CHAPTER 10

COUNTERTERRORISM AND TRANSNATIONAL CRIME

JAMES COCKAYNE

The authority to define conduct as criminal and to use force to repress it lies at the heart of state sovereignty. States are inherently reluctant to share that authority with other entities, whether states or international organizations. Outside of federalist politics, such sharing has historically occurred only in the presence of unusually high inter-state trust, as in the case of the German states in the nineteenth century or the European Union (EU) in recent decades, or as the result of hegemonic powers using force, as in the case of the concession systems imposed on China and the Ottoman Empire by Western powers.

Since the mid nineteenth century, however, transnational criminal and terrorist activity has been facilitated by economic globalization, incentivizing closer international law enforcement cooperation. This chapter explores the history of that cooperation, the contours of which are shaped by the interaction of the institutions of sovereignty and the reality of power in the international system. The chapter argues that international law enforcement cooperation to counterterrorism and transnational crime takes two independent, but interacting, forms: (1) the use of existing international institutions to define behaviour as criminally deviant and to repress it, even against the will of some states; and (2) the formation of transgovernmental policing networks, and, more recently, collaborative multi-sectoral governance arrangements—both

notionally apolitical, but inherently reflective of a shared understanding of criminally deviant behaviour. The interplay of these two approaches follows the contours defined by juridical sovereignty and power in the international system.

The Emergence of Transgovernmental Policing Networks

The history of modern policing is tied up with the political and institutional development of the modern nation-state.[1] As the relation between policing and political institutions has developed differently in different states, the web of international ties between policing institutions has correspondingly developed in a patchwork, organic manner. This development has proceeded fastest where national policing institutions shared a perception of a common criminal or terrorist threat and came together to form a practically oriented 'transgovernmental network'.[2]

This first occurred at the end of the eighteenth century, as European autocratic and conservative states built up domestic policing services as a bulwark against the anti-establishment tendencies being exported from Revolutionary France, and then in the nineteenth century, against anarchist, communist and labour movement networks. Between 1851 and 1866, the Police Union of German States provided an information exchange network, without any shared operational or strategy-setting capacity. These information-sharing networks slowly congealed into more institutional form as counterterrorism moved from the area of 'low' politics to 'high' politics, particularly as anarchist movements found success in targeting heads of state and government.[3] The response was two Anti-Anarchist Conferences in 1898 and 1904,[4] and a Congress of International Criminal Police in Monaco in 1914. In

[1] See David H. Bayley, "The Police and Political Development in Europe," in *The Formation of National States in Western Europe*, ed. Charles Tilly (Princeton, NJ: Princeton University Press, 1975).

[2] This concept of transgovernmentalism was popularized by Anne-Marie Slaughter in "The Real New World Order," *Foreign Affairs* 76/5 (September/October 1997): 183–97. See also Anne-Marie Slaughter, *A New World Order* (Princeton, NJ: Princeton University Press, 2004). For a related account of the formation of more recent transgovernmental networks in the area of international war crimes, see Jenia Iontcheva Turner, "Transnational Networks and International Criminal Justice," *Michigan Law Review* 105 (2007): 985–1032.

[3] On the relation between transgovernmental networks, low politics and high politics see Kal Raustiala, "The Architecture of International Cooperation: Transgovernmental Networks and the Future of International Law," *Virginia Journal of International Law* 43/1 (Fall 2002): 1–92, 5.

[4] Mathieu Deflem, "Bureaucratization and Social Control: Historical Foundations of International Policing," *Law & Society Review* 34/3 (2000): 601–40; Richard B. Jensen, "The International Anti-Anarchist Conference of 1898 and the Origins of Interpol," *Journal of Contemporary History* 16 (1981): 323–47.

Latin America, calls for the internationalization of policing were heard at conferences in Buenos Aires in 1905, in São Paolo in 1912, and again in Buenos Aires in 1920.[5] Finally, in 1923, police officials created the International Criminal Police Commission (ICPC) in Vienna to circulate police 'notices' pooling limited investigative information.[6] By 1934 the ICPC had fifty-eight members.

Parallel projects emerged in the United States, where an 'International Police Conference' operated in the 1920s and 1930s, and an International Association of (municipal) Chiefs of Police operates to this day.[7] (Despite their names, however, these projects were essentially American exercises, just as the 'World Series' of baseball is a north American competition.) After World War II—during which it was controlled by the Nazi SS—the ICPC was revived as the International Criminal Police Organization (since 1956 known as 'Interpol'), and moved to France. Its new constitution formally depoliticized the network, with Article 3 forbidding intervention in 'political' matters. Today, Interpol has 190 members. It operates primarily as a clearing-house, an administrative liaison between the law-enforcement agencies of its member countries, sharing data on fingerprints, mug shots, lists of wanted persons, DNA samples, and travel documents.[8]

Today's Interpol is thus the descendant of earlier transgovernmental policing networks. It is neither a supranational force, nor a classic treaty-based intergovernmental organization, but rather an informal international network of national systems of police.[9] And as an informal network, its success relies on the cooperation and effectiveness of its member 'bureaux'. This has proved an inherent limit to its effectiveness—and a spur for more proactive collaboration by those actors who wish to see a more forceful approach to repress specific forms of criminal conduct. Nowhere is this more clear than in the US-driven 'War on Drugs'.

Counter-Narcotics: Hegemonic Criminal Law

Strong states have long sought to project power internationally by defining conduct as outside the law.[10] International institutions—especially those with norm-making

[5] Paul Marabuto, *La Collaboration policière internationale en vue de la prévention et de la répression de la criminalité* (Nice: École Professionnelle Don-Bosco, 1935).

[6] Deflem, "Bureaucratization and Social Control," 755–6.

[7] Ibid., 758–61.

[8] Interpol, *2011 Annual Report* (Lyon: Interpol, 2012).

[9] Malcolm Anderson, *Policing the World: Interpol and the Politics of International Police Cooperation* (Oxford: Clarendon Press, 1989), 168–85.

[10] See Gerry Simpson, *Great Powers and Outlaw States: Unequal Sovereigns in the International Legal Order* (New York: Cambridge University Press, 2004).

power—offer a tantalizing instrument for amplifying normative power and normalizing coercive authority in the inter-state system. When a strong state can instrumentalize a law-making international institution, some international legal scholars even speak of the result as 'hegemonic international law'.[11]

During the twentieth century, the United States used international institutions to promote several bespoke regimes to tackle different aspects of terrorism and transnational crime. This web of legal arrangements, which we might describe as 'hegemonic criminal law', was built and launched from several different international law-making and norm development platforms. International law enforcement cooperation has proceeded fastest and farthest where: (1) the functional or topic-area of cooperation could be narrowly (i.e. technically) defined, because stakeholders share a common political understanding of the deviant nature of the targeted behaviour; and (2) stronger international powers (such as the United States) had a strong interest in cooperation, while other international actors did not have a strong interest in resisting cooperation.

One clear example is in the field of counter-narcotics. For several centuries after Western maritime powers arrived in Asia, they promoted narcotic consumption and trade in Asia. European powers famously went to war with imperial China in the mid nineteenth century to force China to allow European opium sales. At the beginning of the twentieth century, however, Western policy began to turn 180 degrees, under American missionary leadership.[12] After acquiring the Philippines from Spain, the US government decided not to support the state-run opium trade in the country, but rather to ban it. To be effective, that ban needed to be internationalized (as the UK ban on slavery in the eighteenth century had been internationalized). The United States organized a series of international conferences,[13] and in The Hague in 1911 a treaty was agreed to regulate the trade in opium and cocaine on the basis of medical need.[14]

After World War I, US power in the international arena had increased significantly. The United States saw to it that ratification of the International Opium Convention became one of the terms of the Versailles Peace Agreement in 1919. The new League of Nations was then tasked with oversight of the Convention. The resulting regime included a global certification system for international drug transactions, required reporting to a central Opium Control Board, allowed for the

[11] Detlev F. Vagts, "Hegemonic International Law," *American Journal of International Law* 95 (2001): 843; José E. Alvarez, "Hegemonic International Law Revisited," *American Journal of International Law* 97 (2003): 873.

[12] See Peter Andreas and Ethan Nadelmann, *Policing the Globe: Criminalization and Crime Control in international Relations* (New York: Oxford University Press, 2008), 37–45.

[13] William B. McAllister, *Drug Diplomacy in the Twentieth Century: An International History* (London: Routledge, 2000), 29.

[14] D. Bewley Taylor, *The United States and International Drug Control, 1909–1997* (London: Continuum, 2001).

League to adopt an embargo on drug transactions to or from a country that was exceeding its medical needs, and included a scheduling system to allow experts to expand international prohibitions to new drugs, beginning with cannabis. A 1936 Convention, initiated by the ICPC, suggested the criminalization of trafficking outside this regime.

World War II further consolidated American influence over the international counter-narcotics regime. The international oversight machinery was moved to Washington in 1941, and the dependence of European powers on American military support in South-East Asia led them to agree not to re-establish state-run opium trades in their colonial territories after the war. The League system was transformed into a United Nations (UN) system, based in Geneva. In 1961, at US behest, the counter-narcotics machinery was consolidated through a 'Single Convention on Narcotic Drugs', which extended the system of licensing, reporting and certifying drug transactions to all raw 'narcotic' plant materials including cannabis and coca leaves. A 1971 Convention on Psychotropic Substances set up a similar regime for synthetic drugs. The various oversight bodies were consolidated into a thirteen-person International Narcotics Control Board, which continues today to evaluate national statistical information, monitor the import-export control system and authorize narcotic plant cultivation for medical and scientific need. It serves as a key interpreter of the global drugs prohibition. Since the 1970s, non-compliance with this regime has been criminalized through international treaties and domestic legislation. The 1971 reforms mandated that drug offences be extraditable, and a 1988 Convention required parties to cooperate in anti-trafficking initiatives, criminalize money-laundering, allow for asset seizure, and control chemical precursors.

The counter-narcotics regime is a clear example of hegemonic criminal law. As a system of 'legally binding regulation, backed by the possibility of real enforcement action, imposed on all states by a global international organ engaged in a continuous legislative enterprise by virtue of delegated power and subject to no geographic or temporal limitation',[15] it foreshadowed the approach the United States would later take to constructing a global counterterrorism regime. As with that initiative, the United States and other major powers have used UN institutions to promote compliance with the global counter-narcotics regime at the national level. The major conduit for such assistance is the UN Office on Drugs and Crime (UNODC), based in Vienna.[16] But in recent years the UN Security Council (UNSC) has also been used as a platform for encouraging compliance by member states—and non-state actors. Starting in the late 1990s, Council members

[15] Alvarez, "Hegemonic International Law Revisited," 874, citing Paul C. Szasz, "The Security Council Starts Legislating," *American Journal of International Law* 96 (2002): 901–2.

[16] See Cindy S.J. Fazey, "The Commission on Narcotic Drugs and the United Nations International Drug Control Programme: Politics, Policies and Prospect for Change," *The International Journal of Drug Policy* 14 (2003): 155–69.

began warning of the threats potentially posed by drug trafficking in Angola, Bosnia and Herzegovina, Democratic Republic of the Congo, Haiti, Iraq, Kosovo, Lebanon, Myanmar, and Somalia.[17] In Resolution 1333 (2000), when the Taliban refused to surrender Osama bin Laden, the Security Council imposed a ban on the sale to Afghanistan of acetic anhydride, a heroin precursor, and demanded that the Taliban eliminate all illicit cultivation of the opium poppy.[18] Since 2007 the Council has also closely scrutinized drug trafficking in West Africa, and supported efforts by UNODC and UN peacekeeping, peace-building, and political missions in the region to support local efforts to counter transnational organized crime and drug trafficking.[19] Around October 2009, the Council also began to import the language developed in the West African context into commentary on the impact of drug trafficking on other situations on its agenda, notably Afghanistan and Haiti.[20]

Financial Crime: Hegemonic Criminal Law Goes Multi-Sectoral

The pattern of the US projecting power through criminal norms promulgated by international organizations recurred around the issue of financial crime. The central role of the financial sector in this normative effort takes it beyond the traditional sphere of international (public) law into new, multi-sectoral territory, governing the conduct of private, corporate actors.

The first push focused on anti-bribery. Watergate investigations in the 1970s revealed that US corporations had spent millions of dollars bribing foreign officials to promote their commercial interests. At the time, this was not illegal; in many European jurisdictions, such payments were even tax deductible. In 1977, the US Congress adopted the Foreign Corrupt Practices Act, which criminalizes bribery of foreign officials, even by some foreign companies. But American companies complained that the legislation placed them at a commercial disadvantage

[17] Security Council Report, Update Report No. 1, December 4, 2009.

[18] S/RES/1333 (2000), December 19, 2000. See also S/PRST/2003/7, June 18, 2003; UN Doc. SC/8850, Press Statement, October 9, 2006; S/RES/1817 (2008), June 11, 2008.

[19] S/RES/1829 (2008), August 4, 2008; S/RES/1876 (2009), June 26, 2009; S/PRST/2009/20, July 10, 2009. See S/RES/1885 (2009), September 15, 2009; S/PV.6212, November 5, 2009; and S/PRST/2009/29, November 5, 2009.

[20] See S/RES/1890 (2009), October 8, 2009; and S/RES/1892 (2009), October 13, 2009.

in global markets. As with slavery and counter-narcotics, in a globalized economy the only effective solution was to internationalize the regulatory scheme. After a decade of American advocacy, the Organisation for Economic Co-operation and Development (OECD), a Paris-based intergovernmental economic cooperation organization, did just that, establishing an Anti-Bribery Convention to which the thirty-four OECD members and six other countries (including Russia and South Africa) are party, which requires states to criminalize foreign bribery and creates a peer-review system to encourage implementation.

A second, related effort emerged in the field of anti-money-laundering (AML). This spun off from the counter-narcotics regime, when the earlier-referenced 1988 Convention encouraged states to criminalize the laundering of drug crime proceeds. The United States recognized that effective promotion of AML norms required implementation not only by states but also by banks and other financial institutions. A G7 meeting in 1989 in Paris established a Financial Action Task Force on Money Laundering (FATF), to examine money-laundering techniques and trends, review public and private AML efforts, and propose new measures. In 1990 the FATF issued 'Forty Recommendations' to member states to improve domestic and private sector AML arrangements, and created a system of member state peer review. After 9/11, nine further Recommendations were added to address terrorist financing, and a 2012 revision added a focus on nuclear proliferation and corruption.

The FATF system is informal, but unusually powerful. Its influence comes not from its legal form: it is not enshrined in treaty law, and a 2005 resolution of the Security Council, though adopted under Chapter VII, only 'strongly urges' member states to implement the FATF recommendations, rather than requiring them to do so.[21] The system's power comes, instead, from the potential cost of non-compliance—exclusion from the US-based, private financial infrastructure. In 2000 FATF began issuing lists of 'Non-Cooperative Countries or Territories' which were perceived as having deficient AML arrangements. Appearance on such a list placed these jurisdictions at risk of being cut off from the international financial system, since the US Treasury required US financial institutions not to deal with entities operating there. This approach was met with similar criticisms that would, as we shall see, meet the US-initiated UN counterterrorism regime: claims of a deliberative deficit resulting from a lack of participation of affected jurisdictions and, later, for its impacts on civil society and humanitarian financial flows. But it has proven highly effective in encouraging states and financial institutions to adopt the AML norms and practices promoted by the FATF regime.

[21] See S/RES/1615 (2005), July 29, 2005, para. 7.

Counterterrorism: Transgovernmental Networks Built on Hegemonic Foundations

The American approach to promoting and enforcing counter-terrorism norms has passed through three phases. For much of the twentieth century, working with other affected states, the United States used existing international organizations to generate international support for voluntary counterterrorism cooperation arrangements. Then, in the last decade of the twentieth century, the United States shifted tack, using the UN Security Council's Chapter VII powers to impose a counterterrorism regime from the top down. The result—perhaps predictably—has been resistance from some states, and significant legal uncertainty around the relationship between the new legal regime and existing legal norms.[22] As a result, the United States has shifted course to a third approach, relying more heavily on both overt and covert transgovernmentalism, working with a group of like-minded states in non-treaty collaborations, ranging from the public Global Counterterrorism Forum (GCTF) to secret intelligence and rendition collaborations.

Terrorism was already a matter considered by the League of Nations.[23] But it rose to particular prominence on the world stage after World War II, particularly in Europe and the Middle East in the 1960s and 1970s, when the UN General Assembly became the forum for political bargaining around international law enforcement responses. Cold War political tensions constrained international responses. There was no coordinated mobilization of states' law enforcement capacities to tackle the 1960s and 1970s terrorist groups head on. Instead, a series of UN-blessed international treaties emerged, providing a framework for voluntary legal cooperation based on mutual legal assistance and extradition for specific types of terrorist activities.[24]

As Soviet power waned in the late 1980s, however, the Western powers adopted a more top-down approach in the Security Council. When Libyan agents bombed French and US airliners, the United States, the United Kingdom, and France convinced the Security Council to adopt Chapter VII sanctions against Libya for failing to cooperate with requests that it try or extradite the suspects.[25] In 1996, the Council

[22] See James Cockayne, "Challenges of Coordination in United Nations Counter-Terrorism Efforts," in *Research Handbook on Terrorism and International Law*, ed. Ben Saul (Cheltenham: Edward Elgar, 2014).

[23] Marabuto, *La Collaboration policière internationale*, 113–49; and on terrorism see Ben Saul, *Defining Terrorism in International Law* (Oxford: Oxford University Press, 2006).

[24] The fourteen international legal instruments are detailed at http://www.un.org/en/terrorism/instruments.shtml.

[25] See UNSC Res. 731 (1992) (January 21, 1992), 748 (1992) (March 31, 1992), 883 (1993) (November 11, 1993), and 1192 (1998) (August 27, 1998).

similarly adopted resolutions sanctioning the government of Sudan for failing to try or extradite terrorists that had attempted to assassinate the President of Egypt, Hosni Mubarak, during a visit to Ethiopia.[26] In 1998, after al-Qaeda operatives blew up US embassies in Kenya and Tanzania, the Security Council demanded that Afghanistan stop providing sanctuary for terrorists, and 'cooperate with efforts to bring indicted terrorists to justice'.[27] When Afghanistan failed to hand over Osama bin Laden, the Security Council adopted Resolution 1267, requiring all states to take a series of measures, including instituting financial freezes and travel embargoes, against al-Qaeda and the Taliban.[28] Then, the day after 9/11, the Security Council recognized the United States' right to self-defence under the UN Charter as having been activated by al-Qaeda's attacks, and pre-validated the US armed attack against Afghanistan that followed weeks later.[29]

These steps stood in stark contrast to the lack of involvement of the Security Council in responding to European and Middle Eastern terrorism in the 1970s. The Council was now effectively 'outlawing' certain individuals and groups from circulation in international society, mandating states to use their criminal justice capabilities to enforce these arrangements. This was only possible because of the unrivalled influence of the United States in the Council, the interest it shared with France and the United Kingdom in tackling specific terrorist threats, and the absence of strong incentives for other powerful states (notably Russia and China) to resist this top-down approach.

Two weeks after 9/11, however, the Council took a giant further step, which changed that equation. In Resolution 1373 (2001), the Security Council required states to adopt a range of criminal justice and other measures to tackle not just these specific groups that states recognized as a shared threat, but all terrorism per se. And the Council took serious steps to ensure states complied with the new regime, creating a Counter-Terrorism Committee to oversee states' efforts to implement these obligations, to which they were obliged to report. This was a radical new top-down way to impose criminal norms on international society, turning the Security Council into a kind of 'world legislature'.[30] But it was a 'legislature' controlled by the hegemon and its close allies. Departing from prior practice, this Council subsidiary body was to be chaired by a Permanent Member of the Council (the United Kingdom).[31]

Resolution 1373 quickly met resistance outside the Council, and attempts by the United States and its allies to use the norms developed in the Council to develop

[26] UNSC Res. 1044, 1054, 1070 (1996).
[27] UNSC Res. 1214 (1998) (December 8, 1998).
[28] UNSC Res. 1267 (1999) (October 15, 1999).
[29] UNSC Res. 1368 (2001) (September 12, 2011).
[30] Szasz, "The Security Council Starts Legislating"; Stefan Talmon, "The Security Council as World Legislature," *American Journal of International Law* 99 (2005): 175–93.
[31] See Eric Rosand, "Security Council Resolution 1373, the Counter-Terrorism Committee, and the Fight against Terrorism," *American Journal of International Law* 97/2 (April 2003): 333–41.

a broader comprehensive Convention against Terrorism, in the UN General Assembly, ran aground.[32] Many states resented this new legislative approach in the Council, and its arrogation of quasi-judicial powers over individuals. They saw both moves as legally questionable and politically unwarranted, and pointed to a stark 'deliberative deficit' in the development of the new counterterrorism regime.[33] The regime quickly came to be seen as a Trojan horse for America to expand its power in the international system, under the rubric of a 'Global War on Terror'. States resented 'being dragooned by the Security Council for what many of them see as a Western security agenda'.[34]

The invasion of Iraq in 2003 only confirmed that the United States saw the Council's imprimatur as instrumental, not integral, to any American decision to use force. Political resistance to the UN counterterrorism regime rippled across the UN system. In 2004 a push began to give the General Assembly a larger role in global counterterrorism efforts. In 2005 and 2006 states developed a UN Global Counter-Terrorism Strategy.[35] Largely a rhetorical document, the Strategy commits Member States to: (1) address the conditions conducive to the spread of terrorism; (2) prevent and combat terrorism; (3) build states' capacity to prevent and combat terrorism and to strengthen the role of the UN system in this regard; and (4) ensure respect for human rights for all and the rule of law as the fundamental basis of the fight against terrorism.

The unanimous endorsement of the Strategy was politically important as a signal that there were limits to the UN membership's tolerance for hegemonic unilateralism in the area of law enforcement. But consensus in the Assembly was achieved through several rhetorical manoeuvres that have subsequently limited the Strategy's impact, notably by stating various goals—such as the integration of counterterrorism with human rights—without specifying the means for achieving those goals. The Global Counter-Terrorism Strategy represented a classic diplomatic exercise in creative ambiguity, and a correspondingly poor basis for integrating the new counterterrorism norms with existing practice of law enforcement professionals worldwide.

The UN system has consequently struggled to operationalize the Strategy, despite the formation of a system-wide Counter-Terrorism Implementation Task Force comprising thirty-one UN bodies. Like many UN agencies, this coordination committee has turned into something of a mutual surveillance exercise, with established thematic agencies focused on protecting their normative and bureaucratic

[32] Kendall W. Stiles, "The Power of Procedure and the Procedures of the Powerful: Anti-Terror Law in the United Nations," *Journal of Peace Research* 43/1 (January 2006): 37–54.

[33] Talmon, "The Security Council as World Legislature"; Ian Johnstone, "Legislation and Adjudication in the UN Security Council: Bringing Down the Deliberative Deficit," *American Journal of International Law* 102/2 (April 2008): 275–308.

[34] Senior UN member state official, quoted in James Cockayne et al., *Reshaping UN Counterterrorism Efforts* (New York: Center on Global Counterterrorism Cooperation, 2012), 25.

[35] A/RES/60/288, September 8, 2006.

turf from the revisionist impacts of the new counterterrorism regime. This impact has been particularly felt in the area of humanitarian and development assistance, with donor states increasingly relying on UN counterterrorism norms to insist on brakes on established forms of engagement with non-state armed groups, such as negotiation for humanitarian access.[36] The UN has provided limited leadership to resolve these normative and practical tensions.[37]

Similar challenges of normative integration have emerged in the human rights sphere. Soon after its adoption, commentators began to realize that Resolution 1373 (2001) authorized government actions that sat uncomfortably with existing human rights law and practice.[38] In 2005, a UN human rights expert concluded that the Security Council's approach 'may have given currency to the notion that the price of winning the global struggle against terrorism might require sacrificing fundamental rights and freedoms'.[39] A 2009 Counter-Terrorism Committee Executive Directorate assessment found that 'in virtually all regions there remain significant concerns that the counter-terrorism measures adopted by certain States … within the framework of resolution 1373 (2001), do not comply with those States' obligations under international law'.[40] European states, in particular, have come under steadily rising pressure on this issue from regional human rights bodies and domestic courts.[41] In response to these concerns, the Security Council took a series of limited steps to adjust its listing and delisting decision-making processes. This included creating a position for an Ombudsperson to make (non-binding) recommendations to the Council about how to handle specific cases.[42]

[36] See Naz K. Modirzadeh, Dustin A. Lewis, and Claude Bruderlein, "Humanitarian Engagement under Counter-Terrorism: A Conflict of Norms and the Emerging Policy Landscape," *International Review of the Red Cross* 93/883 (September 2011): 623–47; Sara Pantuliano, Kate Mackintosh, and Samir Elhawary (with Victoria Metcalfe), "Counter-Terrorism and Humanitarian Action: Tensions, Impact and Ways Forward," HPG Policy Brief 43, October 2011, http://globalcenter.org/wp-content/uploads/2012/03/Mediation_engaging_with_proscribed_armed_groups.pdf.

[37] See Conciliation Resources et al., "Summary of Expert Meeting: Mediation and Engagement with Armed Groups" (March 29, 2012), http://www.globalct.org/images/content/pdf/summaries/Mediation_engaging_with_proscribed_armed_groups.pdf.

[38] See Human Rights Watch, "Hear No Evil, See No Evil: The UN Security Council's Approach to Human Rights Violations in the Global Counter-Terrorism Effort," Human Rights Watch Briefing Paper, August 10, 2004, http://www.hrw.org/backgrounder/un/2004/un0804/un0804.pdf; and see International Commission of Jurists, "Assessing Damage, Urging Action: Report of the Eminent Jurists Panel on Terrorism, Counter-Terrorism and Human Rights" (Geneva, 2009).

[39] UN Economic and Social Council, "Protection of Human Rights and Fundamental Freedoms while Countering Terrorism," E/CN.4/2005/103, February 7, 2005, para. 6.

[40] UN Security Council, "Survey of the Implementation of Security Council Resolution 1373 (2001) by Member States," S/2009/620, December 3, 2009.

[41] See, e.g., Joined Cases C-402/05 P and C-415/05 P *Yassin Abdullah Kadi & Al Barakaat International Foundation v Council of the European Union and Commission of the European Communities*, 3 CMLR 41 (2008); Case T-318/01 *Othman v Council and Commission*, 2009/C180/66, Judgment of the European Court of First Instance, 11 June 2009; *Abousfian Abdelrazik v Minister of Foreign Affairs and the Attorney General of Canada*, Reasons for Judgment and Judgment, 2009 FC 580, Ontario, June 4, 2009.

[42] The Ombudsperson role was created by UNSC Res. 1904 (2009), December 17, 2009.

Yet this procedural tinkering in New York left large areas of national practice, justified by reference to new global counterterrorism norms, untouched: drone strikes, electronic surveillance, rendition, and indefinite detention. Increasingly, these issues found their way into the UN's human rights accountability machinery in Geneva,[43] particularly in the context of UN bodies dealing with torture[44] and extrajudicial executions.[45] In 2005, European states spearheaded the creation of a mandate for a UN Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, which has gone some way towards clarifying existing, good, and bad practice through country visits and thematic reports.[46] In 2010, several UN Human Rights Council mandate-holders published a joint study on 'secret detention', which, inter alia, found the CIA's transnational detention programme to violate international law in several ways.[47]

The ripple effect of the new counterterrorism regime on human rights and law enforcement has arguably extended beyond the UN system. Numerous regional organizations and groups of like-minded states—including the G8, Organization of American States, African Union, Organization for Security and Co-operation in Europe (OSCE), East African Community, and Shanghai Cooperation Organization—have referenced Resolution 1373 as a basis for increased policing cooperation.[48] Some of that cooperation appears to have provided a cover for an expansion of executive policing powers at the expense of political opponents, and in that respect bears a notable resemblance to the autocratic policing cooperation of the nineteenth century, discussed earlier.[49]

[43] *Nabil Sayadi and Patricia Vinck v Belgium*, Communication [Comm.] No. 1472/2006, UN Human Rights Committee, CCPR/C/94/D/1472/2006, December 29, 2008, 48 ILM 570 (2009); UN Human Rights Committee, CCPR/C/88/D/1416/2005, November 10, 2006 (*Mohammed Alzery v Sweden*) (on listing and delisting procedures); UN Committee Against Torture, CAT/C/38/D/281/2005, May 29, 2007 (*Pelit v Azerbaijan*) (state responsibility for extraterritorial counterterrorism conduct).

[44] Human Rights Council, "Report of the Special Rapporteur on Torture and other Cruel, Inhuman or Degrading Treatment, Manfred Nowak," A/HRC/4/33, January 15, 2007.

[45] Human Rights Council, "Report of the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, Philip Alston: Study on Targeted Killings," A/HRC/14/24/Add.6, May 28, 2010.

[46] See Human Rights Council, "Report of the Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms while Countering Terrorism, Martin Scheinin," A/HRC/14/46, May 17, 2010; and Human Rights Council, "Report of the Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms while Countering Terrorism, Martin Scheinin," A/HRC/16/51, December 22, 2010.

[47] Human Rights Council, "Joint Study on Global Practices in Relation to Secret Detention in the Context of Countering Terrorism," A/HRC/13/42, February 19, 2010.

[48] Eric Rosand, "The G8's Counterterrorism Action Group," CGCC (May 2009), http://www.globalct.org/images/content/pdf/policybriefs/rosand_policybrief_092.pdf; and OSCE, "Ministerial Statement on Supporting the United Nations Global Counter-Terrorism Strategy," MC.DOC/3/07, November 30, 2007.

[49] See International Commission of Jurists, "Assessing Damage, Urging Action."

Indeed, reporting triggered by Edward Snowden in 2013 revealed that the new counterterrorism regime had been used as the legal touchstone for the creation of perhaps the most powerful of all the transgovernmental policing networks that the United States had established after 9/11. This was a covert network of surveillance agencies and private companies, led by the National Security Agency in the United States and the General Communications Headquarters in the United Kingdom, but also involving Australia, Canada, France, Germany, Israel, Netherlands, New Zealand, Norway, and Sweden, all participating in coordinated digital surveillance—including to spy on each others' citizens.[50] This network had developed the capabilities to capture and analyse vast volumes of internet traffic, telephone calls, and private computer network activity. Once it was revealed that these capabilities were being deployed to intercept the communications not only of suspected terrorists and private citizens, but also of foreign heads of state and diplomats, the controversy quickly found its way to the UN Human Rights Council in Geneva, and the General Assembly in New York. In December 2013 the General Assembly affirmed that 'the same rights that people have offline', notably privacy, 'must also be protected online'.[51]

Notwithstanding the normative impact of the UN counterterrorism regime, the United States quickly lost patience with the UN as a mechanism for operationalizing counterterrorism norms. In 2011, the United States announced the creation of the Global Counter-Terrorism Forum.[52] This consortium of twenty-nine countries plus the EU,[53] co-chaired by the United States and Turkey, aims to provide 'a venue for national CT officials and practitioners to meet with their counterparts from key countries in different regions to share CT experiences, expertise, strategies, capacity needs, and capacity-building programs'.[54] It is thus a cross between a formal international organization and a transgovernmental network.

[50] See Didier Bigo et al., "National Programmes for Mass Surveillance of Personal Data in EU Member States and their Compatibility with EU Law," PE 493.032, European Parliament, Brussels, October 2013. On the involvement of private companies, see, e.g., Charlie Savage, "C.I.A. Is Said to Pay AT&T for Call Data," *NY Times* (November 7, 2013).

[51] A/RES/68/167, December 18, 2013; see also A/HRC/RES/20/8, July 16, 2012; and UN Human Rights Committee General Comment 16: "Surveillance, whether electronic or otherwise, interceptions of telephonic, telegraphic and other forms of communication, wire-tapping and recording of conversations should be prohibited." (CCPR, "General Comment No. 16: Article 17 (Right to Privacy), The Right to Respect of Privacy, Family, Home and Correspondence, and Protection of Honour and Reputation," April 8, 1988, para. 8).

[52] See http://www.thegctf.org.

[53] Algeria, Australia, Canada, China, Colombia, Denmark, Egypt, EU, France, Germany, India, Indonesia, Italy, Japan, Jordan, Morocco, Netherlands, New Zealand, Nigeria, Pakistan, Qatar, Russia, Saudi Arabia, South Africa, Spain, Switzerland, Turkey, UAE, United Kingdom, USA.

[54] GCTF, "Mission," http://www.thegctf.org.

It has generated normative documents that may, in time, come to be seen as contributing to an emerging body of soft law in this area.[55] This points to its deeper utility to the hegemon. It was conceived, bankrolled and remains largely driven by the United States. Its influence now seems likely to grow with the Obama Administration calling for the creation of a $5 billion Counterterrorism Partnerships Fund. Explaining the decision, President Obama noted that while the UN had served as a 'force multiplier', which 'reduce[d] the need for unilateral American action', '[e]volving these international institutions to meet the demands of today must be a critical part of American leadership'.[56]

All of this raises questions about the legitimacy of norms developed through the GCTF. The transgovernmental approach inevitably raises concerns about accountability and participation,[57] but these questions are heightened when a forum, like the GCTF, has limited scope for participation by those communities who will be affected by the policing actions it seeks to promote. This was the fate of FATF, which has come under increasing criticism on just these grounds. It may yet be the fate of the GCTF.

Transnational Organized Crime: A Patchwork of Solutions

The end of Cold War antagonisms also led to the emergence of more forceful international responses to transnational crime, but the absence of US leadership in this area—perhaps because it has focused more on counterterrorism—has led to a variety of different responses, with European states often taking the lead.

In the late 1990s European states pushed the development of a UN Convention against Transnational Organized Crime (UNTOC), which harmonized domestic criminal norms relating to organized crime and created a multilateral framework

[55] See the *Rabat Memorandum on Good Practices for Effective Counterterrorism Practice in the Criminal Justice Sector*, the *Rome Memorandum on Good Practices for Rehabilitation and Reintegration of Violent Extremist Offenders*, and the *Algiers Memorandum on Good Practices for Preventing and Denying the Benefits of Kidnapping for Ransom by Terrorists*.

[56] Tyrone C. Marshall Jr, "Obama Announces New Counterterrorism Partnerships Fund," American Forces Press Service, May 28, 2014.

[57] Philip Alston, "The Myopia of the Handmaidens: International Lawyers and Globalization," *European Journal of International Law* 8 (1997): 435.

for extradition and mutual legal assistance.[58] The UNTOC, adopted in 2000, was accompanied by three separate protocols relating to human trafficking, people smuggling, and illicit manufacture and trafficking in firearms. Implementation of the Convention is overseen by a Conference of Parties, which works closely with UNODC. Thirteen years after the adoption of the Convention, however, states have been unable to agree the terms of a peer review mechanism to encourage effective implementation.[59]

A similar framework, the Convention Against Corruption (UNCAC) was approved by the UN General Assembly in 2003.[60] Like UNTOC, UNCAC aimed to harmonize domestic criminal justice approaches to corruption and foster cross-border cooperation, including for asset recovery. Unlike UNTOC, however, the UNCAC Conference of Parties has been able to agree a system for review of implementation—perhaps because of the strong interest from developing states in using the UNCAC as a vehicle for recovering assets former (corrupt) rulers have moved offshore. The UNCAC's Implementation Review Group uses governmental experts to conduct peer reviews, identify implementation challenges and good practices, and consider technical assistance needs.[61]

In contrast to the treaty-based approach, there has been greater movement towards collective enforcement arrangements where organized crime has arisen in the context of already established multilateral peace operations and political missions, including those organized by the OSCE, UN, and ad hoc coalitions such as the Regional Assistance Mission to the Solomon Islands.[62] Though such efforts are increasingly common,[63] they continue to be framed as exceptional, and undertaken only as an effort to buttress, not replace, state capacity. This is also the case where international support takes the form not of a peace operation, but of external assistance to domestic law enforcement, as in the case with the International Commission against Impunity in Guatemala.[64]

The outlier is the EU, which has gone further than any other international organization in pooling law enforcement arrangements. Since 2005, the European Court

[58] A/RES/55/25, November 15, 2000.

[59] The matter remains under discussion in the Conference of Parties to the UNTOC.

[60] A/RES/58/4, October 31, 2003.

[61] See UNCAC Coalition, "The UNCAC Implementation Review Group," http://www.uncaccoalition.org/uncac-review/implementation-review-group.

[62] See James Cockayne and Adam Lupel, *Peace Operations and Organized Crime: Enemies or Allies?* (New York: Routledge, 2011); and James Cockayne and Camino Kavanagh, "Flying Blind? Political Mission Responses to Transnational Threats," in *Review of Political Missions* (New York: Center on International Cooperation, 2011), 19–30.

[63] See Walter Kemp, Mark Shaw, and Arthur Boutellis, *The Elephant in the Room: How Can Peace Operations Deal with Organized Crime* (New York/Vienna: International Peace Institute, 2013).

[64] Andrew Hudson and Alexandra W. Taylor, "The International Commission against Impunity in Guatemala: A New Model for International Criminal Justice Mechanisms," *Journal of International Criminal Justice* 8/1 (2010): 53–74.

of Justice has recognized the competence of the EU Commission to create EU-wide criminal norms.[65] Even before that, however, European states had created pooled criminal justice investigation capabilities in the form of OLAF (to investigate fraud related to EU expenditures), EUROJUST (a judicial investigation clearinghouse), and EUROPOL (a police investigations body). EUROPOL has no arrest powers, but is actively involved in supporting EU member states' policing investigations, with 100 criminal analysts involved in 13,500 investigations each year.

Most recently, European states have sponsored the creation of a broader multi-sectoral platform to underpin practical cooperation against organized crime. The result is the fledgling Global Initiative Against Transnational Organized Crime, a 'a network of prominent law enforcement, governance and development practitioners who are dedicated to seeking new and innovative strategies to end organized crime'.[66]

Resource Trafficking: A Multi-Sectoral Approach

Quite different cooperation arrangements, relying more heavily on the participation of market actors, have emerged to deal with the illicit trafficking of natural resources. Once again the UN has had an important role as an incubator for closer cooperation arrangements, but here the UN itself has played a notable and independent norm entrepreneurship role in developing collaborative multi-sectoral governance solutions.

In 2003, the Security Council gave strong support to the Kimberley Process Certification Scheme, intended to reduce illicit trade in diamonds, which had emerged out of work done earlier within the Council's Angola Sanctions Committee, pushed by Canadian diplomats.[67] In November 2010, the Council went further, adopting 'Due Diligence Guidelines' intended to mitigate the risk of conflict in eastern Democratic Republic of Congo arising from the provision of direct or indirect support to illegal armed groups, sanctions busters, and 'criminal networks and perpetrators of serious violations of international humanitarian law and human rights abuses, including those within the national armed forces'.[68] The Council indicated that sanctions could be imposed against any entity—including businesses—that failed to exercise due diligence in accordance with these Guidelines. These Guidelines have now been picked up and enforced through national regulation,

[65] See Case C-176/03 *Commission v Council*; Case C-440/05 *Commission v Council*.
[66] "About Us," n.d., http://www.globalinitiative.net.
[67] See S/RES/1459 (2003), January 28, 2003.
[68] S/RES/1952 (2010).

including by the United States Securities and Exchange Commission. In 2011, the Council took a similar approach to encourage removal of Eritrean extractive enterprises from global supply chains, and extended the approach to the provision of financial services, including insurance and reinsurance, that would facilitate investment in the Eritrean extractive sector.[69] A subsequent 2012 resolution recognized that the 'commerce' in charcoal through Al-Shabaab-controlled areas of Somalia 'may pose a threat to the peace, security, or stability of Somalia', and authorized a sanctions committee to impose targeted sanctions against 'individuals and entities engaged in such commerce'.[70] UN expert groups and sanctions committees played a key role, in all three cases, in identifying the trading networks and devising licensing or embargo arrangements that might help put them out of business.

But the effort to involve the Security Council in tackling such trafficking has not gone entirely unquestioned, particularly when the American delegation instigated an open debate in the Security Council in April 2012 entitled 'Threats to international peace and security: Securing borders against illicit flows'.[71] The United States suggested a need to 'streamline and strengthen' UN capacity on border control issues by focusing less on bespoke regimes built to address the trafficking in specific goods or from specific conflict zones, and more on thinking generally about how to strengthen state capacity to deal with any trafficking.[72] China and the Non-Aligned Movement saw echoes, however, of the top-down approach the United States had taken to counterterrorism. The Chinese ambassador argued bluntly that 'border management falls within the sovereignty of Member States'.[73] The Indian delegate expressed concern about the Council stepping into a norm-setting role that was properly that of various UN bodies and agencies.[74] And the Pakistani and Cuban representatives suggested that the discussion risked violating Article 24 of the UN Charter.[75] The effort stalled.

Counter-Piracy: Mixing Transgovernmentalism and Multilateralism

One final area of transnational criminal activity that has recently given rise to international cooperation efforts is maritime piracy. Piracy off the coast of Somalia has

[69] S/RES/2023 (2011), December 5, 2011.
[70] S/RES/2036 (2012), February 22, 2012, OP 23.
[71] S/PV.6277, February 24, 2010, 10; S/PV.6668, November 23, 2011, 25; S/PV.6760, April 25, 2012.
[72] S/PV.6760, April 25, 2012, 18–19.
[73] Ibid., 11.
[74] Ibid., 8.
[75] Ibid., 17, 29.

drawn the most international attention to date, though in recent years a rise in piracy in the Gulf of Guinea has also sparked the UN Security Council's interest.[76]

By 2005, the World Food Programme (WFP) was warning that Somali piracy, which had emerged in previous years as a lucrative predatory business activity for local militias in north-eastern Somalia, threatened to disrupt humanitarian assistance to the country. As shipping and economic costs mounted from paying ransoms, increased insurance and taking precautionary measures—reaching as much as $7 billion by 2011[77]—the International Maritime Organization and WFP both started calling for a strengthened international response.

The UN Security Council responded in June 2008. The United States had learned lessons from its negative earlier experience creating a top-down regime to deal with counterterrorism, and this time took several steps aimed 'at fending off possible criticism [for] acting as a "legislator"'.[78] The Council explained carefully both that it had Somali consent for its actions, and that nothing in the resolution altered existing international law—a particular concern for the G77 states.[79] It limited the scope of the authorization for the use of force in time (through a sunset clause) and space (making clear it covered only Somali waters, not Kenyan or Yemeni waters, for example). It protected third-party rights, such as innocent passage. And it treated piracy not as a threat to international peace and security itself, but as an amplifier of threats already being addressed by the Council in specific cases.[80] Having inoculated itself against charges of legislative adventurism, the Council then authorized collective enforcement action under Chapter VII against Somali pirates, within Somali territorial waters,[81] later extended to Somalia's land territory.[82]

The response by states was vigorous—but this time vigorously positive. Numerous multilateral naval operations were initiated to enforce the new regime, not only by the EU (Operation Atalanta), and the United States (two NATO operations, Allied Protector and Ocean Shield), and a separate maritime task force (TF 151) involving both NATO and non-NATO states (including Australia, New Zealand, Pakistan, Republic of Korea, Singapore, Turkey, and Thailand), but also by a host of other states, including China, India, Iran, Japan, Malaysia, Russia.[83]

All this activity required operational coordination, not only of states but also international shipping bodies and other non-state stakeholders. So in January

[76] See S/PRST/2010/20, July 10, 2009; UN Doc. S/2012/45, January 19, 2012.

[77] "The Economic Cost of Somali Piracy 2011," Working Paper, One Earth Future Foundation, 2012, http://oceansbeyondpiracy.org/sites/default/files/economic_cost_of_piracy_2011.pdf.

[78] Ibid.

[79] Letter to Security Council President, February 27, 2008, not publically available, but referenced in Doc. S/2008/323 containing a letter dated May 12, 2008 from the Permanent Representative of Somalia to the UN to the President of the Security Council. For the concerns of G77 states and China see UN Doc. S/PV.5902 at 2–5.

[80] S/RES/1816 (2008), June 8, 2008, Preamble.

[81] Ibid., OP 7.

[82] S/RES/1851, December 6, 2008, OP 6.

[83] See, e.g., S/2012/783.

2009 member states set up a Contact Group on Piracy off the Coast of Somalia (CGPCS), outside the UN system, with the Council's vocal support.[84] CGPCS is a bespoke coordination regime that aims to facilitate collective enforcement of the international law created by the Security Council—and the norms CGPCS generates through its own working groups. It is, in a sense, a transgovernmental network formally blessed by the UN.

Like drug trafficking and resource trafficking, maritime piracy came onto the agenda of the Security Council through conflict cases already on its agenda. But three aspects of Somali piracy problem facilitated the emergence of new cooperative organizational arrangements, in ways that other transnational criminal activities have not. First, piracy involves conduct on the high seas, where no state could plead sovereignty as a bar to Council-backed enforcement action. Second, the conduct at issue was already unquestionably criminalized under international law. States perceived less danger that the Council would become involved in top-down legislative action. Third, through the increased insurance, consular and physical security costs it imposed on international shipping, Somali piracy directly touched the economic and security interests of the five Permanent Members of the Security Council—yet without creating strong incentives for other states to resist. On the contrary, some other states—notably India, China, Japan, and Iran—have found in the piracy issue an opportunity for strategic power projection, through participation in multilateral maritime enforcement activity in the Indian Ocean.

Yet the counter-piracy experiment has also shown the continuing real-world constraints on cooperative international law enforcement. The states involved in counter-piracy operations off Somalia quickly found that submitting Somali pirates to criminal trial was a long, costly, and complex process, raising many difficult legal questions, particularly relating to the extraterritorial application of human rights regimes, the cost and length of detention, resulting due-process problems, and the inability to return convicts to Somalia because of the risk of unlawful refoulement.[85] The result was that—surely contrary to the original intent of the Council—Western states quickly began to decide *not* to enforce the regime, despite their costly naval presence off Somalia. The British Foreign Office warned its military *not* to detain pirates because of the cost and risk of violating international law.[86] By 2011, the US Congressional Research Service found that 90 percent of all pirates being detained off Somalia were *not* being brought to trial.[87]

[84] S/RES/1897 (2009), November 30, 2009.

[85] See LJN: BM8116, Rechtbank Rotterdam, 10/600012-09 (Netherlands); and Verwaltungsgericht Köln, 25 K 4280/09 (Germany).

[86] David B. RivkinJr and Lee A. Casey, "Pirates Exploit Confusion about International Law," *Wall Street Journal* (19 November 2008). See also Saoirse De Bont, "Prosecuting Pirates and Upholding Human Rights Law: Taking Perspective," Working Paper, One Earth Future Foundation, September 2010, http://oneearthfuture.org.

[87] "Piracy off the Horn of Africa," April 27, 2011.

The Security Council and the CGPCS responded by trying to mobilize resources to mount fair trials in the region. Donors worked with a variety of African states to develop capacity to receive, investigate, and try seized piracy suspects.[88] UNODC became a key delivery platform for these capacity-building efforts. But the process ran aground amid disputes over assistance programmes and complex questions of law.[89] So the Council looked closely at whether it might need to create a specialized, perhaps international, piracy court to fill this gap, appointing former French Foreign Minister Jack Lang as a special adviser.[90] He recommended the creation of a Somali extraterritorial jurisdiction court in Arusha, in Tanzania, later to be transferred to Mogadishu (similar to the Scottish court in the Netherlands that had ultimately tried the Lockerbie suspects), and the creation of two further special courts—one in Puntland and the other in Somaliland.[91] After the UN Secretariat looked at these options in more detail and found significant legal, constitutional, human resources and resourcing complications, support waned.[92] Instead, the idea of establishing a network of specialized piracy courts within local national jurisdictions slowly gained favour with donors.[93] But local states saw the emphasis on piracy chambers as potentially diverting resources from other domestic judicial needs, with no guarantee that such chambers would in fact be 'full'.[94] As the political process in Somalia improved, and pirates returned to livelihoods on land, the urgency of the question slowly evaporated.

Conclusion

After a century and a half of networking and normative innovation by enterprising law enforcement officials and diplomats, law enforcement remains a fundamentally national affair. The reasons for this are not hard to discern. The power to define conduct as criminal and to use force legitimately to back up those choices is central to juridical sovereignty. States will always be reluctant to officially share that power with other states.

[88] S/RES/1846 (2008), December 2, 2008; and "Exchange of letters for the conditions and modalities for the transfer of persons having committed acts of piracy and detained by the EU-led Naval Force (EUNAVFOR), and seized property in the possession of EUNAVFOR, from EUNAVFOR to Kenya" in OJ (2009) L79/49, annex to EU Council decision 2009/293CFSP of February 26, 2009.

[89] *In re Mohamud Mohamed Dashi and 8 ors* [2009] eKLR, Mombasa HC, Misc. Application 434 of 2009.

[90] S/RES/1918 (2010), April 27, 2010, OP4; UN Doc. S/2010/394, July 26, 2010.

[91] UN Doc. S/2011/30, January 25, 2011.

[92] S/2011/360, June 15, 2011.

[93] See, e.g., S/RES/2015, October 24, 2011.

[94] UN Doc. S/2012/50, January 20, 2012.

The more interesting trend that this brief survey reveals is instead that states seem increasingly willing to unofficially cooperate—both with each other, and with other actors such as international peacekeepers, global banks, and multinational companies—in enforcing shared norms. This is in part a product of continuing economic globalization, and in part the result of a group of powerful like-minded Western states instrumentalizing the legislative potential of international organizations.

In the last twenty years, transnational crime and terrorism have served as useful rhetorical adversaries for that group of states. Their quest to 'fight' crime and terror through a mixture of transgovernmental networks, multi-sectoral initiatives and international organizations has provided a vehicle for projecting their own vision of legality, in a necessarily selective manner that—unsurprisingly—protects their interests. Piracy provides a good example: the Council has condemned the payment of ransoms, often from Western states, but it has also taken few operational steps to force states to enforce that condemnation.[95] Nor have suggestions of the creation of an anti-piracy court with jurisdiction over such payments led to action, such is the weight of the shadow cast by the British veto.[96]

Ultimately, the international community's responses to piracy, like its responses to other forms of organized criminality and militancy, follow the contours of international cooperation shaped by the interplay between power and sovereignty.

[95] S/RES/2077 (2012), November 21, 2012.

[96] S/RES/2015, October 24, 2011, OP 17.