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Peer reviews on the fight against terrorism a hidden success of EU security governance?

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This paper¹ provides a first study on use of professional peer reviews by the EU to strengthen the European fight against terrorism. The first part outlines two theoretical approaches to assessing the outcome effectiveness of such peer reviews, namely compliance and learning. Peer reviews can serve both ends and have been increasingly touted as an effective tool to address transnational threats. The second part analyzes the evolution and impact of the EU's peer reviews on the fight against terrorism. Although the first peer review took several years to complete, it was regarded as a striking success that improved mutual trust and the coherence of the international fight against terrorism. It was therefore followed by a second peer review on consequence management in response to terrorist attacks. From a critical perspective, it is shown that the impact of these peer reviews could be doubted from both a compliance and learning perspective, as monitoring and flanking measures have remained too weak. The conclusions point to additional political or normative deficits of peer reviews in EU security policy-making.

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1. Introduction

Over the last decade the fight against international terrorism has been crucial to the European integration process in matters of internal security. At the same time, the impact of EU policy-making on national security systems has been doubted (Bures 2011), while informal processes for transnational counterterrorism cooperation remain ill-understood (Den Boer, Hillebrand et al. 2008). This paper, therefore, analyses one such 'soft' cooperation or governance process that has been stimulated by the EU, namely mutual peer reviews on the counterterrorism policies of EU member states.

This empirical case needs to be situated in the burgeoning empirical literature on European security governance (Schröder 2011; Ehrhart and Kahl 2010). In other policy areas EU scholars have increasingly moved from macro-level analyses of multilevel governance to governance instruments, which allow for more precise links to policy outcomes (Kassim and Le Gales 2010). Such an approach is already reflected in a growing studies on the EU's external security governance and the use of conditionality (e.g. Menon and Sedelmeier 2010). Few exceptions aside (Balzacq, 2008), however, EU-internal security governance remains predominantly discussed from institutional, legal or sociological perspectives (Bigo 2006; Monar 2010).

Due to this underdeveloped theoretical literature, the first part of this paper reviews two basic perspectives on the possible effect of soft governance processes in matters of transnational security. One approach emphasises the promotion compliance with existing standards. The other underlines the potential for flexible problem-solving and learning. Each approach depends on a number of supportive factors, so that effective soft governance instruments are not easy to design or cheap to implement. This provides a basic framework for analysing the impact of peer reviews, which have been used by a variety of international organisations and for various issue areas.

The second main part traces the development of the EU's peer review processes in the fight against terrorism. Drawing on the example of the FATF and EU criminal justice cooperation, EU Justice and Home Affairs ministers called for such a review process in the aftermath of 9/11. Despite this initial momentum, however, the first review was slow to unfold and depended on the renewed shock of the Madrid and London terror attacks to impact national counterterrorism arrangements. Furthermore, the concluding set of recommendations was only superficially monitored. The second peer review on 'consequence management' of serious terrorist attacks placed a greater emphasis on learning and the exchange of best practices, but suffered from a lack of analytical capabilities at the EU level. In sum, the two peer reviews contributed to fostering trust among the member states and EU institutions, but did not lead to a significant convergence towards a common European model in the fight against terrorism. The conclusions outline further avenues for research and touch upon the normative problem of weak or deficient evaluation mechanisms in matters of counterterrorism.

2. Peer reviews in the wider context of security governance

'Dark' networks of terrorism and organised crime require increased transnational and less formal forms of security cooperation (Raab and Milward 2003). Peer review conducted under the aegis of international organizations can support such flexible security cooperation, or security governance,

in various ways. On the one hand, they can spread common standards and cooperative practices in the absence of hierarchy - i.e. promote compliance. On the other hand, they should help to devise or adapt policy in light of new challenges and information - i.e. promote learning. These two stylised perspectives mirror the option space between vertical and horizontal forms of cooperation that underpin most analytical discussions of governance *per se*. To clarify, the following discussion first briefly elaborates on the two perspectives of learning and compliance in security governance, and then links them to peer reviews by international organizations (including the EU). This provides the foundation for the following empirical analysis of the EU peer review in the fight against terrorism.

2.1. Compliance

Despite the global shock of 9/11, one cannot expect spontaneous cooperation or cross-national convergence in the fight against terrorism. Institutional path-dependency, different threat profiles and long-standing national security cultures have perpetuated divergent approaches in Europe (Meyer 2009; Nohrstedt and Hansen 2010; Epifanio 2011). Moreover, international counterterrorism cooperation faces significant collective action problems (Enders and Sandler 2006). Individual states may provide safe haven to terrorist groups in order to be spared from attacks, or may invest in purely national defences in the hope that terrorists will strike elsewhere. Some countries may also simply lack the capacities and financial resources to avoid international 'weakest link' effects. For instance, terrorists have recently planted bombs on planes in Yemen to hit the US.

International organisations that are engaged in the fight against terrorism seek to limit these dangers and collective action problems by means of a mixture of soft governance instruments and hard law (Heupel 2008). For instance, the UN adopted a wide range of international conventions, which prohibit sponsoring or supporting terrorist groups. But since 9/11, the Security Council also took care of the 'soft' side of cooperation and promised technical assistance to vulnerable states, so that Al Qaeda would not exploit them as safe havens.

While soft law and technical assistance programs typically rely on a shadow of hierarchy to achieve credibility (Heritier and Lehmkuhl 2008), less soft governance arrangements should not generally be seen as a second-best solution to top-down enforcement. Managerial approaches to governance and public policy highlight that a shared sense of ownership, local variation and investments in administrative capacities for implementation can be more productive than strict rules and costly enforcement mechanisms (Chayes and Chayes 1995; Tallberg 2003).

Soft *security* governance offers further benefits. Even if one starts from the assumption that Europe is characterised by a 'post-Westphalian' system that is less concerned with national sovereignty (Sperling 2010), security cooperation generates other significant political and financial costs. National governments should retain flexibility and primary responsibility for making critical value choices (within commonly accepted boundaries), as encapsulated in the dilemmas of 'guns or butter' and 'security vs. liberty'. A cautious approach is especially indicated in the case of transnational terrorist that can switch to alternative targets (Sandler and Enders 2006) or seek to provoke strong countermeasures in order to increase their popular support (Guelke 2006).

In short, from a compliance perspective soft security governance instruments should address shared vulnerabilities and foster international trust in the face of weakest link effects or other collective action problem - but also allow for cost-effective and flexible decentralized implementation.

2.2. Learning

Horizontal governance processes should also facilitate the exchange of new information and mutual learning, which is essential in the face of high uncertainty (Duit and Galaz 2008). This clearly applies to the case of transnational terrorist groups whose actions are difficult to predict or to deter. Given the impossibility to defend all targets against attacks, disasters and failures – e.g. when a bomb goes off – are to be expected, but should also lead to constructive learning and review processes (Birkland 2006).

Yet learning remains a very elusive concept in political science, where it has been applied to an extremely wide range of phenomena or levels of analyses (Dunlop and Radaelli 2010). In this context, learning is often seen as a search for institutional legitimacy rather than for effectiveness and efficiency (DiMaggio and Powell 1983). Especially in security issues political institutions seek to demonstrate a high level of responsiveness and control, while it is difficult to ascertain the objective use of knowledge and expertise (Boswell 2008).

This paper cannot develop an encompassing definition of learning, or neatly distinguish learning from other factors that can induce policy change (Roederer-Rynning and Daugbjerg 2010). Suffice here to review a few contextual conditions that influence learning processes in political settings. Generally speaking, groups of experts are more likely to accentuate problem-solving perspectives and epistemic knowledge claims if they meet regularly, are professionally fairly homogenous and operate under loose (or no) political oversight mechanisms (Zito and Schout 2009; Sabel and Zeitlin 2010). Practitioners in the fight against terrorism similarly highlight the benefits of voluntary and informal meetings with a comparatively small number of participants (Deflem 2004).

In highly simplified terms, the ideal would be 'reflexive' learning through a power-free and 'bottom-up' approach where the better expert argument counts. In contrast, if topics or discussion forums have been defined from the 'top-down' by more political actors, one could expect legitimacy-seeking forms of learning. In this case policy processes and outcomes may remain basically unchanged, but could be framed differently to respond to external demands (Dunlop and Radaelli 2010).

Yet one should not construct a false contrast between good expert and bad political learning. Expert discourses are also power-structures that can block out dissenting voices. Moreover, expert knowledge cannot generally be expected to impact on the EU's multi-layered political system. Already in the case of a single agency or institution, 'organizational learning' involves more than knowledge acquisition, but requires knowledge codification, dissemination and reliable implementation (Benner and Rotmann 2008). Similar concerns also apply to governance networks in the EU (Schout 2009). It may not be necessary to achieve standardized policy implementation in such networks, but it is all the more difficult to ensure the reliable dissemination of knowledge.

In short, soft governance instruments for learning typically depend on a delicate balance between, on the one hand, open-ended expert discussion that can counter tendencies for political and legitimacy-oriented learning, and, on the other hand, processes for ensuring the dissemination and implementation of new knowledge or practices across multi-layered administrations. While it may be difficult to ascertain in how far knowledge claims can trump political considerations, this latter dimension can be more easily pinpointed in the form of training programs or codified forms of knowledge (e.g. handbooks).

2.3. Peer reviews in international organisations

In the context of international organisations, peer reviews are usually understood as a tool for 'multilateral surveillance' (Schäfer 2006) of national policy – i.e. as governance instruments of compliance. Depending on the degree of international interdependence and centrality of the peer review process in a given issue area, they can incorporate a mixture of harder and softer monitoring and control instruments (de Ruiter 2008). For instance, the Financial Action Task Force (FATF) set global standards in fight against money laundering that have been enforced through self-reporting as well as external assessments that can lead to coercive measures, such as blacklisting. Post 9/11, the FATF has also increasingly used positive incentives and administrative or 'technical assistance' (Romaniuk 2010, 320), which reflects the managerial approach to compliance touched upon above.

Peer review processes have also been used by international organizations to develop new standards and policy approaches – i.e. as instruments for learning. The OCED has made particularly extensive use of peer reviews to assess and improve economic and educational policy from such a perspective (Mahon and McBride 2009). Similar mechanisms have taken hold in EU policy-making under the label of the Open Method of Coordination (OMC). For instance, EU research policy that falls under this policy method include so-called peer-learning clusters (De Ruiter 2010). While it is beyond the scope of this paper to survey the extensive debate on the OMC (Krueger 2009), its (limited) outcome effectiveness depends among other factors - on an interplay between explorative agenda-setting, bureaucratization and dissemination across the EU's administrative levels (Tholoniati 2010).

Due to this ambiguous use of peer reviews by international organizations, the impact of EU peer reviews should also be explored from both a compliance and learning perspective. In light of the foregoing overview on different possible effects of soft governance instruments, this raises analytical questions, such as the following.

Compliance: How stringent are reporting and sanctioning mechanisms of the peer review process? How large is the leeway for national implementation? Are the flanking efforts, such as administrative capacity building, to support national implementation?

Learning: Are peer review conducted under close political oversight or are discussions driven by technical experts? How is knowledge codified and disseminated? Are there dedicated training or knowledge-management programs?

To be clear, these questions should not be confused with falsifiable hypotheses that can be tested on the basis of quantitative data or related qualitative methods (King, Keohane and Verba 1994). As will also be touched on below, the early stage of empirical research into peer review in EU security (and counterterrorism) cooperation requires a more inductive approach, which draws on different explanatory factors from a compliance and learning perspective over the course of an integrated empirical analysis.

3. Peer reviews in European counterterrorism policy

Against this background, the following part argues that the first EU peer review on the fight against terrorism depended on the external pressures of Eastern enlargements and the terrorist attacks of Madrid and London to reach a coherent form and politically successful outcome, which was formally defined as compliance with a standardized set of recommendations. The second peer review focused on a more delineated policy area, i.e. consequence management of terrorist attacks, and emphasized learning dynamics. Yet despite a growing procedural routine, the second review had a weak stand-alone impact and generated no significant new knowledge. The section concludes by a brief discussion of further applications of the peer review instrument in the EU's neighbourhood and the new policy issue of cyber-security.

3.1. Peer reviews in the nascent Area of Freedom Security and Justice

EU peer reviews in matters of internal security emerged in the late 1990s under the overarching treaty objective to create the Area of Freedom, Security and Justice (ASFJ). The first EU Action Plan on Combating Organised Crime proposed that a “mechanism should be established, based on the experience with the model developed in the FATF, to mutually evaluate the application and implementation at national level of the European Union and other international instruments and undertakings in criminal matters “(Council 1997). This reference to the FATF effectively meant that the effectiveness and efficiency of peer review instrument was taken for granted, and that new ASFJ could be fleshed out on the basis of already existing and widely accepted international standards.

Two years later, interim results of the first round of evaluations on criminal justice cooperation were discussed in the Council Multidisciplinary Group on Organised Crime (MDG) (Council 1999). The report formally stuck to the FATF approach, namely to monitor the implementation of existing recommendations and agreements. However, a closer reading reveals important differences that emphasised a softer approach. Evaluated member states could define the visit programme of the evaluators and request amendments to their reports. Moreover, reports and recommendations would only be discussed within the confines of the MDG, which is composed of high-level experts from member states that can build on common professional norms and normally do not operate under tight political control. This barred confrontational naming and shaming by an external bureaucracy or secretariat as in the FATF. Instead, the EU Council Secretariat could only begin to build up in-house expertise through assisting intergovernmental negotiations on the ASFJ.

The concluding report to the first peer review in early 2001 underlined the cooperative spirit of the peer review process and the wider learning opportunities for all member states (Council 2001a). 'Lessons' and 'best practices' should be collected in the so-called European Judicial Network, which could help to disseminate and implement new knowledge among independent professionals. In short, the first peer review maintained some formal appearances of the FATF compliance model, but mostly promoted learning processes as outlined above. Due to the relatively high degree of independence of participating experts, the MDG highlighted the constructive spirit of the review and foresaw a continuation of the peer review instrument.

3.2. The emergence of the first review on counterterrorism

A few months later, 9/11 drastically changed the rhythm of EU internal security cooperation. The first critical JHA Council meeting of 21 September tabled a plethora of measures that had already been envisaged for the further construction of the ASFJ (den Boer and Monar 2002). It hardly attracted attention that the Council also called for an extension of peer reviews to 'national counterterrorism arrangements', which should now be conducted in an 'easier and swifter form' (Council 2001b). A few weeks later, this is precisely what happened in the case of the FATF that extended its recommendations and monitoring on money laundering to the fight against terrorism (Gardner 2007).

Yet the EU peer review process could not be so easily set to a new purpose. At the time, only a minority of EU member states had specific counterterrorist legislation and associated institutional processes, so that the scope of evaluations was unclear. The sensitivity of the issue area raised further questions. For instance, it could not be taken for granted that national intelligence services would become subject to an external EU evaluation, even if only an informal and intergovernmental one. Thus, it took nearly a year for the EU Council Secretariat to send out a first standardised questionnaire to survey existing national counterterrorism provisions. While this followed the standard FATF peer review practice at the beginning of a review process, the lack of common knowledge base in this issue area was striking, since the Terrorism Working Group, based at the EU Council of Ministers, had been in existence since the early 1980s. So despite regular and long-standing information exchanges on specific terrorist incidents and countermeasures and the dense institutional interaction in the EU, member states had no systemic or structural understanding of each other's level of defenses.

A new legal basis for the peer review had to resolve further questions, such as the scope for national visits or the inclusion of the Commission (Council 2002). So instead of completing a simplified' review by the end of 2002 as originally intended in the aftermath of 9/11, a more complex and politically sensitive process was barely put together by then. By early 2003 the analysis of the first questionnaire (Council 2003a) underlined how difficult it would be to proceed with a coherent and meaningful review process. On the one hand, the questionnaire provided a perceptive summary of legislative, institutional and operational arrangements in different member states, which had hitherto been lacking. On the other hand, this systemic perspective across the EU underlined the persistent differences between those member states that had experienced terrorism prior to 9/11 and those that had not. Moreover, these differences were not only a matter of intensity or degree on a scale of commonly accepted set of counterterrorism policies or instruments, but reflected varying approaches to state-society relations or division of competences within each member state.

To reduce complexity, EU interior ministers agreed to narrow the scope of the peer review to the use and exchange of information by both police and intelligence services. This could be seen as a very reasonable choice, as information exchange is critical to international counterterrorism cooperation. Moreover, the inclusion of security actors beyond the police made inherent sense and went far beyond formal EU competences, so that the informal and intergovernmental peer review could develop strong complementarities to EU security legislation. Yet precisely for this reason the peer review essentially had to start from scratch again. The Council Secretariat resorted to a second very extensive questionnaire while simultaneously asking the member states to catch up on the delayed review process (Council 2003b).

This critical reliance on self-reporting accentuated the gap between inexperienced and experienced states in the fight against terrorism. The latter could present their existing structures and processes

as effective or efficient to EU institutions that had never worked before on these issues, whereas the former could only promise to continue to build up their counterterrorism machinery after 9/11. It was not evident how meaningful quality or 'best practice' criteria that went beyond the simple recommendation to collect and exchange more information could emerge. In short, the first steps of the peer review simply consisted of a top-down and formalized information-gathering and reporting process. This improved the knowledge base of EU institutions and the Terrorism Working Group in Brussels, but was not designed to lead to changes or learning at the national level. At best, the peer review supported the establishment of a counterterrorism 'frame' – i.e. a legitimacy-seeking form of learning to demonstrate external commitment – in relation to a wide variety of security arrangements that had been very unevenly affected by the events of 11 September.

The next step of the process, i.e. mutual on-site evaluations, should address these deficits. Mixed peer evaluation teams of two national experts, and one representative each from the Commission, Council Secretariat and Europol should visit each country for two to four days to prepare a detailed evaluation report. However, from mid-2003 onwards the concern with terrorism had already declined substantially among many member states, as evidenced by the growing implementation gap of EU's official Action Plan on Combating Terrorism. This declining interest also reflected in the peer review. Visits were scheduled to take place over more than a year, while the Terrorism Working Party did not invest more time to oversee the coherence and consistency of the results. As a result, the first national evaluation reports were very different in terms of sheer size and content, which mostly reflected the original response to the questionnaires.²

The Madrid terrorist bombing in March 2004 were therefore critical for pushing the first peer review beyond a general stock-taking exercise with little common analysis or standards. Shocked by the scale of the attacks the European Council underlined the direct connections between national and EU-wide security and urged member states to implement the existing counterterrorism agenda since 9/11. The new EU Counterterrorism Coordinator (supported by the Council Secretariat) rushed to present preliminary findings of the peer review, which spoke of the unresolved status or political objectives of the review. The report argued against a "one size fits all" approach, but also stressed that the EU should "stimulate" member states to cooperate better (Council 2004, 3).

The EU's Eastern Enlargement in early 2004 added to the political pressure to come up with a more coherent and credible approach. While the new member states had to reform their police and judicial system and step up border security before accession, the fight against terrorism had mostly been raised in diplomatic declarations (stressing international solidarity or support for the US). Given that none of the new member states had significant experience with terrorism within its borders, such declarations could not be taken as a reliable indicator for national security measures. To address this possible gap in European defenses, the Terrorism Working Party promised an accelerated review of all new member states (plus the accession countries of Romania and Bulgaria) and began to set out a number of general recommendations that should be respected by all member states.

By summer 2005 another serious terrorist attack in London underlined the salience of the threat. In this context, the peer review continued to attract political interest and concluded on a set of structured recommendations. These were furthermore structured into 1) 'core recommendations' that concerned operational coordination, management and sharing of information; 2) 'other significant recommendations' that related to the legal bases and use of intelligence, communication system and

² Interview with national official, February 2011.

consequence management; and recommendations 'for action at EU level' to improve cooperation with bodies, such as Europol or the Situation Centre (Council 2005a). On paper, this coherent set of recommendations provided a concise yet flexible formulation how national and European structures in the fight against terrorism could work in a more streamlined manner.³

3.3. Exploring impact of the first review

From a political perspective, the formal endorsement of these recommendations by the Council of Ministers (2005b) clearly shifted the peer review to a compliance model. Each member state would present its response to the national evaluation report to the TWG, while the Counterterrorism Coordinator drew up a 'scoreboard' to tracing the implementation record of all recommendations across all member state.⁴ By 2007 the follow-up reporting underlined the 'positive attitude' that prevailed during the peer review, and claimed that the processes contributed to more coherent and effective counterterrorism arrangements across Europe (Council 2007a). Although some recommendations were declared 'not relevant' by a number of member states, the scoreboard instrument indicated a near perfect implementation record of 95%.

Unfortunately, for this paper it was not possible to get access to a representative set of national officials from different EU member states who participated in the peer review.⁵ Still, a few interviewed experts partially confirmed this positive assessment. In particular, a senior and experienced representative from a new member state explained that the review report helped to promote a number of difficult dossiers at the national level, notably with regard to the creation of common data bases on terrorist suspects and provisions for retention of telecommunication data.⁶ Four experts from large member states similarly regarded the review in congruence with national reforms to improve information-sharing and coordination mechanisms, but would not impute a direct causality to the EU peer review.⁷

A recent independent survey on the creation 'fusion centres' or related coordination structures, which aim to integrate different data sources on terrorist threats, provides further evidence of a related convergence of national counterterrorism arrangements in Europe (Comite 2010). To be precise, peer review did not explicitly call for the creation of such centres, but recommended the flexible and streamlined use of threat assessments, intelligence and police information as is practiced in fusion centres.

Yet this should not be taken as direct evidence of the impact or significance of the peer review. Studies on policy convergence and diffusion face profound methodological and argumentative challenges with regard to multiple and overlapping causality (Holzinger, Jörgens et al. 2007). In addition, the historical survey of this paper cannot be squared with a research design that would systematically separate the influence the peer review from other external event or variables. Future studies could focus on an individual recommendation of the peer review, namely facilitate the use

³ The content of the recommendations is discussed from a more critical angle below

⁴ Such scoreboards had already been widely used with regard to key legislative measures of the EU's counterterrorism agenda, such as the European Arrest Warrant.

⁵ Many member states would not publish the name of relevant experts in their national representations in Brussels or national ministries. Personal inquiries through the EU Terrorism Working Groups led to the identification of approximately eleven experts of which five were willing to be interviewed off-the-record.

⁶ Interview, March 2011

⁷ Interviews, February 2011

of special investigative techniques and the use of intelligence in court, and trace its diffusion through the EU and other international organisations on the member states.⁸ Empirical data may also be improved by identifying additional national experts who participated in EU peer reviews, or by obtaining further declassifications of national review reports.⁹ New data and alternative research designs may then lead to more precise assessments of the impact of peer reviews, or the influence of the EU on national counterterrorism policy.

What already emerges at this stage is that the formal implementation record of the first EU peer review needs to be questioned. The overall figure of a 95% success or implementation rate is not credible. This is mostly clearly the case with regard to the last set of recommendations that focuses on the cooperation between member states and European bodies, where one can draw on alternative sources for information and one can exclude an overlap of purely domestic reform discussions. For instance, a later peer evaluation on the exchange of criminal intelligence between member states and Europol that was conducted under the aegis of the MDG highlighted serious and persistent difficulties (Council 2007b). Given that information on terrorist cases is even more difficult to handle, one can take this as evidence for the superficial reporting of the scoreboard. Similarly, the recommendation to cooperate with the Police Chief Task Force had little practical relevance as this body was dissolved due to its widely acknowledged ineffectiveness after the ratification of the Lisbon Treaty. Last but not least, even the former director of the EU's Situation Centre admits that the EU remains be cut off from most sensitive intelligence (Shapcott 2011).

Various recommendations of the peer review that were directed at the national level also lack credibility. Generally speaking, member states' inputs to the Council Secretariat scoreboard could not be cross-checked by further on-site visits. This invited over-optimistic reporting and framing effects in order not to be singled out as a laggard. And while a high level of flexibility is essential for exploiting the advantages of soft governance instruments, various recommendations were simply too hazy to be meaningful. For instance, recommendation eight stated that all national police forces should be 'fully engaged in the fight against terrorism and receive appropriate training'. In absence of any further specification of such an engagement or training, almost any arrangement could be presented as compliant. And even if one assume good faith, a managerial perspective on compliance would highlight that comparatively weak states would require external assistance to meet new demanding benchmarks. No related programme, such as the exchange of liaison officers and training programs, was promoted in the Terrorism Working Party to back up the formal scoreboard.

3.4. The second peer review

The following second peer review reflected the ambiguous outcomes of the first round. The review process itself was regarded as a model that should be continued, but without a clear sense whether learning or compliance aspects should stand at the forefront. Common standards had formally been put into place by the first review and not been challenged by a new major terrorist attack. Therefore, a more open-ended learning and exploration process for future policy development could

⁸ For instance, the NGO Statewatch (2005) claimed that the use of intelligence and special investigative techniques was first and foremost promoted through the G8. Further remarks on research prospects are raised in the conclusion.

⁹ Researchers from other national backgrounds may be able to access a larger or different range of experts than were contacted for this paper. Further declassifications are also likely with the simple passage of time, or by contesting the decision of the EU Council to withhold information. Experience shows that this appeal procedure may be successful in a few instances, but also requires long periods of time. The author is currently engaged in one contestation.

be seen as the best way forward. The TWG considered variety of new and technically complex issues, such as the fight against radicalisation or surveillance systems (Council 2007c). Precisely for this reason, however, member states with greater experience in the fight against terrorism saw the advantages of cooperation in a smaller and more informal setting. For instance, the so-called G6 that reunites the Ministers of Interior of the six largest member states discussed various subjects in the fight against terrorism. The new EU Counterterrorism Coordinator reinforced and exploited this dynamic through starting a programme on 'pilot projects' by a few lead states that covered different aspects of the fight against radicalisation.

Eventually, the Terrorism Working Group settled on 'consequence management' that could be defined in relation to terrorism as well as other threats or hazards that were of greater interest to other states. Concomitant discussions on the ratification of the Treaty of Lisbon may have played an additional role in selecting this topic. Once enacted, the Treaty's Solidarity Clause would commit member states to mutual assistance in the case of a serious disaster or terrorist attack. To make this EU solidarity and assistance commitment workable and politically sustainable, each member state would have to be able to handle everything but the largest crisis by itself. This linked to the peer review back to the objective of common standards and mutual monitoring.

The concluding summary report that emerged three years later (Council 2010a) contained another perceptive summary of the diversity of national institutional structures, but also distilled ten recommendations under four thematic headings that covered most core principles of crisis management: 1. adequate structures (advance plans and dedicated crisis management centres), 2. secure and effective communication systems (within and across member states), 3. improvement of cooperation between different sets of actors (crossing civilian and military, cross-border, or public and private divide), 4. communication with the public (for timely incoming and outgoing information, plus reassurance functions).

These recommendations could again be seen as a significant achievement, as they formulated a common EU understanding that reaches beyond formal legal competences. The more speedy conclusion of the review also spoke of the growing acceptance of the peer review process per se, including the stable participation of the EU Commission and the Council Secretariat. Nevertheless, the appearances of an increasing routine and professionalization of the evaluation was misleading. Due to regular rotation of EU officials as well as national experts, participants could not systematically build on previous review experience or on established assessment template. Similar to first review, the Council Secretariat and the TWG relied entirely on national self-reporting through a questionnaire in order to generate primary information. No reference was made to other potential data sources, such as inventory of national civil protection arrangements that had long been developed by DG Environment of the European Commission.¹⁰ As the on-site visit program was also planned and managed by the hosting country, participating experts could do little more than comment on what national administration would already discuss.¹¹ This lack of an external perspective was aggravated by the fact that seconded national evaluators were mostly counterterrorism experts and police representatives, whereas the chosen topic of consequence management could have benefitted from a wider range of participants.

¹⁰

http://ec.europa.eu/echo/civil_protection/civil/vademecum/index.htm

¹¹

Interview with national expert, March 2011. In the specific review this expert participated, this meant that evaluators were drawn into political fights over lead coordination responsibilities of different ministries in times of crisis.

There is further evidence for lack of deeper analysis. As just argued, the second review reflected an ambiguous mix of objectives. On the one hand, the Lisbon Treaty provided for an increased level of interdependence that would speak for more mutual monitoring. On the other hand, the formally successful conclusion of the first review and the absence of a new major attack gave more space to a less political and more open-ended learning process for policy improvement. Thus, the recommendations of the second review were not supported by a new tracking and surveillance mechanism, such as an improved scoreboard or validating visits by the Council Secretariat. Instead, the concluding report was flanked by an annex of 'best practices' in consequence management that should stimulate purely voluntary reforms and improvements at the national level.

Yet again, this annex was not developed in sufficient depth or supported by dedicated processes for supporting cross-national knowledge transfer and organizational learning. It simply presented a wide range of national crisis management structures and processes on the basis of a simple 'copy & paste' from various national reports. These examples followed a political logic whereby every member state was listed in some form or another. Thematic discussions or criteria on how to assess a national institution or process as 'good' or 'best practice' were simply not present. In fact, many bullet points contained very little information or remained deeply embedded in particular national contexts (complete with national acronyms).

Beyond the peer review report itself, the TWG was not in a position to set up or maintain dedicated networks to distil findings and disseminate them via training programs. Even after the ratification of the Lisbon Treaty the EU's institutional machinery in the fight against terrorism remained overly fragmented (Argomaniz 2009), so that the Council working group that is mainly responsible for crisis management (PROCIV) simply failed to take notice of the evaluation process. At the time of writing, it was also too early to tell whether the Council of Ministers would pick up on the findings in the context of the EU's Action Plan to deal with weapons of mass destruction that would constitute the biggest challenge for coping with serious or disastrous terrorist attacks. A recent discussion paper by the EU's Counter-terrorism Coordinator reflects the ambiguous state of this policy field, noting that available funding is "only being used to a small extent" and that "not all member states attend CBRN related meetings" (Council 2011, 12).

Again, future studies could follow up on the medium-term impact of the second peer review, and draw on national review documents that remain classified for the time being, but may be released in a few years. Greater transparency may also be triggered by a further professionalization of the peer review process, as is discussed below in relation to peer reviews in the wider area of EU criminal justice cooperation.

3.5. Further developments of the peer review instrument

In sum, the two peer reviews in the fight against terrorism suffered from a lack of focus on either learning and compliance dynamics with regard to the scope of the review. Moreover, beyond identifying new standards or best practices, the reform objectives of the peer reviews remained overly dependent on external political conditions, and suffered from a lack tailored flanking measures for administrative capacity building or knowledge management. This interpretation can be corroborated by parallel developments as well as future prospects of the peer review process in the area of counterterrorism and EU internal security.

In 2008 Slovenia proposed to extend the recommendations of the first peer review to the Western

Balkan states (Council 2010b). This clearly followed the experience of the new member states, when the prospect (or recent experience) of accession could be leveraged to induce reforms. While an inflow of Mujahidin had been a concern during and in the aftermath of the Bosnian war, after 9/11 the US had already exercised its influence to address the most significant cases. By 2008 the Western Balkans could therefore be expected to satisfy the recommendations of the review by creating a few formal institutional and legal processes. Nevertheless, Western Balkans merely indicated their intentions to take the required steps, whereas the most advanced state on the road to accession, Croatia, failed to take part. This weak impact indicates that peer reviews on the fight against terrorism are unlikely become an established part of the EU's external security governance in its neighbourhood. This especially applies to countries where the fight against terrorism remains a sensitive domestic issue, such as Turkey or Algeria.

In contrast, the EU Counterterrorism coordinator recently suggested a new peer review in the area of cybersecurity on the grounds that an 'FATF' approach would generate more innovative and flexible standards (Council 2010b) that could match the dynamic and global nature of the internet. Yet as just argued, if common learning and best practice development in a new issue areas should stand of the forefront, a peer review among all twenty-seven member states may not be the best place to start. To put it bluntly, what would Germany, for instance, expect to learn from evaluating cybersecurity arrangements in Cyprus? Conversely, why would an effective discussion process exclude the US that remains the central hub for internet traffic? It seems that EU policy-makers still have to formulate a more sophisticated understanding of the divergent objectives of peer reviews in contrast to other forms of soft governance or pilot projects among the most capable member states.

Such an understanding seems to have only emerged in other areas of EU Justice and Home Affairs cooperation that do not relate directly to the fight against terrorism. While there have been strictly 'bottom-up' and learning-oriented peer reviews between a subset of EU member states on matters of police cooperation (Adang 2008), the trends at the EU levels points to more compliance-related evaluation of specific legislative instruments. For instance, the fourth peer evaluation by the Multi-disciplinary Group on Organized Crime focused on the implementation of the European Arrest Warrant, whereas the fifth round surveyed a number of instruments in the fight against money laundering and financial crime. This technical focus as also allowed for detailed technical analysis beyond general survey data and prolonged expert discussions. These national review reports in these areas have also become increasingly accessible in the public section of the EUs online register of policy documents.

Peer reviews in the general field of criminal justice cooperation have furthermore been strengthened with the ratification of the Lisbon Treaty and the institutional reform of Justice and Home Affairs. The MDG was dissolved and split into two different working groups, one dealing with law enforcement, another with general affairs and evaluation. It remains to be seen whether a similar approach that promotes technically complex and sustained evaluation can be brought to bear on the EU's core counterterrorism legislation, such as in aviation security, regulation on explosives (and precursors) or the application of the revised framework decision on combating terrorism.

4. Conclusions

The first peer review on national counterterrorism arrangements in Europe emerged in an ad hoc manner on the basis of existing practices of the FATF and the early integration stages of the Area of Freedom Security and Justice. Even though the conduct of the review was more challenging than originally envisaged, it supported or provided more information on national reform processes in the aftermath of the Madrid and London bombings as well as Eastern enlargement. Eventually, the evaluation scoreboard led to the formal conclusion that all member states had set up some basic arrangements in the fight against terrorism. As cycles of mutual distrust can be an endemic feature of international counterterrorism efforts, this symbolic reassurance and mutual reporting on national security arrangements should not be underestimated.

Otherwise, the EU peer review had less impact than corresponding efforts by the FATF to achieve greater international compliance with a fixed set of recommendations in the fight against terrorism. Member states did not face the prospect of public shaming or blacklisting, while national evaluation reports remained largely based on self-reported data. A less intrusive approach may be inevitable when one moves from relatively technical and abstract regulation – as in the case of financial instruments – to more operational structures and processes of security authorities. Thus, one may also conclude that the EU's peer review in the fight against terrorism were better than nothing.

The second round of the peer review, which could have improved on the initially improved nature of peer reviews or accentuated a more learning-oriented approach, also displayed serious deficits. It provided a better thematic focus that was more manageable and appealing to all member states. However, the second review did not improve reporting and monitoring processes, or substantiated the exchange of best practices by more comprehensive data collection, knowledge management and training effort. In fact, from a learning perspective the review accentuated existing deficits, such as the designation of review participants on the basis of an equitable participation of all member states and EU institutions, which partially stood at odds with the required technical expertise. And once the shock of the Madrid and London bombings had subsided, the Terrorism Working Party remained just one component of the EU's fragmented counterterrorism machinery, so that the results of the second review could not be expected to set off wider reforms or policy-discussions.

Generally speaking, this paper has only presented a first explorative analysis of peer reviews in European security governance. The EU make extensive use of peer reviews in other issue areas of internal security, ranging from operational police cooperation over the prosecution of financial crimes to the new policy field of cyber security. To date, none of these peer reviews have attracted more than cursory attention by researchers, whereas they could provide for interesting comparative analyses and highlight new dynamics of European security governance beyond formal EU legislation. For instance, the varied interaction patterns of national professionals and EU officials during these peer reviews could serve as a rich case for socialisation studies or for the construction of expert authority by international organizations. Once more empirical details about these peer reviews have been documented, one should also develop alternative research designs or theoretical approaches to explore their effects. As argued above, one could trace and isolate the impact of one or two significant recommendations across all member states. This could tie in with the well-developed literature on the use of conditionality for new member states or externalised security governance in the EU's neighbourhood.

From a normative perspective – which would also deserve more academic attention - peer reviews in matters of EU internal security require greater publicity and transparency. Given the changed

decision-making arrangements after the Lisbon Treaty, EU policy-makers should take the views of the European Parliament or other judicial actors into account. A more open and standardised EU review process could take on an even greater importance, as member states have hitherto failed to develop alternative evaluation mechanisms for national counterterrorism policies.

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