

Countering Convergence

“Central Authorities” and the Global Network to Combat Transnational Crime and Terrorism

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Black smoke once again looms on the Iraqi horizon as a Middle Eastern country, once thought somewhat pacified, has again erupted in a spasm of violence and conflict. The recent ascendance of the Islamic State in Iraq and Syria (ISIS), which tore through large swaths of Iraqi territory and effectively effaced the border between those countries, has illuminated the increasingly transnational nature of terrorist organizations operating in the Middle East.¹ Meanwhile, in North Africa and the Sahel, recent reports indicate that Libya's remote deserts have become a redoubt for al-Qaeda in the Islamic Maghreb and other jihadist groups as well as nonstate armed groups battling for control of northern Mali.²

In a progressively unstable world order, there has never been a greater need for international cooperation in the fight against transnational crime and terrorism. The operations of nonstate armed groups, terrorists, and transnational criminal organizations are becoming global in scope.³ Moreover, as recent events have demonstrated, such groups are increasingly lethal, disruptive, and destabilizing. Also becoming more apparent, however, is that effective cooperation against them requires much development in what international development parlance calls “the justice sector.”⁴ Justice-sector development easily calls to mind images of police training and educational initiatives for lawyers or judges in the developing world, but another sort of national institution serves as a prerequisite to effective inter-

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national cooperation in the fight against transnational criminality: the “central authority.”⁵

Central authorities, the national entities responsible for mutual legal assistance and extradition, are the engines for international cooperation under the modern international legal framework. They are essential to effective cooperation among international law enforcement authorities. As one senior United Nations (UN) officer has noted, “Establishing effective central authorities that receive and process requests for MLA [mutual legal assistance] and extradition is essential in bringing terrorists to justice.”⁶

The acute need for effective central authorities is a result of the globalized nature of crime and the waning relevance of national boundaries. In the contemporary international security context, borders are largely irrelevant—especially in the most fragile parts of places like the Middle East, North Africa, and the Sahel.⁷ The virulent storm of cross-border activity emphasizes the fact that, when governments are challenged to control the full range of their territory and when borders are left unmanned, large swaths of territory are effectively ungoverned spaces that, in turn, invite transnational criminality, conflict, crime, and terrorist activity. Thus, certain parts of the globe now seem little more than a swirling vortex of violence and criminality, destabilizing the region and threatening the larger world.

Similarly, the immateriality of national borders is apparent in the burgeoning rate of other types of transnational crime. The UN Office on Drugs and Crime reports increases in a wide array of transnational crime such as human trafficking, human smuggling, cybercrime, and piracy, as well as trafficking in illicit drugs, weapons, and counterfeit goods. This sort of criminal activity obviously has a destabilizing effect—especially in fragile states—and can undermine governments so extensively that its effects become an international security issue.

Moreover, security experts now express concern about the problem of “convergence”—the collusion of transnational criminal organizations with international terrorist groups. Through the phenomenon of convergence, such groups may take advantage of the logistical capabilities of transnational criminal organizations, thereby attaining greater operational prowess. To a degree, one sees this sort of convergence in the way that ISIS engages in illicit oil smuggling and other criminal enterprises to fund its terrorist activities.

For state actors, however, national borders remain an area of acute apprehension. Sovereignty and the concomitant principle of nonintervention—the cornerstones of the international legal order—provide stability in that order by severely limiting the ability of one state to conduct unilateral activity within the territory of another. This principle is reflected in Article 2(7) of the UN Charter, which provides that, aside from the application of enforcement measures under chapter

7, nothing in the charter “shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state.”⁸ Law enforcement functions are among the matters historically considered “essentially within the domestic jurisdiction.” Consequently, while terrorist and criminal groups are increasingly agile, fluid, and transnational in scope, national law enforcement powers remain tightly constrained.

Given these traditional limits on the scope of extraterritorial law enforcement activity, states, by necessity, have developed mechanisms to cooperate in transnational criminal matters. Intelligence sharing, information sharing through police channels, and the myriad forms of informal cooperation remain critical in this regard. Furthermore, extradition and mutual legal assistance are two principal mechanisms by which cooperation in transnational criminal matters is requested and afforded.

Extradition, of course, is the means by which one sovereign requests and obtains custody of a fugitive located within the jurisdiction and control of another sovereign. Through extradition, a sovereign can obtain physical custody of an offender to stand trial before a court of law. For example, recall the extradition of international arms trafficker Viktor Bout (known as the “Merchant of Death”) to the United States.

Mutual legal assistance—a more obscure term for an equally important activity—refers to the mechanism by which states request and obtain evidence and assistance for criminal investigations and prosecutions. Through mutual legal assistance, a country may seek the production of a wide variety of evidence from a foreign government—evidence that can be extremely useful in a criminal investigation of transnational criminal activity but that lies beyond the inevitable culmination point of informal assistance. Bank records, business records, the contents of e-mails, tax documents, witness statements, and a host of other types of evidence can be compelled on behalf of a foreign country through requests for mutual legal assistance.

Some states can afford extradition and mutual legal assistance based on their own domestic law and even in the absence of an international treaty requiring them. Many states have bilateral arrangements, frequently called mutual legal assistance treaties, that offer a basis for action. The United States, for example, has entered into numerous bilateral treaties of this type with partner countries across the globe. Moreover, with the ascendance of what is now termed transnational criminal law, a number of multilateral conventions under the aegis of the UN expressly require such formal cooperation. Notably, UN Security Council Resolution 2178, the most recent resolution on foreign fighters,

recalls its decision in resolution 1373 (2001) that Member States shall afford one another the greatest measure of assistance in connection with criminal investigations or proceedings relating to the financing or support of terrorist acts, including assistance in obtaining evidence in their possession necessary for the proceedings, and *underlines* the importance of fulfilling this obligation with respect to such investigations or proceedings involving foreign terrorist fighters (emphasis in original).⁹

Acting on foreign requests of such a unique and intensely legal character, however, is no easy task. Thus, in the contemporary international legal framework, states have created central authorities to act on requests for extradition and mutual legal assistance. These are national institutions that act as international nodes of coordination to receive and act upon requests from other countries in transnational criminal matters. Otherwise stated, central authorities breathe life into the treaty framework by operationalizing these international instruments. In fact, many UN treaties, such as the UN Convention against Corruption and the UN Convention against Transnational Organized Crime, expressly call upon member states to designate central authorities in their government for just this purpose.¹⁰

Needless to say, in situations in which the requested state is unwilling or unable to afford assistance, no treaty will prove effective. Further, states will generally be unable to offer assistance without the correct institutional architecture in place. This situation creates a recurring problem vis-à-vis international cooperation in the developing world, where even the most basic national institutions are challenged, yet where threats posed by transnational criminal groups and terrorist organizations are most acute.

Fortunately, though, the problem has not gone entirely unnoticed. The UN has begun programs aimed at developing central authorities in Africa, the Middle East, and elsewhere. Such UN projects seek “to help Member States establish one single central authority in charge of processing extradition and requests for mutual legal assistance thereby strengthening their capacity to cooperate and ensuring efficient and time-effective responses.”¹¹ These efforts are a positive trend although far more can (and should) be done. National governments and the international system are quickly being outpaced by the agility of transnational criminal groups, which are taking advantage of the seeming inability of some governments to investigate or prosecute cross-border crime.¹²

Given the rapidity of the rise of transnational crime and terrorism, greater attention must be paid to the development of justice sectors across the board, including the institutional architecture needed for international cooperation in criminal matters. Transnational threats cannot be defeated without creating effective central authorities and operationalizing the network necessary for states to

join strengths against a global scourge. The international community, therefore, must devote more attention to the development of central authorities in critical regions such as the Middle East, North Africa, and the Sahel. The engines that give life to the international treaty framework must be built, serviced, and properly maintained. Otherwise, efforts to address transnational crime and terrorism through a rule of law framework will remain stymied.

Notes

1. “[ISIS is] a non-state armed group that, by exploiting ungoverned spaces and state fragility in the Middle East, has asserted a degree of control over a large swath of territory that transcends the borders of Iraq and Syria. In so doing, ISIS has become a stark reminder of the dangers posed by ungoverned spaces—lawless expanses of the globe left effectively unregulated by sovereign authority, where terrorist organizations and other transnational criminal groups are permitted to thrive.” Dan Stigall, “The Islamic State of Iraq and Syria (ISIS) Is . . .,” *Global Brief*, 7 November 2014, <http://globalbrief.ca/blog/2014/11/07/%E2%80%9Cthe-islamic-state-of-iraq-and-syria-isis-is%E2%80%A6%C2%A0/>.

2. See, for example, Michael A. Sheehan and Geoff D. Porter, “The Future Role of U.S. Counterterrorism Operations in Africa,” *CTC Sentinel* 7, no. 2 (February 2014): 1–3, <https://www.ctc.usma.edu/v2/wp-content/uploads/2014/02/CTCSentinel-Vol7Iss2.pdf>.

3. Robert Mandel, *Dark Logic: Transnational Criminal Tactics and Global Security* (Stanford, CA: Stanford Security Studies, 2011), 1, 17.

4. “International cooperation also means improving the capabilities of our partner nations to detect, investigate, and prosecute those who intend to harm their citizens. Currently, we have 20 prosecutors working in an advisory capacity at the invitation of host nations to help implement UN and other international conventions and provide a range of technical assistance. We deploy teams of counterterrorism prosecutors, investigators, analysts, and forensic specialists to partner nations that have experienced a terrorist attack or are seeing a large flow of foreign terrorist fighters in order to assist in investigations and prosecutions.” “Attorney General Loretta E. Lynch Delivers Remarks at Technische Universität Dresden,” United States Department of Justice, 1 June 2015, <http://www.justice.gov/opa/speech/attorney-general-loretta-e-lynch-delivers-remarks-technische-universit-t-dresden>.

5. “Success in such ventures [international law enforcement cooperation]—coupled with the increased demand for international cooperation and mutual legal assistance—will require Central Authorities to be adequately staffed with legal experts who are empowered to communicate freely with international partners in order to provide needed information and evidence, to obtain assets, and to bring offenders to justice. Only then can countries fulfill their commitments under the U.N. Convention Against Corruption and the promise of this remarkable Forum.” “Attorney General Eric Holder Delivers Remarks at the Arab Forum on Asset Recovery,” United States Department of Justice, 28 October 2013, <http://www.justice.gov/opa/speech/attorney-general-eric-holder-delivers-remarks-arab-forum-asset-recovery>.

6. “International Cooperation by Central Authorities ‘Essential’ to Bringing Terrorists to Justice, CTED Expert Tells Regional Meeting in Morocco,” UN Security Council Counter-Terrorism Committee, 11 February 2014, http://www.un.org/en/sc/ctc/news/2014-2-5_ctedexpert_morocco_essential.html.

7. “Expressing serious concern about the insecurity and rapidly deteriorating humanitarian situation in the Sahel region, which is further complicated by the presence of armed groups and terrorist groups and their activities, as well as by the proliferation of weapons, from within and outside the region, that threaten the peace, security and stability of regional States” (emphasis in original). Resolution 2056 (2012), Peace and Security in Africa, S/RES/2056 (2012), United Nations Security Council, 5 July 2012, 2, [http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/2056\(2012\)](http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/2056(2012)).

8. “Chapter 1: Purposes and Principles,” Charter of the United Nations, accessed 14 September 2015, <http://www.un.org/en/documents/charter/chapter1.shtml>.

9. Resolution 2178 (2014), Threats to International Peace and Security Caused by Terrorist Acts, S/RES/2178 (2014), United Nations Security Council, 24 September 2014, 6, http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/2178 (2014).

10. *Competent National Authorities under the United Nations Convention against Corruption*, CAC/COSP/EG.1/2012/CRP.1, United Nations Office on Drugs and Crime (UNODC), 22 October 2012, <https://www.unodc.org/documents/treaties/UNCAC/WorkingGroups/EMIInternationalCooperation/22-23October2012/CacCospEg1-2012-Crp1.pdf>.

11. “UNODC and CTED Hold the First Regional Meeting on Building Effective Central Authorities,” United Nations Office on Drugs and Crime, accessed 14 September 2015, http://www.unodc.org/unodc/en/terrorism/latest-news/regional_meeting_central_authorities_project_jan_2014.html.

12. Discussing “revolutionary shifts in the capabilities of modern non-state armed groups, many of which now have new capabilities derived from new weapons and information technologies” and positing that “as technology becomes more accessible, this unsettling trend of increasingly empowered non-state armed groups will only continue—as will the threat to Western interests and global stability.” Dan E. Stigall, “The French Intervention in Mali, Counterterrorism, and the Law of Armed Conflict,” *Military Law Review* 223, no. 1 (2015): 36.

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