

## **Recent International Efforts to Address Transnational Crime**

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I wish to thank our hosts for inviting me to participate in this meeting. The *International Centre for Criminal Law Reform and Criminal Justice Policy* welcomes every opportunity to engage in the ongoing comparative discussion on the new crime prevention challenges that are emerging in the so-called .new borderless world.. These challenges are enormous. I would also suggest to you that many of us have yet to fully understand their practical and immediate implications for criminal law and criminal justice.

The incredibly fast pace of change in the areas of communication and information technology is one with which all nations of the world seem to have a hard time keeping up. In particular, advances in cybernetics and communication technologies have created new situations which sometimes appear to be beyond individual governments' current ability to regulate. Such changes affect all aspects of life. They have already had significant consequences for

several areas of activities in which governments have traditionally played an important regulatory role. Migration of people, international trade and the transnational movement of goods and services, financial and other business transactions are but a few examples of areas where the individual and collective ability of states to control and regulate human transactions in the name of collective interests seem to have been significantly eroded.

The forces of 'globalisation' have had a profound impact on the world's leading economies. Today, the leading countries of Asia know this lesson well, and North America and Europe are rapidly feeling the effects of the difficulties faced by Asian economies.

High-tech currency trading, growth in overseas investment, lowering of tariff barriers and other integrating trends have created a world where economic autonomy for the nation-state is impossible and financial stability cannot be taken for granted. However, beyond economic fluctuations, even greater anxieties loom in the form of new opportunities for organised crime, fraud and corruption. Many forms of crime depend on the presence of business opportunities, if illegal ones, and it is only logical that the new markets and global opportunities present increased opportunities to criminal and corrupt economic actors.

These developments are now major sources of concern for the international criminal justice community. Since 1988, these concerns have led to growing international cooperation against transnational crime. While initial multilateral agreements, as you may recall, took trafficking in narcotic drugs as their focus, recent efforts demonstrate an equal if not greater concern with the financial structures and networks that facilitate transnational criminal activities.

The *United Nations Commission on Crime Prevention and Criminal Justice* recognizes the urgency of these challenges. It has decided that the forthcoming Tenth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, which will be held in Vienna in April 2000, will focus on *Meeting the Challenges of the 21st Century*. Not surprisingly, transnational organized crime, corruption, computer crimes will all figure prominently on the proposed agenda for discussion.

### **The Deterritorialized Nature of Crime**

Crime, of course, is increasingly becoming deterritorialized. as criminal elements are quick to use new means of communication and transportation for their own purposes. The deterritorialized nature of many dangerous forms of criminal activity is offering huge challenges to criminal justice systems around the world. Yet, you may have noticed that public concerns about crime often seem to remain annoyingly parochial. People seem to be more immediately concerned about incidents happening in their own back yard than they are with those occurring on the other side of the planet. It is hard for members of the public to comprehend how crimes occurring in far and distant places can directly affect their well being. Little do they realize that crimes committed in other countries may have a direct

influence on their own environment, their safety, or the integrity of their own political and financial institutions. As a result, public opinion is rarely sympathetic to the idea that their own law enforcement and criminal justice resources should be invested in preventing crime outside of the country's borders.

### **The Transnational Dimensions of Crime**

Almost none of the transnational crimes which now preoccupy the international community are new. Illegal trafficking in firearms and other weapons, in migrants, in illicit substances, in human beings to exploit their labour (a modern form of slavery), in children and other human beings for their sexual exploitation, or terrorism, tax evasion, crimes against the environment, counterfeiting currencies, financial and credit fraud, stock market manipulations, securities fraud, and corruption of public officials are hardly new forms of criminality. They simply have been transposed to a new mammoth scale by the same process of deregulation of transnational exchanges and the greater freedom of movement of goods, information, and people which is demanded by a globalized economy lead by free-trade imperatives. The magnitude of their detrimental consequences, both in terms of human suffering and social and economic costs, has also increased proportionally if not exponentially.

To be sure, some of these crimes have taken new orientations and new dimensions due to concurrent technological developments. In the absence of the relevant technology, some crimes against the environment could simply not be committed a decade ago, neither could some dangerous genetic manipulations. Trafficking in human beings for the purpose of stealing their vital organs only became a viable criminal activity, once the organ transplant technology became widely available. Likewise some new forms of criminal invasion of an individual's privacy have been made possible by new electronic and laser technology. The predicted huge and rapid advances in biological technology might yet produce new varieties of old crimes.

In spite of all this, I would nonetheless suggest to you that the most significant difference in many if not most of these new manifestations of transnational crime is really the ease with which they can avoid or circumvent national control efforts. They are perhaps invincible as long as individual states do not learn to work together.

### **The Limits of National Crime Control Efforts**

Historically, the dual concepts of national sovereignty and exclusive state jurisdiction over criminal law matters have played a crucial role in the development of modern criminal justice systems. These notions continue to be reinforced by the United Nations Charter and by international law in general. Several observers, however, are now expressing their preoccupation with the potential consequences of the continued strict application of these

principles in an era where national borders are becoming increasingly obsolete and irrelevant to criminal activities.

It is easy to understand how international cooperation has become, more than ever before, an essential prerequisite to the effective repression of transnational crime. However, a history of nation states jealously safeguarding their jurisdiction over criminal justice matters has produced a world where criminal justice policies, institutions, procedures and laws vary widely and deeply between the many countries of the world, and even between the countries of a single region. These fundamental differences between national systems can of course complicate cooperation between countries and even render it impossible in some cases. In the meantime, as is made plainly obvious by daily incidents, criminals are usually not affected by such subtleties and can go about their business without much fear of detection or apprehension.

When a Latin American drug lord was asked for his views on what would be an ideal world in which his and other criminal organizations could conduct their business, he answered: .A borderless world and weak states.. Ironically, these same .ideal conditions. are also being pursued by the business and financial world, in the name of free competition, free trade, and the general free market ideology. The globalisation of the economy, which is in the obvious interest of big business and transnational corporations, also appears to be in the interest of transnational organized crime. More and more, it seems that the globalisation of the economy has had for its main effect to relegate national governments to the role of by-standers (see: Dobbin, 1998). Public officials themselves seem, in many instances, to have accepted the dangerous no-conservative notion that .less government is necessarily better government..

With today's technology, it is possible to conduct most kind of business, including crime, from just about any point in the world. Weak states always offer a prime target for transnational organized criminal elements. Such states often inadvertently or willfully provide safe-havens from which criminal organisations can operate.

That indeed raises the well know criminological problem of .crime displacement. to a new transnational or global level. In fact, when it comes to fighting transnational crime, it is probably fair to say that a weakness in crime control efforts anywhere in the world is likely to affect the whole of international crime control efforts. Years of international war against drug trafficking have certainly made this lesson amply clear. The same lesson, however, also applies to all forms of transnational criminality. The onus is of course on states, national governments, and national law enforcement agencies to work together and to demonstrate their political will to confront the issue.

In the next few minutes, I would like to offer a few comments on various steps and initiatives that are being taken or considered by governments at the international level. Since the *International Centre for Criminal Law Reform* is part of the United Nations Crime Prevention and Criminal Justice Program, I will choose most of my examples from the context of recent United Nations initiatives. I should note however that national governments' search for more

effective and collaborative means of combating transnational crime has also found expressions in other international and regional fora, including the Organization of American States (OAS), the Council of Europe, the Commonwealth, and the G-7/8.

### **International Cooperation Against Transnational Organized Crime**

While there are a number of important points in the development of an international response to transnational crime, the single most important development to date may have been the 1988 *UN Convention on Trafficking in Narcotic Drugs and Psychotropic Substances*.

The Convention established the benchmark for national action and international co-operation against the global trade in drugs, reputedly the most profitable activity of organised crime. For drug-related crimes, the convention established standards for mutual legal assistance, criminalisation of offences, and provisions against money laundering. By 1997, 136 countries had signed and ratified the Convention, while 13 more had signed but not yet ratified it.

Since the 1988 convention, the most obvious additional international efforts against organised transnational crime, and drug trafficking in particular, have come in the form of action against money laundering (UNDCP, 1997). In this regard, the work of two important organisations is worth noting here:

#### **1. The Basle Committee**

The Basle Committee on Banking Supervision consists of representatives from the central banks and supervisory authorities of the G-10 group of industrialised nations. It exists to improve banking supervision and strengthen prudential standards in member, and increasingly in non-member, countries. In December 1988, it issued its *Statement of Principles on the Prevention of Criminal Use of the Banking System for the Purpose of Money Laundering*. That represented the first significant step towards the international preventive regulation of financial institutions with respect to money laundering. The Statement proposed the expanded the role of national supervisory bodies to include a duty to discourage certain types of money laundering-related transactions.

#### **2. The Financial Action Task Force**

It was the Financial Action Task Force (FATF) that provided . and continues to provide . the impetus to give legislative form to the policy framework set up by the Basle Committee. It was established by the G7 at the Paris Economic Summit in 1989. It has since grown to

include 28 members and now is the leading international body on money laundering policy. Its most important report, and the one to which later reports have largely provided only a gloss, was its first, of April 1990. This report reviewed the nature and extent of money laundering, considered programs in place nationally and internationally to address it, and made 40 recommendations for states to follow in combating money laundering. The recommendations fall into three main areas: the improvement of national legal systems, the enhancement of the role of the financial system, and the strengthening of international cooperation.

There are two subsidiaries of the FATF: the Caribbean FATF, and the Asia-Pacific Group on Money Laundering. The FATF has been and remains the most significant nexus in the emerging international regime against money laundering. It designed the regime, it administers the process whereby member states review each other's implementation of it, and it undertakes the research necessary to ensure that the regime responds adequately to emerging technologies, new laundering trends, and law enforcement needs.

At the December 1994 Summit of the Americas, the heads of state and government of the Western Hemisphere agreed to intensify collective and individual action in a coordinated hemispheric response to drug production, trafficking and related money laundering. At a December 1995 ministerial conference in Buenos Aires, the governments involved endorsed a wide-ranging statement of principles and action plan. The plan encourages nations to ratify the UN Convention and commits them to international information sharing and legal assistance. Subsequent OAS and CICAD initiatives include semi-annual Experts Group meetings geared toward the development of a coordinated anti-money laundering infrastructure in the region, including training, typologies exercises, and the common implementation of Financial Intelligence Units such as, for example, AUSTRAC (Australia), TRACFIN (France), or FinCEN (USA).

A recent FATF report was critical of Canada's failure to have legislation in place to prohibit the physical export of large sums of currency, and to impose an obligation on banks to report suspiciously large transactions, usually in cash. Both of these legal controls are considered vital in the fight against money laundering. Canada is now acting swiftly to implement the required measures.

I should also mention here that the *International Centre* has launched a three year project on action against Money Laundering in the Asia Pacific Region. It will include empirical research (some of which is already available), coordination meetings and the facilitation of delivery of technical assistance to prevent money laundering. This project is undertaken in cooperation with the UN Drug Control Program, the FATF, and the United States and Canadian governments.

### **Priorities for International Cooperation: A Proposed New Convention**

Although the international community is understandably very concerned with the prevention of international incidents of terrorism, there still is a lack of consensus around a shared definition of these crimes. This was responsible for the relative failure of most international fora to mobilize the international community in an effective fight against terrorism. Recently, a statement of priority and a plan of action were adopted by the G-7. It seems, however, that the political nature of that particular form of criminality may continue to create obstacles to the emergence of a strong political consensus to act in a concerted fashion.

There are, however, other areas where international consensus is emerging and effective action is perhaps more likely to be readily achieved. For instance, 1994 marked the adoption of the *Naples Political declaration and Global Action Plan Against Transnational Crime*<sup>1</sup>. Since then, several other regional meetings have emphasized the importance of fully implementing the Naples Declaration and Action Plan. These included the Buenos Aires Declaration on Prevention and Control of Organized Transnational Crime<sup>2</sup> (1995), the Dakar Declaration on the Prevention and Control of Organized Transnational Crime and Corruption<sup>3</sup> (1997), and the Manila Declaration on the Prevention and Control of Transnational Organized Crime<sup>4</sup>.

During its last session, in April 1998, the *United Nations Commission on Crime Prevention and Criminal Justice* expressed once more its concern about the growth of transnational organized crime, which is affecting the political stability and social and cultural values of societies all over the world, threatening national and global security. It reasserted its belief that the increasingly sophisticated and globalized nature of organized crime made international cooperation a crucial element in combating that phenomenon<sup>5</sup>.

It was decided that an open-ended committee should be established for the purpose of elaborating a comprehensive international convention against transnational organized crime and discussing the elaboration, as appropriate, of international instruments addressing trafficking in women and children, combating illicit manufacturing of and trafficking in firearms, their parts and components and ammunition, and illegal trafficking in and transporting of migrants<sup>6</sup>.

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<sup>1</sup> United Nations, G.A. resolution 49/748, annex, ch. 1, sect. A.

<sup>2</sup> United Nations, E/CN.15/1996/2/Add. 1, annex.

<sup>3</sup> United Nations, E/CN.14/1998/6/Add. 1, chap. 1.

<sup>4</sup> United Nations, E/CN. 15/1998/Add.2, chap. 2.

<sup>5</sup> United Nations, E/1998/30; E/CN.15/1998/11, p. 56.

<sup>6</sup> *Idem*, p. 5.

Since the last Meeting of the Commission, there was an open-ended intergovernmental committee meeting in Buenos Aires, which the *International Centre* attended, which did some preliminary work on the draft convention.

The plan is to have the draft convention completed in time for the *Tenth United Congress on the Prevention of Crime and the Treatment of Offenders* (Vienna, in April 2000) and for it hopefully to be adopted during the same year by the Commission and the General Assembly. The idea is to have the proposed Convention ratified by a sufficient number of countries (40 to 60; the exact minimum number of required signatories has yet to be determined) in time for it to come into force before or at the beginning of the next millennium. This is a very ambitious but possibly achievable goal. It certainly provides an acid test of the member states' resolve to effectively address transnational organized crime.

There is not as yet an agreement on the exact scope of the proposed convention and on the nature of the transnational criminality which will be specifically addressed by the instrument. In addition, some forms of transnational crime have also been identified as the potential subjects of additional protocols to the proposed Convention. These include: trafficking in firearms; trafficking in women and children; trafficking in migrants. There are, as one might expect, several outstanding issues which will have to be addressed in the course of the next two years for the Convention to become a viable international instrument.

### **The Example of the Traffick In Firearms**

Before I address directly some of the difficulties that are encountered by member states in the fight against transnational crime and, in particular, the various obstacles to international cooperation in this area, I propose to briefly review with you one particular case of transnational crime: trafficking in firearms. It will serve to highlight some of the problems that have hindered international cooperation so far.

In most countries, firearms regulation schemes themselves tend to concentrate on controlling the legitimate or .authorized. market for firearms. However, the success of attempts to prevent firearms from .falling into the wrong hands. and to limit their irresponsible use necessarily depends also on the success of efforts to curtail the illegal firearms market. In fact, measures to control and regulate the legal firearms market, when unaccompanied by similar vigorous efforts to deter the illegal market, are likely to succeed only in making the illegal market more lucrative and in creating new opportunities for criminals. Based on their analysis of the use of firearms in criminal incidents in Toronto, Axon and Moyer (1994: xiii) emphasized the importance of controlling the circulation of illegal firearms and of preventing their acquisition and misuse by persons who may have already been involved in crime in the past.

In the United States, several studies have documented the relative ease with which criminals, including juvenile offenders, can illegally obtain firearms (Decker *et al.*, 1996;

Sheley and Wright, 1993; 1995; Sheley *et al.*, 1993). Offenders interviewed soon after their arrest in major American cities indicated that they could obtain a firearm within less than a month (68 percent) or even in a day or less (21 percent). Only 7 percent of offenders indicated that they could not get a firearm (Decker *et al.*, 1996: 38). Offenders who admitted being involved in dealing drugs or in gangs reported an even greater ease of access to firearms (*Ibidem*). Several American authors have deplored the relative lack of law enforcement attention devoted to illicit gun markets and have analysed various proposed means to suppress or disrupt the illegal market for firearms, particularly markets serving youths (e.g.: Bilchik, 1996; Cook *et al.*, 1995; Kennedy *et al.*, 1996; Weil *et al.*, 1996). Some authors have suggested that undercover police work could disrupt and shrink the illicit gun market or that law enforcement should, for example, give a higher priority to investigating and prosecuting cases in which a firearm was stolen (Cook *et al.*, 1995; Cook and Leitzel, 1996). However, without necessarily disagreeing with such suggestions, others have also argued that the characteristics of these gun markets make them quite poor targets for law enforcement (Koper and Reuter, 1996: 137).

In theory, there are three major illegal sources of firearms: theft, smuggling and illegal manufacturing. Unfortunately, there is very little information in Canada on any of these activities. In its 1997 Annual Report on Organized Crime in Canada, the Criminal Intelligence Service Canada reported that organized crime groups, and individual criminals, have access to a wide variety of firearms with an increasing predilection for automatic weapons. (1997: 15). According to the same source, these firearms are usually either smuggled into Canada or acquired through criminal activities such as break and enters and thefts (*Ibidem*). There appear to be few reports of illegal manufacturing of firearms in Canada.

Some recent efforts have been made to uncover more information about the nature and the sources of the firearms used in the commission of a crime or in other incidents reported to the police (Axon and Moyer, 1994; Daniel Antonowicz Consulting, 1997; Dom, 1995; Firearm Smuggling Work Group, 1995). That information, however, is limited to incidents in which firearms were recovered by the police and these represent only a small proportion of all the incidents.

### **1)- Stolen Firearms**

According to the 1996 Firearms Report to the Solicitor General by the Commissioner of the RCMP, a total of 4,409 firearms had been reported stolen during the year, and 1,927 of them were restricted weapons (1996: 20). According to the same source, 65,046 firearms have been reported stolen since 1974 and were still in this status at the end of 1996. Close to 60 percent of these firearms were reported stolen in the provinces of Quebec and Ontario alone. A little over 45 percent of these stolen firearms (29,545) were restricted weapons. In addition to these figures, close to 22,000 other firearms were officially reported lost or missing. (*Ibidem*).

A review of firearm occurrences investigated by the Edmonton Police (Dom, 1995: 9) revealed that in the last six months of 1993, there had been 119 cases of stolen firearms. A little over half of these incidents involved prohibited (n=5) or restricted (n=56) weapons, a

finding which may in part reflect the greater probability of a firearm theft being reported by the owner when the firearm is registered. Seventy percent of the thefts had occurred in the home and only eight percent took place in a business (*Idem*).

Beyond the limited information just mentioned, very little is known about stolen firearms in Canada, what happens to them after they are stolen, how often they are recovered, or how often they are used in the commission of a crime. In fact, at present, the Canadian police cannot readily determine if unrestricted weapons found in the course of law enforcement activities have been stolen (Wade and Tennuci, 1994: 41).

## **2)- Firearms Smuggling**

The large number of unregistered restricted firearms recovered by police is often taken as a clear indication that there is an important firearms smuggling and illegal importation problem in Canada (e.g., Axon and Moyer, 1994: xiii; Firearm Smuggling Work Group, 1995: 12). Francis (1995) documents the nature of the large profits that can be made from the illegal sale of smuggled or stolen firearms. The 1997 Annual Report on Organized Crime by the Criminal Intelligence Service of Canada (CISC) suggests that the United States is the source of most legal and illegal firearms in Canada. According to that report, .{i}t is relatively easy for Canadians to acquire firearms in the United States either through a U.S. accomplice or 'straw' purchaser, or directly by themselves. (...) Firearms are smuggled into Canada through normal ports of entry and the numerous unmanned border crossings. (1997: 15). In fact, however, the true extent of the problem of firearm smuggling into Canada is unknown and cannot at present be estimated.

According to the same CISC report, firearms couriers are not necessarily habitual criminals. The smuggling of firearms into the country appears to involve individuals or small groups moving shipments containing between three and twelve firearms (*Ibidem*). The consultations conducted by the Firearm Smuggling Work Group (1995) revealed how little systematic information actually exists on smuggling activities. The Work Group acknowledged that smuggling may be on the increase and that .this could undermine the federal firearms control program. (*Idem*: 1). The consultations also revealed a concern with the import/export system and, in particular, with the free flow of firearms between Canada and the United States and the movement of firearms in transit through Canada. Several specific illegal importation methods were identified during the consultation (*Idem*: 6).

In Canada, immediate sources of firearms for trafficking obviously include the millions of firearms which may be legally purchased or owned in the United States but are either prohibited or restricted in this country. Another source is the huge quantity of firearms available from the Central American sub-region which, as one of the major areas of confrontation during the cold war, was supplied with large numbers of firearms which are still in circulation and available for acquisition by criminal groups (Chloros *et al.*, 1997; United Nations, 1997c).

Several authors have noted that a lack of international cooperation may weaken national efforts to control illegal access to firearms (Goldring, 1997; Hayes, 1997). It is even possible for certain firearm regulation initiatives at the national level to create international problems. For instance, the prohibition of certain firearms in a country, when unaccompanied by a firearm destruction mechanism, may create a surplus of these firearms on the licit or illicit international firearms market. In fact, in spite of arguments to the contrary by opponents of gun control both at the national and the international levels, there is clear evidence of a close interdependence between the success of national and international efforts to regulate the availability of firearms.

National efforts to control the availability of firearms and to control illegal firearms transactions must also be understood in light of the broader issues of the proliferation of such weapons in the world, often for or as a result of military operations, and of the immense existing stock of firearms readily available to illegal markets. Furthermore, to better understand these issues, it may also be important to remember how the whole area of international transfers of firearms and other small weapons is in a relative state of lawlessness.

The United Nations Experts Group on Firearm Regulation found substantial evidence of increasing transnational illicit transfers of firearms, many of which are of military design. Many countries are reporting serious concerns over the increasing numbers of firearms that are illegally imported, smuggled, stolen or trafficked (Hayes, 1997; United Nations, 1997b). However, many countries which have fairly stringent regulations concerning the importation of firearms appear to have fairly lax regimes regarding their export. The United Nations International Study on Firearm Regulation (United Nations, 1998) revealed the wide-spread discrepancies that exist between national efforts to control illegal importation of firearms and efforts to enforce firearms export regulation laws. Countries generally reported that they had no evidence of illegal export of firearms, a surprising observation considering that most of these countries also reported difficulties with illegal importation (*Idem*). Since one has to assume that illegally imported firearms have to be exported from somewhere, such reports leave unanswered the question of how many of them are perhaps exported legally or at least with some form of complicity on the part of officials in their country of origin.

To understand the enormity of the challenge faced by nations wishing to control the illegal traffic in firearms and thus restrict the availability of firearms or certain types of firearms within their borders, one must remember that there are today tens of millions of firearms in the world which can enter the illegal markets. While many of the millions of small arms available were originally designed for use by armed forces, they have unique characteristics that are also of particular advantage for terrorists and criminals (United Nations, 1997c; p. 12). It is therefore important to give adequate considerations to the use of military firearms which enter the civilian market, particularly but not only in post-conflict situations (United Nations, 1997a; p. 5).

### **3)- *Illegal Manufacturing***

According to the United Nations Institute for Disarmament Research, there are approximately three hundred companies in over fifty countries worldwide manufacturing small arms, equipment and accessories (Rana, 1995; p. 4). China, with at least sixteen factories manufacturing small arms, apparently possesses the world's largest industrial capacity for producing infantry weapons. Other countries, like the United States, are known to be making significant investments in research and development on the small arms of the future. The world market is now glutted with small arms that are easily available at low prices. Rana (1995; p.5) noted that many of the small arms used in Rwanda were reported to be shipped in from Uganda where an AK-47 could be obtained for the price of a chicken and that, in Swaziland, the same weapon could sometimes be purchased for a mere six dollars. The illicit production and trade is of course a concern, but the major sources of firearms currently on the market are legal in the sense that they are sanctioned and approved by various states.

#### ***4)- Links Between Licit and Illicit Markets for Firearms***

Researchers who examined various aspects of the illicit light weapons trafficking at the international level have often observed how an artificial distinction between licit and illicit markets for firearms tends to serve as a smoke screen to hide the reality of the relative lawlessness of the international firearms market (Dyer and O'Callaghan, 1998). The distinction regularly made between legal and illegal firearms transactions is most useful within a national context, at least to the extent that there is, as in Canada, a national scheme to regulate the manufacturing, importation, transfer and acquisition of firearms. In such cases, the illegal market refers to these transactions that occur outside or in contravention of existing regulations. However, when the same distinction is used at the international level or in countries where regulations may vary from state to state, it often serves to obscure the fact that these two markets are not as distinct from each other as one may first assume. The distinction between licit and illicit markets may be a mute one (Lock, 1995).

Illegally imported firearms may well have been legally manufactured and exported; legally imported firearms may have been illegally exported; illegally acquired firearms in one location may be legally sold in another; and so on and so forth. It may be very difficult, if not impossible, to control the trafficking in firearms at the national level without addressing the question of the international firearms trade. And, as Goldring (1997; p. 1) argued, it will prove equally difficult to control the illicit international market in firearms without monitoring and controlling domestic access to these weapons. Thus, the importance of linking domestic gun control policies with efforts that span the international arena.

The alarming proliferation of firearms described above may vary somewhat from region to region, but there is no region in the world which remains unaffected (Goldring, 1997; Klare, 1995; Lock, 1995; Mathiak, 1996; Williams, 1995; United Nations, 1997c). The structure of the firearms market, Lock (1995; p. 1) noted, is not amenable to easy controls. The end of the Cold War has opened the floodgates of surplus stocks and huge over-capacities in manufacturing result in the most aggressive marketing with no borderline towards criminal activity. Under such circumstances, he asks: are attempts to bring the black market under control realistic? (Lock, 1995; p.1). Given the state of relative lawlessness which currently

prevails with respect to international firearms trade, it would seem that efforts to control the black market can only fail unless international agreements or regimes are developed to help promote transparency, accountability, restraint and control in light weapons manufacturing, transfers and holdings.

### **5)- Links Between Drugs and Firearms Trafficking**

There is clear evidence of a direct link between individual and group firearms ownership and use and their involvement in drug dealing and sales. In the United States, available information clearly suggests that drug dealers and drug addicts are major participants in illegal transactions involving firearms (Koper and Reuter, 1996: 136). Given the level of violence involved in the illegal drug industry and the risks associated with any involvement in drug-related criminal activities, it is hardly a surprising observation that offenders involved in such activities tend to be frequently and heavily armed. There is also some available evidence suggesting that trafficking and smuggling networks, once established for other purposes, are usually not adverse to also making a profit by smuggling or dealing in illegal firearms (CISC, 1999: 6). Firearms are also known to be used as currency in illicit drugs exchanges, and vice-versa. However, beyond the observation of these and other obvious links between the two types of illegal activities, little is actually known about the exact nexus between them.

Mariño (1996), using newspaper reports, compiled information on several dozen reported cases of clear links between local wars, arms trafficking and drug trafficking in over 35 countries around the world. He attributed this recurring and important nexus between arms and drugs to the combined effect of a dangerous mix of repressive drug prohibition and liberal arms trade policies. A United Nations Panel of Experts noted that "in some regions, drug control efforts have increased the demand for small arms and light weapons by both law enforcement authorities and drug traffickers, thereby raising the level of violence." (United Nations, 1997c: 21). It concluded that there was an apparent link between the availability of weapons, trafficking in drugs and arms, and the level of violence (*Idem*: 20). Goldring (1997: 7) quoted from a report from the Mexican Federal Attorney General's Office providing evidence that guns and drugs frequently followed the same transportation routes, with guns entering Mexico from the U.S.A. while drugs went north from Mexico. Narcotic traffickers are apparently also heavily involved in illegal gun trafficking. "The inter-relationship," Goldring adds, "is evident in the fact that in certain places guns are priced in terms of kilos of cocaine." (1997: 8).

### **Obstacles to International Cooperation**

Among the several priorities for action in the international fight against transnational crime, many relate to the need to remove existing obstacles to effective international cooperation. Removing such obstacles is precisely what the proposed International Convention Against Transnational Organized Crime is setting out to achieve. Its purpose is to promote

cooperation between state parties so that they may address more effectively the various aspects of organized crime having an international dimension. Existing obstacles to international cooperation are sometimes political, sometimes juridical, sometimes cultural, but they often also simply stem from the fundamental differences which exist between various criminal justice traditions, regimes, and practices. Many of them are surmountable provided that there is a clear political will to so.

Another source of very surmountable obstacles to international cooperation comes from the absence in many countries of the necessary material and human resources required to effectively act. This of course raises another form of international cooperation to which I shall briefly come back: the need for developed and wealthy countries to offer financial and technical assistance to countries who require it. This is particularly important in light of a fact to which I have alluded earlier concerning the displacement of transnational activities to the weakest links in the international chain of crime control. The effectiveness of the fight against transnational crime is dependent on the ability of all countries to at least achieve a minimum level of effective crime control.

Briefly, in point form, here are some of the questions and obstacles that countries must address, either through a convention or some other means.

### **1)- Will Countries Criminalize Participation in Criminal Organizations?**

One short-cut to the prosecution of organized criminal activities is obviously to criminalize membership in an organized criminal organization. This particular solution is often proposed as an effective means of combating transnational crime. In fact, several countries have already taken steps in that direction, including Canada during this last year. However, the strategy is not without raising some important enforcement and legal difficulties.

### **2)- Controlling the Laundering of the Proceeds of Crime**

We have seen earlier that this strategy is one which has been privileged so far in the fight against drug trafficking. It is also one which particularly is dependent on the participation of all national governments and the harmonization of national legislation. It requires a high level of concerted action that is not easy to achieve.

### **3)- Preventing Criminal Elements From Hiding Behind the Protection of a Corporate or other Legal Entity**

It is important to ensure that organized criminal organizations not be allowed to dissimulate their activities under the cover of legitimate legal entities and business corporations. The issue of corporate criminal liability can be very complex. There are several countries,

particularly those whose legal system is in the civil law tradition, which may encounter difficulties in introducing the concept in their legal system. This summer, the *International Centre* co-sponsored a colloquium on the subject of corporate criminal liability with the Max Plank Institute in Berlin<sup>7</sup>. The colloquium clearly emphasised the importance of these difficulties.

The issue of corporate criminal liability also refers to the broader issue of the role of the state. It is often a question of defining the role that states can play, individually or collectively, through their legal and other institutions, to ensure that legal and collective entities conduct themselves in a socially, morally, environmentally, politically and economically responsible manner.

I take it as obvious that, within the current political and economic context, only states have the power, the authority and the legitimacy to impose a measure of order and collective responsibility upon the often very powerful collective entities in question. At some point, the question of corporate criminality becomes one of political will. There is an understandable legislative ambivalence about addressing corporate crime. It is not so obviously in the interest of governments to jeopardize their own financial position by discouraging certain corporate misconduct. The ultimate fear of some governments is that, if an industry is subjected to what it sees as a regime of repressive laws and an increased business risk, it may simply relocate to a more hospitable environment. Nevertheless, actions to effectively combat transnational crime certain must include countering the ability of corporate and collective entities to evade responsibility by exploiting the limitations of a social control system based on national institutions.

#### **4) - Effective Prosecution, adjudication and sanctions**

The idea here is that all countries should ensure that, consistent with their legal system, transnational crimes are treated and dealt with as serious crimes by all parts of the criminal justice system. There are also related issues such as the question of the statutes of limitation in force in various countries which may in some cases create ways for offenders to evade prosecution and conviction.

#### **5)- Facilitating the Confiscation of Proceeds and Instrumentalities of Crime**

Many countries do not as yet have effective legal means of confiscating the proceeds derived from transnational criminal activities or property, equipment and other instruments used to

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<sup>7</sup> *International Colloquium on Criminal Responsibility of Legal Entities*, organized by the International Centre for Criminal Law Reform and Criminal Justice Policy and the Max-Plank-Institut für ausländisches und internationales Strafrecht (Freiburg im Breisgau), Berlin, Germany, May 4-6, 1998

commit the offence. In many cases, criminals can protect such assets against lawful confiscation by moving them to countries where confiscation is difficult or not possible.

### **6) -Promoting the Transparency of Financial Transactions**

In order to improve understanding and information on the detection of financial networks linked to transnational organized crime, there needs to be a good exchange of information between countries about suspicious and other financial transactions, including exchanges of information between law enforcement agencies and regulatory bodies. Also, states must set in place appropriate measures to detect and monitor the physical transportation of cash and bearer negotiable instruments at the border. The difficulty in doing so partly resides in the difficulty that there is in attempting to do so while ensuring not to impede in any way the freedom of legitimate capital movements.

The issue again is a complex and sometimes highly technical one. It relates in part to the problem of financial fraud and fraudulent financial transactions. Last week, the *International Centre* co-organized, with the Centre for Criminal Law and Justice, People's Republic of China, a International Symposium on the Prevention and Control of Financial Fraud, in Beijing<sup>8</sup>.

### **7)- Facilitating Extradition Procedures**

In spite of the presence of numerous bilateral agreements relating to the extradition of offenders, there are still huge gaps in existing arrangements and lasting difficulties in making the current regime functions effectively. Criminal organizations can, without much difficulty, identify countries and regions of the world with weak extradition laws and systematically use these weaknesses to avoid conviction and punishment.

### **8)- Promoting Mutual Legal Assistance and Cooperation in Criminal Matters**

There is a rather long history of international efforts to promote mutual legal assistance treaties and international cooperation in criminal matters. Most agreements are negotiated on a bilateral basis and include numerous exceptions and complications which often make their operation very problematic and their negotiation quite costly. The proposed convention

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<sup>8</sup> *International Symposium on the Prevention and Control of Financial Fraud*, Organized by the International Centre for Criminal Law Reform and Criminal Justice Policy, Vancouver, B.C., Canada, the Centre for Criminal Law and Justice and the Central Prosecutors College, People's Republic of China, as well as the International Banking Security Association, Beijing, 19-22 October, 1998

against transnational organized crime could provide a solid context for the elaboration of a truly global mutual legal assistance regime. In particular, the new framework could more decisively address questions relating to the transfer of proceedings, the recognition of foreign judgments, mutual assistance in law enforcement, as well as cooperation in intelligence gathering and sharing.

The United Nations has produced a model treaties on international cooperation in criminal matters and it has served as an important tool for the development of international cooperation. Existing arrangements governing international cooperation in criminal justice must however be regularly reviewed and revised to ensure that the specific contemporary problems of fighting crime are effectively addressed.

### **9)- Preventing the Corruption of Public Officials**

One way that criminal elements can circumvent the efforts of criminal justice systems is by corrupting government officials. Corruption can ensure the recruitment by criminal organizations of powerful actors who will in turn help them achieve their criminal purposes and avoid facing the consequences of their actions. Recent multilateral initiatives to combat corruption have included the United Nations Declaration against Corruption and Bribery in International Commercial Transactions<sup>9</sup>, the International Code of Conduct for Public Officials<sup>10</sup>, the Inter-American Convention against Corruption, the Organization for Economic Cooperation and Development Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, done in Paris on 17 December 1997, the Convention on the protection of the European Communities ' financial interests and the Protocol and Second Protocol to that Convention, and the ongoing work of the Council of Europe to elaborate a criminal law convention against corruption.

### **10)- The role of Technical and Financial Assistance**

Generally speaking, relatively few countries have the financial and technical means to effectively combat transnational crime. This is why many current initiatives are failing. Financial, material and technical assistance between countries is obviously a pre-requisite to the success of the whole fight against transnational crime. Some considerable progress has already been achieved in identifying the priorities for technical assistance. In some cases, valuable experience has already been acquired with respect to the most promising methods of delivering such assistance. However, this whole area of activity is a rather new one and much remains to be learned.

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<sup>9</sup> United Nations, G.A. resolution 51/191, annex.

<sup>10</sup> United Nations, G.A. resolution 51/59, annex.

**Conclusion**

My presentation could only cover some of the most general aspects of the issue. There is obviously much more to be said and understood about the current challenges created by growing sophistication and transnational nature of crime in the world. This also an area in which change is occurring rather rapidly. I hope that my few remarks will help facilitate our discussion of these issues.

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