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German and U.S. Domestic Counterterrorism Responses: Only Half a World Apart

By Dorle Hellmuth

How do German and American counterterrorism efforts compare?

What can the U.S. learn from German counterterrorism approaches?

Introduction*

According to popular opinion, German and U.S. approaches to counterterrorism could not be more different. One views terrorism as a military problem and the other as a law enforcement issue. Depending on either U.S. or German perspective, German responses are considered “soft,” while U.S. reforms are considered “over the top.” From a German standpoint, new colossal bureaucracies like the Department of Homeland Security and the Office of the Director of National Intelligence are examples of executive power grabs after the 9/11 attacks, and a checks-and-balances system gone awry. On the other side of the transatlantic divide, U.S. officials and lawmakers warn about the threats to the U.S. that come from Germany, among other European countries, due to their lax security provisions.¹

However, when looking past the rhetoric and focusing on domestic counterterrorism² responses, one sees that German and U.S. approaches are not as different as commonly thought. The list of reforms that have been adopted since 9/11 is not only impressive in the United States, but also in Germany. In fact, since the 9/11 attacks both governments sought to centralize counterterrorism coordination; pool law enforcement and intelligence data and analysis capacities; and strengthen information-sharing across all three levels of government (local, state, and federal).³ While their objectives are indeed very similar, their responses still vary in nature and scope. German and U.S. government structures hold an important key to explaining why these similar objectives have translated into different outcomes. The German *Länder* (states), which exercise veto powers on a large number of domestic security issues through the Bundesrat (the upper chamber of the German parliament), oppose federal centralization plans, as they are concerned about federal encroachment on *Länder* turf. As a result, German solutions to information-sharing and coordination solutions tend to be more net-centric and technology-based, leaving the overall security architecture intact. In the United States, Congress has emerged as the primary stakeholder of reorganization efforts, in an effort to gain control over executive branch institutions. However, legislated reorganization efforts resulted in far more hierarchical organizational structures.

Despite the differences inherent in their political systems, Germany and the United States are particularly well positioned to learn best practices from each other. Like the American founding fathers, the German constitutional assembly sought to restrain executive powers and prevent the concentration of powers. This is not only reflected in the decentralized constitutional set-ups and fragmented national security architectures, but also in the way that government branches and security agencies seek to check each other's powers through e.g., legislative and judicial oversight and turf battles. As Germany and the United States exhibit similar “structural” challenges and “restrictive” political cultures, the two NATO allies can greatly benefit from understanding their respective institutional arrangements and practices. A detailed analysis of the strengths and weaknesses of domestic counterterrorism processes and outcomes can help shape U.S. policy toward Germany, and vice versa, while furthering joined responses to the transnational terrorist threat.

Not That Different After All

Since the 9/11 attacks, German and U.S. counterterrorism reforms were designed to (1) centralize counterterrorism coordination; (2) pool law enforcement and intelligence data

and analysis capacities; and (3) strengthen information-sharing among security agencies across all levels of government. In Germany, plans to strengthen the preventive powers of the Federal Criminal Police Office (*Bundeskriminalamt*, or BKA), as well as centralize certain BKA counterterrorism authorities at the federal level were initiated as part of the 2001 Anti-Terror Package, and continued as a result of the 2006 federalism reform and the 2008 BKA Act. Created in late 2004, the new Joint Counterterrorism Center (*Gemeinsames Terrorismusabwehrzentrum*, or GTAZ)⁴ facilitates joint analysis and information-sharing among some forty federal and *Länder* security services. Since spring 2007, the Joint Anti-Terror Database pools counterterrorism data of federal and *Länder* intelligence and law enforcement agencies. Finally, several *Länder* created their own joint analysis centers to facilitate counterterrorism information-sharing across law enforcement and intelligence divides.

In the United States, efforts to centralize coordination within the federal branch resulted in the creation of the Department of Homeland Security (DHS) and the Office of the Director of National Intelligence (ODNI). While the former merged twenty-two agencies and offices, the new Director of National Intelligence is tasked with coordinating the activities of the seventeen members of the intelligence community. Watch list data and analysis capacities were combined in the FBI-run Terrorist Screening Center (TSC) and Terrorist Threat Integration Center (TTIC); the latter subsequently became the National Counterterrorism Center (NCTC) as part of the ODNI. New state-run Fusion Centers were designed to institutionalize information-sharing and serve as analysis hubs for counterterrorism agencies across all levels of government, as well as the private sector.

The similarities in German and U.S. counterterrorism approaches are not coincidental, as the national security architectures in both countries are extremely fragmented. *Inter alia*, this fragmentation is evident across the federal government: numerous security services are involved in counterterrorism, resulting in strong interagency rivalries. As both countries are set-up as federal systems, counterterrorism authorities are also split across state and federal government levels. This is especially obvious in the German case where the *Länder's* sixteen Criminal Police Offices (*Landeskriminalämter*, or LKAs) and sixteen Offices for the Protection of the Constitution (*Landesämter für Verfassungsschutz*, or LfVs) resemble miniature FBIs and MI5s with full jurisdiction in their respective *Land*. Finally, coordination and information-sharing is further complicated by the German "*Trennungsgebot*" (the principle of separation that stems from an Allied "police letter" in 1949 and requires a clear division between intelligence and policing powers) and U.S. "wall" between law enforcement and intelligence elements within the Department of Justice (put in place by the Foreign Intelligence Surveillance Act of 1978 to guard against domestic spying activities). While in theory the 2001 Patriot Act was designed to bring down this wall, in practice it has been difficult to bridge the divide between the case-oriented, after-the-fact police and the more long-term oriented, forward looking intelligence cultures.

Bringing Government Structures In

While German and U.S. reform objectives were indeed very similar, their responses still differ in nature and scope. The particular make-up of German and U.S. parliamentary and presidential government structures,⁵ rather than an exaggeration of differences in threat perceptions and political cultures, represents an important key to explaining the differences in outcomes, e.g., varying degrees of centralization and institutionalization. In the United States, the inherent competition between the President and Congress shaped institutional counterterrorism responses considerably.⁶ As both branches depend on each other for producing tangible results they can present to future voters, neither branch can afford to become complacent and let the other branch gain the advantage. In Germany, the powerful states exercise veto powers on many domestic security issues through the Bundesrat, and influence counterterrorism decision-making significantly.⁷ In contrast to the U.S. Congress, which has a vested interest in generating legislation and gaining oversight powers, the German Bundesrat is determined to protect the status quo (aka *Länder* rights) in the domestic security realm.

Repeated attempts by former Federal Interior Minister Otto Schily to centralize coordination of all police and intelligence capacities at the federal level were ultimately foiled by the *Länder*, which have been dealt a strong veto hand in the intergovernmental bargaining process over domestic se-

curity powers through their Bundesrat vote. In fact, they left their footprint on all federal reform proposals that affected existing *Länder* rights and required *Länder* approval. Beyond that, the *Länder* carved out additional powers for themselves: Just as they insisted on extending disclosure powers to their own intelligence services as part of the 2001 anti-terror legislation, *Länder* security services secured equal access to the anti-terror database. The Interior Minister Conference⁸ of the *Länder* further played a large role in the design of the database. As a result, German solutions to information-sharing and coordination problems tend to be more net-centric and technology-based, and are designed to leave the overall security architecture intact.

Incidentally, German solutions were similar to the various institutions with flat organizational designs the White House created per executive order soon after the 9/11 attacks. Relying on his own, independent institutional basis, the U.S. president sought to establish new coordinating mechanisms, councils, and czar positions that would strengthen presidential powers and enhance executive flexibility vis-à-vis Congress. These included the new Office of Homeland Security/Homeland Security Council (OHS/HSC) and the aforementioned TTIC and TSC. However, wanting a piece of the homeland security pie, Congress soon insisted on statutory mandates for all of these institutions, which ensured that lawmakers would have a say regarding all future budgetary, management, and personnel issues. While lawmakers succeeded in securing oversight powers over all new institutional arrangements, legislated reorganization efforts resulted in more hierarchical and bulky bureaucracies, as illustrated by the new Department of Homeland Security, the Office of the Director of National Intelligence, and the National Counterterrorism Center.

Finally, varying degrees of federalism gave rise to differing vertical power-sharing arrangements in Germany and the United States. While the FBI expanded its Joint Terrorism Task Forces (JTTFs) to all fifty states, the BKA's powers (as well as those of the Federal Office for the Protection of the Constitution, or *Bundesamt für Verfassungsschutz*) to operate within the *Länder* are tightly circumscribed.⁹ As a result, the German focal point for counterterrorism-related analysis formed at the federal level, where the intelligence and law enforcement agencies of the sixteen *Länder* participate in the GTAZ. In the United States, by contrast, there is a “reverse” bias against state involvement at the federal level, as, for example, state participation at the NCTC is kept at a minimum. Instead, information-sharing hubs have emerged at the state level, where federal law enforcement agencies participate in most of the state-led fusion centers.

Best Practices for the United States

Despite the differences inherent in their respective presidential, parliamentary, and federal systems, Germany and the United States are particularly well positioned to learn best practices from each other. Both political systems are designed to restrain executive power and epitomize power-sharing arrangements. In the U.S. separation of powers system, inter-branch dynamics between the White House and Congress have been famously referred to as “separated institutions sharing powers.” In Germany, the interlocking powers of German federalism in the domestic security arena (“*Polizei ist Ländersache*”—law enforcement is state prerogative) require the federal executive branch and the *Länder*/Bundesrat to find cooperative solutions, while the electoral system has given rise to power-sharing arrangements among the coalition partners. In addition to the vertical separation of powers in both countries, the powerful U.S. Supreme Court and German Constitutional Court are prominent manifestations of the same notion. The immense distrust of concentrated security powers has left the security architecture in both countries fragmented and given rise to similar reform objectives in the first place. Restrictive political cultures (reflecting a checks-and-balances tradition) further influence how German and U.S. institutions try to check each other's powers. They are also reflected in the enduring national debates about the appropriate balance between new security powers and civil liberties, as concerns loom large over e.g., the protection of German privacy standards and the U.S. Fourth Amendment. All things considered, the similarities between the challenges German and U.S. decision-makers and counterterrorism officials face at home are striking.

Even so, U.S. policymakers have traditionally focused on, and even idealized, the counterterrorism organization and practices of Great Britain—a country far more accepting of tough security powers and endowed with fusion-of-power structures that evolve around a strong executive at all times.¹⁰ As the above mentioned similarities, as well as a shared cultural aversion to concentration of powers

and domestic surveillance¹¹ illustrate, the German experience serves as a unique, and at least equally important, starting point when searching for sensible counterterrorism approaches in the United States.

GTAZ

While lawmakers have looked to e.g., the British Joint Terrorism Analysis Centre (JTAC) when seeking solutions on how to improve information-sharing and joint analysis,¹² the German GTAZ arrangement also provides critical insights for U.S. planners. Like the United States, Germany is a federal system which, unlike the United States, has succeeded in better integrating states into its information-sharing and joint analysis facilities at the GTAZ, and elsewhere. The loose, informal¹³ German approach has allowed for the participation of not only all thirty-two *Länder* security services, but also judicial and foreign law enforcement representatives (in addition to all federal counterterrorism-related agencies) at the GTAZ. Its less integrated structure has thus fostered unique partnerships among the GTAZ members, while preventing the creation of new stovepipes. NCTC's more formalized, hierarchical organization does not allow for "cross-jurisdictional" relationships like these.

Germany's information-sharing structures in the domestic security realm are not only facilitated through the loose GTAZ arrangement, but also rest on several fixed technological pillars—in the form of database systems that link *Länder* and federal services—as well as the recently established joint counterterrorism database (allowing law enforcement and intelligence services to jointly store and access terrorism-related data for the first time). The networked arrangement is worth a closer look as DHS is expanding its Homeland Security Information Network and classified portals to improve the connectivity of federal, state, and local counterterrorism officials.

Fusion Centers

Like their U.S. counterparts, several German states also set up their own fusion centers.¹⁴ In contrast to the German centers, which are strictly focused on bridging the divide between law enforcement and intelligence analysis, U.S. Fusion Centers tend to be more eclectic in terms of their membership and "all-hazards" focus. The organization, functions, and authorities of these centers hold vital lessons for both countries, and the United States in particular, as Fusion Centers continue to raise civil liberty concerns in various states.

Domestic Intelligence

Even though it is not clear if domestic intelligence agencies are more effective and successful at preventing terror attacks¹⁵—British and German services failed to detect the 2005 London attacks and multiple other terrorist plots—U.S. planners ought to take a close look at German domestic intelligence authorities if such an intelligence reform were to be seriously tackled. Due to the similarities in political cultures, in addition to the fact that German services have more stringent restraints imposed on them than their British counterparts, their modus operandi make for instructive case studies for U.S. planners.

Data-Mining

Despite a cultural aversion to domestic surveillance and an insistence on high data privacy standards, Germans security services have traditionally strongly relied on data-mining systems to track and identify terrorists, as well as map out linkages between them.¹⁶ These programs, and the way they seek to strike a balance between civil liberties and counterterrorism powers in the aftermath of the 9/11 attacks, could serve as a useful model for U.S. policymakers.

Conclusion

The transatlantic debate over European and U.S. counterterrorism practices is frequently focused on exaggerating differences and confirming stereotypes, while conflating domestic and foreign counterterrorism approaches. Even though differences in responses exist, it is important to note how these relate to structural effects. More importantly, and perhaps most constructively, it is crucial to highlight the many similarities¹⁷ between German and U.S. counterterrorism challenges, objectives, and practices, and provide a detailed understanding of how Germany and the United States cope with their decentralized political and security structures. At the end of the day, transnational terrorist threats require responses that not only go but also look beyond national borders.

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AICGS
1755 Massachusetts Ave. NW
Suite 700
Washington, DC 20036
www.aicgs.org

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1 "US Ambassador to Berlin Says Europeans are Soft on Terror," *DW-World.de*, 11 September 2006; Richard Falkenrath, "Europe's Dangerous Complacency," *Financial Times*, 7 July 2004; "US Fears Europe-based Terrorism," *BBC News.com*, 15 January 2008.

2 In the context of this article, domestic counterterrorism is defined as 1) information-sharing between security services; 2) coordination among security services; and 3) intelligence collection, analysis, and dissemination.

3 In addition, both German and U.S. security services gained new preventive and/or disclosure powers; a discussion of these goes beyond the scope of this article.

4 In early 2007, the GTAZ was further expanded to include the Joint Internet Center (*Gemeinsames Internetzentrum*, or GIZ) designed to monitor and analyze Jihadi websites and online activities.

5 Government structures refer to the way power is allocated among the various branches and levels of government, and the resulting process within which reforms are decided and implemented.

6 A prominent school of thought holds that U.S. policymaking processes and outcomes are the product of the tugging and pulling between different bureaucracies, eager to defend their turf. However, this perspective overlooks the powerful presidential potential for controlling inter-agency meddling, as well as Congress' ability to rein in executive branch initiatives. Congress thus managed to impose statutory boundaries on those institutions and programs that were unilaterally created by the executive branch after 9/11, including the Homeland Security Office/Advisor, the Terrorist Threat Integration Center, the FBI's National Security Branch, and the NSA warrantless surveillance program.

7 To be sure, the Interior Minister also faced other veto players in the form of e.g., coalition partners and bureaucratic rivals. However, coalition and/or Justice Ministry preferences were frequently trumped by *Länder* interests after the 9/11 attacks.

8 In an effort to provide uniform representation of state interests in the Bundesrat—against those of the federal government in the Bundestag—the *Länder* have formed the permanent steering committee of the Interior Minister Conference (*Innenministerkonferenz*, or IMK). Apart from coordinating state strategies, IMK procedures are used to harmonize operational details and ensure uniform policy administration across the sixteen states.

9 The BKA and BfV have no permanent representation in the sixteen states. Instead, state and federal services are connected via database networks (INPOL and NADIS).

10 Matthew Johnson, "FBI's Intelligence Woes Restir Debate on an American MI5," *CQ Homeland Security*, 23 October 2007; Advisory Panel to Assess Domestic Response Capabilities for Terrorism Involving Weapons of Mass Destruction, *Second Annual Report: Toward a National Strategy for Combating Terrorism* (Arlington, VA: Rand Corporation, December 2000), 41-44.

11 On this point, see also Peter Chalk and William Rosenau, "The Enemy Within," *Rand Monograph* (Arlington VA: RAND, 2004), 55.

12 See, for instance, Joe Fiorill, "House Democrat Seeks New Information-Sharing Unit," *GovExec.com*, 5 January 2006.

13 The GTAZ has no operation center or director; the law enforcement and intelligence services represented at the center are housed in separate buildings, and come together for daily meetings and as part of joint working groups.

14 Joint Information Analysis Centers were created in e.g., Lower Saxony, Saxony, and Hesse.

15 On this point, see also John Miller, "Law Enforcement, American Style," *New York Times*, 14 September 2006.

16 See, for example, Niels Sorrells, "Taps and Terrorism: A German Approach?" *Intelligence and National Security* 23, no. 2 (April 2008): 189.

17 Michael Jacobsen has also stressed this point, in Jacobson, *The West at War* (Washington: The Washington Institute for Near East Policy, 2006).

Dr. Dorle Hellmuth was a DAAD/AICGS Fellow in May/June 2009. She is a lecturer at the Catholic University of America.

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