

Security Policy and Intelligence Cooperation in the European Union

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Introduction

The collection and analysis of intelligence is increasingly important for the European Union. European governments require timely and accurate intelligence in order to deal effectively with many of the security threats they face including terrorism, the failure of state institutions in the developing world, and the proliferation of weapons of mass destruction. One important mechanism for obtaining such intelligence is sharing with other countries. Since the 1990s the European Union has created or extended three institutions to encourage and facilitate intelligence sharing among its members—the Berne Group, which brings together the security services of all of the member states, Europol, which collects, shares, and disseminates intelligence on threats such as organized crime and terrorism, and the European Union Military Staff that analyzes intelligence on overseas developments.

The objective of these institutions is to facilitate sharing of relevant intelligence by replacing the patchwork of ad hoc and bilateral intelligence sharing developed among the member states since the 1970s. These institutions serve the useful functions of creating technical mechanisms for the diffusion of intelligence between national authorities, including organizing regular meetings of ministers and officials, creating common intelligence databases, and sharing information on security practices such as counter-terrorism. But these institutions do not tackle the problem of defection. The European Union has constructed intelligence-sharing institutions that are anarchic—they include technical mechanisms for facilitating the efficient sharing of intelligence, but do not intrude on the member states' autonomy to decide what intelligence to share or not to share.

One solution to this would be to integrate authority over intelligence at the European level. The member states might agree to add elements of hierarchy to their intelligence sharing by creating a European organization with a policymaking function of coordinating each country's intelligence effort and a monitoring function of ensuring member state compliance with promises to share intelligence. There are important barriers to such integration. Member states that are now reluctant to share fully with each other are wary of ceding authority to a European agency. And moves in this direction will bring to the fore distributional conflicts about how such an agency would be structured and who would set its priorities and pay for its activities. Such problems can be overcome. The European Union has been very effective in solving such bargaining and enforcement problems in other issue areas, such as the liberalization of intra-European barriers to trade and the creation of a single European currency. But doing so in the area of intelligence sharing is unlikely. The reason is that the European Union lacks a leading or dominant state that would be willing and able to take the lead in negotiating and managing a more centralized intelligence effort. More likely is a continuation of the current pattern of multispeed cooperation on intelligence. Multispeed cooperation involves sub-sets of member states developing specific intelligence sharing arrangements outside of the formal structures of the European Union.

In what follows I first discuss how the development of an integrated European economy that includes the free movement of people, goods, and capital, as well as more tentative steps towards the development of a common security and defense policy, have created stronger incentives for the member states to share intelligence. I then explain how concerns about defection by other member states inhibits what could be mutually

beneficial sharing, and how European institutions might be designed to overcome this problem. This is followed by a discussion of the degree to which member states fear defection by their partners and a detailed examination of the structure of the three institutions the European Union has created for sharing intelligence—Berne Group, Europol, and the European Union Military Staff. There is strong, if indirect, evidence that concerns about defection are in fact a barrier to intelligence sharing in the European Union, and that none of the institutions can effectively overcome such concerns. In the conclusion I briefly lay out two ways these institutions could be reformed to facilitate more effective sharing. The first is to increase their independent powers to supervise and monitor the intelligence collection, analysis, and sharing of the member states. The development of such a hierarchic European Union intelligence capability is likely to founder on the strong opposition of national governments, who express concerns about the extent to which they would secure adequate rewards for such cooperation. Instead I suggest that an alternative strategy of encouraging more secure sharing among smaller groups of member states is a more realistic medium-term response.

Incentives to Share Intelligence in the European Union

Two sets of developments have created stronger incentives since the early 1990s for member states to share intelligence. First, the European Union instituted the free movement of people between its member states, a single market for capital, goods and services, and a single currency. This has reduced national controls on cross-border activities and created a demand for sharing of intelligence about transnational terrorism

and other criminal activities.¹ Second, the development of a European Union defense and security policy has led the member states to integrate some aspects of their defense policy planning, including intelligence on overseas developments.

The free circulation of goods, capital, and people within the European Union poses four significant challenges to member states' internal security. The first is that it allows greater scope for organized crime groups to increase the scale of their activities overseas without fear of detection at intra-European Union borders. The second threat, which in many cases is closely related to the first, is that it eliminates an opportunity to detect illegal trafficking in drugs, people, or items such as counterfeit goods and components of weapons of mass destruction. Third, the introduction of the single currency and the creation of a single financial market make it easier for criminal or terrorist groups to engage in money laundering or to move overseas funds gained through

¹ A. Guyomarch, "Cooperation in the Fields of Policing and Judicial Affairs," in Stelios Stavridis, ed., *New Challenges to the European Union* (Aldershot: Dartmouth), B. Heberton and T. Thomas, *Policing Europe: Cooperation, Conflict, and Control* (London: St. Martin's, 1995), J. Peek, "International Police Cooperation within Justified Political and Judicial Frameworks: Five Theses on Trevi," in Jorg Monar and Roger Morgan, eds., *The Third Pillar of the European Union: Cooperation in the Fields of Justice and Home Affairs* (Brussels: Interuniversity Press, 1994), pp. 201-208, and François Thuillier, *L'Europe du secret: Mythes et réalité du renseignement politique interne* (Paris: IHESI, 2000).

illicit activities.² The fourth concern relates to terrorism. Free movement makes it easier for terrorists targeting one member state to seek safe haven in another member state. It also makes it easier for international terrorist groups from outside of Europe to communicate with each other and organize their activities across the member states.³

The second major change with implications for intelligence sharing has been the development of common foreign and security policies. The key step for intelligence sharing was the creation of the European Security and Defense Policy (ESDP). This began in November 1998 at the bilateral summit between British Prime Minister Tony Blair and French President Jacques Chirac in St. Malo. The two leaders issued a joint declaration on European defense which stated that “the Union must have the capacity for autonomous action, backed up by credible military forces, the means to use them, and a readiness to do so, in order to respond to international crises.” The changes to the European Union’s responsibilities they envisioned were substantial, including the development of “appropriate structures and a capacity for analysis of situations, sources of intelligence, and a capability for relevant strategic planning.”

Intelligence Sharing in the European Union

Do the member states of the European Union hold that their partners have incentives to defect from agreements to share intelligence? How, if at all, do European Union institutions facilitate sharing by countering any such incentives to defection? The

² John Occhipinti, *The Politics of EU Police Cooperation: Toward a European FBI?* (Boulder, Lynne Rienner, 2003), p. 121.

³ Thérèse Delpech, *Le terrorisme international et l'Europe*, Cahiers de Chaillot 56 (Paris: European Union Institute for Security Studies, 2002).

Union has created three institutions—the Berne Group, Europol, and the European Union Military Staff—to support the sharing of intelligence. While these institutions facilitate sharing by maintaining technical facilities for supporting sharing between member states, they have little capacity to counter possible defection by member states’ intelligence agencies. The member states created these intelligence sharing institutions, and were careful not to include any requirements that member states share intelligence with others. One reason for not imposing this rather modest requirement is that the governments had concerns that their partners might defect in the future. This made them wary about committing themselves to always share intelligence freely with all other member states of the Union. This interpretation of why European institutions do not directly address concerns about defection is buttressed by evidence from the actual collaboration of member state intelligence agencies and the public statements of government officials.

Sharing Institutions

The Berne Group, or Club of Berne, was formed in the 1970s as a forum for the security services of six European Union member states. It now has twenty-seven members, including all member-states, and the chair of the group rotates in tandem with that of the Union. The Berne Club serves as the principal point of contact of the heads of national security services, who meet regularly under its auspices. The Club has established working groups on terrorism and organized crime, and in 2001 created the Counterterrorist Group (CTG) in which the member states, as well as the United States, produce common threat assessments that are shared among the membership and with

some Union committees.⁴ The Berne Group does not base its activities on a formal charter, and operates outside of the institutions of the European Union. There does not appear to be a formal commitment, or even expectation, that participants will share all relevant intelligence in their possession with other members.

The European Police Organization, or Europol, was created by a convention signed by all member states in 1995 and began operations in 1999. An important predecessor to Europol was the Trevi Group, created by the member states in the 1970s as a part of European Political Cooperation. Trevi was an intergovernmental forum with no role for the Commission or European Parliament. The member states' interior ministries and security services used the Trevi Group to coordinate national counter-terrorism efforts that had cross-border implications. Trevi established secure communication links between member-states to share intelligence on terrorism and sponsored the exchange of information on training and equipment and investigative methods. Like the Berne Group, Trevi had no formal requirement that states share relevant intelligence; furthermore, it had no permanent secretariat or staff and did not engage in independent analysis of intelligence.⁵

⁴ Council of the European Union, "Brussels European Council Presidency Conclusions," 18 June 2004, 4, and Secretary General, High Representative for the Common Foreign and Security Policy of the European Union, "Summary of Remarks by Javier Solana," SO159/04, 8 June 2004.

⁵ Occhipinti, *The Politics of EU Police Cooperation*, p. 32, and Rachel Woodward, "Establishing Europol," *European Journal on Criminal Policy and Research* 1:4 (1994), pp. 7-33.

Europol's priorities are illegal trafficking in drugs, human beings, and vehicles; illegal immigration; terrorism; and forgery, money-laundering, and cyber crime that cross national borders.⁶ Its major objective is to improve the sharing of intelligence on these matters among member states rather than engaging in security, police, or counter-terrorism operations directly. It encourages intelligence sharing by obtaining and analyzing intelligence provided by the member states, notifying member states when it has "information concerning them and of any connections identified between criminal offences," providing "strategic intelligence" and preparing "general situation reports," and, since April 2002, establishing ad hoc teams of staff from Europol and interested member states to collect shared intelligence on specific terrorist groups.⁷ Europol has a staff of about sixty-five analysts as well as an equal number of staff on secondment from national governments.⁸

Each member-state is represented at Europol headquarters by a European Liaison Officer (ELO). Member states are required to supply relevant intelligence to Europol through their ELO, either on their own initiative or in response to a request from the organization. ELOs also are responsible for filing national requests for information from Europol. The key mechanism for intelligence sharing is the European Computer System (TECS), which contains two types of intelligence. The first is the Europol Information

⁶ A complete list can be found at Occhipinti, *The Politics of EU Police Cooperation*, p. 192.

⁷ Quotations from Europol Convention, Article 3.1-3.2.

⁸ Björn Müller-Wille, "Building a European Intelligence Community in Response to Terrorism," *ISIS European Security Review*, April 2004.

System, which hold information about individuals and groups suspected of having committed, or being likely to commit, a crime falling under Europol's remit. This information is limited to basic identifying characteristics (such as name, date and place of birth, nationality, sex) as well as information about crimes committed or likely to be committed, suspected membership in criminal organizations, and relevant convictions.⁹ The second type of intelligence is "work files" generated by Europol staff and ELOs dealing with the details of specific offenses, including contacts of suspects, potential witnesses, and others that could provide relevant information.

Intelligence sharing to support the European Security and Defense Policy centers around the European Union Military Staff, which supports the Military Committee and the Political and Security Committee. The Military Staff includes an Intelligence Division of about thirty responsible for early warning, assessment, and operational support on external security matters including terrorism. Each member state supplies at least one person to work on the Military Staff and to maintain secure communication links with their national security agencies. These seconded staff members serve a function analogous to that of the ELOs in Europol. Member states use their representatives to supply intelligence to the Military Staff and to communicate intelligence from the Division to relevant national agencies. The Division uses intelligence shared by the member states, in addition to intelligence gathered by Union bodies, to produce

⁹ Europol Convention, Article 8; see also James B. Jacobs and Dimitra Blitsa, "Major 'minor' Progress Under the Third Pillar: EU Institution Building in the Sharing of Criminal Record Information," *Chicago Kent Journal of International and Comparative Law* 8 (2008), pp. 111-165.

assessments for the Military Committee, the High Representative for foreign policy, and other Union bodies. Another body concerned with sharing is the Situation Centre, which collects and analyzes intelligence gathered from member states and others for the High Representative. Some of the Situation Centre's staff is supplied by the Intelligence Division; as of 2004 it included one staff member seconded from seven different member states.¹⁰

Defection

One might agree that concerns about defection are a the key barrier to intelligence sharing, but conclude that the member states of the European Union estimate that their partners have few incentives to behave in such a manner. Such a conclusion has quite a bit of face validity. The fact that the member states have created and ceded a degree of authority to the European Union far greater than that possessed by any other international organization might itself be seen as a strong indicator of high levels of mutual trust in each others' willingness to comply with common policies. Furthermore, the member states face similar threats to their security. Geographic proximity means that many member states are directly threatened by security problems at the periphery of the Union in eastern Europe, the Caucasus, and the Mediterranean. Many of the member states have

¹⁰ Secretary General, High Representative for the Common Foreign and Security Policy, "Summary of Remarks by Javier Solana," SO159/04 8 June 2004, Assembly of the West European Union, *The New Challenges Facing European Intelligence* (Paris: Assembly of the West European Union, 4 June 2002), paragraphs 64-5, and Giles Tremlett and Ian Black, "EU Plan to Pool Anti-Terrorism Intelligence," *Guardian* 2 March 2002.

faced or do face serious threats from domestic terrorist groups that operate across borders, as well as from Islamic terror groups. Transnational organized crime also afflicts many of the member states. Such common interests should reduce incentives to defect, allowing intelligence sharing to occur freely with little need for international institutions that monitor compliance and punish renegeing.

The most direct way of determining the degree of trust that exists between member states would be to investigate their willingness to share operational intelligence. But information about the degree of sharing in actual cases is impossible for outsiders, and in many cases for the member states themselves, to obtain. Security services are reluctant to divulge such information, out of a desire to protect from exposure their sources of gathering intelligence. Furthermore, there is no guarantee that cases in which information about the degree of sharing that has occurred is publicly available are representative of the universe of relevant cases, as governments may be most likely to release such information only when the sharing has resulted in successful operations. For these reasons I assess the degree to which the member states worry about defection through three indirect strategies. First, I analyze the rules about sharing in the Berne Group, Europol, and ESDP. Much more information is available about these rules than about the extent of sharing in specific cases. These rules are the product of negotiations among the governments that will share intelligence. The fact that they contain significant limitations on the degree to which participants are required to share intelligence is a good indicator that states demanded these limits because they do in fact have significant concerns about the likelihood that other member states would defect. Second, I analyze the degree to which each of these institutions contains monitoring and punishment

provisions that would allow states sharing intelligence to overcome defection. Finally, I discuss public comments by decision makers that express reserve about other member states and indicate that member states do not fully share intelligence with each other.

None of the institutions has rules that require member states to share intelligence with each other. Instead, the decision to share is effectively voluntary and left at the discretion of each country. The member states do not seem to have utilized the Berne Group to engage in significant sharing of operational intelligence. Instead, the Group serves primarily to share ideas about effective tools and policies for countering terrorism and organized crime, and for the participating services to better understand the perspectives of their counterparts. There is no requirement or expectation that member states would share sensitive intelligence that they otherwise prefer to withhold. Gijs de Vries, the European Union's counterterrorism coordinator, admitted as much, stating that "it appears that the analysis [of the Counterterrorism Group] does not contribute much to decision-making or to the policy direction of the Union".¹¹ The Club does plan to create a shared database on terrorism and organized crime within the next five years, but this would only "allow the collation of contextual intelligence on suspects" and "would not contain sensitive material".¹²

¹¹ Gijs de Vries, "Discours prononce devant la Commission des Affaires Etrangeres de l'Assemble Nationale," 22 June 2004, p. 11, my translation; see also Jean-Pierre Stroobants, "Les Vingt-Cinq peaufinent leur stratégie antiterroriste," *Le Monde* 10 July 2006.

¹² Richard J. Aldrich, "Transatlantic Intelligence and Security Cooperation," *International Affairs* 80:4 (2004), p. 739.

Europol has detailed restrictions on how its analytical files can be shared and accessed. “If an analysis is of a general nature and of a strategic type,” all member states may access the report. But if it “bears on specific cases not concerning all Member States and has a direct operational aim,” the only member states that can access the report are those that provided the initial information leading to the opening of the file, “those which are directly concerned by that information,” and others these member-states invite to participate. Other states may learn about the existence of the analysis file through a computerized index and may request access. But the originators of the intelligence may object, in which case the Europol Convention holds that access shall be agreed by “consensus,” which would seem to give these states a veto over the sharing of Europol’s files. In addition, “[t]he Member State communicating an item of data to Europol shall be the sole judge of the degree of its sensitivity and variations thereof. Any dissemination or operational use of analysis data shall be decided on in consultation with the participants in the analysis. A Member State joining an analysis in progress may not, in particular, disseminate or use the data without the prior agreement of the Member States initially concerned.”¹³ Member-states may decline to provide intelligence to Europol if doing so involves “harming essential national security interests,” “jeopardizing the success of a current investigation or the safety of individuals,” or “involving information pertaining to organizations or specific intelligence activities in the field of State security”.¹⁴

¹³. Quotations from Europol Convention, Article 10.7; these rules are elaborated in Council Act of 3 November 1998, Adopting Rules Applicable to Europol Analysis Files (1999/C 26/01)

¹⁴ Quotations from Europol Convention Article 4.5.

Sharing via the Intelligence Division of the Military Staff has many of the same problems as the Berne Group and Europol. In particular, there is no requirement that member states share intelligence that might be of value or interest to other member states or to Union institutions; sharing is explicitly “voluntary”. As of 2002, there were no arrangements in place for sharing of very secret intelligence, although one report states that most requests for information are met.¹⁵ The Division’s practice of collating intelligence provided by national authorities and performing additional analysis circulated under its name means that recipients are not able to directly identify the country that provided the original information. This masking of the identity of the national sources might make member states worried about security more willing to supply sensitive intelligence to the Division.¹⁶ Working against full sharing, however, are two points. First, since only seven member states have foreign intelligence services, and these vary widely in their capabilities and coverage of international developments, recipients of shared intelligence may be able to make educated guesses about the national source of intelligence transmitted through the Division. Second, and more important, the Division receives relatively little “raw” intelligence from the member states. Instead, it relies on “finished” intelligence, which means that sensitive details and sources and methods of collecting intelligence are usually masked from the recipients. Even in those

¹⁵ Quotation from Assembly of the West European Union, *The New Challenges Facing European Intelligence*, paragraphs 68, 72.

¹⁶ Björn Müller-Wille, “EU Intelligence Cooperation: A Critical Analysis,” *Contemporary Security Policy* 23:2 (2002), p. 76.

cases where it does obtain raw or operational intelligence, it forwards only summaries to its clients.¹⁷

The Union also has capabilities to gather and analyze intelligence itself, although these are quite modest in comparison with those of the larger member states. The Union maintains diplomatic missions throughout the world and has Special Representatives assigned to specific regions and crises, such as the Balkans, Caucasus, the Great Lakes region of Africa, and for the Middle East peace process. These are able to openly collect information from sources such as government officials, publications, and so on, and through their local contacts may occasionally obtain confidential information. They also may have detailed knowledge of specific issues and can place developments in the proper context for decision makers. But their diplomatic status means that they are not able to engage in systematic collection or analysis of intelligence. The European Union Satellite Centre in Spain is responsible for processing and interpreting satellite images in support of the Union's Common Foreign and Security Policy. But the Centre does not actually own or operate its own satellites. Instead, it purchases imagery from commercial satellites conducts its own analysis. This means that it does not control the tasking of the satellites on which it draws for images, so it cannot guarantee that relevant or timely images will be available. Furthermore, images from commercial satellites are not of the highest resolution and so are useful more as background information rather than operational

¹⁷ Frédéric Oberson, "Intelligence Cooperation in Europe: The WEU Intelligence Section and Situation Centre," in Alessandro Politi, ed., *Towards a European Intelligence Policy* (Paris: Western European Union Institute for Security Studies, 1998).

intelligence.¹⁸ As one investigation reports, “[b]ecause of its largely civilian character, and the lack of enough appropriately trained staff (military image interpreters) the Torrejón Centre has difficulty in providing the virtually real time imagery necessary to the conduct of military operations during a crisis”.¹⁹

Since the Berne Group, Europol, and Military Staff leave it to the discretion of the member states to determine what, if any, intelligence they will share with their partners, it is not surprising that they all lack strong or effective mechanisms for monitoring or punishing a failure to disseminate relevant intelligence or to treat shared intelligence securely. Voluntary sharing means that there is no direct way for receiving states to ensure that a sharing state has divulged all the relevant intelligence in its possession or to determine that the intelligence has not been modified or distorted to serve the sender’s interests. In principle, the assessments or work files produced by staff and liaison officers at the Berne Club, Europol, and the Military Staff could allow the detection of deliberately slanted or fabricated intelligence. Since these assessments draw from intelligence provided by all sharing states, staff and liaisons may be able to detect flaws in intelligence they receive from one national source by comparing it with by intelligence shared by others. But there is no guarantee that they will have sufficient sources of high-quality intelligence from other sources in order to make such a determination. And such common assessments are not designed as a mechanism for determining if a member state

¹⁸ Ole R. Villadsen, “Prospects for a European Common Intelligence Policy,” *Studies in Intelligence* (2000).

¹⁹ Assembly of the West European Union, *The New Challenges Facing European Intelligence*, paragraph 89.

has withheld relevant intelligence. The Military Staff and Europol do have provisions that provide modest degrees of protection for the interests of sending states. The Intelligence Division of the Military Staff “cleans” shared intelligence of information that could identify its source, which gives senders some reassurance that their sources and methods of collection and analysis will not be directly revealed to other states. Europol has detailed requirements about the treatment of shared intelligence pertaining to individuals, which reassures sending states that any concerns they have about privacy rights will be respected by receiving states.

The member-states’ security services have managed to share intelligence successfully on numerous occasions. For example, in early 2001 European countries detected a plot by the Al Qaeda terrorist network to bomb targets in Europe. Intelligence sharing allowed them to coordinate a series of arrests resulting in the apprehension of eighteen people as well as weapons and explosives in multiple countries.²⁰ Despite such successes, however, politicians and officials regularly express concern that sharing is not as open as possible, and frequently identify mistrust as the key barrier to greater sharing. For example, after the terrorist attacks on the United States on 11 September 2001, the European Council meeting of 21 September concluded that “Member States will share with Europol, systematically and without delay, all useful data regarding terrorism.” Such a statement would not have been necessary if the degree of sharing was felt to be complete.²¹ British Home Secretary David Blunkett repeated this call for more open

²⁰ Swedish Security Service, *Annual Report* (Stockholm: Author, 2001), p. 31.

²¹ Quotation from Council of the European Union, “Conclusions and Plan of Action of the Extraordinary European Council Meeting,” 21 September 2001.

sharing of intelligence, while acknowledging that Britain would not share its most sensitive intelligence, such as signals intelligence, with other member states.²² Others observed that institutions such as Europol simply could not cope with such difficulties in their present format. Europol Director Jürgen Storbeck complained shortly after the attacks that each member state was still "keeping" its information "to itself" instead of sharing it with others.²³ The Director of the Belgium Federal Police, Patrick Zanders, argued that an insufficient supply of intelligence from the member states made it difficult for Europol to respond effectively to requests for information.²⁴

Similarly, after terrorist attacks in Madrid in March 2004 ministers and senior officials stated that greater sharing would help their counter-terrorism efforts, but that mistrust made such sharing unlikely to materialize. French interior minister Nicholas Sarkozy pointed out that creating a stronger European Union intelligence capability would be difficult because of the need felt by each member state to protect its sources. Irish Justice Minister Michael McDowell, then president of the Justice and Home Affairs Council, said that the members had to "be realistic" in their expectations about greater sharing. Europol's Storbeck again complained that the member states did not share

²² Ian Black, "On the brink of war," *Guardian*, 21 September 2001, p. 8.

²³ "European Police Chief Says Only Scant Information Being Received from USA," *BBC Monitoring Europe* 15 September 2001, Lisbeth Kirk, "Total Control Requires Total Surveillance," *EU Observer* 17 September 2001.

²⁴ Convention Européenne, Groupe du Travail X. 2002, "Note de synthèse de la réunion du 25 septembre 2002," CONV 313/02, 10 October 2002.

sufficient intelligence with the agency.²⁵ Belgian Justice Minister Laurette Onkelinx complained that “there are informal intelligence exchanges at the European level, both bilateral--between two states exchanging intelligence from several countries--and among all the members of what we call the Club of Berne. But this is all informal, there is no obligation, for example, to provide intelligence to a fellow member, there is no obligation to deal with such intelligence at the European level. So the idea is precisely to make such a structure formal and introduce a mandatory element into intelligence exchanges. . . . I believe that Europe must also be built on foundations of mutual confidence, otherwise there will be no sense to it”.²⁶ Blunkett criticized other member states, including Austria and Belgium, for proposing a new European Union intelligence agency when many members were not living up to earlier commitments to share intelligence fully. The European Commission complained openly about member states’ “culture of secrecy” and called for greater trust to effectively prosecute the counter-terrorism campaign.²⁷

Is Integration the Answer?

The member states of the European Union could benefit from more widespread sharing of intelligence. They are unwilling to move in this direction, however, because of concerns that their partners would not share fully or treat shared intelligence securely.

The member states have faced similar challenges in other issue areas, and have chosen to

²⁵ “Ministers Revamp Anti-Terrorist Policies,” *European Report* 20 March 2004.

²⁶ “EU Intelligence Sharing Must Be Mandatory,” *BBC Monitoring Service* 19 March 2004.

²⁷ Ambrose Evans-Pritchard, “Time to Cut Waffle and Tackle Terror, Blunkett Tells EU,” *Daily Telegraph*, 20 March 2004, p. 10.

resolve them through integration. Integration involves delegating some powers to the European Union to craft policies that address the interests of all or most of the member states, and to then independently monitor and punish non-compliance with these policies. Integration is analytically similar to the concept of hierarchy.²⁸ In both integration and hierarchy, participating states voluntarily give up some autonomy in order to facilitate mutually-beneficial cooperation. The Treaty of Rome, for example, created the European Commission and Court of Justice to ensure that member states abided by their obligations to implement the customs union in a non-discriminatory manner. The Treaty also designed decision-making procedures, such as voting rules in the Council of Ministers and the proposal authority of the Commission, to make sure that resulting policy decisions reflect pan-European concerns. These policymaking and monitoring institutions allow the member-states to capture the potential gains from cooperation by reducing concerns about the distributional impact of resulting policy and about defection from agreements to cooperate.

Could integration allow the member-states to more effectively share intelligence as well? In some respects, integration seems ideally suited to resolving the difficulties that the member states of the European Union face in this area. States seek hierarchy when they see large possible gains from cooperation but also face concerns that their

²⁸ Other works that analyze hierarchy in the European Union include Katja Weber and Mark Hallerberg, "Explaining Variation in Institutional Integration in the European Union: Why Firms May Prefer European Solutions," *Journal of European Public Policy* 8:2 (2001), pp. 171-191, and Walter Mattli, *The Logic of Regional Integration: Europe and Beyond* (New York: Cambridge University Press, 1999).

partners will defect. This accurately describes the situation that the member states face. Furthermore, creating a European body with some hierarchical elements would not be unprecedented. Other areas of cooperation in the Union are governed by such bodies. The European Union's single currency, for example, is centrally managed by the European Central Bank, which is politically independent of the member states. One could imagine the creation of a European intelligence organization charged with closely monitoring the intelligence collection and sharing activities of national intelligence services to ensure that they are complying with obligations to provide all relevant intelligence to their counterparts. A first step in this direction would be to explicitly require the member states to share relevant intelligence, rather than allow such sharing to remain voluntary. This would provide the important benefit of ensuring that member states have access to all the intelligence that their partners collect. A second step would be to give this European agency the resources and access to monitor member states' compliance with this requirement. It would reassure recipients that senders are not defecting by withholding useful intelligence. It would also require reassuring senders that recipients will maintain the security of shared intelligence. Compulsory intelligence sharing thus would demand a European Union capability to review all the intelligence that member states collect, and to supervise their internal security procedures and operations. A third step would be to create a much larger capability within the European Union to analyze intelligence collected by the member states. As discussed earlier, some of the chief complaints with current practice is that the intelligence shared by member states includes analysis and conclusions that focus on the concerns and interests of the sending state rather than other member states or of the Union as a whole, and that shared intelligence often gives little

insight into the original sources of information upon which the intelligence is based. A stronger European Union analytic capability would ensure that intelligence analysis reflected the interests of the Union and all the member states and could critically evaluate and compare information gathered by national intelligence services. At the extreme, this could involve the creation of a European Union intelligence agency responsible for directly collecting and analyzing intelligence on its own, as some member states such as Belgium and Austria have suggested. A more modest but still substantial step in this direction would be the creation of a European agency that had legal right, as well as the staff and other resources, to closely track and oversee intelligence developments in the member states' services. It could establish Union-wide priorities on what types of intelligence should be collected, reducing any unnecessary duplication or overlap among the actions of national intelligence services. Playing this role effectively would require it to have some power to direct the collection and analysis efforts of the member states' intelligence agencies, perhaps by encouraging each to specialize in some forms of intelligence while relying on their partners to fill any resulting gaps in their knowledge. And it could make intelligence sharing more efficient by setting standards for how intelligence is collected and analyzed, what human rights and privacy rights intelligence services must respect, and developing standards for the secure distribution and storage of intelligence. Sharing would be much easier if each member state were certain that its partners were prepared to meet such shared standards.

Moving in this direction would reduce the concerns about renegeing and defection that have undermined attempts to expand intelligence sharing. But it would also raise new concerns about possible defection and how the costs and benefits of the operation of such

an authority would be distributed among the member states. This bargaining problem has not attracted much attention to date, but very likely would do so once a serious attempt to integrate intelligence functions emerged. Three distributional problems seem most important. First, each member state would want the European intelligence authority to share its perception of the most important security threats and its priorities for intelligence collection and analysis. Put another way, a national government would worry that a European body would direct intelligence resources and attention away from the security issues it finds most threatening. Second, national governments likely would have different preferences regarding the quality control, human rights, and security standards that a European body would set. Countries with a stronger tradition of protecting privacy, for example, might insist that the European Union adopt strict standards that mirror their national laws, while other states without such a tradition might block new standards that impose additional burdens on their intelligence agencies. Such concerns about privacy and data protection are particularly important in the European Union, whose members have varying commitments to uphold the privacy of personal data. Human rights groups would likely object to attempts to increase intelligence sharing without addressing these concerns on the grounds that it violates the individual rights included in the European Convention on Human Rights or the treaties that created the European Union. The Union itself and the broader Convention both have courts that might rule against government attempts to share more intelligence. The European Union could develop new rules about the conditions under which it will share intelligence on individuals; as discussed above, the Europol Convention already includes such rules. But the negotiation over the precise content of such protections likely would see considerable differences emerge among the

member states. Member states less concerned about such protections might decide to restrict their sharing if strong rules are created that they worry might compromise their ability to collect and act on intelligence, while those states that attach more importance to such rights could block more intelligence sharing until effective rules are in place. Third, disagreements over the distribution of financial costs and benefits likely would emerge. For example, not all member states have foreign intelligence services. Would the member states with such services be expected to share all of the intelligence they collect on the rest of the world with the European partners? If so, they might reasonably demand compensation for the costs of collecting, analyzing, and sharing such information. The larger member states might be reluctant to place their more capable intelligence services under the supervision of a European agency. These member states might expect to play the role of sender far more often than the role of recipient, and would worry that they could carry most of the intelligence collection and analysis burden while smaller member states stand back and receive their intelligence. Member states that themselves have received intelligence from another state not a member of the Union should be particularly concerned about defection by other member states, since it might lead non-Union states lower its confidence that the intelligence it shares will be treated securely. For example, the fact that Britain depends on intelligence it receives from the United States may make British decision makers wary about sharing too frequently with European countries if doing so raises questions in Washington about Britain's reliability.²⁹

Creating a European intelligence body might also raise new concerns about defection. Increasing the ability of the European Union's central institutions to oversee

²⁹ Charles Grant, *Intimate Relations* (London: Centre for European Reform, 2000).

national intelligence collection, analysis, and sharing would require the approval of member state governments. Member States in the Union value the ability to pursue autonomous policies, and have on many occasions prevented the transfer of additional authority to the European level to retain their authority.³⁰ National governments that do not now trust each other enough to share intelligence fully would likely also mistrust sharing with a new European institution with more intrusive powers than those of the Berne Group, Europol, and the Military Staff. The multilateral character of the European Union also would raise the costs of detecting defection. Much intelligence sharing in the European Union takes place informally among small numbers of states. This means that participants only have to monitor their few intelligence sharing partners for defection. Creating a European Union body that required intelligence sharing would multiply the

³⁰ The “intergovernmental” approach to the study of regional integration emphasizes that member states are careful to agree to transfer authority to the European level only when it provides substantial benefits. Key works in this tradition are Stanley Hoffmann, “Obstinate or Obsolete: the Fate of the Nation State and the Case of Western Europe,” *Daedalus*, 95:2 (1966), pp. 862-915, Andrew Moravcsik, “Preferences and Power in the EC: A Liberal Intergovernmentalist Approach,” *Journal of Common Market Studies* 31:4 (1993), and Andrew Moravcsik, *The Choice for Europe: Social Purpose and State Power from Messina to Maastricht* (Ithaca: Cornell University Press, 1998). Other approaches devote attention to other motives for transferring authority but acknowledge that the self-interested support of the member states remains a crucial condition; see, for example, Paul Pierson, “The Path to European Integration: A Historical Institutional Account,” *Comparative Political Studies* 29:2 (1996), pp. 123-163.

number of potential defecting states substantially and require that this body have comprehensive powers to monitor the activities of intelligence agencies in all of the member states.

Conflicts such as these appear in and have been successfully overcome in other issue areas. The member states expressed similar concerns when negotiating the Union's single currency, for example. Member states wanted to ensure that the new monetary authority would pursue policies on inflation and growth similar to their own, create standards that would favor financial firms operating in their territory, and redistribute fiscal resources towards their national treasuries.³¹ We know from past efforts at integration in Europe that overcoming these distributional conflicts is easier if there is one member state that is willing and able to play a leadership role in creating and sustaining cooperation.³² The participating member states can coordinate their intelligence and human rights standards around those of this dominant or leading state. The dominant state can also mitigate some of the political and financial costs that fall on other participants. It can, for example, use its greater resources to establish and finance the monitoring mechanisms, such as new European institutions, needed to monitor the compliance of all member states. It can also use these resources to directly punish member states that renege on their promises to share intelligence, and to compensate with

³¹ See, among many, Thomas Oatley, *Monetary Politics* (Ann Arbor: University of Michigan Press, 1997), or James I. Walsh, *European Monetary Integration and Domestic Politics* (Boulder: Lynne Rienner, 2000).

³² Mattli, *The Logic of Regional Integration*.

side-payments those are likely to contribute more to the shared pool of intelligence than they receive in return.

A state must have three characteristics in order to play this leading role. First, its participation must be necessary for the success of the integration project. This provides it with the leverage, in the form of threatening not to participate, to exercise significant power over the implementation of the intelligence sharing agreement. Second, the potential leading state must be reasonably certain that it will secure substantial benefits from integration. It needs these gains in order to make it worthwhile to finance monitoring and to make side payments that underpin the participation of other states. Third, it must control a disproportionate share of all the political resources of the participating countries. This will give it the wherewithal to make credible threats to punish states that defect on intelligence sharing by withholding potential benefits from cooperation on other issue areas, and to provide other states with side payments that are sizable enough to induce them to contribute to the arrangement.

The European Union lacks a member state that meets these three criteria in the area of intelligence. The three most likely candidates would be Britain, France, and Germany. The participation of all three countries is probably vital for any comprehensive intelligence sharing arrangement. Each has large internal and external intelligence services that could contribute in important ways to a Europe-wide effort in this area, and it difficult to imagine how this effort could realize many benefits without the participation of all three states. It is less clear that each of these countries would garner substantial net gains for participating in such an integration scheme. Each is far more capable at collecting intelligence than almost any other member state. This means that

Britain, France, and Germany would certainly be able to share much intelligence with other member states, but they may not receive much more intelligence from their partners than they do under current arrangements. This means that each of these important countries faces strong incentives to limit more intelligence sharing to only those countries within and outside of the Union that can provide it with a steady stream of useful information. Carefully limiting the partners with which it shares intelligence allows each of these states to ensure that it is receiving at least as much in intelligence gains as it is providing to others. And none of them controls enough political or economic resources to clearly lead the others. Germany's large and wealthy economy was able to play this role when the Union had fewer members and focused on economic integration. But the European Union's geographic expansion into eastern Europe and task expansion into foreign and internal security has made Germany a less crucial actor in a larger and more complicated organization. None one member state, then, appears to be an obvious leader that could solve the distributional barriers to greater intelligence sharing. Leadership might be possible if some combination of the larger member states established common preferences and jointly pushed for integration in the intelligence area. As I point out below, however, this sort of piecemeal approach is likely to take some time to spread to the European Union as a whole.

Multispeed Cooperation in the European Union

Since integration is unlikely, how might the European Union improve intelligence sharing in other ways? And what are the implications for transatlantic cooperation on security policy?

Rather than full-scale integration or hierarchy, the Union is likely to focus its intelligence efforts encouraging more sharing among sub-sets of states that share similar interests and trust each other on a particular issue or problem. Moving in this direction would have many of the disadvantages that creating a more differentiated and “multispeed” European Union has in other issue areas.³³ But since the member states already are reluctant to cede even modest powers to the Union in the area of intelligence, steps such as these might be a modest and realistic improvement on the status quo. There have already been moves in this direction. Groups of member states with common interests now frequently meet to share intelligence on specific operations. They establish ad hoc arrangements, for example, to track terrorist groups that operate within their territory. The interior ministers of Britain, France, Germany, Spain, and Italy meet regularly to discuss matters of common concern before the full meetings of the Justice and Home Affairs Council.³⁴ They seek to work out agreements and bargains among themselves and to then jointly persuade other member states to adopt their common positions. This is a sort of combined leadership, which as we saw above is an important driver of integration. A group of states such as this G5 is less effective than a single state

³³ Good discussions include Lee Miles, “Moving Towards a Hub and Spokes Europe?” *Journal of Common Market Studies* 41:1 (2003), pp. 1-11, Alexander C.-G. Stubbs, “A Categorization of Differentiated Integration,” *Journal of Common Market Studies* 34:2 (2008), pp. 283-295, and Neil Walker, “Sovereignty and Differentiated Integration in the European Union,” *European Law Review* 4:4 (2002), pp. 355-388.

³⁴ Thomas Ferenczi, “Terrorisme: les cinq grads de l’UE veulent harmonizer les procedures d’expulsion,” *Le Monde*, 19 October 2004.

in playing the leadership role because its members must bargain among themselves first and are unlikely to reach agreement on every important issue. But it could provide a forum in which to address at least some of the distributional conflicts that prevent greater intelligence cooperation. Creating more such informal bodies focused on issues of concern to a sub-set of member states might allow these countries to better understand the true interests of their partners and indirectly encourage them to share more intelligence.

One step in this direction could involve the creation of more sophisticated networked databases of intelligence. Such databases might be designed to allow a sender to post a description of each piece of intelligence in its possession. This description would have to be specific enough for potential recipients to determine its potential value but would not contain actionable details of the intelligence or any information about the sources or methods through which it was obtained. Other member states could inspect this description and request the release of the full intelligence report within a short time period. Such a request could trigger mutually advantageous bargaining between the member states in which each could demand that the other take steps that would conform with the larger political interests of both. A sender worried about inadvertent sharing with third parties, for example, could insist that the intelligence only be shared with certain offices in the recipient's government and require the recipient to closely track dissemination of the report. Over time, successful sharing facilitated by such databases might engender greater trust among sub-sets of member-states that interact regularly and lead to the development of more institutionalized bilateral sharing. Another step might be to encourage decision makers to meet with sub-sets of their colleagues from other member states, following the lead of the interior ministers from the G5 countries.

Creating more such informal bodies focused on issues of concern to a subset of member states might allow these countries to better understand the true interests of their partners and indirectly encourage them to share more intelligence. It might also facilitate agreement on new policy measures by all member states. If one sub-set of member states act jointly and successfully, others may choose to follow their lead in order to secure at least some influence over subsequent agreements and to ensure that they receive at least some of the advantages of cooperation.³⁵

This sort of multispeed cooperation on intelligence matters would be less comprehensive or efficient than would full integration. However, for the reasons discussed earlier, there are fewer barriers to its implementation. An additional advantage of multispeed cooperation is that it could be quite well-suited to collaboration with third states, such as the United States and Canada. On the one hand, multispeed cooperation would confront third states with a confusing patchwork of European partnerships that differ in the areas they cover, their membership, and their permanence. This opacity would make it more difficult for outsiders to determine who has authority over what functions in Europe. From this perspective, it would be much simpler for outsiders if Europe could agree to centralize the management and oversight of intelligence, since this would provide them with only one point of contact and negotiation. But centralized authority might also reduce the opportunities open to outside countries. A single European Union intelligence authority would be in a stronger bargaining position to

³⁵ George W. Downs, David M. Roake, and Peter N. Barsoom, "Managing the Evolution of Multilateralism," *International Organization* 52:2 (1998), pp. 397-419.

demand concessions than are individual member states. It could also reject sharing agreements that some member states might be willing to accept.

Organizing intelligence sharing along multispeed lines would be more complicated for outsiders but likely would provide them with greater opportunities. Multispeed cooperation implies that not all member states would participate in all cooperative ventures. It might also mean, though, that third parties could be invited to join some such ventures. For example, the United States and Canada cooperate with some but not all European countries to undertake joint operations based on shared intelligence. Since 2002 intelligence officials from the United States, Canada, and four European countries have jointly operated a counterterrorist center in Paris that not only pools intelligence but also plans and coordinates operations to monitor or disrupt terror cells. The operation is headed by a French official, funded largely by the CIA, and relies on close cooperation between intelligence officials seconded from the participating countries, each of whom is assigned to take the lead in planning and implementing operations that draw on the resources of all six countries when needed.³⁶ This sort of flexible arrangement would be difficult to implement if the European Union had direct authority over intelligence matters. Other member states might insist on participating, which might make the United States reluctant to continue to plan such joint operations. In short, the lack of a closely coordinated intelligence apparatus in Europe could present outsiders with more opportunities to join in flexible intelligence sharing agreements.

³⁶ Priest, 2005, “La France abrite une cellule antiterroriste secrète en plein Paris,” Le Monde 13 September 2006 and “La collaboration antiterroriste confirmée,” Radio France 8 September 2006.

Conclusions and Implications

The members of the European Union have good reasons to want to engage in intelligence sharing. Common policies, including the development of a single economy and common foreign policy, mean that the member states increasingly face similar threats to their internal and external security. It is not surprising, then, that they have developed institutions such as the Club of Berne, Europol, and the Military Staff to facilitate the exchange of intelligence. But full and effective intelligence sharing requires that participants either hold a strong degree of trust in other participants' promises not to defect, or the creation of effective rules and institutions designed to counter concerns about such defection. The available evidence indicates that mistrust is a substantial barrier to full sharing in the European Union. The member states have insisted that intelligence sharing remain voluntary, have declined to create European institutions with the capacity to monitor and punish violations of promises to share, and in their public comments suggest that the trust among them is too low to allow full sharing. European institutions for intelligence sharing are not designed to stop defection. The focus in the development of these institutions has been on building technical mechanisms—databases, regular meetings, and liaison arrangements—that will facilitate sharing among member states. The expectation behind this approach is that member states should share a great deal of their intelligence with their partners. But on many occasions the member states do not perceive it as in their interests to engage in such sharing on a regular basis because of worries about defection.

Such worries alone are not an insurmountable barrier to intelligence sharing. We have seen, for example, that the United States has been able to share intelligence with states such as western Germany, South Vietnam, and Colombia that it did not trust fully to comply with promises to share intelligence. These pairs of states managed to cooperate by creating a hierarchical relationship in which the dominant state exercised some direct control over its subordinate's intelligence activities in exchange for providing the subordinate with political and economic benefits, subsidizing the subordinate's intelligence operations, and credibly committing not to exploit its dominant position. Why, then, has the European Union not created a hierarchical structure to govern intelligence sharing among its members? The key reason is that the Union does not have a state with the desire and resources to play this dominant role. This means that the European Union has had to resort to second-best solutions to its intelligence sharing problems. These include the development of networks of like-minded member states that have sufficient trust in each other and share common interests that they can engage in more intelligence sharing while excluding other member states, the possibility of a small group of more influential member states, such as the G5, assuming a leadership role in intelligence sharing, and the exchange of personnel and ideas with the goal of creating mutual trust and a better understanding of other member states' interests and concerns. These efforts may in the long run succeed in encouraging member states to share more intelligence with each other, but are unlikely to act as quickly or as effectively as would the creation of a more centralized authority.

