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

In an increasingly unstable world order, there has never been a greater need for international cooperation in the fight against transnational crime and terrorism. The operations of non-state armed groups, terrorists, and transnational criminal organizations are increasingly global in scope. Moreover, as recent events have demonstrated, such groups are increasingly lethal, increasingly disruptive, increasingly destabilizing. What is also becoming increasingly apparent, however, is that effective cooperation against such groups requires much development in what is called, in international development parlance, “the justice sector.” While justice sector development easily calls to mind images of police training and educational initiatives for lawyers or judges in the developing world, there is another sort of national institution that serves as a necessary prerequisite to effective international cooperation in the fight against transnational criminality: the “Central Authority.”

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

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

The increasing immateriality of national borders, likewise, is apparent in the burgeoning rate of other types of transnational crime. The United Nations Office on Drugs and Crime (UNODC) reports increases in a wide array of transnational crime, such as human trafficking, human smuggling, cybercrime, piracy and trafficking in illicit drugs, weapons, and counterfeit goods. This sort of transnational crime obviously has a destabilizing effect – especially in fragile States – and can undermine governments so extensively that its effects become an international security concern.

Security experts, moreover, now express concern about the problem of “convergence” – the collusion of transnational criminal organizations with international terrorist groups. Through the phenomenon of convergence, it is feared that terrorist groups may take advantage of the logistical capabilities of transnational criminal groups and, thereby, attain greater operational capabilities. This is already seen to a degree, as an example, in the way that ISIS, engages in the illicit oil smuggling market to fund its terrorist activities.

For state actors, however, national borders remain an area of acute concern. Sovereignty and the concomitant principle of nonintervention – the cornerstones of the international legal order – provide stability in the international legal order by severely limiting the ability of one State to conduct unilateral activity within the territory of another. This is reflected in Article 2(7) of the United Nations Charter, which provides that, aside from the application of enforcement measures under Chapter VII, nothing in the Charter “shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state.” Law enforcement functions are among the matters that are historically considered to be “essentially within the domestic jurisdiction.” As a result, while terrorist and criminal groups are increasingly agile, fluid, and transnational in scope, national law enforcement powers remain tightly constrained.

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

Extradition, of course, is the mechanism by which one sovereign requests and obtains custody of a fugitive located within the jurisdiction and control of another sovereign. Through extradition, a sovereign is able to obtain physical custody of an offender to stand trial before a court of law. Famous examples of this include the extradition of international arms trafficker Victor Bout (known as “The Merchant of Death”) to the United States.

Mutual legal assistance – a more obscure term for an equally important activity – refers to the mechanism by which states request and obtain evidence sovereign and assistance for criminal investigations and prosecutions. Through mutual legal assistance, a country may seek the production of a wide variety of evidence from a foreign government – evidence that can be extremely useful in a criminal investigation of transnational criminal activity but which lies beyond the inevitable culmination point of informal assistance. Bank records, business records, the contents of emails, tax documents, witness statements, and a host of other types of evidence can be compelled on behalf of a foreign country through mutual legal assistance requests.
Some states can afford extradition and mutual legal assistance based on their own domestic law and even in the absence of an international treaty requiring it. Many states have bilateral treaties – frequently called Mutual Legal Assistance Treaties (MLATs) which provide a basis for action. The United States, for example, has entered into numerous bilateral MLATs with partner countries across the globe. Moreover, with the ascendance of what is now termed transnational criminal law, a number of multilateral conventions under the aegis of the United Nations expressly require such formal cooperation. Notably, the most recent UN Security Council Resolution (UNSCR) on Foreign Fighters, UNSCR 2178, requires that “…Member States shall afford one another the greatest measure of assistance in connection with criminal investigations or proceedings relating to the financing or support of terrorist acts, including assistance in obtaining evidence in their possession necessary for the proceedings, and underlines the importance of fulfilling this obligation with respect to such investigations or proceedings involving foreign terrorist fighters.”

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

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

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

Given the rapidity of the rise of transnational crime and terrorism, greater attention must be paid to justice sector development across the board, including the institutional architecture needed for international cooperation in criminal matters. Transnational threats cannot be defeated without creating effective Central Authorities and operationalizing the network needed for states to join strengths against a global scourge. The international community must, therefore, devote more attention to Central Authority development in critical regions such as the Middle East, North Africa, and the Sahel. The engines which give life to the international treaty framework must be built, serviced, and properly maintained. Otherwise, efforts to address transnational crime and terrorism through a rule of law framework will remain stymied.

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