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# **Public good theory and the ‘added value’ of the EU’s counterterrorism policy**

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*Abstract:* This paper develops a deductive theoretical framework for assessing the EU’s added value in the fight against terrorism. The first part argues that public good theory helps to conceptualize objectives of international counterterrorism cooperation and the respective role of international organizations. It critically evaluates existing discussions of security cooperation from this theoretical perspective and sets out a typology of policies according to three aggregation technologies (weaker links, summation, better shot), each of which is linked to a specific set of governance challenges. The second part surveys the EU’s counterterrorism efforts on this basis. Weaker link issues - such as the protection of the movement of people, goods and capital - and the related problem of mutual assurance have been quite successfully addressed, even if there is increasing uncertainty over the boundaries of cooperation. In contrast, the EU fell short with regard to joint efforts in the fight against terrorism due to the non-excludable nature of benefits, as in the case of foreign policy, or (partial) rivalry of consumption, as in the case of intelligence sharing or disaster response capacities. Finally, the EU increasingly supports better shot initiatives to develop new instruments and technologies to combat terrorism, but is often overtaken by mini-lateral forms of cooperation.

Keywords: counterterrorism, public good theory, international organisations, European Union

## 1. Introduction

Ten years after the attacks of 9/11, the EU's fight against terrorism has matured. While it is widely acknowledged that transnational threats of terrorism and organized crime require a joint response, EU member states increasingly highlight the costs of international cooperation (Heller forthcoming). The growing political discourse on the EU's 'added value' in security and counterterrorism policy reflects these contrasting tendencies. It allows for further cooperation, but scrutinises EU initiatives according to a strict logic of consequences. Even though symbolic actions and communication remain crucial to the fight against terrorism (Chowdhury and Krebs 2010), functionalist analytical frameworks are, therefore, increasingly pertinent.

Existing studies on the EU's fight against terrorism mainly provide historical and normative critiques. Commentators agree that policy-making was strongly influenced by short-term concerns and opportunities in the aftermath of terrorist attacks (Bossong 2008; den Boer 2002; Kaunert 2007). This resulted in an overloaded and incoherent agenda that faced serious obstacles in the implementation process (Bures 2006; Argomaniz 2009). Some authors (Monar 2007a; Coolsaet 2010) have drawn on the EU's counterterrorism strategy (Council 30-11-2005) to investigate whether a more credible policy regime could emerge over time. The four strands of the strategy – to protect, to pursue, to prevent and to respond – stake out comprehensive approach to the fight against terrorism, which public authorities should generally aspire to. However, the strategy and related secondary analysis do not provide clear guidance which tasks may best be addressed by international organisations or the EU.

This paper seeks to develop a more systematic framework for assessing the EU's possible added value to international counterterrorism cooperation. Specifically, it seeks to address the following set of questions: What are the objectives of international counterterrorism cooperation? What is the possible role of international regimes/organizations in this regard? How can one understand the respective role of the EU?

The first part of this paper argues that public good theory provides a good basis for addressing this set of questions, as it allows one to model incentives and disincentives in the provision of international security goods. However, existing applications of public good theory to international counterterrorism cooperation need to better reflect the empirical complexity of this issue area. The paper offers a typology of a wide range of international anti-terrorism policies according to three aggregation technologies specified by public good theory (weaker link, summation, better shot). Each of these three cases is linked to a specific set of governance challenges for international organisations.

The second part presents a short survey of the EU's counterterrorism efforts according to this typology. The EU has been relatively effective in responding to weaker link issues that arise due to international threat interdependence. Constant interaction has effectively mitigated the problem of mutual assurance among member states, even concerns with implementation records and boundaries of cooperation persist. In contrast, the EU could not effectively aggregate resources and act jointly in the international fight against terrorism. Due to the non-excludable nature of benefits, as in the case of foreign policy, or partial rivalry of consumption, as in the case of sensitive information, concerns over free-riding and crowding remain significant obstacles to collective action. Finally, the EU increasingly supports better shot efforts to develop new instruments and technologies to combat terrorism, but may be left behind by mini-lateral initiatives of its most capable member states.

## **2. Public good theory and international counterterrorism cooperation**

The first part of this paper briefly rehearses the strengths and weaknesses of public good theory before developing a critique of existing applications to the fight against international terrorism. A more multidimensional model of the terrorist threat and corresponding policy options leads to different expectations about the prospects for international cooperation.

### 2.1. Strengths and limitations of public good theory

Public good theory offers a set of concepts to model the provision of goods that cannot be spontaneously supplied by free markets. Under conditions of globalization, these goods have been increasingly become located at the transnational or global level (Barrett 2007; Kaul et al. 2003). The starting point is the assumption that actors face asymmetric risks, costs and benefits with regard to the production of a certain good. The resulting incentives for unilateral action or cheating create collective action problems.

The most distinct contribution of public good theory lies in three sets of factors that shape the 'game' of production in more subtle ways: rivalry of consumption, excludability of benefits, and aggregation technology. Rivalry of consumption denotes the idea that a good may be diminished by additional consumers or not. Excludability specifies whether beneficiaries of a certain good also need to contribute to its production. Finally, aggregation technology determines overall supply levels. A public good may either be constituted by the sum of all contributions or determined by outliers. Further below, all three factors are elaborated upon in the case of international counterterrorism cooperation.

Public good theory may be criticised from different angles. To begin with, many political goods are more open-ended than economic theory may be comfortable with. For instance, state spending cannot be directly be equated with the provision of 'public security' that is composed of a much wider range of social practices and structures (Loader and Walker 2007). As a result, one is left with heuristic and mostly qualitative assessments of supply levels. Although this paper cannot escape this fundamental analytical problem, it disaggregates the fight against international terrorism into various intermediate goods, such as critical infrastructure protection or strategic threat awareness. This should facilitate the precision of estimates or analytical judgements.

A related problem is the distinction between cooperation outputs and outcomes. For instance, public good analyses of military alliances may explain financial burden-sharing and cooperation patterns (Sandler and Hartley 1999), but say little about the actual provision of collective security. The problem of causation and means/ends relationships is particularly acute in the case against international terrorism. And as the absence of terrorist attacks could be ascribed to a multitude of factors (van Dongen 2009), the effectiveness of almost any counterterrorism measure be questioned (Cronin 2009). This ultimately leads to the question whether abstract models of public choice are useful to understand 'real-world' politics (Udehn 1996).

As with any analytical model, however, making a number of fixed assumptions provides the ground for fruitful investigations. For instance, public good theory has posited monetary

stability as a good, even if there is conflicting evidence about the drivers and benefits of devaluations. These relatively simple postulates have driven very complex historical research (Kindleberger 1973). In short, this paper maintains that public good theory help us to understand incentives and disincentives for counterterrorism cooperation, although the relevance of different policy instruments may be contested. The following pages sets out how such a general, yet reasonably realistic, model may look like.

## 2.2. Existing applications to international counterterrorism cooperation

To date there has been one major discussion of international terrorism cooperation from the perspective of public good theory (Enders and Sandler 2006, 134-159). As a starting point, the fight against international terrorism can be considered as a pure public good, since increased international security is non-rival in consumption and benefits all states. This creates strong incentives to free-ride on the efforts of others, which, in turn, leads to an undersupply of proactive and costly counterterrorism policies at the international level. However, incentives to free-ride are counteracted by the nature of the threat. International terrorist may seek out soft spots where their operations have the greatest success chance. The classic example would be terrorists trying to hijack a plane in a third country with low security standards. Such ‘weakest link’ effects - whereby the lowest contribution determines the overall provision of a good - should induce active cooperation of all countries.

At the same time states need to be assured about each other’s contribution. A few countries may either simply fail to act due to resource constraints, or chose to serve as ‘safe havens’ for terrorists in order to be spared from attacks. To address the problem of assurance requires capacity-building weak states and monitoring of possible cheaters by a powerful hegemon or international regimes. However, states can also shirk the costs of such efforts and opt for non-coordinated defensive strategies to deflect terrorist attacks to other countries. This leads to collective irrational outcomes. Rich states may either fall into an ‘arms race’ that does not lead to an aggregate reduction in terrorist attacks, or citizens of defending states may be attacked when travelling abroad.

Overall, Sandler and Enders are extremely skeptical that international counterterrorism policy can be efficient and effective, as states prioritise private benefits over highly uncertain public goods. While early phase of the War on Terror seemed to conform to the model of hegemonic control, they rightly point to the prohibitive costs of universal capacity building and rule enforcement around the world (*ibid.* 159). They also discount the alternative strategy of international agreements and multilateral regimes to resolve the problems of assurance and free-riding. A simple regression analysis shows that the growing number of international conventions against various terrorist acts did not negatively correlate with frequency and severity of attacks (*ibid.* 154). Yet this is a surprisingly limited argument, as multilateral counterterrorism cooperation goes far beyond UN conventions and does not exclusively focus on the deterrence or prevention of terrorist attacks (Romaniuk 2010; Rosand 2010).

## 2.3. A more complex account of counterterrorism cooperation

This section develops a more complex model of collective action in the fight against international terrorism. Three arguments will be developed: 1) weakest link dynamics should be cast in more flexible terms; 2) counterterrorism cooperation comprises a wider range of

policy instruments and related aggregation technologies; 3) excludability of benefits and rivalry of consumption need to be reinserted into the analysis.

### 2.3.1. Variable threat exposure

A more realistic model of the international fight against terrorism needs to relax the assumption that terrorists are perfectly mobile and form a uniform coalition (Enders and Sandler 2006, 142-45). Despite the ongoing debate on the relative importance of ‘lone wolf’ terrorism vs. ‘global Al Qaeda’ (Hoffman 2008; Sageman 2008), analysts agree that the threat posed by Islamic fundamentalists is composed of ‘three circles’ (Errera 2005). The first circle consists of the original core group of Jihadists from Afghanistan led by Bin Laden; the second of more nationally oriented terrorist groups across the Muslim world that proclaim a loose affiliation with Al Qaeda; and the third circle is made up of ‘self-radicalised’ individuals in Western countries who seek to wider attention by proclaiming to act in the name of Al Qaeda. Actors from each of these circles may act in different theatres of operation – e.g. self-radicalised nationals from Western states may seek to carry out attacks at home or in the Middle East. But this does not translate into smooth cooperation between different terrorist groups or a relatively homogenous threat level across the globe. In the case of Al Qaeda tensions and reputational conflicts have arisen between senior leadership, various national groups in North Africa and the somewhat erratic actions of lone wolf terrorists, which chimes with wider comparative research on the disintegrative dynamics of terrorist campaigns (Cronin 2009).

The assumption of perfect substitutability of targets, which turns all states and sites into potential weakest links or soft spots, is also questionable. Islamist terrorists consistently seek to destroy hard targets via suicide attacks (Berman and Laitin 2005), whereas the bombing of open transport systems – as in the case of the 2004 Madrid attacks - has not become the most preferred strategy. In addition, the numerical increase of terrorist attacks in non-Western countries after 9/11 is not easily explained by opportunistic displacement effects. Terrorist levels have been consistently high in certain regions (i.e. the Middle East and Northern Africa), whereas the recent wave of international terrorism in Western countries mostly reflect internal struggles in the Muslim World (Gerges 2005). In short, the empirical record points to a clear concentration on a relatively limited number of countries and kinds of targets, even if terrorists may occasionally revert to alternatives. This reduces the size of coordination problem in international counterterrorism coordination (Sandler and Arce 2005).

Given the resilience of modern societies in the face of prolonged terrorist campaigns (Gal-Or 1991), it is unrealistic to portray counterterrorism cooperation a genuine ‘weakest link’ issue, which is frustrated by a single defection (Arce *et al.* 2009). Instead, it is mostly a ‘weaker link’ case whereby “greater efforts by some may offset less vigilance by others” (Sandler 2008, 176)<sup>1</sup>. The unilateral imposition of reinforced passenger and border controls by the US shows that this even applies to international air travel that is most vulnerable and interdependent with regard to terrorist attacks.

### 1.3.2. Political control over the variables of impure public goods

To recall, Sandler and Enders argue that defensive measures are likely to be oversupplied due to the private benefits of defending states, whereas proactive measures are undersupplied due

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<sup>1</sup> Compare also Sandler (2004) for a extensive treatment of weaker link issues, or the contextual application of the weakest link model.



to their non-excludability.<sup>2</sup> This simple model does not reflect that public goods may not have fixed characteristics and are open to political intervention (Kaul and Mendoza 2003). For instance, a non-exclusive good such as knowledge can be made exclusive through patents. Conversely, a private good such as education has been turned into a public good by modern welfare states. As will be developed further below, similar interventions can be made with regard to a range of objectives for counterterrorism cooperation.

One should also question the assumption that public security goods are generally non-rival in consumption. Partial rivalry of consumptions denotes the idea that a rising number of participants decreases individual benefits. Use of natural parks serves as a classic example. This reasoning also varies in a number of issue areas that relate to the fight against terrorism. For instance, terrorist threat assessments principally benefits from a growing number of inputs for different countries. But a rising number of participants raise concerns over quality, and confidentiality. In the case of secret intelligence one could also speak of full rivalry of consumption, as timely information may be 'used up' in covert operations. Such considerations help to explain the entrenched preference for informal mini-lateral over formal multi-lateral channels for intelligence sharing (Walsh 2006).

### 1.3.3. A comprehensive approach to counterterrorism

Since 9/11 the fight against international terrorism has been cast as comprehensive policy field that does not only involve internal and external security policy, but also flanking measures in integration, foreign or development policy. Barrett (2007, 7) underlines that compound issue areas can be analyzed with theoretical rigor: "...one advantage of the concept of global public good...is to show us that a single problem ... has many dimensions requiring international cooperation".

Sandler and Enders (2006, 84-9) distinguish defensive and proactive approaches in the fight against international terrorism. This abstract and parsimonious approach seems useful to model interactions between terrorist groups and governments.<sup>3</sup> However, it fails generate clear predictions about the patterns of international cooperation. For instance, Enders and Sandler (2006, 106) argue that proactive counterterrorism policies are likely to be undersupplied due to the risk of free-riding, but also note that they can also resemble best-shot situation. This means that a single actor can achieve the desired effect, while pay-offs are also high enough to merit cost-intensive actions (Hirshleifer 1983). In this case the desired good – such as the elimination of terrorist leaders - will be supplied spontaneously by one or few powerful countries. Conversely, defensive measures that may be open to free-riding and be undersupplied if they depend on pooled resources, as in the case of defensive alliances. This illustrates that one cannot generally expect an oversupply of defensive counterterrorism policies and an undersupply of proactive ones at the international level.<sup>4</sup> The next section will develop the argument that aggregation technology cuts serves better at predicting collective action problems.

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<sup>2</sup> For a recent updated and extended exposition of this argument, see also Sandler (2010)

<sup>3</sup> However, recent game-theoretical analyses also point to the need to consider signaling and voters' choice that introduce much greater complexity (de Mesquita 2007)

<sup>4</sup>

In fact, Rosendorff and Sandler (2004) argue that proactive policies may be oversupplied, as powerful states that can impose negative externalities on weaker states.

Generally speaking, analysts have struggled to devise classificatory systems for counterterrorism policies (Romaniuk 2010). Much of the expert debate continues to revolve around competing choices (Gottlieb 2010), such as the utility of police vs. military in fighting terrorism, the possibility to address ‘root causes’ or engage in political negotiations with terrorist, or the need to prepare for WMD terrorism. In attempt at synthesis Crenlisten (2007, 232) contrasts an ‘easy’ unilateral approach with a ‘hard’ multilateral approach, each of which contains a different mixture of proactive, defensive and wider structural measures. The analytical task is furthermore obscured by alternative political frames. For example, one could conceive of the fight against international terrorism as a contribution to international peace and stability – or one could justify peace operations on the basis that they deny safe have to terrorists. This paper, therefore, aims to survey a maximal range of objectives that could form part of international counterterrorism cooperation.

## 2.4. Typology

The following section offers a typology for different aspects of international counterterrorism cooperation and related governance tasks for international organisations. Due to the malleability of the variables of exclusiveness and rivalry, aggregation technology forms the most useful basis for this typology. The following three cases are set out below: 1) weaker link issues, which require wide-spread compliance or capacity-building; 2) aggregate efforts, which require mechanisms for burden-sharing and delegation; and 3) better shot issues where international organisations can facilitate spontaneous cooperation by providing frameworks for the generation and dissemination of knowledge.

A few caveats are in order. States may pursue unilateral policies that are not covered by this typology, such as direct negotiation with terrorist groups. Some instances of cooperation, such as the bi-lateral exchange of intelligence, are also best understood as private goods that are defined by direct mutual benefit. A number of instruments present ambiguous cases. For instance, the fight against the financing of terrorism could be seen as a weaker link issue, but also as summative effort. Nevertheless, this paper maintains that there are clear clusters of policies, or intermediate goods, according to different aggregation technologies.

### 2.4.1. Weaker links

The first case concerns security cooperation to control threat interdependence. Weaker link goods essentially depend on separate coordinated national efforts.<sup>5</sup> The primary collective action problem consists in assuring all cooperation partners that each participant contributes to a acceptable level. Three intermediate goods in the fight against terrorism could be grouped under this heading, namely universal jurisdiction against terrorism, the security of international mobility of persons, goods and capital, and the security of infrastructure for international economic activities.

A minimalist reading of universal jurisdiction revolves around the international law principle of ‘extradite or prosecute’ of accused terrorist suspects, whereas a more expansive interpretation extends to pre-trial judicial and police assistance (Duffy 2005). The UN and

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<sup>5</sup> To recall, in a ‘weaker link’ situation the least contribution exercises the strongest influence on the aggregate level of supply, but could not reduce the collective effort to zero.

regional organisations such as the Council of Europe have long sought to establish universal jurisdiction with regard to different terrorist-related crimes and engaged in legal and institutional capacity building for its weaker member states.

Protective measures the second classic area of activity for international organizations. This comprises a growing number of regulations to ensure the security of aviation, maritime transport and borders (Salter 2004), but also of financial transactions (Pieth 2006). Taken to its logical extreme, one could speak of a comprehensive attempt at ‘terrorism-proofing’ the international mobility of persons, goods and capital.

The hardening of fixed targets is perhaps the most traditional counterterrorism measure. Political institutions and military installations have always been protected from violent attack. In recent years, the protection of ‘critical infrastructures’ has presented more complex problems. What counts as a critical infrastructure remains open to contention (Fritzon, Ljungkvist et al. 2007), but a conventional reading would include energy networks and core IT systems (e.g. financial markets, traffic control systems) that provide the foundation for advanced liberal economies. Economic interdependence requires increasing international coordination to ensure the stability of such infrastructures.

All weaker link issue areas are beset by competing governance dynamics. Many ‘intermediate’ goods, such as framework for universal jurisdiction terrorist suspects, can also be conceptualised as club goods for regime participants. This facilitates the provision of goods as production cost can be directly set against the exclusive benefits of club members enjoy. The Council of Europe, which took an early leadership role in the fight against European terrorism in the 1970s (Guillaume 2004), serves as an example. However, transnational interdependence may clash with a limited club size. If terrorist make use of international mobility, then cooperation may need to be extended to wider areas (between Europe and the Middle East) or to the global level. International organisations navigate between these competing incentives. For instance, UN conventions against different terrorist activities have been built to an impressive extent (Nesi 2006), but universal adherence may be bought at the price of weak oversight mechanism and high likelihood of implementation failure (Heupel 2008). Further empirical illustrations will be discussed in the second part of this paper that focuses in greater detail on the EU case.

#### 2.4.2. Aggregate efforts

Aggregate public goods approximate the original model of public goods that are likely to be undersupplied due to their non-excludability and the exploitation ‘of the great by the small’. (Olson 1965, 3). Therefore, international regimes or a hegemon need to control free-riding and manage a system for equitable resource mobilisation. In case of international counterterrorism cooperation, regional/international peace or ‘good governance’, strategic threat awareness and a collective response capacity to severe attacks fall under this heading.

Depending on one’s understanding of the causes of international terrorism, peace operations, conflict resolution efforts, or democratisation and development assistance could be considered important tools (Tardy 2004). Suffice to state here that tackling structural causes of conflict and terrorism is dependent on critical threshold effects and requires very high resource investments. At the same time, the benefits of wider systemic goods, such as international peace and stability, are highly diffuse and non-excludable. This means that most states are

tempted to free-ride on the efforts of big powers. In addition, the example of peace operations also shows that burden-sharing is not the only collective action problem, but that increasing number of contributing states also generate crowding and coordination problems.

The provision of a collective response capacity to extreme attacks should face lower obstacles. Access to common defensive resources can be made exclusive to contributing states, while national investments also confer some private benefits (i.e. response capacities to less extreme attacks). Therefore, states do not necessarily have to invest in uncoordinated national defensive policies, but could also strive for economic efficiency and threshold effects – i.e. sufficient resilience levels - through international cooperation. The analogous case of defensive military alliances illustrates that credible mechanisms for burden-sharing and the use of common pool resources are challenging but not impossible to devise (Sandler und Hartley 1999).

Finally, strategic threat awareness is based on the summation of information from as many relevant sources as possible. The creation of national 'fusion centres' for terrorist threat analysis across Europe exemplifies this objective. Of course, under conditions of international mobility boundaries between national and international threat assessments are blurry or non-existent. However, information is not readily pooled as national security authorities remain concerned about the risk of information degradation (crowding) and free-riding by less capable states. The need to ensure confidentiality and to control free-riding place high demands on formal cooperation mechanisms.

#### 2.4.3. Better shots

Better shot situations represent the opposite to weaker link issues (Sandler 2004, Sandler 2008). The largest single contribution makes a disproportionate, but not determinate, impact on the provision levels of a good. As mentioned earlier, better shot goods are mostly produced by only one or few states, even if other states will free-ride. The capture or elimination of terrorist leaders serves as a pertinent example. But not all better shot products are spontaneously supplied. For example, the development of drugs is tied to international intellectual property protection to balance private and public benefits. Similar arguments can be made with regard to other security technologies that may contribute to the fight against terrorism, such as new explosive detectors.

In addition, international organisations can contribute to burden-sharing and cost-effectiveness by coordinating complementary research projects, providing direct financial support and by serving as repositories of knowledge. This may be especially relevant with regard to complex social issues and 'soft' technologies that underpin different policy interventions, such as the development of counter-radicalisation programmes. These issues rarely offer clear-cut benefits to private companies and may require systematic international comparison to achieve a sufficient level of variance for analysis. For instance, in international economic and financial policy a range of international organisations has assumed considerable expert authority and undertaken or supported policy-relevant research. But public good theory also alerts us to the fact that better shot issues tend to be addressed by a few powerful or capable states. This tension will be returned to in the following empirical survey of the EU's fight against international terrorism.

### 3. Surveying the EU's added value in the fight against terrorism

The previous typology led to a loose set of expectations about collective action dynamics in international counterterrorism cooperation. Weaker link efforts are beset by competing incentives for inclusion and exclusion and the creation of credible assurance mechanisms. Summative efforts face high efforts to control free-riding and also need to balance wider burden-sharing with partial rivalry or crowding. Better shot initiatives may be spontaneously supplied by one or few capable states, but may benefit from indirect support from international organisations. Next, one needs to consider the specific context of European integration.

#### 3.1. Contextualising collective action problems

As Sandler (2004, p.11) points out, predictions of collective action are based not only on the nature of public goods, but also on six additional factors: "1.the size of the group 2. the composition of the group, 3.the rules governing the interaction (e.g. institutional arrangements) 4. the strategic nature of interaction (e.g. is it recurring or once over) 5. the underlying information of the participants, and 6. the sequence of interactions." This leads to optimistic expectations about the EU's capacity to resolve collective action problems. Apart from its smaller size and greater homogeneity in comparison to other international organisations, interactions are highly frequent, institutionalised and information rich, which lowers the risks of cheating. Similarly, an extensive quantitative survey of EU 'security governance' from a public good perspective (Dorussen et al. 2009, p.791) argues that asymmetric costs and benefits of member states with regard to different issue areas and security tasks have been effectively balanced over time. But there is also ample ground for a more critical reading of the EU's capacities as a security actor. Following Sandler's conditioning factors for collective action, this can be sketched out as follows:

1. **SIZE:** EU membership has grown considerably over the last years, while European security governance takes place in a multitude of forums and involves countless professional or private actors (Webber et al. 2004)
2. **COMPOSITION:** The complexity of European security governance also leads to a higher degree of heterogeneity of actors. Institutional, professional and private actors varyingly engage in cooperative and competitive behaviour (Bigo 2005).
3. **RULES:** Due to the sensitivity of security issues, most relevant EU decision-making processes remain subjects to unanimity requirements that can cause deadlocks (Nilsson 2002) and are beset by institutional fragmentation (Stetter 2007).
4. **STRATEGIC INTERACTION:** The long-term time horizon of European integration may serve as a hindrance to agreeing on new security policies, if short-term benefits are outweighed by the costs of permanent political integration
5. **INFORMATION:** Whereas information normally abounds in EU policy-making, security issues remains governed both by considerable secrecy (Müller-Wille 2008)
6. **SEQUENCING:** Initiatives by important external partners (US) or sub-sets of (large) member states can exploit first movers advantages (Monar 2001)

While each point would merit more extensive discussion, the EU could, therefore, not be expected to overcome all collective action problems in matters of international security. This interpretation is corroborated in the following survey of the EU's counterterrorism policy.

### 3.2. The EU as a protective regime and the dilemma of political boundaries

International organisations could help to overcome weaker link problems in the fight against international terrorism by reinforcing universal jurisdiction and the protection of international mobility of goods, capital and people as well as of critical infrastructures. This range of activities also describes a large part of the EU's efforts.

Universal jurisdiction of terrorists has been supported at both the external and internal level. Externally, the EU consistently supported all UN conventions against terrorist acts and provided related 'technical' assistance to third states under UNSCR1373 (Wennerholm et al. 2010). In addition, EU partnership agreements were gradually extended by counterterrorism clauses that demanded compliance with related international law. Even if these clauses remained 'non-essential' - so that a violation could not lead to the suspension to the partnership agreement -, they provide an additional monitoring mechanism through regular political dialogues (Council 18-11-2004).

Internally, counterterrorism cooperation has been reinforced by a wider political momentum to establish the so-called Area of Freedom, Security and Justice. In particular, ongoing initiatives for police and judicial cooperation have been extended to the fight against terrorism. The European Arrest Warrant has been presented as a crucial contribution to facilitate the extradition of terrorist suspects (Plachta 2003). Additional framework decisions - such as the European framework decision on combating terrorism that provided a common definition and minimum sentences for related offence - or recommendations to facilitate cross-border investigations have strengthened each member states' capabilities to pursue terrorist across Europe (Monar 2007b).

The EU has been particularly engaged with regard to the protection of the free movement of people, goods and capital from terrorism. The fight against financing of terrorism has been particularly important (Vlcek 2007). The EU has actively engaged in international cooperation under the banner of the UN and the Financial Action Task Force, and directly enacts financial sanctions within its border. It also has taken an active role in the regulation of aviation and maritime security and expanded its role in border and document security standards. Finally, it has developed a strategy to combat the proliferation of WMD (Council 23-12-2003) and an action plan to tighten security controls with regard to the trade in explosives (Council 11-04-2008).

In the aftermath of the Madrid attacks the European Commission introduced the idea of critical infrastructure protection that has been derived from US security policy discourse (Boin and Rhinard 2009). Similar to other protective policies, the EU could draw on established competences over energy and transport networks to argue that increased economic and technological (IT) interdependence requires transnational coordination on an expansive set of fixed targets. In this context, the EU has linked the fight against terrorism to risk management systems for 'all-hazards', which is serves to regularise and depoliticise international cooperation.

However, it would be misleading to suggest that the EU has been fully successful in addressing weaker link vulnerabilities. Whereas the protection of the movement of goods, capital and people could draw on strong legal competences that derive from the European Single Market, there have been extensive delays in the transposition of EU measures for police and judicial cooperation (Bures 2006; Monar 2007). These policy areas lack stringent enforcement mechanisms, whereas divergent threat perceptions put a high cost on positive incentives for cooperation. Critical infrastructure protection policies are also weighed down by costs (Fritzon et al. 2007). Similar criticisms apply to the EU's external fight against terrorism. For instance, the EU failed to prevent the failure of a comprehensive UN convention against terrorism, whereas counterterrorism assistance to third countries has been limited (Wennerholm et al. 2010).<sup>6</sup>

What is of interest here, however, are general observations on the basis of public good theory that go beyond these familiar critiques of the EU's counterterrorism policy. The EU's lack of hard mechanisms for enforcing compliance of all member states did not lead to an outright cooperation failure. The expectation of a long-term and cross-issue interest in cooperation allowed far-reaching initiatives. For instance, the European Arrest Warrant has eventually become an operational tool to pursue terrorist suspects, even if it was subject to severe delays and legal challenges in various member states. In 2004 EU also created the position of Counterterrorism Coordinator for the purposes of increasing mutual commitment and information about implementation efforts. Although the limits of the office also speak of member states' concerns with sovereignty costs, the long-term trend shows that this position gradually contributed to the credibility and focus of the EU's efforts.<sup>7</sup> This chimes with wider research findings about the effectiveness of soft enforcement instruments of international organizations (Jochim, Reinalda 2008).

From the perspective of public good theory, the EU faces greater pressure from competing cooperation channels. As threat perceptions and levels of shared vulnerability vary among European member states, there is a trade-off between increasing the geographical reach and the efficiency of cooperation. On one hand, this takes the form of mini-lateral cooperation within the EU. An avant-garde of exposed states push ahead of other member states with regard to the extent and speed of security cooperation (Bossong 2007). The Treaty of Prüm that started out with only six members and comprises a number of terrorism-related policies, such as the use of sky marshals, falls under this heading. Generally speaking, operational counterterrorism cooperation in Europe takes place through a multitude of networks and venues with different memberships and degrees of formalisation (den Boer et al. 2008).

Last but not least, one can point to intensified 'security governance' beyond the EU. This mainly concerns border, financial and transport security, where the US has become intimately involved in EU-internal negotiations (recently transatlantic consultations on 'homeland security') have been extended to issues such as cybersecurity, critical infrastructure protection and the fight against radicalisation). These efforts could be seen as a successful instance of

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<sup>6</sup> Initially, the EU mostly relabeled or extended ongoing assistance programs for human rights security sector reform and institutional capacity-building, which created tension with the European Parliament that sought to defend its budgetary authority. Since the financial perspective 2007-13 specific funding lines for counterterrorism assistance have been made available under the so-called Instrument for Stability. Aggregate financial sums remain small, however, as will also be discussed further below.

<sup>7</sup> The regular reports by the Counterterrorism Coordinator stimulate discussions in the Council of Ministers and have maintained pressure to improve national implementation records (e.g. Council 26-11-2009). Particularly the second incumbent, Gilles de Kerchove, could raise the authority of the office among the member states.

matching the politically determined size of EU to functional transnational networks for security cooperation (Pawlak 2010). However, it can also be seen as an illegitimate imposition of US counterterrorism policies on European citizens, which promotes investments in questionable and costly surveillance technologies (Bigo et al. 2007). Conversely, EU also seeks to extend counterterrorism policies on various partners in its neighborhood, possibly at the detriment of economic and political modernization (Galli 2008). In short, the costs of extended cooperation in the interests of a dominant actor are not necessarily justified by collective benefits, i.e. the control of weaker link dynamics in the fight against terrorism. This presents a serious challenge to the further development of EU efforts in this issue area.

### 3.3. EU as a security actor and the dilemma of credibility

The EU can be understood as a collective security actor in its own right (Deighton 2007). It jointly pursues a range of security and foreign policies and has considerable financial resources at its disposal. With the ratification of the Lisbon Treaty, member states strengthened related institutional structures and committed themselves to mutual support in the face of attack (Rhinard and Myrdal 2010). The potential added value of the EU could, therefore, be considerable. It could act on the world stage, use its deep pockets and draw a wide range of information sources to fight against international terrorism. However, aggregate efforts in the fight against international terrorism face numerous collective action problems. They are costly, open to free-riding, and beset by crowding effects or partial rivalry of consumption.

This list of constraints partially explains why the EU largely failed to develop proactive foreign policies in response to international terrorism (Bono 2006, Keohane 2008). EU missions in the Palestinian Territories, Iraq and Afghanistan have been largely symbolic (Korski and Gowan 2009) and detached from international efforts to combat terrorism (de Vries 2008). Member states have failed to provide more resources and robust capabilities, as there are no credible commitment mechanisms to control buck-passing or free-riding. The EU also failed to boost its development assistance and programmes for democracy promotion and institutional reform that could have contributed to structural international counterterrorism policies. Since the required threshold effects remain highly uncertain, smaller states could easily refuse to bear higher costs, whereas leading European powers prioritise private benefits and deepen their bi-lateral security cooperation with 'terrorist-sending' states, such as Algeria or Pakistan (Wennerholm et al. 2010).

The EU's joint efforts against terrorism within its borders are beset by similar concerns over free-riding and the use of scare assets. Since 9-11, considerable steps have been made to create a common response capacity to both human-induced and natural disasters (Boin and Ekengren, 2009): the EU created a mechanisms for mutual information and voluntary cross-border asset sharing for civil protection, the ARGUS network and the Monitoring and Information Centre. IT also developed an action plans to respond to a possible attack or serious accident with a chemical, biological, radiological or even nuclear dimension (Council 21-12-2009). These mechanisms or networks have been back by 190m EUR over the course of current financial perspective (Council 10-3-2007).

Yet operational and genuinely resource-intensive cooperation remains politically constrained and voluntary (Rhinard 2009; Åhman, Nilsson et al. 2009). The proposal for a genuinely



common European disaster response force has not gained much traction, partly because Northern member states are concerned that Southern states invest less and are often at a higher risk of natural disasters.<sup>8</sup> Instead, member states have only designated various national modules that may, but not have to, be mobilised in different cross-boundary crises. One could surmise that the threat of free-riding would pose less of a problem as benefits from civil protection cooperation are largely exclusive to the EU. Since assets for civil protection are also scarce and degrade by use - i.e. they exhibit partial rivalry -, non-binding mechanism dominate over collective action.<sup>9</sup>

Two additional initiatives are specifically focused on the fight against terrorism. First, in the aftermath of the Madrid bombings the Commission convinced member states to create an EU fund for the support of victims of terrorism.<sup>10</sup> However, the annual budget of 1.95m EUR could hardly be said to constitute a substantive gain for member states' response capacities and mostly serves as a political symbol. Second, European member states agreed to support informal cooperation among special intervention forces that may be called upon in hostage crises or other quasi-military operations in the fight against terrorism. But the so-called ATLAS network (Council 25/04/2005) does not constitute an operational reserve for emergency situations, and only serves to enhance mutual training and exchange of best practices. This underlines a consistent preference for loose coordination networks that are not open to consistent exploitation by non-contributing states.

Turning to the last aggregate good in international counterterrorism cooperation, EU seems well-positioned to generate a comprehensive threat assessment. Europol produces terrorist threat analyses at the strategic level,<sup>11</sup> maintains a database on bombs and manages a programme for monitoring of radical. Eurojust coordinates complex cross-border judicial prosecutions for serious crimes and serves as another conduit of information-sharing and joint action against terrorists. But although Europol and Eurojust have recently been strengthened with regard to their institutional competences and structures, so far they have made rather limited impact on European counterterrorism cooperation (Bures 2008, Bures 2010). Police can choose from a variety of alternative venues, such as the Police Working Group on Terrorism or Interpol, or tend to rely on informal networks (Bayer 2010). EUROJUST still struggles to induce member states to make more wide-spread use of joint investigation teams.

In general terms, pooling information on a large scale bears the serious risks that small states will free-ride on the investigative efforts of a few lead services in Europe. Moreover, valuable information could be compromised or used up in investigations. Especially in high profile cases – which usually applied to terrorist suspects – there is a serious risk that security authorities will disagree on how to handle a specific case that reaches across national boundaries.

This set of collective action problems applies even more strongly in the case of secret intelligence (Müller-Wille 2008). EU cooperation in this issue area has not gone beyond the so-called Situation Centre (SITCEN) that is dependent on voluntary contributions from

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<sup>8</sup> Interview with national civil protection expert, May 2010.

<sup>9</sup> At the time of writing, it was open to question whether the solidarity clause for mutual assistance in the case of a serious terrorist attack result in more binding implementation mechanisms (Rhinar and Myrdal 2010).

<sup>10</sup>

[http://ec.europa.eu/justice/funding/expired/pilot\\_victims\\_terrorism/funding\\_pilot\\_victims\\_terrorism\\_en.htm](http://ec.europa.eu/justice/funding/expired/pilot_victims_terrorism/funding_pilot_victims_terrorism_en.htm)

<sup>11</sup> In form of annual public reports (TESAT) and more operationally oriented work on an 'analytical workfile on islamic terrorism'.

member states or other open sources. While SITCEN has grown considerably over the last few years and is bound to become an upgraded component of the European External Action Service, so far it has remained distant from the most valuable sources and critical decision-making processes (Rettman 22-02-2010). For instance, SITCEN was not informed or used as a coordination challenge when the US and various member states decided to raise terrorist alters in September 2010 (Mara 07-10-2010).

#### 3.4. The EU as a counterterrorism think tank and the dilemma of relevance

The EU has increasingly become involved in non-operational better shot efforts in the fight against terrorism. It has supported a dynamic expansion of research on security technologies, many of which may contribute to the fight against international terrorism (Geiger 2010). From 2005 to 2013 approximately 1.4bn EUR have been made available via the EU's multi-annual research framework programmes that require transnational cooperation, flanked by additional resources from the European Commission's Directorate General for Home Affairs (Council 12-07-2007).<sup>12</sup> In addition, the EU has promoted strategic public-private partnerships, such as the European Security Research and Innovation Forum, and new transnational expert networks, such as on radicalisation or on explosives.

The EU also plays a role in knowledge diffusion across national contexts. The EU's global counterterrorism strategy (Council 30-11-2005) that essentially copies the UK's model serves as a particularly visible example. But one could point to many more processes for best-practice sharing in areas of police cooperation and civil protection that are relevant to the fight against terrorism (Council 16-04-2010; Council 18-11-2005). Overall, the growth of research funding and knowledge dissemination could turn the EU into a 'counterterrorism think tank' itself (Brady 2009, 19).

At this point in time, however, we know far too little about the dynamics and impact of these activities. The EU's strategic funding of security research attracted little systematic attention beyond left-leaning political commentaries (Hayes 2009). And the EU's role in best-practice sharing in the fight against terrorism remains shrouded due to the fact that many relevant policy documents remain classified. Awaiting further detailed empirical studies, this paper can thus offer only very general observations.

As better shot issues benefit from a concentration of effort and expertise, the EU needs to actively foster initiatives that do not include all member states. On the one hand, this may lead to complementary knowledge-generation processes across member states and promises to raise collective benefits by a diffusion of best practices. For instance, the Counterterrorism Coordinator designated a number of lead countries to develop pilot project on different aspects of the radicalisation and recruitment process (Council 26-11-2009). On the other hand, the expansion and diffusion of pilot projects or new policy instruments face high obstacles. For example, effort counter-radicalisation programmes depends on wide variety of actors from public services and civil society, which vary widely across different national and local contexts. At best one may expect cooperation among few interested and structurally

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<sup>12</sup> As such, these efforts could also be seen as a mixed case of better-shot and pooled goods, which deserves further investigation with regard to the main collective action problems or benefits of EU action. Since there is little data on the effect of these initiatives to date, this paper presumes that the concentration of resources according to competitive grant application renders the better shot logic dominant, not least as EU research funds need to be matched by national investments.

similar states. For instance the EU expert group on radicalisation has been succeeded by so-called Policy Planner's Network on Countering Polarisation and Radicalisation that is composed of only six member states.<sup>13</sup> While this need not be seen as an explicit challenge to the EU's added value to international counterterrorism cooperation, public good theory underlines that unilateral or mini-lateral efforts are the dominant solution to better shot production games.

#### **4. Conclusions**

Public good theory can clarify complex patterns of international counterterrorism cooperation and the respective role of international organisations. In contrast to existing discussion that make questionable assumptions about the nature of the terrorist threat and present an oversimplified model of defensive and proactive counterterrorism strategies, this paper presented a typology of various public goods that form part of international efforts to combat terrorism.

The three main aggregation technologies of public goods all play a role and present different governance challenges to international organisations. Weaker link goods that can benefit from the involvement of international organisations are universal jurisdiction over terrorism, protection of international movements of people, goods and capital, and the protection of interdependent critical infrastructures. Related aggregate goods in the fight against terrorism are international order, strategic threat awareness and collective response capacities to severe attacks. Finally, better shot goods can be defined as the generation and dissemination of new knowledge and technologies in the fight against terrorism.

The second part of this paper surveyed the EU's counterterrorism policy according to this three-fold typology. Firstly, EU has made considerable strides to with regard to a wide range of weaker link issues, as it faces comparatively low obstacles to resolve the problem of assurance through intense institutional interaction. However, the political boundaries do not neatly match with shared exposure to terrorist threats, which translates into increasingly complex policy networks beneath and beyond the EU.

Secondly, the EU has not been able to realise significant aggregate effects in the fight against terrorism. The limits of EU foreign policy contribution to the fight against terrorism can partly be explained by the sheer costs and a corresponding lack of credible mechanisms for the control of free-riding or cost-shirking. The goods of collective response capacity and strategic threat awareness are similarly constrained by collective action problems. Voluntary exchange mechanisms and concerns over degradation through crowding have taken precedence over pooling resources at the EU-level.

Finally, one can observe a growing involvement of the EU in better shot issue areas that are dominated by a subset of member states and other informal means of cooperation. Contrary to the EU's traditional emphasis on legal coherence, EU officials have been open to internal leadership groups and experimentation. At the time of writing, however, it remains unclear whether experiences and best practices in the fight against terrorism can be transferred across European states, and whether mini-lateral initiatives between few member states may

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<sup>13</sup> <http://www.strategicdialogue.org/events/items/ppn-madrid>

decouple from the EU level. From a research perspective, this is perhaps the most interesting and dynamic field of international cooperation that needs to attract more empirical research.

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