

INDIA'S UNFINISHED SECURITY REVOLUTION

Sandy Gordon



**Institute for Defence Studies and Analyses
New Delhi**

INDIA'S UNFINISHED SECURITY REVOLUTION

Sandy Gordon



Institute for Defence Studies and Analyses

No. 1, Development Enclave

Rao Tula Ram Marg,

New Delhi – 110 010

DISCLAIMER: “The views expressed in this academic research paper are those of the author and do not reflect the views of the Australian Government, the Government of India or the Institute for Defence Studies and Analyses.”

ISBN: 81-86019-73-1

First Published: August 2010

Price: Rs. 150/-

Published by: Institute for Defence Studies and Analyses
No.1, Development Enclave, Rao Tula Ram Marg,
Delhi Cantt., New Delhi - 110 010
Tel. (91-11) 2671-7983
Fax.(91-11) 2615 4191
E-mail: idsa@vsnl.com
Website: <http://www.idsa.in>

Printed at: A.M. Offsetters
A-57, Sector-10, Noida-201 301 (U.P.)
Tel.: 91-120-4320403
Mob.: 09810888667
E-mail : amoffsetters@gmail.com

CONTENTS

ACKNOWLEDGEMENTS 4

INTRODUCTION 5

SECURITY LINKAGES IN INDIA AND SOUTH ASIA 9

POLICING AND GOVERNANCE IN INDIAN SECURITY... 16

INDIA’S INTERNAL SECURITY REFORMS 30

ANALYSIS 38

A NEW INVESTIGATION AND 46
ACCOUNTABILITY FRAMEWORK

CONCLUSION 49

APPENDIX 1 53
AUSTRALIA’S COUNTER-TERRORISM
PLANNING PROCESS

APPENDIX 2 55
THE AUSTRALIAN CRIME COMMISSION MODEL

ACKNOWLEDGEMENTS

During October-November 2009, I held a month-long fellowship with the Institute for Defence Studies and Analysis in New Delhi. I am extremely grateful to the Director General and all the staff at IDSA who gave so generously of their time. Their forthright discussions greatly assisted in the shaping of the views in this paper. I am also most grateful to others who discussed the issues covered in this paper, especially the staff of the Institute of Peace and Conflict Studies, New Delhi. But the faults are, of course, my own. I would especially like to thank Dr Shanthie D'Souza, whose care and attention made my trip possible and who kept me up to the mark in completing this paper.

Sandy Gordon

INTRODUCTION:

INDIA'S SECURITY CHOICES

As we consider India's rise to power, there are two main scenarios that come to mind. According to the first and most commonly held, India's current trajectory will continue in a 'straight line'. Exponents of this view hold that India's underlying growth rate of 7-9 per cent and growing military capability mean that by 2030 it will join China and Japan as one of Asia's three great powers.¹ By 2030, India will have the world's largest population.² It will have the world's third largest economy in purchasing power parity terms (PPP) after China and the US.³ It is likely to remain democratic and will have enormous 'soft' power potential, resulting from its large English speaking population, vociferous free press, innovative IT industries, vibrant civil society and widely influential Bollywood film industry. Its navy will be able to range at will over the Indian Ocean and beyond. It will have a fleet of nuclear submarines and an independent nuclear deterrent capable of deterring even China. It will be a major power in space, with the capacity to 'neutralise' enemy satellites.⁴

According to the second and more pessimistic analysis, this new superpower will be expected to rise out of one of the most-troubled sub-regions of the globe – South Asia.⁵ South Asia will continue to have more people living in poverty than any other region in the world for the foreseeable future. It will be awash with economic and political refugees. Its great rivers and ground water will be under severe stress. Its regional association, the South Asian Association for Regional Cooperation

¹ Many scholars have commented on India's rise as an Asian power. See for example, Rajesh Rajagopalam and Varun Sahni, "India and the Great Powers: Strategic Imperatives, Normative Necessities", *South Asian Survey*, 15 (1), 2008, pp. 5-32, pp. 6-7; and C. Raja Mohan, "India and the Balance of Power", *Foreign Affairs*, July/August 2006, 85 (4), p. 17.

² United Nations, "World Population Prospects, the 2008 Revision...", available at <http://esa.un.org/unpp/p2k0data.asp> (accessed March 25, 2010).

³ According to the Economist Intelligence Unit, India will have overtaken Japan in PPP terms to become the world's third largest economy after China and the US. See http://www.eiu.com/site_info.asp?info_name=eiu_ultimate_portfolio_global_economic_indicators&page=noads&rf=0 (accessed March 25, 2010).

⁴ Peter J. Brown, "India targets China's satellites", *Asia Times Online*, January 22, 2010, at http://www.atimes.com/atimes/South_Asia/LA22Df01.html (accessed March 25, 2010).

⁵ See, for example, Amrita Narlikar, "All that Glitters is not Gold: India's rise to power", *Third World Quarterly*, 28 (5), 2007, pp. 983-996; also, *India's Rise to Power in the Twentieth Century and Beyond*, The MacMillan Press, Houndmills 1995.

(SAARC), will still be struggling to provide a viable forum, according to which all in the region can ‘rise on the same tide’ through enhanced trade, security, travel and cultural exchange. Pakistan, India’s neighbour of 166 million and a long-term adversary, will have added another 85 million mouths to feed and jobs to find.⁶ It will be subjected to extreme environmental stress. Hundreds of thousands of its young men will have been educated in *madrassas* that provide inadequate modern education and extremely narrow interpretations of Islam. Bangladesh – another neighbour which has already despatched an estimated 10 million illegal immigrants to India⁷ – may well be struggling to accommodate the estimated 10-15 millions of its population currently living on and farming low lying areas, subject to ever-increasing inundation resulting from climate change.

Trapped within this region (or so this pessimistic scenario goes), India will confront its own demons. It will be ever more dependent on costly imported energy. Its mega cities will be struggling to provide sufficient fresh water, accommodation and sanitation. Riots over distribution of drinking water – as witnessed in 2009 in Mumbai – will be frequent events. Antiquated infrastructure and restrictive labour laws will constrain labour-intensive manufacturing that could provide jobs for the massive rural population seeking a better life. Corruption will continue to be a major burden on governance, as democratisation spreads to new classes who are hungry for its benefits but impatient with its norms. Maoists will continue to recruit those in the poorest states suffering from corruption and poor governance. Maoist-generated unrest will jeopardise India’s extractive industries, which happen to lie within the regions most seriously affected. Criminality will continue to flourish under a creaking legal system that provides near impunity to the wealthy and powerful and no rapid legal punishment for the guilty. Criminals, corruption and terrorism together will continue to erode the security of citizens and tarnish India’s investment reputation. In many states, the massive police service, which today totals 1.5 million for India as a whole (not including paramilitary forces and un-filled police positions), will remain an ineffective, repressive, colonial-era relic, incapable of investigating crime, providing security to communities, supporting human

⁶ British Council, *Pakistan: The Next Generation*, November 2009, ‘Key Findings’, at <http://www.britishcouncil.pk/pakistan-Next-Generation-Report.pdf> (accessed January 25, 2010).

⁷ Josey Joseph, “Securitization of Illegal Migration of Bangladeshis to India”, Institute of Defence and Strategic Studies, Singapore, Working Paper No 10, January 2009, p. ii.

rights or lifting intelligence from the grassroots to the strategic level.⁸ India's 150 million Muslims – 75 per cent of whom belong to under-privileged groups and occupations – will still not have the benefits of the Constitution provided for Dalits and tribals. As the community sinks further in comparative terms, its members will provide more people willing to engage in violent, home-grown *jihad*, assisted from across the border in Pakistan.

According to this sombre view of the future, these difficulties in India's polity will continue to resonate across borders in South Asia, just as the domestic difficulties of India's large neighbours will resonate in India. They will be transmitted by a brand of democratic politics, which seeks to blame the neighbour for local ills, by refugees and economic migrants, by sharpening religious misunderstanding as the region's traditional syncretic values erode in a world of globalisation and by ever-deepening cross-border environmental problems, particularly relating to the sharing of the diminishing river waters upon which hundreds of millions depend. Thus, South Asia will continue to be caught in a vicious circle of local and national troubles that wash back and forward across borders like so much political 'flotsam and jetsam'.

These two scenarios are at the outer extremes of what is likely to occur. Reality will likely be somewhat closer to the middle. But it will nevertheless veer towards one end or the other of the spectrum. Governments of the region will make choices that will have a role in shaping reality. This is particularly true of Indian governments – India being the giant of the region and having greater capability of influencing outcomes.

This paper is especially concerned with Indian choices around the problem of security. The concept of security can range from the traditional, realist idea of security as constituting freedom from threats to the existence of the nation state, to the concept of 'comprehensive' or 'human' security. The latter involves a focus on the security of individuals within the state and surrounding countries, rather than on the existential security of an individual state. It includes all aspects of the welfare of individuals, including their human rights, gender rights, environmental rights, health, nutrition, education, employment, security from violence (whether from state or non-state actors), and so on.⁹

⁸ Many Indian scholars, including serving and retired policemen, have commented on the urgent need of reform of India's police services and on the difficulty of achieving reform. See for example, K.S. Subramanian, *Political Violence and the Police in India*, Sage, New Delhi, 2007; R.K. Raghavan, "The Indian Police: Problems and Prospects", *Publius*, 33 (4), 2003, pp. 119-134; K.P.S. Gill, "There's just one cop for every 700 Indians", *Daily News and Analysis*, September 2, 2007, at <http://www.satp.org/satporgtp/kpsgill/governance/07sept02Pio.htm> (accessed March 26, 2010.)

⁹ For a discussion of the evolution of the idea of human security see Ramesh Thakur, "Human Security and Intervention" in R. Ayson and D. Ball (eds), *Strategy and Security in the Asia-Pacific*, Allen and Unwin, Sydney, 2006, pp. 121-137.

In this paper, we will be concerned with security from existential threats to the nation (as an important basis for the security of individuals within the nation) along with threats of physical violence and property threats to governments and individuals. Such threats can come from other nations, state actors such as security personnel and police, corrupt politicians and officials, terrorists, criminals and insurgents. We will not be considering *directly* some of the broader aspects of human security, encompassed by issues such as lack of water or food or work, environmental problems, or pandemic diseases – serious though they may be. But we do consider such factors *indirectly* because of their role in triggering violence, terrorism, insurgency and social dislocation. This relationship between deprivation and security is present throughout India, but is most noticeable as it applies to the tribal, Maoist-affected belt that covers east-central India. Here, environmental degradation, poor governance, poverty, human rights abuses and corruption have each played major roles in triggering the discontent that lies at the heart of the Maoist revolt.¹⁰

Our primary concern is to demonstrate that there is a ‘seamless web’ between security of communities at the grassroots and security of nations and sub-regions (in this case India and South Asia). Such a line of analysis requires linking mechanisms between lower and higher order security issues. It needs to be explained, for example, why an attack on a police contingent in Chhattisgarh can be relevant to India’s higher order security and even to its rise as a power. It is this linking process, we argue, which means that it is as important for governments successfully to address lower order security issues as it is to tackle higher order issues.

This approach to security is by no means unique or new: many recent Indian commentaries have covered similar ground.¹¹ This paper does, however, bring the added perspective of an Australian security analyst. Australia, as a Westminster-style democracy with a federal structure similar to India’s, has experienced similar difficulties with establishing its internal security architecture. Australia’s experience with internal security and terrorism is, however, obviously of a much less intensive nature than India’s. And as a small, resource-rich nation, it also has many more available resources with which to deal with the problem.

¹⁰ For a comprehensive analysis of the environment and security in South Asia, see Uttam Kumar Sinha, “Environmental Stresses and their Security Implications in South Asia”, *Strategic Analysis*, 30 (3). July-September 2006, pp. 599-618.

¹¹ It is invidious to select individual scholars who have contributed to this debate from a wide and distinguished field. Given India’s powerful civil society, Indian scholarship has been at the forefront globally in its analysis of the relationship between traditional and comprehensive security. Even an institution noted for its contribution on traditional security such as IDSA has a highly active internal security ‘cell’. Other institutions such as the Institute for Peace and Conflict Studies and the Delhi Policy Group have also been highly active in the area of human security analysis. Scholars at the Jawaharlal Nehru University are also notable contributors to the debate on the relationship between different levels of security.

SECURITY LINKAGES IN INDIA AND SOUTH ASIA

The line of analysis that posits a ‘seamless web’ between grassroots and grand security issues necessarily requires a ‘transfer mechanism’ both from the grassroots to the national, sub-regional and global levels and *vice versa*. Thomas Homer-Dixon and his associates describe the transfer process in the context of the ‘upward’ transfer of environmental problems into national and sub-regional security issues. According to this process, both the local level environmental problems themselves and the instability they produce amongst the affected populace further lead to provincial and state-level violence and decay, as competition for scarce resources increases and people are forced to become economic or actual refugees (both nationally and internationally) and internal tension undermines governance, even sometimes leading to civil war. States undergoing such crisis tend to make worse neighbours, with economic and political refugees from such states also damaging the polity in neighbouring states.¹²

Specific transmitters of this instability from local to national levels include forced migration of economic, environmental and political refugees. An example is the mass migration from Bangladesh to India. Since the beginning of the 20th century, people have been forced to migrate from the poor, relatively dry Meymensingh province of what is now Bangladesh into the lush plains and the dangerous, but fertile, *char* lands of Assam in India.¹³ Today, Bangladeshis are still being forced across the border by economic circumstances. While many drift into Assam and other neighbouring provinces, such as Bengal, many more end up in far away Mumbai and Delhi. About 10 million Bangladeshis are now said to be living in India illegally, but the actual figure may be far more.¹⁴ They have upset the ethnic and religious balance in Assam and are often resented by the local people. This resentment has sometimes spilled over into attacks on people of Bangladeshi origin and has fuelled the separatist movement in Assam and elsewhere in the North-East. The

¹² Thomas Homer-Dixon and Jessica Blitt (eds) *Ecoviolence: Links Among Environment, Population and Security*, Bowman and Littlefield, Lanham, Maryland, 1998.

¹³ The author, “Resources and Instability in South Asia”, *Survival*, 35 (2), Summer 1993, pp. 72-4; Namrata Goswami, “Bangaldeshi illegal Migration into Assam: Issues and Concerns from the Field”, IDSA Issues Brief, at http://www.idsa.in/issuebrief/BangladeshiIllegalMigrationintoAssam_ngoswami_140110 (accessed January 21, 2010).

¹⁴ Josey Joseph, no. 7, p. ii.

issue of Bangladeshi illegal migration has also been taken up by the central wing of the Bharatiya Janata Party (BJP) and other elements on the so-called ‘Hindu right’, who either have genuine concerns about the national character of India or wish to exploit such tensions in order to extend the influence of the party beyond the so-called Hindi heartland. The BJP also asserts that border controls and laws have remained inadequate in order to allow for the influx of Muslim Bangladeshis and garner vote banks in Assam for the Congress Party.¹⁵ Because of these local and national political ramifications, the migrations – essentially generated by local issues of governance and the environment in Bangladesh and facilitated by poor border control on both sides – have developed as a troubling, negative factor in India-Bangladesh relations. ‘Securitisation’ of such problems – that is, when they are considered to constitute an existential threat to the receiving state – has contributed significantly to the international ramifications of the problems themselves.¹⁶

States caught up in this type of endemic crisis also often blame the resultant political instability on their neighbour. For example, many in Nepal tended to blame the breakdown of the Maoist government on Indian ‘interference’, despite the fact that Nepal has been caught in a spiralling political, economic and social crisis for at least a decade.¹⁷ Where two contiguous states are in crises of this nature, a vicious circle of violence and counter-violence can be set in motion, in which the complexities of intra-state relations interact negatively both within and between the states in question. Often, communal relations within India are thus regarded as a manifestation of Pakistani interference. Indira Gandhi, for example, was fond of referring to the ‘foreign hand’ as political metaphor for machinations by the Pakistani Inter-Services Intelligence Division (ISI) and the US Central Intelligence Agency (CIA) to explain a range of troubles in India.¹⁸ Similarly, Pakistan today blames its troubles in Balochistan and elsewhere on Indian interference.¹⁹ While

¹⁵ For an expression of this view by the BJP, see Anand Kumar, “Illegal Bangladeshi Immigration”, *South Asia Analysis Group*, 1391, June 25, 2005, at <http://www.southasiaanalysis.org/%5Cpapers14%5Cpaper1391.html> (accessed March 26, 2010).

¹⁶ Josey Joseph, no. 7, p. ii.

¹⁷ “India dismisses Nepal charge of interference in its internal affairs”, *Thaindian News*, May 5, 2009, at http://www.thaindian.com/newsportal/india-news/india-dismisses-nepal-charge-of-interference-in-its-internal-affairs_100188418.html (accessed December 15, 2009).

¹⁸ Pritish Nandy, “10 things that have changed since Indira Gandhi”, *Times of India*, November 7, 2009, at <http://timesofindia.indiatimes.com/articleshow/msid-5206349,prtpage-1.cms> (accessed December 15, 2009). Nandy refers to the ‘foreign hand’ as short hand for the CIA, but it was used just as frequently to cover Pakistan and the ISI.

¹⁹ “India behind terrorist attacks, says [Foreign Minister] Qureshi”, *Dawn*, December 14, 2009, at <http://www.dawn.com/wps/wcm/connect/dawn-content-library/dawn/news/pakistan/11-india-behind-terrorist-attacks—says-qureshi—il—07> (accessed December 14, 2009).

such accusations can in some instances have a measure of truth (which makes them all the more plausible), in part also such tensions arise from pre-existing sets of difficulties that are locally generated and that cannot wholly be attributed to a neighbour.

Although the type of environmental crisis of interest to Homer-Dixon is certainly part of the process of transferring troubles upward, a more complex analytical framework is required. Explanations should include not only environmental factors in themselves, but also how they are caused and exacerbated by other factors, such as law and order problems and socio-economic and related political conditions. For example, the case study of Pakistan, in the volume edited by Homer-Dixon cited above, highlights the fact that unequal distribution of land and other problems arising from Pakistan's feudal structure play a major role in exacerbating environmental factors.²⁰ A more recent study of the situation in Pakistani Punjab, sponsored by the Asian Development Bank (ADB), points to the role of poor governance over water resources as a factor in the severe diminution of ground water.²¹ (A similar fall in ground water resources has also occurred in Indian Punjab).²² The problem in Pakistani Punjab is widely perceived by affected farmers to be the result of the upper riparian power, India, using more than its fair share of the waters that originate in India and flow into Pakistan.²³ The degree to which this accusation is true is unclear – but what is clear is that the two sets of problems (the riparian and water governance problems) have become entangled in the discourse and have severely stressed an already very difficult relationship.²⁴

In India, poor governance has played a significant role in the deforestation and loss of lands to mining companies in tribal areas in states such as Chhattisgarh, Jharkhand, Bihar and Orissa. These factors

²⁰ Thomas Homer-Dixon and Jessica Blitt (eds), no.12, p. 149.

²¹ See report of the study as a power point, penultimate slide, <http://www.google.com.au/search?q=ADB+punjab+pakistan+groundwater+study&ie=utf-8&oe=utf-8&aq=t&rls=org.mozilla:en-US:official&client=firefox-a> (accessed December 3, 2009).

²² For an account of the drop in India, see “Alarming fall in Punjab groundwater levels”, *The Hindu*, April 28, 2008, at <http://www.hinduonnet.com/2008/04/28/stories/2008042851370500.htm> (accessed December 3, 2009).

²³ For the complaints of Pakistani farmers concerning the flow of the Chenab, see Andrew Bunscombe and Omar Wariach, “India is stealing the water of life, says Pakistan”, *The Independent*, March 26, 2009, as at <file:///Users/sandy/Desktop/india-is-stealing-water-of-life-says-pakistan-1654291.html> (accessed December 3, 2009).

²⁴ For a wider discussion on the Indus Water Treaty and Indo-Pakistan relations, see Uttam Kumar Sinha, “India and Pakistan: Introspecting the Indus Treaty”, *Strategic Analysis*, 32 (6), November 2008, pp. 961-967.

have, in turn, played a major role in radicalising tribal populations and driving them into the arms of the Maoists. As the Indian Ministry of Home Affairs states in its 2008-09 Annual Report, “Naxalites operate in the vacuum created by functioning inadequacies of field level governance structures ...”²⁵ Indeed, the issues of governance and law enforcement go well beyond environmental crisis and become problematic in their own right.

Due to poor governance, moreover, the mechanisms of the state intended to provide for the welfare of the people are often rendered inadequate or totally ineffective by corruption and incompetence. Again referring to the tribal, Maoist-affected areas of India, many schools have no teachers, health clinics no doctors or nurses and the National Rural Employment Guarantee Act (NREGA) has no funds to distribute to those in genuine need.²⁶ The police, rather than providing for the security of the population, are widely seen as corrupt agents of the powerful and as part of the problem.²⁷ In states like Bihar, this nexus between corrupt and criminalised politicians and the police has become particularly acute. Although matters have recently improved, in the past in Bihar, 33 per cent of contesting politicians had some kind of criminal charge pending against them.²⁸

These essentially local problems can have a multiplier effect that results in serious problems at the national and international levels. Thus, if we consider the Maoist-affected areas of India, the worst affected areas also happen to be co-extensive with India’s principal mining provinces. Mining enterprises are subject to occasional attack and more frequent

²⁵ Government of India, Ministry of Home Affairs, Annual Report for 2008-09, pp. 15-16, at [http://www.mha.nic.in/pdfs/AR\(E\)0809.pdf](http://www.mha.nic.in/pdfs/AR(E)0809.pdf) (accessed December 12, 2009).

²⁶ In Chhattisgarh, a tribal populated state, the office of the Comptroller and Auditor General found only 35 days work had been provided of the stipulated 100, see “Only 35 days employment under rural jobs scheme in Chhattisgarh”, *ThaiIndian News*, February 22, 2009, at http://www.thaindian.com/newsportal/uncategorized/only-35-days-employment-under-rural-job-scheme-in-chhattisgarh_100158236.html (accessed December 8, 2009).

²⁷ A particularly eloquent statement on the plight of the tribals has been made by the Gandhian, Himanshu Kumar, who has spent 17 years in the tribal area living in an ashram he founded. See Himanshu Kumar, “Who is the problem, the CPI (Maoist) or the Indian state?”, *Economic and Political Weekly*, November 21, 2009, 44 (47), pp. 8-12, at <http://epw.in/epw/uploads/articles/14159.pdf> (accessed December 6, 2009). For a view on the effects of governance failure in triggering Maoist unrest, see also Ved Marwah, *India in Turmoil*, Rupa and Co, New Delhi, 2009. Marwah was an IPS officer who served in Jharkhand and a number of other trouble spots throughout India.

²⁸ Chris Morris, “Crime and caste colour Bihar politics”, BBC News, April 23, 2009, at http://news.bbc.co.uk/2/hi/south_asia/8014949.stm (accessed March 26, 2010).

pressure to finance Maoist groups through the levy of so-called 'revolutionary taxes'. Mining employees have also been kidnapped. Corrupt governments (as possibly indicated by the allegations against former Jharkhand Chief Minister Madhu Koda) levy their share of pain on private and state enterprises operating in the area. In these activities, they are often protected by the close political and financial relationships that exist between the police and politicians. The net result is that Indian investment, direct foreign investment (DFI), technology, raw materials and foreign exchange are denied in Maoist-affected areas and India as a whole in this vital extractive area. The overall climate for DFI is adversely affected due to the perception of violence and instability thus portrayed. Similarly, the focus of violent *jihadis* on key commercial centres, such as Mumbai, Hyderabad and Bengaluru (formerly Bangalore), could also potentially affect the wider Indian economy and the international perception of India as a rising economic power and safe place to invest.²⁹

The instability generated by flawed systems of law and order and poor governance is not just a 'one-way street' from the local to the national and international: negative effects often flow the other way. Centrally initiated agendas and problems can have pernicious local repercussions. This occurred when the BJP at the central level initiated events that led to the destruction of the Babri Masjid at Ayodhya in Uttar Pradesh in December 1992. The fact that a BJP-led government was in power in the state in which Ayodhya is located meant that the normal mechanisms of control were not in place to prevent the demolition.³⁰ This local event, initiated by a central political party, impacted in Mumbai in Maharashtra in the form of rioting in which up to 1,000 people, mostly Muslims, were killed.³¹ In turn, this precipitated a classic attack-revenge cycle – the serial terrorist attacks perpetrated by the Dawood Ibrahim-led 'D Company' in March 1993, in which 257 were killed and 700 injured. It is worth noting that the destruction of the Babri Masjid also spread upwards and had international repercussions. In

²⁹ A recent book by the Federation of Indian Chambers of Commerce and Industry (FICCI) Task Force on National Security and Terrorism, *National Security and Terrorism* (Vol. 1) argues this point of view. Although the author has not had an opportunity to view this recent publication, details are provided in a full review by Pushpita Das, "Combating Terrorism: Perspective from the Ground", January 25, 2010, at the IDSA web site, http://www.idsa.in/bookreview/CombatingTerrorism_pdas_250110 (accessed January 29, 2010).

³⁰ The full text version of the *Liberhan Commission Report* into these events is available at *The Hindu*, at <http://beta.thehindu.com/news/article54082.ece>.

³¹ Srikrishna Commission Report, at <http://www.sabrang.com/srikrish/vol1.htm> (accessed December 2, 2009).

Bangladesh, the event was followed by widespread destruction of Hindu temples and killing of Hindus. Similar events occurred in Pakistan, although on a lesser scale.

In the modern, globalised setting, 24x7 reporting afforded by light video cameras and other technologies, has provided a crucial transfer mechanism, both upward and downward. (But equally, it can also provide a mechanism for greater transparency). The riots in Gujarat in 2002 – in which up to 1,000 people, mostly Muslim, were reportedly killed – have since had a wider impact on Muslim sensibilities through the advent of 24x7 TV news reporting of the riots themselves, recordings of the atrocities on video and digital film image, and their subsequent circulation amongst Muslims, both in India and abroad. There is considerable evidence that the riots themselves and the way they were widely transmitted were a significant factor in recruitment and revenge attacks by *jibadi* terrorist groups in the following years.³² Indian Mujahideen (IM) operatives allegedly repeatedly showed footage of the riots to motivate young recruits to seek revenge.³³ It is a well-publicised fact that the attackers of 26/11 referred to Gujarat as a reason for their violent revenge.

Local-level unrest has complex roots. The ability of governments to deal with such unrest is severely constrained by poor governance, which both exacerbates the problem and also constrains preventive measures, both of the law and order kind and also of the mitigation kind. In these circumstances, local unrest can quickly translate as state and central unrest through transfer mechanisms, such as the effect of local unrest on the national economy (the failure fully to develop India's crucial minerals and energy provinces), the role of modern media in publicising potentially inflammatory events and flows of economic and environmental refugees, who can have a destabilising political effect. Similarly, centrally and internationally generated problems are also transferred downward and can have negative impact at the local level.

³² For example, the Mumbai suburb of Ghatkopar, where many wealthy Gujaratis reside, was twice targeted by bombers. The eight attacks on the Mumbai rail system in July 2006 all occurred on the Western line, along which Gujaratis live. Even the attackers of 26/11 in Mumbai cited revenge for Gujarat while mounting their attacks. Photos of the riots and of victims are still widely circulated on the Internet. See http://www.gujaratplus.com/riots_gal/. The document written by 'OCTOPUS' Unit of the Andhra Pradesh Police, on completion of the chargesheet compiled for the Hyderabad High Court concerning the Indian Mujahideen (IM) accused in the twin blasts of 2007 also identifies the seminal role of the Gujarat riots in radicalising the IM.

³³ Neeraj Chauhan, "Atif showed Gujarat riot visuals to provoke youngsters", *Indian Express*, September 25, 2008, at <http://www.indianexpress.com/news/atif-showed-gujarat-riot-visuals-to-provoke/365539/> (accessed December 9, 2009); and OCTOPUS, *Ibid*.

The mechanisms of governance, law and policing fulfil an important – indeed crucial – role in either helping to stabilise this situation and knitting a fractious nation together, or else in actually producing ‘trouble’ that can be transferred either upward through the system or downward. Moreover, if these mechanisms are not functioning well, the instruments at the disposal of the state to contain and mitigate such dissonance are limited. In some circumstances, the law enforcement authorities can even be part of the problem rather than the solution. We now explore this role of law enforcement a little further in the Indian context.

POLICING AND GOVERNANCE IN INDIAN SECURITY

As with any large country, India's security mechanisms are required to meet multiple needs. They must defend the nation against attack by another country. They need to defend against terrorist attacks. They have to deal with insurgencies. They are supposed to investigate corruption and ensure the probity of government at all levels. A fundamental requirement is that they protect an individual from criminal attack. And they need to maintain order nationally and at the street level. In each one of these roles, and at each level of activity (national, state or local), security authorities and governance mechanisms can either be a part of the problem or the solution. Often, they act in different ways and are driven by different political imperatives at different levels.

Although security agencies have clear national goals, at the state and local levels, they can tend to become biased in favour of the government of the day through the political and economic nexus that develops between security authorities and politicians at the local level. There is nothing new about such bias. At the time of the assassination of Indira Gandhi in 1984, the Congress (I) authorities were accused of doing nothing to protect Sikhs in New Delhi from attack or in subsequently prosecuting alleged attackers.³⁴ Similar allegations were levelled against the BJP government in Gujarat in relation to the anti-Muslim riots of 2002. The allegations against the Gujarat police and courts have several dimensions. One level of complaint does not involve government connivance as such, but rather the fact that the police simply reflected wider community anger over the killing of 58 Hindu activists at Godhra and therefore failed to control the anti-Muslim backlash that followed.³⁵ This idea that the police can be 'biased' is reflected in The *Sachar Committee Report* (2006). The committee found that in India as a whole, Muslims are under-represented in the police, constituting only 6-7 per cent of

³⁴ Mridu Lal Khurana, "India's 1984 Anti-Sikh Riots: Waiting for Justice", *Time*, October 28, 2009, at <http://www.time.com/time/world/article/0,8599,1931635,00.html> (accessed March 29, 2010).

³⁵ The police chief at the time is on record as having said that it is impossible to divorce the sentiment of the police against Muslims from the wider societal context. "Where the whole society has opted for a certain colour in [sic] a particular issue", admitted Ahmedabad Police Commissioner Prashant Chandra Pande to an interviewer from a web magazine, "it's very difficult to expect the policemen to be totally isolated and unaffected". Quoted in 'Gujarat riots point to need for police reform', Asia-Pacific Human Rights Network, at file:///Users/sandy/Desktop/gujarat%20riots%20point%20to%20need%20of%20police%20reform (accessed December 2, 2009).

constables, whereas they constitute 13.4 per cent of the population.³⁶ The situation is even worse for the Indian Police Service (IPS), where the committee reportedly found only 4 per cent Muslim officers.³⁷ But arising from the Gujarat riots, there were also more troubling accusations of actual police connivance in supporting the riots at the behest of a biased political class. Although reports of police and political connivance are contested, the Special Investigations Team (SIT), established by the Supreme Court to inquire into the riots, has demanded the arrest of at least one senior policeman for complicity in the riots.³⁸ And finally, there is the view that the Supreme Court of India was required to intercede in a justice system that was not affording justice to the victims at the level of the Gujarat High Court. In short, this case provides a ready example of the differing influences and perspectives at play in the different levels of India's justice system.

The justice system can be a part of the problem, but there are also many recent instances where strong, neutral political leadership has mitigated any supposed bias within the police. Although the Srikrishna Commission report implicated the government and police in the Mumbai riots of 1992-93, in recent years, strong action by the Government of Maharashtra has resulted in several potentially inflammable communal situations being contained. Despite two terrorist attacks on the communal 'tinderbox' of Malegoan,³⁹ and despite the attacks of 26/11, careful handling by the Maharashtra government and the police managed to defeat the obvious purpose of such attacks – to trigger communal rioting and consequent polarisation of communities towards extremists. All too often, however, the reverse is the case: politicians have a leading role in manipulating the police for negative, rather than positive, purposes or at least they turn a 'blind eye' to police inactivity in the face of disorder.⁴⁰

³⁶ PM's High Level Committee, Government of India, "Social, Economic, Educational Status of the Muslim Community of India: A Report" (Sachar Committee), New Delhi, India, 2006, pp. 101-02.

³⁷ As reported in *Thaindian News*, "With few Muslims in civil services, sponsors chip in", June 3, 2008, at http://www.thaindian.com/newsportal/uncategorized/with-few-muslims-in-civil-services-sponsors-chip-in_10055925.html (accessed March 26, 2010).

³⁸ A DSP has been arrested as a result of those investigations. See Rediff, February 8, 2009, at <http://www.rediff.com/news/2009/feb/08godhra-top-cop-held-in-riots-case.htm> (accessed January 2010).

³⁹ Malegaon is a mill town of 700,000 that is 75 per cent Muslim and that has a terrible reputation for communal rioting. Despite two attacks, one by Muslim extremists and the other by Hindu extremists, concerted government and police action was able to prevent the communal situation erupting and not one life was lost other than in the initial attacks.

⁴⁰ In making such claims, we do not seek to enter into the debate between the academics Paul Brass and Ashutosh Varshney over whether communal rioting in India is staged for political ends (broadly Brass's view) or whether it is contained and mitigated by inter-

Given the many different levels of performance of the Indian justice system, one of the challenges in a paper such as this is to obtain a reasonable measure of the state of internal security. The debate about internal security in India can be conducted in the ‘glass half empty or half full’ framework, depending on one’s emphasis. In India, one can find the best and worst of policing at any one time. But the assessment of the extent of the reform process needed depends on the assessment of the degree of the problem involved, so an over-arching assessment is required.

The level of violence against individual citizens is one measure, even if a crude one, of the effectiveness of law enforcement and governance in India. On the one hand, those of us who follow security issues in India are assaulted on a daily basis by accounts of seemingly high levels of violence. On any given day, we can come across an account of a terrorist attack in a major Indian city in which dozens are killed and many more wounded and maimed; in which police fire on unruly mobs; in which Indian Maoists attack and kill whole contingents of police; in which women are set alight in so-called dowry deaths; or in which criminals or police are killed in major shoot-outs. Against this, those who travel through India are often struck by the way in which optimism and good prevail amidst extreme poverty and in which syncretic values persist and different religions and communities live in harmony and close proximity. Again, the booming economic data do not indicate that violence, dissonance and unrest in India are sufficient to dampen the economy in any significant way. But these are subjective views and the question still remains: how violent, corrupt and dysfunctional is India in comparative terms? This is a difficult issue. The data are hard to extract not only for India but also for other, possibly more violent, regions and sub-regions, such as Africa and parts of Central and South America.

In terms of violence, judged according to the statistics of violent deaths, India at first appears to be a dangerous place. Up to 2007, the US State Department continued to collect comparative data, but its findings are limited to the category ‘terrorism’. Besides definitional problems with that term, in itself it does not cover the full spectrum of

communal mechanisms of civil society (broadly Varshney’s view). We are simply claiming that how authorities provide leadership in early stages of communal tension can make a significant difference to the outcome. For Varshney’s review of Brass’ book, see “Aligarh is not India”, *India Today*, November 10, 2003. For Brass’ response to Varshney’s review, see <http://www.mail-archive.com/sapac@www.residentlounge.com/msg00137.html>. Brass’ book, which touched off the debate, is *The Production of Hindu-Muslim Violence in Contemporary India*, University of Washington Press, London, 2003. For Varshney’s view on communal conflict, see *Ethnic Conflict and Civic Life: Hindus and Muslims in India*, Yale University Press, London, 2002.

violence. Nevertheless, the 2007 report recorded 2,300 lives lost due to ‘terrorism’ in India (no comprehensive data were available in the 2008 report).⁴¹ According to data provided by the South Asia Terrorism Portal (SATP), India has lost 22,789 people to extremist violence between September 2001 and now.⁴² Even allowing for a flexible view of terrorism that includes all forms of extremist violence and taking account of India’s population of 1.1 billion, this appears at first sight to be an alarming problem.

Measures such as the Global Peace Index are equally flawed as an absolute measure of violence. The index includes factors such as ‘democracy’ and excludes important areas such as ‘domestic violence’. But nevertheless, the large South Asian countries rank relatively low (poorly) on the index (Pakistan 127; Sri Lanka 125; India 107; Bangladesh a surprisingly good 86).⁴³

Other data, however, paint a less alarming picture of the situation in India. The murder rate in India (which presumably also reflects deaths in terrorism and political violence) has somewhat *fallen* since Independence – from 3.7 per 100,000 in 1951 to 3.4 per 100,000 in 2007.⁴⁴ Others put India’s murder rate, at 3.8 per 100,000, still well below that of the US at 5.5 per 100,000, but well above many western European countries and the UK.⁴⁵ China, perhaps a more valid comparison given its vast population, has a rate of 2.4 per 100,000.⁴⁶ But China is a more homogeneous country and is more tightly controlled by its undemocratic political system. In terms of general crime rates, the officially recorded statistics are also reasonably positive. They report a declining rate for crimes under the Indian Penal Code (IPC – which fall towards the more

⁴¹ US Department of State, *Country Reports on Terrorism 2007*, Chapter 2, “South and Central Asia Overview”, at <http://www.state.gov/s/ct/rls/crt/2007/103709.htm> (accessed April 3, 2009).

⁴² *South Asia Terrorism Portal*, at <http://www.satp.org/satporctp/countries/india/database/indiafatalities.htm> (accessed November 24, 2009).

⁴³ Global Peace Index, <http://www.visionofhumanity.org/gpi/results/rankings.php> (accessed April 3, 2009).

⁴⁴ Data extrapolated from the Indian National Crime Records Bureau, Ministry of Home Affairs, ‘Snapshots’ (1953-2007), *Crime in India 2007*, at <http://www.ncrb.nic.in/cii-2007/Snapshots%201953-2007.pdf> (accessed April 8, 2009).

⁴⁵ Sudershan Pasupuleti et al, “Crime, Criminals, Treatment and Punishment: An Exploratory Study of Views Among College Students in India and the US”, *Journal of Contemporary Criminal Justice*, 25 (2), March 2009, pp. 131-47, p. 134.

⁴⁶ See *Shanghai Daily*, May 17, 2006, “China’s murder rate decreases as arrests jump”, as in Wikipedia, ‘List of countries by intentional homicide rate’, http://en.wikipedia.org/wiki/list_of_countries_by_murder_rate#cite_ref-compcriminology_50_7 (accessed April 8, 2009).

serious end of the scale) in relation to population growth rate over the decade prior to 2007.⁴⁷

It would seem then that in *per capita* terms, India is not especially violent by world standards and is becoming less violent and crime-affected. While political violence, including terrorism, is concentrated in some cities and sub-regions, it does not, on the whole, stifle the daily lives and economic transactions of the majority of people.

Although India is in statistical terms not an especially violent place, there are nevertheless worrying signs that in some parts a destructive cycle of violence can intensify, possibly leading to a classic downward spiral of terrorism (or other forms of violence), excessive state response and further violence triggered by such response. Such was the pattern, indeed, that led to the inter-generational civil war in Sri Lanka. It would be particularly worrying if such trends were to emerge in key economic centres, such as Mumbai, Hyderabad and Bengaluru. As mentioned, another key area in terms of India's economic performance is the Maoist-affected regions. Violent separatism in Kashmir and India's North-East also has worrying strategic implications.

Moreover, crime statistics in India do not tell the whole story concerning governance, crime and violence. There is evidence that India's crime problem is seriously under-reported, and worse, that this under-reporting occurs in part due to a loss of faith in policing. It is impossible to know the extent of under-reporting of crime in any country, but there are ways we can explore the data to give an indication of the dimension of the problem. Crime victim surveys are a useful tool in this regard, but are not sufficiently developed in the Indian context to enable us to draw country-wide conclusions. One survey of four major cities in Tamil Nadu (notably a state with more effective policing than many others) found that "many crimes occurring in India are not reported and that police (crime) figures are only the tip of the iceberg".⁴⁸ A victimisation survey of Rajasthan conducted by Massachusetts Institute of Technology on behalf of the Rajasthan Police reportedly found that only 29 per cent of crimes were ever reported, and that of those that were, only 72 per cent received a First Information Report (FIR – the vehicle for setting the legal process in motion).⁴⁹ Nevertheless, we need to note that the

⁴⁷ See National Crime Records Bureau, *Crime in India 2007*, 'Snapshots', at <http://ncrb.nic.in/cii2007/home.htm> (accessed January 29, 2010).

⁴⁸ K. Chockalingham, "Criminal Victimization in Four Major Cities in Southern India", *Forum on Crime and Society*, 3 (1&2), December 2003, p. 125.

⁴⁹ The survey covered 16,000 households and 11 districts. See Nina Singh and Daniel Keniston, "Telling it like it is ...", *Karmayog*, at http://www.karmayog.org/police/policy_22362.htm (accessed January 7, 2009).

more serious the crime (such as murder), the more likely it is to be reported.

Serious under-reporting is also likely true of drugs crime. It is worth exploring this problem in a little detail, because serious drugs crime is usually associated with high levels of organised crime and corruption. Drugs crime and associated criminality, in turn, typically mount major, long-term challenges to legal structures, particularly when they become entangled with the so-called problem of ‘narco-terrorism’.

The Indian Narcotics Control Bureau (NCB) reports a virtually flat pattern of opiates seizures (at about one tonne of heroin annually and two tonnes of opium), suggesting India’s trafficking in and use of this class of drugs is not rising markedly, or that interdiction has fallen markedly.⁵⁰ The United Nations Office of Drugs and Crime (UNODC), however, has another view. In a survey of India, the UNODC found that “in 2004, the number of *chronic substance-dependent individuals* were as follows: 10 million (alcohol), 2.3 million (cannabis) and 0.5 million (opiates) [*emphasis added*].”⁵¹ The report continued: “The survey not only points to the problem of India’s population having twice the global (and Asian) average prevalence of illicit opiate consumption, but also shows that the treatment resources available are not commensurate with the burden of work (number of dependent drug users) requiring immediate treatment”.⁵² A national ‘habit’ of half a million chronic (highly addicted) users is indicative of consumption of massive quantities of illicit drugs, even allowing for the presumed lower levels of purity in India. This is, in turn, indicative of high levels of criminality.

The US State Department in its 2007 report also designated India as a major hub for illicit drugs. The State Department was concerned at the possibility of diversion of India’s substantial licit opiate production and noted the sudden surge in discoveries in illicit growing in 2007.⁵³ The NCB notes: “It was decided to conduct an intensive survey of the probable areas (of cultivation) involving NCB, state authorities and other central authorities.” Eight thousand hectares of illicit poppy were destroyed in that year compared with 218 hectares in 2006 and 623

⁵⁰ Narcotics Control Bureau, Ministry of Home Affairs, Government of India, *Annual Report 2009*, Annexure A, p. 65, with an update for 2009 provided by the Bureau for the author.

⁵¹ UNODC, Executive Summary, p. 27, at http://www.unodc.org/pdf/india/publications/south_Asia_Regional_Profile_Sept_2005/10_india.pdf (accessed January 6, 2010).

⁵² UNODC, *Ibid*.

⁵³ “India is a major drugs hub: US”, *The Economic Times*, September 18, 2007, at http://www.unodc.org/india/en/rajiv_quoted_et.html (accessed January 6, 2010).

hectares in 2008.⁵⁴ Illicit harvesting of at least 8,000 hectares (the amount discovered and destroyed) suggests major criminal involvement in the purchase, consolidation and processing of the opium gum. For example, this area (which would be by no means the total area illicitly grown) constitutes nearly one-third of the estimated *total* illicit cultivation in Myanmar in the same year.⁵⁵

The concerns of the US State Department were reflected by findings of the Australian Crime Commission (ACC). Australia has reported an increasing quantity of South West Asian origin heroin (mainly from Afghanistan), with India supplying in the 2007-08 reporting year “the largest number of detections (as a global source of origin) over 500 grams.”⁵⁶ This indicates that India is a major source of heroin transshipment from the Golden Crescent – reporting that is simply not consonant with the Indian Government’s view of its illicit drug problem and the criminality involved with it. Just recently, a gang of Nigerians allegedly transshipping heroin from India to Australia was interdicted in Chennai.⁵⁷

US authorities also express grave concern about India’s capacity to deal with money laundering. Although India passed legislation in 2009 that strengthens its anti-money laundering regime, the US Bureau of International Narcotics and Law Enforcement Affairs said in its 2009 report (issued annually through the State Department) that India was still falling well short of the Financial Action Task Force (FATF) recommendations. The report noted that illicit *hawala* transfers for incoming remittances amounted to US\$13-17 billion alone, leaving aside the fact that the majority of *hawala* dealings relate to criminality and tax evasion rather than remittances.⁵⁸

The concern of this paper is especially with India’s counter-terrorism mechanisms; but we also assert that these in turn relate intimately to

⁵⁴ Narcotics Control Board, *Annual Report 2008*, pp. 31-32. The denial of Maoist involvement in drug growing came from an interview with a senior NCB official (who prefers to remain anonymous) in November 2009.

⁵⁵ UNODC, *2008 World Drug Report*, p. 25, at www.unodc.org/documents/wdr/WDR_2008/WDR_2008_eng_web.pdf (accessed January 6, 2010).

⁵⁶ Australian Crime Commission, *Illicit Drug Report 2007-08*, at http://www.crimecommission.gov.au/publications/iddr/2007_08.htm (accessed January 7, 2010), pp. 51-53.

⁵⁷ “Drug peddlers behind murder”, *The Hindu*, January 19, 2010, at <http://www.hindu.com/2010/01/19/stories/2010011958130100.htm> (accessed January 19, 2010).

⁵⁸ “Take steps to curb terror funding, America tells India”, *The Economic Times*, March 2, 2009, at <http://economictimes.indiatimes.com/News/PoliticsNation/Take-steps-to-curb-terror-funding-America-tells-India/articleshow/4210150.cms> (accessed January 11, 2010).

general issues of governance, corruption and policing. This relationship was recently defined on a practical level by the Minister of Home Affairs, P Chidambaram:

If intelligence-gathering is the corner stone of fighting insurgency or insurrection or terror, the foot soldier (police man or woman) cannot work in isolation. He must be enabled to gather intelligence from the people ... It is therefore important that State Governments adopt Community Policing.⁵⁹

In terms of developing a more sustainable approach to internal security (and consequently, the closely-related area of external security), the police and judiciary have crucial, even primary, roles to play. The police are the 'eyes and ears' of the system. They are a massive force that, if properly trained and networked, can observe intelligence at the grassroots and pass it upward to the strategic level. They are the ones in a position to pre-empt attack and provide a first response once it occurs. (We shall not quickly forget the images of police in Mumbai attempting to do battle with *Kalashnikov*-armed terrorists with World War II vintage *Lee Enfield* .303 rifles.)

A police service capable of providing these services should be more oriented to community policing than the paramilitary structure dictated by the 1861 Police Act. Under a community policing model, the constable is an independent, well-trained and educated operative, capable of making independent, street-level decisions on individual cases, which he or she encounters, rather than deferring to higher authority and acting purely according to direction. This is the policing model conferred by the idea of the London 'bobby' patrolling the streets unarmed, as originating in the reforms of Sir Robert Peel in 1829. Under these reforms, the police were to be accountable, of un-impeachable integrity and to be at one with the public, who they were seen to serve.

Regrettably, the efforts to reform India's state police services, which still mostly operate according to acts very similar to the central government Act, which in turn dates back to the colonial legislation of 1861, have not significantly progressed. As expressed by Sanjay Patil in a recent report written under the auspices of the Commonwealth Human Rights Initiative,

When the British Empire first started wielding more control and influence on its colonies in South Asia, it modelled policing after the militaristic Irish Constabulary rather than the civilian London Metropolitan model. This was meant to subjugate

⁵⁹ P. Chidambaram, "A New Architecture for India's Security", Intelligence Bureau Centenary Endowment Lecture, December 23, 2009, at <http://www.outlookindia.com/article.aspx?263495> (accessed January 22, 2010).

very large and hostile indigenous populations with a relatively small force.⁶⁰

No lesser body than the Indian Planning Commission has pointed out that policing and legal structures in India are currently highly dysfunctional. Whereas the primary concern of the Commonwealth Human Rights Initiative is the rights of individuals, the Planning Commission is primarily concerned with India's economic and social performance as a nation. According to the Planning Commission, the poor performance of the legal sector is actually dragging India and its development down. In its words, "a more orderly society is the bedrock of planned development".⁶¹

In 2006, the Indian Supreme Court also brought down seven requirements (six directed against the states and one against the Union) directed towards policing reform. These requirements, many of which reflected the recommendations of the Indian Police Commission, have never been implemented. The Police Commission had met eight times between 1988 and 1991. Its recommendations were wide ranging recommendations – from the establishment of proper, independent complaint mechanisms, to the replacement of the repressive and anachronistic 1861 Police Act, and to ensuring the independence of policing from the influence of the government executive.⁶² One important factor apparently preventing reform is the nexus between the police and senior politicians in some states. Obviously, such states will be reluctant to introduce reforms attacking the cosy relationships that are of mutual benefit. So far, 11 of 26 states have implemented some kind of reforms, but often such reforms fall short of providing accountability and transparency.⁶³

Much of the above is common sense and covered elsewhere. What is sometimes overlooked, however, is that the ability to conduct successful *investigations* is a prime tool of counter-terrorism and that the police are the key investigators in counter-terrorism. Successful investigations can

⁶⁰ Sanjay Patil, "Feudal Force: Reform Delayed. Moving from Force to Service in South Asian Policing", Commonwealth Human Rights Initiative, 2008, p. 10, at http://www.humanrightsinitiative.org/publications/police/feudal_forces_reform_delayed_moving_from_force_to_service_in_south_asian_policing.pdf (accessed December 18, 2009).

⁶¹ Indian Planning Commission, "Mid-Term Appraisal of the Tenth Five Year Plan (2002-2007)", Part II, Chapter 17, p. 496, at http://planningcommission.gov.in/plans/mta/midterm/content_eng1.htm (accessed December 18, 2009).

⁶² For a selection of the recommendations, see Sanjay Patil, no. 60, box, p. 35.

⁶³ Deutsche Welle, "Indian police reform gains ground", http://www2.dw-world.de/southasia/South_Asia/1.234779.1.html (accessed March 29, 2010).

break up terrorist cells and organisations and provide far-reaching intelligence leads.

For example, B. Raman has pointed out that there have been no major attacks in India in the year since 26/11. In part, he attributes this to the successful investigation of the Indian Mujahideen series of attacks that took place on major Indian cities throughout 2008 and the consequent significant erosion of IM cells.⁶⁴ The opening up of the investigations into the IM through an ‘encounter’ with three IM activists in New Delhi in September 2008 and the subsequent arrest of one has opened a whole chain of cases in India that had hitherto escaped detection.⁶⁵

But despite the successes against the IM, there is evidence that India’s capacity to investigate terrorism and crime in general is still not always what it should be. Even crime scene management in important cities like Mumbai and New Delhi is often inadequate, as evidenced by the obvious and very poor crime scene control in Mumbai in the aftermath of 26/11.⁶⁶ (Although it must also be said that crime scene management after any massive terrorist attack such as 26/11 is bound to be difficult). In other instances, investigations have not always had early successes and have sometimes been characterised by poor practices and worse. For example, the investigations of the bombings in Hyderabad in 2007 resulted in a number of arrests and accusations on use of torture by the police – accusations subsequently upheld in a report of the Andhra Pradesh Minorities Commission.⁶⁷ The bombing of the Samjhauta Express train in 2006 has also not been resolved, despite a number of initial false arrests. The attacks on the Mumbai rail system in July 2006 resulted in serious differences between agencies as to which terrorist group was responsible, with the Maharashtra Anti-Terrorism Squad (ATS) arresting Student’s Islamic Movement of India (SIMI) members and the Crime

⁶⁴ B. Raman, “India and Jihadi terrorism during 2009”, *Sri Lankan Guardian*, January 3, 2010, at <http://www.srilankaguardian.org/2010/01/india-jihadi-terrorism-during-2009.html> (accessed January 5, 2010).

⁶⁵ Many previous attacks, going right back to the attack on the US Center in Kolkata in 2001, had an entanglement with personnel who subsequently became involved with what came to call itself the IM. See OCTOPUS, no. 32, p. 9.

⁶⁶ See for example. “26/11 probe: poor crime scene management say experts”, *The Hindu*, November 19, 2009, at <http://beta.thehindu.com/news/article51268.ece> (accessed January 6, 2010).

⁶⁷ An alleged facsimile version of the L. Ravi Chander report is available at http://www.TwoCircles.net/files/report_ravi_chander.pdf. This alleged facsimile is also provided on the website ‘Twocircles.net’ at http://www.twocircles.net/2009apr08/ravi_chander_report_reveals_torture_and_illegal_detention_ap_police.html (accessed January 6, 2010).

Branch of the Mumbai Police arresting IM members. Eventually, the Crime Branch was forced by the courts to release its arrestees.⁶⁸ Following the blasts, about 300 Muslims were randomly ‘rounded up’ by the Mumbai police and held for questioning. Even the investigation of the 26/11 attacks was mired in controversy. And a suppressed, official report of the Maharashtra government reportedly points to poor policing practices in the response to the attacks.⁶⁹

All too often, Indian investigations seem to involve the arrest of a suspect on grounds of inadequate evidence and subsequent administration of the so-called ‘truth drug’ (Sodium Pentathal). Suspects are sometimes tortured in these encounters with the police, as occurred in the Andhra Pradesh case mentioned above. These approaches seem to be based more on desperation resulting from political pressure to obtain a result rather than sound investigation practices. The otherwise cumbersome court system appears to bear out the view that the investigations process is generally poor in India. The conviction rate for IPC (more serious) crimes in India in 2007 was 42.3 per cent.⁷⁰ This compares with a conviction rate of 80.7 per cent in the UK.⁷¹ It is worth noting that conviction rates are a different data set than ‘clear up’ rates, which would be far lower than 42.3 per cent, given the fact that in 2007, 14.5 million were awaiting trial on IPC crimes alone, suggesting that, on an annualised basis, the ‘clear up’ rates are extremely low.⁷²

On their part, senior police in India express considerable frustration with a legal system that can take years to bring cases to judgment and that is increasingly subject to the ‘purchasing of justice’ by the deployment of slick lawyers capable of finding loopholes in the system on technical grounds.⁷³ In these circumstances, the police are increasingly taking matters into their own hands. In less serious cases, they are giving alleged criminals

⁶⁸ “Mumbai cops goof up: 7/11 accused acquitted”, *Times of India*, May 12, 2009, at <http://timesofindia.indiatimes.com/India/Mumbai-cops-goof-up-711-accused-acquitted/articleshow/4511603.cms> (accessed January 6, 2010).

⁶⁹ Prachi Pingley, “Police slated over Mumbai attacks”, BBC News, June 16, 2009, at http://news.bbc.co.uk/go/pr/fr/-/2/hi/south_asia/8103528.stm (accessed January 6, 2010).

⁷⁰ National Crime Records Bureau, *Crime in India 2007*, Chapter 4, Table 4B (no page), at <http://ncrb.nic.in/crimeinindia.htm> (accessed January 29, 2010). In 2007, only 13 per cent of cases scheduled for trial were actually heard.

⁷¹ *DPP Journal*, “Conviction rate increases”, June 29, 2009, at http://www.cps.gov.uk/news/journals/dpps_journal/conviction_rate_increases/ (accessed January 5, 2010).

⁷² National Crime Records Bureau, Ministry of Home Affairs, *Crime in India 2007*, Chapter 12 (unpaginated), at <http://ncrb.nic.in/cii2007/cii-2007/CHAP12.pdf> (accessed January 5, 2010). The other category of crime is Special and Local Law (SLL) crime, which is generally representative of a lower level of offence than IPC crime.

a thrashing and letting them go; in more serious cases, they are sometimes killing them in so-called 'encounters'. In one of the most serious of these, three senior policemen have been arrested in Gujarat; but this is alleged to be only one of a number of such encounter cases in that state.⁷⁴ Even a frustrated public is increasingly resorting to so-called 'lynch law'. A video of a man in Bihar being beaten nearly to death by a mob shocked even the President, who remarked that something needed to be done to prevent ordinary citizens taking the law into their own hands, and also noted that "the realm of judicial administration is not without its own share of inadequacies and blemishes".⁷⁵ While such methods might be seen to give temporary relief from criminality, they unfortunately also lead to grave injustices and further alienate disaffected minorities, who are often the targets of police bashings, torture and 'encounter' killings.

General crime and the police capacity to deal with it cannot be de-linked from counter-terrorism, especially in the South Asian context. In South Asia, there is a particularly close relationship between crime, corruption and terrorism. Criminal gangs like Dawood Ibrahim's 'D Company' have widespread networks for smuggling purposes, involving agents of corruption in the police and customs. Court cases show that these were heavily utilised in the Mumbai bombings of 1993. Just recently, members of a criminal gang reportedly working on behalf of D Company were arrested for issuances of false passports.⁷⁶ Given D Company's links with terrorists, the security implications of these activities are profound. According to the US Congress Research Service (CRS),

Lending his (Ibrahim's) criminal expertise and networks to such terrorist groups, he is capable of smuggling terrorists across national borders, trafficking in weapons and drugs, controlling extortion and protection rackets, and laundering ill-gotten proceeds, including through the abuse of traditional value transfer methods, like hawala.⁷⁷

⁷³ Interviews with senior police members of the IPS, New Delhi, October and November 2009.

⁷⁴ "A journalist who cracked the Gujarat fake encounter case", Rediff, April 25, 2007, at <http://www.rediff.com///news/2007/apr/25spec.htm> (accessed January 19, 2010).

⁷⁵ "Arrests follow India mob attack", BBC News, February 24, 2008, at http://news.bbc.co.uk/go/pt/ft/-/2/hi/south_asia/7261586.stm (accessed January 19, 2010).

⁷⁶ "ATS arrests man who arranged fake passports for D-company", *Times of India*, January 21, 2010, at <http://timesofindia.indiatimes.com/city/lucknow/ATS-arrests-man-who-arranged-fake-passports-for-D-company/articleshow/5482437.cms> (accessed January 22, 2010).

There is also a close nexus between firearms and explosives trafficking and terrorism and insurgency, between *bawala* and terrorism fund transfers, between the giant web of fraudulent under-invoicing and terrorism financing, and between all areas of criminality and the raising of funds to support terrorist and insurgent organisations.⁷⁸ Moreover, these problems are not specific to India, but are general throughout South Asia, which only goes to complicate India's situation. For example, India suffers from the fact that a major arms shipment route from South East to South Asia passes through the Bangladeshi ports of Cox's Bazaar and Chittagong. The largest-ever such interdicted case involved a shipment of 10 truckloads of arms through Chittagong, allegedly destined for the United Liberation Front of Asom (ULFA) and allegedly involving corrupt senior Bangladeshi ministers and intelligence officers.⁷⁹ India's porous border with Nepal also often features as a source of smuggled weapons and explosives, subsequently used in terrorist attacks and other crimes.⁸⁰

Given this close nexus between crime, corruption and terrorism in South Asia, it would be impossible to make India safe from terrorism and insurgency without also greatly improving the performance of the police and related agencies in investigating major crimes and corruption. Policing, however, is predominantly a state government function and mainly still undertaken in India according to the authoritarian mould bequeathed by the perceived needs of the colonising power. Judging from the quotation of the Minister of Home Affairs given at the outset of this section, it is apparent that the Union government is well aware of the problems with policing in India and that the need to improve policing is integral to the counter-terrorism effort. Indeed, stimulated by the poor response evident to the attacks of 26/11, the government has commenced a major process of reform of India's counter-terrorism and security

⁷⁷ Congress Research Service (John Rollins, Liana Sun Wyler, Seth Rosen), "International Terrorism and Transnational Crime: Threats, Policy and Considerations", January 5, 2010, p. 16, at www.fas.org/sgp/terror/R41004.pdf (accessed January 19, 2010).

⁷⁸ See the concerns of Indian officials expressed in Asia/Pacific Group on Money Laundering (APG), "APG Mutual Evaluation Report on India, March 2005", para 13, pp. 14-15, at <http://www.apgml.org/documents/docs/8/India%20ME1%20-%20Final.pdf> (accessed February 3, 2009); Rollie Lal, "South Asian Organised Crime and Terrorist Networks", *Orbis*, 49 (2), Spring 2005, pp. 293-304, p 295 and passim.

⁷⁹ "Chittagong arms were for ULFA", *The Hindu*, March 8, 2009, at <http://www.hindu.com/2009/03/08/stories/2009030855661200.htm> (accessed March 8, 2009).

⁸⁰ For an in-depth examination of weapons smuggling from both Nepal and Bangladesh, see Anurag Tripathi, "The Easy Way To Arms And Violence", *Tehelka*, 5 (3), January 26, 2008, at http://www.tehelka.com/story_main37.asp?filename=Ne260108the_easy.asp (accessed January 29, 2010).

mechanisms. If implemented in full, these reforms will go a good way to meeting some of the major concerns about internal security in India. But as we shall see, they are still likely to have some serious limitations.

INDIA'S INTERNAL SECURITY REFORMS

UNION GOVERNMENT CHOICES IN SECURITY REFORM

Given India's limited resources, New Delhi's increasing re-allocation of its overall security resources towards internal and border security, and 'continental' defence against near neighbours like Pakistan tends to detract from military modernisation and development of force projection capability. One way of illustrating this is to show that the share of defence spending on the 'blue water navy', the classic tool of force projection, has remained in percentage terms fairly constant over the last few decades, shifting only from 13 per cent of the defence budget in 1994 to 14.5 per cent today. This percentage share is low for a power seeking a force projection capability. For example, it compares with a percentage share for the US Navy of 26 per cent.⁸¹ Against this, concentration on close-in coastal defence and security has risen dramatically following 26/11.⁸²

Another way of measuring the costs of internal security is to look at the rising cost of police and paramilitary forces in relation to military forces. State police numbers have been rising at well above the rate of the population increase, from 1.37 million in 1997 to 1.75 million in 2007 (available positions – there are about 1.5 million police *in situ*).⁸³ This rise reflects the position of the Union Government that India is under-policed.⁸⁴

As well as this rise in police numbers, the Union Government's burden of expenditure on homeland security has also risen significantly. Since 9/11, the percentage share of homeland security (not including the Coast Guard or state police) in relation to defence spending has risen from

⁸¹ Such comparisons should not be taken too far, however. America's circumstances, in which it does not confront a contiguous, threatening land power, are vastly different from India's.

⁸² Pushpita Das, "Wither Coastal Security?", IDSA Comment, at http://www.idsa.in/idsacomments/WhitherCoastalSecurity_pdas_261109 (accessed December 10, 2009).

⁸³ Government of India, Ministry of Home Affairs, Bureau of Police Research and Development, Table A Chapter 1, p. 2, "Data on Police Organization as at 1/01/2008", follow the links at <http://www.bprd.gov.in/index3.asp?sslid=1813> (accessed December 14, 2009).

⁸⁴ Speech of Minister for Home Affairs, IB Centenary Endowment Lecture, December 23, 2009, at <http://static.indianexpress.com/frontend/iep/docs/Chidambaram-speech.pdf> (accessed January 12, 2010).

11.76 per cent in 2000-01 to 18.5 per cent in 2009-10 (budget estimate).⁸⁵ The Union Government now supports police forces costing Rs 12,817 crore (US\$2.27 billion), up from Rs 5,677 crore (US\$ 1.2 billion) in 1999-2000 – or a rise of 126 per cent in nominal terms.⁸⁶

The data suggest that there has been a proportional shift within India's security spending between power accretion spending and internal security spending. This is not to say that conventional defence spending has not been rising handsomely, but rather that internal security has become an urgent focus of the Union Government. Internationally, however, this proportional shift has been overshadowed by the far greater global interest on India's rise as a military power.

Although there has been a shift in emphasis in favour of internal and border security spending, the *focus* of that shift is still in favour of 'hard' (or some might say 'repressive') use of power and against other instruments for achieving better governance outcomes. In this equation, the various paramilitary forces, the armed constabulary (numbering nearly half the state police), the Coast Guard and the various intelligence agencies might be considered as 'hard' power. 'Soft' elements, on their part, might be said to consist of the police working to protect the community from crime, the legal structure, various measures to ensure governance, justice and accountability, and approaches that seek to alleviate the lot of those with grievances, such as economic support for tribal and Muslim populations or granting greater autonomy to separatist regions. Diplomatic, economic and aid efforts designed to create a more robust regional grouping in South Asia also fall within this 'soft' category.

This paper focuses only on India's security choices in relation to its internal security mechanisms rather than its diplomatic, trade and aid activities in the South Asian region or the needs of national defence against attack by another country. But it is worth noting that, although regional security building is an extremely difficult area of activity for India as the regional 'giant', it is a crucial activity in terms of India's wider security, not least in achieving cooperative regional outcomes against transnational terrorism and crime. Nor do we deal with the various attempts of the government to meet the needs of disaffected minorities

⁸⁵ Based on data in the *Indian Budget and Economic Survey* as at <http://indiabudget.nic.in/> (accessed December 14, 2009). The 'homeland security' data includes the Intelligence Bureau, all central police forces, the Home Guard and Civil Defence. Defence expenditure is as given under the Ministry of Defence head in the budget papers. But this does not include expenditure on the military nuclear programme.

⁸⁶ Government of India, Ministry of Home Affairs, *Annual Report 2008-09*, pp. 76-77, at [http://www.mha.nic.in/pdfs/AR\(E\)0809.pdf](http://www.mha.nic.in/pdfs/AR(E)0809.pdf) (accessed December 11, 2009).

such as tribals, Muslims or those in other areas, seeking separation or greater autonomy. Equally, these are absolutely vital areas of activity for balanced approaches to counter-terrorism and counter-insurgency. Due to the magnitude of these topics, however, they cannot be covered in this paper.

Given the reality of India's federal structure, it will be natural to expect the Union Government to be most active in areas of its jurisdiction such as defence, federally funded paramilitary forces, the national intelligence agencies, central police and centrally administered laws. State and local level activities will tend to get a lesser emphasis, at least from the Union Government. Thus, many of the activities at the 'soft' end of the spectrum, such as policing reform and 'community policing', will not fall directly within the jurisdiction of the Union Government. As for state governments, while some may have an incentive to improve these aspects of security in their jurisdictions, others will be less active in the pursuit of reform. A state political class that has the police under its influence, for example, will be far less willing to conduct meaningful police reforms than one that is not. And it is because of this that many states have resisted efforts to reform the police, including the efforts of the Supreme Court and various police reform commissions.

It is a central tenet of this paper that the Union Government should develop ways of providing additional focus on so-called 'lower order' issues of security, such as anti-corruption measures, the rights of individuals and modernisation of the police and judiciary, even though they fall predominantly within state government jurisdictions. Without leadership from the centre in these areas, the current drive for greater internal security – especially as it has been developed since the attacks of 26/11 – is unlikely to prove sustainable. Although the Union government is clearly restrained in the level of its activity in respect of these areas by the Constitution, there are a number of ways it can become more active and activist and these areas, as are discussed below.

Post-26/11 Security Reforms

In common with many countries, India's internal security architecture has evolved in an *ad hoc* way. The National Security Guard (NSG) was founded in 1986 in the aftermath of the 1984 Operation Blue Star. The Multi-Agency Centre (MAC), an intelligence 'fusion centre' within the Intelligence Bureau (IB), was first mooted in the aftermath of the intelligence failure associated with Kargil in 1999 and re-furbished in the

aftermath of the 26/11 attacks.⁸⁷ Due to this *ad hoc* process and because of India's federal structure, the current security architecture is characterised, in the words of Home Minister Chidambaram, by the fact that "there is no single authority to which these organisations report and there is no single or unified command which can issue directions to these agencies and bodies."⁸⁸ It is also plagued by 'turfdom', fragmentation and careerism.

According to its status as a Westminster-style democracy, the apex of India's security architecture is the Prime Minister and the Cabinet and various offices attached to them. The Cabinet Committee on Security (CCS) consists of *ex-officio* ministers (the Prime Minister, Minister of Home Affairs, Minister of Defence, Minister of External Affairs and Minister of Finance). It is supported by a National Security Council (NSC), with representatives from the above ministries and the Deputy Chairman of the Planning Commission and National Security Adviser (NSA - who answers to the Prime Minister). The NSC, in turn, is serviced by a secretariat of officials. The NSA is responsible for the Joint Intelligence Committee (which brings together the heads of various intelligence agencies), the Aviation Research Centre (ARC) and the National Technical Research Office (NTRO). The Cabinet Secretariat is responsible for the external intelligence agency, the Research and Analysis Wing (RAW). The Ministry of Finance hosts the Financial Intelligence Unit (FIU). The Ministry of Defence hosts the Defence Intelligence Agency (DIA) and the respective arms of the defence forces host their own intelligence agencies. The Ministry of Home Affairs (MHA) hosts the major domestic security intelligence agency, the Intelligence Bureau (IB), which in turn hosts the MAC. The MHA also hosts the various central government police and paramilitary services, such as the Indian Police Service (IPS), central paramilitary forces (which in turn hosts the NSG), various border paramilitary forces such as the Border Security Force (BSF), the Central Reserve Police Force (CRPF – used to support states in crisis), the Central Bureau of Investigation (CBI), and recently formed National Investigation Agency (NIA).

⁸⁷ An intelligence 'fusion centre' is a centre, usually within a host organisation, in which intelligence from a variety of organisations that may have different protective protocols and legislation to protect that otherwise limit sharing, can be brought together. Often actual representatives of the organisations concerned sit within the fusion centre, from where they can access the respective data bases of their organisations and present the findings in a way that does not jeopardise any sensitive material. Usually the intelligence is fused in the form of 'strategic' reports on individual cases rather than in a general way, as would be the case in 'data warehousing'.

⁸⁸ Speech of Minister of Home Affairs, no. 84.

The major connectivity in terms of intelligence between the Centre and states comes about through the state offices of the IB, through the fact that the Centre can insert its various agencies into the states at the request of the states, through the newly created Subsidiary Multi-Agency Centres (SMACS) and through the connectivity between the SMACS and state police Special Branches. Under the Constitution, except in the case of President's Rule, intelligence relating to national security or investigations relating to the central government's jurisdiction (such as fraud in a central government agency or those relating to the newly created NIA), these relationships all exist according to the invitations and goodwill of the states.⁸⁹ Thus if a state does not wish to call in the central government agencies, it need not do so.

As with other federal structures, such as Australia and the US, the artificial bifurcation of intelligence between state and central authorities constitutes a major impediment to the flow of intelligence between the grassroots and the central agencies. This natural tendency of federations is greatly exacerbated in India because of the vast size of the country. Further, intelligence agencies everywhere are extremely poor at sharing intelligence, and India is no exception. They are restricted in doing so by different 'intelligence cultures', the existence of multiple agencies essentially doing the same thing ('stove-piping'), lack of trust and the natural desire to protect sensitive sources. Unfortunately, the police are particularly prone not to share intelligence for all the above reasons and because of a police culture that can often be sceptical of the intelligence function.

The hallmark of sound intelligence in the age of terrorism is the ability to fuse the intelligence gathered at the grassroots with that gathered and analysed at intermediate, national and international levels – what has become known in the US as 'connecting the dots'. Intrinsically, this demands that police and the intelligence agencies work closely together at all levels and develop the capability to share intelligence. It requires that intelligence be 'sucked up' from operations to the analytical and strategic levels. In turn, it requires a sound relationship between the police and the communities they are policing. It also involves trust, compatible data sharing arrangements and adequate security for information and intelligence. Ideally, it requires that all this happens in as near as possible to real time, which in turn implies sound data sharing and analytical systems. But however sophisticated the systems, the sharing of intelligence always

⁸⁹ Under Section 356 of the Constitution, the central government may dismiss a state government and govern the state directly if the state is deemed to exhibit a failure of the constitutional machinery. If, after six months, no workable majority has emerged, fresh elections must be held.

means a trade-off between the security of information and sources, and the ability to share intelligence.

Since he took over the Ministry of Home Affairs portfolio in December 2008 in the aftermath of the 26/11 attacks, Mr Chidambaram has already conducted a series of reforms and has outlined further major reforms.⁹⁰ Reforms, either anticipated or accomplished, include the following (compiled from press reporting and from Chidambaram's speech in December 2009):

Re-vitalisation of the Intelligence Agencies and Counter-Terrorism Mechanisms

- The Multi-Agency Centre (MAC), within the Intelligence Bureau (IB), has been re-furbished and strengthened. The IB has been given an additional Rs 147 crore for the purpose. So-called 'Subsidiary Multi-Agency Centres' (SMACs) have now also been established in the states.
- The MAC and SMACs are to be linked by a dedicated, secure network. In all, 30 locations (including the MAC, the SMACs and a number of police Special Branches) are to be linked by this network.
- A new, over-arching counter-terrorism organisation is to be created by end 2010, to be called the National Counter-Terrorism Centre (NCTC)
 - To incorporate the MAC, NIA, NTRO, JIC, NCRB and National Security Guard (NSG)
 - To have an operations division (presumably to include the NSG)
 - And thus to minimise the current bifurcation between agencies currently controlled by the NSA and the Ministry of Home Affairs.
- To enable a more rapid response to major terror attacks than was achieved on 26/11, NSG hubs have been established in Hyderabad, Bengaluru, Chennai and Kolkata and two additional regional response groups have been located in Hyderabad and Kolkata. Each hub is staffed by 250 people.⁹¹

⁹⁰ Speech of Minister for Home Affairs, no. 84.

⁹¹ Prior to 26/11, the NSG was located at New Delhi. In all, it took the Guard a reported 11 hours before it could respond to the attack. During that time, the inadequately equipped and trained Mumbai police were left to deal with the situation. The NSG was not called in till three hours after the attack. No equipment was in place on its aircraft or crew available.

- The Border Security Force (BSF) has been significantly upgraded and re-equipped and 29 additional battalions are to be raised. The Central Reserve Police Force (CRPF) and other central paramilitary forces have also been significantly upgraded.
- In the next 12-18 months, 21 existing, standalone databases will be networked through NATGRID. According to Chidambaram, NATGRID will provide “quick, seamless and secure access to desired information for intelligence/enforcement agencies”.⁹²
- In a recent development, the National Security Adviser has resigned, possibly opening the way for an integrated security architecture, one more fully reflecting the objectives laid out by Chidambaram.

Strengthening of Coastal and Border Defences

- Coordination has been strengthened between the Coast Guard, Navy and coastal police.
- 64 coastal police stations have been operationalised.
- 56 interceptor boats have been purchased (of 204 scheduled).
- A vessel tracking and monitoring system is being considered.
- Intensified patrolling is in place.
- ID cards are to be issued to fishermen and possibly also coastal residents.
- Following the exposure of serious gaps in the visa system by the Headley case, the Mission Mode Project (MMP) will be implemented. This will provide for online visa and foreigners’ registration and tracking with the objective of creating a secure and integrated service delivery framework for facilitating legitimate travellers and strengthening security. It is estimated to cost Rs 1,011 crore and will be implemented over a period of four-and-a-half years.

Policing and Legal Reform

- The National Investigations Agency (NIA) has been established and is now staffed by a small number of investigators and analysts
 - The remit of the NIA is to investigate terrorism crimes under the Unlawful Activities (Prevention) Act and other crimes, such as drug-related crimes, counterfeiting, and major organised crime and money laundering, that have international or multi-state implications.

⁹² Speech of the Home Minister, no. 84.

- The Union government has assisted with funds for the recruitment of 400,000 additional state police
- It has promulgated guidelines for non-corrupt recruitment and developed an electronic system to ensure ‘hands free’ and non-corrupt recruitment. This system has already been implemented for central recruitment.
- The Union government is to assist with connectivity between police stations and the establishment of a system for police called Crime and Criminal Tracking Network System (CCTNS) “to facilitate collection, storage, retrieval, analysis, transfer and sharing of data and information at the police station and between the police station and the state headquarters and the central police organisations”.⁹³
- The Home Minister has admonished states to implement ‘community policing’.
- He has also requested that “to organise and analyse information derived from the community, the state police Special Branches should be restructured as a specialised and self-sufficient cadre of the State police in terms of personnel, funds and equipment.” To this end, on January 7, 2009, the central government circulated a proposal to restructure the Special Branch in the State police forces. The implementation of the proposal will mark the beginning of a long-haul effort to restructure the intelligence-gathering machinery at the district and state levels.⁹⁴
- The Union Government will assist state police to establish 24x7 command and control posts and quick response teams (QRTs), properly equipped and trained.
- States are admonished to establish (where they don’t have them) anti-terrorism units (ATUs) to pre-empt and investigate terrorist attacks.
- In a major legal reform, the Law Minister has conducted negotiations with chief law officers and chief ministers to enable the release of ‘undertrials’, who have already served a significant proportion of the sentences to which they would be convicted, if found guilty, thus releasing up to 1.25 million of India’s 3.5 million inmates, 70 per cent of whom are under trial.⁹⁵

⁹³ Ibid, p. 4.

⁹⁴ Ibid, pp. 4-5.

⁹⁵ “Moily’s mission: get 75 per cent undertrials out of prison by July 31”, *The Times of India*, January 17, 2010, at <http://timesofindia.indiatimes.com/articleshow/msid-5454196,prtpage-1.cms> (accessed January 19, 2010).

ANALYSIS

The collective changes outlined above, if fully implemented, would amount to an internal security ‘revolution’ in India. The idea of a NCTC, to bring a number of important agencies under one umbrella, act as a ‘fusion centre’ for terrorist related intelligence, minimise ‘stove-piping’, and provide operational coordination, closely reflects changes introduced in the US following 9/11, especially the establishment of the umbrella NCTC there, under the auspices of the Director of National Intelligence (DNI). This mimicry of the US architecture in part arises from the early assistance provided by the Federal Bureau of Investigation (FBI) in the aftermath of 26/11 and a subsequent series of visits to the US by senior Indian politicians and officials, including the Home Minister and Prime Minister.

But do the changes go far enough? Do they ‘press the right buttons’, and are they likely to be successful in providing better governance throughout the Indian Union – a prime consideration of this paper in its approach to counter-terrorism and counter-insurgency?

In all such architecture relating to federations like India, Australia, Canada and the US, there are five major heuristic ‘gaps to be bridged’:

- between overseas and domestic intelligence;
- between military and non-military intelligence;
- between central and state intelligence;
- between the intelligence agencies and police intelligence; and
- between intelligence and the operational counter-terrorism role (response), which is in turn divided into:
 - investigations;
 - operational coordination in event of an attack; and
 - consequence management.

These five major ‘gaps’ are heuristic in the sense that each and every inter-agency relationship also needs to be bridged. But they represent the major conceptual divides and provide a useful point of departure for the analysis. We will now briefly critique the proposed Indian architecture in light of each of these five main areas.

Overseas and Domestic Intelligence

The proposed Indian NCTC, although influenced by the US, will be architecturally somewhat different from the US model. It will be hosted by the Department of Home Affairs and not the NSA (the counterpart of the American DNI). This is a significant difference, since under the Indian model there will be no intelligence ‘czar’ having authority over all Union government intelligence agencies (unless the Minister of Home Affairs were deemed to fulfil that role). Thus, the domestic agencies involved with intelligence, such as the IB and NIA, will be organisationally separated from the foreign intelligence agencies and military agencies (although their intelligence may be ‘fused’ in the MAC, which will be within the NCTC). Depending on the effectiveness of the operations of the MAC, this potentially provides an area of weakness in the model. It also means that the ‘gap’ between domestic and external intelligence may not be adequately bridged in the Indian case.

Military and Non-Military Intelligence

The military intelligence agencies are hosted by the MOD and the same reservations can therefore be made as regards to overseas and domestic intelligence, above. Moreover, the military-related collection agencies, such as India’s SIGINT agency, are also administratively separated from the military, further cementing the military-non-military divide (but also facilitating a closer relationship with the non-military agencies).

Central and State Intelligence

Some additional links will have been achieved by the reforms. The IB, located within the NCTC through the MAC, will have links into the states via its state offices and the SMACS, which will in turn have links with the state police Special Branches. These links, however, will be indirect and incomplete. Most seriously, there is no indication in the counter-terrorism and internal reform package to date that policing in India will be reformed. The Home Minister has simply exhorted the states to introduce what he calls “community policing” and to ensure that the intelligence so provided is linked with state police Special Branches. Special Branches are generally separated from the main body of police and their existence in Western countries has often been highly controversial. Not only have they often proved ineffective in the counter-terrorism role, but also they tend to divorce that role, and the intelligence process, from normal policing. Often too, they have resulted in embarrassing and incompetent police involvement in the political process. This danger is

particularly pronounced in India, where the doctrine of the separation of powers in relation to policing is practically non-existent.

Police and Intelligence Agencies

The main police body within the NCTC will be the NIA. The NIA is, however, a strictly limited agency that will not have the capacity according to its current legislation to provide the link between the intelligence agencies and state police. The NIA will need to be properly resourced and staffed, which is still not the case. The NIA Act is seemingly generous in providing agency officers with India-wide powers in respect of scheduled offences.⁹⁶ The Act states at 3(3):

Any officer of the Agency of, or above, the rank of Sub-Inspector may ... exercise throughout India, any of the powers of the officer-in-charge of a police station in the area in which he is present for the time being and when so exercising such powers shall, subject to any such orders [of the Central government] as aforesaid, be deemed to be an officer-in-charge of a police station discharging the functions of such an officer within the limits of his station.

Sections 6-10, inclusive, give the procedures for putting an investigation in motion. Unfortunately, they are somewhat ambiguous and bear some of the hallmarks of hasty drafting. For example, Section 8 allows the investigator to investigate any other offence of the 'accused' related to the original offence scheduled under the Act. It is not clear whether this can only happen after an arrest, but presumably the reference to the 'accused' signifies that this is the case. If so, then that will be a serious limiting factor in the scope of the investigations. Another limiting factor comes about through the system of notification, spelt out in Section 6. This stipulates that any scheduled offence reported to any police station in India will be brought to the attention of the 'state' authorities, who will bring it to the attention of the Union Government authorities, who will in turn determine if it is a subject of the Act and bring it to the NIA for investigation. The relevant words of Section 6(1) are: "On receipt of information and recording there of under section 154 of the (Criminal) Code relating to any Scheduled Offence the officer-in-charge of the police station shall forward the report to the State Government forthwith."

⁹⁶ Offences scheduled under the Act are: terrorism, counterfeiting of currency, human trafficking, illicit drugs trafficking, organised crime, plane hijacking, violations of the Atomic Energy Act and Weapons of Mass Destruction Act. In addition, all offences alleged against the accused under these scheduled offences may also be investigated. All subsequent references are from the text of the NIA Act, which may be found at the SATP web site: <http://www.satp.org/satporgtp/countries/india/document/papers/75-c1.htm> (accessed January 20, 2010).

This seemingly unambiguous stipulation has a myriad of practical implications. The system for involving the NIA in an investigation is extremely cumbersome and could take months. Anyone who has any practical knowledge of investigations knows that it is a virtually impossible situation to be brought into an investigation in the latter stages, when one has no control over the crime scene, collection and maintenance of evidence, or early interrogation processes (which are the most crucial).

But our main issue with the NIA Act is that it does not support the intelligence collection process – which is in turn essential for prevention. It is essentially concerned with an ‘offence’ reported as a FIR. But intelligence is not about offences or evidence as such (although it can include evidence) but the *analysed information surrounding offences and potential offences*. It is this information surrounding potential offences that will need to be collected by local-level police and passed upward through the intelligence process. Thus, the NIA Act is not an ideal vehicle for either investigations or intelligence and could prove very difficult to operate. That is not to say, however, that such intelligence will not be passed between Special Branches, the SMACs and the MAC, but rather that, if it is, it will continue to be a ‘hit and miss’ process. Moreover, and crucially, the intelligence feed from the grassroots will only be as good as the police providing it: and as mentioned above, nothing in the present reform process indicates that the process of state-level policing will be progressed from the present paramilitary thrust under the 1861 Police Act.

Intelligence and the Operational Counter-Terrorism Role (Response)

To the extent that the MAC, the NIA, the IB and Union Government response agencies, such as the NSG, will presumably be housed within the NCTC, at least some of the connectivity concerns between intelligence and counter-terrorism operations will be met. However, the weakness in this area arises from the fact that the NSG (as a special weapons and tactics – SWAT – group) is only one small component of counter-terrorism response. The other components, such as state police first response, post-facto investigations, consequence management and de-radicalisation programs for those arrested, rest predominantly within the state jurisdiction. Also the intelligence effort surrounding a terrorist event will still have all the problems of coordination and data matching mentioned above. This is the exact situation faced by Australia, which has derived a number of mechanisms to try to overcome the problem (see Appendix 1).

Other Missing Elements

The Indian reform process outlined above will go some way in providing a viable counter-terrorism and counter-insurgency base if fully and effectively implemented. It has several major deficiencies, however. Some of these, such as the need to concentrate on uplifting the South Asia region as a whole and on meeting the concerns of India's disaffected minorities, are beyond the scope of this paper. But other important concerns about policing, governance and accountability need to be addressed. They particularly need to be addressed because – as argued above – the state and grassroots levels are key elements in counter-terrorism and counter-insurgency.

The closely related factors of accountability and governance lie at the heart of the state and local-level security problems. Without accountability and good governance, governments will not be able to implement any programmes to alleviate the economic and political grievances of disaffected communities, such as the otherwise commendable NREGA.⁹⁷ And the police, far from being able to act as the eyes and ears of the community, will actually be a part of the problem in that they will alienate those very communities.

Accountability and Governance Reform in India

Accountability and governance mechanisms need to be addressed at all levels of government and in relation not just to policing, but also issues like corruption in general and failure of public servants such as teachers and medical workers to fulfil their duties. For the purposes of this paper, however, we confine ourselves to the more manageable topic of policing and law enforcement accountability.

As pointed out by the Commonwealth Human Rights Initiative, continued adherence to India's 1861 Police Act lies at the heart of the accountability problem in policing.⁹⁸ Thus, the very foundation of policing in India is the proposition that the police are subject to the dictates of the governments which they serve. Obviously, this subordination of the police to the political class is always the case to an extent, even in countries supposedly subscribing to the separation of powers doctrine.

⁹⁷ NREGA is a job guarantee scheme enacted by legislation on August 25, 2005. The scheme provides a legal guarantee for 100 days of employment in every financial year to adult members of any rural household willing to do public work-related unskilled manual work at the statutory minimum wage of Rs 100 per day. The Central government outlay for scheme is Rs 39,100 crore (\$8 billion) in FY 2009-10. Recently, it was renamed as the Mahatma Gandhi National Rural Employment Guarantee Act. See <http://nrega.nic.in>

⁹⁸ Sanjay Patil, no. 60, p. 10.

Governments hold the ‘power of the purse’. As with the Australian Federal Police Act in Australia, the Minister for Home Affairs may also convey to the AFP his or her broad programme for investigations and other activities. But the key point is that in countries subscribing to the doctrine of the separation of powers, politicians cannot become involved in any individual legal case for fear of political malfeasance. In India, this is not the case at all, as was witnessed recently in Uttar Pradesh when the state government under the Chief Minister Mayawati apparently initiated a malicious prosecution of a leading Congress opposition figure – an occurrence that is, unfortunately, all too common.⁹⁹

Other problems with policing also follow from the continued adherence to the 1861 Act. The Indian Police Service (IPS), while an august and often useful institution, has forced ‘community policing’ into a ‘lowest common denominator’. Under current structures, the fact that constables and senior constables are often poorly educated, trained, paid, accommodated, equipped and have no prospects for promotion means they cannot provide the backbone of a genuine community policing effort. And under current structures, it is they, rather than the IPS, which form the vast majority of Indian police.

Many of the problems with the 1861 Act were recognised and overcome in a ‘model police act’ written by a committee under the auspices of the MHA and published in 2006.¹⁰⁰ For example, under this model act, the rank of constable was to be abolished and a police officer would be designated a ‘Civil Police Officer’ after three years initial training. Accountability measures would be strengthened through introduction of independent complaints mechanisms and the hold of state governments over police would be reduced by measures such as police boards (including the leader of the Opposition) and tenured, merit-based appointments for Inspectors General of Police (Commissioners). Although many states have updated their police acts, by no means all have adhered to the tenets of the model police act in doing so, fearing loss of control over the police.¹⁰¹

⁹⁹ Debjani Ganguly, “Dalit muscle power in UP: Mayawati-Bahuguna clash”, *South Asia Masala*, July 23, 2009, at <http://asiapacific.anu.edu.au/blogs/southasiamasala/2009/07/23/dalit-muscle-power-in-up-mayawati-bahuguna-clash/> (accessed January 29, 2010).

¹⁰⁰ For a critique of the model police act, see a powerpoint by the former secretary of the drafting committee, Dr U.N.B. Rao, at http://74.125.95.132/search?q=cache:O71Qeju2TrsJ:www.commoncauseindia.org/whatsNew/PresentationonModelPoliceActU_N_B_Rao.ppt+india+model+police+act&cd=5&hl=en&ct=clnk&gl=au (accessed January 26, 2010).

¹⁰¹ *Ibid.*

Police reforms in India will not be quick or easy. Both the states and their police services will resist them. Given the size and poor condition of Indian police services and lack of resources at the state level, the task is enormous, even with the best possible circumstances that would not involve such resistance. The Union Government will need to ensure that police reforms remains a major priority in its security reform process, that it does not get pushed to one side by other seemingly easier, quick fix reforms and that it remains in focus over the long-term.

India has a number of federal and state-level accountability mechanisms relevant to police and law enforcement. One such measure that is often over-looked is the collection and maintenance of sound law enforcement and crime statistics. Statistics are fundamental to accountability in so far as citizens are given a clear insight into how their services are performing. For example, strong, inter-linked statistics between courts and the police are capable of furnishing key information about both court and police performance. It is through the linking of these statistics that they are 'turbo-charged' so that they can be far more exacting as accountability measures.¹⁰²

One early measure the Union Government can consider is to fund and oversight (to ensure quality) in each state periodic crime victimisation surveys designed to give longitudinal and comparative pictures of genuine crime problems. The results of these surveys can also be compared with the results of the existing Indian crime database to determine how effective current collection methods are. They should be widely available to the public, including through the Internet.

India also has a number of existing accountability institutions. At the central level, the National Human Rights Commission (NHRC) is designed to protect the rights of individuals. The commission has the powers of a civil court in respect of all Indian jurisdictions. It may intercede in court processes in relation to human rights and visit institutions to investigate alleged human rights abuses. But its weakness is that it may only make recommendations to governments (although these include recommendations for prosecutions where appropriate). Further, it is constrained to consider issues of human rights abuses, which do not

¹⁰² By way of example, in Cambodia there were no adequate court statistics that enabled reconciliation between cases brought and those resulting in a conviction. Consequently, serious corruption in the legal processes did not come to light. Once such statistics were compared it was evident that very few of the pedophilia cases resulted in convictions, seemingly because of the problem of either corruption amongst legal officials or the 'buying off' of witnesses.

normally include corruption. It is also bogged down by the massive workload imposed on it.

The Central Vigilance Commission (CVC) is a central agency responsible for dealing with corruption amongst senior, federal-level officials. While it has extensive investigative powers, they relate only to central government agencies and relatively senior level officers. Similarly, the investigatory arm of the government in relation to corruption, the CBI, can only act in regard to state-level institutions at the express invitation of the concerned state.

The limitations of this architecture on an India-wide basis are patent in the high levels of corruption still pertaining throughout the country. Although India has improved its Transparency International ranking in recent years, its performance still leaves a lot to be desired and in 2008, it was again slipping, with a ranking of 85th and a score of 3.4 on the perception of corruption index.¹⁰³

¹⁰³ In 2004, India was ranked 90th and achieved a score of 2.0. By 2006 it was 70th with a score of 3.3. But in 2008 it had again slipped to 85th with a score of 3.4. See the Transparency International web site at http://www.transparency.org/regional_pages/asia_pacific/resources/surveys_and_indices#cpi (accessed January 27, 2010) and follow the links.

A NEW INVESTIGATION AND ACCOUNTABILITY FRAMEWORK

Strengthening National Investigations

The powers and jurisdictional cover provided by the combination of the CBI, IB and NIA are now considerable, particularly in relation to problems, such as terrorism, which is covered by an India-wide mandate in respect of intelligence (the IB) and investigations (the NIA). However, there are still weaknesses with this system, as spelt out above. They concern, *inter alia*: the cut-off between intelligence and investigations still in evidence between the state police and central authorities; and the fact that the mechanisms to call in the NIA are cumbersome and that it cannot act until an offence has been committed, thus further alienating the intelligence from the investigations relationship. As argued in this paper, the connections between the crime problem and the terrorism-insurgency problems in India (and South Asia generally) are close. Serious organised crime needs to be addressed on an India-wide basis, and an arrangement such as Australia's Crime Commission (see Appendix 2) should be seriously considered – or else an amendment of the NIA Act should be made to grant the agency similar powers. Further, policing reform lies at the heart of improvement of the investigations and intelligence effort. The Home Minister's security 'revolution' needs to be further extended to embrace more resolute Union Government action on police reforms.

Strengthening Police and Government Accountability

Given the serious nature of the problems confronting India and the clear incapacity of current institutions to deal with them, the reform process initiated by the Home Minister should go much further in imposing accountability mechanisms than it has so far. Considering India's admirable tradition of judicial activism, one model open for further investigation can be the judicial commission model – that is, the establishment of judicial commissions with investigative and coercive powers. Obviously, however, such powers need to be carefully circumscribed to protect human rights.

Several models have had some success in fighting endemic corruption in policing and government. In general, the following are necessary for successful corruption fighting:

- The anti-corruption body should be independent of government in its operations (although its head will of necessity be appointed by

- the government, but preferably on a fixed term, tenured contract);
- It should have sufficient investigatory powers to do its job (preferably, these should be ‘coercive’ Royal Commission-like powers¹⁰⁴);
 - It should be adequately financed to do its job; and
 - It should be constituted at the correct jurisdictional level.
 - In the Indian case, this would mean units at Union and state-government levels.

The cases of Hong Kong and Singapore come to mind. Of these, Hong Kong is more relevant to India, since the situation in Singapore has been addressed in part by paying police high salaries – a facility obviously not available to India. The Hong Kong model has been in place in various forms since 1974 when the Independent Commission Against Corruption (ICAC) was established. The essential features of the Hong Kong model are that the ICAC is fully independent (answerable only to the head of government), well resourced and strongly backed by law (although in this case by ordinance rather than an act of the legislature).

In the Indian constitutional context, the CVC Act should be amended to provide the above features. The CVC should be enabled to focus on more junior level officers as well as senior officers, and its resources expanded accordingly. It should be provided its own fully staffed investigations unit, which would include responsibility for investigating the integrity of centrally-raised police and paramilitary forces.

Moreover, a revised agency should be presented by the Union Government as an exemplar for a state-level model to be advocated and funded by the Union Government similar to the various state-level anti-corruption commissions in Australia. Some of these, such as in New South Wales, are divided between the Independent Commission Against Corruption, the Police Integrity Commission and the Crime Commission (which is a crime fighting agency with similar powers to the ACC). Others, such as the Western Australian Corruption and Crime Commission cover both crime and corruption fighting (although the investigation role is sub-contracted by the Commission to the Commissioner of Police rather than being carried in-house). All such bodies have independent structures and substantial powers.

¹⁰⁴ Although, of course, India could not have an actual ‘Royal Commission’, being a republic, it could presumably have a ‘Presidential Commission’ with similar coercive powers.

¹⁰⁵ For a critique of these relationships, see Sandy Gordon, “Re-Shaping Australian Intelligence”, *Security Challenges*, 1 (1), November 2005, pp. 27-58.

Above all, the Indian culture of internal investigations of complaints against police should not be able to stand alone as the only means of redress. It has been shown time and again to be inadequate as a means of stamping out endemic corruption. It certainly has a place, in so far as it will be impossible to investigate all complaints against the police by means of an independent commission. But it should be only part of the menu of remedies available.

CONCLUSION

India's internal security revolution – for that is what it is – is now well under way. The current Congress-led United Progressive Alliance government has the overall thrust correct. That is, India's future as a power is dependent on better governance and security outcomes at all levels of the government. While India retains its current dissonant elements, it remains vulnerable to cross-border disruption and will need to focus ever more attention on maintaining the civil authority of the government. Consequently, it will have less capacity to provide resources for economic development, education, health, and the acquisition of soft-and hard power in the region and world.

The current 'revolution' is an unfinished one, however. In itself, it is unlikely substantially to achieve its goal of a more secure India. Not surprisingly, it is heavily focused on those areas amendable to the influence of the Union Government. But the fundamental issues of security lie lower down in the system. They rest on the ability of the police to win the confidence of the people, provide them with security and act as the eyes and ears of the system in respect of counter-terrorism and counter-insurgency. They also depend on the ability of local and district level courts to deal speedily and justly with cases. Although India's security revolution may achieve short-term gains, unless these lower order issues are addressed, it will not prove sustainable.

While much of this challenge lies outside the scope of the Union Government, there are actions it can take to help further this security and governance revolution. In particular, it can provide better accountability institutions at the central level and can use these as models for similar institutions at state level. It can also improve the prospects of its central investigations agency, the NIA, by negotiating with the states to introduce a system that favours intelligence as well as investigations and grants the agency the powers of a standing Royal Commission. The main thing is that the Union Government understands that what it has done so far is only the beginning and it must not lose the momentum of its reform processes pushed forward so admirably in the year since 26/11.

APPENDICES

APPENDIX 1:

AUSTRALIA'S COUNTER-TERRORISM PLANNING PROCESS

Australia's problem with the coordination of its counter-terrorism programmes is very similar to India's. Counter-terrorism requires a 'seamless web' of functionality between the high-level intelligence, investigations and response mechanisms available to the federal government (even including the military), the mid-level responses available to state governments, and on down to the responses demanded of communities, such as hospitals, fire services and local police. The Australian system is far from perfect. In particular, the intelligence relationships, especially those between the higher order intelligence agencies and the law enforcement agencies, still leave a great deal to be desired.¹⁰⁵ Although the Australian system may not be readily applicable to India for a number of reasons, it may have some features upon which India could usefully draw.

Given the disparate nature of the instrumentalities involved, some basic 'cement' is required to keep the whole thing together. In the Australian context, this comes from the Commonwealth Government (equivalent to the Union Government in India). This cement comes in two forms: the planning process, and the testing and response coordination process.

The planning process is overseen by a security 'czar' position within the Department of Prime Minister and Cabinet (equivalent to the Prime Minister's Office in India). Under his or her auspices, a committee (the National Counter-Terrorism Committee), consisting of representatives of relevant federal and state authorities devises, promulgates and updates a counter-terrorism plan – The National Counter-Terrorism Plan. The plan also has a manual, more precisely designating responsibilities. The plan was last revised in 2005 and can be viewed at <http://www.nationalsecurity.gov.au/agd/WWW/NationalSecurity.nsf/AllDocs/85A16ADB86A23AD1CA256FC600072E6B?OpenDocument>.

Testing of the plan through simulation exercises and responsibility for coordination in the event of a terrorist attack rests with the Protective Security Coordination Centre (PSCC), a division within the Attorney-General's Department. It is the responsibility of the PSCC to ensure that adequate testing of the system is conducted according to varying scenarios and that, in the event of a terrorism incident or attack, proper coordination takes place between all relevant state and federal agencies.

Regular exercises, either at 'desk' level or more realistic, are devised to ensure that the system operates effectively in all envisaged circumstances. In the event of an attack, it is decided at the outset whether command of the response belongs to a particular state (if it falls solely within that state) or whether it is national (if it falls within several states or territories). After such a decision is made, then the relevant authority (such as a State Police Commissioner or Federal Police Commissioner or other relevant high level officer) is placed in command of the totality of the response phase.

The consequence management phase is also nationally coordinated where necessary. This is particularly important in the case of preparation for terrorism attacks, which often result in large numbers of serious injuries, such as burns, which are usually beyond the capacity of local-level hospitals.

The Australian system is certainly open to criticism. In particular, the departmental division between planning and coordination may not be conducive to maximum efficiency. Some time may also be lost initially in determining who is in overall command of the response to a terrorism event (although it is difficult to see how this latter problem can be overcome in a federal structure). But the principle – command lies with the state in which the event occurs or otherwise with the Commonwealth if there are multiple jurisdictions or an overseas-sponsored attack – remains sound.

APPENDIX 2 :

THE AUSTRALIAN CRIME COMMISSION MODEL

The Australian Crime Commission (ACC) was established by legislation passed in 2002. It superseded the National Crime Authority (NCA), which had somewhat wider powers (see below). It is intended as a coercive means to address high-level organised crime on an Australia-wide basis. Its legislative instruments consist of an agreement amongst Australia's six states and two territories to pass parallel (similar) legislation to enable central investigation of certain pre-defined crime types and problems throughout Australia having an Australia-wide or Commonwealth relevance. So any crime that affects the Commonwealth or its agencies (and this includes all posts and telecommunications, for example) or crosses state borders or the national border may be deemed to be the subject of a 'special (intelligence) operation' or 'special investigation' and thus subject to the ACC, provided it has been approved as such by the ACC Board. The Board consists of all police commissioners, and the head of the Australian Security Intelligence Organisation (ASIO), *inter alia*. The ACC also provides an Australia-wide intelligence base to support such investigations and has offices in Canberra and each state capital.

The principal difference between the ACC and the body it replaced, the NCA, is that the NCA legislation enabled its board to declare a 'reference', which identified serious crime problems that could be subject to the NCA *irrespective of whether they had a Commonwealth aspect*. In practice, however, the ACC legislation gives the organisation a fairly wide remit, since most major criminal groups have some kind of trans-state border or international aspect. (This includes all international drug operations, terrorist operations relating to any group with Australia-wide or international connections, any crime using the Internet of phone system or posts, any crime committed by an Australia-wider criminal organisation such as a motor cycle gang or any crime that involves more than one state.)

The ACC is headed by a chief executive and has Royal Commission-like powers, but only in respect of those pre-determined subject areas – deemed 'special operations' and 'special investigations' by the Board. Once a crime problem has been so declared, any person or document may be brought before the Commission. Witnesses may be questioned

relating to that crime problem, even though such a person may not have been formally accused. Such a person is required to answer truthfully, as in a court, with similar penalties applying for lying or misleading the Commission. Answers must also be forthcoming, even though they may have the effect of incriminating the witness. Secrecy may be imposed on witnesses to protect operations. If a criminal offence is unearthed, the ACC may make recommendations on prosecution or seizure of assets to relevant state or Commonwealth authorities. The ACC is staffed by police officers drawn from all states and territories and a civilian supporting staff.

Differences Between the ACC and NIA Models

India's NIA is similar in some respects to the ACC. In particular, the crimes that can be investigated must have a central government or all-India context: terrorism, drug smuggling, money laundering, major organised crime, counterfeiting, etc.

However, the ACC legislation is far more powerful in respect of the intelligence role. The NIA Act is contingent on an offence having been committed and a FIR filed. As outlined above, the subsequent process for engaging the NIA is extremely cumbersome. The ACC, however, can probe offences in the form of 'special (intelligence) operations' so long as its board has designated a crime area as subject to a 'special operation'. The pre-emptive capability of the ACC is thus far greater than the NIA. Moreover, in uncovering the truth, the ACC has the coercive powers of a Royal Commission, whereas the NIA must rely on normal police powers. The ACC can also recommend confiscation of proceeds of crime even though a conviction may not have been obtained.

