COUNTERTERRORISM 129 IN EXTERNAL ACTION

THE EU'S TOOLBOX FOR RESPONDING TO TERRORISM ABROAD

Teemu Sinkkonen

FIIA BRIEFING PAPER 129 ▪ May 2013

ULKOPOLIITTINEN INSTITUUTTI
UTRIKESPOLITISKA INSTITUTET
THE FINNISH INSTITUTE OF INTERNATIONAL AFFAIRS

COUNTERTERRORISM IN EXTERNAL ACTION

THE EU'S TOOLBOX FOR RESPONDING TO TERRORISM ABROAD

Teemu Sinkkonen
Researcher
The Finnish Institute of International Affairs

FIIA Briefing Paper 129
May 2013

- The Algerian hostage incident in January 2013 was a good example of the type of terrorism that Europeans are likely to face at the moment: the target was a multinational energy plant in the European neighbourhood, the motives were both political and economic, and the perpetrators were part of a global ideology, but acted in their local interests.

- The EU did not take a political stance nor launch any of the crisis response arrangements during the hostage situation, although both France and the UK were active in the crisis and their citizens were at risk.

- The European Security Strategy has named terrorism as one of the main threats to Europe and the objective is to address the threats abroad as well. This is being achieved through several horizontal tools and institutions that are dealing with terrorism either directly or indirectly. However, the structures are complex and bureaucratic, which demands a lot from coordination.

- Hypothetically, the solidarity clause could also be used in some special crises in mobilising policing capabilities abroad in order to assist those EU member states that do not have such resources, but so far the clause has not been tested. Another option would be further integration regarding police forces and intelligence services.

- Good bilateral relations are the best tool for preventing terrorism in the European neighbourhood. Special attention needs to be paid to the Euro-Mediterranean Partnership countries due to recent political change and armed conflicts that raise the risk level in the region.

The European Union research programme
The Finnish Institute of International Affairs

ULKOPOLIITTINEN INSTITUUTTI
UTRIKESPOLITISKA INSTITUTET
THE FINNISH INSTITUTE OF INTERNATIONAL AFFAIRS

On January 16, 2013, a loosely al-Qaeda-affiliated group called the "Masked Brigade" attacked a Tigantourine natural gas facility at In Amenas in South-East Algeria close to the Libyan border. The facility was jointly operated by the Algerian state oil company Sonatrach, the British firm BP and the Norwegian company Statoil. The perpetrators took over 800 hostages, among them roughly 130 foreign nationals, and demanded that France should end its military operations in Mali, that Algeria should not allow French military planes to use its airspace, and that a number of Islamist prisoners should be released. None of these demands were met. Instead, the Algerian Special Intervention Group initiated a rescue operation on 17 January using heavy weaponry such as helicopter gunships. The operation was finally over two days later. During the whole episode, 67 people were killed, among them 29 perpetrators, 1 Algerian civilian and 37 foreign nationals.

The In Amenas hostage incident was not a major terrorist attack in the heart of Europe, such as the attacks in Madrid and London in 2004 and 2005 respectively, which provided important momenta for European states and the EU to enhance their role in counterterrorism both internally and internationally. However, the incident was a good example of the terrorist threat that is currently being posed against Europeans and European interests for several reasons: 1) Unresolved political changes and conflicts in North Africa and the Middle East and the repercussions of Libyan arms spreading in the area increase the likelihood of terrorist attacks and kidnappings involving international targets in the European neighbourhood. 2) The perpetrators were a typical example of a contemporary Islamist group: It is loosely linked to al-Qaeda's global ideology, but due to a lack of global leadership, its interests were more local than global. Besides political activism, the group was involved with the illegal trafficking of weapons and drugs. 3) Since the target was multinational and involved both economic and political interests, it clearly reflects the complexity of the stakeholders and the dimensions of the effects caused by the crisis.

Due to the typical nature of the attack and the perpetrators, it is interesting to analyse the crisis response to the In Amenas case from the perspective of the EU. Terrorism was named as one of the major threats in the EU's Security Strategy (ESS) back in 2003 and it was mentioned in the strategy that the "first line of defence" is often outside European borders. Since then, the EU has become a significant international actor on the normative aspects of counterterrorism, but it has been criticised for being a "paper tiger".[1]

However, it should be remembered that the EU's actorness in counterterrorism is in its infancy and is still developing[2], and the EU's role is limited to coordination and external action. The achievements are mostly at a legislative and strategic level, but at the operational level counterterrorism relies almost entirely on the responsibility of individual member states. In the light of the In Amenas case, this seems to be true: Despite the individual responses of some member states, the relevant EU institutions remained silent during and after the hostage episode.

This raised some big questions regarding the role of the EU in counterterrorism, especially concerning its External Action Service (EEAS): Should the High Representative and her cabinet have responded, and how? How to coordinate the multiple national and private interests and stakeholders in a complex international situation, especially when it happens outside European borders? How can the EU implement the main principles of its counterterrorism strategy, prevention, protection, pursuit and response in its external action? In order to answer these questions, it is necessary to take a closer look at the EU's crisis response arrangements, the EEAS and the European counterterrorism coordination.

European crisis response

Since the hostage incident took place in Algeria, it was natural that the Algerian authorities would take care of the rescue operation themselves. Algeria is an important ally of the Western counterterrorism efforts and it was known to be a hardliner regarding terrorism, so the response of not conceding to the demands and a quick military rescue operation were expected. However, many of the affected states, particularly the USA, the UK, and Norway were

1 Bures, Oldrich, *EU Counterterrorism: A Paper Tiger?*, Ashgate, London, 2011.

2 Brattberg, Erik, Mark Rhinard, "The EU as a global counter-terrorism actor in the making", *European Security*, 21 (4), 2012, pp. 557-577.

critical about launching a military rescue operation without any consultation with the affected countries. Both the UK and the USA also offered operative assistance, but it was rejected at the beginning of the rescue operation. A high number of casualties in the rescue operation only fuelled the criticism[3], but since Algeria is an important oil and gas provider, the criticism was quickly muted.

In the aftermath of the hostage incident, the UK sent a rapid response team including counterterrorism experts to Algeria in order to advise the Algerian forces on catching those perpetrators that managed to escape despite the heavily armed rescue operation, and to help the British survivors. Similarly, French and American special forces participated in hunting down the mastermind of the hostage incident, Mokhtar Belmokhtar, in Mali and Chad. France and the UK had their national interests at stake and they did have the capacity to respond operatively to the situation, which only serves to underline the fact that not all European countries are equally able to protect their citizens abroad. For example, Norway raised the issue of enhancing military and civilian cooperation in the Nordic Council on April 11, 2013, arguing that the Algerian case is a good example of an asymmetric threat and that such threats also need to be considered when developing the security policies between the Nordic countries.[4]

The EU did not respond publicly to the Algerian incident. Despite the non-response, the case provides a good reminder of the ESS and a moment to analyse the capability to address the threats outside the EU, as stated in the Strategy. Since the Security Strategy was created, several advances in EU counterterrorism have been made. The Lisbon Treaty provided an umbrella for the EU's goals on terrorism, calling for coherence and consistency in EU external action in Common Foreign and Security Policy Articles 21 and 26, whereas "closer cooperation between police forces" was mandated in Article 29 of the Treaty of the Functioning of the European Union and "common action on judicial cooperation in criminal matters" in relation to terrorism in Article 31.

3 http://www.nytimes.com/2013/01/18/world/africa/limits-of-algerian-cooperation-seen-in-rescue-effort.html

4 Nordic Council statement, April 11, 2013, retrieved April 22, 2013, http://www.norden.org/fi/pohjoismaiden-neuvosto/asiat/dokument-3-2013

Counterterrorism in external action

The EU's counterterrorism strategy is divided into four principles: prevent radicalisation and terrorist recruitment, protect citizens and infrastructure from terrorist action, pursue and investigate terrorist organisations and individuals, and respond to a terrorist attack minimizing its harmful consequences.

Most of this counterterrorism work falls under the responsibility of the EU member states, and the role of the EU is limited to coordination and external action. The Lisbon Treaty did not outline the space for EU collective action abroad regarding counterterrorism efforts, but the natural focus of the EEAS is to take care of the formulation and promotion of EU positions, partnerships, coordination and assistance *vis-à-vis* third countries also in the area of counterterrorism. It includes liaison with international institutions such as international aviation and maritime organisations, any terrorism-related aspects concerning the CSDP missions, and the terrorism-related activities of the EU delegations. Such activities can either be directly related programmes such as radicalisation prevention programmes, or indirectly related in the form of promoting democracy, stabilisation, the Rule of Law, and so forth.

In the EEAS itself, counterterrorism is not limited to actors that deal with Security Policy, but terrorism can cross over geographical desks, policy divisions, the EU Intelligence Analysis Centre (IntCen), EU Delegations and EU Special Representatives.[5]In addition to this already complex bureaucratic and institutional labyrinth, member states still have their own institutions regarding counterterrorism, which in many cases are also active outside the EU's external borders. This has traditionally limited rather than given added value to collective EU action against terrorism, since it has prevented deeper integration in some sectors of counterterrorism, most of all regarding the intelligence services. Seeing the Algerian incident as a reflection of the EU's capabilities in external action, the focus here is on the four principles of counterterrorism in external action.

5 Balfour, Rosa, Alyson Bailes, Megan Kenna, "The European External Action Service at work: How to improve EU foreign policy", European Policy Centre Issue Paper, 67, 2012.

Prevention

From the point of view of prevention, the most relevant tools that the EU's external action has are related to the bilateral relationship of the EU with neighbouring countries, and they are implemented through the EU delegations and Special Representatives. In Northern Africa and the Middle East, the EU's neighbourhood programme is called the Euro-Mediterranean Partnership (EMP). Prior to the Arab Spring, the programme was often criticised for prioritising security and stability over developing democracy and promoting Human Rights.

However, since the Arab Spring, circumstances have become even more complicated because of the conflicts in the area and the volatile political changes towards democracy. As a consequence, the EU has encountered problems over how to position itself with the rise of moderate Islamism in the democratic processes[6], especially since the Islamism question was a very difficult topic to discuss with the Arab countries even before the Arab revolutions.[7] However, the ongoing changes in the region are precisely the reason why the EU should become more engaged with the region, since they offer a window of opportunity to overcome the earlier dilemma of democratisation vs. stabilisation, and losing importance in the area would only complicate crisis management in cases like the hostage incident.

Traditionally, the EU has been most successful in using normative and economic power. Therefore the most common areas for enhancing cooperation in bilateral relations are, for example, related to the legal aspects and stimulating economic growth and trade cooperation. The EEAS can help in transferring expertise on the institutions related to the Rule of Law, which is essential in tackling the root causes of terrorism together with supporting a well-functioning democratic political system. This includes strengthening police and judicial systems, which again is not only related to prevention, but also to response.

That brings us back to the Algerian case. Algeria did well in its response to the hostage situation in every other aspect but its communication with the states whose citizens were at risk, and the rescue operation, which in hindsight used excessive force and resulted in too many civilian casualties. With proper preventive cooperation in the form of acting in an advisory capacity and conducting rehearsals with Algerian law enforcement authorities, similar incidents could perhaps be dealt with more delicately in the future, or there would at least be more established liaison and communication with the relevant authorities.

Similar cooperation is already ongoing regarding emergency services and crisis response. Together with the neighbouring countries, the EU has Prevention Preparedness Response to Natural and Man-made Disasters programmes (PPRD), which are targeted at supporting the programme countries in the civil protection mechanisms through training, financing, rehearsals, providing advice, monitoring and other similar activities. Through the PPRD programmes in the EU's Southern and Eastern neighbourhoods, the emergency services should be better able to respond to crises and also, when requested, to cooperate together with relevant European structures also in the case of man-made disasters such as a terrorist attack.

Regarding the financial aspects of preventive work, instruments already exist in the EEAS, such as the Instrument for Stability (IfS), which could perhaps be used. The IfS was designed for conflict prevention, crisis management and peace-building, and it includes a budget for both short-term and long-term implementation.[8] There are also tools that are related to terrorism prevention indirectly, such as promoting a democratic political system and general welfare. Such tools are normally implemented in the target countries by the EU delegations. Since the Arab Spring, the EU has presented a so-called "money, market access and mobility policy" in the Euro-Mediterranean Neighbourhood, which offered the cooperating countries more resources for more cooperation.

6 Behr, Timo, "EU Foreign Policy and Political Islam: Towards a new Entente in the post-Arab Spring Era?", *The International Spectator*, 48(1), 2012, pp. 1-14.

7 Behr, Hartmut, Lars Berger, "The Challenge of Talking about Terrorism: The EU and the Arab Debate on the Causes of Islamist Terrorism", *Terrorism and Political Violence*, 21, 2009, pp. 539-557.

8 Balfour, Bailes and Kenna, 2012.

Protection

The EU's external action in protecting citizens and infrastructure means providing practical assistance in border management and transport, and having properly functioning international protocols regarding them. A good example of this in the context of counterterrorism was the Yemen cargo incident in October 2010. Two explosive devices were shipped from Yemen with a destination in the USA, but before they reached their destination, one was intercepted in Dubai and the other in the UK.

The EU Commission responded both internally and internationally through enhanced inspections of air cargo transport and by improving the dialogue in relevant international fora, for example with the EU–US Transportation Security Cooperation Group, and directly with third countries. During the inspections, the EU allowed the deployment of security scanners and increased security measures, and several shortcomings in implementing the rules were identified. However, the work that is related to protection in external action is largely preventive or responsive from the European perspective, meaning that assisting other states in protecting their citizens more efficiently has an indirect effect on Europe mostly because it helps to prevent terrorism, or it reflects on Europe when something happens and the EU can respond through providing assistance in civil protection.

Another relevant protection method is related to migration flows and passenger name records (PNR). The idea is to prevent known terrorists from entering EU territory and to issue alerts about potentially dangerous persons. However, this idea cannot be put into practice easily due to opposition from many political parties that see the sharing of PNR with third countries, for example, as breaching the current legislation on privacy, non-discrimination and protection of personal data. Despite an existing agreement on sharing PNR with the USA, in April 2013 the European Parliament voted down the European Commission's proposal to use PNR in criminal investigations, including terrorism offences.

Similarly, the securitisation of immigration has been criticised for treating immigrants as a security threat. However, many member states do have a surveillance and intelligence outreach to their embassies and consulates abroad, so they can check the backgrounds of people wishing to enter their countries. The European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union, Frontex, is following the same principle by extending the border control even further from the physical edges of EU territory through surveillance operations such as HERA II on the West African coastline in 2006.

Pursuit

Regarding the "pursuit" aspect of the EU's counterterrorism policy, the EU is currently relying on the member states and their capabilities. These capabilities have recently undergone a peer review process, where a group of counterterrorism experts have assessed the structures and functions of each member state.[9] The EEAS has its own Situation Centre that monitors world events, and IntCen, which analyses the information gathered, but they are dependent on the intelligence provided by the member states or other international actors such as NATO.Similarly, Europol is more of an information hub than a "federal police force" of the EU. Hence, investigating terrorists once again relies on bilateral relations with the relevant countries and on international agreements, such as the database of Passenger Name Records that facilitates information sharing between countries.

However, the EU also has military and policing capabilities that can be used for counterterrorism outside the EU's borders in the framework of crisis management, which is part of the Common Security and Defence policy (CSDP). Again, these capabilities are dependent on the member states since they provide experts from their national institutions. Since the terrorist attacks on September 11, 2001, the CSDP has been linked to the EU's framework documents related to terrorism, but the executive aspects of counterterrorism have rarely been a direct part of the CSDP operations in practice.[10]

9 Bossong, Raphael, "Peer reviews in the fight against terrorism: a hidden dimension of European Security Governance", *Cooperation and Conflict* 2012, 47, pp. 519–538.

10 Oliveira Martins, Bruno, Laura Ferreira-Pereira, "Stepping inside? CSDP missions and EU counter-terrorism", *European Security*, 21 (4), 2012, pp. 537–556.

A notable exception to the rule is Operation Althea in Bosnia and Herzegovina, which inherited its executive mandate from NATO when the operation was handed over to the EU in 2004. The type of CSDP operation and the executive versus strengthening mandates have a direct effect on the capacity to investigate and operate in the operation area, but even without an executive mandate, a CSDP mission can be used in the prevention of terrorism through strengthening the national structures of the targeted country.

The gap between counterterrorism rhetoric and implementation can be explained by a general lack of concrete counterterrorism objectives and by an emphasis on the internal aspects of counterterrorism, which have given the external action a secondary role.[11] Another reason might also be that while the European military forces are unified in most aspects in order to be NATO compatible, police forces are different in every member state, which makes the cooperation challenging. Since the European perspective on counterterrorism has always placed emphasis on policing rather than military measures, having an executive police mission might be a great challenge for the EU until the police forces are made equally compatible across the member states as the defence forces have been through NATO, or until a European "federal" police force is established.

There was no CSDP mission in Algeria, which ruled out its use in the hostage incident with regard to both prevention and pursuit, but the role of the CSDP in similar cases should not be underestimated for two reasons: First, there was an ongoing French military operation, Operation Serval in Mali, which, despite not being an EU operation, involved several EU member states and a capacity-building mission in the Nigerian Sahel. Second, preparations were already underway for a Libyan CSDP operation and for a training mission in Mali. The spill over of the Algerian incident to these areas underlines the need for a good regional security policy approach regarding the CSDP operations as well. Admittedly, the CSDP is not designed for a rapid response to a single incident and the military rapid reaction capacity, the EU battle groups, is not a tool for counterterrorism operations either. Yet, CSDP operations can even now contribute to the prevention of terrorism wherever the operations take place and, given the political will, "pursuit" capabilities could even be deployed more in CSDP operations, with the possibility for rapid reaction in pursuit being developed.

11 Ibid.

Response

The last dimension of counterterrorism is the response to a terrorist attack. Again, the main responsibility lies with the member states, but there are also structures that can be used at the EU level, if deemed necessary. In practice, when something significant happens that could require the activation of the EEAS, a Crisis Platform is activated under the leadership of the HR. The platform provides the EEAS and Commission services with clear political and/or strategic guidance for the management of a given crisis and decides whether a specific crisis requires the highest level political response or not. When necessary, the platform can bring together both military and civilian crisis management instruments.

The Crisis Platform is mainly aimed at really important cases and conflicts that do require a common EU stance. The Algerian incident was not considered to be such a case. However, there are more established institutional structures in the European Commission for crises that do not require the response of the HR, but which can be dealt with directly through the responsible emergency response structures. Apart from an internal crisis, the Commission can respond to a crisis that happens anywhere in the world at the request of the country that is facing the crisis in order to provide aid for civil protection, in terms of evacuation, search and rescue, for example. This assistance does not involve the police or the military, but it can also be launched in the event of a terrorist attack. In theory at least, the EU could have sent a group of experts to take care of the victims of the Algerian hostage incident. This tool could also be developed to provide assistance that requires police or military experts in emergency situations, since the CSDP structures are not meant for short-term crisis response but for crisis management with a long perspective.

For the highest level crisis response, there is Article 222 in the Lisbon Treaty, the so-called "solidarity clause", as it codifies the political commitment to mutual aid in the event of crises, including terrorist attacks: "The Union shall mobilise all the

instruments at its disposal, including the military resources made available by the Member States" to prevent, protect and assist member states in the event of a crisis.

The mobilisation is dependent on a request by the political authorities of the member state that is facing the crisis, and when it requests assistance, the member states should coordinate the action in the EU Council. Furthermore, "the arrangements for the implementation by the Union of the solidarity clause shall be defined by a decision adopted by the Council acting on a joint proposal by the Commission and the High Representative (HR) of the Union for Foreign Affairs and Security Policy". This gives the HR a "double-hatted" role, since she is responsible both for the external action and for the security policy in relation to crises.

Although the solidarity clause was created with crises occurring in the territory of the EU member states or in international waters or airspace in mind, terrorism is a typical threat that effectively blurs the boundaries between "internal" and "external". A good example of where the solidarity clause could hypothetically be used in relation to an external threat would be if a terrorist plot against a specific member state was uncovered outside the EU, the threat was regarded as imminent, and joint action was deemed necessary to prevent it from taking place on the territory of the targeted member state.

However, the question remains of how to use the military and police instruments in such a case, and whether the action would be limited to coordinated diplomacy. Since many member states have their own security forces available for international operations, it would give much-needed leverage to smaller states facing incidents like the one in Algeria if those capabilities were at hand through the solidarity clause, as the EU does not have its own instruments for such cases. As the clause has not been tested in practice, the question remains unanswered.

Conclusions

Good structures and preparedness exist in the EU to respond to a crisis instigated by terrorism, such as the Algerian hostage incident, at least from the civil protection point of view, but the EU can only act at the request of the country that has been targeted. In order to activate the highest crisis response arrangements and the EEAS, the crisis must be considered relevant enough to require the response of the HR and the Commission. The Algerian incident did not cross this threshold and the EU did not take a stance, while France and the UK were active as individual states. Since Algeria responded in a coherent manner, that is to say by not negotiating or conceding to the demands of the perpetrators, the decision not to respond was correct and it respected the sovereignty of Algeria. Only the number of civilian casualties and poor communication provoked some criticism internationally.

Nevertheless, the Algerian incident was a typical example of a current terrorist threat against Europeans, which makes the case significant for reflecting on how to develop and improve the EU's capabilities for counterterrorist action outside European borders. For the moment, it seems that when it comes to civil protection, the EU has established arrangements that facilitate a quick and coherent response, but outside the sphere of civil protection, European action rests with individual member states.

Currently, the European counterterrorism structures that are related to external action seem to suffer from overlapping structures, institutional complexity and a lack of will for further integration. This demands a lot from coordination in a crisis situation. Furthermore, there are shortcomings especially with regard to the policing aspects of counterterrorism and external action. Inside Europe, the targeted member state takes care of the operative and political aspects of the incident and requests help from the other member states when it deems it necessary. However, when an attack against Europeans or European interests occurs outside, the situation seems to be more complex and politically sensitive.

In the Algerian case, both France and the UK sent their special troops to Algeria and Mali, but that is because their nationals were involved in the incident and they had their own capacity to do so. In the case of a smaller member state, there is no such capacity to send national forces to the location of the incident. Whether the solidarity clause can be used on such occasions in order to mobilise countries with relevant capabilities to provide assistance remains to be seen, until the clause is tested in practice.

Meanwhile, there is another option available: the EU could create a rapid response mechanism that also involves police and even military elements, which could work as focal points for information, assist the local authorities in the crisis response, investigation and pursuit of the perpetrators and safeguard the security of Europeans, if requested or allowed by the targeted state. Good bilateral agreements and programmes like the PPRD are essential in building up such capacity. Special attention should be paid to the Southern neighbourhood, since the armed conflicts and political changes have created higher risks of terrorism, but also opportunities to enhance the relationship with the North African and Middle Eastern states and become a relevant international actor in the area.

The Finnish Institute of International Affairs
tel. +358 9 432 7000
fax. +358 9 432 7799
www.fiia.fi

ISBN 978-951-769-380-6
ISSN 1795-8059
Cover photo: Matt Reinbold / Flickr.com
Language editing: Lynn Nikkanen