

Issues in Transnational Crime

Cliff Roberson, LL.M, Ph.D.

Greetings

It is a pleasure to be afforded this opportunity to convey some of my conclusions and opinions regarding transnational crime. I do not hold myself out as an expert on the subject, but merely a scholar trying to learn more about the issues. My presentation is based on my personal opinions and conclusions. It is not approved or endorsed by any institution. You must remember that each of us when we form opinions and conclusions, they are filtered through our cultural upbringing. I was born and raised in South Texas and educated in the Midwest and on the East and West Coasts. That is the filters by which my conclusions and opinions are formed.

The Nature of Transnational Crime?

"Transnational crimes" are not only international (involves misconduct that cross borders between countries), but crimes that by their nature involve border crossings as an essential part of the criminal activity. Transnational crimes also include crimes that take place in one country, but their consequences significantly affect another country. Examples of these crimes include: human trafficking, smuggling or trafficking of goods (arms trafficking and drug trafficking), sex slavery, terrorism offences, torture and apartheid. Transnational organized crime refers specifically to transnational crime carried out by organized crime organizations.

Globalization has increased the flows of people, information and capital across borders. Globalization, together with advances in technology, has contributed to a rise in transnational crime, such as drug trafficking, people trafficking, people smuggling and money laundering.

Criminals no longer recognize national borders. And so our collective response to crime must therefore also overcome our borders.

Whose Problem is it?

One major issue in the prevention of transnational crime is the failure of nations to recognize that their country may be a significant part of the problem. For example, in the United States most people feel that the violence in Mexico is Mexico's problem and that all the U.S. needs to do is to build a fence to keep the violence and crime away from the U.S.

The Southern border of the United States and the Northern Border of Mexico is a dividing line between two great countries. The interaction between the two countries is highly complex and very active. It is estimated that there are close to one million people legally crossing the border between the United States and Mexico each day. How large is the flow of illegal immigrants is unknown, but in 2009 over 270,000 persons attempting to illegally cross the border were arrested (Wagner, 2011)

The border is presently one of the most violent border regions in the world. Daily there are newspapers reports of violent acts committed on the citizens who live in that region. In addition, there are numerous violent acts committed on government officials, including law enforcement personnel.

It should be clear that Mexico's problems of violence and corruption is caused to a great extent by its proximity to the United States. The United States is the world's largest illegal drug market, and the force of economic demand means that the countries supplying the demand including Mexico are trapped in a very bad position. Because of this market and the illicit trade it creates, the illegal drugs flow northward from Mexico and billions of U.S. dollars flow back southward into Mexico. The illicit market demands and the guns used by the individuals involved in the illicit market that flow southward from the U.S. to Mexico are largely responsible for Mexico's present level of violence (Stewart, 2011).

Another problem is that the United States is deporting illegal immigrants who have been convicted of serious crimes in the U.S. to Mexican border cities. Ciudad Juarez Mayor Jose Reyes blamed U.S. deportation policy for contributing to his city's violence, saying that of the 80,000 people deported to Juarez in the past three years, 28,000 had U.S. criminal records -- including 7,000 convicted rapists and 2,000 convicted murderers. According to Reyes, the criminal deportees have contributed to the violence in Juarez, which has reported more than 2,200 murders in 2011. Reyes and the other Mexican mayors said that when the U.S. deports criminals back to Mexico, it should fly them to their hometowns, not just bus them to the border. Juan Hernandez, founder of the Center for U.S.-Mexico Studies at the University of Texas at Dallas and former director of Mexico's Presidential Office for Mexicans, stated that he has spoken to the border city mayors, and they don't believe the U.S. is doing enough to help prevent the violence (Macedo, 2010).

U.S. Immigration and Customs Enforcement (ICE) transports the majority of Mexican criminal aliens back to Mexico on buses. Since they're often held in U.S. detention centers near the border prior to deportation, busing them to Mexican border cities is much less expensive than flying them to the interior of the country. Many U.S. citizens contend that say the Mexican lawmakers are simply trying to pass the buck to the U.S. and its taxpayers. They contend that the Mexicans should take responsibility for their criminals, who are putting both Mexican and American lives in danger. In 2011, the ICE suspended the removal of Mexican nationals with criminal records to the border towns in Mexico.

My country, the U.S., needs to stop considering the violence as solely a Mexican problem and accept its role in the present situation. The U.S. provides the drug market and the weapons used by the cartels to protect their trade.

Anti-money Laundering/Proceeds of Crime

As noted earlier, the Mexico-US drug trade produces billions of dollars for the traffickers. Socriminal's next step is to launder the money. As noted by the Law Enforcement, Organized Crime and Anti-Money-Laundering Unit (Unit) of UNODC (United Nations Office on Drugs and Crime), money is one of the prime reasons for engaging in almost any type of criminal activity. The unit defines money-laundering as the method by which criminals disguise the illegal origins

of their wealth and protect their asset bases, so as to avoid the suspicion of law enforcement agencies and prevent leaving a trail of incriminating evidence.

Terrorist Financing of the Financial Action Task Force (FATF) is the main international anti-laundering body. FATF was established by the G-7 Summit that was held in Paris in 1989. The Task Force was given the responsibility of examining money laundering techniques and trends, reviewing the action which had already been taken at a national or international level, and setting out the measures that still needed to be taken to combat money laundering.

Through the Global Program, FATF encourages states to develop policies to counter money-laundering and the financing of terrorism, monitors and analyses related problems and responses, raises public awareness about money-laundering and the financing of terrorism, and acts as a coordinator of initiatives carried out jointly by the United Nations and other international organizations. FATF also has the power to “black-list” countries that fail to meet the standards and recommendations set forth by FATF.

UN General Assembly Resolution 60/288 encouraged states to implement the comprehensive international standards embodied in the 40 Recommendations on Money-Laundering and Nine Special Recommendations on Terrorist Financing of FATF.

Initially developed in 1990, the 40 Recommendations were revised in 1996 to take into account changes in money laundering trends and to anticipate potential future threats. In 2003, they revised and updated. In addition, various interpretative notes were adapted. The interpretative notes are designed to clarify the application of specific recommendations and to provide additional guidance.

The Unit's mandate was set forth in 1998 by the Political Declaration and the Measures For Countering Money-Laundering adopted by the General Assembly at its twentieth special session. The declaration broadened the scope of the unit's mandate to cover all serious crime, not just drug-related offences. The principle instruments in combating money laundering are the United Nations Convention against Transnational Organized Crime, which was adopted by General Assembly resolution 55/25 of 15 November 2000.

The Law Enforcement, Organized Crime and Anti-Money-Laundering Unit of the United Nations Office on Drugs and Crime (UNODC) is assigned the responsibility for carrying out the United Nation's Global Program against Money-Laundering, Proceeds of Crime and the Financing of Terrorism. The unit was established in 1997 in response to the mandate given to UNODC through the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988. The broad objective of the global program is to strengthen the ability of nations to implement measures against money-laundering and the financing of terrorism and to assist them in detecting, seizing and confiscating illicit proceeds, as required pursuant to United Nations instruments and other globally accepted standards, by providing relevant and appropriate technical assistance upon request.

The forty recommendations are considered as a complete set of counter-measures against money laundering covering the criminal justice system and law enforcement, the financial system and its regulation, and international co-operation. The Recommendations have been adopted by many international bodies and countries. The Recommendations are designed in a

manner to ensure that they are neither complex nor difficult to implement and do not compromise the freedom to engage in legitimate transactions or threaten economic development. The Recommendations contain principles for action and allow countries a measure of flexibility in implementing them. While the recommendations are not a binding international convention, many countries have made a political commitment to combat money laundering by implementing them.

According to the FATF, terrorists and terrorist organizations also rely on money to sustain themselves and to carry out terrorist acts. Money for terrorists is derived from a wide variety of sources. While terrorists are not concerned with disguising the origin of money, they are concerned with concealing its destination and the purpose for which it is being used. Accordingly, terrorists and terrorist organizations employ similar techniques to those used by money launderers to hide their money.

A key factor in combating money laundering, according to UNODC, is the ability to prevent and detect money-laundering operations. The office contends that the application of intelligence and investigative techniques is an effective way of detecting and disrupting the activities of terrorists and terrorist organizations.

According to UNODC, money-laundering fuels corruption and organized crime. The office also notes that corrupt public officials need to be able to launder bribes, kick-backs, public funds and, on occasion, even development loans from international financial institutions. In addition, organized criminal groups need to be able to launder the proceeds of drug trafficking and commodity smuggling. As noted by the UNODC, terrorist groups use money-laundering channels to get cash to buy arms. The social consequences of allowing these groups to launder money can be disastrous. The unit contends that taking the proceeds of crimes from corrupt public officials, traffickers and organized crime groups is one way to stop deter this type of criminal activity.

Criminals are taking advantage of the current globalization of the world economy by transferring funds quickly across international borders. Objectives of the Global Program against Money-Laundering, Proceeds of Crime and the Financing of Terrorism include: To assist in the achievement for all States to adopt legislation that gives effect to the universal legal instruments against money-laundering and countering the financing of terrorism; to provide the states with the necessary knowledge, means and expertise to implement national legislation and the provisions contained in the measures for countering money-laundering; to assist beneficiary States in all regions to increase the specialized expertise and skills of criminal justice officials in the investigation and prosecution of complex financial crimes, particularly with regard to the financing of terrorism; to enhance international and regional cooperation in combating the financing of terrorism through information exchange and mutual legal assistance; and to strengthen the legal, financial and operational capacities of beneficiary States to deal effectively with money-laundering and the financing of terrorism.

UNODC provides assistance to governments who confront criminals involved in the laundering of the proceeds of crime through the international financial system. The office also provides law enforcement authorities and financial intelligence units with recommended strategies to counter money-laundering, advises on improved banking and financial policies and assists national financial investigation services. The assistance also includes granting technical

assistance to authorities from developing countries, organizing training workshops, providing training materials and transferring expertise between jurisdictions.

The UNODC's Legal Advisory Section and International Monetary Fund (IMF) has drafted model laws for both common law and civil law legal systems, to assist countries in setting up their anti-money-laundering/countering the financing of terrorism. Currently, there are three model laws that countries may use; the 2005 UNODC Model-Legislation on Money-Laundering and Financing of Terrorism, the 2009 Model Provisions for Common Law Legal Systems on Money-Laundering and the Terrorist Financing, Preventive Measures and the Proceeds of Crime. The model laws serve as guidelines for states who are in the process of upgrading, encompassing their laws to meet the new international standards. The model laws may be adjusted or modified to meet the particularities of each nation's legal system and administrative culture.

Smuggling and Trafficking in Humans

People smuggling and trafficking in humans are presently receiving a lot of press. While deal with the movement, trafficking in persons and people smuggling are different. Trafficking does not require an illegal border crossing, nor is it necessarily transnational, such as in cases of internal trafficking, whereas people smuggling involves an illegal border crossing. While victims of people trafficking are regarded as commodities, individuals who are smuggled across borders are more like clients who pay for the service.

The UN Convention against Transnational Organized Crime (UNTOC), contains a Protocol against the Smuggling of Migrants by Land, Sea and Air (the Smuggling Protocol) and a Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (the Trafficking Protocol).

In general, in people smuggling, the individual being smuggled has consented to illegally crossing a border. Consent can be somewhat ambiguous with trafficking. Consent is irrelevant when the individual is a child. In some cases, trafficked victims have consented to the movement; however, not to the terms or the consents are fraudulent or deceitful. If consent is given under coercion to comply, the consent is also meaningless.

Protection from Violence,

According to the World Health Organization (WHO), each year, more than 1.6 million people worldwide lose their lives to violence. In addition, WHO reports that for every person who dies as a result of violence, many more are injured and suffer from a range of physical, sexual, reproductive and mental health problems. Violence places a massive burden on national economies, costing countries billions of US dollars each year in health care, law enforcement and lost productivity. WHO works with partners to prevent violence through scientifically credible strategies that are conceived and implemented in relation to causes at the levels of the individual, family, community and society. WHO presented the first World report on violence in 2002. By 2011, more than 30 governments had organized national launches or policy discussions about the

prevention of violence. In 2007, the United Nations' General Assembly adopted the resolution declaring 2007 United Nations Year for Violence Prevention.

The World report on violence and health was the first comprehensive review of the problem of violence on a global scale. The report focused on what violence is, whom it affects and what can be done about it. The report was the end product of a three years' work and benefited from the participation of over 160 experts from around the world, receiving both peer-review from scientists and contributions and comments from representatives of all the world's regions.

The World report noted that because of the huge, and often hidden, complexity behind violence it would take a wide range of actors to successfully implement violence-prevention programs. The report noted that assistance is needed from health professionals to community workers, from law enforcement officials to school authorities, from urban planners to media campaigners – because violence prevention has to form many alliances and take various forms. The report concluded that most important of all, tackling violence prevention requires political and financial commitment. The engagement of governments and other stakeholders at all levels of decision-making – local, national and international was crucial to the success of any programs designed to prevent violence.

Using the WHO World report as a guideline, many governments world have developed national injury prevention policies, strategies and/or plans of action. Although the instruments used in the various nations vary in nature and scope, they provide a guide to the nations' efforts to prevent injury-related death and disability. For example, WHO's World report on road traffic injury prevention and World report on violence and health called upon nations to develop procedures for the prevention of road traffic injuries and violence. WHO recommended that such policies, strategies and plans of action be definite and contain objectives, priorities, timetables and mechanisms for evaluation. The report suggests that responsibility be assigned for all stages of their implementation and that they be developed in a participatory manner. In addition, the implementation should involve both government and nongovernment actors alike. Some policies were developed by and for a single sector such as health, transport, justice or education, but ideally they should be developed in a multi-sectorial fashion. It was also recommended that policy makers and planners take into account at an early stage the human and financial requirements that will be necessary for their implementation.

The World report concluded that national planning to prevent violence must be based on a consensus developed by a wide range of governmental and nongovernmental actors. The planning should include a timetable and evaluation mechanism, and enable collaboration between sectors that might contribute to preventing violence, such as the criminal justice, human rights, education, labor, health, and social welfare sectors.

The report noted that many countries do not have a national plan nor a coordinating agency or department that deals with violence comprehensively. And that in many countries the response is focused on law and order, with only limited strategic cooperation with other authorities to help reduce violence. The report opines that the formulating and implementing of a coherent and multi-disciplinary national plan is the first critical step towards violence prevention.

According to the report most national injury prevention policies, strategies and/or plans of action currently being used originated in high-income countries. Few low- and middle-income countries have developed such policies. Of those which presently exist, some are comprehensive pertaining to all injury-related mortality and morbidity, while others focus on a particular type of injury such as road traffic injuries or violence-related injuries or a particular group of intended beneficiaries such as children, youth or women. The success of these policies, strategies and plans depend on the burden posed by these public health concerns in the country and the country's willingness and ability to recognize these as issues which need to be addressed and to take action.

The World report concludes that the important primary prevention interventions for reducing violence include: prenatal and prenatal health care for mothers, as well as preschool enrichment and social development programs for children and adolescents; training for good parenting practices and improved family functioning; improvements to urban infrastructure, both physical and socioeconomic; measures to reduce firearm injuries and improve firearm-related safety; media campaigns to change attitudes, behavior and social norms.

The report notes that first two interventions are important for reducing child abuse and neglect as well as violence perpetrated during adolescence and adulthood. The latter three can have significant impacts on several types of violence such as youth and collective violence or suicide.

In conclusion, the report notes that violence is not an intractable social problem or an inevitable part of the human condition. Nations and citizens can do much to address and prevent it, but the world has not measured the size of the task and does not yet have all the tools to carry it out. The report notes that the global knowledge base is growing and much useful experience has already been gained which needs to be implemented. Violence is associated with the majority of transnational crimes, particularly crimes such as human trafficking, child pornography, and gun smuggling. In addition violence is frequently used as a weapon in international crimes such as war strategy and child warriors.

Organized Crime

Transnational organized crime involves the planning and execution of illicit business ventures by groups or networks of individuals working in more than one country. These criminal organizations use systematic violence and corruption to achieve their goals. Transnational crime ring activities weaken economies and financial systems and undermine democracy. These networks often prey on governments that are not powerful enough to oppose them, prospering on illegal activities, such as drug trafficking, that bring them immense profits.

According to the United Nations Office on Drugs and Crime, organized crime is now global. Illicit goods are being moved from one continent, trafficked across another and marketed in a third. These goods can include drugs, people, diamonds, firearms, wildlife or timber, or may involve maritime piracy or cybercrime. Transnational organized crimes include money laundering, smuggling, and human trafficking especially for the sex industry, illicit drug trafficking and high tech crime.

Some Organizations that Combat Transnational Crime

Convention on Cybercrime: This convention attempts to create a common criminal policy aimed at the protection of society against cybercrime, inter alia, by adopting appropriate legislation and fostering international co-operation.

United Nations Crime and Drug Conventions: Has text of the relevant conventions as well as a summary and access to the status of treaty adherence.

United Nations Convention against Transnational Organized Crime and its Protocols: The United Nations Convention against Transnational Organized Crime is the main international instrument in the fight against transnational organized crime.

United Nations Conventions on Terrorism: Full text of various United Nations Conventions on Terrorism

United Nations Office on Drugs and Crime (UNODC)

UNODC is mandated to assist Member States in their struggle against illicit drugs, crime and terrorism through research, technical cooperation projects and assistance with ratification and implementation of international treaties.

Asia Pacific Group on Money Laundering (APG): The purpose of APG is to facilitate the adoption, implementation and enforcement of internationally accepted standards against money laundering and the financing of terrorism. Focus is on Asia Pacific Countries.

Financial Action Task Force (FATF): The FATF is an inter-governmental, policy making body whose purpose is the development and promotion of policies, both at national and international levels, to combat money laundering and terrorist financing

International Money Laundering Network (IMOLIN): IMoLIN is an Internet-based network assisting governments, organizations and individuals in the fight against money laundering.

Interpol: The International Criminal Police Organization - Interpol, including governance, fact sheets, publications, regional activities and current areas of specialization (terrorism, drugs, financial crime and forensic).

United Nations Commission on Crime Prevention and Criminal Justice: The Commission's mandate priority areas include international action to combat national and transnational crime, including organized crime, economic crime and money laundering as well as improving the efficiency and fairness of criminal justice administration systems.

United Nations Commission on Narcotic Drugs (CND): The CND is the central policy-making body within the United Nations system dealing with drug-related matters. It analyses the world drug situation and develops proposals to strengthen the international

drug control system to combat the world.

United Nations Counter -Terrorism Committee: The CTC monitors the implementation of resolution 1373 by all States and tries to increase the capability of States to fight terrorism.

United Nations Interregional Crime and Justice Research Institute: An institute established in 1967 to support countries worldwide in crime prevention and criminal justice. The Institute carries out research, training, information dissemination and technical cooperation.

United Nations Office on Drugs and Crime (UNODC):UNODC is mandated to assist Member States in their struggle against illicit drugs, crime and terrorism through research, technical cooperation projects and assistance with ratification and implementation of international treaties.

Transnational crime is increasingly sophisticated and requires a sophisticated response – one that employs new knowledge, skills, technologies and operational mandates. The **Centre for Transnational Crime Prevention (CTCP)**, Faculty of Law was established in 2000 by the University of Wollongong in Australia to tackle the ever progressive threat of transnational crime.

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