A Substitute for Broad Extraterritoriality: Recognizing an Experienced Player Armed with Modernized Tools

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A Substitute for Broad Extraterritoriality: Recognizing an Experienced Player Armed with Modernized Tools

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This is a paper from the Nautilus Institute workshop "Cooperation to Control Non-State Nuclear Proliferation: Extra-Territorial Jurisdiction and UN Resolutions 1540 and 1373" held on April 4th and 5th in Washington DC with the Stanley Foundation and the Carnegie Endowment for International Peace. This workshop explored the theoretical options and practical pathways to extend states' control over non-state actor nuclear proliferation through the use of extra-territorial jurisdiction and international legal cooperation.

Other papers and presentations from the workshop are available here.

Nautilus invites your contributions to this forum, including any responses to this report.

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I. Introduction

Larry L. Burton, attorney and former Acting Deputy Director at the World Customs Organization, writes, "there is no question but that as the entities controlling and administering the international movement of goods, the world's customs administrations are uniquely positioned to provide increased security to the global supply chain...In recognition of the stark new global realities of terrorism and its aims, the World Customs Organization, in concert with its membership, has developed and made available a suite of instruments and programs designed to arm the world's customs administrations to meet such threats."

The views expressed in this article are those of the author and do not necessarily reflect the official policy or position of the Nautilus Institute. Readers should note that Nautilus seeks a diversity of views and opinions on significant topics in order to identify common ground.

II. Article by Larry L. Burton

- A Substitute for Broad Extraterritoriality: Recognizing an Experienced Player Armed with Modernized Tools

By Larry L. Burton
Introduction

By now all are well aware of the global efforts collectively referred to as the "war on terrorism." The struggle is epic in its scope and vigor. It is being waged in many ways and in numerous venues. In its most graphic form, the "war" is being waged in an asymmetric fashion by means of conventional armies being dispatched to engage radical political and religious ideology. It is reported, debated and dissected in the global press and over the Internet. Its fallout extends to the ballot box where it has become common practice for those of one political stripe to portray those of another as being "soft on terrorism" in attempts to gain political advantage. The need to deal with those who engage in terrorist acts has extended its reach to courtrooms around the world, both military and civil. The battle is also being addressed in the great deliberative bodies of the world including, of course, the United Nations and its Security Council.
Perhaps little noticed or considered by the other actors engaged in anti-terrorism efforts, the customs administrations of the world have been working on their piece of the response. Importantly, they have been working in a coordinated fashion and are channeling their joint efforts through a single coordinating international organization. That organization is the World Customs Organization (WCO), headquartered in Brussels, Belgium, and the desired aim of these unified efforts is to interdict the weapons, funds, raw materials, high tech implements, and other goods that constitute the needed tools of those bent upon terrorist attack.
The outcomes desired by all of these individual and institutional practitioners of good will, regardless of the means employed, span a broad spectrum from confronting and destroying belligerent actors and dismantling their plans and structures, to interdicting the numerous tangible enabling tools of their trade. Unique in the panorama of players dedicating their efforts to anti-terrorism are the united customs administrations of the world that have a plan, a common approach, and now the tools for successful realization. Their role and methods will be revealed over the course of this paper.

United Nations Response to Terrorist Threats

While the need for the ongoing struggle predates the well-known events of September 11, 2001 , that date seemingly provides the widely recognized starting point for the global response. [1] In the wake of those attacks in the United States, the Security Council of the United Nations has adopted a series of responsive resolutions. Significantly, they are all issued under Chapter VII of the charter of the organization, thus rendering them binding on all United Nations members. Two in particular are of interest, those being United Nations Security Council Resolution 1373 (UNSCR 1373), and United Nations Security Council Resolution 1540 (UNSCR 1540). [2]

While ostensibly different in their areas of focus, these two resolutions do have some very important points of convergence. In summary, UNSCR 1373 is directed to: cutting off sources of funding to terrorist enterprises; denying terrorists safe haven; encouraging mutual aid in evidence gathering; establishing and enforcing domestic criminal laws concerning terrorist acts; strengthening international borders and controlling travel documents; and, enhancing information exchange and cooperation regarding terrorist movements, document use, and trafficking in arms, explosives and sensitive materials.

While UNSCR 1540 is linked to UNSCR 1373 through language in its preamble, it is made specific in its application to non-state actors. It is also specific to matters of trafficking in nuclear, chemical and biological weapons, their delivery systems and related materials. In large, this resolution tracks the sentiment of UNSCR 1373 in reiterating the need for effective border controls with specific reference to export, transshipment, transit and re-export. The resolution recognizes that some states may require assistance in implementation, and indeed, the World Customs Organization has been an important and active participant in support of United Nations efforts to move these important resolutions toward widespread implementation by member states.

The obvious point of convergence in the two resolutions is their mutually stated recognition of the need for enhancement of border security. A less obvious commonality is not to be found in the language of the resolutions themselves. Rather, it arises from a realization that neither of the resolutions may be expected to become effective so long as countries operate in isolation. These resolutions are wholly dependent upon countries recognizing that their mutual self-interests are satisfied through broad cooperation in order to satisfy at least their spirit, if not their specific provisions.

WCO Activities in Support of United Nations Security Council Resolutions

In its implementation phases, UNSCR 1373 requires of states that they self-report on the state-o--play with respect to the processes and areas of concern which are germane to the intent of the resolution. Based upon the country responses to this mandate, the Counter-Terrorism Committee of the Security Council may seek permission for in-country investigative missions, and for this purpose assembles teams of subject matter experts to staff the missions. In each such instance, there has been the need for the participation of a customs expert on mission teams.

The Counter-Terrorism Committee of the Security Council seeks assistance from the World Customs Organization in procuring customs expertise. As of the end of 2009, WCO personnel had been present on numerous of these missions, including, among others, those to Thailand, Vietnam, India, Pakistan, Bosnia-Herzegovina, Kenya, Chad and Algeria. In addition to representatives from the WCO, interdisciplinary assessment teams have included experts representing the United Nations Office on Drugs and Crime, the International Criminal Police Organization (INTERPOL), the International Air Transport Authority (lATA), the International Maritime Organization (IMO), the Financial Action Task Force (FATF), and members representing the Counter-Terrorism Committee itself.

Typically, once in the country to be assessed a mission team would be split into three components. This resulted in groups being designated as financial, legal, and law enforcement groups. The WCO has always been teamed with INTERPOL to assess the law enforcement component, both at the headquarters level as well as at numerous international land, air and sea borders and ports of entry

for persons and merchandise. Investigations have been thorough and cooperation was usually forthcoming.

The WCO invariably takes lines of inquiry guided by reference to the very instruments and programs that are the subject of discussion in this paper. The results, from a customs perspective, were a full, accurate and revealing picture of the customs situation present in a given subject country. Useful assessments were made of staffing needs, training requirements, the sufficiency of physical security infrastructure, electronic systems, discretionary authority levels, the atmosphere with regard to public perception of the customs administration, communication and cooperation with the trading public, and means of addressing the universal and unavoidable issues of integrity and corruption in public institutions.

The WCO also contributed to efforts by the United Nations and others to move the implementation of UNSCR 1540 forward, albeit in ways different than those applied to UNSCR 1373. With respect to UNSCR 1540, the approach has perhaps been more analytical and policy oriented, and less involved with hands-on physical implementation efforts.

The WCO, at the invitation of the 1540 Committee staff, participated in workshop-like activities in which implementation strategies and best practice approaches were the subject of discussion by experts. In addition, a senior member of the working staff of the WCO contributed a chapter to a book on the impact of the resolution in relation to non-proliferation and counter-terrorism [3]. Subsequently, one of the two editors of that book joined the staff of the United Nations 1540 Committee.

While the WCO and other organizations have contributed as best they could to the success of the Resolutions 1373 and 1540 of the Security Council, those efforts and others of their kind cannot be expected to succeed without broad participation from the community of nations. Even with compliance being mandatory, it is apparent that implementation cannot be compelled. In fact, there is evidence that vital extensive cooperation has not occurred to a sufficient degree. In particular, since the adoption of UNSCR 1540 in April of 2004 there has been the need for two follow-on resolutions. Both UNSCR 1673 and UNSCR 1810 were adopted as follow-up provisions to UNSCR 1540 [4]. Both reiterate the provisions of Resolution 1540 and urge countries to fully implement. But as already posited in this paper, implementation in isolation is not possible. This being the case, there would seem to be significant difficulties in attaining the globally applicable results envisioned by UNSCR 1540.

The Doctrine of Extraterritorial Jurisdiction

Application of the doctrine of extraterritoriality is suggested as a means to move forward to implementation. Specifically defined, extraterritorial jurisdiction is the legal ability of a government to exercise authority beyond its normal boundaries. If universally operational, a country's extraterritorial reach would extend beyond its borders in exerting jurisdiction over its own nationals committing proscribed terrorist acts wherever they might be found, and wherever the underlying offenses may occur.

Of course any country may state a claim to such jurisdiction involving any other external place. But for a peacefully expressed claim of such extraterritorial dominion to actually be effective in the another country it must be agreed either with the legal authority in the country, or by creation of legal authority which covers both countries. There are, of course, examples of extraterritorial jurisdiction which have been made to apply internationally. The United States, for example, has Status of Forces Agreements with many nations which imbue the United States with jurisdiction over members of its own military forces posted abroad [5]. Many other countries have enacted laws allowing their nationals to be prosecuted by their own courts for genocide or crimes of war even when cited offenses are committed extraterritorially. The United Kingdom has incorporated the International Criminal Court Act into its domestic law, whereby war crime charges can be filed against extraterritorial British nationals and residents [6].

Assertions of extraterritoriality unsupported by acceptance of such claims would appear to collide directly with universally recognized concepts of state sovereignty. Truly widespread

extraterritoriality could necessarily require that heads of state and national legislative bodies be engaged to arrive at mutually acceptable arrangements. While not impossible to envision a meaningful degree of global coverage, it can certainly be imagined that nearly universal participation will be a very long term prospect.

If extraterritoriality is a desirable end which is not easily attainable within acceptable time frames, there is benefit in looking into other means which might be able to frustrate the plans and activities of terrorist groups and individuals. This paper suggests that there is another mechanism which deserves consideration. Certainly the approach to be explored is not a substitute for bringing terrorist actors to justice in accord with the aims of universal extraterritoriality. Rather, it provides a means to interrupt and interdict the flow of weapons and other materials needed by terrorists in accomplishing their ends.

Considering the Role of the WCO and its Member Customs Administrations

International trade is undeniably an essential driver for economic prosperity. Additionally, the global trading system is vulnerable to the kind of terrorist exploitation that could serve both the strategic and tactical needs of malefactors. For verification of this vulnerability one need look no further than the seminal events of September 11, 2001, where instrumentalities of commerce, in this case aircraft, were converted to the very instruments and delivery devices for major terrorist attacks. Customs administrations worldwide are the little noticed but omnipresent entities operating the levers of commerce. It is a common joke known to customs officers everywhere that they practice what is quite possibly the world's second oldest profession. Indeed, in its first session, the newly independent Congress of the United States created the very first agency of the United States, the predecessor to the American customs administration of today [7]. All jokes and historical references aside, there is no question but that as the entities controlling and administering the international movement of goods, the world's customs administrations are uniquely positioned to provide increased security to the global supply chain while contributing to socio-economic development through revenue collection and trade facilitation.

Customs administrations have important powers that exist nowhere else in government, most notably the authority to inspect cargo and goods shipped into, through and out of their jurisdiction. Customs also has the authority to refuse entry or exit of goods and the authority to expedite their entry. Customs administrations require information about goods being imported, and often require information about goods exported. They can, with appropriate legislation, require that information to be provided in advance and electronically. Given its unique authority and expertise, customs can and should play a central role in the security and facilitation of global trade. However, a holistic approach is required to optimize the security of the international trade supply chain while ensuring continued improvements in trade facilitation. Customs authorities commonly develop cooperative arrangements with other relevant government agencies in order to achieve this result.

The World Customs Organization (WCO) is the sole international membership entity dedicated solely to coordination of and cooperation between customs administrations worldwide [8]. Currently, the national customs administrations of 177 of the world's countries are WCO members.

In recognition of the stark new global realities of terrorism and its aims, the WCO in concert with its membership has developed and made available a suite of instruments and programs designed to arm the world's customs administrations to meet such threats. This suite of weapons is centered on the WCO SAFE Framework of Standards to Secure and Facilitate Global Trade (SAFE Framework), with numerous supporting arrows in the quiver. Each will be discussed in due course [9].

The WCO SAFE Framework of Standards

Because the 177 members of the WCO preside over 99 percent of the total of global trade, any WCO programs enjoying broad participation by that membership can be seen to have significant impact. Securing the international trade supply chain is a major step in the overall process of strengthening and preparing Customs administrations for challenges of the 21st Century that, unfortunately, include the need for anti-terrorism efforts. In order to strengthen and go beyond existing national programs and practices, WCO Members have developed a regime that will enhance both the security

and the facilitation of international trade. This regime is embodied in the SAFE Framework.

The SAFE Framework sets forth principles and standards and presents them for membership adoption as a minimal threshold of what must be done to secure trade. Most importantly, 163 of the 177 WCO member customs administrations have shown acceptance of and confidence in these measures, evinced by their having signed instruments stating their intent to adopt the SAFE Framework into their national customs practices.

The SAFE Framework aims to establish standards that provide supply chain security and facilitation at a global level, thus infusing certainty and predictability into the flow of trade. It has as goals, enabling integrated supply chain management for all modes of transport and enhancing the role, functions and capabilities of Customs to meet the challenges to the global trade supply chain. Critical to the success of these efforts are the aims of the SAFE Framework to strengthen cooperation between the Customs administrations of the world in order to improve their capabilities in detecting high-risk consignments, and to strengthen customs and business cooperation while continuing to ensure the seamless movement of goods through secure international trade supply chains.

The WCO SAFE Framework consists of four core elements. First, it harmonizes the advance electronic cargo information requirements on inbound, outbound and transit shipments. Under the second element, each country that joins the SAFE Framework thereby commits to employing a consistent risk management approach to address security threats. Thirdly, it requires that at the reasonable request of the customs administration in the importing nation and based upon comparable risk targeting methodologies, the exporting nation's customs administration must perform an outbound inspection of high-risk containers and cargoes, preferably using non-intrusive detection equipment such as large-scale X-ray machines and radiation detectors. The fourth and final core element of the SAFE Framework defines benefits that Customs will provide to businesses that meet certain required supply chain security standards and best practices.

The Two Pillars of the SAFE Framework and Importance of Mutual Recognition

Two pillars support the SAFE Framework and its previously described four core elements, these being customs-to-customs network arrangements and customs-to-business partnerships. The pillars inculcate a set of standards that are consolidated in order to ease understanding and rapid international implementation. They also draw directly from existing WCO security and facilitation measures and programs developed by member administrations.

The life's blood of the SAFE Framework flows from two sources. The first of these wellsprings is that of mutual recognition. This key to the overall success of the SAFE Framework places its dependence dually upon customs administrations mutually recognizing the sufficiency of the customs processes of their fellow administrations internationally, and the efficacy of other administrations' certification of their own cadres of Authorized Economic Operators, a concept discussed later in this paper.

As previously outlined, the twin pillars of customs-to-customs network arrangements and customs-t--business partnerships support the structure of the SAFE Framework. Mutual recognition of customs-to-customs arrangements allows the customs administration in an importing country to place sufficient trust in the rigor and specific application of customs intelligence and inspection regimes applied to a shipment in an exporting country, and as a result to allow entry to that cargo shipment without necessarily having to intervene further. Of course, customs always has the right to exercise the option to fully inspect any goods entering its territory, but obviously given massive cargo volumes officials cannot physically inspect all, or even nearly all, shipments. The flow of trade would be crippled without the self-assurance by customs that the cargoes undergoing inspection are truly those to which their exceedingly limited resources are best applied.

Likewise, the customs-to-business pillar of the SAFE Framework is wholly dependent upon mutual recognition amongst customs administrations for its viability. In this context, there exist communities of traders including exporters, manufacturers, carriers and the like, operating within

the trading environments of each of the countries of the world. Some of these are large well known multinational operators, but some are much smaller regional or even local companies little known outside of their country of operation. By applying WCO Authorized Economic Operator (AEO) certification processes to the operations of traders operating within a given country's territory, Customs administrations worldwide are provided with a reliable picture of the security worthiness and degree of trust assigned to those particular links in the global trade chain [10]. Here, as in the case of the first pillar, the mutual recognition of business trustworthiness between a sending and a receiving customs administration is essential. These AEO certification processes will be explored further in the course of this paper.

The criticality of mutual recognition of the two pillars of the SAFE Framework having been presented, the reader must know that the second and indispensable WCO program from which the life's blood of the SAFE Framework flows is its Columbus Program for Capacity Building. Capacity building is a major and well-matured program of the organization. This vital contributor to the success of the SAFE Framework will likewise be discussed further in the course of this study.

The WCO Tools and Programs that Support the SAFE Framework

As previously stated, the SAFE Framework is surrounded and supported by a suite of instruments and programs which are currently available to the customs administrations of the world for their use in securing the global trade lanes from exploitation by terrorist enterprises or individuals. These additional instruments and programs include: the World Customs Organization Compendium of the Authorized Economic Operator Program; the Customs Enforcement Network; the WCO Data Model; and, the WCO Columbus Program for Capacity Building. Each will now be presented separately.

Authorized Economic Operators

While the importance of customs-to-customs cooperation is evident, the critical role of business operators in the security picture may not be immediately apparent. The full participation of business is and has been critical to customs administrations but has not always been acknowledged by officials. Too often in the past there has been an "us versus them" kind of siege mentality that has not well served the needs of either customs or business. More and more now, customs has come to appreciate that cooperative business participants in the trade chain are effective force multipliers for understaffed customs administrations processing massive cargo volumes. All entities through which cargoes are passed have important potential contributions to make to cargo security. This includes manufacturers, expeditors, consolidators, de-consolidators, exporters, shippers, brokers and importers. For obvious reasons the security of their own chains of commerce is of central importance to business operators, and customs is well served by offering those operators some benefits in exchange for diligence and information. Their interested presence provides many more eyes on the progress of shipments along the supply chain.

The WCO recognizes these engaged business operators and, once they have satisfied rigorous uniform standards, designates them to be Authorized Economic Operators (AEO). These certification criteria include security requirements applicable to premises, means of transport and personnel. Operators can be accredited by Customs as AEOs when they prove to have high quality internal processes that will prevent goods in international transport from being physically tampered with or otherwise compromised. In summary, the expectation is that certified parties are best able to ensure the integrity of information, such that what is said to be in a container represents the true contents of that container. The processes are also designed to ensure the integrity of employees, such that those employees will not place goods in a container that do not belong there. Finally, certified AEOs are expected to take sufficient measures in order to secure access to premises and other assets. Critically, certification provisions allow customs officials access to AEO premises and records, and open up the lines of communication between traders and their local customs officials.

As a result, customs will trust the operator and perform fewer inspections on goods imported or exported by or via certified AEOs. This benefits the mover of the goods as goods are available more quickly, which means lower transport costs. Customs benefits since valuable and limited inspectional

resources can be used to target cargoes connected to unknown or otherwise potentially unsafe operators.

Strict requirements are placed upon aspirants to this designation and in return, those qualifying are accorded significant and coveted benefits by customs in exchange for diligence. Perhaps most significant to traders is expedited access to their goods upon importation, and priority consideration to AEO participants should there be an unexpected interruption to the flow of trade caused by terrorist intervention or natural disaster. Time truly is money to the trading public. Quick access and expedited resumption of trade are priceless. Lest it be forgotten, these are not unreciprocated gifts to business. Rather they are the rewards for diligence and vigilance during the movement of goods in trade, as well as for the establishment of approved best practices even before the start of those movements. All benefit from this vital part of the overall WCO and customs approach to anti-terrorism.

The Customs Enforcement Network (CEN)

There can be no question but that the application of robust intelligence resources is a vital element for the successful enforcement of the laws charged to the care off the world's customs administrations. In the universe of operators practicing within the trade supply chains of the world and in the staggering mass of consignments moving throughout global trade lanes, only a small minority represents those of law enforcement concern. In order to enable its member customs administrations to combat terrorism and transnational organized crime more effectively, the WCO has developed a global system for gathering data and information for intelligence purposes. This system is known as the Customs Enforcement Network (CEN) [11].

The CEN concept recognizes that as important as detection and enforcement are, it is also vitally important to prevent customs control and search operations from impeding the free movement of persons, goods and means of transport. Customs services are implementing intelligence-based selective and targeted controls, and the exchange of information on potential detected risks of offences is vital for the implementation of enforcement strategies by customs administrations.

In its structure and operation, the Customs Enforcement Network (CEN) is more than a database. It is also an encrypted communication tool that customs administrations may utilize to facilitate the exchange and use of information and intelligence amongst themselves. Maintained and operating around the clock the CEN gives customs administrations access to many valuable tools. These include a database containing worldwide customs seizure and enforcement information upon which analysis and targeting decisions can be formulated. It also provides alerts to pending threats and trends, contains a database of photographs of innovative and emerging concealment methods as well as a means to exchange x-ray pictures of concealments between customs worldwide. Finally, it represents a communication network between customs administrations, thus fostering and facilitating cooperation and joint operations internationally. There are thirteen specific enforcement areas addressed in the CEN. Those of particular relevance to the present study concern enforcement efforts involving violations of law involving precursor chemicals, weapons and explosives, nuclear materials, currency, and other hazardous materials. The CEN accomplishes these tasks by using the most modern of technologies to perform reliable, secure and inexpensive operations, and is a vital contributor to a suite of complementary security tools and programs.

The WCD Customs Data Model

Like the CEN system, the Customs Data Model is another tool in the realm of WCO modern technology applications available to assist security efforts by customs administrations [12]. Historically, the Data Model grew from efforts of the then G7 group of nations in 2002 to simplify and standardize the cargo import and export data elements and requirements applied to cargo shipments administered by its seven countries' customs administrations.

The G7 ceded the project to the WCO for the purpose of more fully developing it and bringing the worldwide customs community into the group of users. It has continued to grow and evolve and has since been through two additional iterations. One major innovation is the expansion of the project to

take into account the data on cargoes which are required by other government agencies and which are beyond those needed for customs purposes.

The main benefit of the Data Model for security and enforcement purposes is that identical data elements and their full descriptions are available for all of the customs administrations. Thus, the export information from one country is mirrored in the import information of another. A common understanding of the meanings and applications of the information elements attending cargo shipments is a great aid in identifying, targeting, and tracking cargoes moving in commerce.

The WCO Columbus Program for Capacity Building

It is recognized both in the text of UNSCR 1540 and by the WCO, that some states will require assistance in implementing the new security regimes created by the need to respond to terrorist threats. As referenced earlier, on behalf and for the benefit of its members the WCO has produced and makes available several instruments and programs which support the SAFE Framework. Effective implementation is dependent upon several separate elements which, when joined together, form the structure of a security regime. These elements include uniformity of requirements, international cooperation, communication, and information sharing. These are the very elements that the WCO has used for two purposes. They have of course been critical in formulating and implementing the SAFE Framework and its complementary instruments and programs, and have also been at the core of WCO participation as a member of numerous border security assessment teams in support of UNSCR 1373 and the Counter-Terrorism Committee of the United Nations Security Council.

As might well be imagined, the customs administrations of the 177 countries represented at the WCO are at every stage of development and represent every level of sophistication. But from the most to the least advanced, the enhancements to everything from anti-terrorism efforts to traditional customs enforcement that are offered by implementing the SAFE Framework are apparent. This is what has caused 163 of these members to formally signify the intent to fully adopt the SAFE Framework into their practices.

Contemporaneous with creation of the SAFE Framework, the WCO recognized that effective capacity building is an element critical to ensuring its widespread adoption and implementation. To this end, it was necessary to formulate strategies to enhance the capacity building assistance provided to Members. It was recognized early on that in order for capacity building to be successful, there must exist a strong reserve of political will and integrity. Thus it was decided that countries demonstrating a commitment to implement the SAFE Framework and exhibiting the necessary political will would be assisted by the WCO, and by a consortium of countries and cooperating partners.

In order for the SAFE Framework to be implemented it was recognized that not only would capacity building be needed, there would also need to be an understanding that a phased approach would be required. It was unreasonable to expect that every, or even many, administrations would be able to implement immediately. While the SAFE Framework is considered a minimum set of standards, it would need to be implemented in stages and in accordance with a plan tailored to each administration's capacity and legal authority.

With these understandings and guiding principles in place, the WCO launched its Columbus capacity building program [13]. Literally hundreds of nominees from customs administrations around the world underwent exhaustive training programs conducted by the staff of the WCO Capacity Building Directorate. Training was both theoretical and practical, accomplished through study, discussion, work groups and role-playing.

From the hundreds undergoing capacity building diagnostic mission training, the top performers were selected. In most cases, those select newly trained diagnosticians would accompany WCO staff members on diagnostic missions, but in some cases they would be teamed solely with other selected trainees and would execute missions on their own. In the years 2006 through 2008 the mission schedule was aggressive, with well over one hundred countries being visited by teams for a top to

bottom assessment of their existing situations. These in-country missions were exhaustive in their coverage, with each being executed by two person teams, and lasting for a period of two weeks. The overall Columbus program is fully executed in three distinct phases. As stated, the first phase entails dispatching a two-person team of diagnosticians to a requesting national customs administration. This team provides a strategic assessment based on WCO Diagnostic Framework tools. These tools have been acknowledged by organizations like the United Nations, the Organization for Economic Cooperation and Development, the World Bank, the International Monetary Fund and others. Teams investigate the full range of authority, practice, and structure affecting the national customs mission. Investigations lead the teams beyond just the customs administration in that they also include related national agencies as well as the particular trading community in their scope. The investigative scope includes both headquarters elements and visits to land, air and marine ports within the jurisdiction of customs. Phase one missions culminate in exhaustive reports of findings and recommendations being prepared and presented to the national customs administration.

In broad terms, among other matters these reports analyze: the sufficiency of existing legal authority; the training programs administered by the administration; the organizational structure of the administration; the ability to address integrity and corruption issues as they arise; the sufficiency of electronic systems and modem technology, including everything from up-to-date computer hardware to large scale cargo x-ray and nuclear scanning equipment; the history of significant enforcement and seizure activity; and, membership in and utilization of existing WCO programs made available to assist customs efforts.

Based upon the WCO findings and recommendations resulting from the phase one missions, countries decide upon their need for further assistance in order that suggested improvements may be implemented. As requested, the WCO enters the second phase of the Columbus process with member customs administrations. In this phase, WCO subject matter experts again visit the countries and provide several valuable services to administrations. They provide support in preparation of an overall Customs modernization plan or specific project action plan. They also assist in the development of project proposals and business cases for submission to stakeholders and potential donors. An important part of such missions includes preparing and conducting pilot projects aimed at sustainable implementation of modernization initiatives. Finally, WCO experts help to identify possible sources of financial support.

In the third and final phase of the Columbus capacity building program, WCO experts return to countries that have undergone assessments and assistance under the first two phases of the program. The purpose of such third phase visits is to monitor progress by a country toward attainment of the goals previously agreed as beneficial. A steering group exists within the WCO and progress is reported to that group on both country and regional levels.

Since January of2006 the WCO has initiated a number of Capacity Building programs and activities, the most significant of which is the Columbus program, Aid for SAFE trade as previously discussed. To date, the Columbus program has achieved many milestones in terms of concrete actions and implementation outcomes. Of the 163 customs administrations committing to implementation of the SAFE Framework, 120 of them requested capacity building assistance and diagnostic mission visits. Thus far, 114 of those administrations have either received or scheduled such mission visits. Beyond that, there have been some 75 phase two missions completed and phase 3 is in process.

Conclusion

It is not the intent of this paper to suggest that the universal, or even widespread, application of extraterritorial criminal jurisdiction for enforcement of binding Security Council resolutions is necessarily out of our eventual reach. Nor is it intended to discourage continued efforts to extend the scope of extraterritoriality for the application of judicial remedies to anti-terrorist activities. Rather, the point to be made is that there are developed and expanding efforts being made by the customs administrations of the world. These efforts are well placed to interrupt and interdict the flow of harmful goods that may be turned against civil society by terrorists and other criminal

elements.

Perhaps the most critical element in this regard is that the trained professional customs officers of 177 nations that process 99 percent of trade moving globally, are working in a coordinated fashion through a single entity, the World Customs Organization. Furthermore, as outlined in this paper, they have a plan and have devised the tools needed for its successful execution.

Progress has been made and is ongoing. Methods and systems are constantly being refined in order that the small but problematic portion of the huge cargo volumes moving in international trade may be identified, isolated and dealt with. It is true that the customs piece of the anti-terrorism response is but one part of the picture, but we should be assured that it is being addressed diligently and well.

III. References

[1] See United States Department of State Fact Sheet detailing terrorist bombing of U.S. Embassies in Nairobi, Kenya and Dar Es Salaam, Tanzania, August 7, 1998, wherein hundreds were killed and thousands wounded.

[2] UNSCR 1373 adopted 18 September 2001 ; UNSCR 1540 adopted 28 April 2004.

[3] Will Robinson, Chapter 10, Global Non-Proliferation and Counter-Terrorism, The Impact of UNSCR 1540; Edited by Olivia Bosch and Peter van Ham. Royal Institute of International Affairs, 2007.

[4] United Nations Security Council Resolutions 1673, 27 April 2006, and 1810, 25 April 2008.

[5] For example: Agreement Under Article VI of the Treaty of Mutual Cooperation and Security between the United States of America and Japan Regarding Facilities and Areas and the Status of U.S. Armed Forces in Japan. January 19, 1960.

[6] The International Criminal Court Act, 2001, Order 200 I (S.l. 2001/2161).

[7] See, Acts of the First Congress of the United States, held at New York City, March 4 to September 28, 1798.

[8] Convention Establishing the Customs cooperation Council (today known as the World Customs Organization), signed in Brussels, Belgium on January 26, 1953.

[9] See the WCO SAFE Framework of Standards to Secure and Facilitate Global Trade, Adopted by the WCO Council in its June 2005 Session.

[10] See the WCO Member AEO Programs / Mutual Recognition Arrangements and Agreements, May 2010, containing the Compendium ofthe Authorized Economic Operator Program.

[11] WCO Customs Enforcement Network, fIrst operational in July 2000.

[12] WCO Customs Data Model, 2003.

[13] WCO Diagnostic Framework and Strategy for Capacity Building, 2004.

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