Chapter 1

Terrorism after September 11

In 1998, I wrote a book explaining terrorism as we knew it then. In a new preface for a reprinting in 2000, I emphasized the already growing fears that nuclear and biological weapons of mass destruction would be used by terrorists. Understanding the threat to America of terrorism after September 11, 2001 requires understanding what the situation was before that date and what changed with that attack and with ensuing wars in Afghanistan and Iraq.

Terrorism as We Knew It before September 11

Perhaps the most important point for any student of terrorism to recognize before September 11 was that, for reasons not totally understood, a little bit of terrorism goes a long way. Even small-scale terrorism possesses an almost magical ability to produce fear, anxiety, anger, and a demand for vigorous action in a sizeable portion of a country's population. A handful of terrorists led Canadian Prime Minister Pierre Trudeau to declare a state of emergency in Quebec province.[1] Belgium responded powerfully to a similar concern flowing from an equally small group.[2] The Red Army Faction, which preoccupied Germany for more than two decades, rarely had more than a few active members.[3] Even the Provisional IRA at its most active in Northern Ireland involved only hundreds, not thousands, of armed opponents of the British government.[4]

These small groups were able to reshape the domestic and foreign agendas of great governments even though the level of harm they threatened was very low and their means, with few exceptions, conventional. For more than 100 years, starting in the late nineteenth century, terrorists restricted themselves to assassinations, hostage-taking (which now includes hijacking of planes), and setting off relatively conventional bombs. The lesson for governments was to do what was necessary to protect citizens against a danger that was far less threatening than war or depression while guarding democratic liberties against the anger and fear that terrorism produced.

Before September 11, the United States was dealing with a terrorist problem that, with what then seemed to be two re-markable exceptions—the bombing of the World Trade Center in 1993 and the bombing in 1995 of the Alfred P. Murrah Federal Building in Oklahoma City—posed minimal risks at home. The harm to U.S. citizens abroad from much more troublesome international terrorism was also very small. The danger to our embassies manifested by the attacks in Kenya and Tanzania in 1998 was serious but did not create intense fear and anxiety at home, although we were already seeing the hands of Osama bin Laden and his Al Qaeda organization behind them. The result, as FBI and CIA testimony before the Congressional Intelligence Committees after September 11 has confirmed, was that there was relatively little concern about prevention of attacks in the United States.

How dangerous a situation is depends not only on how bad it is currently—and we were enjoying a prolonged period of safety at home—but also on how likely the situation is to get worse. We saw no particular reason to fear a radical increase in terrorism. Terrorism could threaten us in any one of the following four ways, none of which seemed likely: (1) we could anticipate a higher probability of the type of relatively small attacks against American interests, largely abroad, that we experienced in the 1980s; but these had gone down in the 1990s.

(2) More seriously, we could anticipate a sustained campaign of bombings such as those France and Britain had experienced in the 1980s and 1990s. Nothing promised that. (3) We had seen a handful of spectacular terrorist events involving conventional explosives used as powerful car or truck bombs. True, there was the World Trade Center bombing of 1993, and the bombing of the Murrah Building in Oklahoma City, but most attacks were overseas. There were the attacks on the American embassies in Africa and on the Khobar Towers barracks in Saudi Arabia, two large attacks in Lebanon, and more, but these seemed to show that it was easier, and thus more tempting, for terrorists to attack American forces and diplomats abroad than ordinary citizens at home. (4) Finally, we were beginning to worry about weapons of mass destruction, particularly nuclear and biological devices, but nothing like that had been seen with the sole exception of the limited Aum Shinrikyo sarin gas attacks in Japan.[5]

Our attention was focused on how to deal with hostage takers and how to retaliate after a terrorist event. Thus there was little attention paid to prevention, particularly at home. As a result, the September 11 terrorists were hardly challenged in their use of easily hijacked airliners as humanly guided missiles to attack targets that were both symbolic and important.

Prior to September 11, it was possible to describe, with some precision, what options the United States had in dealing with the two most familiar forms of attack by terrorists: hostage taking or deadly attacks against people and property. Terrorists were likely to hijack or take hostages in other forms because of the immense publicity associated with the prolonged detention of, and prolonged danger to, U.S. citizens. Since the object of terrorism is, overwhelmingly, to use the magically exaggerated fear, anger, and anxiety that even a few terrorists can create as a megaphone to speak to audiences that would not otherwise hear or listen,[6] hostage taking had great publicity advantages. The options for a state whose hostages were taken

were either to try to rescue them with a sudden military-like assault, or to make concessions to the demands of the terrorists. Otherwise there was nothing to do but stall.

If instead the terrorists had killed a state's citizens or destroyed its property, the remedies took the form of retaliation designed, much like criminal punishment, not only to deter future attacks but also to reassure the public of the targeted nation that they were not helpless and that their leaders were not indifferent. If the United States could satisfy itself and its allies that the attacks were state-sponsored, it could rely on the international law of self-defense to justify a short retaliatory military response, as we did in Libya, Iraq, Sudan, and Afghanistan; or it could attempt to establish diplomatic, economic, or travel sanctions, which required the cooperation of at least the major economies, or secure a UN Security Council resolution like the one that imposed sanctions on Libya after the bombing of Pan Am Flight 103.

If we could not attribute the attack to a state, we could attempt to respond against the individual terrorists or their organization. If the terrorists had fled to another state, that would require extradition as well as assistance in gathering evidence abroad. These forms of cooperation were often not forthcoming from states that either sympathized with the terrorists or feared that the terrorists, who had not bothered them before, would retaliate against them for extraditing someone belonging to one of their organizations. Without the formalities of extradition, a sanctuary state could agree to our arresting someone there. Pakistan did that in the case of Ramsi Yousef, the leader of the 1993 bombing of the World Trade Center. As an alternative, the United States could try to capture the terrorists abroad without the cooperation of a foreign government, a step forbidden by international law and the law of the state where the terrorists were seeking sanctuary. Israel had done this in the case of Adolf Eichmann; we, in the case of the Mexican killers of American DEA agent Enrique Camarena-Salazar.[7]

What Changed on September 11, 2001

What changed on September 11, 2001? First, the ruthlessness and devastation of the attacks convinced us that terrorists targeting the United States would in fact use weapons of mass destruction, including nuclear and biological weapons, if they could obtain and deliver them. Iraq had seemed a likely source. Second, the careful planning and professional execution with which the September 11 attacks were carried out; the attribution of the attacks to an organization, Al Qaeda, which may have trained more than 10,000 would-be terrorists; and the location of that large organization within a context of radical Islamism that may motivate millions—these together created a form and scale of threat totally different from that posed by the handful of largely untrained terrorist operatives we had seen in the past. Moreover, what we could conclude from the September 11 attacks alone cast new light on—had to be reconsidered in the light of—the successful embassy bombings and the near success of the 1993 attack on the World Trade Center.

The first implication of these changes was that our estimation of the size of the danger we faced from terrorism, whether measured by the people attacking us or by the weapons they might use, was suddenly increased by several orders of magnitude. The implication of this was that we had to start taking the problems of prevention and consequence-management vastly more seriously—more seriously, indeed, than the problems of hostage-taking and retaliation that had been our focus before.

Broadly, prevention had two or three aspects: keeping the terrorist events from happening; dealing with the consequences effectively if they did happen; and restoring national confidence thereafter. The first, which took on far greater urgency after September 11, also suddenly looked more difficult because we were dealing with suicide bombers, whose effectiveness was being demonstrated daily in Israel. They had a distinct tactical advantage. Among the half-dozen or so chal-

lenges for terrorists designing a successful attack, one had been eliminated: the necessity of planning for the terrorists' escape.

Our ideas about how order was to be imposed on the world's politics also changed on September 11. Until the end of the twentieth century, the relevant set of legal arrangements—the morally binding and somewhat enforceable rules—could be described as a complex network of powers and responsibilities. Most law dealing with terrorism was left to the decision of specific states. Some was created by mutual agreement among sovereign states through bilateral treaties (such as the extradition agreements between the United States and scores of nations) or by multilateral conventions (such as the United Nations Charter or the airplane sabotage convention). Subject to veto, the Security Council could direct states to take (or refrain from) actions where necessary to secure or maintain peace. For example, it imposed sanctions on Libya as a result of the attack on Pan Am Flight 103 over Lockerbie.

What states could do in the name of fighting terrorism was limited in another way. States could and did agree to protect certain fundamental human rights of their own citizens or citizens of other states. By the start of the twenty-first century, many nations, but not including the United States, had even agreed to accept and cooperate with the jurisdiction of an International Criminal Court that could, at the behest of its first prosecutor, Luis Moreno Ocampo, enforce a few of the most basic of these rights against officials and other individuals throughout the world. On less basic matters, an individual state could hold another state responsible for the fair treatment of its citizens when residing as aliens abroad. Aside from these relatively minor restrictions, each state was responsible for the peaceful and useful relations among people within its borders.

While a state could enforce its own laws against terrorism by citizens or aliens—individuals or organizations—within its territory, subject only to its obligations by treaty or tradition to respect human rights and also to protect, in specified ways,

citizens of other countries, it could not regulate or prohibit actions abroad except those by its own citizens or those actions directed at consequences within the state or threatening the nation itself. (One further but narrow power allowed every state to punish violations of a very few "universal" norms respecting behavior no state could handle alone or tolerate being left unhandled.) Theoretically State X might order its citizens in State Y to do something State Y prohibited for anyone within its borders, but that possible conflict arose *very* rarely if ever.

Thus, whether the actions involved states, groups, or individuals, it was decently clear who had the power to regulate their relationships. There were no sizeable gaps—no significant areas of dispute about whose or what law controlled whether a governmental or non-governmental organization or an individual was free to take action A. And the understanding about who could enforce the rules setting any applicable limits for permissible actions was almost equally clear. A state could take military action against another state only in self-defense and pending Security Council response. Other forms of sanction—economic or diplomatic—were only restricted by specific agreements (such as trade agreements). No state could enforce its laws by sending its police into any other state without consent of the host country.

September 11 revealed a gap in this web of legal regimes for states, groups, and individuals that had been intended to deal comprehensively with war, crime, and the rights of non-citizens. Al Qaeda was a sizeable non-governmental organization, operating from a number of states against the people and government of the United States, thereby creating a threat to the lives, physical security, and economic welfare of U.S. citizens and residents. It posed an ongoing danger of attack and harm much larger than that of any purely criminal group, yet it generally operated without ongoing support of a hostile state (thus not making applicable even an extended notion of the

power of self-defense against a hostile state). Its activities could be prohibited as crimes against the United States under the rules allowing each state to protect itself against crimes targeting that state. But it planned, trained, and frequently operated beyond the area where we can *enforce* our laws by sending in police, leaving us to rely on schemes of international cooperation never designed to bear the strain of a systematic set of attacks on our country.

Its first attack relied on visitors from other countries, a category whose relatively free entry into and life within the United States had hitherto been welcomed. Welcoming alien visitors had not posed any comparable danger in peacetime, although "enemy aliens" had traditionally experienced severe controls in time of war between the United States and the state of their citizenships.

In short, even extending the rights of nations to defend themselves to include attacks on states knowingly harboring a terrorist group would not make the familiar laws of war available to the United States when Al Qaeda operated in secret from friendly states. And even extending the network of law enforcement cooperation would not create a system, in every state from which Al Qaeda might operate, sufficiently motivated and efficient to prevent attacks on us. A dangerous gap remained.

The President responded by expanding the notion of international war, previously limited almost exclusively to conflict among states, to reach foreign non-state groups that wanted to harm the United States—and invoking, with the expanded use of "war," the extraordinary powers of a wartime executive at home and some of the powers associated in the past with controlling "enemy aliens" in wartime. Because our non-state enemies in this "war" did not comply with the obligations that states had accepted in the Geneva Conventions, we noted and exploited the absence of international law protection against their being detained indefinitely, tried by the military, and coercively interrogated.

Even as to states the rules changed. Eighteen months after the attack, the Director of Policy Planning at the Department of State, Richard Haass,[8] had developed a notion of "weak sovereignty," something less than the traditional rights of sovereignty, which was to be the fate of nations that either support terrorist movements; or possess weapons of mass destruction in violation of international law; or engage in repeated breaches of human rights. Any of these activities could justify a military intervention. With that, traditional notions of sovereign rights to be free of foreign interventions, ranging from police operations to war, had joined domestic traditions as the subjects of proposed radical transformation.

Already, in the name of a "war" of a new kind, the president had asserted new claims of executive powers to act without normal legislation or judicial review; to maintain wartime secrecy in place of public accountability; and to detain even citizens without allegations of crime or judicial determination of dangerousness. Now the nation claimed a right to operate militarily in countries with which we are at peace to capture or kill our attackers. For such illegal combatants in a "war" (albeit of an unprecedented, non-state form) against the United States and for the states where they resided, there was a new absence of protection from U.S. actions. The United States could make its own rules—which generally showed restraint—and the commander in chief alone could speak for the United States in making them.

What We Still Did Not Know

If the world looked startlingly different to the public, it was not because we had much specific information about the nature of the threat. Assessing the more precise nature of a terrorist threat requires understanding the motivation of the terrorists, their organizational structure, and their capabilities, including their access to needed resources. As to each of these, the American public and, to a large extent, our government was

quite ignorant. We could not answer certain crucial questions, even after our overthrow of the Taliban and our pursuit of members of Al Qaeda in Afghanistan and in the rest of the world.

The motivation of Al Qaeda might have been to drive the United States out of Saudi Arabia and bring us to end our support of Israel; alternatively, it might have been to harvest and redirect the frustrations, resentments, and sense of lost respect of some significant proportion of over a billion Muslims.[9] The first would suggest targets in the future that would have the maximum impact on American people. The second would lead Al Qaeda to look for targets that were most inspiring in the symbolism of the Muslim world.

As to structure, Al Qaeda could be a hierarchical organization whose capacities would be greatly diminished if it were deprived of a home base from which its leadership could operate. But, alternatively, it might be more like a franchising operation or a foundation, reviewing plans and then funding much smaller groups of independent operators and helping them make the necessary contacts for carrying out their plans. Somewhere in between, it could be a terrorist training and indoctrination facility for the thousands who visited its bases in Afghanistan, many of whom might then return with plans needing more specific assistance.

The minimal conditions for operating even something as small in scale as a terrorist foundation would be an ability to raise money, a reliable system for inviting and vetting applicants, a pool of dedicated people who may want to submit plans, and a group of trusted individuals who could provide the missing expertise or resources needed for execution of an applicant's plan. The most significant difference from a hierarchical organization is the absence of any need for a substantial home base or headquarters. Indeed, the organization could be even less structured: largely a religious/social movement based on hostility to the United States because of conditions that are blamed on U.S. policy.

Finally, whatever the structure and motivation, the capabilities of the terrorists depend upon skills, weapons, helpers abroad, and support available within the United States, as well as what money the organization has available to it. The professionalism of the attacks on September 11 suggests deliberation, careful planning, and disciplined execution but tells us little else about the capacity of the organization. We were wholly unprepared for an event that, in retrospect, involved stunningly little in the way of sophisticated technology.

We can take truly effective steps of prevention only if we know something about motivation, organizational structure, and capabilities. Only if we know these matters can we also assess how much in the way of dollars and historic liberties we must be prepared to pay for more adequate prevention.

The Response of the Bush Administration

Faced with these risks and these uncertainties, the Bush administration defined the dangers we faced as "war," demanding and justifying a radical shifting of our domestic and international priorities. It waged a traditional "war" against the Taliban in Afghanistan, denying Al Qaeda their former safe haven, and a far less successful pursuit of the leaders of Al Qaeda.[10] It explained a war against Iraq as needed to deal with the danger that Saddam Hussein would make weapons of mass destruction available to Al Qaeda or similar others. At home, it acted as if we were confronted with the risks to our independence, safety, and economy that existed during World War II. It challenged boldly, if not brashly, traditional assumptions about our democratic freedoms and the role of judicial review in guaranteeing them. And it excluded the Congress as far as possible from responsibility for determining what steps could and should be taken and even from oversight of the conduct of the "war." Finally, our allies were "either with us or against us," as we decided largely by ourselves what had to be done.[11]

The administration's focus was sharply on prevention of future attacks and the use of "offense" against terrorist groups to accomplish this and reduce fear. Increasing safety was a sensible dominant aim, although as a nation we have additional concerns as well. We have to maintain our foreign alliances, formal and informal. That requires not only mutual benefit but also maintaining a persuasive moral and legal justification behind our military, diplomatic, and economic actions abroad. We have to maintain trust in—and avoid fear of—our government for all significant parts of the population. That requires both effectiveness and fairness in our responses. We want to punish wrongdoers simply because that's right, and we would like to build as broad as possible a military, legal, and moral commitment to oppose all forms of terrorism—even those that do not threaten us. But no other goal is quite comparable in importance to creating safety and ending fear.

Recognizing the concern about fairness and maintaining trust in our government among all significant sections of the population, the administration tried to avoid a war on the Muslim religion, successfully seeking support against Al Qaeda from Muslim countries. At home, when it felt that particular groups had to be subjected to exceptional steps of investigation, it announced a focus on aliens (frequently not distinguishing between resident aliens and visitors) while in practice giving particular attention to aliens from Arab or Muslim countries (no other terrorist group threatening the United States had made use of suicide bombers).[12] The administration showed a willingness to spend very large amounts of money and to extensively reorganize the federal government in an effort to prevent future terrorist attacks and, more sparingly, to reduce the harmful consequences of those that would occur.

In one sense, these were the actions of an administration that, even prior to September 11, was skeptical of Congress and the courts, unconcerned with traditional domestic priorities, and doubtful of the need for international cooperation. But

these responses also reflect the central mystery of even the most conventional form of terrorism: a capacity to generate massive fear and anxiety. Public fears and anger are immediate and powerful; threats to civil liberties or divisions within the society or among allies are more remote and far less urgent or demanding. Moreover, in the background lies the time bomb of political responsibility for not having stopped the next terrorist attack, whether it is a small conventional bomb, a campaign of conventional bombings, a "spectacular," or an effort to use chemical, biological, or nuclear weapons. We may not know much about the real risks that face us, but political actors can assess the political costs to be borne by anyone who has opposed even the most extravagant of preventive steps, if and when the next terrorist event takes place.

The Wisdom of War in Afghanistan

Whatever one's views on the wisdom of trying to reduce the dangers of terrorism by attacking Iraq in 2003, the initial commitment to war in Afghanistan was plainly wise. Al Qaeda was able to recruit, train, plan, and marshal resources to attack far more easily because the government of Afghanistan tolerated and supported these activities. Much of the world was prepared to accept our expanded definition of national self-defense—the standard required by Article 51 of the UN Charter—when we declared that harboring those activities was a hostile threat to U.S. security. We have dealt with that state support by a military campaign that should also be a warning to other states. Such open help will not be available, risk free, in the future to groups threatening violence against U.S. citizens and interests at home or abroad.

War in Afghanistan had other benefits. Much of the motivation for the attacks on September 11 may have been to turn the passive resentment of felt victimization into heroic hopes in much of Islam by showing the vulnerability of the United States to Islamist terrorists and proving its inability to retaliate

effectively. This would increase enthusiasm for violent action in any pool of people deeply hostile to the United States. Our successful war in Afghanistan has helped deny these dangerous rewards to terrorists.

Indeed, the war in Afghanistan promised to show our enemies that we had learned how to fight and win wars without bearing grave losses of our own soldiers' lives; in some unstable nations even a relatively weak armed opposition becomes powerful, compared to the government it resists, when intelligently supported by our air power and Special Forces. Finally, to whatever extent we have been able to capture or kill individuals planning to continue the attacks of September 11 or to deny them the resources they need, we have also been addressing the danger even if in fact our efforts reach only a fraction of our potential enemies and of their resources.

Other factors favored treating the conflict with the Taliban as a war. The conflict depended in far larger measure on the activities of the U.S. military than on intelligence agencies, the State Department, or the Justice Department. The number of armed and dangerous individuals we faced was beyond the operational capacity and beyond the physical reach of our judicial system. Useful or even necessary measures involving a significant amount of collateral damage depended for their legality on this being a war. The conflict, insofar as it was against the Taliban regime of Afghanistan, would have a limited duration during which it would require extraordinary mobilization of our resources and prompt, centralized decision-making. The conflict was far more analogous to what we had called "wars" in the Middle East and South Asia than what we had labeled "terrorism" in those areas.

More Questionable Choices

The administration announced a goal of destroying any form of terrorism that could threaten us and, perhaps, terrorism more broadly, almost regardless of the cost.[13] That goal seemed

so obviously a pre-condition for civilization—nothing justified attacking innocent civilians for political purposes—that the administration demanded unqualified support from other countries as a measure of their friendship and their recognition of the harm that had been done to us. We did not address the issue with our friends as a problem of foreign relations that could be confronted in any number of ways, and as to which good friends could differ. You were with us or against us.

The administration needed support at home, too. It relied on public fears and the resulting demands for vigorous, unified leadership to corral the Congress. Its insistence on the importance of secrecy, and therefore the impropriety of oversight, helped. Its political posture was always aggressive, for the administration trusted that the American people would not demand greater deference to allies or to domestic civil liberties.

Finally, for structures and resources needed to crush terrorism, the administration relied primarily on the Department of Defense and secondarily on a new Department of Homeland Security. Improved intelligence was important, but it was felt that the FBI and the CIA could work that out with sufficient pressure from the president and the Congress. The role of the State Department was largely to maintain support abroad for our military efforts.

In the chapters that follow, I shall argue that however well that strategy might work in the short term, it has great weaknesses as a long-term strategy. War on terrorism is the wrong theme. Reliance on the military is the wrong set of priority activities. We need the willing cooperation of allies throughout the world, and this will require taking into account views of terrorist activity as something other than pure evil. Continued domestic support will depend upon confidence that the administration is not proposing, as "temporary" losses of democratic liberties, changes that could last for generations. Most important, the organizational structure that is most needed is a greatly improved intelligence apparatus that will still be accountable to the American people. Expenditures on the de-

partments of Defense and Homeland Security might be worth-
while, but they are, ultimately, of secondary importance.

Many administration decisions looked fine in the short run.
There are, however, special requirements for a government
project that is intended to last over a sustained period of time;
a fight against terrorism is plainly such a project. Its goals must
incorporate choices that will be desirable and accepted over
that long period. Empowering the executive at the expense of
the legislature and overriding particular democratic liberties
that have become traditional might have been fine, and ac-
cepted, for the four years of World War II. But if these were to
be the practices of decades of a war on terrorism, the country's
democracy would change fundamentally. On the other hand,
the long duration of the problem of terrorism means that
capacities that are more difficult to create quickly can be put
into place. The same is true of alliances, treaties, and other
critically important forms of support among nations.

We need plans for dealing with the ups and downs of a wider
variety of the forms of terrorism over the long haul. The first
question is whether it helps to approach that need as if what we
face is a "war."