

PREVENTING INTERNATIONAL TERRORISM: CAN MULTINATIONAL CORPORATIONS OFFER A FRESH NEW PERSPECTIVE?

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Preventing international terrorism: Can multinational corporations offer a fresh new perspective?

In the four years since September 11th, the United States and the world have been committed to winning the war on terror. The evil that came to our shores on September 11th has reappeared on other days and in other places. In cities across the world, we have seen images of destruction and suffering that can seem like random acts of madness but are part of a larger terrorist threat. To combat this evil, we must remember the calling of September 11th - we will confront this mortal danger to all humanity and not tire or rest until the war on terror is won.

President George W. Bush, October 6, 2005.

Speech given to The National Endowment For Democracy On The Nature Of The Enemy We Face And The Strategy For Victory.¹

I. Introduction

With these words, President Bush continued to emphasize the importance of the war on terror until this war is won. Victory is depicted as the only acceptable result.

¹ See <http://www.whitehouse.gov/infocus/nationalsecurity/>.

The United States of America (“USA”), geographically far away from the rest of the world prior to 9/11, was a country sufficiently protected from terrorist activities in the homeland. However, many other parts of the world have been at the clutches of terrorism for a long time.

The world changed drastically for the USA after 9/11. One could easily suggest that a new legal era began: the era of law and order after 9/11.

The new legal era is marked by the passing of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001² and other legislation such as the Enhanced Border Security and Visa Entry Reform Act of 2002;³ the Support Anti-terrorism by Fostering Effective Technologies Act of 2002;⁴ the Executive Order 13224 entitled Blocking Property and Transactions with Persons who Commit, Threaten to Commit, or Support Terrorism; and a lot of other bills and resolutions.⁵ In this article, I will suggest some new approaches to deal with the problem of the millennium, terrorism, drawing conclusions from the practice of multinational corporations (“MNC”) and international business transactions.⁶

² Pub. L. No. 107-56, 115 Stat. 272, commonly known as the USA Patriot Act.

³ Pub. L. No. 107-173, 107th Cong., 2d Sess. (May 14, 2002).

⁴ Pub. L. No. 107-96, commonly known as the SAFETY Act.

⁵ See <http://thomas.loc.gov/home/terrorleg.htm>. This site was begun in September 2001, by the Library of Congress, as a way of keeping the public informed of legislation related to the terrorist attack on the USA. The creators of the site, refer to the selection of legislation as necessarily subjective. However, they do cover a wide range of such activity, as the September 11th attack had a ripple effect on legislation. The site has last been updated on October 30, 2002.

⁶ See *infra* III. for a discussion of what is an MNC.

International business transactions are private business transactions.⁷ However, they are international in character. “The international element exists when the parties have their places of business in different nation states; when these transactions involve the movement of goods, services, capital or technology across the boundaries of different nations; or when transactions between parties of one state have a direct effect in a different state”.⁸

International businesses incorporated as MNCs, operate in many different states.⁹ MNCs while investing in new ventures all over the world, have to manage a variety of risk factors such as language risk, cultural risk, currency risk, and political risk including terrorism.¹⁰ MNCs have been in the quest to perfect their risk management strategies just like the Olympian athlete who practices to ace her competition on the balance beam. One small false step and they are both doomed to fail. However, when MNCs and the Olympian have complete control and balance, they achieve the perfect 10 performance and let the world watch their performance with envy, awe and amazement.

In reality, what have MNCs done to manage the risks they face, especially in the developing world, in order to make their turbulent journey a calm one? How do

⁷ DANIEL C. K. CHOW & THOMAS J. SCHOENBAUM, INTERNATIONAL BUSINESS TRANSACTIONS 1 (2005).

⁸ *Id.* at 1.

⁹ BLACK'S LAW DICTIONARY 1407 (6th ed.1990). State means a people permanently occupying a fixed territory bound together by common-law habits and custom into one body politic exercising, through the medium of an organized government, independent sovereignty and control over all persons and things within its boundaries, capable of making war and peace and of entering into international relations with other communities of the globe.

¹⁰ See *infra* III.a. for more detailed information regarding risks faced by MNCs.

MNCs manipulate a variety of risk factors and still be profitable? Are these risk managing mechanisms applicable to the challenges faced by states in general and the USA in particular, with respect to combating terrorism?

In this article, I will argue that the principles that have worked for MNCs would be beneficial and effective for states as well as the USA to win the war against terrorism. I will further argue that the USA has a unique position in the world, where it has an accumulated dormant knowledge regarding fighting terrorism in light of its ownership of the most respected, most profitable and largest corporations in the world.¹¹

Finally, I will propose that the president of the USA, appoints an advisory council, comprised of representatives of MNCs, that would function under the Department of Homeland Security (“DHS”). The MNC advisory council would report to the secretary of the DHS on a regular basis regarding information and feedback about changing business climates, trends, strategies and practices they incorporate in their risk management techniques with the aim of strengthening and preventing further terrorist attacks.

¹¹ Based on the Pricewaterhouse Coopers report for world’s most respected companies available at <http://www.pwc.com/Extweb/ncsurvres.nsf/docid/8FB55E0D663409F580256F4F003B99D3> the following MNCs were selected as the most respected companies in 2004: General Electric, Microsoft, Toyota, IBM, Coca-Cola, Dell, Wal-Mart, Citigroup, Procter & Gamble, and Hewlett-Packard.

II. Globalization and its effects on the war on terror

At the most basic level, globalization involves increased movement of products, services, currency, ideologies, religions, and culture between countries, and it facilitates the sharing of technology and information among people.¹² Thomas Friedman¹³ defines globalization as “the inexorable integration of markets, transportation systems, and communication systems to a degree never witnessed before in a way that is enabling corporations, countries and individuals to reach around the world farther, faster, deeper and cheaper than ever before”.¹⁴ In its most extreme form, globalization refers to total global connectedness, the creation of an entirely borderless world, and the end of the nation state.¹⁵

It is easy to see that globalization is affecting and will continue to affect the economic, political, cultural, and social structure of our world. As indicated above globalization not only consolidated the world in terms of free movement of goods, services, currency, and technology, it also created the concept of global terrorism. Global terrorism is a phenomenon observed all around the world. Recently, in March 2004, ten bombs detonated in four locations on Madrid's train line; killed 191 and injured 1,460 others.¹⁶ The suspects that were arrested by

¹² Aaron Judson Lodge, *Globalization: Panacea for the World or Conquistador of International Law and Statehood?*, 7 *Or. Rev. Int. L.* 224, (2005).

¹³ Thomas Friedman is a New York Times foreign affairs columnist who is a three times Pulitzer price winner.

¹⁴ See, *supra* note 12, at 3.

¹⁵ *Id.*

¹⁶ Daniel B. Prieto, Mass Transit Security after the London Bombings, Address Before the Commonwealth of Massachusetts Joint Committee on Public Safety and Homeland Security (August 4, 2005), at http://bcsia.ksg.harvard.edu/publication.cfm?ctype=testimony&item_id=50.

authorities had nationalities from Morocco, India, Syria, and Spain.¹⁷ In England, on 7 July 2005, with four bombs, terrorists struck the London underground, killing 52 people and injuring 700 more.¹⁸ The incident was the deadliest single act of terrorism in the United Kingdom since the 1988 bombing of Pan Am Flight 103, and it is the deadliest bombing in London since the Second World War.¹⁹

As the incidents in Madrid and England show terrorists and money supporting terrorist activities move from anywhere in the world to their target destination. As part of globalization and a smaller world, more people and goods cross international borders. Thus, one has to accept globalization as a given and build the solutions to fight terrorism around it. It is not realistic to assume that one nation can be isolated and kept safe from terrorism by closing all its borders and screening all entrants prior to entering the boundaries of the state.

Accepting that we live in the age of globalization, MNCs have started building their success strategies around requirements of doing business in a globalized world, such as moving their manufacturing facilities where labor costs are cheaper. Globalization will certainly play a role in fighting terrorism as well. As MNCs have adapted to the new rules of the game, states will be obliged to do the same to win the war on terror.

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.*

a. What is terrorism?

In the international arena there is no one definition of terrorism. This complicates the quest to find a solution to the problem. The logical first step to solve a problem is identification of and thus definition of the problem. Whole articles, chapters, and books have been dedicated solely to the purpose of defining terrorism²⁰. The abundance of such literature has caused some judges to adopt an “ I know it, when I see it” approach.²¹ The problem lies in the notion that one person’s freedom fighter is another person’s terrorist. As outrageous as it may sound, this is even true with Al Qaeda and Osama Bin Laden. The West does not hesitate to categorize Al Qaeda as a terrorist movement, despite the fact that many in the Muslim world see Osama Bin Laden and Al Qaeda as freedom fighters, engaged in the mission to liberate the Islamic world from a corrupt and immoral West.²²

Thus, it is easy to see why the definition of terrorism has caused wide debate. Some scholars have suggested that, rather than defining terrorism, a futile mission, it is best left undefined. This in turn, ensures that different kinds of terrorism can be defined without attempting to provide a complete definition that would satisfy all situations without the need to reach an agreement on a

²⁰ P. J. VAN KRIEKEN, *TERRORISM AND THE INTERNATIONAL LEGAL ORDER* (The Hague, 2002), Chapter 2 provides a good explanation of different definitions of terrorism. The pages from 13 to 31 discuss the lack of an agreement on a single definition of terrorism on the worldwide scale.

²¹ JOHN DUGARD September 11, 2001, *A turning point in international and domestic law?*, 187 (Paul Eden and Theresa O’Donnell, eds., Transnational Publishers, 2005).

²² *Id.* at 189.

comprehensive convention.^{23, 24} Some scholars have suggested that current conventions and the international legal system is adequate to deal with terrorism.

On the other hand, some other scholars have suggested the completely contrary view, advocating strongly for a single terrorism definition applicable under all circumstances. This contrary view has suggested that in order to bring discipline and order to the international system, it is necessary to sign and enforce a new comprehensive convention on international terrorism that defines terrorism and provides a mechanism for greater cooperation among states. The new convention would also facilitate efforts to prevent terrorism and bring to justice those who commit terrorist activities in any corner of the world.²⁵

My conclusion is that whether you accept that there is a need for a brand-new convention in the post 9/11 era, or whether you believe in the strength of the status quo, the reality of the situation remains the same. There is a surge in terrorist activities around the world and in the USA, and legal systems are obliged to create innovative solutions to deal with terrorism. More forums where terrorism and its solutions are researched and discussed in depth will provide

²³ *Id.*

²⁴ BLACK'S LAW DICTIONARY, 331 (6th ed. 1990). A convention is a pact or agreement between states or nations in the nature of a treaty, usually applied (a) to agreements or arrangements preliminary to a formal treaty or to serve as its basis, or (b) international agreements for the regulation of matters of common interest but not coming within the sphere of politics or commercial intercourse, such as international postage or the protection of submarine cables.

²⁵ SURYA P. DUBEDI, The war on terror and UN attempts to adopt a comprehensive convention on international terrorism, 225 (Paul Eden and Theresa O'Donnell, eds., Transnational Publishers, 2005).

fresh new outlooks and a better outcome for solving this extremely challenging problem.

In spite of all difficulties, the definition of terrorism in international law has gained acceptance to the extent it has defined different kinds of terrorism²⁶ without attempting to provide a complete definition of terrorism that would satisfy all situations. This has been a middle ground approach where there is still a unified terrorism definition but it changes under different circumstances.

For the sake of simplicity, however, throughout this article I will accept the definition contained in title 22 of the US Code, Section 2656f subtitled Annual Country Reports on Terrorism and subsection (d) (2) which gives the following definitions:

As used in this section—

- (1) the term “international terrorism” means terrorism involving citizens or the territory of more than 1 country;
- (2) the term “terrorism” means premeditated, politically motivated violence perpetrated against noncombatant targets by subnational groups or clandestine agents; and
- (3) the term “terrorist group” means any group practicing, or which has significant subgroups which practice, international terrorism.²⁷

The US Government has employed this definition of terrorism for various statistical and analytical purposes since 1983.²⁸ When I will use the term terrorism in this article, I will refer to the international terrorism definition as

²⁶ *Id.* at 187.

²⁷ See http://www4.law.cornell.edu/uscode/html/uscode22/usc_sec_22_00002656---f000-.html .

²⁸ *Id.*

defined above under title 22, section 2656f (d) (2) of the US Code. This article does not address domestic terrorism.

b. Responses from around the world to the terrorism challenge post 9/11

Which are the countries in the world that have previously faced terrorist activities on their lands? What have they done that has worked in the past? Would it be possible to form a database where best practices in the war against terrorism can be combined? Should the USA look at places around the world and incorporate best practices type of changes to its current legal order?

The General Accounting Office of the USA, has already conducted some studies comparing and contrasting the systems in several countries pre 9/11. In the April 2000 Report presented to Congress, titled “Combating Terrorism”,²⁹ the General Accounting Office reported about how other states are organized to combat terrorism, and how they allocate their resources to combat terrorism.³⁰ A broader study with specific focus on how other states in the world manage to protect their homeland could provide some valuable insight and some additional measures that can be used to prevent terrorism.

²⁹ This is the US General Accounting Office report dated April 2000 to congressional requesters at <http://www.gao.gov/archive/2000/ns00085.pdf> .

³⁰ The General Accounting Office selected Canada, France, Germany, Israel, and the United Kingdom. The report suggests that global terrorism in Europe is in decline because of vigilance by security forces and the recognition by some terrorist groups that long-standing political and ethnic controversies should be addressed by negotiations. In the report, especially, England and Israel, indicated the direct relation of developments in the peace process with the decline of terrorist activities.³⁰ Cooperation between law enforcement and intelligence agencies has been another reason for the decline in terrorism.

How did other states in the world respond to the challenge post 9/11? Some states in the world have specific terror legislation whereas others have relied only on their general criminal and tort laws. A quick review suggests that states which have had problems with terrorism in their history, such as England and Spain, have enacted specific legislation, whereas states that have had a smooth run such as Sweden and Switzerland, left the matter to their general legislation.³¹ States that have had casualties caused by terrorism tend to pass new rules and regulations subsequent to a major terrorist attack. For instance, the Terrorism Act of 2000 and the Anti-terrorism, Crime and Security Act of 2001³² are two of the most recent pieces of legislation in England passed for combating terrorism. The Anti-terrorism and Security Act of 2001 has been England's response to the 9/11, terrorism events. The aim had been to take immediate action and try to solve the terrorism problem with a legislative approach.³³

Europe, in particular, chose to take action on 63 grounds.³⁴ These grounds can generally be put under several different categorizations: new legislative measures such as the European arrest warrant; revised and revamped operational measures; and new specific security measures. Europe's review of its operational measures resulted in better coordination between different bodies dealing with terrorism, better intelligence gathering, and advanced systematic

³¹ BERNHARD A. KOCH, *Terrorism, Tort Law and Insurance, A Comparative Survey*, (Springer, 2004).

³² CLIVE WALKER, *Blackstone's Guide to Anti-terrorism Legislation*, Oxford University Press, July 2002.

³³ DOUGLAS A. KASH, *An International Legislative Approach to 21st Century Terrorism*, 163 (ed. Harvey W. Kushner, Sage Publications 1998).

³⁴ See at <http://www.statewatch.org/news/2002/jul/rm10773-r2.pdf>.

reporting of the findings to the EC.³⁵ Enforcing borders and improving information systems were some specific security measures that were adopted. Another action taken by Europeans was to increase diplomatic activity related to building an international coalition against terrorism.

c. United Nation's ("UN") attempts to fight terrorism

The UN is an organization of independent states. The purposes of the UN, are to maintain international peace and security; to develop friendly relations among states; to cooperate in solving international economic, social, cultural and humanitarian problems and in promoting respect for human rights and fundamental freedoms; and to be a center for harmonizing the actions of states in attaining these ends.³⁶

In the words of Kofi Annan, the General Secretary of the UN,

Terrorism is a global threat with global effects;..... its consequences affect every aspect of the United Nations agenda from development to peace to human rights and the rule of law. By its very nature, terrorism is an assault on the fundamental principles of law, order, human rights, and the peaceful settlement of disputes upon which the United Nations is established. The United Nations has an indispensable role to play in

³⁵ JORG MONAR, *The EU and the challenge of September 11*, 406, (Paul Eden and Theresa O'Donnell, eds., Transnational Publishers, 2005).

³⁶ See at <http://www.un.org/aboutun/basicfacts/unorg.htm> .

providing the legal and organizational framework within which the international campaign against terrorism can unfold.³⁷

It is no surprise that the UN has been at the forefront of the fight against terrorism throughout its history. A first attempt to arrive at an internationally acceptable definition of terrorism was made under the League of Nations. However, the convention drafted in 1937 under the guidance of the UN, never did come into existence because of its attempt to define terrorism.³⁸ The League of Nations was the forerunner of the UN and it ceased its activities after failing to prevent the second World War.³⁹

The UN officially came into existence on 24 October 1945, when the initial charter, drafted by representatives of 50 countries in San Francisco, was ratified by a majority of the 50 signatories.⁴⁰ UN member states still have not agreed on a universal definition for terrorism applicable under every situation. Unfortunately, it is often thought that one state's terrorist is another state's freedom fighter. With 191 states as constituents⁴¹ following different agendas, it is not hard to guess why the UN is having difficulty to agree upon a unilateral definition on terrorism.

³⁷ See at <http://www.unodc.org/unodc/terrorism.html>.

³⁸ See at UN website- http://www.unodc.org/unodc/terrorism_definitions.html.

³⁹ See at <http://www.un.org/aboutun/history.htm> .

⁴⁰ *Id.*

⁴¹ The complete list of all member states can be found at <http://www.un.org/Overview/unmember.html> .

The current structure under the UN has 13 major conventions and protocols regarding terrorism. There are also a number of important UN Security Council and General Assembly Resolutions on international terrorism, dealing with specific incidents.

The major UN Conventions addressing terrorism are the following⁴²:

1. Convention on Offences and Certain Other Acts Committed on Board Aircraft (Aircraft Convention, Tokyo, 1963-safety of aviation)⁴³.
2. Convention for the Suppression of Unlawful Seizure of Aircraft (Unlawful Seizure Convention, The Hague, 1970-aircraft hijackings).⁴⁴
3. Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation (Civil Aviation Convention, Montreal, 1971-applies to acts of aviation sabotage such as bombings aboard aircraft in flight).⁴⁵
4. Convention on the Prevention and Punishment of Crimes Against Internationally Protected Persons, including Diplomatic Agents (Diplomatic Agents Convention, New York, 1973- outlaws attacks on senior government officials and diplomats).⁴⁶

⁴² See at http://www.unodc.org/unodc/terrorism_conventions.html .

⁴³ As of 19 January 2006, 180 states are members to this convention.

⁴⁴ As of 19 January 2006, 181 states are members to this convention.

⁴⁵ As of 19 January 2006, 183 states are members to this convention.

⁴⁶ As of 19 January 2006, 159 states are members to this convention.

5. International Convention Against the Taking of Hostages (Hostage Taking Convention, New York, 1979).⁴⁷
6. Convention on the Physical Protection of Nuclear Material (Nuclear Material Convention, Vienna, 1979-combats unlawful taking and use of nuclear material).⁴⁸
7. Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, supplementary to the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation (Airport Protocol, Montreal, 1988, extends and supplement the Civil Aviation Convention, Montreal, 1971).⁴⁹
8. Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation, (Maritime Convention, Rome, 1988-applies to terrorist activities on ships).⁵⁰
9. Protocol for the Suppression of Unlawful Acts Against the Safety of Fixed Platforms Located on the Continental Shelf (Fixed Platform Protocol, Rome, 1988, applies to terrorist activities on fixed offshore platforms). This convention establishes a legal regime applicable to acts against fixed

⁴⁷ As of 19 January 2006, 153 states are members to this convention.

⁴⁸ As of 19 January 2006, 116 states are members to this convention.

⁴⁹ As of 19 January 2006, 156 states are members to this convention.

⁵⁰ As of 19 January 2006, 134 states are members to this convention.

platforms on the continental shelf that is similar to the regimes established for the protection of international aviation.⁵¹

10. Convention on the Marking of Plastic Explosives for the Purpose of Detection (Plastic Explosives Convention, Montreal, 1991-provides for chemical marking to facilitate detection of plastic explosives, e.g., to combat aircraft sabotage).⁵²

11. International Convention for the Suppression of Terrorist Bombing (Terrorist Bombing Convention, New York, 1997).⁵³

12. International Convention for the Suppression of the Financing of Terrorism (the "ICSFT")(Terrorist Financing Convention, New York, 1999).⁵⁴

13. International Convention for the Suppression of Acts of Nuclear Terrorism (Nuclear Terrorism Convention, New York, 2005, opened for signature on 14 September 2005 and is the newest UN convention regarding terrorism).⁵⁵

I believe the 12th convention of the UN, the ICSFT convention, indicates the trend to come in the era of fighting terrorism which is sharing responsibility. I would like

⁵¹ As of 19 January 2006, 123 states are members to this convention.

⁵² As of 19 January 2006, 121 states are members to this convention.

⁵³ As of 19 January 2006, 145 states are members to this convention.

⁵⁴ As of 19 January 2006, 149 states are members to this convention.

⁵⁵ As of 2005, 97 states have signed this convention. This convention has not entered into force yet.

to briefly discuss its innovative approach. The ICSFT rather than focusing only on tougher punishment encompasses preventive measures to fight terrorism.

Pursuant to the ICSFT, financial institutions are required to report unusual or suspicious account activities, to keep records of financial transactions for a period of 5 years, and to communicate and to cooperate with competent agencies.⁵⁶ Article 18 of the ICSFT addresses some of these specific preventive measures and it puts several burdens on financial institutions.⁵⁷

c. Why is the UN system not adequate to deal with terrorism?

The UN has 191 member states. The UN attempted to form a comprehensive convention on international terrorism post 9/11. The UN's Sixth Committee was

⁵⁶ LEGAL DEPARTMENT IMF 2003, SUPPRESSING THE FINANCING OF TERRORISM, A HANDBOOK FOR LEGISLATIVE DRAFTING.

⁵⁷ Article 18 reads in part as follows: 1. (b) Measures requiring financial institutions and other professions involved in financial transactions to utilize the most efficient measures available for the identification of their usual or occasional customers, as well as customers in whose interest accounts are opened, and to pay special attention to unusual or suspicious transactions and report transactions suspected of stemming from a criminal activity. For this purpose, States Parties shall consider:

- (i) Adopting regulations prohibiting the opening of accounts that holders or beneficiaries of which are unidentified or unidentifiable, and measures to ensure that such institutions verify the identity of the real owners of such transactions;
- (ii) With respect to the identification of legal entities, requiring financial institutions, when necessary, to take measures to verify the legal existence and the structure of the customer by obtaining, either from a public register or from the customer or both, proof of incorporation, including information concerning the customer's name, legal form, address, directors and provisions regulating the power to bind the entity;
- (iii) Adopting regulations imposing on financial institutions the obligation to report promptly to the competent authorities all complex, unusual large transactions and unusual patterns of transactions, which have not apparent economic or obviously lawful purpose, without fear of assuming criminal or civil liability of breach of any restriction on disclosure of information if they report their suspicions in good faith;
- (iv) Requiring financial institutions to maintain, for at least five years, all necessary records on transactions, both domestic or international.

allocated this enormous task. Under India's leadership, a lot of progress was made in the drafting of an international terrorism convention. However, some articles regarding the definition of terrorism and the exceptions of armed forces, blocked the negotiations.⁵⁸ This has undermined the authority of the UN and created questions as to whether the UN could adequately handle a world crisis. After all, what was the reason d'être of the UN if it could not provide a solution to a problem viewed as requiring immediate attention by a majority of states? At that time, the General Assembly stepped in and provided the lead towards the resolution of the controversial definition of terrorism by defining it as broadly as possible.⁵⁹

The fact that a UN convention is enacted only as a response to a terrorist incident indicates the trend that the UN is generally reactive in its actions rather than being proactive. Furthermore, many UN member states are not yet parties to these conventions or have not yet implemented them.⁶⁰

Under international law, treaties⁶¹ become part of domestic law by following a specific course of action. The term treaty and convention is used interchangeably. Agents of the states involved start the course of action. Once the agents of the states involved reach agreement on a text, the agents initial the

⁵⁸ DUBEDI, *supra* note 25 at 211.

⁵⁹ See at <http://www.un.org/Depts/dhl/resguide/r56.htm> , resolution G.A.Res./56/58, Dec. 12, 2001.

⁶⁰ *Supra* Section II.c.

⁶¹ See at <http://www.un.org/law/ilc/texts/treaties.htm> ; according to the 1969 Vienna Convention on the law of treaties, a "treaty" means an international agreement concluded between states in written form and governed by international law, whether embodied in a single instrument or in two or more related instruments and whatever its particular designation.

draft agreement. After the initialing phase, the principles of the agents, who are usually the heads of state or their representatives, sign the treaty. Subsequently, the treaty is submitted to legislative authorities, for approval. After the legislative approval is obtained, the heads of state express the consent of their state to be bound by the treaty by depositing an instrument of ratification with the designated depository power (in multilateral treaties) or with the other state party (in bilateral treaties).⁶² Thus, international law and national law have to act in a concerted effort to have a valid and enforceable treaty.

In other words, once the requirements of international law as underlined in the Vienna Convention on the Law of Treaties⁶³ are met, then the requirements of each individual state would have to be met to have an enforceable treaty. The constitution of each state explains the domestic requirements for treaties to enter into force. For example, Article VI (2) of the USA Constitution⁶⁴ describes the domestic process of acceptance into law of treaties. Other states have their own national processes described in their Constitutions. Therefore, it is important to know the stage at which the UN Convention stands to determine its chance of applicability and enforcement. The mere existence of a treaty can be insignificant unless it is incorporated and treated as national law by each individual state in accordance with their respective Constitution.

⁶² W. MICHAEL REISMAN, ET AL., INTERNATIONAL LAW IN CONTEMPORARY PERSPECTIVE 1281 (2004).

⁶³ See at <http://www1.umn.edu/humanrts/instree/viennaconvention.html> .

⁶⁴ Article VI (2) of the US Constitution reads: This Constitution, and the laws of the US which shall be made in pursuance thereof, and all treaties made, or which shall be made under the authority of the US shall be the Supreme law of the land; and judges in every State shall be bound thereby, anything in the Constitution or laws of any State to the contrary notwithstanding.

Assuming that member states have agreed upon and drafted an international terrorism convention, the mission does not end there. In fact, if the member states, for one reason or another change their positions and decide not to ratify and implement the convention or decide to ratify and implement the convention with reservations, the UN has no power to intervene at that stage. This indicates the vulnerability of the UN system. It is up to each individual member state to turn the convention into a reality, to make it and apply it as part of domestic law.

d. An alternative means to monitor terrorism: Multinational corporations

The US Department of State follows the patterns of global terrorism.⁶⁵ Based on the 2003 report, which tracks the terrorism patterns between the years of 1998 to 2003, businesses are the facilities that are struck the most compared to military, diplomatic, or state targets. In fact, businesses have been struck by international attacks for a total of 1534 times compared to 100 attacks on state targets.⁶⁶ This indicates that businesses must take the threat of terrorism seriously and incorporate strategies to deal with it effectively.

The breakdown of total attacks by region between 1998-2003 indicates that the number of attacks in North America is still relatively low. There have been a total of only six attacks in the USA, the least number of attacks, compared to all the other parts of the world. The next least number of attacks has occurred in

⁶⁵ See at <http://www.state.gov/s/ct/rls/pgtrpt/>.

⁶⁶ See at <http://www.state.gov/s/ct/rls/pgtrpt/2003/>.

Eurasia with 93 attacks.⁶⁷ Other parts of the world are doing worse, with 174 attacks in Africa, 400 attacks in Asia, and the worst being 1429 attacks in Latin America. However, when we look at the number of casualties, we see a different trend. Four attacks in the USA (the year of 2001) have resulted in 4465 casualties, whereas the 1429 attacks in Latin America resulted in only 365 casualties.

Approximately 80 percent of terrorist attacks against American interests over the past 30 years have been directed against American businesses.⁶⁸ In fact, American businesses and citizens abroad have been the target of terrorism many times. This further strengthens the argument that MNCs are well equipped to deal with the risk of terrorism because they have been pressed to develop systems, approaches, and mechanisms with the end-result of avoiding, preventing, and reducing threats and terrorist attacks. MNCs have encountered the risk of terrorism countless times and faced significant losses.

MNCs despite their enormous sizes, are agile and have to follow the terrain where they do business very carefully. Changes in the MNCs' political, social, cultural or economic structure of their operating environments will affect the business environment negatively or positively. Therefore, MNCs do the monitoring of political, social, cultural and economic structures of their operating environments and implement strategies to cope with the changing conditions.

⁶⁷ *Id* 11.

⁶⁸ JULIE A. MARTIN, Commentary on Political Risk Insurance Providers in the Aftermath of September 11 and the Argentine Crisis (ed. Theodore H. Moran, The World Bank Group).

Understanding the challenging operating environments of MNCs leads to my recommendation of forming an MNC advisory council represented by a member of each of the most respected MNCs that would consult with the state for purposes of furthering and perfecting protective security measures. The president of the USA, would appoint an advisory council, comprised of representatives of MNCs, that would function under the DHS. The MNC advisory council would share its best practices and insight in managing political risk, coupled with the social and cultural dynamic, with the secretary of the DHS. The MNC advisory council will meet on a regular basis and will provide constant feedback as to conditions on the ground to the secretary of the DHS. Providing such feedback to the secretary of the DHS would be similar to employing semi-central intelligence agency operatives on the ground all around the world. Information is power. Relevant information filtered through the MNCs and passed on to the secretary of the DHS could help to save innocent lives that would have been lost without such information.

Another expertise area of MNCs is the area of financing and control of money flows. As suggested by many scholars, a comprehensive campaign against terrorism is not possible without blocking the channels of terrorism financing.⁶⁹ One has to follow the money. Finding out the several hundred millions of dollars that finance terrorism in the three trillion dollars transferred daily in the

⁶⁹ ALEXEI VASSILIEV, *Financing Terror: From Bogus Banks to Honey Bees* 77 (ed. The Jamestown Foundation, 2004).

international financial marketplace is a tremendous task indeed.⁷⁰ MNCs, especially the MNCs that are financial institutions, can provide valuable input in this respect.

III. Multinational corporations

What do Citigroup Inc., Halliburton Company, Pfizer Inc., General Motors Corporation, the Coca-Cola Company, and Microsoft Corporation have in common? They are all MNCs operating all over the world. An MNC is defined as a firm that has centers of operation in many countries, in contrast to an international firm, which does business in many countries but is based in only one country, although the terms are often used interchangeably.⁷¹ The MNCs referred to in this article will be either MNCs with one of their major bases in the USA or international firms based in the USA.

MNCs manage foreign investments in different parts of the world after each of their respective board decides to invest abroad. Foreign direct investment is “an investment that is made to acquire a lasting interest in an enterprise operating in an economy other than that of an investor, the investor’s purpose being to have an effective choice in the management of the enterprise.”⁷² Foreign direct investment requires a major long-term commitment in another state regarding capital, human, and other resources on the part of the MNC. In a foreign direct

⁷⁰ *Id.*

⁷¹ BLACK’S LAW DICTIONARY 1015 (6th ed.1990).

⁷² International Monetary Fund, *Balance of Payments Manual*, 408 (1980).

investment venture, the MNC, with the goal of being and remaining at the top of its game, is obliged to manage all the risks mentioned under section III. a below.

From the time the decision to invest in a foreign state is made, the MNCs have to manage a variety of risks that are quite different than solely risks of domestic business transactions. The more complicated the transaction and the more volatile the conditions in the foreign country where the investment is to be made, the more risks the MNCs will have to manage.⁷³ Some MNCs are particularly well equipped to analyze and assess risks because they have done this as part of a survival strategy. The MNCs, especially in the petroleum and other natural resources fields and banks, have been at the forefront of political risk analysis.⁷⁴ Accordingly, in 1980, more than 70 percent of the MNCs in the natural resources field reported the use of institutionalized assessment activities that entailed explicit and systematic analysis of political risk.⁷⁵ Pharmaceutical MNCs are also recognized for their practices to monitor the regulatory environment where they operate.

a. Type of risks managed by multinational corporations⁷⁶

A basic list of risks that must be managed successfully for MNCs involved in foreign direct investments would include the following:

⁷³ A basic classification of international business transactions, ranging from simpler to more complicated, can be summarized as follows: (1) export-import transactions, (2) sale of services, (3) licensing and (4) direct foreign investment.

⁷⁴ HOWARD L. LAX, STATES AND COMPANIES: POLITICAL RISKS IN THE INTERNATIONAL OIL AND GAS INDUSTRY 12 (1988).

⁷⁵ *Id.*

⁷⁶ See generally LARRY A. DIMATTEO & LUCIEN J. DHOOGHE, INTERNATIONAL BUSINESS LAW: A TRANSACTIONAL APPROACH 12-27 (2006).

1. Special risks related to investing in developing countries such as arbitrary state actions, excessive taxation, and corruption.
2. Language risk. Because different languages may be spoken while conducting international business transactions it is highly likely that misunderstandings will result in poor communication.
3. Cultural risk. Operating worldwide requires knowledge in different business manners and methods, religious customs, dietary practices, humor, and acceptable dress.
4. Currency risk. Major economic risks that have to be managed by MNCs are convertibility issues between hard and soft currencies ⁷⁷, repatriation of profits risks, and currency rate fluctuation risks resulting in the form of devaluation.
5. Legal risk. Being subject to application and enforcement of foreign laws, mandatory investment guidelines required by states constitute some examples of legal risks faced by MNCs.
6. Political risk. Changes in state policies resulting in trade barriers that may include quantitative restrictions, new standards, labeling and certification requirements, state subsidies, changes in taxes etc. are all considered political risks. MNCs also have to deal with domestic turbulence and terrorism threats which are also dealt with under political risk. ⁷⁸

⁷⁷ US dollar, British pound, European euro, Swiss franc and Japanese yen are the hard currencies in the world. The rest is known as soft currencies.

⁷⁸ DAN HAENDEL, FOREIGN INVESTMENTS AND THE MANAGEMENT OF POLITICAL RISK 154 (1979).

Regime changes or changes to the existing political, economical, and social policies where the MNCs investments are located will almost always require management of the changes on the part of the MNCs. When a state effects changes to its policies, there is a potential threat to the MNC's investment. Policy changes may result in hostilities toward the very presence of the MNC: political hostility to foreign investment generated by ideological inclinations; nationalistic concerns over the domination of the economy by foreign elements; changes that take place globally within an industry; deterioration in the general law and order situation in the country making the foreign investment a target for attack; intervention in a foreign investment in order to exercise a regulatory power such as the protection of investment or some economic interest; internal corruption or where a corrupt state replaces a new state are all such types of hostilities.⁷⁹ All these hostilities indicate the volatility of the terrain MNCs have to operate in and the risks the MNCs must become adept at managing on a regular basis.

b. Managing political risk

Political risk refers to the potential economic losses arising as a result of governmental measures or special situations that may either limit or prohibit the MNCs activities.⁸⁰ There are many definitions of political risk events. They can include demonstrations, riots, sabotage, terrorism, armed

⁷⁹ M. SORNARAJAH, THE INTERNATIONAL LAW ON FOREIGN INVESTMENT 77 (2004).

⁸⁰ JANICE MONTI-BELKAOU & AHMED RIAHI-BELKAOU, THE NATURE, ESTIMATION, AND MANAGEMENT OF POLITICAL RISK Chapter 3 (1998).

insurrection, revolution, guerrilla war, and civil war as well as many other events.⁸¹

Older corporations such as the Coca-Cola Company managed political risk literally for hundreds of years. The Coca-Cola Company opened its first bottling plants outside the US in 1906 in Canada, Cuba, and Panama.⁸² Today it is operating in 200 states.⁸³ This is even more than the 191 states where the UN operates. Younger corporations such as Microsoft Corporation have only been in existence since 1975⁸⁴ but still they have done risk management overseas for quite some years now.

Some scholars have named avoidance, adaptation, and risk transfer as corporate responses to political risk.⁸⁵ Whereas other scholars have suggested using investment guaranties, timing and entry strategies, altering the subsidiary's activity, controlling the location of intangible assets, local purchasing strategies, outsourcing, moving funds, and direct lobbying as ways to minimize political risk.⁸⁶

⁸¹ *Id.* The long-list includes the following events as political risk events: change of contract price, civil disorder (demonstration, riots, sabotage, terrorism, armed insurrection, revolution, guerilla war, civil war), creeping expropriation, devaluation, revaluation, domestic price control, domestic refining and shipping requirements, embargoes and boycotts, flow of funds restrictions, foreign exchange control, foreign war, government to government sales policies, hiring and firing constraints, ideological change, international trade barriers and constraints, labor relations, labor shortages, local product content rules, locally shared ownership, non-tariff barriers, outright nationalization, production quotas, reinvestment requirements, tariff barriers, tax.

⁸² See <http://www2.coca-cola.com/ourcompany/aroundworld.html> .

⁸³ *Id.*

⁸⁴ See <http://www.microsoft.com/mscorp/goingbeyond/indexFlash.html> .

⁸⁵ HAENDEL, *supra* note 78 at 74.

⁸⁶ *Id.* at 78.

Some other actions suggested to minimize political risk are the following: demonstrating through well-designed public relations efforts the importance of private and foreign investment to national development⁸⁷; avoiding partisan involvement in local politics; identifying the MNC with national aspirations and objectives; emphasizing the MNC's contribution to the economy; directing the MNC's efforts to increase exports; developing strong local suppliers, customers, and employees; implementing an effective training system for management; encouragement of local participation by using the local stock market or through joint ventures; seeking the leverage mechanism through analysis of local state operations, the roles played by opposition elements, the distribution of wealth, and the sources of societal stability; conducting the maximum amount of research and development locally; blending into the environment and becoming an integral part of society; risk sharing through the participation of international agencies; cultivating host country academics and intellectuals as consultants; developing skills in dealing with state representatives; maintaining up-to-date information on political and economic conditions about the state where the foreign direct investment is located; and considering both public and private political risk insurance.⁸⁸

⁸⁷WITOLD J. HENISZ, *Political Risk Management: A Strategic Perspective* 155 (ed. Theodore H. Moran). Managers of 13 firms in cellular service and electricity generation industries, also identified active monitoring of political and regulatory areas as well as active participation in policy debates, public relations aspects as key determinants of success for their business in emerging markets.

⁸⁸HAENDEL, *supra* note 78 at 144.

Some other strategies used by MNCs to minimize foreign investment risks have been transferring some or all of the ownership to locals, promoting a large number of locals to upper management, giving more decision power to locals, relying on local partners with relevant contacts, producing locally rather than importing a greater number of parts and increasing export reputation toward participation in world markets, achieving a status of indispensability when having exclusive access to high technology or specific products, integrating vertically to offer economies of scale to the local operation, local borrowing, minimizing fixed investments and buying political risk insurance.⁸⁹

A careful analysis of the risk management measures described above can lead to many transferable risk management strategies that can be incorporated to state practices in the field of preventing terrorism.

c. Terrorism insurance

Demand for terrorism insurance coverage increased significantly after 9/11. Supply is nowhere to be found however. Some export trading agencies which used to provide terrorism insurance coverage at no cost, either started to charge for this coverage or have stopped providing it altogether.⁹⁰ As most property underwriters began to exclude terrorism insurance risk from the

⁸⁹ MONTI-BELKAOUI & RIAHI-BELKAOUI, *supra* note 80 at 145.

⁹⁰ VIVIAN BROWN, Political Risk Insurance After September 11 And The Argentine Crisis: A Public Provider's Perspective, 20 (ed. Theodore H. Moran, 2004, The International Bank for Reconstruction and Development/The World Bank 2004).

general insurance contract, a market for stand-alone terrorism insurance risk coverage began to develop. Political violence wordings, which describe terrorism, in export credit agencies' contracts have been scrutinized in depth.⁹¹ The cost of political violence coverage has increased.⁹²

Since 9/11, very few corporations are willing to cover risk of terrorism as part of a general property policy.⁹³ What had previously been viewed by the political risk industry as a seemingly minor risk is now too large and too unpredictable. Thus, the political risk insurance industry is refusing to underwrite the risk as a potential for unlimited liability.⁹⁴ States in the industrialized world now have to fill the need for an insurer of last resort for terrorism.⁹⁵ In fact, Israel, South Africa, Spain, and the United Kingdom have already done so.⁹⁶

In the USA, the Terrorism Risk Insurance Act of 2002⁹⁷ provides a three-year terrorism backstop, which obliges all insurers to offer insureds with exposure in the US terrorism insurance coverage with respect to international terrorism only.⁹⁸ The Act initially would terminate at the end of 2005 and was capped at

⁹¹ *Id.*

⁹² *Id.*

⁹³ THEODORE H. MORAN, Overview, 12 (ed. Theodore H. Moran, The International Bank for Reconstruction and Development/The World Bank 2004).

⁹⁴ *Id.*

⁹⁵ *Id.*

⁹⁶ *Id.* at 13.

⁹⁷ H.R. 3210, 107th Cong., 2nd Sess. (2002).

⁹⁸ DAVID JAMES, Political Risk Insurance After September 11 And The Argentine Crisis: An Underwriter's View From London, 29 (ed. Theodore H. Moran, The International Bank for Reconstruction and Development/The World Bank 2004).

100 billion USD.⁹⁹ On December 22, 2005, President Bush signed into law the Terrorism Risk Insurance Extension Act of 2005, which reauthorizes the Terrorism Risk Insurance Program for two years, while expanding the private sector role and reducing the federal share of compensation for insured losses under the program.¹⁰⁰

In light of the increased responsibilities on the part of all states, states have been obliged to step up to the plate and eventually underwrite terrorism insurance as a last resort institution. It is clear that prevention of terrorism would be a very wise strategy to follow as it would act to limit state responsibility and would limit significant potential losses.

IV. Some examples of multinational corporations practices that would be valuable to win the war on terror

a. The focus point: prevention vs. punishment

The most straightforward solution to disputes that may arise in the international arena is the use of dispute resolution techniques. One of the first things experienced MNCs do to avoid complex transnational litigation is to arrange for the settlement of disputes out of court. This is done by means of conciliation, mediation, and especially arbitration. There are certain instances in which the MNC cannot avoid ending up in court. However, to the extent the

⁹⁹ JULIE A. MARTIN, Commentary on Political Risk Insurance Providers in the Aftermath of September 11 and the Argentine Crisis, 59 (ed. Theodore H. Moran, The International Bank for Reconstruction and Development/The World Bank 2004).

¹⁰⁰ See <http://www.treas.gov/press/releases/js3066.htm> .

MNC can avoid litigation, and resolve the dispute through arbitration the MNC is considered more victorious. Frequently cited advantages of arbitration over litigation include potential savings in time, expense, confidentiality, and expertise of the arbitrators about the subject matter.¹⁰¹

This is similar to the emphasis that must be given to fight the war against terrorism. The focus should be on prevention rather than punishment. In other words, the focus should be to find effective solutions to block the terrorist activity before it occurs, not to deal with it after it has resulted in tremendous damage.

One of the first and natural responses to control terrorism in post 9/11 has been enacting new legislation. New legislation has in fact built upon the existing legal foundations of national powers of surveillance, investigation, detention, and prosecution. Military intervention in places like Afghanistan and Iraq were also some other responses to deal with the problem. Enacting new legislation or military intervention can only be a partial solution in the fight against terrorism.

Conventional legal measures are necessarily reactive in character.¹⁰² Legal measures aim to improve security, surveillance, and investigation. Legal

¹⁰¹ DIMATTEO & DHOOGHE, *supra* note 76 at 125.

¹⁰² CHRISTOPHER HARDING, *The Concept Of Terrorism And Responses To Global Terrorism: Coming To Terms With The Empty Sky* (Paul Eden and Theresa O'Donnell, eds., Transnational Publishers, 2005).

controls also incorporate tougher criminal law regimes in relation to jurisdiction, transnational legal cooperation, and penalties.¹⁰³ Unfortunately, when we assess the past 30 year's legal activity, we see that legal control measures have neither reduced the risk of terrorist activity nor affected the determination to carry such activities out. The Madrid and London terrorism events which happened post 9/11 appear to confirm such an assessment. Legal measures do not seem to act as preventive measures against terrorism events. We have to conclude that the prospects for effective legal control of terrorism appear pessimistic to say the least.¹⁰⁴

It is true that there may be occasional advances and gains in intelligence and investigations arising from legal control measures. However, the evident costs, ranging from an increasing, not decreasing, level of public apprehension and nervousness to established miscarriages of justice should force the state to think out of the box and supplement legal control measures with alternative prevention measures to win the war against terrorism.¹⁰⁵

Although I do not suggest here that tougher legislation or adequate punishment should be avoided, what I am suggesting is to shift the focus of emphasis to prevention to win the war on terror. Just like the distinction of focusing and resolving disputes in the pre-litigation stage for MNCs, the emphasis on fighting terrorism should also lie with preventing terrorist

¹⁰³ *Id* at 172.

¹⁰⁴ *Id* at 184.

¹⁰⁵ *Id.* at 173.

activities with means other than tougher punishment. MNCs' risk management strategies focus on prevention rather than punishment. Because of the importance of preventing terrorism and because MNCs practices focus on prevention, further analysis and incorporation of MNCs terrorism prevention practices into the existing structure holds tremendous value that remains to be added to the system.

b. Applicable measures

What are some of the measures used by MNCs that can be applied immediately to fight terrorism? I will suggest four of such measures: conducting public relations campaigns, forming strategic alliances, identifying best practices by conducting a survey among MNCs, and incorporating best practices to prevent terrorism.

1. Public relations campaigns

Global marketing strategists have suggested to use the concept of exemplary corporate citizenship to reduce political vulnerability and risk for MNCs. The report acts as a public relations campaign, outlining a positive image of the MNC.

Emphasizing that the MNC is an exemplary corporate citizen reinforces the points set forth below¹⁰⁶:

¹⁰⁶ *Id.* at 144.

1.The MNC is a guest in the foreign state. The MNC acts according to local rules and regulations. Furthermore, the MNC complies with global responsibility standards.

2.The profits of the MNC are not solely repatriated abroad. The profits of the MNC are distributed between national employees and the economy of the foreign state where the operation is located.

3.The MNC respects local customs, practices, and tastes of customers.

4.Although English is an accepted language overseas, the MNC uses the local language as well. Fluency in the language of the international customer helps in marketing sales and cementing good public relations.

5.The MNC contributes to the state's economy and culture with worthwhile public projects.

6.The MNC trains its executives and their families to act appropriately in the foreign country.

7.The MNC employs its foreign operations with competent local nationals. The MNC supervises the operations from home.

MNCs already started publishing corporate citizenship reports explaining how they conduct business responsibly and ethically and how they

enhance value in the communities they operate.¹⁰⁷ This is a promotional tool for MNCs.

In an increasingly globalized world, first-class management of public relations is extremely important for MNCs. In fact, public relations is replacing old fashioned advertisement. Good publicity provides: high credibility as news stories and features are more authentic and credible to readers than ads; buyers are caught off guard because public relations can reach prospects who prefer to avoid salespeople and advertisements; and the MNC itself or its products are dramatized easier in public relations campaigns.¹⁰⁸

The experience of MNCs is transferable to the area of states preventing terrorism. Based on MNCs experiences, I suggest designing two public relations campaigns. The first public relations campaign would be conducted by the DHS at the national level focusing on creating terrorism awareness. The second public relations campaign would be conducted on the international level focusing on enhancing the image of the USA internationally. Just like the exemplary corporate citizenship reports that are creating a positive buzz around MNCs, such public relations campaigns with the US interests in mind, will create a positive buzz

¹⁰⁷ Coca-Cola and Microsoft are two of such MNCs. Coca-Cola's citizenship report is available at http://www2.coca-cola.com/ourcompany/citizenship_report.html .Microsoft's is available at <http://www.microsoft.com/citizenship/default.msp> .

¹⁰⁸ PHILIP KOTLER, MARKETING MANAGEMENT 565 (Millennium Edition).

around terrorism awareness and around the image of the USA. Furthermore, implementing an international public relations campaign to reinforce a positive image of the USA would provide countless advantages. Good publicity will take the USA one step closer to winning the war against terror gaining countless allies on the US's side.

2. Strategic alliances

Forming strategic alliances is an approach widely used by all businesses. Alliances sometimes work but sometimes they can be disastrous for an MNC. MNCs have learned some painful lessons in crafting winning alliances. MNCs seem to focus on three key elements in crafting winning alliances: strategic fit, a focus on the long term, and flexibility.¹⁰⁹

An MNC needs to assess its own core competencies to determine whether there will be a strategic good fit with another corporation. Thereafter, the MNC needs to find a partner that will complement the MNC in its business lines, geographic positions, or competencies. A good example of a strategic fit is AT&T, Systems Inc. and Sovintel, A Russian telephone corporation. The two joined forces to offer high-speed services for digitized voice, data and video communication between the two countries. By joining together, the two telecommunications corporations

¹⁰⁹ KOTLER, *supra* note 108 at 82.

can offer new services for more business customers than either could do it alone.

The second condition to a strategic alliance is a focus on the long term. Joining forces between corporations to save a few dollars has proven to be a short lived strategy. Instead strategic partners should focus more on gains that can be harvested for years to come. Corning Incorporated (“Corning”) is one of the leaders in the area of building strategic partnerships. Corning, a leading supplier of glass and ceramic technologies, has a well deserved reputation for creating partnerships. Corning, considers itself a network of organizations and half of its products come from joint venture partnerships.

The third condition in crafting a winning alliance is flexibility. Alliances need flexibility for survival. One example of a flexible partnership is Merck & Co. Inc.’s alliance with Astra AB Sweden.¹¹⁰ Merck & Co. Inc. started out by owning the distribution rights of Astra AB’s new drugs in the USA. For the next phase, Merck & Co. Inc. formed a new corporation to handle the partnership’s \$500 million a year business at the time and sold half the

¹¹⁰ AstraZeneca was formed on 6 April 1999 through the merger of Astra AB of Sweden and Zeneca Group PLC of the UK – two companies with similar science-based cultures and a shared vision of the pharmaceutical industry.

equity to AB Astra.¹¹¹ Thus, Merck & Co. Inc. changed the structure of the cooperation based on a market driven approach.

Forming strategic alliances has also been used in the area of fighting terrorism. i.e. The USA obtained an alliance of multinationals to enter into Iraq. The USA had sufficient troops should it wish to deploy them. However, the USA enlisted the troops of other states for the mere political impact.¹¹² The USA initially went for a broad alliance. However, troops of the strategic alliance pulled back before the Iraqi mission was accomplished.¹¹³

There are plenty of lessons to be learned from the MNCs strategic alliance forming experiences that are directly applicable to the Iraqi situation. Choosing an alliance that works is the difficult part. A true strategic alliance is a mutually beneficial cooperative relationship where decision-making is shared between the partners, and the parties achieve strategic goals and value that they could not accomplish on their own.¹¹⁴ It takes more than just to find the right partner or partners. Goals need to be understood clearly; the benefits and risks of an alliance as well as the

¹¹¹ KOTLER, *supra* note 108.

¹¹² Matt Kelley, US Partners in Iraq dwindling in number, size, USA Today, January 28, 2005 also available at http://www.usatoday.com/news/nation/2005-12-28-iraq-coalition_x.htm .The article, it summarizes that the coalition forces in Iraq in 2005 number fewer than 23,000 from 24 countries, down from about 50,000 from 38 countries in 2003.

¹¹³ The news of nations pulling out of Iraq was reported in the press. Available at <http://www.cbsnews.com/stories/2005/03/15/iraq/main680400.shtml> .

¹¹⁴ See <http://www.ciainsight.com/article2/0,3959,16483,00.asp> .

alternatives need to be analyzed before forming such relationship. It is easy to form alliances for the sake of forming them. Making them truly function is the difficult part.

3. A survey worth doing

A survey of corporate programs for managing terrorist threats conducted in 1993, found that 30% of MNCs at the time had specific programs that dealt with the risk of terrorism events.¹¹⁵ Furthermore, some MNCs such as The Coca-Cola Company have been doing this type of management for a much longer period of time.¹¹⁶ The 1993 survey of the programs showed the following characteristics as the focus of such programs: purchasing security devices and equipment; training executives, middle managers and foreign national employees; protecting assets; allocating dollars for security planning purposes; and collecting data worldwide on terrorist activities.¹¹⁷ MNCs have also indicated that they have stimulated the local economies, employed host country nationals, shared ownership, acted politically neutral, lobbied behind the scenes and observed the political mood to reduce exposure to political risk.¹¹⁸ I believe that it would be extremely beneficial to repeat a similar survey to bring light on current MNC terrorism prevention practices.

¹¹⁵ MICHAEL G. HARVEY, *A Survey of Corporate Programs for Managing Terrorist Threats*, Journal of International Business Studies Vol. 24, No. 3., pp. 465-478 (3rd Quarter, 1993).

¹¹⁶ See III.b. above.

¹¹⁷ *Id.*

¹¹⁸ MONTI-BELKAOUI & RIAHI-BELKAOUI, *supra* note 80 at 146.

I contacted several of the largest and most respectable MNCs¹¹⁹ based in the USA to ask them whether they had a terrorism prevention program and if they did, whether they could share the characteristics of their terrorism prevention programs for an academic study. In other words, I attempted to conduct a survey that would shed light on the MNCs practices in the area of preventing terrorism. The contacted MNCs were not willing to share the information openly and publicly. The MNCs stated that such information was proprietary in nature but that they did have terrorism prevention programs in place. It was obvious that the MNCs were sensitive to the subject.

Frankly, it is very understandable that an MNC might not be willing to share its expertise and experience in the management of political risk and terrorism, as this is viewed as a core competency. The DHS could conduct such a survey. The survey would provide valuable information that could be directly used to enhance the existing terrorism prevention system. There is a lot to be shared and learned from MNCs, that have done this numerous times very meticulously in international settings.

¹¹⁹ See *supra* note 11. Based on the Pricewaterhouse Coopers report for world's most respected companies, the following MNCs have been contacted: General Electric, Microsoft, Toyota, IBM, Coca-Cola, Dell, Wal-Mart, Citigroup, Procter & Gamble, and Hewlett-Packard. Specifically Coca-Cola, Hewlett-Packard and General Electric responded that this type of information was proprietary in nature and could not be shared publicly. The other corporations sent generic messages through their websites and did not respond to the query.

4. Sharing best practices

In the fight against terrorism should the entire burden be on the shoulders of the state? What could MNCs do as responsible corporate citizens?

What about sharing the best practices in risk management with the state?

Best practices in the business world generally define superior practices that have been successful, such as distribution strategies, technological innovations, and customer service. The corporations that are commended as best practices award recipients are those with the diligence, perseverance, and dedication required to develop a winning business plan and excel in the increasingly competitive global marketplace. What about instituting the same idea of best practices in the field of preventing terrorism?

MNCs operating in the natural resources area have already established measures against preventing terrorism and enhancing security. In fact, MNCs operating in the oil industry are particularly sensitive to political changes.¹²⁰ MNCs operating in the oil industry, and MNCs generally operating in extractive industries are often the first to be hit by political events.¹²¹ As natural resource projects need large fixed investments, with long lead times before projects become profitable, managing a variety of

¹²⁰ LAX, *supra* note 74 at 14.

¹²¹ *Id.*

risks that change on a continuous basis is an art that must be managed by the executives of such MNCs.¹²²

The US is entitled to benefit from the tremendous knowledge that belongs to the MNCs, jugglers of the trade in foreign lands, and make the best use of such expertise for all its constituents. The dormant knowledge in the possession of the MNCs has to be cultivated and used for the greater good, the US public as a whole.

As there are best practices to improve quality, customer satisfaction, and productivity, there already are practices used by MNCs to effectively manage terrorism risks. It is a matter of identifying management strategies for the terrorism risk and making best use of them. The value of preventing terrorism is incomparably higher to establishing any measures after the terrorist attack has occurred.

c. Increased cooperation between multinational corporations and the state

In the post 9/11 world, threatened by the possibility of a terrorist attack on a day-to-day basis, it is necessary to put the burden on businesses and MNCs and on each and every individual in society and to share such responsibility with the state. In the USA, the era of careless disregard for the world around oneself has ended. One has to be more in touch with and alert to all kinds of events

¹²² Id.

happening in one's surroundings. It is only with such awareness and information sharing that the war on terrorism will be won.

Individuals cannot expect all protection against terrorism from the state anymore. The state's burden has to be shared among all members of the society. MNCs are major powerhouses and are sometimes seen as challenging the very presence of nations states. It is time for such strong players of the economy, the MNCs, to step up to the challenge and be a major component in the war against terrorism.

A project called CommerceGuard, a cooperation between General Electric and Siemens, gives a nice example of MNCs and the state joining forces to fight the war on terror.¹²³ General Electric and Siemens propose to equip containers, which are used for maritime transportation, with devices that register if they have been opened during transit. This will act as a reliable tamper warning device. More than 60 million container shipments are made each year. Since 9/11, the USA was in search of a system in which the majority of containers would move through border security without any inspection. Project CommerceGuard which provides the tracking device would indicate whether any tampering was done to the cargoes during transit. Thus, customs officials would only have to check the cargoes which have been tampered during transit. This would provide faster moving cargo, better business profits and better use of state officials time. The

¹²³ Edward Alden and Richard Milne, *GE joins Siemens to protect cargoes*, Financial Times, January 19, 2006, at 1.

cooperation between MNCs and states would result clearly in a win-win situation. This is a perfect example of the benefit to come from the interaction and cooperation between MNCs and the state.

V. Conclusion

In conclusion, just like the MNCs building their survival and success strategies around the reality of globalization, the state will have to do the same to win the war against terrorism. The UN is the leading international body in the global arena that fights the war against terrorism. Although making admirable progress in the war against terrorism, the UN, will always have limited efficacy. The reason lies in the fact that the UN finalizes a legal document but has no authority in the acceptance or enforcement stage. It is the responsibility of each member state to adopt the legislation and to enforce it as part of domestic law.

What I have suggested in this article, has been an innovative way to prevent terrorism, which would build upon and enhance the existing structure. The MNCs have operated in risky investment environments all over the world. The reason MNCs are investing in risky environments is simple: higher operating margins leading to higher profits. The quest to remain competitive and to stay ahead of the game have forced MNCs to use various risk management techniques while traveling through turbulent waters. Why not use the dormant knowledge of the MNCs and enhance the existing terrorism prevention mechanisms used by the DHS?

Luckily, the USA is home to most of the major MNCs. Forming an MNC advisory council that would provide input and feedback to the secretary of the DHS about trends, programs, strategies regarding terrorism prevention and alerting the DHS to changes in the business environment would establish an early threat detection system. There is great progress to be made by the cooperation between MNCs and the DHS.

Prevention is where the focus of the fight against terrorism should be.

Legislation, which is the first logical step taken as a measure to fight terrorism is a strong deterrent, but it is reactive by its very nature. What needs to be done is designing and implementing risk management strategies aimed at preventing terrorism. As hard as it may be, there is absolute positive value in such an endeavor. Some measures that are directly applicable from MNC practices to the practice of states would be initiating public relations campaigns, building strategic alliances, and sharing best practices to prevent terrorism.

Because businesses have been the most common targets in international attacks, they have devised strategies to prevent and manage terrorism threats and attacks. What brings MNCs ahead of the game, despite their enormous sizes, is the swiftness of their actions in changing investment environments. MNC employees situated all over the world will act like additional eyes and ears in the fight against terrorism.

There are some other major practice areas of MNCs that can be useful in the fight against terrorism that have not been addressed in this article. One of these would be further research in the area of how MNCs ensure that they hire and transfer employees legally from one state to another and how that could relate to protection of border security. Another area would be researching what MNCs are doing about hiring safe employees at the workplace and how that could correspond to profiling of individuals on the basis of nationality by the state. This list can be expanded very easily. However, as these subjects are very broad, I have just preferred to acknowledge the transferability of MNC practices in such areas to the area of preventing terrorism and leave it at that, at this point.

I also want to clarify that I am not suggesting contracting homeland security issues to MNCs here. What I am suggesting to do is to use MNC practices to enhance the existing terrorism prevention systems in place. Furthermore, I am also suggesting transferring the use of innovative MNC practices that would be applicable in the fight against terrorism to the practices of the DHS. However, at all times the control should remain with the DHS and not the MNCs.

The burden of fighting against terrorism must be shared among members of a society. MNCs, exemplary corporate citizens, are well equipped to take on such a challenge. Sharing their outlook and expertise with the secretary of the DHS whether it be in the area of forming strategic alliances, launching a public relations campaign or identifying and implementing best practices in the field of

preventing terrorism; will lead to a win-win scenario. After all, the MNCs may prove to be the sine qua non element in preventing terrorism.