligence each state would be expected to provide. Syria did share considerable intelligence on al Qaeda shortly after the September 11 attacks, apparently because the government saw al Qaeda as a threat to its position and out a desire to avoid a confrontation with the United States. American intelligence agencies also used their practice of extraordinary rendition to deliver suspected terrorists to Syria for questioning by the authorities, who shared evidence gathered in these interrogations with the United States. But it appears that this cooperation dried up sometime around 2003 due to Syrian opposition to the invasion of Iraq and conflicts over the country's actions in neighboring Lebanon. Iran also cooperated with the United States by sharing intelligence, especially on individuals connected to al Qaeda that fled to Iran after the American invasion of Afghanistan in 2001, as well as on developments in that country. But subsequent conflicts with Iran over nuclear energy and Iraq may have reduced Iran's willingness to share intelligence in more recent years.

Conclusions and implications

The United States can benefit substantially from sharing intelligence with other states in its struggle against Islamic terrorism. But it cannot trust all of these states to treat the intelligence it shares securely, or to provide all the relevant intelligence in their possession. The United States can compensate for this lack of trust by negotiating hierarchical relationships to govern intelligence sharing. Hierarchies allow the United States to limit the decision-making autonomy of cooperating states and provide it with tools to directly monitor their compliance with promise to share intelligence. Creating hierarchies is costly to the United States, which must provide material rewards and credible guarantees that it will not exploit its influence over a partner. When the United States trusts another state not to defect, the benefits of hierarchy are too small compared to these costs. This is essentially the situation with transatlantic intelligence sharing. The United States knows that European countries want to counter Islamic terrorism, and thus generally perceive intelligence sharing to be in their interest. There is little need to create a hierarchy to govern this set of relationships. Hierarchy is a worthwhile option when the when the partner state has strong incentives to defect from its promise to share, but its activities can be governed by the dominant state for a modest cost. Examples of such an arrangement include Jordan, Egypt, and Morocco. All three are allies of

the United States committed to countering Islamic terrorism but who face political and administrative pressures to renege on this commitment. The United States has been able to reduce such renegeing by developing means of direct control and monitoring over these subordinate states in exchange for security commitments, financial assistance, and by crafting its control mechanisms so that the subordinates retain some autonomy. Hierarchical relationships are too costly to create for relations with other states that possess intelligence of value to the United States but do not share its political goals, such as Iran and Syria.

In addition to shedding new light on the extent and form of contemporary intelligence sharing arrangements, relational contracting provides some insight into the question of intelligence reform in the United States. Many analysts and blue-ribbon panels have suggested that the American intelligence community's top priority should be to strengthen its ability to collect human intelligence rather than relying on local states to reliably collect and pass along this information. Daniel Byman advises that "[t]o reduce its vulnerability to manipulation, the United States should also try to diversify its intelligence sources to ensure that it does not rely exclusively on the local ally for information."³⁷ Senator Saxby Chambliss, a member of the Senate Select Committee on Intelligence, concludes that "the CIA had lost its focus on [human intelligence] missions and needed to put more collectors on the streets, rely less on other foreign intelligence agencies, and find ways to penetrate terrorist cells."³⁸ This criticism was also emphasized in the independent investigations of the terrorist attack by al Qaeda on 11 September 2001 as well as the United States intelligence community's incorrect conclusion that Iraq possessed weapons of mass destruction prior to the American invasion of the country in 2003.³⁹

The United States intelligence community has sought to substantially expand its human intelligence capabilities directed against terrorist organizations. But there are important limits to what this effort can contribute. The intelligence community has found it difficult to recruit sufficient numbers of personnel with the language skills and cultural backgrounds that would be most useful for collecting human intelligence on Islamic terrorism. The fact that the large majority of the members and supporters of Islamic terrorist groups are located outside of the United States places logistical and political limits on how far American intelligence officers can go in obtaining such intelligence, as even friendly countries often object to the collection of human intelligence on their territory. Furthermore, it is not clear that the United States has sought to limit or replace in any significant way intelligence-sharing with other states. Indeed, as the case studies make clear, the United States has substantially increased its sharing with the rest of the world, and especially so with countries that face strong incentives to defect from such sharing. The reason for this, I suggest, is that American intelligence agencies understand the practical limits they face in expanding human intelligence collection, and recognize that they can use hierarchy to better ensure that partners overseas will not defect when supplied with such intelligence. Clearly recognizing and understanding the costs and benefits of such hierarchical arrangements compared to the proposals of intelligence reform advocates may lead to a re-evaluation of the importance attached to the development of a stronger American effort to directly collect human intelligence.

Notes

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