

TRANSNATIONAL THREATS AND THE OUTSOURCING OF LAW ENFORCEMENT Current trends and the potential role of the European Union

Preliminary considerations focusing on the new EU's Instrument for Stability*

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In November 2006, the European Parliament and the Council adopted a Regulation establishing an Instrument for Stability (IfS)¹. This new financial tool of the EU's external action has two fundamental goals: the first is to contribute to stability in situations of crisis or emerging crisis, "by providing an effective response to help preserve, establish or re-establish the conditions essential to the proper implementation of the Community's development and cooperation policies" (art. 1(1), letter a). The second specific aim of the new IfS – which will be the subject of this note – is framed as follows:

"in the context of stable conditions for the implementation of Community cooperation policies in third countries, to help build capacity to address specific global and transregional threats having a destabilising effect and to ensure preparedness to address pre- and post-crisis situations" (art. 1(1), letter b).

The IfS announces itself as an innovative tool which should work in a way complementary to humanitarian aid and long-term cooperation instruments, and consistently "with the Community's overall strategic policy framework for [each] partner country". It should act by providing technical and financial assistance in a wide and rather heterogeneous number of areas, including – as far as the second of the above-mentioned specific aims – 1) "threats to law and order, to the security and safety of individuals, to critical infrastructure and to public health"; 2) "risk mitigation and preparedness related to chemical, biological, radiological and nuclear materials or agents"; 3) "pre- and post-crisis capacity building" (art. 4).

This short concept note is a preliminary attempt at analysing the context in which the regulation is adopted as far as international law enforcement against transnational (or transregional, i.e. stretching from the territory of the EU to one or more third country) threats is concerned, and at assessing the potential for innovation and some of the critical issues to be addressed in the future implementation of the IfS.

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¹ Regulation (EC) No 1717/2006 of the European Parliament and the Council of 15 November 2006 establishing an Instrument for Stability, Official Journal of the European Union, 24/11/2006, L 327/1.

I. Globalisation and transnational networks

1. The impact of globalisation on individuals is very uneven. A widespread conception opposes the empowering effect that globalisation tends to have on the most affluent, mobile and educated, with the impoverishing and marginalising impact it often has on disadvantaged groups and areas. A more articulated view should stress that the increased communication and interconnection opportunities brought about by globalisation can represent an important empowering factor also for disadvantaged individuals if and when these organise themselves in *spontaneous transnational networks* (STNs, where “spontaneous” means “not created, nor organised nor controlled by official public powers”).

2. STNs have always existed in world history (one could look, for instance, as far back as the initial semi-clandestine phase of the diffusion of Christianity; or recall the transnational anarchical rings, who made use also of terrorist methods, during the *belle époque* phase of globalisation, at the end of 19th century). In the current phase of globalisation, though, STNs have acquired new potential, largely due to technological developments. Such potential is translated into new forms of *asymmetrical relations between (networked) individuals and states*. Nowadays, STNs can challenge more easily and effectively than in the past very different types of organisations (pyramid-like ones) such as states. In most cases, such challenges are legitimate and productive, both for economic and human development, as well as for cultural progress. In a growing number of cases, however, the challenge of networks against states is perceived as threatening and therefore defined and treated as illegitimate/illegal. Quite obviously, the dividing line between legitimate and illegitimate STNs, and between the positive and negative flows that such STNs generate and promote, is exquisitely political.

II. Conceptualising transnational threats

3. Contemporary STNs are of a very heterogeneous nature.

Among “good” STNs, we normally tend to include:

- a) Transnational NGOs (although this may not be the case, even in advanced democracies: e.g. Rainbow Warrior case, opposing Greenpeace and France in 1985);
- b) Knowledge-sharing networks (e.g. Wikipedia; but illicit forms of knowledge-sharing obviously also exist);
- c) Migrants’ diasporas as potential actors of co-development in sending countries (here also, different and less positive views of the role of diasporas obviously exist).

On the other hand, there is widespread consensus that the following should be classified as “bad” STNs:

- A) Smuggling/trafficking rings, although in sending countries smugglers (*coyotes, scafisti, harraga*, etc.) are often viewed as popular heroes;
- B) Terrorist networks (here also, the global community is evidently far from a consensual definition);
- C) Money laundering circuits;
- D) Uncontrolled off-shoring of dangerous/polluting industrial activities.

4. A “holistic approach” to transregional security threats, as the one called for in the briefing notes and analyses prepared by the Commission for the implementation of the IfS, is certainly useful. STNs are in most cases loose organisations highly capable to interact and cooperate flexibly with each other. Therefore, also the different types of material and immaterial, transnational and transregional flows that STNs produce (and are made of) can overlap and mix. Except for a few specific areas, however, there is *surprisingly little solid empirical evidence of actual systematic*

overlapping between different kinds of illicit flows and of systematic interconnections between different transnational threats. Overemphasizing such interconnections may therefore have a distorting effect, which could both hamper law enforcement and trigger prejudice. An instructive analogy can be made with the exceedingly confident and sometimes superficial cultural and political approach which conducted, in the 1980s and 1990s, to construct a unified European policy field denominated “Justice and Home Affairs”. Developed in different, subsequent institutional contexts (Trevi, Schengen, Third Pillar, to cite only the main fora), such approach produced in vast sectors of European public opinions a certain degree of confusion, namely between international migration and transnational crime. Eradicating such confusion has been an official priority for most EU Member States and for EU institutions for several years now. Therefore, without neglecting the importance of holistic approaches, “generalisation errors” as those done in the past have to be avoided in the future, both in internal affairs and in the EU’s external action.

5. For reasons similar to those exposed at point 4, it is of great importance to avoid a *unilateral and one-sided* discourse and conceptualisation of illicit transnational/transregional flows. To maintain and reinforce its international legitimacy and credibility, the European Union should give equal attention to well-known types of North-South illicit flows which are also (although perhaps more indirectly) threatening European and international stability. We can think, for instance, of the expanding traffics in light weapons and illegal waste.

III. Law enforcement responses to transnational threats

6. Pyramid-like organisations such as states are structurally inadequate to counter effectively illicit STNs. To react effectively against illegal networks (and prevent their formation), states have an obvious and (now) universally recognised need to set up *law enforcement networks*. But international law enforcement cooperation can be of many different kinds. In particular, a constant oscillation (and often ambiguity) exists in state practices between informal/formal, unofficial/official, secret/transparent, non-institutionalised/institutionalised cooperation. Such oscillation is probably in part “physiological”, i.e. inherent to the very nature of security policy-making. In contemporary international relations, however, the “temptation of informality” in international law enforcement cooperation seems to be rising again after some years of apparent decline. This is particularly evident since 9/11, not just in the US security policies. There is a clear and widespread trend towards informal *externalisation* (outsourcing, some would more bluntly say) of key control and law enforcement functions (from anti-terrorism to migration controls).

7. Informal (or vaguely and loosely formalised) externalisation has some clear “operational” advantages, in terms of:

- Flexibility;
- Reduced accountability;
- Reduced normative constraints.

In several areas, however, informal externalisation (we refer here essentially to externalisation towards states and less to outsourcing of security tasks to private actors, such as security companies) is increasingly proving its disadvantages, among which:

- Low reliability of partners states;
- Vulnerability to “political blackmailing”;
- Lack of normative/ethical legitimacy;
- Negative impact on internal political/institutional dynamics of partner states (unbalanced and unchecked support to military/security sector can objectively reduce internal pluralism and hamper good governance);

- Negative impact on international dynamics at regional level between partners states and neighbours (externalisation of migration controls, in particular, can worsen neighbourhood relations of the partner state and hamper regional cooperation/integration in the area).

8. Significant, although still insufficient and not conclusive, evidence of the pros and cons illustrated at point 7 emerge, for instance, from the interesting test case of international cooperation with Libya in the field of migration controls, both at bilateral level (mostly Italy-Libya) and at EU level. As shown in table 1 and 2 (see Annex), the development of Italian cooperation with Libya against irregular migration and human smuggling, since 2000 (but more intensely since 2003), has not yet ended nor significantly reduced the phenomenon, particularly in the main disembarking area (i.e. the Sicilian island of Lampedusa). Furthermore, the Italian-Libyan cooperation in the field of migration management has suffered heavy criticisms for a number of alleged negative effects at different levels:

- i) on the human rights of transit migrants and, more generally, on the conditions of the vast immigrant population of Libya;
- ii) on Libya's political relations with Sub-Saharan countries;
- iii) on the local cross-border economy between Libya and Niger.

IV. The potential role of the European Union

9. In this context, the role of the EU, in particular through its new IfS, could be very important, both in terms of direct and concrete achievements, and through the setting of benchmarks and models potentially very useful and influential, also at the level of bilateral law enforcement cooperation. *Through its new IfS, the EU has a chance to experiment and hopefully prove the viability and effectiveness of formal and institutionalised, but still flexible, law enforcement networks, as an alternative to informal externalisation.* Such an achievement would greatly reinforce the international legitimacy and the overall “actorness” of the EU on the global scene. It would also contribute to the promotion of good governance and rule of law in the international community.

10. A crucial objective and a major challenge in implementing the IfS will be how to be effective in countering negative STNs without losing in overall coherence of the EU's external action. In other terms, the challenge will be *how to combine effective capacity building in the security sectors of partner states (be they in Africa, Central Asia or Latin America) with the maintenance and the gradual reinforcement of both general and specific political conditionality* (rule of law; respect of basic human rights of suspects and detainees; accountability of police and military forces; etc.). Going back to the Libyan example, and more generally to the issue of controls over transit migration in North Africa, the problem is how to combine an emerging “migration conditionality” (where political support, aid and technical cooperation are geared to migration control benchmarks and targets) with broader goals and principles of the EU's external action, and of the European Neighbourhood Policy (ENP) in particular. The European Union was generally very successful in preserving such balance between security policy development and good governance in the sphere of enlargement; a crucial challenge for the IfS will be to find innovative approaches and solutions to repeat such success at a much wider, ideally global level.

ANNEX

Tab. 1: No. of irregular migrants by sea* (Italy and Spain; 1999-2006; 000s).

<i>Years</i>	<i>1999</i>	<i>2000</i>	<i>2001</i>	<i>2002</i>	<i>2003</i>	<i>2004</i>	<i>2005</i>	<i>2006</i>
Italy	50.0	26.8	20.1	23.7	14.3	13.6	22.9	22.0
Spain	3.6	15.2	18.5	16.7	19.2	15.7	11.8	31.0

Tab. 2: No. of irregular migrants by sea* and No. of confiscated vessels (Italy; 1998-2006).

	1998	1999	2000	2001	2002	2003	2004	2005	2006
Apulia									
<i>Vessels</i>								2	11
<i>Migrants</i>	28,458	46,481	18,990	8,546	3,372	137	18	9	243
Sicily									
<i>Vessels</i>								252	477
<i>Migrants</i>	8,828	1,973	2,782	5,504	18,225 (of which in Lampedusa: 9,669)	14,017 (Lampedusa: 8,819)	13,594 (Lampedusa: 10,497)	22,824 (Lampedusa: 14,855)	21,400 (Lampedusa: 18,096)
Calabria									
<i>Vessels</i>						1		3	2
<i>Migrants</i>	873	1,545	5,045	6,093	2,122	177	23	88	282
Sardinia									
<i>Vessels</i>								1	7
<i>Migrants</i>								8	91
Total migrants	38,159	49,999	26,817	20,143	23,719	14,331	13,635	22,939	22,016

* Including both migrants apprehended upon clandestine landing and migrants rescued at sea and admitted on the national territory.

Sources: CeSPI based on data provided by the Italian Ministry of the Interior and on the following sources: *Documento Programmatico relativo alla politica di immigrazione 2004-2006*; *Rapporto del Ministro dell'Interno al Parlamento sull'attività delle Forze di polizia, sullo stato dell'ordine e della sicurezza pubblica e sulla criminalità organizzata 2004* (<http://www.interno.it/assets/files/2/20062311729.pdf>); For Spain: Ministerio de Trabajo y Asuntos Sociales, *Balance de la Secretaría de Estado de Inmigración y Emigración de las embarcaciones interceptadas en 2005*; B.O.C.G. I, 621, 22 December 2006. For more detailed statistics and for an analysis, see Lorenzo Coslovi, *Brevi note sull'immigrazione via mare in Italia e in Spagna*, Centro Studi di Politica Internazionale, January 2007, available at www.cespi.it.