

The Bush-EU Meeting: More Than a Symbolic Gesture on Counterterrorism?

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Brief Analysis

President Bush will visit Brussels next week and meet with leaders of the European Union (EU). While the Iranian nuclear program and the war in Iraq will undoubtedly be the top items on the agenda, counterterrorism is also certain to be a topic of discussion. This meeting-and the more conciliatory tone taken by both the United States and Europe over the past month-is encouraging and, one hopes, will lead to closer cooperation and collaboration between the United States and the EU. From a counterterrorism perspective, however, the question could be asked whether Bush's meeting with the EU officials is anything more than symbolic. Does the EU play an important role in Europe's counterterrorism efforts, will it do so in the future, or is this still an arena in which the member states have almost complete primacy? The answer is not as clear as it once was. Although the EU still plays a fairly limited role in European counterterrorism efforts, it has gradually assumed a more active role in this area, a trend that appears likely to continue.

Background

Prior to September 11, the EU played almost no role in criminal justice matters, a category which included counterterrorism. The treaty establishing the EU in 1992 created three separate areas-or "pillars" as they were called-for EU policy. The EU's authority was at its peak in setting policy under the first pillar, which covered economic, social, and environmental issues. Its power was slightly more limited in the second pillar, which included foreign policy and military matters. The third pillar covered justice and home affairs matters, including counterterrorism, and the EU's authority in this arena was far more limited than under the other two. The member states regarded it as a highly sensitive area of national sovereignty, involving police and intelligence matters, and they were unwilling to cede power in this arena to the EU.

Post-September 11 Changes

Since September 11, the EU has sought a greater role in the justice and home affairs arena, with some success. The most visible development was the creation of the office of an EU counterterrorism "czar" in May 2004, in the wake of the Madrid train bombings. Gijs de Vries, a former Dutch interior minister and member of the European Parliament, was appointed to this position and charged with coordinating the development of EU-wide counterterrorism policy.

Though it has received somewhat less attention, probably more important has been the implementation of the European Arrest Warrant (EAW), which was designed to help member states combine their law enforcement efforts

across national borders using common definitions and procedures. In the past, the issue of “dual criminality” has led to many highly public extradition battles between EU member states. Under this principle, member states would extradite someone only if the matter was a crime both in the state sending the request and in the state receiving it. The EAW-which is now the law in every EU member state but Italy-was intended to replace this extradition system. Under the EAW, a judge is supposed to grant the extradition request, with minimal review, whether or not the crime charged is one in the judge's state as well. It appears to be having an impact already and has been used successfully in a number of cases. The most publicized was this past week, when Youssef Belhaj, a suspect in the Madrid train bombings, was arrested by Belgian authorities in response to an EAW issued by Spanish authorities. The EAW still must overcome some obstacles, however, before it can be deemed a success. For example, several weeks ago, a French judge refused a Spanish request for the extradition of a spokesman for Basque political prisoners.

In this same vein, the EU is currently debating whether to create a European evidentiary warrant, which would allow a judge in one member state to obtain existing evidence in another member state (as part of a criminal proceeding). Many observers believe that the EU is likely to pass the evidentiary warrant in the near future.

The recently ratified European Constitutional Treaty may also have an impact on counterterrorism policy. The Constitutional Treaty-which still requires implementation by the member states-would abolish the pillar structure described above, presumably allowing the EU greater legislative freedom in the justice and home affairs arenas.

Continuing Limitations on EU Power

However, despite the many changes that have been made since September 11, the EU still plays a limited and narrow role in overall European counterterrorism efforts. While the EU has gained greater influence in the legislative and policy arenas, it is not involved to any real extent in day-to-day counterterrorism matters. European intelligence and police work is still performed by member states, and cooperation on counterterrorism matters among member states is on either a bilateral or multilateral basis, not through the EU.

This situation appears unlikely to change in the near future. For example, during the debate over the Constitutional Treaty there was a proposal to create a European prosecutor. Such an office would have clearly enhanced the involvement of the EU in day-to-day criminal justice matters. The proposal was quickly shot down, and observers regard it unlikely to be passed in the next decade, as it would too greatly infringe on national sovereignty.

In addition, Europol and Eurojust-established by the EU to improve collaboration and cooperation between police forces and judges, respectively, of member states-have little actual authority to fulfill their assigned missions. Europol, for example, has a support function and through it national agencies can cooperate only on the “nonoperational” aspects of law enforcement.

Implications

From the perspective of the United States, there are several reasons why greater EU involvement in counterterrorism matters should be viewed as positive and should be encouraged. First, the counterterrorism efforts of EU member states are extremely uneven. While some countries, such as France, Spain, and Britain, take the threat very seriously and have fairly strong intelligence and law enforcement capabilities, this is not the case with all member states. The EU might be in the best position to push countries to improve their domestic capabilities. In fact, there are many instances where member states welcome pressure from the EU, as it allows them to take actions that their populations might otherwise oppose. Second, cooperation and coordination on counterterrorism within Europe remains problematic. French terrorism investigating magistrate Jean-Louis Bruguiere recently complained that information sharing in Europe is often overly time-consuming, when action is required “in real time.” He noted that national intelligence agencies are still hesitant to share information with their EU counterparts due to concerns about protecting sources. This is particularly disconcerting given the ease of movement and travel across the EU.

Although this presents a very difficult challenge, the EU is in a better position to address this problem than the United States or any individual member state.

As Europe has become one of the most important battlegrounds in the global fight against terrorism, the success of U.S. counterterrorism strategy will depend, in part, on the effectiveness of European counterterrorism efforts. It is essential, therefore, that the U.S. government determine how it can best help the Europeans address the above issues. Irrespective of its emphasis, a successful U.S. strategy will certainly involve finding ways to work with both the EU and the individual member states.

Michael Jacobson, a Soref fellow at The Washington Institute, served as counsel on both the congressional and independent commissions investigating the September 11 attacks. ❖

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