



*Intelligence,
emergencies and
foreign policy:
The EU's role in
counter-terrorism*



Hugo Brady



CENTRE FOR EUROPEAN REFORM

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1 Introduction

Several years after bombs claimed over 250 lives in London and Madrid, Europeans still face risks from terrorism. The December 2008 atrocities in Mumbai were a reminder to western governments and their allies that Islamist terror cells remain active worldwide and continue to plot attacks at home and abroad. The growing strength of *jihadist* cells in North Africa, close to the EU's borders, as well as in Yemen and the Horn of Africa, causes concern. And the US still views the EU's passport-free Schengen area as a potential haven for militants planning new attacks against America.

In both the EU and the US, the most critical counter-terrorism effort is at ground level, where police work with local communities to minimise risks. But terrorists operate across frontiers and so, too, must those who oppose them. In the EU, governments have created a complex framework for co-operation against terrorism over the last ten years: they have adopted a counter-terrorism strategy in 2005, agreed a raft of terrorism-related laws, shared more security intelligence, and appointed a 'counter-terrorism co-ordinator' to be the public face of their collective efforts. Despite these advances, Europeans – in the guise of the EU – have struggled to define a robust common counter-terrorism policy. Partly, this is because the EU's role in internal security matters is limited mostly to judicial and regulatory measures. Partly, it is because using EU procedures to agree counter-terrorism measures is an onerous, often fractious, process that can take years. But chiefly, it is because only a handful of the 27 member-states feel seriously threatened by terrorism, while all have different historical and cultural approaches to law and order. That is unlikely to change.

Nonetheless, the recent shift in the US approach, away from the ‘global war on terror’ concept, makes this an opportune time to look at what the EU has already achieved in the fight against terrorism, what approaches are taken by the different member-states and what might be done to build on these in the future. For example, the EU should take advantage of the US’s changed worldview to work on a new transatlantic *modus vivendi* on a range of internal security issues. European governments have no more important partner in counter-terrorism efforts. Only together can the EU and US persuade and support governments in Afghanistan and Pakistan, as well as some African and Middle Eastern states, to curb terrorist activity in their territories.

At home, Europeans should exchange ideas about the best ways to prevent the radicalisation and recruitment of terrorists in their own countries, as well as abroad and online. And governments need to prepare for the unthinkable: the aftermath of a terrorist attack using chemical, biological or radiation-based weapons. Cross-border co-operation – such as access to another country’s laboratories and medical expertise – could be of critical significance in the wake of such attacks. And all member-states need to work on a perennial problem in counter-terrorism: how to get governments and agencies to share intelligence more effectively on terrorist suspects and how to ensure that this information reaches the right players in time to prevent or deter attacks. Overall, EU counter-terrorism co-operation would be greatly assisted by the entry into force of the Lisbon treaty, which would speed up decisions in justice and security matters. The treaty would also provide new safeguards to ensure that civil liberties are not undermined by over-zealous security co-operation.

The evolving security risk: A leaderless jihad?

What exactly is the threat? For most of the last decade, the main terrorist threat to the West has been either directly from, or inspired by, al-Qaeda, the group which masterminded the attacks

of September 11th 2001. Led by Osama bin Laden and others, al-Qaeda seeks, amongst others things, the establishment of a modern day Muslim caliphate across Africa, the Middle East and parts of Europe. Recent evidence suggests that the terrorist organisation is split internally. Observers also point to al-Qaeda’s seeming irrelevance to recent, pivotal events in the Middle East, such as Israel’s incursion into Gaza in November 2008.¹

However, this suspicion of irrelevance may only be true of ‘al-Qaeda core’: the cells based in the Pashtun tribal areas of Afghanistan and Pakistan, where bin Laden has a base. The al-Qaeda leadership operates a sort of global terror franchise system, loaning out its branding and ideology, sometimes to old-style terrorist groups wishing to rejuvenate their image among the local population. For example, one of al-Qaeda’s main franchisees is ‘al-Qaeda in the Islamic Maghreb’ (AQIM), an Algerian group formerly known as the ‘Salafist Group for Preaching and Combat’ (GSPC). Other franchisees exist in Sudan, Somalia and Yemen.

Al-Qaeda is an ideology as well as an organisation. EU countries worry less about the core than about homegrown groups, inspired by al-Qaeda but acting on their own initiative, within their own societies. And well they might: such cells have carried out the majority of attacks in Europe to date. Some experts believe that al-Qaeda has ceased to be the leading organisation that plans terrorist atrocities or recruits terrorists against the West. Marc Sageman, an influential US academic, believes that the threat from al-Qaeda has instead morphed into a scattered social movement, mostly based in Europe and America, and made up of “auto-radicalised” young men participating in a “leaderless jihad”. Other analysts reject this view and still consider that western governments’ top priority should be the complete destruction of the al-Qaeda leadership.²

¹ *The growing, and mysterious, irrelevance of al-Qaeda*, *The Economist*, January 22nd 2009.

² See Bruce Hoffman, *The myth of grass-roots terrorism*, *Foreign Affairs*, May/June 2008.

Either way, no sensible European government on al-Qaeda's 'hit list' can discount the threat of a future attack. No terror group has managed to carry out a major attack on European soil since the London bombings of July 2005. But serious and large-scale plots have been uncovered since then in Britain, Italy, Spain, Denmark and Germany. Security services in the Netherlands, France and the UK consider their countries at high risk of attack, even possibly by crude chemical, biological or radiological means. Hence EU countries have little option but to remain alert, prepare for the worst and keep their intelligence services talking to each other as they search for worrying patterns of activity.

A choice of weapons in counter-terrorism

How a country fights terrorism largely depends on how much its citizens and parliamentarians are willing to expand the powers of the state to detain, question, charge and imprison suspects. France, for example, has long been considered a paragon of successful terrorism prevention. The French state has wide-ranging powers to tail suspects and intercept private communications that would be considered excessive elsewhere. Further, prosecutors are given greater leeway to prosecute suspects for the mere intention to commit terrorism, under so-called conspiracy laws. French officials say that the combination of these legal powers accounts for their country's success in preventing terror attacks.³

³ H.D.S. Greenway, 'France v. terrorism', *International Herald Tribune*, February 18th 2009.

French success in getting the intelligence services, police and prosecutors to work together bears further examination. French counter-terror investigations are centralised under a single special terrorism magistrate. He or she can direct not just the French police and gendarmes, but also the Direction de la surveillance du territoire (DST) and the Direction générale de la sécurité extérieure (DGSE) – respectively, the French internal and external intelligence services. By contrast, the absence of

such a clear hierarchy is one of the main problems that dogs counter-terrorism efforts in the US and several European countries. Almost a decade after the attacks on the World Trade Centre, why is this still a problem?

Unlike the US Federal Bureau of Investigation (FBI), most western intelligence services do not have powers of arrest or detention. Their job is to obtain the fullest possible intelligence on a particular threat by continued monitoring and surveillance. By contrast, police – which do have powers of arrest and detention – will generally wish to act early on any actionable intelligence they receive in order to prevent a crime. As a result there is an understandable reluctance on the part of intelligence services to share information with police for fear of destroying valuable leads. The challenge to put good intelligence at the service of preventing a terrorist attack is made more difficult if the country has a plethora of police forces and intelligence services, as is the case in the UK and, even more so, in Spain where poor inter-agency relations have long hampered counter-terror efforts. The challenge can seem insurmountable if the country is a federal republic comprising several independent states each with its own interior security structures, as in Germany or the US.

Some countries have tried to replicate the success of the French system. For example, the British government made the deputy commissioner of the London Metropolitan Police co-ordinator of national counter-terrorism investigations, and tried (unsuccessfully) to extend detention periods for terrorist suspects to 42 days. Earlier this decade, Germany established a somewhat clearer hierarchy between the federal and state security structures, although the country's constitution prohibits a full centralisation of powers on security matters. In those countries where strong terrorism conspiracy laws are politically unacceptable, authorities come down hard on terrorist suspects when they are implicated in civil unrest, breaches of immigration rules or minor crimes. Again, Britain and Germany are two examples.

Foreign intelligence services tend not to co-operate in official multilateral fora. But internal intelligence agencies tasked with domestic security, such as MI5 (the British security service), the French DST, or the German Bundesamt für Verfassungsschutz (BfV), have worked together in groups against terrorism and other threats for years. They exchange intelligence bilaterally and also in the counter-terrorism group of the Club of Berne, a decades-old forum for European interior security services to meet and exchange information. The Berne group produces collective assessments of the terrorist threat which it shares with national governments and EU institutions.

2 The EU and counter-terrorism

The EU has no direct role in ensuring the internal security of its member-states. EU institutions are not actively engaged in the day-to-day business of preventing terrorist attacks: their chief contribution is to ensure that the legal and practical structures for counter-terrorism co-operation are robust and effective. Terrorism is one of the main priorities of the G6, an internal security vanguard made up of the interior ministries of Britain, France, Germany, Italy, Poland and Spain. With the possible exception of Poland, these countries all feel threatened by terrorism and have elaborate national counter-terror systems. That means they have agencies and resources specifically dedicated to gathering counter-terrorism intelligence, can respond rapidly in the event of a terrorist attack to protect civilians and infrastructure and, to some degree, have integrated counter-terrorism priorities into their foreign policies.

Amongst the other EU countries, Denmark and the Netherlands also feel threatened and have similar security set-ups to combat terrorism. But the rest of the member-states have less developed counter-terror capabilities and rely on normal law enforcement and intelligence-gathering. Thus, the central purpose of the EU's work on counter-terrorism is to help protect those member countries which feel threatened, by raising the internal security standards of all.

The EU did agree on a common strategy in 2005 in which the member-states categorised their common counter-terrorism efforts under the headings 'prevent', 'protect', 'pursue' and 'respond'. But the strategy was mostly intended to show how the EU's existing responsibilities were relevant to national counter-terrorism efforts,

both before (prevent and protect) and after (pursue and respond) an attack. These objectives include regulating to protect civilian infrastructure and secure hazardous materials, helping to fight cross-border crime, improving border security and trying to speak with one voice in foreign policy.

Since the 2001 terrorist attacks on the US, EU interior ministers have harmonised the definition of terrorism (essential for police to pursue terrorists across borders), as well as making it a crime across Europe to recruit or train terrorists. Agreed in the aftermath of September 11th, a 'European arrest warrant' has dramatically accelerated and simplified the extradition of suspects between member-states, as seen in some high-profile terrorism cases. Experts from the EU's Joint Situation Centre (SitCen) – a body composed of seconded national intelligence experts based in Brussels – brief EU policy-makers about the latest terrorist trends and risks on an ongoing basis. Uniquely, SitCen's files combine intelligence gathered from both the internal and external security services at national level, and the Club of Berne. These analyses are often shared with Europol – the EU's police agency – which produces a trend report of its own from this and other information shared by member-state police services.

Europol and Eurojust – the EU's unit of national prosecutors – serve as valuable clearing houses for information and analysis, and for exchanges of best practice. Eurojust plays a particularly useful role in terrorism financing cases, with its powers to seize financial assets of suspected criminals. Meanwhile Europol's analysts – apart from maintaining intelligence files on Islamic and ethno-nationalist extremism – help to continuously monitor and translate extremist websites. The EU is also making it easier for Europe's 1.5 million police officers to request and receive assistance from other member-states on a broad range of crimes, including terrorism. From 2010, new EU rules will require European police officers to deal with requests for basic investigative information from each other within eight hours. Meanwhile, interior ministries are linking national

criminal record databases electronically and allowing automatic searches of each others' DNA and fingerprint databases. EU databases with a law enforcement function, like the Schengen Information System (which lists wanted persons in the EU's passport-free zone), are being upgraded with the latest technology, though with mixed success.

Modern states no longer control communications or utilities, such as power and water in the way they once did. Police in Britain, for example, fret that Skype – an internet-based telephone service – could render their attempts to monitor terrorist communications impotent within a few years. Therefore private sector co-operation is indispensable to cope with modern security threats.⁴ Businesses may find it unpalatable and expensive, but counter-terrorism regulations can make people safer by reducing the opportunities for terrorists to develop low-tech weapons or to target travellers and tourists. The main goal for EU countries is to make the single market as 'terrorism-proof' as possible. That includes agreeing European legislation to track and control the movement of explosive substances like ammonium nitrate (the principal substance used in numerous terrorist bombings); setting down common safety requirements for airports and other transport hubs; and attempting to ensure that privately-owned infrastructure can withstand foreseeable emergencies.

The European Commission, as the drafter and enforcer of single market legislation, is the key actor in such efforts. In August 2006, a plot to destroy seven transatlantic airliners using liquid explosives was foiled in the UK. At the member-states' subsequent urging, the Commission restricted the volume of liquids passengers could carry onto European flights as a precautionary measure. Governments also rely on the Commission to ensure that national passports across the EU are upgraded with the security features recommended by the International Civil Aviation Organisation.

⁴ David Omand, 'The national security strategy: Implications for the UK intelligence community', *Institute for Public Policy Research*, 2009.

Responsibility for enforcing such rules internally implies an external role, too. The Commission negotiates the terms under which the US can access passenger name records (PNR) from transatlantic commercial flights.

Terrorist atrocities can be carried out on a shoestring budget. But terrorist cells need considerable sums to maintain their organisations long enough to plan and carry out serious attacks, and to recruit and radicalise others. Contrary to popular belief, substantial amounts of terrorist funding still go through the formal banking system. Consequently, EU money-laundering laws require private sector workers, such as bankers, lawyers and accountants, to file reports about suspicious activity to the local authorities whenever they suspect terrorist groups may be moving funds. EU interior ministry officials also maintain two terrorism blacklists, updated every six months. One list incorporates al-Qaeda and Taliban members already blacklisted by the UN Security Council and another deals with other terrorist organisations from Europe, the Middle East, Latin America and Asia. Individuals and groups on these lists have had their bank accounts frozen and their travel rights suspended. (However, the way that groups are added to or deleted from these lists has provoked controversy, as discussed later.)

Terrorist recruiters and extremist activists point to the West's political involvement in the Middle East as the basis for their belief that Islam is under attack. Yet traditional foreign policy seems absent from European counter-terror efforts.⁵ For example, the EU has neither the capabilities nor the political will to deploy a military mission in support of counter-terrorism objectives, unlike NATO in Afghanistan. Partly, this is because the EU's clout in hard power is even weaker than in internal security. However, EU countries do give money, legal advice and training to police and officials in countries where extremism is a potentially radicalising force.

⁵ Daniel Keohane, *The EU and counter-terrorism*, CER working paper, May 2005.

Such support is provided mostly through a plethora of regional partnership schemes such as the Union for the Mediterranean or the Eastern Partnership, but also through the EU's 'Stability Instrument', a €2 billion emergency fund to help prevent states from descending into chaos. Some €20 million of this fund has been ear-marked specifically for counter-terrorism. But EU countries need to place stricter conditions on countries hoping to receive the new funds. Large sums have already been spent in Algeria and Morocco on programmes to help counter extremism. EU officials admit that such programmes have so far failed to achieve much, either in terms of strengthening connections with local police or security services, or extracting a greater political commitment to combat extremism.

Preparing the EU for a CBRN attack

Some European governments fear a terrorist attack using chemical, biological, radiological or nuclear (CBRN) weapons. Germany considers the threat serious enough to have stockpiled enough vaccine to inoculate its entire population from certain biological agents. Any future attack is unlikely to employ a developed chemical weapon such as VX or Sarin gas (though this was famously used by terrorists on the Tokyo underground in 1995). Such weapons are tightly regulated and controlled by national, European and international regimes. Future terrorist attacks are more likely to involve commercially available chemicals like ammonia or chlorine, or germ agents synthesised in improvised home laboratories.

The EU's single market is already subject to rules on the security of CBRN materials. For example, there are EU-wide bio-safety standards governing the handling, transport, usage and disposal of biological agents and precursors. But these are designed mostly to prevent industrial mismanagement and accidental environmental damage. The member-states now want the Commission to create an EU-wide regulatory regime to prevent the diversion of such materials for terrorist purposes. The regime would involve a mixture of legislation and exchange of best practice, and could potentially be

very far-reaching. For example, EU-wide security standards could be imposed for the handling of CBRN substances in the private sector and university laboratories. The EU could also come up standardised training, vetting and licensing regimes for workers and scientists trusted with access to such substances.

If significant amounts of CBRN substances were lost or stolen in an EU country, they could be used in an attack on another. Hence the Commission is likely to recommend the establishment of an EU-wide early warning system to flag up any such disappearances in time to put authorities in other member-states on the alert for a possible CBRN attack. The G6 already has an early warning system for CBRN-related incidents. This should be expanded to include all EU countries. Similarly, existing systems already in place to highlight suspicious transactions involving drugs or explosives could be copied or extended to include CBRN materials.

But what if national and European safeguards fail, and a CBRN attack occurs? Member-states must give thought to how they will cooperate in response to large numbers of casualties and injuries as well as catastrophic damage to infrastructure, food and water supplies. Over the last decade, both the EU and NATO have organised some 30-40 multi-country exercises to simulate how European countries might respond and work together in the event of a natural disaster, or a conventional or CBRN terrorist attack. In November 2008, the French co-ordinated a nine-country EU exercise to test emergency service responses to simultaneous chemical and biological terrorist attacks. More than 800 doctors, fire-fighters and fire rescue workers from France, Germany, Belgium, Spain, Greece, Portugal, Italy, Sweden and the Czech Republic took part.

In case of a CBRN attack on an EU country, the European Commission has established an office to ensure a rapid response to any call for emergency civilian assistance. This so-called monitoring and information centre (MIC) is based in the Commission's environmental directorate and operates on a 24-hour basis.

Member-states register equipment and personnel with the MIC that can be called up and used within 12 hours. For example, during the Mumbai attacks of 2008, the French EU presidency used the MIC to arrange for a Swedish rescue aircraft to evacuate British and Spanish citizens from India. Similarly, Portugal, as host to the Euro 2004 football championships, asked the MIC to put decontamination teams from other EU countries on stand-by, in case of biological attack during the games. Governments should also include the MIC in preparations for large-scale international events that are likely to be future targets ⁶ *House of Lords, European Committee, 'Civil protection and crisis management in the European Union', March 2009.* Olympics.⁶

Member-states are unlikely to request extensive help from each other in response to a crisis. For the foreseeable future, most will prefer to rely on purely national resources. That is partly because of the complexities of requesting and receiving assistance from abroad, and partly because governments are loath to seem weak by accepting outside help, a reflex demonstrated by the Italian government's response to the L'Aquila earthquake in April 2009. Thus it may be more beneficial for governments to prioritise the exchange of best practice on disaster management than to spend years agreeing elaborate joint response plans. Some but not all countries have drawn up contingency plans for how their own health services, law enforcement agencies, rescue services and, where relevant, the military, should work together during a crisis. Co-ordination of emergency services through the MIC will also become easier and more effective if national systems are working well and structured in a compatible way.

3 Weaknesses in EU security co-operation

The EU has a tangential but indispensable role in supporting its member governments' counter-terrorism policies. No other organisation has the legal or political clout to implement such a diverse range of legislation across the continent, to cut deals with the US in areas like aviation and container security, or to get police and prosecutors working together in quite the same way. But at times the EU's inexperience in dealing with issues linked to national security is telling, as are the delays and difficulties inherent in its bureaucratic processes.

True, EU officials are helping to engineer a legal and technical revolution in the sharing of law enforcement data. But the new databases and procedures that are agreed are mostly developed in isolation from one another. This has the potential to make the lives of ordinary investigators harder, not easier: they have to learn several separate sets of new operating procedures and data protection rules. Faced with such complexity, they will almost always prefer the security of the informal 'old boy' networks that often fail to share intelligence well or widely. Worse, the Commission has consistently failed to deliver a promised upgrade to the Schengen Information System (SIS), which is supposed to give the somewhat obsolete database more capacity and the ability to use biometric technology.

Where possible, the sharing of police and judicial information in the EU should be governed by a single rulebook. This should include handling codes for sensitive intelligence, common restrictions on searching and sharing information from databases, and a single, flexible set of rules for data protection. A single set of rules enforced

by a single data protection body would greatly simplify the current system. Meanwhile, the Commission needs to redouble its efforts to deliver the new Schengen system. Further delays will damage the EU's credibility when it comes to providing technical solutions to cross-border security problems.

Non-governmental organisations and civil liberties campaigners point out that EU co-operation against terrorism, crime and illegal migration often lacks proper checks and balances. Some governments will want to shrug off such criticism but the lack of transparency can hamper the effectiveness of counter-terrorism efforts. Take the terrorist blacklists. Judges from the European Court of Justice (ECJ) have ruled in several cases that the lists are too arbitrary, with too little possibility for individuals or groups to challenge a listing or to be taken off. In one ruling from September 2008, the ECJ quashed the listing of Yasin al-Qadi, an individual believed by European security services to be linked to al-Qaeda. In June 2009, this ruling was cited in another ECJ decision to delist the high-profile Islamist preacher and al-Qaeda supporter, Abu Qatada, currently in prison in the UK.

One knock-on effect of such rulings is that they threaten to weaken transatlantic co-operation against terrorism. The al-Qadi case alarmed the US, which feared that failure to apply the UN Security Council sanctions against suspected terrorists in the EU would stop other parts of the world complying too. Prior to this, in 2006, the ECJ also annulled an EU-US agreement on the sharing of passenger records, again due to flawed legal procedures, at the request of the European Parliament. Although the agreement was swiftly renegotiated, the move risked a suspension of the current system of visa-free travel for European citizens travelling to the US.

Cases like these make the EU appear an erratic, ineffective player in internal security issues to key partners like the US and non-European countries in the UN Security Council. Interior ministers should engage the European Parliament in a constructive dialogue on

counter-terrorism legislation, even though this is not technically required until the Lisbon treaty is ratified.⁷ Also, to ensure that the blacklists are both effective and fair, the EU should make available comprehensive fact sheets clearly explaining the reasons for a blacklisting and outlining the procedure for delisting. Further, the member-states could appoint an independent reviewer to assess the proportionality of blacklistings and other common counter-terrorism measures. This office should be based in the EU's Council of Ministers with unrestricted access to the relevant information.

Many intelligence services work on the assumption that Europol is not yet a sufficiently serious outfit to do business with, particularly in ongoing investigations. Europol twice attempted – once before and once after the Madrid bombings – to establish a special office of national counter-terror experts. Both attempts failed. In addition, it has become commonplace to observe that Europol and Eurojust have a tendency to duplicate each others' efforts and still fail to work properly together, despite habitual pressure to do so from their political masters.

One reason for such failings is that these two bodies operate in a horrendously complex legal environment. Europol in particular must adhere to an inflexible and dogmatic data protection regime. This means that the office is often held to higher standards than national police forces when sharing information within the EU and with outsiders. The Bundeskriminalamt (BKA), Germany's federal criminal agency, exchanges data on individual suspects with its Russian counterpart, while Europol cannot do likewise, even though it has a co-operation agreement with Russia. In 2008, Europol was forbidden to use valuable intelligence on internet-based Islamic extremism because the websites in question used names of private individuals (in this case, the private individual was Osama bin Laden). Constraints like these make it hard for national services to take Europol seriously. The value added from Europol and Eurojust could be greatly improved if the two bodies were merged, or at least

⁷ Hugo Brady, 'The new politics of EU internal security', *CER Insight*, June 2008.

based in the same building. This would improve the agencies' ability to aid national investigations, by cutting out duplication and greatly improving communication between police and prosecutors.

Another systemic weakness of European counter-terrorism efforts is that interior ministries differ in how they implement EU legislation. Some see EU security agreements as sets of minimum standards which they then 'gold plate' with additional measures. Others view EU rules merely as suggested approaches. Gilles de Kerchove – the current EU counter-terrorism co-ordinator – knows this dichotomy well. In a briefing to interior ministers in mid-2009, he lamented the continual failure of many member-states to implement EU rules designed to combat terrorist groups, including laws on money laundering, retention of telecommunications data, cyber-crime and the freezing of criminal property abroad. Overall, de Kerchove's job is to get governments to give EU agreements the full force of law and to work with agencies like Europol and SitCen to brief the member-states on threats. But, in contrast to the Commission with its responsibility for policing the single market, de Kerchove does not have powers to set policy or to force member-states to implement EU rules. Armed only with powers of persuasion, de Kerchove is hampered by the reality that "everyone likes co-ordination but nobody likes to be co-ordinated", according to a senior EU official.

De Kerchove has sensibly avoided posturing over the importance of his brief. Instead he has focused on a few areas where he believes the EU's judicial, administrative and political mandates can add value. These include making EU foreign policy more effective in counter-terrorism efforts, helping to counter radicalisation and the recruitment of terrorists, and preparing to deal with the effects of a chemical or biological attack. He has also recommended that all member-states set up 'fusion centres' like the British Joint Terrorism Analysis Centre (JTAC), the German Joint Counter-terrorism Centre (GTAZ) or the French Counter-terrorism Co-ordination Centre (UCLAT). These are joint offices where law enforcement and intelligence officers reach strategic conclusions on

the terrorist threat, based on their shared intelligence. The idea is that, if each member-state has a central co-ordination body, working across borders on potential terrorist threats should also become much easier.

The EU as a counter-terror think-tank

Intelligence and prosecutions can help contain terrorism, foil attacks, and deny extremists the oxygen of publicity. But the political and ideological roots of extremism are the real security threat. Today, EU and US policy-makers are keenly aware of the need to find better ways of countering al-Qaeda's message at home, abroad and in internet chat-rooms. The governments of Britain, France, Belgium, Spain, Germany and the Netherlands all worry about rogue preachers and radical Islamist groups recruiting sympathisers, supporters, and ultimately, members of terrorist networks from their own Muslim communities. Thus Britain has taken the unprecedented step of condemning and isolating those who espouse non-violent interpretations of Islam if their beliefs point to a sneaking regard for terrorism or to intolerance against homosexuals, or religions other than Islam.⁸ For example, ⁸ UK government, 'The United Kingdom's strategy for countering international terrorism', March 2009. <http://security.homeoffice.gov.uk/news-publications/>

But precisely how governments should challenge Islamist extremism – in the media, prisons, schools or mosques – remains a delicate issue. There is little prospect of a common European stance on it. Unlike in the US, with its openness to new immigrants and their faiths, identities and economic aspirations, European countries take very different views on how best to integrate migrants, the role of minorities in the education system and the relationship between church and state. Also in contrast to the US, European countries have twice been at the centre of cultural controversies that have

caught the attention of Muslims everywhere. Graphic depictions of the Prophet Muhammad in the Danish newspaper *Jyllands-Posten*, and the quotation of the Koran alongside scenes of Islamist violence in the controversial Dutch film *Fitna* led many to fear a violent backlash across Europe from ordinary Muslims. Against this background, in mid-2008 the European Commission scrapped policy proposals it had been asked to prepare on preventing radicalisation. The Commission's justice commissioner, Jacques Barrot, feared the dangers of defining relationships with Europe's 15-16 million practising Muslims primarily in terms of terrorism, security and risk control. In so doing, the Commission also implicitly accepted that such issues – which are closely linked to national integration policies – were beyond its remit or capabilities.

Nonetheless, the member-states have used the EU as a sort of multinational think-tank to come up with a range of practical ideas to counter radicalisation, albeit in the form of voluntary recommendations. Take terrorist recruitment in prisons. In late 2008, France, Germany and Austria jointly developed EU guidelines recommending that national authorities pay increased attention to the training of prison staff, keep likely terrorist recruiters in isolation, and monitor the practice of religion in prisons. At de Kerchove's request, several member-states have volunteered to come up with strategic recommendations for an EU counter-radicalisation policy. The UK has recommended ways in which the member-states can combat extremist ideologies; the Danes are leading efforts to persuade extremists to moderate their viewpoints; and other member-states are working on preventing radicalisation via the internet, on state guidelines for the training of imams, and on ways for police and local authorities to monitor and tackle extremism.

4 End the war on terror: A new transatlantic alliance

Terrorism is a difficult subject for EU foreign ministers because of the deep divisions between European countries over the Iraq war, and the war on terror more generally. Controversies over the extraordinary rendition of terrorist suspects, 'targeted' killings of suspected al-Qaeda operatives and abuses at the Abu Ghraib prison and Guantánamo detention camp ensured that collective EU efforts remained low-key and limited in scope. However, the relationships between intelligence services in the US and those of individual EU countries have clearly grown more intimate over the same period.⁹ Co-operation with the French DGSE, for example, has been described as "the best in the world" by the CIA, a reference to their joint operations centre in Paris. Intelligence from such co-operation has helped thwart terrorist attacks against EU countries as well as in the US. This fact is rarely recognised in Europe, owing to unease over the use of torture by the CIA during the Bush years.

⁹ Richard J Aldrich, 'US-EU intelligence co-operation on counter-terrorism: Low politics and compulsion', *British Journal of Politics & International Relations*, Volume 11, Issue 1, 2009.

The US is moving away from the 'global war on terror' concept to a more multilateral approach, emphasising a return to the conventions of international law and engagement with key partners such as the EU, UN and mainstream Muslim forces.¹⁰ In June 2009, EU leaders responded positively – if cautiously – to a request from President Obama to facilitate the resettlement of some 70 prisoners from the Guantánamo Bay detention centre. Several EU countries declared that they were

¹⁰ Randall Mikkelsen, 'EU officials say US wants to turn page on terror war – two sides talk about Europe accepting US prisoners', *Reuters*, March 16th 2009.

willing to take former Guantánamo detainees. This will not be a straightforward process, however. Concerns remain over whether the US will disclose full intelligence on former detainees and how EU countries will share intelligence with each other once the prisoners are resettled.¹¹

¹¹ Judy Dempsey, 'Finding a way to take Guantánamo detainees', *International Herald Tribune*, June 11th 2009.

Nonetheless, the closure of Guantánamo represents a huge opportunity for the EU to deepen security co-operation with the US. The EU and US should agree on a joint strategy on internal security in areas where they have shared concerns arising from terrorism, organised crime and unmanaged migration. The strategy could be agreed at an EU-US summit expected under Spain's EU presidency in 2010. The part of the strategy that deals with counter-terrorism should include co-operation on threat assessment; and better co-operation between the FBI and Europol, as well as between the CIA and SitCen. The accord would also incorporate current EU-US efforts to forge agreements on the sharing of passenger information, data protection and the monitoring of international financial transactions. Those are expected to be concluded around the same time. The main point of the strategy should be to consign the 'war on terror' to the past; to speed up resettlement of Guantánamo detainees in Europe; and to agree on joint foreign policy priorities where these are linked to the threat of terrorism.

Pakistan must be at the forefront of these priorities. The fluctuating political and security situation there is a constant source of concern for western policy-makers. Al-Qaeda and a resurgent Taliban both have sanctuaries in Pakistan's tribal borderlands. Lashkar-e-Taiba (LeT), the Kashmiri terrorist group, also largely based there, is a constant source of strain in Pakistan's relations with India. The LeT is possibly the most dangerous terrorist group in existence. It links the hyper-sensitive nationalist conflict between India and Pakistan to Islamist extremism through its connections to al-Qaeda. Pakistan is simultaneously facing

open warfare with the Taliban in its 'federally administered tribal areas', and other Islamist extremists who have carried out a number of major attacks in urban areas. In the worse case scenario, it is not inconceivable that Pakistan – and its nuclear weapons – could fall into the hands of extremist political forces. Nevertheless, despite these risks, on a per capita basis the EU gives 20 times as much aid to Nicaragua as it does to Pakistan. EU countries have gone some way to addressing this imbalance by setting aside €5 million of the EU 'Stability Instrument' for counter-terrorism efforts in Pakistan, but this is tiny compared to what some member-states give individually.

A second priority should be the Middle East Peace Process. Arguably, no other issue feeds Muslim resentment towards the West more than the Israeli-Palestinian conflict. Political conditions for a settlement do not look good: Israel's prime minister, Benjamin Netanyahu, has spent his career opposing concessions to the Palestinians. Meanwhile, the Palestinian territories were disastrously split in 2007, when Hamas, asserted control over Gaza. Nonetheless, President Obama raised the political stakes in June 2009. In a well-received speech to the 'Muslim world' in Cairo, Obama committed the US to a fresh push for a sustainable, two-state settlement to which Netanyahu has been compelled to respond.

The EU has a role to play in this shifting game. France and Britain – member-states with a colonial history in the region – are happy to direct much of their diplomatic effort on this issue through EU structures. Yet, despite being the largest single aid donor to the Palestinian Authority, the European Commission's regional office there lacks even an Arabic-speaking spokesperson in a part of the world where al-Jazeera serves as "the parliament of the Arabs".¹² The establishment of an EU external action service (EAS) would do much to give EU diplomatic efforts in the region more capability and visibility (this is discussed below).

¹² Expression used by a senior official at an EU workshop on radicalisation and recruitment, Brussels, February 18th 2009.

To support US efforts, the EU should embrace Israel with ‘tough love’ – it should make clear that it is keen to deepen bilateral relations and provide full assistance for peace talks, but insist on the need for Israel to recommit fully to the peace process. In addition, the EU should more actively support Palestinian

¹³ Clara Marina O’Donnell, *The EU’s approach to Israel and the Palestinians: A move in the right direction*, CER policy brief, June 2009.

reconciliation and consider suspending its assistance to Palestinian police forces until a unity government is formed between Hamas and Fatah.¹³

Turkey should be another priority. The country has become more popular in the Arab world due to its refusal to co-operate with the US invasion of Iraq and its prime minister’s very public protest against the 2008 Israeli incursion into Gaza. During the same period, Turkey’s relations with both the US and EU have worsened. The EU, meanwhile, must continue membership negotiations with Turkey, since a unilateral suspension would permanently sour relations. If the talks were successful, it is difficult to predict what impact the prospect of a large Muslim country joining the EU might have on extremist Islamic ideology. But, to most European Muslims, Turkish membership would send a powerful message about the viability of a moderate European Islam. EU countries should clamp down on the European organisation of the Partiya Karkerên Kurdistan (PKK), an ethno-nationalist group already on the EU’s list of outlawed terrorist organisations. That would help ensure greater co-operation from the Turkish security services in preventing extremist attacks in EU countries.

In Africa, both the EU and US would be more effective if they sponsored counter-terrorism efforts in various regions. The Europeans need to work with the countries of North Africa and the Sahel desert region, such as Niger and Mali, which are vulnerable to penetration by al-Qaeda’s new presence. This fragile region is a potential future sanctuary for al-Qaeda: it is already being used to host camps to train terrorists and insurgents. These are amongst the poorest nations on earth and are ill-equipped to confront extremist agitation;

governments there already struggle to cope with a mass of problems like organised crime, and the smuggling of drugs, weapons and people. Meanwhile, the US should focus its efforts on East Africa and the Horn of Africa, including Sudan and Somalia.

Governments on both sides of the Atlantic are now more aware of the need to counter extremist propaganda with better media and communications strategies. Some even train and assign counter-terrorism bloggers to challenge extremist narratives in internet chat-rooms. In general, media and communications strategies are needed to undermine the narratives that sustain Islamist terrorism. For example, the portrayal of al-Qaeda as a well-organised, dangerous and widespread terrorist group tends to help Islamist recruiters and promote copy-cat organisations at home. Also, instead of overtly linking democracy promotion and counter-terrorism – a linkage which undermines both causes – the West should concentrate instead on the promotion of free media, economic reform and direct development aid to anti-corruption efforts in Middle Eastern and African countries.

Next steps in EU internal security

The EU faces three pressing challenges in internal security, each of which has important implications for national counter-terrorism policies. The first is whether the EU can speak with one voice on the foreign policy aspects of internal security, given that member-states face different levels of threat from terrorism and cross-border crime, and different pressures from immigration. Despite the fact that there is increasingly an external aspect to European internal security co-operation, great uncertainty remains as to ‘who speaks for Europe’ in international negotiations affecting domestic security matters.

The EU could ensure that internal security issues, like terrorism, feature more prominently in general EU agreements with other countries. For example, the EU’s new Central Asian strategy contains only vague references to how the EU will work with

countries in the region to deal with terrorism-related issues, the movement of dangerous substances and arms, organised crime, and illegal immigration. European negotiators could trade market access and visas more aggressively in return for meaningful co-operation on internal security issues from local law enforcement.

Central to solving the foreign policy conundrum is the second challenge of bringing leadership and direction to the EU's expanding system of bodies involved in internal security matters. Despite its counter-terrorism strategy, the EU's institutions have had to eke out a role for themselves in this area almost on a case-by-case basis, leaving a messy, frequently overlapping system of committees, agencies and legal frameworks. Little wonder that De Kerchove's predecessor, Gjis de Vries, resigned in frustration in spring 2007.

The final problem is deceptively simple: how to get the member-states to make better use of existing EU internal security tools. That includes greater use of the Schengen Information System, which has a special alert procedure for warning other member-states of suspicious but unconvicted persons in the Schengen area.¹⁴

¹⁴ *The alert system is based on Article 99 of the Schengen Agreement.*

Currently, only France and Italy regularly raise such alerts. Other member-states usually only check for prior convictions.

The member-states will not seriously address such challenges until the fate of the EU's troubled Lisbon treaty is decided in the autumn 2009.¹⁵ Although essentially a set of administrative reforms, some interior ministers, think that the treaty would bring about a revolution of the EU's entire justice and security policy area, as

¹⁵ *The treaty awaits ratification in the Czech Republic, Germany and Poland. Ireland rejected the treaty in a referendum but is due to vote again on October 2nd on concessions offered by EU leaders.*

well as greatly improving foreign policy co-ordination. The treaty would make the European Commission a real actor in internal security matters by giving it greater powers to propose new laws and sanction laggard member-states which fail

to implement agreed legislation. The treaty would also establish an EU internal security committee – or COSI – involving SitCen, Europol, Eurojust and EU's border agency Frontex. The potential powers of COSI should not be over stated: it would be concerned with day-to-day security issues, and would not be a policy-maker or strategy setter like the US National Security Council. But the committee could mitigate the co-ordination problems currently experienced by existing agencies.

The Lisbon treaty would also establish a new EAS, merging the parts of the EU's foreign policy machinery currently based in the European Commission, the Council of Ministers and 140 overseas missions. The EU's foreign policy and security chief (currently Javier Solana), who will serve as the head of the new service, should ensure that a senior EAS official is appointed special representative for internal security. This person should also sit on COSI. If the EAS is established, SitCen will for the first time be able to task the EU missions overseas to collect counter-terrorism intelligence, when requested to do so by the member-states.

With or without the new treaty, the Commission's justice and security directorate is over-burdened, despite large increases in its resources. The directorate is responsible for the gamut of immigration and asylum policy, justice policy, borders policy, security policy, civil and criminal law co-operation and fundamental rights protection. Only civil protection and civilian crisis management matters are located somewhere else. One idea would be to create a new commissioner purely for internal security matters, leaving the justice brief to be dealt with by a separate directorate. If the Lisbon treaty enters into force, this security commissioner could work with the High Representative for Foreign Policy, COSI and the interior ministries to present a more coherent EU internal security policy. The new post would take over the current responsibilities of the counter-terrorism co-ordinator.

If the treaty enters into force, another of its principal reforms will be to grant the European Parliament, hitherto a vocal but

powerless critic, powers to amend EU legislation affecting internal security. But to wield such powers effectively the parliament needs to demonstrate to interior ministries that it is a serious, thoughtful partner in internal security matters. The parliament should establish its own committee on internal security, to audit proposed laws for their effectiveness, while the parliament's civil liberties committee would continue to scrutinise EU legislation for its impact on freedoms.

5 Conclusion

At first sight, it would be easy to dismiss the EU as irrelevant to European counter-terrorism efforts. Yet the Union's sprawling involvement in most of the relevant policy areas – from legislation to some intelligence-sharing to exchange of best practice – reflects the difficult nature of the terrorist threat. The EU has chalked up moderate successes in the 'pursue' and 'protect' elements of its 2005 counter-terror strategy. It cannot be a central player in the 'prevent' category because it does not have a direct role in intelligence gathering, law enforcement or integration policy. These remain the responsibility of the member-states, with the EU mainly acting as a forum for an exchange of the best ideas and intelligence. Lastly, the Commission's plans to impose security standards for the handling of hazardous substances and to ensure that emergency services work together across borders suggest that the EU's ability to 'respond' to terror attacks is improving.

An EU counter-terrorism policy that focused on centralising of existing national law enforcement and counter-radicalisation efforts would fail miserably. The cleverest counter-terrorist solutions are often those developed by local law enforcement agencies specifically suited to their own particular environment. Governments are right to focus common efforts more on impeding terrorists' ability to travel, recruit, raise funds, issue propaganda, build weapons and carry out atrocities. Equally, member-states and European parliamentarians should take a dim view of EU initiatives that have potential to over-burden police and prosecutors with red-tape or that over regulate where existing safeguards are good enough.

The threat of terrorism remains a real security risk for many EU member-states. But terrorism and violent extremism do not

currently, nor are they likely to, pose an existential threat to Europe's societies or way of life. Thomas Barnett, a US author and former national security strategist, describes Islamist terrorism as the desperate reaction of a small group to a world that is modernising

¹⁶ Thomas Barnett, 'Great powers: America and the world after Bush', Penguin, 2009.

at a bewildering pace. The West's response should be characterised by "strategic patience", not self-destructive over-reaction.¹⁶ The EU can help make the

member-states safer during periods when they are at risk of terrorist attack, as some currently are and others will be in the future.



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Intelligence, emergencies and foreign policy

The EU's role in counter-terrorism

Hugo Brady

Many European countries feel threatened by terrorist plots against civilians and infrastructure. European governments have strengthened their efforts to co-operate on counter-terrorism over the past decade. But they have been hampered by differing perceptions of the terrorist threats, poor co-ordination between EU and national agencies and ineffective rules on decision-making. Hugo Brady argues that both the new-found willingness of the US to work with its partners and the new rules that will come with the Lisbon treaty (when implemented) will improve the EU's performance. He calls for a joint EU-US counter-terrorism strategy and suggests how EU governments can better co-operate on internal security.

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