

Counter Terrorism Liaison Officers: an effective anachronism?

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Introduction

Whilst many states have had a long experience of internal terrorism, the events of 9/11, and the subsequent transport attacks in Madrid and London have all highlighted the international nature of the present terrorist threat and the increasing need for effective cross-border police and judicial cooperation to counter it. These events provided an impetus for a wide range of political and legal initiatives undertaken by the European Union (EU) and elsewhere (Den Boer 2003), and have shone a light on the pre-existing bi and multilateral arrangements for doing so. Among these are located Counter Terrorism Liaison Officers (CTLOs)², who, along with non-specialist or criminal police liaison officers (LOs), are a little researched and little understood area of international police cooperation (Block 2011: 165).

Member States (MSs) of the EU are, at the political level, supporting and developing international policing bodies such as Europol and Eurojust whilst simultaneously investing in bi-lateral practitioner level police cooperation by supporting and even increasing the number of CTLOs. As an example of this, prior to 9/11 the UK had three government-funded CTLOs posted abroad, in France, Germany and the Benelux countries. Immediately after the attacks, four extra posts were set up, in Spain, Canada, Australia and Italy, and CTLOs were appointed and were in post during 2003. Since that date this number has grown to fifteen, with British CTLOs in for example Pakistan, Indonesia and Morocco. A

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² Counter Terrorism Liaison Officers are defined here as counter terrorism (CT) law enforcement and intelligence specialists posted abroad to undertake liaison roles with counter-terrorism services in other countries. UK CTLOs also carry out a role in 'extremism' cases (single issue groups prepared to use violence) and are thus sometimes referred to as 'CTELOs'.

similar expansion of police CTLOs took place in other countries too. France set up new posts in, for example, Cyprus and Ireland as a response to 9/11. In the case of the UK, the choice of where to post CTLOs was decided jointly by senior New Scotland Yard officers, the CTLO Management Board (described below), with input from the Foreign and Commonwealth Office. A range of factors governed the choice, including the perceived need to improve cooperation, the possible existence of pre-established arrangements by other UK agencies and the willingness of the host country to accept the posting of such a liaison officer.³

CTLOs sit at the conjunction of two distinct dynamics in policing and cross border police cooperation. Firstly, research has shown that with the notable exception of Europol, the major impetus for improved international police cooperation has arisen from practitioners, from police officers themselves, and that political level involvement would arrive later, if at all (Gallagher 1998, Anderson 1989). Secondly, it is evident that nation-states and their police forces treat terrorism as a subject apart from ‘ordinary’ crime. This can be seen in the size of counter terrorist police teams and in the extraordinary powers they are given to investigate terrorism (Swallow 2003).

This chapter will start by considering the theoretical considerations underpinning international police cooperation including the above two dynamics. It will then consider the nature of terrorism, discuss why it is treated differently from other crimes, examine the development of international police cooperation, the roles CTLOs perform and outline the response of the EU and Europol to 9/11. This has been included as it will highlight some of the issues that exist relating international police cooperation in the area of counter terrorism (CT). In conclusion it will draw these themes together and speculate on the future development of international police cooperation in this area.

Theoretical considerations – issues related to cross-border police cooperation

Why has most impetus for improved international police cooperation come from police forces themselves? To answer this we should briefly look at the role policing services actually undertake, and as

³ The posts identified in 2003 in Canada, Italy and Australia have now finished, and the funding used for other posts.

Walker argued this can only be undertaken by first considering the role of the nation-state which is the 'most powerful reference point for our present understanding of the wider political relevance of policing institutions' (Walker 1994: 24).

Max Weber, the great German economist and sociologist, argued in his 1919 essay, 'Politik als Beruf' (Weber 1948:78 in translation) defined the modern nation-state as 'a human community which . . . claims the monopoly of the legitimate use of force within a given territory'. Each state would set up an army to maintain external security, and at a later stage a police force to safeguard internal security.

As Walker put it, 'police is the label and policing the means used by the state when asserting its exclusive title to the use or threat of force against dangers within its territory' (Walker 1994:25). He continued (Ibid: 25-26) noting that there is a very close 'connection between the police function and the broader function of the state'. He argued that whilst other policy areas function independently of each other, it is policing that underpins them all. For example he pointed out that should the exercise of authority in any of the other policy areas fail, it is the police and in dire circumstances the army who 'fill the gap'. It can thus be seen that the police and the army are linked to the preservation of order within the state, and can be regarded as the final guarantor of the very existence of the nation-state itself.

As outlined above, Gallagher (1992, 1998) showed that functional pressures related to increases in cross-channel trade and tourism in the English Channel and northern France regions led to an increase in crime. Stolen French cars were being increasingly found in Kent, and British criminals were being increasingly arrested in Northern France. Gallagher charts the growth in cross border crime from the 1960s onwards. He demonstrates that it was a new issue for police forces on either side of the channel and obliged them to cooperate across borders. Governments were largely silent on the issue, unable or unwilling to condone it officially owing arguably to Weberian based concepts of sovereignty and allowed police forces themselves to develop letters of understanding or bi-lateral police-cooperation agreements. This left the police with little alternative than to build up direct contact with each other on a practitioner-to-practitioner basis. Gallagher terms this 'sub-national' police cooperation (1998:

introduction). This chapter will argue that LOs and CTLOs are positioned above this ‘sub-national’ level, in what might be termed the ‘national’ arena, producing a three – level model of cross-border police cooperation.

To conceptualise this we can perceive the nation-state as a cone or pyramid, with the apex representing the government, the base representing the territorial area over which it claims exclusive rights to the use of force, and the periphery representing its frontier. Governments are symbolically distanced, perhaps isolated from each other at the apexes of their nation-state pyramids, but the bases touch, and it is here that most of the functionally-driven international police cooperation takes place, at Gallagher’s ‘sub-national’ level. Above this, and entering areas of greater political sensitivity are positioned the LOs and at the highest point, the CTLOs.

Brodeur’s well-known definition of ‘high policing’ and ‘low policing’ can be used to enrich this model and highlight the differences in roles between the sub-national level, the LOs and the CTLOs. In Brodeur’s definition, high policing deals with matters of state security and counter terrorism, and low policing addresses the more prosaic, such as petty criminality and vandalism. Criminal and judicial policing are based in the middle (Brodeur 1983). In this ‘state as pyramid’ model, low policing cooperation undertaken at the sub-national-level would take place at the base periphery of the pyramid, abutting neighbouring ‘low policing’ agencies and at a symbolic distance from the governmental ‘apex’. Mid-level policing is undertaken by LOs who would often deal with specialised central police teams based in capital cities, and high policing would take place at just under the ‘government’ level, in direct support of the state. CTLOs, who deal with intelligence services on highly sensitive issues (as outlined in section 12.3 below) are thus ‘distanced’ from their opposite numbers and to a lesser degree from their LOs and are under closer control and scrutiny by their respective governments.

Whilst externally this may seem an informal set of arrangements, Lipson (1991) argues that it may in fact be a very formalised strategy, the nature of which allows a high degree of flexibility and lack of legally binding constraint for the respective governments. Lipson lists the benefits of such informal arrangements. They are quick to set up, flexible and easily abandoned. They avoid formal and visible pledges and can be easily modified, avoiding the needs to involve court proceeding in the event of any

dispute (ibid: 500). In the sensitive world of counter-terrorist cooperation, these points are very useful.

The next section will address terrorism, which as will be demonstrated, is often treated as a category apart from ordinary crime.

Terrorism as a concept

As a crime category, terrorism has only relatively recently been recognised, the term perhaps replacing concepts of ‘treachery’ and ‘treason’. The term became established in its present usage in the 20th Century. The first British legislation containing the word ‘terrorism’ was the 1974 Prevention of Terrorism (Temporary Powers) Act, replacing an act of Parliament from 1939 entitled the ‘Prevention of Violence Act’. Despite this recent development, there are significant difficulties with this word itself. Firstly, it is a very sensitive subject area for nation-states, and clichés such as ‘one man’s terrorist is another’s freedom fighter’ still have great currency in international discourse. Additionally, definitions of terrorism vary greatly from country to country and change quite quickly over time (Hoffman 2006:3, Schmid: 2011:39)

Terrorism is often considered an attack on the very existence of the state itself, and the motivations of terrorists are very powerful, often driven by deep hatred and commitment and carried out in the absolute and firmly held belief in the rightness of their cause. Normal ‘constraints’ on the limits of ‘ordinary’ criminal behaviour do not seem to apply. The most significant expression of this is the suicide bomber. White (2011:43-44) sets out the differences he perceives between criminals and terrorists. Criminals he argues are motivated often by greed, are self-centred and unfocussed, opportunistic, often deterred by the police and always have a planned escape. Terrorists are the opposite. He depicts them as well trained, well prepared and organised, undeterred by capture, and prepared to accept the consequences of their actions. White’s separation may explain why different tactics are used to deal with them.

States therefore, in order to protect themselves, have often tended to treat terrorism as a category apart from other crimes. This is reflected in both the size and scope of national counter-terrorism agencies⁴ and in the extensive legal powers with which they have furnished themselves to deal with it (Roach 2011). The techniques used to counter terrorism are amongst the most sensitive in use, rarely used as widely or as extensively in criminal investigations. There are occasional allegations that states undertake actions which could be viewed as excessive in protecting themselves against terrorists. The controversies surrounding the detention of terrorist suspects by the US authorities in Guantanamo Bay are well known, and the UK for example has on at least two occasions taken actions that have allowed its critics to accuse it of the internment of its enemies, and has seen its counter-terrorism legislation overturned by its own and by European courts as being in breach of human rights.

Development of international counter-terrorism cooperation

The sensitivity around terrorism prevented Interpol, which until the second part of the 20th century was the only international body facilitating cross police border cooperation, from dealing with the subject. This vacuum led directly to the establishment of CTLOs. Interpol was constituted in its present form in 1956. Significantly, its constitution was not written by international lawyers or by diplomats but by police officers. The absence of professional or legal expertise in the drafting of the constitution has led to considerable difficulties with its interpretation and implementation. For example, the drafters did not include a mechanism for expelling errant members (Swallow 1996: 115).

⁴ In 2005, the London Metropolitan Police's 'Counter Terrorism Command' had over 2,000 officers (see <http://news.bbc.co.uk/1/hi/uk/4227476.stm> Accessed 27.10.12). This represents some 6% of the force's total strength of 32,000 officers (www.bbc.co.uk/news/uk-england-london-12129579 Accessed 27.10.12). In addition, The Security Service (MI5) had over 3,800 staff, the majority of whom were dedicated to counter-terrorism (see http://www.huffingtonpost.co.uk/2012/06/26/olympic-security-mi5-chief-jonathan-evans_n_1626469.html Accessed 27.10.12). This compares with the 3,740 staff employed by the UK's Serious and Organised Crime Agency (SOCA) who deal with all other forms of serious and international crime (see www.soca.gov.uk/about-soca/how-we-are-run/structure Accessed 27.10.12). Although general policing will be subjected to government cutbacks, there is no evidence as yet that the above counter-terrorism agencies will be cut.

Of great significance for this chapter is the emphasis in its constitution on distancing the organisation from political control. This led to the wording of Article 3, which explicitly prevented Interpol from engaging in activities of a 'political, military, religious or racial' nature (Interpol 1990). In this far-reaching decision, Interpol stated it would not deal with terrorism, and for many years, Nazi war criminals fell into this category. Explaining this decision, the then Secretary General, Jean Népote, speaking at Bramshill House on 1 December 1966 in the Frank Newsam Memorial Lecture, outlined Interpol's thinking on this matter. He said:

Offences against ordinary criminal law are universally recognised as violations of the rules governing life in a community and of the normal pattern of relations between human beings. There is a kind of historical and geographical consensus branding them as crimes. This kind of absolute and universal condemnation is conspicuously lacking where political offences are concerned, even when they have been codified and defined by law, and the relativity is particularly apparent at the international level (Quoted in Ghosh 1976: 213).

A significant example of this was Interpol's refusal in 1972 to help the German Federal police, the BKA, to investigate the terrorist attack on Israeli athletes by the Black September Group at the Munich Olympic Games deeming their murderous activities to be 'political' (Gulbinowicz 1978).⁵

Because of Interpol's position, and due to the rise in international terrorism in the 1970s, a small number European police forces from France, Germany, Belgium and The Netherlands independently of their governments set up an informal counter-terrorist network in January 1976 to exchange terrorist intelligence. The UK's contact point was a unit within New Scotland Yard's Special Branch, the police body at the time responsible for investigating terrorism nationally.

The decision to establish this informal CT network was adopted by the inter-ministerial European Political Cooperation group as the basis for TREVI to provide additional impetus and political support to dealing with such issues. Significantly, the police forces involved in setting up the pre-TREVI network wished to distance themselves from the involvement of politicians in their work. In 1979 they

⁵ Interpol's position on terrorism was to a certain extent modified by a resolution adopted at the Assembly General in 1984 to allow Interpol to deal with some 'political' crimes. The resolution stated: 'In general, offences are not considered to be political when they are committed outside the 'conflict area' and when the victims are not connected with the aims or objectives pursued by the offenders' (Interpol 1984).

set up an informal 'sub-TREVI' network, now called the Police Working Group on Terrorism (PWGT) to work alongside, but apart from the TREVI group. The PWGT exists today and has 30 members, embracing the 27 EU states, plus Malta, Norway and Switzerland (Heeres 2012:191).

How does the PWGT work? The first point to mention is that it is an informal but governmentally accepted network of police CT agencies dealing with terrorism. It does not include civilian security services or police services without a judicial role⁶. The PWGT provides a secure encrypted communication system linking its member agencies. It conducts its work via a twice-yearly meeting where personal contacts are made and relationships are developed. As discussed earlier, terrorism is a complex subject requiring the use of sensitive techniques such as undercover agents, electronic and physical surveillance and human sources, and a great deal of importance is placed upon the trust that is built up between agencies and individuals within agencies. The ability of a police officer to be able to pass or receive terrorist information or intelligence to or from a person he or she trusts, to know the information is passed in good faith and will be acted upon in a timely and appropriate manner, is highly valued (Das and Kratcoski 2001:25).

Should police officers in one country require intelligence regarding a suspected terrorist in another country, this is the network they would use to pass and receive the information. Similarly, should judicial terrorist enquiries be undertaken overseas, it is the PWGT that will facilitate that work by dealing with investigators or examining judges, by arranging visits or by passing evidence. In the field of counter-terrorism, it is still the most effective mechanism available to co-ordinate the international policing effort against terrorism. The PWGT does not have a central analytical facility nor a permanent secretariat. In 2000 an offer by Europol to perform these roles for the PWGT was rejected by the membership. The group is 'chaired' at any one time by the state due to hold the next six-monthly meeting.

⁶ The absence of civilian intelligence services from the PWGT arises from organisational rivalry. However it should be mentioned that these bodies have their own international network, known as the 'Club of Berne'. See <http://euobserver.com/institutional/32104> accessed 4 November 2012 The Club posts no CTLOs.

Counter-terrorism Liaison Officers

To enhance the cooperation provided by the PWGT, and starting in about 1989, many countries also appointed CTLOs to work alongside the PWGT network. These postings are organised separately from the PWGT, but have a close relationship with it. Some are posted to other PWGT members; others are posted to countries outside this group. Some have responsibility for several countries, both PWGT members and non-members. For example the UK CTLO in Germany deals with Scandinavia, and the officer in France with Belgium and Algeria, which is not a PWGT member.

UK CTLOs posted to other PWGT member countries are invariably based directly within specialist counter terrorism teams. In France for example, the UK liaison officer is based within the French Interior Ministry, in the national counter-terrorism coordination team UCLAT (L'unité de coordination de la lutte antiterroriste). This team conducts no investigations itself, but is the contact point for all international and internal French requests for information on counter-terrorism. It has a staff of about twenty, from the several police and Gendarmerie teams in France with counter-terrorism roles. It also houses foreign CTLOs posted to France and runs France's own network of CT liaison officers abroad. The French liaison officer in the UK is based within the Metropolitan Police Special Branch 'International Liaison Service' (ILS) which runs the UK's network of CTLOs. At present this officer is the only foreign counter-terrorism liaison officer based in the UK.

CTLOs posted outside the PWGT network, for example those in Morocco and India, together with all criminal liaison officers, who represent the UK's Serious Organised Crime Agency (SOCA⁷), are based within the British Embassies. The reason that such officers posted within the PWGT's membership are usually based within host police CT agencies and not their national embassies relates to the fact that when the PWGT and its unnamed predecessor were originally set up and CTLOs were initially appointed, national governments were by and large not involved in the process. As outlined above, the police officers set up the PWGT in 1979 to run alongside, but apart from, TREVI. Discussions to do this were conducted on a police-to-police basis without government involvement, and therefore

⁷ This agency will be called the 'National Crime Agency' with a changed legal status on 1st October 2013.

once in post, CTLOs were generally unable to call upon government facilities such as embassies or ambassadorial support services. For example, the original group of British CTLOs was not afforded diplomatic immunity, as this would have involved government input and agreement.

As noted by Gallagher (1998), government interest in police cooperation activities usually comes after the fact. This was noted in the UK after 9/11 when there was direct government interest and input into this area of activity, and thus later CTLOs, and especially those outside the PWGT network, were able to use ambassadorial facilities. For those posted within the network, the precedent of direct posting within police services was well established and continued.

The posting of LOs however came after the setting up of the CTLO/PWGT network, and was an issue initiated by the TREVI group, from the early 1990s. Thus the exchange of LOs had direct government input, and these were based in embassies from the outset, reaching out into host police services from that base. The issue of government involvement influencing where LOs are based can be identified in the American police liaison network. Here most police liaison is undertaken by the major federal policing organizations such as the State Department, the CIA or the FBI all of whom are diplomatically authorized and based within their respective American embassies. In the early 2000s, the New York Police Department (NYPD), possibly the largest and wealthiest force in the US, and perhaps out of frustration at the service it perceived itself to be receiving for the Federal agencies, unilaterally set up its own police liaison network sending ‘NYPD LOs’ abroad without State Department or broader US Government support. These NYPD LOs, where accepted by host agencies, were therefore based in police buildings, and not in US Embassies. In France the NYPD LO was based in a police station in Paris, having little contact with his ‘official’ colleagues at the Embassy⁸.

Who are the CTLOs and what do they do? CTLOs are invariably police officers, usually of mid to senior rank, perhaps Chief Inspector, Captain or Commandant although this can vary, and will have

⁸ The USA does not use the term CTLO nor does it specifically designate liaison officers dedicated to terrorism. This work is undertaken by the above listed bodies depending on which is leading on any particular enquiry. For example, in late 2001, the US lead for 9/11 related enquiries undertaken in UK was the FBI Legal Attaché (Legat) at the American Embassy in London.

an extensive experience of CT investigations. They are expected to be linguists, to develop a thorough understanding of the agencies abroad with which they work and above all to make and maintain personal relationships with police officers there. They are generally posted for periods between three and five years. Some are posted to one country, but others may have responsibility for more than one country, but will always have a permanent base. The CTLOs primary function is to facilitate cross border CT enquires on a 'police to police' basis by providing a single point of contact for CT agencies in both their home and host countries. A typical enquiry they might deal with for example might follow the arrest of a terrorist suspect in the UK found in possession of French passports. Either the UK or the French CTLO would be asked to inform the French authorities of the arrest and to check on both the suspect and the passports he held to see if they were involved in any French CT enquiries. These enquiries would be conducted rapidly on a 'police to police' basis, and if considered evidential-ly useful, would be followed up by a formal judicial request for the same information via an 'International Letter of Request (ILoR)', sometimes referred to as a 'commission rogatoire internationale' or 'CRI'. ILoRs are formulated in the UK by the Crown Prosecution Service, and in France by the relevant Investigating Magistrate, and are sent via the more formal judicial route formally requesting that enquiries are undertaken in a way acceptable to the requesting country. Many countries, France and the UK included, also exchange liaison lawyers or prosecutors to facilitate judicial enquiries such as the passage of such ILoRs (Guille 2010).

Similarly, the CTLO may organize and facilitate a visit by a specialist team from either country wishing to meet their opposite numbers to discuss joint investigations or to exchange intelligence. The CTLO would also act as guide, interpreter and translator. UK CTLOs are given no performance indicators or targets to meet, and an attempt to introduce such a scheme in 2006 was abandoned through impracticality perhaps owing to the sensitive 'high policing' nature of the work they undertake.

How are CTLOs chosen, and how is the scheme governed?

Within the UK, and in the absence of a national police service, the UK CTLO scheme is run from within the headquarters of London's Metropolitan Police Service, in New Scotland Yard. This build-

ing also used to accommodate all national and international bodies dealing with criminal issues on behalf of the wider British police service until the establishment of NCIS, now SOCA, in April 1992. As NCIS (and SOCA) have no role in CT, the national and international units dealing with such issues remained in New Scotland Yard.

Each of the UK's territorial policing services has a dedicated CT unit, usually called Special Branch. In London, Special Branch as an intelligence body and the former Anti-Terrorist Branch as an investigative body, were merged in 2006 to form the Counter-Terrorism Command (CTC, also known as SO15). The availability of a post as CTLO would be advertised nationally among these counter-terrorism teams, and suitably qualified officers would be called for interview. The UK scheme is governed by a Management Board comprising members of the Home Office, ACPO, ACPO (Scotland), the Foreign Office and senior members of the CTC. This body would decide where CTLOs should be posted.

Europol's 9/11 Counter Terrorist Task force

Why is CT intelligence not passed via Europol? There is no practical or judicial reason why this should not happen, as Europol is fully equipped and lawfully empowered to do so. Were Europol to be used to channel CT information, a benefit unavailable bilaterally is that Europol could also check with the other Member States to see whether the above suspect and his passports had ever come to light elsewhere. Yet so sensitive is seen the issue of terrorism, that even today, more than a decade after 9/11, Member States and their police forces still tend to use the PWGT and CTLOs in preference to Europol.⁹

As an example of this deeply rooted preference for bilateral cooperation, this chapter will turn to a brief discussion of the EU's response to 9/11, as it will highlight many of the issues governing the present state of cross border police cooperation on counter-terrorism within the EU.

⁹ An exception to this is perhaps extremism. For example a very successful criminal investigation, 'Operation Achilles', was mounted and coordinated via Europol and Eurojust in 2007 against the Animal Liberation Front and the Stop Huntingdon Animal Cruelty group (SHAC).

In the wake of the 9/11 attacks, the EU Council meeting on 20th September 2001 ordered the establishment of a 'Counter Terrorist Experts Team' (here referred to as the Counter Terrorist Task Force – CTTF) within Europol, for 'a renewable period of six months' (Council 2001). In recognising that Europol would not have sufficient staff to establish this team itself, Member States were 'invited' to appoint 'liaison officers'. The Council decision was augmented by a European Council summit decision the following day, instructing Member States to impart 'systematically and without delay, all useful data regarding terrorism' in their possession to Europol (European Council 2001).

Europol was tasked by the Council with establishing a team with three aims:

- To collect in a timely manner all relevant information and intelligence relating to the current threat
- To analyse the collected information and undertake the necessary operational and strategic analysis
- To draft a Threat Assessment document based on the information received.

To deal with this tasking, Europol called a meeting at its headquarters in The Hague on 27th September 2001 and outlined its plans. It asked to be provided with either one or two members of staff from each MS and would divide them into four teams reporting to Europol's existing counter-terrorist team, SC5. To start its mandate, Europol requested the team should start work on 14 October 2001 and asked that Europe's police and intelligence services pass it information on a regular basis.

The tasking was undoubtedly Europol's most significant chance to date to prove its worth in the field of counter-terrorism, to raise its profile in coordinating the international policing effort in a key area and take over the work of the PWGT and CTLOs. There was an immediate problem to be addressed, and Europol had considerable political support behind it.

Yet the CTTF found it difficult to make a contribution to the European response to 9/11 and it caused a great deal of tension between Europol and the CT agencies of the Member States. The reasons relate mainly to the attitudes of the Member States to terrorism and to the emphasis they still put on tried and trusted methods of tackling it.

The tasking, whilst a powerful political statement in respect of the need for the EU to be seen to respond, took little account of the practical and legal difficulties of doing so.

Firstly, and perhaps most surprisingly, the Council decision was made without prior reference to, or consultation with, Europol. The decision was not communicated to Europol once it had been made, and not once in the eighteen months of its existence did the Council enquire how it was progressing or what problems it might be encountering. Anecdotal evidence indicates that a senior Europol manager, having heard a rumour of the tasking from an intern there, had to spend some time on the afternoon of 20th September telephoning contacts in Brussels to find out if it were true.

Secondly, in forming the CTTF, Europol was given about thirty extra staff. Yet it simply did not have the infrastructure, in terms of offices, telephones or computers, to cater for these new arrivals. Although Europol provided significant assistance to them, the initial concerns of the CTTF members were understandably finding suitable accommodation and it took some weeks for them to settle in.

Thirdly, the primary tasking given to Europol (to collect all relevant information) was patently beyond its remit. Europol had no authority to collect information in this particular field of activity. Such information ‘belonged’ to CT agencies of the Member States and had to be shared voluntarily. For a variety of reasons, they were reluctant to do so. Their reasons included a mistrust of sharing their hard-won and possibly sensitive, even secret, intelligence with others too readily. The instruction issued by the Council on 21st September 2001 to share information was not communicated, at least in the UK, to the CT agencies in a position to provide the information. It is also doubtful in any event whether such interference in operational police or Security Service work by the British Government would have been constitutionally acceptable.

Fourthly, the status of the CTTF’s staff was not clear. The tasking referred to ‘liaison officers’, a term not recognised under the Europol Convention. Some were sent to Europol as full members of staff, working under Europol’s regulations and authority, which meant in theory they were allowed access to Europol’s central databases, the ‘Analytical Work Files’ (AWFs), the mechanism by which Europol conducts its work. Many were sent as ‘Europol Liaison Officers’, defined under Article 5 of Europol’s Convention, which meant they were under the control of their own national liaison bureaux, and

not allowed access to the AWFs. Some were classified as ‘seconded officers’, again a status not recognised under Europol’s Convention, to work under Europol’s authority, and thus it was not clear if they were allowed access to the AWFs. Some of the people who were sent were not counter-terrorist specialists, some did not want to be there and some were confused about the role they were to perform. These issues created serious managerial difficulties for Europol and the Member States.

Fifthly, Article 4 of Europol’s Convention at that time stated that Europol may only receive and disseminate information from the Member States via a nationally appointed unit known as the Europol National Unit (ENU)¹⁰, which in the case of the UK in 2001 was the National Criminal Intelligence Service (NCIS), now called SOCA, and soon to become the National Crime Agency. However, NCIS, as was the case with ENUs in France and Italy and elsewhere, did not deal with terrorism, and this caused logistical difficulties for CT agencies wishing to supply the CTTF with information. In the UK the issue was solved by setting up a separate office staffed by the Security Service (MI5) within NCIS to pass intelligence to Europol, but this created another link in the communication chain and required the posting of more specialist staff away from their primary duty.

Finally, in taking on this task, the CTTF entered a field with well-established and fully functioning informal multi-lateral and bi-lateral networks, including the Club of Berne and the PWGT, and in order to fulfil its tasking was obliged to replicate much of the work undertaken by these pre-existing structures. As outlined above, CT agencies much preferred to use these networks.

Given these enormous logistical and political difficulties, it is not surprising that the CTTF was unable to make a major contribution to Europe’s policing response to 9/11. It can be argued that the CTTF actually hindered the EU’s post 9-11 activities, by absorbing and diverting resources at a critical time. For example during October and November 2001 there were meetings for all the EU’s CT agencies held twice a week at Europol, involving perhaps 40 CT specialists each time.

¹⁰ Since this time, Europol’s convention has been modified to allow direct contact in certain circumstances.

Conclusion

International cooperation between police forces to counter terrorism is still undertaken primarily within the realm of unofficial international law enforcement networks. In comparison with police liaison officers cooperating on criminal issues, CTLOs usually work at a greater distance from foreign police services, and are closer to their governmental authorities. Much of this is due to the sensitive and state specific nature of terrorism, and the greater interest governments take in it. It can also be attributed to great variety of CT intelligence structures that exist in different nation-states, which makes mutual intelligence change far from self-evident. The historical role of agencies dealing with CT domestically has been to protect their nation state against foreign threats, and although the current terrorist threat is common to all EU states, the culture, structure and remit of intelligence services, underpinned by Weberian concepts of statehood, do not allow them easily to combine and cooperate other than on a bilateral practitioner basis. CT intelligence architectures differ greatly from country to country, and this does little to facilitate cross-border intelligence exchange.

Moreover neither Interpol nor more significantly Europol have provided a suitable forum for CT liaison. This was very evident in the lack of success of the CTTF, which highlights the nature of the present state of international police cooperation in the counter-terrorist field.

Having made its decision to establish the CTTF, the Council seemed to take very little interest in it. Whether the Council was badly advised, or was unaware, or whether it was more concerned with making powerful statements in the knowledge that Europol was not equipped to carry out its demands will have to be judged by other researchers. In an echo of the debate surrounding the establishment of Europol in 1992, it also showed the gulf that still lies between political aspirations and practical reality in the CT field.

Moreover, it showed that at the present time, MS's police and security services seem unwilling to allow Europol to manage CT intelligence coordination in the EU, and that they prefer the informal practitioner networks they have built up over time. It remains to be seen whether this is condoned by MS's Governments, but at least in the cases of France and the UK it can be seen that their governments were prepared to spend resources on the development of the practitioner-led PWGT and on

CTLOs. There are reasons for this may relate to a desire not to get rid of the old, the PWGT and CTLO network, before the new, centralised provisions of Europol, have proved themselves effective.

Convergence and centralisation of international counter-terrorism may well happen in the fullness of time at the expense of CTLOs, but evidently not in the short to medium term. Until a post-Weberian European (supra)nation-state is established, exercising force within its own territory, LOs of all disciplines will continue to operate, and their presence could in some measure be viewed as an indicator of the development of the European Union as a nation-state. We are far from that position, and thus the emphasis still seems to be on inter-state negotiation via LOs and CTLOs.

Areas for further research:

1. Within the EU, is the reliance MSs place upon bi-lateral contact via LOs and CTLOs justified given the range of central bodies such as Europol and Eurojust that exist to facilitate police and judicial cooperation?
2. As exemplified by the failure of Europol's post 9/11 CTTF, is there a mismatch between political aspirations and practical realities in the field of European police cooperation?
3. Should terrorism be treated as a category which is separate from other crimes, and if so, why?

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