Improving Counter-Terrorism Policy Integration in the European Union: An Analysis

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Introduction

Terrorism attacks are one of the biggest security challenges that governments, states and institutions face today. The very nature of terrorist attacks, as low frequency but high impact events, renders them incredibly difficult to anticipate and prevent.[1] Over the course of 2016, the European Union has faced a wave of high-profile, damaging terrorist attacks. Last March, two suicide bombings at the Brussels airport and another in the main subway station killed 32 and wounded more than 300. In July, a lone attacker killed 84 people in Nice, France, after driving into a crowd celebrating Bastille Day (Simmons, 2016, np). Just days later, two armed men stormed a church in Normandy, France, killing a priest and taking four others hostage (Willsher, 2016, np).

More than just undermining citizens' confidence in their safety, these attacks have threatened to "destabilize the two largest countries and potentially doom an already wounded European project" (Stewart, 2016, p. 11). Member states have presented leaving the EU as a measure to safeguard the security of their citizens; indeed, the debate over migration, and implicitly, terrorism, was front and center in the "Leave" campaign's rhetoric in their fight for Brexit (Cowburn, 2016, np.), a response that is obviously antithetical to the continued existence of the EU. Yet, what is also clear is that the counter-terrorism efforts of member states alone are not enough to keep their citizens safe; some have even described them as "powerless" given the recent attacks (Stewart, 2016, p. 11). One of the attackers in Normandy was a known extremist who was equipped with a tracking tag on his ankle, yet French authorities still failed to intercept him and prevent the completion of the attack (ibid, p. 11). Somewhat surprisingly, it is widely acknowledged that there are "significant implementation deficits" with regards to member states enacting EU-level counter-terrorism policy, even though

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[1] Although jihadist and religiously-inspired terrorism is discussed in this article, I do not make the assumption that all terrorism is on account of these factors. Indeed, Europol's most recent European Union Terrorism Situation and Trend Report accounts for foreign terrorist travelers, right-wing extremism, left-wing extremism, ethno-nationalist terrorism, and lone-wolf terrorism, and jihadist terrorism among others. (European Police Office, 2016, p. 6). Thus, I define 'terrorist attacks' to be an event where violence is used against civilians as a means of creating fear and mass panic, be it for political, religious, ideological or other reasons.

these policies are considered to add value to the security efforts of EU countries. (Monar, 2014, 202)

This sets up a puzzling question: if terrorist attacks continue to threaten the internal security of member states, and member states are not able to deal with these attacks entirely on their own, why have they not been more receptive to implementing Union-wide counter-terrorism policy?

This paper attempts to find an answer to this question through an in-depth analysis of EU counter-terrorism policy. A literature review of EU counter-terrorism policy is combined with a brief history of terrorist attacks and counter-terrorism measures in Europe before 9/11. An analysis of key mechanisms and institutions in EU counter-terrorism policy is then undertaken, before examining EU counter-terrorism efforts through an integrationist lens. Finally, the paper will offer several suggestions to improve EU counter-terrorism policy, and specifically, its implementation by member states moving forward.

History and Literature Review

Even before 9/11, the EU had significant historical experience with terrorism. Wittendorp notes that its involvement with counter-terrorism efforts dates back to the times of the European Community in the mid-1970s, with the hostage-taking of Israeli athletes during the Munich Olympics of 1972 serving as an infamous failure (2016, p. 470). It is also generally accepted that terrorism has been "solidly entrenched in Europe's past" (Coolsaet, 2010, p. 857). Yet in the grand scheme of internal security policy, counter-terrorism took a back seat to organized drug and crime prevention, both of which had action plans created in an attempt to deal with their perceived problems. It was only after the 9/11 attacks that the EU started to consider counter-terrorism policy as a key internal security priority. (Wittendorp, 2016, p. 472).

Academic literature is divided on the effectiveness of the EU as a counter-terrorism actor today. Wade argues that with the arrival of the Treaty of Lisbon the EU has evolved from a supra-

national community focused largely on facilitating economic policy into a "supra-national entity with a clear role in the criminal justice sector" (2013, p. 335-336). Bures, Kaunert, Léonard and Mackenzie are strongly in favour of the external dimension of the EU's counter-terrorism activities. In particular, they praise the EU's counter-terrorism coordinator, who in their judgment is "increasingly considered an important component [of counter-terrorism policy] by both member states and third actors" (2013, p. 336).

Conversely, Argomaniz et. al promulgate that the EU is still largely a subsidiary to most member states in the field of counter-terrorism policy (2015, p. 378). This is corroborated by Den Boer and Wiegand (2015, p. 378) and Bossong (2012, p. 178), with the latter arguing that the EU's "consistent preference for loose coordination networks" is largely ineffectual in bringing about the coordination and consistency that is needed when dealing with counter-terrorism efforts between 28 different member states. Another criticism is that although EU may have achieved international "actorness" with regards to counter-terrorism policy on the world stage, its persistent struggles with internal terrorist attacks damage its external credibility. To use a colloquial phrase, the Union must be able to "walk the walk" – and become more successful in dealing with internal terrorist attacks – before being able to "talk the talk" in telling other state actors how to best confront their own problems.

Counter-Terrorism Institutions and Mechanisms at the EU Level

EU institutions and mechanisms have become increasingly devoted to counter-terrorism since the 9/11 attacks. Indeed, a conservative estimate of counter-terrorism initiatives currently spanning across the EU's three pillars is at more than 80 (Argomaniz et. all, 2015, p. 196). The next section of the paper analyzes those judged to be most important to contemporary counter-terrorism efforts, so

that we may better understand why member states have been so slow to integrate their counter-terrorism policy.

There are several key EU counter-terrorism documents. The first is the EU's Anti-Terrorism Roadmap, created by the Council Secretariat shortly after the 9/11 attacks. Revised in 2004 after the Madrid bombings, it has become "the document for maintaining an overview of the many initiatives undertaken to govern terrorism" (Wittendorp, 2016, p. 473). In 2005, the EU created a counter-terrorism strategy to "provide a snapshot of the progress made towards the realisation of targets established" (ibid, 474). The strategy consists of four pillars: "Prevent", focused on preventing the recruitment and radicalisation that leads to some terrorist attacks; "Protect", to protect citizens and infrastructure from attacks; "Pursue", to pursue and investigate terrorists across Europe; and "Response", to be able to manage and minimize the consequences of a terrorist attack. The counter-terrorism strategy also led to establishment of an EU Counter-Terrorism Coordinator (CTC) who was expected to help in three main areas: to coordinate the work of the Council in combating terrorism; to maintain an overview of all the counter-terrorism instruments at the EU's disposal; and to "closely monitor the implementation of the EU Action Plan on Combating Terrorism" (Wade, 2013, p. 361).

The EU-level institutions of Europol and Eurojust also contribute to EU counter-terrorism efforts. A 2005 decision by the European Council required member states to inform Europol of their ongoing national investigations relating to terrorism, legitimizing it as a significant EU-level player in counter-terrorism (Coolsaet, 2010, p. 862). Its mandate further expanded in 2009 to cover "all forms of serious cross-border crimes" allowing the agency to pursue crimes indirectly tied to terrorism, such as illegal financing, weapons procurement, and offenses of similar nature (Wade, 2013, p. 363).

Eurojust functions as an "independent group of magistrates" tasked with improving coordination and cooperation among investigators and prosecutors dealing with serious crimes

(Coolsaet, 2010, p. 863). Given that the four freedoms of the EU all center around movement, it is inevitable that most terrorist attacks, although perhaps occurring in a single member state, will in some way connected to multiple member states. In this sense, Eurojust facillitates judicial cooperation between member states when trying to prosecute those involved in terrorist attacks, as well as supporting and funding joint investigation teams in complex terrorism cases (Eurojust, 2016, np).

An overview of key anti-terrorism institutions and mechanisms would not be complete without acknowledging the European Arrest Warrant (EAW). Based on the quintessentially EU values of mutual recognition and trust, member states are expected to surrender wanted persons to any member state who asks, given legitimate reason and evidence (Den Boer and Wiegand, 2016, p. 387). The EAW aids individual member states in their counter-terrorism investigations, given the EU's freedom of movement clause as discussed above, because they do not have legal jurisdiction to apprehend wanted persons outside of their borders (ibid, p. 388). Monar also notes that the success of the EAW on the mutual-recognition front galvanized the creation of parallel mechanisms to combat counter-terrorism, such as the 2005 Framework Decision on Confiscation of Crime-Related Proceeds and the 2008 Framework Decision on the European Evidence Warrant (EEW). The EEW is complimentary to the EAW, allowing "a judge in one member state to 'use' law enforcement authorities in another member state" for the search and seizure of objects, documents and data for use in criminal proceedings, with terrorism obviously falling within this mandate (2014, p. 204).

Analysis of Integration

This paper argues that the lack of policy implementation by member states can primarily be explained by intergovernmental theory of EU integration. Intergovernmentalism – relatively analogous to realism in contemporary international relations theory – argues that nation-states are the

primary driver of EU integration. The theory also draws a distinction between "high" and "low" politics, arguing the former – issues of war and peace – drives integration decisions.

The largest problem at the member state level with implementing EU-level counter-terrorism policy is the inevitability that some member states will be more concerned about terrorism than others. In 2015, for instance, France saw 73 terrorist attacks and 424 terrorist arrests, while Romania had only 11 arrests and no attacks (European Police Office, 2016, p. 15). Such large discrepancies in the realities for different member states frustrate the process of substantive cooperation at the EU level because member states clearly have different interests (Den Boer, 2015, 74). States such as Poland and the Czech Republic, with only 4 and 5 attacks in 2015, respectively, are likely to not view EU counter-terrorism efforts as important because they perceive little threat to their own internal security (European Police Office, 2016, p. 15).

Complicating the issue, all EU counter-terrorism efforts are subject to the subsidiary principle of Article 5(3) of the Treaty on European Union, in which the Union should only act "if and so far an objective cannot be sufficiently achieved by the Member States and can be better achieved at the Union level" (Monar, 2015, p. 340). Counter-terrorism convergence has failed in part because only some states believe that EU action would produce added value; others seem perfectly fine to handle their own affairs. Consequently, member states – as well as the European Parliament - who view EU counter-terrorism policy as compromising their sovereignty have been quick to challenge it legally, further delaying its implementation. Since 9/11, seven of the EU counter-terrorism acts passed at the Commission level have been challenged in front of the European Court of Justice, with five "annulled or experiencing a similar invalidation" (Barros, 2012, p. 519). As intergovernmentalism suggests, integration has been severely delayed due to the desires of individual member states who have been averse to integrating their counter-terrorism policy at the EU level.

While some may argue that intergovernmental theory would expect member states to see the violence caused by terrorist attacks as motivation to integrate counter-terrorism policy, countries are realistically wary about ceding so much sovereignty in such a key area. Within national intelligence communities – the biggest players in the "prevent" pillar of counter-terrorism strategy – the preference for trading intelligence rather than sharing it under an integrated model continues to prevail (Coolsaet, 2010, p. 864). Such ingrained resistance at the member-state level to a communal approach has also doomed proposals for greater cooperation, such the joint Austria-Belgium submission in 2004 to create a European CIA, which conceivably would have been an extremely effective tool in EU-level counter-terrorism efforts (ibid, p. 864). Indeed, far from integrating intelligence forces at the EU level, bureaucratic officials in member states are even still reluctant to share information with Europol, as they prefer the isolation and relative secrecy of their individual networks, meaning that individual states are by far the prime collectors, producers, and user of counter-terrorism intelligence (Argomaniz et. al, 2015, p. 202), (Den Boer, 2015, p. 403). A recent report on member states' sharing of information with Europol also noted that collaboration specifically in the field of terrorism is especially low (Monar, 2014, p. 206). Even though it would likely be in their best interests to form a communal model of intelligence sharing, individual member states have so far resisted the idea, slowing the integration of counter-terrorism policy across the EU.

A final issue slowing counter-terrorism integration is that the capabilities of member state intelligence services vary widely. It would seem to make sense to pool resources and harmonize policy, but member states with strong intelligence services – the UK (before Brexit), France and Germany – have resisted some aspects of integration because they are worried about contributing disproportionately to the work, allowing weaker member states to get by with doing little (Inkster, 2016, p. 24), (Monar, 2014, p. 206). Bossong does valuable work on this point interpreting the convergence of counter-terrorism policy through public good theory. He argues that states will often

choose to prioritize private benefits over highly uncertain public goods, as they are hindered by problems "arising from the risk of free-riding and the use of scare assets" (2013, p. 178). Convergence on counter-terrorism policy has not happened because internal security is of such a fundamental nature that member states believe it should be their essential function to provide – they do not want to concede their responsibility, and inherently, their sovereignty on such an important matter, especially when they perceive a communal model may make them weaker. As Argomaniz et. al conclude, counter-terrorism policy in the EU is "nothing but a high profile example of long running tension… between the notions of security and sovereignty" (2015, p. 202) Again, we see that the desires of individual member states influence integration, as intergovernmentalism predicts.

Suggestions for Improvement

This paper concludes its analysis of EU counter-terrorism efforts by offering several ideas that could be used to help further integrate EU counter-terrorism policy at the member state level. Before that, however, it must be recognized that the EU has certainly achieved some integration success, particularly after the 9/11 attacks. Europol and mutual recognition instruments such as the EAW have been recognized as "pragmatic, value added tools" and have been widely used by member states (Coolsaet, 2010, p. 873). These tools, however, largely fall under the "pursue" and "respond" pillars of the EU strategy. Integration is highest for the pillars which are not crucial to stopping terrorist attacks, while, paradoxically, integration of the "prevent" pillar is the lowest. This is likely because member states see initiatives that address the "prevent" pillar as being the most compromising to their sovereignty (Coolsaet, 2010, 865). Moving forward, the EU must prioritize the "prevent" aspect of its strategy, as this is the key to a decreased number of attacks.

How, then, should the EU encourage member states to integrate all of the pillars of its strategy, and specifically, the prevent pillar? One solution is to increase the punitive measures for

member states who have not undergone sufficient integration. The "peer pressure" that is currently cited as a coercive mechanism to force states to comply is a very poor motivator when there is such a severe implementation deficit across the entire EU (Monar, 2014, p. 202). And although the CTC's impact on external counter-terrorism efforts, such as catalyzing the EU's involvement as the driving force behind the Convention against Nuclear Terrorism at the United Nations is impressive (Den Boer and Wiegland, 2015, p. 381), the office severely lacks practical measures that can be asserted to force the compliance of member states on internal security matters (Bures et. al, 2013, p. 329). Increasing the power of the CTC so that it could punish member states who fail to implement policies within a realistic timeline would likely go a long way to addressing the implementation deficit.

Further, the EU must do a better job of developing practical tools such as the EAW that states will actually want to use. As mentioned, member states are generally reluctant to surrender sovereignty on issues of internal security. Mechanisms like the EAW allow the EU to play a facilitating role in counter-terrorism efforts without rivaling the power of individual countries. Thus, the EU is able to play a constructive role and add value to member states with little to no opposition. The development of tools that specifically help with the "prevent" pillar of the strategy would greatly assist EU-level counter-terrorism policy.

Finally, the EU must convince its member states that convergence on counter-terrorism policy is actually in their best interests. This will admittedly be very hard to do, as the traditional notion of security being a responsibility of individual member states is certainly prevalent. Yet, it is not an impossible task. After 9/11, for instance, aviation security became a key priority for member states, leading the EU commission to create a set of common rules to "raise minimum common standards of security at European airports" (Argomaniz and Lehr, 2016, 367). After an attempted transatlantic airline attack in 2006, the Commission adopted an EU-level ban on most liquids in

carry-on luggage (ibid, 368). This integration occurred in large part because of the importance of commercial aviation for the economies of EU member states; national governments were convinced to act quickly because they understood the benefits of policy convergence in this area (ibid, 374). When member states perceive that it is to their benefit to integrate counter-terrorism policy, they clearly act quickly. The EU must do a better job articulating the advantages of an EU-level counter-terrorism strategy for countries in order to speed up integration. The aviation example also demonstrates that, in the face of high-profile events such as 9/11, member states can be encouraged to act decisively. Although one does not hope for more terrorist attacks anywhere, the EU must also be aware that it will generally have more political capital to push member state integration directly after a big attack. Accordingly, it must be prepared to press member states during this time to support or implement counter-terrorism policies at the EU level.

Conclusion

In the 15 years since 9/11, the EU has greatly increased its global presence as a comprehensive counter-terrorism actor. Although it has provided significant tools, mechanisms, and policies in the field of counter-terrorism, integration at the member state level has been considerably lower than expected. This paper has established that intergovernmentalism explains the implementation deficit. Ultimately, member states are still reluctant to cede their sovereignty to the EU in such a key area as internal security, particularly when several member states experience few, if any terrorism-related incidents each year. National intelligence communities are also wary of contributing to a more communal approach to preventing terrorism. Both of these factors have worked at the member state level to greatly impact the speed of counter-terrorism policy integration. Moving forward, the EU must do a better job of convincing member states that policy integration will actually benefit their internal security while also creating more tools to aid member states at the

national level. Finally, it must act in a more political manner to identify times when member states

may be more receptive to implementing specific policies, and adjust its priorities accordingly.

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