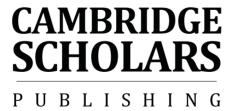# New Challenges for the EU Internal Security Strategy

New Challenges for the EU Internal Security Strategy

Edited by

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CAMBRIDGE
SCHOLARS

P U B L I S H I N G

TABLE OF CONTENTS

LIST OF ABBREVIATIONS

A1P1- Article 1 Protocol 1 to the European Convention on Human Rights
ACC - Australian Crime Commission
ACFE - Association of Certified Fraud Examiners
ACPO - (UK) Association of Chief Police Officers
AFP - Australian Federal Police
AFSJ - Area of Freedom Security and Justice
ANPR - Automated Number Plate Recognition
ASI - Anti-Slavery International
ASIO - Australian Security Intelligence Organisation
BBC - British Broadcasting Corporation
CARICC - Central Asian Regional Information and Coordination Centre
CFE - Certified Fraud Examiner
CFSP - Common Foreign and Security Policy
CIS - (Australian) Commonwealth Investigative Service
CISE - Common Information Sharing Environment
CoE - Council of Europe
COM - Commission document
COMPOL - (Australian) Commonwealth Police
CoJ- Court of Justice (of the EU)
Cospol - Comprehensive Operational Strategic Planning for the Police
CPS - (UK) Crown Prosecution Service
CSES - EU-Russia Common Space of External Security
CSES - Centre for Strategy and Evaluation Services
CSFSJ - EU – Russia Common Space of Freedom, Security and Justice
CSI - US Container Security Initiative
CSO - Company Security Officer
CTC - UN Security Council's Counter-Terrorist Committee
DAC - Development Cooperation Directorate
DG MAF - Directorate General Maritime Affairs and Fisheries of the
    European Commission.
DR Congo- Democratic Republic of Congo
ECIM - European Criminal intelligence model
ECHR – European Convention on Human Rights and Fundamental Rights
ECJ - European Court of Justice
ECtHR- European Court of Human Rights

EMCDDA - European Monitoring Centre for Drugs and Drug Addiction
ENP - European Neighbourhood Policy
ESDP - European Security and Defence Policy
ESS - European Security Strategy
EU - European Union
EURAD - Europe Against Drugs
EUROSUR - European Border Surveillance System
EU SOCTA - European Union Serious and Organised Crime Threat
    Assessment
EUSR - European Union special representative
FACI - forensic accounting and corporate investigation industry
FATF - Financial Action Task Force
FCO - (UK) Foreign and Commonwealth Office
GIAC - Global Information Assurance Certification - certified Forensic
    analyst
GPS - Global positioning System
GRETA - CoE Group of Experts on Action against Trafficking in Human
    Beings
ILO - International Labour Organisation
ILP - intelligence led policing
IMF - International Monetary Fund
IMO - International Maritime Organisation
INL - (US) Bureau of International Narcotics and Law Enforcement
    Affairs
IOM - International Organisation for Migration
ISPS code - International Ship and Port Facility Security Code
JITs/JITS – Joint Investigation Teams
JWG - Joint Working Group
KPMG - a global firm of accountants
LJ- Lord Justice
LNG - liquid natural gas
LPG - liquid petroleum gas
LRIT - A vessel tracking globally system.
MARPOL - International Convention for the Prevention of Pollution from
    Ships
MI5 - British Security Service
MONEYVAL - CoE Committee of Experts on the Evaluation of Anti-
    Money Laundering Measures and the Financing of Terrorism
MOUs - Memoranda of Understanding
NATO - North Atlantic Treaty Organisation
NCA - the (UK) National Crime Agency

NCA - Nordic Police Cooperation Agreement
NCIS - (UK) National Criminal Intelligence Service
NeBeDeagPol - Arbeitsgemeinschaft der Leiter der belgischen, niederländischen und deutschen Polizeibehörden im Rhein-Maas-Gebiet
NGOs - Non - Governmental Organisations
NIM - national intelligence model
NPCA - Nordic Passport Control Agreement
NPYWC - Ngaanyatjarra Pitjantjatjara Yankunytjatjara Women's Council
NRM - (UK) National Referral Mechanism
NSS - (US) National Security Strategy
NSW - New South Wales
NYP lands - Ngaanyatjarra Pitjantjatjara Yankunytjatjara lands (Australia).
OCTA - (Europol's) Organised crime Threat Assessment
OECD - Organisation for Economic Cooperation and Development
OLAF - European Anti-Fraud Office
OSCE - Organisation for Security and Cooperation in Europe
PCCCs - Police and Customs Cooperation Centres
PCTF – EU Police Chiefs Task Force
PFSA - Port Facility Security Assessment
PFSO - Port Facility Security Officer
PFSP - Port Facility Security Plan
POCA – Proceeds of Crime Act 2002
POG - (Australian) Peace Office Guard
PKK - Kurdish Workers Party
PTN desks - Polis Tull i Norden (Nordic Police and Customs Cooperation)
PwC - Price Waterhouse Coopers, Accountants.
ROCTA - (Europol's) Russian Organised Crime Threat Assessment
SafeSeaNet - A vessel traffic monitoring system in EU waters
SATs - Swift Action Teams
SECI Centre - South East Cooperation Initiative, earlier name for the SELEC Centre.
SEEOCTA - (Europol's) South-East European Organised Crime Threat Assessment
SELEC – South East European Law Enforcement Centre
SIVE - Straits of Gibraltar Surveillance System
SOCA - The (UK) Serious and Organised Crime Agency
SOLAS Convention - International Convention for the Safety of Life at Sea
SS - Security Sector

SSO - Ship Security Officer
SSR - Security Sector Reform
TE-SAT - Terrorism Situation and Trend Report
THB - Trafficking in Human Beings
TOC - Transnational Organised Crime
TREVI - Terrorisme, Radicalisme, Extrémisme et Violence Internationale
UK - United Kingdom
UKBA - UK Borders Agency
UKHTC - United Kingdom Human Trafficking Centre
UNDOC - United Nations Office on Drugs and Crime
UNDP - United Nations Development Policy
US/USA - United States of America
USS - United States ship
USSR - Union of Soviet Socialist Republics
WA - Western Australia
WAPI - World Association of Private Investigators
WCO - World Customs Organisation
WMD - weapons of mass destruction
WSP - German Waterways Police

CHAPTER ONE

NEW CHALLENGES FOR THE EU INTERNAL
SECURITY STRATEGY:
AN INTRODUCTION AND OVERVIEW

MARIA O'NEILL AND AARON WINTER

In the past number of years, the EU and its member states have experienced a number of changes, as well as challenges, in the areas of politics, economics, security and law. As these areas are interconnected, changes and challenges to or in any of them have implications for the others, as well as implications for the populations and institutions of the EU or those coming into contact with its international power and influence. This edited collection will focus primarily on the latter two areas, that of security and law, and most notably the EU's internal security strategy. The EU's Internal Security Strategy,[1] adopted by the Spanish presidency early in 2010, followed on from the coming into force of the Lisbon Treaty in 2009, building on previous developments within the EU in the Area of Freedom Security and Justice (AFSJ) policy. The focus of the EU Internal Security Strategy is to prevent and combat "serious and organised crime, terrorism and cybercrime, in strengthening the management of our external borders and in building resilience to national and man-made disasters".[2] The Internal Security strategy intersects and overlaps with the European Union's Counter-terrorism strategy,[3] the Strategy for the External Dimension of JHA,[4] and the EU's Security

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[1] Communication from the Commission to the European Parliament and the Council; The EU Internal Security Strategy in Action: Five steps towards a more secure Europe, COM/2010/0673 final.
[2] Ibid. 3.
[3] Council of the European Union; The European Union Counter-Terrorism Strategy, Brussels, 30 November 2005, 14469/4/05.
[4] Council of the European Union; A Strategy for the External Dimension of JHA: Global Freedom, Security and Justice, Brussels, 30 November 2005, 14366/3/05.

Strategy.[5] The role of and interaction between these strategies, their supplementing documents, and their implications for crime, victims, the law, political relations, democracy and human rights, form the backdrop against which the chapters in this collection are written.

The Stockholm Programme, which was signed off by the European Council in December 2009, sets out the framework for the development of the policies and laws needed to address the current risks to the EU and its member states. The Stockholm Programme's focus is on improving security and protecting citizens from terrorism, organised crime and other threats.[6] These other threats are enumerated in the programme as being, amongst others, drugs and arms trafficking, corruption, trafficking in human beings, and the smuggling of persons.[7] In addition to cross border EU crime requiring comprehensive and clear response,[8] the Stockholm Programme recognises that in "a global world, crime knows no borders," and that there is a need recognise that "internal security is interlinked with the external dimension of the threats."[9]

A new focus for the EU's approach to internal security has been established through the Stockholm Programme with an increased potential, at least after the five year phase-in period of the Lisbon Treaty's provisions, for more coherence in dealing with law enforcement and security issues within the EU. The Lisbon upgrade in the underlying legal framework will have a dramatic effect on the law and practice in this area, with the move from intergovernmentalism to supranationalism, the increased coherence of the legal framework in the AFSJ, and the increasing role of both the Court of Justice and the Commission. The development of this Internal (to the EU) Security framework will involve policy makers, lawyers, criminologists and the law enforcement professionals across the EU, and their counterparts in partner third countries. The internal security issues of the EU are seen as being inextricably linked with the external security relations of the EU, through the Common Foreign and Security Policy (CFSP), and allied policy areas. The EU has therefore been focusing on developing close relations in the

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[5] Solana, J., A Secure Europe in a better world, European Security Strategy, Brussels, 12 December 2003.
[6] Stockholm Programme – An open and secure Europe serving the citizen, 2nd December 2009, 17024/09, JAI 896, at 1.1. Political priorities, 5.
[7] Ibid. at 4.1. Internal Security Strategy, 17.
[8] Ibid.
[9] Ibid. at 4.1. Internal Security Strategy, 18.

area of security, not only with traditional strategic alliance partners, but also with its immediate neighbours, in particular through the European Neighbourhood Policy (ENP), and separately with Russia in the context of the four common spaces programme, two of which are relevant to this subject area, the EU-Russia Common Space of Freedom, Security and Justice (CSFSJ), and the EU-Russia Common Space of External Security (CSES). The Stockholm Programme also talks about relations further afield, such as with Latin America, West Africa, Central Asia including Afghanistan, and the United States of America, in the field of drugs trafficking,[10] and with China, India and Brazil in the context of counter-terrorism.[11] Some of these issues will be examined in this collection, in particular, in the final two parts, which deal with trafficking in human beings, and the external relations of the EU.

Two very clear boundaries have been written into the EU treaty framework in the AFSJ, over which the EU cannot cross. These include the individual member states' national security provisions, an area which has been allocated in a number of countries to the intelligence or security services,[12] which remains outside the EU legal framework. This does not mean, however, that counter-terrorism provisions are not covered by the EU. While the EU's counter-terrorism strategy is part of the CFSP pillar, where the counter-terrorism co-ordinator can also be found, law enforcement's approach to counter-terrorism is covered by the cross-border policing provisions, involving the specialised police services, such as the UK's Special Branch. These police forces support national intelligence and security services, where they exist, in individual member states. The EU's capacity to act in counter-terrorism cases will be examined, in particular, in the first part of this book, which deals with the relationship between policing and security.

In addition to the above national security exceptions, matters relating to individual member states' approaches to the maintenance of law and order in their own territory, or the safeguarding of that country's internal security, such as methods or tactics used in policing, can vary quite widely from one part of the EU to another. Furthermore, the actual structures being used to police that territory[13] remain a matter for that member state, and outside the competence of the EU. Also separate from the EU, the

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[10] Ibid. 4.4.6. Drugs, 24.
[11] Ibid. 7.4. Agreements with third countries**,** 35.
[12] Article 73 TFEU.
[13] Article 72 TFEU.

Council of Europe, in Strasbourg, maintains an oversight role over its member states in the context of human rights and the political nature of terrorism and counter-terrorism, as well as the wider issues of law and order. This oversight is exercised by the European Court of Human Rights, and individual member states courts, implementing the provisions of the European Convention on Human Rights in the case of violation, or alleged violation of human rights in the cases of torture, rendition or extradition. Yet, there are questions if this oversight is enough given that it is, in the context of EU membership, a form of self-regulation as opposed to that from an independent, external, third party. Moreover, while human rights records and standards have been a condition to allowing new countries into the expanding EU (e.g. from Eastern European), the role of a more established and dominant EU member, the UK, in extradition, rendition and alliances with countries that practice torture in the war on terror has not been as effectively addressed.

The EU is concerned with issues which cross borders, and involve two or more EU member states. As is stated in the Europol Council Decision,[14] at Article 4, the general thrust of all of the EU policies in this area deal with issues which "require a common approach by the Member States owing to the scale, significance and consequences of the offence." The change in the legal structure underpinning the Area of Freedom Security and Justice (AFSJ) is as a result of EU member states having developed a higher level of trust and mutual understanding in this policy area, with most of the provisions now to be enacted following the standard co-decision procedure, involving both the Council and the European Parliament, by way of an ordinary resolution.[15] However concerns still remain with regard to operational cross border policing provisions, which remain in the control of the various Home Office ministers, sitting in the Council, who will vote on procedures following a special legislative procedure, requiring unanimity.[16] However there are provisions, in the absence of agreement, for nine member states to proceed with their own initiatives. This would appear to be reasonable, as particular regions of the EU experience particular types of crime not significantly affecting other parts of the EU.

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[14] Council Decision 2009/371/JHA establishing the European Police Office, OJ L121/37.
[15] *Inter alia* Article 87.2 TFEU.
[16] Article 87.3 TFEU.

The current focus of the EU is on further developing and refining internal EU provisions, moving in to new cross border crime areas which have not been adequately covered previously, and developing relations outside the EU in cross border law enforcement. While the EU has very well developed security and law enforcement external relations with its traditional strategic partners, such as the United States of America and Australia, much of the drug trafficking and human trafficking are not coming from these traditional partner countries. It is important that the EU develops relations with its immediate neighbours, and those countries which can directly assist it in dealing with specific challenges and threats, to their mutual advantage. For example, both human and drugs trafficking follow specific global trafficking routes. In human trafficking the EU member states, being predominantly countries of destination, need to engage, at a law enforcement level, with countries of origin and transit, in order to properly police this difficult area of crime and victimisation. It is for this reason that the EU, in the Stockholm Programme, has identified key partners, both in the EU's immediate neighbourhood, and across the globe, which would be likely to be in a position to assist the EU in facing its internal security threats. The states in question need to address the issue of both human trafficking and wider border security without compromising the rights and needs of those being trafficked, as well as migrants and asylum seekers. Combating drugs trafficking faces different but overlapping challenges to human trafficking, such as the issue of trafficking routes mentioned above. The role of the police is not only to investigate crime, once it has happened, but, where possible, to prevent the crime from occurring. For example, it is better to prevent large shipments of cocaine or heroin from entering the country, than spending a lot of time chasing after distributers and dealers once the drugs are in the country and being sold, or tracing the proceeds thereof. Although it is worth noting that this will still be an issue as not all drugs will be intercepted and many drugs are manufactured within the EU. In addition, rescuing trafficked persons at an earlier stage, or preventing the trafficking from occurring in the first place, will prevent (potential) victims from having to endure longer periods of slavery, abuse and exploitation, as well as the possibility of being further removed from their home country, further victimised by being arrested and criminalised by the criminal justice system or deported by immigration services or even lost. Additionally, this is also a more effective law enforcement approach to combating crime. The intelligence services have a similar role in the context of counter-terrorism, with a focus being on both interrupting, if not destroying, terrorist networks and more practically preventing attacks.

Tackling the crime earlier in its planning phase or trafficking chain adds a greater level of protection to the societies and populations and maintenance of order within (and without) the EU by reducing the risks, implications and effects of the crime in question. There is also the claim that doing so also assists the EU and neighbouring countries in the EU border region which, it is believed, would otherwise be destabilised by the growth and development of organised crime networks concentrating at the external border. Perhaps the most high profile case of this, which is evoked as an example of this potential threat, are the problems which are currently being experienced in the border region of Mexico and the USA, as drug cartels attempt to deliver their supplies to the lucrative markets in North America.

Such border issues and concerns are difficult to address because, as in the case of the EU, different countries and even immediate neighbours have quite different legal systems and policing structures, experience different political developments and trends, and are at different stages of development. But it is the last point which is vitally important. While discourses about the crimes, security and stability/instability (as well as the very construction of Europe itself) at borders depends on demarcating a frontier and erecting a border between self and other (in this case stable states and unstable states), where the former are advanced capitalist democracies and latter less socio-economically developed and in current or recent state of political transition. Those countries that are in the EU, but geographically peripheral and closer to the border and included as part of expansion, sit physically and discursively in the grey area between the others as a buffer zone, but one that is a porous middle-ground and can therefore allow a metaphorical bleeding of the problems associated with that outside the border into the privileged and protected zones, such as the EU or the US in the previous example, which because of their socio-economic status also provide such lucrative markets for drugs and human beings. Security strategies can of course be created and implemented to address border region issues and problems, but by doing so they "police", regulate and maintain, if not exacerbate, the inequalities and exclusions that a border demarcates. The developing external relations with these countries beyond the border are seen as long term security strategy projects, and attempts to address such inequalities that would reduce the possible threats is an even longer term one. This wider debate is, of course, beyond the subject matter and remit of this book.

Following on from the issue of inequality and power, the EU is also focusing on developing, internally, the freedom and justice aspects of the Area of Freedom Security and Justice, as it is arguable that the security elements are further down the line of development than these ancillary provisions. The recent upgrade in status of the EU Charter of Fundamental Rights 2000, and the gaining of the Court of Justice's full powers after the full phase-in of the Lisbon Treaty should lead to a rapid development of these freedom and justice provisions. These latter provisions are also out-with the scope of this book, but it is hoped that publications in the next couple of years will be in a position to deal with these developments. The security issues which are examined in the various chapters of this book need to be examined for threats to, or violations of, human rights, civil liberties, abuse of power, equality and privacy at each stage of the policy and practice development process, and at the sites or locations where security becomes an issue. Particular crimes merit closer attention.

Building on original research by its contributors, this collection comprises work by authors from a wide variety of academic and professional areas and perspectives, as well as different countries, on a variety of areas and issues related to or raised by the EU's Internal Security Strategy, from intelligence-led policing and human trafficking to port security. This book examines, from a wide variety of discipline perspective, to include law, geography, politics and practice, both this further refinement of existing internal provisions on cross border crime, and the increasing external relations of the EU in the AFSJ.

The collection is divided into five parts. The first part examines the fundamental relationship between policing and security. Part two examines the relationship between security and location. While a great deal of attention has been focused on airports and passenger air travel since 9/11, in part two we have decided to concentrate on another specific but less examined location, EU commercial maritime ports. The third and fourth parts of this collection focus on two particular types of crime as case studies, commercial/financial crime and human trafficking. The fifth and final part of the book examines the "bigger picture", the relationship between the EU's internal and external security policy. Within each part, the contributors examine different, but overlapping, legal, political, practical and analytical cases, themes and issues.

Part one includes Artur Gruszczak's chapter on EU intelligence-led policing - the case of counter-terrorism cooperation. Gruszczak examines

the role of intelligence led policing in the context of the EU's counter-terrorism legal framework. As Gruszczak states, EU counter-terrorism is a good test case given the individual member states sensitivities with regard to sovereignty issues, and the highly politicised issues surrounding terrorism, and the complexities of counter-terrorism cross border cooperation. It is clear that the EU has taken a law enforcement approach to terrorist incidents, rejecting the US's "war on terror" approach. As pointed out by Gruszczak, this approach is supported by the former Director General of MI5, Eliza Manningham-Buller, classifying the 9/11 attacks on the US as being a law enforcement issue. Gruszcsak analyses the methodology adopted to develop the EU's terrorism report TE-SAT. He discusses intelligence led policing generally, and the conceptual and operational problems which it has encountered, particularly as its practice has spread to new EU policing jurisdictions.

The second part, on security at EU commercial maritime ports, includes two chapters, the first, by Angela Carpenter, who writes on Security and Europe's Sea Ports: threats and issues facing maritime gateways to Europe. The second paper is a joint paper by Carpenter and Yarin Eski which examines Policing in EU Seaports: Impact of the ISPS Code on port security post 9/11. Carpenter tackles the issue of security and transport in the context of both shipping and ports. She identifies the main maritime security threats as being illegal immigration, people trafficking, smuggling and drug trafficking, weapons trafficking, terrorism and narco-terrorism, to include the use of ships as bombs. She examines the EU measures and cooperative activities to tackle these threats, to include the measures used to track vessels at sea, and to identify vessels that need to be inspected while in seaports. She goes on to indicate that future research will be required in this area, in order to fully come to grip with what is likely to be a continued security threat to the EU.

Eski and Carptenter's joint chapter continues the theme of port security. The focus of this paper is on the International Ship and Port Facility (ISPS) Code and its objective of providing a standardised consistent framework for evaluating risk, with consideration being given to both water-side and shore-side access to the port and the ships berthing in the port. While the rhetoric has been on establishing higher levels of national security, the research underpinning this chapter indicates that the EU users of the ISPS Code raises issues such as a war on boredom, issues of trust in the code, and bureaucracy. As the authors point out, it is uncertain whether the ISPS Code really increases port security, with the

participants in the research not considering themselves to be part of an international army in the war on terror.

The third part of this book focuses on commercial/ financial crime, an increasing issue for the EU. Under the heading of the Business of Crime two chapters are included, the first, by Ludo Block, writes about transnational activity in private investigation: exploring the relevant issues. Block, examines international cooperation in the private investigation of economic crimes in the EU. The second chapter is written by Ken Swinton who, writing from a legal perspective, examines the Civil Recovery of Proceeds of Crime: lessons for the EU from the UK experience.

In the first of two chapters on the Business of Crime, Block points out, that while the transnational aspects of public policing has been the focus of a steadily growing body of research over recent decades, private policing, which uses a similar palette of both overt and covert investigation methods, has received less recognition. While there is a lack of a clearly defined homogeneous group in private policing, there are clearly multinational investigative firms operating. The need for international standards in the field of private investigation needs to be addressed, as does the question of accountability, and the legality of the investigative methods being employed. The issue of which jurisdiction's laws the private investigating firm needs to comply with is problematic, particularly if the relevant jurisdiction of operation is either weak or compromised. Block uses the case of the investigation of Yulyia Tymoshenko in the Ukraine as an illustration of the issues which can arise in practice. The UN Development Programme Investigation Guidelines are examined as a possible global standard in this context.

Swinton's chapter examines the recent proposal for a directive dealing with the confiscation of the proceeds of crime. He writes from the perspective of a Scottish lawyer, with Scotland, a legal jurisdiction based on a civilian tradition, having previously having to negotiate a close legal relationship with England & Wales, a traditional common law legal system. He analyses through the case law of a number of legal jurisdictions, to include the European Court of Human Rights, the UK attempts to bridge the gaps between these two traditions in the context of the confiscation of the proceeds of crime. The issue of whether this confiscation should be treated as criminal law or civil law, with their ancillary balance of proofs is also addressed. With the EU now proposing

similar provisions by way of a proposed directive, the challenges of
developing effective EU wide regimes, recognising the different traditions
of the member states needs to be recognised and acknowledged, with
Swinton arguing that the EU has much that it can learn from the UK
experience in this area.

The fourth part of this book takes trafficking in human beings (THB)
as its focus, a subject matter seen as being in much need of reform at an
EU level, with a new directive, post Lisbon, having recently been enacted,
and now, at the time of writing, being implemented in the member states
of the EU. This area is explored by Alex Balch, in conjunction with Glynn
Rankin. They examine whether policing can respond to the new challenges
being presented by EU. Maria O'Neill, writing from a legal perspective,
further examines THB and the EU justice and law enforcement framework
in light of the European Neighbourhood Policy (ENP), an external policy
of the EU in which it engages with most of the countries neighbouring the
EU.

Balch and Rankin argue that one of the main reasons stated at the time
of the delayed UK opt in to the new THB directive, Directive
2011/36/EU,[17] was to maintain the UK's world leader status in THB. They
ask whether this accession was simply an act of political symbolism, or
whether it was as a result of grass roots policing developments, separate
from government policy. The authors explore the current reforms in UK
policing, in the context of THB policing, where no additional resources
have been allocated to deal with THB in the UK, while there are on-going
cost savings measures in UK police forces. They question whether the
police, independent of new policing strategies or a direct government
policing plan can effectively deal with this transnational crime. Balch and
Rankin conclude that there is a general consensus underpinning the EU's
approach to THB, requiring a holistic integrated approach to both the
strategy and planning in this crime area, with that approach being required
at the local, national and international basis.

O'Neill explores further the external transnational basis of the new
THB legal framework, focusing on the EU's legal relationships with its
Eastern Neighbours. With the EU likely to prioritise multilateral solutions

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[17] Directive 2011/36/EU of the European Parliament and of the Council of 5 April
2011 on preventing and combating trafficking in human beings and protecting its
victims, and replacing Council Framework Decision 2002/629/JHA, OJ L 101,
15/04/2011, 1.

in its external relations, in external security and law enforcement matters, to shared problems, it is likely that both the South East European Law Enforcement Centre (SELEC)[18] and the Central Asian Regional Information and Coordination Centre (CARICC),[19] in Kazakhstan, will be key partners in this area. This will be in addition to direct relationships with other ENP countries. Practitioners across the EU have identified an increase in the number of THB victims from Central and South-Eastern Europe. Many of these countries are represented in the SELEC and CARRIC law enforcement centres. While the detail of the relationships of individual countries with the EU would need to be examined on a case by case basis, Moldova, a member of SELEC, and Azerbaijan, a member of CARRIC, are taken as individual case studies in this chapter.

The final part of this book continues the theme of the external relations of the EU, and looks at transnational policing: the bigger picture. Three chapters take up this theme, with Daniela Irrera examining the externalization of the EU Internal Security Strategy in the framework of multilateralism: the case of the fight against Transnational Organised Crime. Francesca Longo, examines the externalization of the EU Internal Security Strategy in the framework of multilateralism: the case of security sector reform, in her chapter, with Saskia Hufnagel, moving further from the immediate European neighbourhood, writing on European Police Cooperation Frameworks: A Model for Australian Intergovernmental Coordination?

The EU sees its internal and external security policy as being inextricably linked. This can be seen in the focus in the Internal Security Strategy on the interlinking of internal security-related priorities with the political dialogues engaged in by the EU with third countries and regional organisations,[20] to include linking in with the wider European Security Strategy.[21] In addition, the European External Action Service, the new (repackaged) diplomatic service of the EU, have been invited to participate

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[18] Whose membership comprises Albania, Bosnia & Herzegovina, Bulgaria, Croatia, Greece, Hungary, FRY Macedonia, Moldova, Montenegro, Romania, Serbia, Slovenia and Turkey http://www.secicenter.org/.

[19] Whose membership comprises Azerbaijan, Kazakhstan, Kyrgyz Republic, Russian Federation, Tajikistan, Turkmenistan and Uzbekistan. http://www.caricc.org/index.php?lang=english.

[20] Communication from the Commission, The EU Internal Security Strategy in Action, 3.

[21] Ibid. 15.

with these developments, with the Police and Judicial Cooperation in Criminal Matters (PJCCM) Committee on Internal Security (COSI) to meet regularly with the CFSP's Political and Security Committee.[22] While operational issues may be about to start at some levels, with non-EU third countries, much of the work that is currently being envisaged is at the political/ international relations level. Initial structures need to be put in place between countries before effective and efficient active policing can truly begin. In addition many non EU countries see the need of updating and reforming their own law enforcement and justice structures, as they find themselves at different stages of transition, either from being post-Soviet states, or after the varying levels of changes of the Arab Spring.

Irrera focuses on transnational organised crime (TOC) in the context of the externalisation of the EU internal security strategy. She argues that while TOC continues to be seen as a national law enforcement issue, some significant changes are occurring in the international system. With organised crime and organised criminals progressively showing the ability to operate at a global level, combining their activities with other problem groups, such as terrorists, and establishing their own areas of operation, capturing or exploiting weak or failed states. As she points out, in cases of war, organised crime groups effortlessly fill the grey zones which develop. This requires not only a military response, to deal with the war, but also a more adequate global strategy. The changing perception of TOC in practice is requiring a multilateral response, one which is envisaged in the EU's European Security Strategy, and the externalisation of its internal security concerns. The EU holds the view that EU's own internal security arrangements could be re-assembled in other parts of the world.

Longo moves this discussion of the externalisation of the EU's internal security strategy forward, focusing on the EU's approach to Security Sector Reform (SSR). SSR has dramatically emerged as a key concept in international activity since the end of the 1990s. SSR has also been an underpinning concept of the EU's concepts and practice in external relations, from the outset, even if it has only been expressly referred to since the mid 2000s, with AFSJ now forming an important part of the EU's foreign policy, in light of the fact that many of the countries that the EU wants to engage with are seen as being countries in transition, particularly with regard to law enforcement and justice matters. The main concepts underpinning SSR, as pointed out by Longo, are the

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[22] Ibid.

interdependence between state security and the security of individual, the interconnection between domestic security and external security, and the connections between a hard security policy and domestic security. The specific dynamics of the EU's external action is examined in this context.

Further away from the EU, Australia is examined by Hufnagel in the final chapter. There are lessons which have been learnt in an EU context that can be transferrable to other cross border policing frameworks, and visa versa. This issue is examined by Hufnagel with a chapter on the application of EU police cooperation frameworks to Australia. Hufnagel points out that the two most important EU strategies of potential value for Australia are the EU legal frameworks and the regional cooperation frameworks, such as the Nordic Police Cooperation Scheme. Recognising that lessons can also be learnt from other former colonies and federal states such as the United States and Canada, lessons are also still be learnt from the EU's formal cooperation frameworks, which are relatively lacking in Australia, with Australian police cooperation predominantly taking place at the informal police-to-police level, despite the existence of two federal law enforcement agencies, the Australian Federal Police and the Australian Crime Commission.

The development of the EU Internal Security Strategy presents new challenges for, not only the EU's institutions and agencies, from a policy and practice perspective, but its implementation at a security level opens up new challenges in the context of fundamental rights and justice. Many academic authors have raised the issue of the imbalance in development of the Area of Freedom, Security and Justice, pointing out that there has been significant development under the heading of security, but that the freedom and justice elements of the project are lagging behind. In addition the perceived need to develop close working relations with third countries, not only in the EU's immediate neighbourhood, but across the globe, many of which do not operate on the basis of liberal democratic principles, poses new and complex challenges for the maintenance of the rule of law, and the fundamental principles that underpin, not only the EU, but also each of its individual member states. The EU's Internal Security Strategy must be seen as a work in progress, with a number of key issues with regard to its development being addressed in the chapters of this book. A full examination of the challenges however, would require not only a wider range of security and law enforcement issues to be covered, but also would require their examination from a wider range of disciplines such as sociology and criminology. It is hoped, however, that this book will make

a valuable contribution to the understanding and critical evaluation of, as well as debates on, the ongoing development of the EU's AFSJ.

Bibliography

Council Decision 2009/371/JHA establishing the European Police Office, OJ L121/37.

Council of the European Union; A Strategy for the External Dimension of JHA: Global Freedom, Security and Justice, Brussels, 30 November 2005, 14366/3/05.

The European Union Counter-Terrorism Strategy, Brussels, 30 November 2005, 14469/4/05.

Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA, OJ L 101, 15/04/2011, 1.

Solana, J., A Secure Europe in a better world, European Security Strategy, Brussels, 12 December 2003.

Stockholm Programme – An open and secure Europe serving the citizen, 2nd December 2009, 17024/09, JAI 896.

SETTING THE SCENE

CHAPTER TWO

EU INTELLIGENCE-LED POLICING: THE CASE OF COUNTER-TERRORISM COOPERATION

ARTUR GRUSZCZAK

The adoption by the EU of an intelligence-led policing model in dealing with serious threats to public order and internal security marked a significant shift in EU internal security policy. A pro-active approach to threat assessment and risk management on the part of relevant EU agencies and the majority of the member states reflects the growing importance of prevention and anticipation in the field of EU internal security. Intelligence-driven cooperation among national police and other law enforcement agencies became a showcase of modern transnational policing in the EU, especially in the light of EU Internal Security Strategy of 2010. Therefore, it is legitimate to take up the issue of EU intelligence-led policing as an analytical and practical solution responding effectively to the pressing challenges in internal security, particularly in the area of counter-terrorism. The model of intelligence-led policing at the EU level is grounded on specific functional and institutional synergies suitable to EU legal and institutional framework as well as national interests and perspectives of the member states. EU cooperation in counter-terrorism is a good test-case, given the high political relevance of this issue as well as its complexity and sensitivity.

Origins and content of intelligence-led policing

In the early 1990s changes in policing gave an impetus to intelligence-driven activities that were motivated by new challenges and tasks resulting from a growing obsolescence of the traditional reactive model of policing. Police forces were less and less efficient in tackling transnational organised crime, cross-border illegal trafficking and terrorist networks, as well as coping with risks and dangers generated in the emerging

cyberspace. National law enforcement services were also challenged by the increasingly sophisticated crime–terror nexus linking large-scale organised crime with terrorist networks. Declining public confidence with law enforcement services, going together with the rapid expansion of private security services and marginalisation of police in some areas of internal security and public order, brought about an increasing pressure on state-led law enforcement agencies to be more effective and more cost-efficient and on police to change its "cop culture."[1] The privatisation of security and self-mobilisation of local civic communities heightened a sense of crisis about public security. The roles of the police institutions reflected the processes of pluralism, disaggregation and fragmentation characteristic of the societies at the end of the 20th century.[2] Some authors such as D H Bayley, even attempted to demystify the real role of the police claiming that "the police do not prevent crime."[3] According to this point of view, backed by research done in the 1970s and 1980s, there was no convincing evidence that the police build-up, measured by the number of police officers, the money spent on police, or the investment in technologies and tools improving police performance had any effect on the incidence of crime.

Numerous sources[4] have pointed out the significance of a report on crime management in the UK prepared by the Audit Commission in 1993.[5]

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[1] Schreier, F., "Human Trafficking, Organised Crime & Intelligence", in *Strategies Against Human Trafficking: The Role of the Security Sector*, Friesendorf C. ed., (Vienna and Geneva: National Defence Academy in cooperation with Geneva Centre for the Democratic Control of the Armed Forces, 2009).

[2] Reiner, R., "Policing a Postmodern Society," *The Modern Law Review* 55, 6 (1992): 777-780.

[3] Bayley, D.H., *Police for the Future* (Oxford – New York: Oxford University Press, 1994), 3.

[4] Schreier, "Human Trafficking"; Gill, P., "Making Sense of Police Intelligence? The Use of a Cybernetic Model in Analysing Information and Power in Police Intelligence Processes," *Policing and Society* 8, 3 (1998): 296-297; Heaton, R., "The Prospects for Intelligence-led Policing: Some Historical and Quantitative Considerations," *Policing and Society* 9, 4 (2000): 337-339; James, A., "The Influence of Intelligence-Led Policing Models on Investigative Policy and Practice in Mainstream Policing 1993-2007: Division, Resistance and Investigative Orthodoxy." A thesis submitted to the Department of Social Policy of the London School of Economics and Political Science for the degree of Doctor of Philosophy, London, September 2011,
http://etheses.lse.ac.uk/221/1/James_The_influence_of_intelligence-led_policing_models_on_investigative_policy_and_practice_in_mainstream_polic

The report, "Helping with Enquiries: Tackling Crime Effectively," contained a critical evaluation of police work in terms of crime indicators and efficiency of law enforcement actions. The Commission's diagnosis was clear:

> "because of a stark lack of technical support and some failures to implement modern management methods, the police are driven to fine-tuning a 1970s-based approach to crime investigation to tackle the 1990s volume of crime. They and the criminal justice system are almost overwhelmed by the volume of crime, and more and more of their effort is absorbed in day-to-day 'fire-fighting'".[6]

The search for alternatives to the traditional model of public policing produced different outcomes. The emphasis placed on proactive approaches resulted in reactivation or reinvention of such systemic solutions as problem-oriented policing, community policing, community-based crime prevention, order maintenance policing, "risk-based" strategies, neighbourhood policing and, last but not least, intelligence-led policing.[7] Intelligence-led policing (ILP) was therefore one of the possible answers to the challenge of a better and more efficient management of public security by law enforcement agencies.

There is no universally accepted definition of intelligence-led policing and the true meaning of the term has never really been settled.[8] Nevertheless, for the purpose of this chapter, it is appropriate to give some

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ying_1993-2007.pdf (accessed July 23, 2012), 22.

[5] Audit Commission, "Helping with Enquiries: Tackling Crime Effectively," Police Paper No. 12, 1993, http://www.audit-commission.gov.uk/subwebs/publications/studies/studyPDF/1079.pdf (accessed July 23, 2012).

[6] Ibid. 39.

[7] Bayley, *Police for the Future*; Shearing, C.D., "The Future of Policing," *Law & Society Review* 30, 3. (1996): 585-606; Jones T. and Newburn, T., "The Transformation of Policing? Understanding Current Trends in Policing Systems," *British Journal of Criminology* 42, 1 (2002): 129-46.

[8] James, "The Influence of Intelligence-Led Policing Models", 20; de Lint, W., "Intelligence in Policing and Security: Reflections on Scholarship," *Policing and Society* 16, 1 (2006): 1-2; Carter D.L. and Carter, J.G., "Intelligence-Led Policing: Conceptual and Functional Considerations for Public Policy," *Criminal Justice Policy Review*, 20, 3 (2009): 316-17; Alach, Z., "The emperor is still naked: How intelligence-led policing has repackaged common sense as transcendental truth," *The Police Journal* 84 (2011): 75-97.

short characteristics of the leading approaches to ILP and highlight certain conceptual elements of intelligence-based policing.

According to Ratcliffe's well respected definition intelligence-led policing is

> "the application of criminal intelligence analysis as an objective decision-making tool in order to facilitate crime reduction and prevention through effective policing strategies and external partnership projects drawn from an evidential base."[9]

Core parts of this definition may be found in an original "paradigmatic" ILP solution adopted by the Kent County Constabulary in the early 1990s.[10]

In another of Ratcliffe's formulations, taking into account a corporate management framework, intelligence-led policing is

> "a business model and an information-organising process that allows police agencies to better understand their crime problems and take measure of the resources available to be able to decide on an enforcement tactic or prevention strategy best designed to control crime."[11]

From this perspective, ILP concentrates on knowledge management to respond effectively to threats and risks posed by criminal groups as business organisations.[12] Intelligence is a set of tools and work practices which help to craft a proper law enforcement strategy and facilitate eventual criminal proceedings. Prevention and the control of crime are subject to well-organised, subtly crafted intelligence that take advantage of

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[9] Ratcliffe, J.H., "Intelligence-led Policing," *Trends & Issues in Crime and Criminal Justice* 248 (April 2003), 3.

[10] Anderson, R., "Intelligence-Led Policing: a British Perspective," in *Intelligence-led Policing. International Perspectives on Policing in the 21st Century*, Smith A. ed., (Lawrenceville, New Jersey: IALEIA, 1997), 5-8.

[11] Ratcliffe, J.H., "Intelligence-Led Policing," in *Environmental Criminology and Crime Analysis*, Wortley R. and Mazerolle L., eds. (Cullompton, Devon: Willan Publishing, 2008), 267. Compare: Ratcliffe J.H. and Guidetti, R., "State Police Investigative Structure and the Adoption of Intelligence-Led Policing," *Policing: An International Journal of Police Strategies and Management* 31, 1 (2008): 109–28.

[12] Gottschalk, P., "Managing criminal organisations," *International Journal of Police Science & Management* 10, 3 (2008): 289-301.

technologically enhanced information and data management. In this context, policing consists in acquiring, gathering and processing information in order to offer a comprehensive "product" that is either a specific set of data or a tailor-made solution facilitating threat assessment and risk reduction.[13]

Organisational excellence, understood as the capacity to deliver superior performance that meets the expectations of stakeholders,[14] is highlighted by followers of another conceptual approach. In this regard, ILP is associated with particular organisational structures, such as intelligence units with analytical capacity, and the use of task groups to direct proactive undertakings.[15] It is suggested by den Hengst and ter Mors that ILP should underpin a "community of intelligence" conceived as "a large non-hierarchical network that, through sharing content and process related issues, increases the situational awareness of analysts and speeds up the development of analytical work practices for intelligence-led policing."[16] To be effective, ILP should provide an organisational framework not only for the community of intelligence, linking law enforcement agencies with national intelligence services, but also to contribute to the building of new relationships between the intelligence community and local authorities as well as other relevant public actors.[17] ILP is then getting closer to community-oriented policing in the way that it is configured, in a form that enables national intelligence agencies to utilise information and data collected in the fieldwork.[18]

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[13] Dorn, N., "European Strategic Intelligence: How Far Integration?," *Erasmus Law Review* 1, 5 (2008): 165-66.

[14] Katzenbach, J.R., and Smith, D.K., *The wisdom of teams: Creating the high-performance organization* (New York: HarperCollins, 2008).

[15] Heaton, R., "Intelligence-Led Policing and Volume Crime Reduction," *Policing* 3, 3 (2009): 293.

[16] den Hengst, M., ter Mors, J., "Community of Intelligence: The Secret Behind Intelligence-Led Policing," 7
https://www.politieacademie.nl/kennisenonderzoek/Lectoraten/lectointelligence/Documents/PID2397493.pdf (accessed July 22, 2012).

[17] O'Brien, K.A., "Managing national security and law enforcement intelligence in a globalised world," *Review of International Studies* 35, 4 (2009): 910.

[18] Innes, M., Abbott, L., Lowe, T., Roberts, C., "Seeing like a citizen: field experiments in 'community intelligence-led policing'," *Police Practice and Research* 10, 2 (2009): 99-114; Tilley, N., "Problem-oriented policing, intelligence-led policing, and the national intelligence model," Crime Science Short Report Series (London: Jill Dando Institute of Crime Science, 2003).