

Reappraising joint action in the transnational fight against terrorism



Doron Zimmermann

The title to this article should have included the word “cooperation,” which has been purposefully omitted for, the present author believes, good reasons. The idea of “cooperation” in the context of the combating of terrorism by Western powers on both shores of the Atlantic is simultaneously both overrated and undervalued – although this problematic trend is more acutely felt in Europe than in the U.S. A paradox proposition, you may think, as you read this.

Differing approaches to combating terrorism

Conversely, a perceptible divergence in how Continental Europe, Great Britain and the United States pursue anti- and counter-terrorism policy – to the extent that comprehensive policies can be found on the Continental end of the spectrum – is suggestive of how States have historically found themselves at loggerheads with a number of different and often contradictory imperatives in the fight against terrorism. National interests at times conflict with requirements of supranational entities committed to this struggle; the policy of State A concerning group X might not agree with the regional agenda of State B; or a political violence movement evidently engaged in terrorist acts may actually be on the payroll of a State. The list of potential bones of contention is interminable. Yet the need to pool the resources to actively fight the scourge of terrorism with dispatch is not only self-evident: it is first and foremost paramount. With this long-standing quandary adumbrated, let us return to the original contention of this writer: that international cooperation in the fight against terrorism is both overrated and undervalued, albeit, for the wrong reasons.

The problem of attaching too high a value to international cooperation is intricately linked to two propositions advanced with conspicuous frequency on the European side of the Atlantic: first, that there should be an ordered framework for Europe within which collaboration against terrorism between States occurs; second, that the conduct of States in this cooperative process and during the phase of implementing the fruits of such cooperation should consequently be governed by norms and regimes, legal or otherwise.

The manifestation of this normative approach is institutionalism, the principles of which are arguably steeped in the intellectual tenets of its hapless Wilsonian Idealist progenitor; the penultimate expression of this brand of institutionalism in Europe is a bureaucratic juggernaut: the European Union.

Limits to institutionalism

Pursuant to the maxim of augmenting force by concentration and optimising it by way of the integration of its constituent capabilities, the proponents of the institutional approach implicitly contend that while the process leading to the integration of resources to fight terrorism may indeed be long, it will culminate in the desirable end-state of bringing together a comprehensive arsenal of counter-terrorism instruments. At first sight, there is no problem with this formula per se. When scrutinised, however, we quickly find that in the wake of the Maastricht Treaty, the emphasis of the institutionalist approach as practiced by Brussels after the treaty’s ratification (1 November 1993) is on process rather than on verifiable outcome. This prioritisation, whether by design or entirely inadvertent, is deeply problematic as it engenders – downright encourages – the growth of the bureaucracy and its attendant formalisms required to ensconce processes. Concerning counter-terrorism, both represent supreme impediments: the yardstick of recent history is without remorse.

At the heart of this problem lies the circumstance that the undue importance conceded to processes, and the bureaucratic infrastructure they require, in many different fields of EU activity up to and including counter-terrorism is neither intended nor unintended, but inherent. In the final analysis, the result is that eleven years after Union, the desired objective of achieving a force multiplier in the area of counter-terrorism because of European integration remains remote. The not so self-evident answer to the question of why the EU is struggling to get its bearings in the fight against terrorism even after the catalytic impact of 9/11 is best explained by taking recourse to two examples: the demise of TREVI (Terrorisme, Radicalisme, Extremisme, Violence Internationale) and the emergence of the EU common arrest warrant. ▶

Doron Zimmermann

Dr. Doron Zimmermann is Senior Researcher with the Centre for Security Studies at the Swiss Federal Institute of Technology (ETH), where he acts as the head of the Political Violence Movements Project, a university-based research effort on the subject of internal and international terrorism.

Upon completing his Ph.D. at the University of Cambridge in early modern British Political History, he worked as set manager for a documentary on the Roma people in Eastern Europe.

He joined the ETH in 1999 and has published extensively on international relations and terrorism.



► European institutions

TREVI was formed 1975/76 with the purpose of harnessing resources, mostly from the intelligence agencies, on an intergovernmental level in the fight against a nascent, yet burgeoning international terrorism. Its purview originally did not extend beyond terrorism and internal security; but its very success led to an expansion of the TREVI remit into the fields of organised crime and illegal immigration. Against the backdrop of a steep rise in politically motivated aerial piracy and hijackings in the later 1970s and after, ministers of various European States met in order to deliberate and coordinate steps to be taken against the threat of terrorism, to facilitate the exchange of intelligence, pass on experiences and promote training.

But the TREVI working groups' ad hoc modus operandi may have left much to be desired in terms of procedural transparency and, by extension, accountability. TREVI was criticised on many accounts: for being a ramshackle ministerial forum without a clear mandate, out of fear of its potential for developing into an unguided missile and, not least, for its propensity toward secrecy enshrined in its operational code of "need to know," which its members were careful to maintain at all times. Indubitably, its functional constitution and pragmatic methods did not dovetail with the highflying ideals of a supranationalist lobby in Britain and the Continent bent on accelerating the economic and political integration of Europe and its institutions.

And what is more, its track record spoke for itself: TREVI was in the forefront of fighting cross-border terrorism at a time when, in the face of a threat that rendered such a perspective inadmissible, the majority of national security policy establishments in Europe upheld the Manichean conception of internal and external security.

On an operational level, TREVI's intergovernmental activity set a precedent for effectiveness, if not a politically acceptable benchmark, for what the EU is attempting to accomplish with Europol today. The difference between the two, and the fate of the former, largely illustrate the argument about institutional inertia. TREVI's remit was both an expression of its members' political will to cooperate on a case by case basis; and an indication of the security context that rendered such collaboration necessary. TREVI ceased to operate in 1992, when its cooption into the EU Third Pillar (Justice and Home Affairs) put an end to its principal quality of being a flexible, ad hoc ministerial counter-terrorism forum: institutionalisation spelled the end of TREVI's potential. ►

Combating terrorism: Switzerland and transatlantic cooperation

The attacks of 11 September 2001 have underlined not only the need to strengthen national cooperation but also the need for greater international police cooperation. Switzerland is aware of the crucial importance of international cooperation in the fight against terrorism and is actively involved in this process within the framework of its legal possibilities. The Interpol channel is used to disseminate police information, to request support and also to ask for legal assistance. Liaison officers from the Federal Office of Police are stationed in several European countries and in the USA in order to facilitate the work of the prosecution authorities. Cooperation with the USA in particular has been intensified thanks to a special agreement.

Preventing money flows for terrorist activities

Switzerland has supported American efforts to combat terrorism from the outset. It adopted for example the so-called Bush lists that were published shortly after 11 September 2001 based on a presidential executive order of September 24, 2001. It ordered the immediate freezing and also banned any transactions with all financial assets of listed persons or organisations with connections to international terrorism. The supervisory authorities responsible for the activities of financial intermediaries (FIs) (Federal Banking Commission, Money Laundering Control Authority) provided the FIs with the Bush lists and reminded them of their due diligence obligations. Shortly afterwards, a good hundred reports of suspicious transactions were sent to the Money Laundering Control Authority (MROS). The MROS passed all these reports on to the Federal Prosecutor, which then instituted several criminal proceedings and blocked accounts containing CHF 24 million. This efficient reporting system is a testament to Switzerland's money laundering legislation, which is progressive by international standards. Reports from banks in particular are of high quality.

Operative Working Arrangement

In view of the complexity of investigative procedures in the area of terrorism, a new level of international cooperation was needed from the outset, particularly with the USA. On 4 September 2002, Switzerland and the USA signed an Operative Working Arrangement. This agreement defines arrangements for the unbureaucratic exchange of operative staff and for information exchange, while fully respecting the rules of international legal aid. The Swiss Federal Prosecutor's Office also held an informal conference of leading State prosecutors and police specialists from ten European countries and from the USA in which international investigative methods and problems of legal assistance were discussed. One of the aims of the conference was to identify networking possibilities between separate national investigative procedures.

Legal assistance procedures

On the whole, the existing instruments of international legal aid have proved their worth in the combating of terrorism. The first request for legal assistance in this area by the USA was granted within two days of receipt. After ten months of legal proceedings, bank documents connected with proceedings against the head of the *Benevolence International Foundation* (BIF) in the USA were also handed over to the USA after an appeal to the federal court. Difficulties that sometimes arise for procedural reasons in legal assistance proceedings are of a general nature and are not specifically related to the fight against terrorism. ►



The Pentagon, September 11, 2001
(Photo US Department of Defense)



► By contrast, Europol is the brainchild of the EU brand of institutionalism and, as a consequence, also subject to all the constraints of a ponderous apparatus and to the disadvantages of organisational red tape; its mandate, while currently more transparent than that of TREVI, is narrowly defined and even so subject to protracted debate among EU member States, who to this day cannot agree to empower it for the task it is to accomplish. Ominously, the recently created and heavily circumscribed mandate of the office of the EU's counter-terrorism coordinator – already now lambasted as a lame duck – appears to be headed in the same direction. Against the backdrop of the sorry demise of TREVI, the question does arise how the purported advantages of supranational cooperation – of capabilities integration – championed by the EU and its institutions is to be brought to bear against terrorism? After all, the asymmetry between a supranational organisation and its process-oriented, bureaucratic institutions on the one hand, and sub-State actors, such as political violence movements, whose informal organisational structure and dynamism make them the exact opposite of regulated supranational organisations, on the other, is acute.

The second example, though rather brief, is quite instructive. The EU member States had been discussing the idea of a common arrest warrant valid in Union territory long before 9/11 in order to mitigate, even neutralise, the bickering resulting from protracted extradition disputes between EU States.

Harmonising procedures

The official rendition of how the warrant finally received majority assent despite having been shelved as what one commentator called “another in-basket item for water cooler discussion,” was that senior level government officials pledged their support for this measure as a consequence of the catastrophic events of 11 September 2001. In the case of the present author, this complacently held view was rudely disturbed at a conference recently held at the Paul H. Nitze School of Advanced International Studies in Washington D.C. There, the audience was confronted with an entirely different version: that the passage of the common arrest warrant was the result of intense U.S. diplomatic pressure following 9/11. Had anybody but Richard Falkenrath, President George W. Bush's Special Assistant, made this point, the comment could have been written off with relative ease as just so much political spin. Furthermore, after careful reflection concerning this case, the plausible conclusion offers itself that the institutionalist emphasis on process, as opposed to outcome, had again reared its ugly head and, in the years before 9/11, had resulted in the hallmark self-absorption of the responsible EU organisations. ►

► Patriot Act

The US *Patriot Act* is a comprehensive anti-terrorism act that has a number of extra-territorial effects, particularly in the financial sector. It potentially gives prosecutors the right to intervene on foreign legal territory and to bypass the official legal assistance channels. The provisions of the *Patriot Act* are not directed against Switzerland as a financial centre. Switzerland has an extensive and internationally recognised set of anti-money-laundering measures in place. Moreover, as stated above, the Swiss and the American prosecuting authorities have in place the necessary instruments for the exchange of information. The USA has insisted that it will apply these provisions in a very restrictive manner. So far it has not applied them in its dealings with Switzerland. It should also be noted that the *Patriot Act* could also result in improved legal assistance by the USA. However, there have not yet been any specific cases of application.

Respecting legal norms

Switzerland holds the view that, in the fight against terrorism, international legal norms must be respected. Within the UN, Switzerland has therefore argued strongly that international sanctions against alleged terrorists and their backers should be based on more transparent and more solid legal foundations. The list of persons subject to sanctions was massively extended on the initiative of the USA following the attacks of 11 September 2001. The persons or organisations included on the UN-lists have no right to a legal hearing for the listing or for the de-listing process.

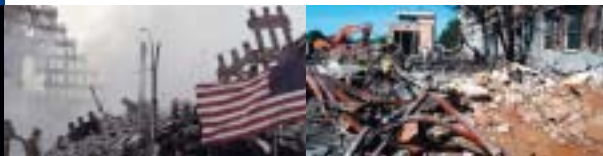
In view of the serious personal and financial consequences involved, this is unacceptable. Switzerland is also fully implementing UN sanctions. Apart from the USA, Switzerland has blocked the largest amounts, a total of CHF 34 million, in connection with UN sanctions. Switzerland has also ratified all twelve UN anti-terrorism conventions.

The practice of cooperation has proven that close and efficient cooperation is perfectly possible within the framework of the current provisions and that pragmatic approaches can bring constructive solutions for certain areas, as the Operative Working Agreement shows. When there are differences of opinion, multilateral fora such as the UN or bilateral discussions serve as useful means of working out viable compromises. ■

Urs von Daeniken, Chief
Adrian Bürki, Analyst
Service for Analysis and Prevention
Swiss Federal Office of Police



(Photo American Red Cross)



► Only the shock of 9/11 and persistent U.S. demands that the EU clamp down on terrorism with whatever means at its disposal broke the EU internal deadlock. If this analysis applies to the case of the common arrest warrant, the moral would be that one of the only few tangible innovations of the EU Third Pillar is in fact not its own achievement, but instead the direct result of the events of 9/11, severe external diplomatic pressure and the EU reaction to both. Whatever this episode suggests about the EU's willingness and ability to effectively combat terrorism (as opposed to that of her member States), it appears to corroborate a contention made earlier about inherent institutional inertia.

Wedded to the observation that the terminus a quo of the terrorist threat, the political violence movements, is highly dynamic and operates in an informal environment, and unfettered by any rules, the EU's doctrinaire insistence on using closely regulated, interlocking institutions at the frontline in the fight against terrorism bodes ill for the future. In closing, a few parting thoughts on why the present author believes international cooperation to be undervalued; the observations pertain to pragmatic, "functional" instances of bilateral and multilateral collaboration that generated positive "spillover" effects impacting on related policy areas.

Franco-Spanish cooperation against the Basque separatist group did not arise out of a meta-discussion on how best to combat terrorism in Europe and elsewhere: it was the direct result of the reality of adjoining, porous borders used by ETA to evade capture by Spanish law enforcement officers. Spain's repeated calls for security assistance and France's gradual realisation that she could not permit ETA to use her territory as a stepping-stone for the Basque group's operations in Spain because of the general strain imposed on bilateral relations, and due to the potential reciprocating precedent inaction would create, provided the crucial impetus for cross-border cooperation. Franco-Spanish operations against ETA are among the most successful accomplishments in the history of European counter-terrorism. Many other examples, not least the Anglo-Irish Accord of 1985 and other bilateral and multilateral agreements about how to best rise to the challenge of political violence and terrorism, illustrate the value of working toward a common goal on a case by case basis, if such holds the promise for concrete and mutual benefit.

The point is simply this: the success of international cooperation in the fight against terrorism does not depend on creating a specialised organisation within a multilateral, formalised institution of the supranational kind.

The institutional approach is, indeed, overrated and, has, hitherto barely paid any tangible dividend, and also does not appear to offer a brighter perspective in the near future. The effective combating of terrorism, however, is predicated upon viably operable international partnerships, such as TREVI. Notably, in this context "operable" in the past has been synonymous with "informal".

Meanwhile the need to confront terrorism is immediate; we have all witnessed the attacks of 11 March in Madrid this year. It is sensible to commit resources to what can be done now and for reasons immediately apparent to the relevant parties, and no longer hold out the promise of that which presently and for reasons integral to the nature of the EU seems a remote possibility at best.

Maybe the time has come to reappraise our estimation of proven avenues to international cooperation with all their blemishes and fragility arising from the functionalist yet pragmatic circumstances which gave rise to them; and to stop investing direly needed resources in pursuit of a tantalising fantasy of the ideal, centrally directed, pan-European counter-terrorism agency. The quintessence of this argument is that many little steps may lead us to greener pastures after a grueling foot march, while the discussion on how to leapfrog ahead remains only of potential value. ■

Useful link:

International Relations and Security Network
www.isn.ethz.ch



(Photo Centre for Security Studies, ETH)