We Saw it Coming: Jihadist Terrorism, Challenges for the European Union

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Summary

Nothing about the recent Paris or Copenhagen terrorist attacks was totally unexpected. Indeed, they were the sort of thing that security apparatuses in Europe had been preparing to have to deal with. Although security responses to terrorism are traditionally considered a quintessential national sovereignty prerogative, in the past ten to fifteen years the recognition that highly asymmetric security threats respect no borders has heightened the EU's role as a coordinator in this policy domain. Some claim that counter-terrorism has changed the role and functioning of the EU itself towards a more operational character in security matters. Both old and new security responses to terrorism have (re-)emerged on the agenda of the EU and its member states in the 'post-Paris attacks' phase.

The 'terrorist threat' and European responses

The terrorist attacks in Paris on the editorial offices of *Charlie Hebdo* and on a kosher supermarket were carried out by two tiny, heavily armed *nuclei* acting on the behalf of al-Qaeda and the 'Islamic State'. The attackers were figures known from the criminal underground, they had significant prison records, and they had been under a police surveillance programme. Similarly, one month later, the gunman who opened fire during a debate on freedom of speech at a synagogue in Copenhagen had a criminal record, and had become radicalized in prison.

The severity of the threat posed by transnational jihadist networks as battle-hardened European fighters return home from Syria has been reiterated for more than a year in every European capital, and also in Brussels. A key aspect to understanding the evolving nature of the threat is the scale of the phenomenon: an unprecedented number of radicalized individuals ready to mobilize into using war weapons in European cities, often as copycat behaviour. This has indeed happened, and is quite likely to happen again. Nothing about the Paris or Copenhagen attacks can be said to have been totally unexpected – the attacks were exactly the sort of thing that security apparatuses in Europe had been preparing to deal with. And yet, for all the efforts at managing the crisis and information about the crisis, both episodes unfolded unpredictably, leaving far too many victims on the ground.

The immediate aftermath of the Paris attacks saw uncoordinated anti-terrorist operations in various countries – Belgium, Germany, France, Greece and Italy – sometimes meeting armed resistance. Despite the evidence of a cross-border dimension (the black market in weapons, use of the Internet, connections to transnational jihadist networks), European governments were quite firm in reiterating denial: these 'cases' were not related to one another. Security traditionally lies at the heart of sover-

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eignty. Thus, it should come as little surprise that, for all the public emphasis on the existence of a threat to European society, and even an 'European 9/11', governments tend to see threats through the prism and strictly within the perimeters of national security. The question remains: how would a synchronous (hostage) crisis across EU member-state borders be handled?

French controversies

A dozen anti-terrorism legal reforms have been introduced in France in the past two decades. After an initial debate on whether the Paris attacks would push European countries into adopting 'patriot acts' along the lines of the 'war on terror' path set by the USA after the events of 9/11, PM Manuel Valls made it clear that basic liberal rule of law and civil liberties would stand: the response to an exceptional threat would not consist in building a state of exception, but in adopting exceptional measures. While no change in the criminal code was in sight, the main opposition party (Front National) proposed to reintroduce the death penalty. The comprehensive 'new deal' that the French government proposed to French society envisions the strengthening of the surveillance apparatus: more police, more intelligence and new 'cyber patrols', which led to the administrative blockage of tens of websites. Only a few months later, on 5 May, a law that the media immediately labelled 'France's patriot act' was passed in the National Assembly with 438 votes in favour and only 86 against.[1] Among other things the new controversial bill gives French intelligence agencies comprehensive powers of surveillance, allowing them to tap the phones and emails of people linked to a 'terrorist inquiry' without seeking permission from a judge.[2]

The public debate has focused on the larger picture of how the state should fight radicalization, recognizing that incarceration can prove counter-productive. The French government has echoed the need for building prosecutor skills, increasing prison intelligence, and embarking on broader prevention strategies including social integration: rethinking the 'banlieue question' and urban development. Internationally, France would push for a 'Schengen space with muscles', as well as a French Passenger Name Record (PNR) that would be coordinated with a European one. The French interior minister toured the big Internet corporations in Silicon Valley, requesting more collaboration in granting access to sensitive data that may be the object of investigation or prosecution. According to the French government, the response rate to its data requests has remained unacceptably low. The decision to go ahead with the *blockage administratif* of tens of 'jihadist sites' in absence of judicial review on the part of a country traditionally championing freedom of speech, however, has sparked controversy.[3]

Meanwhile, survey results published by *The Economist* show that perceptions about Muslim presence in Europe are quite exaggerated:[4] while the French, for example, think that France has a Muslim population of 31%, the actual figure is 8%. A survey by the IPSOS institute published by *Le Monde*[5] shows that 50% of the French believe there is a war going on: 84% against jihadism, 16% against Islam. Further, 50% of respondents support stepping up the counter-terrorism engagement abroad, while 40% want to maintain the same level of intervention. Most interestingly, some 95% of those surveyed support harsher detention conditions for jihadists; 60–70% support mass eavesdropping, house searching and interrogation in the absence of judicial guarantees. These data differ considerably from similar survey results in 2011, although it should be noted that a larger number of French citizens than in the past do not consider Islam as such incompatible with French democracy.

Several incidents can be noted here. The mayor of Nice congratulated the teachers of an elementary school for bringing an eight-year-old pupil to the police for refusing to honour to the terrorism victims and declaring that he would stand 'with the terrorists'. The controversial French comedian Dieudonné M'bala M'bala was arrested for posting '*Je suis Coulibaly*' on his Facebook page and invoking the right of free speech; 54 people were arrested in France over 'hate-speech comments' in the weeks following the Paris attacks.[6] Various organizations have denounced the increasingly discriminatory attitudes of the French police when conducting random checks on individuals of Arab appearance. While a growing number of citizens of Jewish origin were reported to be leaving France, there have also been growing numbers of attacks on mosques[7] – to such an extent that funding has been announced for improving security around them, and a dialogue/consultation body that includes various Muslim communities has been (re-)launched.[8]

The EU's changing role in countering terrorism

Security responses to terrorism have traditionally been considered a quintessential prerogative of *national* sovereignty. However, in the past ten to fifteen years, recognition that highly asymmetric security threats respect no borders has resulted in an expanded role for the EU as a coordinator in this policy domain. From almost total irrelevance, the EU has emerged as a surprisingly active counter-terrorism actor. Since 9/11, the EU has adopted 239 measures against terrorism, of which 26 are action plans and strategy documents and 15 are laws or directives.[9] The new 'European Agenda on

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1   'French Patriot Act approved', *NewEurope*, 6 May 2015, URL: http://www.neurope.eu/article/french-patriot-act-approved/
2   'France passes new surveillance law in wake of Charlie Hebdo attack', *The Guardian*, 5 May 2015, URL: http://www.theguardian.com/world/2015/may/05/france-passes-new-surveillance-law-in-wake-of-charlie-hebdo-attack
3   'Terrorisme: Cazeneuve veut 'responsabiliser' les géants du Web', *Le Monde*, 20 January 2015, URL: http://www.lemonde.fr/pixels/article/2015/01/20/terrorisme-messages-haineux-cazeneuve-veut-responsabiliser-les-geants-du-web_4559817_4408996.html?xtmc=valls_facebook_twitter_google_terrorisme&xtcr=4, N. Muiznieks, 'Un patriot act contra il terrorismo', *Il Manifesto*, 21 March 2015, p. 8.
    J. King, 'In blocking websites, France abandons role as guardian of free speech', *CPJ Blog*, 19 March 2015, URL: https://cpj.org/blog/2015/03/in-blocking-websites-france-abandons-role-as-guard.php

4   'Islam in Europe', *The Economist*, 7 January 2015, URL: http://www.economist.com/blogs/graphicdetail/2015/01/daily-chart-2
5   'La preception par les Français des attentats, de la mobilisation du 11 janvier et de la place d'Islam en France', *Le Monde*, 27 January, URL: http://fr.slideshare.net/IpsosFrance/la-perception-par-les-franais-des-attentats-de-la-mobilisation-du-11-janvier-et-de-la-place-de-lislam-en-france?ref=http://www.ipsos.fr/decrypter-societe/2015-01-27-attentats-mobilisation-11-janvier-place-l-islam-en-france-qu-en-pensent-francais
6   'France arrests 54 for 'defending terrorism' after Charlie Hebdo attack', *Al Jazeera America*, 14 January 2015, URL: http://america.aljazeera.com/articles/2015/1/14/france-charliehebdoarrests.html
7   A similar problem is witnessed in Germany: 'German Asylum: Attacks on Refugee Hostels a Growing Problem', Spiegel Online, 11 April 2015: http://www.spiegel.de/international/germany/german-refugee-hostel-attacks-on-the-rise-a-1027994.html
8   'France plans broader dialogue with its large Muslim minority', *Reuters*, 25 February 2015, URL: http://uk.reuters.com/article/2015/02/25/uk-france-islam-dialogue-idUKKBN0LT1OB20150225

Security' issued on 28 April 2014 explicitly prioritises 'terrorism, organised crime and cybercrime as interlinked areas with a strong cross-border dimension, where EU action can make a real difference.'[10]

Although the EU has often struggled to convince member-state agencies about its added value in the counter-terrorism domain, its role has emerged as one of coordination of existing initiatives, harmonization of national legislation, and support to operational work. EU counter-terrorism policies constitute a ´broad sectoral approach´, spanning areas such as the exchange of information between police and intelligence agencies, critical infrastructure protection, external action, border protection and the fight against terrorist financing and recruitment.[11]

Has counter-terrorism channelled the role and functioning of the EU in security matters toward a more operational character, as some would claim? EU anti-terrorism policies have been largely incident-driven. The terrorist attacks in New York in 2001, Madrid in 2004 and London in 2005 all became watersheds: these crises have coincided with framework decisions, action plans, strategies, declarations, the establishment of new supra-national security institutions and the strengthening of existing ones. The 2002 European Arrest Warrant, the 2004 EU Counter-Terrorism Coordinator and the 2005 EU Counter-Terrorism Strategy are cases in point. In-between attacks, EU policy-making on counter-terrorism has been marked by slowdowns, even '*anti-terrorism fatigue.*'[12]

The EU counter-terrorism discourse, too, seems to have been driven forward by terrorist attacks. The July 2005 London bombings led to substantial changes in the perception of the terrorism threat, from an almost exclusive focus on al-Qaeda, to the danger emanating from homegrown terrorists due to radicalization processes and recruitment.[13] Although terrorism has long been framed as a 'common threat to Europe', the involvement of neighbouring Arab countries in counter-terrorism strategies (not least, measures like border and migration controls) has been quite salient.

At the meeting of the Foreign Affairs Council on 19 January 2015 EU High Representative for Foreign Affairs and Security Policy, Federica Mogherini, insisted on framing the current situation as a 'civilizational alliance', representing terrorism as a common threat for European, Arab and Asian countries.[14] The EU Commission declared that it would start using the Arabic language in official communications, and that EU delegations would be assigned permanent security attachés to liaise and share information. Underlying these initiatives is the clear aspiration to promote change: one simply does not

create a role (security attachés) unless a function has been envisaged for them. So, we can imagine the deployment of personnel to be integrated into a 'system in becoming', a machinery that is not yet there. The recently issued 'European Agenda on Security' highlights the deployment of security experts in EU Delegations in European Neighborhood Policy as a priority, in addition to considering the posting of EU agencies' liaison officers and magistrates in key third countries.[15]

While announcing the revision of the 22 measures against terrorism adopted in 2013 and a stepping up of its strategy against radicalization, the aforementioned EU Council concluded that counter-terrorism will not change the European model of society, which is an open pluralistic society where everyone has a place. Cooperation between Europol and other European agencies has been strengthened, and a greater emphasis put on the fight against terrorism financing as well as on arms trafficking. Establishing a European Counter-Terrorism Centre coordinated by Europol is being proposed by the European Commission.[16]

The main contention in the post-Paris debate has been about whose task it is to provide security. EU member states hold that this is a prime national responsibility, with the EU's role merely one of support and facilitation. Member-state governments are also pushing for a swift decision on the establishment of a European Passenger Name Record (PNR) – which will mean that flight passenger personal data can be collected, stored and analysed for law enforcement purposes. The PNR debate has to date been blocked by the Socialist and Democrats as well as the Greens in the European Parliament, specifically in the LIBE Committee, which has competence on matters of security, justice and freedom. The Paris attacks, however, have led to tremendous pressure for passing the PNR Directive. The Commission has been intent on brokering a compromise deal between the Council and the Parliament, adjusting data protection guarantees and softening the sharp edges of the previous draft so that the proposal could be passed in the Parliament. Thus, the PNR seems to have become one of the prime measures in EU's fight against terrorism, as reiterated in the Statement of the 12 February informal summit of heads of states.[17] Generally, PNR opponents hold that adopting such a directive before further defining how data protection should be in the EU is a bad idea. Another question that remains is whether a PNR would actually have prevented the Paris or the Copenhagen attacks. The simple answer is that it would not: it would probably not even have stopped Coulibaly's fiancée on her way to Syria. There exist plenty of diversionary tactics that allow evasion of that form of control.

Other measures internationally discussed in the 'post-attack' climate include a strengthening of the Schengen framework and of the EU external borders, setting up databases relevant to the fight against terrorism based on common risk indicators, as well as Europol setting up focal points and alert lists on travelling terrorists.

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9   'EU har lansert 239 antiterrortiltak', *Aftenposten*, 16 January 2015, URL.: http://www.aftenposten.no/nyheter/uriks/EU-har-lansert-239-antiterrortiltak-7864408.html

10 *European Commission*, 'The European Agenda on Security' - COM(2015) 185 final, Strasbourg, 28 April 2015.

11 J. Argomaniz, O. Bures, O. and Kaunert, K. (2014): 'A Decade of EU Counter-Terrorism and Intelligence: A Critical Assessment', *Intelligence and National Security*, 30 (1–2): 191–206.

12 *EU Counter-Terrorism Strategy - Discussion paper*, Brussels, 26/11/2009; 15359/1/09 REV 1

13 J. Argomaniz (2009), 'Post-9/11 institutionalisation of European Union counter-terrorism: emergence, acceleration and inertia', *European Security*, 18 (2): 151–172.

14 http://www.consilium.europa.eu/en/meetings/fac/2015/01/19/

15 European Commission, 'The European Agenda on Security' - COM(2015) 185 final, Strasbourg, 28 April 2015.

16 Ibid.

17 *Informal meeting of the Heads of State or Government Brussels, 12 February 2015 - Statement by the members of the European Council*, URL.: http://www.consilium.europa.eu/en/press/press-releases/2015/02/150212-european-council-statement-fight-against-terrorism/

There has been a proliferation of databases and data sets. However, the systems for data collection already in use, such as Schengen's SIS II, appear to be under-used. Some states put information there, some states do not. Some want to retain information that they regard as sensitive. Is this because of traditional ´national intelligence jealousy´ and bureaucratic culture? – or is there a broader question of how we conceptualize national security? Perhaps there is rather a lack of incentives for acting in line with the stated expectations of the system? Before establishing new systems, should we not instead ask why the old ones are not working in the way they should?

Let us assume that we need a strategic vision to fight terrorism in Europe. Will such a strategy emerge out of new data sets, lists and names – or would that be another example of unwarranted faith in technological 'solutionism'? There is a gap between the technically possible and the politically desirable, and that gap is such that we should probably reflect about distinguishing between a strategic, focused vision and a reaction to strong public outcry.

This point is important, because we are talking about exceptional measures. When it comes to exceptionality, the question of when the return to normalcy can be expected cannot be evaded. In Italy, for instance, exceptional anti-terrorism measures that were adopted in the 1970s are partially still in use. Another salient question concerns whether our intentions and hypotheses about effectiveness are corroborated by actual evidence. The literature on the subject has not yet managed to handle the broad question of the impact of EU counter-terrorism measures, or create consensual benchmarks. This state of the art casts a shadow on the argument of proportionality, as well as on the idea that a legal limitation of civil rights should be motivated also – to put it in terms of Augustinian realism – by a reasonable prospect of success.
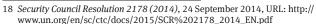
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The main question is whether blanket or mass data collection and retention can actually help in catching terrorists, or whether it will end up violating basic freedoms and civil liberties without delivering much. Collecting data may prove be controversial if we do not define the 'what' and the 'to what extent'. What can we learn from the NSA scandal and its European manifestations? What are the limits of data collection and retention? Under what judicial review mechanism is this practice to be authorized?

Conclusions

Summing up: The EU has an important role in terms of law harmonization. Today there is a need for normative updating and new harmonization of legislation following UN Security Council Resolution 2178 (2014)[18] on the prevention of 'recruiting, organizing, transporting or equipping of individuals who travel to a State other than their States of residence or nationality for the purpose of the perpetration, planning of, or participation in terrorist acts'. Inside the EU there exist significant differences in terms of legal frameworks and implementation, leading some countries to become ´safe havens´. Indeed, it could be argued that addressing these problems should have higher priority than creating and managing the 28 PNRs that are expected to be merged into a new EU Passenger Name Record.

The efforts made by EU Counter-Terrorism Coordinator Gilles de Kerchove, also through interacting directly with the broader European public through the media, seem to involve advocating further harmonization (beginning with the definition of who is a jihadist) while offering a type of support that may help the system to evolve and avoid the pitfalls of national segmentation. Announced to the Belgian daily Le Soir, the idea of a cell of terrorism experts that would be activated in case of a crisis, while helping with creating counter-narratives that fight jihadist propaganda, works in that direction.[19]

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18 *Security Council Resolution 2178 (2014)*, 24 September 2014, URL: http://www.un.org/en/sc/ctc/docs/2015/SCR%202178_2014_EN.pdf
19 'Projet de l'Union européenne pour combattre la propaganda djihadiste', *Ma Presse*, 3 January 2015, URL: http://techno.lapresse.ca/nouvelles/internet/201501/03/01-4832288-projet-de-lunion-europeenne-pour-combattre-la-propagande-djihadiste.php

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