

Chapter 20

THE NEXUS BETWEEN EU CRISIS MANAGEMENT AND COUNTER-TERRORISM**Gijs de Vries***

1. INTRODUCTION

In 1991, civil war broke out in Yugoslavia. European leaders initially thought their collective efforts would suffice to contain and resolve the conflict. Luxembourg's Foreign Minister Jacques Poos famously declared that 'The hour of Europe has dawned.'¹ It proved a false dawn. Divided among themselves, and unwilling to risk the lives of their own soldiers, European governments proved incapable of restoring peace to their continent. Instead, the United States and NATO did.

This humiliating experience has prompted EU Member States to strengthen their political and military capacities for joint action. The Common Foreign and Security Policy (CFSP) was established as the Second of the three Pillars of the European Union in the Maastricht Treaty of 1992. It covered 'all questions related to the security of the Union, including the eventual framing of a common defence policy, which might in time lead to a common defence' (Art. J.4(1) TEU). In June 1992, the Ministerial Council of the Western European Union decided that military forces of WEU member states could be employed for humanitarian and rescue tasks, peace-keeping tasks, and tasks of combat forces in crisis management, including peace-making. These so-called 'Petersberg tasks' were included in the European Union's Amsterdam Treaty in 1997. They currently feature in Article 17(2) of the Treaty on European Union. The Amsterdam Treaty also created the post of High Representative for CFSP.²

Having endowed the Union with these competences, Member States realised they had to provide the necessary capabilities as well. In June 1999, the European Council, building on President Chirac's and Prime Minister Blair's St Malo Declaration, declared that the European Union 'must have the capacity for autonomous action, backed up by credible military forces, the means to decide to use them, and a readiness to do so, in order to respond to international crises without prejudice to

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¹ Declaration of J. Poos to the international press, 29 June 1991.

² See the contribution by de Zwaan to this volume.

actions by NATO.³ Six months later, the Helsinki Headline Goal was agreed, aimed at providing the EU with military forces capable of fulfilling the Petersberg tasks, including the most demanding, in operations up to corps level (50,000–60,000 troops) in order to be capable of intervening in any crisis that could occur in an area where European interests are affected.⁴

Meeting this objective has proven difficult. In 2003, the Council had to acknowledge that the EU's capacity remained 'limited and constrained by recognised shortfalls.'⁵ Furthermore, the original objective of meeting the Petersberg tasks had been superseded. In the European Security Strategy, agreed in December 2003, the Union's crisis management objectives had been expanded. In 2004, therefore, a new Headline Goal was set, to enable Member States 'by 2010 to respond with rapid and decisive action applying a fully coherent approach to the whole spectrum of crisis management operations covered by the Treaty on European Union.'⁶ Some important interim steps have nevertheless been achieved. Building on the 2003 Artemis crisis management mission, and following proposals made in February 2004 by the UK, France and Germany, initiatives were launched to enable the EU to deploy forces at short notice. Since January 2007, the EU has the operational capacity to undertake two Battlegroup-sized rapid response operations of around 1,500 troops nearly simultaneously.⁷

The original Petersberg tasks did not include counter-terrorism (CT), and neither did the Amsterdam Treaty. After the attacks on New York and the Pentagon on 11 September 2001, the then Spanish Presidency of the EU argued that the fight against terrorism needed to be added as an additional task for the Union. However, the Presidency's efforts failed to generate the necessary unanimity. Instead, the Seville European Council (June 1992) issued a declaration, stating it had decided to step up the action of the EU against terrorism 'through a coordinated and inter-disciplinary approach embracing all Union policies, including the development of the Common Foreign and Security Policy (CFSP) and making the European Security and Defence Policy operational.'⁸ The Council, therefore, did not explicitly include counter-terrorism as an objective of European crisis management. It took the Union until December 2003, when the Council adopted the European Security Strategy, to include support for third countries in combating terrorism in the spectrum of crisis management operations to be covered by the Union, along with joint disarmament operations and security sector reform.⁹

³ Joint Declaration issued at the British-French Summit, Saint-Malo, France, 3–4 December 1998.

⁴ The Headline Goal is available at <<http://www.ue.eu.int/uedocs/cmsUpload/Helsinki%20Headline%20Goal.pdf>>.

⁵ See <<http://www.consilium.eu.int/uedocs/cmsUpload/Declaration%20on%20EU%20Military%20Capabilities%20-%20May%202003.pdf>>.

⁶ See <<http://www.consilium.europa.eu/ueDocs/newsWord/en/misc/89593.doc>>.

⁷ See the contribution by Haine to this volume.

⁸ Available at <<http://www.ue.eu.int/ueDocs/newsWord/en/ec/72638.doc>>.

⁹ 'A Secure Europe in a Better World – The European Security Strategy', available at <http://www.consilium.europa.eu/cms3_fo/showPage.asp?id=391&lang=EN-42k>.

The European Convention, meanwhile, had already recommended to include counter-terrorism in the EU Treaty among the missions of the common security and defence policy (see Art. III-309 TCE). The new Treaty, signed at Lisbon in December 2007, accordingly stipulates in Article 43 new TEU that these tasks

‘shall include joint disarmament operations, humanitarian and rescue tasks, military advice and assistance tasks, conflict prevention and peace-keeping tasks, tasks of combat forces in crisis management, including peace-making, and post-conflict stabilisation. All these tasks may contribute to the fight against terrorism, including by supporting third countries in combating terrorism in their territories.’

The Lisbon Treaty, again in conformity with the proposal from the European Convention, also includes a mutual defence clause (Art. 42(7) new TEU), obliging Member States to provide aid and assistance ‘by all the means in their power’ to a Member State which is the victim of armed aggression on its territory, as well as a solidarity clause, stating that the Union and its Member States

‘shall act jointly in a spirit of solidarity if a Member State is the victim of terrorist attack or natural or manmade disaster. The Union shall mobilise all the instruments at its disposal, including the military resources made available by the Member States, to:

(a)

- prevent the terrorist threat in the territory of the Member States;
- protect democratic institutions and the civilian population from any terrorist attack;
- assist a Member State in its territory at the request of its political authorities in the event of a terrorist attack;

(b)

- assist a Member State in its territory at the request of its political authorities in the event of a natural or manmade disaster.’

Both the proposed mutual defence clause and the solidarity clause envisage Member States supporting each other following an attack. They do not oblige mutual assistance to *prevent* attacks. Territorial defence, therefore, has not been included as a Treaty obligation. In terms of the fight against terrorism, this does leave a certain ambiguity. Does the Lisbon Treaty provide legal authority for direct military intervention by the Union against an external terrorist threat? Could the EU, for example, authorise military action to avoid weapons of mass destruction falling into the hands of terrorists? The EU’s counter-proliferation strategy stipulates that preventive measures form the Union’s first line of defence. These include political and diplomatic measures (multilateral treaties and export control regimes) and resort to the competent international organisations (IAEA, OPCW, etc.). However, in case political and diplomatic measures have failed, coercive measures could be taken by the Union under Chapter VII of the United Nations Charter and international law, such as sanctions (selective or global), interception of shipments, and, as a last resort, the use of force.¹⁰ By contrast, whether the EU’s competences extend

¹⁰ Basic Principles for an EU Strategy against Proliferation of Weapons of Mass Destruction, available at <http://www.ue.eu.int/ueDocs/cms_Data/docs/pressdata/en/reports/76328.pdf>.

to US-style covert military operations against terrorists is perhaps more doubtful. In any case, the Union is likely to continue demonstrating a clear preference for crisis management operations at the request of a third country or authorised explicitly by the United Nations Security Council.

This paper will explore the ways in which the European Union has sought to integrate counter-terrorism into its policies for crisis management and for security-related financial and technical assistance to third countries.

2. ESDP DIMENSION

The European Security and Defence Policy (ESDP) dimension of the fight against terrorism currently extends to four scenarios: (i) prevention in the framework of an EU-led crisis management operation under Title V TEU; (ii) protection of EU forces and assets in the area of operations of an ESDP mission; (iii) response/consequence management in the context of a crisis management operation; and (iv) support to third countries in combating terrorism, as well as protection of EU citizens in third countries, especially in the case of EU citizens taken hostage by terrorist groups.

A number of actions have been identified to implement this ESDP dimension of the Union's counter-terrorism strategy.

National defence intelligence organisations (working through the Intelligence Division of the European Union's Military Staff) provide support to the Council's Joint Situation Centre (SitCen), which, among other responsibilities, constitutes the EU's intelligence capacity covering the range of terrorist threats both within and outside the Union.

A policy on the security of personnel deployed in crisis management missions has been agreed. The policy defines the core measures, roles, responsibilities and core tasks with regard to the security and safety of personnel in such missions.¹¹

Consular cooperation among Member States has intensified. Among the priorities has been the preparation of evacuation of EU citizens in third countries in crisis situations. The Lead State concept in crisis situations, adopted by the EU Council on 18 June 2007,¹² was put into practice for the first time in Chad in early 2008.¹³ As Lead State in Chad, France evacuated more than 1,200 citizens from 12 Member States and third countries (60 nationalities in all).

The EU Battlegroups can also be tasked to carry out evacuation operations.¹⁴ However, a common approach to situations where EU citizens have been taken hostage by terrorist groups, which the Council commissioned in 2004, still needs to be developed.¹⁵

¹¹ Policy of the European Union on the security of personnel deployed outside the EU in an operational capacity under Title V of the Treaty on European Union, Council Doc. 9490/06.

¹² See <http://www.consilium.europa.eu/uedocs/cms_Data/docs/pressdata/en/gena/94803.pdf>.

¹³ Council Decision 2008/101/CFSP of 28 January 2008 on the launching of the European Union military operation in the Republic of Chad and in the Central African Republic (Operation EUFOR Tchad/RCA), *OJ* 2008 L 34/39.

¹⁴ See <http://consilium.europa.eu/uedocs/cmsUpload/Battlegroups_February_07-factsheet.pdf>.

¹⁵ See the Conceptual Framework on the ESDP Dimension to the Fight against Terrorism, available at <<http://register.consilium.eu.int/pdf/en/04/st14/st14797.en04.pdf>>.

Procedures to provide military support to EU disaster response have been streamlined.¹⁶ These procedures are complementary to the capabilities of the European Community Civil Protection Mechanism and the Commission's DG ECHO. The European Commission's Monitoring and Information Centre (MIC) has been granted access to the database of military assets and capabilities relevant for the protection of civilian populations against terrorist attacks, including chemical, biological, radiological and nuclear (CBRN). However, not all Member States' assets have been included in this database. Nor does inclusion necessarily imply that national assets will be made available following a request by the MIC. Member States have been adamant that the database is based exclusively on voluntary contributions.

EU Ministers have also agreed that humanitarian aid to third countries may draw upon military assets, notably for logistical and infrastructure support mainly in the context of natural disasters. The EU has developed a General Framework for the use of Member States' military or military-chartered transportation assets and ESDP coordination tools in support of EU disaster response.¹⁷ However, military assets and capabilities may only be used in support of humanitarian relief operations as a 'last resort', i.e., where there is no comparable civilian alternative. Member States have also made clear that their military assets will remain under military control.

Counter-terrorism has been earmarked for inclusion in the Headline Goal 2008 for civilian crisis management. Work has commenced to improve interoperability between civilian and military capabilities.

Counter-terrorism has also been included in the five illustrative scenarios prepared in connection with the military Headline Goal 2010. These are: (i) separation of parties by force; (ii) stabilisation, reconstruction and military advice to third countries; (iii) conflict prevention; (iv) evacuation operation; and (v) assistance to humanitarian operations. However, the practical relevance of these scenarios for the fight against terrorism has thus far been limited. In fact, the nature and extent of any engagement of ESDP resources for direct military intervention against presumed terrorists remains unclear. No policy framework has been elaborated. The Council has never debated the issue in detail – nor, for that matter, have the competent Ambassadors in the PSC. It may be concluded, therefore, that any direct military action in the fight against terrorism is likely to be left to individual Member States or ad-hoc coalitions.

Other initiatives highlighted in the ESDP dimension of the fight against terrorism have been equally difficult to implement. Follow-up has not yet been given, for example, to the proposal that relevant aspects of the European Council's 2004 Solidarity Declaration against terrorism – requiring mutual assistance after an attack *inside* the EU – should be included in the ESDP exercise programme.¹⁸ The ESDP exercise programme remains targeted on interventions *outside* the Union. In spite

¹⁶ Military support to EU disaster response – Identification and coordination of available assets and capabilities, Council Doc. 9462/3/06 REV 3 and Doc. 14540/06 + COR 1.

¹⁷ General Framework for the use of Member States military and military chartered transportation assets and ESDP coordination tools in support of EU disaster response, Council Doc. 8976/06.

¹⁸ See *supra* n. 15.

of their commitments, EU Member States remain reluctant to envisage any European coordination of military support with respect to crises within the EU. In practice, exercises focused on emergency management inside the EU have been left to the European Commission and to civilian authorities at national level.

As a result, the European Union operates two parallel sets of crisis and emergency management exercises. The European Commission runs an annual series of intra-Community exercises in the domain of civil protection. These exercises, some of which have focused on the consequences of a terrorist attack, are civilian in nature. The Council, for its part, organises exercises in the framework of ESDP. Thus far, counter-terrorism has not figured prominently in the ESDP exercise programme. Neither the Commission nor the Member States have yet explored the potential for greater synergy, including in the field of counter-terrorism. Failure to overcome this inter-institutional stand-off will imply that the Union will be unable to secure the necessary interoperability between military and civilian capabilities in the defence of civilian populations against a terrorist attack, including in crisis situations under Title V of the Treaty on European Union. To attain such interoperability was one of the Council's objectives under the EU Action Plan on Combating Terrorism.¹⁹

The strategy endorsed in 2004 stated that, to prevent terrorism, scenarios involving maritime and airspace control-type operations should be envisaged.²⁰ However, a Rapid Response Air Initiative and a Maritime Rapid Response Concept are still in preparation. Similarly, the creation of a Nuclear Biological Chemical (NBC) Centre of Competence, flagged in 2004, has been marred with delays. When the Council gave the green light in December 2006, it was on the understanding that the Centre would operate inside the Council Secretariat without an increase in either budget or staff.²¹

3. CRISIS MANAGEMENT

Over the past few years the European Union has evolved into one of the world's most prominent actors in the field of crisis management. At the end of 2007, the EU was involved in 12 active ESDP missions (three in the Western Balkans; three in the Middle East; three in Africa; two border missions covering Ukraine, Moldova and Georgia; and one in Central Asia). Nine ESDP missions had been completed and three more were in preparation.²² Several of the crisis management missions

¹⁹ The EU Action Plan on Combating Terrorism is available at <<http://register.consilium.europa.eu/pdf/en/05/st10/st10694.en05.pdf>>. See also the 2004 EU Solidarity Programme, available at <http://consilium.europa.eu/uedocs/cmsUpload/15480EU_Solidarity_Programme.pdf>, item 33, and *supra* n. 15.

²⁰ See *supra* n. 15.

²¹ See the EU strategy against the proliferation of WMD: Monitoring and enhancing consistent implementation, Council Doc. 16694/06, at 10, available at <http://www.register.consilium.europa.eu/pdf/en/06/st16/st16694.en06.pdf>.

²² See G. Gya, 'ESDP and EU Mission Update', 36 *European Security Review* (2007).

undertaken by the European Union in recent years have contributed, at least indirectly, to the fight against terrorism. EUJUST LEX, the EU's rule of law mission to Iraq, has permitted around 1,000 judicial officials in Iraq to receive training and provided a modest contribution to the capacity of that country to govern itself.²³ The mission has been extended until June 2009.²⁴ Similarly, EU BAM Rafah and EUPOL COPPS have contributed to stability in the Palestinian territories, at least until the electoral victory of Hamas in 2006.²⁵ As a result of Operation ALTHEA and EUPM a series of small arms and light weapons have been dismantled in Bosnia-Herzegovina.²⁶ Supported by EUPM, Bosnia-Herzegovina's State Investigation and Protection Agency was admitted to the Egmont world-wide network of Financial Intelligence Units, responsible for the fight against money laundering and terrorist financing. The EU police mission to Afghanistan should help improve the performance of law enforcement in Afghanistan.²⁷ For its part, the European Commission, acting under its First Pillar competences, has financed many activities aimed at improving good governance and human rights protection.²⁸ All of these can be said to encourage, at least indirectly, conditions favourable to the prevention and prosecution of terrorism in conformity with international law.

On the other hand, the contribution of ESDP to the fight against terrorism – and supporting activities by the Commission – has not yet reached its full potential. Counter-terrorism has so far not been included explicitly in the mandates of ESDP crisis management missions. Indeed, in Bosnia-Herzegovina, NATO has retained a small headquarters, with approximately 220 US forces, whose tasks include supporting counter-terrorism efforts.²⁹ EU ALTHEA's focus is not on counter-terror-

²³ See the information available on the website of EUJUST LEX <http://www.consilium.europa.eu/cms3_fo/showPage.asp?id=823&lang=EN&mode=g>.

²⁴ See Council Joint Action 2007/760/CFSP of 22 November 2007 amending and extending Joint Action 2005/190/CFSP on the European Union Integrated Rule of Law Mission for Iraq, EUJUST LEX, *OJ* 2007 L 305/58.

²⁵ See Council Joint Action 2007/359/CFSP of 23 May 2007 amending and extending Joint Action 2005/889/CFSP on establishing a European Union Border Assistance Mission for the Rafah Crossing Point (EU BAM Rafah), *OJ* 2007 L 133/51 resp. Council Decision 2008/134/CFSP of 18 February 2008 implementing Joint Action 2005/797/CFSP on the European Union Police Mission for the Palestinian Territories, *OJ* 2008 L 43/38.

²⁶ See the contribution by Gross to this volume.

²⁷ Council Joint Action 2008/229/CFSP of 17 March 2008 amending Joint Action 2007/369/CFSP on the establishment of the European Union Police Mission in Afghanistan (EUPOL AFGHANISTAN), *OJ* 2008 L 75/80.

²⁸ See, e.g., Regulation (EC) No 1717/2006 of the European Parliament and of the Council of 15 November 2006 establishing an Instrument for Stability, *OJ* 2006 L 327/1. A sum of EUR 2.06 billion over 7 years will be provided for the promotion of stable conditions for human and economic development and the promotion of human rights, democracy and fundamental freedoms under the EU's external relations policy. See also Regulation (EC) No 1889/2006 of the European Parliament and of the Council of 20 December 2006 on establishing a financing instrument for the promotion of democracy and human rights worldwide, *OJ* 2006 L 386/1, with a total of EUR 1.1 billion for the 2007-2013 period.

²⁹ See J. Kim, *Bosnia and the European Union Military Force (EUFOR): Post-NATO Peacekeeping* (Washington, Congressional Research Service, updated 5 January 2006).

ism capacity building but on combating organised crime and reducing the amount of surplus weapons and ammunition. In Lebanon, following the 2006 cease-fire between Israel and Hizbollah, EU Member States provide the bulk of the UNIFIL II peace-keeping mission – but they do so as individual member states of the UN and not as part of a European Union operation. In Afghanistan, counter-insurgency and counter-terrorism operations are conducted by several EU Member States, but in their capacity as members of the US-led operation Enduring Freedom and not on behalf of the Union. The EU's Police Mission to Afghanistan could be said to play a role in strengthening that country's counter-terrorism capabilities, at least indirectly, but the scale of the mission – 195 police and legal experts – has been widely criticised as insufficient.³⁰ The mission has been marred by delays and operational difficulties, which have even prompted the resignation of its first mission leader, General Friedrich Eichele. Cooperation between the EU and NATO in Afghanistan remains patchy.³¹ The EU's police mission to the Palestinian Territories has in effect been frozen since the electoral victory of Hamas in January 2006. In practice, therefore, opportunities to provide counter-terrorism assistance and advice within the framework of civilian or military ESDP missions are not systematically being used.

It is not yet clear whether the European Gendarmerie Force, which could be deployed in all phases of a crisis management operation, will have a role to play in the fight against terrorism. The decision to set up the Force was taken in the Netherlands in 2004. It comprises units from France, Italy, the Netherlands, Portugal and Spain and can take on military police tasks in international EU operations under both civilian and military command.³² The Force can be transferred to the deployment area within 30 days. According to the 2004 Declaration of Intent, the fight against terrorism can be among EUROGENDFOR's responsibilities.³³ Counter-terrorism has not been explicitly included in the Treaty establishing the European Gendarmerie Force – EUROGENDFOR.

As counter-terrorism has not been integrated across the board into ESDP, little progress has thus far been made in implementing the commitment of the Council, contained in the EU Action Plan on Combating Terrorism, to improve protection of personnel, material and assets deployed in crisis management missions under Title V of the Treaty. This was specifically to include the ability to protect critical infrastructure and other possible key civilian targets in the area of operations.

³⁰ See, e.g., D. Korski, *Afghanistan: Europe's Forgotten War* (London, European Council on Foreign Relations, 2008).

³¹ See also the contribution by Reichard to this volume.

³² Treaty between the Kingdom of Spain, the French Republic, the Italian Republic, the Kingdom of The Netherlands and the Portuguese Republic, establishing the European Gendarmerie Force, EUROGENDFOR, Velsen 18 October 2007. The full text of the Treaty is available at <<http://www.eurogendfor.org/referencetexts/EGF%20Treaty%20english%20version.pdf>>. See also the contribution by Duke to this volume.

³³ See O. Antonescu, *The European Gendarmerie Force Role in Crisis Management Operations* <http://www.gmr.mapn.ro/Engleza/Ultimul_nr/antonescu-p.35-40.pdf>, at 39.

Awareness in EU Member States of the 2004 Conceptual Framework on the ESDP Dimension in the Fight Against Terrorism and of the commitments in the EU Action Plan against terrorism appears to be uneven. Whereas progress has been made in improving coordination among successive EU Presidencies with respect to ESDP and crisis management, such coordination does not yet extend to the counter-terrorism dimension. In the document setting out the 18-month programme of the German, Portuguese and Slovenian Presidencies (2007-2008), for example, there is no mention of counter-terrorism in the chapter devoted to ESDP and crisis management.³⁴ The ESDP dimension of the fight against terrorism was not included in the 2007 Presidency Report on ESDP.³⁵ A recent information leaflet on ESDP issued by the German Government similarly omits any reference to counter-terrorism.³⁶

Notwithstanding the Council's commitment to an integrated, cross-Pillar approach to counter-terrorism, in practice both the Council and the Commission continue to discuss counter-terrorism primarily as an issue of law enforcement covered by the Third Pillar, under the responsibility of the Ministers of the Interior and Justice. EU Defence Ministers, for their part, tend to focus on civilian and military crisis management and peace-keeping operations, and devote comparatively little attention to the military aspects of counter-terrorism.³⁷ Coreper, which during the British Presidency (second half of 2005) actively contributed to coordination of Council working groups with respect to counter-terrorism, has reverted back to its traditional, Pillar-oriented working methods, and the European Parliament's scrutiny of the ESDP's contribution to counter-terrorism has been intermittent.

Whereas the United States has provided considerable military assistance to countries facing terrorism – including its 2003 commitment of \$100 million for the East Africa Counter-Terrorism Initiative – the EU has not earmarked any funding to this end. This reluctance to involve the Union in military capacity building reflects both political differences about the usefulness of military instruments in the fight against terrorism and a lack of national capacity in many Member States. It also stems from reluctance to grant the European Union too prominent a role in military affairs. All of this is unlikely to change any time soon. Nor is the Council likely to end the 'twenty-year-long doctrinal debate' on the lawfulness of the use of force to protect European citizens endangered in the territory of a third state.³⁸ However, integrating counter-terrorism in the EU's crisis management missions should be a different matter, as the Council recognised on more than one occasion.³⁹

³⁴ 18-month Programme of the German, Portuguese and Slovenian Presidencies, Council Doc. 17079/06.

³⁵ Presidency Report on ESDP, Council Doc. 10910/07.

³⁶ The Federal Government, *The European Security and Defence Policy* <<http://www.auswaertiges-amt.de/diplo/de/Infoservice/Broschueren/ESVP-EN.pdf>>.

³⁷ At informal sessions EU Defence Ministers have discussed counter-terrorism. See, for example, <http://www.eu2005.lu/en/actualites/documents_travail/2005/03/18defresume/index.html>.

³⁸ See M. Sossai, 'The Anti-Terrorism Dimension of ESDP', in M. Trybus and N. White, eds., *European Security Law* (Oxford, Oxford University Press 2007) 157-173, at 168.

³⁹ See, for example, *supra* n. 15.

There is also much that EU Member States and the Commission could still do to help prevent the procurement by terrorists of small arms, light weapons, conventional explosives and precursors of chemical, biological and radiological weapons. In addition to taking practical measures (including the provision of technical assistance to developing nations), the Union should prepare diplomatic initiatives. It would be particularly important to encourage the incoming US Administration to abandon its blockade of arms control initiatives in the fields of small arms and of biological weapons. As part of its 'war on terror' the US has significantly increased its arms sales and military assistance to at least 25 countries, including many where, according to the State Department, 'serious', 'grave' or 'significant' human rights abuses were committed by the government or state security forces.⁴⁰ In view of the widely-acknowledged significance of human rights abuses as a contributing factor to radicalisation, these policies have not facilitated Western efforts to win hearts and minds. The US Administration's resistance to a legally binding instrument to trace small arms and light weapons, and US opposition to an internationally binding verification protocol to the Biological Weapons Convention continue to impede global efforts to improve security and prevent conflict. Here, as elsewhere, resistance by the current US Administration to multilateral commitments has damaged the capacity of both the United States and of the European Union to prevent and combat terrorism.

4. INITIATIVES

There would thus appear to be considerable scope for strengthening the European Union's contribution to counter-terrorism. Initiatives along the following lines could be envisaged:

- i. ESDP border missions, such as EUBAM in Moldova/Ukraine,⁴¹ could be mandated, for example, to assist in the enforcement of UNSCR 1267, which, along with financial sanctions, obliges UN member states to enforce an arms embargo and a travel ban against listed individuals and entities. Border authorities and customs officials have a crucial role to play in enforcing these mandatory sanctions against suspected terrorists and in implementing international regimes against the smuggling of drugs, weapons, explosives and weapons of mass destruction. Border guards and customs officials need to be properly trained and equipped to carry out these duties. By providing the necessary assistance (including under the First Pillar financial instruments oper-

⁴⁰ *U.S. Arms Exports and Military Assistance in the 'Global War on Terror'*, Center for Defense Information, 6 September 2007, available at <<http://www.cdi.org>>.

⁴¹ The current mandate is laid down in the Memorandum of Understanding between the European Commission, the Government of the Republic of Moldova and the Government of Ukraine on the European Commission Border Assistance Mission to the Republic of Moldova and to Ukraine, done at Palanca on 7 October 2005.

ated by the Commission) the EU could add teeth to both the UN's and its own counter-terrorism strategy.

- ii. In a similar vein, counter-terrorism capacity building could be 'mainstreamed' in all civilian crisis management missions – and into most military ones. The EU is currently launching a mission in the range of 1,300-1,500 international police, judges, prosecutors and custom officials to be based in Kosovo (EULEX KOSOVO). Their mandate includes monitoring, mentoring and advising on all areas related to the rule of law, in particular in the judiciary, police, customs and correctional services.⁴² The mandate, therefore, does not exclude providing counter-terrorism assistance. However, as counter-terrorism has not been included explicitly, it is unlikely to play a meaningful role in the mission's activities. Future EU crisis management missions, particularly rule of law missions, should have counter-terrorism covered in their mandate from the outset.
- iii. Steps should also be taken to ensure that expertise in counter-terrorism is available, on a structural basis, to the institutions and bodies responsible for preparing and managing civilian crisis management missions, such as the responsible Directorate in the Council Secretariat, the Committee for Civilian Aspects of Crisis Management, the Civil-Military Cell and the European Police College (CEPOL).⁴³ There is much the Council Secretariat, under the responsibility of its Secretary-General, could still do to develop the ESDP dimension of counter-terrorism.
- iv. Coreper and the Political and Security Committee (PSC) should verify that counter-terrorism capabilities are covered adequately and in detail in both the Civilian Headline Goal 2008 and the Military Headline Goal 2010, as well as in any follow-up strategies.⁴⁴
- v. In addition to integrating technical and financial expertise on counter-terrorism into ESDP missions, EU Member States could make more systematic use of diplomatic instruments. Countries hosting ESDP missions should be encouraged, both bilaterally and through CFSP, to improve their capacity to prevent and combat terrorism by signing, ratifying and implementing the 13 United Nations Conventions and the three UN Protocols against terrorism.
- vi. ESDP training programmes and exercises should systematically cover best practices in providing counter-terrorism assistance. EU military exercises under ESDP and the civilian exercises organised by the European Commission should be coordinated to improve synergy and mutual learning, for example with respect to CBRN-related consequence management. Cross-Pillar scenarios, requiring operational cooperation between the European Commission, the Council Secretariat and the military forces of EU Member States, need to be included in the planning of exercises. These exercises should address is-

⁴² See Council Joint Action 2008/124/CFSP of 4 February 2008 on the European Union Rule of Law Mission in Kosovo, EULEX KOSOVO, *OJ* 2008 L 42/92.

⁴³ See the contribution by Duke to this volume.

⁴⁴ See the contributions by Haine and Schuyer to this volume.

- sues of crisis and emergency management both inside the EU and in (hypothetical) third countries.
- vii. Coordination between the military and civilian dimension of crisis management should be further improved, not only within ESDP, but also between ESDP and the authorities responsible for Justice and Home Affairs. Member States participating in a crisis management mission should make sure that criminal and counter-terrorism-related intelligence gathered by military or civilian operators during a mission is shared systematically with EUROPOL. This would help EUROPOL to provide a more comprehensive assessment of developments in terrorism and other forms of crime – including, crucially, the nexus between the two. JHA Ministers and Defence Ministers should meet jointly at least once a year to assess progress and analyse the lessons learned.
 - viii. The Council and the PSC have a tendency to discuss ESDP/crisis management and counter-terrorism as separate issues, instead of focusing on their inter-relationships. It would be helpful, therefore, if the PSC would discuss on a regular basis whether ESDP's contribution to the EU's counter-terrorism strategy is developing satisfactorily. Foreign and Defence Ministers should assess progress at least once every six months, on the basis of a briefing by the Secretary-General/High Representative, and provide strategic guidance. Coreper, supported by the EU Counter-Terrorism Coordinator, should ensure that these Council debates are prepared across the three Pillars. The European Parliament's Foreign Affairs Committee should step up its scrutiny of the Council's performance.
 - ix. Cooperation between NATO and the EU continues to be hamstrung.⁴⁵ Both organisations have been steadily expanding their involvement in counter-terrorism, but without the necessary cooperation. Some degree of overlap in the counter-terrorism activities of NATO and the EU may be unavoidable – perhaps even desirable – but opportunities for synergies are not systematically being explored. Both organisations need to exercise greater leadership. A regular high-level dialogue needs to be set up between NATO and the EU to discuss and coordinate policies in the fight against terrorism. Should Turkey continue to block coordination at the level of Ambassadors, senior officials of the EU Council and the NATO Secretariat should meet informally but openly.
 - x. Greater cooperation between NATO and the EU is particularly urgent in Afghanistan, where both continue to work along largely separate tracks. Afghanistan remains a critical theatre of operations in the fight against terrorism. Short of assuming that all EU support to Afghanistan directly or indirectly helps to address terrorism, neither the European Commission nor the Council can be said to have developed a counter-terrorism assistance policy with respect to Afghanistan. CT capacity building has not been included in the EUPOL mission's mandate. Developing such policies, and building in the necessary cooperation with NATO, should be a priority of the incoming French Presidency of the Union.

⁴⁵ See the contribution by Reichard to this volume.

- xi. Diplomatic efforts should be prepared to enlist the incoming US Administration in joint attempts to agree legally binding arms control initiatives, including with respect to small arms and light weapons and biological weapons.

As indicated above, the EU's role in international crisis management has expanded rapidly in recent years. Of course, the EU's contribution to crisis management is not limited to Council initiatives under ESDP. As already mentioned, the European Commission has important responsibilities of its own, notably through its various aid instruments. These 'First Pillar'-based instruments allow the Commission to help prevent and manage conflicts and to engage in post-conflict rehabilitation. Counter-terrorism is progressively – though slowly – being included as a standard component in each of these lines of action.

5. SECURITY SECTOR REFORM

Although cooperation between the Council and the Commission has arguably improved in recent years, there are still areas where the old habits of bureaucratic politics have yet to be eradicated. Security sector reform (SSR) is a case in point. In many developing countries, particularly in conflict-prone areas, security sector reform (or, more accurately, security system reform) is a necessary precondition for the prevention and eradication of terrorism. Particularly from the vantage point of combating terrorism, reform of civilian security agencies (police, intelligence services, border guards, etc.) is as important as reform of the armed forces. Efforts to enlist developing countries in the US-led 'war on terror' have resulted in the bolstering of intelligence and other law enforcement agencies. Public accountability of these agencies tends to be low or non-existent. Heavy-handed security policies of police forces, intelligence services and the military, ostensibly aimed at combating terrorism, have often produced counter-productive effects. It is therefore essential to ensure that respect for human rights, particularly in the fight against terrorism, is an integral part of any SSR policy. Such an integrated approach by the Union and the Member States is absolutely necessary to improve security in the medium to long term and to secure effective and accountable government in accordance with international standards.

Consequently, it made sense for SSR to have been identified as one of the core areas for EU action under the European Security Strategy. Some aspects of SSR, including support for reform of foreign intelligence and security services (both military and civilian), could be considered as falling under the European Security and Defence Policy – the Council's domain. Many other aspects could be said to lie within the sphere of competence of the Commission. The Commission's involvement is already considerable. Through the Commission, the European Community is engaged in SSR-related support in more than 70 countries.⁴⁶ Therefore, much

⁴⁶ See Communication from the Commission to the Council and the European Parliament, 'A Concept for European Community Support for Security Sector Reform', COM(2006) 253 final, at 6.

could be said for a clear delineation of competences between these two institutions and for the development of an integrated strategy and coherent action. Unfortunately, the Union today lacks both. The Council Secretariat⁴⁷ and the Commission⁴⁸ have elaborated separate strategies, neither of which includes a clear demarcation of their respective competences. The Council of Ministers has declined to insist on a comprehensive, common strategy. As a consequence, strategic analyses and needs assessments continue to be made by both institutions, albeit with a degree of cooperation, and the Union's capacity to punch its weight in terms of integrated policies remains limited. There is considerable irony in the fact that, whereas European and other Western governments recognise the need for a 'whole of government'-approach to security sector reform in developing countries,⁴⁹ European governments and the Commission have not yet succeeded in developing such an approach amongst themselves.

Renewed efforts therefore need to be deployed by the Council and the Commission to arrive at a joint and comprehensive policy with respect to security sector reform. Particular attention should be devoted to the integration of counter-terrorism capacity-building reform into SSR-strategies. Such CT-related reform policies need to be developed with respect both to the armed forces and to civilian authorities. Making maximum use of its diplomatic clout, the EU and its Member States should ensure that respect for international human rights law is fully integrated into counter-terrorism-related EU SSR efforts.

Perhaps the new, post-Constitutional Treaty, with its provisions for a 'double-hatted' High Representative (Article 18 new TEU) and a European External Action Service (Article 27(3) new TEU), will elicit the necessary integrated approach.⁵⁰ In fact, security sector reform is not the only area where the new Treaty may prompt a more active EU contribution to international counter-terrorism efforts. Another area where the Lisbon Treaty should provide for a more active EU role is the provision of military support to non-EU states. Now that the Union has been explicitly authorised to provide and carry out 'military advice and assistance tasks' (Article 43(1) new TEU), the Council must be expected to develop appropriate policies and instruments. The Lisbon Treaty's provisions for 'enhanced cooperation' (Title IV new TEU) also require careful scrutiny. Enhanced cooperation can be launched by a minimum of nine Member States (regardless of future enlargements of the Union), including within the sphere of CFSP (Article 20(2) new TEU). The decision does require unanimity in the Council (Article 329 TFEU).⁵¹

In the short-term, however, the European Commission in particular could do a great deal to integrate security sector reform into its cooperation programmes with neighbouring countries. Reform of the security sector in countries such as Egypt,

⁴⁷ EU Concept for ESDP Support to Security Sector Reform (SSR), Council Doc. 12566/4/05.

⁴⁸ See COM(2006) 253 final.

⁴⁹ See DAC Guidelines and Reference Series, Security Sector Reform and Governance (Paris, OECD 2005).

⁵⁰ See also the contribution by Duke to this volume.

⁵¹ See also the contribution by de Zwaan to this volume.

Tunisia or Algeria is indispensable to counter radicalisation and recruitment to terrorism. Therefore, security sector reform should not only be integrated with post-conflict rehabilitation policies – the current EU approach – but understood and practised as a necessary dimension of the prevention of terrorism. In April 2008 Guinea-Bissau became host to the EU's most recent security sector reform mission.⁵² The mission is to last 12 months and involves deployment of 15 military and civilian advisors who will assist in preparing reforms of the military, the police, and the criminal justice system.

6. CAPACITY BUILDING

The new Stability Instrument⁵³ will enable the European Commission to contribute much more actively to counter-terrorism capacity building as well as to the implementation of the EU's counter-radicalisation strategy agreed in 2005.⁵⁴ For EU Member States to act effectively against radicalisation and recruitment to terrorism, they should not just restrict their focus to the territory of the Union. In view of the frequent links between violent extremists inside and outside the Union it is essential for EU governments to reach out to counterparts in relevant non-EU states, such as Pakistan, Saudi Arabia, Kenya, Egypt and the countries of the Maghreb. The purpose of the EU's counter-radicalisation strategy is therefore to prevent and combat radicalisation and recruitment to terrorism not only in the EU itself, but also in other parts of the world. Counter-radicalisation thus needs to be an integral part of the European Union's diplomatic tools and aid instruments.

The new Instrument for Stability is a key element of the EU's crisis management capacity. It is designed to allow the Community to respond urgently to the needs of countries threatened with or undergoing severe political instability or suffering from the effects of a technological or natural disaster. Its dual purpose – to anticipate or respond to political crisis, violent conflict or disasters – should allow the Instrument to play a major role in providing counter-terrorism assistance to third countries, including for the prevention of radicalisation. Indeed, under Article 4(1)(a) of the Stability Instrument the Commission has been authorised to provide technical and financial assistance aimed at 'strengthening the capacity of law enforcement and judicial and civil authorities involved in the fight against terrorism (...)' Unfortunately, early signs have not been encouraging. Beyond providing a modest degree of Community assistance to the African Union's fledgling Centre for Study

⁵² Council Joint Action 2008/112/CFSP of 12 February 2008 on the European Union mission in support of security sector reform in the Republic of Guinea-Bissau (EU SSR GUINEA-BISSAU), *OJ* 2008 L 40/11.

⁵³ See Regulation (EC) No 1717/2006 of the European Parliament and of the Council of 15 November 2006 establishing an Instrument for Stability, *OJ* 2006 L 327/1.

⁵⁴ The European Union Strategy for Combating Radicalisation and Recruitment to Terrorism is available at <<http://www.register.consilium.europa.eu/pdf/en/05/st14/st14781-re01.en05.pdf>>. Assistance to third countries also ranks among the priorities of the EU Strategy against Terrorism. The Strategy is available at http://www.consilium.europa.eu/cms3_fo/showPage.asp?id=1195&lang=EN&mode=g>.

and Research on Terrorism – which the Council had already decided to support separately under the ‘Second Pillar budget’ of CFSP⁵⁵ – no further initiatives seem to have been prioritised by the European Commission. Systematic use of the CFSP budget to fund counter-terrorism assistance does not appear to be under consideration. Furthermore, the Commission’s counter-terrorism desk in DG RELEX continues to be understaffed. It would be regrettable if, as a result, opportunities to engage in projects and programmes to prevent and combat radicalisation and recruitment in North Africa, East Africa and South-East Asia would be missed. Council and Commission should consider how their respective financial instruments could be used to greater effect. Funds for counter-terrorism assistance should be earmarked both when the annual priorities for the CFSP budget are discussed and when the Indicative Programme and Action Plan for the implementation of the Stability Instrument Strategic Framework are drafted.⁵⁶

In a general sense, the EU’s instruments for the prevention and management of crisis and emergencies could play a more prominent role in the fight against terrorism. The Council has thus far not prioritised implementation of its commitment to provide support to third countries in the field of consequence management or support in training and exercises under ESDP.⁵⁷ In fact, the availability of national experts to assist third countries in the field of emergency management so far does not form part of the EU’s civilian crisis management planning. Inter-institutional cooperation (Council-Commission) would therefore seem necessary to deliver on this undertaking.

Since 2004, some experience has been gained in coordinating Member State counter-terrorism aid to Algeria, Morocco and Indonesia with technical assistance provided by the European Commission. In addition, there has been progress in matching Council-led initiatives under ESDP with assistance provided by the Commission. Indonesia is an interesting example in this context.⁵⁸ While experts from ASEAN and the EU (under an ESDP mission) played a crucial role in monitoring the implementation of the 2005 peace agreement between the Indonesian Government and the GAM rebels in Aceh, including the release of prisoners and the decommissioning of weapons, the Commission financed a reintegration programme for former fighters. However, the Aceh operation, while demonstrating the EU’s capacity to deliver security-related assistance in a volatile situation, did not include counter-terrorism assistance in the strict sense. In fact, the number of countries earmarked to receive coordinated CT assistance from EU Member States remains small. EU governments often appear reluctant to earmark development funding for

⁵⁵ See Chapter V, Section 4 (Contributing to security in the world – European security strategy and European security and defence policy) of the EU’s General Report of Activities 2007, available at <<http://www.europa.eu/generalreport/en/2007/rg99.htm>>.

⁵⁶ Implementation of the EU Counter-Terrorism Strategy – Discussion paper, Council Doc. 15448/07.

⁵⁷ See *supra* n. 15.

⁵⁸ See the contributions by Thym and Baroowa to this volume.

counter-terrorism purposes. Many also experience difficulties in securing the availability of experts to carry out concrete projects.⁵⁹

The time has come for a systematic assessment of lessons learned. On the basis of this assessment – and on the basis of input from both national and European experts – priorities for counter-terrorism assistance should be identified. As indicated earlier, initiatives to address radicalisation and recruitment should figure prominently among the objectives, and the opportunities provided by the EU Instrument for Stability should be exploited to the maximum. The European Parliament should keep the implementation by the Commission under close review.

For counter-terrorism capacity building and other assistance by the EU and its Member States to be effective, it needs to be coordinated with the aid provided by other donors. Donor coordination – in this as in other development-related fields – is often weak and inconsistent. A Europe-wide analysis of the effectiveness of donor coordination, including CT-related assistance provided by the G8, the World Bank and others, is long overdue. It would be preferable for this exercise – which could be completed within a year – to be carried out jointly by the Commission, the Council Secretariat and Member States, with overall coordination provided by the Presidency. As the EU's counter-terrorism strategy emphasised, it is only in this way, through a comprehensive and multi-Pillar approach, that the full potential of the European Union to prevent and combat terrorism will be realised.

7. CONCLUSION

In the European Security Strategy (2003) support for third countries in combating terrorism has been included in the spectrum of crisis management operations to be covered by the Union. Consequently, commitments as regards the external dimension of the EU's fight against terrorism were entered into the EU Action Plan against Terrorism (2004), the Conceptual Framework on the ESDP Dimension in the Fight against Terrorism (2004) and the EU Strategy against Terrorism (2005).

Since 2004, progress has been made in implementing these commitments, notably as regards intelligence sharing, consular cooperation, procedures for military support and ESDP coordination of EU disaster relief operations, and inclusion of counter-terrorism in the civilian and military Headline Goals. Several EU crisis management missions could also be said to have indirectly contributed to the prevention of terrorism. The European Commission has implemented a number of third-country assistance projects in the field of counter-terrorism, and a beginning has been made with the coordination of capacity-building efforts by Member States with the activities of the Union.

However, five years after the launch of the European Security Strategy, overall progress is still limited. Counter-terrorism has not been mainstreamed into the civilian and military crisis management missions of the Union. Practical arrange-

⁵⁹ Implementation of the Strategy and Action Plan to Combat Terrorism, Council Doc. 15411/1/07, REV 1.

ments to implement the 2004 EU Solidarity Declaration have yet to be agreed. Inter-institutional cooperation in delivering counter-terrorism assistance to third countries remains weak. Presidency efforts to promote cross-Pillar synergies in the Council, notably between Justice and Home Affairs Ministers and Ministers of Foreign Affairs and Defence, have been less than consistent. Much work remains to be done to enhance the effectiveness of the EU's contribution against terrorism – not only at the level of the Union, but also at that of individual Member States. It is particularly important for EU Ministers to develop greater awareness of the EU's commitments and a stronger focus on delivery. A systematic assessment of lessons learned would enable the Council to maintain – and, where necessary, regain – the required momentum.