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MUTUAL TRUST IN REGIONAL AND INTERREGIONAL COOPERATION ON COUNTERTERRORISM

AN ANALYSIS OF THE EU AND ASEAN APPROACHES

Céline C. Cocq

SUMMARY

Countries may be victims of terrorism in various ways, such as experiencing attacks on their soil, involuntarily hosting terrorists, serving as transit countries, and having their citizens recruited for terrorist purposes.

Requiring a comprehensive and transnational response, the current global framework is too broad to propose any effective solution. Regional organisations are more suitable as they are able to tailor their response to their specific needs and context/environment.

Cross-border cooperation is essential to combat terrorism and this is strongly supported and fostered by the European Union (EU), especially as it harmonises its Member States' counterterrorism policies and legislations. By contrast, the Association of South East Asian Nations (ASEAN) is limited to a role of secretariat in the decision-making of its Member States'. The EU is an independent and valuable actor in international relations. In light of the differences, and recognising the need to collaborate on this topical issue, the EU aims to export its standards in the fight against terrorism. With this purpose in mind, the EU should reflect on whether its strategy fits the specific context and needs of ASEAN, which is both a regional organisation and the congregation of its Member States. Moreover, the EU should put clearly forward what would be its added value to the ASEAN undertaking in this field (i.e. being a regional organisation as well that could bring its expertise).



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INTRODUCTION

Preventing and combating terrorism has long been identified as a major security priority at the international, regional and national levels. Among the means identified, cross-border cooperation certainly receives the most attention at the regional and international levels. That being said, the main challenge is to identify ways to create effective cooperation. Relations based on trust are necessary in order to achieve effectiveness.

Mutual trust is a topic that everyone is discussing currently. But, there are important questions that need to be asked. How is it supposed to facilitate cooperation? What is it built upon? Mutual trust is a malleable concept consisting of social, political and legal dimensions. It is built upon legal and/or non-legal incentives to achieve its purpose, i.e. to facilitate direct operational and strategic horizontal cooperation between competent national authorities in the fight against terrorism.

These incentives may be categorised in three clusters that represent the pillars of the development of mutual trust in the different form it may take. When comparing the EU and

ASEAN experiences, these three clusters of measures have been identified deductively and analysed, namely capability building, capacity building, and knowledge sharing. Measures belonging to these clusters have been used, consciously or not, by the United Nations (UN) agencies to ensure States comply with international norms and standards. This template has been tailored to the specific context of each region. These three measures are meant to develop mutual understandings and, potentially, common standards within regions (comparative regionalism) and between regions (inter-regionalism).

KEY FINDINGS

From this research, a grid of analysis emerged and was used to examine each regional approach towards the building of mutual trust and, subsequently, of interstate cooperation.

Capability building:

- Adoption of comprehensive constitutional architectures, national legislations, and other appropriate norms in compliance with international and regional norms (with a particular focus on harmonisation of norms and policies);
- Improvement of the national legislations and cooperation mechanisms implemented at the national level based on the evaluation of legal systems already adopted;
- Mutual learning on each other's respective legal framework(s) in order to improve the national and, potentially, regional criminal justice systems.

Capacity building:

- Organisation of trainings for competent national authorities, including police and judicial authorities, to ensure that the international standards are effectively implemented by the key actors on the basis of the relevant counter-terrorism international norms and national legislations;
- Enhancement of the operational capacities (providing technologies, tools to communicate and cooperate) of law enforcement authorities, prosecutors, judges and all other actors, including potentially intelligence services, involved in the field of criminal justice and development of their tools to fight serious (transnational) crime.

Knowledge/experience sharing:

- Organisation of trainings or workshops for competent national authorities where best practices, experiences and knowledge can be shared;
- Development of networks that should serve as channels for communication between various officials and professionals working in the criminal justice field, including through fora;
- Evaluation of legal systems and their implementation disseminated to the public and/or competent national authorities (e.g. evaluation of the EU legislation on diverse topics) to learn and implement the legislations, best practices and methods.

Depending on the Member States' willingness to engage with each other and their capabilities and capacities to do so, each region has tailored their approach by picking and choosing among the various measures included in these three clusters.

Besides being at the core of the methodology used for the comparative analysis, this grid of analysis shall help direct the EU stakeholders in interacting with external partners about regional integration-related subject(s) or any other issue better be handled at the regional level. Emerging from the application of the grid to the EU and ASEAN is the slight appearance of a parallelism between the evolution of a normative and institutional architecture and cooperation, and the development of mutual trust between competent national authorities and the formalisation of their relations, on the other. One very significant point to notice nonetheless is the inclusion in the concept of mutual trust and, consequently, in the necessary requirements for an effective cooperation in the EU: human rights standards. The equivalent guarantee of human rights protection across borders is not a constitutive element of cooperation within ASEAN. Despite their different human rights standards, approaches and forms of cooperation, the EU and ASEAN, both undertook initiatives aimed at reconstructing and adapting their security systems and models of cooperation to combat terrorism. However, the EU has developed a much more sophisticated framework of cooperation, particularly relating to counterterrorism. The EU can, in fact, claim advanced instruments of police and judicial cooperation. Conversely, ASEAN lacks similar instruments, and its operational capability is relatively underdeveloped. The factors for this include, the limited resources of the Association, the diversity of the political and legal systems of its members, and their traditional

strong protection of their national sovereignty. First binding instrument for its members, the 2007 ASEAN Convention on Counter Terrorism constitutes a timid step in the development of the ASEAN regional legal framework for cooperation against terrorism.

It is far-fetched to believe that the ASEAN and the EU security systems will intersect. Any differences, however,

should not obscure the fact that the EU and ASEAN approaches to counterterrorism appear to be evolving in parallel (quite so). Accordingly, this may suggest that EU and ASEAN security polices, in the area of non-traditional security, might eventually converge, especially if the two regions develop further their interregional relations.

POLICY RECOMMENDATIONS

- Undertake in-depth *ex ante* analysis of the historical and geopolitical context as well as the policy and normative priorities for the EU to adapt its means and/or external policy to each regional grouping.
- Further engage in the mutual learning process between the two regions, through various programmes (e.g. between competent national authorities at different level of hierarchy; educational and research programmes).
- Involve and empower the full array of stakeholders besides the public authorities, such as the NGOs, the education professionals or the experts, to reduce the risks of terrorist attacks and improve the countering of terrorism.
- Ensure that there is no overlap of competences and tasks between the relevant stakeholders and regional agencies (e.g. Frontex and Europol); and also between the EU officials (cf. EU Member States v. EU representatives? EEAS v. Commission? Or complementarity between them?) in their interactions with ASEAN, as a regional organisation, and its Member States.
- Work more closely with the ASEAN Intergovernmental Commission on Human Rights (AICHR) and its members to share experiences and expertise, especially in criminal matters, in order to guarantee the balance between ensuring the security of their respective citizens and their human rights. Preventing and combating terrorism cannot only be a matter of security measures and criminal justice response. A coherent and comprehensive approach is necessary.

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Céline C. Cocq is completing her thesis within the framework of an MSCA-funded GEM-STONES European Joint Doctorate between the Université de Genève (CH) and the Université libre de Bruxelles (BE).
celine.cocq@gem-stones.eu

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