

## International Responses to Terrorism

**Judge Jean-Louis Bruguiere**, Chairman, French Anti-Terrorist Judges, France

On the eve of the 6th anniversary of the 11th September 2001 attacks, Osama Bin Laden, still in hiding and who fuels the strongest speculations about his very existence, has appeared twice on two video recordings that appear to be authentic, broadcasted on the Internet.

It's the first time in three years that the leader of Al-Qaeda manifests himself to threaten America once again.

This double message, addressed primarily to the United States, reminds us, as if we needed so, that today terrorism has become a worldwide phenomenon, a priority on the states' political agenda.

But only with the tragic events of 11th September did the world become aware of the reality of this global peril.

First I would like to thank the officials of the Lakshman Kadirgamar Institute of International Relations and Strategic Studies, who organized this colloquium, for inviting me to participate in their work.

This international conference on the fight against terrorism both restates the will of the international community not to give way in the face of terrorist blackmail, so heavy in threat for the fundamental values that are ours, beyond the cultural, historical and institutional diversity of the states, and brings answers to this threat. Efficient responses adapted to the seriousness of the threat, yet responses that lie within the field of the Law. This is the challenge brought about by this new threat.

It's the second time I have the honour and the privilege to express myself on this subject in Colombo.

Sri Lanka – like France – didn't wait until 11th September 2001 to evaluate the terrorist threat nor to implement the necessary measures to fight against those who've chosen to promote blind violence in order to give victory to their demands.

Today Al-Qaeda and the groups and networks affiliated to it turn to suicide attacks. This new strategy has given another dimension to the Islamist threat.

But this strategy isn't new. Let's not forget that it was initiated and developed by the Tamil Tigers, who then exported it as well as their know-how to other regions of the world, notably Palestine and the Caucasus.

There is no minor form of terrorism. Great Britain paid a heavy tribute to the terrorist actions of the IRA before reaching a pacific solution to this conflict after long years of fighting. The Spanish still haven't reduced ETA's activism, despite France's support.

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Sri Lanka has fought for many years, not without attempting - in vain - to reach a political solution to the conflict, against the terrorist activities of the Tamil Tigers, a militarised violent organization that has numerous structures of logistical support abroad, particularly in Europe.

We shall not broach the subject of these terrorist organizations, but their main characteristics are that they are hierarchical; they have a local or regional base; and they use violence as a way of giving victory to a political demand, generally separatist. This is notably the case for the IRA, the ETA and the LTTE. All these movements are of the separatist kind.

Contrary to Al-Qaeda, they have a political and military apparatus with a hierarchy; they are compartmentalized and obey to a centralized command structure. Well-versed in underground techniques, indoctrinated, very militant and disciplined, members of these networks carry out faithfully their leaders' orders. These organizations can benefit from foreign help provided either by states or more generally by sympathizers or underground networks in terms of logistical and financial assistance.

In Europe, the IRA had developed in the United Kingdom a highly sophisticated military apparatus and had obtained Libya's help for military supplies. Moreover it had set up underground networks in France, more specifically in Brittany and in the western part of the country. These underground structures enabled it, among other things, to attack British troops then stationed in Germany.

The ETA, which still hasn't been dismantled and recently broke a truce of convenience, has the same typology as the IRA. This organization has powerful bases in France and its militants are particularly active in our country, which is considered to be a rear base for their military activities in Spain. Close collaboration between the French and Spanish police and justice departments has vastly weakened the attacking capabilities of this terrorist organization.

The PKK, a Kurd separatist organization very active in Turkey, where it has carried out numerous attacks, also have powerful bases in Germany and France. Several cells of this organization were recently dismantled in France.

Although the underground nature of these terrorist movements, the compartmentalization of their operational structures and the discipline of their members give them an indisputable military advantage, on the other hand the centralization of decision-making and commanding bodies and the pyramid-like nature of their

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organization make them vulnerable. Therefore anti-terrorist services need to develop their intelligence activities, particularly the recruitment of human sources.

The LTTE also belongs to this category. It needs an increasing amount of resources in order to finance its terrorist activities in Sri Lanka and therefore has created in Europe very active underground networks under cover of charitable organizations, which extort money from the expatriate Tamil community. One of these networks was recently dismantled in France, after months of surveillance of militants, all linked to the politico-military apparatus established in Sri Lanka.

Other organizations, seemingly separatist, are of a different nature. This is notably the case for the Moro Islamic Liberation Front (MILF) in the Philippines, which belongs to Al-Qaeda's sphere of influence and had formed operational relations with the Indonesian Jammaa Islamiya.

Similarly the Colombian FARC belongs to another category. Driven on by a Marxist ideology, this military organization at war with the current government doesn't hesitate in striking alliances with drug traffickers in order to finance its military activities.

These few examples show that organizations of the separatist kind or claiming to follow political ideals are still active and coexist in this world with the radical Islamist current.

However, terrorism conveyed by these organizations doesn't have the same resonance as Al-Qaeda's, despite being just as bloodthirsty as the latter.

It is true that Islamist terrorism has a global dimension and that it feeds on geopolitical opportunities in order to thrive.

Above all its main target is the United States and it threatens the stability of the world through its global strategy. This is a point we'll come back to later.

But nevertheless let's not forget the other forms of terrorism on the often-unacknowledged grounds that they don't concern us directly. In this area the egocentricity of the states plays into the hands of terrorism.

Nations often tend to forget the lessons of terrorist violence.

Public opinions tend to delete the scenes of terror produced by terrorist actions from their collective consciousness.

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Even the 11th September 2001 now belongs to History, and the commemorations of the sixth anniversary of these attacks didn't benefit from the same media coverage as the previous years.

European countries have forgotten the Madrid and London attacks, and the large-scale planned terrorist operations recently foiled in Germany have barely made the French public aware of the problem.

It is true that only states that have experienced terrorism are aware of the reality of the threat.

This was the case of the United States, where the public opinion only mobilized and supported President Bush in his "war against terrorism" after the 11th September attacks. The 1998 attacks against their embassies in Nairobi and Dar es Salaam didn't have the same effect. Similarly the arrest of Ahmed Ressam (the Millennium bomber) in December 1999 on the United States' West Coast, which showed Al-Qaeda's will to hit the United States on their soil, was notably underestimated.

France has been under terrorist threat for more than thirty years, and has always considered the fight against terrorism as a priority. It has given itself a particularly efficient anti-terrorist system, which is today considered with interest by many states. The anti-terrorist legislation isn't a political issue in France, although its implementation has sometimes been contested by Human Rights advocates.

But in France the public opinion as a whole considers that the right balance between infringements on personal freedom and safeguard of the collective safety has been preserved.

This experience of the fight against terrorism, acquired with the passing years, has led us to implement in this area a global strategy that doesn't take into account any partisan or national considerations.

The fight against terrorism – under whatever form – has become global. It doesn't belong to one state. In this matter solidarity is an adamant requirement.

The anti-terrorist judicial division I lead has implemented, at my behest, this strategic dimension of the fight against terrorism, without discrimination against origin or form. Thus, in France, we pursue with the same determination the logistical and financial support activities carried out for the benefit of organizations operating abroad.

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In the same spirit, it has also developed international cooperation not only in Europe and in the United States but also in other regions of the world, notably in Asia.

Lately it's been particularly the case with Sri Lanka, within the framework of the dismantling of an LTTE logistical and financial network set up in France.

The fight against radical networks of Islamist inspiration is obviously at the heart of our priorities.

For the most part these networks consist of activists from the Maghreb, mainly Algeria, formed at the beginning of the 1990's with the development of the GIA (Armed Islamic Group), which then created a few years later the GSPC (Salafist Group for Preaching and Combat).

Although they appeared in Europe after the repression in Algeria of Islamist parties that threatened the political stability of the country, their emergence falls within the more general scope of the post-Cold War era, with the exacerbation of nationalist currents – mostly in the Balkans – and the rise of the radical Islamist ideology embodied by Al-Qaeda.

Unlike what political leaders of the era predicted, the collapse of the bipolar world has generated a divided, antagonistic world, in which nationalist tensions and radical ideologies are exacerbated. Some of the latter – Al-Qaeda's – have proclaimed their theological foundations: Salafism.

The tragic events of September 11, 2001 and the many terrorist actions that shook the world after that date proceed from this evolution, which has been notably underestimated.

Today no one challenges the fact that the terrorist threat is obvious and acute.

Al-Qaeda and the organizations and networks that have pledged allegiance to it represent an increasingly heavy threat to the security of the states and the world's sound footing.

Very opportunistic, attentive to the world's evolutions, reactive to political and geopolitical factors, the radical Islamist networks established across the continents take advantage of the tensions and international crises as well as the prevarications and the mistakes of the states in their management of world affairs, to promote their strategy of violence.

The Islamist threat is all the more difficult to fight since it doesn't obey a centralized commandment centre and it doesn't come from a structured and hierarchical

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organization. It develops on a horizontal and erratic mode, without any pre-established operational set-up, at the behest of networks and scattered polymorphous mutant cells operating on a global scale.

The Islamist threat hasn't just become global. It has also developed a global combat strategy.

Such globalisation at a strategic level manifests itself in the targets and in the means used.

From the classical technique of bomb attacks, Al-Qaeda and all the terrorist networks that have pledged allegiance to it have gone on to using civilian planes as weapons of massive destruction and today suicide attacks.

I don't need to underline to the political and security leaders of this country the formidable efficiency of these blind attacks, difficult to detect, and which deeply affect civilian populations.

The use of other methods is also to be feared, such as chemical, bacteriological and radioactive weapons (dirty bombs). Although at this stage we do not have any documented proof, experts in the fight against terrorism fear the use of nuclear weapons in the long run.

These few preliminary considerations place us at the heart of this colloquium's theme, the necessary response to terrorist threats, and more precisely the response modes elaborated by the international community or by member states within the framework of an institutional or agreed cooperation.

But in order to analyse the terms of the response to terrorist threats and to appreciate the relevance and the efficiency of procedures implemented to that effect, you need to define the outlines of a complex, polymorphous and very evolutionary threat in its operational strategy as well as in its ways of working.

Therefore, if you agree, I first intend to evoke briefly the evolution, the typology and the outlines of the Islamist threat, before talking about the response modes drawn up by the international community. Nevertheless the efficiency of international standards in this area decreed either by the United Nations or by regional organizations such as Europe's, depends on the goodwill of states and on their legal arsenal.

In this respect, France has a series of legal provisions dedicated to the fight against terrorism, and it has developed, mostly at my behest, a voluntarist operational strategy, today unanimously acknowledged for its efficiency.

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Let's talk first – however briefly – about the evolutions and the main characteristics of the terrorist threat.

## EVOLUTION AND TYPOLOGY OF THE ISLAMIST THREAT THAT HAS PLEDGED ALLEGIANCE TO AL-QAEDA

Islamist terrorism emerged and then developed quickly after the collapse of the bipolar world. The attacks on 11th September 2001 and the current events proceed from this evolution.

Knowing well this evolution and drawing its outlines isn't an academic exercise, it has an operational dimension.

This is the policy we've been following for decades: it has allowed us, particularly with regards to the Islamist threat, to define an efficient counterattack strategy.

1-On the emergence of Islamist terrorism until 11th September 2001

In Europe and more specifically in France, the first manifestations of the terrorist threat date back to 1993.

France was affected very early on by radical Islamist violence, with the emergence of the Armed Islamic Group (GIA).

The United States were also targeted by a terrorist network after the first attack in 1993 against the World Trade Centre in New York. But this first attack didn't lead to an in-depth review of this creeping threat.

In France the Islamist radical threat was conveyed by the Algerian GIA, a radical Salafist organization with the same ideology and the same strategy as Al-Qaeda.

Stemming from political upheavals in Algeria after Islamist parties were banned, the GIA and other radical Islamist groups went underground in 1992. They created pockets of resistance in Algeria and constituted in Europe, and more specifically in France, clandestine networks of logistical and financial support.

These clandestine structures with a direct connection to the Algerian maquis were lead by seasoned Mujahiddin who had undergone military training in Afghanistan's camps.

These are the cells that were then activated for the attacks perpetrated in France in 1995.

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This wave of attacks sponsored by the GIA had been preceded six months earlier by the hijacking of a plane owned by the airline Air France, which ensured regular flights between Algiers and Paris.

But it wasn't any ordinary hijacking: the commando who'd hijacked the plane was supposed to crash it in Paris, probably on the Eiffel Tower, which is a symbolic monument, just like the twin towers of the World Trade Centre in New York.

This GIA strategy foretold very clearly Al-Qaeda's: the export of terrorist violence to the Western World and the use of aircraft as weapon of massive destruction. Similarly it revealed that Al-Qaeda and the organizations that had sworn allegiance to it favoured suicide attacks for their main operations, although this behaviour doesn't appear in the Sunnite tradition. We know the place held by this operating mode in the attacks perpetrated by Islamist networks since 2003.

Once more let's not forget that the creators of this type of operation are the Tamil Tigers of the LTTE.

This terrorist activism of the 1990's also emphasized one essential factor in the terrorist threat, the Jihad lands. The "religious war" is above all the direct confrontation on an Islamic land between Muslims and Non-Muslims.

Afghanistan was such a land, and also Bosnia, Kosovo, Kashmir, Chechnya and today Iraq.

But undoubtedly it is the Afghanistan-Pakistan area that played a dominant role until 2001 in the development of the Islamist threat.

The study of this phenomenon within the framework of an investigation that was handed to me allowed us to become aware as early as 1995 of the reality of Al-Qaeda's threat, and to understand its strategy. France was thus able to adapt its counter terrorism system to this new situation in order to anticipate the effects.

This is the context in which, from as early as 1996, starting with a fake passport affair, we detected the network lead by Ahmed Ressam, nicknamed "the Millennium bomber", who had planned to carry out an attack at Los Angeles airport during the transition to the year 2000.

This planned attack foretold the large-scale terrorist operations of 11th September. In both cases Al-Qaeda decided to strike the United States on their soil, just like the GIA had done in France six years earlier. Moreover, in both cases – France at the end of 1994 and the United States in September 2001 – the use of commercial aircrafts as

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weapons of mass destruction was favoured. This shows remarkable continuity in the strategy of these networks.

## 2-After 11th September 2001 and the current situation

The period that followed 11th September 2001 showed that the threat hadn't disappeared and that it had acquired a global dimension. Although deprived of their Afghan sanctuary, Al-Qaeda's networks have proven that they are still active.

Particularly, it's appeared that multiple networks and scattered cells had been formed in the world, without any operational links, very fluid, with polymorphous structures, reactive to geopolitical data, and particularly opportunistic at action level.

These structures do not obey any centralized commandment centre, and Al-Qaeda doesn't act as one. Nevertheless Al-Qaeda stimulated this threat, notably through media interventions by its charismatic leaders, urging on the networks to act independently from actions led by its own organization or by other movements directly affiliated to it.

This very particular feature of the Al-Qaeda current and this unprecedented operational typology required an anti-terrorist strategy of a new kind, much more flexible, reactive and able to anticipate. This is what we tried to achieve in France.

Thus we managed to detect before it took action a Pakistani Islamist network affiliated to LET (Lashkar-e-Toiba), established in Australia, and to establish on this occasion the activism of Pakistani structures in Europe.

The Caucasus also appeared as early as 2002 as a training base for Mujahiddin. Radical Islamists from Europe were trained there in the use of chemical weapons by networks under the leadership of Abu Musab al-Zarqawi and Basayev. They were to carry out attacks in France.

As a matter of fact, since 2003 it's Iraq that's been the most powerful driving force for terrorist activities, exerting an unprecedented level of attraction on the European Islamic current.

More fragmented and volatile networks and structures were formed. The Islamist militants engaged in these channels towards Iraq have turned out to be more fanatical than their elders, willing to die as martyrs not only on the Iraqi stage but also in Europe in suicide attacks.

## 3-The current situation and the foreseeable evolution of the terrorist threat

No one can doubt that the aggravation of the terrorist threat is for real.

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The Syrian-Lebanese crisis and the diplomatic tensions between Iran and the Western world on the nuclear issue have become additional problems beside Iraq. These tensions interfere with the security climate in the Middle East. Moreover the constant deterioration of the situation at the Afghanistan-Pakistan border is a new subject of worry. The evolution of this insecurity, fed by the Taliban and Al-Qaeda, could spread to neighbouring countries all the way to Central Asia and South-East Asia.

Furthermore the recent allegiance of the Algerian GSPC – formerly GIA – to Al-Qaeda constitutes a new threat for North Africa and Europe.

This fast evolution of the Islamist threat demands constant adaptation to its operational typology.

In the field of counter terrorism there is no rigid model. We have to be resourceful when confronted with the evolution of networks, adaptable in the way we approach threat factors, and flexible in the analysis of situations as well as in the implementation of anti-terrorist procedures.

The heterogeneousness of approaches with regards to the threat, mostly due to erroneous analysis of the terrorist threat, has direct consequences on counterattack procedures. The main result is that it creates sanctuaries for terrorist networks.

Such a situation, found in a number of regions of the world, including Europe, compromises the efficiency of the fight against terrorist structures and the latter take advantage of this.

It must be understood that in this area – whatever the situation or the organizations involved, including those that don't belong to the Islamist current – international solidarity is imperative.

The fight against terrorism isn't the concern of any one state. International cooperation has to take place unreservedly and with none debarred, including in relation to separatist-style organizations, which usually only concern one particular state.

Terrorism is a worldwide scourge. As such it must mobilize the international community. Political demands mustn't hide the real dimension of terrorism: to spread terror in order to give victory to a demand or an ideology.

Through the United Nations and other worldwide or regional bodies, the international community has reasserted many times over the need to fight against all forms of terrorism. However, member states have to grant themselves a legal arsenal that will enable them to fight efficiently against the terrorist threat.

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This leads us to examine the counterattack procedures based at the same time on a series of conventions, international legal instruments and national legislations.

## THE STATES' COUNTERATTACK AGAINST TERRORIST THREATS: THE ARSENAL OF LEGAL PROVISIONS AND PROCEDURES IN THE INTERNATIONAL AND NATIONAL ORDER DEDICATED TO THE FIGHT AGAINST TERRORISM

Not all states consider that to place the fight against terrorism within a legal framework is a basic premise.

Many states within which institutions are not democratic or that have given in to the lure of law-and-order strategies, have implemented counterattack procedures situated outside the legal field. Such an approach, which plays into the hands of terrorism, is politically questionable and inefficient in the long run.

For all that, the combat against terrorism has to be led resolutely, without any weakness or concession; even if it means carrying out measured infringements of individual freedoms if required by circumstances.

The international community, aware of the challenge that the terrorist threat represents for the core values our societies are based on, has gone down this path by condemning terrorist violence unequivocally, stating that no reference to any so-called political demands can justify it. The fact that the states have to implement the necessary legal measures is another matter.

### 1-International instruments

Let's examine first the international conventions adopted either by the United Nations or by Europe, whether it's the Council of Europe or the Council of the European Union.

You have to distinguish between conventions with a universal scope and conventions adopted by European authorities.

#### ➤ Conventions with a universal scope

In the fight against terrorism, the universal normative framework is constituted of twelve conventions that try to fight against the multiple manifestations of terrorism without giving a global definition of the notion of terrorism. These conventions are as follow:

The Convention relative to Offences and Other Acts Committed on Board Aircraft, adopted in Tokyo on 14th September 1963, which from the criminal point of view contains no obligation of specific incrimination, only rules relative to the competence of

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jurisdictions. This convention was followed by the Hague Convention of 16th December 1970 for the Repression of Unlawful Seizure of Aircraft.

The following year, on 23rd September, was adopted in Montreal a third convention on air traffic, the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, to which was added a Protocol concerning airport safety.

All these conventions adopted between 1963 and 1971 show that the international community had already been made aware at this time of aerial terrorism, which was then mostly carried out by the Palestinian organizations of the "Refusal Front".

These conventions, which only have a limited practical scope, didn't have any direct effect on the prevention of attacks perpetrated by Al-Qaeda and Salafist-type organizations after the fall of communism.

Moreover the United Nations adopted the Convention on the Prevention and the Punishment of Crimes Against Internationally Protected Persons, dated 14th December 1973, and the Convention Against the Taking of Hostages, dated 17th December 1979.

Maritime traffic – after the hostage-taking incident on Italian boat "Achille Lauro" – gave rise to the adoption on 10th March 1988 of a Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation, followed by a Protocol on oilrigs.

Furthermore, aware of the threat posed by the use of atomic power for terrorist purposes, the international community adopted several conventions to prevent this risk.

On 3rd March 1980 was adopted in Vienna the Convention on the Physical Protection of Nuclear Material, which makes a criminal offence of any act that could be qualified as "traffic" or dispersal of nuclear materials and which could cause death or serious injuries to others.

This Convention was completed on 13th April of the same year by the United Nations Convention on Nuclear Terrorism, which came in force on 6th July 2007 after its ratification by Bangladesh, the 22nd state to do so.

This Convention obliges signatory states to integrate within their domestic legal framework the incriminations contained within the Convention.

Moreover, two more conventions about the use of explosives in a terrorist context were to be adopted. The Montreal Convention dated 1st March 1991 on the Marking of Plastic Explosives aimed to repress better the wide use in terrorist attacks of "Semtex", a

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plastic explosive of Czechoslovakian origin. On 15th December 1997 the United Nations adopted another Convention for the Suppression of Terrorist Bombings.

Finally, on 9th December 1999, following France's initiative, the United Nations adopted the Convention for the Suppression of the Financing of Terrorism.

➤ Conventions of the European Union and the Council of Europe

As well as conventions with universal scope, other multilateral legal instruments were to be enacted by European authorities: the Council of Europe and the Council of the European Union.

Unlike conventions with universal scope, which don't always have an operational dimension, those adopted by Europe have all been transposed in the domestic legislative order and now complete the legislative arsenal of the states in the fight against terrorism.

As far as the Council of Europe is concerned, it's adopted two conventions on terrorism:

1. The 1977 European Convention on the Suppression of Terrorism and its additional Protocol dated 15th May 2003. This Convention doesn't consider terrorist offences as political offences, offences related to a political offence or offences inspired by political motives.
2. The European Convention on the Prevention of Terrorism dated 16th May 2005.

As for the European Union, it adopted on 13th June 2002 a framework decision that has legislative value for member states. It lists the acts that have to be considered as terrorist acts when they are seriously damaging to a country and when they are committed with the view of seriously intimidating a population or of forcing unduly the public authorities or an international organization to accomplish or fail to accomplish a given act, or with the view of seriously destabilizing or destroying the fundamental political, constitutional, economic or social structures of a country or of an international organization.

Above all, and this is new, this framework decision makes offences relative to a terrorist group criminal offences, and gives a definition very close to the French penal code definition of "criminal conspiracy" to the "terrorist group". Therefore it makes punishable all the logistical and financial activities of the group in question when they are upstream of terrorist actions. Furthermore it distinguishes between leadership of the group and participation in the group's activities. This is precisely what the French legislator did in 2004 and 2006.

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Finally it has to be noted that within the framework of the so-called JAI negotiations (Justice and Internal Affairs), significant advances have been obtained at the European level regarding the management of intra-Community investigations, with joined team of investigation and in the field of extradition, with the European arrest warrant.

With Europol and Eurojust, which do not have yet the authority to substitute themselves for national authorities in the absence of a European Constitution granting them political legitimacy, such European advances in this field are the beginnings of supranational justice and police department.

But in the absence of true European police and justice, states are solely responsible for the management of their anti-terrorist policy, even if their action in this area has to take into account the international instruments we have just talked about.

Unquestionably all these international conventions play a crucial part in the fight against terrorism.

As a matter of fact they have made the states more aware of the terrorist threat and have encouraged them to cooperate even in the absence of international conventions.

Thus, in October 2002, I was able to obtain from the United Arab Emirates the hearing of Jamel Beghal, detained in Abu Dhabi, then his extradition, in compliance with international letters rogatory. In the absence of an international convention these two requests were granted based on diplomatic reciprocity. On the same basis, another Islamist militant linked to Al-Qaeda and belonging to Ahmed Ressay's network was extradited from Jordan in 1999. In 1998, the Libyan authorities – in a specific political context, it has to be said – agreed to comply with international letters rogatory concerning the September 1999 attack against the DC10 owned by airline UTA. Lately the police and judicial cooperation between France and Australia has led to the neutralization of a Pakistani network of the LET (Lashkar-e-Toiba), which was about to carry out attacks in the Sydney area.

But international conventions don't solve all the problems. They must be transposed to the internal order in order to be applicable, which isn't always the case.

Furthermore, many of them don't really have a practical scope. Above all, some of them are not applied or meet with resistance from the states.

Thus it's only in 2005 that Great Britain extradited Rachid Ramda, wanted by French justice for his presumed participation in the 1995 GIA attacks. Today the European arrest warrant makes extraditions easier in Europe.

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Similarly, the principle of double incrimination is often an obstacle to international cooperation, especially for extraditions. Now few states have an anti-terrorist legislation such as ours. The terrorist criminal conspiracy offence, which in the past had no equivalent in the legislation of other countries, didn't allow the implementation of conventions for judicial cooperation or extradition.

In fact it's the internal judicial order that takes precedence. At the end of the day the responsibility of states is paramount.

Finally we still have to talk about national strategies. Here I will only envisage the French experience, which, as previously mentioned, is original in more than one respect.

### THE FRENCH COUNTER TERRORISM SYSTEM

This system is structured around a series of legal provisions dedicated to counter terrorism and to the creation of an original operational methodology focused on risk prevention.

#### ➤ The legislative arsenal

The main feature of this legislative arsenal is to be adapted to the terrorist threat, flexible and evolutionary. Therefore it isn't a rigid legal system. It has to be underlined that the non-accusatory system – the "civil law" system – of the French penal procedure has vastly facilitated this flexibility and allowed the French system to be efficient, without, however, being free from the legal framework.

France has taken up the challenge of fighting against all forms of terrorism within a legal framework. In order to succeed it was able to make this framework evolve. But it never gave in to the temptation of exceptional legislations detrimental to the fundamental principles of our law, such as the right for any accused person to have a fair trial.

France, with its long experience of terrorism, developed a doctrine very early on in this field. It relies on actions carried out by our intelligence services, which detect potential threats, the specialized services of the criminal police department and a centralized judicial system.

This particularly efficient system could only be established and constantly improved thanks to the awareness of the public opinion and the political class alike that terrorism is a major threat to our values no matter what form it takes.

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But we owe the efficiency of this system to its non-accusatory nature; its flexibility allows it to adapt to the outlines of the threat.

The “common law” is rigid since its governing principles proceed from custom, not law.

Like jurisprudence, custom, by nature, evolves slowly. This slow evolution guarantees the stability of the legal system and the protection of individual freedoms whatever the circumstances.

In this legal system, this rigidity – particularly with regards to rules of procedure – hinders the necessary adaptations of the law in the face of changes in the terrorist threat.

A gap can then appear between the legal arsenal and the need for rulers, who guarantee collective safety, to react to the threat. The temptation is then strong to free oneself from the legal framework. The Americans did it in Guantanamo and so did the British with the Anti-Terrorism Act of 2001, which was penalized by the Law Lords in London.

In France the rules of procedure have evolved. Police custodies have been extended, cases centralized in Paris. Immediate searching regulations when searches are requested by investigating judges enabled the collection of increasing numbers of elements of proof.

Above all, the fact that in French law any proof obtained loyally is admissible has largely contributed to the reinforcement of cooperation between intelligence services and judicial authorities.

The result is a better use of operational intelligence for judicial ends. Raw unsupported intelligence only has a weak value as proof. Nevertheless it is admissible. Most of all it can be used – however without revealing its origin and the means used to obtain it – to open a new investigation which will enable to find other, more convincing proofs for the judge, within a judicial framework.

This flexibility of the law has given efficient weapons to the various players in the fight against terrorism. “Civil law” thus enabled evolutions to take place in the procedural field as well as for incriminations and sanctions incurred for terrorist acts.

One has to distinguish between contents laws and form laws

➤ Procedure laws

These are the most important ones. They condition the efficiency of the investigations and the judicial neutralisation of terrorist networks.

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The main law in this area is the law dated 9th September 1986, which centralized in Paris the proceedings, the investigation and the judgement of acts of terrorism. The execution of sentences was also centralized after a recent law.

The centralization allowed the creation of a force of specialized magistrates, at prosecution level and investigation level, with exhaustive and up-to-date knowledge of global and very evolutionary phenomena. This ability to grasp how networks operate as a whole is essential for Al-Qaeda-style terrorist structures, which are polymorphous, dissociated, evolutionary and opportunistic in the way they operate. As underlined before, they obey no commandment centre and operate autonomously, although they do have one-off or permanent operational contacts with similar networks, scattered all round the world, some of them thousands of kilometres away.

As well as centralizing investigations, the 1986 law extended to four days – recently extended even further to six days - the duration of police custody (during which a suspect can be detained and questioned by the police without any contact with the outside and without the assistance of an attorney).

Moreover, investigating judges (in France, specialized judges, not prosecutors, are in charge of investigations) are able to order phone-tappings, monitor Internet traffic and even use intrusive measures, such as bugs in private locations. They then act as judges. Some of their decisions can be referred to the Court of Appeal.

### ➤ Contents laws

Since 1994 the French legislator has recognized the autonomy of terrorist acts by dedicating to them an entire title in the penal code.

Yet he hasn't yet defined the terrorist offence but he has worsened some common law offences "when they are intentionally in relation with an individual or collective enterprise with the purpose of seriously disturbing public order by intimidation or terror."

But it's mostly the terrorist criminal conspiracy offence, completely new in Europe, and which meets the prescription of the European Union's framework decision dated 13th June 2002, that has turned out to be the most efficient weapon against terrorist networks.

Calling them terrorist acts, this legal measure represses the logistical and financial activities of terrorist groups and alliances, without the need to establish that these activities are linked to a particular project or that there exists any terrorist project.

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This legal weapon – which is the cornerstone of our legislative system – has enabled us to promote a proactive anti terrorist strategy aimed at preventing attacks by neutralizing clandestine networks of logistical and financial support.

Because in this area, no attack can be perpetrated unless clandestine structures in charge of financing the operation and supplying the logistical means to achieve the attack have been set up first in target countries.

Since 1996 the implementation of this strategy has allowed us to counter several planned attacks, one or two per year, against our territory.

Thus, in 1998, under my leadership, was neutralized a European network of radical Islamists who had planned to carry out a series of attacks during the football world cup. In 2000 was dismantled in Frankfurt another network of Islamist radicals who were about to carry out a blind attack on the Cathedral Square in Strasburg.

In 2001 were arrested several radical militants linked to Al-Qaeda, still on the basis of the criminal conspiracy offence. They had spent some time in Afghanistan and were planning to carry out an attack against the United States Embassy in Paris.

The following year another network was neutralized: its activists had planned to carry out chemical attacks in France after spending some time in the Caucasus.

The same legal basis was put to good use again in France when we dismantled last April a vast network of Tamil militants who actively supported the LTTE, notably at the financial level.

This judicial operation carried out under the authority of the department I used to manage was only made possible because we had at our disposal the legal weapons required. Contrary to other countries – including European ones –, on account of its anti-terrorist legislation, France can prosecute the logistical or financial activities of networks operating abroad. Furthermore, our doctrine in this area, which I developed with the passing years, consists in considering that an organization like the LTTE is a terrorist organization like any other and that its activities, even in the area of logistics, have to be repressed with the same vigour as for terrorist networks operating on our soil and threatening us directly.

Therefore it is within the framework of this strategy and with the help of our legislative arsenal that presumed members of the LTTE based in France were arrested by the Anti-Terrorist Sub Directorate of the Criminal Police and charged with terrorist criminal conspiracy and financing of terrorism. For those specific offences they incur 10 years' imprisonment and a definitive ban from our domestic territory for those who are not

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French nationals. Although in some circumstances loss of citizenship can be pronounced.

These investigations mostly concern underground cells involved in logistical and financial operations; this led us to discover that they mostly used micro-finance of the kind used by common law criminals (chiefly the traffic and fraudulent use of forged credit cards).

With reference to the fight against macro-finance, France introduced in its domestic legislation the measures taken by the International Convention for the Suppression of the Financing of Terrorism. It completed its judicial arsenal in this area by making the following offences criminal offences: money laundering for terrorist purposes and fraudulent operations of currency manipulation (insider trading).

### OPERATIONAL METHODOLOGY

This operational methodology was previously mentioned when we talked about the terrorist criminal conspiracy offence: it tends to prevent the terrorist risk through a resolutely proactive policy.

However, the efficient implementation of such a strategy requires all the actors of counter terrorism, starting with intelligence services, to be asked to collaborate.

In France we managed to implement the operational synergy between our intelligence services, starting with the DST (Directorate of Territorial Surveillance).

Like the American FBI, this counter espionage and counter terrorism department holds investigative powers. It is currently our main partner and we entrust it with the majority of investigations into Al-Qaeda networks.

This collaboration has allowed us to enhance the value of intelligence obtained by our services, in relation with direct threats on our soil or threats to other countries.

Thanks to this operational synergy we discovered in 1996 the "Ressam" network, named after this Al-Qaeda militant arrested on 14th December 1999 on the United States' West Coast just as he was about to bomb Los Angeles airport.

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Finally, at this stage another fact needs to be emphasized: the part played by international cooperation.

Islamist terrorism is global. Understanding these phenomena requires trustful partnerships between the states in order to share intelligence.

For France the United States have been and still are special partners. It is thanks to this cooperation that Ressaam was condemned in the United States.

This international cooperation has also enabled us to detect threats directed towards other countries, particularly Australia and Japan.

## **CONCLUSION**

Today the fight against terrorism is at the centre of every state's schedule. The worsening of the security situation in the Middle East and at the Afghanistan-Pakistan area increases the risks to world safety and seriously threatens the stability of some states.

If the fight against terrorism is an inescapable requirement, reiterated several times by the United Nations, the means implemented in this fight must fulfil some political and operational constraints.

No country can be free from its legal framework in order to define and implement its anti terrorist policy.

To renounce our values is to play in the terrorists' hands.

But to adopt a wait-and-see or a lax attitude towards terrorist networks, whatever its nature or motivation, would seriously endanger our liberties.

Once again we are faced with the fundamental problem of the necessary balance between protecting human rights and individual freedoms and protecting collective safety and state institutions.

This issue has become increasingly important since the September 11, 2001 attack; it is mentioned in international conventions and also fuels the internal debate.

The United Nations, through their conventions or through the stances of their General Secretary, have constantly reminded nations of the Organization's objectives, which include, with a view to maintaining peace and international security, the adoption of

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new measures to prevent and remove threats to peace and promote human rights and economic development.

The Document of the 2005 World Summit regarding the action of the UNO against terrorism firmly condemned terrorism once again "in all its forms and manifestations, committed by whomever, wherever and for whatever purposes, as it constitutes one of the most serious threats to international peace and security".

The international community thus presents in a clear fashion the issue of the resolute fight against terrorism, since it threatens world peace, and the necessary respect for human rights. But it's up to sovereign states to define within their internal order the balance that has to be achieved between those two often-antagonistic constraints, based on their own political and security factors.

The terrorist criminal conspiracy offence as defined in article 421-2-1 of the French Penal Code is the subject of many criticisms from human rights advocates. However, this legal text, applied by ordinary jurisdictions, fulfils the prescriptions of the framework decision of the Council of the European Union dated 13th January 2002, regarding the fight against terrorism, which reminds us in its preamble that "the European Union is based on the universal values of human dignity, freedom, equality, solidarity, respect for human rights and fundamental liberties".

The Council of Europe has also proved very attentive to the respect of these fundamental values, particularly within the framework of the statutes and operating rules of internal security services of its member states.

The Venice Commission on the internal security services of member states of the Council of Europe adopted in its report dated 7th April 1998 a declaration according to which it is stated that not only the state, but also any citizen of this state, have to guarantee the protection of the integrity, stability and internal security of the state. In this perspective, although individuals have the right to exercise freely their freedom, the latter can nevertheless be curtailed for the common good and the good of the society they belong to, as long as these curtailments are justified with regards to the reasons stated above. This principle takes up again the jurisprudence decreed in this area by the European Court of Human Rights (see Klass judgment dated 6th September 1998).

During the work sessions of the Specialists' Group on internal security services at the Council of Europe (PC-S-SEC) in October 2002, of which I was one of two scientific experts, the principles drawn by the Venice Commission were confirmed, particularly the right to interfere with private life when it proves necessary for national security and as long as it is exercised within a legal framework.

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Consequently there must be no rupture, and even less antagonism, between international order and internal order.

States are sovereign. They are solely responsible for the measures to take in order to guarantee their safety and the safety of their citizens while protecting human rights and individual freedoms.

Implementing this requirement can be difficult. In this area states have to display courage and political responsibility. This requires greater solidarity between nations in order to lead this global fight.

In this respect we owe it to ourselves to reinforce our international cooperation at every level, notably by adopting multilateral or bilateral conventions in the field of judicial cooperation as well as extradition.

Some countries like Japan or Sri Lanka still do not have a conventional agreement with France. This situation, even if it doesn't facilitate bilateral cooperation, doesn't forbid it either, provided that there is an agreement.

Thus we have formed many partnerships with these states on the basis of diplomatic reciprocity. I am convinced of the urgent need to enhance international cooperation and I have constantly worked towards it in connection with other security entities in France.

This policy has allowed us to prevent terrorist attacks and has vastly benefited many other countries.

Thank you for your attention.