

Cooperation in Latin America against Terrorism

Presentation by Mr. Ignacio Ibáñez
Program Manager
Inter-American Committee against Terrorism
Organization of American States

Thank you, Mr. Chairman.

Your Excellencies, President Uribe, Minister Németh and Minister Mayor Oreja;
Distinguished audience and panelists;
Ladies and gentlemen;

It is a great honor for me to be here today and partake in this magnificent “intellectual picnic” if I may borrow Leonard Read’s formula to describe how powerful high-level intellectual meetings can be in the battle of ideas. I would therefore like to praise this momentous initiative, and thank the European Ideas Network and the EPP Group in the European Parliament for organizing it and for having invited me to give a short presentation on “Cooperation in Latin America against Terrorism”.

As you may know the headquarters of the Organization of American States is in Washington D.C., so I’ll put aside for a moment—just a moment—that I am a Spaniard and be a bit American by starting with a disclaimer: the views and opinions expressed in this presentation are, unless said otherwise, my opinions and views and not necessarily those of the OAS or the Inter-American Committee against Terrorism.

I. Unity based on principles and values

Now, I would like to start by reading you a short text:

“The central values of civilization are in danger. (...) The position of the individual and the voluntary group are progressively undermined by extensions of arbitrary power. Even the most precious possession of Western Man, freedom of thought and expression, is threatened by the spread of creeds which, claiming the privilege of tolerance when in the position of a minority, seek only to establish a position of power in which they can suppress and obliterate all views but their own. (...) these developments have been fostered by the growth of a view of history which denies all absolute moral standards and by the growth of theories which question the desirability of the rule of law.”

This analysis of the fundamental threats to our open societies—the arbitrary use of power by the state, moral relativism, intolerance, constant questioning of the rule of law—can be applied to many time periods. This could even be an accurate diagnose of the current state of world affairs, couldn’t it? Well, it was actually written in 1947 as part of the foundational Statement of Aims of Friedrich Hayek’s Mont Pelerin Society.

Back in 1947, or in 1776, or in 1933, or in 2001, or today, the threat is the same: a threat against our freedom and our tolerant and peaceful way of living. Although these are concepts born in Western societies through a historical process with deep Greek, Roman and Judeo-Christian roots, these concepts have become universal values and principles—legally recognized by all 194 Member States of the United Nations.

Following this line of thought, we can clearly identify terrorism as the most obvious threat to the world and particularly to our civilization, as terrorists look to exploit the weaknesses of post-modern societies in order to violently achieve their political goals. Terrorists look for disunity, they play with our own values and principles—freedom, democracy, equality, rule of law—and use them against us. Terrorists ask our societies uncomfortable questions—“Should all creeds be respected? Should we prioritize national security over human rights considerations? Should we confront the threat abroad or at home?”—as they know many have forgotten or purposely ignore the values and principles that would help us give straight answers. Thus, social disunity. Thus, the wreckage of liberal democracies.

Contrario sensu, as we have experienced in Spain and Colombia, under the administrations of President Aznar and President Uribe respectively, only when an overwhelming majority of society—government, political parties, civil society, citizens—is united, victory against terrorism is within reach. Who can forget the turning point that the killing of Miguel Ángel Blanco represented in the fight against ETA? Who can forget February 4, 2008, when Colombia’s civil society showed its strength against FARC by gathering more than 13 million people in different rallies throughout the world?

Therefore, in order to defeat this threat, as other ideological threats to liberal democracy were historically defeated—absolutism, totalitarianism—the main battlefield ought to be the battle of ideas. For only if an overwhelming majority of individuals in our societies recognize the paramount importance that our foundational liberal principles and values have to address modern crossroads, only if they truly value the lessons that history has brought, only if it is clearly understood that our moral roots are the key to our survival, only then liberty and peace will prevail over terror and death.

II. The Americas

The moral and intellectual heritage I have been referring to is shared by Europe and the Americas. Latin America and the Caribbean are part of the Western world, by history, culture, language, law, and religion among many other factors, and have contributed significantly to its development. For example, even if it is not acknowledged by most of the so-called “indigenous movements”, it is thanks to democratic-liberal principles of tolerance and equality before the law, that pre-Columbian traditions, languages and cultures are respected and protected throughout the Hemisphere today. For those of you who are interested in this topic, I highly recommend reading a book that has become a classic in this area, Carlos Rangel’s “Del buen salvaje al buen revolucionario: mitos y realidades de Latinoamérica”, which in its English version was translated to “Latin Americans: their Love-Hate Relationship with the United States”.

Latin-American countries have been suffering terrorist attacks since the second half of the XX century, as these acts were often employed by revolutionary guerrillas as a means to destabilize the state. *Sendero Luminoso*, FARC, the 1992 and 1994 bombings in Argentina... However, Latin American countries have often been plagued by the same illnesses as their European and American siblings when confronting terrorism. In one case after another, the ultimate problem lies in the incapacity of certain sectors of the society to link this threat to a direct attack against their fundamental rights, and the values and principles that comprise them.

Those who have not been willing to see these connections have often been the same ones questioning the desirability or applicability of the rule of law. By confronting security versus fundamental rights, many have unknowingly or purposely forgotten that since Hobbes and Locke, the social pact between the individual and the state implies that the latter's first and foremost obligation is to defend the life of the former. In addition, the state must respect and protect two other inalienable rights, liberty and property, with the entire social contract situated within an agreed upon legal framework, the rule of law.

Therefore, securing the life and integrity of individuals cannot be separated from liberty and the rule of law, since, by its very nature, a constitutional framework enacts the social pact and protects the liberties of the individual while restricting the powers of the government.

Now, many of you may be thinking that this all very well, but will also be asking yourselves whether a government can actually fight against terrorism in an effective way while fully respecting fundamental rights and liberties. I would like to propose two preliminary answers: establishing or strengthening a comprehensive legal regime against terrorism, and fully cooperating internationally.

III. A comprehensive legal regime against terrorism

The first step to preventing and fighting terrorism is to have appropriate legislation in place. How did the international community react to this increasing need to have strong laws against terrorism? From the 1960s onwards the international community or rather, the "international society", has been drafting international conventions and protocols that seek to harmonize a universal response to terrorism. As of today, these 16 universal treaties against terrorism are topic-driven treaties, each one of them focusing on specific sets of offenses related to: aviation and maritime security, internationally protected persons, means of attack (bombs, weapons of mass destruction, nuclear terrorism) and preparatory acts (terrorism financing). By ratifying and implementing these treaties into national legislation, countries have been, with uneven results, strengthening their counter-terrorism legislations.

Additionally, since 1999 the UN Security Council has also been "legislating" by issuing binding Security Council resolutions—i.e. adopted under chapter VII of the UN Charter, which deals with threats to international peace and security. Of special importance in regard to counter-terrorism efforts is UNSCR 1373 (September 28, 2001), which directly establishes obligations with regard to the need to legislate against terrorism and its financing, to set up the appropriate institutional and regulatory frameworks to deal with this threat, and to cooperate internationally to effectively prevent and fight against terrorism. The UN General Assembly has also

contributed to these efforts by drafting a “Global Counter-Terrorism Strategy” (2006, reviewed in 2008 and again last week).

Regionally, OAS Member States have also taken steps in this direction, especially by drafting the Inter-American Convention against Terrorism (2002), and by creating the Inter-American Committee against Terrorism (1999) and its Secretariat (2002).

Finally, I would like to draw your attention to one last point. Some of you may have noticed that I did not mention the existence of an international, agreed upon definition of terrorism...I did not mention it, because such a definition does not exist. As you can imagine this is a contentious topic: what about “freedom fighters”? How can we reconcile international law principles such as self-determination or sovereignty with an over-arching definition of terrorism?

The truth of the matter is—and this is not only my position but incidentally also that of OAS/CICTE and certain agencies of the UN—that from a legal standpoint a definition of terrorism is not necessary. The 16 international legal instruments against terrorism criminalize more than 50 specific offenses that cover all but a few—e.g. cyber-terrorism—terrorist conducts. Of course I do not mean to say that an international agreed upon definition of terrorism is not desirable from a political point of view—a sound consensus at the international level would indeed be a strong sign against terrorism. I simply mean to say that all countries can effectively work in partnership with what already is in place, and that inaction based on a lack of a universal definition of terrorism is not acceptable.

To sum up, it seems as though enough legal and institutional tools have been made available by the international society for countries to escape from the dichotomy of security vs. rule of law by appropriately legislating against terrorism.

However, legislating *per se* is obviously not an automatic answer to the problem. National laws against terrorism can and should find good guidance in the existing international standards, but they also ought to be tailored to the specific needs of each country. In some cases, the constitution of a country will require amendments to allow the design and implementation of a truly effective framework against terrorism. Limits to these changes are established by the core principles, values and moral beliefs of our liberal democracies, which ensure the respect and protection of our liberties and rights within the rule of law. Only if these ideas are well understood by all will the necessary legal changes be by and large supported and truly effective, as individuals will understand that security and liberty are not opposites but two sides of the same coin.

We therefore need to be “creative” in drafting counter-terrorism laws. While honoring our principles, we need to adapt to the new threats. Creative, efficient, and flexible—but respectful of our liberties—is precisely what countries such as Italy and Colombia have been, for example, with regard to their laws on the extinction of property rights over assets proceeding from criminal or terrorist activities (“*ley de extinción de dominio*”). Or how Spain, France or the United States have addressed legal concepts such as “the use of circumstantial evidences” (*prueba indiciaria*), “*apologie du terrorisme*” and “material support”, respectively. Or how Peru has developed “due process” provisions for terrorism cases.

IV. International cooperation

This brings me to the second possible answer to the question of how we can fight terrorism in an effective way while fully respecting our principles and values: international cooperation. If the legal tools and the obligation to implement them into national legislation are there, as we have seen, why isn't the system running like clockwork?

Allow me to give you a straight response: in most countries there is no political will to really do what needs to be done—legislate appropriately and cooperate internationally, as starting points—to effectively fight terrorism. This inaction exists because most societies—thus, their political leaders—have not realized how serious a threat terrorism is for our civilization, for our peaceful coexistence. They have not unveiled the plot and seen how terrorists are using the cracks in the wall of our liberal democracies to dynamite the building. We seldom see how terrorists play with our disunity, how terrorists have correctly concluded that the key to our defeat is our own ignoring or attacking of our moral roots, history, and the liberal and democratic principles and values that are the pillars of our open societies. That is why terrorists have been able to build a somehow successful violent and subtle strategy to defeat us. To defeat freedom, equality, and the rule of law.

In Latin-America, as in many other parts of the world, we have clear examples of the unwillingness of certain governments to see the obvious. I sometimes think we are looking at a Magritte painting, the image of a smoking pipe with the text "*ceci n'est pas une pipe*" underneath it. It seems like some politicians try to convince the world that what everybody is seeing is actually not what they are seeing. Otherwise, how can we explain what is happening in regard to terrorist cells and training camps in the region? How can there be triply-shared borders in which everything happens and yet nothing happens at the same time? How can one not publicly state that the present situation in some countries is no longer an organized crime-drug-related problem, but a terrorist conundrum threatening to defeat the state by killing local authorities and massacring innocent civilians?

The Inter-American Committee against Terrorism has been one of the international bodies that has most emphasized the importance of transnational cooperation when fighting terrorism. Its border controls programs—maritime, aviation, customs, travel document security—, as well as its emerging threats, legislation and counter-terrorism financing, tourism, and cyber-security programs have decisively contributed to build capacities and foster cooperation throughout the Americas. Despite this, international organizations are just what their Member States want them to be, and in the Americas the political will to fully fight terrorism varies greatly from one country to another.

In some countries this will exists. For instance, based on the increased concern that certain countries have in regard to bulk cash smuggling as a means to finance terrorist activities, international cooperation has lately been strengthened to address this issue. In 2009, a joint operation undertaken by several agencies from Colombia, Mexico and the United States resulted in the seizure of more than 41 million US dollars in cash at the ports of Buenaventura and Manzanillo.

If the political will exists international cooperation against crime and terrorism allows for a great deal of creativity and flexibility, which in turn may bring efficiency. A good example of this created efficiency is the third pillar of the European Union, particularly with regard to the European Arrest Warrant, EUROJUST, EUROPOL, joint investigative teams, etc.

In Latin America and the Caribbean there are also interesting initiatives in this arena, such as the CARICOM Arrest Warrant—which is not yet in force—some multi-national border control commissions—such as COMBIFRON, a commission with officials from Colombia and Ecuador, or the initiative announced earlier this week involving Brazil, Colombia and Peru¹—, intelligence information sharing between certain countries, the use of the OAS/CICTE National Points of Contact Network, and of the OAS Secure Electronic Communication System (Groove), etc.

However, in addition to the existence of political will, the key to success for any of these initiatives hinges on how much states trust each other. If Europe's modern mechanisms have proven to be a great asset, it is mainly because Member States rely on each other and know that all fundamental rights are respected in the Union. They trust each other and are willing to work together. As you can imagine, this amount of trust and will is rarely mirrored in Latin America, which brings me back to the underlying issue at stake: principles and values need to be shared in order to foster trust and unity of action. Only if states trust each other by recognizing a common ground, only if we are united at the national, regional and international levels, we will defeat terrorism.

V. Conclusion

To conclude, as opposed to criticism, I would like this presentation to be taken as a wake-up call for all freedom-loving individuals in both sides of the Atlantic. When Magritte painted his pipe while denying its own existence, he intended to call us to reflect on images and reality, what is perceived by our senses, what things are really made of, and what they symbolize—an ongoing idea that started with Plato and took a new dimension with Einstein.

If we aspire to strengthen laws and international cooperation against terrorism, to ensure that our way of living is respected and endures, and to defeat these fanatics and all they represent, we need to start by winning the battle of ideas. By strengthening our societies both morally and intellectually we can solidify the pillars of tolerance upon which they were built. Each one of us, in Europe and in the Americas, has a role in this endeavor.

¹ September 15, 2010, El Tiempo: http://www.eltiempo.com/mundo/latinoamerica/peru-instalara-base-antinarcoticos-en-frontera-con-colombia_7904127-1