Chapter 1
Policing Across Borders: Transnational Threats and Law Enforcement Responses

George Andreopoulos

This volume seeks to explore some of the main challenges confronting the law enforcement community in the Balkan region in dealing with two critical transnational threats and the prospects for effective cross-border collaboration in addressing such threats. One of the key arguments advanced here is that, in order to be effective and sustainable, such collaboration must adhere to international rules and standards and, in particular, international human rights norms.

Over the last 60 years, the threats facing the international community have drastically evolved. While traditional threats resulting from interstate aggression remain a matter of concern, the universe of challenges to human welfare has expanded. A 2004 report issued by the United Nations Secretary-General's High-Level Panel on Threats, Challenges and Change (HLPTCC) entitled *A More Secure World: Our Shared Responsibility* suggests that "any event that leads to large-scale death or lessening of life chances and undermines States as the basic unit of the international system" may be understood as a threat to international peace and security. In this context, the report identified six clusters of threats which are of global concern: economic and social threats; interstate conflict; internal conflict, including genocide, civil war, and other large-scale atrocities; nuclear, radiological, chemical, and biological weapons; terrorism; and transnational organized crime (TOC) (A more secure world 2004). Several of these clusters are also identified in domestic laws: in US law, for example, transnational threats are defined as "any transnational activity (including international terrorism, narcotics trafficking, the proliferation of weapons of mass destruction and the delivery systems for such weapons, and organized crime) that threatens the national security of the United States" and "any individual or group" that engages in any of these activities.[1]

---

[1] 50 USCS ξ402 (Title 50. War and National Defense; Chapter 15. National Security, Coordination for National Security).

G. Andreopoulos (✉)
Department of Political Science, John Jay College of Criminal Justice and the Graduate Center, City University of New York, New York, NY 10019, USA
e-mail: chrights@jjay.cuny.edu

Such understandings of threats to international peace take as their premise a paradigmatic shift from an exclusive preoccupation with state security to a more nuanced interplay between state security and human security considerations within the framework of collective security. This shift in its turn rests on two basic pillars: the interconnectedness of various types of threats and, as a concomitant, the need for these threats to be addressed at the national, regional, and global levels.

TOC represents a telling example of such a threat. Corruption, money laundering, and human and drug trafficking not only contribute to state weakness, adversely affect economic growth, and undermine democratic institutions but, as indicated in the HLPTCC report, also undermine peace-building efforts through illicit trade in small arms and conflict commodities. In addition, state weakness/failure constitutes an inviting terrain for the proliferation of other transnational threats, including terrorism; such developments invariably have spillover effects into neighboring countries, as Zoran Pajic notes in his contribution. In order to eliminate such threats, the international community needs a varied and more effective use of the tools at its disposal.

Law enforcement constitutes a vital component of any credible response to the challenges posed by the aforementioned transnational threats. In particular, law enforcement efforts can play an important role in the suppression and punishment of activities resulting from these threats, as well as in the prevention of threat-enabling situations. As a result, several recent developments at the international, regional, and national levels have attempted to strengthen the contribution of law enforcement on the suppression/punishment and prevention fronts and enhance its overall role in global governance.[2]

To be sure, international crime control efforts manifested, in particular, through cross-border law enforcement collaboration do not constitute a novel feature in international relations. As several analysts have noted, such efforts have a long history (Andreas and Nadelmann 2006, p. 4; Deflem 2002, 2009). What has changed is the intensity and geographic reach of these efforts which have transformed the landscape of crime control and have raised the profile of policing issues in the international security discourse (Andreas and Nadelmann 2006, pp. 4–5).

The potential contribution of law enforcement is also part of a broader argument concerning the need for new conceptual lenses to understand global governance. According to this argument, the traditional notion of the state, i.e., as that of a unitary entity like a billiard ball, needs to be revised. Instead, states should be viewed as dis-aggregated entities and cross-border interactions should be understood as relations among subunits, including regulatory, law enforcement, judicial, and legislative channels (Slaughter 2004, p. 5). These transgovernmental networks are involved in a variety of activities that include the development of common standards and agreements

---

[2]At the international level, reference should be made to the work of the United Nations Security Council Counterterrorism Committee, to the implementation of the United Nations Convention against Transnational Organized Crime, and to several initiatives launched by the United Nations Office on Drugs and Crime (UNODC), in cooperation with the United Nations Office of Legal Affairs (UNOLA), and, at the regional level, to initiatives derived from the Organization for Security and Cooperation in Europe (OSCE) Charter on Preventing and Combating Terrorism and from the Organization of American States (OAS) Convention against Terrorism, among others.

to advance interstate cooperation, implementation issues such as intelligence sharing, and technical assistance and training. An important function of these networks is to facilitate the professional socialization of their counterparts from less developed nations through various capacity building initiatives (Slaughter 2004, p. 4).

The increasing density of such cross-border interactions does not unfold in a normative vacuum. In fact, the density of exchanges, manifested primarily through the sharing of growing amounts of information and the ability to coordinate activities among a vast array of entities, has only reinforced the critical nature of the normative context. More specifically, these activities need to adhere to well-recognized standards of legitimacy. This is particularly important in the context of law enforcement activities, given the perennial tension between effective law enforcement and law enforcement that becomes an instrument of repression, as Aaron Fichtelberg notes in his contribution.

There is wide consensus in the international community that human rights constitute important sources of legitimacy (Grant and Keohane 2005, p. 35). This statement does not mean that human rights remain uncontested: in fact, and at the risk of overgeneralization, it would be fair to say that the more widespread the moral appeal of human rights, the more intense the debate as to the content and reach of the relevant norms. The reference to standards of legitimacy indicates (1) that conformity to human rights norms constitutes an important indicator of the appropriateness of a particular course of action and (2) that any deviations from appropriate conduct place a considerable onus on the actors undertaking them to explain such deviations. Failure to do so would entail reputational costs and, in many cases, also material ones.

Actions and practices to which the stigma of illegitimacy is attached are not necessarily discontinued, but they are invariably concealed. A very good example here is torture. In an earlier period in European history, torture constituted a reliable means of obtaining a confession, which was considered as the "queen of proofs" in the criminal justice system (Peters 1999; Rejali 2007). To be sure, the role of torture as a source of obtaining evidence has drastically changed, but the practice has not been eliminated. The periodic reports issued by reputable human rights organizations, as well as the work of treaty organs and of the Special Procedures of the Human Rights Council, provide ample evidence as to the continuity of this practice.[3] What has changed is that, nowadays, states and other entities engaging in torture and related practices do not openly admit to doing so.[4] The abusive conduct in "secret prison sites" run by the CIA with the collaboration of other intelligence agencies, as discussed in Henry Carey's chapter, is an adequate testimony to that effect. Those engaged in such conduct go to great lengths to conceal it, an implicit admission of its inappropriate nature and of the reputational costs involved in its exposure.[5]

---

[3]I am referring, in particular, to the work of the UN Committee against Torture and of the UN Special Rapporteur on Torture.

[4]This statement has to be somewhat qualified in light of post-9/11 developments and the US-led efforts to normalize "enhanced interrogation techniques."

[5]The fear of exposure, due to more effective monitoring, has also contributed to a greater emphasis on what Rejali calls *stealth torture*, and explains why clean forms of torture "tend to cluster in democratic contexts" (Rejali 2007, p. 410).

These standards of legitimacy are drawn from hard as well as soft law instruments. These instruments include the core international human rights treaties,[6] and in the context of the Balkan region, which is the focus of this volume, the relevant European instruments and directives drawn from such instruments. For example, all Balkan countries are members of the Council of Europe and therefore bound, in addition to the core human rights treaties, by the provisions of the European Convention on Human Rights and Fundamental Freedoms and its protocols,[7] by the rulings of the Convention's European Court of Human Rights (ECtHR), and by other regional treaties, such as the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment and its protocols.[8] Moreover, law enforcement activities are expected to be guided by soft law instruments, such as the Code of Conduct for Law Enforcement Officials,[9] the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials,[10] the Standard Minimum Rules for the Treatment of Prisoners,[11] and the Basic Principles for the Treatment of Prisoners,[12] among others.

While the Balkan region confronts numerous transnational challenges, our book project has focused on two of them: terrorism and human trafficking. There are several reasons for this selection. In recent years, both issue areas have risen into prominence within the regional security discourse and have featured in efforts to build effective cross-border cooperative structures. For example, both issue areas constitute key programmatic concerns in the Justice and Home Affairs Field of the Regional Cooperation Council (RCC), the regional organization which succeeded

---

[6]These are the International Convention on the Elimination of All Forms of Racial Discrimination; the International Covenant on Civil and Political Rights; the International Covenant on Economic, Social and Cultural Rights; the Convention on the Elimination of All Forms of Discrimination against Women; the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; and the Convention on the Rights of the Child; http://www.ohchr.org/EN/ProfessionalInterest/Pages/CoreInstruments.aspx

[7]http://www.echr.coe.int/NR/rdonlyres/D5CC24A7-DC13-4318-B457-5C9014916D7A/0/CONVENTION_ENG_WEB.pdf

[8]http://conventions.coe.int/Treaty/en/Treaties/Html/126.htm.

[9]Adopted by General Assembly resolution 34/169 of 17 December 1979; http://www2.ohchr.org/english/law/pdf/codeofconduct.pdf.

[10]Adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990; http://www2.ohchr.org/english/law/pdf/firearms.pdf.

[11]Adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Geneva in 1955, and approved by the Economic and Social Council by its resolutions 663 C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977; http://www2.ohchr.org/english/law/pdf/treatmentprisoners.pdf.

[12]Adopted and proclaimed by General Assembly resolution 45/111 of 14 December 1990; http://www2.ohchr.org/english/law/pdf/basicprinciples.pdf.

the Stability Pact for South Eastern Europe (SPSEE).[13] Likewise, in the recently established South East European Law Enforcement Center (SELEC), which replaced the South East European Cooperative Initiative (SECI),[14] two of the key task forces are on human trafficking and migrant smuggling[15] and on antiterrorism.[16] This density of interactions signals the enormity of the challenges confronting national and regional stability and a recognition of the potential benefits of intelligence sharing, of the creation of joint task forces for cross-border action, as well as of other forms of cooperation.

In addition, both threats, though transformed, constitute long-standing challenges for the international community. The current war on terror is part of a historical process that can be traced back to at least the nineteenth century, when "European police and intelligence agencies collaborated to keep track of political offenders" (Andreas and Nadelmann 2006, p. vi). In a similar vein, the most recent precedent to human trafficking can be traced back to the white slavery that existed among the United States, Western Europe, and South America between the 1880s and 1930s (Shelley 2010, p. 295).

Last, but not least, human rights play a very important role in confronting these challenges: in the context of terrorism, it is vitally important to protect human beings from both terrorism and from the excesses of policies and practices aimed at combating terrorism (Andreopoulos 2011; Flynn 2012); in the context of human trafficking, it is vitally important to address both the supply and the demand side of the equation, without criminalizing the victims (Fowke 2008; Danziger et al. 2009).

While the relevance of human rights norms is often acknowledged, the development of human rights-sensitive crime control initiatives remains, at best, a work in progress.

This volume is based on papers, presentations, and a series of discussions that took place in the context of four workshops organized by the Center for International Human Rights (CIHR) at the John Jay College of Criminal Justice, City University of New York, in collaboration with the Center for Security Studies (KEMEA) of the Greek Ministry of Public Order and Citizen Protection.[17] In preparing this volume,

---

[13] For more on RCC's Justice and Home Affairs field, see Annual Report of the Secretary General of the Regional Cooperation Council on regional co-operation in South East Europe in 2010–2011; http://www.rcc.int/pubs/0/15/annual-report-of-the-secretary-general-of-the-regional-cooperation-council-on-regional-co-operation-in-south-east-europe-in-2010-2011; and Annual Report of the Secretary General of the Regional Cooperation Council on regional co-operation in South East Europe 2011–2012. Sarajevo, 15 May 2012; http://www.rcc.int/admin/files/docs/reports/RCC-Annual-Report-2011-2012-text.pdf

[14] SELEC replaced SECI in October 2011, with the entering into force of the Convention of the South East European Law Enforcement Center; Convention of the South East European Law Enforcement Center, http://www.selec.org/docs/PDF/SELEC%20Convention%20%5bsigned%20on%2009.12.2009%5d.pdf.

[15] For more info on this task force, see http://www.secicenter.org/p280/Task_Force_on_Human_Trafficking_and_Migrant_Smuggling.

[16] For more info on this task force, see http://www.secicenter.org/p263/Anti_Terrorism_Task_Force.

[17] For more information on the workshops and the participants, see the acknowledgments section in this volume.

we asked contributors to address one or more of the following themes, which were considered central to our enquiry:

1. *Transgovernmental enforcement networks and the future of international police cooperation*. There is little doubt that the increasing collaboration of law enforcement agencies across borders has led to the emergence of an international law enforcement community. To be sure, police cooperation is not new; its modern variant unquestionably possesses some characteristics from earlier eras. However, the ever growing transnational organized crime challenges have added another layer of complexity and have transformed in some fundamental ways the nature and density of cross-border interaction. What are the key continuities with the past and what are the main transformations in this era of globalization? How does this development impact criminalization and crime control in international relations in general and in relations among states in the Balkan region in particular?

2. *The convergence of national security and criminal justice considerations*. The 2004 United Nations Report *A more secure world: our shared responsibility* identified terrorism and transnational organized crime as among the "six clusters of threats with which the world must be concerned now and in the decades ahead." Evolving definitions of security have contributed, as several analysts have noted, to the securitization, desecuritization, and resecuritization of "a … wide range of international policing issues … over time" (Andreas and Nadelmann 2006, p. 236). How has this convergence and in particular the growing interaction between law enforcement and national security institutions affected the identity and structure of these institutions as well as the instruments and tactics at their disposal to achieve their missions? What is the effect of this convergence on regional (i.e., Balkan) cooperation and stability?

3. *State capacity*. State capacity is a critical variable in the implementation of law enforcement policies, in particular if expectations of adherence to international rules and standards are to be met, as well as in ensuring more effective and legitimate cross-border cooperation. The Balkan region is seriously challenged on this front. While several regional international and regional organizations/agencies have training programs aimed at capacity building in the area of law enforcement and judicial institutions, more needs to be done. How can such entities contribute to this effort?

4. *Accountability issues in the internationalization of law enforcement*. The growing trend toward internationalization has raised, as several analysts have noted, a host of accountability-related issues, including, among others, the "democratic deficit" caused by activities that are not or not adequately supervised by elective bodies, and the human rights implications of the securitization of law enforcement, especially after the terrorist attacks of 9/11. What have been the main manifestations of this problem in the Balkan region? How can this trend be contained and eventually reversed? What can regional organizations and civil society actors contribute to this endeavor?

Aaron Fichtelberg's contribution sets the stage on the importance of democratic policing by analyzing and assessing the interconnection between three forces: the

demands of a democratic police force, state capacity building as a way to achieve democratic policing, and the ability of international institutions to help create and sustain the fine balance between the competing aims of modern policing in a democratic society. The author argues that while crime control in general and policing in particular are amenable to democratization and that democratic policing is a necessary condition for a democratic society, the democratization of policing is not an easy task. What is needed to achieve the desired fine balance is a combination of restraining bureaucratic structures, the cultivation of a professional ethic and carefully crafted legislation. This is an ongoing challenge for all societies addressing the difficult task of ensuring transparency and accountability in policing practices.

Turning our attention to the interconnectedness between national and international security, Zoran Pajic addresses the issue of security in relation to the criminal justice system and the latter's capacity to address some of the main contemporary security threats at the national as well as the regional and global levels. According to Pajic, any serious examination of this issue must begin with a common understanding about the meaning and responsibilities of collective security. Drawing on the case of Bosnia-Herzegovina, the author highlights the challenges posed by state failure and its implications for domestic as well as regional stability. Given the growing interconnectedness among local, regional, and global developments, addressing some of these challenges will necessitate the adoption, by the international community, of a more holistic approach toward the state-building process. It is in the context of "mutual dependence," the author argues, that credible incentives can be generated to ensure that failed states become reliable stakeholders in this process.

State capacity is a critical variable in advancing effective cross-border collaboration. Dimitar Markov, in his contribution, examines the role of international organizations in building the capacity of law enforcement institutions in Bulgaria. He analyzes the different types of international assistance and capacity building initiatives in the area of law enforcement and assesses their respective strengths and weaknesses. He concludes that, while the majority of capacity building efforts have produced satisfactory results, thus enhancing the ability of law enforcement to deal with crime and cross-border offenses, effective coordination remains an elusive goal. Very often international assistance provided by the different organizations leads, due to the lack of such coordination, to overlapping or incompatible results. This is a critical challenge for both national governments and international institutions.

Law enforcement collaboration in dealing with the threat of transnational terrorism has intensified since 9/11, but it has also led to many abuses. Henry Carey's contribution examines law enforcement misconduct, in particular misconduct associated with extraordinary renditions and secret prisons. One of the most troubling responses to the terrorist threat, on the part of the US government, was the creation of a CIA network of secret detention facilities, in which detainees were subjected to systematic torture and other forms of abusive conduct. This worldwide network included three European countries, Poland, Romania, and Lithuania. Going beyond the Balkan region, he analyzes and assesses the extent of this development and the efforts of regional entities, such as the Council of Europe and the European Union, to discourage collaboration in unlawful activities and ensure greater transparency

and accountability in the work of intelligence agencies. This case highlights two key issues: (1) the various ways in which the density of cross-border interactions can enable transgovernmental network misconduct and (2) the monitoring role of regional organizations as well as the limitations inherent in their operations, even in "high normativity" areas such as Europe.

Human trafficking is another major public order and human security issue for the region. In examining this issue, Roza Pati employs the theoretical lenses of the New Haven School of Jurisprudence. Thematically, the study focuses on substantive and procedural issues of international cooperation in addressing the crime of trafficking in human beings, and the geographic focus on such cooperation is in the region of South East Europe. Her contribution identifies the conflicting claims involved, and critically examines past trends in decision making, actual agreements, and instances of cooperation, and offers insights on future trends. Though some progress has been registered, Pati concludes that the pace at which cooperation to combat human trafficking has developed has not kept pace with the internal infrastructure which has been set up for this purpose. She concludes by offering a set of recommendations to states to improve anti-trafficking cooperative efforts, so as to ensure policy outcomes consistent with "a world public order of human dignity."

The next two pieces are contributions from seasoned practitioners. Nikos Petropoulos' essay examines the challenges that terrorism poses for law enforcement. His contribution surveys the main legislative measures adopted at the international, regional (European), and national (Greek) levels to combat it. The author argues in favor of a common international definition of terrorism and for the strengthening of existing agencies, such as Europol, and of entities promoting regional cooperation, such as SECI and its successor, SELEC, whose policies and practices must be consistent with fundamental rights and liberties, as enshrined in international and European treaties and related documents. In addition, the author briefly examines the impact of counter-terrorist legislation on human rights and argues that the correct approach entails finding a balance between national security and human rights.

Vassilis Grizis' essay offers insights into the complexities and challenges involved in addressing the crime of trafficking in human beings. His essay examines key developments at the international, regional (European), and national (Greek) levels to combat human trafficking. While the anti-trafficking efforts have registered some successes over the last few years, the author argues that significant progress can only be achieved by focusing on policies seeking to address the root causes of the problem. In this context, he argues that improved coordination among countries of origin, transit, and destination, as well as systematic efforts to protect the victims of trafficking, constitutes indispensable components of a more holistic and proactive approach to the problem.

The volume concludes with a focused study on the quest for accountability, a critical component of any effort aimed at ensuring legitimate law enforcement policies and practices. Selma Zekovic's contribution examines current trends in advancing the accountability of the law enforcement sector in Bosnia and Herzegovina

through an examination of the political situation in the country, the role of state institutions and civil society, and the media. Her essay provides an assessment of key accountability-related cases which have been highly prominent in the public arena, as well as of their potential consequences for the democratic process in that country. She concludes that a lot of work still needs to be done to ensure the establishment of sustainable accountability mechanisms and argues that a necessary step in that direction would be the adoption of policies that would advance democratization, policies that would go hand in hand with the implementation of international and EU standards in this regard.

The creation of a growing array of law enforcement networks at the international, regional, and national levels is emerging as a vital response to the interconnectedness of transnational threats. Bearing in mind the challenges posed by these threats to world order, the imperatives of suppression/punishment and prevention necessitate an in-depth study of these threats as well as of law enforcement's prospects for effectively addressing them. As the essays in this volume make clear, adherence to international norms constitutes a sine qua non for legitimate collective action. We trust that this volume will make a contribution to the ongoing quest for effective and legitimate law enforcement responses, responses which will advance protection premised on a commitment to human dignity.

References

Andreas, P., & Nadelmann, E. (2006). *Policing the globe criminalization and crime control in international relations*. New York, NY: Oxford University Press.

Andreopoulos, G. (2011, September 1–4). *Taking human rights seriously? Assessing the United Nations security council's counter-terrorist policies and practices*. Paper presented at the American Political Science Association Convention, Seattle.

Danziger, R., Martens, J., & Guajardo, M. (2009). Human trafficking & migration management. In C. Friesendorf (Ed.), *Strategies against human trafficking: The role of the security sector* (pp. 261–298). Vienna and Geneva: National Defence Academy and Austrian Ministry of Defence and Sports in Co-operation with Geneva Centre for the Democratic Control of Armed Forces.

Deflem, M. (2002). *Policing world society: Historical foundations of international police cooperation*. Oxford: Oxford University Press.

Deflem, M. (2009, November 13–14). *Policing terrorism across national borders*. Paper presented at a Workshop of the Policing Across Borders Project of the Center for International Human Rights (CIHR), John Jay College of Criminal Justice, City University of New York.

Flynn, E. (2012). Pushing the envelope: Human rights at the United Nations Counter-Terrorism Committee. Unpublished paper, on file with the author.

Fowke, M. (2008, May 2–3). *Global trends in human trafficking and the challenges for crime prevention*. Paper presented at a Workshop of the Policing Across Borders Project of the Center for International Human Rights (CIHR), John Jay College of Criminal Justice, City University of New York.

Grant, R., & Keohane, R. (2005). Accountability and abuses in world politics. *American Political Science Review, 99*(1), 29–43.

Peters, E. (1999). *Torture*. Philadelphia, PA: University of Pennsylvania Press (rev. ed.).

Rejali, D. (2007). *Torture and democracy*. Princeton, NJ: Princeton University Press.

Shelley, L. (2010). *Human trafficking. A global perspective*. New York, NY: Cambridge University Press.

Slaughter, A.-M. (2004). *A new world order*. Princeton, NJ: Princeton University Press.

United Nations. (2004). *Report of the high-level panel on threats, challenges and change: A more secure world: Our shared responsibility*. New York, NY: Department of Public Information.

US Code TITLE 50—War and National Defense, Chapter 15, ξ 402; http://www.law.cornell.edu/uscode/pdf/lii_usc_TI_50.pdf