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Explaining the EU's Ineffectiveness as an International Actor in Countering Terrorism

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Since the terror attacks on 9/11, the European Union (EU) has enacted an ever increasing number of counterterrorism (CT) policies, in a continuous attempt to 'add value' to this policy area. The following essay will critically evaluate how far the EU has been effective as an international actor in CT and whether this can be explained by neo-functionalism. I argue that even though there have been some positive developments, especially post-Lisbon Treaty, there are clear limits to integration in this area since member States (MS) are often unwilling to give up power, rendering EU-level CT policy largely ineffective. It is asserted that the theoretical assumptions of neo-

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functionalism largely fail to explain the lack of integration in CT.

This essay is structured as follows: The first section provides the framework for analysis by defining terrorism as well as setting out the approach by which effectiveness is assessed, going beyond statistical analysis, and explaining neo-functionalist assumptions. The second part analyses the general development of EU CT policy according to the criteria for effectiveness (set out in section one) and applies a neo-functionalist explanation. The final section looks deeper into one of the most developed CT institutions, Europol.

The effectiveness of CT measures may be assessed in many different ways. Firstly, in terms of terrorism 'outcomes' (e.g. whether the number of attacks has gone up or down, how many suspects were arrested e.t.c.). Here, it might be helpful to consider

statistics. For example, whilst in comparative terms Europe and Western countries in general only account for a small number of terrorist targets – 2.6% of all terrorism-related deaths over the last 15 years² – the annual European Terrorist Situation and Trend Report (TE-SAT) produced by Europol reveals a general increase in terrorist attacks in recent years. This is especially sharp in the category of jihadist terrorism; in 2011, there were 122 jihadist terror attacks in Europe, while in 2015 this number has gone up to 687.³

However, there are numerous problems with over-reliance upon statistical data for the purpose of assessing effectiveness. First, the reliability of Europol data can be questioned given its dependence on MS's input, whose intelligence agencies might be cautious about disclosing data.⁴ For despite the “2002 common

² Global Terrorism Index, 2015:49

³ TE-SAT, 2015:23

⁴ This discussed in more detail in the subsequent paragraphs

definition” there may potentially be more legal-technical problems about whether national enforcement agencies interpret a certain incident as a terrorist attack. Second, there is a lack of causative evidence. That is to say, whether or not terrorist attacks have increased depends on a number of factors, possibly, but not necessarily, including EU-level action (e.g. it might also be due to terrorists targeting non-EU States or MS initiatives). Third, and most importantly, statistics are superficial in that they do not reveal anything about: (i) the methods and structures of EU CT, (ii) the actors and processes involved and; (iii) whether specific policies have been effective.

Therefore, my analysis will move beyond statistics by evaluating the EU’s self-set goals in combating terrorism and whether they have been fulfilled. The influential ‘Counter-Terrorism Strategy 2005’ (CTS) sets out policies under the four main

headings: prevent, protect, pursue and respond⁵ and these will be used as the main basis. Moreover, the CTS also contains the strategic commitment “to combat terrorism *globally*”⁶ and there is indeed a range of other terrorism legislation, which reiterates similar goals.⁷

Additionally, it should be noted that the CTS specifically limits the EU’s role in CT by stating that MS retain “the primary responsibility for combating terrorism” but that “the EU can *add value*”.⁸ When evaluating the effectiveness then, the EU’s view of their own limitations should be kept in mind. The

⁵ Counter-Terrorism Strategy, 2005:5

⁶ Ibid.:2. The CTS also commits the EU to respecting human rights when developing CT policy, however whether this actually enhances or hampers with effectiveness is a matter of debate beyond the scope of this essay, so it is not considered in detail here.

⁷ See for instance the recent European Council’s ‘Strategic Guidelines in the Area of Freedom, Security and Justice’ (2014).

⁸ Counter-Terrorism Strategy, 2005:4

following analysis will thus consider two inter-related measures of effectiveness:

- i) Do EU CT policies ‘add value’ to one or more of the four pillars?
- ii) Do EU CT policies have an element aimed at globally combating terrorism, in other words, do they have an external dimension?

These criteria for effectiveness can be linked to a theoretical assessment of why EU CT has developed the way it did, using a neo-functionalist approach. At the core of this theory lies the integration mechanism of ‘spill-over’ which entails that cooperation in one policy area necessarily leads to cooperation in other areas.⁹ Moreover, neo-functionalism assumes that States are rational actors and that institutions can develop an independent capacity.¹⁰ Integration is perceived as being more than a zero-sum game and according to the neo-functionalist founder Haas “the

⁹ Jensen, 2016:54

¹⁰ Nieman and Schmitter, 2009:48

end result (...) is a new political community superimposed over the pre-existing ones".¹¹ Whilst applying neo-functionalism to an area of 'high politics' might be unusual¹², its general merits in explaining European integration justify this novel approach. Moreover, it responds to some critics' arguments about case selectivity when evaluating theories of regional integration.

Effectiveness of EU CT Policy

Before 9/11 there was "little coordinated legislative activity at the EU level"¹³ so the analysis of the effectiveness of EU CT policy according to the above analytical framework will start from 2001. After the September attacks, EU CT rapidly developed, producing 239 instruments until 2013 (including

¹¹ Haas, 1958:16

¹² Traditionally neofunctionalism has been associated with 'low politics' (Nieman and Schmitter, 2009:48).

¹³ Guild, 2008:178

resolutions, directives, international agreements etc.)¹⁴ and an increase in spending from ca. 5.7m € in 2002 to around 93.5m € in 2009.¹⁵

A major development in CT was the changes incurred by the Treaty of Lisbon (ToL) that abolished the complicated pillar system. Specifically, for CT policy, the pillar system had led to overlapping competences and incoherence between the Justice and Home Affairs (JHA) (from 2003 on called Police and Judicial Co-operation in Criminal Matters) and the Common Foreign and Security Policy.¹⁶ The objectives of the post-Lisbon Area of Freedom, Security and Justice (AFSJ) display a strong “internal-external nexus”, especially in the area of CT¹⁷ - terrorists do not stop at EU borders - and thus CT is often classified together with other foreign policy

¹⁴ Hayes and Jones, 2013:22

¹⁵ Wensink et al, 2011:21

¹⁶ Lavenex, 2015:458

¹⁷ Smith, 2014:176

objectives such as development or enlargement.¹⁸ Nevertheless, in general, the development of CT policies has been pushed on the internal dimension (rather than the external dimension) and this can be contributed to the “perception of terrorism as a law enforcement challenge” rather than an US-style ‘war on terror’.¹⁹

The ToL also introduced legislative changes, owing to the fact that the AFSJ is now part of the ordinary procedure (whereby the Council and the European Parliament (EP)) have shared consequences).²⁰ Albeit, these legislative improvements are limited due to the opt-outs of Denmark, the UK and Ireland, as well the possibility for a quarter of MS to initiate policies.²¹ EU CT now

¹⁸ Rees, 2011:37

¹⁹ Monar, 2015:338

²⁰ Lavenex, 2015:375

²¹ Bache et al, 2015:465

involves a “complex patchwork of actors”²² including the European Commission, the Council and (increasingly since 2009) the EP, as well as specialised institutions and actors such as Europol, Eurojust or the Counterterrorism Coordinator.

Having established that EU CT policy has immensely evolved over the past 15 years, the question is how effective it has been according to the two-limbed test outlined above. First, on the one hand, it can be argued that the EU plays a successful role in coordination between MS’s CT policies²³, for instance judicial cooperation via Eurojust adds value to the ‘pursue’ pillar. Furthermore, cross-MS working groups such as the Commission sponsored Radicalisation Awareness Network (RAN) (European Commission, 2016) enables practitioners to exchange

²² Lavenex, 2015:373

²³ *Ibid.*: 383

their insights with each other as well as politicians and thus adds to the ‘prevent’ pillar.

However, the emphasis on cooperative successes already points out the limits of CT effectiveness. While on a rhetorical level (e.g. via the CTS) MS continuously emphasises the importance of closer integration in CT, this does not manifest itself in their actions. Thus, Bures famously termed EU CT a “paper tiger”²⁴, strong in rhetoric, but weak in execution. While this evaluation may be a bit of an exaggeration, it serves to illustrate the implementation weaknesses EU CT displays, leading an internal EU assessment paper to classify implementation as “slow, poor and inadequate”.²⁵ Whilst some attribute this to a general “structurally inherent” flaw of the whole EU²⁶, such generalisations are unhelpful especially considering that the CT as part of the AFJS should be

²⁴ Bures, 2006:57

²⁵ European Commission, 2004

²⁶ Zimmermann, 2006:134

analytically differentiated. This is because unlike other policy areas it is more significantly affected by MS's reluctance to give up power in favour of supranational institutions as security policy is at the core of nation-state sovereignty. Hence, I argue that whilst the EU has played a limited cooperative role, it has not been able to substantially add value to the field of CT. This is especially problematic given the bulk of instruments passed and the immense increase in spending.

Second, the EU's external face may be evaluated more positively than other elements of the CT. The "rhetorical spill-over" from internal to external concerns has been astonishing²⁷. This further emphasises that the ToL changes have led to more coherence and have been very beneficial for dealing with non-EU States which have appreciated the EU as an important actor in CT.²⁸ On the other hand,

²⁷ Argomaniz, 2012:36

²⁸ Monar, 2014:150

problems persist due to the AFSJ's nature of "shared competence". This means that MS can still resort to bilateral negotiations and agreements which undermine the EU as being seen as one united international actor. Hence, the EU can certainly be described as an international actor with some effect on third States; but, at the same time, as being somewhat limited by its own internal capability problems.²⁹

Overall, the analysis has shown that there has been some effectiveness in cooperative terms, but the EU's role in CT policy in general remains weak. From a neo-functionalist standpoint however, there is evidence of spill-over effects from the freedom of movement and the EU's open market economic cooperation to more security integration, the former being the crucial "internal motor".³⁰ Neo-functionalists would explain this spill-over from 'low'

²⁹ Beyer, 2008:314

³⁰ Lavenex, 2015:369

to ‘high politics’ integration by MS having recognised the functional necessity of security cooperation for the protection of the internal market. Thus, it is rational to transfer some power to the EU level and entrust the established institutions such as the EP, as well as new ones like Eurojust, with this power. Moreover, these institutions, especially the Commission, were able to play an increasing role, being driven by an “institutional self-interest” which is in fact somewhat independent of the MS.³¹

There are, however, clear limits to a neo-functional analysis of the development of EU CT policy. Effectiveness has been criticised so heavily as being poor because of MS’s reluctance to give up power in the area of security. The EU’s CT development has been severely restricted due to MS’s “reluctance to engage in hard supranational

³¹ Monar, 2014:155

legislation”³² thus limiting the explanatory merits of functional spill-over. Even though it would be rational to integrate more closely on a European level, the MS’s self-interested stance prevents this and thus intergovernmental governance remains the primary mode of policy cooperation.³³ Indeed, institutions have not been able to develop a sufficiently independent capacity and evidently MS have not seen the potential of CT integration as being more than a zero-sum game. This has led the EU to fail at being a “decision-maker in its own right”.³⁴

Therefore, an alternative explanation for the development of EU CT policy might be provided by a more intergovernmental approach, placing power in the hands of MS. On the other hand, a more constructivist perspective might provide a different explanation for the limited integration that has taken

³² Lavenex, 2015:368

³³ *Ibid.*

³⁴ Zimmermann, 2006:124

place, namely that certain events such as 9/11 and the bombings in Madrid (2004) and London (2005) have led to a “common EU threat perception”³⁵ which in turn have furthered integration up to a certain point. Whilst the strengths and weaknesses of these two alternative theories cannot be developed any further at this point, it is important to bear in mind that the neo-functional explanations of spill-over applied to CT limited integration can in fact be challenged.

Europol

Having examined the general framework, the analysis will now turn to one specific actor that has emerged out of the EU CT efforts: Europol, which has been named the “most ambitious and significant [achievement] to date”.³⁶ Terrorism is a ‘borderless’ crime, so intelligence cooperation should also be

³⁵ Monar, 2015:335

³⁶ Zimmermann, 2006:132

‘borderless’; eventually the role of facilitating this cooperation was passed to the initially small and purely “drug-crime” focused³⁷ institution: Europol. The 2009 Council Decision 2009/371/JHA reformed the framework of Europol’s role, and listed as its task: (i) information exchange (incl. personal data), training and technical cooperation and; (ii) in general supporting MS’s efforts in fighting crime. Though Europol does not have independent investigative competences (like the FBI), some MS have iterated support for a reform towards a more executive function. However, most MS do not want to empower Europol in such a way.³⁸

Indeed, Europol’s limited competences and enforcement mechanisms are severely hampering its effectiveness. Whilst there is some evidence that its power has been improving³⁹, generally Europol suffers

³⁷ Bures, 2016:59

³⁸ Zimmermann, 2006:135

³⁹ Gerspacher 2005:424

from a lack of MS's willingness to share information on a supranational level and cooperate on an institutional basis. There is a persistent underlying lack of trust among the MS which, according to Europol's Director Wainwright, has led to a great 'amount of conservatism (...) at a national level'.⁴⁰ MS do not perceive Europol as a value-adding institution but rather as an "optional bonus"⁴¹ and often opt for a bilateral, more informal approach when it comes to intelligence sharing⁴², for instance in the Club de Berne. This undermines Europol's role in this policy area and its ability to prevent, protect, pursue and respond, as well as the fact that it adds to the already existing complexity of CT.

Europol's problems are thus twofold: (i) the general unwillingness of MS to fully commit to it and; (ii) its lack of enforcement mechanisms to change this.

⁴⁰ Chevallier-Govers, 2012:140

⁴¹ Müller-Wille, 2004:26

⁴² Bures, 2016:62

As to its external dimension, Europol has been quite active, currently having concluded operational agreements with 14 States.⁴³ This shows some effectiveness as an international actor, since third-States seem to recognise the opportunity of negotiating with one institution instead of 28 separate MS.

When evaluating the theoretical explanations for Europol's development using the neo-functional approach, one should differentiate between two issues: firstly, the existence of Europol as such and secondly, how it has evolved. The fact that Europol even exists and holds "a degree of authority (...) far greater than that possessed by any other international organisation"⁴⁴ points towards States realising that it is rational to transfer some power to the supranational level and that they actually benefit from it, rendering it a positive sum game. Whilst Europol does depend on

⁴³ Europol, 2016

⁴⁴ Walsh, 2006:633

MS's input, it has developed some independent capacity with regards to international cooperation with third States. This is remarkable given that it started as a purely drug-crime focused institution. These developments can be explained once again by the spilling-over of more economic cooperation in the freedom of movement to a more political, security-focused cooperation needed to protect the internal market from terrorists' abuse.

On the other hand, neo-functionalism reaches its limits when attempting to explain Europol's subsequent slow evolution and lack of power. When it comes to intelligence there is a "persistent national sovereignty concern of States"⁴⁵ which results in an unwillingness to share information and a turn towards informal forums. The spill-over from the internal market is thus very minor and it also shows that States do not behave rationally when deciding to keep

⁴⁵Chevallier-Govers, 2012:140

information to themselves. Europol has not developed a comprehensive independent capacity but heavily relies on MS who therefore retain most of the power. It is unlikely that Europol will develop into a more supranational institution anytime soon; instead it will probably remain an intergovernmental optional policy tool.

Conclusion

The analysis of the EU as an international actor in the field of CT has shown that integration in this area is rather limited, despite some cooperative competences being transferred to EU level. I have set out the criteria for effectiveness in a twofold way, rejecting a purely statistical analysis, before discussing CT terrorism generally and then considering a specific actor, Europol. In terms of 'adding value' the EU has been able to demonstrate its competence as an actor and to some extent, (post-ToL) more cohesiveness.

However, it often suffers from a lack of implementation as well as MS unwillingness to engage in CT policies on a European level. In developing its external face, the EU can claim its greatest successes, also enabled by the ToL pillar abolition and as third countries seem to appreciate dealing with the MS collectively, despite the persistence of bilateral agreements.

Neo-functionalism is only able to explain the early developments of EU CT and Europol. Even though “spill-over” theory can explain why this policy area has evolved in the first place, its subsequent stagnation on an intergovernmental level rather than further development on the supranational level, shows its weaknesses. Europol and other institutions have not been able to develop an independent capacity but largely depend on MS cooperation. Haas’ prediction of a supranational community is very far from being accomplished. In further analysis, it would be

interesting to apply other regionalist integration theories such as liberal inter-governmentalism or social constructivism to the EU CT policy area to determine whether they are better at explaining the arguably irrational lack of integration in CT.

Bibliography

- Argomaniz, J., (2012) “A Rhetorical Spillover? Exploring the Link between the European Union Common Security and Defence Policy (CSDP) and the External Dimension in EU Counterterrorism” *European Foreign Affairs Review*, 17 (2/1): 35–52.
- Bache, I., George S., Bulmer, S. and Parker, O. (2015) “Freedom, Security, and Justice” in: *Politics in the European Union*. 4th ed., Oxford: OUP. pp. 451-474.
- Beyer, C. (2008) The EU as a Security Policy Actor: The Case of Counter-Terrorism. *European Foreign Affairs Review* 13: 293-315.
- Bures, O. (2006) “EU Counter-Terrorism Policy: A Paper Tiger?” *Terrorism and Political Violence*, 18 (1): 57-78.
- Bures, O. (2016) “Intelligence sharing and the fight against terrorism in the EU: lessons learned from Europol” *European View*, 15: 57–66.
- Chevallier-Govers, C. (2012) Antiterrorism Cooperation between the EU and ASEAN. *European Foreign Affairs Review*, 17 (1): 133–156.
- Council of the European Union (2005) *The European Union Counter-Terrorism Strategy*. Available at: <<http://register.consilium.europa.eu/doc/srv?l=EN&f=ST%2014469%202005%20REV%204>>
- European Commission (2004) *Response to the Terrorist Attacks on Madrid*. Available at: <http://europa.eu/rapid/press-release_MEMO-04-66_en.htm>

- European Commission, (2016) *Radicalisation Awareness Network (RAN)*. Available at: <
http://ec.europa.eu/dgs/home-affairs/what-we-do/networks/radicalisation_awareness_network/index_en.htm>
- European Council, (2002) *Council Framework Decision 2002/475/JHA of 13 June 2002 on combating terrorism*. available at: < <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:32002F0475>>
- European Council, (2009) Council Decision 2009/371/JHA establishing the European Police Office (Europol). *OJ L 121/38*.
- European Council, (2014) *Strategic Guidelines in the Area of Freedom, Security and Justice, EUCO 79/14*. available at:
 <<http://register.consilium.europa.eu/doc/srv?l=EN&f=ST%2079%202014%20INIT#page=2>>
- Europol, (2015) *European Union Terrorism Situation and Trend Report 2005*. available at: <
<https://www.europol.europa.eu/activities-services/main-reports/eu-terrorism-situation-and-trend-report>>
- Europol, (2016) *Partners & Agreements*. available at:
 <<https://www.europol.europa.eu/partners-agreements>>
- Gerspacher, N. (2005) “The roles of international police cooperation organizations – beyond mandates, toward unintended roles” *European Journal of Crime, Criminal Law and Criminal Justice*, 13(3): 413–434.

- Haas, E. B., (1958) *The Uniting of Europe* (Stanford: Stanford University Press)
- Hayes, B. and Jones, C. (2013) Catalogue of EU Counter-Terrorism Measures Adopted since 11 September 2001. *SECILE*, available at: <<http://www.statewatch.org/news/2013/dec/secile-catalogue-of-EU-counter-terrorism-measures.pdf>>
- Institute for Economics and Peace, (2015) *Global Terrorism Index 2015*. available at: <<http://economicsandpeace.org/wp-content/uploads/2015/11/Global-Terrorism-Index-2015.pdf>>
- Jensen, C. S. (2016) “Neo-functionalism” in Cini, M. and Borragan, N.P-S., (eds) *European Union Politics*. 5th ed. (Oxford: OUP)
- Lavenex, S. (2015) “Justice and Home Affairs” in Wallace, H., Pollack, M. and Young, A.,(eds) *Policy-Making in the European Union*. 7th ed., (Oxford: OUP)
- Monar, J. (2014) “The EU’s Growing Role in the External AFSJ Domain: Factors, Framework and Forms of Action” *Cambridge Review of International Affairs* 27(1): 147-166.
- Monar, J. (2015) “The EU as an International Counter-terrorism Actor: Progress and Constraints” *Intelligence and National Security* 30 (2/3): 335-336.
- Müller-Wille, B. (2004) “For our eyes only? Shaping an intelligence community within the EU” *Paris: European Union Institute for Security Studies*

- Nieman, A. and Schmitter, P.C., (2009)
Neofunctionalism. in: Wiener, A. and Diez, T., (eds.)
European Integration Theory. 2nd ed., (Oxford: OUP)
- Rees, W. (2011) “The External Face of Internal Security”
In: Hill, S. and Smith, C., (eds.) *International
Relations and the European Union* (Oxford: OUP)
- Smith, K. E., (2014) “The Fight Against International
Crime” in: *European Union Foreign Policy in a
Changing World*. 3rd ed., (London: Polity Press)
- Walsh, J. I. (2006) “Intelligence Sharing in the European
Union: Institutions Are Not Enough” *Journal of
Common Market Studies*, .44(3): 625-643.
- Wensink, W., van de Velde, M. and Boe, L., (2011)
Estimated costs of EU counterterrorism measures.
available at:
<[http://www.europarl.europa.eu/RegData/etudes/note/join/2011/453181/IPOL-LIBE_NT\(2011\)453181_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/note/join/2011/453181/IPOL-LIBE_NT(2011)453181_EN.pdf)>
- Zimmermann, D. (2006) “The EU and Post-9/11
Counter-Terrorism: A Reappraisal” *Studies in Conflict
and Terrorism*, 29 (2): 123-145.