EU Counterterrorism Policy:
Establishing a Regime

A Dissertation Presented
To the
Brussels School of International Studies
University of Kent

In Partial Fulfilment of the
Requirements for the Degree of
Master of Arts in
International Conflict and Security with EU External Relations

2016
By
Ayhan Unlu
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10 August 2016, Brussels
By
Ayhan Unlu
Dedication

I dedicate this dissertation to the people who were taken away from their loved ones with any type and form of terrorist attacks.
Acknowledgement

I would like to express my sincere thanks to my supervisor Dr Bojan Savic for his continuous help and supervising on keeping my research focused with his comments and feedbacks.

I wish to thank to my mom, my whole family including the last member, Kerem Sezai.

This Dissertation and Master level education is funded by Jean Monnet Scholarship Programme of the European Union. I want to thank to the people who worked for and supported the programme.
Abstract

This dissertation focuses on the EU Counterterrorism policy. The research question of the dissertation is “Does the EU counterterrorism policy establish an EU Counterterrorism Regime?” If it establishes the regime, which set of factors constitutes? Common terrorism threat is the main causal factor for the creation of the EU Counterterrorism Regime. It makes the member states of the EU align with this regime governed actions, and make them avoid defecting from the regime. Institutional design and information sharing systems help out the cooperation among member states. As being a living regime, EU counterterrorism have impact on third countries and have interactions with them.
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<tr>
<td>ISIL</td>
<td>Islamic State of Iraq and Levant</td>
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<td>GTD</td>
<td>Global Terrorism Database</td>
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<tr>
<td>GPI</td>
<td>Global Peace Index</td>
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<tr>
<td>PNR</td>
<td>Passenger Name Record</td>
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<tr>
<td>IEP</td>
<td>The Institute for Economics and Peace</td>
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<tr>
<td>MENA</td>
<td>Middle East and North Africa</td>
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<td>Europol</td>
<td>European Police Office</td>
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<td>VIS</td>
<td>Visa Information System</td>
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<td>Eurojust</td>
<td>The European Union's Judicial Cooperation Unit</td>
</tr>
<tr>
<td>FRONTEX</td>
<td>The European Agency for the Management of Operational Cooperation at the External Borders</td>
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<td>SitCen</td>
<td>The European Joint Situation Centre</td>
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<td>VIS</td>
<td>Visa Information System</td>
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<tr>
<td>ISW</td>
<td>The Institute for the Study of War</td>
</tr>
<tr>
<td>EEC</td>
<td>European Economic Community</td>
</tr>
<tr>
<td>HR/VP</td>
<td>High Representative for Common Foreign and Security Policy/ Vice-President of the Commission</td>
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</table>
Chapter 1: Introduction

1.1. The Security Environment in the EU

According to the Global Terrorism Index 2015 Report: in 2014, 239 terrorist attacks took place in Europe causing 31 dead. The number of the attacks appears to be high, but the majority of the attacks took place in Northern Ireland and they did not cause any dead. One section of the Report examines the terrorist attacks in western countries (Europe, the United States, Canada and Australia). The report uses the designation of terrorist organisation Islamic State of Iraq and Levant (ISIL) for “the West” terminology. The 89 percent of the terrorist attacks in the West took place in Europe (Institute for Economic & Peace, 2015). In 2015, even with a limited number of terrorist attacks, civilian dead numbers increased in an appalling way. 146 civilians were killed in the terrorist attacks that took place on European soil. The increase rate is 370.96 percent when it is compared with 2014.

1.2. Central Argument

The research question of the dissertation is “Does the EU counterterrorism policy establish an EU Counterterrorism Regime?” If it establishes the regime, which set of factors constitutes the regime? As a common threat, terrorism is the leading factor to establish a counterterrorism regime with a special EU approach. The EU approach is based on the respect for the human rights, the fundamental freedoms, the protection of personal data and the rule of law. The establishment of principles and norms started with the very beginning of the counterterrorism legislation with the core EU values’ effect on them. The executive power is left to the sovereign member states and from time to time the adoption of the EU-level legislation to national level can be said to be taking long time.

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1 Written by Ayhan Unlu, an MA candidate in International Conflict and Security Studies with EU External Relations. This dissertation is written for the academic purposes; it does not include any political or ideological opinions of the candidate.

2 2016 report has not been published by the Institute for Economic & Peace. The number of casualties and the percentage of the increase rate depend on the research made by the candidate. The full list of the attacks that are taken into account is provided in the second chapter of the dissertation.
The EU counterterrorism regime establishes cooperation tools among member states with union level institutions and information sharing systems.

The external dimension of the regime includes relations with third countries with cooperation in regime governed actions, regime’s exporting its principles and norms and also the core EU values.

1.3. Scope

The dissertation focuses on the establishment of the EU Counterterrorism Regime. The examination of the regime establishment is provided from its beginning to the development of the regime, its keeping on existence and then the impact of it abroad.

The Assessments on the EU counterterrorism regime include the international security environment in which the regime created, causal factors that led to the creation of the regime, the principles and norms of the regime, the institutions and information sharing systems used in the regime, the internal cooperation among member states and external cooperation with third countries, the causes that makes member states avoid defecting from the regime, the lastingness of the regime, the dynamics of change in the regime / the total regime change and the impact abroad.

The dissertation takes into account the adopted legislation by the EU including its previous forms such as European Economic Community. Documents with “terrorism” word in their titles from 1977 to 2016 are examined in this work. Binding EU level legislations establishes the principles and norms of the EU Counterterrorism Regime. This work examines which legislation established which principles and norms of the regime.

This dissertation uses mainly the Regime theory. Stephen Krasner’s (1982) regime argument, Robert Keohane’s and Robert Axelrod’s (1982) discussion on the institutions and cooperation, and Gulten Aybet’s (2001) perspective on the security cooperation in Europe from 1945-1991 are used on the analysis of the abovementioned documents. The EU Counterterrorism Regime has impact both on member states and the third states. The regime exports itself to the
neighbouring countries as well. Due to these reasons, the Europeanisation theory is also used briefly for the internal interactions in the EU Counterterrorism Regime and on the external relations with third countries.

This dissertation does not include or provide any policy recommendation or critique of the EU counterterrorism policy.

1.4. Chapter Outline

Chapter 2 presents the main definitions of terrorism, the violent change in the deadliness of the terrorism threat in the last decade, counterterrorism measures that states establish and the chronological development of the EU counterterrorism legislation.

Chapter 3 focuses on the theoretical application. The process of the EU counterterrorism regime establishment is examined in Chapter 3. The general examination of the term ‘international regimes’ is given at the first section, then at the second section, the assessments on the EU Counterterrorism Regime are given. In this section, firstly, the anarchy in international relations is discussed. Secondly, the causal factors; with a specific attention on the common threat of terrorism, the change of perception of terrorism and its interlinks with different policy areas are examined. Thirdly, the establishment of the principles and the norms of the EU Counterterrorism Regime and their relations with the core EU values are argued. One of the most vital part of the EU Counterterrorism regime which is institutional design is examined and discussed in the fourth sub-section. The fifth sub-section includes the assessments on the cooperation aspect of the EU counterterrorism Regime. The dynamics of the cooperation are explored further. The mechanisms to make the member states avoid to defect from the regime are analysed in this sub-section too. The assessments on the continuity, change within the regime and the total regime change comparison is provided about the EU counterterrorism regime in an uncertain future. At the end of the section, the relations of the regime with the third countries are given.

Chapter 4 presents the conclusion of the dissertation. Concluding thoughts are provided with the diagrams prepared by the candidate. Remarks on the EU
Counterterrorism Regime in a Terrorised Global Environment, Potential for Further Research are given and the conclusion is presented.

1.5. Methodology

The dissertation is mostly based on the qualitative methodology but quantitative methodology is used as well. The quantitative data which is related to the terrorist attacks (dead rates, number of events, analysis of the trends) is gathered from Global Terrorism Database (GTD)³ and Global Peace Index (GPI)⁴. The data is used to give the insight of the security environment. For the examination of the EU legislation, EUR-Lex database⁵ is used. Instead of using proposals and other acts that are not adopted and which are not binding; Reports, Conventions, Directive, Regulation, Joint Actions, Decision, Framework Decision, and Treaties are used. These legislations and legislative documents are examined according to their effects on the establishment of the EU counterterrorism regime. SECILE project⁶ catalogue, which includes the legislative documents adopted after 11 September 2001, is also used in the research. Contextual Analysis is used to examine the legislations. The causal relations between the legislation and the establishment of the EU Counterterrorism Regime are examined according to the theories used in the dissertation.

³ The Global Terrorism Database (GTD) is an open-source database which is hosted by the University of Maryland available at https://www.start.umd.edu/gtd/. It includes information on terrorist events all around the world from 1970 through 2014.

⁴ Global Peace Index (GPI), is a list which makes comparison of the countries according to the potential determinants about peace. Analysis of peace is prepared by an independent think tank, the Institute for Economics and Peace.


⁶ The project report is produced by the civil liberties organisation Statewatch. The project was funded by the European Union Seventh Framework Programme (FP7/2007-2013) under grant agreement No.313195 with the title “the Securing Europe through Counter-Terrorism – Impact, Legitimacy & Effectiveness”.
Chapter 2: Terrorism-Counterterrorism- EU Policy

In this chapter firstly, the definition of terrorism will be given, including that of the United Nations, the USA and the European Union. Current changes in the terrorism threat and the deaths caused by terrorist attacks in the EU will be examined shortly according to the Global Peace Index 2016 Report. Counterterrorism measures taken by international actors will be mentioned briefly to point out the measures used by states. The EU legislation related to counterterrorism will be given at the last section of the chapter. In this section, 146 EU legislative documents from EUR-Lex database with the “terrorism” word in their titles will be examined thoroughly. Legislative proposals and strategy papers of the EU will be excluded in this section; taking into consideration that as long as the adoption of the strategy or proposal is not accomplished, they cannot be put into force and they become stillborn. Sub-sections include the first steps of the counterterrorism legislation until the 9/11 attacks in the USA, and the legislation after 9/11 until the Passenger Name Record (PNR) Directive in April 2016.

2.1. Definitions of Terrorism in the UN, the USA and the EU

There is almost a consensus on the non-existence of an agreed definition of the terrorism. Citing from three secondary sources Tiefenbrun mentions that:

"... a word like terrorism, which is used so frequently these days in different contexts (including casual, colloquial, political, and legal discourses) does not have a universally accepted definition" (Tiefenbrun, 2016).

To start with the definition of the terrorism: terrorism is explained as “the unofficial or unauthorized use of violence and intimidation in the pursuit of political aims” in Oxford Dictionary of English (3 Ed.) (Stevenson, 2010).

Giving examples of suicide bombing from Israel, the Sri Lankan and United States, Pape mentions that terrorist organisations can gain specific political goals
(Pape, 2003). Taking into account that, the “war on terror” presented a new terminology in 2003. The terrorist attacks changed in both frequency of incidents and their brutality.

Rosemary O’Kane, in her book *Terrorism - Seminar Studies - 2nd Edition*, explains the difficulty in identifying terrorism, and starts with giving visual examples of terrorist attacks as “those which involve a suicide bomber with explosives strapped around the waist or carried in a rucksack, of hijacked aeroplanes and of bombs placed under a park bench, exploding under a parked car or thrown through the window of a crowded restaurant” (O’Kane, 2012). Recent years the types of terrorist attacks changed more violently way with specifically targeting crowds of innocent people with suicide bombing and mass killing combined with that.

The UN Report “A More Secure World” which was prepared in 2004 mentioned the inability of member states to agree on a terrorism definition. The report mentioned that even some countries had the terrorism as a threat when some countries had not. But it is obvious that the current security environment has already changed after 2004 and terrorism became a global threat for every country. The change of the threat will be discussed in the following section (United Nations Secretary-General, 2004). UN Security Council Resolution 1566 (2004) defines the criminal acts of terrorism as it is presented below:

“...criminal acts, including against civilians, committed with the intent to cause death or serious bodily injury, or taking of hostages, with the purpose to provoke a state of terror in the general public or in a group of persons or particular persons, intimidate a population or compel a government or an international organization to do or to abstain from doing any act, which constitute offences within the scope of and as defined in the international conventions and protocols relating to terrorism, are under no circumstances justifiable by considerations of a political, philosophical, ideological, racial,
Definitions of Terrorism in the U.S. Code 18 U.S.C. § 2331 divides terrorism in two parts: international and domestic with the same type of definition. The international definition is taken into the consideration and the Code defines it as those acts which:

(A) Involve violent acts or acts dangerous to human life that are a violation of the criminal laws of the United States or of any State, or that would be a criminal violation if committed within the jurisdiction of the United States or of any State;

(B) Appear to be intended—

(i) to intimidate or coerce a civilian population;

(ii) to influence the policy of a government by intimidation or coercion; or

(iii) to affect the conduct of a government by mass destruction, assassination, or kidnapping; and

(C) Occur primarily outside the territorial jurisdiction of the United States, or transcend national boundaries in terms of the means by which they are accomplished, the persons they appear intended to intimidate or coerce, or the locale in which their perpetrators operate or seek asylum (U.S. House of Representatives, 2016).

European Council Framework Decision of 13 June 2002 on Combating Terrorism first mentions three aims of the terrorist offences as: “[1] seriously intimidating a population, or [2] unduly compelling a Government or international organisation to perform or abstain from performing any act, or [3] seriously destabilising or destroying the fundamental political, constitutional, economic or social structures of a country or an international organisation” afterwards it lists the offences as:
(a) attacks upon a person’s life which may cause death;
(b) attacks upon the physical integrity of a person;
(c) kidnapping or hostage taking;
(d) causing extensive destruction to a Government or public facility, a transport system, an infrastructure facility, including an information system, a fixed platform located on the continental shelf, a public place or private property likely to endanger human life or result in major economic loss;
(e) seizure of aircraft, ships or other means of public or goods transport;
(f) manufacture, possession, acquisition, transport, supply or use of weapons, explosives or of nuclear, biological or chemical weapons, as well as research into, and development of, biological and chemical weapons;
(g) release of dangerous substances, or causing fires, floods or explosions the effect of which is to endanger human life;
(h) interfering with or disrupting the supply of water, power or any other fundamental natural resource the effect of which is to endanger human life;
(i) threatening to commit any of the acts listed in (a) to (h) (The Council of the European Union, 2002).

One of the most comprehensive definition of the EU is given here and the evolution of the terrorism definition in the EU will be examined with its related legislation in the following chapter.

2.2. The Change in Terrorism Threats

The security environment has been changed in an appalling way, last decade. The Institute for Economics and Peace (IEP)’s Global Peace Index (GPI) 2016 Report
mentions that terrorism is at “an all-time high” level. Terrorism impact on peace increase 20 percent from 2008 to 2016 (See Figure 1)

*Figure 1 GPI percentage change 2008-2016 by indicator (The Institute for Economics and Peace, 2016).*

Terrorist incidents and deaths increased from 2004 to 2014 as well. “The number of deaths from terrorism has risen dramatically since 2011, from under 10,000 to over 30,000” (See Figure 2)

*Figure 2 Terrorist Incidents and Deaths from Terrorism, 2006-2014 (The Institute for Economics and Peace, 2016).*

According to the report, in 2015, Europe was the most effected region from terrorism after the Middle East and North Africa (MENA). “In the last five years
the number of deaths from terrorism has doubled compared to the previous five years in both Europe and North America” The number of deaths in the EU increased from 126 to 281, with 123.01\(^7\) percent increase rate (See Figure 3)

*Figure 3 Deaths from Terrorism in Europe (Excluding Turkey\(^8\)) and North America, 2006 To 2015/16 (The Institute for Economics and Peace, 2016).*

Even with the limited number of attacks happened in 2015, civilian dead numbers increased in an appalling way.

“On 7 January 2015, two heavily armed terrorists attacked Charlie Hebdo magazine office in Paris and 12 people were killed in France (BBC, 2016).

On 9 January 2015, a terrorist took hostages in France and killed 4 people (The Telegraph, 2016).

On 14-15 February 2015, a cafe and a synagogue was attacked in Copenhagen, Denmark. The terrorist killed 2 people and was killed by the police (The Guardian, 2016).

On 26 June 2015, a civilian was killed by two terrorists in France (BBC, 2016).

On 21 August 2015, a terrorist started shooting with a machine gun in a train, wounding 3 people and was stopped by passengers in France (The Guardian, 2016).

\(^7\) Calculated by the candidate.

\(^8\) There is no specific reason given in the report for excluding Turkey from the graphic. But it is probably cause of Turkey’s having the most deterioration in GPI in Europe region.
On 13 November 2015, a coordinated terrorist attack at 6 points in Paris, France killed 127 people (Reuters, 2016).

On 6 December 2015, a terrorist injured 3 people in London, UK with knife (BBC, 2016). 9

146 civilians were killed in the terrorist attacks in 2015.

2.3. Counterterrorism Measures

States take far-reaching counterterrorism measurements to cope with the current terrorism threat. Sandler divides the typical counterterrorism measures into two groups as: “defensive and proactive measures” Sandler explains the defensive measures with giving examples such as metal detectors for airway passengers or their luggage, security measurements for governmental buildings and guards at some infrastructural points for safety. He includes the alerts, the penalties for terrorist activities, the response capacity, and the stockpiling medications for chemical or biological attacks in defensive measures too. With proactive measures, he calls the “offensive” measures which are directed by governments to the terrorist organisations and their supporters. He listed the targets to destroy with the measures as the “resources, such as training camps, finances, their safe heavens and members of the organisations” (Sandler, 2015). In the establishment of the counterterrorism regime in the EU targeted sources of the terrorist activities will be used in accordance with the counterterrorism legislation.

2.4. Historical Improvement of Counterterrorism in the EU

Since the beginning of the terrorism threat, Martins et. Al. (2012) claim that the terrorist threat that the EU encounters is coming from outside of the continent. They explain the EU Counterterrorism Policy with its “multi-level/cross-institutional nature” and the combination of “state and EU actors, institutions, agencies and instruments” (Laura Martins, 2012).

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9 Citation was used in Fulfilment of the Requirements for PO814: European Foreign and Security Policy in the 21st Century (2015/2016) Module.
Counterterrorism policy of the EU is criticized arguably by Bures in an article named as “EU Counterterrorism Policy: A Paper Tiger?” Bures argues that “multitude of political, legal, and cultural challenges” needs to be solved in the EU counterterrorism policy field (Bures, 2006). Bures focuses, in his critique, on the internal dimension of Counterterrorism Policy.

2.4.1. First Steps

Firstly, the TREVI\textsuperscript{10} Group was established to strengthen the cooperation on fighting terrorism with the efforts of 12 member states in Rome European Council on 1 December 1975\textsuperscript{11} (Council of The European Union, 2005).

In 1977, “the European Convention on the Suppression of Terrorism” distinguished terrorist offences from political offences which would mean no terrorist activities would be considered as a political offence in any other member state. With this convention, the terrorist offences would not be able to have shelters in member states and each state was obliged to extradite the criminals who committed terrorism acts such as hijacking an aircraft, attacking against the life and protected people including diplomats, hostage taking, using bombs, explosives or automatic firearms (Council of The European Union, 2016).

Community Policy on Tourism (Initial Guidelines) in 1984, mentioned that even the community had a uniformed passport which was designed to eradicate the security checks at internal borders, member states were still keeping on making controls to avoid terrorism and drug trafficking (Commission, 1984). In 1991, Council Directive for preventing money laundering (Council of the European Communities, 1991) and Council regulation on flight/airport controls (Council of the European Communities, 1991) included terrorism in EU legislations.

\textsuperscript{10} Bunyan mentions that the acronym is open to different interpretations and explains it as “… It has been variously attributed to: the presence at the 1971 meeting of the Dutch Minister Mr Fonteyn (which means fountain); the name of a famous fountain in Rome; the Trevi district in Rome; and as an acronym for either ‘Terrorisme radicalisme et violence international’ or terrorism, radicalism, extremism and international violence.” (Bunyan, 2016).

\textsuperscript{11} Bunyan lists the four essential Trevi documents as: ‘the ’Palma Document’ (Madrid, June 1989); the ’Declaration of Trevi Group Ministers' (Paris, 15 December 1989); the ’Programme of Action’ (Dublin, June 1990); and the Coordinators report on the progress on the Palma Document (Edinburgh, December 1992). Summaries” (ibid.)
Treaty on European Union allowed the cooperation in the field of justice and home affairs with the creation of a union-wide information exchange organisation called European Police Office (Europol) for “preventing and combating terrorism, unlawful drug trafficking and other serious forms of international crime” (European Union, 1992). After the ratification of Schengen acquis in 1985, internal borders were eradicated and better police and judicial cooperation became more vital (Council of the European Communities, 2000). The Europol Convention was agreed in 1995 (Council of the European Communities, 1995), after its ratification by member states it was put into force on 1 October 1998 (EUROPOL, 2016). La Gomera Declaration in December 1995, mentioned that a “thorough coordination between Member States by way of improved machinery for police and judicial cooperation” was needed for fighting against terrorism (European Parliament, 2016). Council of European Union adopted the Joint Action of 15 October 1996 and established a Directory for counter-terrorist competences (Council of the European Union, 1996). In 1997, the EU’s assistance to the Palestinian Authority started by countering terrorism (Council of the European Union, 1997). In 1999, external dimension of the policy came out with another aspect. Due to the human rights violations and terrorist activities in East Timor, the EU established sanctions for Indonesia (Council of the European Union, 1999) and in 2000 for Burma/Myanmar too (Council of the European Union, 2000).

2.4.2. After 9/11

After the terrorist attacks on 11 September 2001, terrorism became one of the hottest topics in international relations studies. The EU reacted to the attacks immediately with the Extraordinary Council meeting and the Fight against Terrorism Conclusion on 20-21 September 2001. The conclusion included six parts as: (1) Judicial Cooperation, (2) Cooperation between police and intelligence services, (3) Financing of terrorism, (4) Measures at borders, (5) Other measures, (6) Measures designed to improve cooperation with the United States. The conclusion mentioned cooperation with other partners and additionally gave a
special importance to the cooperation with the most recent victim of the deadliest
terrorist attack, the USA (European Commission, 2001).

On 27 December 2001, the Council of the European Union adopted a common
position to combat terrorism. This common position put the fighting terrorism into
a priority objective for the EU. Article 7 of the common position, saying “Persons
who finance, plan, facilitate or commit terrorist acts shall be prevented from using
the territories of the Member States of the European Union for those purposes
against Member States or third States or their citizens“ (The Council of European
Union, 2001) mentioned these acts related to terrorism. In the following articles, it
points out the measures to fight terrorism. The EU counterterrorism policy has
always had an external dimension since the beginning. The Council of European
Union’s next common position on the same date was also about counterterrorism
too (Council Common Position of 27 December 2001 on the Application of
Specific Measures to Combat Terrorism) The position mentioned the cooperation
among member states in policing and judicial cooperation to combat terrorism.
The solution prepared a list of terrorist organisations and persons related to those
organizations (The Council of European Union, 2001). In 2002, the efforts to
increase the cooperation and the abilities of member states started with some other
council decisions (Council of the European Union, 2002;2003). Council
Framework Decision of 13 June 2002 on combating terrorism set the basis of
counterterrorism policy after 9/11 (Council of the European Union, 2002). It was
improved with the Schengen Information System updates in 2004 and 2005
(Council of the European Union, 2004;2005). The Council of Europe Convention
on the Prevention of Terrorism was adopted on 3 May 2005 (Council of Europe,
2016). The Specific Programme ‘Prevention, Preparedness and Consequence
Management of Terrorism and other Security related risks’ was put into force on
1 January 2007 which was covering the time period between 1 January 2007 and
31 December 2013. The programme’s main objective was to protect people and
infrastructure (Council of the European Union, 2007). Though the Council of the
European Union recommended to improve information sharing in 2007 (Council
of the European Union, 2007), Visa Information System (VIS) gave the ability for

In the following section, the mentioned legislation will be examined thoroughly with the theoretical framework.

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12 The resolution was mainly related to the foreign fighters in terrorist organisation (UN Security Council, 2016).
Chapter 3: Theoretical Application:

In this chapter, Krasner’s article “Structural Causes and Regime Consequences: Regimes as Intervening Variables” and Axelrod’s and Keohane’s article “Achieving Cooperation under Anarchy: Strategies and Institutions“, which were both written in 1982, will be used to form the theoretical framework of the dissertation. Aybet’s (2001) perspective, on her examination of the European Security Cooperation from 1945 to 1991 according to the regime theory will be integrated into the framework. This theoretical framework will be used to examine EU Counterterrorism legislation and it will be argued that all of the legislation have been establishing an EU Counterterrorism Regime with its strong and weak points. The EU counterterrorism regime have impact both internally and externally. The EU member states are affected by the regime and candidate/neighbour states are in a relationship with the regime too. Because of these reasons Europeanisation theory will be used briefly in the chapter too. (See Figure 4)

*Figure 4 Theories used in the dissertation*

![Diagram showing theories used in the dissertation]

General definition of and views about international regimes and their components will be given at the beginning. Then later it will be explored further into the EU counterterrorism regime governed actions.

Are EU Counterterrorism legislations establishing obligations for member states or not? Do they make member states to sacrifice their short-term interests without
obligations? Do they establish new Counterterrorism regime-governed activities? Is sovereignty a constitutive principle of the EU counterterrorism Regime? Does a dominant actor in the process of EU counterterrorism legislation exist or not? The examination will be made according to questions directed for the EU counterterrorism regime

3.1. International Regimes

Krasner explains regimes as:

“Regimes can be defined as sets of implicit or explicit principles, norms, rules, and decision-making procedures around which actors’ expectations converge in a given area of international relations” (Krasner, 1982).

Krasner explains principles as “beliefs of fact, causation and rectitude”. He uses the definitions of different scholars in the field of neoliberal institutionalism especially their explanation of international regimes and their components. Krasner sees principles and norms as the defining characteristics of the regimes. He argues that principles distinguish regime-governed activities from narrow short-term interest based actions. He mentions Jervis’s analysis of security regime with stating that the states can sacrifice their short term interest even without obligation when they desire or expect the same behaviour from other states as well (Jervis, 1982 ). Krasner sees sovereignty as the most important diffuse principle in international relations, in accordance with Bull’s naming sovereignty as the constitutive principle of international relations (Bull, 1977). Krasner points out that principles embody some sense of obligation. He remarks that the dominant actors can use the sanctions and incentives to make other actors get in alignment with the principles, norms, rules and decision making procedure of the international regimes. He argues that there can be many rules and decision making processes established related to the principles and norms of the regime. This variety of the rules and processes and the changes in them do not mean a
different regime or a regime change but means variety of changes in the regime (Krasner, 1982).

Aybet (2001) sees regime theory as a useful way to make analysis on security cooperation in the EU, mentioning that the power is not the regulating factor in the EU. She mentions that “regime theory denies the realist notion that the power and the self-maximisation are the only stabilising power in an anarchical international system with no central power” (Aybet, 2001). Aybet divides the views in the regime theory into three views.

3.1.1. Conventional Structural View

Considering the first view of Kenneth Waltz’s and Susan Strange’s with naming it “conventional Structural View”, she sees this view as a good critique to regime theory but which does not offer any insight into the dynamics of cooperation, seeing only distribution of power and its interaction with self-interest matter (Aybet, 2001). Security can be taken into account as one of self-interests.

3.1.2. Modified Structural View

Aybet points out that the second view offers some good analysis of the creation and maintenance of the regimes. It is named as “modified structural view” and includes Robert Keohane’s and Arthur Stein’s structuralist-realist view. These writers mention that regimes have effects on sovereign states’ behaviours. They see the power and interest as the only intervening variable in regime analyses. Behaviours of sovereign states’ change to maximise their interests and power. States’ self-interests can weigh against the customary behaviours decided by the regime (Aybet, 2001). On the other hand, this can be considered in the opposite direction in a positive way too. Sovereign states’ willingness to maximise their interest and power can cause their aligning with the regime-governed activities.
3.1.3. Grotian View

Aybet sees Oran Young, Raymond Hopkins and Donald Puchala as “Grotian\(^{13}\)”, because of their explanation of the balance of power as a regime. The creation of transatlantic security cooperation against Soviets included western European Communities during Cold War. Third view explains this cooperation as an attempt to balance power relations. (Aybet, 2001).

Young (1982), in his article about “Regime Dynamics”, mentions that international regime activities take place at locations where sovereign states do not have jurisdictional power. He gives examples of sea-bed mining, deep-sea fishing areas. He adds the interest areas on which states have direct relationships with one another such as exchange rate management areas (Young, 1982). Axelrod and Keohane mention that the “payoff structures” were depending on the events that happen outside of the areas players have no control (Keohane, 1985).

Every sovereign state represents non-controllable area of another sovereign state in legal way.

But as the threat of terrorism moves across borders, this brings the need to establish cooperation mechanisms set by the counterterrorism regime. The cooperation in the counterterrorism regime brings limited capabilities for sovereign states in another sovereign state’s territory.

According to the third view governments uses private entities to control the regime-governed activities (Aybet, 2001). This cannot be said for counterterrorism regime. Due to the importance of the security issues in counterterrorism regime, it is not controlled by the private entities such as companies, think-tanks or banks, but it is given under the control of supranational governmental bodies such as Europol and Eurojust in the EU.

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\(^{13}\) As the follower of Hugo Grotius. Hugo Grotius lived in seventeenth century and argued that states’ acceptance to binding international laws could set an international legal order and it could neutralize the anarchy (Sterling-Folker, 2005). This order is not certain in international relations, and it exists even when there is no supranational community (Aybet, 2001).
In the third view, power is seen as one of the explanations for regime change but not as the only one. The third view explains the causes of the regime change in three aspects (1) underlying structure of power, (2) external development which effects cooperation and (3) internal contradictions (Aybet, 2001). The third view’s definition of regime does not fulfil the situation of common beneficial gains which can be discussed in the counterterrorism regime. As the threat is common for the EU member states, they expect to have a common gain of secure Europe in the EU counterterrorism regime. Third view presents power and interest as the major intervening variable in regime analyses. Aybet adds exogenous forces, the advancement of knowledge, and internal national factors as intervening variables (Aybet, 2001).

The sophistication of the counterterrorism regime requires the use of different approaches and concepts. International regimes can be explained as set of principles and norms which forms the set of rules and decision making procedures. The power and interests of the actors in the international regimes sets the principles and the norms of the international regime first, then the principles and norms establish the regime-governed rules and the actions.

In the following section the EU Counterterrorism regime will be examined from the beginning of its existence to its impact abroad. The assessments on the anarchy in international relations, causing factors of the creation / existence of the counterterrorism regime, and principles and norms of the regime will be presented. The institutionalisation of the regime will be discussed with its effect to create better cooperation. The reasons which lead to the survival of the counterterrorism regime will be examined. A short discussion will be given on the difference between the total regime change and change within the regime. The examination of the impact abroad will be given at the last sub-section.

3.2. Assessment on the EU Counterterrorism Regime

3.2.1. Anarchy in International Relations

Axelrod and Keohane identify anarchy as the situation of not having a common government. They see this anarchic situation as a constant. They mention that the
type and the design of interactions changes from one another, but anarchy remains constant (Keohane, 1985). Casale lists (1) European Commission, (2) Europol and (3) Eurojust as “the most relevant institutions in EU counter-terrorism [policy]” then adds The European Counter-Terrorism Co-ordinator, the European Agency for the Management of Operational Cooperation at the External Borders (FRONTEX) and the European Joint Situation Centre (SitCen) (Casale, 2008). About the EU counterterrorism regime, it can be said that there is no lack of common government or authority. In the EU counterterrorism regime, institutions such as Council of European Union, European Commission and the Parliament are constantly working on counterterrorism related issues. For sure, the interaction among EU institutions, and the relations between EU institutions and the member states alter. Also there is a dissimilarity in member states' application of the counterterrorism legislation and the speed of their adapting them into their national legislations.

The Council Framework Decision of 13 June 2002 obliged the member states to have penalties for terrorist offences, and to take necessary measurements in amending the framework decision into their national law with a deadline to amend them until the end of 2002 (Council of the European Union, 2002). At the adoption process of the legislation in the member states, only five Member States (Austria, Germany, Ireland, Italy and Portugal) responded with the required information, at the end of deadline (31 December 2002). Luxembourg and Netherlands did not respond, furthermore Greece did not respond with specific information even after one year. It took almost 4 years more to make progress in this framework decision to reach the “satisfactory implementation” (Commission of the European Communities, 2016).

3.2.2. Causing Factors

Axelrod and Keohane see the international regimes are constituted by a set of factors, which are listed as: (1) trade disputes, (2) monetary policy, and (3) debt rescheduling as well as (4) arms races, (5) the outbreak of war, and (6) diplomatic concerts (Keohane, 1985). They argued the factors pertained primarily to
economics. Because of that, terrorism as a common threat will be added to these factors as well and will be examined in the following sub-section.

### 3.2.2.1. Common Threat

The existence and the creation of the European Union (and also NATO) shows that a common threat makes states react together and move toward a cooperative relationship. The threat which caused the NATO’s existence was the Soviet (Keohane, 1985). The common threat for the EU could be argued as the catastrophic damages of the war on the continent.

In the EU counterterrorism regime, the main causal factor is the common threat of terrorism. The terrorist attacks take place repeatedly worldwide and time to time in the EU too as is mentioned in the second chapter.

Axelrod and Keohane discuss the issues related to security affairs in the aspect of the conflict between states but not the situation of a common threat such as of terrorism (Keohane, 1985).

Oye (1979), as cited in Axelrod and Keohane (1985), mentions that France, Britain and the United states could agree on international monetary reform in 1936, because of the concerns about the Nazi Germany (Keohane, 1985). In the same way, as Nazi Germany was considered as the common concern (threat) at that time, the same concern can be referred to the common threat of terrorism in the EU counterterrorism regime.

Council Framework Decision of 13 June 2002 on combating terrorism identified terrorism as the main threat for EU shared principles such as “human dignity, liberty, equality and solidarity, respect for human rights and fundamental freedoms” (Council of the European Union, 2002).

### 3.2.2.2. Perception

Axelrod and Keohane argue that perception is the main determiner for the interests of each player (Keohane, 1985). The perception of the terrorism threat was defined as being externally rooted at the beginning (Laura Martins, 2012).
Later, the perception of terrorist threat was caused by the foreign fighters who returned from the conflict zones in other parts of the world (European Commission, 2016). After recent terrorist attacks on European soil, it became named as extremism and radicalisation. More de-radicalisation efforts and processes will be taking place in the EU counterterrorism regime, according to the European Union Global Strategy presented by HR/VP of the EU on 28 June 2016 (European Union, 2016).

Figure 5 The Change of the Perception of Terrorism Threat in the EU

As the perception of terrorism changed during the historical improvement of the regime, an expansion of counterterrorism regime governed actions was observable in different types of policy areas.

3.2.2.3. Interlinks / Expansion of the areas

Trevi group’s activities were considered in accordance with the fight against drug trafficking and also with the illegal immigration issues. This approach brought the sophistication of the policy without being unidirectional, adding the dimensions of drug trafficking and illegal immigration issues and their relationship with terrorism. The sophisticated relationship among different policy areas was originated from the principle for establishing “safeguarding free society” and free movement in the community (Statewatch, 2016b).

To be able to set the principles of counterterrorism policy after the 9/11 attacks, The EU started implementing binding legislations first targeting the sources that terrorist organisation’s needs. Directive 2001/97/EC\(^\text{15}\) was the second directive for preventing money laundering which targeted terrorist financing (European...\(^\text{15}\) Full title of the directive is Directive 2001/97/EC of the European Parliament and of the Council of 4 December 2001 amending Council Directive 91/308/EEC on prevention of the use of the financial system for the purpose of money laundering.

\(^{14}\) Prepared by the candidate.
Council, 2001). The directive amended ten-year-old directive about money laundering. The Common Position to combat terrorism of 27 December 2001 denied the idea of being a safe haven for the persons and entities that had financial, recruitment or any types of activities related to terrorist acts (The Council of European Union, 2001).

Council Framework Decision 2008 amended Council Framework Decision of 13 June 2002 with addition of provocation, recruiting and training of terrorists as criminal offences into EU legislation. Aiding or abetting, inciting and attempting were obliged for member states to be criminalised (Council of the European Union, 2008).

Axelrod and Keohane claim that principles and norms are mainly causing the disputes in international regimes (Keohane, 1985). In the following sub-section, the principles and norms will be discussed not only in the aspect of EU counterterrorism regime but also in the aspect of EU’s basic values.

3.2.3. Principles and Norms

Though Axelrod and Keohane mention that principles and norms are the main causes of the disputes in international regimes; in the EU counterterrorism regime, instead of principles and norms, the sets of rules are, mainly, at the centre of discussions. Collision of the main EU principles (such as personal data protection) and the regime governed actions (such as collection of personal data) cause the disputes. To give a specific example, the PNR legislation was voted in the European Parliament and was denied to be included in the parliamentary agenda on 7 March 2016 due to the opposing idea of violating personal data privacy (Vote Watch Europe, 2016). After the attacks took place in Brussels on 22 March 2016, the PNR legislation was adopted on 27 April 2016. (Council of the European Union, 2016). The balance of security and liberties was observed in the PNR legislation process.

Programme of Action, which was prepared by Trevi Ministers’ Conference in 1990, brought the continuity on updating of information sharing related to the terrorist groups. Airports, railway stations and ports were improved in the aspect
of security measurements. The structural design for central co-ordination would be set by Member States to fight terrorism. Member states were advised to examine legal arrangements to allow police departments to investigate terrorist financing. This programme brought the personal data protection principle to the scene too (Statewatch, 2016a).

There has never been any problem/conflict about the definition of terrorism threat among member states. The European Convention on the Suppression of Terrorism (1977) brought the principles of extradition between member states. It brought the harmony in leaving the terrorist acts out of the scope of political offences. And the Convention set the obligation on contracting states not to decide on those activities as political offences. The Convention’s Article 13 Point 3 pointed out that if any contracting state had put a reservation at national level would not be able to request extradition from any other contracting state (Council of The European Union, 2016). This point served the best to make the European Community members to have a consensus on the definition of terrorist offences and put an end to Weinberg et al.’s (2012) dilemma of “one man’s terrorist can be another man’s freedom fighter” (Weinberg, 2004) with avoiding reservations and providing shelter for terrorists in contracting states.

Talking about the oil crisis in 1970s, Aybet points out that state centric power was not able to prevent or control the crisis. She argues that the international system is not as anarchic as the realists thought and “a certain order” is set by itself and establishing its own principles and rules. She adds that the certain order is not established by the efforts of people but by itself. States act under self-restraint in the international regimes. Self-interest is one of the basic explanations for regime development (Aybet, 2001). On the other hand, this can be considered in a positive way too. Sovereign states’ willingness to maximise their interest and power can cause their getting in line with the counterterrorism regime-governed activities as in the example of PNR regulation. The UK and France on 31 January 2014 had already started to apply cooperation on the application of the PNR system even before the directive was prepared at EU level (Embassy of France in London, 2016).
Basic EU principles and core values have impact on the process of establishing EU counterterrorism regime’s principles and norms.

3.2.3.1. Basic EU principles

The main point of the establishment of the EU is to provide its citizens free movement inside the union, with freedom, security and justice. The idea of a Single Market evolved to a union of prosperity (European Union, 2016). That is the cause of the long term relationship among member states. Though there have been disputes or discussions about the main goal from time to time, the common goal can be seen as that. Integration is one of the most important dynamics in the creation process of the EU identity, in free trade, free movement, human rights and fundamental freedoms. Creating an area of freedom, security and justice is one of the diffuse principles that lead to the EU counterterrorism regime.

In the establishment of the regime, respect for the basic principles of European Union and principle of respecting those core values were prioritised.” Core values are listed in the Lisbon Treaty: “the respect for human dignity, the freedom, the democracy, the equality, the rule of law and the respect for human rights, including the rights of persons belonging to minorities “ (The European Union, 2007).

Declaration of Ministers of the Trevi Group (1989) expressed that European principle of avoiding to impose “over-rigorous” controls at the external borders on the majority of the travellers was used by the criminal networks of illegal immigration. Instead of increasing the controls on travellers, the main principle was to use technological and co-operational improvements (Statewatch, 2016a).

The Directory, established in 1996, was aimed at improving the skills and specialisation in the counter-terrorism activities among the member states. The skills and techniques used in counter-terrorism operations would be shared without any personal data (Council of the European Union, 1996). The exchange of expertise in this way was to respect one of the most important principles; personal data protection. The definition of terrorism accepted by the Council of
Europe members, then by the EU members, did not cause any change on the principles and norms on personal data protection.

The Council of Europe Convention on the Prevention of Terrorism had strict remarks for not using any of the information sharing systems for discrimination of a person, entity, religious group or ethnicity (Council of Europe, 2016).

Axelrod comments that even when there is a small cluster for cooperation, the cooperation will emerge (Keohane, 1985). The inspiration of European Union was started with the idea of avoiding war, then it evolved to establish a free movement area without borders for people, goods and capital. This idea was already a cluster to start designing the institutions both at EU level and the national level. The development of the institutions in the EU counterterrorism regime will be examined and discussed in the following sub-section.

3.2.4. Institutional Design

3.2.4.1. New institutions and Institutional Cooperation

To reduce the costs about border control, a free movement area was intended to be established and less control at internal borders and increased security at external borders system would be prepared. The Palma Document (1989) brought the principle of intensified, strengthened external border control and harmonising the provision in the field of judicial cooperation. Internally, the document intensified the information sharing on terrorism issues related to the deportation of third country citizens, known members and activities of terrorist groups, and police search operations. To ensure a common system for explosive control, police surveillance on wanted person investigations and a central instrument researches was started (Statewatch, 2016b).

Axelrod and Keohane sees cooperation not equal to harmony (Keohane, 1985). It can be claimed that, on the contrary, a better cooperation requires harmonisation of the interests and institutional design too, among interacting players in the international regimes. Among EU member states, harmonisation of institution to combat terrorism was one of the main objectives in the legislative process. The EU legislation tries to establish institutional structure in member states to create
better communication between national level units/branches and EU level counterpart institutions.

Declaration of Trevi Group Ministers (Paris, 15 December 1989) sets the new requirements for a better cooperation in creation of a European area without internal borders (Statewatch, 2016a). The Declaration mentions the difference among legal systems of EU member states and the necessity to close the gap. It is mentioned in the declaration that the terrorists and groups use these gaps and increase their abilities to carry out terrorist attacks. The increased speed of communication speed and the opportunity of international travel was additionally increasing terrorist groups’ abilities (Statewatch, 2016a).

The Report to the European Council in Edinburgh from the Coordinators’ Group on Free Movement of Persons, in 1992, put two requirements to be set properly before doing away the internal border controls: “the application of certain essential measures enabling joint organization and reinforcement of checks at external frontiers and co-operation in other fields”. The report also emphasized the new instrument European Information system (EIS). The report was the critique of Palma Document. The first steps were taken for the implementation of exchange of liaison officers, customs information system and customs enforcement strategy at external borders and firearms control was partially achieved. Exchange of liaison officers, rapid information exchange, a common information system and communication frequency for public safety services was examined by member states. The necessity of the authorization of these actions were mentioned. Arrangements for student and teachers exchange on security issues were discussed (Statewatch, 2016a;2016b).

The main function of The Treaty on European Union (Maastricht, 1992), in the counterterrorism regime, was laying the ground for a union-wide co-operational institution, Europol (European Union, 1992). Principal tasks were given to EUROPOL in accordance with the previous arrangements and examinations. The tasks were mainly around the concept of information; how to gather, analyse, use and share. Notification of the authorities, both ways (from Europol to national authorities and the opposite) and among member states too, became important.
Sharing expertise was added to sharing information to “develop specialist knowledge”. A follow-up mechanism was added to the system with “situation reports”. Some obligations were set for member states for providing information and intelligence for Europol and keeping them up to date, responding to Europol’s requests and ensuring law compliance. Each member state was obliged to establish a specific national unit to be responsible for the tasks mentioned in the convention. The establishment would bring the institutionalisation that Europol needed at national level. Data protection about information sharing with third countries would be organized with the approval of the information provider state. On the other hand, the third country had to be reliable in the aspect of data safety. This later made the EU to aid and assist third countries in data protection and information sharing. The Europol Convention did not allow any reservations in the obligations (Council of the European Union, 1995).

La Gomera Declaration, in December 1995, explained the change in the threat of terrorism with its transnational dimension and the difficulty to fight against terrorism with only national resources. It was meant to increase the efficiency of national resources with a better cooperation in the community (European Parliament, 2016).

Cooperation was extended to the judicial aspect with the amendment of the Eurojust decision in 2003. A set of information was decided to be shared at least, in the terrorist offence related issues with Europol and Eurojust (Council of the European Union, 2003).

On 31 May 2005, the action plan was updated for the second time. In this period of time (between Madrid terror bombing and the mentioned date), 106 terrorist attacks with 3 dead victims and many injuries took place in Europe (START, 2015). Though principles were being established at the EU level, the executive power was left still at sovereign states level which brought the question of member’s unwillingness to share their sovereignty.

On terrorist kidnappings a database was started to be created including the data from 1 January 2002, with a fixed information form in 2007. This brought the
change of expertise and experience from one state to the other member states (Council of the European Union, 2007).

In 2008, Council Decision about the consultation of the Visa Information System (VIS) created the obligations and conditions of consulting the system by Europol and Member State’s authorities dealing with terrorist offences. Principles of the consultation were set in the Decision for Europol and member states including the way that would be used in urgent situations too (Council of the European Union, 2008).

Council Decision about cross-border cooperation to combat terrorism created an improved way to share information on DNA analysis files, fingerprint identification systems and vehicle registration data. Instead of sharing the information at first place, the system was set to make a search for a matching profile then the member state would be able to request the detailed information from the member state that owns the data. This decision allowed the Member States national authorities to share information related to the terrorist offences even they were not requested to. This would mean to sacrifice short-term doubts about information sharing and to expect the same action from other member states to have the long term goals; success in counterterrorism operations. But also the simplicity of the exchanged information was not adequate and detailed information was essential and needed for investigations (Council of the European Union, 2008).

3.2.5. Cooperation

In the literature of security cooperation studies, mainly it is discussed as the relationship between states when one state is the threat for another one (Keohane, 1985). Jervis (1982) argues that an increase on the security of a state can bring a decrease on the security of another state (Jervis, 1982 ). In the counterterrorism regime, terrorism is the common threat. Cause of that one states’ increasing its security does not cause the other state’s security to decrease. But in counterterrorism regime an increase on security of a state increases the accumulation of the security in other states of the EU too. Security regime
discussions are based on the relationship between states to defeat one another. The continuity of cooperation in the counterterrorism regime can be observed due to the continuity of the threat and attacks. The cooperation among EU member states will be examined this sub-section.

Regarding to the old history of the EU counterterrorism regime, in 1970s, TREVI group was established in 1976 by 12 Members of European Economic Community (EEC). After a number of intergovernmental meetings on terrorism, with the proposal of UK Foreign Secretary James Callaghan, in the Council of Ministers meeting in Rome in December 1975, Interior Ministers agreed on setting up a special group for combating terrorism. And in EC Interior ministers’ meeting in Luxembourg on 29 June 1976, the group was formalised (Bunyan, 2016). This effort was the first attempt to establish cooperation between member states. Trevi group’s aim was explained to “pool their (Member States’) resources in order to strengthen their capacity to the maximum to prevent acts of terrorism and to bring those responsible to justice.” It also established the linkages among fighting terrorism, fighting drug trafficking and police cooperation and customs cooperation (Statewatch, 2016b).

The structural principles of Trevi Group (1976), were set with three levels for meetings: (1) Ministerial (2) Senior Officials and (3) Working Officials (Bunyan, 2016). The principle of multi-level governance in the EU counterterrorism regime was established at the beginning. Ministers, senior officials and working officials started having meetings to have a better cooperation on counterterrorism issues.

Axelrod and Keohane see the perception as an important component of the decision making in the cooperation (Keohane, 1985). The perception of the terrorism threat was changed from the beginning, as it has already been examined in the previous sections. (See Figure 5)

3.2.5.1. Crisis

When there is not a crisis in the regime, Axelrod and Keohane argue that friendly relation across the alliance is compatible with the loyalty in the alliance (Keohane, 1985). But in security regimes such as counterterrorism regime, it can be
discussed that the counterterrorism reaction or cooperation can be observed with an improving pace when the common threat of terrorism increases its effectiveness on the parties of the regime. ISIS related issues including arrests, attacks that are inspired or directed, in the member states took place often in the countries such as France, Germany and the UK (See Figure 6). This can be discussed due to the reason that these member states’ actorness in the coalition in the fight against ISIS is more intensive than other member states. It is visible in the figure that the UK, France and Germany had more attacks/arrests than the eastern European states. The Eastern European states follow the legislation even without being targeted by terrorist attacks but still keeping the terrorism as a threat for their states. It is discussed for the international regimes that leading industrialized countries yield positive results in the negotiations (Keohane, 1985).

*Figure 6 ISIS’s Objectives in Europe from January 2014 to March 25, 2016 (ISW, 2016).*
3.2.5.2. Avoiding withdrawal

Almost all of the EU member states share the common Schengen area. If the member states avoid the cooperation in the EU counterterrorism regime, the member states get more vulnerable for the terrorist attacks without the benefit of cooperation. Instead of defecting from the counterterrorism cooperation, states are more willing to be the free rider, at least by choosing to stay in the counterterrorism regime and benefit from that.

Stein mentions that the actors would avoid the actions of the regime not to lose their power and reputation (Stein, 1982) but this can be argued as a factor for member states’ avoiding withdrawal from counter terrorism regime and regime-governed actions. None of the member states would be willing to be observed as hesitant to react to the terrorism threat and that makes the opposite effect of Stein’s claim.
3.2.5.3. *Research and development*

The Specific Programme ‘Prevention, Preparedness and Consequence Management of Terrorism and other Security related risks’ brought the EU to the Research and Development level in counter-terrorism regime including threat and risk assessments (Council of the European Union, 2007). 7th Framework Programme for Research funded 319 projects in security related issues including the fight against terrorism with €1.3 billion budget (European Commission, 2016). European Union Global Strategy 2016 can be considered to bring an impetus in the development of the EU counterterrorism regime.

3.2.5.4. *Monitoring Compliance*

The monitoring of the actors in international regimes is one of the main dynamics to keep the international regimes functioning properly and in a fair way (Keohane, 1985). In the EU counterterrorism regime, the feedback reports about counterterrorism legislation in the member states’ progress are mostly not published publicly, as Secile project report mentions (Statewatch, 2016). This can be considered cause of the security level of the documents or the problems about the compliance of the legislative responses by member states for the EU level regulations.

The Council established evaluation teams of experts from member states for evaluating the implementation and the legal systems at national level in 2002 (Council of the European Union, 2002). This was the last part of the regime governed actions with an attempt to create a control mechanism.

3.2.5.5. *Dominant actor*

Bunya claims that the dominance of the UK is observed in the proposals of the Trevi related documents (Bunyan, 2016).

Council Common Position of 27 December 2001 on the Application of Specific Measures to Combat Terrorism was to identify the terrorist persons, groups and entities. This position included 6 terrorist groups in Northern Ireland, 3 in Greece, 2 in Spain and 2 in Palestine. The current threat from terrorist groups was defined
by creating a list. The UK was dominant in creation of the list again with including 6 terrorist groups in Northern Ireland (The Council of European Union, 2001).

Though some of the EU counterterrorism measurements were taken after the proposals of the UK and the UK appeared to be the most-benefitted state on some of the measurements, a dominant actor which leads the legislation cannot be observed. Or in other words, the UK can’t be called as the dominant power in the EU counterterrorism regime.

Axelrod and Keohane mention that unexpected events cause the international regimes to make new experiments for a better cooperation. And that is mainly lead by few individual states (Keohane, 1985). The question of “Is there a leading actor in the EU?” still remains unanswered.

3.2.5.6. Sanctions

Axelrod mentions that when there is a greater difference in the players’ interests, the players will be tending to defect from the cooperation (Keohane, 1985).

Axelrod and Keohane comments about the international lending regimes. Tendency of small banks to defect from the regime was avoided by the threatening of the bigger banks. The bigger banks threatened the smaller banks about not supporting them for future loans and not sharing information in the future (Keohane, 1985). This was done in the counterterrorism legislation too without any threatening for the future. But information sharing would be finished if the reservations were put to the legislation on the counterterrorism legislation.

Sanctions are used in international regimes to punish the defectors from international agreements or international systems (Keohane, 1985). In the EU counterterrorism regime, the sanctions against Indonesia, Myanmar, Iraq, and Syria by the EU were to punish the support for terrorism in a global approach to the fight against terrorism. Sanctions were established on an EU-wide base which made member states to take joint actions. Sanctions have never been used in the legislation internally, against member states. On the other hand, having a reservation in some of the legislation would result in the inability of the
reservation providing state not to get any benefit from the legislation (e.g. information from another member state) Axelrod and Keohane argue that if the sanctions are severe, there can be problem of the collapse of the cooperation in the regime (Keohane, 1985). Because of that, at the beginning of the cooperation legislation, there was an option of reservation for member states. Member states were allowed to refuse the cooperation in whole or in part for a period of time, with the consideration of the legislation that could affect its public order and security of national independence. This served as a pressure valve to keep the efforts to establish regime and let it develop. (Statewatch, 2016a). But later the reservation option was diminished in the legislation.

3.2.6. Long Lasting Regime

Institutionalised regimes are mentioned as having more chance for survival. The institutions serve for the maintenance of the regime (Aybet, 2001). EU counterterrorism regime uses different types and kinds of institutions too which helps for the survival of the regime. Though there are still amendments in the sets of rules and institutions and their functions, institutionalisation of the regime can be discussed as being almost completed.

The expectation of cooperation between the states, which are in relationship is important for the parties to get better responds (Keohane, 1985). EU member states are always ready and have commitment in the cooperation. Axelrod and Keohane discuss that even before World War I, some conferences were gathered for arms control and for strengthening international law but none of them caused an effect on international politics and could not avoid the World War I. The terrorism threat will not diminish and cause of the asymmetry of the terrorism threat it can be argued that the counter measures for fighting terrorism will keep on expanding. Axelrod and Keohane mention that when a cooperation is established successfully in security area, the governments think that the willingness of the partner’s cooperation is unconditional (Keohane, 1985). Participation in the counterterrorism regime can be considered as unconditional because of the membership. But as is known, there are big debates in some
member states to close the internal borders to increase the security of national states.

Jervis’s (1982) discussion, which is about a war against a hegemon, gives some details about the willingness to work together in alliances. He mentions that after the hegemon is defeated, the powerful states would be willing to keep on working against the hegemon not to let it get stronger back again. The winning states start having empathy with other states even after the hegemon is defeated (Jervis, 1982). The same empathy can be observed in many of member states when a terrorist attacks takes place in a member state or even outside of the EU. This can be named as a factor which brings member states closer to each other in the counterterrorism regime.

The solidarity among member states, shared values such as human rights, freedom of speech and association and fundamental right, and the common threat of terrorism, gave the power for the maintenance of the regime.

3.2.7. Change within the Regime or a Total Regime Change

3.2.7.1. Regime change

The regime changes when there is lack of coherency among the principles, norms, rules and decision making process (Krasner, 1982). The EU counter terrorism regime has not lost the coherency among them and cause of that the regime has never gotten weakened. This indicates that the counterterrorism regime will keep on its existence without defection of the member states.

New counterterrorism legislation or amendments to that does not cause the counterterrorism regime to change, they just cause changes within the regime to modify and increase the efficiency of the policy.

3.2.7.2. Blurry Future

It is discussed that every actor thinks about his or her own problems (Keohane, 1985). As the perception of the terrorism threat changed to radicalisation in recent years as it was discussed before. As it was mentioned in accordance with Figure 6, the level of the radicalisation threat is in an inequality in the member states. In
member states such as France, the UK and Germany, the number of terrorist incidences are high when it is compared to the eastern European member states such as Czech Republic.

The phrase of “shadow of the future” is used to describe the uncertainty and the lack of clarity of the future event with the limits of the information of counterpart states’ actions (Keohane, 1985). Terrorism threat is the causal factor for the counterterrorism regime and it does not seem to have a decrease and it does not diminish in the near future, on the contrary year by year it escalates. The counterterrorism legislations started not to allow any reservation and targeted full implementation of the legislation into the national level. This increased the reliability of the member states on the commitments in the legislations about cooperation. Axelrod and Keohane indicate that due to the reason that there is no secrecy in political and economic issues unlike the military aspect of the cooperation, it is easier to reach the reliable information about future (Keohane, 1985). It can be discussed that keeping national security issues out of the scope of information sharing process prevents member states to avoid sharing information.

The political conditions at national causes the uncertainty about the future of the regime.

3.2.8. Impact Abroad

In the counterterrorism regime, the centre of the power is mainly sovereign states but additional interactions with neighbour or associated states is visible due to the nature of international terrorism. The interactions are both getting support for EU counterterrorism regime and also to diffuse the principles and norms of the regime to the interacted states.

Organizing meetings with internal dimension in the EU, in TREVI group meetings observer status was first given to non-European Community members and this created the external dimension of the EU counterterrorism regime (Bunyan, 2016). Observer group was called as “Friends of Trevi” and included Sweden, Austria, Morocco, Norway, Switzerland, Finland, Canada and the USA. This group was the first steps of the cooperation then it expanded its efficiency in
the following years. Cooperation with “friendly third countries” was also taken into account by Trevi Group too (Statewatch, 2016b).

After the attacks in 9/11, the EU started its exercising cooperation with third countries such as Palestinian Authority to support its efforts in counter-terrorism activities for three years in the territories under its control (Council of the European Union, 1997). And in 1999 and 2000 sanctions were established against Indonesia and Burma/Myanmar (Council of the European Union, 1999;2000).

The European Council adopted Declaration on Combating Terrorism on 25 March 2004, in the aftermath of the terrorist train bombing in Madrid\(^\text{16}\). The European Council listed the high-level strategic objectives for revised EU Action Plan to Combat Terrorism as below:

a) Deepen the international consensus and enhance international efforts to combat terrorism,

b) Reduce the access of terrorists to financial and other economic resources,

c) Maximise capacity within EU bodies and Member States to detect, investigate and prosecute terrorists and prevent terrorist attacks,

d) Protect the security of international transport and ensure effective systems of border control,

e) Enhance the capability of Member States to deal with the consequences of a terrorist attack,

f) Address the factors which contribute to support for, and recruitment into, terrorism,

g) Target actions under EU external relations towards priority Third Countries where counter-terrorist capacity or commitment to combating terrorism needs to be enhanced.

The external dimension was brought to the discussion table in the Action Plan (point a and g) (The European Council, 2004).

\(^{16}\) Madrid terror bombing was the second deadly terrorist attack in Europe with 192 dead at that time, after Lockerbie Pan Am Aircraft bombing with 270 civilian dead.
Council of Europe Convention on the Prevention of Terrorism in 2005 including the members of the Council of Europe and the European Economic Community members brought impetus with the signature from non-EEC member states both in the Europe and outside of the Europe too. 17 Offences related to recruitment and training for terrorism was identified and obliged for each Party to be set as criminal offences. Prevention level was established with mentioning that the terrorist offence should not need to be physically executed for the judicial investigations against the persons who participated in terrorist recruitment and training acts. The investigations would be started even there was no executed terrorist attacks. The Convention did not make concession about the fundamental principles of the EU (human rights obligations, freedom of expression, freedom of association and freedom of religion). Aftermath of a terrorist attack, especially the conditions of the victims, were taken into consideration. Duty to investigate every terrorist offence was given to each Party whether the offence took place in that Party’s territory or not (Council of Europe, 2016).

Instead of withdrawal from the principles and norms of the Counterterrorism regime, regime have been exporting itself firstly to the non-EU member states in European continent and neighbouring and candidate states.

To be able to talk about the compliance among the member states in the EU counterterrorism regime issues, a short discussion on Europeanisation has to be provided as well.

Alam argued that “Despite numerous syntheses, there is no common definition for Europeanization, which remains a much debated concept” (Alam, 2016). Scholars mostly argue about the different aspects of Europeanisation regarding to their point of interest, e.g. Ladrech focused on political aspect, Moumoutzis mostly wrote on foreign policy. Kaliber et al., writing about the triangle of Turkey, Europeanisation and Civil Society in Turkey, argued that they distinguished four

17 Full list of signatures is available at http://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/196/signatures?p_auth=Shvb8zUx
different meanings of Europeanisation: “policy, political, discursive and societal Europeanization” (Kaliber, 2005).

Writing in 1994, Ladrech explained the meaning of Europeanisation as “Europeanization is an incremental process reorienting the direction of the organisational logic of national politics and policy-making” (Ladrech, 1994). Ladrech used the word ‘Europeanisation’ with its top-down dimension. Counterterrorism regime governed actions were mostly taken at the EU-level and sovereign states were expected to adopt them into their national legislation.

Müller and Alecu de Flers argues two dimensions of Europeanisation on foreign policy issues; (1) bottom-up dimension which means the Europeanisation of national interests, (2) top-down dimension with the “downloading” of the EU level policies and ideas to national level (Müller, 2010). First dimension could be used in the aspect of preparing the proposals for the EU regime governed actions. The dominance in the proposal process or the outcome process will be discussed in the following sub-section.

Borzel argued that the Europeanisation impact of domestic change on neighbouring or candidate countries depends on five factors: (1) the costs (of change), (2) the external push, (3) the capacity, (4) the willingness and (5) the power to resist the pressure (Borzel, 2010). Due to these factors the exporting of the regime has had its own limitations.

3.2.8.1. Best partner

The security cooperation between the EU and the US in the Cold War era against Soviet threat, brought the same cooperation between two parties in the counterterrorism cooperation. As the USA’s approach was expressed as the “War on Terror”, in Council Common Position of 27 December 2001 on Combating Terrorism, the EU’s approach appeared to be active more than passive. The word “attack” to the sources used by terrorists was used. It started the close cooperation with the USA which made the EU and the USA the best partners for each other. Even in the position in the Europol in December 2015, it is visible in the number of the experts with 26 Employees from the USA and 22 from other third countries
in total (See Table 1) It extended the dimension of prevention from a union based perspective to a global perspective. The position included not only the threats to member states but also the threats directed to third countries too (The Council of European Union, 2001).

*Table 1 Number of Employees from third countries in Europol (Europol, 2016)*

<table>
<thead>
<tr>
<th>COUNTRY</th>
<th>NUMBER OF EMPLOYEES</th>
<th>AGENCY/ORGANISATION</th>
<th>NUMBER OF EMPLOYEES</th>
</tr>
</thead>
<tbody>
<tr>
<td>Albania</td>
<td>1</td>
<td>INTERPOL</td>
<td>2</td>
</tr>
<tr>
<td>Australia</td>
<td>3</td>
<td>US ATF (Bureau of Alcohol, Tobacco, Firearms and Explosives)</td>
<td>1</td>
</tr>
<tr>
<td>Canada</td>
<td>4</td>
<td>US Customs and Border Protection (CBP)</td>
<td>2</td>
</tr>
<tr>
<td>Colombia</td>
<td>2</td>
<td>US DEA (Drug Enforcement Agency)</td>
<td>3</td>
</tr>
<tr>
<td>F.Y.R. of Macedonia</td>
<td>1</td>
<td>US DS (Diplomatic Security Service)</td>
<td>3</td>
</tr>
<tr>
<td>Iceland</td>
<td>1</td>
<td>US FBI (Federal Bureau of Investigations)</td>
<td>3</td>
</tr>
<tr>
<td>India</td>
<td>1</td>
<td>US FDA (Food and Drug Administration)</td>
<td>1</td>
</tr>
<tr>
<td>Moldova</td>
<td>1</td>
<td>US ICE (Immigration and Customs Enforcement)</td>
<td>6</td>
</tr>
<tr>
<td>Montenegro</td>
<td>1</td>
<td>US IRS (Internal Revenue Service)</td>
<td>1</td>
</tr>
<tr>
<td>Norway</td>
<td>3</td>
<td>US TSA - Transportation Security Administration</td>
<td>1</td>
</tr>
<tr>
<td>Pakistan</td>
<td>1</td>
<td>US SS (Secret Service)</td>
<td>3</td>
</tr>
<tr>
<td>Switzerland</td>
<td>3</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Axelrod and Keohane see that the American troops stationed in Europe to provide security cooperation for the EU against the threat of Russia (Keohane, 1985). Same type of alliance against terrorism is established in the fight against terrorism too.
Chapter 4: Conclusion

4.1. Concluding Thoughts

The main aim of establishing a union in European continent was to avoid war and provide a single market. The European Economic Community expanded its effects from economics to security relations in a short time. The consensus that the European Economic Community had on economics, helped to reach a consensus on the terrorism definition. The definition provided that in member states, the terrorist attacks or offences would not be named as political offences and terrorist organisations would not be able to find shelter.

The Common threat of terrorism was the main causal factor of the efforts to establish an EU Counterterrorism Regime. The perception of the terrorism changed in the course of the evaluating period of the regime. It started with the definition in which the threat is rooted outside of the continent, then the threat was named as the danger caused by the foreign fighters returning from conflict zones, afterwards the radicalisation threat was at the centre of the terrorism.

The executive power was left on sovereign states, from time to time this caused delays in the adoption of the EU Counterterrorism Regime Legislations at national level.

The core EU values supported the idea of creating an area of freedom, security and justice. The core EU values: respect for human rights, human dignity and privacy of the personal data, rule of law, fundamental freedoms and equality have had an impact on the principles and norms of the EU counterterrorism regime. Over-rigours control internally or at external borders, unlimited use of personal data, discrimination of a person, entity, religious group or ethnicity were avoided because of the core EU values.
The EU Counterterrorism Regime connected different types of areas; such as policing, justice, intensified external border control, information sharing, extradition, preventing terrorist financing, human and drug trafficking, and cooperation among these areas to fight terrorism.

The Member States established the Schengen area to reduce the cost of external border controls. Extra cooperation in policing, justice and information sharing was needed internally to secure the area. This led to the establishment of both new institutions and information sharing systems. Europol was the first supranational union-wide institution at the EU-level to increase the policing cooperation among member states. Eurojust became the second institution for judicial cooperation.

The sophistication of terrorism threat with its interlinks with different areas caused the EU Counterterrorism Regime to establish multi-level governance in three levels.
The terrorist attacks and arrests related to terrorism have escalated in recent years in the EU. The majority of these incidents took place in a few Member States such as the UK, France and Germany in an un-homogeneous manner. Even this un-homogenous manner did not affect the harmony among the member states in the Counterterrorism Regime.

As the common terrorism threat is not expected to diminish in the near future, the EU Counterterrorism Regime appears to keep on its existence for a long time. The institutionalisation of the regime helps out the survival of the regime. Shared values, pressure valves that the regime have also help to avoid the defection of the member states from the regime.

The EU counterterrorism regime have had impact both in domestic legislations of the member states and the third countries. The cooperation was established with the third countries and the best cooperation has been accomplished with the USA.
During the Cold War, The European Economic Community and the USA used to have the same type of partnership too.

4.2. Remarks on the EU Counterterrorism Regime in a Terrorised Global Security Environment

It can be argued that to stop terrorist attacks, 100 percent, is not possible and a utopic expectation. Eradication of terrorism does not seem to be a near future event, because of that the EU Counterterrorism Regime will be still alive and keep on improving itself with new cooperation tools. Even the UK's quitting EU membership should not be read as a way to decrease the cooperation on counterterrorism issues.

At the 70th UN General Assembly, on 29 September 2015, Donald Tusk (President of the European Council of the EU) stated that many refugees were fleeing from terrorism, mentioning the conflict in Syria (The United Nations, 2016). At the same assembly, High Representative for Common Foreign and Security Policy/ Vice-President of the Commission (HR/VP) Federica Mogherini stated that “… nothing is scarier to Da’esh than cooperation. Cooperation between Sunni and Shia, between Muslims and non-Muslim countries and societies…” (European External Action Service, 2016). Terrorised Global Security Environment requires cooperation in a global approach as the EU Counterterrorism Regime accomplished in a union base.

4.3. Potential for Further Research

Cooperation with third countries especially with neighbouring countries have a vital importance to increase the effectiveness of the EU Counterterrorism Regime. The external dimension of the EU Counterterrorism Regime, with its exporting core values, principles and norms, and the ability of increasing the cooperation with Turkey or MENA countries is considered to be a challenging further research.
4.4. Conclusion

The leading idea for establishing a union on European continent was to avoid catastrophic damages of wars. Creating a single market with a single external borders led to the situation that the security of member states relied on one another.

Common threat of terrorism became the main causal factor for the establishment of a counterterrorism regime. This regime was grounded on the core EU values like human rights, rule of law and fundamental freedoms.

Regime establishment included (1) combination of different types of areas; such as preventing terrorist financing, human and drug trafficking and recruitment to policing, the border control, jurisdiction and extradition, (2) creation of new institutions such as Europol, Eurojust, Frontex and SitCen, and (3) the creation of Information Sharing systems.

The regime had multi-level governance with the participation of different institutions and bodies at three levels.

To fight with the Common terrorism threat, the EU established the counterterrorism regime with respect on the EU core values. The regime established institutional and co-operational structure with union-wide institutions. Information sharing systems were used to increase the effectiveness of the cooperation. The cooperation with third countries started taking place in the regime at the very beginning and intensified especially after 9/11 attacks. The best cooperation has been with the USA. As the executive power is still in the hands of sovereign member states, from time to time there are delays in the adaption of EU level legislation into the national law. However, Member states do not have a tendency to defect from the regime because of the still existing common terrorism threat and the common benefits of the cooperation in the EU Counterterrorism Regime. As the new EU global strategy 2016 is being prepared, the EU Counterterrorism Regime will keep on having improvements within the regime but a total regime change should not be expected.
Bibliography


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