

EU-Japan Security Cooperation: Challenges and Opportunities



A project co-funded by the University of Essex and the Erasmus+ Programme of the European Union



Online paper series, Spring/Summer 2017

EU-Japan / Fight against Terrorism and Organized Crime

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1. Threat perception

The fight against international terrorism and organized crime has been one of the central concerns of European security cooperation for decades. In the 1970s, the so-called TREVI group of European Ministers of Interior formed in response to a wave of terrorist attacks and came to constitute the political nucleus for the later EU cooperation in police and criminal justice matters. Ever since the 1990s, the expansion of globalization was shadowed by the growth and diversification of organized crime groups. The range of potential criminal activities is vast, ranging from drug, arms and human trafficking¹ to more “subtle” but highly damaging forms of economic crime, such as VAT fraud, money laundering, match fixing, product piracy and counterfeiting, and smuggling of cigarettes, endangered species or animal products. In the mid-1990s, the perceived threat from organized crime (especially its central role in drug trafficking) triggered the creation of EUROPOL, whereas the very first EU action plan in the area of internal security from 1998 focused on organized crime (Council Action Plan 15/08/1997), which has been followed by regularly revised strategic documents on human and drugs trafficking (Council of the European Union, 2012; European Commission COM (2012) 286).

The period between September 11, 2001 and the attacks in Madrid and London in 2004-5 then served as formative period for the EU’s expanding role in all aspects of internal security. As early as 2003, the European Security Strategy (ESS) provided a nuanced as well as urgent threat assessment by arguing that Europe “is both a target and a base for this Terrorism” and that the radicalization of young migrants is possible due to “modernization pressure, cultural, social and political crises as well as the alienation of the young people living in foreign societies” (European Security Strategy, 2003). The 2010 EU Internal Security (Council of the European Union 5842/2/10), similarly listed terrorism and organized crime as the first two main threats, followed by the closely related threats of cybercrime and cross-border crime. This and many other sector specific strategies on phenomena such as the financing of terrorism or radicalisation are flanked by annual reports by EUROPOL on the threat of terrorism and ‘serious and organized crime’ in Europe, the so-called *Te-Sat* and *SOCTA* reports (EUROPOL 2013a, 2013b).² In the area of organized crime Europol has increasingly published

¹ Including new synthetic drugs or illegal ‘slave labour’ in European textile workshops

² Both reports are flagship products of EUROPOL that seek to demonstrate the analytical value of the institutions to member states. As such, these annual strategic reports have been subject to intense debates and may, at

headline-catching figures that underlined the seriousness of the threat. For instance, it estimated that 3,600 organized crime groups were active in Europe (EUROPOL 2013c), or claimed that different forms of organized crime had a negative economic impact in the region of double-digit billions of Euros (Wainwright 2013).

Between 2007 and 2012, however, terrorism receded from the agenda, with the EU Counterterrorism Coordinator complaining about lacking implementation and “terrorism fatigue” among the member states, whereas the public was – seen on average across all member states – largely unconcerned. According to the Eurobarometer's public opinion poll, around 2 per cent of the European population in 2012 categorized terrorism as one of the EU's two most important issues. Threat perceptions changed again dramatically with the rise of so-called Islamic State (IS) since 2013. The first terrorist attack in Europe, apparently committed by a Syrian returnee, took place on 24 May 2014, when the French national Mehdi Nemmouche shot four people at the Jewish Museum in Brussels. The two major attacks in Paris in February and November 2015 then tragically underlined the seriousness of the threat. An internal paper by Europol drawn up quickly after the second Paris attacks considered the overall constellation of high attraction to IS, returnees to Europe and the intersection with the migration crisis as the “most serious terror threat Europe has faced for over 10 years” (Council of the European Union 14244/15). This was sadly confirmed in 2016 with three further severe attacks in Brussels, Nice and Berlin.

These tragic events intersected with the major refugee crisis in Europe, which became in many European national publics enmeshed with threat perceptions about terrorism. While various security authorities have been arguing against conflating these concerns too directly, it has been estimated that at least several dozen IS operatives had made their way back to Europe in the context of the refugee crisis (Chulov 2016; Gaouette *et al.* 2016; Hinnant and Dodds 2016). Recently, military successes against IS may have ended the flow of recruits to Syria and Iraq, but even further raised the worry that terrorism by returnees will be used as the remaining tactic of choice against Western countries (EUROPOL 2016b). Particularly in France, the fear of further attacks has been extremely elevated and led to repeated extensions of the state of emergency (AFP 2016). But also other European countries have undergone an increasing upward convergence of threat perceptions, which stimulated new initiatives to cooperate in the fight against terrorism (see further below). A related recent trend for convergence has been the connection between terrorism and organized crime, the so-called crime-terror nexus, which has been increasingly evidenced in the latest wave of Jihadi terrorism in Europe (Clarke 2016). In particular, a considerable proportion of foreign terrorist fighters (FTF), but also of other radicalized individuals still inside European member states have a criminal record and are involved in petty crime. For European security actors this underlines the need to move on parallel fronts and use policy instruments, especially to trace and to control illicit funds, both for the fight against organized crime and against terrorism.

2. EU internal (domestic) response

In light of the centrality of organized crime and terrorism to EU internal security cooperation as a whole, it is virtually impossible to provide a survey of all major EU instruments that have been associated with these threats, and which would provide a full ‘baseline’ for current developments. For

least occasionally, be too political to be taken at face value. Nevertheless, the following broad messages of these reports reflect commonly shared views and threat assessments among European security experts

instance, the EU original Action Plan on Combating Terrorism³, contained more than 170 items (Bossong 2008), whereas a comprehensive stock taken from 2013 counted more than 239 EU measures since 2001 – while also harshly criticising the often limited relevance of many measures to the declared central objectives of countering international terrorism (Statewatch n.d.). The range of more issue specific and historically accumulated documents on organized crime and terrorism surveyed above do not offer much insight either. For instance, the 2005 EU counterterrorism strategy contains four broad objectives, namely prevention, pursuit of terrorists, preparedness to defend against attacks and response measures in the aftermath, such as victim support. Thus, the EU typically tends to be as comprehensive as possible, without a clear sense of priority. The relevance of the various EU security strategies to political practice has also regularly been doubted (Coolsaet 2010; Schroeder 2011).

Instead, one can sketch out five broad trends or patterns in the EU's response to organized crime and terrorism. First, the starting point is that the EU cannot act directly against terrorism and organized crime groups. Arrests and the conduct of concrete security measures remain strictly with each of the member states. As put in Art.4 (2) TEU and Art.72 (and 73) TFEU, member states remain free to define the exercise of their national competences in this regard. At most, national security staff are borrowed or united under EU instruments and frameworks, such as rapid intervention teams at borders. So even the most operational aspects of EU internal security cooperation, namely the activities of the growing JHA agencies EUROPOL, EUROJUST (and FRONTEX), remain centred on the collection and exchange of information with national authorities. This is not to underestimate the power and importance of such information-driven approaches to internal security provision. EUROPOL opened a new counterterrorism centre in 2016, which significantly boosted intelligence exchanges, while both EUROPOL and FRONTEX have been given supportive roles in the security screening of refugees arriving to hotspots in Greece and Italy. EU has also made considerable physical investments into data networks and databases, both of a centralised and decentralised kind, ranging from the long-standing Schengen Information System to more recent agreements on how to exchange DNA data or all other forms of police information via IT infrastructures that are coordinated by EU agencies (Council of the European Union 9368/1/16).

Second, the EU traditionally underlines the need to respect 'the Rule of Law' in countering the threats of organized crime and terrorism, while the meaning of this approach remains dependent on national legal systems that are only partially made compatible with each other. As a wider policy objective, the EU committed to creating the so-called Area of Freedom, Security and Justice, which is now even mentioned before the Single Market as a core objective of the European integration process (Art. 3(2) TEU). The main thrust of EU initiatives has been to facilitate and speed up mutual legal assistance and cooperation across borders and to create so-called mutual trusts among the diverse legal systems in European member states. The underlying principle is the so-called mutual recognition of different national legal systems (Nilsson 2006), whereas a genuinely common body of EU criminal law remains elusive. The most notable step has been the so-called European Arrest Warrant, which should allow national criminal justice authorities to request the arrest and extradition of suspects without political interventions. Still, the creation of legal trust across the member states to underpin effective mutual recognition remains complex and ridden with conflicts (Block 2011, Peers 2013), so that in many cases expectations for cooperation based on pragmatism and minimal shared standards are not borne out in practice.

³ Though probably unnecessarily inflated, the Action Plan served as the most comprehensive definition of the EU's operational and legislative measures in this area.

In recent times, however, these questions of trust, general patterns of transnational cooperation between police and justice authorities, or general principles of mutual recognition and the architecture of the Area of Freedom, Security and Justice have receded from the political agenda. Instead, the focus is now placed on more specific indicators for operational coordination in respect to key threats, such as the number of persons that are entered into EU-wide terrorist watch lists. Furthermore, one can see a steady adaptation and hardening of EU legislation for specific problems in the prosecution of terrorism and organized crime. The latest revision of the EU directive on combating terrorism that seeks to ensure a more consistent criminalisation of travel to areas that can be construed as support of, or seeking training from, terrorist organisations (European Commission 2015b). But this legal hardening in specific fields also comes hand in hand with a trend of increasing criminalisation of 'preparatory acts' or general 'association' with criminal or terrorist groups that fall short of conventional standards of the rule of law – highlighting clearly defined criminal acts and the presumption of innocence. This is a wider trend in Western criminal law that has not been pioneered, but also supported rather than resisted by the EU.

Third, the EU's increasingly hard edge in the fight against terrorism and organized crime has manifested itself most clearly in the area of financial sanctions, where the EU can build on its entrenched market power and competences as an economic regulator. One of the most controversial components of the EU's fight against terrorism since 9/11 has been the freezing of terrorist assets, as originally required by the UN Security Council (de Goede 2011), but evolved over time into an increasingly independent EU sanctioning mechanism. More widely, the EU has long been very active to address issues of financial transparency, regulation and control that are associated with both the fight against terrorism and organized crime (e.g. the FATF) (Brzoska 2011). Recent policy developments continue this long-standing trajectory irrespective of shifting strategic security discourses. One could even argue that the control of financial transactions constitutes for considerable time already a genuinely supra-nationalised component of the Commission agenda on internal security. In February 2016 the Commission issued a renewed action plan on combating the terrorist financing (European Commission 2016, 50). Among several legislative amendments to rules on money laundering, it also pushed towards more financial intelligence exchange and further cooperation with third countries, all of which serve multiple purposes in the fight against organized crime alongside terrorism. Meanwhile, the exchange of financial intelligence with the US under the so-called Terrorist Finance Tracking Programme, which is managed by EUROPOL, has been cited as the central contribution of the EU to the investigation of the network of the terrorist cell that struck Paris in November 2015. As a final measure the Commission is currently reviewing the options for a system of sanctioning terrorist suspects without international connections that are necessary under the current regime (European Commission 2015a).

Fourth, a relatively new or resurgent trend in the EU's response to terrorism is the renewed emphasis on border security, which results from the intersection of recent attacks with the refugee crisis. While the US has long sought to defend itself from international terrorism by ever more stringent border control measures, this has typically been regarded as impossible in Europe due to more open and (geographically) diverse borders in the Schengen area. Furthermore, until a few years ago the most serious threats emerged from within the member states and radicalized nationals rather than international terrorist attackers. The rise of foreign travelling fighters since 2013 has changed this assessment, so that the EU's strong competences for harmonizing border controls are now reapplied to identifying these travel movements, screening refugee flows and preventing possible returns. Thus in 2016, the EU agreed after a decade of discussions on a European system for the collection and analysis of Passenger Name Records on international flights – a system which the US already installed in 2003, followed by many other OECD countries. Further proposals for enhanced biometric registration, 'smart' technological border controls, and a screening of visa-free travellers to the EU are

currently being discussed and are likely to be approved in the near future, even if operational implementation may still take many years.

Finally, the EU has sought to position itself as a core platform for 'softer' forms of learning and operational coordination in different thematic fields of internal security (Bossong 2012). Such soft governance initiatives are aiming to sidestep both limited legal competences and to support such trust building for more voluntary cooperation. For instance, the EU sponsors a network on the prevention of crime, the terrorism-related 'radicalization awareness network' (RAN) and a multiplicity of other expert groups with related expertise to aspects of terrorism and organized crime.⁴ The RAN network in particular has become an ever more publicised and well-funded part of the EU's counterterrorism agenda, even if it remains challenging to move from general best practice exchanges to a wide diffusion and reform of practices of ground-level staff from police as well as social services across many member states. There are also more operational initiatives to synchronise the priorities of national police and border agencies, such as by simultaneous, if nationally independent actions against certain forms of organized crime under the so-called 'policy cycle'.

3. International actions of the EU

Ever since 9/11, the EU sought to integrate the fight against terrorism into its wide array of diplomatic activities, partnership agreements (especially in the EU's neighbourhood) and some external financial assistance programs (Brattberg and Rhinard 2012, Kaunert 2012). However, until the early 2010s, this largely remained at the level of diplomatic declarations and general clauses in EU partnership agreements, which in itself had little force or impact.

Yet, the so-called 'external dimension' of the EU's cooperation in matters of internal security, which also includes the fight against organized crime and illegal migration, grew dynamically since the mid-2000s (Carrapico 2013, Monar 2013). EU-US cooperation has been at the forefront, ranging from general mutual legal assistance, the exchange of various forms of data for the analysis of security agencies (SWIFT financial intelligence, PNR) to consultations on emerging legal frameworks in areas such as cybersecurity and counter-radicalisation. Most recently, the European Parliament acceded to a new EU-US framework agreement on data protection, which includes information-sharing for security purposes, which had previously been a major obstacle in this relationship. At the same time, the EU has sought to exercise external governance on internal security concerns over its immediate neighbourhood and some African states, which are seen as originators, safe havens or transit corridors for terrorism and organized crime. Particularly states that continue to seek EU membership and close association, such as in the Western Balkans, have been receptive and could be motivated for intensified information-exchange with EU partners (Council of the European Union 13887/15). But the EU developed a wider range of partnerships and cooperation agreements with third countries around the world to address different aspects of drugs and human trafficking (Renard 2014).

Against this background, the EU is typically seen as a strong supporter of multilateral frameworks for cooperation in international organisations such as the Council of Europe, the OSCE and UN, be it in the case of the fight against terrorism (Wouters and Duquet 2013) or against drug trafficking

⁴ For instance, the ATLAS network of special intervention units, the informal network of contact points on the administrative approach to prevent and fight organised crime, the Explosives Security Experts Task Force, etc. An current official EU list can be found at <http://register.consilium.europa.eu/pdf/en/13/st09/st09407-re01.en13.pdf>

(EMCDDA, n.d.). The EU also aimed to provide a contribution to international peace and stability by fielding civilian crisis missions in the Western Balkans, Africa and parts of the Middle East and Central Asia that should support, among other objectives, the Rule of Law and the fight against organized crime and terrorism.

While many of these contributions and missions have not had the desired impact, recent years have seen an intensification of efforts. In 2012, the EU and the new External Action Service sought to design more integrated strategies to the Horn of Africa and the Sahel, which included the fight against terrorism and organized crime as prominent objectives – also reflected in the mandates of the EU missions in Mali (EUTM Mali) and Niger (EUCAP Sahel Niger). At the same time, the EU Antiterrorism Coordinator promoted a more operational agenda for global cooperation. This included, for example, regular dialogues on questions of radicalization or the control of terrorist financing with Gulf States. These efforts further intensified after the Arab Spring and the subsequent concern with foreign fighters, leading to ‘high-level dialogues’ on counterterrorism with Maghreb states. Under the aegis of the new High Representative Mogherini, capacity building packages were launched in Tunisia, Jordan and Lebanon, each of which comprised a financial volume between 30 to 35m Euro. This complements EU regional programs to spread counter-narratives and security sector reform, which may indirectly contain terrorist support.

Yet, it must also be noted that the EU’s response to the war in Syria and the military campaign against ISIL remains highly constrained and mostly focused on the provision of financial assistance and humanitarian aid. The EU strategy for Iraq and Da’esh promised approximately EUR 1.7 billion, in addition to 2.4 billion raised at the international donor conference in February 2016. Despite this growing financial commitment, key diplomatic negotiations on the conflict took place without the EU. Moreover, the overriding concern of the EU to limit refugee flows from the conflicts in Syria, Afghanistan or Libya undermined its internal cohesion and allowed third countries, such as Turkey, to prioritise its own regional security policy objectives. Even if operational cooperation in the fight against foreign terrorist fighters and different terrorist grouping eventually picked up between various EU member states and key third states, it represents another missed opportunity, or even major set-back for the EU’s international role in the fight against terrorism.

4. EU-Japan cooperation

Despite the absence of Islamic terrorism within Japan, it has a somewhat comparable historical experience of left-wing extremist terrorism, or the Japanese Red Army Faction, which was also internationally active (O’Connell 2015). In the 1990s, the sarin attack by the Aum sect still constitutes the only major terrorist WMD attack until today, and served at the time already as inspiration for many pessimistic threat scenarios by terrorist experts around the globe. Furthermore, organized crime is a historically entrenched phenomenon in Japan as well as in various, if not all, parts of the EU. In particular, the ‘Yakuza’ has been widely known alongside the Italian mafia, even if new groups, such as the ‘Russian mafia’ may have grown more dynamically over the last two decades (Galeotti 2005 // 2014). While the respective international reach and impact of different organized crime groups remain contested, with Japanese groups possibly less inclined to operate abroad than may be assumed (Varese 2011), the general public and political awareness of organized crime remains comparatively high in Japan.

These parallels, though not necessarily overlaps, in threat perceptions provide the basis for EU-Japan security relations and cooperation in the fight against terrorism and organized crime. Generally speaking, EU-Japan exchanges on security issues build on a long, intense engagement since the

1970s as major trading powers (Keck et al. 2013; Watanabe 2013) and members of the wider 'Western' or US-led international order (Frontini 2016; Grajewski 2016). The fundamental motivation for subsequent cooperation on security issues since the end of the Cold War is shared historical and rhetorical commitment to global stability and peace, as well as the liberal institutional order led by the UN (European Commission 2015). The constitutional limitations for Japan's non-military stance remained in place, but chimed with many European member states (especially Germany) and the then entrenched discourse of the EU as a civilian power.

Japan, as a major economic power, also developed major stakes in global financial stability and related initiatives for controlling illicit flows. This triggered increasing exchanges with the EU on questions of money laundering, but also financial sanctions that were advanced in the UN. The overlapping membership in the G7 has been particularly important for European-Japanese interactions on these topics. The G7 initiated the Financial Action Task Force (FATF) already in 1989, from which it would develop into a central network for global efforts to combat illicit finance over two decades. Building on this, the Egmont, among related 'financial intelligence units', focuses on the fight against terrorist financing.⁵ In addition, a further spin-off network among the G7 is the so-called Dublin group, which deals with drug trafficking on a regular basis since 1990 (EURAD 2014; McDonough and Deflem n.d.).

In 2001, the tenth anniversary of the new EU-Japan cooperation coincided with the global response to international terrorism (Ministry of Foreign Affairs of Japan 2001). This conjuncture led to dedicated declaration on combating terrorism alongside the first EU Japan Action Plan (de Boer 2002), which otherwise included various concerns in the fight against organized crime, such as money laundering or various forms of illicit trafficking among many other economic, scientific and cultural policy objectives. While the action plan may be criticized as an overly long 'shopping list' with a lack of prioritization or jointly felt need for urgent action (Berkofsky n.d.), the concern with terrorism remained on the diplomatic agenda: due to its alliance with the US and increasing military engagement since the second Gulf War, Japan became subject of terrorist threats by Al Qaida since 2003. This became the basis for regular political exchanges and declarations of the EU and Japan on the shared challenge to address terrorism in order to preserve international peace and stability (Mykal 2011). The core of these activities revolved around mutual support for the UN and its diverse efforts to contain international terrorism by UNSC resolutions, peace operations and by assistance and capacity-building for vulnerable countries. Japan also invested in numerous regional Asian formats, such as ASEAN, or provided support to specifically vulnerable countries, such as Afghanistan, to contain terrorism. At the same time, Japan also became one of the first international partners for EUROPOL. The 2001 Action Plan included further topics of organized crime, in particular human, arms and drugs trafficking. Yet this did not lead to noticeable shared activities, not least as EUROPOL was also still a nascent organization within the EU.

In 2009, the EU and Japan signed an Agreement on Mutual Legal Assistance (MLA) which entered into force early 2011. The aim of the agreement was to facilitate cooperation in the area of mutual legal assistance in criminal matters. As overall numbers of requests for legal assistance increased significantly, one can conclude that the agreement was relatively effective (Council of the European Union 15008/16) to enhance cooperation in the field. Eurojust, which is the EU institution tasked responsible to facilitate such requests, however, has not commonly been involved, as the MLA allows for direct cooperation between member states and Japan. There is no cooperation agreement

⁵ See <http://www.egmontgroup.org/>

between Eurojust and Japan, but contact points have been established to facilitate better cooperation (Council of the European Union 6417/15).

In the 2010s, EU-Japan cooperation then renewed the shared focus on economic development and scientific exchanges under the impression of the global financial crisis and the Fukushima disaster. Nevertheless, some new developments in the shared fight against terrorism financing and also new initiatives to address counterfeiting could be advanced. On a bilateral level, the technological knowhow and eagerness to implement new technologies drives further exchanges, such as on biometric border controls, data exchanges for security purposes or more generally the securing of cyberspace, which also touches upon the fight against terrorism and organized crime. In the last few years, the EU's efforts to combat cybercrime – particularly through the formation of the EC3 centre at EUROPOL – have also touched upon Japan, or even led to isolated cases of direct cooperation (EUROPOL 2016a). Yet, cooperation between EUROPOL and Japan reached neither the level of a strategic nor an operational agreement.

Most recently, the rise of ISIL since 2013 attracted few Japanese fighters, whereas in 2015 two Japanese reporters in Syria were held hostage and ultimately executed by ISIL (Counter Extremism Project n.d.). The rise of ISIL nevertheless underlined the shared concern of Japan and the EU to address process of radicalization (Counter Extremism Project n.d.), which constitutes another area of cooperation in the framework of the UN. Overall, however, it seems that EU-Japan cooperation in the fight against terrorism remains mostly centred on wider diplomatic and financial support for international peace and stability than specific measures to target certain groups (at risk of radicalization, or travelling fighters).

5. Conclusions

Increased cooperation in matters of internal security, which is intimately connected to the fight against terrorism and organized crime, has been one of the main developments of EU integration over the last two decades. Yet although the EU is clearly the most advanced regional organisation in this issue area, where national sovereignty concerns typically obstruct more than informal or ad hoc cooperation, it can hardly be treated as a coherent actor in the fight against terrorism and organized crime. The EU and its Area of Freedom, Security and Justice are still made up by an incoherent amalgam of data and information networks for criminal justice information, EU-level agencies for analysis and coordination (but not direct executive action and prosecution) and national criminal justice systems that are only made partially compatible with each other. In so far as the EU has acquired a distinct profile, it arguably progressed best in the areas of financial aspects of the fight against organized crime and terrorism, flanked by increasing efforts for border security, information-sharing and screening of travel movements to intercept foreign terrorist fighters.

Cooperation on internal security has repeatedly emerged as a pressing political priority, to respond to immediate crises, but also to underline the concrete benefit of the EU to citizens. Over the last two years, an increasing number of national political actors have come to highlight internal security as a key objective for maintaining the legitimacy of the Union, or at least to maintain the central value of freedom of movement and the popular achievements of Schengen. However, it is also clear that during a time of rising Euroscepticism and in the wake of the Brexit shock expressively supranational conceptions for intensified cooperation, even in such seemingly popular areas such as internal security, have been met with an ever higher degree of scepticism than in the past.

International cooperation on organized crime and terrorism needs to reflect on this complex state of affairs, and also be aware of the multiplicity of venues for security cooperation, be they of a bilateral (liaison officers) or multilateral kind (e.g. in the UN). In very broad terms, EU-Japan security relations benefit from shared norms, and in part also shared threat perceptions. The question is rather in how far tangible cooperation benefits and projects can be realized in different global formats, or whether alternative domestic priorities and more immediate concerns with threats in the respective neighbourhoods (Raine and Small 2015; Sakaki 2015) of the EU and Japan overlay the possible cooperation on organized crime and terrorism.

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