

Global Rule of Law or Global Rule of Law Enforcement? International Police Cooperation and Counter- terrorism

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With increasing vigor since the events of September 11, 2001, police institutions across the globe have proliferated their counterterrorism strategies, including participation in international police organizations such as the International Criminal Police Organization (Interpol). This article discusses some of these developments in light of the prospects of the development toward a global rule of law. Based on the theory of police bureaucratization, it is shown that police institutions have independently developed international structures and practices irrespective of international accords. This article reveals the dynamics of such international police efforts by examining the counterterrorist policies of Interpol. It is argued that the outcome of the relative separation between international police practices, on one hand, and global legal developments, on the other, will be critical in assessing any efforts to counteract the societal processes and conditions that may facilitate the development of terrorism on a global scale.

Keywords: international police cooperation; Interpol; international terrorism; counterterrorism; rule of law

In the modern state, real authority . . . rests necessarily and unavoidably in the hands of the bureaucracy.

—Max Weber

In the context of democratic societies, the rule of law is guaranteed by the legitimacy legal norms enjoy from those to whom such norms apply, on one hand, and by the threat of enforcement from specialized agents of control, on the

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other. With respect to the threat of force, modern states have monopolized the function of internal coercion in specialized police institutions. But the function of policing is also articulated at the international level, as law enforcement institutions engage in a variety of international activities and have forged international cooperative structures and organizations that aim to foster collaboration in the fight against crimes that are of an international nature. Increased concerns over the threat of international terrorism since September 11, 2001, have sharply accelerated these developments. Thus, police institutions across the globe have proliferated their counterterrorism strategies, both domestically and abroad, while international police organizations have likewise stepped up their campaigns against terrorism.

Based on existing research of the dynamics of international police cooperation (Deflem 2002, 2004b), substantial evidence suggests that the security and intelligence agencies of national states engage in collaboration across national borders, in matters of terrorism and other crimes, despite the fact that critical differences may exist in their respective countries' attained level of and formal commitment to constitutional democracy. To the extent that police institutions across nations have already forged a global order against terrorism, it can be said that terrorism has effectively been criminalized under a world rule of law enforcement. Yet it is not clear whether the legitimacy requirements of a global democratic order are realized by these developments, as research has also revealed that international police operations can take place outside the confines of legal safeguards and human rights restrictions. A central question, then, is if and how a global order of law enforcement can lead the way to a global order of law. In this article, I will address this question on the basis of an analysis of selected developments in the policing of international terrorism in the post-9/11 context. I will specifically focus on the counterterrorism strategies devised by the International Criminal Police Organization, the police organization better known as Interpol. My analysis relies on the bureaucratization theory of international police cooperation that has been developed in a comparative-historical context (Deflem 2000, 2002).

International Police Cooperation and the Bureaucratization of the State

The bureaucratization theory of international police cooperation was developed to analyze the behavior of modern police institutions under conditions of increasing globalization from the middle of the nineteenth century onward (Deflem 2000, 2002). Yet the theory can also be applied to account for important dimensions of the contemporary conditions of counterterrorism, especially at the level of international policing activities (Deflem 2004a, 2004b). In these variable contexts, the

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theory predicts a high degree of autonomy of police institutions to determine the means and objectives of activities related to crime control and order maintenance. As state bureaucracies always remain related to the political power of governments, the degree of a police institution's institutional autonomy will vary and have variable implications, depending on social conditions, especially attempts by governments to politicize police activity during periods of intense societal upheaval.

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The bureaucratization theory of policing is founded on the work of the sociologist Max Weber (1922/1980), who forwarded the conception of police institutions as state bureaucracies when he specified among the functions of the modern state "the protection of personal security and public order (police)" (p. 516). Weber attributed special significance to the police function by arguing that the expansion of the bureaucratization process was particularly accelerated by "the increasing need, in a society accustomed to pacification, for order and protection ("police") in all areas" (p. 561).

The bureaucratization theory maintains that public police institutions, since at least the formation of national states in the nineteenth century, reveal a tendency toward independence from the governments of their respective national states. Police bureaucracies achieve institutional autonomy on the basis of a purposive-rational logic to employ the most efficient means (professional expertise) given certain objectives that are rationalized on the basis of professional systems of knowledge (official information). The theory does not deny that policing is related to state control but holds that the behavior of police agencies is not wholly determined by reference to their relation to the political center of states. Instead, bureaucracies are shaped by organizational transformations related to a more general rationalization process affecting bureaucratic activity. In the case of social control, it is most crucial that police bureaucracies gradually adopt criminal enforcement tasks, irrespective of political directives, and develop professional techniques to fulfill these goals.

The theory of bureaucratization accounts for change and continuity in the development of state institutions. Most interesting in this respect are the conditions that impact bureaucratization during periods of momentous societal change. Intense social disturbances typically lead to attempts to redirect bureaucratic activity to again play a role intimately related to the political goals of national states (politicization). In the case of policing, periods of societal upheaval are seen to affect the institutional autonomy of police institutions in functional and organizational ways. Drawing from work on the evolution of international policing in the context of Europe and the United States, several historical examples can be mentioned (Deflem 2002).

In 1851, the first modern international police organization was established in the form of the Police Union of German States. Active until 1866, the Police Union brought together police of seven sovereign German-language states, including Prussia and Austria, with the express purpose of policing the political opposition of established autocratic regimes. Ironically, from such political efforts would gradually grow police organizations and practices with distinctly criminal objectives. Throughout the latter half of the nineteenth century, police institutions indeed developed and expanded professionally justified systems of policing and forged cooperation on the basis thereof. In 1898, a striking repoliticization attempt occurred when the Italian government organized the Anti-Anarchist Conference of Rome. Attended by government representatives of twenty-one European nations, the conference sought to organize an international police structure against the anarchist movement. Although a follow-up meeting was held in St. Petersburg in 1904, three years after the assassination of U.S. President McKinley, independent developments in the bureaucratization of the police function prevented these politically directed efforts from interrupting the antianarchist and other international policing strategies that police institutions had already begun to develop beyond any political policies and intergovernmental conventions.

Next to the disruptive impact of World War I, another striking example of the momentary shifts brought about in bureaucratization during sudden crises occurred after the Bolshevik Revolution, when police institutions in Europe and elsewhere turned attention to the presumed spread of a global communist movement. But once again, such politically motivated police activities would be only temporarily relevant, or they were redirected in terms that did not necessarily harmonize with government power, with implications that lasted until long after World War II. This is most clearly revealed in the case of the FBI during the Hoover era, when anticommunist police activities formed part of a generalized policing of “each and all,” including the politically powerful (Deflem 2002).

Efforts to politicize police institutions and other bureaucracies during moments of intense societal change are not especially surprising, as national crises typically bring about a centralization of power in the executive branch. What is ironic is that these politicization efforts occur progressively at times when police institutions continue to expand and solidify a position of autonomy that enables them to better resist such attempts at political control. Thus, on theoretical grounds alone, the degree to which the autonomy of state bureaucracies has been accomplished in

periods of relative stability cannot be assumed to be without consequences during moments of upheaval.

September 11 as World Event

Offering an interesting parallel to historical incidents of attempts to politicize policing during periods of war and revolution are the dynamics of international policing that have taken place since September 11, 2001 (Deflem 2004b). Indeed, the function and organization of policing in many nations across the global as well as at the international level have changed very significantly in response to the terrorist events of 9/11. Among the most important external determinants of counterterrorism policing are political pressures by means of new legislations and other forms of official policy. In the decades before September 11, government policies and legislation against terrorism at the national and international level developed only slowly. Internationally, the regulation of terrorism dates back to 1937 when the League of Nations adopted a convention on the Prevention and Punishment of Terrorism. The convention found little support among the nations of the world, and from then on, international policies on terrorism developed piecemeal, focusing on specific elements associated with terrorism (plane hijackings, bombings, hostage taking). In the United States, formal policies against terrorism also developed slowly and piecemeal until the Clinton administration secured passage of the Antiterrorism and Effective Death Penalty Act of 1996.

Legislative and other policy responses to the terrorist attacks of 9/11, especially in the United States, have gone far beyond what could have been predicted on the basis of developments during the 1990s. While the military intervention in Afghanistan mirrored the strikes launched against al-Qaeda by order of President Clinton in 1998, the U.S. military effort was now more resolute, backed by new policies to justify the militarization of the judicial processing of foreign terrorists and new legislation aimed to broaden counterterrorist police strategies. About a month after 9/11, the PATRIOT Act (the "Provide Appropriate Tools Required to Intercept and Obstruct Terrorism Act") received congressional approval. Next to the PATRIOT Act, the creation of the Department of Homeland Security in November 2002 has been among the most concrete political efforts to unite and oversee the various U.S. security agencies involved in the "war on terror."

Despite the various political and legal efforts to control counterterrorist policing, however, it also makes sense to expect that police institutions will resist politicization attempts to remain focused on an efficiency-driven treatment and depoliticized conception of terrorism. The reason for this autonomy of policing is that the bureaucratization of modern police institutions is now at an unparalleled high level. Unlike in the late nineteenth and early twentieth centuries, modern police institutions have presently attained a level of bureaucratic autonomy that is unprecedented in scale. Police can therefore more effectively resist political influences in a manner congruent with achieved professional standards of expertise and knowledge with respect to the means and objectives of bureaucratic activity. In

what follows, I will make this case by focusing on the counterterrorism strategies of the international police organization Interpol.¹

Interpol and Counterterrorism

Interpol is an international police organization that aims to provide and promote mutual assistance between criminal police authorities within the limits of national laws and the Universal Declaration of Human Rights. Originally formed in Vienna in 1923, the organization has steadily grown in membership but never substantially changed in form or objectives (Deflem 2000, 2002). Interpol is not a supranational police agency with investigative powers or an organization sanctioned by an international governing body such as the United Nations. Rather, it is a cooperative network formed independently among police agencies to foster collaboration and provide assistance in police work across nations. To this end, Interpol links a central headquarters, located in Lyon, France, with specialized bureaus, the so-called National Central Bureaus (NCB), in the countries of participating police agencies. At present, Interpol counts 181 member agencies.

The diversity among Interpol's member agencies, however, has also hindered the organization's effectiveness in its missions, as members do not always trust one another.

For several decades now, Interpol has passed various resolutions to combat terrorism and terrorist-related activities (Anderson 1997; Bossard 1987; Interpol Web site, <http://www.interpol.int/>). During the 1970s, Interpol passed resolutions that pertained to certain crimes that are typically involved with terrorist activities, such as criminal acts conducted against international civil aviation and the holding of hostages. Such terrorism-related resolutions were considered valid only within the context of a 1951 Interpol resolution that the organization would not concern itself with matters of a political, racial, or religious nature, a restriction that has since been adopted explicitly as Article 3 of the Interpol constitution.

Following resolutions on organized groups that engage in acts of violence and on explosive substances, an Interpol resolution passed in 1984 concerning Violent Crime Commonly Referred to as Terrorism. The resolution encouraged the member agencies to cooperate and combat terrorism within the context of their national

laws. An additional Interpol resolution that year acknowledged that it was not possible to give a more precise definition of political, military, religious, or racial matters and that each case had to be examined separately. In 1985, however, a resolution passed that called for the creation of a specialized group, the Public Safety and Terrorism (PST) subdirectoriate to coordinate and enhance cooperation in matters of international terrorism.

Following certain highly publicized terrorist incidents during the 1990s (such as the World Trade Center bombing on February 26, 1993), the Interpol General Assembly stepped up its counterterrorist initiatives. In 1998, at the General Assembly meeting in Cairo, Interpol's commitment to combat international terrorism was explicitly confirmed in a Declaration against Terrorism, condemning terrorism because of the threat it poses with regard to security, democracy, and human rights. In 1999, at the Interpol General Assembly meeting in Seoul, it was again affirmed that the fight against international terrorism was one of Interpol's primary aims.

Interpol since September 11

A few weeks after the terrorist attacks in the United States, the Interpol General Assembly held its 70th meeting in Budapest, Hungary. At the meeting, the Interpol General Assembly passed Resolution AG-2001-RES-05 on the 9/11 terrorist attack to condemn the "murderous attacks perpetrated against the world's citizens in the United States of America on 11 September 2001" as "an abhorrent violation of law and of the standards of human decency" that constitute "cold-blooded mass murder [and] a crime against humanity" (Interpol Web site). It was also decided to tackle terrorism and organized crime more effectively and that the highest priority be given to the issuance of so-called Red Notices (i.e., international Interpol warrants to seek arrest and extradition of a suspect) for terrorists sought in connection with the 9/11 attacks. In October 2001, Interpol held its 16th Annual Symposium on Terrorism to discuss new antiterrorism initiatives, such as the feasibility of setting up a special aviation database, the financing of terrorism, and anti-money-laundering measures. In October 2002, 450 representatives from 139 of Interpol's 181 member agencies attended the 71st General Assembly meeting in Yaoundé, Cameroon. Acknowledging September 11 as a catalyst in the development of global approaches to crime, the meeting paid even more distinct attention to the matter of terrorism. The assembly attendants agreed to draft a list of security precautions for the handling of potentially dangerous materials (such as letters and parcels that might contain anthrax), while bioterrorism was specified as deserving special attention.

Since 1998, a formal set of Interpol Guidelines for Co-operation in Combating International Terrorism more explicitly addresses the relationship of terrorism to Article 3 of Interpol's Constitution, forbidding Interpol to undertake matters of a political, military, religious, or racial character. Basically, terrorist incidents are

broken down into their constituent parts, only the criminal elements of which can then be identified and subjected to police investigations.

Interpol pays special attention to the financing of terrorist activities since it is assumed that the frequency and seriousness of terrorist attacks are often proportionate to the amount of financing terrorists receive. Interpol's emphasis on financing is aided by the fact that Interpol Secretary General Ronald K. Noble, the organization's chief executive (and a New York University Law School professor), has a long-standing interest in monetary crimes as president of the Financial Action Task Force, a twenty-six-nation agency established to fight money laundering. In 1999, a first specific Interpol resolution on the financing of terrorism was passed in Seoul.

In matters of the fight against terrorism, Interpol also maintains liaisons with other international organizations. In November 2001, for example, Interpol signed an agreement with Europol to foster cooperation in the policing of terrorism and other international crimes. In December 2001, Interpol and the U.S. Department of the Treasury similarly pledged to cooperate more closely and create an international database of organizations and persons identified as providing financial assistance to terrorist groups. In March 2002, Interpol reached an agreement to cooperate closely with the Arab Interior Ministers' Council to facilitate the exchange of information with the Arab police community.

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The terrorist attacks of September 11 were considered an Interpol matter because of the international dimensions of the case. Shortly after 9/11, Interpol Secretary General Ronald Noble argued that while the terrorist attacks took place on U.S. soil, "they constituted attacks against the entire world and its citizens" (Interpol Web site). Immediately following September 11, Interpol issued fifty-five Red Notices for terrorists who had committed or were connected to these terrorist attacks. Interpol also increased its circulation of Blue Notices, that is, requests for information about or the location of a suspect, of which nineteen concerned the hijackers who carried out the September 11 attacks.

From a practical viewpoint, Interpol reorganized in several key respects after September 11, although some of these organizational changes had already begun before the terrorist attacks. Most concretely, during a press conference in Madrid on September 14, 2001, Secretary General Noble announced the creation of 11 September Task Force at Interpol's headquarters in Lyon, France, to coordinate international criminal police intelligence received at Interpol's headquarters and relating to the recent terrorist attacks in the United States. Also instituted following the September 11 attacks was a General Secretariat Command and Coordination Center that is operational twenty-four hours a day, seven days a week. A new Financial and High Tech Crimes Sub-directorate was created that specialized in money laundering. In April 2002, Interpol announced the creation of an Interpol Terrorism Watch List, which provides direct access by police agencies to information on fugitive and suspected terrorists who are subject to Interpol warrants. Also, at the Interpol meeting in Cameroon in 2002, a new global communications project was announced as Interpol's highest priority. This project involves the launching of a new Internet-based Global Communications System (called I-24/7) to provide for a more rapid and more secure exchange of data between the member agencies.

Global Rule of Law and International Police Cooperation

The theory of bureaucratization suggests that structures and processes of international police cooperation rely on a high degree of institutional independence among police institutions. Unlike a legally binding and/or politically attained global rule of law, the global rule of law enforcement relies on professional expertise and efficiency considerations. Interpol indeed places most emphasis on a smooth coordination of and direct contacts between the various participating police agencies. Only a few days after September 11, Interpol Secretary General Noble flew to New York and Washington to meet with U.S. police chiefs and plead for international cooperation. Interpol pays much attention to establishing direct international police communications that can be used efficiently, further aided by technologically advanced means of police technique.

As an important consequence of Interpol's orientation to efficiency in counterterrorist and other police objectives, the organization has managed to attract cooperation from police agencies representing nations that are ideologically very diverse and not always on friendly terms in political respects. For example, shortly after the war in Iraq, authorities from France and the United States agreed to cooperate toward the development of biometric techniques to prevent the forgery of passports as part of their efforts against terrorism, despite these countries' profound disagreements over the Iraqi conflict. On the occasion of the signing of the agreement, U.S. Attorney General John Ashcroft also visited the Interpol headquarters in Lyon to attend an international conference aimed at step-

ping up the recovery of Iraqi works of art stolen in the aftermath of the fall of the Saddam Hussein regime. The diversity among Interpol's member agencies, however, has also hindered the organization's effectiveness in its missions, as members do not always trust one another. Therefore, unilaterally executed transnational police operations may be preferred instead of participation in the multilateral structures of Interpol. In that sense, Interpol is not always a particularly effective organization because "major powers, like the United States, do not fully trust it" (Bassiouni 2002, 93). Especially in matters of international terrorism, U.S. police agencies typically conduct international activities unilaterally rather than participate in an international organization such as Interpol.

The emphasis on efficiency in international counterterrorist police work reveals the relevance of formal rationalization processes that have been observed in many modern bureaucratic institutions. In terms of the objectives of social control, the bureaucratization of policing involves most noticeably a depoliticization of the target of counterterrorism. This criminalization of terrorism is accomplished by defining terrorism very vaguely ("a crime against humanity") and/or by identifying and isolating the distinctly criminal elements (bombings, killings) from terrorist incidents. Bureaucratization processes have historically been influential across Western societies (Jacoby 1969/1973), so that an important implication is that cooperation among state bureaucracies policing terrorism can take place irrespective of the similarities and/or differences among nations in political, legal, cultural, and other respects. The relative independence of police thereby exposes the limitations of state-centered theories in terms of the specific roles played by police and other state institutions. The autonomy of state bureaucracies creates the potential for bureaucratic activity, such as policing efforts against terrorism, to be planned and implemented without regard for considerations of legality, justice, and politics.

Conclusion

Ideological and political sentiments on terrorism are very divided in the world of international politics and diplomacy. Yet efforts at the level of police agencies and international police organizations, such as Interpol and its member agencies, can be based on a common ground surrounding terrorism through its treatment as a depoliticized crime. Terrorism is thereby fought in ways that are considered to be efficient, irrespective of normative concerns. As such, the bureaucratization of modern police institutions harmonizes with Weber's (1922/1980) perspective of societal rationalization as having gone in the direction of an increasing reliance on principles of efficiency in terms of a calculation of means. It is under those conditions, Weber argued, that the modern state bureaucracy becomes an "almost unbreakable formation," with little political control and democratic oversight (p. 570).

It is important to recognize that the processes and structures of policing and other state activities are composed of a multitude of dimensions and institutions that are not necessarily in tune with one another. For our theorizing of the rule of

law, an important implication of the developments of bureaucratization at the level of policing is that we need to recognize a fundamental irony of the modern political state from its origins through its further evolution. The centrality of the state in any discussion on law and police needs no introduction, but it is also important to contemplate the evolution of the state and its functionally divided components, specifically the legal system and the forces of internal coercion. Developing a bureaucratic apparatus to fulfill the state's concentrated and growing arsenal of functions, the state's powers are dispersed across a multitude of institutions, the organization and activities of which the state can no longer carefully control. As the case of international police cooperation shows, the institutions that develop and multiply during the state's continued development cannot be assumed to always be carefully disciplined by the center of the state.

Not only does the evolution of the modern state bring about that the spontaneous collective attention of society is inevitably relaxed (Durkheim 1893/1984), the functionally divided state institutions that are created in response to the weakening influence of tradition also lead to a diversification of the objectives of state power. The expansion of state bureaucracies such as the police has ironic consequences. For as the state grows, the relative power of its center weakens. There is no common end to the state, of course, but it also does not suffice to merely enumerate the state's multiple functions. What is particularly important is that the many functions of the state are not always neatly harmonized, for they each have their own instruments and institutions that develop in relative autonomy to one another and with respect to the center of the state. A state with many means will also have many ends. Therefore, whatever model that is suggested toward the adoption of constitutional-democratic principles at the global level of law and politics to decrease the chances of terrorism must also take into account the manner in which effective control of terrorism is currently accomplished by international cooperation among public police agencies.

Note

1. The following analysis selectively draws from Deflem and Maybin (2005).

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