

The challenges confronting western intelligence services after 9/11

Written by Maciej Osowski

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MACIEJ OSOWSKI, FEB 18 2011

It is difficult to imagine that the beginning of the 21st century could have started with bigger revolution than the 9/11 attacks. This event has had an enormous impact on international politics, global security, and citizens' privacy. Moreover, the consequences of those attacks will certainly be felt over the decades to come. Perhaps the only event that can come close to 9/11 on terms of impact both on the US and in the global scale is the Pearl Harbour attack which led to the US involvement in the World War II. Nevertheless, it seems reasonable to argue that the repercussions of 9/11 might in the long term outweigh those of Pearl Harbour, even though its effect on international relations, economy and security will not be possible to assess in its entirety in the near future.

There is one more very important connection between those events. In both cases it was an intelligence failure that allowed the total surprise of attack and therefore the shock and huge damage to be done to the US. In the case of Pearl Harbour, it led to deep reform of American intelligence community. It can be only guessed what reforms are being introduced due to 9/11[1] commission reports in the intelligence service structure. In fact, most of what is happening within the American and Western intelligence community is mostly guesswork. That being said, one can still find a fairly reliable body of information and assessment of principal challenges confronting Western intelligence services in the post-9/11 scenario. These are elements which will be shaping the evolution of Western intelligence services in incoming years. This essay will argue that there are four main challenges that intelligence services have to tackle with the view to enhancing their ability to secure the functioning of states. First of all, the new type of enemy will make Western intelligence services concentrate equally on non-state and state actors. Secondly, the use by intelligence agencies of their broadened privileges granted to them after 9/11 will be outlined, where avoiding the abuse of human or civic rights seems to be a major challenge. Thirdly it will be demonstrated how important an issue it is for services to enhance their own coordination and the ability to read signals fast enough to deliver warning about the incoming danger. Finally, the problem of international cooperation between intelligence services will be analysed as crucial to gaining advantage over new threats. Because of the space limitations, the US and the UK intelligence agencies will be understood to represent the Western intelligence community – one of the reasons for that being that in both countries the problem of intelligence after the 9/11 was the main issue of concern raised in many available publications.

Before the 9/11 attacks the intelligence community and its challenges were not at the centre of public interest. According to G. Tenet[2], there was widespread belief that the US (and the world, for that matter) is safe compared to the period of Cold War. Despite his and the CIA warnings about possible threat from Islamic terrorist groups neither the public opinion nor responsible figures in the US administration were particularly interested in concentrating on the threat. Putting aside Tenet's claims that he fulfilled his duties by informing responsible figures about possible danger of attacks on US soil, it can be argued with certain accuracy that the US intelligence services failed to deliver information about possible danger.

After the attacks there was an automatic shift in intelligence interest from state to non-state actors (even though, obviously, the whole bureaucratic machine could not change its interest overnight). According to Cogan[3], change happened not only to American but to all Western intelligence services. From gatherers they changed into hunters searching for any information revealing possible threat of attack. Compared to standard state targets, Al- Qaeda and

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other global terrorist groups were more difficult to find, target and spy on. Probably that is why not only American but all Western services had problems with a smooth shift in concentrating on this new non-state actor threat – example of which were the 7/7 London and 3/11 Madrid bombings. Both events happened a few years after 9/11 – supposedly long enough to shift intelligence agencies interest to Al- Qaeda and similar networks. Moreover, the failure to deliver accurate intelligence on WMD in Iraq proved that American intelligence could not manage not only targeting non-state actors but, while shifting its interest to them, it neglected major hostile state actors such as Iraq. From the emerging picture it is clear that Western intelligence is barely struggling to cope with the challenge defined as new non-state actors.

At the same time, it must be borne in mind that this picture of failure and intelligence constraints is biased by the impossibility to reveal intelligence successes. It is easy to pick intelligence failures as in most cases they were revealed to the public, however in case of successes, public opinion will not be informed about them until many years after, when nobody will be really interested in them any more. Nonetheless, there is at least one success of a foiled Al-Qaeda attack on flights over Atlantic[4] that has been known to the public (because of necessary precautions of not allowing any liquids in on-board luggage). This can mean that there have been many other successful operations against Al-Qaeda and other non-state actors about which the truth will be not revealed. On the other hand, it could be reasonably argued that, taking into account an immense pressure intelligence services were under, they would leak information if there had been other spectacular successes. In point of fact, except few leaks about minor successes, there has been no information so far about any other major achievement. All of this makes it difficult to judge how successfully Western intelligence agencies are in tackling the new challenge of Islamic terrorist groups.

Yet the fact remains that non-state actors are a major challenge for Western intelligence services in the post-9/11 context. Agencies have to face this threat and one will only be able to judge the result of this competition in incoming years. But appearance of Al-Qaeda and similar groups did wake up services from the Cold War sleep. If it had not been for 9/11, nobody could ensure that Western intelligence would apply suitable attention to the new threat. Nowadays it can be argued that services are conscious of the possible new threat – not only Islamic terrorist groups, but also of their security vulnerabilities which could be used by enemy. According to some scholars[5], top officials and analysts opened their imagination after 9/11 and are aware that the threat to national security can come from everywhere, all the time.

The second huge challenge for Western intelligence services does not come straight from the 9/11 attacks but is a direct repercussion of them. The New York attacks but also the Madrid and London bombings convinced government officials that extraordinary steps should be taken against new threat as it looked that until then intelligence agencies had had not enough abilities to cope with the incoming danger. No responsible politician could allow themselves another attack to happen. A similar situation would surely show them as useless and shiftless. Therefore many governments took the simplest way of defending themselves, that is they granted wider privileges for their intelligence services. Both the UK and the US have chosen this path of tackling the new unprecedented threat. Soon after the 9/11 attacks President George W. Bush issued an executive order that authorised the National Security Agency (NSA) to conduct surveillance of certain telephone calls without obtaining a warrant[6]. Furthermore, over the next two years NSA was able to monitor all calls and electronic traffic within the USA[7], which allowed them to keep track not of the communications content, but of the details of people who communicated. This was an issue raised by human and civil right organisations and allegedly was violation of constitutional rights[8].

Apart from these extraordinary and controversial steps, both the UK and the USA introduced special counter-terrorism legislations to fight direct threat of terrorism after the 9/11 and 7/7 attacks. The UK introduced The Anti-Terrorism, Crime and Security Act 2001 on 19 November 2001, The Prevention of Terrorism Act 2005 and The Terrorism Act 2006 that received the Royal Assent on 30 March 2006. The US introduced The Patriot Act on October 26, 2001. This legislation was designed to sunset after direct terrorism threat ceased. In both countries the counter-terrorism legislation was renewed and is still in power[9]. Unfortunately because of space limitation it is impossible to research this legislation in this paper, but it is fair to say their use was went beyond terrorism. It is enough to mention the UK using it against Iceland and, in the USA, the FBI using it against casino customers[10].

The rationale behind recalling this legislations is to show that intelligence services failed to abstain themselves from

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excessive usage of it. Wider privileges are always a challenge for intelligence agencies. The first challenge is directly related to the central objective of intelligence services themselves, founded to defend the constitution and citizens. Overusing counter-terrorism laws leads to the abuse of citizens' rights, people who agencies were designed to defend in the first place. It means that the instrument to achieve the aim actually disables the aim itself. In other words counter-terrorism legislation is often counter-productive at the same time. Long periods of detention, targeting Muslim community as one of "suspects", the control of funds, breaching citizens' freedoms, arguably there is hardly any more direct impulse to terrorism activity than this legislation itself. While perhaps useful in the short term, in the longer perspective counter-terrorism legislation is always leading to divisions within the society and therefore can even enhance terrorism activity in the long run. It can be argued that until now intelligence services in Western states have been failing to restrain themselves in using wider privileges. On the other hand, it is valid to speculate whether it is these agencies that should restrain themselves or whether it should rather be governments' responsibility to do it[11]. It is reasonable to assume that intelligence services will always use legislation to the limit or even beyond it as they understand that if something is legislated, then it is ethical and right. Therefore, a question can be asked whether constraining itself is a challenge for intelligence agency. Or maybe it is rather an issue for the government not to "pass the buck" of responsibility onto intelligence services by enhancing their privileges.

Another challenge is directly related to the functioning of intelligence agencies themselves. As in fact responsible services failed to warn government and citizens against the danger of attacks, it cannot really be said that they failed when gathering such information. With hindsight, it is obvious that Agencies did indeed ignore signals coming from their agents or instruments, or interpreted them too late too late[12]. Strictly speaking, it was not the lack of intelligence so much as the problem of information management that caused the delayed warning. At least this is what journalists and 9/11 commission investigation have revealed[13]. As a consequence of that, President ordered an intelligence reform which could be compared to the one designed after Pearl Harbour attack. Not only did he centralise intelligence management into the Office of the *Director of National Intelligence*, but also *tempered usual rivalries between agencies and facilitated communication*. He also *established a whole new Cabinet department of the United States federal government with intelligence privileges (the Department of Homeland Security) with the aim to target terrorist activities on American soil*. These steps taken by executive power can be described as reasonable, especially if we take into account the fact that intelligence services possessed information about possible attacks with planes but did not managed to bring it higher, because of organisational constraints[14].

There is a general consensus among scholars that there is probably the biggest since World War II governmental (Department of Homeland Security) and intelligence (DNI) reform taking place. At the same time nobody can be sure what exact consequences will follow from this reform. Hopefully, this will be the best way of facing up to the challenges of coordinating intelligence services effort and facilitating the speed of signals analysis. It will probably take years before one can fully assess in what sense the issue of improving intelligence service functioning was resolved successfully. Needless to say, it is highly possible there will be no agreement as to whether it was more of success or failure. Nevertheless, improving its own coordination and speed of information delivery can arguably be described as one of primary intelligence challenges in the post-9/11 context. Hopefully, the way the US is tackling this issue will encourage other Western states to follow it as most reasonable in the context of changing security threats in the post-9/11 era.

Last but not least, another challenge for intelligence services is the issue of international cooperation. The challenges outlined above involve mostly tasks which to be resolved within single state. However, the process of international intelligence cooperation *per se* involves cooperation between different states and their services. The importance of this challenge cannot be overrated. As 9/11 attacks brought on the international scene the transnational threat of non- state terrorism groups, adequate response to that issue would be also international cooperation, particularly in intelligence matters. While there is general consensus among academics[15] that it would be an appropriate response to transnational threat, there is no doubt intelligence liaison is a challenge itself for Western intelligences.

Most importantly, it needs to be said that after 9/11 states highly involved in fighting terrorism, such as the UK and the USA, started close cooperation with states such as Pakistan, Syria and Libya. Such cooperation is fraught with many challenges and traps – suffice it to mention possible manipulation of information delivered. Also, over-reliance on sources from authoritarian states is highly risky because these states can use it for putting political pressure on

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their democratic allies. Such cooperation also provokes criticism from civil rights organisations and therefore needs to be assessed always in the light of possible advantages and losses.

Furthermore, international cooperation within Western intelligence services is not as smooth as one could imagine. Undoubtedly there has been an increase in cooperation between signatories of UKUSA 1948 agreement (the UK, the USA, Canada, New Zealand, Australia) and several other serious partners (France, Germany). However, there are also limitations to it. Many resources could be not reliable as was the case of information from the German agent Curveball on which US intelligence relied prior to the second Iraq invasion[16]. It does not matter that information come from reliable allies as everybody can make mistakes and trust must be restrained. What is more, cooperation between democratic states is a subject of parliamentary and judicial oversight and can be revealed under normal conditions to the public, as it has recently happened in UK[17]. This can cause further distrust even in long and deep liaison processes.

There is no doubt that cooperation between intelligence agencies is becoming more important in the post-9/11 scenario. At the same time, it can be argued that intelligence sharing is still and will stay a major challenge not only to intelligence services themselves but also to governments and human rights.

This paper has argued that there are four main challenges for Western intelligence services in post 9/11. Firstly, there is a new type of enemy, that is the non-state actor. Secondly, larger privileges granted after 9/11, advantageous perhaps in the short term, are equally challenging in the long run. Thirdly, it has been demonstrated how challenging for services it is to enhance their own coordination and ability to read signals in an environment when time between warning and attack can be counted in minutes or hours rather than days. Finally, the problem of international cooperation between intelligence services was described as crucial to gaining advantage over new threats. Although facts behind the importance of these challenges have been demonstrated, it is as yet unclear how successful intelligence services are in tackling them. Unfortunately it will probably take decades to judge if facing up to those challenge by Western intelligence services was more of a success or a failure.

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Written by: Maciej Osowski
Written at: Aberystwyth University
Lecturer: Dr Dan Hucker
Date written: 2010.05

About the author:

Maciej Osowski has a M Psych degree in Work and Organizational Psychology from Adam Mickiewicz University Poznań. He was a member and Branch President of Conservative Liberal Koliber Association. He is currently a student of International Politics/Intelligence at Aberystwyth University.