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**T.C.  
YEDİTEPE UNIVERSITY  
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**THE LINKS BETWEEN INTERNATIONAL  
TERRORISM AND ORGANIZED CRIME,  
NEW DIMENSIONS IN 21<sup>ST</sup> CENTURY**

by

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# THE LINKS BETWEEN INTERNATIONAL TERRORISM AND ORGANIZED CRIME, NEW DIMENSIONS IN 21<sup>ST</sup> CENTURY

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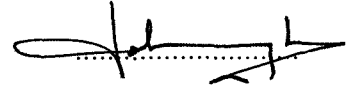
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AML	Anti-Money Laundering
ARQ	Annual Reports Questionnaire
ASALA	Armenian Secret Army for the Liberation of Armenia
ATM	Automatic Teller Machine
ATS	Amphetamine Type Stimulants
AUC	Autodefensas Unidas de Colombia
AUSTRAC	Australian Transaction Reports and Analysis Center
BASIC	British American Security Information Council
BBCI	British Broadcasting Corporation Interactive
BMPE	Black Market Peso Exchange
CFT	Combat the Financing of Terrorism
CIA	Central Intelligence Agency
CICAD	Inter-American Drug Abuse Control Commission
CTC	Crime-Terror Continuum
DEA	Drug Enforcement Agency
DSTO	Databases on Nuclear Smuggling, Theft and Orphan Radiation Sources
ELN	National Liberation Army
EOKA	National Organization of Cypriot Fighters
ETA	Euskadi Ta Askatasuna
EU	European Union
FARC	Fuerzas Armadas Revolucionarias de Colombia
FATF	Financial Action Task Force
FBI	Federal Bureau of Investigation
FIU	Financial Intelligence Unit
FinCEN	Financial Crimes Enforcement Network
FLN	Front de Liberation Nationale - Algeria
FLNC	Front de la Libération Nationale Corse
FSB	Federal Security Service
GDP	Gross Domestic Product

GIA	Groupes Islamiques Armés (Armed Muslim Groups, Algeria)
GNP	Gross National Product
HEU	Highly Enriched Uranium
IIRO	International Islamic Relief Organization
IITF	Information Infrastructure Task Force
ILO	International Labor Organization
IMF	International Monetary Fund
IMRO	Macedonian Revolutionary Organization
IMU	Islamic Movement of Uzbekistan
INCB	International Narcotics Control Board
INCSR	International Narcotics Control Strategy Report
INTERPOL	International Police Organization
IOM	International Organization for Migration
IRA	Irish Republican Army
JRA	Japanese Red Army
KADEK	Kurdistan Freedom and Democracy Congress
KKK	Ku Klux Klan
KLA	Kosovo Liberation Army
LEU	Low Enriched Uranium
MDMA	Methylenedioxy Methamphetamine
MNLF	Moro National Liberation Front - Philippines-
MWL	Muslim World Language
NATO	North Atlantic Treaty Organization
NIS	Newly Independent States
NY	Narodnaya Volya
OAS	Organization of American States
OC	Organized Crime
PBX	Private Branch Exchange
PFLP	Popular Front for the Liberation of Palestine
PKK	Kurdistan Workers Party
PLO	Palestine Liberation Organization
RAF	Red Army Faction

RICO	Racketeer Influenced and Corrupt Organizations
RUC	Royal Ulster Constabulary
SAARC	South Asian Association for Regional Cooperation
SEA	South East Asia
SWA	South West Asia
TCO	Transnational Criminal Organizations
TO	Terrorist Organization
TraCCC	Transnational Crime and Corruption Center
UÇK	Ushtria Çlirimtare E Kosovës (Kosovo Liberation Army)
UK	United Kingdom
UN	United Nations
UNDCP	United Nations International Drug Control Program
UNODC	United Nations Office on Drugs and Crime
US	United States
USSR	Union of Soviet Socialist Republics
WMD	Weapons of Mass destruction
WWW	World Wide Web

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## ABSTRACT

Globalization has made the world smaller in one way and it has caused that the international society living on the same geography became closer by comparison to the last centuries. Recently, in the more and more interconnected world the risks and responsibilities themselves became more and more interconnected. The problems of one region of the world quickly become the problems of another. Therefore, many different types of security threats, such as civil wars, ethnic conflict or armament tendencies of antidemocratic regimes directed towards the weapons of mass destruction in the developing world, now force the international system as new global challenges.

These events, at the same time, the “old global” security challenges, such as illegal small arms trafficking, drug trafficking and terrorism, have grown in different dimensions and accelerated their dominant dynamics.

Since the events of September 11, 2001, with the terrorist attacks on the US’ World Trade Center, the subject of terrorism has exploded on the world stage. International terrorism is not the single threat for human security, but also the growing acceleration of transnational organized crime and its support to international terrorism become more dangerous for international peace.

It is discussed that the rising systematic power of international organized crime organizations and their financial supporting power may affect negatively the economic and politic cornerstones of the nation-states in the middle and long term. In this frame, it may be put forward that the terrorism and organized crime syndrome which is the one of the propulsive power of the new sources of conflict will continue to exist in the agenda of international relations’ discipline. It is supposed that the complex structure among drug trafficking, arms smuggling, money laundering and the terrorism financing have to be identified and its dark image have to be cleared up.

To fight against terrorism, you have to fight against other challenges, such as drug trafficking, money laundering, arms smuggling and especially terrorism financing by organized crime organizations. The main objective of this study is to define international

terrorism and organized crime, and to examine terrorism-crime connection and finally to estimate the possible future trends on these two subjects. In this study, one of the important subjects which is concentrated on, the problematic of financing terrorism, has been tried to analyze in the scientific point of view. As a result, don't forget that if you want to destroy mosquitoes, you have to dry the bog.

As discussed in the conclusion, international society has to identify completely their reaction against international terrorism which is a chronic and vital disease. So, it will be simpler to cure a diagnosed disease. Therefore, in order to be successful in the war against terrorism globally which is the plague of the century, as in the circle of "bog-mosquito", to neutralize the main components of terror; not making any differentiation "good terrorist"; it is believed that international society have to move all together.



## ÖZET

Küreselleşme, bir ölçüde dünyayı küçültmüş ve aynı coğrafya üzerinde yaşayan uluslararası toplumun, geçen yüzyıllara kıyasla daha yakınlaşmasına neden olmuştur. Günümüzde; birbirine daha sıkı bağlarla bağlanmış olan dünyada, riskler ve sorumluluklar da kaynaşmış durumdadır. Dünyanın herhangi bir bölgesindeki sorun, kısa sürede diğerinin sorunu haline gelmektedir. Bu nedenle, gelişen dünyada iç savaş, etnik çatışma veya antidemokratik rejimlerin kitle imha silahlarına yönelik silahlanma eğilimleri gibi farklı güvenlik tehdidi türleri, yeni küresel tehditler olarak uluslararası sistemi zorlamaktadır.

Bu gelişmeler, aynı zamanda, yasadışı silah kaçakçılığı, uyuşturucu trafiği ve terörizm gibi eski küresel güvenlik tehditlerinin farklı boyutlarda gelişerek, hakim dinamiklerini süratlendirmektedir.

11 Eylül 2001 tarihinde, ABD'nin Dünya Ticaret Merkezi'ne yapılan terörist saldırıdan bu yana, terörizm konusu dünya sahnesindeki farklı yerini almıştır. Uluslararası terörizm, insanlık için tek tehdit olmayıp, uluslararası organize suçların gelişen ivmesi ve terörizme verdiği destek, uluslararası terörizmin uluslararası barış için daha tehlikeli bir hal almasını gündemde tutmaktadır.

Uluslararası organize suç örgütlerinin yükselen sistematik gücü ve bu güce destek sağlayan finansal gücünün, orta ve uzun vadede ulus devletin politik ve ekonomik yapı taşlarını olumsuz yönde etkilemesi söz konusu olabilecektir. Bu çerçevede bakıldığında, yeni uyuşmazlık kaynaklarının itici güçleri arasında yer alan terör ve organize suçlar sendromunun, uluslararası ilişkiler disiplininin ajandasında gündemini koruyacağı görüşü ileri sürülebilir. Uluslararası terörizmle savaşın hedeflediği başarıya ulaşmasında, uyuşturucu trafiği, silah kaçakçılığı, kara para aklama ve terörün finansman kaynakları arasındaki kompleks yapının tanımlanması ve karanlıktaki görüntüsünün aydınlığa çıkarılmasının gerekli olduğu varsayılmaktadır.

Terörizmle savaşmak için, uyuşturucu trafiği, kara para aklama, silah kaçakçılığı ve özellikle terörizmin finansmanı gibi tehditlerle de savaşmalısınız. Bu akademik çalışmanın temel amacı uluslararası terörizm ve organize suçları tanımlamak, terörizm ile organize

suçlar arasındaki bağlantıyı incelemek ve son olarak söz konusu iki konunun muhtemel geleceği üzerinde tahminlerde bulunmaktır. Bu çalışmada, üzerinde durulan önemli konulardan birisi olan terörizmin finansman sorunsalı, bilimsel açıdan analiz edilmeye gayret edilmiştir. Sonuç olarak, unutmayınız ki, sivrisinekleri yok etmek için bataklığı kurutmanız gerekmektedir.

Sonuç kısmında da ele alındığı üzere, uluslararası toplum karşılaştığı kronik ve hayati bir rahatsızlık olan uluslararası teröre karşı tepkisini iyi tanımlayabilmelidir. Böylece, tanısı konmuş bir hastalığı tedavi etmek daha kolay olacaktır. Bu itibarla, asrın vebası olan terörle mücadelenin küresel boyutta başarıya ulaşabilmesi için, “bataklık-sivrisinek” döngüsünde olduğu üzere, terörün asli unsurlarının etkisiz hale getirilmesinde; “iyi terörist” ayrımı yapmaksızın, uluslararası toplumun birlikte hareket etmesinin gerekliliğine inanılmaktadır.

*"There is no fortress so strong that money cannot take it"*

*CICERO (106-43 BC)*

## **1. INTRODUCTION**

Terror is located in the international environment as a part of current lifetime. This is presented in the most sensitive coordinates of our study. However, thanks to the current information capabilities, terrorist attacks can be televised instantly to billions of people. This situation demonstrates the importance of which the balance of strategically planning between targets and terrorist organizations must be shed light on.

The partnership between international terrorism and transnational organized crime is a known subject but the dimensions of the link between them are not well-known. In my study I will examine the profound relations between international terrorism and organized crime.

Every day the front pages of major newspapers carry incredible news stories about different crime groups operating on an unprecedented scale in almost every region of the world. The money laundering of the Mexican drug traffickers, the bombings and contract killings executed by Russian crime groups and large scale alien smuggling to American shores by Chinese crime groups are striking in their brazenness. Are these stories a new form of media sensationalism or should these separate stories be analyzed together as part of a larger problem?

Media attention to transnational organized crime exceeds that devoted to the problem by policy makers at the national and international level. Yet, transnational organized crime will be one of the major problems facing policy makers in the 21st century. It will be a defining issue of the 21st century as the Cold War was for the 20th century and Colonialism was for the 19th. No area of international affairs will remain untouched as

political and economic systems and the social fabric of many countries will deteriorate under the increasing financial power of international organized crime groups.<sup>1</sup>

The merger of transnational crime and terrorism is profound. The idea that these ideas can be discussed separately is problematic. Such compartmentalization limits our ability to analyze and address the diverse forms of transnational criminal activity. Highly corrupt societies give little opportunity for legitimate social mobility and their high level corruption is a deterrent to economic growth and investment. Under these circumstances, the employment opportunities of transnational crime groups provide a desirable economic alternative to youth without legitimate opportunities.<sup>2</sup>

The phenomena of transnational crime and terrorism are all too often viewed as separate phenomena. These phenomena have grown in tandem because the economic and political conditions that give rise to these phenomena are quite similar. The evolution of the transnational crime—ideologically based or economically based—depends on specific environmental factors that have proliferated in many developing and transitional countries that have not successfully integrated into the global economy.<sup>3</sup>

Terrorists and transnational criminals use many of the same strategies to promote their operations, chief among these being the use of information technology to plan and realize their activities. The rise of greater international mobility and the proliferation of information technology throughout the world have facilitated the growth of both transnational crime and terrorism. The ease of communications in the contemporary era makes the location of groups and actors less significant than it was previously. The ability to exploit security holes in the system makes crime groups and terrorists operate out of unexpected locales rather than their home territories.

Most transnational crime and terrorist groups are based in transitional and developing countries. The illicit businesses are now the largest and most profitable to be located in the developing world. For example, the drug trade now represents about 7% of world

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<sup>1</sup> SHELLEY, Louise, *Congressional Testimony before the House Committee on International Relations, Threat from International Organized Crime and Terrorism*, October 1, 1997.

<sup>2</sup> SEN, Amartya, *On Corruption and Organized Crime*, in *World Drug Report Oxford: Oxford University Press*, 1997, p. 150.

<sup>3</sup> FARER, Tom, "Conclusion Fighting Transnational Organized Crime: Measures Short of War," in *Transnational Crime in the Americas*, New York and London: Routledge, 1999, p.244

trade according to late 1990s estimates of the United Nations.<sup>4</sup> Their vast profits and enormous assets make them powerful actors in their home countries and in their regions. Because they are so large relative to the legitimate businesses based in their region or in the countries through which they operate, they have a large influence on politics and business.

The vast profits of illegal businesses allow them to hire the best specialists domestically and internationally. Facilitating this trade is an ever greater reliance on information technology to promote their activities secretly. For example, international drug traffickers are among the most widespread users of encrypted messages, coded messages by cell and satellite phones and use anonymizer features on computers. They also are able to hire technical specialists capable of using steganography and other means to make messages hard or impossible to decipher.<sup>5</sup> This access to high level specialists allows illicit businesses and terrorist organizations to transcend borders and operate internationally without detection. Often the crime and terrorist groups do not need to go outside their region to hire such technical specialists. Some of the leading specialists in the technical area are located in regions that house major transnational crime groups and terrorist organizations.

The presence of many highly trained technical specialists in the countries of the former Soviet Union and in the Indian subcontinent means that transnational crime groups means that a vast array of specialists are available for hire.<sup>6</sup> While some specialists will not work for criminal or terrorist organizations willingly, some will do it unaware of their employers whereas others will agree to provide assistance because well-paid legitimate employment is scarce in their region.

The connections between transnational crime and terrorism are not unique to developed and developing countries. As investigations in the advent of September 11th have shown, terrorists in developed countries use criminal activity to survive. Arrests in Spain revealed that terrorists were selling counterfeit airline tickets to survive and such

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<sup>4</sup> United Nations International Drug Control Programme, World Drug Report Oxford: Oxford University Press, 1997, p. 124.

<sup>5</sup> BAUGH, William E. and DENNING, Dorothy E., Encryption and Evolving Technologies: Tolls of Organized Crime and Terrorism, Excerpted in Trends in Organized Crime, 3, No.1, 1997, p.85-90.

<sup>6</sup> Conference on Transnational Crime, Corruption and Information Technology Sponsored by the Transnational Crime and Corruption Center, American University, Nov. 30-Dec. 1, 2000. Available on site: [www.american.edu/traccc](http://www.american.edu/traccc).



groups in the United States were surviving by means of money laundering and other criminal offenses.<sup>7</sup>

## 1.1 DEFINITION OF THE PROBLEM

Defining of terrorism is the most serious problem with which the international society is confronted. Because of this, in my study, one of the essential objectives is to bring up the problem in a scientific objectivity.

As organized crime and terrorist groups have globalized and diversified their operations in the past decade, they have based their activities in countries offering conditions most favorable to survival and expansion. Mobility, an important new characteristic of most such groups, has given groups a wider selection of operational bases and the ability to respond faster to changes that are unfavorable to their operations.

The main domestic elements making a nation “hospitable” to transnational crime and terrorism are *official corruption, incomplete or weak legislation, poor enforcement of existing laws, non-transparent financial institutions, unfavorable economic conditions, lack of respect for the rule of law in society, and poorly guarded national borders*. In some cases, several of those conditions arise together from a lack of political will to establish the rule of law. In turn, such a lack can derive from weak national institutions or from high-level corruption. A failing national economy often is an influential background factor that increases domestic and transnational criminal activity in a country. Such purely domestic factors often are exacerbated by a nation’s geographic location (along a key *narcotics trafficking route* or in a region where arms trafficking is prolific, for example), or the influence of regional geopolitical issues such as a long-standing territorial dispute.

The reach of transnational crime and terrorism is increasing for many of the same reasons that the reach of legitimate business is expanding. The globalization has brought about greatly increased cooperation and sophistication among criminal groups based in different parts of the world. In recent years, terrorist groups also have proven that their reach is worldwide, as they benefit from some of the same conditions that make nations

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<sup>7</sup> Eight Suspected in Aiding in Attacks are Ordered Jailed by Spanish Judge, Wall Street Journal, November 18, 2001.

hospitable to organized crime. Evidence shows, for example, that terrorist groups based in the Middle East have established connections in several other continents.

The main problem is the existence of both international terrorism and organized crime. "The enemy of my enemy is my comrade." This epigram shows the dimensions of the problem. Both international terrorists and transnational organized criminals act according to this epigram. Terrorists help organized criminals; in return organized criminals support terrorists and the wheel turns continuously.

## **1.2 OBJECTIVES OF THE STUDY**

This descriptive study is performed in order to highlight the common characteristics of the international terrorism and organized crime and the possible impacts of these subjects in global context.

The main objective of the study is to examine the relations between international terrorism and organized crime and its current and future effects on international order and international security.

## **1.3 SCOPE OF THE STUDY**

The main scope of this study can be stated as connection between international terrorism and organized crime. This study focuses on understanding international terrorism and organized crime and explaining the link between these two international problems.

This study consists of eight chapters;

The study starts with an introduction chapter to draw the framework of the study.

In chapter 2, five sections are presented to understanding the new face of international terrorism. It's stated changing meaning of international terrorism. Then it's explained the history by using the waves of terrorism. And then it's examined the causes of terrorism in a global context. Religious terrorism is the next section. Finally it's examined counter measures against international terrorism.

Chapter 3 presents the concept of transnational organized crime. This chapter consists of six sections. The definition and the concepts of organized crime are outlined. Then,

the nature of criminal activity and the transnational dimensions of organized crime are examined in a global context. Next, major international organized crime groups are listed and their activities are explained. Finally international cooperation against transnational organized crime is outlined.

Chapter 4 is about major transnational organized crime activities. In five sections, it's explained five major transnational organized crime activities and their impacts in a global context. These major transnational organized crime activities are; drug trafficking, conventional (small) arms trafficking, smuggling nuclear materials, trafficking in human beings (illegal immigration) and cybercrime.

In Chapter 5 it's explained money laundering. In first section the meaning of money laundering is explained. Secondly, it's examined the international dimensions of money laundering and money laundering as an international threat. Then, it's focused on the size of the problem. In fourth section the money laundering cycle is described. Finally, it's tried to explain the sources of dirty money.

Chapter 6 exposes international terrorism-organized crime nexus and the ways of financing terrorism. This chapter consist four sections. Organized crime-terrorism connection is the first section. Secondly, the link between drug cartels and terrorism is examined. The third section deals with the laundering money of terrorist organizations. Then, it's examined financing of terrorism.

Chapter 7 outlines the subject of future of international terrorism and organized crime. Especially the use of information technology and as a result of this, facilitate the activities of terrorist groups and organized crime organizations. It's outlined also the effects of cyber laundering of terror.

Chapter 8, conclusion summarizes the basic findings of the research.

Appendices that are placed at the end of the study, dealt with especially organized crime and terrorism.

## **1.4 METHODOLOGY**

The study is essentially based on secondary data such as books, articles, various magazines and unpublished materials as a source of information. Some experts from

institutions were also visited to gather information. Gathered data systematically is analyzed to construct the thesis. In this perspective methodology used in the thesis can be described as the combination of different techniques.



*“Terrorism is dangerous ground for simplificateurs and generalisateurs.*

*To approach it, a cool head is probably more essential than any  
other intellectual quality.”*

*Walter LAQUEUR*

## **2 UNDERSTANDING THE NEW FACE OF INTERNATIONAL TERRORISM**

As we indicated that in our academic research, terror has along historical background. However, in order to realize the subject matter, we aim to focus on the transformation process and ongoing normative structure of the international terrorism.

Terrorism has been on the international agenda for a long time, but until fairly recently it was relegated to a lowly place. From time to time, following some spectacular attack, terrorism would figure prominently in the media for a few days. There would be deliberations on the highest level of government, committees would be appointed and resolutions passed. But when calm returned the issue would be forgotten, for there seemed to be no particular urgency to deal with it. There were always some very important domestic and foreign issues that would take precedence, and in any case *terrorism never threatened all countries in an equal measure*. This has now changed, and terrorism is bound to remain high on the list of our priorities. True, acute apprehension is bound to decline if no major attacks take place for a considerable time. The lack of vigilance during the period before September 11, 2001, can be explained, in part, with reference to the fact that during the preceding two years terrorist activities had been rare.

It was only to be expected that there should be voices arguing that the events of September 2001 had been unique and unlikely to recur, as time had passé without many major terrorist attacks. Memories are short and wishful thinking is deeply rooted. Terrorism will be given less attention if a full scale war breaks out. But no war lasts

forever. It is too expensive in every respect in our days and age, whereas terrorism is relatively cheap and will be with us for as long as anyone can envision, ever if not always at same frequency and intensity.

There is no authoritative systematic guide to terrorism and perhaps there never will be one, simply because there is not one terrorism but a variety of terrorisms and what is true for one does not necessarily apply to others. There are major obstacles on the road toward understanding terrorism; perhaps no other topic in our time has provoked such violent emotions.

In this chapter I will try to explain the changing meaning of terrorism. Because terrorism has no universal definition and it is a dynamic phenomenon. And then, I will tell about the history of terrorism by using "the four wave of terrorism" headline. In next section I will analyze the causes of terrorism. Next section is concerning with the religious dimensions of terrorism. And in the last section I will summarize the counter measures which are taken against international terrorism.

## **2.1 THE CHANGING MEANING OF TERRORISM**

In this section, it's examined the definition problem about terrorism, in spite of its definition is not stable. There are some proposed definitions but we could not talk about only one and universal definition. Yet, I tried to explain one proposed definition.

International terrorism is a political disorder that has grown to the detriment of the international legal system. A political disorder is like "a wasting disease," said Niccolo Machiavelli, "to start with it is easy to cure but difficult to diagnose; after a time, unless it has been diagnosed and treated at the outset, it becomes easy to diagnose but difficult to cure."<sup>8</sup> To that remarkable insight, this must be added: A political disorder is further aggravated when quick-fix remedies are dispensed in frustration upon erroneous diagnosis. Such is the story of international terrorism. First, the international community has failed to diagnose correctly and to prescribe a proper treatment for international terrorism. Second, problems of terrorism are further complicated when frustrated individual states take unilateral action and administer questionable treatment to suppress the disorder.

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<sup>8</sup> MACHIAVELLI, Niccolo, *The Prince*, G. Bull trans., 1961, p.39

### 2.1.1 Definition Problem

When we talk about terrorism, what exactly are we talking about? How does terrorism differ from ordinary crime? Is all politically motivated violence terrorism? Is terrorism synonymous with guerilla war, or is the term properly reserved for those trying to overthrow governments? Can governments also be terrorists? What is the distinction between driving a truck loaded with explosives into an embassy and dropping high explosives on a city? How do we make useful distinctions? Virtually all discussions about terrorism sooner or later wander into the swamp of definition.

The one of the important problems which makes difficult to take measures against international terrorism, is that nations don't come yet to an understanding about the definition of terrorism. So, to punish the crime which did not defined is impossible.<sup>9</sup>

The term "terrorism" has no precise or widely accepted definition. If it were a mere matter of description, establishing a definition would be simple: Terrorism is violence or the threat of violence calculated to create an atmosphere of fear and alarm –in a word, to terrorize- and thereby bring about some social or political change. This pretty close to the definition offered by a South American jurist more than 35 years ago, terrorism consists of acts that in themselves may be classic forms of crime –murder, arson, the use of explosives- but that differ from classic crimes in that they are executed "with the deliberate intention of causing panic, disorder, and terror within an organized society."<sup>10</sup>

But while this definition puts terrorism in the realm of crime, we live in a world that recognizes the legitimacy of war and the right of revolution. At the turn of the 20<sup>th</sup> century, socialist revolutionaries in Russia were proud to call themselves terrorists. They had a terrorist arm called appropriately the Terrorist Brigade, and they hoped through selective assassination to inspire terror among Russia's ruling elite. They were careful not to injure bystanders, and if their intended victim was accompanied by members of his family, they would abort their attack. Ironically, today's terrorists are less fastidious about their actions and more concerned about their public image. In the

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<sup>9</sup> CAŞIN, Mesut Hakkı, Uluslararası Hukuk Açısından Terör ve Organize Suçlar, İdris Bal, 21 nci Yüzyılda Türk Dış Politikası, Nobel Yayın Dağıtım, Ankara, Ocak, 2004, s.878.

<sup>10</sup> JENKINS, Brian M., International Terrorism : The Other World War, The New Global Terrorism, Pearson Education, Inc., New Jersey, 2003, p.16.

age of mass media, terrorism has become a pejorative term. Terrorists now call themselves anything but terrorists.

Some governments are prone to label as terrorism all violent acts committed by their political opponents, while antigovernment extremists frequently claim to be the victims of government terror. Use of the term thus implies a moral judgment. If one group can successfully attach the label terrorist to its opponent, than it has indirectly persuaded others to adopt its moral and political point of view, or at least to reject the terrorists' view. Terrorism is what the bad guys do. This drawing of boundaries between what is legitimate and what is illegitimate, between the right way to fight and the wrong way to fight brings high political stakes to the task of definition.

Terrorism in recent years has become a fad word that is promiscuously applied to a variety of violent acts which are not necessarily intended to produce terror. It is important to distinguish between actions that are intended to terrorize and actions that just happen to terrify. Muggers may terrify the population of a large urban area, but they produce terror as a by-product of their crimes; their objectives are wallets and watches, not alarm.

The difficulty in defining terrorism has led to the cliché that one man's terrorist is another man's freedom fighter. The phrase implies that there can be no objective definition of terrorism, that there are no universal standards of conduct in conflict.<sup>11</sup>

Terrorism can be objectively defined by the quality of the act, but not by the identity of the perpetrators or the nature of their cause. All terrorist acts are crimes, and many would also be war crimes or "grave breaches" of the rules of war if we accepted the terrorists' assertion that they wage war. All involve violence or the threat of violence, sometimes coupled with explicit demands. The violence is frequently directed against civilian targets. The purposes are political. The actions are often carried out in a way that will achieve maximum publicity. The perpetrators are usually members of an organized group. Their organizations are by necessity clandestine, but unlike other criminals, terrorists often claim credit for their acts. And finally –the hallmark of

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<sup>11</sup> Ibid.



terrorism- the acts are intended to produce psychological effects beyond the immediate physical damage.<sup>12</sup>

While these criteria do not eliminate all ambiguity, they enable us to draw some limits and answer some of the questions. Terrorism differs from ordinary crime in its political purpose and in its primary objective. Neither the ordinary bank robber nor the man who shot President Reagan is a terrorist. Likewise, not all politically motivated violence is terrorism. Terrorism is not synonymous with guerilla war or any other kind of war and it is not reserved exclusively for those trying to overthrow governments. The leftist assassin and the right-wing death squad, both use the same tactics for the same purpose –to instill fear and alter a political situation.

### **2.1.2 Proposed Definitions**

One expert writing in the 1970s felt it useful to differentiate four types of terrorism; international (terrorism conducted by people controlled by a sovereign state), transnational (terrorism practiced by autonomous non-state actors, but not necessarily with the support of sympathetic states), domestic (terrorism involving the nationals of only one state), and state terrorism (terrorist tactics practiced by a state within its own borders, such as the genocide performed by Nazi Germany)<sup>13</sup> This classification allowed the types of terrorism to be isolated, as depicted in Table 2.1.<sup>14</sup>

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<sup>12</sup> Ibid.

<sup>13</sup> MICKOLUS, Edward, Trends in International Terrorism, in *International Terrorism in the Contemporary World*, ed. Marius H. Livingston, with Lee Bruce Kress and Marie G. Wanek, Westport, Conn.: Greenwood Press, 1978, p.45.

<sup>14</sup> Ibid.

		<b>Are Nationals of More than One State Directly Involved?</b>	
		YES	NO
<b>Are Activities Controlled or Directed by Governments?</b>	YES	international	state
	NO	transnational	domestic

**Table 2.1 Four Forms of Terrorism**

We could see below some proposed definitions on terrorism:

Oxford English Dictionary<sup>15</sup> : A system of terror. (1) Government intimidation as directed and carried out by the party in power in France during the revolution of 1978-94; the system of 'Terror.' (2) Gen. A policy intended to strike with terror those against whom it is adopted; the employment of methods of intimidation; the fact of terrorizing or condition of being terrorized.

League of Nations Convention: All criminal acts directed against a State and intended or calculated to create a state of terror in the minds of particular persons or a group of persons or the general public.

UN Resolution language : (1) Strongly condemns all acts, methods and practices of terrorism as criminal and unjustifiable, wherever and by whomsoever committed; (2) Reiterates that criminal acts intended or calculated to provoke a state of terror in the general public, a group of persons or particular persons for political purposes are in any circumstance unjustifiable, whatever the considerations of a political, philosophical, ideological, racial, ethnic, religious or other nature that may be invoked to justify them.

Short legal definition proposed by A. P. Schmid to United Nations Crime Branch: Act of Terrorism = Peacetime Equivalent of War Crime.

<sup>15</sup> HOFFMAN, Bruce, *Inside Terrorism*, Columbia University Press, 1998, p.18.

Academic Consensus Definition: Terrorism is an anxiety-inspiring method of repeated violent action, employed by (semi-) clandestine individual, group or state actors, for idiosyncratic, criminal or political reasons, whereby - in contrast to assassination - the direct targets of violence are not the main targets. The immediate human victims of violence are generally chosen randomly (targets of opportunity) or selectively (representative or symbolic targets) from a target population, and serve as message generators. Threat- and violence-based communication processes between terrorist (organization), (imperiled) victims, and main targets are used to manipulate the main target (audience(s)), turning it into a target of terror, a target of demands, or a target of attention, depending on whether intimidation, coercion, or propaganda is primarily sought.

The unlawful use of force or violence against persons or property to intimidate or coerce a government, the civilian population, or any segment thereof, in furtherance of political or social objectives.<sup>16</sup>

The calculated use of violence or the threat of violence to inculcate fear, intended to coerce or intimidate governments or societies as to the pursuit of goals that are generally political, religious or ideological.<sup>17</sup>

Premeditated, politically motivated violence perpetuated against noncombatant targets by sub national groups or clandestine agents, usually intended to influence an audience.<sup>18</sup>

### **2.1.3 An Alternative Definition**

The definition proposed here states that terrorism is the intentional use of, or threat to use violence against civilians or against civilian targets, in order to attain political aims. This definition is based on three important elements:

First: The essence of the activity—the use of, or threat to use, violence. According to this definition, an activity that does not involve violence or a threat of violence will not be defined as terrorism (including non-violent protest—strikes, peaceful demonstrations, tax revolts, etc.).

<sup>16</sup> The FBI definition. Available on site: <http://www.fbi.gov/publications/terror/>

<sup>17</sup> US DoD definition: Available on site: <http://www.history.navy.mil/library/guides/>

<sup>18</sup> US State Department definition. Available on site: <http://www.unamich.org/MUN/SEMMUNA/>

Second: The aim of the activity is always political—namely, the goal is to attain political objectives; changing the regime, changing the people in power, changing social or economic policies, etc. In the absence of a political aim, the activity in quest will not be defined as terrorism. A violent activity against civilians that has no political aim is, at most, an act of criminal delinquency, a felony, or simply an act of insanity unrelated to terrorism. Some scholars tend to add ideological or religious aims to the list of political aims. The advantage of this definition, however, is that it is as short and exhaustive as possible. The concept of “political aim” is sufficiently broad to include these goals as well. The motivation—whether ideological, religious, or something else—behind the political objective is irrelevant for the purpose of defining terrorism. In this context, the following statement by Duvall<sup>19</sup> deserves mention:

“Motives are entirely irrelevant to the concept of political terrorism. Most analysts fail to recognize this and, hence, tend to discuss certain motives as logical or necessary aspects of terrorism. But they are not. At best, they are empirical regularities associated with terrorism. More often they simply confuse analysis.”<sup>20</sup>

Third: The targets of terrorism are civilians. Terrorism is thus distinguished from other types of political violence (guerrilla warfare, civil insurrection, etc.). Terrorism exploits the relative vulnerability of the civilian “underbelly”—the tremendous anxiety, and the intense media reaction evoked by attacks against civilian targets. The proposed definition emphasizes that terrorism is not the result of an accidental injury inflicted on a civilian or a group of civilians who stumbled into an area of violent political activity, but stresses that this is an act purposely directed against civilians. Hence, the term “terrorism” should not be ascribed to collateral damage to civilians used as human shields or to cover military activity or installations, if such damage is incurred in an attack originally aimed against a military target. In this case, the responsibility for civilian casualties is incumbent upon whoever used them as shields.

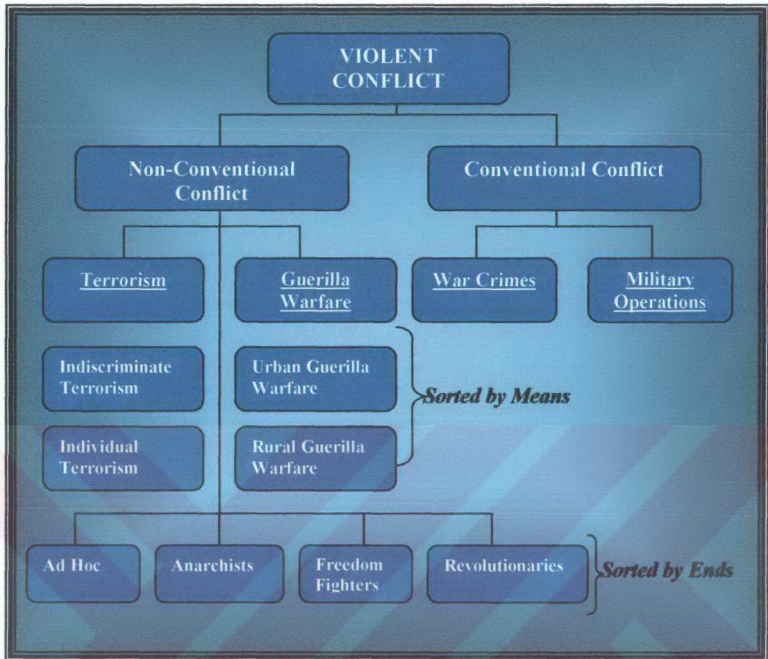
The proposed definition of terrorism also addresses a lacuna in present international legislation and international conventions, in order to develop a fundamental tool for international cooperation against terrorism. In order to achieve as wide an accord as possible, this definition must be founded on a system of principles and laws of war,

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<sup>19</sup> DUVALL, Gabriel, Associate Justice of the U.S. Supreme Court (1811-35)

<sup>20</sup> SCHMIDT, Alex P., *Political Terrorism*, SWIDOC, Amsterdam, Transaction Books, 1984, p.100.

legislated and ratified in many countries. In other words, in order to reach an accepted definition of terrorism, we must extrapolate from the existing principles of conventional warfare (between countries) to arrive at similar principles for non-conventional warfare (for our purposes, a violent struggle between an organization and a state). Many countries in the world support the view—and have enshrined these in international conventions—that we must differentiate between two types of military personnel who make use of force to attain their aims. On the one hand there are “soldiers”—members of the military who intentionally target members of rival armies, and on the other, there are “war criminals”—members of the military who intentionally harm civilians (Figure 2.1). This normative and accepted attitude toward military personnel operating in a situation of conventional warfare enables us to extrapolate to situations of non-conventional warfare (between an organization and a state), thus allowing us to distinguish terrorism from guerrilla warfare. As noted, terrorism is “a violent struggle intentionally using, or threatening to use, violence against civilians, in order to attain political aims,” whereas guerrilla warfare is “a violent struggle using (or threatening to use) violence against military targets, security forces, and the political leadership, in order to attain political aims.” Terrorism is thus different from guerrilla warfare in its mode of activity and in the targets chosen by the perpetrators. The only question to be resolved is whether perpetrators choose to attain their aims by targeting civilian or military targets?



**Figure 2.1 Definition of Terrorism**

## 2.2 THE FOUR WAVES OF TERROR

In this chapter I will explain the history of terrorism in global context. The history of terrorism is separated to four waves by the specialists. These waves are “Anarchist wave”, “Anti-colonial wave”, “New Left wave” and “Religious wave”.

In the 1880s, an initial "Anarchist Wave" appeared which continued for some 40 years. Its successor, the "Anti-Colonial Wave" began in the 1920s, and by the 1960s had largely disappeared. The late 1960s witnessed the birth of the "New Left Wave," which dissipated largely in the 90s leaving a few groups still active in Sri Lanka, Spain, France, Peru, and Columbia. The fourth or "Religious Wave" began in 1979, and, if it follows the pattern of its predecessors, it still has twenty to twenty-five years to run.

Revolution was the overriding aim in every wave, but revolution was understood differently in each. Most terrorist organizations have understood revolution as secession or national self-determination. This principle, that a people should govern itself, was bequeathed by the American and French Revolutions.<sup>21</sup>

Revolution is also seen to be a radical reconstruction of authority, and this objective was often combined with efforts to create a new state by destroying two or more existing ones. Often the three conceptions were combined in different ways, and all were affected by different pre-existing contexts, which make it useful to give each wave a distinctive name.

The first three waves lasted approximately 40 to 45 years, but the "New Left Wave" was somewhat abbreviated. The pattern suggests a human life cycle pattern, where dreams that inspire fathers lose their attractiveness for the sons. Clearly, the life cycle of the waves does not correspond to that of organizations. Organizations normally dissipate before the wave does, though sometimes an organization survives its associated wave. The IRA, for example, is the oldest terrorist organization of the modern world; it began the anti-colonial wave in the 20's and is still here. By way of comparison, the average life of organizations in the third or "New Left" wave is two years.

The all of rebel terror is very ancient, going back at least to the first century. Hinduism, Judaism, and Islam produced the Thugs, Zealots, and Assassins respectively--names still used to designate terrorists. Religion determined every purpose and tactic of this ancient form.<sup>22</sup>

Significant examples of secular rebel terror appeared before the "Anarchist Wave" began. The United States, for example, experienced two major successful ones. The Sons of Liberty, provoked by the Stamp Act, organized mobs to tar and feather colonists still loyal to the king, forcing many to flee the country and settle in Canada. The Ku Klux Klan (KKK) forced the federal government to end Reconstruction. But the two American examples were time and country specific. They had no contemporary

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<sup>21</sup> RAPOPORT, David C., *The Four Waves of Rebel Terror and September 11*, Department of Political Science University of California at Los Angeles, *Anthropoetics* 8, no. 1, Spring / Summer 2002.

<sup>22</sup> RAPOPORT, David C., *Fear and Trembling: Terror in Three Religious Traditions*, *American Political Science Review*, 1984, p. 658.

parallels and no emulators, because they "did their dirty work in secret and kept their mouths shut afterwards."<sup>23</sup>

Why does the first wave begin in the late 19<sup>th</sup> century? There may be many reasons, but two stand out: doctrine and technology. Russian writers, particularly Nechaev, Bakunin, and Kropotkin, created a doctrine or strategy for terror, an inheritance for successors to use, improve, and transmit. Participants, even those with different ultimate objectives, were now able to learn from each other. The distinctiveness of this pattern is brought home by comparing it with those of the ancient religious terrorists, who always stayed within their own religious traditions. Each religious tradition produced its own kind of terrorist, and sometimes their tactics were so uniform that they appear to be a form of ritual. But if one compares Nechaev's Revolutionary Catechism with the Training Manual Bin Laden wrote for Al-Qaeda, the paramount desire to learn from the experiences of both friends and enemies is clear.<sup>24</sup> The greatest tactical difference between them is that Nechaev understands women to be priceless assets, while Bin Laden defers to the Islamic tradition and employs men only.

The transformation in communication and transportation patterns is the second reason that explains the timing and spread of the first wave. The telegraph, daily mass newspapers, and railroads flourished in this period; and subsequently throughout the 20<sup>th</sup> century, technology continued to shrink time and space.

Strangely enough, the characteristics and possibilities of modern revolutionary terror were partly inspired by studying the intrigues of the Russians in the Balkans. The Czars employed assassins against Turkish officials. Publicity and provocation, not pure terror was the objectives of the Czarist atrocities and these objectives were incorporated in systematic Anarchist efforts to put atrocities at the service of revolution.<sup>25</sup>

Narodnaya Volya ("The People's Will"), the first terrorist group in the first wave, inherited a world where traditional revolutionaries seemed obsolete or irrelevant. (Figure 2.2) No longer could pamphlets, books, meetings, demonstrations produce mass uprisings, and even revolutionaries described themselves as "idle word spillers"! A

<sup>23</sup> RAPOPORT, David C., *The Four Waves of Rebel Terror* and September 11, Department of Political Science University of California at Los Angeles Anthropoetics 8, no. 1, Spring / Summer 2002.

<sup>24</sup> RAPOPORT, David C., *Sacred Terror: A Case from Contemporary Islam* in Walter Reich ed. *Origins of Terrorism*, Cambridge: Cambridge University Press, 1990, p. 103.

<sup>25</sup> POST, Jerry, *Bin Laden Work in Terrorism and Political Violence*, Summer 2002, p.14.



"new form of communication" was needed, one that would be heard and command respect. Terror filled that need; no one could ignore it, and repeated acts of terror would generate the polarization necessary for revolution.



**Figure 2.2 Members of Naradnoya Volya<sup>26</sup>**

The Anarchist doctrine has four major points: 1) Modern society contains huge reservoirs of latent ambivalence and hostility. 2) Society muffles and diffuses them by devising moral conventions to generate guilt and provide channels for settling some grievances and securing personal amenities. 3) However, conventions can be explained historically and therefore acts we deem to be immoral, our children will hail as noble efforts to liberate humanity. 4) Terror is the quickest and most effective means to destroy conventions. The perpetrator frees himself from the paralyzing grip of convention to become a different sort of person, and society's defenders will respond in ways that undermine the rules they claim are sacred.<sup>27</sup>

Terror was extra-normal violence or violence beyond the moral conventions regulating violence. Most specifically, the conventions violated were the rules of war designed to distinguish combatants from non-combatants. Invariably, most onlookers would label the acts atrocities or outrages.

The rebels described themselves as terrorists, not guerrillas, tracing their lineage back to the French Revolution, and sometimes to the Order of Assassins in medieval Islam. They sought political targets with the potentiality to shake up public attitudes.

<sup>26</sup> [www.econ.uiuc.edu/~koenker/sep4lec.html](http://www.econ.uiuc.edu/~koenker/sep4lec.html)

<sup>27</sup> ULAM, Adam B., *In the Name of the People*, New York: Viking Press, 1977, p. 269.

Terrorism was a strategy, not an end. The specific tactics used depended upon both on the context and the rebel's political objectives. Judging a context so often in flux was both an art and a science.

What gave the creators of this strategy confidence that it would work? In this case, as in the later waves, the moving forces were major political events, which unexpectedly exposed new vulnerabilities of government. Hope was excited, and hope is always an indispensable lubricant of rebel activity. The turn of events that gave rebels evidence of Russian vulnerability was the dazzling effort of the young Czar Alexander II to transform the system virtually overnight. In one stroke of the pen (1861), he freed the serfs (one-third of the population) and gave them funds to buy land. Three years later he established limited local self-government, "westernized" the judicial system, relaxed censorship powers and control over education. Hopes were aroused but could not be fulfilled quickly enough--for example, the funds to subsidize the peasants to buy land proved to be insufficient--and in the wake of inevitable disappointment, systematic assassination campaigns largely against prominent officials began, culminating in the death of Alexander II himself.

Soon other groups in the Russian Empire emerged, focusing on assassinations and robbing banks to finance their activities. The Armenians (Hunchaks) and the Poles were first. Then the Balkans exploded where many groups found the boundaries of states recently torn out of the Ottoman Empire unsatisfactory. In the West, revolutionary Anarchists mounted assassination campaigns and helped stimulate comparable ones in India, such as the Maniktala Secret Society (1905).<sup>28</sup>

The Versailles Peace Treaty concluding World War I sparked the hope for the second or "Anti-Colonial Wave." The empires of the defeated states (which were mostly in Europe) were broken up by applying the principle of self-determination. Where independence was not immediately feasible, territories were understood to be "mandates" ultimately destined for independence. But the victors could not articulate the principle without also raising questions about the legitimacy of their own empires. The IRA emerged in the 1920s, and terrorist groups developed in all imperial domains

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<sup>28</sup> HEEHS, Peter, *Nationalism, Terrorism, and Communalism: Essays in Modern Indian History*, Delhi, Oxford University Press, 1998, Chapter 2.

except the Soviet after WW-II. A variety of new states--Ireland, Israel, Cyprus, Yemen, Algeria...--emerged, and the wave receded as the empires it swept over dissolved.

Second wave tactics differed in some respects from those of first. Bank robberies were less common, partly because diaspora sources this time contributed more money. Most conspicuous was the lesson learned that assassinating prominent political figures was often counterproductive, and few attacks on the prominent occurred. One organization continued the old practice, Lehi (a Zionist revisionist group the British labeled the "Stern Gang") and it proved much less effective than competitors in the struggle for independence. Martyrdom so often linked to assassinating the prominent seemed less significant too. The new strategy was first to eliminate via systematic assassinations the police, a government's eyes and ears. Military units would replace them and would prove too clumsy to cope without producing counter-atrocities, increasing social support for the terrorists. If the process of atrocities and counter-atrocities was well planned, it worked nearly always to favor those perceived to be weak and without alternatives.

Major energies went into guerrilla-like (hit and run) actions against troops, attacks that went beyond the rules of war, however, because weapons were concealed and the assailants had no identifying insignia. Some groups (*e.g.*, Irgun and IRA) made efforts to give warnings in order to limit civilian casualties. In some cases (*e.g.*, Algeria) terror was one aspect of a more comprehensive rebellion dependent on guerrilla forces. Although an important ingredient in colonial dissolution, terrorist groups rarely achieved their original purposes. The IRA gained an Irish state but not one extending over the whole island. EOKA fought to unify Cyprus and Greece but had to settle for the state of Cyprus, which split in two afterwards and has remained so ever since. Begin's Irgun fought to gain the entire Palestine mandate but settled for partition rather than risk civil war among Jews.<sup>29</sup>

Anti-colonial causes were legitimate to many more parties than the causes articulated in the first wave, and that created a definition problem. The term "terrorist" had accumulated so many abusive connotations that those identified as terrorists found that they had enormous political liabilities. Rebels stopped calling themselves terrorists. Lehi (the last organization to rely on assassinations) was also the last to characterize

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<sup>29</sup> RAPOPORT, David C., *The Four Waves of Rebel Terror and September 11*, Department of Political Science University of California at Los Angeles Anthropoetics 8, no. 1, Spring / Summer 2002.

itself as a terrorist group. Menachem Begin, leader of the Irgun (Lehi's contemporary and rival), concentrating on purpose rather than means, described his people as "freedom fighters" struggling against government terror. So appealing did this self-description prove to be that all subsequent terrorist groups followed suit. Governments appreciated the political value of "appropriate" language too, and began to describe all violent rebels as terrorists. The media corrupted language further, refusing to use terms consistently in the hope of avoiding being seen by the public as blatantly partisan. Major American newspapers, for example, often described the same individuals in the same account, indeed sometimes in the same paragraph, alternatively as terrorists, guerrillas, and soldiers.<sup>30</sup>

The agonizing Vietnam War produced the psychological requisites for the third or "New Left Wave." The effectiveness of Vietcong terror against the American Goliath armed with modern technology kindled hopes that the Western heartland was vulnerable too. The war also stimulated an enormous ambivalence about the value of the existing system, especially among the young in the West.

Many groups in the "developed world" (e.g., American Weather Underground, West German RAF, Italian Red Brigades, Japanese Red Army, and the French Action Directe) saw themselves as vanguards for the masses of the Third World where much hostility to the West already existed. The Soviets encouraged these groups in many different ways. In Latin America, revolutionary groups repeated a pattern visible in the first wave; they abandoned the countryside and came to the city where they would be noticed. Carlos Marighella, a major figure on the Latin American scene, produced *The MiniManual of the Urban Guerrilla*, a handbook of tactics comparable to Nechaev's *Revolutionary Catechism* in the first wave.

In the third wave, radicalism was often combined with nationalism, as in the Basque Nation and Liberty (ETA), the Armenian Secret Army for the Liberation of Armenia (ASALA), the Corsican National Liberation Front (FNLC), and the IRA. The pattern reminds us of the first wave, where Anarchists sometimes linked themselves to nationalist aspirations, notably in Indian, Armenian, and Macedonian groups. Although every early effort failed, the linkage was renewed for the obvious reason that self-

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<sup>30</sup> RAPOPORT, David C., *Politics of Atrocity in Terrorism: Interdisciplinary Perspectives*. Eds. Y. Alexander and S. Finger, New York: John Jay Press, 1997, p. 46.

determination always appeals to a larger constituency than radical aspirations, and over time self-determination obscured the radical programs initially embraced. Nonetheless, most failed quickly. The survivors did not make much headway, because the countries concerned (Turkey, Spain, and France) did not understand themselves to be colonial powers nor did they display the ambivalence necessary for the separatists to succeed.

When the Vietnam War ended in 1975, the Palestine Liberation Organization (PLO) became the heroic model. Originating after three Arab armies collapsed, its very existence was a statement that terror offered more hope than conventional military forces. The central position of the PLO was augmented by three powerful circumstances; Israel, its chief enemy, was an integral part of the West, it got strong Soviet support, and it was able to provide facilities in Lebanon to train terrorists from many countries.<sup>31</sup>

Airline hijacking was the most novel tactic in this wave, and over a hundred occurred during the 1970s. Hijacking had an international character because foreign rather than domestic landing fields were more available to hijacked planes. Hijacking also reflected an impulse for spectacular acts, a first wave theme abandoned in the second for more effective military-like strikes.

Strikes on foreign embassies began in the third wave, when the PLO attacked the Saudi Embassy in Khartoum (1973). The most recent was the attack of the Peruvian "Shining Path"(1996), which held 72 hostages in the Japanese Embassy for more than four months (1996-7) until a rescue operation killed every terrorist in the Embassy.

Kidnappings occurred in at least seventy-three countries and were especially important in Italy, Spain, and Latin America. In the fourteen years after 1968, there were numerous international incidents, 409 kidnappings, and 951 hostages taken. Initially, hostages were taken to gain political leverage. But it was soon apparent that hostages (especially company executives) could provide much cash. Companies insured their executives, and the unintended consequence was that it made kidnapping more lucrative

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<sup>31</sup> RAPOPORT, David C., *The Four Waves of Rebel Terror and September 11*, Department of Political Science University of California at Los Angeles *Anthropoetics* 8, no. 1, Spring / Summer 2002.

and easier to consummate on the kidnapers' terms. Informed observers estimate that some \$350 million were gained from the practice in the period.<sup>32</sup>

Although bank robbing was not as significant as it was in the first wave, some striking examples materialized. In January 1976 the PLO together with their bitter rivals the Christian Phalange hired safe breakers to help them loot the vaults of the major banks in Beirut. Estimates range between \$50 and a \$100 million stolen. "Whatever the truth the robbery was large enough to earn a place in the Guinness Book of World Records as the biggest bank robbery of all time."<sup>33</sup>

The third wave began to ebb in the 1980s. Revolutionary terrorists were defeated in one country after another. Israel's invasion of Lebanon (1982) eliminated PLO facilities to train terrorist groups, and international counter-terrorist cooperation became increasingly effective. The "religious wave" began in the same decade. In the three earlier waves, religious identity was always important; religious and ethnic identities often overlap, as the Armenian, Macedonian, Irish, Cypriot, Israeli, and Palestinian struggles illustrate. But the aim earlier was to create secular sovereign states, in principle no different from those present in the international world. Religion has a vastly different significance in the fourth wave, supplying justifications and organizing principles for the New World to be established.

Islam is the most important religion in this wave and will get special attention below. But we should remember that other religious communities produced terrorists too. Sikhs sought a religious state in the Punjab. Jewish terrorists attempted to blow up Islam's most sacred shrine in Jerusalem and waged an assassination campaign against Palestinian mayors. One religious settler murdered 29 worshippers in Abraham's tomb and a fundamentalist assassinated Israeli Prime Minister Rabin (1995). 1995 was also the year in which Aum Shinrikyo, a group that combined Buddhist, Christian, and Hindu religious themes, released nerve gas on the Tokyo subway, killing 12 and injuring 3000. (Figure 2.3) A worldwide anxiety materialized over expectations that a new threshold in terrorist experience had materialized: various groups would be

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<sup>32</sup> ADAMS, James, *The Financing of Terror*, New York: Simon and Schuster, 1986, p. 192.

<sup>33</sup> *Ibid.*, p. 94.

encouraged to use chemo-bio weapons soon, and each separate attack would produce casualties numbering tens of thousands.<sup>34</sup>



**Figure 2.3 Aum Shinrikyo-Sarin Gas Attack on the Tokyo Subway-1995<sup>35</sup>**

Christian terrorism, based on racial interpretations of the Bible, emerged mostly in the amorphous American Christian Identity movement. In true millenarian fashion, armed rural communes composed of families would withdraw from the state to wait for the Second Coming and the great racial war that event would initiate. So far the level of Christian violence has been minimal, although some observers have associated the Identity movement with the Oklahoma City bombing (1995).

Three events in the Islamic world provided the dramatic political turning point, or necessary condition, for a new wave. The Iranian Revolution was the first. Street demonstrations disintegrated the Shah's armies and provided proof that religion now had more political appeal than the prevailing revolutionary ethos. Significantly, Iranian Marxists also active against the Shah could muster only meager support.

The Iranians inspired and helped Shiite terror movements elsewhere, in Iraq, Saudi Arabia, Kuwait, and Lebanon. Most important were the events in Lebanon where Shiites, influenced by the self-martyrdom tactic of the early Assassins, introduced suicide bombing. The result was surprising, perhaps even to the Lebanese themselves. American and other foreign troops who had entered the country after the 1982 Israeli invasion quickly left and never returned.

<sup>34</sup> RAPOPORT, David C., The Four Waves of Rebel Terror and September 11, Department of Political Science University of California at Los Angeles Anthropoetics 8, no. 1, Spring / Summer 2002.

<sup>35</sup> <http://news.bbc.co.uk/olmedia/>

Later, in Afghanistan, Muslim resistance (partly due to US aid in bringing Sunni volunteers to the battlefield) forced the Soviets out, an event which became a crucial step in the stunning, unimaginable disintegration of the Soviet Union itself. Religion now manifested the ability to eliminate a secular super-power.

Iranian and Afghan events were unexpected, but a third ingredient to give religion its special significance was fully anticipated by believing Muslims. 1979 was the beginning of a new century according to the Muslim calendar, and the tradition is that a redeemer would come at that time, a tradition that had regularly sparked uprisings at the turn of Muslim centuries earlier. This tradition influenced the Iranian Revolution itself, which occurred in the crucial expected year and may even have intensified Afghan resistance. Certainly, it affected other events. Sunni Muslims stormed the Grand Mosque in Mecca in the first minutes of the new century and 10,000 casualties resulted. Whatever the specific local causes, Sunni terrorism soon appeared in many states with large Islamic populations: Egypt, Syria, Tunisia, Morocco, Algeria, the Philippines, and Indonesia. Sunni groups competed with the PLO in strikes against Israel. Afghan veterans who had volunteered from all parts of the Islamic world returned home with the will, confidence, and training to begin terrorist operations against weak home governments.

Assassinations and hostage taking, common features of the third wave, persisted, but "suicide bombing"<sup>36</sup> was the most striking and deadly tactical innovation. It reasserted the martyrdom theme of the first wave, neglected by its two successors. The achievements in Lebanon inspired one remaining secular group, the Tamil Tigers in Sri Lanka, who used suicide bombing to give their ailing movement new life. The most spectacular Tamil act killed Indian Prime Minister Rajiv Gandhi. Despite the conventional wisdom that only a vision of rewards in Paradise could inspire such acts, the Tamils have used "suicide bombers" more than all Islamic groups put together!

Fourth wave groups, much more than their counterparts in the third wave, have made massive attacks against military and government installations. Americans, in particular, became frequent targets. An ambush in Somalia forced American troops, who had evacuated Lebanon, to abandon another mission. Suicide bomb attacks on military posts in Yemen, Saudi Arabia, and an American destroyer went unanswered. Similarly, embassies in Kenya and Tanzania were struck, occasioning heavy casualties in the local

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<sup>36</sup> SPRINZAK, Ehud, *Rational Fanatics*, Foreign Policy, Oct. 2001, p. 69.



populations. The responses were ineffective cruise missile strikes against suspected targets. In 1993, the first successful attack by foreign terrorists on American soil occurred, the first World Trade Center bombing. It was followed by unsuccessful efforts to coordinate new attacks in America on the eve of the new millennium.<sup>37</sup> Finally, the massive assaults on September 11 occurred, and the "war" against terror was launched.<sup>38</sup>

Although their relationships vary in each wave, there are four major international audiences for each terrorist group: foreign terrorist groups, diaspora populations, liberal sympathizers, and foreign governments. Vera Figner, who organized the foreign policy of Narodnaya Volya, appealed directly to three audiences. She identified totally with an international revolutionary tradition of socialists and Anarchists,<sup>39</sup> and developed good contacts with the Russian Diaspora community--an element hitherto "lost to the revolutionary tradition." By expressing her regret for the assassination of President Garfield, she tried to reach out to Western liberals, taking the occasion to emphasize that terror was always wrong in democratic states. This statement alienated many radicals supporting her; indeed, it failed to convince all interested parties that she truly meant what she said. She made no direct efforts to shape the policies of foreign states, but diaspora and liberal communities worked to make their governments more sympathetic to the Russian terrorists. Russian foreign policies and Figner's political system in any case irritated other states. The offer of the Japanese to finance Russian terrorists during the Russo-Japanese War (1905) encouraged Indian terrorists to believe that the Japanese would help them, too.

The 1890s became the "Golden Age of Assassination" in the West; monarchs, prime ministers, and presidents were struck down one after another. Most assassins were Anarchists who moved easily across international borders to assassinate foreign leaders, compelling affected governments to conclude that they had to share police information and cooperate to control borders. President Theodore Roosevelt seized the opportunity to call for the first international crusade to safeguard civilization.

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<sup>37</sup> KAPLAN, Jeffrey, *Terrorism and Political Violence*, Spring 2002, p. 14.

<sup>38</sup> MAYESTI, Michele L., *Explaining the United States' Decision to Strike Back at Terrorists*, *Terrorism and Political Violence*, 13:2, Summer, 2001, p. 85-106.

<sup>39</sup> RAPOPORT, David C., *The International World as Some Terrorists Have Seen It: A Look at a Century of Memoirs in Inside Terrorist Organizations*, London: Frank Cass, 2001, p.45.

Anarchy is a crime against the whole human race, and all mankind should band together against the Anarchist. His crimes should be made a crime against the law of nations . . . declared by treaties among all civilized powers.<sup>40</sup>

But three years later, when Germany and Russia urged states to convene in St. Petersburg to sign an international protocol to share police information, the US refused to come. Hostility to Germany, anxiety about involvement in European politics, and the fact that the US had no federal police force shaped that decision. Italy refused too, for a different but very revealing concern. If Anarchists were returned to their countries of origin, Italy's domestic troubles might be worse than its international ones!

The first great effort to deal with international terrorism failed largely because the interests and priorities of states pulled them in different directions, and, indeed, as the 20<sup>th</sup> Century began, some states actively helped terrorist groups. Bulgaria gave substantial support to Macedonian terrorists in the Ottoman Empire, and the suspicion that Serbia helped the assassin of Archduke Franz Ferdinand was an important ingredient in launching WW-I. Ironically, that assassination was crucial in stemming the first terrorist wave, and the deed might not have happened if Roosevelt's crusade had been successful a decade earlier.

The international ingredient in the next wave had a different shape. Terrorist leaders of different national groups acknowledged common bonds and heritage, but the heroes their literature invoked were overwhelmingly national ones. The underlying assumption was that if one strengthened ties with foreign terrorist groups, abilities to use other international assets would be weakened.

The League of Nations drafted two conventions (1937) to cope with terrorism, but they were "political theatre," not serious efforts to deal with the problem, and never went into effect.<sup>41</sup> After WW-II, the UN inherited the League's authority over international terror and over the mandates governed by colonial powers, territories that were now scenes of extensive terrorist activity. As the UN grew by admitting new states virtually all of which were former colonial territories, that body gave the anti-colonial sentiment more

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<sup>40</sup> JENSEN, Richard B., *The United States, International Policing the War against Anarchist Terrorism, Terrorism and Political Violence*, 13:1, Spring 2001, p.19.

<sup>41</sup> DUBIN, Martin David, *Great Britain and the Anti-Terrorist Conventions of 1937, Terrorism and Political Violence V-I*, Spring, 1993, p.1.

structure, focus, and opportunities. Significantly, UN debates regularly described anti-colonial terrorists as "freedom fighters."

Diaspora groups displayed abilities not seen in earlier waves. The IRA received money, weapons, and volunteers from the Irish overseas, especially in America. The support of the US government for Irish independence was partly dependent on Irish American influence too. Israeli groups got similar support from similar, especially American, diaspora sources. The Arab world gave the Algerian FLN crucial political support, and Arab states adjacent to Algeria offered sanctuaries and allowed their territories to be used as staging grounds for attacks. The Greek government sponsored the Cypriot uprising against the British, and as the revolt grew more successful, the more enraged Turkish Cypriots looked to Turkey for aid and received it. The Cyprus problem is still unresolved nearly a half century later.<sup>42</sup>

The different Irish experiences illustrate how crucial influences are shaped by foreign perceptions of purpose and context. The first effort in the 20s, seen simply as an anti-colonial movement, gained the foreign support needed from Irish Americans and the US government to secure an Irish state. The supporting parties abandoned the IRA during its brief campaigns to bring Northern Ireland into the Republic during World War II, when a more important concern prevailed. Support from abroad did not materialize in the 50s during the Cold War. IRA activities in the early part of the "New Left Wave" had a Marxist element that affected the usual sources of diaspora support. The Cold War had to end before an American government showed serious interest in the issue again, when it initiated moves that may ultimately resolve the conflict.

The conventional wisdom is that international connections always provide a terrorist group with enormous advantages. This wisdom is deeply flawed. One important and not fully understood reason for the fact that the third wave was the shortest was that it was so dependent on unreliable international connections. The emphasis on the revolutionary bond alienated potential domestic and liberal constituencies, particularly during the Cold War. Soon it was found that the effort to foster operational cooperation between terrorist groups posed serious problems for the weaker ones. Thus the German Revolutionary Cells, partners of the Palestine Front for the Liberation of Palestine

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<sup>42</sup> RAPOPORT, David C., *The Four Waves of Rebel Terror and September 11*, Department of Political Science University of California at Los Angeles, *Anthropoetics* 8, no. 1, Spring / Summer 2002.

(PFLP) in a variety of hijacking efforts, tried to get help from its partner to release German prisoners. But the Germans found themselves wholly "dependent on the will of Wadi Haddad and his group," whose agenda was very different from theirs after all, and the relationship soon terminated.<sup>43</sup> A member of another German group (2nd June) suggests that the group's obsession with the Palestinian cause induced it to attack a Jewish synagogue on the anniversary of Kristallnacht; a date often considered the beginning of the Holocaust. Such "stupidity," he says, alienated potential German constituencies.<sup>44</sup>

Palestinian raids from Egyptian-occupied Gaza helped precipitate a disastrous war with Israel (1956), and Egypt was led to prevent the possibility that fidayeen raids would be launched from its territories ever again. A Palestinian raid from Syria brought the latter into the Six-Day War, and Syria ever afterwards kept a tight control on those operating from its territories. The third wave had one strikingly new international feature. Never before had one people become the favorite target of most groups. Approximately one third of the international attacks involved American targets. American economic, diplomatic, and military activities were visible in Latin America, Europe, and the Middle East. The support the US gave governments under terrorist siege only intensified this proclivity.

From its inception in 1968, the PLO, a loose confederation, often found international ties unexpectedly expensive because they complicated existing divisions within the organization. In the 1970s, Abu Iyad, founding member and intelligence chief, wrote that the Palestinian cause was so important in Syrian and Iraqi domestic politics that those states captured organizations within the PLO to serve their own ends. The result was that it was even more difficult to settle for a limited goal as the Irgun and the EOKA had done earlier. Entanglements with Arab states created other problems for both parties similar to those in 1956 and 1967. When a PLO faction hijacked British and American planes to Jordan (1970) in the first effort to target non-Israelis, the Jordanian army devastated the Palestinians and the PLO lost its home. Finally, an attempt to assassinate an Israeli diplomat in Britain sparked the 1982 invasion of Lebanon, forcing

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<sup>43</sup> KLEIN, Hans J., Jean M. Bourguereau, *German Guerrilla: Terror, Rebel Reaction and Resistance*, Orkney, U.K., 1981, p. 31.

<sup>44</sup> BAUMANN, Michael, *Terror or Love*, New York: Grove Press, 1977, p. 61.

the PLO to leave the home that gave it so much significance among foreign terrorist groups.

To maintain control over their own destiny, states began to sponsor their own groups, an activity unknown in the second wave, and a very costly one to the sponsors. In the 1980s, Britain severed diplomatic relations with Libya and Syria for sponsoring terrorism on British soil, and France broke with Iran when Iran refused to let the French interrogate its embassy staff about assassinations of Iranian émigrés. The limited value of state-sponsored terror was emphasized by Iraqi restraint during the Gulf War, despite widespread predictions that Iraqi terrorists would flood Europe. If terror had materialized, it would have made bringing Saddam Hussein to trial for crimes a war aim and the most plausible explanation for Hussein's uncharacteristic restraint is the desire to avoid that result.

During the third wave, states for the first time cooperated openly and formally in counter-terror efforts. The international cooperation of national police forces sought so desperately in the 1904 St. Petersburg Protocol finally materialized in the mid 1970s, when Trevi and Interpol were established. The Americans with British aid bombed Libya (1986) for the terrorist attacks it sponsored, and the European Community imposed an arms embargo. Two years later, evidence that Libya's agents were involved in the Pan Am crash in Lockerbie, Scotland led to a unanimous UN Security Council decision obliging Libya to extradite the suspects, and a decade later, when collective sanctions had their full effects, Libya complied. When compared with League and UN activities during the "Anti-Colonial Wave," the UN action in the Libya case signified a dramatic change.

Nonetheless, sometimes even close allies could not cooperate. France refused to extradite PLO, Red Brigade, and ETA suspects to West Germany, Italy, and Spain respectively. Italy spurned American requests to extradite a Palestinian suspect in the seizure of the Achille Lauro cruise ship in 1984. The US in its turn has refused to extradite some IRA suspects. In 1988 Italy refused to extradite a Kurd sought by Turkey because Italian law forbids capital punishment and Turkish law does not. Events of this sort will not stop until the laws and interests of separate states are identical.<sup>45</sup>

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<sup>45</sup> RAPOPORT, David C., The Four Waves of Rebel Terror and September 11, Department of Political Science University of California at Los Angeles, *Anthropoetics* 8, no. 1, Spring / Summer 2002.

Finally, the breakdown of the Lebanese government gave the PLO an opportunity to become the first terrorist organization to train foreign groups. When the PLO fled Lebanon, its host (Tunisia) refused to let it continue that activity, and to a large extent the PLO's career as an effective terrorist organization was over. Ironically, as the Oslo Accords demonstrated, the PLO achieved more of its objectives when it became less dangerous.

Religion (the basis for the fourth wave) transcends the state bond. But groups from different mainstream religious traditions do not cooperate. Even traditional cleavages within a religion, Shia and Sunni for example, are sometimes intensified.

Within the same religion, particularly the same branch of that religion, the potentialities for cooperation affecting many interests may be great, particularly in the Islamic world where so many states exist. Whether or not the religious tie was crucial, the first successful strategic example of state-sponsored terror occurred during the fourth wave. Iran facilitated the suicide (self-martyrdom) bombings, which compelled foreign withdrawals in Lebanon. Inasmuch as the attacks were made by local elements on their own terrain, the targeted parties did not make retaliatory strikes at the sponsor. Al Qaeda's tactical strikes at the American installations and embassies were protected by the Afghan Taliban government's refusal to accept the UN ultimatum to force Al Qaeda to leave its bases. The religious ties may have been a crucial element in the decision. But whatever the reason, when the Taliban again refused to comply after September 11, it suffered the consequences.

Resemblances between Al Qaeda and the PLO exist, but the differences are significant. While the PLO prior to the Oslo Agreements targeted Americans more than any other non-Israeli people, the US was not the principal target, as it seems to have been for Al Qaeda from the very beginning. The PLO trained elements of pre-existing groups but those groups retained their identity; Al Qaeda trains individuals committed to its goal from various places in the Sunni world, including the West. The PLO had a loose, divided form that caused it enormous trouble but gave it an ability to persevere. While Al Qaeda has created unique "sleeper cells" in areas to be targeted, it does seem like a single unit, and hence much more dangerous. But there is a flip side to this structural

difference. Once their centers are destroyed, better-organized groups are more likely to quit fighting.<sup>46</sup>

### 2.3 ANALYSIS ON CAUSES OF TERRORISM

In this section, I brought the analysis and hypotheses together on causes of terrorism which are written some specialists. If we could understand the causes of a problem we could solve this problem fairly easy.

The assumption underlying much of the terrorist-profile research in recent decades has been that most terrorists have some common characteristics that can be determined through psychometric analysis of large quantities of biographical data on terrorists. One of the earliest attempts to single out a terrorist personality was done by Charles A. Russell and Bowman H. Miller.<sup>47</sup>

Ideally, a researcher attempting to profile terrorists in the 1990s would have access to extensive biographical data on several hundred terrorists arrested in various parts of the world and to data on terrorists operating in a specific country. If such data were at hand, the researcher could prepare a psychometric study analyzing attributes of the terrorist: educational, occupational, and socioeconomic background; general traits; ideology; marital status; method and place of recruitment; physical appearance; and sex. Researchers have used this approach to study West German and Italian terrorist groups. Such detailed information would provide more accurate sociological profiles of terrorist groups. Although there appears to be no single terrorist personality, members of a terrorist group(s) may share numerous common sociological traits.

Practically speaking, however, biographical databases on large numbers of terrorists are not readily available. Indeed, such data would be quite difficult to obtain unless one had special access to police files on terrorists around the world. Furthermore, developing an open-source biographical database on enough terrorists to have some scientific validity would require a substantial investment of time. The small number of profiles contained in this study is hardly sufficient to qualify as scientifically representative of terrorists in

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<sup>46</sup> SIMON, Steven and Daniel Benjamin, *America and the New Terrorism*, Survival 42, 2, September, 2000, p.156-77.

<sup>47</sup> RUSSELL, Charles A., and BOWMAN, H. Miller, *Profile of a Terrorist*, *Terrorism: An International Journal*, 1, No. 1, 1977, p.17-34.

general, or even of a particular category of terrorists, such as religious fundamentalists or ethnic separatists. Published terrorism databases, such as Edward F. Mickolus's<sup>48</sup> series of chronologies of incidents of international terrorism and the Rand-St. Andrews University Chronology of International Terrorism, are highly informative and contain some useful biographical information on terrorists involved in major incidents, but are largely incident-oriented.

### **2.3.1 Approaches to Terrorism Analysis**

#### **2.3.1.1 The Multicausal Approach**

Terrorism usually results from multiple causal factors--not only psychological but also economic, political, religious, and sociological factors, among others. There is even a hypothesis that it is caused by physiological factors, as discussed below. Because terrorism is a multicausal phenomenon, it would be simplistic and erroneous to explain an act of terrorism by a single cause, such as the psychological need of the terrorist to perpetrate an act of violence.

For Paul Wilkinson, the causes of revolution and political violence in general are also the causes of terrorism. These include ethnic conflicts, religious and ideological conflicts, poverty, modernization stresses, political inequities, lack of peaceful communications channels, traditions of violence, the existence of a revolutionary group, governmental weakness and ineptness, erosions of confidence in a regime, and deep divisions within governing elites and leadership groups.<sup>49</sup>

#### **2.3.1.2 The Political Approach**

The alternative to the hypothesis that a terrorist is born with certain personality traits that destine him or her to become a terrorist is that the root causes of terrorism can be found in influences emanating from environmental factors. Environments conducive to the rise of terrorism include international and national environments, as well as subnational ones such as universities, where many terrorists first become familiar with Marxist-Leninist ideology or other revolutionary ideas and get involved with radical groups.

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<sup>48</sup> MICKOLUS, Edward F., with Susan L. Simmons. *Terrorism, A Chronology of Events and A Selectively Annotated Bibliography*, Westport, Connecticut, Greenwood Press, 1997, p. 25.

<sup>49</sup> WILKINSON, Paul, *Political Terrorism*. London, Macmillan, 1974, p.36.



Having identified one or more of these or other environments, analysts may distinguish between precipitants that started the outbreak of violence, on the one hand, and preconditions that allowed the precipitants to instigate the action, on the other hand. Political scientists Chalmers Johnson<sup>50</sup> and Martha Crenshaw<sup>51</sup> have further subdivided preconditions into permissive factors, which engender a terrorist strategy and make it attractive to political dissidents, and direct situational factors, which motivate terrorists. Permissive causes include urbanization, the transportation system (for example, by allowing a terrorist to quickly escape to another country by taking a flight), communications media, weapons availability, and the absence of security measures. An example of a situational factor for Palestinians would be the loss of their homeland of Palestine.

Various examples of international and national or subnational theories of terrorism can be cited. An example of an international environment hypothesis is the view proposed by Brian M. Jenkins<sup>52</sup> that the failure of rural guerrilla movements in Latin America pushed the rebels into the cities. (This hypothesis, however, overlooks the national causes of Latin American terrorism and fails to explain why rural guerrilla movements continue to thrive in Colombia.) Jenkins also notes that the defeat of Arab armies in the 1967 Six-Day War caused the Palestinians to abandon hope for a conventional military solution to their problem and to turn to terrorist attacks.

### **2.3.1.3 The Organizational Approach**

Some analysts, such as Crenshaw, take an organization approach to terrorism and see terrorism as a rational strategic course of action decided on by a group. In her view, terrorism is not committed by an individual. Rather, she contends that "Acts of terrorism are committed by groups who reach collective decisions based on commonly held beliefs, although the level of individual commitment to the group and its beliefs varies."<sup>53</sup>

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<sup>50</sup> JOHNSON, Chalmers. Perspectives on Terrorism Reprinted in Walter Laqueur, ed., *The Terrorism Reader*. New York, New American Library, 1978, p.44.

<sup>51</sup> CRENSHAW, Martha, *The Causes of Terrorism*, Comparative Politics, 13, July 1981, p. 379-99.

<sup>52</sup> JENKINS, Brian M., *Terrorists at the Threshold.*, In E. Nobles Lowe and Harry D. Shargel, eds., *Legal and Other Aspects of Terrorism.*, New York, 1979, p.67.

<sup>53</sup> CRENSHAW, Martha, *Questions to Be Answered, Research to Be Done, Knowledge to be Applied*, Walter Reich, ed., *Origins of Terrorism: Psychologies, Ideologies, Theologies, States of Mind*. Cambridge, Cambridge University Press, 1990, p. 247-60

Crenshaw has not actually substantiated her contention with case studies that show how decisions are supposedly reached collectively in terrorist groups. That kind of inside information, to be sure, would be quite difficult to obtain without a former decision-maker within a terrorist group providing it in the form of a published autobiography or an interview, or even as a paid police informer. Crenshaw may be partly right, but her organizational approach would seem to be more relevant to guerrilla organizations that are organized along traditional Marxist-Leninist lines, with a general secretariat headed by a secretary general, than to terrorist groups *per se*. The FARC, for example, is a guerrilla organization, albeit one that is not averse to using terrorism as a tactic. The six members of the FARC's General Secretariat participate in its decision-making under the overall leadership of Secretary General Manuel Marulanda Velez. The hard-line military leaders, however, often exert disproportionate influence over decision-making.

Bona fide terrorist groups, like cults, are often totally dominated by a single individual leader, be it Abu Nidal, Ahmed Jibril, Osama bin Laden, or Shoko Asahara. It seems quite improbable that the terrorist groups of such dominating leaders make their decisions collectively. By most accounts, the established terrorist leaders give instructions to their lieutenants to hijack a jetliner, assassinate a particular person, bomb an embassy, and so forth, while leaving operational details to their lieutenants to work out. The top leader may listen to his lieutenants' advice, but the top leader makes the final decision and gives the orders.

#### **2.3.1.4 The Physiological Approach**

The physiological approach to terrorism suggests that the role of the media in promoting the spread of terrorism cannot be ignored in any discussion of the causes of terrorism. Thanks to media coverage, the methods, demands, and goals of terrorists are quickly made known to potential terrorists, who may be inspired to imitate them upon becoming stimulated by media accounts of terrorist acts.

The diffusion of terrorism from one place to another received scholarly attention in the early 1980s. David G. Hubbard<sup>54</sup> takes a physiological approach to analyzing the causes of terrorism. He discusses three substances produced in the body under stress:

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<sup>54</sup> HUBBARD, David G, *The Psychodynamics of Terrorism.*, in Yonah Alexander, T. Adeniran, and R.A. Kilmarx, eds., *International Violence.*, New York, Praeger, 1983, p. 45-53.

nor epinephrine, a compound produced by the adrenal gland and sympathetic nerve endings and associated with the "fight or flight" physiological response of individuals in stressful situations; acetylcholine, which is produced by the parasympathetic nerve endings and acts to dampen the accelerated nor epinephrine response; and endorphins, which develop in the brain as a response to stress and "narcotize" the brain, being 100 times more powerful than morphine. Because these substances occur in the terrorist, Hubbard concludes that much terrorist violence is rooted not in the psychology but in the physiology of the terrorist, partly the result of "stereotyped, agitated tissue response" to stress. Hubbard's conclusion suggests a possible explanation for the spread of terrorism, the so-called contagion effect.

Kent Layne Oots and Thomas C. Wiegele have also proposed a model of terrorist contagion based on physiology. Their model demonstrates that the psychological state of the potential terrorist has important implications for the stability of society. In their analysis, because potential terrorists become aroused in a violence-accepting way by media presentations of terrorism, "Terrorists must, by the nature of their actions, have an attitude which allows violence." One of these attitudes, they suspect, may be Machiavellianism because terrorists are disposed to manipulating their victims as well as the press, the public, and the authorities. They note that the potential terrorist "need only see that terrorism has worked for others in order to become aggressively aroused."

According to Oots and Wiegele, an individual moves from being a potential terrorist to being an actual terrorist through a process that is psychological, physiological, and political. "If the neurophysiological model of aggression is realistic," Oots and Wiegele assert, "there is no basis for the argument that terrorism could be eliminated if its sociopolitical causes were eliminated." They characterize the potential terrorist as "a frustrated individual who has become aroused and has repeatedly experienced the fight or flight syndrome. Moreover, after these repeated arousals, the potential terrorist seeks relief through an aggressive act and also seeks, in part, to remove the initial cause of his frustration by achieving the political goal which he has hitherto been denied."<sup>55</sup>

D. Guttman also sees terrorist actions as being aimed more at the audience than at the immediate victims. It is, after all, the audience that may have to meet the terrorist's

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<sup>55</sup> OOTS, Kent Layne and WIEGELE, Thomas C., *Terrorist and Victim: Psychiatric and Physiological Approaches from a Social Science Perspective*, *Terrorism: An International Journal*, 8, No. 1, 1985, p. 32.

demands. Moreover, in Guttman's analysis, the terrorist requires a liberal rather than a right-wing audience for success. Liberals make the terrorist respectable by accepting the ideology that the terrorist alleges informs his or her acts. The terrorist also requires liberal control of the media for the transmission of his or her ideology.<sup>56</sup>

### **2.3.1.5 The Psychological Approach**

A common suggestion is that there must be something wrong with terrorists. Terrorists must be crazy, or suicidal, or psychopaths without moral feelings or feelings for others. Thirty years ago this suggestion was taken very seriously, but thirty years of research has found psychopathology and personality disorder no more likely among terrorists than among non-terrorists from the same background. Interviews with current and former terrorists find few with any disorder found in the American Psychiatric Association's Diagnostic and Statistical Manual. Comparisons of terrorists with non-terrorists brought up in the same neighborhoods find psychopathology rates similar and low in both groups.

Another way to think about this issue is to imagine yourself a terrorist, living an underground existence cut off from all but the few who share your goals. Your life depends on the others in your group. Would you want someone in your group suffering from some kind of psychopathology? Someone who cannot be depended on, someone out of touch with reality? Of course there are occasional lone bombers or lone gunmen who kill for political causes and such individuals may indeed suffer from some form of psychopathology. But terrorists in groups, especially groups that can organize attacks that are successful, are likely to be within the normal range of personality.

Indeed terrorism would be a trivial problem if only those with some kind of psychopathology could be terrorists. Rather we have to face the fact that normal people can be terrorists, that we are ourselves capable of terrorist acts under some circumstances. This fact is already implied in recognizing that military and police forces are eminently capable of killing non-combatants in terrorism from above. Few suggest that the broad range of military and police involved in such killing must all be abnormal. Since 9/11, there have already been suggestions that the U.S. security forces

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<sup>56</sup> GUTTMANN, D, Killers and Consumers: The Terrorist and His Audience, Social Research, 46, 1979, p. 517-26.

may need to use torture to get information from suspected terrorists. This is the edge of a slippery slope that can lead to killing non-combatants.

No one wakes up one morning and decides that today is the day to become a terrorist. The trajectory by which normal people become capable of doing terrible things is usually gradual, perhaps imperceptible to the individual. This is among other things a moral trajectory, such as Horowitz has described in "The Deadly Ethnic Riot." In too-simple terms, terrorists kill for the same reasons that groups have killed other groups for centuries. They kill for cause and comrades, that is, with a combination of ideology and *intense small-group dynamics*.<sup>57</sup>

The cause that is worth killing for and even dying for is personal, a view of the world that makes sense of life and death and links the individual to some form of immortality. Every normal person believes in something more important than life. We have to, because, unlike other animals, we know that we are going to die. We need something that makes sense of our life and our death, something that makes our death different from the death of a squirrel lying by the side of the road that we drive to work. The closer and more immediate death is, the more we need the group values that give meaning to life and death. These values include the values of family, religion, ethnicity, and nationality--the values of our culture. Dozens of experiments have shown that *thinking about our own death leads us to embrace more strongly the values of our culture ("terror management theory")*.

There is no special association between religion and violence. Many of the terrorist groups since WW-II have been radical-socialist groups with no religious roots: the Red Brigade in Italy, the Baader-Meinhof Gang and the Red Army Faction in Germany, the Shining Path in Peru. Animal rights and saving the environment can be causes that justify terrorism. For much of the twentieth century, atheistic communism was such a cause.

The group values represented in the cause are focused to a personal intensity in the small group of like-minded people who perpetrate terrorist violence. Most individuals belong to many groups--family, co-workers, neighborhood, religion, country--and each of these groups has some influence on the beliefs and behavior of the individual. These

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<sup>57</sup> McCauley, Clark, *The Psychology of Terrorism*, Social Science Research Council/After Sept. 11. Available on site: <http://www.ssrc.org/sept11/essays/>

groups tend to have different values and the competition of values reduces the power of any one group over its members. But members of an underground terrorist group have put this group first in their lives, dropping or reducing every other connection. The power of this one group is now enormous, and extends to every kind of personal and moral judgment. This is the power that can make violence against the enemy not just acceptable but necessary.

Every army aims to do what the terrorist group does: to link a larger group cause with the small group dynamics that can deliver individuals to sacrifice. Every army cuts trainees off from their previous lives so that the combat unit can become their family; their fellow-soldiers become their brothers, and their fear of letting down their comrades greater than their fear of dying. "Perfect love casts out fear."

The power of an isolating group over its members is not limited to justifying violence. Many non-violent groups also gain power by separating individuals from groups that might offer competing values. Groups using this tactic include religious cults, drug treatment centers, and residential schools and colleges.

In brief, the psychology behind terrorist violence is normal psychology, abnormal only in the intensity of the group dynamics that link cause with comrades.<sup>58</sup>

### **2.3.2 General Hypotheses of Terrorism**

If one accepts the proposition that political terrorists are made, not born, then the question is what makes a terrorist. Although the scholarly literature on the psychology of terrorism is lacking in full-scale, quantitative studies from which to ascertain trends and develop general theories of terrorism, it does appear to focus on several theories. One of these hypotheses suggests that participants in revolutionary violence predicate their behavior on a rational cost-benefit calculus and the conclusion that violence is the best available course of action given the social conditions. The notion that a group rationally chooses a terrorism strategy is questionable, however. Indeed, a group's decision to resort to terrorism is often divisive, sometimes resulting in factionalization of the group.

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<sup>58</sup> Ibid.

### 2.3.2.1 Frustration-Aggression Hypothesis

The frustration-aggression hypothesis of violence is prominent in the literature. This hypothesis is based mostly on the relative-deprivation hypothesis, as proposed by Ted Robert Gurr<sup>59</sup>, an expert on violent behaviors and movements, and reformulated by J.C. Davies<sup>60</sup> to include a gap between rising expectations and need satisfaction. Another proponent of this hypothesis, Joseph Margolin<sup>61</sup>, argues that "much terrorist behavior is a response to the frustration of various political, economic, and personal needs or objectives." Other scholars however have dismissed the frustration-aggression hypothesis as simplistic, based as it is on the erroneous assumption that aggression is always a consequence of frustration.

According to Franco Ferracuti<sup>62</sup>, a University of Rome professor, a better approach than these and other hypotheses, including the Marxist theory, would be a subcultural theory, which takes into account that terrorists live in their own subculture, with their own value systems. Similarly, political scientist Paul Wilkinson<sup>63</sup> faults the frustration-aggression hypothesis for having "very little to say about the social psychology of prejudice and hatred..." and fanaticisms that "play a major role in encouraging extreme violence." He believes that "Political terrorism cannot be understood outside the context of the development of terroristic, or potentially terroristic, ideologies, beliefs and lifestyles"

### 2.3.2.2 Negative Identity Hypothesis

Using Erikson's theory of identity formation, particularly his concept of negative identity, the late political psychologist Jeanne N. Knutson<sup>64</sup> suggests that the political terrorist consciously assumes a negative identity. One of her examples is a Croatian terrorist who, as a member of an oppressed ethnic minority, was disappointed by the failure of his aspiration to attain a university education, and as a result assumed a

<sup>59</sup> GURR, Ted Robert, *Why Men Rebel*, Princeton, New Jersey, Princeton University Press, 1970, p. 57.

<sup>60</sup> DAVIES, T.R, *Aggression, Violence, Revolution and War.*, in Jeanne N. Knutson, ed., *Handbook of Political Psychology*, San Francisco: Jossey-Bass, 1973, p. 234-60.

<sup>61</sup> MARGOLIN, Joseph, *Psychological Perspectives in Terrorism*, in Yonah Alexander and Seymour Maxwell Finger, eds., *Terrorism: Interdisciplinary Perspectives.*, New York: John Jay, 1977, p. 273-74.

<sup>62</sup> FERRACUTI, Franco, *A Sociopsychiatric Interpretation of Terrorism*, *The Annals of the American Academy of Political and Social Science*, No:463, September 1982, p.129-41.

<sup>63</sup> WILKINSON, Paul, *Political Terrorism*. London: Macmillan, 1974, p. 127.

<sup>64</sup> KNUTSON, Jeanne N, *Social and Psychodynamic Pressures Toward a Negative Identity*, in Yonah Alexander and John M. Gleason, eds., *Behavioral and Quantitative Perspectives on Terrorism.*, New York: Pergamon, 1981, p. 105.

negative identity by becoming a terrorist. Negative identity involves a vindictive rejection of the role regarded as desirable and proper by an individual's family and community. In Knutson's view, terrorists engage in terrorism as a result of feelings of rage and helplessness over the lack of alternatives. Her political science-oriented viewpoint seems to coincide with the frustration-aggression hypothesis.

### 2.3.2.3 Narcissistic Rage Hypothesis

The advocates of the narcissism-aggression hypothesis include psychologists Jerrold M. Post, John W. Crayton, and Richard M. Pearlstein. Taking the-terrorists-as-mentally-ill approach, this hypothesis concerns the early development of the terrorist. Basically, if primary narcissism in the form of the "grandiose self" is not neutralized by reality testing, the grandiose self produces individuals who are sociopathic, arrogant, and lacking in regard for others. Similarly, if the psychological form of the "idealized parental ego" is not neutralized by reality testing, it can produce a condition of helpless defeatism, and narcissistic defeat can lead to reactions of rage and a wish to destroy the source of narcissistic injury. "As a specific manifestation of narcissistic rage, terrorism occurs in the context of narcissistic injury," writes Crayton<sup>65</sup>. For Crayton, terrorism is an attempt to acquire or maintain power or control by intimidation. He suggests that the "meaningful high ideals" of the political terrorist group "protect the group members from experiencing shame."

In Post's view, a particularly striking personality trait of people who are drawn to terrorism "is the reliance placed on the psychological mechanisms of "externalization" and 'splitting'." These are psychological mechanisms, he explains, that are found in "individuals with narcissistic and borderline personality disturbances." "Splitting," he explains, is a mechanism characteristic of people whose personality development is shaped by a particular type of psychological damage (narcissistic injury) during childhood. Those individuals with a damaged self-concept have failed to integrate the good and bad parts of the self, which are instead split into the "me" and the "not me." These individuals, who have included Hitler, need an outside enemy to blame for their own inadequacies and weaknesses. The data examined by Post, including a 1982 West German study, indicate that many terrorists have not been successful in their personal,

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<sup>65</sup> CRAYTON, John W, *Terrorism and the Psychology of the Self.*, in Lawrence Zelic Freedman and Yonah Alexander, eds., *Perspectives on Terrorism.*, Wilmington, Delaware: Scholarly Resources, 1983, p. 37-8



educational, and vocational lives. Thus, they are drawn to terrorist groups, which have an us-versus-them outlook. This hypothesis, however, appears to be contradicted by the increasing number of terrorists who are well-educated professionals, such as chemists, engineers, and physicists.

The psychology of the self is clearly very important in understanding and dealing with terrorist behavior, as in incidents of hostage-barricade terrorism. Crayton points out that humiliating the terrorists in such situations by withholding food, for example, would be counterproductive because "the very basis for their activity stems from their sense of low self-esteem and humiliation."

Using a Freudian analysis of the self and the narcissistic personality, Pearlstein<sup>66</sup> eruditely applies the psychological concept of narcissism to terrorists. He observes that the political terrorist circumvents the psychopolitical liabilities of accepting himself or herself as a terrorist with a negative identity through a process of rhetorical self-justification that is reinforced by the group's group-think. His hypothesis, however, seems too speculative a construct to be used to analyze terrorist motivation independently of numerous other factors. For example, politically motivated hijackers have rarely acted for self-centered reasons, but rather in the name of the political goals of their groups. It also seems questionable that terrorist suicide-bombers, who deliberately sacrificed themselves in the act, had a narcissistic personality.

## **2.4 TERRORISM IN THE NAME OF RELIGION**

Recent years, terrorism under the name of religion is more significant. In this section I examined the religious based terrorism in global context but by explaining all regions in the worlds one by one.

Tragically, all major religions can justify violence, and religion has long been associated with terrorism. Ever since there was good and evil, religious people have pondered whether using evil to fight evil is good in the name of justice or self-defense. The most common resort to violence occurs when a religious group feels threatened and thinks of itself as a chosen people. Less common is the compulsion to slaughter others in the name of a deity. Religions also spawn sects, cults, and alternative religions. A sect is

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<sup>66</sup> PEARLSTEIN, Richard M, *The Mind of the Political Terrorist*, Wilmington, Delaware: Scholarly Resources, 1991, p.87.

an offshoot of an established religion (Mormons, for example), and they either die off or expand into a major denomination. Their role is most likely that of the victim, not the aggressor. A cult is a spiritually innovative group (Scientologists, for example) headed by a charismatic leader that aims to become a major denomination. Most cults are harmless, but some are into mind control (Unification, for example) and others are into mass suicide (Branch Dravidians, for example). Certain doomsday cults are well-known terrorists (such as Aum Shinri Kyo) because they are more homicidal than suicidal.<sup>67</sup>

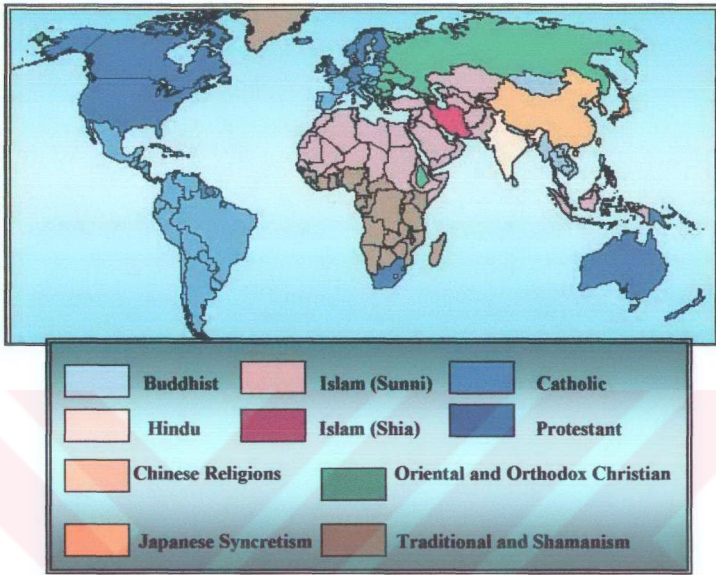
There are four warning signs of a dangerous religious group: (1) apocalyptic thinking, or eschatology, that the world is coming to an end, and true believers will enjoy unique rewards at endtime; (2) charismatic leadership where the leader dominates the followers spiritually, emotionally, and sexually; (3) paranoia and demonization of outsiders, accompanied by intentional isolation within a cloistered community; and (4) preparations of a defensive nature, usually indicated by a buildup of guns, poisons, and/or weapons of mass destruction.<sup>68</sup> Many terrorist experts regard apocalyptic thinking as the first and most important danger sign. Let's briefly examine some of the major world religions (figure 2.4):

**CHRISTIANITY:** The most popular religion in the world (33%) and the one with the most historical record of violence, much of it in-fighting. A person becomes Christian by being born again (Conservatives), baptized (Protestants and Catholics), reciting the Apostles' Creed (Catholics), or having a personal relationship with Jesus (Liberals). Eastern Orthodoxy rejects the Apostles' Creed. The strongest bond involves interpretation of the New Testament, although Fundamentalists (Extreme Conservatives) believe the Bible is inerrant and not subject to modern interpretation.

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<sup>67</sup> WALTER, Reich, *Origins of Terrorism: Psychologies, Ideologies, Theologies, States of Mind*. Washington D.C.: Woodrow Wilson Center Press, 1998, p.76.

<sup>68</sup> LEWY, G. *Religion and Revolution*, NY: Oxford Univ. Press., 1974, p.97.



**Figure 2.4 World Religions**

**ISLAM:** The world's second largest (20%) and fastest growing religion. The word Islam is derived from the word "salam", meaning peace or submission. Allah is a word meaning one true God. Muslim is a word meaning a person who submits to the will of God. A person becomes Muslim by becoming a follower of Islam, attending a mosque (all are non-denominational), reading the Qur'an, holding six beliefs (involving God, angels, messengers, Satan, Day of Judgment, and Jesus was no son of God), and practicing five pillars (reciting a creed, praying 5 times a day, charity, fasting, and pilgrimage). Sikhism is a cross between Islam and Hinduism that rejects elitism and cherishes ceremonial weapons.

**HINDUISM:** The world's third largest (13%) religion and the oldest organized one. The word Hindu comes from combining the first part of Himalayan and last part of Bindu, a geographical area between the mountains and sea. It is a religion without a founder, and a person becomes Hindu by reading the sacred texts, recognizing the holy trinity

(Brahma the Creator, Vishnu the Preserver, and Shiva the Destroyer), and practicing various hymns, incantations, and Yoga to commune your soul with the unity of all reality. Most Hindus (80%) regard Vishnu as the ultimate deity, although there are many sects. Hindus believe in transmigration of the soul, or reincarnation, in judgment for good and bad acts.

**BUDDHISM:** The world's fourth largest (6%) religion, founded by Buddha in 535 BC. Buddha is a term meaning one who is enlightened or has awakened. In Buddhism, there is no God, savior, heaven or hell, only a state of Nirvana achieved by meditation and avoiding extremes of mortification and hedonism. Southeast Asia practices Southern Buddhism which emphasizes karma. China, Japan and Korea practice Eastern Buddhism, which celebrates festivals and is mostly a ruling class religion. Tibet, Mongolia, and Russia practice Northern Buddhism (the Dalai Lama being the ruler) which emphasizes pilgrimages to sites in Sri Lanka and India. There are a variety of traditions mixed with local culture. Most Japanese (85%), for example, also follow Shinto, an ancient nature worship religion, and Shintoists almost always follow Confucianism (love of family) or Taoism (the force that flows thru life).

**JUDAISM:** Not one of the world's largest (0.2%) religions, but one of the most influential. The history of the Jews is chronicled in the Old Testament, which corresponds to their sacred texts, the Torah being only five chapters of it. Jews believe in an incorporeal God who is monitoring everything on earth. There is no savior in Judaism, and the Jews are the chosen people not because they are superior but because they have received more difficult responsibilities and more punishments if they fail. Synagogues are governed by the congregation, the Rabbi being someone well educated. The main forms are Orthodox, Reform, and Conservative (an intermediate position between Orthodox and Reform).

Professor Huntington in his book *Clash of Civilizations*<sup>69</sup> makes the argument that religion determines culture and that at least eight separate culture clashes are occurring in the world today. The Middle East, of course, goes without saying, and he points to the Balkan (Yugoslavian) region as a place where clashes between Christianity, Orthodox Christianity and Islam often erupt into violence. Japan is another area ripe for

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<sup>69</sup> HUNTINGTON, Samuel, *The Clash of Civilizations and the Remaking of World Order.*, NY: Simon & Schuster., 1996, p.56.

conflict, as is the Indian subcontinent and Hindu region. Latin America and Africa will have emerging clashes, mostly Christian in-fighting, or in the case of Africa (which is 40% Christian and 40% Muslim), an ultimate battle clash.

#### **2.4.1. The War Nobody Knows How to Win**

Half of the world's thirty most dangerous terrorist groups claim religion as their motivation. This motivation involves believing that their religion mandates acts of terror as sacred duty in an endless, cosmic struggle for the best way to please God. Religious terrorism has no military objective. A holy war, or jihad, is endless because it has a spiritual objective. One never knows when God is pleased enough, and when the situation in heaven matches the situation on earth. Nobody cares who or how many get killed in spiritual warfare. It for this reason that experts say religious terrorism might not be the world's most dangerous type, but it certainly is the most dedicated and unpredictable<sup>70</sup>. While some are, most religious terrorists are not part of a sect or cult. They are devout "true" believers in the mainstream religion. The divine mandate for destruction is regarded as the "neglected duty" within the mainstream religion, and implied, directly or indirectly, in the sacred texts. Religious terrorists also do not consider themselves terrorists, since they say they do not enjoy violence for the sake of violence. They regard themselves as religious activists or militants.

Religious terrorism is not countered by the same factors that counter other forms of terrorism. Cease fires and negotiation don't work, for example, with organizations containing no "secular" wing. Only a few religious organizations maintain a secular or political front. Hoffman<sup>71</sup> argues that even secular religions act unconstrained because they are playing to God and no one else. It's also plausible to argue that religious terrorists don't want to win, since religion is at base an underdog philosophy which needs an overpowering demonized enemy, or Great Satan<sup>72</sup>. Fatalistic suicide is, after all, more common than egoistic and altruistic suicide. The greatest fear is if weapons of mass destruction are used by religious terrorists - they have no fear of destroying themselves in the process.

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<sup>70</sup> JUERGENSMEYER, M., *Terror in the Mind of God: The Global Rise of Religious Violence.*, Berkeley: Univ. of California Press, 2001, p.112.

<sup>71</sup> HOFFMAN, B., *Inside Terrorism.*, NY: Columbia Univ. Press., 1999, p.65.

<sup>72</sup> ELLIS, M., *Unholy Alliance: Religion and Atrocities in Our Time*, Minneapolis: Fortress Press., 1997, p.99.

## 2.4.2 Irish Terrorism

The model known as Irish terrorism is a model for nationalistic terrorism, but here, we will only consider the religious elements of it, and patterns that have emerged between the Catholics (GREENS) and Protestants (ORANGE). Historically, most Catholics were republicans living in the South, and Protestants were unionists (also landlords and industrialists) living in the North. Each side had been arguing and arming themselves since the 19th century. The first major conflict erupted on Easter in 1916 when the unionists called in British help, and the town of Dublin was demolished by British artillery. The Irish Republican Army (IRA) was formed that day, and led by Michael Collins, a student of Russian anarchism and terrorism. Murder and mayhem followed until a brief peace came after creation of independent Southern Ireland (the Republic of Ireland) in 1921. The struggle then shifted to Northern Ireland, where the British tightened their hold by creating the Royal Ulster Constabulary (RUC), a sort of semi-military police force, which became the favorite target of the Provisional IRA (a Northern Ireland spin-off group affiliated with the Sinn Fein party -- another spin-off group being the Irish Continuity Army, dedicated to international terrorism, not just within Ireland). The Provisional IRA committed sporadic acts of terrorism until 1994 when peace talks began, and a cease-fire was agreed to. During the cease-fire (which some see as surrender), another spin-off group emerged - the Real IRA, which is the group officially recognized as a foreign terrorist organization.<sup>73</sup>

There are many theories of the Irish conflict, but any understanding must admit that religion, politics, and economics are inseparably mixed. The three main denominations in Ireland are Catholic, Church of England, and Presbyterian - all religions of providence that emphasize the need for God's approval of secular affairs. Competition for political influence runs high, and people vote along religious lines. Everyone wants to control the state for reasons of deeply felt religious and economic deprivations, this desire permeating all aspects of everyday life. Religion may not be the root cause of Irish conflict, but it is definitely the fuel that flames the passions. Most Irish terrorism is in the name of retaliation or retribution. The GREENS believe they are protecting their homeland from human rights abuses at the hands of an illegitimate British government which is unaccountable under any rule of law (Bloody Sunday being a reminder of

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<sup>73</sup> COOGAN, T., *The IRA: A History.*, Niwot, CO: Roberts Rinehart., 1994, p.54.

this). The ORANGE believes they are being betrayed by a peace-seeking British government and must retaliate for more lethal, indiscriminate, and evil terrorism (the Omagh bombing being a reminder of this).<sup>74</sup>

### **2.4.3 Religious Terrorism in the South Asian Context**

Very often, religious terrorism is mixed with ethnic conflict. That is the situation on the Indian subcontinent and throughout much of South Asia where one identifies as -speaking, -believing. Sri Lanka, a poor island south of India formerly known as Ceylon, is a good example. There, about 75% of the people are Sinhalese-speaking, Buddhist-believing, 12% of the people are Tamil-speaking, Hindu-believing, and 8% of the people are Arab-speaking, Muslim-believing. The Tamils have long hated the Sinhalese practice of infusing Buddhist philosophy into politics.

South Asia (which includes India, Pakistan, Afghanistan, Bangladesh and Nepal) has the highest population densities in the world (Bombay = 127,000 people per sq mi. - NYC only 24,000/sq mi), there are dozens of languages, low life expectancies, and not enough food to go around (people believing more children means better chance of growing food). After Mohandas Gandhi led a non-violent war of independence in 1947, North India (which was primarily Islamic) became partitioned off from South India (which was primarily Hindu), and Pakistan was born out of a mass migration. In 1971, an ethnic conflict centered in Pakistan led to another mass migration, this time forming Bangladesh. Since 1975, the Sikhs have controlled the "emergency zone" Punjab region. India has experienced domestic terrorism at the hands of groups like Assam (United Liberation Front of Assam) in the Bengali region. The result is a region with scattered ethno-religious groups, all trying to exercise political clout or self-determination in one way or another. The Kashmir conflict is a good example of this struggle.

Adherents of different religions often claim they cannot live with one other in the same area. Buddhism tends to be practiced by people living in highland areas, Hindu by lowland people, and Islam by city folk. In Buddhism, everything and everyone is equal. In Hinduism (as well as Confucianism), everything is born unequal - some people are born noble, others are not. Islam and Christianity tend to fuel the mix by adding

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<sup>74</sup> O'DOWD, L., Northern Ireland: Michael Collins, Between Civil Rights and Civil War., London: CSE Books, 1980, p.113.

elements of fundamentalism, most notably in the notion of martyrdom, which is highly attractive to the Asian region because it has the highest suicides rates of anywhere in the world. Ethno-religious terrorism in the region baffles most experts. It is difficult to distinguish religious and nonreligious motivation, and South Asian terrorism tends to be heavily mixed with a criminal element, both organized and unorganized.

#### **2.4.4 Religious Terrorism in the Balkan Context**

The Yugoslavia region and the neighboring Balkans (Albania, Bosnia, Bulgaria, Croatia, Hungary, Macedonia, and Romania) have long been a region of ethnic and religious conflict. There are over 10 million Balkan Muslims (Kosovo, Bosnia, and Bulgaria have over 2 million each), and anti-Muslim hatred runs high. Balkan Muslims are not your average Muslims. Their sworn enemies are those of Serbian and Slavic descent who happen to be Orthodox Christians that see their job as protecting Europe from Muslim invasion. In the words of Slobodan Milosevic, they're "dirty rotten Turks who breed like rabbits, run drugs, flood Slav lands with their alien offspring, and deserve to be sent back to Mecca where they belong."

Thus, the war began from 1991 to 1999, with America and NATO involved in the middle of it, first with Croatia (1991-1995) where we backed the Muslims, then with Bosnia (1992-1995) which is still under UN occupation, and then with Kosovo (1999) where we bombed the living daylight out of Belgrade and other Yugoslav cities, accidentally hitting a Chinese embassy in the process. The Balkan war is regarded by most US experts as a tragic mistake. There are an abundance of books on the subject, all along the lines of "NATO's Blunder"<sup>75</sup>. It was the first time American bombers struck European cities since World War II, and it was the first netwar of propaganda, as charges of "real" terrorism and genocide bounced across the Internet.

In retrospect, all sides to the conflict committed atrocities. Croatia had a large Serbian population in the middle of the country, and they fought hand-to-hand until NATO helped march the Serbs out at gunpoint. In Bosnia, the town of Sarajevo was devastated, and UN peacekeepers observed such things as "ethnic cleansing" where Serbian soldiers tried to impregnate non-Serbian women. In the late 1990s, over 5000 Kosovar people (a term coined by NATO - Kosovars consider themselves Albanians or Kosovo

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<sup>75</sup> CARPENTER, T., *NATO's Empty Victory: A Postmortem on the Balkan War.*, Washington: CATO Institute., 2000, p.45.



Albanians), were killed by Serbian police and military, and another 1.5 million became refugees in nearby Albania, Macedonia, and Montenegro. The Kosovo Liberation Army (KLA) were regarded as terrorists by Serbians, and the world is judging Milosevic and the Serb leadership as terrorists. Some in the region see US involvement in the conflict as an instance of Western Christianity trying to wipe out Orthodox Christianity.

#### **2.4.5 Religious Terrorism in the Eurasian Context**

The former Russia (Russian Federation) and its Caucasus region have long experienced terrorism which escalated in 1999 with the start of Russia's war on terrorism in Chechnya. The Chechens are a Muslim people (again not your average Muslims) who hate the Russians, declared their independence in 1991, and beat the Russians in a ground war from 1994-1996. Their cause has become the cause of Muslims everywhere. In fact, the idea of an international mujahidin can be traced to the Chechnya conflict. There is evidence of a Chechen connection to an al-Qaeda terrorist network, and indeed, some Chechen militants fought alongside al-Qaeda and Taliban forces against the US and Northern Alliance in Afghanistan. Chechen terrorism has spread throughout the region, in the form of bombings and kidnappings mostly, into Georgia, Azerbaijan, Kyrgyzstan, Uzbekistan, and Moscow itself. One of the groups involved in spillover violence is the Islamic Movement of Uzbekistan (IMU). The region is used as a base for financial and logistic assistance to terrorist groups worldwide. The Islamic charity organization known as the Global Relief Foundation had a headquarters in Chechnya, and is a known front for financing terrorist groups. Russian organized crime is also heavily active in the region and involved in arms smuggling. The Arab news network al-Jazeera frequently broadcasts pictures of Chechen civilians killed in the Russian war on terrorism.

The Chechen terrorists are financed by the Chechen mafia as well as with Saudi money (for building mosques) and Arab relief fronts. There are some 150 Chechen mafia groups operating in or near Moscow, and they seem to prefer London, rather than Switzerland, as their money laundering center. They are constantly engaged in gang warfare with other Russian gangs, most notably the Solntsevskaya, and of course, in making whatever profit they can from criminal activity.

Chechen terrorism is largely successful because the Chechen mafia obtains and passes on intelligence obtained from bribing Russian military personnel. Both Chechen and Russian mafia groups have been involved in the nuclear black market, smuggling depleted plutonium, cesium, and other radioactive material that makes "dirty" bombs.

#### **2.4.6 Religious Terrorism in the North African Context**

Sudan is the largest country in Africa (roughly the size of Europe), and located south of Egypt. It has been a war zone since its independence from Britain in 1954. Years of dictatorships and military coups have been the norm, with the situation escalating in the 1990s to genocide. Northern Sudan (the safer region) consists of 8 million Arabic-speaking Muslims, and an indigenous black Nuba population which the current government has been trying to exterminate. Southern Sudan consists of 6 million black Africans who are Christians or animists (animism is a primitive religion that every object, even a rock, has a soul). The current government's goal is to become Africa's first all-Islamic nation, so Islamic Law and Jihad are used to persecute and execute any non-believers. Christians, in particular are regularly murdered, raped, maimed, or forced into slavery. The National Islamic Front regime which holds the capital city of Khartoum regards Christian missionary activity as Western invasion. Osama bin Laden is believed to be hiding in Sudan, Yemen, or Somalia.

Many religious cults tend to form in Africa, and much of it involves distorted forms of Christian fundamentalism which mix witchcraft with what might be called Pentecostalism. This is prevalent in Ghana, Malawi, Zambia, Zimbabwe, and Nigeria, but we'll focus on Uganda, a country located directly below Sudan.<sup>76</sup> Like many Africans, Ugandans believe in witch-doctors, who not only attempt to heal the sick (usually by cutting off a body part), but provide financial and marital advice. Christian missionaries in the region usually report having a hard time explaining things like witches and devils. Africans, however, are intensely interested in anything to do with salvation and putting troubles behind you to start a new life. At least one terrorist cult group has exploited these desires.

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<sup>76</sup> GIFFORD, P., African Christianity., London: Hurst, 1998, p.23.

#### 2.4.7 Religious Terrorism in the Middle Eastern Context

The area known as Palestine is an ancient land which has always been populated by Arab Muslims, Arab Christians, and Arab Jews. In 1917, the British promised to help create a Jewish "national home" in Palestine. Arab protests began in 1920. In 1919 there were 568,000 Muslims, 74,000 Christians, and 58,000 Jews in Palestine. Fifteen thousand Jews a year immigrated during Hitler's rise to power, and some 100,000 death camp survivors came later. Today, there are 1,091,000 Muslims, 614,000 Jews, and 146,000 Christians in Palestine. Wars have been fought in 1948–49, 1956, 1967 (The Six Day War), 1973–74 (The Yom Kippur War), and 1982 between Israel and the Arab states.

The current conflict centers on two Israeli-controlled territories. The West Bank has the largest percentage of Arab Muslims, and the conflict there revolves around the status of Jerusalem (the center of three great religions). The Gaza Strip is another Muslim area where the *intifadah* (grassroots uprising) began, and refugee camp conditions are worse than in the West Bank. The religious backdrop to the situation is heavily mixed with anti-US sentiment, where the US is seen as supporting Israel only because of American oil interests.<sup>77</sup> Further, the US is seen as being responsible for militarizing the region (the Middle East is the most militarized region in the world) and propping up corrupt Arab governments. In addition, American culture is seen as hopelessly racist, or at least stereotypical, in the way it portrays Arabs - as the bad guys in movies, cartoons, war films, and popular conception, up to and including the latest way Americans easily roll the words "Islamic terrorism" off their tongues.

It's hard to walk the line between cultural sensitivity and stereotype. Suffice it to say that opinions vary, but some believe Islam doesn't mean peace, but submission - to the will of Allah to "fight and slay the unbelievers wherever you find them, and seize them, beleaguer them, and lie in wait for them in every stratagem of war" (The Koran, Surah IX:5). If these viewpoints are true, then there really is such a thing as Islamic terrorism. There are, indeed, organizations dedicated to Islamic domination of the world, just as the great "breakout" of Islam during the 7th Century that resulted in the Arab "golden age." At the forefront of this idea are Muslim clerics most likely kept quiet by their governments, and in some ways is an adequate description of Osami bin Laden's goals

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<sup>77</sup> ESPOSITO, J., *The Islamic Threat: Myth or Reality?* NY: Oxford Univ. Press, 3.ed, 1999, p.66.

for al-Qaeda. In the Philippines and Malaysia, there's the Abu Sayyaf group. In Algeria there's the Armed Islamic group. In Egypt there's Al-Gam'a al-Islamiyya and Al-Jihad.<sup>78</sup> Other Islamic groups simply hate Israel and want to destroy it. Hamas, Hezbollah, the Popular Front for the Liberation of Palestine, and the Palestinian Liberation Front are such groups. We'll deal first with the terrorist origins of the PLO.

Other Middle Eastern groups are more closely linked to Muslim fundamentalism than the Palestine issue, and fundamentalism in this context bridges both Sunnis and Shiites, and can be seen as anti-Americanism - an outright hatred of American values and culture couched in the language of religion. A few leaders of these groups have openly called for the deaths of Americans on a global scale. The foremost character in this regard is Osama bin Laden.

## **2.5 COMBATING INTERNATIONAL TERRORISM**

The purpose of this section is to explain the legitimate counter measures to be taken against international terrorism by international organizations. Here, I summarized general activity of the international organizations about counter terrorism.

Terrorism violates the most elementary values of human co-existence and the rules of the national and international order. Terrorism is not just a problem for internal security, but has an extremely significant foreign-policy dimension. Given the number of trouble spots around the world, increased mobility and the constant improvement of communications technologies, the globalization of terrorism is becoming a real danger. As a global problem, terrorism must be met with an international response.

The terrorist attacks of 11 September 2001 changed the world's perception of the nature of the challenge. The opening of the session of the General Assembly of the United Nations had to be postponed for the first time in its history. Nearly all international fora have since given the topic of terrorism high priority. It had previously been something of a fringe topic, raised by states that were particularly affected by regional troubles, but has now run like a thread through all debates. It has for example just been the subject of a week of special talks at the United Nations.

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<sup>78</sup> SHAY, S., *The Endless Jihad.*, Herzliya, Israel: ICT, 2001, p.95.

### **2.5.1 The UN's Role in Combating Terrorism**

The United Nations has always played a leading role in the worldwide fight against terrorism and has set the required political and legal standards. The UN General Assembly responded quickly to the attacks on the US with a unanimous Resolution on 12 September 2001 condemning them and calling for international cooperation to prevent and eradicate terrorism.<sup>79</sup>

With its unilaterally adopted Resolutions 1368 of 12 September and 1373 of 28 September 2001, the UN Security Council steadfastly responded to the threat posed by terrorism and contributed to the further development of international law. With Resolution 1368, it was for the first time recognized that terrorist acts could constitute a threat to international peace and security and in this context recognized the inherent right of individual or collective self-defense in accordance with Article 51 of the UN Charter.

Resolution 1373, based on Chapter VII of the UN Charter, went one step further, setting out a list of concrete obligations on member states to combat terrorism. The focus is on suppressing the financing of terrorism and on preventing the harboring of terrorists. The Resolution calls upon all states to report to a specially-constituted committee within 90 days on the steps they have taken to implement the Resolution. The Resolution also contains a number of areas in which it is recommended that states take action.

### **2.5.2 The Twelve Anti-terrorism Conventions**

Principles on eliminating and combating terrorist acts are set forth in Resolutions 49/60 of 9 December 1994 and 51/210 of 17 November 1996.<sup>80</sup> The community of states has laid down the rules for fighting terrorism in twelve separate conventions. These take a "sectoral" approach, focusing on the methods or the place of the crime and disregarding the motives of the perpetrators. The conventions have thus so far avoided the difficulty of finding a generally acceptable definition of terrorism that distinguishes terrorists from freedom fighters. This very evasion was the recipe for success that led to rapid agreement on the Resolutions adopted so far.

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<sup>79</sup> [http://www.auswaertiges-amt.de/www/en/aussenpolitik/vn/terrorismus\\_html#1](http://www.auswaertiges-amt.de/www/en/aussenpolitik/vn/terrorismus_html#1)

<sup>80</sup> <http://www.un.org>

### **2.5.3 The International Convention for the Suppression of Terrorist Bombings**

The International Convention for the Suppression of Terrorist Bombings, adopted by the 52<sup>nd</sup> UN General Assembly on 15 December 1997, fills a significant gap, dealing with the problem of terrorist attacks on public places with large numbers of innocent victims. Germany was one of the co-sponsors of this Convention and was the tenth state to sign it in January 1998.

### **2.5.4 The International Convention for the Suppression of the Financing of Terrorism**

The International Convention for the Suppression of the Financing of Terrorism, open for signature since 10 January 2000, differs from its predecessors in focusing not on types of attack but on terrorist organizations' financial sources. Germany has also signed this Convention.<sup>81</sup>

### **2.5.5 The Draft Convention for the Suppression of Acts of Nuclear Terrorism**

In order to meet the increased threat from nuclear terrorism, the Russian Federation has proposed a convention for the suppression of acts of nuclear terrorism. This project needs further debate in the United Nations, where above all the exclusion clause for the military is a cause of controversy.

### **2.5.6 The Draft Comprehensive Convention on Terrorism**

Terrorist attacks have reached such proportions that the need for further regulation to plug the gaps in the current legal framework has been widely recognized. An Indian draft for a comprehensive convention on terrorism was submitted to the United Nations in September 2000. Germany supports this project and will continue to pursue the previously successful strategy of disregarding the motives of the perpetrators. There is no justification for terrorism. In times of peace this applies to military forces too. Legitimate goals may only be pursued with legitimate means. The end never justifies the means. Regrettably, the draft has so far been blocked by the attempt made by some states to obtain an exception from the ban on terrorism for freedom movements, an idea

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<sup>81</sup> <http://www.un.org>

that Germany finds unacceptable. We will continue to back the project and call for a comprehensive prohibition of terrorism.

### **2.5.7 A Summit Meeting on Combating Terrorism**

The group of Non-Aligned countries advocates the holding of a UN summit on combating terrorism. In view of the costs involved, it must be ensured that such a conference would not end up being no more than another forum for debate, but would pave the way for an action-oriented approach that would lead to practical progress in the fight against terrorism.

### **2.5.8 The Role of the International Criminal Court**

There have been repeated calls for the International Criminal Court to add the offence of "terrorism" to its Statute. To do so, however, a clear definition of terrorism is required, which does not as yet exist? Giving the International Criminal Court jurisdiction over terrorist offences would in fact considerably facilitate the implementation of the obligation to bring terrorists to justice contained in Security Council Resolution 1373. It would make the community of states as a whole responsible for their prosecution instead of individual states, thus making the procedure more anonymous and lessening the exposure of individual states to external or internal retaliatory threats.

### **2.5.9 The Role of EU**

The legal basis for the EU's fight against terrorism is found primarily within the so-called "third pillar", and more precisely within the provisions on police and judicial cooperation in criminal matters (Title VI of the Treaty on European Union). To create a European area of freedom, security and justice, the EU member states are developing a common approach to preventing and combating crime, organized or otherwise. Terrorism is a key area. This joint approach includes closer cooperation between police forces, judicial, customs and other competent authorities, as well as approximation of national criminal legislation.<sup>82</sup>

Europol, the European Police Office, also plays a very important role in combating terrorism. It is responsible for analyzing information from all EU member states and

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<sup>82</sup> [http://www.auswaertiges-amt.de/www/en/aussenpolitik/vn/terrorismus\\_html#1](http://www.auswaertiges-amt.de/www/en/aussenpolitik/vn/terrorismus_html#1)

other international cooperation partners and should thus be aware of any possible threats. Europol informs the EU member states and its cooperation partners immediately of new discoveries so that they can take relevant steps to protect their citizens or prosecute suspects as soon as possible. Europol also supports ongoing national investigations and can coordinate these with other investigations at European or international level in a way that the national authorities could not. A European agency for judicial cooperation, Eurojust, is currently under development. This body will coordinate and support cooperation between national judicial authorities at European level.

The history of terrorism is equal to the history of humanity. The foresights about the future of terrorism are generally pessimistic. The countermeasures against terrorism are not sufficient to destroy it completely. Essentially, if good men take countermeasures against the bad men, bad men take counter-countermeasures against the good men's countermeasures and this situation goes on. Is there a solution? Yes. Understanding the changing meaning of terrorism and taking aim at its heart.



*“When bad men combine, the good must associate; else they will fall one by one,  
an unpitied sacrifice in a contemptible struggle.”*

*Edmund Burke*

### **3. CONCEPT OF TRANSNATIONAL ORGANIZED CRIME**

The objective of this chapter is to examine what it means organized crime. To realize this objective I defined the organized crime and explained its concept in historical basis. Organized crime is not only domestic but also an international problem. So I interested international and transnational dimensions of organized crime. Then, I summarize international syndicates of organized crime and international cooperation against organized crime.

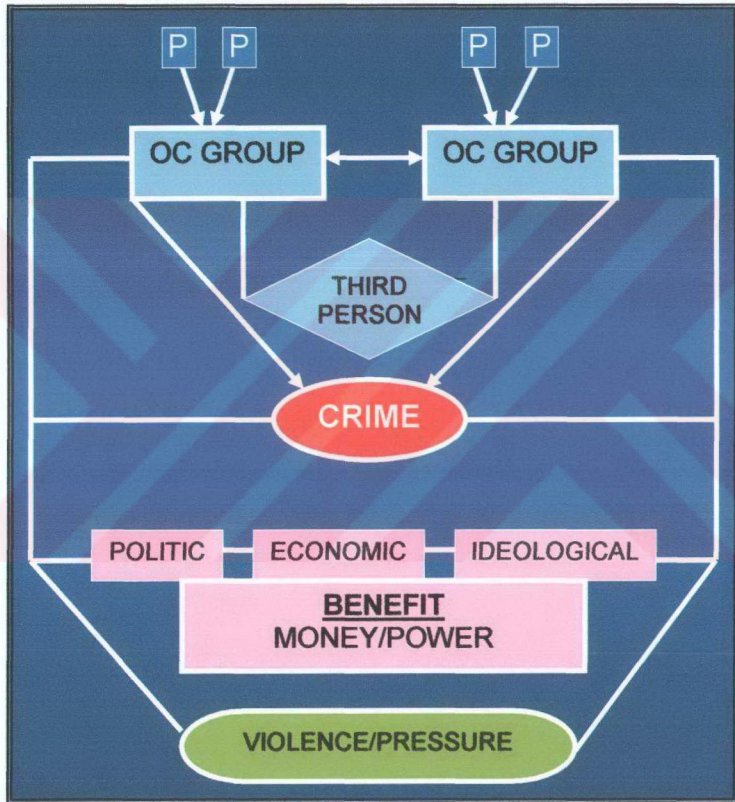
Organized crime has traditionally been seen as a domestic problem bedeviling a relatively small number of states such as Italy, the United States, and Japan. In the last few years, however, there has been a recognition that the problem is no longer limited to a few states and can no longer be treated as something that falls within a single jurisdiction. The rise of a global market for illicit drugs, the end of the Cold War and the breakdown of the barriers between East and West, the collapse of the criminal justice system in Russia and the other states of the former Soviet Union, the development of free trade areas in Western Europe and North America, and the emergence of global financial and trading systems have fundamentally changed the context in which criminal organizations operate - and encouraged what had been predominantly domestic groups to develop into transnational criminal organizations (TCOs).

#### **3.1 DEFINING ORGANIZED CRIME**

In this section I tried to respond this question; “What is the meaning of organized crime?”

### 3.1.1 The Structure of Organized Crime

Organized crime is, within an organization which could be in any form, to use violence or at least put pressure to provide benefits.<sup>83</sup> Therefore, the term of “organized crime” consists of some elements below: (Figure 3.1)



**Figure 3.1 Organization of Organized Crime**

<sup>83</sup> ÖZGÜL, Muammer Yaşar, An Overall Assessment of Transnational Organized Crime, ,Deputy General Director of Personnel, Ministry of Interior, Turkey, 1995, p.61.

Existence of an association (2 or more persons): The main component that distinguishes organized crime from other crimes is that two or more people are participating in the crime and putting the desire directed towards the same goal.

The aim of providing benefit (money or power): Organized crime groups expect material and social benefit as a result of their illegal activities.

Violence or pressure : An organized crime group beats, wounds and kills as a violence element and uses threat and blackmail as a pressure element, aimed at providing benefit for itself or a third person.

### 3.1.2 Organized Crime Definitions

This is a collection of definitions of organized crime and comments on the problem of defining organized crime that I have extracted from various sources. Organized crime is a nonideological enterprise involving a number of persons in close social interaction, organized on a hierarchical basis, with at least three levels/ranks, for the purpose of securing profit and power by engaging in illegal and legal activities. Positions in the hierarchy and positions involving functional specialization may be assigned on the basis of kinship or friendship, or rationally assigned according to skill. The positions are not dependent on the individuals occupying them at any particular time. Permanency is assumed by the members who strive to keep the enterprise integral and active in pursuit of its goals. It eschews competition and strives for monopoly on an industry or territorial basis. There is a willingness to use violence and/or bribery to achieve ends or to maintain discipline. Membership is restricted, although nonmembers may be involved on a contingency basis. There are explicit rules, oral or written, which are enforced by sanctions that include murder.<sup>84</sup>

Organized crime n 1. Widespread criminal activities, such as prostitution, interstate theft, or illegal gambling, that occur within centrally controlled formal structure. 2. The people and the groups involved in such criminal activities.<sup>85</sup>

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<sup>84</sup> ABADINSKY, Howard, *Organized Crime*, 4th ed., Chicago, 1994, p. 6.

<sup>85</sup> *The American Heritage Dictionary of the English Language*, Third Edition, Boston/New York/London 1992

Organized crime consists of the participation of persons and groups of persons (organized either formally or informally) in transactions characterized by some elements:

- Intent to commit, or the actual commission of, substantive crimes;
- A conspiracy to execute these crimes;
- A persistence of this conspiracy through time (at least one year) or the intent that this conspiracy should persist through time;
- The acquisition of substantial power or money, and the seeking of a high degree of political or economic security, as primary motivations.
- An operational framework that seeks the preservation of institutions of politics, government, and society in their present form.<sup>86</sup>

Essential to the definition of organized crime is the use of violence or the threat of violence to facilitate criminal activities and to maintain monopoly control of markets. Also essential is that organized crime employs corruption of public officials to assure immunity for its operations.<sup>87</sup>

Organized crime means: the illegal activities carried out by structured groups of two or more persons existing for a prolonged period of time and having the aim of committing serious crimes through concerted action by using intimidation, violence, corruption or other means in order to obtain, directly or indirectly, a financial or other material benefit.<sup>88</sup>

Any group having a corporate structure whose primary objective is to obtain money through illegal activities, often surviving on fear and corruption.<sup>89</sup>

"Organized crime" is understood to be the large-scale and complex criminal activity carried on by groups of persons, however loosely or tightly organized, for the

<sup>86</sup> IIT Research Institute/Chicago Crime Commission 1971, p. 264.

<sup>87</sup> KENNY, Dennis J. & Finckenaer, James O., *Organized Crime in America*, Belmont et al, 1995, p. 285.

<sup>88</sup> Council of Europe, *Crime Analysis: Organized crime - Best practice survey no. 4*, Strasbourg, France, 2002.

<sup>89</sup> NESBITT, Paul, *Head of Organized Crime Group*, in Bresler, 1993, p. 319.

enrichment of those participating and at the expense of the community and its members. It is frequently accomplished through ruthless disregard of any law, including offences against the person, and frequently in connexion with political corruption.<sup>90</sup>

### 3.1.3 Traditional or Organized Crime

There are some differences between traditional and organized crime. These differences could be categorized six elements. (Table 3.1)

	TRADITIONAL	ORGANIZED
<b>STRUCTURE</b>	Operates independently or with ad hoc group	Loose knit confederations, two or more persons, conspire on a continuing basis
<b>LAW</b>	Specific statues	Board statues, Omnibus Crime Bill, RICO
<b>ENFORCEMENT POLICIES</b>	Tightly enforced	Selectively enforced
<b>ENFORCEMENT PROCEDURES</b>	Publicity, exposure, public indignation	Secrecy, no acknowledgement that organized crime exist
<b>PERSONALITY OF CRIMINAL</b>	Social isolate, sociopathic	Sociopathic, strong peer identify, money oriented
<b>OTHER DIFFERENCES</b>	Occasional criminal based on monetary need. Not guided by group action	Seeks career identity, adheres to group's ethnical and moral standards. Lives by code of gang, which is administered summarily to keep discipline.

**Table 3.1 Identify Differences between Traditional and Organized Crime<sup>91</sup>**

## 3.2 THE CONCEPT OF ORGANIZED CRIME IN HISTORICAL PERSPECTIVE

This section includes both the concept and the history of organized crime. That is to say, here, we could understand the historical concept of organized crime.

### 3.2.1 The Frequency Curve

The first step in a conceptual-history study is to search a data base of representative texts for incidents of the use of the term in question. In this way it is not only possible to

<sup>90</sup> UN, Changes in Forms and Dimensions of Criminality - Transnational and National. Working paper prepared by the Secretariat for the Fifth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Toronto, Canada, 1-12 September 1975.

<sup>91</sup> PACE, Denny F., Concepts of Vive, Narcotics and Organized Crime, Pearson Education Company: Upper Saddle River NJ, 3 rd ed., 1991, p. 25.

determine with some accuracy the point in time when the concept first appeared, but also how, in quantitative terms, its use has changed over time and what phases, marked by an increase in popularity, deserve particular attention.

For example, changes in the frequency of the term organized crime in the "New York Times Index" show that the concept of organized crime has only very gradually gained acceptance in the media and that it has been a major issue only for rather short periods of time between the late 1960s and mid 1980s.

The same kind of analysis of Germany's leading news magazine "Der Spiegel" shows that when the American debate on organized crime gained momentum during the 1960s the concept of organized crime slowly began to gain a foothold in Germany.

### **3.2.2 Categories for Assessing Statements on Organized Crime**

When we turn our attention from the frequency curve to the substance of the conceptual history it is necessary, first of all, to define categories with which to classify and assess the various statements on organized crime. One criterion for classifying statements is how many dimensions they comprise. Some statements on organized crime are too vague as to reveal any notion of the nature of organized crime. Some statements center around a single, quintessential quality of organized crime, while others combine a number of characteristics into a multi-dimensional concept of organized crime.

As far as one-dimensional conceptions of organized crime are concerned, three basic approaches can be distinguished which may be labeled activity-, organization-, and system-approach, respectively. (Table 3.2)

<b>Quintessential Feature</b>	<b>Typical Characterization of Organized Crime</b>
<b>Activity</b>	Organized Crime = Provision of Illegal Goods and Services
<b>Organization</b>	Organized Crime = Criminal Organization(s)
<b>System</b>	Organized Crime = Integration of Legal and Illegal Structures

**Table 3.2 Basic Approaches to the Understanding of Organized Crime**

The activity-approach equates organized crime with certain types of criminal activity, for example with the provision of illegal goods and services, regardless of the degree of organization of those involved in these activities and regardless of their socio-political position. The organization-approach focuses on organizational entities, regardless of the type of criminal activity in which they are involved and regardless of their socio-political position. The system-approach perceives organized crime in essence as a social condition in which legitimate and criminal structures are integral parts of one corrupt socio-political system, regardless of either the types of crime promoted or the degree of organization of those supporting the system.

Multi-dimensional conceptions tend to be based on an organization-centered understanding of organized crime but include other criteria as well. The various criteria of multi-dimensional conceptions can be distinguished by using a classification of four levels of complexity (Table 3.3):

- The individual characteristics of "organized criminals,"
- The structures, for example networks or groups which connect these individuals,
- The over-arching power structures that subordinate these structural entities,
- The relation between these illegal structures and the legal structures of society.

Level of Complexity	Scope
Organized Crime/Society	Symbiotic <-> Parasitical
Underworld Structure	Polypolistic <-> Monopolistic
Group Structure	Opportunistic <-> Bureaucratic
Individual Characteristics	Indistinct <-> Distinct

**Table 3.3 Levels of Complexity in Multi Dimensional Concepts of Organized Crime**

### 3.2.3 Today's Dominant Concept of Organized Crime

Today's concept of organized crime is heterogeneous and contradictory when we take into account the entire range of pertinent statements in the criminal-policy debate. But when we focus on the imagery that dominates the general perception of organized crime we can ascertain a tendency towards equating organized crime with ethnically homogeneous, formally structured, multi-functional, monopolistic criminal organizations which strive to undermine and subdue the legal institutions of society.

Within the framework of the outlined four levels of complexity this means that the dominating imagery centers around individuals who belong to specific ethnic minorities. The prototypical organized criminal is a foreigner.

With regard to the structure of criminal organizations the stereotypical image of organized crime focuses on bureaucratic organizations in contrast to informal groups or networks. Moreover, these criminal organizations are typically portrayed as multi-functional. They are said to be illegal enterprises and secret societies at the same time. As far as the structures of illicit markets and criminal subcultures as a whole are concerned, the dominating understanding of organized crime is based on the notion that they tend to be monopolized and that all criminal groups strive for monopoly positions on an ever increasing scale.

Finally, the prevailing view of organized crime places criminal organizations in a fundamental conflict with the legal institutions of society, especially with regard to the



concept of globally operating "Mafias," instead of stressing the underlying socio-political conditions conducive to organized crime.

Retrospectively, it may appear that the concept of ethnically homogeneous, monopolistic criminal organizations has continuously dominated the understanding of organized crime since the times of the famous Italian-American gangsters of the Prohibition Era, like Al Capone and Lucky Luciano. But this is not the case, especially not with regard to the 1920s and 1930s. (Figure 3.1)



Figure 3.2 Al Capone (1899-1947)<sup>92</sup>

#### 3.2.4 Major Trends in the Development of the Concept of Organized Crime

The conceptual history of organized crime shows little continuity and little consensus. If we take the smallest common denominator of all pertinent statements collected for this study we would arrive at a very broad definition of organized crime. From an activity-oriented point of view, organized crime would comprise all criminal acts that are not impulsive or spontaneous. From an organization-oriented point of view, organized crime would refer to all criminals who do not operate in complete social isolation. Consequently, the term organized crime could even be applied to an individual criminal as long as someone else knowingly contributes to his criminal conduct, for example by providing useful information or by merely showing respect for his behavior.

<sup>92</sup> <http://www.eregonacf.fsnet.co.uk/>

The conceptual history of organized crime is characterized by change. Two trends are most significant, the extension of the geographical scope from a local to a global frame of reference, and the narrowing down of the social scope from a systemic to a dichotomic view of organized crime and society.

### **3.3 THE NATURE OF CRIMINAL ACTIVITY IN THE INTERNATIONAL ARENA**

Here I tried to prove that organized crime is not only a domestic problem, but also an international phenomenon.

The nature of criminal activity in the international arena varies along a number of axes. The World Ministerial Conference on Organized Transnational Crime held in Naples in the fall of 1994 developed a series of characteristics typical of transnational organized crime, which while not a definition sheds light on the dominant activities of these groups. These characteristics included:

- group organization to commit crime;
- hierarchical links or personal relationships which permit leaders to control the group;
- violence, intimidation and corruption used to earn profits or control territories or markets;
- laundering of illicit proceeds both in furtherance of criminal activity and to infiltrate the legitimate economy;
- the potential for expansion into any new activities and beyond national borders;
- cooperation with other organized transnational criminal groups.<sup>93</sup>

This listing bears some relation to the context in which the meeting took place, as the set of relationships describes more closely those criminal groups based on the

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<sup>93</sup> United Nations Crime Prevention and Criminal Justice Newsletter, Naples Political Declaration and Global Action Plan Against Organized Transnational Crime, Section II, Subsection A, Paragraph 12, contained in The World Ministerial Conference on Organized Transnational Crime, Nos. 26/27, Vienna, November 1995.

personalistic Mafia model than it does others, for instance the Boryukudan of Japan. Nevertheless, most of the key elements of a useful definition of transnational organized crime are there, including groups organized through personal relationships; the regular use of violence, fraud or corruption to gain illegal access to various goods, assets, control of markets, etc.; and the subsequent reintroduction or integration of criminal assets into the legal economy.

The exercise of defining transnational organized crime opens a Pandora's Box of variables which complicates the task of this paper. The first problem is that there are crimes which are transnational but not organized, and likewise crimes which are organized but not transnational. In the first instance, one might consider the individual smuggling of valuables for personal gain; in the second, the traditional control of criminal markets in prostitution by city-based crime groups operating exclusively within national boundaries. For the purposes of this analysis, these categories of crime can be ignored as having little potential to result in anything resembling a security threat.

A second more substantial issue is that of the actors involved. Typically, the groups mentioned in the literature on transnational organized crime include the Triad gangs of Hong Kong, China and various overseas ports; the Boryukudan (Yakuza) of Japan; the Sicilian Mafia, the Cosa Nostra, Italian-American criminal groups and their offshoots; the "cartels" of the Colombian cocaine exporting regions and their North American and European distribution networks; the collection of gangs and criminal organizations known collectively as the Russian mafiya; and Nigerian criminal groups. Encountering a list like this, as one does repeatedly, suggests the existence of a set of powerful non-state actors bound in cohesive units and readily identifiable as criminal organizations, a kind of pluralistic world of crime bosses. But this image does not mesh with the more monolithic view of transnational organized crime put forward by the American senator John Kerry and the late Claire Sterling, both of whom depict a coordinated network linking reactionary and dissatisfied elements in the former East bloc, international terrorists and avaricious criminal groups worldwide.<sup>94</sup>

Nor does it mesh with a third possible model that of a more fluid set of relationships, loose contacts and ad hoc interactions within and amongst criminal groups. Given the necessity of anonymity and secrecy in criminal behavior, and the unforeseen nature of

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<sup>94</sup> STERLING, Claire, *Thieves World*, New York: Simon and Schuster, 1994, p.219-220

many criminal opportunities, cell-based relationships and impromptu, one-off deals and arrangements seem equally plausible. For instance, while the Mafia model popular with students of American organized crime depicts a tightly knit, hierarchical “family” structure in which loyalty to specific family “dons” is sworn and adhered-to on pain of death, Japanese studies of organized drug smuggling reveal an extremely high degree of anonymity, to the extent that in some cases neither the top or the bottom of the hierarchical Boryukudan is aware of the other’s identity or activities.<sup>95</sup>

A third problem complicates the matter further. The actors involved and the basic structure of organized transnational criminal activity may change with the crime being committed. The network of relationships required in the cocaine trade, for instance, is significantly different from that employed in arms trafficking. In the first case, a cooperative structure of growers, refineries, “mules,” transshipment middlemen, wholesalers and street-level distributors is required to deliver the product from the point of origin to that of consumption, a process of coordination rendered more difficult by the difficulties of transporting the product across state boundaries. Subsequently, complex and unique networks for laundering drug profits are brought into play, involving laundering specialists, offshore and domestic financial institutions, real firms and shell companies, and other actors. By contrast, arms traffickers rarely deal in the production of the commodity, and as their clientele are often state-backed (or national) armed groups, the problems of detection are regularly less than that of the drug smuggler, despite the unwieldy nature of the commodity. The purchase of arms in the former Soviet Union on the black market, and subsequent resale in the Middle East, for example, presents a challenge which has more to do identifying supply and demand than avoiding vigilant authorities, and thus the complexity and size of the cooperative network may be considerably smaller.<sup>96</sup>

Other variables are perhaps less problematic but still warrant discussion. The role of states in certain spheres of criminal activity is well-known, whether as part of the covert activities of security forces (for example, the role of the CIA in the Iran-Contra affair during the 1980s, or the sale of weaponry by the Russian military) or as a result of direct

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<sup>95</sup> TOMOKO, Akane, *Effective Countermeasures Against Drug Trafficking: Specifically Anti-Money Laundering, Legislation and Practices by Law Enforcement*,” paper given at the Tenth Regional Seminar on Effective Measures for Combating Drug-Related Crimes: Money-Laundering and Difficulties of Prosecution and Proof, San Jose, Costa Rica, August 1997, p.23-25.

<sup>96</sup> ROBERTSON, R., *Globality and Modernity*, in *Theory Culture and Society*, 1992, p. 9.

or tacit government involvement in criminal activities (e.g. facilitating the practice of money laundering by known traffickers, the turning of a blind eye to international prostitution or pedophilia rings, or the refusal to participate in extradition processes or to sign extradition treaties where a state is known to be harboring persons guilty of major crimes). Thus the transnational nature of much criminal activity is not merely the extension of criminal activity beyond the boundaries of the nation-state to which cooperative international responses must be developed. In some cases that cooperation itself is the primary obstacle, rather than the criminal behavior.

There is also the problem of predicate and secondary crimes. Predicate crimes are those initial activities (for instance, the acts of selling drugs or smuggling illegal aliens) which generate profit. Secondary crimes, by which we generally mean the laundering of the proceeds of crime, are those practices which, while in other circumstances would be legal, allow the proceeds of crime to be used by the criminal organization. They fundamentally involve economic transactions in which the participants conduct business with the knowledge that the assets in question are criminally-derived. The problem arises in that the former are far more visible and tangible than the latter, although it is the secondary level of criminal activity that allows the first level to continue. The participants in most laundering operations – bankers, accountants, investment brokers – are usually well-integrated into the legal economy, and their crime is often one of omission or deliberate oversight. The problem of identifying the particular criminal actors extends well into the realm of the economy considered legitimate, and drawing conceptual lines between members of criminal groups and non-members is consequently extremely difficult.

Thus to sum up these points, the gaps in our knowledge surrounding the nature of criminal organizations and their involvement in the spectrum of organized transnational crime leave us with significant difficulties in developing a coordinated response to this problem. There may be a set of discrete criminal groups on whom we may focus, there may be strategic alliances amongst criminal groups as among firms, there may be a globally-coordinated network of these groups; or, conversely there may be a looser, more ad hoc set of affiliations amongst criminal groups.<sup>97</sup> In turn, any of these models may be more or less correct in particular realms of crime. States may have a variety of

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<sup>97</sup> WILLIAMS, Phil, *Transnational Criminal Organizations: Strategic Alliances*, *The Washington Quarterly* 18: 1, winter 1995, p.57.

different roles with respect to criminal activities: victim, prosecutor, passive witness, or active accomplice. Finally, the initial commission of crimes is simply the more visible component of an infrastructure which (to whatever degree of coordination) silently conceals and reintroduces vast sums into the legal economy with the active participation of many of its leading institutions.<sup>98</sup>

Although not an exhaustive list, the following activities comprise the majority of serious crimes with transnational implications perpetrated by criminal organizations, as reflected in the approaches taken by leading international organizations focusing on crime; trafficking in narcotic drugs and psychotropic substances, trafficking in conventional arms, trafficking in nuclear materials, trafficking in women and children, smuggling of illegal aliens, large-scale car theft, trafficking in body parts, tax evasion and corruption.<sup>99</sup>

The reader will note immediately that terrorism have been excluded from consideration, though it is often included and is currently under discussion as part of the United Nations Draft Treaty on Transnational Organized Crime.<sup>100</sup>

Of the things we may say of this list, first is that the effect of “globalization” is seen in that few of these activities are confined to specific areas of the globe; that is, much crime has become transnationalized. In the drug trade, for example, the global aspect mirrors the global division of labor found in other economic realms, where production in developing areas has risen to meet demand in advanced industrial states. Other regions, in particular the Caribbean, are central to the secondary stage of *laundering* drug money. There are few realms of organized criminal activity where it is possible to suggest that the problem is contained beyond one’s own borders.

Second, there are two basic axes of complexity to transnational criminal activity. The first is the requirement in terms of actual personnel. Some crimes, for instance automobile smuggling rings, involve logistical challenges in coordinating the theft, stripping, packaging, shipping, import, and resale of vehicles, which necessitate

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<sup>98</sup> DUYNE, P., *Organized Crime, Corruption and Power*, in *Crime, Law and Social Change*, 1997, p. 26.

<sup>99</sup> WILLIAMS, Phil Ernesto Savona, “Problems and Dangers Posed by Organized Transnational Crime in the Various Regions of the World, *The United Nations and Transnational Organized Crime*, a special issue of *Transnational Organized Crime* 1: 3, Autumn 1995.

<sup>100</sup> LIUKKONEN, Markku, *Motor Vehicle Theft in Europe: International Cooperation in the Prevention and Control of the Theft of and Illicit Trafficking in Motor Vehicles*, HEUNI Paper No. 9, The European Institute for Crime Prevention and Control, Helsinki, 1997.

cooperative relationships between criminal groups based in different locales.<sup>101</sup> Such a situation requires a network of groups. Other crimes, for instance money-laundering, can be accomplished with three or fewer individuals participating, with those numbers diminished further by the advent of on-line banking.<sup>102</sup> The second axis of complexity is that of the timing, coordination and danger involved in committing the crime.

Third, there is a degree of state complicity in five of the ten areas listed. That is to say, in these cases it is not meaningful to describe a global situation in which states attempt to counter threats posed by *transnational criminal groups*. It is more reasonable to suggest that in these realms, some states find themselves opposed to a range of criminal behaviors by these groups which are either tolerated or on occasion directly supported by foreign governments. The issue then becomes less one of enforcing global norms, and more one of regime-building to establish those norms in the first instance.<sup>103</sup>

Fourth, it is hard to see much evidence of a general threat of violence emanating from transnational organized crime; that is, direct, large-scale coercive threats are rare. There are some exceptions to this conclusion. *Drug trafficking*, particularly in the South American context, has led in this decade to significant armed confrontations between the private forces of the traffickers and host governments, and provoked the US coup (ultimately bloodless) in Panama. Coercive prostitution and sex slavery, as visited most visibly on Asian women and children, can be cast as violence in the sense of assault, and in places such as Thailand and the Philippines may be said to have significant ill effects for the quality of life of large numbers of inhabitants. Trafficking in arms and nuclear materials, while per se a commercial activity, has obvious knock-on effects in terms of “potential energy” for violence, whether of the state or of the terrorist variety. But in general, the violence associated with criminal behavior appears more as a sporadic transaction cost in a realm of activity beset with risks, dangers, and a lack of trust. Organized coercive threats are rare, at least in the sense in which we have used these terms in security studies, and vary across crime types in terms of the threatened group or parties, the nature and public/ clandestine characteristics of the threat, means of coercion, and so on.

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<sup>101</sup> Report of the Secretary-General on the Question of the Elaboration of an International Convention Against Organized Transnational Crime, United Nations Office at Vienna, Document E/CN.15/1997/7/Add.1, Vienna, 1997.

<sup>102</sup> <http://www.bviibc.com>

<sup>103</sup> DUYNE, P. van, *The Phantom and Threat of Organized Crime*, in *Crime, Law and Social Change*, 1996, p. 4.

Fifth, in terms of economic impact, the picture is considerably different from that of violence: the economic impact of transnational organized crime appears to be severe. Although the economic effect of criminal behavior varies across crime type, in several areas the impact in both global terms and in affected states is significant. UN estimates suggest that in the case of the drug trade, revenues accruing may surpass US \$400 billion annually, placing drugs between the auto and oil industries in the global pecking order.<sup>104</sup> Obviously, little if any of this money is reported to taxation authorities. In more general terms, with respect to tax evasion, IMF estimates suggest that funds worth more than three times that amount are absent from global accounting records.<sup>105</sup> At the state level, in particular cases the impact is more extreme. For example, through networks of money-laundering, most probably through the Caribbean, vast sums have been pillaged directly or indirectly from the public purse throughout Latin America. In Peru this decade, IMF loans of over US \$1 billion have disappeared from government accounts with little or no evidence of corresponding public expenditure. In Mexico, one estimate places the ratio of tax revenue actually collected to that justified by the national income structure at only 20%.<sup>106</sup> Unfortunately, while these figures are impressive, reliable comparative data is hard to come by, especially in circumstances where agencies responsible for tracking financial flows are themselves in the partial control of those with something to conceal.

Sixth, the social impact of criminal activity is concentrated in particular states, even more so than the economic impact. Unlike many environmental issues such as global warming or overfishing, where seemingly innocuous local practices may aggregate to create significant global threats, the impact of crime is usually felt in a more severe fashion at the point of activity than in the general community. While the cocaine trade in the Americas touches Latin American, Central American, North American and Caribbean countries, the social impact is felt primarily in consumer states and some producer states. In the former its effect is usually highly concentrated. Heroin and cocaine use in New York, Vancouver or Geneva may be a significant social problem and yet be relatively invisible to most of the inhabitants of those cities. Those regions

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<sup>104</sup> United Nations Crime Prevention and Criminal Justice Newsletter, The World Ministerial Conference on Organized Transnational Crime, Nos. 26/27, Vienna, November, 1995, p. 22.

<sup>105</sup> RUGGIE, John Gerard, Territoriality and beyond: Problematizing Modernity in International Relations, *International Organization* 47: 1, winter 1993, p.177.

<sup>106</sup> BLUM, Jack A., The Mexican tax estimate received open support in the author's subsequent interview with the Director-General of the Mexican Public Ministry., op.cit.



serving as transshipment or laundering points feel first an economic effect: the social impact, while not negligible, is diffuse rather than concentrated.

### **3.4 THE TRANSNATIONAL DIMENSIONS OF ORGANIZED CRIME**

Here, I discussed the transnationalization of organized crime. Because, looking at this harmful fact by only one dimension will mislead us. We have to think of its all dimensions.

Globalization and growing economic interdependence, that have long been regarded as pacifying and stabilizing factors of financial transactions and international relations, have also encouraged and promoted the transformation of crime beyond borders, places, people and, in some cases, even identifiable victims. Improved communications and information technologies, increased blurring of national borders, easier mobility of people and services across countries and the emergence of a globalized economy are considered to be some of the factors which have moved crime further away from previous conventional explanations.<sup>107</sup>

During the 1990s the international debate on organized crime phenomena existing in several countries started to focus, in a more systematic way, on the emergence of a new dimension, characteristic of the organized crime groups involved in the management of the major criminal markets: the 'transnational' dimension. This term, which belongs to the field of international relations, is generally used to refer to the movement of information, money, physical objects, people or other tangible or intangible items across state boundaries, when at least one of the actors involved in this movement is not governmental.<sup>108</sup> According to this perspective, transnational criminal organizations, although involved in activities considered criminal or illegal, share with other transnational actors – such as corporations and multinationals – the desire to maximize their freedom of action and to minimize the effects of both national and international control over their activities.<sup>109</sup> In this pursuit, they both engage in activities that readily

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<sup>107</sup> HOBBS, D., *Going Down the Glocal: The Local Context of Organized Crime*, in *Howard Journal of Criminal Justice*, 1998, p. 37.

<sup>108</sup> KEHOANE, R., *Nye, Transnational Relations and World Politics*, Cambridge, Massachusetts: Harvard University Press, 1972, p.35.

<sup>109</sup> WILLIAMS, P., Savona, E., *The United Nations and Transnational Organized Crime*, London: Cass, 1996, p.88.

cross national borders and are concerned with strategies aimed at creating new market opportunities.

However, it should be emphasized that the growing transnationalization of the contemporary world has been accompanied by peculiar trends within the main criminal markets which have also fostered organized crime beyond its 'traditional' local dimension. The emergence of criminal markets with a global dimension, such as trafficking in drugs, arms and human beings, has significantly contributed to the establishment of more frequent interactions among the major organized crime groups and to the expansion of their activities outside their home territories. Illegal markets within state boundaries have become more and more interlinked, while criminal groups from different countries and nationalities have established a thick network of illicit businesses, trading goods and services, information and funds.<sup>110</sup> Hence, applied to the organized crime phenomenon, the term 'transnational' would emphasize both the process of growing ethnicization of criminal groups – which are more and more often composed of individuals belonging to different ethnic groups – and the increasing internationalization of criminal markets and illicit activities.

### **3.4.1 Factors in the Growth of Transnational Organized Crime**

The fundamental forces underlying the growth and increasingly international character of organized crime are the technological explosion and economic boom of the post-Second World War period as well as the current geopolitical situation, which has been rapidly evolving since the collapse of the socialist world. The 1960s represent the benchmark for many of the technological and economic changes affecting transnational crimes, whereas the political changes contributing to the spread of transnational crime emerged in subsequent decades.<sup>111</sup>

The growth in transnational illegal activities is largely due to the increasingly international scope of legitimate business and the ease with which it is conducted. Significant technological advances most affecting the growth of transnational crime include the rise of commercial airline travel, telecommunications (including telephone, fax and computer networks) and the use of computers in business. For example,

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<sup>110</sup> DELLA PORTA, D., Politics, the Mafia and the Corruption Market, in *Corrupt Exchanges*, Aldine de Gruyter, 1999, p. 23.

<sup>111</sup> ELLION, Michael, *The Global Mafia*, Newsweek, 13 December 1993, p. 18.

between 1960 and 1974, the passenger volume on international flights increased six-fold. By 1992, it had increased more than four times from 1974 levels. This rise has contributed to an increasingly mobile world population; mobility equally enjoyed by carriers of illicit commodities and illegally obtained currencies. Concomitantly, between 1970 and 1990, global trade increased ten times. Included in the increased flow of commodities are illicit commodities, as cargo is loaded and unloaded at numerous points around the globe to avoid detection. Advances in telecommunications and satellite technology, the development of fiber-optic cable and the miniaturization and complexity of computers have resulted in a communications explosion of international telephone calls, fax transmissions and wire transfers. Crime groups benefiting from the "global village" and its instant and anonymous telecommunications are able to operate without frontiers in unprecedented ways. With such a volume of travel and trade, criminals or traffickers are less easily distinguished from their fellow travelers or legitimate businesspersons.<sup>112</sup>

This leads to another factor underlying the increase in international crime -- the growth of international business. Organized crime groups follow the wends of international business. The increasing economic interdependence of the world requires both illicit and legitimate businesses to think internationally. Global markets have developed in both legitimate goods and illicit goods, the most notable of which is the international narcotics trade. Just as legitimate multinational corporations establish branches around the world to take advantage of attractive labor or raw-materials markets, so do illicit multinational businesses. Furthermore, international businesses, both legitimate and illicit, also establish facilities worldwide for production, marketing and distribution. These enterprises are able to expand geographically to take advantage of these new economic circumstances thanks to the aforementioned communications revolution.

The transnational character of organized crime means that these groups are now part of the global political agenda. As they develop from their domestic bases, their members establish links with fellow nationals living abroad. Tribal links among similar ethnic groups in different countries may facilitate international illicit activity, such as that seen

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<sup>112</sup> WILLIAMS, Phil, *Transnational Criminal Organizations and International Security*, Survival, 36, no. 1, Spring 1994, p. 96.

across borders in Africa, the Golden Triangle and along the southern frontier of the former Soviet Union (the Azerbaijani-Iran and Tadjik-Afghan borders).<sup>113</sup>

The collapse of the socialist bloc in Eastern Europe and the dissolution of the USSR, along with the rise of the European Union (EU), have resulted in loosely controlled borders stretching from Europe to the Pacific Ocean and along a lengthy frontier with Asia. Not only do indigenous crime groups operate with near impunity in these areas, but a lack of coordinated policy facilitates illicit commerce in goods and human beings as well as large-scale money laundering. The fall of communism has lessened the ability of the border police and the ministries of internal affairs of the successor states to strictly enforce former borders between the Asian successor states and their neighbors. With these porous borders, the geographical boundaries of individual countries are less important. For example, one goal of the EU- the free movement of peoples and goods among its member-states -- has benefited these states but has also been exploited by European criminals as well as numerous crime groups from Asia, Africa, Latin America and, most recently, Eastern Europe.

Large-scale ideological confrontations have been replaced in recent decades by hundreds of smaller ethnic conflicts in many regions of the globe. These small-scale wars contribute to transnational organized crime by increasing the supply of narcotics and by feeding the trade in arms. Developing countries with poor economies that are dependent upon agricultural commodities are, with falling agricultural prices, often attracted to drug cultivation as a means of obtaining cash. This money can then be used to purchase arms for use in small-scale clashes. Weapons for such purposes are often bought on the illegal arms market, which is supplied by transnational organized crime groups.

However, despite the veritable explosion in illicit trade, the hegemony of global international crime is exaggerated. Increasing links exist among different international organized groups, but the idea advocated by Claire Sterling of a *pax mafiosa* is premature.<sup>114</sup> The cooperation among organized crime groups from different regions of the world enhances drug-trafficking capacities and permits the smuggling of nuclear

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<sup>113</sup> ASUNI, Tolani, *Drug Trafficking and Drug Abuse in Africa*, in *Criminology On, Africa*, ed. Tibamanya mwene Mushanga, Rome: United National Interregional Crime and Justice Research Institute, 1992, p. 1-17-9.

<sup>114</sup> STEALING, Claire, *Thieves' World*, New York: Simon and Schuster, 1994, p.67.

materials as well as trafficking in human beings, but it does not yet present a consolidated threat to the established political order. An emerging *pax mafiosa* is precluded because many parts of the world are not under the domination of a particular organized crime group. The violence that exists in many Western European cities, particularly Berlin, is evidence that there is strong competition among different organized crime groups for control.

### **3.4.2 Pernicious Consequences of Transnational Organized Crime**

The costs of transnational organized crime are not exclusively monetary. Transnational organized crime undermines political structures, the world economy and the social order of the countries in which the international crime groups are based and operate. The resulting instability invites more crime, and may preclude the institutionalization of democratic institutions, the rule of law and legitimate markets.

Transnational organized crime undermines civil society and human rights. Through intimidation and assassination of journalists in different countries, it limits freedom of the press and individual expression. Transnational organized crime also undermines the creation of civil society by dominating independent philanthropic organizations and by intimidating citizens in movements that challenge organized crime.<sup>115</sup> The infiltration of these groups into labor unions violates citizen labor rights. International trafficking in prostitution and pornography demeans both women and children, and the illegal smuggling of individuals to work in situations where they are often exploited raises serious human rights concerns.

### **3.4.3 Transnational Organized Crime, the State and World Order**

The world political order becomes increasingly stable when more nations establish democratic forms of government based on respect for the rule of law and government through consensus. International organized crime is detrimental to existing democracies and to societies in transition to democracy. Transnational crime undermines the rule of law and the legitimacy of democratic government through its corruption of individuals and the judicial process. Organized crime groups often supplant the state in societies

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<sup>115</sup> ADOLFO, Beria di Argentine, *The Mafias in Italy*, in *Mafia Issues: Analyses and Proposals for Combating the Mafia Today*, ed. Ernesto U. Savona, Milan: International Scientific Professional Advisory Council of the United Nations Crime Prevention and Criminal Justice Programme (ISPAC), 1993, p. 22-3.

undergoing a transition to democracy, as their representatives assume key positions in the incipient legislatures, which are responsible for crafting the new legal framework for the society. Their presence within legitimate state institutions undermines political stability because their goals are to further their own criminal interests (illicit profits), not the interests of the populace at large.

Transnational organized crime groups in both developed and developing democracies seek to corrupt high-level government officials both on the groups' home turf and in the countries where they operate. But these groups are often more successful when their efforts are conducted in nation-states that are in political transition, because the controls over the legal process do not yet function as they do in a stable democracy.

Transnational organized crime groups also threaten states through their trafficking in nuclear materials. Now the world no longer worries about nuclear conflict between the world's superpowers. Instead, today the nuclear threat comes largely from the arms trafficking of organized crime, a new and highly pernicious form of illicit activity. The smuggling of nuclear materials may enable some country or crime group to independently produce a nuclear weapon, therefore raising the potential for nuclear blackmail.<sup>116</sup>

#### **3.4.4 Transnational Organized Crime and the World Economy**

The impact of international organized crime groups on the world economic order is equally disturbing. Much has been written about the pernicious effects of multinational corporations that transfer operations outside their domestic base, often in order to elude domestic legal controls. A typical critique concludes that their "exploitative effects on rich and poor nations remain unchecked."<sup>117</sup> International law lacks the legal enforcement power necessary to control the behavior of such international corporations. The innate obstacles to regulating the abuses of multinationals (i.e., the diversity of laws among nations, the lack of extradition treaties and the desire of developing nations to attract foreign capital at any cost) are only amplified when replaced by illicit multinationals -- transnational organized crime.

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<sup>116</sup> COWELL, Alan, *Italians Voting Today, with Mafia's Role a Top Issue*, New York Times, 27 March 1993, p. 10.

<sup>117</sup> GREIDER, William, *Who Will Tell the People: The Betrayal of American Democracy*, New York: Simon and Schuster Touchstone, 1993, p. 377.

The practice by transnational criminal organizations of large-scale money laundering, of corrupting of key officials in economic and customs positions and of utilizing banks, stock exchanges, venture capital opportunities and commodities markets, all undermine the financial security of world markets. The pensions and savings of ordinary citizens are also jeopardized when banks and stock funds collapse because of illegal manipulation of the financial sectors by international organized crime groups.<sup>118</sup>

#### **3.4.5. Social Consequences of Transnational Organized Crime**

The social consequences of transnational organized crime are often understated. The most visible manifestations - violence, drug trafficking, gambling, prostitution and the spread of AIDS -all have a very direct effect on quality of life. Not only do international crime groups run these illicit markets, but they coerce women and children into prostitution and develop drug dependencies among millions of individuals in order to create a market for their narcotics.

Furthermore, the control of illegal markets by international organized crime has a ripple effect throughout the economy, thereby affecting the quality of life of even those who do not participate in the market of illicit goods and services. Extortion activities and the monopoly of markets increase the costs of consumer goods. As a consequence, citizens pay more for food, housing and medical services.<sup>119</sup>

Because organized crime groups are oriented toward immediate profits, their activities (cultivating drugs on unsuitable soil, harvesting and selling of protected species and illegally overfishing sturgeon for the lucrative caviar trade) often lead to serious environmental damage.

#### **3.4.6 Complexity of Transnational Organized Crime**

Transnational organized crime groups thrive in different political environments, functioning with diverse internal structures and in various areas of activity.<sup>120</sup> They can be based in a collapsing superpower, the less-developed region of a developed

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<sup>118</sup> PASSAS, Nikos, *I Cheat, Therefore I Exist: The BCCI Scandal in Context*, in *International Perspectives on Business Ethics*, ed. W.M. Hoffman, et al., New York: Quorum Books, 1993, p.47.

<sup>119</sup> *Current Digest of the Soviet Press*, 46, no. 4, Crime, Corruption Poses Political, Economic Threat, 23 February 1994, p. 14.

<sup>120</sup> KELLY, Robert J., *Criminal Underworlds: Looking Down on Society*, in *Organized Crime: A Global Perspective*, ed. Robert J. Kelly, Totowa, NJ: Rowman and Littlefield, 1986, p. 14.

democracy and in a formerly stable democracy. These groups vary broadly in size as well as in their strategies for avoiding detection. International organized crime groups are based on every continent, and their activities, while probably most pronounced in the regions closest to their home country, are increasingly conducted across continents, often in conjunction with organized criminals from other parts of the world. Divergent legislative and enforcement policies among nations permit these transnational crime groups to more easily elude authorities by exploiting a particular environment. For example, the favorable banking laws and the lack of enforcement have made several Caribbean islands havens for money laundering.

The complexity and transnational nature of organized crime is probably most apparent in the area of drug trafficking. But this activity is not confined only to the distribution of narcotics, as these same networks can be (and have been) used to smuggle weapons and may be used to smuggle nuclear materials with equal facility. Indeed, the trading and sale of drugs and weapons are often interrelated when, as indicated above, drugs become the most easily obtainable currency.<sup>121</sup>

The multinational character of the drug trade is revealed in major cases detected by law enforcement. For instance, one unmasked network involved criminals from Pakistan, Africa, Israel, Eastern Europe and Latin America.<sup>122</sup> The drugs (hashish) originated in Pakistan and were delivered to the port of Mombassa (Kenya), where they were added to a cargo of tea and reshipped to Haifa (Israel) by way of Durban (South Africa). At Haifa, the cargo was put onto a ship of a company that ships to Constanza (Romania) every 15 days. From there, it was to have been shipped by an Israeli-Romanian company to Italy, via Bratislava (Slovakia). The head of the network was a German citizen of Ugandan origin who worked for a Romanian company. This complex network was only disclosed because the perpetrators were apprehended in Constanza.<sup>123</sup>

In contrast, another large drug seizure of 517 kilos of cocaine at a Polish port linked Poles with Ecuadorians, members of the Cali cartel of Colombia and members of Italian organized crime.<sup>124</sup> This drug network illustrates the collaboration of three of the most

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<sup>121</sup> WILLIAMS, Phil, *Transnational Criminal Organizations and International Security*, Survival, 36, no. 1, Spring 1994, p. 96.

<sup>122</sup> LABROUSSE, Alain and Alain Wallon, eds. *Etat des Drogues, Drogue des Etats: Observatoire Geopolitique des Drogues*, Paris: Hachette, 1994, p. 252.

<sup>123</sup> Ibid.

<sup>124</sup> Ibid, p. 258.



important transnational organized crime groups -- the Colombian, Italian and the recently emergent Eastern and Central European (unlike the previous case, which involved only a limited number of participants from these major crime groups).

Apart from these three major transnational organized crime groups, the Chinese Triads, Japanese Yakuza and various Nigerian groups are also significant players in transnational organized crime.<sup>125</sup> Indeed, after the collapse of its oil boom, Nigeria became one of the largest drug-trafficking nations in the world, strategically placed as it is along ancient trade routes that link Asia and Europe as well as the Americas. At present there is not one region in the world without an indigenous transnational organized crime group or that is not plagued by the activities of an international organized crime group.<sup>126</sup>

### **3.5 INTERNATIONAL GROUPINGS OF ORGANIZED CRIME**

We could list hundreds of organized crime organizations which are in existence all over the world. But according to objective of this study only major groupings examined here.

Organized crime does not somehow operate in glorious isolation. All of these “gangsters” are actively attacking business- and operating as a business- across the world.<sup>127</sup>

#### **3.5.1 Colombian Cartels**

These cartels are highly organized, well equipped, well financed, formidable and totally entrenched in their country origin. The leaders of these international drug organizations have built powerful financial transportation, intelligence and communications empires that rival those of many small governments.<sup>128</sup> The Cali cartel is said to be worth \$206 billion. Its two leaders, the brothers Gilberto and Miguel Rodriguez, were sentenced to 10 years’ imprisonment in January 1997 but allegedly continue running their operations from jail. Cocaine and heroine trafficking into the US is their main business but they

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<sup>125</sup> Background Document for World Ministerial Conference on Organized Transnational Crime, Problems and Dangers Posed by Organized Transnational Crime in the Various Regions of the World, Naples, 21-23 November 1994.

<sup>126</sup> ASUNI, Tolani, Drug Trafficking and Drug Abuse in Africa, in Criminology On, Africa, ed. Tibamanya mwene Mushanga, Rome: United National Interregional Crime and Justice Research Institute, 1992, p.120.

<sup>127</sup> LILLEY, Peter, Dirty Dealing, Kogan Page Limited, London, 2003, p. 20.

<sup>128</sup> U.S., Senate, Hearings of the Subcommittee on Terrorism, Narcotics, and International Operations; Committee on Foreign Relations, The BCCI Affair, Washington, DC, 1991, 1992.

also do a nice sideline into contract killing. The country has been in a state of permanent civil war for the last 35 years, and allegations abound that link together the drug cartels, far right paramilitary groupings and the Colombian army itself. Columbia, to all intents and purposes, appears to be in a permanent state of national emergency. All of this has meant that the drug cartels have broadened their operations geographically, both to neighboring South American Countries and to Western Europe itself.<sup>129</sup> (Figure 3.3)

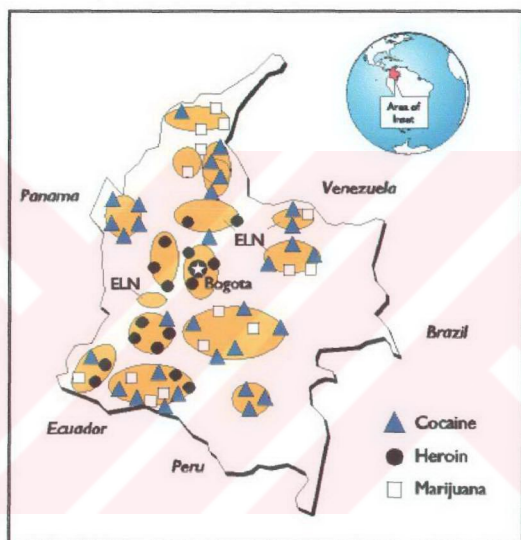


Figure 3.3 Colombian Narco-Terrorist Groups<sup>130</sup>

### 3.5.2 Mexican Cartels

Drug trafficking and organized criminal activity are viewed within Mexico as a threat to international security. Mexican cartels have learnt from the Colombians but also have the added advantage of a 2,000-mile-long border with the US. Just as with the

<sup>129</sup> THOUMI, Francisco E., *Political Economy & Illegal Drugs in Colombia*. Colorado: Lynne Rienner, 1995, p.12.

<sup>130</sup> <http://www.heritage.org/research/features/>

Colombians, the drug gangs have made sizeable inroads into corrupt politicians and political structures. There is a variety of different groups, all of which are extremely violent: The Tijuana cartel; the Juarez cartel; the Miguel Caro-Quintero organization; and the Gulf cartel, aka the Juan Garcia-Abrego organization.<sup>131</sup> (Figure 3.4)

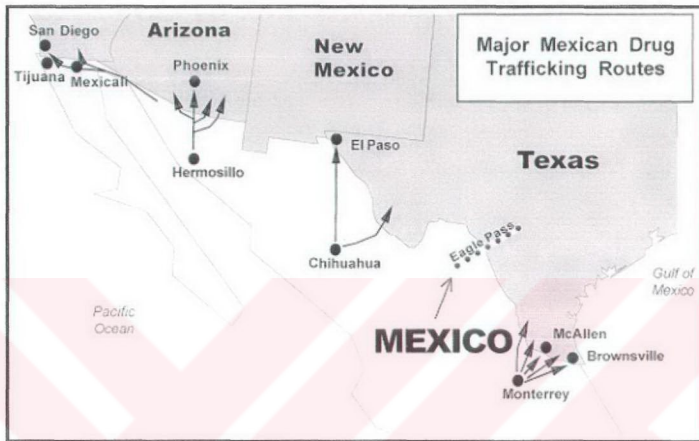


Figure 3.4 Major Mexican Drug Trafficking Routes<sup>132</sup>

### 3.5.3 Russian Mafia

The Russian Mafia were previously the flavor of the month, if for no other reason than the quarter-million stolen cars per year they are responsible for. But of course there is much, much more to them than that. Membership figures vary widely from 100,000 to in excess of 300,000. In St Petersburg, as an example, it is estimated that 230 criminal groups operate there with five extremely influential gangs. Such an extent of criminality led to 33 contract killings in the city in 1999.<sup>133</sup> In Moscow in 1999 the crime rate increased by 38.7 per cent on the previous year: registered crimes in the areas of economic related, drug related and arms related grew by 64 per cent, 39 per cent and 13 per cent respectively.<sup>134</sup> (Figure 3.5)

<sup>131</sup> U.S. House of Representatives, Hearings of the House Committee on Foreign Affairs, Subcommittee on International Security, Washington D.C., May 11, 1993.

<sup>132</sup> <http://www.usdoj.gov/dea/programs/>

<sup>133</sup> VOLKOV, Vadim, *The Political Economy of Protection Rackets in the Past and the Present*, Social Research, 2000, p. 67.

<sup>134</sup> *Ibid*, p. 69.

It is now clear that much of the criminal activity in Russia itself existed under, and was “tolerated” by, the Soviet authorities. After the fall of communism the influence of Organized crime in Russia was all-pervasive, with estimates running as high as 80 per cent of all Russian businesses being mafia controlled.<sup>135</sup> What has been staggering is the spread of Russian organized crime since the dismantling of communism. There are said to be between 2,000 and 8,000 stratified crime groupings that are alarmingly active all over the world: the United Kingdom (sex trade, drugs and fraud); Holland (sex trade and drugs); the United States (drugs and fraud); Belgium (stolen cars); France (drugs, fraud and the sex trade); Switzerland (dummy businesses); Italy (drugs and human trafficking from Albania); Germany (the sex trade, drugs and stolen cars); Poland (drugs and fraud); Austria (dummy companies, the sex trade and drugs); former Yugoslavia (the black market and illegal supplies of arms); Israel (drugs and extortion); Canada (drugs, sex trade and fraud).<sup>136</sup> It should be taken as read that these groups are involved in money laundering in all of these countries and anywhere else where it is possible. That two largest groupings are Izmailovo and Solntsevo, alleged to be headed by the now infamous Sergei Mikhailov.<sup>137</sup>

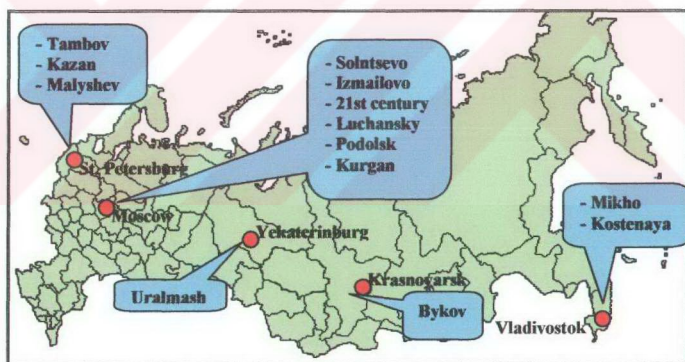


Figure 3.5 Organized Crime Groups in Russia<sup>138</sup>

<sup>135</sup> ANDERSON, A., *The Red Mafia: A Legacy Of Communism*. In E. Lazear (Ed), *Economic Transition in Eastern Europe and Russia: Realities of Reform*. Stanford, CA: The Hoover Institution Press. 1995, Available on site: <http://andrsn.stanford.edu/Other/redma.html>

<sup>136</sup> VETROV, A. *The Ministry of Internal Affairs Requests Assistance in Combating Teenage crime*, *The Current Digest of the Post-Soviet Press* 47:34 1995, p. 77.

<sup>137</sup> FRISBY, Tanya. *The Rise of Organized Crime in Russia: Its Roots and Social Significance*. *Europe-Asia Studies* 50:1, 1998, p. 44.

<sup>138</sup> <http://www.usdoj.gov/dea/pubs/intel/>

### 3.5.4 Japanese Yakuza

The influence of the Yakuza on Japanese business and banking was perhaps underestimated until the last couple of years when their activities finally came out of the woodwork as a result of the Far East financial turmoil. The Yakuza are estimated as being responsible for almost half the bad debts held by Japanese banks. However, it has been suggested that the banks themselves courted Yakuza groups in the 1980s when large corporate borrowers defected the international markets. When the bubble burst the Yakuza borrowers were saddled with massive debts, but the banks were too scared to foreclose on them, fearing retribution. Estimates as to their membership hover around the 100,000 mark with a turnover of up to 490 billion per year.<sup>139</sup> These estimates make them by far and away Japan's biggest individual business. They have cornered the market in Japan for property and loan fraud together with prostitution, debt collection and extortion rackets. The downturn in Japanese economy has also led to the Yakuza spreading out from their traditional family/national base and looking for investments and business opportunities in Hawaii, other US states, the Philippines, Australia and other areas of South East Asia. It is suspected that the Yakuza have invested 450 billion in financial markets in the United States.<sup>140</sup> (Figure 3.6)

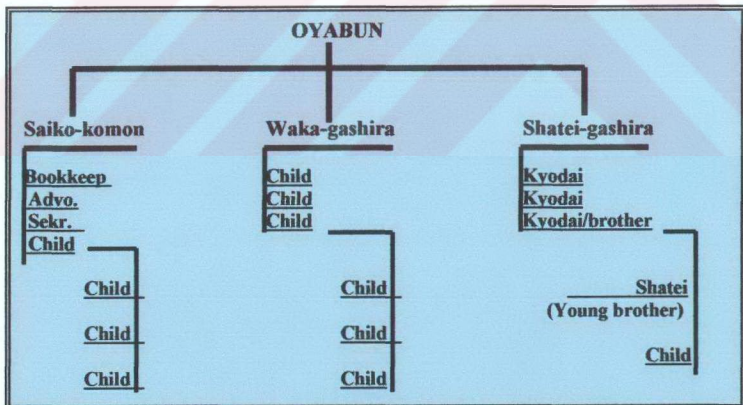


Figure 3.6 Japanese Yakuza Structure<sup>141</sup>

<sup>139</sup> SEYMOUR, Christopher. *Yakuza Diary: Doing Time in the Japanese Underworld*. New York: Atlantic Monthly Press, 1996, p.57.

<sup>140</sup> LILLEY, Peter, *Dirty Dealing*, Kogan Page Limited, London, 2003, p. 25.

<sup>141</sup> [http://www2.gol.com/users/coynerhm/yakuza\\_the\\_japanese\\_mafia.htm](http://www2.gol.com/users/coynerhm/yakuza_the_japanese_mafia.htm)

### 3.5.5 Italian Mafia

Read the book, seen the films: membership of 20,000 but should not be underestimated or overlooked. To be strictly correct, as outlined below, the correct term is “Mafias” in the plural as there are at least four (possibly five) major groupings. They are still hugely influential in Italy where it is still estimated that they control 20 per cent of the country’s commercial activities, notwithstanding the on-going governmental purges on their activities. The various groups have a heavy presence in arms, gambling, loan sharking, and extortion, disposal of toxic waste, European Union frauds, animal trafficking, and fraud centered on government tenders and increasing the infiltration of legitimate companies to launder funds. The Italian Mafia have adapted and survived by entering new dynamic business areas and realizing when it is prudent and/or sensible to leave behind their more traditional activities. The Cosa Nostra is still active all across Italy with 6,000 active member families. It was one of the first groups to cooperate with criminal groups in Moscow.<sup>142</sup> It now focuses on large scale fraud against the EU and Italian government together with bank fraud and computer related crime. The ‘Ndrangheta is the richest mafia in Italy with a propensity for international drug and arms trafficking. There are 150 cells each solely comprised of blood relatives together with 6,000 families and affiliates in Northern Italy and the rest of the world. It has formed links with Albanian groups to run arms trafficking, prostitution, and money laundering and illegal immigration. The Camorra is particularly active in Campania with over 100 clans totaling 7,000 affiliates. It is believed to be the largest Mafia group, preferring waste management activities, public tender frauds and shenanigans with EU money. The Sacra Corona Unita, whilst its strategic control has now decamped to the former Yugoslavia, is heavily present in the contraband tobacco market, prostitution and money laundering.<sup>143</sup> (Figure 3.7)

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<sup>142</sup> Office of the Attorney General of California, California Department of Justice, Report on Russian Organized Crime, Sacramento, 1995.

<sup>143</sup> Background Document for World Ministerial Conference on Organized Transnational Crime, Problems and Dangers Posed by Organized Transnational Crime in the Various Regions of the World, Naples, 21-23 November 1994, p. 50.



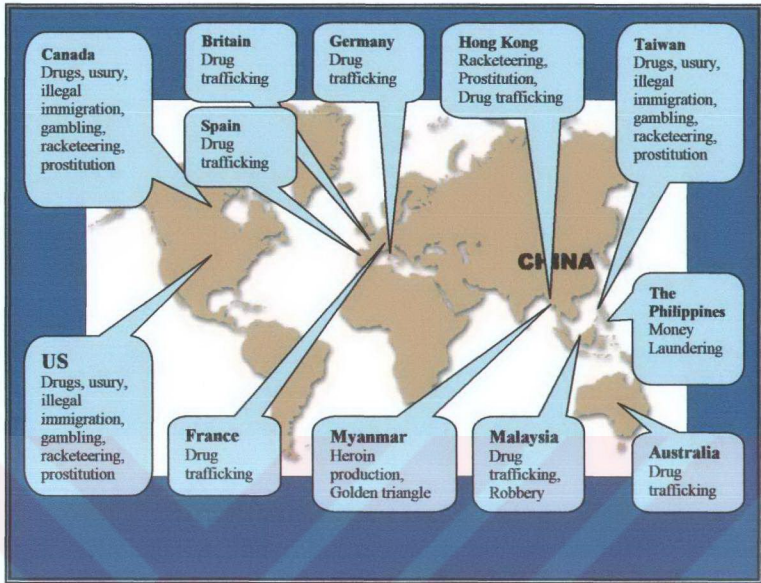
Figure 3.7 Italian Organized Crime Groups<sup>144</sup>

### 3.5.6 China Triads

This intricate network of Chinese criminals has its roots in the 19<sup>th</sup> century opium trade; some commentators date its origins back even further to the 17<sup>th</sup> century. The Triads now operate in very major centre of the world with a Chinese population, and have an estimated turnover of \$200 billion per annum. Membership figures vary widely but a minimum figure is estimated as being 20,000 with a maximum exceeding 100,000. There are six main gangs (but over 50 in all) who are essentially rivals at local level but cooperate globally. These include the Sun Yee On (also known as the San Yee On), the 14k, the Wo On Lok and the Wo Sing Wo. The Sun Yee On is the largest group with cells in North America, Western Europe, Asia and Australia and a membership of more than 25,000; the 14k is based in Hong Kong with outposts in the Netherlands, North America, the United Kingdom, Canada, Australia and New Zealand. Amongst other businesses that the Triads are involved in are gambling, illegal prostitution, human trafficking, extortion, fraud, loan sharking, counterfeiting, drug trafficking and money laundering.<sup>145</sup> (Figure 3.8)

<sup>144</sup> <http://www.fas.org/irp/threat/>

<sup>145</sup> FINCKENAUER, James O. Ph.D., Chinese Transnational Organized Crime, International Center US National Institute of Justice, .2001, p.35.



**Figure 3.8 China Triads Activity<sup>146</sup>**

Heroin addiction has become an enormous problem since China became an increasingly important transshipment route for heroin produced in Burma. Before 1990, when most Southeast Asian heroin transited Thailand, China had few problems with drug trafficking or addiction. Between 1990 and 1998, however, the number of registered drug abusers in China increased by a factor of 10 from some 70,000 to nearly 700,000, according to official Chinese statistics; unofficial estimates of drug addiction in China range from 1 to 12 million. A January 1998 Chinese press article reported that addicts in China spend some \$17 billion annually on illicit drugs.<sup>147</sup>

Intravenous heroin use is contributing to a significant HIV/AIDS problem in China, accounting for 70 to 90 percent of HIV transmissions, according to Chinese press reporting. In late 1998, Chinese officials estimated there were some 300,000 HIV/AIDS cases in China, but this figure is probably conservative given weaknesses in China's

<sup>146</sup> [http://www.ibgf.org.br/imagens/n\\_mapa6.gif](http://www.ibgf.org.br/imagens/n_mapa6.gif)

<sup>147</sup> International Crime Threat Assessment, US Government, December 2000, Chapter III. Available on site: [www.fas.org/irp/threat/](http://www.fas.org/irp/threat/)



HIV/AIDS reporting and monitoring system. The Chinese Academy of Preventive Medicine forecasts more than 10 million by 2010 if control efforts are not successful.

Contraband smuggling has become a target for a major law enforcement crackdown beginning in July 1998. Chinese Premier Zhu Rongji in August 1998 announced that rampant smuggling had reached unprecedented levels in terms of its scope and quantity of products. He also blamed smuggling for corrupting government officials, poisoning social morals, and a surge in other crimes. China's high tariffs and taxes, as well as nontariff barriers to trade, make smuggling of foreign-produced automobiles, cigarettes, computer software and equipment, electronics, petroleum products, and other goods extremely lucrative for criminal groups and corrupt officials. Illegal imports, besides depriving the government of substantial customs revenue, have seriously disrupted China's key oil industry, as well as the country's computer, automobile, and cigarette sectors, according to press reports. Organized crime syndicates, including Hong Kong's 14K triad and mainland criminal groups, are heavily involved in the smuggling of automobiles and cigarettes into China for Chinese consumers and for reexport to foreign markets.

Local press reports in 1998 indicated that the value of goods smuggled into China totals about \$12 billion annually. During the first eight months of 1998, Chinese officials seized more than \$650 million in smuggled goods that would have netted \$200 million in customs duties. A good portion of China's capital flight--estimated by one business industry journal at \$20 billion for 1998--is said to go toward smuggled goods.

China is also struggling to control a growing black market in small arms, including military weapons, which are sold to criminal groups throughout East Asia. Increasing quantities of firearms have shown up inside China, contributing to the crime problem and sometimes challenging the firepower available to local Chinese police and security officers. Chinese police in Guangdong and Liaoning Provinces have encountered crime gangs armed with military-style assault rifles. A portion of the weapons traded on China's black arms market are sold to criminal groups in Hong Kong and Macau, adding to Beijing's concern about crime and social order in both enclaves. Chinese authorities claim most of the arms come from Vietnam and that Vietnamese gunrunners dominate the trade, but many of the weapons trafficked in China probably are from police and military stocks or from Chinese arms factories.

Infrastructure development projects in China designed to attract and support foreign trade and investors are a major draw for investment by Chinese criminal groups. Some Chinese criminal syndicates try to profit from ambitiously planned infrastructure development projects in China by direct investment, offering loans, or arranging financing.

Chinese authorities report that organized crime groups target legitimate investors in large-scale scams. According to 1998 press reports, Beijing closed down 25 large-scale investment scams each involving \$125,000, and in the last half of 1998 the Chinese broke up pyramid schemes worth more than \$250,000.

### **3.5.7 Nigerian Drug Trafficking Organizations**

Nigeria continues to be the major hub in Africa for the transshipment of Southeast Asian (SEA) and, to a limited degree, Southwest Asian (SWA) heroin to Europe and the United States. Nigerian drug trafficking organizations are among the largest trafficking groups engaged in the smuggling of SEA heroin into the United States. In recent years, Nigerian drug trafficking has expanded at an unprecedented rate. Nigerian traffickers are not only operating from Southeast Asia and Africa, but also from South America. Currently, there are hundreds of loosely organized Nigerian trafficking groups, which operate extensive global networks that control the sub-Saharan drug markets. Nigeria is also a transshipment country for multikilogram quantities of cocaine from South America being transported to Europe, Asia, and Africa, especially South Africa. Marijuana, grown in Nigeria, is shipped to Europe and West Africa. Nigerian traffickers are well established in Southeast Asia and Europe and are rapidly entrenching themselves in such diverse places as the former Communist bloc countries of Eastern Europe, South Africa, Russia, Brazil, the Philippines, and South Korea.<sup>148</sup>

Because of the individual and combined scale of the crimes perpetrated by the above groups it is naturally (and correctly) assumed that each of them is involved in large scale and widespread money laundering. It should also be noted that the summary above includes only the major generic groups of organized criminals: don't forget that there are many more domestic units in each country.

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<sup>148</sup> Drug Intelligence Brief, Drug Enforcement Administration, Nigeria: Country Brief, August 2001, p.2

At an international conference on transnational organized crime in Tokyo at the, and of January 2001, a senior United Nations official claimed that “Internationally organized crime is now a bigger threat to security for ordinary people than war.” And he also made the following points:<sup>149</sup>

- The fight against the organized criminals behind human trafficking, corruption and cybercrime must be a genuinely global effort.
- Organized criminals can cooperate across borders with greater ease than law enforcement officials—that is why international cooperation is so vital.
- The level and intensity of international crime has gone beyond what governments and the general population is prepared to accept.
- As many as 1 million women and children are trafficked each year across national borders by criminal groups.
- The profits from corruption, drug trafficking and other crimes have become so big that the numbers are difficult to grasp, while money laundering is estimated by the US Government to be equivalent to as much as 5 per cent of the world’s gross domestic product.

### **3.6 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 cooperation against the global trade in drugs, reputedly the most profitable activity of organized crime. For drug-related crimes, the convention established standards for mutual legal assistance, criminalization of offences, and provisions against money

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<sup>149</sup> ARLACCHI, Pino, the Undersecretary-General at the United Nations Office for Drug Control and Crime Prevention, International Conference, Tokyo, Jan. 2001.

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 organized transnational crime, and drug trafficking in particular, have come in the form of action against money laundering.<sup>150</sup> In this regard, the work of two important organizations is worth noting here:

### **3.6.1 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 industrialized 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.

### **3.6.2 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.

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<sup>150</sup> UNDCP, United Nations International Drug Control Program, World Drug Report. Oxford: Oxford University Press, 1997.

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).<sup>151</sup>

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.

### **3.6.3 Briefing of an Academic Study on Fighting Against Transnational Organized Crime**

Effective and efficient link analysis techniques are needed to help law enforcement and intelligence agencies fight organized crimes such as narcotics violation, terrorism, and kidnapping. Hsinchun Chen and Jennifer J. Xu propose a link analysis technique that

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<sup>151</sup> DANDURAND, Yvon, Recent International Efforts to Address Transnational Crime, International Conference on Crime and Criminal Justice in a Borderless Era, Ritsumeikan University, Kyoto, Japan, November, 2 1998, p.6-7

uses shortest-path algorithms, priority-first-search (PFS) and two-tree PFS, to identify the strongest association paths between entities in a criminal network. To evaluate effectiveness, they compared the PFS algorithms with crime investigators' typical association-search approach, as represented by a modified breadth-first-search (BFS). Their domain expert considered the association paths identified by PFS algorithms to be useful about 70% of the time, whereas the modified BFS algorithm's precision rates were only 30% for a kidnapping network and 16.7% for a narcotics network. Efficiency of the two-tree PFS was better for a small, dense kidnapping network, and the PFS was better for the large, sparse narcotics network.<sup>152</sup>

According to the crime statistics organized crime is a serious rising problem which threatens all mankind. In spite of the proximity of the danger the countermeasures are not sufficient. This insufficiency is originated from both states and international organizations.



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<sup>152</sup> HSINCHUN, Chen and XU, Jennifer J., Fighting organized crimes: using shortest-path algorithms to identify associations in criminal networks, *Decision Support Systems*. Available on site : <http://www.sciencedirect.com/science/article/>

*“Omne malum nascens facile opprimitur; inveteratum fit plerumque robustius.*

*(Every evil in the bud is easily crushed; as it grows older it becomes stronger.)”*

*CICERO*

#### **4 MAJOR TRANSNATIONAL ORGANIZED CRIME ACTIVITIES AND WORLDWIDE OCCURANCE**

There are tens of organized crime activities which exist all over the world. In this chapter I examined only five major OC activities. Because, when I examined the link between organized crime and terrorism in chapter 6, I saw that only five major transnational organized crime activities are effective to the world order, world security and global economy. And only these five OC activities are connected with terrorism. Here, I did not mention the groups of organized crime. I summarized these groups in chapter 3. In this chapter, the syndicates of organized crime are less important than the organized crime activities.

Five major transnational organized crimes:

- Drug trafficking.
- Conventional arms trafficking (illegal firearms trading).
- Smuggling in nuclear materials (nuclear black market).
- Trafficking in human beings and illegal migration.
- Cybercrime (computer-related crimes).

The threat from international crime continues to grow as criminals exploit the globalization of trade and finance and rapid changes in technology. These developments have helped create new mechanisms for trafficking contraband, conducting illicit trade, laundering money, and engaging in large-scale economic crimes. They have also

opened the door to new criminal opportunities.<sup>153</sup> While organized crime groups have greatly benefited from these developments, the pace of globalization and technological advancements also has inadvertently resulted in some legitimate businesses becoming engaged in economic criminal activity.<sup>154</sup>

Pick up any newspaper anywhere in the world, any day, and you will find news about illegal migrants, drug busts, smuggled weapons, technological crime, or nuclear threat. The global nature of these five crimes was unimaginable just a decade ago.

#### **4.1 DRUG TRAFFICKING**

No steps can be taken to fight against any menace unless we first gather information and intelligence regarding its current situation and past trends. Drug trafficking figures very prominently in transnational organized crime. The annual profits of organized crime are estimated, according to some sources, at one trillion dollars world wide; almost as much as the US annual federal budget.<sup>155</sup> As per report of UNDCP 1994, out of it not less than 500 billion dollars is the share of profits coming out of the drug trade, which is about half of US\$ 1,000 billion spent world wide on defense in 1991. As per estimates of Financial Action Task Force on Money Laundering of the G-7, the drug market in Europe and US alone amounted to more than US\$ 122 billion in 1990. In 1995 US citizens spent approximately \$ 57 billion on drugs including \$38 billion to purchase cocaine and \$10 billion on heroin from overseas sources. In comparison with this high-income society where average per capita annual income is \$20,000, take the example of Pakistan where average annual income is about \$500. As per UNDCP report 1994, estimated consumer expenditure in Pakistan on heroin alone was US\$ 1.2 billion per year.

All the above figures point towards the heinousness of the situation, which is becoming worse with every day passing. Improved technological and administrative infrastructure facilitates both legal and illicit trade. Increased trade and liberalization of the market space, spells more opportunity for illegal transactions. Evidence for this generalization

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<sup>153</sup> US Government interagency working group in support of and pursuant to the President's International Crime Control Strategy, International Crime Threat Assessment, December 2000.

<sup>154</sup> MOISES, Naim, The Five Wars of Globalization, Article, EBSCO Publishing, Jan/Feb. 2003, Issue 134, p.28. Available on site: EBSCO publishing [www.ebsco.com/EBSCOhost3.htm](http://www.ebsco.com/EBSCOhost3.htm)

<sup>155</sup> VLASSIS, Dimitri, "Current Problems in the Combat of Organized Transnational Crime", United Nations, a visiting expert for the 108th International Seminar, 1998.



may be found in the example of the European Union. From the mid 1980s onwards, which is noted for the single European market, seizure of narcotics increased noticeably. Seizure of heroin grew by 7 times in 1985 to 1994 while for cocaine it jumped by a factor of 42. These increased seizure figures can not be attributed to stronger law enforcement as the annual number of deaths from drugs also increased by 5 times from 1982 to 1991. This suggests that absolute amount of drugs in Europe also increased.<sup>156</sup> Increased seizure figures in source and transit countries are also not an indicator of efficient law enforcement; rather it could be an increased activity of drug trafficking as we are still unaware of the “Dark Figure” of their successful operations.

#### 4.1.1 Types of Drugs

A drug is any substance that can cause a change in body or way of thinking and feeling. Classification of drugs can be done by adopting different criteria as to whether they are natural, semi-synthetic or basing on their physiological and pharmacological action on the body. Drugs occurring in nature are called natural drugs. Plants make many drugs and store them in their roots, bark, leaves, flowers, fruits, and seeds, resinous and milky exudations. These are crude and raw natural drugs. We can process these crude drugs to isolate the active compounds in it and chemically convert them into other compounds to make them more efficacious or reduce their ill-effects on the body. Such man-made drugs derived from natural drugs are called semi-synthetics.<sup>157</sup>

Drugs which are wholly man-made starting from elements like carbon, hydrogen, nitrogen, phosphorus, sulphur, etc, or from simple primary chemicals, are known as synthetic drugs. Synthetic drugs, similar in properties to the natural ones, are produced in factories so as to make them available in greater quantities for medical use and at cheaper prices. These synthetic drugs make up the shortage, as the plants producing them are grown only in certain parts of the world under certain special climatic conditions and that too in limited areas. Natural and synthetic drugs exist side by side. Apart from classification, which varies according to the origin of drugs, there can be many other classifications.<sup>158</sup>

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<sup>156</sup> UGO, Ernesto, “The Organizational Framework of European Crime in the Globalization Process,

<sup>157</sup> Report of International Narcotics, Control Board for 1996, UN publication, 1997.

<sup>158</sup> World Drug Report, United Nations International Drug Control Program, United Nations publication, 1997.

#### **4.1.1.1 Opium/Heroin**

Opium is obtained from the poppy plant by making incisions into the unripened seedpod of the poppy. A milky substance oozes out and turns reddish brown upon contact with the air. The substance is collected and further refined. If it is intended for illegal use, it is mixed with glycerin and water and boiled down. The substance is processed further by cooking to evaporate the water, with the remaining glycerin keeping the final outcome opium-pliable. The opium is further processed to become illegal morphine or heroin.<sup>159</sup>

Morphine is the principal alkaloid of opium. Since morphine is a condensed extract, it is three times stronger than opium. There is wide variety of legitimate uses for morphine as a medicinal or pain-relieving agent. In its natural state, morphine is not readily soluble in water. Therefore it is treated with sulfuric acid. The texture is light, very similar to that of chalk dust.<sup>160</sup>

Heroin is another of the opiates. Public concern as to the opiates is focused primarily on heroin being regarded as the chief drug of addiction globally. Heroin is synthesized from morphine and, grain for grain is ten times more potent in its pharmacological effects. Heroin acts as a depressant to the spinal cord. The tolerance of this drug builds up faster than any other opiate. Consequently, the danger of drug dependency is considerably greater. It has come to known as the most dangerous and enslaving drug.<sup>161</sup>

#### **4.1.1.2 Coca/Cocaine**

Cocaine is a white crystalline alkaloid that is a potent, dangerous, and habit-forming drug. It was first used scientifically as local anesthetic in 1884. Its medical use as an anesthetic is based on its ability to interrupt conditions in nerves, especially in the mucous membranes of the eye, nose and throat. Cocaine is obtained from the leaves of coca, a bush commonly found wild in Peru and Bolivia and cultivated in many other countries. After the coca crop is harvested, it is processed and, generally, shipped to

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<sup>159</sup> UNODCCP, *Global Illicit Drug Trends 2002*, Vienna 2002, p. 24

<sup>160</sup> Report of the International Narcotics Control Board for 1993, United Nations publication, Sales No: E.94.XI.2, para. 92.

<sup>161</sup> WEATHERBURN, Don and Bromwyn Lind, *The Impact of Law Enforcement Activity on a Heroin Market*, *Addiction*, vol. 92, No. 5, 1996.

Columbia for refinement into cocaine. Its use is not new; for centuries Indians of Peru and Bolivia have chewed coca leaves, often mixed with ashes of plant and with limestone, for pleasure and to enable them to withstand strenuous work, walking, hunger and thirst. The chemical in the leaves produces local anesthetic of the stomach. The fine, white cocaine powder, also called snow or coke, can be sniffed and readily absorbed from nasal mucous membranes. Cocaine can also be injected in solution or smoked in a chemically treated form.<sup>162</sup>

#### **4.1.1.3 Cannabis**

Cannabis is a plant belonging to the hemp family. The genus originated from Central Asia and is now cultivated widely in the Northern Temperate Zone. It is prized as the more abundant source of mildly hallucinogenic drug present in the resin (cannabin) of the flowering tops, leaves, seeds and stems. Cannabis is also known by many other names: hashish charas, bhang, ganja and marijuana. The dried crushed product varies in potency, depending on how and where it is grown, prepared, used or stored. It usually is smoked in cigarettes or pipes; it also can be sniffed, chewed, or added to foods or beverages. Compared to opiates, cannabis has a shorter history of abuse. Cannabis was seen as a symbol of the liberal western society in South East Asian countries.<sup>163</sup>

#### **4.1.1.4 Amphetamine-Type Stimulants**

Synthetic drugs existed in history since the development of modern medical science. Advances in chemical technology have opened vistas to new chemical substances which bring effects similar to most of the naturally grown drugs. Cost differentials have paved the way for the development of synthetic drugs. One kilogram of heroin costs more than \$100,000 in the US while 1/10th of its cost may manufacture the substance of equal psychotropic results. Narcotic traffickers have already seen the future in this as it substantially curtails the risks in long transportation. They would not have to depend on, weather affected, two crops in a year. Drug crops are vulnerable to destruction in the

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<sup>162</sup> RYDELL, C. Peter, and Susan S. Everingham, *Controlling Cocaine: Supply vs. Demand Programs*, Santa Monica, California, RAND, 1994, p.43.

<sup>163</sup> WHO - World Health Organization, *Smoking, Drinking and Drug Taking in the European Region*, Copenhagen, 1997.

hands of law enforcers. Land space and little horizontal mobility are required in the manufacture of synthetic drugs as compared to natural drugs.<sup>164</sup>

The world of abusers is embarking on a gradual shift to synthetic drugs. The use and trafficking of amphetamines (full name mythylenphetamine or short 'ICE') and its derivatives are now increasing all over in Europe, US and Asia. Clandestine manufacture of amphetamines is easy and risk free although one of its precursor chemicals remains the plant based ephedrine. It has thus been inevitable that where easier and less visible method of drug production - are invented, the illegal syndicates will turn to them for profit.

#### **4.1.2 Production**

After the steep decline recorded in 2001, world's illicit opium and heroin production recovered in 2002 due to the resumption of large-scale opium poppy cultivation in Afghanistan. By the end of 2002, coca bush cultivation had declined by 18%, compared with the end of 2001, thanks to a significant reduction of coca cultivation achieved in Colombia. The lack of adequate data does not enable UNODC to precisely monitor trends in cannabis and synthetic drug production from year to year. However, indirect indicators suggest that global production of cannabis and amphetamine-type stimulants continued to increase in 2002, although regional variations can be observed.<sup>165</sup>

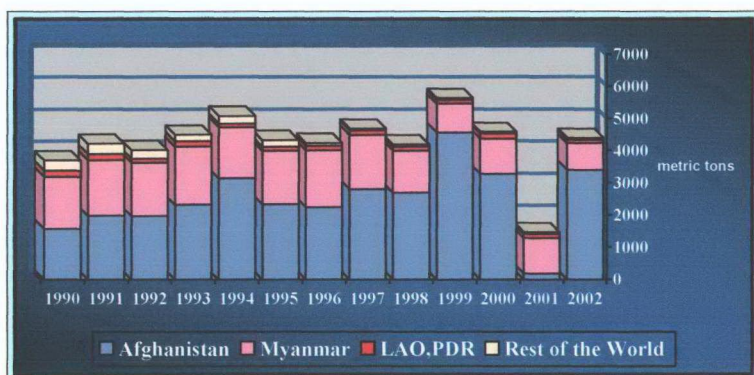
##### **4.1.2.1 Opium/Heroin**

Most of the world's illicit opium and heroin comes from a few countries. Afghanistan ranks first, with about three-quarters of world's production, followed by Myanmar, the Lao People's Democratic Republic (Laos) and Colombia. From 2000 to 2001, the world's illicit opium production declined by 65 %. That considerable decline was primarily the result of a ban on opium poppy cultivation enforced by the Taliban regime that reduced Afghanistan's opium production by 94 %.(Figure 4.1)

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<sup>164</sup> Substance Abuse and Mental Health Services Administration, National Household Survey on Drug Abuse: Main Findings, Washington, D.C., United States Department of Health and Human Services, 1999, p.65.

<sup>165</sup> Global Illicit Drug Trends 2003, UN Publicity, New York, 2003, p. 15



**Figure 4.1 Global Opium Production 1990-2002**

The resumption of large-scale opium poppy cultivation in Afghanistan last year brought the world's illicit opium poppy cultivation back to 180,000 hectares (ha) in 2002 (against 222,000 ha in 2000 and 144,000 ha in 2001). The resulting opium production was estimated at about 4,500 metric tons (mt) (against 4,700 mt in 2000 and 1,600 mt in 2001). This one-year setback is however somewhat mitigated by a longer-term decline of 25% in the global area under opium poppy cultivation since 1998, when the total extent was 238,000 ha. (Table 4.1 – 4.2)

	1995	1996	1997	1998	1999	2000	2001	2002
<b>CULTIVATION<sup>166</sup> IN HECTARES</b>								
<b>SOUTH-WEST ASIA</b>								
Afghanistan	53759	56824	58416	63674	90583	82171	7606	74100
Pakistan	5091	873	874	950	284	260	213	622
<b>Subtotal</b>	<b>58850</b>	<b>57697</b>	<b>59290</b>	<b>64624</b>	<b>90867</b>	<b>82431</b>	<b>7819</b>	<b>74722</b>
<b>SOUTH-EAST ASIA</b>								
Lao PDR	19650	21601	24082	26837	22543	19052	17255	14000
Myanmar	154070	163000	155150	130300	89500	108700	105000	81400
Thailand	168	368	352	716	702	890	820	750
Viet Nam <sup>167</sup>	1880	1743	340	442	442	0	0	0
<b>Subtotal</b>	<b>175768</b>	<b>186712</b>	<b>179924</b>	<b>158295</b>	<b>113187</b>	<b>128642</b>	<b>123075</b>	<b>96150</b>
<b>OTHER ASIAN COUNTRIES</b>								
Combined	5025	3190	2050	2050	2050	2479	2500	2500
<b>Total Asia</b>	<b>239643</b>	<b>247599</b>	<b>241264</b>	<b>224969</b>	<b>206104</b>	<b>213552</b>	<b>133394</b>	<b>173372</b>
<b>LATIN AMERICA</b>								
Colombia <sup>168</sup>	5226	4916	6584	7350	6500	6500	4300	4200
Mexico <sup>169</sup>	5050	5100	4000	5500	3600	1900	4400	2700
<b>Total Latin America</b>	<b>10276</b>	<b>10016</b>	<b>10584</b>	<b>12850</b>	<b>10100</b>	<b>8400</b>	<b>8700</b>	<b>6900</b>
<b>GRAND TOTAL</b>	<b>249919</b>	<b>257615</b>	<b>251848</b>	<b>237819</b>	<b>216204</b>	<b>221952</b>	<b>142094</b>	<b>180272</b>

Table 4.1 Global Illicit Cultivation of Opium Poppy 1995-2002<sup>170</sup>

<sup>166</sup> Potentially harvestable, after eradication.

<sup>167</sup> Due to small production, Viet Nam cultivation and production were included in the category "Other Asian countries" as of 2000.

<sup>168</sup> According to the Government of Colombia, cultivation covered 7.350 ha and 6.500 ha and production amounted to 73 mt and 65 mt in 1998 and 1999 respectively.

<sup>169</sup> Sources: As its survey system is under development, the Government of Mexico indicates it can neither provide cultivation estimates nor endorse those published by UNDCP which are derived from US Government surveys.

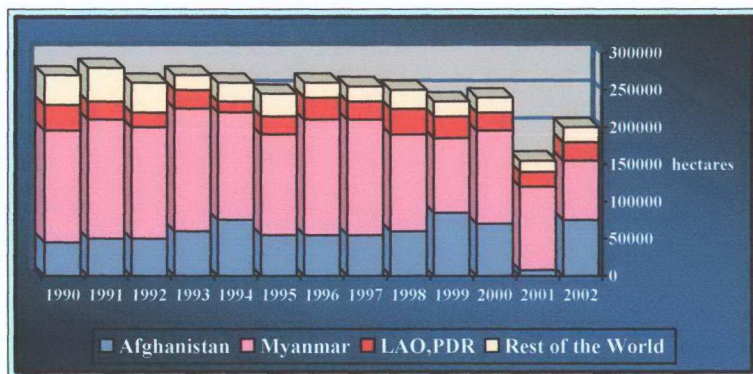
<sup>170</sup> Global Illicit Drug Trends 2003, UN Publicity, New York, 2003, p. 15

	1995	1996	1997	1998	1999	2000	2001	2002
<b>POTENTIAL PRODUCTION IM METRIC TONS</b>								
<b>SOUTH-WEST ASIA</b>								
Afghanistan	2.335	2.248	2.804	2.693	4.565	3.276	185	3.400
Pakistan	112	24	24	26	9	8	5	5
<b>Subtotal</b>	<b>2.447</b>	<b>2.272</b>	<b>2.828</b>	<b>2.719</b>	<b>4.574</b>	<b>3.284</b>	<b>190</b>	<b>3.405</b>
<b>SOUTH-EAST ASIA</b>								
Lao PDR	128	140	147	124	124	167	134	112
Myanmar	1.664	1.760	1.676	1.303	895	1.087	1.097	828
Thailand	2	5	4	8	8	6	6	9
Viet Nam	9	9	2	2	2	0	0	0
<b>Subtotal</b>	<b>1.803</b>	<b>1.914</b>	<b>1.829</b>	<b>1.437</b>	<b>1.029</b>	<b>1.260</b>	<b>1.237</b>	<b>949</b>
<b>OTHER ASIAN COUNTRIES</b>								
Combined	78	48	30	30	30	38	40	40
<b>Total Asia</b>	<b>4.328</b>	<b>4.234</b>	<b>4.687</b>	<b>4.186</b>	<b>5.633</b>	<b>4.582</b>	<b>1.467</b>	<b>4.394</b>
<b>LATIN AMERICA</b>								
Colombia	71	67	90	100	88	88	58	50
Mexico	53	54	46	60	43	21	71	47
<b>Total Latin America</b>	<b>124</b>	<b>121</b>	<b>136</b>	<b>160</b>	<b>131</b>	<b>109</b>	<b>129</b>	<b>97</b>
<b>GRAND TOTAL</b>	<b>4.452</b>	<b>4.355</b>	<b>4.823</b>	<b>4.346</b>	<b>5.784</b>	<b>4.691</b>	<b>1.596</b>	<b>4.491</b>

**Table 4.2 Global Illicit Production of Opium, 1995-2002<sup>171</sup>**

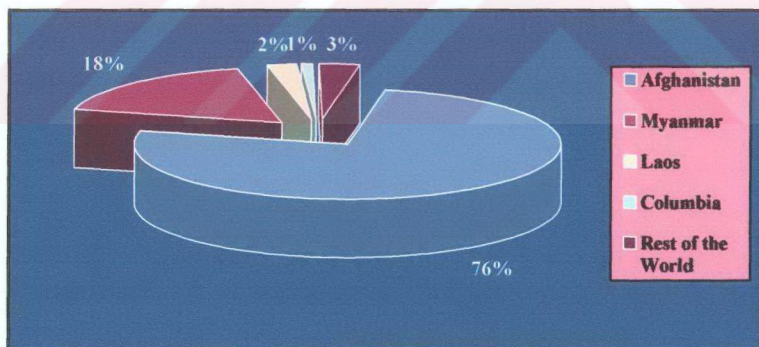
Leaving aside the short-lived exception of 2001, the most significant trend over the last four-year period is the relative shift of illicit opium production from South-East to South West Asia. Afghanistan's irrigated fields typically produce 4 times more opium per hectare than the rain-fed fields of the mountainous Shan States in Myanmar. Between 1999 and 2002, opium poppy cultivation declined by 40 % in South-East Asia. During the same period, the extent of opium poppy cultivation in Afghanistan increased by 16%. In 2002 alone, cultivation declined by 23 % in Myanmar, from 105,000 ha to about 81,000 ha, and by 18 % in Laos, from about 17,000 ha to about 14,100 ha. (Figure 4.2)

<sup>171</sup> Global Illicit Drug Trends 2003, UN Publicity, New York, 2003, p. 15



**Figure 4.2 Global Opium Poppy Cultivation 1990-2002.**

In 2002, the relative distribution of illicit opium production among the main source countries was: Afghanistan (76%), Myanmar (18%), Laos (2%), and Colombia (1%). The remaining 3% came from other countries (Mexico, Pakistan, Thailand, Vietnam, etc.) where marginal production is reported. (Figure 4.3)



**Figure 4.3 Opium Production 2002**

Potential production of illicit heroin in 2002 would amount to about 450 mt. It should be noted that this figure is only indicative. There are too many uncertainties about a number of important factors to calculate a more reliable estimate. Such factors include

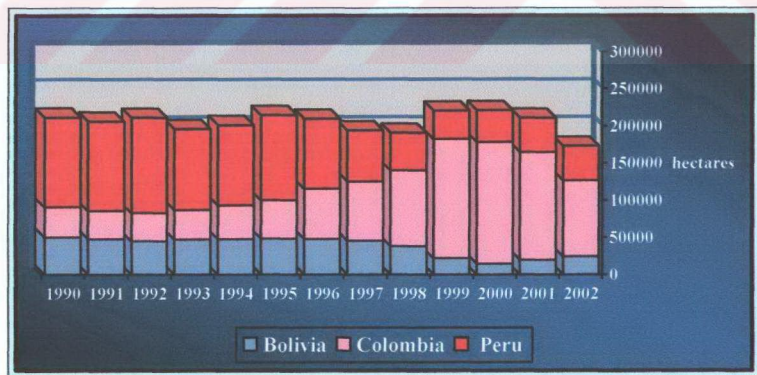


the quantity of opium directly consumed in and around the producing countries, and therefore not transformed into heroin, the exact morphine content of the opium produced in the different source countries, or the efficiency of the clandestine laboratories which process opium into morphine and then heroin.<sup>172</sup>

#### 4.1.2.2 Coca/Cocaine<sup>173</sup>

For the second year in a row, the UNODC supported monitoring system reported a decline in illicit coca cultivation in Colombia. It declined by 30%, to a total of 102,000 ha in December 2002, down from 145,000 ha in November 2001. The two-year decline in Colombia comes after a continuous increase, which took illicit cultivation from less than 40,000 ha in the early 1990.s to more than 160,000 ha in 2000. The decline recorded now is attributed primarily to the large-scale eradication campaign implemented by the Colombian government, as well as to field abandonment or voluntary manual eradication by farmers facing declining coca base price or benefiting from alternative development programs.

As Colombia is by far the largest source of illicit coca in the world, ahead of Peru and Bolivia, this large decline was reflected in globally aggregated coca cultivation, which decreased by 18 % from 211,000 ha in 2001 to 173,000 ha at the end of 2002. (Figure 4.4)



**Figure 4.4 Global Coca Bush Cultivation. (1990-2002)**

<sup>172</sup> Global Illicit Drug Trends 2003, UN Publicity, New York, 2003, p. 15-20

<sup>173</sup> *Ibid.*, p. 22-28

According to the UNODC supported monitoring system, Peru's illicit coca cultivation remained relatively stable during the year, with 46,500 ha, against 46,200 ha in 2001 (less than 1 % increase). In Bolivia, where cultivation recorded a continuous decline between 1996 (48,100 ha) and 2000 (14,600 ha), an increase of 4,500 ha (23%) in the area under cultivation was reported last year. It followed a previous one-year increase of 5,300 ha reported in 2001. The area under coca cultivation, however, remains relatively modest (24,000 ha in 2002) and includes about 12,000 ha of coca cultivation authorized by national law for traditional uses of the coca leaf. (Table 4.3)

	1995	1996	1997	1998	1999	2000	2001	2002
<b>CULTIVATION<sup>174</sup> OF COCA BUSH IN HECTARES</b>								
<b>Bolivia<sup>175</sup></b>	48.600	48.100	45.800	38.000	21.800	14.600	19.900	24.400
<b>Colombia<sup>176</sup></b>	50.900	67.200	79.400	101.800	160.100	163.300	144.800	102.000
<b>Peru<sup>177</sup></b>	115.300	94.400	68.800	51.000	38.700	43.400	46.200	46.700
<b>Total</b>	<b>214.800</b>	<b>209.700</b>	<b>194.000</b>	<b>190.800</b>	<b>220.600</b>	<b>221.300</b>	<b>210.900</b>	<b>173.100</b>

<b>POTENTIAL PRODUCTION OF DRY COCA LEAF IN METRIC TONS</b>								
<b>Bolivia</b>	85.000	75.100	70.100	52.900	22.800	13.400	20.200	19.800
<b>Colombia</b>	80.900	108.900	129.500	165.900	261.000	266.200	236.000	222.100
<b>Peru</b>	183.600	174.700	130.600	95.600	69.200	46.200	49.300	52.500
<b>Total</b>	<b>349.500</b>	<b>358.700</b>	<b>330.200</b>	<b>314.400</b>	<b>353.000</b>	<b>325.800</b>	<b>305.500</b>	<b>294.400</b>

<b>POTENTIAL MANUFACTURE OF COCAINE IN METRIS TONS</b>								
<b>Bolivia</b>	240	215	200	150	70	43	60	60
<b>Colombia</b>	230	300	350	435	680	695	617	580
<b>Peru</b>	460	435	325	240	175	141	150	160
<b>Total</b>	<b>930</b>	<b>950</b>	<b>875</b>	<b>825</b>	<b>925</b>	<b>879</b>	<b>827</b>	<b>800</b>

**Table 4.3 Global Illicit Cultivation of Coca Bush and Production of Coca Leaf and Cocaine (1995-2002)**

While the potential one-year cocaine production of the 102,000 ha recorded in December 2002 in Colombia would amount to 480 metric tons, this number does not

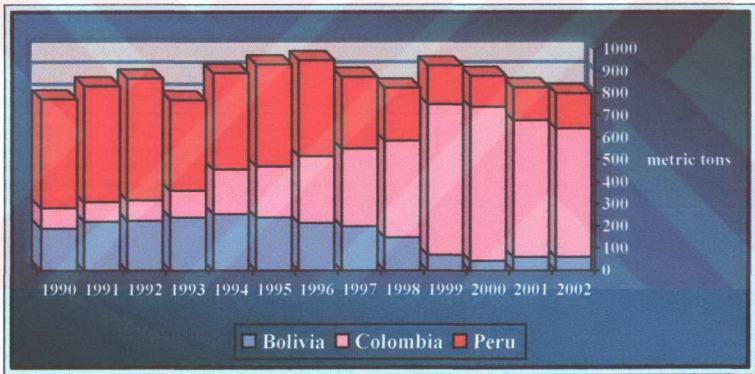
<sup>174</sup> Potentially harvestable, after eradication.

<sup>175</sup> CICAD and US Department of State, International Narcotics Control Strategy Report, Annual estimates include 12,000 hectares authorized by Bolivian Law 1008.

<sup>176</sup> Cultivation estimates for 1999 and subsequent years come from the national monitoring system established by the Colombian Government with the support of UNDOC.

<sup>177</sup> UNDOC now relies on the results for 2000, 2001 and 2002 of the illicit crop monitoring system established with the support of UNDOC.

represent actual production throughout 2002. Estimating the actual production of cocaine in Colombia in 2002 is not easy, because coca fields are harvested more than once in a given year and eradication activities are spread over several months. In order to arrive at a more realistic estimate for Colombia, UNODC calculated an average of the two cultivation figures recorded in November 2001 and in December 2002 by the UNODC supported national monitoring system. This average (123,400 ha) was then multiplied by the estimated yield per hectare and per harvest, and by the average number of harvests per year. The result amounted to 580 metric tons of potential cocaine production in Colombia for 2002. While the calculated estimate is not very accurate, it is probably closer to the actual amount produced during the calendar year than a figure derived solely from the extent of cultivation recorded at the end of the year, after an extensive eradication campaign. (Figure 4.5)



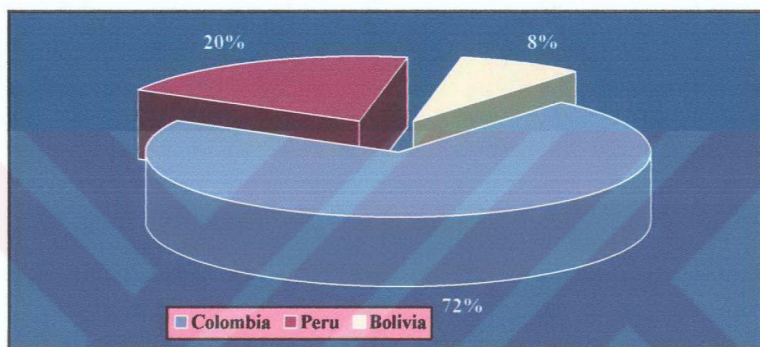
**Figure 4.5 Global Potential Cocaine Production (1990-2002)**

It should be noted that, although less than in the past, some of the coca base produced in Peru is still processed into cocaine in Colombian clandestine laboratories.

In Peru, the estimation was relatively simpler, because the level of cultivation remained stable in 2002. The resulting potential cocaine output for that country was estimated at 160 metric tons in 2002. For Bolivia, where the new UNODC supported monitoring

system was still in pilot phase last year, UNODC relied on the estimate of 60 metric tons, derived from the survey conducted by the US government in 2002.

Adding the three national estimates would give a tentative figure of 800 metric tons for the world's potential cocaine production in 2002. Its distribution among the three main producing countries would thus have been: Colombia 72 %, Peru 20% and Bolivia 8 %. (Figure 4.6)



**Figure 4.6 Potential Cocaine Production 2002**

#### **4.1.2.3 Cannabis**

The wide spread of cannabis cultivation over the world and the virtual absence of cannabis cultivation monitoring systems and surveys make it impossible to have an accurate assessment of the location, extent and evolution of cultivation and production in the world. Indirect indicators related to seizures of illicit cannabis products can help to shed some light on certain aspects of the problem. For instance, the origin of the seized drugs helps to identify the main source countries for cannabis. Overall, the rising level of cannabis seizures seems to indicate a continuing increase in cannabis cultivation worldwide.<sup>178</sup>

<sup>178</sup> Global Illicit Drug Trends 2003, UN Publicity, New York, 2003, p. 29-30

## Cannabis herb:

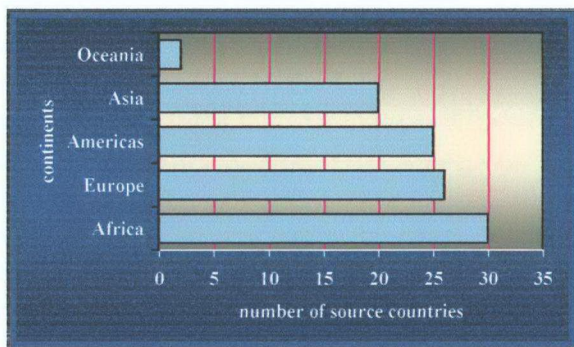
Ninety-two countries providing information on the main sources of the cannabis herb they seized in 2001 identified 85 different source countries. Considering the same information collected over the 1998-2001 period from 111 countries, 102 different source countries for cannabis were identified. This clearly demonstrates the almost universal problem of cannabis production and trafficking.

The source countries are evenly distributed across Africa, Europe, the Americas and Asia. In contrast to cocaine or heroin trafficking, most of the cannabis herb trafficking is intra-regional. Thus, the main sources of cannabis in the Americas are located in the same region. The same applies to Africa and Asia. Inter-regional trafficking of cannabis herb is largely limited to Europe. About 40% of the source countries mentioned by countries in Europe (44 in total over the 1998-2001 period) were not located in Europe; 6 were located in Africa (incl. South Africa, Morocco, Nigeria and Malawi), 6 in Asia (Central Asia, the Near and Middle East and South-East Asia (Thailand)), 4 in the Americas (incl. Colombia and Jamaica) and 1 in Oceania (Australia).

Overall, the most frequently mentioned source countries at the global level in 2001 included Albania, Colombia, South Africa, the Russian Federation, Jamaica and the Netherlands. For the 1998-2001 periods, Thailand, Ghana and Paraguay would have to be added to the list. In addition, in terms of quantities of cannabis herb trafficked, Mexico, Canada and the USA play an important role as source countries. US authorities estimate that more than 10,000 tons of cannabis herb is produced domestically and that more than 5,000 tons a year are imported from neighboring Mexico and Canada. Mexico is believed to produce between 7,000 and 8,000 tons of cannabis herb a year according to US estimates.<sup>179</sup> (Figure 4.7)

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<sup>179</sup> USA, INCSR, March 2003.



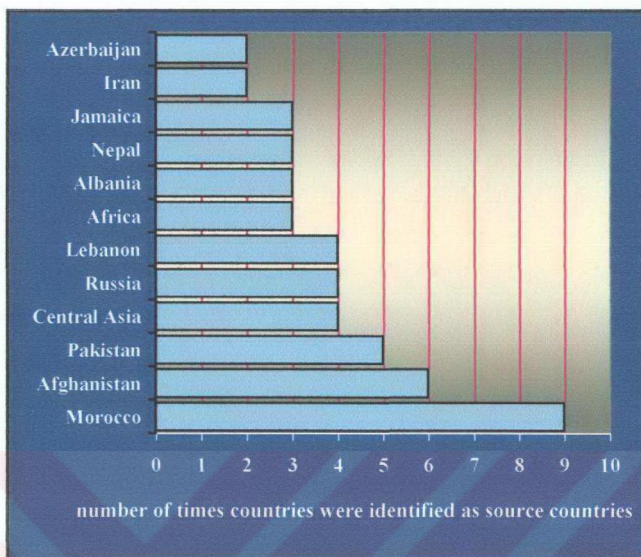
**Figure 4.7 Number of Source Countries for Cannabis Regional Breakdown 1998-2001 (based on information from 111 countries)<sup>180</sup>**

#### Cannabis resin:

Over the period 1999-2001, Morocco, as well as Afghanistan and Pakistan, were most often mentioned as source countries for cannabis resin products. In Western Europe, more than 60% of the countries reporting to UNODC (13 out of 21) identified Morocco as a main source of their cannabis resin for that period, and a third identified Afghanistan and Pakistan (7 out of 21) as major sources.

At the global level, other important source countries identified were in Central Asia and the Russian Federation. Lebanon was also mentioned in 2001 by a number of countries, possibly reflecting a revival of cannabis cultivation there. In Europe, Albania still seems to play a role as a source country, as well as Nepal, in South Asia. In addition, a significant number of countries in Europe identified Spain and the Netherlands as the countries where criminal groups obtained their cannabis resin. The only country in the Americas cited as a country of origin of cannabis resin is Jamaica. (Figure 4.8)

<sup>180</sup> UNODC, Annual Reports Questionnaire Data/DELTA

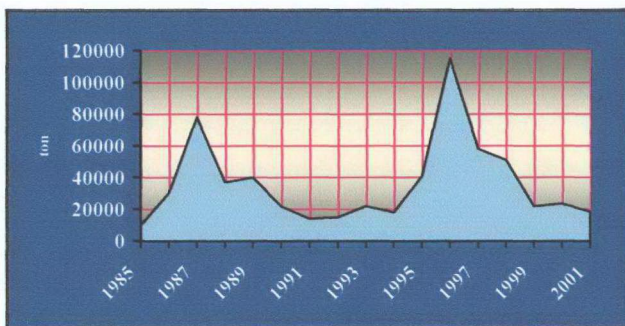


**Figure 4.8 Main Source Countries of Cannabis Resin in 2001 (based on information from 61 countries)<sup>181</sup>**

#### Eradication of cannabis cultivation:

In contrast to rising seizures of the cannabis end-products, reported seizures of cannabis plants showed a decline in recent years and are now back at the levels of the early 1990s. This could be an indication that the eradication of cannabis plantations is being given less priority by enforcement agencies. About 18,500 tons of cannabis plant material was reportedly seized in 2001, down from 23,900 tons in 2000. In total 70 countries reported seizure of cannabis plants in 2001 and 95 over the 2000-2001 periods. The largest such seizures of cannabis plants in 2001 were reported by Turkey. In the European Union, Italy reported the largest seizures. In South America, it was Brazil; in the Caribbean, Trinidad & Tobago; and in Central America, Costa Rica. The largest seizures of cannabis plants in Asia were reported by the Philippines and, in Africa, by the Republic of South Africa. In terms of land under cannabis cultivation eradicated, Mexico reported the highest figures in recent years. (Figure 4.9)

<sup>181</sup> UNDOC, Annual Reports Questionnaire Data/DELTA.



**Figure 4.9 Cannabis Plant Seizures at the Global Level (1985-2001)<sup>182</sup>**

#### 4.1.2.4 Amphetamine-Type Stimulants (ATS)

Diversions from licit production of amphetamine-type stimulants are now rare. This is particularly the case with regard to substances controlled under Schedule I of the Psychotropic (1971) convention, such as methcathinone, or the ecstasy group (MDMA, MDA, MDME) for which there is hardly any licit production and thus very limited risk of diversion. It is also true for Schedule II substances, such as amphetamine or methamphetamine, even though they are produced in larger quantities (in 2001: 15.5 tons of amphetamine also used for the production of 6.6 tons of dexamphetamine and 3.5 tons of levamphetamine; 5 tons of methamphetamine; and 0.8 tons of levomethamphetamine).<sup>183</sup>

However, seizure statistics show that the licit production figures mentioned above are dwarfed by illicit production. The overwhelming part of reported seizures of ATS is substances produced in clandestine laboratories. Global seizures of illegal amphetamine and methamphetamine amounted to 41 tons and 26 tons in 2000 and 2001, respectively. Seizures of ecstasy group substances amounted to 5 tons each in 2000 and 2001, respectively.<sup>184</sup>

One indicator for the extent and the trends of illicit manufacture is the number of clandestine laboratories detected and seized. Based on ARQ data about 11,400

<sup>182</sup> UNDOC, Annual Reports Questionnaire Data/DELTA

<sup>183</sup> INCB, Psychotropic Substances, New York 2003, p. 105-111.

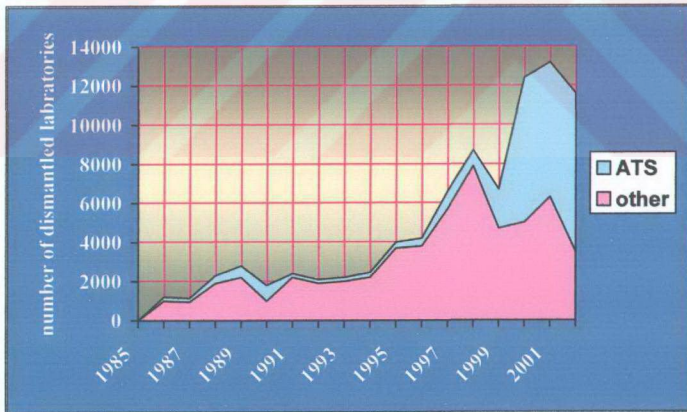
<sup>184</sup> Global Illicit Drug Trends 2003, UN Publicity, New York, 2003, p. 35



clandestine laboratories were dismantled in 2001, of which 8,600 (75%) produced ATS. For comparison, this proportion was around 18% in the early 1990s. The average annual growth in the number of clandestine ATS laboratories detected and dismantled was 35% p.a. over the 1991-2001 periods, while the number of other laboratories (mainly cocaine, morphine and heroin laboratories) grew by just 4½ % p.a. The increase in reported detections of ATS laboratories accelerated during the period 1995-1999.

Most ATS laboratories dismantled produced methamphetamine (almost 95% in 2001). Laboratories producing a combination of ATS (mostly methamphetamine, methcathinone, amphetamine and ecstasy) came next (3%), followed by those producing only amphetamine (1% in 2001) and only .ecstasy. (Close to 1% in 2001). Only 0.1% of the laboratories dismantled produced other synthetic stimulants.

Detections of ATS laboratories increased over the last two decades and showed a relative shift from amphetamine to methamphetamine production. In 1985, 26% of the ATS laboratories seized produced amphetamine, in 1991 14% and in 2001 only 1%. Meanwhile the proportion of methamphetamine laboratories increased from 69% in 1985, to 87% in 1991 and almost 95% in 2001. (Figure 4.10)



**Figure 4.10 Detections of Clandestine Laboratories at the Global Level (1985-2001)<sup>185</sup>**

<sup>185</sup> UNDOC, Annual Reports Questionnaire Data/DELTA

### 4.1.3 Trafficking

Overall trafficking, as reflected in the number of seizure cases, appears to have continued growing in 2001. Growth rates of reported seizure cases were, however, lower in 2001 than they were in the 1990s. Over the 1990-2000 periods, the number of reported seizure cases grew from 0.3 to 1.3 million or 15% p.a. In 2001 the growth rate was 6%. The strong increases in the 1990s were also a reflection of improvements in reporting. In 1990, 55 countries and territories reported seizure cases to UNODC. By the year 2000, reporting improved to 94 countries. The number of countries reporting seizure cases to UNODC fell, however, to 85 for the year 2001. Nonetheless, the total number of reported seizure cases increased further to 1.4 million. (Figure 4.11)

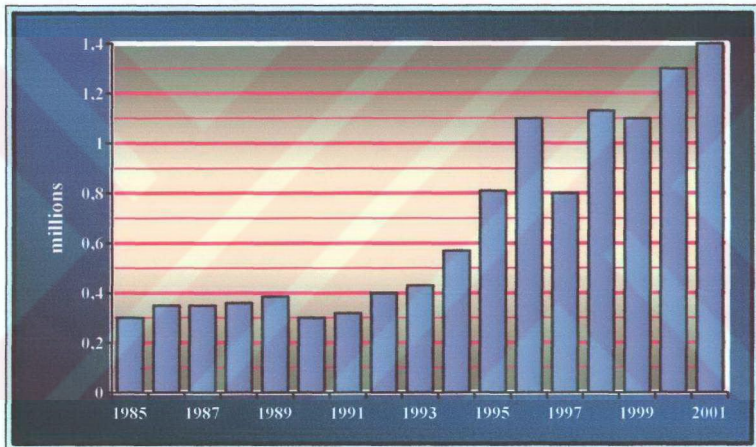


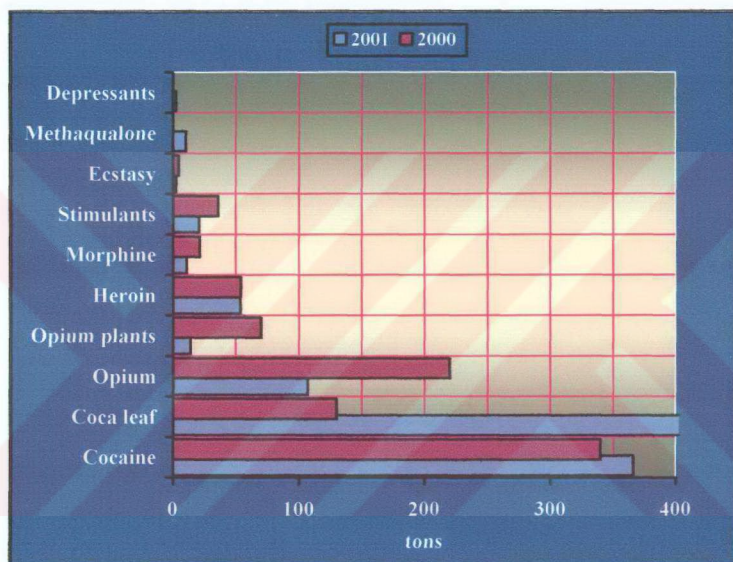
Figure 4.11 Global (Reported) Seizure Cases (1985-2001)<sup>186</sup>

Far more countries report the amounts of drugs seized (159 countries and territories in 2001) than the number of seizure cases (85 countries and territories). The data on the quantities seized thus provide a more comprehensive picture of the drug trafficking situation at the global level. The largest volume of illicit drugs seized concerned cannabis herb and resin, followed by cocaine, the opiates (opium followed by heroin and morphine) and the amphetamine-type stimulants (methamphetamine, followed by amphetamine and ecstasy). This ranking has not changed in recent years.

<sup>186</sup> UNDOC, Annual Reports Questionnaire Data/DELTA

The following analysis of quantities seized is based on information provided by 159 countries & territories. Overall cannabis seizures remained almost unchanged in 2001 as compared to a year earlier (close to 5,500 tons). A decline in cannabis resin (hashish) was largely offset by an increase in cannabis herb (marijuana) seizures.

Cocaine seizures amounted to 366 tons in 2001, and were thus slightly higher than in 2000. Seizures of coca leaf, by contrast, showed a strong decline (88%), reflecting declines reported from all three Andean countries. (Figure 4.12)



**Figure 4.12 Global Seizure in Metric tons (based on weight equivalents) in 2000 and 2001<sup>187</sup>**

#### 4.1.3.1 Trafficking in Opium/Heroin

Global seizures of opiates (heroin, morphine and opium expressed in heroin equivalents) fell by 23% in 2001, the first significant decline in opiate seizures over the last two decades.

<sup>187</sup> Cocaine excluding seizures in liquid form

This was the result of two different trends. Opium and morphine seizures declined by about 50% in 2001, reflecting the strong reduction in global opium production (-65%) following Afghanistan's opium cultivation ban in the year 2001. Heroin seizures, however, did not decline and remained stable. Given the existence of large heroin stocks, not only in the production countries but also in the transit countries, heroin trafficking continued unabated in 2001. Assuming that seizures of countries which so far have not reported remained at about the same level as a year earlier, then overall heroin seizures remained basically stable in 2001. (Figure 4.13)

#### 4.1.3.2 Trafficking in Coca/Cocaine

Cocaine seizures increased slightly in 2001 as compared to 2000, but were still some 7% less than in 1998. Given fluctuations from year to year, and some changes in the number of countries reporting, cocaine seizures basically reflected stable to slightly declining cocaine production in recent years after having increased dramatically in the 1980s at the time when cocaine production skyrocketed. (Figure 4.13)

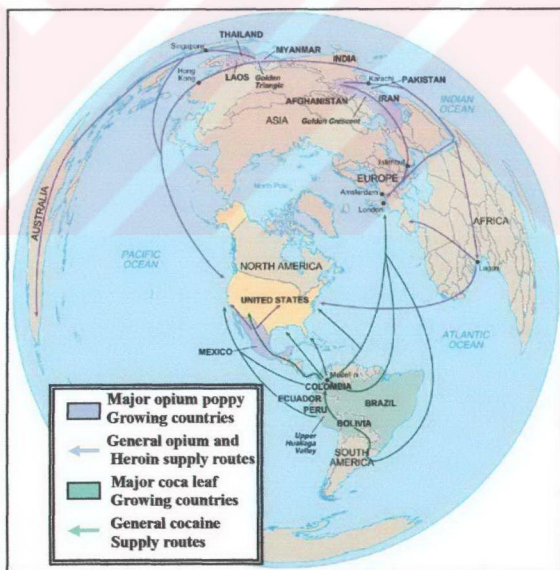


Figure 4.13 Cocaine and Opium Trafficking 2000-2001<sup>188</sup>

<sup>188</sup> UNESCO Source, The Globalization of the Drug trade, April 1998

#### 4.1.3.3 Trafficking in Cannabis

The two cannabis products, cannabis herb (marijuana) and cannabis resin (hashish) continue to be the main drugs trafficked worldwide. Almost all countries are affected by cannabis trafficking and in almost all countries seizures of cannabis exceed those of other drugs. In total almost 5600 tons of cannabis products were seized in 2001, i.e.15 times the amount cocaine and more than 100 times the amount of heroin. Seizures of cannabis herb amounted to almost 4700 tons and seizures of cannabis resin amounted to about 900 tons in 2001. In addition, about 3 tons of cannabis oil was seized in 2001.

The rise of cannabis seizures in recent years was concentrated on herb while the resin seizures remained basically stable. In 2001 seizures of marijuana continued rising while hashish seizures declined. Overall cannabis seizures remained stable. (Figure 4.14)

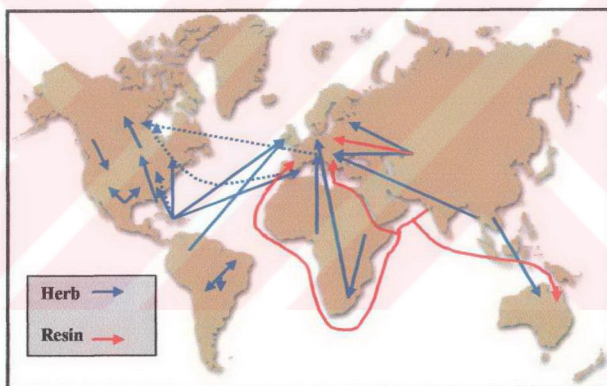


Figure 4.14 Cannabis Herb and Resin Trafficking 2000-2001<sup>189</sup>

#### 4.1.3.4 Trafficking Amphetamine-Type Stimulants (ATS)

Amphetamine-type stimulants (ATS) seizures reflecting increases in production, trafficking and consumption, showed a marked upward trend in the 1990s, notably in the second half of the decade, peaking in the year 2000. In 2001, however, ATS seizures declined, mainly due to a fall of methamphetamine seizures in China. In recent

<sup>189</sup> Global Illicit Drug Trends 2003, UN Publicity, New York, 2003, p. 80

years China reported the largest ATS seizures, though in 2001 they were less than those reported from Thailand.

In recent years ATS seizures increased much more rapidly than heroin or cocaine seizures. Using average seizures over the 1989-1991 period as a basis for comparison, ATS seizures rose nine fold till the year 2000. Though they declined in 2001, they were still higher than in 1998 and some six times larger than over the 1989-1991 period.

The revised Annual Reports Questionnaire (ARQ) enables better distinctions to be made between the various ATS. At the global level, more than 70% of all ATS seizures were methamphetamine and more than 10% were ecstasy seizures over the 2000/2001 period. Most of the rest were amphetamine (between 9 and 16%; no precise proportion can be given since not all countries detail the type of ATS which they seized).

Overall seizures of ATS have shown a clear concentration in East and South-East Asia in recent years, including 2000 and 2001. Other regions of importance are North America and West Europe. Seizures of ATS in East and South-East Asia accounted for 66% of all such seizures over the 2000-2001 periods, up from 32% over the 1990-1991 periods. Most of the increase in the East and South-East Asia took place in the late 1990s. Seizures of ATS in North America and West Europe accounted together for about 30% of all such seizures over the 2000-2001 periods and were of approximately equal size. Other parts of the world accounted for just 4% of global ATS seizures.(Figure 4.15)

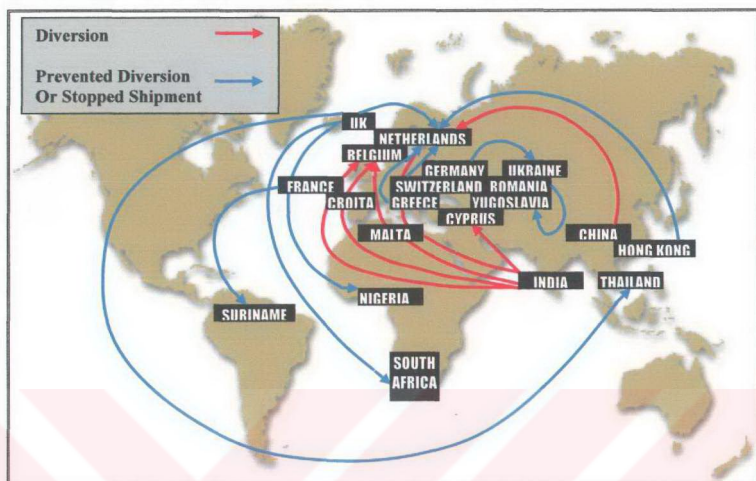


Figure 4.15 Trafficking of Amphetamine-Type Stimulants<sup>190</sup>

#### 4.1.4 Consumption

One way of assessing the impact of illicit drugs is to use the category of problem drugs. As an indicator. There are different definitions of problem drugs.<sup>191</sup> They rely primarily on the criteria of treatment for addiction, drug related mortality as well as drug related crime, notably drug related violence. Used here is the extent to which abuse of a certain drug leads to treatment demand. Use does not necessarily relate to the size of the population consuming it. Cannabis, for example, is the most widely consumed illicit drug worldwide; it is not, however, the main problem drug. For which people seek treatment.

The opiates are the most serious problem drug in the world, and are responsible for most treatment demand. On average 70% of all treatment demand in Asia, 64% in Europe and 62% in Australia is related to opiate abuse. In much of South East Asia, however, methamphetamine emerged over the last decade as the main problem drug. In

<sup>190</sup> Report of the International Narcotics Control Board for 1998, United Nations publication, Sales No. E.99.XI.1, paras. 93-97.

<sup>191</sup> Annual Report on the State of the Drugs Problem in the European Union, 2001, p. 11.

the Americas, cocaine is still the main problem drug accounting for 58% of treatment demand in South America and around 40% in North America.<sup>192</sup> In the USA, however, the number of people admitted to treatment institutions for heroin abuse has started to exceed the number of people admitted for cocaine abuse (1999 and 2000). In Africa, cannabis is the main problem drug, accounting for 61% of treatment demand.<sup>193</sup>

Most of the data presented here covers the 1998-2000 period, though some countries also reported their treatment data for 2001. Compared to previous calculations, covering the 1995-97 period, and presented in Global Illicit Drug Trends 2002, there has been a general decline of the importance opiates in Europe and (to a lesser extent) in Asia. In the Americas, the relative importance of cocaine has declined. In general, poly-drug abuse seems to be on the rise. (Figure 4.16)

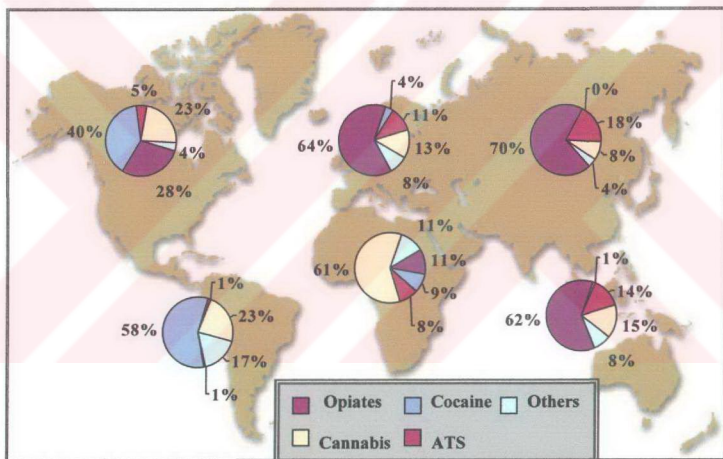


Figure 4.16 Main Problem Drugs in 2003<sup>194</sup>

The difference between source countries and consuming countries causes “trafficking”. Initially producing countries used to send drugs directly to consuming countries. But with awareness regarding the source countries in the effected countries, strict measures were adopted to block the supply Effective enforcement techniques concentrated on the

<sup>192</sup> The regional averages were calculated as a simple unweighted average of the proportions reported from individual countries.

<sup>193</sup> Global Illicit Drug Trends 2003, UN Publicity, New York, 2003, p. 105.

<sup>194</sup> Ibid, p.107.



incoming traffic of passengers and cargo from producing countries. This gave birth to the phenomena of transit countries.

The methods used to transport illicit drugs are often very ingenious. Traffickers use a variety of means to transport drugs including automobiles equipped with concealed compartments, planes, buses, trains, legitimate delivery services, boats, fishing trawlers, ocean-going vessels, etc. Drugs are smuggled by couriers using various concealment methods such as concealment in traveling suitcases, hiding among personal belongings, body packing, swallowing methods, etc. In addition to moving large shipments of the drugs, small quantities are often moved through the mail.

The most popular method used is concealment in traveling suitcases or overnight bags. Swallowing is also popular especially among African couriers. Some of them are able to swallow several hundred grams of drugs in balloons or condoms. The record seizure obtained in the swallowing method was 158 condoms with an estimated gross weight of 1,060 grams of heroin. Other methods used, include concealment in a carton of soap by pressing heroin into the form of soap bars; concealment in the case of an electrical cord, in the core of lace's roll; concealment in post-cards, envelopes, books, postal parcels, etc.

#### **4.2 CONVENTIONAL ARMS TRAFFICKING**

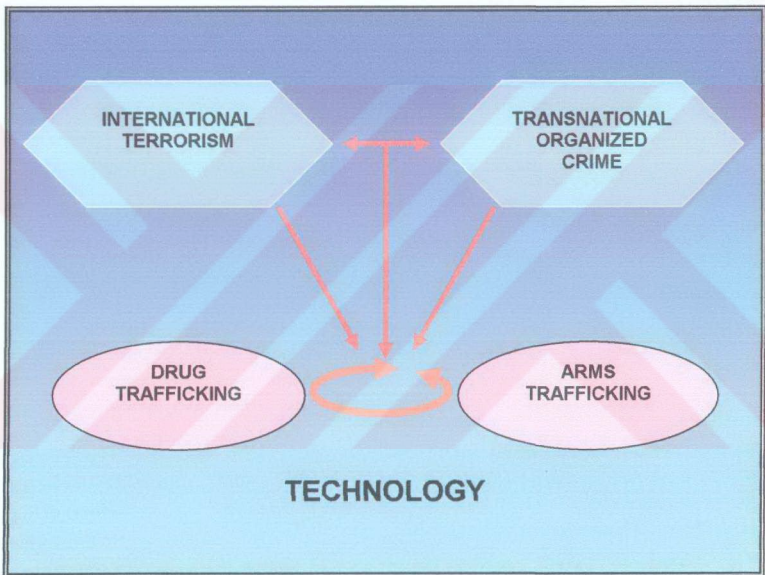
Understanding the international terrorism and organized crime structures requires the relationship between the unseparated parts of weapons, its marketing dimensions. Indeed, international terrorism used different types of arms in order to go ahead of its aimed targets.

The crime and terror always use the human factor but the instrument had been dominantly governance the weapons, when we check in juridical norms. In other words, international terrorism always needs the arms. But today, we can determine the developments when we check in historical background of the international terrorism, there is a wide ranging proliferation effect since modern weapons acquired the more lethal capabilities by using sophisticated systems from the conventional until unconventional assault systems such as Japanese gas attack.

Secondly, the international terrorist organizations have more men power with cooperation structure in deployment of multidimensional geographies today from the US Twin Towers until the Tokyo subways transboundary nature.

Thirdly, the international terrorism has advanced illicit arms trafficking capability which vastly financed by the drug trade.

Under the above mentioned operative network system of international terrorism, we have to analysis the working mechanisms and code of conduct of the problem. (Figure 4.17)



**Figure 4.17 Structure of International Terrorism and Organized Crime in Arms Trafficking**

The unauthorized movement of firearms across national borders presents a significant problem. Firstly, firearms can be important as instruments of crime, favored by criminal elements, and secondly, their widespread availability poses a threat to the sovereignty of some states. In some cases international traffic in firearms may contribute to destabilization and even to total state failure. The proliferation of weapons is also

responsible for fuelling violations of international human rights and humanitarian law, thwarting sustainable development and destabilizing regional peace and security throughout the world.<sup>195</sup> According to the United Nations, small arms and light weapons are responsible for 90 per cent of all war casualties since World War II. All but three of the 49 conflicts since 1990 have been fought exclusively with small arms and light weapons.<sup>196</sup>

According to one report, in 1995, over 45 million people worldwide were displaced, mostly as a result of war or political repression. Even when conflicts are resolved, they usually leave a legacy of an armed and insecure society, which undermines the re-establishment of governance.<sup>197</sup>

The illicit trafficking of firearms is a global problem with multifaceted ramifications. Curbing its development and proliferation calls for a better assessment of the phenomenon and a new way of looking at problems and identifying solutions. Given that firearms are “central to the new era of insecurity, in the transnational, global and local contexts”<sup>198</sup>; the international community has increased its focus and responded accordingly.<sup>199</sup> “Coping with the issue of illicit trafficking from a new perspective is therefore the sine qua non for success in this fight both on the national and international level.”<sup>200</sup>

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<sup>195</sup> WOOD, B., & CLEGG, E. 1999, Briefing – Controlling the gun-runners: Proposals for EU action to regulate firearms brokering and shipping agents, BASIC Publications. Available on site: <http://www.basicint.org/gun-runners.html>

<sup>196</sup> STOHL, M., Small Arms and Failed States, America’s Defense Monitor Program, 1999. Available on site: <http://www.cdi.org/ada/1307/transcript.html>

<sup>197</sup> Federation of American Scientists, Global Black-Market Arms Trade Should Be Next Target of NGOs’, *Journal of the Federation of American Scientists*, vol. 50, no. 4, 1997. Available on site: <http://www.fas.org/faspir/pir0797.htm>

<sup>198</sup> MATHIAK, L., “The Light Weapons Trade at the End of the Century”, in *Society Under Siege – Crime, Violence and Light Weapons*, ed V. Gamba, Towards Collaborative Peace, Vol. I, Institute for Security Studies, South Africa, 1998, p. 178.

<sup>199</sup> MOUZOS, J., CSCAP Working Group on Transnational Crime – Small Arms Project: An Australian Perspective, Australian Institute of Criminology, Canberra, 1999. Available on site: <http://www.aic.gov.au>

<sup>200</sup> ALVES, P. G., & CIPOLLONE, D. B., Curbing Illicit Trafficking in Small Arms and Sensitive Technologies, An Action-Oriented Agenda, United Nations Institute for Disarmament Research, UNIDIR Brief No. 2/1998.

#### 4.2.1 Definition of Illicit Trafficking in Arms

"Illicit trafficking in arms" is understood to denote the international trade in conventional arms which is contrary to the laws of states and/or international law.<sup>201</sup>

However, this term should be extended to include certain principles also defined in international law, especially human rights and humanitarian law. For example, authorized government arms transfers should be considered illicit if they violate the human rights of the citizens in the recipient states.<sup>202</sup>

Small arms and light weapons are not only ubiquitous but are also an old feature of international relations. The novelty in analyzing small arms and light weapons is that their increasingly unrestricted availability constitutes a disturbing trend that is directly connected to a significant rise in urban violence and criminality as well as to the changed nature of contemporary conflicts especially in the last decade. The end of Cold War created the opportunity for research into possibilities of controlling small arms. These arms are not strategic and do not require a large amount of investment in maintenance, production, and stockpiling, as do weapons of mass destruction. These weapons were a priority for the international arms control community during the Cold War.

Nowadays, they are overshadowed by the weapons that are in vogue in contemporary warfare and in carrying crime and violence throughout the world: from machetes and hand guns to sub-machine-gun and shoulder-fired surface-to-air (anti-aircraft) missiles. The current pace of the current arms transfers and the weapons already in existence call for urgent measures to be undertaken by the international community.<sup>203</sup>

Small arms and light weapons are those that can be carried by single combatants or by a small crew. (Table 4.4)

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<sup>201</sup> Guidelines for International Arms Transfers UN Disarmament Commission, 7 May 1996, paragraph 7.

<sup>202</sup> British American Security Information Council (BASIS), *Combating Illicit Light Weapons Trafficking: Developments and Opportunities*, January 1998, p. 5.

<sup>203</sup> CHALMERS, Malcolm, Owen Greene, Edward J. Laurence, Herbert Wulf, "The UN Register, Transparency, and Cooperative Security", *Developing the UN Register of Conventional Arms*, Bradford Arms Register Studies number 4, 1994, p.199.

SMALL ARMS	Revolvers and self-loading pistols
	Rifles and carbines
	Submachine guns
	Assault rifles
	Machine-guns
	Ammunition for the above mentioned weapons
LIGHT WEAPONS	Hand-held under barrel and mounted grenade launchers
	Portable anti-aircraft guns
	Portable anti-tank guns, recoilless rifles
	Mortars of caliber up to 82 mm inclusively
	Ammunition for the above mentioned weapons
	Portable launchers of anti-tank missile and rocket systems, including missiles
	Portable launchers of anti-aircraft missile systems, including missiles
	Mobile containers with missiles or shells for single action anti-aircraft and anti-tank
	Anti-personnel and anti-tank hand grenades
Anti-personnel and anti-tank mines.	

**Table 4.4 Small Arms and Light Weapons**

#### **4.2.2 The Structure of the Arms Market and the Modus Operandi of Criminals**

Easy to operate and with a low rate of obsolescence, light weapons are used by a wide range of armed groups and individuals, including national militaries, individual citizens, private security personnel and child soldiers. Lightweight and easy to conceal, they are therefore also attractive to smugglers.<sup>204</sup>

Moreover, unlike most major conventional weapons, the supply lines for light firearms are very long. A single weapon often passes through many hands and is “recycled” from one conflict to the next. Together with the nature of the activities for which light weapons are used, these dynamics lay the foundation for an extensive illegal market. While the secretive nature of the transfers makes accurate assessment of illicit weapons trafficking extremely difficult, there are estimates that the trade accounts for as much as

<sup>204</sup> BASIC, op. cit., p. 6.

55% of all light weapons transfers.<sup>205</sup> Weapons are transferred illegally in a variety of ways in order to serve a wide variety of purposes: they may be diverted from legal channels, stolen from storage facilities, or smuggled across borders. They may be transferred by one state in order to arm sub-state groups in another, supplied to parties in a conflict unable to obtain weapons as the result of a UN arms embargo, or used by narco-traffickers, criminal syndicates, and private security firms to carry out clandestine activities. Regions of conflict also provide fertile ground for illicit weapons trafficking. Once a conflict ends, it is often extremely difficult for authorities to regain control of weapons that have flooded the country, given that they frequently act as a form of currency, are used for banditry, or are traded in the civilian market for other goods.<sup>206</sup>

A recent UN panel on the proliferation of light weapons has also highlighted the nexus between illicit weapons trafficking and other black market activities. According to the panel's report, "networks operating internationally and other modes of transfer used for the illicit transfer of a variety of commodities are also used to transfer weapons. The techniques used involve smuggling, concealment, mislabeling and false documentation. To hide financial transactions, use is made of coded bank accounts protected by the secrecy laws of some financial institutions. To transport weapons, various methods are used, such as ships with bogus registration and flags of convenience".<sup>207</sup>

This situation has a number of consequences.

Illicit weapons trafficking "plays a major role in the violence currently affecting some countries and regions, by supplying the instruments used to destabilize societies and Governments, encourage crime and foster terrorism, drug trafficking, mercenary activity and the violation of human rights".<sup>208</sup> In regions of conflict, the market in illicit weapons often results in a dramatic increase in violence and crime in civil society. For example, the homicide rate in El Salvador has increased by 36% since the end of the civil war.<sup>209</sup> The easy availability of AK-47s in Mozambique and Angola has flooded Southern Africa with illicit automatic weapons, and made South Africa one of the

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<sup>205</sup> CAINS, E., *A Safer Future: Reducing the Human Cost of War*, Oxford, Oxfam, 1997, p. 35.

<sup>206</sup> BASIC, *op. cit.*, p. 6.

<sup>207</sup> United Nations Economic and Social Council, Report of the Panel of Governmental Experts on Small Arms, UN doc. n. A/52/298, August 27, 1997, p. 17.

<sup>208</sup> *Ibid.*

<sup>209</sup> IAACSON, A., *Altered States: Security and Demilitarization in Central America*, Washington DC: Center for International Policy; San Jose: Arias Foundation for Peace and Human Rights, 1997, p. 122.

world's largest centers of illicit light weapons trafficking. In turn, more and more crimes in South Africa involve the threat or use of a firearm. In just the first six months of 1997, guns were used to commit 5,127 murders and 25,783 armed robberies in South Africa.<sup>210</sup>

Moreover, uncontrolled flows of light weapons can also seriously hinder peacekeeping and peace support operations. In a country flooded with weapons, such operations are much less effective, as well as more difficult and expensive to execute. For example, in Angola, where an estimated two million light weapons remain in circulation, the unrestricted flow of weapons to the warring factions has greatly increased the risks to peacekeepers, rendered weapons collection a near futile exercise and threatened the prospects for lasting peace.

Finally, the trade in light weapons also diverts valuable resources from economic and social development assistance. In 1994, a UN Advisory Mission was dispatched to Mali to study the security situation and its relationship to light weapons proliferation. After an intensive investigation of national legislation, smuggling, theft and illegal sales, the mission concluded that "the lack of security was fuelling the demand for weapons. The availability of weapons was fuelling the cycle of banditry and violence which in turn was virtually bringing structural development to a halt and preventing any progress on socio-economic problems".<sup>211</sup>

#### **4.2.3 Movement of Illegal Firearms**

While the illegal trade in commodities is not new, the surge in illicit arms-trafficking is a more recent phenomenon. WW-II may have significantly increased the number of weapons globally, but the surplus after war ended was controlled to some degree.<sup>212</sup> However, the Cold War period brought about significant changes, with countries sustaining their arms production at war levels, and generating stockpiles of weapons under government control.

<sup>210</sup> S. Africa Reports, 5,127 Gun Murders in Six Months, in Reuters, November 10, 1997.

<sup>211</sup> GOULDING, "The Mali Mission", Undersecretary-General for Political Affairs to the First Committee, United Nations, October 26, 1994.

<sup>212</sup> NAYLOR, T., *The Rise of the Modern Black Market and the Fall of Supply-Side Control*, in V Gamba, *Society under siege: Crime, Violence and Illegal Weapons*, Institute for Security Studies, Halfway House, 1997, p.45.

By the end of the Cold War, there were massive quantities of weapons available that were in excess of national needs. Countries became increasingly willing to sell weapons for profit, instead of the more political considerations that counted in the past. The number of production licenses and the development of indigenous capacity for arms manufacturing grew in many developing countries as the licensing of weapons for export virtually collapsed. While few countries outside of North America and Europe were able to produce the full range of conventional land, sea and air weapons (aircraft, helicopters, tanks and ships), many more were producing smaller caliber weapons, including small arms. Today, there are an estimated 300 companies in 70 countries actively producing light weapons.<sup>213</sup> Frequently, these companies operate with less oversight than those that issue the production licenses in North America and Europe.

This contribution aims to juxtapose the challenge of controlling the black market in weapons against the steps that are already being taken by governments within their own borders and through regional and international co-operation, to limit these markets and reduce the traffic in weaponry.

The diversion of firearms from the legal to the illegal market place includes international, interstate, intrastate trafficking, stolen firearms cases, illegal firearms transfers and straw purchases (an individual who purchases a firearm and completes the required paperwork for the purpose of concealing the true identity of the intended receiver of the firearm).

The illegal trade of firearms usually occurs through three main channels. These include:

Clandestine military operations: these are covert transfers of firearms by one government to a separatist or insurgent forces operating in another country;

Black market sales: this is the criminalization of other legal transactions, rather than black marketeering per se. What truly differentiates a black market from a 'legitimate' firearms deal is the covert methods of intermediating between supply and demand – firearms moving one way and money back the other. To hide their trail, purveyors of

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<sup>213</sup> O'CALLAGHAN, G. & K Joseph, *The International Response to the Light Weapons Crisis: Lessons for the Commonwealth*, in A F Musah & N Thompson, *Over a barrel: Light weapons and human rights in the Commonwealth*, Commonwealth Human Rights Initiative, London/New Delhi, 1999, p. 304.



black market firearms will use concealment, mislabeling, fake documentation, and laundering of payment. Put simply, the essence of the black market transaction can be understood by thinking of “black” not as a color, but the absence of light (transparency).<sup>214</sup>

Grey market sales: the grey market is more obscure than the black market. The grey market resembles the covert nature of the black market, but in reality it is very different. Unlike the black market, grey transactions usually are neither entirely legal nor entirely illegal. The grey market represents not policy writ large, but policy in flux as exporting and importing governments experiment with new diplomatic links, cloaking possible policy changes in covert transactions. It is through the use of covert channels that officials on both sides can take greater risks, cultivating new relationships while minimizing the danger and potential embarrassment.<sup>215</sup>

There are three types of sales most common in the weapons trade. (Table 4.5)

SELLER	RECIPIENT
GOVERNMENT	GOVERNMENT
GOVERNMENT	NON-STATE ACTORS
COMMERCIAL SALES	

**Table 4.5 Types of Arms Sales**

Arms transfers in the first category generally comprise the legal trade in weapons, as do the majority of commercial sales. Government transfers to non-state actors and some commercial sales are those which most often fall into categories of illegal and quasi-legal transfers, known as the black and grey markets, respectively.

Black market transfers generally refer to those which are knowingly conducted in violation of an existing arms embargo, national laws or other factors which make the sale criminal. Grey market sales, however, are more difficult to classify. As is evident in their name, these types of sales cover a broad range of semi-legal or legally questionable transfers. A suggested definition is that grey sales are those which "violate

<sup>214</sup> NAYLOR, R. T., "The Structure and Operations of the Modern Arms Black Market", in *Lethal Commerce: The Global Trade in Small Arms and Light Weapons*, Committee on International Security Studies, American Academy of Arts and Sciences, Cambridge, Massachusetts, 1995, p. 45.

<sup>215</sup> KARP, A., "The Rise of Black and Gray Markets", *Annals of the American Academy of Political and Social Scientists*, vol. 535, Sept. 1994, p. 178.

national and international norms and policies, if not laws.<sup>216</sup> The use of front companies, third-party buyers or sellers, and suspect if not fraudulent documentation can form part of a grey market sale, complicating the picture and limiting the chances of detection.

Although attempts have been made to tackle the issue at the national and regional level, it is at the international level — with the increasing globalization of both legal and illegal activities — where the greatest current challenge lies. As crossborder trade increases and criminal organizations begin to operate transnationally, effective international action to curb the flow of weapons becomes increasingly important.

An important step in this process has been to reach greater agreement among countries on what can be considered legal sales, making it easier, in theory, to identify what is illegal.<sup>217</sup> Those sales which are clearly black market transactions, for example, the commercial supply of arms to a country under an arms embargo or to a known criminal organization, are those where it is easier to find areas of consensus.

Black markets were created by embargoes.<sup>218</sup> They are the unintended by-product of embargoes prohibiting sales to particular countries, and since the Cold War, embargoes have been a standard instrument. Following each embargo placed on a country by the United Nations, new opportunities for black market sales arose. In other words, black markets were created in an attempt to circumvent embargoes on specific countries.

To understand the arms trafficking globally we have to know the sellers and the recipients. Figure below will help us to have an idea about arms trafficking globally. (Figure 4.18)

<sup>216</sup> KLARE, M., *The Subterranean Arms Trade: Black-Market Sales, Covert Operations and Ethnic Warfare*, in A Pierre Ed., *Cascade of arms: Managing conventional weapons proliferation*, Brookings Institution Press, Washington DC, 1997, p. 47.

<sup>217</sup> MCSHANE, *Light Weapons and International Law Enforcement*, in J Boutwell & M Klare (eds), *Light Weapons and Civil Conflict*, Rowman and Littlefield, Lanham, Maryland, 1999, p 180.

<sup>218</sup> KARP, A., "The Rise of Black and Gray Markets", *Annals of the American Academy of Political and Social Scientists*, vol. 535, Sept.1994, p. 178.

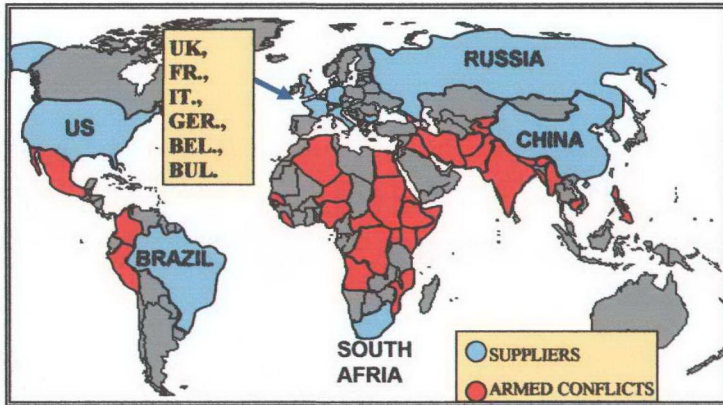


Figure 4.18 Global Trafficking in Firearms.

After the cold war, illegal trade in firearms focuses on some regions. These regions are Africa, Middle East and South Asia. Ethnic and religious conflicts encourage the firearms market. This is an important point of my study.

#### 4.3 NUCLEAR BLACK MARKET

The phenomenon of the illicit trafficking in nuclear materials has attracted the attention of policy makers and practitioners probably more because of the dangers that its growth may bring than in view of its current dimensions. The studies published to date are more assessments of potential risks than accurate analyses of real danger. Inspection of a highly detailed account of all nuclear smuggling incidents between 1993 and 1996 allows no conclusions to be drawn as regards nuclear smuggling as an emerging activity connected with organized crime, including terrorism.<sup>219</sup> Of course, this assertion is made on the basis of the cases that been discovered. Analysis of these cases and a survey of the scientific literature around the world,<sup>220</sup> however, allow one to outline a theoretical market.

Operators on the supply side - the traffickers - appear to be desperate amateurs rather than professionals: for the moment these traffickers are greedy freelancers, traders,

<sup>219</sup> Senate Committee on Governmental Affairs Permanent Subcommittee on Investigations, "Chronology of Worldwide Demand for Nuclear Weapons Materials, 20 March 1996.

<sup>220</sup> ULRICH, J., *Transnational Organized Crime and Law Enforcement Cooperation in the Transnational Organized Crime*, Vol. 3, No. 2, Summer 1997, p.123-125

adventurers or opportunists<sup>221</sup> looking for quick profits, rather than criminal organizations. When the problem first arose (1994), the Director of the CIA Jim Woosley noted “most of the cases of nuclear smuggling that we are aware of involve desperate individuals or small groups with no apparent links with organized crimes... simply trying to make fast money”.<sup>222</sup> Traffickers have been also described as opportunistic entrepreneurs and business people, former intelligence and military personnel from Russia and the other former Soviet Bloc countries. There is also speculation concerning the involvement of the Italian and Russian organized crime groups, which exchange counterfeit merchandise (clothes, watches) for sophisticated equipment, heavy and light, and uranium. Those who use the uranium and for what purposes on the demand side is a matter of conjecture. Whether the demand is artificially created by the press or whether it is real is still an open question.

Not knowing the demand and with no accurate analysis of supply, of modus operandi, and of the actors involved, the market of nuclear material seems to be more random in nature than organized. Consequently, thorough discussion of the interaction between changes in some elements of the market and changes in legislation is not possible. The essential elements of the market are obscure, both to investigative bodies and to researchers. Nor has investigative journalism produced any information that goes beyond mere speculation. Thus, future concerns cannot be clearly specified, given there are no substantiated connections between a typology of criminals and nuclear arms smuggling.<sup>223</sup>

#### **4.3.1 Suppliers**

It was formed a supply and demand balance in the nuclear black market. The causes of the rise in smuggling of nuclear materials may be the problem of financing terrorism or the collapse of the USSR. The collapse of the USSR facilitated the expansion of trafficking in nuclear materials.

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<sup>221</sup> ATKINSON, R., Official Say Contraband Not a Threat, in *The Washington Post*, August 28, 1994.

<sup>222</sup> WILLIAMS, P. and P.N. Woessner, “Nuclear Material Smuggling: An Interim Assessment”, in *Transnational Organized Crime*, Vol. 1, No. 2, summer 1995, p. 215.

<sup>223</sup> LEE, R., *Recent Trends in Nuclear Smuggling*, in *Transnational Organized Crime*, Vol. 2, No. 2-3, Summer/Autumn 1996, p. 109.

The supply side consists of individuals who have, or can gain, access to nuclear and other radioactive material.<sup>224</sup> These individuals can be both insiders and outsiders. Insiders include civilian employees at facilities that house nuclear material or radiation sources, military personnel, and security guards. Thefts involving insiders are most common, especially for nuclear material. For example, out of seven known thefts or attempted diversions of weapons-usable<sup>225</sup> fissile material (Podolsk in 1992, Andreeva Guba in 1993, Sevmorput in 1993, Electrostal in 1994 and 1995, Sukhumi in 1992-1997, and the Chelyabinsk region in 1998), six were committed by insiders. The first and most notorious insider theft occurred at the Luch Scientific Production Association in Podolsk in 1992, when deteriorating economic conditions caused an employee to steal 1.5 kg of uranium enriched to 90%.<sup>226</sup> The most recent attempted diversion of 18.5 kg of Highly Enriched Uranium (HEU), foiled by the Russian Federal Security Service (FSB), and was a result of conspiracy between the employees of one of the Chelyabinsk region's nuclear facilities. Had the Russian intelligence service failed to prevent this diversion, it might have led to the most serious consequences because the amount of material was probably enough to build a nuclear weapon.<sup>227</sup> This was also the only credible incident involving weapons-usable material that took place in a closed nuclear city. Other confirmed thefts of weapons-usable material have occurred either at civilian research and production facilities or at military naval sites.

#### 4.3.1.1 Civilian Personnel

Before the collapse of the Soviet Union, nuclear workers were considered to be the elite of the nation's science and industry and enjoyed the lifestyle of which many Soviet citizens could only dream. However, in 1991, the situation changed dramatically and the once pampered nuclear scientists were faced with a loss of status and low, often delayed, pay. The tight KGB control over the personnel of nuclear facilities was

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<sup>224</sup> Although nuclear material is radioactive, the term nuclear refers to uranium, plutonium, and thorium or any compound thereof. The term other radioactive material refers primarily to ionizing radiation sources such as cesium-137, strontium-90, iridium-192, cobalt-60, radium-226, and so forth.

<sup>225</sup> Weapons-Usable Nuclear Material is plutonium-239 and uranium enriched to 20% and over in U-235 Highly Enriched Uranium (HEU). Uranium enriched to 90% and over and plutonium containing more than 80% of Pu-239 is referred to as weapons-grade material. Uranium enriched to below 20% is called low-enriched uranium (LEU).

<sup>226</sup> COCKBURN, A., & Cockburn, L., *One point safe*. Garden City, NY: Doubleday, 1997, p.34.

<sup>227</sup> BUNN, M., *The Next Wave: Urgently Needed New Steps to Control Warheads and Fissile Material*. A Joint Publication of Harvard University's Project on Managing the Atom and the Non-Proliferation Project of the Carnegie Endowment for International Peace., 2000, p.67.

significantly diminished. In addition, the security system of nuclear facilities was designed to guard against threats from outsiders only. An insider with access to nuclear material and the knowledge of how to escape with it undetected was not considered to be a threat, and the measures to protect the material against insiders were very weak and easy to overcome. Thus, the worsened economic conditions and lax security practices created a favorable environment for potential material diversion by the facility personnel.

Insiders at civilian nuclear sites are ideally suited for theft of nuclear material because they know the vulnerabilities of the facility's accounting system and can use them to their advantage. For example, in the past employees managed to escape detection by diverting small amounts of nuclear material every day, just enough to go unnoticed by the accounting system, and thus accumulating a significant amount of the material. This was the case with Leonid Smirnov, a technician from the Luch Scientific Production Association, who over a several months period in 1992 diverted 1.5 kg of HEU by 25-g to 30-g increments, too small to show on the facility's balance books. During the same year, a similar scheme was used by the employees of the Chepetsk Mechanical Plant in Glazov, Russia, to divert Low-Enriched Uranium (LEU) from the facility. Each month, they were stashing away 4% of the allowed inventory "loss" and within several months were able to accumulate a large amount of LEU and then smuggle it from the plant without alerting the management.<sup>228</sup> After the first seizures of parts of the stolen uranium by the FSB agents, an inventory conducted at the plant revealed that some 300 kg of LEU was missing.<sup>229</sup>

The detailed knowledge of the facility's security system also has helped insider perpetrators steal nuclear material without being detected. In 1995, 1.7 kg of 21% enriched uranium was smuggled out of Electrostal Machine-Building Plant, a major Russian producer of naval and research reactor fuel, by one of its employees in a "shopping bag full of apples." The employee reportedly escaped detection because the portal monitors were not working at the time and did not set off an alarm.<sup>230</sup> A year

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<sup>228</sup> HANDELMAN, S., *Comrade Criminal: Russia's New Mafia*. New Haven, CT: Yale University Press., 1995, p.12.

<sup>229</sup> KUZNETSOV, V., *Physical Protection of Nuclear Power Installations of Russia*. *Yadernaya Bezopasnost*, No: 34-35, 2000, p. 33.

<sup>230</sup> FSB and Police Shoot at Each Other Because of Uranium Peddlers. *Kommersant Daily*. 1997, November 14. Available on site: <http://www.nti.org/db/nistruff>

earlier, another worker at the same plant walked out through the gates carrying almost 3 kg of uranium, enriched to 90%, hidden in his protective gloves.<sup>231</sup>

#### 4.3.1.2 Military Personnel

Military facilities, such as naval fuel storage sites and submarine depots, have been frequent targets for thefts of weapons-usable material. Following the collapse of the former Soviet Union, the military sector faced problems similar to those in the civilian sector: poor control and protection of the facilities and aggravated economic conditions of the personnel. As in the civilian sector, insiders were involved in most of the known thefts. Two confirmed thefts of HEU at Andreeva Guba and Sevmorput Shipyard in 1993 were both committed by servicemen from these naval bases. Contract employees of the Northern Fleet were involved in two unconfirmed attempted thefts of nuclear fuel rods from Zvezdochka ship repair plant in 1995 and 1996. According to another unconfirmed report, fuel rods containing at least 7 kg of uranium enriched between 40% and 60% were stolen by three workers from a fuel storage facility in Sovietskaya Gavan of the Pacific Fleet.<sup>232</sup> A more recent account reports an arrest of four sailors for stealing parts of submarine equipment containing gold, silver, platinum, and palladium, as well as radioactive fuel, from a nuclear submarine at the Vilyuchinsk-3 submarine base on the Kamchatka Peninsula in the Far East of Russia. The sailors were reportedly advised by a retired radiological safety officer. The suspects said they had intended to sell the precious metals and radioactive fuel.<sup>233</sup>

Often, military personnel have also been involved in the theft of radiation sources, such as cesium-137, strontium-90, iridium-192, cobalt-60, and others, from their facilities. In June 1992, three containers with cesium-137 were stolen from a Soviet military base in Poland by the Russian Army deserters. In 1996, a group of former military personnel who specialized in the diversion of cobalt-60 was apprehended in Severomorsk, Russia. The group, led by a former KGB major, reportedly diverted around 10 containers of

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<sup>231</sup> Uranium Transported in a Passenger Railcar and Stored in a Cool Place. *Novaya Yezhednevnyaya Gazeta*, p. 1. 1994, June 16. Available on site: <http://www.nti.org/db/nistraff>

<sup>232</sup> LEE, R. W., *Smuggling Armageddon: The Nuclear Black Market in the Former Soviet Union and Europe*. New York: St. Martin's Griffin, 1999, p. 90.

<sup>233</sup> Russian Servicemen Accused of Theft, *New York Times*. Retrieved February 2, 2000. Available on site: <http://www.nytimes.com>

cobalt-60.<sup>234</sup> In a more recent incident, two cesium radiation sources, which were probably stolen from a former Russian military base in Vaziani, were confiscated from a Georgian defense firm. Two officials of the Georgian Ministry of Defense were among the arrested suspects.<sup>235</sup>

#### 4.3.1.3 Guards

Security guards at nuclear facilities, both civilian and military, also present a threat to diversion of nuclear material. Susceptible to bribes, they can provide access to storage facilities and switch off the alarm system. Thus, an unknown nuclear dealer describing security practices at Electrostal plant in 1993 claimed that guards could turn off the facility alarm system for a few moments for 1,000 rubles.<sup>236</sup>

The Stanford database shows that guards have been implicated in at least two nuclear material diversions. In 1992, a whole fuel assembly, containing more than 100 kg of LEU, was stolen from the Ignalina nuclear power plant in Lithuania as a result of collusion between the facility employees and guards. The assembly, 7-m long and weighing 280 kg, was tied to the bottom of the duty bus and carried outside of the premises of the facility unnoticed.<sup>237</sup> The 1993 theft at Andreeva Guba naval base of the Northern Fleet also was enabled by the complicity of a guard on duty at the alarm post. The guard allowed two of his accomplices to penetrate the storage facility and remove 1.8 kg of 36% enriched uranium.<sup>238</sup>

In April 1993, Russian law-enforcement authorities broke a ring in Sverdlovsk Oblast that traded in stable, nonradioactive isotopes. Although the material was neither radioactive nor weapons-usable, the case was of great concern because the ring consisted of several employees from the closed nuclear city Lesnoy, formerly known as Sverdlovsk-45. The isotopes of ytterbium, rubidium, zinc, and thallium, illegally produced at the Elektropribor chemical combine in Lesnoy, had been shipped abroad for 3 years before the ring was arrested. The head of the Russian State Center for Stable

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<sup>234</sup> TARABRIN, A., *Hunters of Deadly Trade*. Pravda, 1996, p. 9-16. Available on site: <http://www.nti.org/db/nistraff>

<sup>235</sup> Containers with Radioactive Cesium Discovered in Georgia, Interfax, 1999, February 26 Available on site: <http://www.nti.org/db/nistraff>

<sup>236</sup> LEE, R. W., *Smuggling Armageddon: The Nuclear Black Market in the former Soviet Union and Europe*. New York: St. Martin's Griffin, 1999, p.31.

<sup>237</sup> Container with Uranium discovered in Lithuania. Russian Information Agency Novosti, Retrieved March 20, 2002. Available on site: <http://www.nuclear.ru>

<sup>238</sup> COCKBURN, A., & Cockburn, L, *One point safe*. Garden City, NY: Doubleday, 1997, p.36.



Isotopes, Alexander Podkidyshev, was implicated in the illegal scheme. He made large profits by purchasing the illegal isotopes at below-market prices and then reselling them to his own company in Moscow at a higher price.<sup>239</sup>

Another smuggling ring illegally exporting isotopes from a closed nuclear city was uncovered in 1997, when Russian customs officials found a discrepancy between the actual shipment and what was stated in the shipping documents. A group of employees of Radioisotope Factory No. 45 at the Mayak Production Association in Ozersk, headed by the factory director, falsified customs declarations and shipped radioactive iridium to a company in the United Kingdom. Within 2 years; several illegal shipments were made until the ring was finally broken.<sup>240</sup>

The use of legal shipments of radioisotopes for illegal export of nuclear and other radioactive material has been long discussed by the Russian customs officials as a possible way of smuggling. With the currently available radiation detection technology, it is practically impossible for a customs officer to verify if the type and amount of the material inside a shielded container actually correspond to what is stated in the customs declaration.<sup>241</sup> An average customs officer will not be able to do isotopic analysis of the shipped material and will have to send it to a special lab. Because this procedure costs money and causes time delay, many customs officers are reluctant to do it, especially if they were mistaken in the past and were reprimanded for adding unjustifiable expenses to the customs post.

#### **4.3.1.4 Outsiders**

Based on the available data, outsiders are very infrequently involved in the theft of nuclear material. One of the few such incidents took place in Sarov, a closed nuclear city formerly known as Arzamas-16 in 1994, when three teenagers stole almost 10 kg of natural uranium and escaped with it through a hole in the fence. According to reports,

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<sup>239</sup> DOBRYNINA, S., Engineer Tunin's Hyperboloid. *Novyye Izvestiya*, 2000, June 30, p. 1. Available on site: <http://www.nti.org/db/nistralf>

<sup>240</sup> DAUGHTLY, E. E., NIS Nuclear Smuggling since 1995: A Lull in Significant Cases? *Nonproliferation Review*, 5, 1998, p. 122.

<sup>241</sup> KRAVCHENKO, N., Prevention of the Use of Legal Trafficking for Nuclear Material and Radioactive Sources Smuggling. Proceedings of the IAEA International Conference "Security of nuclear material: Measures to Prevent, Intercept and Respond to Illicit Uses of Nuclear Material and Radioactive Sources," Stockholm. 2001, May 7-11.

they wanted to sell the material to obtain enough money to buy video equipment.<sup>242</sup> Outsider thieves are, however, a rather frequent phenomenon when it comes to theft of radiation sources. This is likely due to the fact that there are more facilities housing radiation sources than nuclear material and they have less stringent security.

Motive number one for stealing radiation sources is making a profit. Stanford's database contains at least 40 nuclear trafficking incidents in which the stolen radiation sources were intended for resale. Another popular motive behind such thefts is selling the heavy shielding, made of lead or aluminum, for scrap metal. Generally, most thieves do not suspect that the heavy container they have stolen has a highly radioactive element inside and get exposed to harmful, sometimes lethal, radiation doses trying to break the container to extract the valuable metal. In the notorious 1987 Goiania incident in Brazil, thieves stole a powerful radiation source from an abandoned clinic and broke its protective shielding, which they planned to sell for scrap. Within several days of exposure to the glowing powder found inside the container, the thieves, their family members, and many other residents of Goiania were contaminated and four people died due to overexposure. In a similar incident in 2001, local residents stole and disassembled a lead container from a lighthouse belonging to the Northern Fleet Hydrographical Service in the Murmansk region, Russia. The container housed a strong gamma-radiation source. As a result, the thieves were hospitalized with a diagnosis of radiation sickness.<sup>243</sup> Thefts, in which the rupture of the metal shielding of the sources led to injuries and even fatalities, have occurred in Turkey, Estonia, Chechnya, Azerbaijan, and Thailand.<sup>244</sup>

#### **4.3.2 Intermediaries (Middlemen and Traffickers)**

Intermediaries are individuals, groups, and organizations that find a potential buyer for the stolen material, negotiate a deal (middlemen), and deliver it to the end-user (traffickers). They fall into the categories of amateurs, opportunist businessmen and firms and organized crime groups.

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<sup>242</sup> WILLIAMS, P., & Woessner, P. N. Nuclear Material Trafficking: An Interim Assessment. *Ridgeway Viewpoints*, 95(3), 1995, p.9.

<sup>243</sup> Today specialists of the Northern Fleet liquidated a powerful radiation source in the Murmansk Region. Russian Television ORT, 2001, June 10. Available on site: <http://www.rambler.ru/db/>

<sup>244</sup> DSTO, Database on nuclear smuggling, theft and orphan radiation sources, Center for International Security and Cooperation, Institute of International Studies, Stanford University, 2002.

#### 4.3.2.1 Amateurs

Amateurs among middlemen and traffickers are the most frequently detected subcategory. Usually, they have little or no knowledge about the nature of the material they are handling. For instance, a butcher from St. Petersburg, who instigated his relative working at Electrostal to steal HEU from the plant, stored the material in his refrigerator so it would not spoil while he was looking for a buyer!<sup>245</sup> Sometimes, dealing with radioactive material without the necessary caution, amateurs expose themselves and others to harmful doses of radiation. One of the five suspects arrested in Donetsk, Ukraine, in February 2000 in a sting operation had hidden the strontium they were trying to sell in his apartment without shielding it. As a result, residents of the building, including small children, were exposed to elevated radiation levels.<sup>246</sup>

Many amateur intermediaries mistakenly believe that anything radioactive can be sold on the black market as nuclear technology. In January 2002, Belarusian police arrested a resident of Minsk Oblast who was trying to sell four containers of radioactive strontium-90, which may have been stolen from a military unit, where it would have been used as a standard for checking dosimeters.<sup>247</sup> In May 2002, another resident of Belarus was arrested in Moscow in a sting operation. Russian authorities confiscated 0.5 kg of depleted uranium from the unemployed man, who was trying to pass it for weapons-grade uranium.<sup>248</sup> In general, unemployed people are very often involved in nuclear trafficking. At least 14 incidents in Stanford's database mention the involvement of unemployed individuals.

Sometimes amateur traffickers also get caught while crossing a border into another country. For instance, two Ukrainian nationals, described by officers as "more like ordinary farm workers than experienced smugglers," were arrested on the border between Ukraine and Moldova in 1998 in an attempt to smuggle a lead container with 11 kg of uranium, which had reportedly been stolen from the Khmelnytsky nuclear

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<sup>245</sup> WILLIAMS, P., & Woessner, P. N., Nuclear Material Trafficking: An Interim Assessment. Ridgeway Viewpoints, 95(3), 1995, p.9.

<sup>246</sup> Crime unit confiscates 28 strontium-90 containers, Ukrainian Television UT3 (Kiev), 2000, February 25. Available on site: <http://www.nti.org/db/nistraff>

<sup>247</sup> Belarusian police arrest suspect selling strontium-90, Belarusian Television, FBIS Document CEP20020117000376. 2002, January 17. Available on site: <http://www.nti.org/db/nistraff>

<sup>248</sup> Kilo of uranium can be bought even in a street, Vechernyaya Moskva. 2002, May 23. Available on site: <http://www.integrum.com>

power plant in Ukraine. After their arrest, the suspects confessed that they had planned to market the material in Western Europe for a price of \$1.5 to \$2 million.<sup>249</sup>

Amateurs are the least dangerous category of traffickers because they are easiest to detect due to the lack of knowledge about the material they deal with and where to find the potential customers for this material. Some middlemen were even reported to have gone to public markets to look for a buyer. Thus, the butcher from St. Petersburg and his two accomplices—a pipe layer and an unemployed man—had apparently offered samples of HEU at weekly markets in St. Petersburg until they were arrested by law enforcement authorities in March 1994.<sup>250</sup> Others naively bring their material to government research institutions for analysis to make sure they have the right stuff. In May 2002, six unemployed men were arrested in the Lithuanian capital, Vilnius, after they took almost a kilogram of cesium-133 to the Lithuanian Institute of Physics in Vilnius to verify its value and content.<sup>251</sup>

#### **4.3.2.2 Opportunist Businessmen and Firms**

This category of intermediaries encompasses a very wide spectrum of businessmen, small firms, and larger companies. The level of professionalism in this group can vary from amateurish to sophisticated. Some businessmen simply take advantage of an opportunity when offered nuclear material, which they treat “as simply an extension of their legitimate activities”.<sup>252</sup> Others invent complex schemes, establish a steady supply of material, and set up reliable smuggling channels, such as the one established by Alexander Podkidyshev to smuggle stable isotopes produced at Lesnoy.

Yuri Taimykin, the general director of a small Moscow firm “Tayma” who was approached by his old acquaintance with a request to find a buyer for 1.7 kg of HEU stolen from the Electrostal Machine-Building plant in 1995, belonged to the category of opportunist businessmen. He agreed to sell the uranium for a percentage of the profits but was soon placed under surveillance by the Russian Federal Security Services and

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<sup>249</sup> Ukraine customs detain two for nuke smuggling. Reuters. 1998, December 4. Available on site: <http://www.nti.org/db/nistruff>

<sup>250</sup> WILLIAMS, P. & Woessner, P. N., Nuclear Material Trafficking: An Interim Assessment. Ridgeway Viewpoints, 95(3), 1995, p.9.

<sup>251</sup> WALSH, N. P., Six Arrested, One Sought in Radioactive “Dirty Bomb” Plot. Guardian, 2002, June 1. Available on site: <http://www.guardian.co.uk/>

<sup>252</sup> WILLIAMS, P., & Woessner, P. N. Nuclear Material Trafficking: An Interim Assessment. Ridgeway Viewpoints, 95(3), 1995, p.9.

then arrested for attempting to sell the material. During the court hearing, he maintained that he did not know he was dealing with uranium.<sup>253</sup>

Incidents in which firms were involved were more frequently reported in the former Soviet Union in the beginning of the 1990s, when there were ample opportunities for new business activities on one hand and little control and poor law enforcement on the other. Many companies were founded under the cover of research or metal-trading firms but were in fact engaged in the illegal export of rare-earth metals and strategic materials. Driven by a desire for a larger profit, some of them ventured into the smuggling of dual-use, nuclear, and other radioactive material. Thus, in 1996, part of 7 kg of HEU stolen from the Sovietskaya Gavan naval base of the Pacific Fleet was recovered from a metal-trading firm in the Baltic city of Kaliningrad.<sup>254</sup> In June 1993, the Russian press reported that a group of 10 smugglers trafficking in rare-earth elements and strategic materials had been arrested in Novosibirsk after attempting to take 12 kg of enriched uranium out of the country. The group, led by a businessman from Novosibirsk, was reportedly found in possession of 34 kg of silver, 125 kg of zirconium, and 12 tons of titanium believed to have been stolen in 1992 from one of the defense industry facilities in Novosibirsk. An employee of the Siberian branch of the Russian Academy of Sciences, who may have helped organize the supply of material, was among the gang members.<sup>255</sup>

In December 1993, the Black Sea Division of the Ukrainian Ministry of Internal Affairs apprehended a group of smugglers on board a Ukrainian ship bound overseas in possession of 260 pellets of what was apparently LEU.<sup>256</sup> The fuel reportedly originated from one of the facilities in Kazakhstan, most likely the Ulba Metallurgical Plant, which produces nuclear reactor fuel. The smugglers were led by the director of an Odessa-based scientific company and had weapons and false documents on them.<sup>257</sup>

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<sup>253</sup> FSB and police shoot at each other because of uranium peddlers. *Kommersant Daily*, 1997, November 14. Available on site: <http://www.nti.org/db/nistraff>

<sup>254</sup> LEE, R. W., *Smuggling Armageddon: The Nuclear Black Market in the Former Soviet Union and Europe*. New York: St. Martin's Griffin, 1999, P.68

<sup>255</sup> ZVEZDNYI, *Kommersant*, 1993, June 7, p. 28. Available on site: <http://www.nti.org/db/nistraff>

<sup>256</sup> KUZNETSOV, V., *Physical Protection of Nuclear Power Installations of Russia*, *Yadernaya Bezopasnost*, No. 34-35, 2000, March/April.

<sup>257</sup> Plot to smuggle radioactive material from CIS foiled. *Guardian*, 1993, December 24. Available on site: <http://www.nti.org/db/nistraff>

#### 4.3.2.3 Organized Crime Groups

To date, there is no hard evidence to link organized crime groups with nuclear smuggling activities. There have been few confirmed nuclear smuggling cases in which the involvement of organized crime was suspected. However, because of the ease with which organized crime can avoid detection of their illicit activities, the full magnitude of such involvement is difficult to assess. Resourceful and powerful organized crime groups in Russia, Central Asia, the Caucasus, and Eastern and Southern Europe have established smoothly running mechanisms for smuggling drugs and weapons that could be easily adapted to nuclear material trafficking. Although some argue that such groups most likely have no interest in dealing with nuclear material because they are gaining sufficient profits from their other activities and do not want to jeopardize what they have, the consequences of their involvement in nuclear business are too serious not to consider such a possibility.

Networks trafficking in drugs, weapons, and other illicit commodities are well suited for nuclear smuggling. Their experience in avoiding detection, knowledge of safe routes, protection by corrupt authorities, and established infrastructures can be utilized for trafficking in nuclear and other radioactive material. For example, Aleksandr Vanous, a suspected Czech middleman in the 1994 Landshut case in which a sample of 87.7% enriched uranium was seized in a German sting operation, had been previously involved in heroin smuggling and dealt in counterfeit money.<sup>258</sup>

At least two parallel seizures of nuclear material and drugs have taken place to date. Three men trying to smuggle 1 kg of yellowcake and 350 g of heroin to Pakistan through the Himalayan kingdom of Nepal were arrested by Indian authorities in June 1998. According to Indian police, the suspects “belonged to a gang which has been engaged in smuggling contraband goods to Pakistan”.<sup>259</sup> In February 2002, during a raid against international drug trafficking, law enforcement officials in Southern Kazakhstan seized 1.5 kg of uranium oxide powder smuggled from Tajikistan via Uzbekistan, together with a large cache of heroin. Kazakhstani officials believed that the arrested

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<sup>258</sup> LEE, R. W. *Smuggling Armageddon: The Nuclear Black Market in the Former Soviet Union and Europe*. New York: St. Martin's Griffin, 1999, p.78.

<sup>259</sup> Three Indians held for trying to smuggle uranium to Pakistan, Agence France Presse. 1998, June 16. Available on site: <http://www.lexisnexis.com/universe>

Uzbekistani smugglers were part of a ring trafficking in drugs and radioactive materials.<sup>260</sup>

Another incident indicating the interest of drug trafficking networks in nuclear trade was recorded in Moscow in September 1999. Khikmet Osmalov, believed to belong to a Dagestan-based organized crime group that is allegedly involved in drug trafficking, was detained by the officers of the Moscow Criminal Investigation Department during a routine document check following the September 1999 building explosions in Moscow. He was carrying 2.6 kg of tantalum, nuclear-related, dual-use material, which was reportedly packaged in an original capsule, suggesting that it was stolen from a factory. At the time of his arrest, Osmalov was also carrying heroin.<sup>261</sup>

Following the September 11 terrorist attacks in Washington and New York, whose impudence and lethality made many believe that terrorist organizations would not hesitate to use weapons of mass destruction, including nuclear, much attention has been given to the members of the Russian organized crime linked with al Qaeda and the Taliban. The two persons who have raised most serious concerns are Victor Bout, a former Soviet military officer accused of large-scale arms-trafficking activities, and Semyon Mogilevich, an Israeli businessman of Ukrainian origin suspected of drug smuggling from Afghanistan and having ties with al Qaeda. In the summer of 2001, European intelligence services produced reports claiming that Bout made \$50 million in profit on weapons sales to the Taliban and possibly bin Laden. Later that year, European sources reported that Mogilevich was approached by al Qaeda representatives with a request to obtain nuclear material. Although both men have denied any involvement with bin Laden and his network, the concern that any of their networks, or any other organized crime groups in Russia, could in principle supply the terrorists with nuclear material if they wanted to do so remains.<sup>262</sup> Ties between organized crime and former and active intelligence officials exacerbate the risk of undetected nuclear smuggling.<sup>263</sup>

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<sup>260</sup> Kazakhstani officials confiscate 1.5 kg uranium oxide, heroin. Interfax. 2002, March 11. Available on site: <http://www.nti.org/db/nistruff>

<sup>261</sup> Dagestani condemns police to the torments of Tantalum. Segodnya. 1999, September 11. Available on site: <http://www.nti.org/db/nistruff>

<sup>262</sup> INGRAM, J., Alleged Russian Arms Trafficker Denies Accusations That He Aided Al-Qaida. Associated Press. 2002, March 5. Available on site: <http://www.lexis-nexis.com/universe>

<sup>263</sup> LEE, R. W., Smuggling Armageddon: The Nuclear Black Market in the Former Soviet Union and Europe. New York: St. Martin's Griffin, 1999, p.69-71.

If organized crime groups were interested in the acquisition of nuclear or other radioactive material, they would be able to obtain it by bribing the insiders or threatening them or their families. Such a scenario can be envisaged from a 1999 incident, when a criminal group from St. Petersburg approached Yevgeniy Balan, a specialist working at the nuclear-powered icebreaker *Rossiya* in Murmansk, and offered to pay him \$100,000 for the procurement of californium-252, used to start up nuclear reactors.<sup>264</sup> Balan, who was responsible for removing spent nuclear components from the icebreaker, shipped an empty container to the Atomflot storage facility and carried 5 g of californium-252 off the *Rossiya*. Then, together with his accomplice Nikolay Yefimovich, a radiation control technician aboard the service ship *Imandra*, Balan carefully packed the stolen material inside a container filled with paraffin and then placed the container into a canister of water to shield the strong neutron emission. By the time the theft occurred, the criminal group apparently lost the interest in buying the material. The culprits decided to search for a buyer themselves and shortly thereafter were arrested in St. Petersburg. Although no weapons-usable material was involved in this case, it nevertheless validates the concern that if organized crime groups were set to obtain such material, they would be able to find a well-positioned insider and bribe or intimidate him into stealing it for them. In fact, such offers appear to have been made already to those with access to weapons-usable fissile material. According to a military prosecutor of the Northern Fleet of Russia, a Murmansk–St. Petersburg smuggling ring had approached Russian naval officers offering up to \$1 million for each kilogram of HEU that they obtained.<sup>265</sup>

So far, there have been more small criminal groups involved in nuclear smuggling rather than large organized crime syndicates. In December 2001, Moscow law enforcement authorities arrested seven men, believed to belong to the Balashikha criminal gang, who were trying to sell 1 kg of LEU stolen from the Electrostal Machine-Building Plant.<sup>266</sup> Another smuggling ring was arrested in Balashikha in March 2001, after several months of surveillance by the Moscow police conducted in Greater Moscow and other Russian cities. The arrest took place when the buyers were going to

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<sup>264</sup> TSYGANOV, A., *Sailors Traded in Isotopes from Icebreaker*. *Kommersant*, 1999, July 15. Available on site: <http://www.nti.org/db/nistraff>

<sup>265</sup> LEE, R. W., *Smuggling Armageddon: The Nuclear Black Market in the Former Soviet Union and Europe*. New York: St. Martin's Griffin, 1999, p.68.

<sup>266</sup> DSTO, *Database on Nuclear Smuggling, Theft and Orphan Radiation Sources*. Center for International Security and Cooperation, Institute of International Studies, Stanford University. 2002.



purchase a sample of a large cache of cesium-137. A total of about 200 g of this material was confiscated from the gang members. The Greater Moscow participants of the deal were acting as middlemen and found the buyers, who, according to the police, were nationals of one of the Middle Eastern countries. During the arrest, the police confiscated a \$250,000 down payment for the sample. The value of the total amount was estimated at \$1.5 million.<sup>267</sup> The confiscated amount of cesium was unusually large as compared to other trafficking cases and could have made a powerful dirty bomb.

Russian criminal groups are not the only organized crime structures that have shown interest in nuclear material. Such interest was expressed by one or more branches of the Italian mafia. Reportedly, Russian organized crime groups received counterfeit merchandise (e.g., clothes, watches) from the Italian mafia and paid for it with highly sophisticated military equipment, heavy and light weapons, and uranium.<sup>268</sup> Indeed, several incidents involving nuclear material of allegedly Russian origin were reported in Italy in the early 1990s. The trafficked material was reportedly to have been delivered to a Middle Eastern country, and former Soviet intelligence officials were implicated in some of the incidents.

More recently, the interest of the Italian mafia in nuclear material was demonstrated again in 1998, when members of several Italian mafia clans, running drug and arms trafficking business, were arrested during an attempted sale of LEU. The confiscated uranium fuel rod, enriched to 19.9%, was stolen from a research reactor in the Democratic Republic of Congo and smuggled to Italy. According to some sources, it was only one of eight rods that went missing from the Congo reactor.<sup>269</sup> The Italian police believed the remaining rods were hidden somewhere in Italy and after the September 11 attacks they resumed the search for the missing material.<sup>270</sup>

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<sup>267</sup> Traders in radioactive metal were arrested in Podmoskovie. Russian Television ORT (FBIS Document CEP20010110), 2001, March 10. Available on site: at <http://www.nti.org/db/nistruff>

<sup>268</sup> WILLIAMS, P., & Woessner, P. N., Nuclear Material Trafficking: An Interim Assessment. Ridgeway Viewpoints, 95(3), 1995, p.12.

<sup>269</sup> FLEISHMAN, J., Sting Unravels Stunning Mafia Plot. Philadelphia Inquirer. 1999, January 12. Available on site: <http://www.nti.org/db/nistruff>

<sup>270</sup> WILLAN, P., Race to find mafia's uranium bars: Police fear terrorists may get ingredients for "dirty bomb." Guardian, 2001, November 9, p. 7. Available on site: <http://www.lexis-nexis.com/universe>

### **4.3.3 End-Users**

Although suppliers and traffickers may divert or acquire material based on a real or perceived market demand, ultimately the concern and threat lies in the end-user of the smuggled material. This section will discuss five categories of potential end-users for smuggled material and provide some unsettling evidence and anecdotes of activities that may have, or have, resulted in the acquisition of nuclear and other radioactive material by end-users.

#### **4.3.3.1 Proliferating States**

When addressing the issues of weapons of mass destruction and nuclear proliferation, the greatest threats are those posed by nation-states with clandestine nuclear weapons programs. Iran, Iraq, and North Korea have all come under close international scrutiny over the past decade as nations seeking weapons of mass destruction. In the Stanford database, they are the most frequently reported destinations for the smuggled nuclear, radioactive, and nuclear-related dual-use material. Iran and Iraq are both mentioned in 10 cases, “a Middle Eastern country” in 7 cases, and North Korea in 6 cases.

These nations are known to have some of the infrastructure needed for the development and deployment of a small nuclear arsenal. The largest impediment is the acquisition of weapons-usable material. For this reason, smuggling nuclear material is of particular concern. The successful transport of 25 kg of HEU or 8 kg of plutonium—IAEA recognized standards for making a nuclear weapon—could make the difference between a security concern and a formidable nuclear threat.

#### **4.3.3.2 Terrorist Organizations**

The events of September 11, 2001, clearly focused the world’s attention on the scope and capabilities of terrorist organizations. Never before had so few individuals been able to inflict such catastrophic damage. The planning and coordination needed for the attacks of September 11 leave little doubt that if such time and energy were devoted to the acquisition of nuclear materials, the attempts could be successful. With regard to

this goal, Osama bin Laden was quoted in a 1998 interview as saying, “If I seek to acquire such weapons, this is a religious duty”.<sup>271</sup>

Indeed, in January 2002, the Associated Press reported that US military officials had uncovered crude diagrams of nuclear weapons in an al Qaeda safe house in Kabul, Afghanistan. The diagrams described components essential to nuclear weapons, such as uranium and high explosives. Nevertheless, the report documenting this case states that the terrorists are not believed to have a functional nuclear weapon.<sup>272</sup>

According to the US Undersecretary of State John Bolton, there is no “doubt that al Qaeda was pursuing nuclear, chemical, and biological warfare capabilities. It’s not our judgment at the moment that they were that far along, but I have no doubt that they were seeking to do so”.<sup>273</sup>

The Department of Energy terrorism expert Gary Richter said that al Qaeda had tried on several occasions to purchase nuclear material. Luckily, however, they appear to have had a tendency to buy the wrong material, and it seems that they lack the technical sophistication to successfully develop nuclear weapons.<sup>274</sup>

Although perhaps lacking in technical expertise, one of the weapons documents, labeled “Superbomb,” describes a nuclear weapon that would not work but nevertheless demonstrates convincing knowledge of some of the mechanisms for initiating a nuclear explosion.<sup>275</sup>

Several incidents demonstrate al Qaeda’s long-term interest in acquiring nuclear material. Of particular interest is the information provided by Jamal Ahmad al-Fadl, a Sudanese national and al Qaeda defector. According to al-Fadl, he played a key role in laying the foundation for a \$1.5 million purchase of an unknown quantity of uranium from Khartoum, Sudan. At one point during the deal, al-Fadl was shown a cylinder

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<sup>271</sup> Transcript of interview with Osama bin Laden. ABC News. 1998, December 24. Available on site: <http://more.abcnews.go.com/sections/world/dailynews/>

<sup>272</sup> LUMPKIN, J. J., Al-Qaida had Crude Nuclear Diagrams. Associated Press, 2002, January 31, Maerli, M. B., 2000, Summer. Relearning the ABC’s: Terrorists and “weapons of mass destruction.” Nonproliferation Review. Available on site: <http://cns.miis.edu/>

<sup>273</sup> BOETTCHER, M., & Arnesen, I., Al Qaeda Documents Outline Serious Weapons Program. CNN. 2002, January 24. Available on site: <http://www.cnn.com/2002/US/01/24>

<sup>274</sup> LUMPKIN, J. J., Al-Qaida had crude nuclear diagrams. Associated Press. . 2002, January 31. Maerli, M. B. 2000, summer. Relearning the ABC’s: Terrorists and “weapons of mass destruction.” Nonproliferation Review. Available on site: <http://cns.miis.edu/pubs/>

<sup>275</sup> BOETTCHER, M., & Arnesen, Ibid.

approximately 2 ft to 3 ft tall. Among the many words reportedly engraved on the cylinder, there was a serial number and the words "South Africa," which presumably indicate the origin of the material.<sup>276</sup>

During a Nasirbagh refugee camp raid in the Peshawar province of Pakistan in 1998, police confiscated 8 kg to 10 kg of uranium of unspecified enrichment from two Afghani nationals. The suspects, Mujahid Khand and Ghulam Hazrat, were on their way to Afghanistan, where they intended to sell the uranium reportedly bought from Kazakhstan (Frontier Post, 1998). Obviously, given the Taliban and al Qaeda stronghold in Afghanistan, any trafficking of nuclear material in the region becomes of critical concern.

Smuggling of radioactive sources also must be considered when examining the interests of terrorist organizations such as al Qaeda. In June 2002, the group's interest in manufacturing a "dirty-bomb" was widely publicized by the arrest of Jose Padilla, a Chicago criminal with connections to al Qaeda.<sup>277</sup> Padilla had met with Abu Zubaydah, bin Laden's operations chief, in Pakistan and proposed the construction of a nuclear bomb. Zubaydah reportedly recommended that Padilla return to the United States and acquire nuclear waste for use in a conventional bomb that would contaminate an area upon detonation. Luckily, U.S. intelligence intercepted Padilla before he could make any progress with this plan. This case, however, clearly demonstrates al Qaeda's interest in acquiring radioactive sources for terrorist attacks.

Although al Qaeda may be top on the list of U.S. national security concerns, the Tehranian-based group Hezbollah also is suspected to have an interest in, and possibly access to, nuclear material. In March 1999, Lebanese security agents arrested two men, Fu'ad Abduh al-Shuwayri and Butrus Michael Najim, who were allegedly attempting to sell 6 kg of uranium to Syrian nationals with close connections to Iran. The category of uranium was not specified.<sup>278</sup> The original dealer, an engineer known only as Ahmad, told al-Shuwayri that he would like to sell the material to people linked with Hezbollah

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<sup>276</sup> MCCLOUD, K., & Osborne, M. WMD Terrorism and Osama Bin Laden. Retrieved April 22, 2002. Available on site: from <http://cns.miis.edu/pubs/reports/>

<sup>277</sup> RIPLEY, A., The Case of the Dirty Bomber. Time Magazine. 2002, June 16. Available on site: <http://www.time.com/time/nation/>

<sup>278</sup> Lebanese trying to sell uranium to Iran reportedly caught. Al-Nahar, Beirut. 1999, March 18. Available on site: <http://www.nti.org/db/nistraff>

or Iran for \$210 million. Najim then arranged a transaction with Ali Nayazi Dandesh, an Iranian with close links to Tehran.

Indeed, smuggling aside, some terrorist groups have been quite bold in their attempts to acquire weapons of mass destruction. To this end, noted scholar Rensselaer Lee has cited a fax reportedly sent to a Russian nuclear research center in 1991.<sup>279</sup> The letter, apparently from the Islamic Jihad, detailed a request to buy a nuclear weapon from the Russian officials. In June 2000, a similar request was reported, and the Islamic Jihad apparently offered Russian nuclear scientists \$1 billion for an undisclosed amount of HEU and weapons-grade plutonium.<sup>280</sup>

#### **4.3.3.3 Religious Sect**

Initially, the Aum Shinrikyo's nuclear weapons program followed that of a state-run program. By mining natural uranium from their site in Australia, the group appeared to be interested in processing and enriching the fissile materials for their own nuclear weapons.<sup>281</sup> Later, however, that approach was abandoned, perhaps due to prohibitive costs and equipment requirements, and now the group may be exploring more opportunistic paths toward nuclear weapons.

Although little has been confirmed about the Aum Shinrikyo's intent to acquire nuclear material, the cult has already used weapons of mass destruction in the sarin gas attacks in Tokyo in April 1995. Little doubt remains regarding the cult's connections with well-placed Russian military, political, and scientific figures who could procure nuclear material.<sup>282</sup> For example, by bribing a former Russian member of parliament in the Caucasus, the group was able to acquire a Soviet-made M1-17 military helicopter.

#### **4.3.3.4 Separatist Movements**

Separatist movements, often considered terrorists by their nation-states, also can be end-users of nuclear and other radioactive material, as was clearly demonstrated by the

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<sup>279</sup> WEBSTER, W. H., de Borchgrave, A., Kupperman, R., Peterson, E., Cilluffo, F., Mullen, S., et al. *The nuclear black market*. Washington, DC: Center for Strategic and International Studies. 1996, p. 76.

<sup>280</sup> WAGNER, B., *Buying Russia's excess nukes should be Clinton's top priority*. San Francisco Chronicle. 2000, June 2. Available on site: <http://www.sfgate.com/cgi-bin/article>

<sup>281</sup> MAERLI, M. B., *Relearning the ABC's: Terrorists and "weapons of mass destruction."* Nonproliferation Review. . 2000, summer. Available on site: <http://cns.miis.edu/pubs/npr/>

<sup>282</sup> LEE, R. W., *Smuggling Armageddon: The Nuclear Black Market in the Former Soviet Union and Europe*. New York: St. Martin's Griffin. 1999, p.68.

Chechen militants in 1995. Shamil Basayev, a Chechen field commander, ordered the burial of four radioactive containers in Izmailovsky Park in Moscow and informed a Russian TV station about the location of the sources. Although the radioactivity level of the found containers was not very high, the incident nevertheless caused great concern about the possibility of more serious radiological terrorist attacks in the future. Special radiation search teams were set up in Moscow and some other large Russian cities to detect, secure, and dispose of dangerous radiation sources.

Chechen separatists have repeatedly threatened the use of radioactive material. During the first war in Chechnya in 1995-1996, half of the 900 cubic meters of radioactive waste with radioactivity levels of 1,500 Curies was reportedly found missing from the radon disposal facility situated near Grozny. Despite the speculation that underpaid, demoralized Russian soldiers may have pilfered the radioactive material and sold it to the Chechen militants for a dirty bomb, Russian authorities accused the Chechen militants of recovering radioactive waste from the repository with the purpose of using it in acts of terrorism and sabotage. Thus, two 200-l barrels containing cesium-137 that were buried in the repository in 1983 were found in the region of Gudermes.<sup>283</sup> Many other radiation sources were found by the Russian Ministry of Emergency Situations in Grozny and other parts of Chechnya in a special search operation conducted during the second military campaign between 1999 and 2002.<sup>284</sup>

Russian intelligence officials believe that some of the found material was used by Chechen militants to make munitions filled with radioactive material because it was discovered in a workshop for the production of mortars and grenade cup discharges, which had been established before the second campaign and reportedly belonged to Shamil Basayev.<sup>285</sup> However, there was only one incident that indicated that dirty bombs were actually deployed by the Chechen militants. In 1998, a container full of radioactive substances was found next to a railway line near Argun with a mine attached to it. Russian officials considered it a foiled act of sabotage.<sup>286</sup>

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<sup>283</sup> There are no collections of substances on the territory of Chechnya, whose leakage may lead to ecological disaster, says Head of the Ministry of Defense's Radiation Safety Department. RBK. 1999, December 15. Available on site: <http://www.cry.ru>

<sup>284</sup> DSTO. Database on nuclear smuggling, theft and orphan radiation sources. Center for International Security and Cooperation, Institute of International Studies, Stanford University. 2002.

<sup>285</sup> Radioactive legacy of Basaev. Vremya Novostei. . 2001, April 2. Available on site: <http://www.vremya.ru/>

<sup>286</sup> Container with radioactive substances found in Chechnya. ITAR-TASS. 1998, December 29. Available on site: <http://www.nti.org/db/nistruff>

#### 4.3.3.5 Criminal Groups and Individuals

Another category of end-users encompasses criminal groups and individuals interested in blackmail; extortion; deliberate exposures; and even murders of their business competitors, colleagues, and relatives, as well as politicians and law enforcement authorities. Given the vast supply of poorly guarded radiation sources, incidents of this type were reported in Russia, the United States, Belarus, Moldova, and Japan. Stanford's database lists a total of 20 malevolent acts using radioactive material.

Two premeditated murders using radiation sources have been reported to date. One occurred in an unspecified country in the West when a scientist who wanted to take his supervisor's job gave him a watch with a strong radiation source inside. After the supervisor's death, police were able to find the perpetrator.<sup>287</sup> A better known incident involves the director of Kartontara packing company in Moscow, Vladimir Kaplan, who died of radiation sickness in 1993 after several weeks' exposure to a powerful radiation source installed in the headrest of his chair by unknown people, possibly one of his employees. In Irkutsk, an unknown saboteur used the same technique in an attempt to kill two company directors. Luckily, the "hot seat" was detected and removed before the damage had been done. And in another Siberian town, a man tried to murder his mother-in-law by planting a stolen radioactive element in her basement.<sup>288</sup>

In addition to settling personal accounts and eliminating competitors, radiation sources also have been used as means of blackmail. For instance, a box containing radioactive material was stolen in Pridniestroviiye in 1992, and the thieves threatened to blow up the material if fighting in Moldova is not stopped.<sup>289</sup>

Politicians also were subject to radiological malevolence. In the United States, a Long Island man was arrested after threatening to kill local politicians by planting radioactive material in their homes. He was reported to have accumulated a "truckload" of old

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<sup>287</sup> LEONOV, A. F., Polenov, B. V., & Chebyshov, S. B. Modern Methods and Technical Means to Counter Radiation Terrorism. *Ecologicheskiiye Systemy I Pribory*, 5, 2000, p.7-10. Available on site: <http://www.polimaster.com/ru/support/docs/>

<sup>288</sup> WARD, O., Deadly Dose of Radiation is Murder. Russian-Style, Fears on Rise About Nuclear Terrorism. *Toronto Star*, 1994, January 25, p. A18. Available on site: <http://www.lexis-nexis.com/universe>

<sup>289</sup> Radioactive Material Stolen from Transdniestr. *JPRS-Proliferation Issues*. 1992, April 3. Available on site: <http://www.nti.org/db/nistaff>

sources and might have been able to inflict real damage.<sup>290</sup> In Tokyo, Japanese police arrested a man who had sent letters containing radioactive thorium to the prime minister's residence and nine other government departments. The letters reportedly included a message warning about ongoing export of nuclear material to North Korea.<sup>291</sup> In March 2002, Belarusian police arrested members of a criminal gang who planned to plant radiation sources in Internal Affairs Ministry offices in two towns in Gomel Oblast. Four containers with radioactive material were seized from the gang members, together with firearms, a grenade, and explosives.<sup>292</sup>

#### **4.4 TRAFFICKING IN HUMAN BEINGS AND ILLEGAL MIGRATION**

The smuggling and trafficking of human beings has increased throughout the world. The problem is exacerbated in size and seriousness by the growing involvement of organized crime groups. The smuggling of women and children by these organized crime groups often involves human rights abuses. Conditions of travel are appalling—victims may freeze or suffocate as part of cargo in trucks or boats. The treatment of the victims of trafficking often amounts to new forms of slavery.

It has been estimated that European criminal organizations pay about US\$6,000 to Asian syndicates to buy a Chinese man or woman. The person will have to pay more than US\$15,000 to their employers in Europe to purchase their freedom. The profit: US\$9,000 plus essentially free labor.

The smuggling and trafficking in human beings is a transnational crime. With an emphasis on the growing involvement of organized crime groups, the Global Programme is working to promote national and international alliances and closer cooperation among law enforcement agencies, immigration authorities, prosecutors, victim assistance groups and other specialized bodies.<sup>293</sup>

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<sup>290</sup> PILLETS, J., & Fitzgerald, T. J., Nuclear Tools of Terror Could Destroy in Silence. Record, Bergen County, NJ, 1999, November 21. p. 17. Available on site: <http://www.lexis-nexis.com/universe>

<sup>291</sup> Japanese man sent radioactive letters. BBC World Service. 2000, June 17. BBC Web Site.

<sup>292</sup> Belarusian police arrest suspect selling strontium-90. Belarusian Television, FBIS Document CEP20020117000376. 2002, January 17. Available on site: <http://www.nti.org/db/nistr Traff>

<sup>293</sup> UN Office for Drug Control and Crime Prevention, UPDATE, January 2000, p. 9



#### 4.4.1 Trafficking, Smuggling and Migration

There are strong political pressures to divorce the debate on “trafficking” from the more general phenomenon of migration, and to treat “smuggling” and “trafficking” as distinct phenomena. However, if the primary concern is to locate, explain and combat the use of forced labor, slavery, servitude and the like, then there is no moral or analytical reason to distinguish between forced labor involving “illegal immigrants”, “smuggled persons” or “victims of trafficking”. The distinction between trafficking and smuggling may be clear to those who attach political priority to issues of border control and national sovereignty, but it is far from obvious to those who are primarily concerned with the promotion and protection of the rights of migrant workers. (Figure 4.19) Indeed, it is widely believed that the trafficking/smuggling distinction represents a gaping hole in any safety net for those whose human rights are violated in the process of migration.<sup>294</sup> As many analysts have observed, policies designed to control and restrict immigration can actually fuel markets for “trafficking” and “smuggling” and contribute to the construct of irregular migrants (“trafficked”, “smuggled” or otherwise) as cheap and unprotected labor.<sup>295</sup> This should alert us to the existence of demand not just for cheap labor/services in destination countries, but also for opportunities to migrate in sending countries.

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<sup>294</sup> GALLAGHER, A., Trafficking, smuggling and human rights: tricks and treaties, *Forced Migration Review* (12), 2002, p. 27.

<sup>295</sup> ILO, Getting at the roots: Stopping exploitation of migrant workers by organized crime, International Labor Office, Paper presented to International Symposium on the UN Convention Against Transnational Organized Crime: Requirements for Effective Implementation, Turin, 22-23 February 2002.

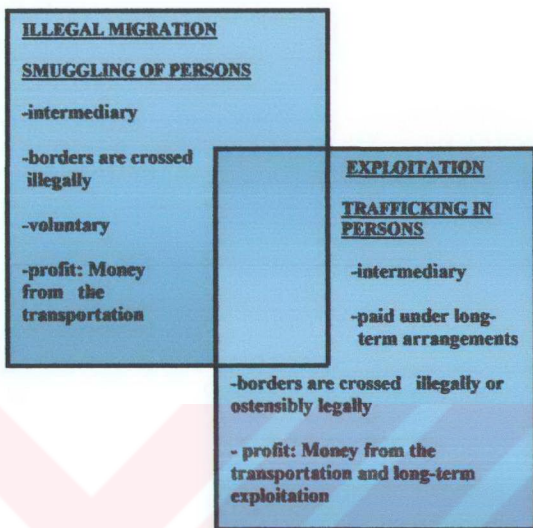


Figure 4.19 The Distinction Between Smuggling and Trafficking Persons

“Trafficking” is often described as a form of modern-day slave trade and, for most people, it evokes images of women and children being snatched from their homelands and forcibly transported elsewhere. Yet, research generally points to the conclusion that in the vast majority of cases, “trafficking” is a corrupted mode of migration, that transforms very specific migratory projects, such as the desire to accumulate savings or support one’s dependants by migrating to work, the dream of securing a better future for one’s children by sending them to be raised and educated abroad, the desire to transform one’s life by marrying “well”, and so on, into nightmares.<sup>296</sup> It is therefore important to recognize that the individuals concerned had good reasons for migrating, which is why the adverse publicity and even personal experience regarding the dangers associated with undocumented migration are rarely enough to stop people from taking the risk.<sup>297</sup> Furthermore, the idea that “trafficking” constitutes a subset of illegal migration relies on an over-simplistic distinction between “legal” and “illegal” migration. In practice, even legal migration processes often have illegal elements, while “trafficked” persons

<sup>296</sup> AGUSTIN, L. Challenging ‘Place’: Leaving Home for Sex, *Development*, 45(1), 2002, p.110-16.

<sup>297</sup> PHONGPAICHT, P., “Trafficking in People in Thailand”, in P. Williams Ed., *Illegal Immigration and Commercial Sex: The New Slave Trade*, Frank Cass, London. 1999, p.55.

frequently enter a state legally. For instance, women may legally enter as wives and then be subjected to forced labor. Meanwhile, deception and exploitation are also features of legal labor migration schemes, both during the process of migration and at the point of destination. Indeed, migrant workers' rights organizations have recently reported a "rise in the incidence of unpaid wages, confiscated passports, confinement, lack of job training and even violence" against migrant workers who are legally present in a number of countries under various work permit schemes.<sup>298</sup> Very often workers are vulnerable to such abuses precisely because they have migrated legally under work permit schemes that tie them to a certain employer.

There are also more general problems in terms of distinguishing trafficking from legally tolerated employment contracts. Questions about what constitutes exploitative employment practices are much disputed - indeed they have historically been, and still are, a central focus of the organized labor movement's struggle to protect workers. There are variations between countries and different economic sectors within a country concerning what are socially and legally acceptable employment practices. In the absence of a global political consensus on minimum employment rights and cross-national and cross-sector norms regulating employment relations, it is extremely difficult to come up with a neutral, universal yardstick against which "exploitation" can be measured. The same applies to legally tolerated forms of exploitation of women and children within families.<sup>299</sup>

Violence, confinement, coercion, deception and exploitation can and do occur within both regular and irregular systems of migration and employment. The fact that such abuses can vary in severity and thereby generate a continuum of experiences rather than a simple either/or dichotomy, further complicates a meaningful definition of trafficking. At one extreme of the continuum we can find people who have been transported at gunpoint, then subjected to forced labor through the use of physical and sexual violence and death threats against them or their families back home. At the other end are those who were neither charged exorbitant rates by recruiting agencies nor deceived regarding the work for which they were originally recruited, and whose rights are respected. But, between the two poles lies a wide range of experience. The precise point along this

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<sup>298</sup> AMC Asian Migrant Yearbook 2000: Migration Facts, Analysis and Issues in 1999, Asian Migrant Centre, Hong Kong.

<sup>299</sup> "Is Trafficking in Human Beings Demand Driven?", IOM, 2003, p.9

continuum at which tolerable forms of labor migration end and trafficking begins will vary according to our political and moral values.<sup>300</sup>

#### **4.4.2 Components of Trafficking: Recruitment, Movement and Exploitation**

While trafficking might be difficult to pin down because of its complexity, its essential components are not in dispute:

People who are trafficked enter the process when they are recruited by people or processes. They may be forced or coerced by family, friends, recruitment agents or agencies, and in extreme cases be forcibly removed by abduction. They may be duped by misinformation or lies, or pushed by need or desperation to seek out recruiters themselves (often called 'voluntary' recruitment, although free choice hardly applies). This initial stage in the process may involve the exchange of money or negotiation of a loan. Once in debt, the person who wants to move is extremely vulnerable to threats and manipulation.

By its nature, trafficking presumes movement of people away from their normal place of work and home, to another town, area, or country. This movement may involve teams of people who facilitate it: someone may provide false documents, transport will have to be arranged, there may be 'relay' people along the way who separate families, provide guidance across a border or otherwise help the process along. In some instances there are corrupt border guards, customs or law enforcement personnel who turn a blind eye to irregularities or suspicious documentation. There will be transport providers who may or may not know the nature of their cargo.

At the point of arrival, there may or may not be an organized reception process, a person or group who will meet the trafficking victims and who may well take away any documents the victims have (rendering them 'undocumented' and prey to fear of disclosure, and taking away their freedom to return or move on). Reception might include accommodation ranging from a halfway house to prison-like confinement. At this stage, too, the trafficking victim may learn of more debts to be repaid for 'services' provided.

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<sup>300</sup> Ibid. p.10.

Thus it is that the trafficking victim will be at the mercy of the traffickers and, far from being able to find work to begin to build a better future, will be forced to labor to pay off debts, as a result of fear of disclosure, violence or reprisals. This labor is likely to be performed without a contract, time off, insurance, access to health or social security services or pay, and often for long hours in the kind of work too often reserved for low-skilled migrant workers: in sweatshops, agriculture, construction work, domestic service, food processing or labor-intensive manufacturing and, of course, for women and older girls, in commercial sex. Such exploitation is at the heart of trafficking.<sup>301</sup>

#### **4.4.3 Prosecution Challenges**

Part of the reason that trafficking has flourished in recent years is because it has been a high profit, low-risk enterprise. Trafficking in human beings is estimated to net profits of \$7 to \$10 billion a year worldwide for those involved.<sup>302</sup> The risks of getting caught are low because traffickers use a combination of coercive mechanisms in order to retain control over the migrant and thereby ensure that they are either unable or unwilling to contact or co-operate with the authorities. These mechanisms include:

##### **4.4.3.1 Threat or Use of Violence**

The implicit or explicit use of violence, including torture and rape, is commonly used by traffickers as a means of ensuring the compliance of migrants. In the long term it is the threat of violence against family or friends in countries of origin which proves the most effective deterrent to those who consider trying to escape or reporting their traffickers to the authorities. Many migrants will endure their situation rather than expose their families to the risk of retaliatory violence.

##### **4.4.3.2 Irregular Immigration Status and Control of Movement**

Traffickers do escort migrants to and from work and lock them in rooms and houses to stop them escaping. However, less obvious mechanisms of controlling people's movements, such as removing their travel documents and forcing them to carry a mobile phone at all times, can be equally effective. Many trafficked people enter the country of destination with false documents or clandestinely. Even if the migrant has entered

<sup>301</sup> "Trafficking in Human Beings, New Approaches to Combating the Problem", ILO, May 2003, p.3

<sup>302</sup> UNICEF UK. End Child Exploitation: Stop the Traffic, London, 2003, p.11.

legally, traffickers normally take away passports and other travel documents so that the migrant cannot prove that they have a right to be in the country.

Migrants believe that if they go to the authorities they will be deported and/or prosecuted, and in many cases these fears are well founded. Traffickers also claim that they control the police, which seems plausible to many migrants, especially if state officials were complicit in trafficking them out of their countries of origin.

#### **4.4.3.3 Debt Bondage**

In order to pay for the ticket to take up the well paying jobs abroad that they have been promised, most migrants will need to borrow money. This money may come from family or friends, loan sharks or directly from the trafficker. When they arrive at their destination and discover that the job they were promised does not exist, they still have a debt to pay back which can be anything between \$1,000 and \$35,000.<sup>303</sup>

Those migrants who have debts to family members back home will feel that they have no alternatives as they cannot return home without the money they owe. Migrants who owe money to the trafficker will be angry at having been tricked and exploited, but may also feel that they still have an obligation to pay back the trafficker and believe that eventually they will be able to make some money in their own right. This expectation may prove false as their initial debt can be inflated through charges for accommodation, food and interest on the loan.

#### **4.4.3.4 Emotional Attachment**

Some traffickers use an emotional attachment that a person has for them as a mechanism for controlling them and coercing them to work against their will, often in prostitution. Traffickers suggest to their “girlfriends” that they travel to another country for a better life and then abuse the trust that has been put in them. In these circumstances, the woman doesn’t immediately identify her “boyfriend” as a trafficker and, as with victims of domestic violence, it may take them a considerable period of time before they are ready to leave the person who is exploiting and abusing them.

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<sup>303</sup> SALT, J., *Current Trends in International Migration in Europe*, Council of Europe, Strasbourg, 2001. Quoted in *International Organization for Migration, World Migration 2003*, Geneva, 2003, p.315.

#### 4.4.3.5 Lack of Alternatives

These coercive mechanisms, combined with the fact that the migrant has no money to live on, let alone pay for a return ticket home, severely curtail their options. When the migrant is also unfamiliar with the country or town they are living in, does not speak the language and has no one to go for help, they often feel that they have no alternative but to submit to the trafficker.

These factors explain how traffickers maintain control over migrants and why the vast majority of trafficked migrants will not go to, or cooperate with, the authorities against their traffickers. Equally problematic is the fact that, even today, few law enforcement or other state officials are aware of what trafficking is and how it operates. This means that they often do not identify people they come into contact with as being trafficked, and consequently they miss the opportunity to take them out of the trafficking cycle and build a case against the trafficker.<sup>304</sup>

For these reasons, cases where a trafficker has been identified and enough evidence gathered to pursue charges against them remain the exception rather than the rule. Even when prosecutions have been brought, the lack of adequate legislation has frequently meant that traffickers are charged under inappropriate offences and, if convicted, receive very light sentences.

Undoubtedly there is a need for legislation that prohibits trafficking for all forms of exploitation and which makes the punishment commensurate with the crime. However, it is important that domestic and regional legislative measures should be fully consistent with the Trafficking Protocol's inclusive definition of trafficking; otherwise traffickers will be able to evade prosecution and groups of trafficked migrants will not be recognized as such.

The Convention on Preventing and Combating Trafficking in Women and Children for Prostitution, which was agreed by the South Asian Association for Regional Cooperation (SAARC)<sup>305</sup> in January 2002, is an example of an initiative which is not consistent with the Protocol. The SAARC Convention only applies to women and

<sup>304</sup> KAYE, Mike, *The Migration Trafficking Nexus*, Anti-Slavery International, November 2003, UK, p.6-7.

<sup>305</sup> SAARC members include Bangladesh, Bhutan, India, the Maldives, Nepal, Pakistan and Sri Lanka.

children and restricts its focus to prostitution, sexual exploitation and fraudulent or child marriages. Consequently, the SAARC Convention, unlike the Trafficking Protocol, will not cover trafficking for labor purposes, such as domestic work or camel jockeys, which are serious problems for several SAARC member states.

#### **4.4.4 The Global Scale of Trafficking**

In most countries, there are few statistics on the scale of trafficking. The most recent global estimates of the scale of trafficking in women and children were prepared in 1998 by the US Government. It was estimated then that between 700,000 and 2 million women and children are trafficked across international borders annually, although the calculations used to arrive at these figures are unclear.

The reasons for the lack of data on trafficking include:

- The underground and illegal nature of trafficking;
- The lack of anti-trafficking legislation in many countries;
- The reluctance of victims to report their experiences to the authorities;
- The lack of government priority given to data collection and research.

##### **4.4.4.1 Africa**

There is growing concern about the growth in trafficking in Africa. In February 2000, Nigeria, the most populous country in the continent, hosted the first pan-African conference on human trafficking. The conference was opened by Nigerian President Obasanjo who reported that 1,178 Nigerian women and children who were believed to be victims of trafficking were deported to the country between March 1999 and December 2000. President Obasanjo said that: "Child labor and women trafficking are very much akin to the slave trade era of the eighteenth and nineteenth centuries and we must take the battle with the same doggedness that we took against the slave trade."

In Central and Western Africa, trafficking is not just limited to women, who are trafficked as domestic servants to Saudi Arabia and to Kuwait from Mali, but includes children as well, a subject which is receiving more and more attention. Children, largely from Mali and Benin, are exploited as workers on plantations, as domestic servants and



in the sex industry, primarily in Nigeria and Côte d'Ivoire, with a number remaining in Burkina Faso.

From Ethiopia, many women migrate to work in the Middle East and the Gulf States. In 1999, it was estimated that there were between 12,000 and 20,000 Ethiopian women working in Lebanon, where average wages are ca. US\$100/month. The Ethiopian women working in the Middle East and Gulf States are, it appears, primarily domestic workers who are in many cases severely abused. From 1997 to 1999, 67 bodies of Ethiopian women were returned from the Middle East and Gulf countries to Ethiopia. Other cases of abuse, suicide and mental and physical traumatization are reported, suggesting very bad conditions and, indeed, as some have suggested, virtual slavery. There are reports of Ethiopian women having been trafficked to Mongolia, where they were forced to work as nude dancers. (Table 4.6)

Origin Countries	Destination Countries
From Ghana	To Nigeria, Côte D'Ivoire, Italy, Belgium, Netherlands, Lebanon, Libya, USA
From Nigeria	To Italy, Belgium, Netherlands
From Ethiopia	To Middle East, Gulf States
From Mali	To Côte D'Ivoire, Nigeria (children), Saudi Arabia, Kuwait (domestic labor)

**Table 4.6 Trafficking Flows from African Countries<sup>306</sup>**

#### 4.4.4.2 Asia

In South-East Asia, again, a great deal of trafficking occurs within the region as well as from the region. Women and children are trafficked not only for work in the sex industry, but also for sweatshop labor, for marriage and for street begging.

<sup>306</sup> IOM Field Missions

Many of the trafficking flows in South- East Asia are familiar to the international community such as the trafficking of women and children from Viet Nam to Cambodia and China, and the trafficking of Vietnamese and Cambodian women to Thailand and Singapore (Table 4.7). For example, Chinese police rescued 123,000 women and children in a national six-month operation against human trafficking in 2000.

From	To	Type
Viet Nam	China	Marriage
Viet Nam	Taiwan	Marriage
Viet Nam	Cambodia	Sex Industry
Cambodia	Internal	Sex Industry
Cambodia (N,NW)	Thailand (children and women)	Primarily begging, also sex industry and domestic labor
Cambodia	Taiwan, Singapore	Sex industry, domestic
Thailand	Internal	Sex industry

**Table 4.7 Trafficking Flows within South-East Asia<sup>307</sup>**

A new trend, however, is the trafficking of women from Eastern Europe to Asia. For example, in 2000, IOM assisted five Romanian and two Moldovan women who, under the belief that they would be dancers, were trafficked to Cambodia. Shortly thereafter, three women from Peru were assisted to return home from South Korea. These women were trafficked far from home, to places where their looks made them exotic and hence more profitable to the traffickers. According to information from our offices, these figures are just a very small indication of the numbers of Eastern European women trafficked to Asia, and this trend is likely to continue.

<sup>307</sup> Ibid.

In South Asia the pattern of trafficking is different from that in South-East Asia. For example, South Asian women are trafficked to the Middle East and Gulf states, often for forced domestic labor. In an effort to curb exploitative practices, Bangladesh has banned the emigration of women as domestic maids.

The trafficking of Bangladeshi children is also a significant problem. Over the last ten years, 3,397 children were trafficked from Bangladesh, of whom 1,683 were boys, mostly under ten years of age. Boys are trafficked to the Gulf States to act as camel jockeys – the lightest possible riders are sought for camel races.

In addition to trafficking from South Asia to the Middle East and Gulf states, trafficking also occurs within the region, generally from the poorest countries in the region, Bangladesh and Nepal, to Pakistan and India, primarily for work in the sex industry.

(Table 4.8)

From	To	Type	Scale
Nepal	India	Sex Industry	5,000-7,000 women and girls/year
Bangladesh	India	Sex Industry	Of 500,000 prostitutes in India, It is estimated that 13,500 are Bangladeshi.
Bangladesh	Pakistan	Sex Industry	4500 women and children/year; 200,000 over 10 years.
Total Bangladeshis trafficked	Middle East		200,000 women and children over last 20 years; 3397 children (1683 boys) in last 10 years
Sri Lanka	Internal	Children begging, labor, sex industry, child soldiers	Affects ca. 100,000 children in Sri Lanka under age of 16.
Sri Lanka		Unclear; some sex industry, domestic labor	2,000-3,000 children/year

**Table 4.8 Trafficking Flows in South Asia<sup>308</sup>**

#### 4.4.4.3 Latin America

In Latin America there is much less data on trafficking available than in other regions in which IOM is active. This does not, however, mean that trafficking is not a significant problem.

For example, in Colombia it is estimated that some ten women a day are trafficked out of the country, with ca. 500,000 women and children currently outside Colombia, trafficked either into sexual exploitation or forced labor. As the internal conflict in

<sup>308</sup> IOM Field Missions

Colombia has worsened, the pool of those who are potentially subject to trafficking has expanded greatly as more and more persons are seeking to leave the country at all costs.

IOM is also increasingly aware that women are being trafficked from Latin America to Central America, the USA and South-East Asia. Recently, for example, IOM provided assistance through its Global Fund for Victims of Trafficking to women who had been trafficked from Peru to South Korea and from Ecuador to Honduras.

#### **4.4.4.4 Eastern Europe and Central Asia**

For many years there have been numerous reports of women being trafficked from Central and Eastern Europe. A recent IOM study highlights that there is also considerable trafficking from the former Soviet republics of Central Asia.

A recent IOM research report on Kyrgyzstan suggests that of the 4,000 women who are estimated to have been trafficked in 1999 from Kyrgyzstan, about one-third were trafficked to or through other CIS countries and the rest were trafficked to the Middle East, China and Europe.

From southern Kyrgyzstan, it is known that women are trafficked primarily to the United Arab Emirates, while from northern Kyrgyzstan; they are trafficked mainly to Russia and Kazakhstan and onward to Europe. From Kazakhstan, the main transit country for Kyrgyz trafficked women en route to the UAE, there are little hard data, yet estimates suggest that at least 5,000 women annually might be trafficked. (Table 4.9)

From	To	Scale	Returns	Type	Recruitment
Kazakhstan (Northern)	Either by charter flight or regular flight to UAE	5000 women in 1999	All of Kazakhstan; In 1999, 25 from Greece, 21 from UAE, 16 from Turkey	Sex industry	Promises of jobs
Kazakhstan (Southern)	By train to Moscow and with falsified Russian passports onward to Greece and other locations			Sex industry	Promises of jobs
Kyrgyzstan	Within CIS (ca. 37%) Middle East, Turkey; Transit via Kazakhstan and Russia	4,000 (IOM/OSCE estimate)	Via Kazakhstan and Russia	Sex industry	
Tajikistan	Middle East, Ukraine, Kyrgyzstan	At least 20 known cases in 2000			

Table 4.9 Trafficking Flows Central Asia<sup>309</sup>

<sup>309</sup> IOM Field Missions

#### 4.4.4.5 Former Soviet Union; Russia, Ukraine, Baltics

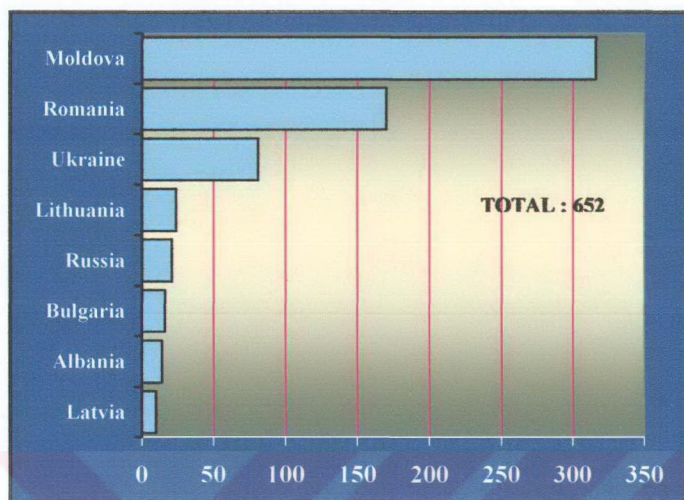
In 1998, the Ukrainian Ministry of Interior estimated that 400,000 Ukrainian women had been trafficked in the past decade, although Ukrainian NGOs and researchers believe the number to be higher. In October 2000 alone, 185 Ukrainian women, nearly two-thirds of whom (120) were in their mid-20s, were returned to Kyiv airport by authorities of other countries. These women were returned from Turkey, Israel and numerous European countries, mainly Germany, Italy, Greece and Switzerland.

In 2000, IOM assisted 81 trafficked Ukrainian women to return to Ukraine – 27 from Bosnia and Herzegovina, 9 from Kosovo, 18 from Germany, 11 from Bulgaria and 8 from Italy, while the NGO La Strada has assisted 44 persons to return in the last two years.

Over the past two years, the Russian Border Guard has intercepted 5,000 Russian women attempting to leave Russia with invalid documents. Their principal intended countries of destination were Turkey, Italy, Germany, Bulgaria and Finland. While these interceptions do not necessarily imply trafficking, Russian women are the third largest group of trafficked women assisted by IOM Bonn (Germany), following Lithuanians and Ukrainians. Fifteen Russian women were assisted to return to Russia in 2000, and 11 in 1999, from just four (of sixteen) states in Germany. In 2000, IOM also assisted 7 women to return from the Balkans to Russia.

In the Baltics, IOM's return data suggest that there is considerable trafficking from Lithuania. A quarter of the trafficked women assisted by IOM Bonn to return home in 2000 were from Lithuania. Figure 4.18 shows that Moldovan and Romanian women make up the majority of trafficked women assisted to return from Western Europe and the Balkans, followed by Ukrainian women. These figures underline the inter-regional nature of trafficking in Central and Eastern Europe. Trafficking does not just occur from East to West, but also from North to South.

IOM assisted return statistics suggest that the pattern of trafficking to Western Europe is different. Neither Moldovans nor Romanians are found in significant numbers among the trafficked returned from Western European countries (Figure 4.20). Only Ukraine is a significant sending country for both Western Europe and the Balkans.



**Figure 4.20 Trafficked Women Returned by IOM in 2000: Main Countries of Origin**

#### 4.4.4.6 The Balkans and Central Europe

In Eastern and Central Europe and the Balkans, IOM has a number of assisted return programmes specifically for victims of trafficking; consequently, much better data is available. The return data below, even if not indicative of the absolute numbers trafficked, indicate the relative significance of various sending countries.

For the Balkans, Moldova, Romania and Ukraine are clearly the three most significant sending countries in terms of scale. IOM return data, as well as anecdotal reports, have confirmed this. Kosovo and Bosnia Herzegovina are primarily receiving countries, while Albania is primarily a country of origin. In Albania, the victims are becoming younger, and the numbers are increasing.

In FYR Macedonia, during just the last five months of 2000, 60 trafficking victims were assisted by IOM Skopje. In Romania, IOM Bucharest reported that, in 2000 alone, it had assisted 205 Romanian women returning to Romania, all of whom had been trafficked to the Balkans. They had been promised jobs as waitresses, but were forced into prostitution.



The conventional wisdom is that young, naïve women and girls, generally from very rural surroundings, are the most at risk group. In this respect, it is very interesting to note that, of the 130 women assisted by IOM Pristine from February 2000 to February 2001, 93 were from urban areas or from the capital cities of their countries (80 were from Moldova, 25 Romania, 12 Bulgaria and 10 from Ukraine).

Another questionnaire administered by IOM Skopje to 56 trafficked women revealed similar results: 66 per cent were from either a big city or capital city. Of those assisted in Kosovo, nearly half (48) had been recruited into trafficking by a woman. Well over half (63) believed they were leaving their homes to take up well paid employment and some 12 per cent were kidnapped. Some 79 per cent of the IOM Skopje group had been promised a well-paid job.

In Hungary, the available figures are based on information from Hungarian consulates abroad. In the first 11 months of 2000, eight Hungarian consulates had requested IOM assistance in helping 97 Hungarian trafficked women. From these figures, the widespread scale of trafficking in Hungarian women becomes evident. In 2000, 33 trafficked women were assisted in Mexico City, 32 in Madrid, 12 in Barcelona, 9 in Bern and 8 in Bonn, Germany.

#### **4.4.4.7 Western Europe**

In Western Europe the pattern of trafficking is different from that in Central and Eastern Europe with victims of trafficking coming from a much wider range of source countries. For example, Nigerian women are trafficked to Italy, Belgium and the Netherlands, Thai and Brazilian women have been trafficked to Great Britain, Ukrainian women to the Balkans and Germany, and smaller groups of women have been trafficked throughout Europe. In Italy, IOM Rome reports that of the estimated 20,000-30,000 irregular female migrants who are believed to enter the sex industry each year, 10-20 per cent (2000-6000) are believed to be trafficked.

In Greece, few data are maintained, yet one study showed that slightly over half of trafficked women are from Russia and Ukraine, with about one-third from the Balkans and just a few per cent from Asia and Africa.

In Belgium, of the 334 persons identified as victims of trafficking in one of the three assistance centers in 1999, the largest group was Nigerians. 20 per cent of victims were men. During 1999 and the ten first months of 2000, IOM Brussels assisted 19 trafficked women to return to their home countries. Returns were organized to a wide range of countries including Nigeria, Ukraine, Thailand and the Philippines.

In the Netherlands, according to data from STV (Stichting tegen Vrouwenhandel – Foundation against Trafficking), there were 288 female victims of trafficking in 1999 and 205 in 1998. Of those, the majority were from Central and Eastern Europe. In Germany, IOM Bonn assisted over 100 victims of trafficking in 2000, from just four states in Germany. Ninety-nine of 107 assisted victims came from the former Soviet Union and Eastern Europe.

#### 4.5 CYBERCRIME

Willie Sutton, a notorious American bank robber of a half-century ago, was once asked why he persisted in robbing banks. “Because that’s where the money is,” he is said to have replied.<sup>310</sup> The theory that crime follows opportunity has become established wisdom in criminology; opportunity reduction has become one of the fundamental principles of crime prevention.

But there is more to crime than opportunity. Crime requires a pool of motivated offenders, and a lack of what criminologists would refer to as “capable guardianship”; someone to mind the store, so to speak.

These basic principles of criminology apply to computer-related crime no less than they do to bank robbery or to shop lifting. They will appear from time to time throughout the following discussion. Not all of these factors are amenable to control by governments alone. It follows, therefore, that a variety of institutions will be required to control computer-related crime.

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<sup>310</sup> KEYES, Ralph, *Nice Guys Finish Seventh: False Phrases, Spurious Sayings and Familiar Misquotations*. Harper Collins New York: 1993, p 16.

#### **4.5.1 Motivations of Computer Criminals**

The motivations of those who would commit computer-related crime are diverse, but hardly new. Computer criminals are driven by time-honored motivations, the most obvious of which are greed, lust, power, revenge, adventure, and the desire to taste "forbidden fruit". The ability to make an impact on large systems may, as an act of power, be gratifying in and of itself. The desire to inflict loss or damage on another may also spring from revenge, as when a disgruntled employee shuts down an employer's computer system, or to ideology, as when one defaces the web page of an institution that one regards as abhorrent. Much activity on the electronic frontier entails an element of adventure, the exploration of the unknown. The very fact that some activities in cyberspace are likely to elicit official condemnation is sufficient to attract the defiant, the rebellious, or the irresistibly curious. Given the degree of technical competence required to commit many computer-related crimes, there is one other motivational dimension worth noting here. This, of course, is the intellectual challenge of mastering complex systems.

None of the above motivations is new. The element of novelty resides in the unprecedented capacity of technology to facilitate acting on these motivations.

#### **4.5.2 Increasing Opportunities for Computer-Related Crime**

Recent and anticipated changes in technology arising from the convergence of communications and computing are truly breathtaking, and have already had a significant impact on many aspects of life. Banking, stock exchanges, air traffic control, telephones, electric power, and a wide range of institutions of health, welfare, and education are largely dependent on information technology and telecommunications for their operation. We are moving rapidly to the point where it is possible to assert that "everything depends on software".<sup>311</sup> The exponential growth of this technology, the increase in its capacity and accessibility, and the decrease in its cost, has brought about revolutionary changes in commerce, communications, entertainment, and education. Along with this greater capacity, however, comes greater vulnerability. Information technology has begun to provide criminal opportunities of which Willie Sutton would never have dreamed.

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<sup>311</sup> EDWARDS, O. "Hackers from Hell", *Forbes*, 9 October 1995, p.182.

Statistics on computer use and connectivity are notoriously evanescent. They are out of date before they appear in print. But the following data give a general sense of the growth and penetration of digital technology in recent years. (Figure 4.21)

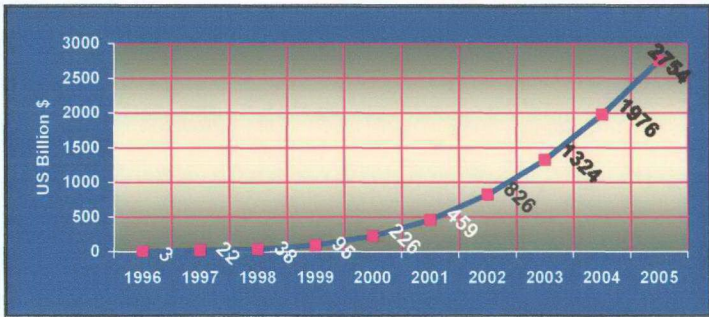


Figure 4.21 E-Commerce Forecasts<sup>312</sup>

One notes that Internet use in general and the volume of electronic commerce are increasing exponentially, but this growth has been uneven across the nations of the world, with industrialized nations experiencing greater use of new technologies. Not only does the increasing connectivity increase the number of prospective victims of computer-related crime, it also increases the number of prospective offenders.

#### 4.5.3 Varieties of Computer-Related Crime

The variety of criminal activity which can be committed with or against information systems is surprisingly diverse. Some of these are not really new in substance; only the medium is new. Others represent new forms of illegality altogether. The following generic forms of illegality involve information systems as instruments and/or as targets of crime. These are not mutually exclusive, nor are the following list necessarily exhaustive.<sup>313</sup>

<sup>312</sup> Real Numbers Behind "Net Profits 1999", Activ Media Research LLC 1999

<sup>313</sup> GRABOSKY, Peter, Computer Crime: A Criminological Overview, Australian Institute of Criminology, 15 April 2000, p.4.

#### 4.5.3.1 Theft of Telecommunications Services

The “phone phreakers” of three decades ago set a precedent for what has become a major criminal industry. By gaining access to an organization’s telephone switchboard (PBX) individuals or criminal organizations can obtain access to dial-in/dial-out circuits and then make their own calls or sell call time to third parties.<sup>314</sup> Offenders may gain access to the switchboard by impersonating a technician, by fraudulently obtaining an employee’s access code, or by using software available on the Internet. Some sophisticated offenders loop between PBX systems to evade detection. Additional forms of service theft include capturing “calling card” details and on-selling calls charged to the calling card account, and counterfeiting or illicit reprogramming of stored value telephone cards.

It has been suggested that as long ago as 1990, security failures at one major telecommunications carrier cost approximately £290 million, and that more recently, up to 5% of total industry turnover has been lost to fraud.<sup>315</sup> Costs to individual subscribers can also be significant. In one case, computer hackers in the United States illegally obtained access to Scotland Yard’s telephone network and made £620,000 worth of international calls for which Scotland Yard was responsible.<sup>316</sup>

#### 4.5.3.2 Communications in Furtherance of Criminal Conspiracies

Just as legitimate organizations in the private and public sectors rely upon information systems for communications and record keeping, so too are the activities of criminal organizations enhanced by technology. There is evidence of telecommunications equipment being used to facilitate organized drug trafficking, gambling, prostitution, money laundering, child pornography and trade in weapons (in those jurisdictions where such activities are illegal). The use of encryption technology may place criminal communications beyond the reach of law enforcement.

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<sup>314</sup> GOLD, Steve, BT Starts Switchboard Anti-Hacking Investigation, Jan 11, 1999. Available on site: <http://www.infowar.com/>

<sup>315</sup> SCHIECK, M., Combating Fraud in Cable and Telecommunications, IIC Communications Topics No. 13. London: International Institute of Communications, 1995, p.44.

<sup>316</sup> TENDLER, S. and Nuttall, N., Hackers Leave Red-Faced Yard with \$1.29m Bill, The Australian, 6 August, 1996, p. 37.

The use of computer networks to produce and distribute child pornography has become the subject of increasing attention. Today, these materials can be imported across national borders at the speed of light.<sup>317</sup> The more overt manifestations of Internet child pornography entail a modest degree of organization, as required by the infrastructure of IRC and WWW, but the activity appears largely confined to individuals.

By contrast, some of the less publicly visible traffic in child pornography activity appears to entail a greater degree of organization. Although knowledge is confined to that conduct which has been the target of successful police investigation, there appear to have been a number of networks which extend cross-nationally, use sophisticated technologies of concealment, and entail a significant degree of coordination.

Illustrative of such activity was the Wonderland Club, an international network with members in at least 14 nations ranging from Europe, to North America, to Australia. Access to the group was password protected, and content was encrypted. Police investigation of the activity, codenamed "Operation Cathedral" resulted in approximately 100 arrests around the world, and the seizure of over 100,000 images in September, 1998.

#### **4.5.3.3 Information Piracy, Forgery, and Counterfeiting**

Digital technology permits perfect reproduction and easy dissemination of print, graphics, sound, and multimedia combinations. The temptation to reproduce copyrighted material for personal use, for sale at a lower price, or indeed, for free distribution, has proven irresistible to many. This has caused considerable concern to owners of copyrighted material. Each year, it has been estimated that losses of between US\$15 and US\$17 billion are sustained by industry by reason of copyright infringement.<sup>318</sup> The Software Publishers Association has estimated that \$7.4 billion worth of software was lost to piracy in 1993 with \$2 billion of that being stolen from the Internet.<sup>319</sup>

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<sup>317</sup> GRANT, A., David, F., and Grabosky, P., *Child Pornography in the Digital Age*, Transnational Organized Crime, 3, 4, 1996. p.171-188.

<sup>318</sup> LEHMAN, Bruce, US, IITF, *Intellectual Property and the National Information Infrastructure: Report of the Working Group on Intellectual Property Rights.*, Washington: US Patent and Trademark Office, 1995.

<sup>319</sup> MEYER, M. and Underwood, A., *Crimes of the Net*, Bulletin / Newsweek, November 15, 1995, p.68.

Ryan<sup>320</sup> puts the cost of foreign piracy to American industry at more than \$10 billion in 1996, including \$1.8 billion in the film industry, \$1.2 billion in music, \$3.8 billion in business application software, and \$690 million in book publishing. According to the Straits Times (8/11/99) a copy of the most recent James Bond Film *The World is Not Enough*, was available free on the Internet before its official release. When creators of a work, in whatever medium, are unable to profit from their creations, there can be a chilling effect on creative effort generally, in addition to financial loss. Digital technology also permits perfect reproduction of documents such as birth certificates or other papers which may be used to construct a false identity, as well as the counterfeiting of currency and other negotiable instruments.

#### 4.5.3.4 Dissemination of Offensive Materials

Content considered by some to be objectionable exists in abundance in cyberspace. This includes, among much else, sexually explicit materials, racist propaganda, and instructions for the fabrication of incendiary and explosive devices. Telecommunications systems can also be used for harassing, threatening or intrusive communications, from the traditional obscene telephone call to its contemporary manifestation in "cyber-stalking", in which persistent messages are sent to an unwilling recipient.

One man allegedly stole nude photographs of his former girlfriend and her new boyfriend and posted them on the Internet, along with her name, address and telephone number. The unfortunate couple, residents of Kenosha, Wisconsin, received phone calls and e-mails from strangers as far away as Denmark who said they had seen the photos on the Internet. Investigations also revealed that the suspect was maintaining records about the woman's movements and compiling information about her family.

In another case a rejected suitor posted invitations on the Internet under the name of a 28-year-old woman, the would-be object of his affections that said that she had fantasies of rape and gang rape. He then communicated via email with men who replied to the solicitations and gave out personal information about the woman, including her address, phone number, details of her physical appearance and how to bypass her home security

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<sup>320</sup> RYAN, M., *Knowledge Diplomacy: Global Competition and the Politics of Intellectual Property*. Washington: Brookings, 1995, p.11.

system. Strange men turned up at her home on six different occasions and she received many obscene phone calls. While the woman was not physically assaulted, she would not answer the phone, was afraid to leave her home, and lost her job.

One former university student in California used email to harass 5 female students in 1998. He bought information on the Internet about the women using a professor's credit card and then sent 100 messages including death threats, graphic sexual descriptions and references to their daily activities. He apparently made the threats in response to perceived teasing about his appearance.

Computer networks may also be used in furtherance of extortion. The Sunday Times (London) reported in 1996 that over 40 financial institutions in Britain and the United States had been attacked electronically over the previous three years. In England, financial institutions were reported to have paid significant amounts to sophisticated computer criminals who threatened to wipe out computer systems.<sup>321</sup> The article cited four incidents between 1993 and 1995 in which a total of £42.5 million were paid by senior executives of the organizations concerned, who were convinced of the extortionists' capacity to crash their computer systems.<sup>322</sup>

One case, which illustrates the transnational reach of extortionists, involved a number of German hackers who compromised the system of an Internet service provider in South Florida, disabling eight of the ISP's ten servers. The offenders obtained personal information and credit card details of 10,000 subscribers, and, communicating via electronic mail through one of the compromised accounts, demanded that US\$30,000 be delivered to a mail drop in Germany. Co-operation between US and German authorities resulted in the arrest of the extortionists.

#### **4.5.3.5 Electronic Money Laundering and Tax Evasion**

For some time now, electronic funds transfers have assisted in concealing and in moving the proceeds of crime. Emerging technologies will greatly assist in concealing the origin of ill-gotten gains. Legitimately derived income may also be more easily

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<sup>321</sup> The Sunday Times, June 2, 1996

<sup>322</sup> DENNING, D., *Activism, Hacktivism, and Cyberterrorism: The Internet as a Tool for Influencing Foreign Policy* 233-4, 2000. Available on site: <http://www.nautilus.org/info-policy/workshop/papers/denning.html>



concealed from taxation authorities. Large financial institutions will no longer be the only ones with the ability to achieve electronic funds transfers transiting numerous jurisdictions at the speed of light. The development of informal banking institutions and parallel banking systems may permit central bank supervision to be bypassed, but can also facilitate the evasion of cash transaction reporting requirements in those nations which have them. Traditional underground banks, which have flourished in Asian countries for centuries, will enjoy even greater capacity through the use of telecommunications.

With the emergence and proliferation of various technologies of electronic commerce, one can easily envisage how traditional countermeasures against money laundering and tax evasion may soon be of limited value. I may soon be able to sell you a quantity of heroin, in return for an untraceable transfer of stored value to my "smart-card", which I then download anonymously to my account in a financial institution situated in an overseas jurisdiction which protects the privacy of banking clients. I can discreetly draw upon these funds as and when I may require, downloading them back to my stored value card.<sup>323</sup>

Offshore coding is another disease. According to Philip Hunter "Offshore coding is booming throughout North America and Europe, with Gartner group predicting that by 2004 80% of US companies will consider outsourcing critical services to foreign-based developers. But as this offshore outsourcing trend accelerates, concerns that enterprises are exposing themselves to undue risk of cyber-terrorism and industrial property theft are increasing."<sup>324</sup>

#### **4.5.3.6 Electronic Vandalism and Terrorism**

As never before, western industrial society is dependent upon complex data processing and telecommunications systems. Damage to, or interference with, any of these systems can lead to catastrophic consequences. Whether motivated by curiosity or vindictiveness

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<sup>323</sup> WAHLERT, G., *Implications for Law Enforcement of the Move to a Cashless Society*, in Graycar A. and Grabosky P. N. (eds.), *Money Laundering*. Canberra: Australian Institute of Criminology. 1996, p.22-28.

<sup>324</sup> HUNTER, Philip, *Security Issues with Offshore Outsourcing: Offshore coding booming, but is it safe? Answer is a qualified yes, but only if you do your homework*, *Network Security*, 8, 2003, p. 5. Available on site: <http://www.sciencedirect.com/science/article/>

electronic intruders cause inconvenience at best, and have the potential for inflicting massive harm.<sup>325</sup>

While this potential has yet to be realized, a number of individuals and protest groups have hacked the official web pages of various governmental and commercial organizations.<sup>326</sup> Attempts were made to disrupt the computer systems of the Sri Lankan Government<sup>327</sup> and of the North Atlantic Treaty Organization during the 1999 bombing of Belgrade.<sup>328</sup>

#### 4.5.3.7 Sales and Investment Fraud

As electronic commerce becomes more prevalent, the application of digital technology to fraudulent endeavors will be that much greater. The use of the telephone for fraudulent sales pitches, deceptive charitable solicitations, or bogus investment overtures is increasingly common. Cyberspace now abounds with a wide variety of investment opportunities, from traditional securities such as stocks and bonds, to more exotic opportunities such as coconut farming, the sale and leaseback of automatic teller machines, and worldwide telephone lotteries. Indeed, the digital age has been accompanied by unprecedented opportunities for misinformation. Fraudsters now enjoy direct access to millions of prospective victims around the world, instantaneously and at minimal cost.

Classic pyramid schemes and "Exciting, Low-Risk Investment Opportunities" are not uncommon. The technology of the World Wide Web is ideally suited to investment solicitations. In the words of two SEC staff: "At very little cost, and from the privacy of a basement office or living room, the fraudster can produce a home page that looks better and more sophisticated than that of a Fortune 500 company".

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<sup>325</sup> HUNDLEY, R. and Anderson, R., Emerging Challenge: Security and Safety in Cyberspace, IEEE Technology and Society Magazine, 14(4), 1995, p.19-28.

<sup>326</sup> RATHMELL, A., Cyber-terrorism: The Shape of Future Conflict? Royal United Service Institute Journal, October, 1997, p.40-46. Available on site: <http://www.kcl.ac.uk/orgs/icisa/>

<sup>327</sup> AP, First cyber terrorist action reported, Nando. 1998. Available on site:

<http://www.techserver.com/newsroom/ntn/info/>

<sup>328</sup> BBC, NATO under 'cyber attack. 1999. Available on site: <http://www.flora.org/flora.mai-not/>

#### 4.5.3.8 Illegal Interception of Telecommunications

Developments in telecommunications provide new opportunities for electronic eavesdropping. From activities as time-honored as surveillance of an unfaithful spouse, to the newest forms of political and industrial espionage, telecommunications interception has increasing applications. Here again, technological developments create new vulnerabilities. The electromagnetic signals emitted by a computer may themselves be intercepted. Cables may act as broadcast antennas. Existing law does not prevent the remote monitoring of computer radiation.

It has been reported that the notorious American hacker Kevin Poulsen was able to gain access to law enforcement and national security wiretap data prior to his arrest in 1991.<sup>329</sup> In 1995, hackers employed by a criminal organization attacked the communications system of the Amsterdam Police. The hackers succeeded in gaining police operational intelligence, and in disrupting police communications.<sup>330</sup>

#### 4.5.3.9 Electronic Funds Transfer Fraud

Electronic funds transfer systems have begun to proliferate, and so has the risk that such transactions may be intercepted and diverted. Valid credit card numbers can be intercepted electronically, as well as physically; the digital information stored on a card can be counterfeited.

Of course, we don't need Willie Sutton to remind us that banks are where they keep the money. In 1994, a Russian hacker Vladimir Levin, operating from St Petersburg, accessed the computers of Citibank's central wire transfer department, and transferred funds from large corporate accounts to other accounts which had been opened by his accomplices in The United States, the Netherlands, Finland, Germany, and Israel. Officials from one of the corporate victims, located in Argentina, notified the bank, and the suspect accounts, located in San Francisco, were frozen. The accomplice was arrested. Another accomplice was caught attempting to withdraw funds from an account

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<sup>329</sup> LITTMAN, J., *The Watchman: The Twisted Life and Crimes of Serial Hacker Kevin Poulsen*. Boston: Little Brown, 1997, p.17-22.

<sup>330</sup> RATHMELL, A., *Cyber-terrorism: The Shape of Future Conflict?* Royal United Service Institute Journal, October, 1997, p.40-46. Available on site: <http://www.kcl.ac.uk/orgs/icsa/>

in Rotterdam. Although Russian law precluded Levin's extradition, he was arrested during a visit to the United States and subsequently imprisoned.<sup>331</sup>

The above forms of computer-related crime are not necessarily mutually exclusive, and need not occur in isolation. Just as an armed robber might steal an automobile to facilitate a quick getaway, so too can one steal telecommunications services and use them for purposes of vandalism, fraud, or in furtherance of a criminal conspiracy. Computer-related crime may be compound in nature, combining two or more of the generic forms outlined above.

In addition, a number of themes run through each of these forms of illegality. Foremost of these are the technologies for concealing the content of communications. Technologies of encryption can limit access by law enforcement agents to communications carried out in furtherance of a conspiracy, or to the dissemination of objectionable materials between consenting parties.<sup>332</sup>

Also important are technologies for concealing a communicator's identity. Electronic impersonation, colloquially termed "spoofing," can be used in furtherance of a variety of criminal activities, including fraud, criminal conspiracy, harassment, and vandalism. Technologies of anonymity further complicate the task of identifying a suspect.

Beyond the aforementioned reluctance of victims to report, the technologies of secrecy and anonymity noted above often make detection of the offender extremely difficult. Those who seek to mask their identity on computer networks are often able to do so, by means of "looping", or "weaving" through multiple sites in a variety of nations. Anonymous remailers and encryption devices can shield one from the scrutiny of all but the most determined and technologically sophisticated regulatory and enforcement agencies. Some crimes do not result in detection or loss until some time after the event. Considerable time may elapse before the activation of a computer virus, or between the insertion of a "logic bomb" and its detonation.<sup>333</sup>

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<sup>331</sup> DENNING, D., *Information Warfare and Security*. Boston: Addison, Wesley, 1997, p. 55.

<sup>332</sup> *Ibid.*

<sup>333</sup> GRABOSKY, Peter, *Computer Crime: A Criminological Overview*, Australian Institute of Criminology, 15 April 2000, p.12-13.

*"Gold is tested by fire, man by gold."*

*Ancient Chinese Proverb*

## **5 MONEY LAUNDERING**

In 4<sup>th</sup> chapter I did not examine money laundering as a kind of organized crime activity, because of its specialty. The main purpose of organized criminals is gathering money. In other words, five major transnational organized crime activities that I explained in chapter 4 were means. All activities of organized crime earn money, and all of the money has to be laundered that it could be useful. Money laundering is a kind of organized crime, too. But all the ways of whole organized crime activities come to an end in a bank.

### **5.1 WHAT IS MONEY LAUNDERING?**

Today money-laundering attracts the most attention when associated with trafficking in illicit narcotics. However enterprising, criminals of every sort, from stock fraudsters to corporate embezzlers to commodity smugglers, must launder the money flow for two reasons. The first is that the money trail itself can become evidence against the perpetrators of the offence; the second is that the money per se can be the target of investigation and action.

Legitimate business corporations, too, might have recourse to the techniques of laundering whenever they need to disguise the payment of a bribe or kickback. In the current climate, where there has been a highly publicized backlash against corporate and public-sector corruption, laundering in bribery cases is likely to attract an increasing amount of attention. In fact even Governments make occasional use of the same apparatus—to dodge reparations, evade the impact of sanctions or covertly fund political interference in some rival state.

Regardless of who actually puts the apparatus of money-laundering to use, or what strange twists and turns it takes, the operational principles are essentially the same. Strictly speaking, money-laundering should be construed as a dynamic three-stage process that requires: firstly, moving the funds from direct association with the crime; secondly, disguising the trail to foil pursuit; and, thirdly, making the money available to the criminal once again with its occupational and geographic origins hidden from view. In this respect money-laundering is more than merely smuggling or hiding tainted funds, although those acts may constitute essential constituents of the process.<sup>334</sup>

Perhaps the most logical way to keep the nature of the process of laundering distinct from some of its constituent parts is to stress the difference between hiding the existence of criminal money and disguising its nature. If criminal money is hidden from the view of the law, for example if it is spent in the form of anonymous cash or moved to a jurisdiction where there are no sanctions against the use of money of illegal origin, it can scarcely be described as "laundered". All that has happened is that criminally derived money has had its existence hidden from the law enforcement authorities of the place where the underlying offence has been perpetrated. However, if the money is given the appearance of legitimate provenance in a place where sanctions against its illegal origins do exist, then and only then can it be said to be truly laundered—it has had its nature disguised.

## 5.2 MONEY LAUNDERING AS AN INTERNATIONAL THREAT

Money laundering has become a global problem as a result of the confluence of several remarkable changes in world markets. The growth in international trade, the expansion of the global financial system, the lowering of barriers to international travel, and the surge in the internationalization of organized crime have combined to provide the source, opportunity, and means for converting illegal proceeds into what appears to be legitimate funds. Money laundering can have devastating effects on the soundness of financial institutions and undermine the political stability of democratic nations. Criminals quickly transfer large sums of money to and from countries through financial systems by wire and personal computers.<sup>335</sup> Such transfers can distort the demand for

<sup>334</sup>Financial Havens, Banking Secrecy and Money Laundering, UN Office of Drug and Crime, Crime Prevention and Criminal Justice Newsletter, Issue 8 of the UNDCP Technical Series.

<sup>335</sup>GALLARDO, Gallardo, Chile Attracts Drug Money for Laundering: Strong Economy, Financial Market Lure Foreign Cartels, Washington Times, Oct. 21, 1997.

money on a macroeconomic level and produce an unhealthy volatility in international capital flows and exchange rates.<sup>336</sup>

A recent and highly publicized case prosecuted in New York provides an example of the ease with which criminals can launder large amounts of money in a short time period.<sup>337</sup> Several individuals and three companies pleaded guilty to federal money laundering charges in that case in connection with a scheme that funneled more than \$7 billion from Russia through a bank in New York over a 2-year period. The laundering scheme involved the transfer of funds by wire from Moscow to the United States and then to offshore financial institutions. Additionally, in 1998, federal authorities in Florida announced arrests in an international fraud and money laundering scheme involving victims from 10 countries, with losses up to \$60 million laundered through two banks on the Caribbean island of Antigua.<sup>338</sup>

Emerging market countries are particularly vulnerable to laundering as they begin to open their financial sectors, sell government-owned assets, and establish fledgling securities markets.<sup>339</sup> The economic changes taking place in the former Soviet States in Eastern Europe create opportunities for unscrupulous individuals where money laundering detection, investigation, and prosecution tools slowly take shape. Indeed, as most emerging markets began the process of privatizing public monopolies, the scope of money laundering increased dramatically.

The international community of governments and organizations that have studied money laundering recognize it as a serious international threat. The United Nations and the Organization of American States (OAS) have determined that the laundering of money derived from serious crime represents a threat to the integrity, reliability, and stability of financial, as well as government, structures around the world.<sup>340</sup> In October 1995, the President of the United States, in an address to the United Nations General

<sup>336</sup> CAMDESSUS, Michel, Financial Action Task Force on Money Laundering, February 10, 1998; <http://www.inf.org/external/nf/speeches/>

<sup>337</sup> HOSENBALL, Mark and Bill Powell, The Russian Money Chase, Newsweek, February 28, 2000, p.42-43.

<sup>338</sup> SKIPP, Catherine, Six Arrested in Global Fraud, Money-Laundering Case: Group Allegedly Bilked victims of \$60 Million, Washington Post, May 8, 1998, sec. A, p. 2.

<sup>339</sup> KROLL, Stephen R., Money Laundering: A Concept Paper Prepared for the Government of Bulgaria, International Law 28, 1994, p.835.

<sup>340</sup> United Nations Declaration and Action Plan Against Money Laundering, United Nations Resolution S-20/4 D (June 10, 1998); and the Ministerial Communiqué, Ministerial Conference concerning the Laundering of Proceeds and Instrumentalities of Crime, Buenos Aires, Argentina (December 2, 1995). Available on site: [http://www.oecd.org/fatf/Initiatives\\_en.htm](http://www.oecd.org/fatf/Initiatives_en.htm)

Assembly, identified money laundering, along with drug trafficking and terrorism, as a threat to global peace and freedom. Immediately thereafter, he signed Presidential Directive 42, ordering US law enforcement agencies and the intelligence community to increase and integrate their efforts against international crime syndicates in general and against money laundering in particular.<sup>341</sup>

Money laundering threatens jurisdictions from three related perspectives. First, on the enforcement level, laundering increases the threat posed by serious crime, such as drug trafficking, racketeering, and smuggling, by facilitating the underlying crime and providing funds for reinvestment that allow the criminal enterprise to continue its operations. Second, laundering poses a threat from an economic perspective by reducing tax revenues and establishing substantial underground economies, which often stifle legitimate businesses and destabilize financial sectors and institutions. Finally, money laundering undermines democratic institutions and threatens good governance by promoting public corruption through kickbacks, bribery, illegal campaign contributions, collection of referral fees, and misappropriation of corporate taxes and license fees.<sup>342</sup>

### 5.3 THE SIZE OF THE PROBLEM

How much money are we talking about? The International Monetary Fund estimates global money laundering at \$600 billion to \$1.5 trillion a year. A rough, working figure would be on the order of a trillion dollars a year. Breaking it into its component parts reasonably produces a picture as follows: some \$500 billion a year in the criminal component, \$20 to \$40 billion in the cross-border movement of corrupt money, and another \$500 billion or so in the tax-evading component.

Furthermore, it is likely that half of the total, \$500 billion, comes out of developing and transitional economies, countries with often unstable governments, weak legal systems and 80 percent of the world's population. This is largely a permanent outflow. Little of it, perhaps less than ten percent, returns to such countries as foreign direct investment,

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<sup>341</sup> U.S. Department of State, *International Crime Control Report, Money Laundering and Financial Crimes, 1999*, p.599.

<sup>342</sup> MCCAFFREY, Barry R., *Efforts to Combat Money Laundering, Loyola of Los Angeles International and Comparative Law Journal* 791, no. 20, 1998.



masquerading under an acquired foreign identity. The streams of money from poorer countries parked in western accounts have now accumulated to trillions of dollars.<sup>343</sup>

However, some figures have been developed which give some indication of the extent of the problem. In 1998 the UN estimated drug trafficking world-wide at US\$ 600 billion, much of which would be laundered. Other estimates have been made that US\$1.5 trillion to US\$3 trillion of "dirty money" is placed into world financial systems each year, or roughly 2-3% of global GDP.<sup>344</sup> While some of this money would be spent or reinvested in criminal activities, it may be assumed that a portion of this amount would be amassed and continue to increase the total world stock of assets acquired with illicit funds by organized crime groups.

One of the few detailed efforts made to quantify money laundering in a particular country is found in a report by the Australian Transaction Reports and Analysis Centre (AUSTRAC). A variety of methods were used to determine an estimated range for money laundering in Australia. The report concluded that a range of between a \$1.0 billion and a \$ 4.5 billion would appear to be a sensible interpretation of the information provided, with some confidence that the most likely figure is around \$3.5 billion.<sup>345</sup>

Anecdotal evidence from individual investigations would also suggest that money laundering is occurring at significant levels. An investigation of an Australian narcotics ring revealed a \$ 77 million was laundered through financial institutions in a number of countries. Another investigation into a Chinese based fraud syndicate revealed a \$ 60 million laundered through Australian financial institutions. A US DEA operation in 1994 revealed a scheme which was estimated to have laundered approximately US\$ 1.2 billion through Dominica Republican money changers and Puerto Rico during 1993.<sup>346</sup>

What might be concluded then? Money laundering would certainly seem to be a significant problem amounting to hundreds of billions of dollars a year and part of those funds would be adding to an international stock of illicit cash and assets purchased with proceeds of crime, thereby increasing the strength of a number of transnational

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<sup>343</sup> BAKER, Raymond, *Dirty Money and Its Global Effects*, International Policy Report, January 2003, p.3.

<sup>344</sup> WALKER, John, Consulting Services, *Modeling Global Money Laundering Flows*, 1998. p.74.

<sup>345</sup> WALKER, John, Consulting Services, *Estimates of the Extent of Money Laundering in a through Australia* AUSTRAC, September 1995, p. 39.

<sup>346</sup> *The Supply of Illicit Drugs to the United States* National Narcotics Intelligence Consumers Committee, August 1995, p.77.

organized crime groups. It can also be concluded that if the above estimates are accepted, money laundering globally now presents not only a problem for criminal justice systems but also a macroeconomic problem.<sup>347</sup>

Figure 5.1 summarize the estimated international flows of laundered money at the global level. Note that, in these figures, flows of money generated and laundered in the same region of the world may actually involve international transfers.<sup>348</sup>

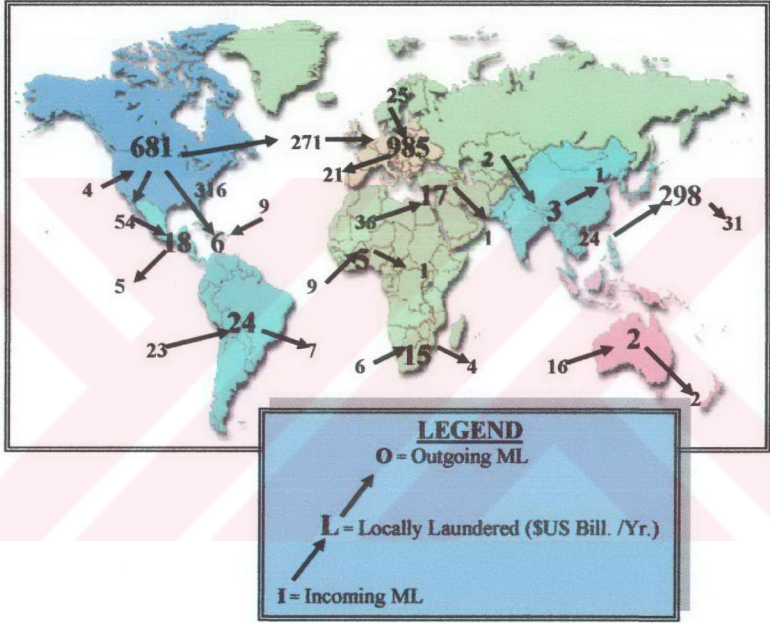


Figure 5.1 Estimates of the Major Money Laundering Flows Around the World.

<sup>347</sup> MCDONELL, Rick, Money Laundering Methodologies and International and Regional Counter-Measures, The conference Gambling, Technology and Society: Regulatory Challenges for the 21st Century, Sydney, 8 May 1998.

<sup>348</sup> Ibid.

## 5.4 THE MONEY LAUNDERING CYCLE

The intent of money laundering process is to convert illicit cash to a less suspicious form, so that the true source or ownership is concealed and a legitimate source is created. This process consists of three stages: Placement, Layering and Integration. Placement involves the physical disposal of cash being the proceeds of crime by depositing it with a financial institution. The second stage of layering transfers these deposited funds among various accounts, disguising the origin of the funds through a series of complex transactions. Finally, integration shifts these funds to legitimate individuals or front companies that have tentative links to the criminals. Only upon integration can the criminals draw upon the money for legitimate spending or financing future criminal acts. (Figure 5.2)

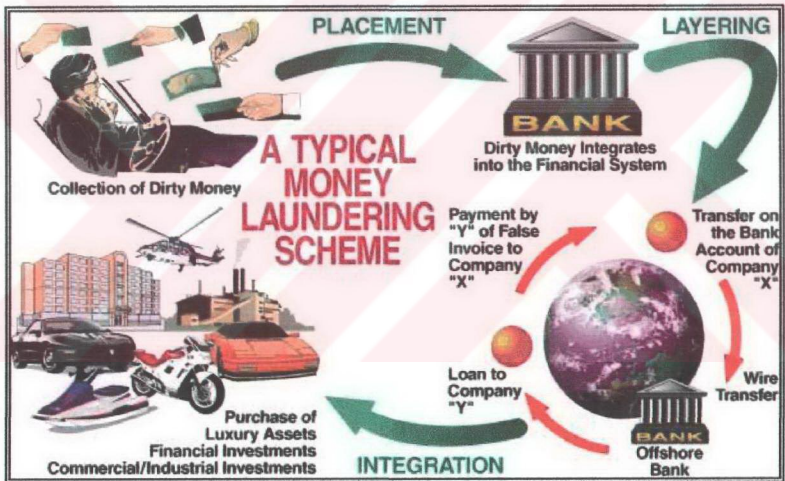


Figure 5.2 Money Laundering Stages<sup>349</sup>

### 5.4.1 Placement

The first task is to move the funds from the country of origin. This can be done by either sidestepping or working through the formal banking system. If the decision is made to sidestep the system, the most popular method appears to be shipping money abroad in

<sup>349</sup> [http://www.unodc.org/unodc/en/money\\_laundering\\_cycle.html](http://www.unodc.org/unodc/en/money_laundering_cycle.html)

bulk cash. Sometimes items like diamonds or gold or even precious stamps and other collectibles are also used; the criterion is that they be of high value in relation to bulk, making them physically easy to smuggle as well as relatively easy to reconvert into cash at the point of destination. However, cash is clearly far more important than valuable commodities.

Although an increasing number of countries demand the reporting of the export of all monetary instruments, the record of success is not very encouraging. Bulk cash, particularly in large denomination bills, can still be easily carried out of a country in hand-luggage. While the United States \$100 bill is the favorite, others exist that could be useful provided the currency is well-known and universally accepted. The largest denomination Euro and the Swiss franc notes would qualify whereas the Singapore dollar, available in \$10,000 denominations, would probably be used only rarely and within a limited geographic area. Even if controls on hand luggage are tightened, bulk cash can be easily moved through checked personal luggage, particularly if the passenger travels by ship. And of course the money can be stuffed into bulk commercial containers whose sheer volume defeats any systematic efforts to monitor them. To the extent detection does occur, it is the result of either blind luck or informants' tips. Clearly the problem of currency smuggling will increase as world trade grows, borders become more open to both people and goods and currencies become more convertible.

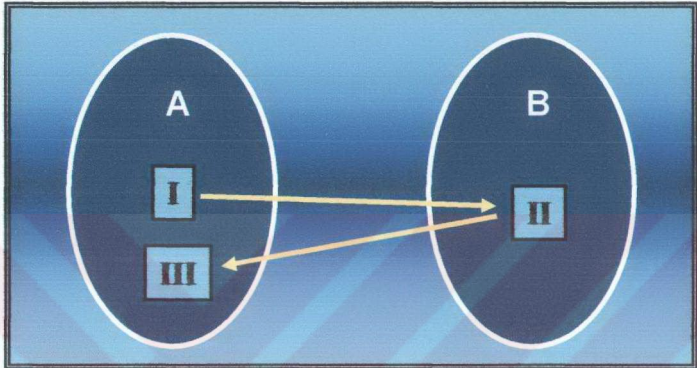
The person whose funds are to be moved does not have to assume the risk personally. There are professional courier networks that will handle the job and guarantee delivery. Unfortunately, sometimes couriers possess diplomatic passports, so they and their effects are at least partially immune from search and, in any event, such couriers may be subject to little more than deportation if caught. There is open traffic in diplomatic credentials that should be curbed.

Various lateral transfer schemes are also used to export money. These work through compensating balances, a simple principle that has long been used in legitimate trade, particularly when dealing with countries that have exchange controls and/or legally inconvertible currencies.<sup>350</sup>

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<sup>350</sup> Financial Havens, Banking Secrecy and Money Laundering , Double issue 34 and 35 of the Crime Prevention and Criminal Justice Newsletter, Issue 8 of the UNDCP Technical Series, 1998.

Consider the example: Assume Business I in country A owes \$X to Business II in country B. Assume Business II in country B owes \$X to Business III in country A. To settle the debts without compensating balancing: Business I would ship \$X to Business II. Business II would ship \$X to Business III. (Figure 5.3)



**Figure 5.3 An example of Money Transfer**

This requires two international transfers and four distinct withdrawal and deposit transactions.

To settle the debts with a compensating balance all that happens is that Business I in country A settles the debt owed by Business II to Business III in country A. There are only two banking transactions, from the account of Business I to the account of Business II and no international transfers.

Obviously in reality the mechanics are much more complex, the sums do not exactly balance and the exchanges are usually multilateral. Still, the principle remains intact. The practice is commonplace, and there are even financial brokers who specialize in arranging such transfers.

However, the compensating balance principle is also the basis of operation of the so-called underground banking systems that are becoming more and more popular today as ethnic diasporas grow. Someone in country A seeking to move funds abroad contacts

the underground banker and deposits a certain sum. The underground banker sends a coded message to his/her correspondent abroad to credit the equivalent of the deposited sum (less the fee) to a foreign bank account held in the name of the person seeking to move the money out of country A. No actual funds have to move. And the offsetting transaction occurs when someone else abroad attempts to move money back into country A. It is neat and untraceable, particularly when cemented by bonds of extended family trust typical of some ethnic communities living and conducting business abroad.

Nonetheless, it cannot be stressed too often that, like so much "informal finance", techniques of underground banking really have benign origins. They were evolved for perfectly legitimate purposes, reflect institutional underdevelopment and/or unfamiliarity with or lack of confidence in the formal banking systems and have been, in some cases, unfairly targeted by law enforcement officials for criticism. It is impossible to avoid the conclusion that ethnic and cultural misunderstandings, even on occasion prejudice, and have played a role in some of the adverse attention focused on these so-called underground banking systems. They can indeed be used for criminal purposes, but so too can life insurance companies and nursing homes.<sup>351</sup>

When the decision is made to send criminal money abroad using the formal banking system, additional precautions are required. Any large cash deposit potentially attracts attention. There are also jurisdictions that subject large cash deposits to some form of additional mandatory scrutiny. This can vary from the United States model of automatic reporting of sums above a certain threshold to others that rely instead on suspicious transaction reports.

Enormous backlogs of information are generated by cash transaction reporting systems, a problem that will be only partially solved by electronic filings on the Australian model. Ultimately cash deposit reports, whether in paper or in electronic form, are of little use unless there are not only the resources to process them but also personnel who know what they are looking for. Yet, to date knowledge about the nature, structure and operation of illegal markets remains so rudimentary that there is little logic to piling up raw information until some of those gaps in understanding are addressed.

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<sup>351</sup> CASSIDY, William, Fei-ch'ien flying money: a study of the Chinese underground banking system, address to the Twelfth Annual International Asian Organized Crime Conference, 26 June 1990.

Equally notorious, in response to the cash transaction reporting systems, are the multiple schemes launderers have devised to get around the reporting rules: prior conversion of cash to checks through formal or informal check-cashing services; breaking cash deposits down to sums below the reporting threshold; securing an exemption from reporting; and even bribing bank staff.

However, whichever system of formalized scrutiny, if any, is in operation, one rule remains. Large deposits (whether in cash or in checks) with no apparent justification potentially attract attention. Unlike the situation even a decade ago, so much public attention has been focused on instances when banks accepted a huge bundle of cash from unknown parties and either wired it abroad or converted it into bearer instruments, this avenue is likely going to be used less often. Successful money-laundering today probably requires working through a front business, one that has a credible explanation for its level of deposits and—something vital when the next stage begins—an equally credible explanation for moving the funds abroad.<sup>352</sup>

Such a company would be one that engages regularly in international trade in goods and/or services. A clever laundering operation would assure that any "payments" it makes to supposed suppliers abroad are in odd rather than round sums and that those sums are not repeated. It might also divide the payments between "suppliers" in several countries, alternate between wire and written forms of remittance and ensure that the nominal recipients appear to have sound business reputations. Although services are the best, for there are no clear rules against which to check the prices being charged to the domestic company, there is some evidence that trade in physical goods can be used as cover for criminal money transfers too. Recent investigations by two university professors in Florida revealed huge discrepancies in the prices at which commodities enter and leave the United States when compared to international norms and even from country to country. Although it is likely that most such price discrepancies are due to tax evasion or capital flight, there is likely to be an element of money-laundering as well.<sup>353</sup>

The above actually points to a potentially fatal weakness in money-laundering schemes that may not have been sufficiently exploited. The usual presumption of law

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<sup>352</sup> NAYLOR, R. T., *The Big Wash: An Enquiry into the History and Practice of Money-Laundering*, Unpublished Manuscript, 1997, Chap. 2-5.

<sup>353</sup> Dirty linen: Mexico, *The Economist*, vol. 343, No. 8017, 17 May 1997, p. 36-37.

enforcement is that, once the money is inside the banking system, most of the battle is lost. Accordingly, much of the regulatory effort is put into building, if not barriers, then at least screening mechanisms against that happening. However, money inside the domestic banking system is not yet money inside the international banking system. And there is an asymmetry in the types of front companies needed for these two distinct transactions. If the best cover for placing deposits inside the domestic financial system is a cash-based retail service business, the best cover for sending money abroad is a company that engages in international trade in goods and services. There are serious grounds for questioning why a company engaged in domestic retail services should be sending significant sums abroad, especially if done on a regular basis. And there are serious grounds for wondering why a company engaged in international trade in goods and services (which are, by definition, a wholesale operation) should have large sums of cash deposited in its domestic accounts. Such anomalies can serve as a red flag to alert bank staff that something requires further explanation.

#### 5.4.2 Layering

Once the money is abroad, it is time for stage two of the laundering cycle, moving it through the international payments system to obscure the trail. Despite a myriad of complications, there is a simple structure that underlies almost all international money-laundering activities during this stage of the process.

Contrary to popular stereotypes, only the rankest of amateurs would arrive at the front door of a Swiss bank with a suitcase of high-denomination United States bank notes and demand to open a "numbered" account.<sup>354</sup> That would undoubtedly both begin and end the would-be launderer's life of crime. To be sure, Switzerland has not lost all of its appeal as a financial haven. It is stable politically; the Swiss franc is strong and well-respected; the country plays a major role in the world gold market; and it has a variety of banking institutions. The latter range from powerful multi-functional institutions that are well-represented all over the world and that combine commercial and investment banking with fund management and stock brokerage services to small, discrete private banks that specialize in handling the affairs of the "high net-worth individual".

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<sup>354</sup> FAITH, Nicholas, *Safety In Numbers: The Mysterious World of Swiss Banking*, New York, Viking Press, 1982, p.66.



Over the last two decades, however, the Swiss authorities have progressively reduced the protection afforded by the country's famed secrecy laws, signed treaties of cooperation in criminal investigation with other countries and moved actively and rigorously to freeze suspect accounts in everything from embezzlement to insider trading to drug trafficking cases. Switzerland also made money-laundering a crime *per se*. Undoubtedly, given the size and historical reputation of the Swiss financial system, much criminal money still finds refuge there, but it cannot be said that Switzerland rolls out the welcome mat for drug money (that deriving from tax and exchange control evasion is quite another matter), and most such money that does arrive in Switzerland probably now is subject to a pre-washing elsewhere.

Well before a reasonably sophisticated money launderer will attempt to establish a bank account in any haven jurisdiction, there are preliminary steps to be taken. Bank secrecy can often be waived in the event of a criminal investigation. It is for that reason criminal money is normally held not by an individual (even with a "numbered" account) but by a corporation. Prior to the money being sent to Austria, Luxembourg, Switzerland or any other financial haven, the launderer will probably call on one of the many jurisdictions that offer an instant-corporation manufacturing business. The Cayman Islands, the British Virgin Islands, Liberia and Panama are among the favorites, although there are many others that sell "offshore" corporations that are licensed to conduct business only outside the country of incorporation, are free of tax or regulation and are protected by corporate secrecy laws. Preferably for the launderer, such a company will already have a history of actual activity to increase the appearance of legitimacy. Once the corporation is set up in the offshore jurisdiction, a bank deposit is then made in the haven country in the name of that offshore company, particularly one whose owner's identity is protected by corporate secrecy laws. Thus, between the law enforcement authorities and the launderer, there is one level of bank secrecy, one level of corporate secrecy and possibly the additional protection of client-attorney privilege if a lawyer in the corporate secrecy haven has been designated to establish and run the company.<sup>355</sup>

In addition, many laundering schemes devise yet a third layer of cover, that of the offshore trust. There are many perfectly legal reasons for the establishment of offshore trusts, some rather dubious ones (dodging decisions of tax or divorce courts being the

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<sup>355</sup> GOLDSTEIN, Arnold, *How To Protect Your Money Offshore*, Deerfield Park, Florida, Garrett Publishing, 1996, p.34.

most common) and a few clearly illegal ones. The advantage of a trust is that the owner of assets conveys that ownership irrevocably to the trust and therefore prevents those assets from being seized by creditors. Offshore trusts are usually protected by secrecy laws and may have an additional level of insulation in the form of a "flee clause" that permits, indeed compels, the trustee to shift the domicile of the trust whenever the trust is threatened—by war, civil unrest or even by probes from law enforcement officers. The obvious disadvantage is the nominal loss of control by the owner: in theory a deed of trust is irrevocable, and the former owner can influence, but can not control, the actions of the trustee.<sup>356</sup>

In the past Liechtenstein was a favorite place in which to set up such a trust. In fact, it was probably the only jurisdiction that is not part of the English common law tradition to have such facilities. The Liechtenstein *anstalt*, unlike most trusts, is a commercial entity capable of doing business; it can make the transferor of the assets the ultimate beneficiary, thereby undermining the notion that the conveyance is irrevocable. Today, however, the very term *anstalt* in a company name can serve as yet another red flag for revenue authorities and law enforcement officers. "Asset-protection trusts" offered by many former and current British dependencies are an equally serious problem. If suitably set up, they have all of the advantages of the Liechtenstein model. Typically, assets are first conveyed to an offshore company; control of the company is transferred to the offshore asset-protection trust; the person transferring the assets arranges to be appointed manager of the company; and the trust deed may stipulate that the transferor of the assets has the right to buy them back again for a nominal sum, thereby respecting the letter of the law of trusts while undermining its spirit.

Whatever the exact form it takes, the offshore asset-protection trust creates yet another layer of secrecy and security in a money-laundering scheme, and it can be complemented by yet more tricks and devices. Companies can be capitalized with bearer shares so there is no owner on record anywhere—the person who physically possesses the share certificates owns the company. There can be multiple systems of interlocking companies, all incorporated in different places, forcing law enforcement officers to proceed from jurisdiction to jurisdiction peeling them away like layers of an onion. There can be multiple bank transfers, again from country to country, where each

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<sup>356</sup> LORENZETTI, James, *The Offshore Trust: A Contemporary Asset Protection Scheme*, *Journal of Commercial Law Review*, vol. 102, No. 2, 1997.

transfer is protected by secrecy laws that must be breached one at a time. The funds transfer trail can be broken on occasion with the launderer picking up the money in cash from a bank in one place, redepositing it in a bank somewhere else and then wiring it to yet a third location. The trail can be further complicated if the launderer purchases his/her own "instant bank" in one of several jurisdictions that offer such facilities and makes sure that his/her bank is one of those through which the money passes, then closes the bank and/or destroys the records.<sup>357</sup>

Once the funds have been moved through the international financial system sufficiently to make their origins extremely difficult, if not impossible, to trace, it is time to move them home again, to be enjoyed as consumption or employed as capital.

### 5.4.3 Integration

Many techniques can be used for this stage. Ten (among many) possibilities are listed below:<sup>358</sup>

Funds can be repatriated through a debit or credit card issued by an offshore bank. Withdrawals from ATM machines or expenditures using the card can be settled either by automatic deduction from a foreign bank account or by the card holder periodically transferring the required funds from one foreign bank account to another. Debit cards are superior from the point of view of automaticity and confidentiality. However, even an ordinary credit card can be turned into a debit card by being secured through the deposit of collateral with the issuing bank. Although secured credit cards were initially intended to give persons who were deemed bad credit risks the advantages of a credit card, such as reserving hotel rooms or renting cars, they can also be very useful to anyone seeking to lower their financial profile.

Bills incurred in the place of residence can be settled by an offshore bank or even more discretely by an offshore company. In fact, persons seeking to use at home illegal money held abroad need not even bother to work through their own offshore accounts and shell companies. There are firms that advertise their willingness to handle all of their clients' major payments—utility bills, regular car or mortgage payments etc. The

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<sup>357</sup> NAYLOR, R. T., *The Big Wash: An Enquiry into the History and Practice of Money-Laundering*, Unpublished Manuscript, 1997, Chap. 4.

<sup>358</sup> *Ibid.* Chap.5.

client makes a deposit from his/her offshore account to that firm's offshore account and sends bills or payment instructions to the firm.

One method, so far known to be used only for transactions between Mexico and the United States, is through certain kinds of bank drafts. These are either sold outright by a bank or issued to account holders against the security of their current balances. Prior to May 1997, when it became mandatory for banks and other financial entities in Mexico to request identification from anyone who buys a draft for an amount that exceeds or equals \$10,000 or its equivalent in any other currency, the Mexican drafts did not show the name of a payee yet were guaranteed by the bank, making them virtually as good as cash. They could be redeemed by banks in the United States with a correspondent relationship with the issuing institution, even if the individual cashing the draft had no account. Historically, they were used for transactions between people like Mexican farmers who had limited or non-existent credit ratings and merchants in the United States. They could also be used for more nefarious purposes, however. Someone might smuggle cash to Mexico, deposit it in a United States dollar account, draw out a draft, mail or carry it into the United States, deposit or cash it in a United States bank—with no requirement under United States law for the bank to report the transaction. Once cashed, the draft returned to Mexico, and the issuing bank wired payment to the cashing bank, often in a bulk payment to cover a number of drafts at the same time, thus further obscuring the trail. The same kind of transaction could well be occurring in many countries using drafts issued by the banks of many other countries.<sup>359</sup>

Visibility can be reduced through the use of a payable-through account. Instead of securing a license to operate in one country, a foreign bank can open a correspondent master account with a bank in the host country and allow its clients to draw checks on the bank's master account. The account remains legally in the name of the foreign bank. The dangers of these accounts have been highlighted in particular by the United States authorities.

Money can be brought back disguised as casino winnings. Money is wired from the criminal's offshore bank account to a casino in some tourist centre abroad. The casino pays the money in chips; the chips are then cashed in; and the money is repatriated via

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<sup>359</sup> FinCEN (Financial Crimes Enforcement Network) in *Trends: A Bulletin of Financial Crimes and Money-laundering*, May 1993, p.10.

bank check, money-order or wire transfer to the criminal's domestic bank account where it can be explained as the result of good luck during a gambling junket. This, of course, is a trick usable only sporadically: "winning" too often will attract attention.

Another option is for the criminal to use international real estate flips. Here the criminal arranges to "sell" a piece of property to a foreign investor who is, in reality, the same criminal working through one or several offshore companies. The "sale" price is suitably inflated above acquisition cost, and the money is repatriated in the form of a capital gain on a smart real estate deal. If the property is a personal dwelling, there is, in some fiscal jurisdictions, an added bonus—the capital gains are tax-free. Like the casino caper and for the same reasons, international real estate sham sales can only be used on an occasional basis.

Bogus capital gains on options trading is preferable to real estate, as it is perfectly normal for someone to trade securities regularly. In fact, frequent securities transactions, each "making" modest capital gain, are less likely to attract unwanted attention than the occasional major gain. The trick is to "buy" and "sell" a currency, commodity or stock option back and forth between foreign and domestic companies. The onshore company records a capital gain and the foreign one a capital loss. This works even better if the foreign company is incorporated in a place with secrecy laws. Such a laundering trade is perfectly safe since the domestic authorities cannot audit the books of the offshore entity.

For truly regular income flows, the criminal might arrange to collect the money in the form of income rather than gambling receipts or capital gains. Personal income is easy to arrange. The criminal simply has one or more of his/her offshore companies hire him/her as an employee or, better, as a consultant. In effect the criminal can pay himself/herself a handsome salary or generous consulting fees, as well as possibly a company car or a condominium in a prime location, out of the offshore nest-egg. Although this usually results in the highest personal tax rate, it can be partially obviated by having as much of the consulting fees as seems credible paid to cover expenses, which are then deducted from the taxable component of the income.

The criminal might also choose to repatriate the money as business income. It is merely a matter of setting up a domestic corporation and having it bill an offshore company for

goods sold or services provided. If commodities are the chosen vehicle, it is safer that they actually exist and are overvalued (if on the way out) or undervalued (if on the way in), rather than completely fake. It is easier to argue with customs inspectors who might check the shipment about the declared value of a good than it is to try to explain a shipment of empty crates. Once abroad the goods can be dumped on the black market or into the sea. The same can happen with services, in this case without the need to be bothered with physical inventory.

Probably the neatest solution of all is to bring the money home in the form of a business "loan". The criminal arranges for money held in an offshore account to be "lent" to his/her on-shore entity. Not only is the money returning home in completely non-taxable form, but it can be used in such a way as to reduce taxes due on strictly legal domestic income. Once the "loan" has been incurred, the borrower has the right to repay it, with interest, effectively to himself or herself. In effect, the criminal can legally ship even more money out of the country to a foreign safe haven while deducting the "interest" component as a business expense against domestic taxable income. With the employment of various "loan-back" techniques, the money-laundering circle is not merely closed; it can actually be increased in diameter.

## **5.5 ORGANIZED CRIME GROUPS AND DIRTY MONEY SOURCES IN MONEY LAUNDERING SYSTEM**

Organized crime is perhaps best understood as the continuation of commerce by illegal means, with transnational criminal organizations as the illicit counterparts of multinational corporations. During the 1990s, transnational organized crime—and the related phenomena of illegal markets and money laundering—were transformed from an unrecognized problem to an issue taken seriously by governments, both individually and collectively. Indeed, there has been a growing sensitivity to the problem and increased willingness to address transnational organized crime, illegal markets, and money laundering as serious challenges to international security and governance rather than simply domestic issues.<sup>360</sup> Also fueling crime, illicit markets, and money laundering the growing efforts at governance in this area is the recognition that in some cases, governments themselves are part of the problem. This is not simply a competition between sovereign states and what James Rosenau termed "sovereignty-free actors"; in

<sup>360</sup> WILLIAMS, Phil, *Crime, Illicit Markets, and Money Laundering*, 2001, Chap.3, p. 106.

some cases, state structures and institutions have been neutralized, compromised, or coopted by criminal organizations.<sup>361</sup> This makes collective governance simultaneously more important and more difficult.

### 5.5.1 Criminal Groups as a Part of Dirty Money

Criminal organizations have a long history. The Sicilian Mafia developed during the nineteenth century, providing protection, contract enforcement, and debt collection in a region where the Italian government was weak. The criminal activities of Chinese triads can be traced back to the early part of the twentieth century. Initially established as secret societies to oppose the Qing dynasty, the triads lost their political rationale with the collapse of the dynasty and the establishment of the Republic of China in 1912. Whereas some members entered politics, "those who were not absorbed by the political machine returned to the well-established Triad organizations for power and status. However, without a patriotic cause to pursue, the secretive and anti-establishment nature of the organizations helped transform them into criminal groups."<sup>362</sup>

For its part, organized crime in the United States has witnessed a pattern of ethnic succession with Irish, Jewish, and Italian criminal organizations enjoying periods of dominance before gradually giving way to the current kaleidoscope of organizations, many of which are ethnically based. The "new ethnic mobs," as they have been termed, include: Colombian, Dominican, and Mexican drug trafficking groups; Russian émigré networks involved in a wide variety of criminal activities, ranging from car theft to health-care and insurance fraud and stock manipulation; Nigerian criminal networks engaged in drug trafficking and imaginative fraud schemes; Chinese criminal entrepreneurs smuggling illegal aliens and operating protection rackets within their own community; roving Vietnamese gangs engaged in home invasions; and Albanian organizations adept at supermarket robberies.<sup>363</sup> In effect, the United States has become host to foreign criminal organizations, attracted by large illicit markets and lucrative opportunities.

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<sup>361</sup> ROSNEAU, James, *Turbulence in World Politics: A Theory of Change and Continuity*, Princeton, N.J.: Princeton University Press, 1990, p.67.

<sup>362</sup> KO-LIN, Chin, *Chinese Subculture and Criminality: Non-traditional Crime Groups in America*, New York: Greenwood Press, 1990, p. 9.

<sup>363</sup> KLEINKNECHT, W., *The New Ethnic Mobs: The Changing Face of Organized Crime in America*, New York: The Free Press, 1996, p.81.

Organized crime has long had a transnational dimension—a characteristic that becomes even more important in an interdependent world. During prohibition in the United States, for example, liquor was not only manufactured illegally in the United States but also brought from Europe and Canada. Similarly, the drug trafficking industry had a transnational dimension almost from the outset, simply because those countries that historically were the main growers, processors, or manufacturers of narcotic and psychotropic substances were not the major consumers. Even more striking, smuggling—an inherently cross-jurisdictional or transnational activity—is one of the world's oldest professions, based as it is on differential opportunities for profit. (It has long been argued, for example, that the Caribbean could better be described as the sea of contraband.)<sup>364</sup>

Trafficking, of course, has not been limited to goods: trafficking in women for commercial sex also has a long history. In the late nineteenth century, for example, Argentina and Brazil emerged as lucrative markets for traffickers in women. Those who controlled the business were predominantly French, Jewish (from Poland and Russia), and Italian.<sup>365</sup> As one of the predecessors of today's nongovernmental organizations (NGOs) lamented in 1903: "The white-slave traffickers are in close contact in all parts of the world, in great cities as in small villages . . . in order to benefit fully from the techniques of the traffic and the advantages of combination." Moreover, "the advantages of the traffickers were indeed substantial. They had the steamship and the railway to move women quickly and the telegraph to help dispatch them efficiently. With the exception of Britain and Germany, the police were corrupt or compliant to varying degrees everywhere." The difference in today's world is not the trade as such, but the speed, ease, and variety of the flows of women—and even this is a difference in degree rather than kind.

### 5.5.2 Sources of Laundered Millions

Laundered money derives from the full range of illicit activities linked to organized crime such as narcotics and arms trafficking, trafficking in human beings, extortion, gambling, counterfeiting of money and goods, trafficking in endangered species and

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<sup>364</sup> GRAHN, Lance, *The Political Economy of Smuggling: Regional Informal Economies in Early Bourbon New Grenada*, Boulder, Colo.: Westview Press, 1997, p. 3–4.

<sup>365</sup> BRISTOW, Edward J., *Prostitution and Prejudice: The Jewish Fight Against White Slavery, 1870–1939* New York: Schocken Books, 1983, p. 118.



stolen art and automobiles. Often, corrupt government officials move the bribes they have received or the money they have embezzled to offshore locations for security. Much of this cannot be treated as laundered money in many countries because these corrupt activities are not predicate offenses to money laundering. The need to have a pre-existing criminal offense under many criminal codes is a major deterrent to effective money laundering investigations.

The money laundering associated with high level governmental corruption has received more attention in the post-Cold War era. Corrupt leaders launder money derived from multiple sources: siphoned out of the national treasury; diverted from foreign assistance; pay offs from foreign investors or contractors working on development loans from multilateral organizations and proceeds from privatization.

The wave of privatizations in the 1990s in many parts of the world has contributed to the increased deposit of funds in unregulated offshore accounts. In the transitional period from governmental ownership to private ownership when there is limited transparency, many of the insiders have managed to appropriate significant resources of privatizing firms and have through elaborate trust agreements, consistent with the laws of the locale, parked very valuable national resources in financial tax havens.<sup>366</sup>

The money laundering associated with the privatization process has also resulted in large and visible cases of international money laundering investigated such as the Raul Salinas case from Mexico and the Pavel Lazarenko case from Ukraine. Investigations into each of these cases, by Swiss and American authorities, as well as other governments, has totaled in the hundreds of millions of dollars.

In the Salinas case, pay offs from drug traffickers were commingled with pay offs for beneficial privatizations of key state-owned industries. Salinas used Citibank's private banking services to transfer his ill-gotten gains securely overseas.<sup>367</sup> In the Lazarenko case, it was privatization of the oil and gas industries which allowed the former prime minister to accumulate hundreds of millions of dollars and led to his indictment for

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<sup>366</sup> POTOUCEK, Martin, *Not Only the Market the Role of the Market, Government and the Civic Sector in the Development of Post Communist Societies*, Budapest: Central European University Press, 1999, p. 80-111.

<sup>367</sup> U.S. Congress. Senate. Committee on Governmental Affairs, Permanent Subcommittee on Investigations. 1998. 5<sup>th</sup> Congress. Private Banking: Raul Salinas, Citibank and Alleged Money Laundering, GAO Publication No. GAO OSI-99-1.

money laundering in both Swiss and American courts. The sums involved recall those of other political leaders of the 1980s and early 1990s such as Marcos in the Philippines and Mobutu in the Congo who had access to large portions of their national treasury and El Hadj Omar Bongo, president of Gabon.

In the investigations following the end of the General Sani Abacha government in Nigeria, US\$650 million was traced to Switzerland and US\$120 million has also been traced to Liechtenstein. This is illustrative of the absence of preventative legislation. Furthermore, there is a failure of many countries to have laws that facilitate the confiscation of the proceeds of corruption have allowed massive transfers of assets from countries in the South, like Nigeria, to countries in the North. Prosecutors in Korea who followed the embezzlement of their past president tracked over US\$700 million dollars and were able to recover over several hundred million of the laundered money for their national treasury. A major question is whether mechanisms will be made available in the future to deter such deposits and whether procedures will be established to make such sums more easily recoverable by the source country.<sup>368</sup>

As the corruption issue is no longer a taboo issue for employees of multilateral financial institutions, the significant money laundering associated with project and structural adjustment loans have become permissible topics of discussion. For example, researchers at the IMF now acknowledge that they could observe the financial flows out of Haiti immediately after international loan funds flowed into the country. An investigator examining the diversion of a World Bank loan to Pakistan traced \$30 million to a Swiss bank. Increasingly, the investigators of corruption in these international financial institutions must be trained to find money laundering because both bribe money and actual project loans wind up in the banking centers of Western countries.<sup>369</sup>

### 5.5.3 Drug Trafficking and Money Laundering

There exists a symbiotic relationship between drug trafficking and money laundering to the extent that you can not fully discuss one without the other. It should be noted

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<sup>368</sup> BLUM, Jack A., Levi, Michael, Naylor, R. Thomas, & Williams, Phil. Financial Havens, Banking Secrecy and Money Laundering. United Nations Bulletin of Crime Prevention and Criminal Law 34 & 35, 1998, Sections 4 & 5.

<sup>369</sup> TANZI, Vito, The International Anti-Corruption Forum: Corruption's Impact on Economic Performance. The Brookings Institute: Washington, DC, January 19, 2000.

however, that there are many other organized criminal activities that generate a lot of wealth that would require laundering. The particular emphasis on the narcotics trade is perhaps, because it generates the highest profits among other forms of organized crime. One estimate put the revenue of a successful drug dealer at US\$1500:00.<sup>370</sup> In 1991, the US and European drug trafficker's profits were estimated to yield approximately US\$232,115:00 per minute. The retail drug trade is estimated to have a value of US\$122 Million per type/commodity. E.g. Heroin which is processed from raw Opium is estimated to be cultivated and marketed for about US\$70:00 per kg in Burma; the same kg would cost about US\$3,000:00 in northern Thailand and it be sold for export at between US\$6, 000-10, 000:00 in Bangkok. The same is estimated to sell for between US\$90,000-200, 000:00 by the time it reaches the USA. By 1992, the global drug trade was estimated to generate a profit of about US\$1Trillion per annum.<sup>371</sup> These statistics portend frightening dangers and challenges for global effort against the scourge of money laundering. By the way, one may ask, why do criminals launder their wealth.

The answer is simple: the most compelling incentive for criminals to conceal the true origins and sources of their wealth is to avoid detection and possible confiscation. Beyond that is the motive of maximizing more profits to support other criminal enterprises. Indeed, 'money or wealth is not only the goal of criminal enterprises, but the life blood of the enterprise'. Therefore, money laundering is a high reward endeavor, which is concerned with maximizing profits and reducing risks to the barest minimum.<sup>372</sup>

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<sup>370</sup> International Conference on Cooperation against Drug & Crime, organized by the Wilton Park Conferences, Steyning, U. K., Feb. 1997.

<sup>371</sup> PARADISE, Tracy, "Money Laundering and International Political Economy" in the 16<sup>th</sup> International Symposium on Economic Crime, Jesus College University of Cambridge U.K., Sep. 1998.

<sup>372</sup> RIDER, A. k .Barry, "The Control of Money Laundering: A bridge too far" in the compendium of papers presented at the 14<sup>th</sup> International symposium on Economic Crime, Cambridge Sep. 1996.

*“Do not drive the tiger from the front door,*

*whilst letting the wolf get in the back.”*

*Hu Zhidang (Circa 210 BC)*

## **6 INTERNATIONAL TERRORISM-ORGANIZED CRIME NEXUS AND FINANCING OF TERRORISM**

The main objective of my study is analyzing the links between international terrorism and transnational organized crime. I examined the links under consideration in this chapter.

Even if the “self-interest unity” has different structural characters, the “horizontal chaining” connections of both organizations fulfill their actions in many different regions. In the “vertical” dimensions of this structural platform, arms, propaganda, personnel procuring, drugs and money laundering constitute, in the practical meaning, the engine power of the crime organizations in the name of “continuity”.

The distinction between terrorism and organized crime is not always cleat-cut. However, traditionally organized crime has been seen as primarily profit maximizing, and high profile attention-drawing actions tend to be the anathema of the Mafioso, whose success is dependent upon attracting as little government attention to himself and his activities as possible. Conversely, acts of political violence that draw maximal attention are the *raison d'être* of terrorist organizations. This means that terrorists are generally perceived as a grave threat to international security, whereas organized crime, although seen as problematic, enjoys tacit tolerance due to corruption or short-term pragmatism.<sup>373</sup>

The main objective of this chapter is to examine the link between organized crime and terrorism in a global context and to investigate the financing of terrorism. In chapter 5, money laundering cycle is explained. Some specialists assert that terrorism financing

<sup>373</sup> MARELLI, Francesco, *Organized Crime and Terrorism: Dancing Together*, UNICIRI, 2003, p.1.

and laundering of money are similar, but others say that these two phenomenons are separate subjects. As for me, while the money laundering is the chapter, financing of terrorism constitutes the section of this chapter.

## **6.1 TERRORISM AND ORGANIZED CRIME CONNECTION**

In this section I inspected the general connection between terrorism and organized crime.

The end of the Cold War and subsequent demise of the Soviet Union ushered in a new international security environment that can no longer be explained by the dominant security paradigms utilized by most Western governments and analysts since World War II. Our understanding of security falling under the rubric of high politics, and focused on maintaining the territorial sovereignty of state actors has been questioned by several ongoing international dynamics. For example, inter-state conflicts have been replaced by rising occurrences of intra-state violence; the state as the central focus of international affairs has given way to a host of non-state actors; and, it has become increasingly evident that the greatest threat to security emanates from the rapidly evolving phenomena of terrorism and transnational organized crime (TOC). In actuality, national, regional and international experience with insecurity over the past decade has confirmed that terrorism and TOC deserve paramount attention precisely because they both span national boundaries, and thus are necessarily multi-dimensional and organized; and, because they directly threaten the stability of states by targeting economic, political and social systems.

As a result of this shift in the international security environment, numerous scenarios – once unthinkable – have become common occurrences. Criminal and terrorist groups regularly engage in strategic alliances to provide goods or services – for example, Russian organized crime has cooperated with the Revolutionary Armed Forces of Colombia to exchange drugs for arms, and allegedly to provide money-laundering opportunities; terrorist and criminal groups converge in territory inadequately controlled by state forces – such as Afghanistan, the Western Frontier Province in Pakistan and the tri-border area in South America – to discuss mutual interests and areas of potential cooperation; criminal groups commonly seek to take advantage of widespread instability to increase their criminal operations and secure political aspirations; and

terrorist groups – such as Abu Sayyaf and the Islamic Movement of Uzbekistan - have used the veneer of Islam to secure lucrative criminal operations.

In light of these developments in the operations of terrorism and TOC, it is integral to highlight that neither phenomenon is static – both terrorism and TOC have evolved significantly as a result of a combination of factors, many of which are associated with the intensification of the globalization process. Unfortunately, the shifting operational and organizational dynamics of both phenomena since 1991 have received little attention; and thus are scantily understood. The relative inability of government analysts and policymakers to respond to the changing nature of post Cold War security has thus left the world unprepared in its ability to respond to major transnational challenges. Thus as transnational phenomena continue to evolve, and terrorism and TOC continue to adapt to each others strengths and weaknesses, the international community is left to deal with a host of culminating threats – as exemplified in the unprecedented terrorist attacks perpetrated by al-Qaeda on September 11th, 2001.<sup>374</sup>

In the current international environment, security must be understood as a cauldron of traditional and emerging threats that interact with one another, and at times, converge.

### **6.1.1 Background to the Crime-Terror Continuum**

The relationship between organized crime and terrorism is not a completely new phenomenon. Aspects of relations have existed since the 1970s in the Middle East (Lebanon) and Asia (the Golden Triangle), and the 1980s in Latin America, where drug cartels and terrorist groups have engaged in *de facto* strategic alliances. Terrorist and criminal groups during these decades primarily entered into cooperative relationships for operational purposes. In Colombia for example, the cocaine cartels based in Medellin and Cali regularly hired FARC and M19 guerrillas to provide security at cocaine plantations. The terrorists received revenues used for future operations, and the cartels found an efficient way to secure their lucrative operations. Throughout the 1980s the Colombian security predicament was one that could succinctly be summarized as a “Hobbesian Trinity of illegal drug traffickers, insurgents, and paramilitary organizations (which) are creating a situation in which life is indeed ‘nasty, brutish, and short.’”<sup>375</sup>

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<sup>374</sup> SMITH, Paul, *Transnational Violence and Seams of Lawlessness in the Asia-Pacific: Linkages to Global Terrorism*, Hawaii: Asia Pacific Centre for Security Studies, 2002, p. 19.

Although these early relations between terrorist and criminal entities could be considered extremely clinical and business-like in nature, these ties are one of the most important transformations of international security. Despite being traced back to the 1970s, the relationship between organized crime and terrorism grew in importance after 1991 as a result of various strategic factors, including: the end of the Cold War; the most recent wave of globalization; and associated developments in illicit operations worldwide.

Among the most important consequences, emanating from the end of the Cold War and subsequent fall of the Soviet Union is the erosion of Communism as a motivating international ideology, and a source of significant external support, for several countries in the world. From this reality emerged other factors that had an impact on the international security environment, such as: the subsequent decline in state-sponsorship for terrorist groups; the opening of territorial borders; the creation of a surplus of arms; and, the expansion of the marketplace to a near global status. In addition to creating conditions conducive to the spread of democratization and market economization, the end of the Cold War equally created a global environment attractive for the spread of criminality by a vast array of actors.

The historical impact of the fall of the Soviet Union was exacerbated by rising evidence of the negative impact of globalization. Although most evaluations of globalization are positive, stressing values of integration for national and regional economies, expanding productive capacity, emerging markets, the subsequent prospects of eliminating poverty and spreading democracy and ending war<sup>376</sup>, globalization has also complicated the security environment. Among the most important negative components of globalization which have affected the nature of security is that globalization has undermined the legitimacy of states through the expansion of information, technology, finance and manufacturing, thus giving rise to "warlords, mafias and mercenary groups, many of which have an interest in the perpetuation of conflicts".<sup>377</sup> Especially in the context of weak states, such as those that encompass most of the former Soviet Union, sub-Saharan Africa, Latin America, and parts of South Asia, the dynamics caused by

<sup>375</sup> MANVARING, Max, *Non-state Actors in Colombia: Threat and Response*. Strategic Studies Institute Monograph, Carlisle PA: Strategic Studies Institute, U.S. Army War College, May 2002, p. 1.

<sup>376</sup> HARRISS-WHITE, Barbara, *Globalization, Insecurities and Responses: an Introductory Essay*, in Barbara Harriss-White (ed.), *Globalization and Insecurity: Political, Economic and Physical Challenges* Hampshire and New York: Palgrave Publishers Ltd, 2002, p. 1-3.

<sup>377</sup> *Ibid.*, p.11.

globalization have helped create “a situation where the structure, authority (legitimate power), law and political order have fallen apart”, thus creating conditions where the hold on power is increasingly divided between “what is left of the formal institutions of the state (which are invariably corrupt), local warlords and gang or mafia leaders.”<sup>378</sup>

There are two additional consequences of globalization that also need to be considered in the context of the emerging security environment. First, the inherent dichotomy of globalization (creating integration and fragmentation, homogenization and diversification, globalization and localization) has mobilized non-state actors increasingly to react to what is commonly viewed as the “growing incompetence and declining legitimacy of established political classes”. In many cases this mobilization is executed in various forms of public demonstrations; however weak states run the risk that this mobilization will take on a violent form. Second, the contemporary wave of globalization has also expanded the operations of parallel economies in regions where “new forms of legal and illegal ways of making a living have sprung up among the excluded parts of society”, and have legitimized new forms of criminal activity. Kaldor writes that these parallel economies are produced from the neo-liberal economic policies pursued by international organizations, forcing developing and transitional states to undertake macro-economic stabilization, deregulation and privatization. These forced economic programmes have also increased unemployment, depleted natural resources, and created greater income disparities – creating conditions conducive to conflict and criminality. In this context it is thus imperative to recognize that the victory for capitalism and free markets in the 1990’s do not imply peace as “free enterprise can easily dovetail into economic violence, and self-help into helping oneself.”

Equally important to these historical events in altering the international security environment have been associated developments in transnational crime. Placed in environments experiencing economic and trade liberalization, technological advancements, migration flows and border porosity - coupled with growing numbers of weak states in the world - criminal organizations have incorporated a host of new characteristics. These include the rising ability to cross national borders unhindered, the ability to cross between licit and illicit operations, the ability to recognize new

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<sup>378</sup> WILLETT, Susan, Globalization and the Means of Destruction: Physical Insecurity and the Weapons Industry at the Turn of the Millennium, in Harriss-White, 2002, p. 190-191.



opportunities by examining the evolving environment, and the growing capability to manage risks.

Risk management, in fact, can be considered one of the factors that have produced significant changes in how non-state actors organize their movements and conduct their operations. In seeking alliances and cooperation, as will be discussed in the next section, criminal and terrorist groups have increasingly learned from one another, thus emulating activities (i.e. smuggling and money-laundering) and/or organizational dynamics (i.e. networks, cell-structure) because other groups have been successful with them. As a result, both criminal and terrorist groups operating in the world today increasingly exhibit similar structures, and are often engaged in similar criminal and political activities.

For example, Harriss-White has concluded that organized criminal activities in weak states have responded to the evolving post-1991 international environment by incorporating the structure of traditional terrorist groups into their own. Referring specifically to criminal organizations involved in the drug trade in Peru, Bolivia, Colombia, Mexico and Afghanistan, she notes that these groups “consist of specialized cells separately managing production, transport, distribution, money-laundering, communications, physical protection and recruitment. The most advanced telecommunications, weapons, means of transport and counter-intelligence technologies are used to enforce property rights.”<sup>379</sup>

Although illustrative examples will be provided in subsequent sections it is useful to note that there are roughly eight areas of similarity between contemporary organized crime and terrorism: both utilize network and cell-based structures; the activities of both groups cross the national-regional-transnational divide; both groups require safe havens, and as a result both tend to take advantage of diaspora communities; both groups use similar targeting and deployment techniques, and thus have sophisticated intelligence and counter-intelligence capabilities; both groups have a programme of government and public relations; and, both contemporary criminal and terrorist groups have an absolute dependence on external sources of funding.

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<sup>379</sup> Ibid, p.31.

This environment, combining the decline of ideology as a motivating organizational force and the pressures of globalization placed predominantly on weak states, has laid the foundations of the CTC. In attempting to secure their own survival by taking advantage of a state of widespread confusion, criminal organizations and terrorist groups epitomize the threats posed to security in the twenty-first century.

### 6.1.2 Explaining the Crime-Terror Continuum (CTC)

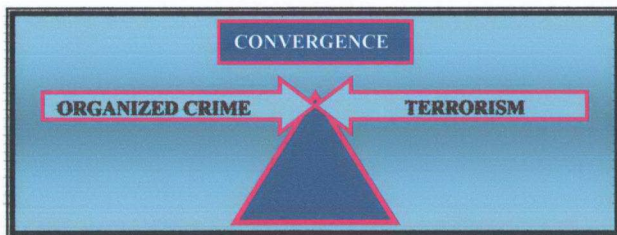
The nexus between organized crime and terrorism has been frequently alluded to throughout both academic and popular writings since the early 1990's. Despite this, there exists no thorough analysis of the relationship between organized crime and terrorism. Within the context of the contemporary security environment numerous points in the relationship between organized crime and terrorism can be isolated, each of which is intended to highlight the evolving nature of security. The CTC is referred to as a continuum precisely because it may be used to trace past, current and the potential future evolution of security threats. The most unstable and threatening point along the CTC is the fulcrum point, where criminal and ideological/political motivations simultaneously converge and are exemplified within one group. What the CTC primarily seeks to establish is that the differences commonly identified between organized crime and terrorism are currently defunct. When assessing contemporary security threats, the reality is that it has become increasingly difficult to distinguish between ideological/terrorist and criminal motivations. As summarized by Schweitzer,

Such distinctions that had existed [between organized crime and terrorism] are fading fast. A few terrorist and criminal organizations already rely on the same global infrastructures for their illegal ploys, take advantage of the same breakdowns in authority and enforcement in states under siege, and seek increasing shares of the fortunes generated from narco-trafficking and other crimes. Whether mercenaries are hired to do the bidding of drug lords or of terrorist kingpins, the hit teams share a single motive in employing violence – earning their financial keep.<sup>380</sup>

Taking this as a starting point, the CTC at its most basic can be illustrated as follows: (Figure 6.1)

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<sup>380</sup> SXHWEITZER, Glenn E., *A Faceless Enemy: the origins of modern terrorism*, Cambridge, Massachusetts: Perseus Publishing, 2002, p. 288.



**Figure 6.1 The Crime-Terror Continuum**

Depicted in this simple diagram is the suggestion that organized crime and terrorism exist on the same plane, and thus are theoretically capable of converging at a central point. Traditional organized crime is situated on the far left, with traditional terrorism situation on the far right – each holding distinct and separate positions. At the fulcrum of the continuum lies the ‘convergence’, the point where a single entity simultaneously exhibits criminal and terrorist characteristics. The relationship between organized crime and terrorism, however, is significantly more complex than Figure 6.1 suggests. In assessing the relationship that has developed between criminal and terrorist groups, seven points along the continuum are discernible. These points, however, can be divided into six general groups.<sup>381</sup>

- Terrorists engage in organized crime activity to support themselves financially.
- Organized crime groups and terrorists often operate on network structures and these structures sometimes intersect, terrorist can hide themselves among transnational criminal organizations.
- Both organized crime group and terrorists operate in areas with little governmental controls, weak enforcement of laws and open borders.
- Both organized criminals and terrorists corrupt local officials to achieve their objectives.

<sup>381</sup> SHELLEY, Louise I., *The Nexus of Organized International Criminals and Terrorism*, US National Crime and Corruption Center, 2003, p.85. Available on site: <http://www.american.edu/tracc/>

- Organized crime groups and terrorists often use similar means to communicate-exploiting modern technology.
- Organized crime and terrorists launder their money, often using the same methods and often the same operators to move their funds.

### 6.1.3 The Emerging Terrorist-Criminal Nexus

Parallel to the progress in global economic integration in the 1990s, integration has also evolved on the “dark side of globalization.” Two developments stand out.

First, stronger links are to be observed between the non-profit driven, i.e. terrorist sphere and the profit-driven sphere of organized crime. Terrorist organizations such as Al Qaeda have privatized their financial resources, diffusing them into the dispersed and almost impenetrable financial network of organized crime.

Second and even more worrying is that the line between the legal and the illegal sphere is becoming blurred. On the one hand, legally operating entities such as charities have emerged as important financial supporters of terrorist organizations, thus replacing the “rogue states” most of which have backed out of supporting terrorism. On the other hand, organized crime seems to be increasingly penetrating the legal economy, with the help of enormous amounts of laundered money.<sup>382</sup>

In a simple matrix, which shows the main links among the four areas and the state, (Figure 6.2) attempts to illustrate this terrorist-criminal nexus that has emerged in recent years.

<sup>382</sup> SCHERPENBERG, Jens van, *Stiftung Wissenschaft und Politik, Combating The Terrorist-Criminal Nexus*, by the American Institute for Contemporary German Studies, 2001, p.3.

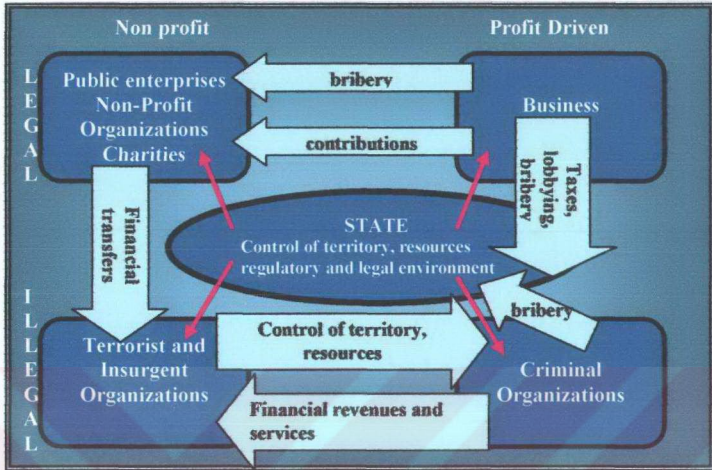


Figure 6.2 The Terrorist-Criminal Nexus<sup>383</sup>

Terrorist organizations, no matter whether they have been operating in Colombia, in Afghanistan, in sub-Saharan Africa or in former Yugoslavia, all experienced the need to diversify their resource base. The less they could count on support from “sponsor states,” the more they have been engaged with organized crime. This is not a natural relationship, since organized crime, as a parasitic activity, is operating within the system, not necessarily against it. But terrorist organizations, too, have something to offer to criminal organizations. They may control where to grow and process illegal products such as opium or coca (e.g. Al Qaida and the Taliban in Afghanistan, the insurgent groups in Colombia) or where to illegally exploit and market mineral resources such as diamonds or certain strategic minerals (e.g. in Central and West Africa). Moreover, criminal organizations may sometimes deliberately link up with or even merge into terrorist or insurgent organizations in order to destabilize a country or region, thus creating favorable conditions for their business. The example closest to the EU is the connection between the Albanian Mafia and the UCK.

<sup>383</sup> Ibid, p.4.

Although not a homogenous group of actors, organized crime is by far the biggest factor in the terrorist-criminal nexus, economically and probably also politically. According to IMF estimates, which are based on data from the mid-1990s, the total amount of money laundered annually from criminal business activities is in the range of 2-5 percent of the aggregate global GNP. At the time of the estimate, the corresponding amount was \$500 billion to \$1.5 trillion. Terrorist finance is just a small part of this vast sphere of illegal finance (the assets attributed directly to terrorist organizations that have been frozen so far amount to no more than a few hundred million dollars). Freezing terrorist assets, therefore, is quite unlikely to have a lasting effect on the access of terrorist organizations to financial resources. But organized crime has more to offer to terrorists than its sophisticated money laundering services. Some of the major OC industries such as trafficking in human beings, drug trafficking, illegal arms trade, forging of documents, cybercrime are valuable to terrorist organizations as well.<sup>384</sup>

Last but not least, corruption and bribery, formerly called the lubricant of business in the less well-governed parts of the world, still is the lubricant that makes the multiple links between organized crime and the legal sphere work smoothly. Corruption corrupts, literally. It renders people susceptible to more corruption and makes them prone to blackmailing and thus is the main agent of subversion and penetration of legal businesses and state authorities (administration, legislative and sometimes even judiciary). The recent cases of corruption and illegal contributions to politicians in Germany and France have demonstrated vividly that corruption and corrupt political decision-making are by no means phenomena limited to badly governed developing countries far away. It is a positive sign that those cases were discovered and that (some of) the persons responsible were brought to justice. But then there is another major European country, Italy, whose government, for rather obvious reasons and, much to the dismay of its partners, is resolutely rolling back any progress in fighting organized crime, corruption and money laundering at home and blocking such progress within the EU.

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<sup>384</sup> Ibid, p.5.

## 6.2 DRUGS & TERROR

We could see the most clear connection between organized crime and terrorism by examining the drug trafficking. All over the world, almost all terrorist organizations is interested in drug trafficking. In this section I examined drug and terror connection all over the world.

Narco-terrorism or the interconnection between the international drug market and terrorism is a topic that, having lain relatively dormant in discussions of international security for years, has come into prominence in light of the terrorist events of recent times. The increasing perception of the presence of terrorist networks in the eyes of the global community, coupled with the rising numbers of annual terrorist acts throughout the world, has given the international security environment an increased impetus to counteract any potential organizations or individuals that may support terrorist acts. Given the nature of their activity, terrorists must often depend upon revenue from illicit activities, a prominent one of which is drug trafficking, to finance their programs. The activities of drug traffickers and terrorist organizations are threatening to international security on a number of levels, primarily by either undermining the structures of legitimate governments in pursuit of their ends or by exploiting the protections of governments that condone or endorse their activities. The extent to which terrorism is dependent upon and related to the drug trade is currently under debate; nevertheless, examining the nature of the nexus between them is an important issue to be addressed by the UNDCP. Of equal importance to the focus of this committee's debate is the exploration of possible action to be taken against such a relationship in furtherance of the cause of international peace and security. For the purposes of this committee's debate, we may define narco-terrorism as a subset of terrorism, in which terrorist groups/individuals participate, either directly or indirectly, in the cultivation, distribution, manufacture, or transportation of illegal substances and the financial flows generated from these activities. In addition, the state sponsoring of drug-trafficking endeavors (through taxation, sheltering, etc) for the purpose of aiding and abetting terrorist activities is also pertinent to this discussion.<sup>385</sup>

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<sup>385</sup> UN General Assembly topic booklet courtesy the Georgetown Foreign Relations Committee, Narco-terrorism, November 9, 2003, p.2.

## 6.2.1 History of the Problem

There is a well-documented history of the relationship between terrorist organizations and the international narcotics trade. In contrast to the allegedly worldwide terrorist network of al Qaeda, most terrorist organizations in the past have been regionally focused. Below, several of the many such groups and regional affiliations are referenced, to demonstrate the variety and extent of the threat posed by narco-terrorism.

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### 6.2.1.1 Colombia: FARC, ELN & AUC

Colombia's three major terrorist groups are the Fuerzas Armadas Revolucionarias de Colombia (FARC), the National Liberation Army (ELN), and the United Self Defense Forces of Colombia (AUC). The FARC membership is estimated to be 12,000 to 18,000 personnel and the ELN maintains 3,000 to 6,000 personnel. The FARC, which is the best-trained and equipped terrorist group in Colombia, asserts influence and varying degrees of control on large areas of Colombia's lowlands and rain forest, where coca cultivation and cocaine processing dominate the region. The ELN operates primarily along Colombia's northeastern border with Venezuela and in central and northwestern Colombia, including Colombia's cannabis and opium poppy growing areas. Right wing "self-defense groups" emerged in Colombia during the 1980s in response to insurgent violence. There are hundreds of such groups, and they are financed through drug trafficking, among other ways. The crux of their activity involves conducting paramilitary operations throughout Colombia. The AUC (Autodefensas Unidas de Colombia) is a loose coalition and is the best known of these self-defense groups. Such drug traffickers, self-defense groups and terrorist organizations have for decades committed attacks of the most extreme violence on Colombian society.<sup>387</sup>

### 6.2.1.2 Peru: Sendero Luminoso (Shining Path)

Sendero Luminoso (Shining Path) is a highly violent armed extremist group in Peru that, beginning in the 1980s, sought to overthrow the government of Peru and install in its place an agrarian communist community. The group has historically operated out of

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<sup>386</sup> CILLUFFO, Frank. The Threat Posed from the Convergence of Organized Crime, Drug Trafficking, and Terrorism. Center for Strategic & International Studies, 13 December 2000. Available on site: <http://www.csis.org/hill/>

<sup>387</sup> US Drug Enforcement Administration, Drug Intelligence Brief. September 2002



remote regions of Peru, known for their cultivation of the main coca crops from the region. It is suspected by international narcotics agencies that Shining Path has probably been engaged in the extraction of revolutionary taxes from the cocaine base operators.

### **6.2.1.3 Paraguay, Argentina & Brazil: Hezbollah & Hamas**

The historical presence of the Islamic extremist groups of Hezbollah and Hamas (Islamic Resistance Movement) is generally well known. Further, the triborder area of Paraguay, Argentina, and Brazil is an area in which such extremist activity has been concentrated. The two dominant terrorist organizations in the triborder area are Hezbollah and Hamas. It is believed that in this region, their illicit activities include the smuggling of illegal substances through the triborder area, along with counterfeiting US currency, etc. The presence of these two groups in this region demonstrates the internationality of the terrorist threat and the relative ease with which terrorist organizations can export their activities and assimilate into new areas without calling attention to themselves in the international community.<sup>388</sup>

#### **6.2.1.4 Afghanistan: Al Qaeda & the Taliban**

Afghanistan has been one of the world's major sources for the opiate and cannabis products trade. While nominally a party to the 1988 UN Drug Convention, it lacked the governmental resources to implement the obligations faced underneath it. The supporting connections between the formerly ruling Taliban and the drug trade, and between the Taliban and the terrorist network of al Qaeda have been well documented in the popular press over the last year.<sup>389</sup> The economy of Afghanistan was exceptionally dependent upon revenues from the opium trade in particular, and the ruling structure of the Taliban that lent its support to terrorist organizations, was kept in place partly due to this revenue.<sup>390</sup>

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<sup>388</sup> United Nations Office for Drug Control and Crime Prevention, Economic and Social Council, October 2002. Available on site: <http://www.odccp.org/odccp/>

<sup>389</sup> Drugs-Terrorism Link Strong in Colombia, Afghanistan, United States Department of State International Information Programs, 13 December 2002. Available on site: <http://usinfo.state.gov/topical/global/drugs/>

<sup>390</sup> HUTCHINSON, Asa, Congressional Testimony the Senate Judiciary Committee's Subcommittee on Technology, Terrorism, and Government Information about Narco-Terror: The Worldwide Connection between Drugs and Terror, March 13, 2002. Available on site: <http://www.usdoj.gov/dea/pubs/cngtrest>

### 6.2.1.5 PKK (KADEK)

Turkey has historically remained a key transshipment point for drug trafficking because of its desirable geographic location connecting Europe to Asia. In 1994, European narcotics specialists contended that 60-70% of Europe's heroin was passing through Istanbul. Most of the heroin coming from Afghanistan, Iran, and Pakistan pass through Turkey and head toward Western Europe. Several sources maintain that smuggling operations were partly controlled by Iranian nationals who escaped to Turkey after the 1979 revolution in Iran. Finally, police in Italy, Holland, Germany, and Scandinavia have been investigating and uncovering the PKK's involvement in drug and arms smuggling in those nations since 1993.

Trends in police seizures of heroin and other drugs within Turkey illustrate the significance of the drug trafficking problem. For example, heroin seizures in Turkey increased from 0.9 tons in 1990 to 1.6 tons in 1994. Other areas of drug tracking have been marked by similar gains. During 1993-1994, an average of 21 tons of hashish was seized annually in addition to 2.7 tons of morphine. These figures are significant in light of the PKK's use of narcotics for supporting its campaign of terror.

However, there is evidence linking the PKK to drug smuggling in Europe that is strong enough to force these officials to reconsider their position concerning the group's connection to illegal drugs. First, a report prepared by the International Criminal Police Organization (INTERPOL) in 1992 linked the PKK to drug and concluded that nearly 178 Kurdish organizations were suspected of illegal drug trade involvement. Second, Interpol's chief narcotics officer Iqbal Hussain Rizvi stated that the PKK was also heavily involved in drug trafficking as a means to support the Kurdish revolt in Turkey. Rizvi further specified the routes for the illegal drugs confirming that Kurdish areas were sites for heroin refining factories. Third, in 1994 Germany's Chief Prosecutor maintained that 80% of the drugs seized in Europe were linked to the PKK and that money acquired through illegal drug trafficking was used to purchase arms. Furthermore, the Italian police also acknowledged the existence of a PKK team conducting transportation of heroin to Italy and arms to Turkey. Fourth, admissions by some of the individuals arrested for drug dealing confirm the PKK role in this illicit money-producing business. For example, a Kurdish smuggler caught in 1991 admitted

to transporting 300 kilograms of heroin for the PKK over a three-year period during the late 1980s.<sup>391</sup>

These incidents strongly indicate the PKK's involvement in illegal drug trafficking and link the group to drug trading as early as 1984 (the same year the PKK officially started its separatist terrorism). Not only is the PKK involved in the transportation of illegal drugs, but over the years, it has also extended its role into production and marketing as well. In short, the PKK has grown into a full-service business coordinating the production, use, and transportation of illegal drugs, particularly in Western Europe.

According to a report by the British National Service of Criminal Intelligence, the PKK acquired about \$75 million from drug smuggling in Europe in 1993. Further, in 1994 PKK members were arrested by Turkish authorities while attempting to smuggle 1.5 tons of hashish into Turkey from one of Turkey's neighboring countries.

Due to its extensive drug smuggling operations, the PKK has remained well-armed. In 1994 alone, Turkish security forces seized from the PKK a total of 3,075 weapons and various instruments including 767,000 rounds of ammunition; 399 rocket launchers; 3,419 rockets; 4,415 hand grenades; 31 mortars; 1,964 mortar bombs; and 131 radios.<sup>392</sup>

While the United Nations has issued dozens of resolutions pertaining to the elimination of international terrorism, and the elimination of the international drug trade, it has yet to address (in the form of a substantive resolution with strong prescriptive action) the issue of the development of standards for addressing the intersection of the two aforementioned threats to international peace and security.<sup>393</sup>

#### 6.2.1.6 IRA

Links between the IRA and the terrorist narcotics group Revolutionary Armed Forces of Colombia (Spanish initialism FARC) have been suspected for some time. However, a major element of that connection was established in August 2001, when Colombian authorities arrested three IRA explosives experts under suspicious circumstances in

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<sup>391</sup> Republic of TURKEY, Ministry of Foreign Affairs, *The PKK's role in Drug Trafficking*, 2003. Available on site: <http://www.mfa.gov.tr>

<sup>392</sup> *Ibid.*

<sup>393</sup> Global Issues of the Twenty-First Century, United Nations Challenges, *Crime: International Terrorism, Drugs, Corruption, Global Challenges*, October 2002. Available on site: <http://www.global-challenges.org/>

Bogotá. British intelligence reports have estimated that in recent years the FARC has paid IRA operatives about US\$2 million for training in arms, explosives, and techniques of urban warfare, using offshore bank accounts; since 1998, between five and fifteen such experts are believed to have moved back and forth between Colombia and Europe. In April 2002, General Fernando Tapas, chief of the Colombian Joint Chiefs of Staff, testified to the House International Relations Committee that in Colombia seven IRA members had trained Colombian, Cuban, Iranian, and perhaps Basque fighters in the use of arms and intelligence for terrorist purposes.<sup>394</sup> The IRA and FARC also may have cooperated in supplying arms to insurgents in Nicaragua in 2000.<sup>395</sup>

Because the IRA strongly discourages individual initiative, all such operatives assumedly have the official approval of the organization. Padraig Wilson, a close associate of Gerry Adams, president of the IRA's political organization, Sinn Fein, is known to have made covert contacts with FARC in Colombia in the past two years.<sup>396</sup> As of October 2002, the three men who were arrested remained in a Colombian prison with no trial date set.

Such deals offer the IRA two advantages. At a time when the organization is nominally disarming, profits from the Colombian training provide currency with which to tap into the rich assortment of arms available from world traffickers. FARC money may have helped pay for a shipment of 20 highly efficient Russian AN-94 assault rifles that Russian intelligence reported going to the IRA (presumably from corrupt agents in the Russian arms industry or the Russian military) in 2001, at about the same time that the three IRA experts were in Colombia. The IRA also is believed to have purchased arms in Latin America recently.<sup>397</sup> Colombia offers the IRA an inconspicuous area for developing its own weapons and tactics at a time when the IRA nominally is observing a cease-fire in its home territory. On the other side of the deal, the FARC gains training in terrorist and guerrilla techniques from what is widely considered one of the most

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<sup>394</sup> ALDERSON, Andrew, David Bamber, and Francis Elliott, IRA's Involvement in International Terrorism, *The Daily Telegraph*, London, 28 April 2002. Available on site: <http://www.nisat.org>

<sup>395</sup> HARNDEN, Toby, Farc Money Funded Arms Deals, *The Daily Telegraph*, London, 15 May 2002. Available on site: <http://www.nisat.org>

<sup>396</sup> U.S. Congress, House, International Relations Committee, "Investigative Findings on the Activities of the Irish Republican Army (IRA) in Colombia," 24 April 2002. Available on site: <http://www.neoliberalismo.com/>

<sup>397</sup> HARNDEN, Toby, Adams Ally's Trade in Terror, *The Daily Telegraph*, London, 15 May 2002 (FBIS DocumentEUP20020515000149).

effective terrorist organizations in the world. The cost is easily affordable, considering that estimates of the FARC's annual narcotics income reach as high as US\$1 billion.<sup>398</sup>

Although the links between the IRA and the FARC have not usually constituted direct exchanges of narcotics for weapons, transactions between the two groups have involved both those commodities. The chief income base of the FARC is narcotics sales, and recent IRA payments in narcotics to Croatian arms traffickers demonstrate that the IRA likely has received narcotics from FARC. The clandestine military training provided to the FARC by the IRA is a form of trafficking that enhances the value of arms acquired elsewhere, and the IRA also may have supplied weapons to the FARC as well: In early 2002, the FARC began using mortars very similar to those designed by weapons expert James Monaghan, one of the three captured IRA agents. According to Colombian authorities, those weapons are a significant upgrade of the FARC's terrorist capability.<sup>399</sup>

Thus the evidence strongly suggests that the IRA is at the center of a complex linkage of narcotics and arms trading that includes criminal groups in Europe and narco-terrorists in Latin America. According to this scenario, the flow of narcotics is mainly from Latin America into Europe, with the IRA using narcotics as currency rather than trafficking actively itself. The more complex flow of arms and arms enhancement services moves from European sources such as Croatian smugglers to the IRA, but it also moves from the IRA to Latin America and vice-versa: the IRA's arms are enhanced by access to FARC testing areas, as the FARC's arms are enhanced by IRA training and arms shipments. The IRA assistance may have been an attempt to upgrade the FARC's capabilities following intensification of United States counter-narcotics assistance that began in 2000.

#### 6.2.1.7 ETA

The ETA has been implicated in narcotics trafficking since at least 1984; ETA groups reportedly have waged wars among themselves to control narcotics markets in Spain.<sup>400</sup>

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<sup>398</sup> BURGESS, Mark, *Globalizing Terrorism: The FARC-IRA Connection*, CDI Terrorism Project report, 5 June 2002. Available on site: <http://www.cdi.org/terrorism/>

<sup>399</sup> HARNDEN, Toby, *Adams Ally's Trade in Terror*, *The Daily Telegraph*, London, 15 May 2002 (FBIS DocumentEUP20020515000149).

<sup>400</sup> AROSTEGUI, Martin, *ETA Has Drugs-for-Weapons Deal with Mafia*, *United Press International* report, 3 October 2002. Available on site: <http://www.washtimes.com>

Like the IRA, the separatist ETA is known to use cocaine and heroin to pay for illegal arms shipments in support of terrorist activities. Also like the IRA, the ETA has been linked with arms trafficking operations originating in or transiting through the former Yugoslavia. In 2000 the ETA agreed to supply the Middle Eastern terrorist group Hamas with explosives that the ETA had stolen in Brittany. The deal was an incidental result of a meeting in northern Italy, arranged in the fall of 2000 by a Belgian arms dealer (name unknown) who regularly supplied ETA. Demonstrating the flexibility and complexity of arms trafficking relationships, the ETA attended the meeting not to sell but to purchase arms, having decided to rebuild its supply channels in 1999 after the cease-fire of 1998-99 ended. Several other terrorist groups were present at the meeting, which had the purpose of driving down prices by establishing joint offers to manufacturers.<sup>401</sup> The form of payment for the explosives sold to Hamas is unknown; no narcotics are known to have changed hands.

Italian authorities recently have disclosed information about links between the ETA and the Camorra crime organization based in Naples. By the terms of a 2001 agreement, the Camorra has supplied heavy weapons such as missile launchers and missiles to the ETA in Spain, in return for large amounts of cocaine and hashish. Involved on the Italian side are the Genovese clan, based at Avellino, and several smaller clans in the Torre Annunziata region south of Naples. According to an informant, the initial arrangements of this exchange were made in a face-to-face meeting between a single ETA representative and two representatives of the Italian groups. Subsequently, the Italian groups were represented by Felice Bonneti, a long-time drug trafficker with strong connections in Spain and Italy. Most of the key members of the Italian groups already had "business" connections with the ETA prior to the latest drugs-for-weapons agreement.<sup>402</sup>

The agreement called for heavy arms, explosives, and bombs to be supplied from Pakistan and Uzbekistan via the clans' military contacts in the Czech Republic, 35 to 40 days after delivery of the cocaine. The ETA explicitly refused an offer of Kalashnikov rifles in favor of anti-tank and ground-to-air missiles. Reportedly, the narcotic was

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<sup>401</sup> ETXEBERRI, Carlos, *ETA Sold Part of the Dynamite It Stole During the Cease-Fire to Hamas*, El Mundo, Madrid, 18 June 2001 (FBIS Document WEU20010618).

<sup>402</sup> CHIARIELLO, Paolo and Gian Antonio Orighi, *ETA and Camorra Crime Syndicate*, Panorama, Milan, 3 October 2002 (FBIS Document EUP20020927000203). Available on site: <http://www.washtimes.com>

delivered weekly to Genoa in special drums attached to the bottom of a ship. Because the investigation of this agreement was announced only in early October 2002, many details are not yet available.<sup>403</sup> Among those details are the original source of the cocaine, actual exchanges that took place before the police learned of the system, and the route (or planned route) followed by any arms and explosives before they reached Spain.

If successful, such an arrangement between the ETA and Italian crime groups would provide the Basque terror organization with arms from the diverse trafficking sources in Eastern Europe and the former Soviet Union, with which the Italian groups seem to be well connected. Although the ETA's drug sources are not directly known, it is likely that the ETA, like the IRA, has an exchange relationship with Latin American narcotics suppliers, by which the ETA moves some of its illegal arms along to narco-terrorist groups in South America in return for narcotics. The arrangement provides the Italian groups another access to Latin American cocaine and hashish, although the Italians complained initially about the quality of the narcotics delivered to them by their ETA partners, according to an informant.<sup>404</sup>

### 6.2.2 Current Situation

There is a great amount of international discussion regarding the states whose drug-production or trafficking is most problematic. While many have taken significant strides to improve their status, the following states are often cited as being major players in the international drug market: Afghanistan, Bahamas, Bolivia, Brazil, Burma, Cambodia, People's Republic of China, Colombia, Dominican Republic, Ecuador, Guatemala, Haiti, India, Jamaica, Laos, Mexico, Nigeria, Pakistan, Panama, Paraguay, Peru, Thailand, Venezuela & Vietnam. Beyond these states, many states are participants in the drug trade on a smaller scale, usually as a point of transit. Malaysia, for instance, is not a drug-producing state but nevertheless acknowledges that it has been used as an avenue for traffickers.

Furthermore, the fact that in recent years the international system has become characterized by increased communications and economic interactions among states has allowed terrorist and illicit trade groups to capitalize on networks that were originally

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<sup>403</sup> Ibid.

<sup>404</sup> Ibid.

intended to promote the lessening of trade restrictions and improve the global standard of living. The global economy permits such organizations to expand their scope and reach of operations, thereby increasing their ability to destabilize the international security environment. Furthermore, as progress is made, particularly due to the efforts of the United Nations, to abolish state-sponsoring of terrorist groups, the unintended negative side-effect of such success is to make such groups more dependent upon other types of financing, the most common of which are revenues from illicit trades.<sup>405</sup>

Currently, twelve of the twenty-eight terrorist organizations (as identified by the US Department of State) are involved in the traffic of drugs. The drug trade is the primary source of financing for many powerful terrorist groups, including the Revolutionary Armed Forces of Colombia (FARC) and the United Self Defense Forces of Colombia (AUC), and Shining Path in Peru. The recently ousted Taliban in Afghanistan used revenues from its opium and heroin trades to maintain power.

There are many examples of terrorist activity in the past year alone that have been connected to the narcotics trade. For instance, according to the Government of Colombia, the FARC and ELN committed 260 terrorist attacks against Colombia's Covenas oil pipeline. The results of these terrorist attacks are equivalent to 11 times the spillage of the Exxon Valdez, costing millions of dollars in revenue. Also in Colombia, in April of 2002 there was a series of bombings, kidnappings and explosive rockets being detonated - activities that may also be attributed to the FARC. Additionally, in Southwest Asia, Afghanistan produced 70% of the world's supply of illicit opium in 2000; while Afghanistan cut its poppy cultivation dramatically in 2001, one corollary to the US action against the Taliban there has been an increased dependence upon narcotics revenues for domestic rebuilding. The Kurdistan Worker's Party (PKK) members have been noted to be involved in the taxation of drug shipments and the protection of drug traffickers throughout the Southeastern Region of Turkey and other areas of operation. Furthermore, currently the situation in regions of central Asia is precarious. Uzbekistan, for instance, is in a particularly volatile position in that it shares borders with the four other central Asian states along with Afghanistan. Its economic conditions are in need of attention, and the population as a whole is under-educated with

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<sup>405</sup> RABASA, A. and Chalk, P., *Colombian Labyrinth: The Synergy of Drugs and Insurgency and Its Implications for Regional Stability*. RAND, 2001, p.43.



many social hardships shared by neighboring regions of Kazakhstan and Kyrgyzstan, including a pervasive narcotics addiction problem and a growing HIV/AIDS problem that is related to the drug market. In the Middle East, Hezbollah dominates the activities of drug producing, smuggling and terror financing. Additionally, to demonstrate the internationality of the narco-terrorist problem, in 2001 it was reported that three members of the Irish Republic Army were arrested in Colombia for collaborating with the FARC, accused of training FARC members in urban terrorism.<sup>406</sup>

In brief, the current situation on the topic of narco-terrorism may be no more or less threatening than it has been in recent decades; however, the increased awareness of the problem among states in the international system has necessitated that the United Nations take up the topic specifically, in the hopes of arriving at an international consensus regarding normative effective action to counter the problem of narco-terrorism.<sup>407</sup>

### 6.3 FINANCING OF TERRORISM

Financing or terrorism was the harmful disease of the world in 20<sup>th</sup> century. In 21<sup>st</sup> century this illicit system will continue its merciless mission. In this and the next section I examined the process, the methodology and the concept of financing of terrorism. The inspection of the link between terrorism financing and money laundering was a significant subject for me.

For most countries, money laundering and terrorist financing raise significant issues with regard to prevention, detection and prosecution. Sophisticated techniques used to launder money and finance terrorism add to the complexity of these issues. Such sophisticated techniques may involve many different types of financial institutions; many different financial transactions using multiple financial institutions and other entities, such as financial advisers, shell corporations and service providers as intermediaries; transfers to, through, and from different countries; and the use of many different financial instruments and other kinds of value-storing assets. Money

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<sup>406</sup> Global Issues of the Twenty-First Century, United Nations Challenges, Crime: International Terrorism, Drugs, Corruption. Global Challenges. October 2002. Available on site: <http://www.global-challenges.org/>

<sup>407</sup> Economic and Social Council 2002 Resolutions and Documents. United Nations. October 2002. Available on site: <http://www.un.org/esa/coordination/ecosoc/>

laundering is, however, a fundamentally simple concept. It is the process by which proceeds from a criminal activity are disguised to conceal their illicit origins. Basically, money laundering involves the proceeds of criminally derived property rather than the property itself.

The financing of terrorism is also a fundamentally simple concept. It is the financial support, in any form, of terrorism or of those who encourage, plan, or engage in it. Less simple, however, is defining terrorism itself, because the term may have significant political, religious, and national implications from country to country.

Money laundering and terrorist financing often display similar transactional features, mostly having to do with concealment. Money launderers send illicit funds through legal channels so as to conceal their criminal origins, while those who finance terrorism transfer funds that may be legal or illicit in origin in such a way as to conceal their source and ultimate use, which is the support of terrorism. But the result is the same—reward. When money is laundered, criminals are rewarded with disguised and apparently legitimate proceeds. Similarly, those who finance terrorism are rewarded by providing the financial support to carry out terrorist stratagems and attacks.<sup>408</sup>

### **6.3.1 Money Laundering or Laundering of Terror**

Money laundering and the financing of terrorism may be seen as distinct activities. The laundering of criminal funds aims at giving a legal appearance to dirty money, whereas the laundering of terrorist funds aims at obscuring assets of a legal origin (such as public funding or so-called charities). This distinction is useless, however, since the objective of public policies is not to address the issue of the processing of illegal funds, but the funds themselves and the organizations behind them. In this regard, criminal assets and terrorist assets represent the same threats to financial systems and public institutions, and it is clear that the strategies designed to fight criminals when they channel their funds through financial systems may apply with the same success in combating terrorist financing cases.<sup>409</sup>

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<sup>408</sup> Reference Guide to Anti-Money Laundering and Combating the Financing of Terrorism, Money Laundering and Terrorist Financing: Definitions and Explanations, 3/30/2003. Available on site: <http://www1.worldbank.org/finance/>

<sup>409</sup> THONY, Jean-François, Money Laundering and Terrorism Financing: an Overview, IMF publications, 2000, p.4.

In addition, mysterious ties often unite organized crime and terrorism. A sort of objective alliance forms in many instances between criminal and terrorists groups, fed by their convergent interests: criminal organizations benefit from the ability of terrorist and guerrilla organizations to do damage, while the latter in turn benefit from the financing that criminal activities can obtain for them. The strange similarity between the geography of terrorism movements and other guerrillas and the geography of large-scale drug trafficking is self explanatory: the Revolutionary Armed Forces of Colombia (FARC) are to be found in coca producing areas, whilst the African civil wars are taking place in areas where precious stones and other natural riches are extracted; the soldiers of Al-Qaeda in Afghanistan and the Khun Sa rebels in Myanmar foment their armed actions in the world's largest opium-producing areas. Cambodia, Chechnya, the Balkans, and Sri Lanka are equally interesting areas for studying the manner in which ideology can become the front for organized crime, or the manner in which organized crime can come to the aid of terrorist causes.<sup>410</sup>

### 6.3.2 What is Terrorist Financing?

The United Nations (UN) has made numerous efforts, largely in the form of international treaties, to fight terrorism and the mechanisms used to finance it. Even before the September 11th attack on the United States, the UN had in place the International Convention for the Suppression of the Financing of Terrorism (1999), which provides:

"1. Any person commits an offence within the meaning of this Convention if that person by any means, directly or indirectly, unlawfully and willfully, provides or collects funds with the intention that they should be used or in the knowledge that they are to be used, in full or in part, in order to carry out:

(a) An act which constitutes an offence within the scope of and as defined in one of the treaties listed in the annex; or

(b) Any other act intended to cause death or serious bodily injury to a civilian, or to any other person not taking an active part in the hostilities in a situation of armed

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<sup>410</sup> THONY, Jean-François, Processing Financial information in Money Laundering Matters: the Financial Information Units, *European Journal of Crime, Criminal Law and Criminal Justice*, 1996-3, p. 257.

conflict, when the purpose of such act, by its nature or context, is to intimidate a population, or to compel a Government or an international organization to do or to abstain from doing any act.

2. (a) On depositing its instrument of ratification, acceptance, approval or accession, a State Party which is not a party to a treaty listed in the annex may declare that, in the application of this Convention to the State Party, the treaty shall be deemed not to be included in the annex referred to in paragraph 1, subparagraph (a). The declaration shall cease to have effect as soon as the treaty enters into force for the State Party, which shall notify the depositary of this fact;

(b) When a State Party ceases to be a party to a treaty listed in the annex, it may make a declaration as provided for in this article, with respect to that treaty.

3. For an act to constitute an offence set forth in paragraph 1, it shall not be necessary that the funds were actually used to carry out an offence referred to in paragraph 1, subparagraph (a) or (b).<sup>411</sup>

The difficult issue for some countries is defining terrorism. Not all countries that have adopted the convention agree on what actions constitute terrorism. The meaning of terrorism is not universally accepted due to significant political, religious and national implications that differ from country to country. FATF, which is also recognized as the international standard setter for efforts to combat the financing of terrorism (CFT),<sup>412</sup> does not specifically define the term financing of terrorism in its eight Special Recommendations on Terrorist Financing (Special Recommendations)<sup>413</sup> developed following the events of September 11, 2001. Nonetheless, FATF urges countries to ratify and implement the 1999 United Nations International Convention for Suppression of the Financing of Terrorism.<sup>414</sup> Thus, the above definition is the one most countries have adopted for purposes of defining terrorist financing.

<sup>411</sup> International Convention for the Suppression of the Financing of Terrorism, Article 2, Available on site: <http://www.un.org/law/cod/finterr.htm>.

<sup>412</sup> FATF, Chapter III, Available on site: [http://www1.oecd.org/fatf/SReCS TF\\_en.htm](http://www1.oecd.org/fatf/SReCS TF_en.htm).

<sup>413</sup> FATF, Annex V, Available on site: [http://www1.oecd.org/fatf/SReCS TF\\_en.htm](http://www1.oecd.org/fatf/SReCS TF_en.htm).

<sup>414</sup> *Ibid.*

### 6.3.3 The Link Between Money Laundering and Terrorist Financing

The techniques used to launder money are essentially the same as those used to conceal the sources of, and uses for, terrorist financing. Funds used to support terrorism may originate from legitimate sources, criminal activities, or both. Nonetheless, disguising the source of terrorist financing, regardless of whether the source is of legitimate or illicit origin, is important. If the source can be concealed, it remains available for future terrorist financing activities. Similarly, it is important for terrorists to conceal the use of the funds so that the financing activity goes undetected.

For these reasons, FATF has recommended that each country criminalize the financing of terrorism, terrorist acts and terrorist organizations,<sup>415</sup> and designate such offenses as money laundering predicate offenses.<sup>416</sup> Finally, FATF has stated that the eight Special Recommendations combined with The Forty Recommendations on money laundering<sup>417</sup> constitute the basic framework for preventing, detecting and suppressing both money laundering and terrorist financing.

Efforts to combat the financing of terrorism also require countries to consider expanding the scope of their AML framework to include non-profit organizations, particularly charities, to make sure such organizations are not used, directly or indirectly, to finance or support terrorism.<sup>418</sup> CFT efforts also require examination of alternative money transmission or remittance systems, such as hawalas. This effort includes consideration of what measures should be taken to preclude the use of such entities by money launderers and terrorists.<sup>419</sup>

As noted above, a significant difference between money laundering and terrorist financing is that the funds involved may originate from legitimate sources as well as criminal activities. Such legitimate sources may include donations or gifts of cash or other assets to organizations such as foundations or charities that in turn are utilized to support terrorist activities or terrorist organizations. Consequently, this difference requires special laws to deal with terrorist financing. However, to the extent that funds for financing terrorism are derived from illegal sources, such funds may already be

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<sup>415</sup> Ibid.

<sup>416</sup> Ibid.

<sup>417</sup> Ibid., at introductory paragraph.

<sup>418</sup> Ibid., Special Recommendations, Spec. Rec. VIII.

<sup>419</sup> FATF, Annex VI, Available on site: <http://www1.oecd.org/fatf/>

covered by a country's AML framework, depending upon the scope of the predicate offenses for money laundering.

#### **6.3.4 The Magnitude of the Problem**

By their very nature, money laundering and terrorist financing are geared towards secrecy and do not lend themselves to statistical analysis. Launderers do not document the extent of their operations or publicize the amount of their profits, nor do those who finance terrorism. Moreover, because these activities take place on a global basis, estimates are even more difficult to produce. Launderers use various countries to conceal their ill-gotten proceeds, taking advantage of differences among countries with regard to AML regimes, enforcement efforts and international cooperation. Thus, reliable estimates on the size of the money laundering and terrorist financing problem on a global basis are not available.

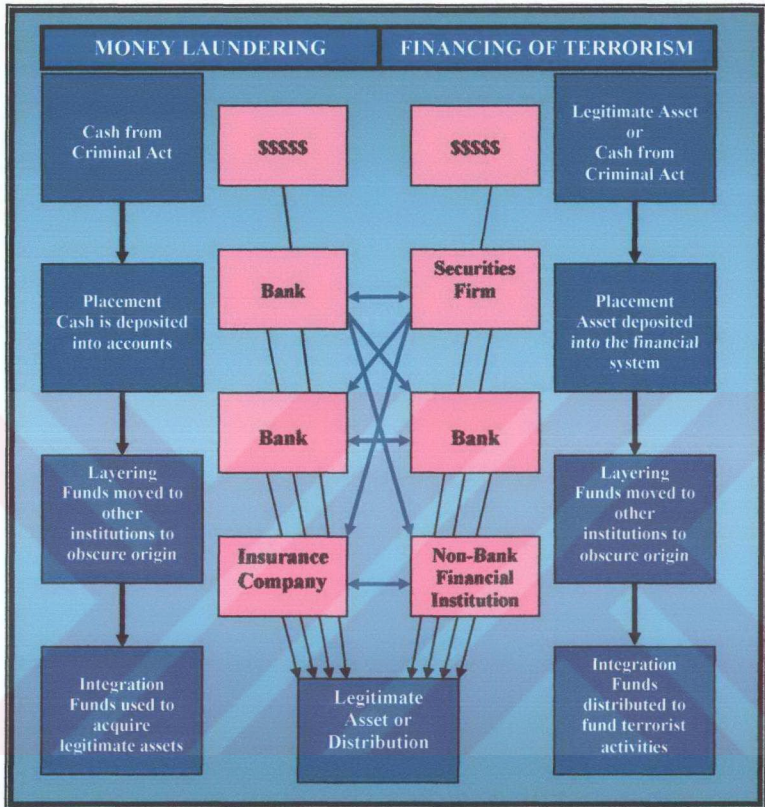
With regard to money laundering only, the International Monetary Fund has estimated that the aggregate amount of funds laundered in the world could range between two and five per cent of the world's gross domestic product. Using 1996 statistics, these percentages would approximate between US \$590 billion and US \$1.5 trillion.<sup>420</sup> Thus, by any estimate, the size of the problem is very substantial and merits the complete attention of every country.

#### **6.3.5 The Processes**

The initial concern over money laundering began with its early connection to illegal trafficking in narcotic drugs. The objective of drug traffickers was to convert typically small denominations of currency into legal bank accounts, financial instruments, or other assets. Today, ill-gotten gains are produced by a vast range of criminal activities—among them political corruption, illegal sales of weapons, and illicit trafficking in and exploitation of human beings. Regardless of the crime, money launderers resort to placement, layering, and integration in the process of turning illicit proceeds into legal monies or goods. (Figure 6.3)

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<sup>420</sup> TANZI, Vito, Money Laundering and the International Finance System, IMF Working Paper No. 96/55, May 1996, p.3-4.



**Figure 6.3 The Processes of Money Laundering and Financing of Terrorism**

The three stages of money laundering cycle that I examined in chapter 5 are also seen in terrorist financing schemes, except that stage three integration involves the distribution of funds to terrorists and their organizations, while money laundering, as discussed previously, goes in the opposite direction—integrating criminal funds into the legitimate economy.

### 6.3.6 Where Do Money Laundering and Terrorist Financing Occur?

Money laundering and the financing of terrorism can, and do, occur in any country in the world, especially those with complex financial systems. Countries with lax, ineffective, or corrupt AML and CFT infrastructures are also likely targets for such activities. No country is exempt.

Because complex international financial transactions can be abused to facilitate the laundering of money and terrorist financing, the different stages of money laundering and terrorist financing occur within a host of different countries. For example, placement, layering, and integration may each occur in three separate countries, one or all of them removed from the original scene of the crime.

### 6.3.7 Methods and Typologies

Money can be laundered in a number of ways, ranging from small cash deposits in unremarkable bank accounts (for subsequent transfer) to the purchase and resale of luxury items such as automobiles, antiques, and jewelry. Illicit funds can also be transferred through a series of complex international financial transactions. Launderers are very creative—when overseers detect one method, the criminals soon find another.

The various techniques used to launder money or finance terrorism are generally referred to as methods or typologies. The terms methods or typologies are referred to interchangeably, without any distinction between the two. At any point in time, it is impossible to describe accurately the universe of the different methods criminals use to launder money or finance terrorism. Moreover, their methods are likely to differ from country to country because of a number of characteristics or factors unique to each country, including its economy, complexity of financial markets, AML regime, enforcement effort and international cooperation. In addition, the methods are constantly changing.

Nevertheless, various international organizations have produced excellent reference works on money laundering methods and techniques. FATF has produced reference materials on methods in its annual reports and annual typologies report.<sup>421</sup> The various

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<sup>421</sup> FATF Report on Money Laundering Typologies, 2002-2003, Available on site: <http://www1.oecd.org/fatf/>



FATF-style regional bodies also provide information on the various typologies seen in their regions. For the most up to date information on money laundering methods and typologies, please consult the websites for these entities. In addition, the Egmont Group has produced a compilation of one hundred sanitized cases about the fight against money laundering from its member financial intelligence units.<sup>422</sup>

## **6.4 CHARACTERISTICS OF TERRORIST FINANCING**

The primary objective of terrorism according to one definition is “to intimidate a population, or to compel a Government of an international organization to do or abstain from doing any act”.<sup>423</sup> In contrast, financial gain is generally the objective of other types of criminal activities. While the difference in ultimate goals between each of these activities may be true to some extent, terrorist organizations still require financial support in order to achieve their aims. A successful terrorist group, like any criminal organization, is therefore necessarily one that is able to build and maintain an effective financial infrastructure. For this it must develop sources of funding, a means of laundering 1 Article 2, International Convention for the Suppression of the Financing of Terrorism, 9 December 1999. Those funds and then finally a way to ensure that the funds can be used to obtain material and other logistical items needed to commit terrorist acts.

### **6.4.1 Sources of Terrorist Funds**

Experts generally believe that terrorist financing comes from two primary sources. The first source is the financial support provided by States or organizations with large enough infrastructures to collect and then make funds available to the terrorist organization. This so-called State-sponsored terrorism has declined in recent years, according to some experts, and is increasingly replaced by other types of backing. An individual with sufficient financial means may also provide substantial funding to terrorist groups. Osama bin Laden, for example, is thought to have contributed significant amounts of his personal fortune to the establishment and support of the Al-Qaeda terrorist network.<sup>424</sup>

<sup>422</sup> <http://www1.fincen.gov/>, Chapter III, The Egmont Group.

<sup>423</sup> Article 2, International Convention for the Suppression of the Financing of Terrorism, 9 December 1999. Available on site: <http://www.un.org>

<sup>424</sup> Financial Action Task Force (FATF), Guidance for Financial Institutions in Detecting Terrorist Financing, Paris, 24 April 2002, p.4.

The Financial Intelligence Unit (FIU) in Country C received several suspicious transaction reports from different banks concerning two persons and a diamond trading company. The individuals and the company in question were account holders at the various banks. In the space of a few months, a large number of fund transfers to and from overseas were made from the accounts of the two individuals. Moreover, soon after the account was opened, one of the individuals received several USD cheques for large amounts.

According to information obtained by the FIU, one of the accounts held by the company appeared to have received large US dollar deposit originating from companies active in the diamond industry. One of the directors of the company, a citizen of Country C but residing in Africa, maintained an account at another bank in Country C. Several transfers had been carried out to and from overseas using this account. The transfers from foreign countries were mainly in US dollars. They were converted into the local currency and were then transferred to foreign countries and to accounts in the Country C belonging to one of the two subjects of the suspicious transaction report.

Police information obtained by the FIU revealed that an investigation had already been initiated relating to these individuals and the trafficking of diamonds originating from Africa. The large funds transfers by the diamond trading company were mainly sent to the same person residing in another region. Police sources revealed that this person and the individual that had cashed the cheques were suspected of buying diamonds from the rebel army of an African country and then smuggling them into Country C on behalf of a terrorist organization. Further research by the FIU also revealed links between the subjects of the suspicious transaction report and individuals and companies already tied to the laundering of funds for organized crime. This case is currently under investigation.

**Example: Diamond Trading Company Possibly Linked to Terrorist Funding  
Operation**

The second major source of funds for terrorist organizations is income derived directly from various "revenue-generating" activities. As with criminal organizations, a terrorist group's income may be derived from crime or other unlawful activities. A terrorist group in a particular region may support itself through kidnapping and extortion. In this scenario, ransoms paid to retrieve hostages, along with a special "revolutionary tax" (in reality a euphemism for protection money) demanded of businesses, provide needed financial resources but also play a secondary role as one other means of intimidating the target population. Besides kidnapping and extortion, terrorist groups may engage in large-scale smuggling, various types of fraud (for example, through credit cards or charities), thefts and robbery, and narcotics trafficking.

Funding for terrorist groups, unlike for criminal organizations however, may also include income derived from legitimate sources or from a combination of lawful and unlawful sources. Indeed, this funding from legal sources is a key difference between terrorist groups and traditional criminal organizations. How much of a role that legal money plays in the support of terrorism varies according to the terrorist group and whether the source of funds is in the same geographic location as the terrorist acts the group commits.

Community solicitation and fundraising appeals are one very effective means of raising funds to support terrorism. Often such fundraising is carried out in the name of organizations having the status of a charitable or relief organization, and it may be targeted at a particular community. Some members of the community are led to believe that they are giving for a good cause. In many cases, the charities to which donations are given are in fact legitimate in that they do engage in some of the work they purport to carry out. Most of the members of the organization, however, have no knowledge that a portion of the funds raised by the charity is being diverted to terrorist causes. For example, the supporters of a terrorist movement from one country may carry out ostensibly legal activities in another country to obtain financial resources. The movement's supporters raise these funds by infiltrating and taking control of institutions within the immigrant community of the second country. Some of the specific fundraising methods might include: collection of membership dues and / or subscriptions; sale of publications; speaking tours, cultural and social events; door-to-

door solicitation within the community; appeals to wealthy members of the community; and donations of a portion of their personal earnings.<sup>425</sup>

#### 6.4.2 Laundering of Terrorist Related Funds

From a technical perspective, the methods used by terrorists and their associates to generate funds from illegal sources differ little from those used by traditional criminal organizations. Although it would seem logical that funding from legitimate sources would not need to be laundered, there is nevertheless often a need for the terrorist group to obscure or disguise links between it and its legitimate funding sources. It follows then that terrorist groups must similarly find ways to launder these funds in order to be able to use them without drawing the attention of authorities. In examining terrorist related financial activity, FATF experts have concluded that terrorists and their support organizations generally use the same methods as criminal groups to launder funds. Some of the particular methods detected with respect to various terrorist groups include: cash smuggling (both by couriers or bulk cash shipments), structured deposits to or withdrawals from bank accounts, purchases of various types of monetary instruments (travelers' cheques, bank cheques, and money orders), use of credit or debit cards, and wire transfers. There have also been indications that some forms of underground banking (particularly the *hawala* system<sup>426</sup>) have had a role in moving terrorist related funds.<sup>427</sup>

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<sup>425</sup> Financial Action Task Force (FATF), Guidance for Financial Institutions in Detecting Terrorist Financing, Paris, 24 April 2002, p.5,

<sup>426</sup> FATF Report on Money Laundering Typologies, 1999-2000, 3 February 2001, p. 4-8.

<sup>427</sup> Financial Action Task Force (FATF), Guidance for Financial Institutions in Detecting Terrorist Financing, Paris, 24 April 2002, p.5,

The financial intelligence unit (FIU) in Country L received a suspicious transaction report from a bank regarding an account held by an offshore investment company. The bank's suspicions arose after the company's manager made several large cash deposits in different foreign currencies. According to the customer, these funds were intended to finance companies in the media sector. The FIU requested information from several financial institutions. Through these enquiries, it learned that the managers of the offshore investment company were residing in Country L and a bordering country. They had opened accounts at various banks in Country L under the names of media companies and a non-profit organization involved in the promotion of cultural activities.

According to the analysis by the FIU, the managers of the offshore investment company and several other clients had made cash deposits to the accounts. These funds were ostensibly intended for the financing of media based projects. The analysis further revealed that the account held by the non-profit organization was receiving almost daily deposits in small amounts by third parties. The manager of this organization stated that the money deposited in this account was coming from its members for the funding of cultural activities. Police information obtained by the FIU revealed that the managers of offshore investment company were known to have been involved in money laundering and that an investigation was already underway into their activities. The managers appeared to be members of a terrorist group, which was financed by extortion and narcotics trafficking. Funds were collected through the non-profit organization from the different suspects involved in this case. This case is currently under investigation.

**Example: Cash Deposits to Accounts of Non-Profit Organization Allegedly Finance Terrorist Group**

The difference between legally and illegally obtained proceeds raises an important legal problem as far as applying anti-money laundering measures to terrorist financing. Money laundering has generally been defined as a process whereby funds obtained through or generated by criminal activity are moved or concealed in order to obscure the link between the crime and generated funds. The terrorist's ultimate aim on the other hand is not to generate profit from his fundraising mechanisms but to obtain resources to support his operations. In a number of countries, terrorist financing thus may not yet

be included as a predicate offence for money laundering, and it may be impossible therefore to apply preventive and repressive measures specifically targeting this terrorist activity.

When terrorists or terrorist organizations obtain their financial support from legal sources (donations, sales of publications, etc.), there are certain factors that make detecting and tracing these funds more difficult. For example, charities or non-profit organizations and other legal entities have been cited as playing an important role in the financing of some terrorist groups. The apparent legal source of this funding may mean that there are few, if any, indicators that would make an individual financial transaction or series of transactions stand out as linked to terrorist activities.<sup>428</sup>

An investigation in Country B arose as a consequence of a suspicious transaction report. A financial institution reported that an individual who allegedly earned a salary of just over USD 17,000 per annum had a turnover in his account of nearly USD 356,000. Investigators subsequently learned that this individual did not exist and that the account had been fraudulently obtained. Further investigation revealed that the account was linked to a foreign charity and was used to facilitate funds collection for a terrorist organization through a fraud scheme. In Country B, the government provides matching funds to charities in an amount equivalent to 42 percent of donations received. Donations to this charity were being paid into to the account under investigation, and the government matching funds were being claimed by the charity. The original donations were then returned to the donors so that effectively no donation had been given to the charity. The charity retained the matching funds. This fraud resulted in over USD 1.14 million being fraudulently obtained. This case is currently under investigation.

**Example: High Account Turnover Indicates Fraud Allegedly Used to Finance Terrorist Organization**

Other important aspects of terrorist financing that make its detection more difficult are the size and nature of the transactions involved. Several FATF experts have mentioned

<sup>428</sup> Financial Action Task Force (FATF), Guidance for Financial Institutions in Detecting Terrorist Financing, Paris, 24 April 2002, p.6,

that the funding needed to mount a terrorist attack does not always call for large sums of money, and the associated transactions are usually not complex. For example, an examination of the financial connections among the September 11th hijackers showed that most of the individual transactions were small sums, that is, below the usual cash transaction reporting thresholds, and in most cases the operations consisted of only wire transfers. The individuals were ostensibly foreign students who appeared to be receiving money from their parents or in the form of grants for their studies, thus the transactions would not have been identified as needing additional scrutiny by the financial institutions involved.<sup>429</sup>

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<sup>429</sup> Financial Action Task Force (FATF), *Guidance for Financial Institutions in Detecting Terrorist Financing*, Paris, 24 April 2002, p.6.

The manager of a chocolate factory (CHOCCo) introduced the manager of his bank accounts to two individuals, both company managers, who were interested in opening commercial bank accounts. The two companies were established within a few days of each other, however in different countries. The first company (TEXTCo) was involved in the textile trade while the second one was a real estate (REALCo) non-trading company. The companies had different managers and their activities were not connected.

The bank manager opened the accounts for the two companies, which thereafter remained dormant. After several years, the manager of the chocolate factory announced the arrival of a credit transfer issued by the REALCo to the account of the TEXTCo. This transfer was ostensibly an advance on an order of tablecloths. No invoice was shown. However, once the account of TEXTCo received the funds, its manager asked for them to be made available in cash at a bank branch near the border. There, accompanied by the manager of CHOCCo, the TEXTCo manager withdrew the cash.

The bank reported this information to the financial intelligence unit (FIU). The FIU's research showed that the two men crossed the border with the money after making the cash withdrawal. The border region is one in which terrorist activity occurs, and further information from the intelligence services indicated links between the managers of TEXTCo and REALCo and terrorist organizations active in that region.

#### **Example: Lack of Clear Business Relationship Appears to Point Terrorist Connection**

The examples above indicate the processing of the system. These examples may be multiplied. The most important point is to learn the system by using these examples.



*"The serious problems of life are never fully solved. If ever they should appear to be so, it is a sure sign that something has been lost. The meaning and purpose of a problem seem to lie not in its solution but in our working at it incessantly."*

*Carl Jung*

## **7 FUTURE TRENDS IN ORGANIZED CRIME AND INTERNATIONAL TERRORISM**

Thus far, I examined the current situation about international terrorism, organized crime and the links between them. At the end of examining the current situation, it has constituted a general opinion. These opinions are:

- Both international terrorism and transnational organized crime have changing and dynamic situation.
- They are both the two of the most serious problems of the world.
- Both international terrorism and transnational organized crime affect each other, but this affection has the aim of providing illegal benefit.
- Transnational organized crime activities are being active now all over the world.
- The ways of the whole illicit money come to an end at some countries to be laundered.
- The link between international terrorism and transnational organized crime is deeper and it is not easy to determine the details of the link.
- The law enforcement policies against international terrorism and especially transnational organized crime are not sufficient.

In this post-Cold War era, it is clear that many 'old' phenomena from the international security environment have been radically altered. Sebastyen Gorka reports on how the

concepts of threat, security, deterrence and national interest have been reassessed by nearly all national capitals and by their policy elites.<sup>430</sup>

Factors such as economic globalization, transparency of borders and the explosion of information technology have all played a part in this process. Consequently the categories and tools of the past have been shown to be lacking. While terrorism and organized crime still exist, they are far removed from the 'quintessentially political terrorism of the 1970s and 1980s or the clichéd mafia syndicates we are all too familiar with. Both activities have exploited the change in the international environment and, more importantly, they have overlapped to a degree unimaginable prior to 1990.

Terrorism is always a crime, yet in its 'purest' form has usually involved criminal activity (murder, property damage, etc) for a political end, be it national independence, or the release of imprisoned terrorists. Often, terrorist acts have actually been focused on destabilizing the governmental regime being fought, undermining the electorate's confidence in the authorities.

Organized crime has rarely had any interest in undermining the governmental system in which it operates since it is predominantly money making venture that prefers conservative stability. Despite these differences, carrying out terrorist activities costs money. As the bipolar world crumbled, and as the USSR was less and less able to subsidize anti-western terrorists, the classic groups exercising political violence had to look elsewhere for funding. The best example of such a shift was the Provisional IRA's large-scale 1980s move into the crime arena. While historically being involved in minor protection-racket activities, as the Cold War drew to an end, Provisional IRA became more involved in illicit gambling, running gaming arcades, taxi firms, and even, some say, drug running. This diversification was simply a more sophisticated version of a slide into less than politically 'pure' activities mirrored elsewhere, most often in Latin America.<sup>431</sup>

In this chapter I researched the forecasts and projections on the future of both international terrorism and organized crime. Especially the use of information technology is an important development which is for the benefit of terrorism and OC.

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<sup>430</sup> [http://www.janes.com/security/international\\_security/news/jtism/jtism000619\\_1\\_n.shtml](http://www.janes.com/security/international_security/news/jtism/jtism000619_1_n.shtml)

<sup>431</sup> Ibid.

And the acceleration of the development demonstrates that anyone could not block this benefit. But still, we have not to be pessimist; on the contrary, we have to work more.

## 7.1 ESTIMATES ON FUTURE OF INTERNATIONAL TERRORISM

International terrorism is changing in ways that may make it more dangerous and difficult to combat. The collapse of communism and the break-up of the Soviet Union, the dramatic decline of terrorism that many observers had expected at the beginning of the 1990s have not materialized. On the contrary, the post-Cold War era has witnessed not only an increase in terrorism as the weapon of warfare but also a trend toward more lethal violence.<sup>432</sup>

Terrorism remains one of the most serious problems for many countries and for the international community. Indeed, at the beginning of the 21st century terrorism and more lethal terrorist methods are on the rise for several reasons.

First, the collapse of communism, the disintegration of the Soviet empire and the end of the bipolar world order has resulted in the outbreak of nationalist and religious hostilities and the loss of restraining mechanisms available in the old balance of power arrangement.

Second, the increased activism of potent religious movements and the proliferation of zealous religious or pseudo-religious groups have increased the likelihood of mass disturbances and mass destruction because religious terrorists, unlike their secular counterparts, are more likely to inflict indiscriminate harm to further their "holy wars."

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In the past, terrorism was practiced by a collection of individuals belonging to an identifiable organization that had a clear command and control apparatus and a defined set of political, social, or economic objectives. Radical leftist organizations such as the JRA, the RAF in Germany, and the BR in Italy, as well as ethno-nationalist terrorist movements such as the Abu Nidal Organization, the IRA, and the Basque separatist group, ETA, reflected this stereotype of the traditional terrorist group. They generally

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<sup>432</sup> KIRAZ, Erman, *Changing Structure of Modern International Terrorism*, Yeditepe University, Graduate Institute of Social Science, MBA Thesis, Istanbul, 2003, p.160.

<sup>433</sup> NACOS, B.L., *After the Cold War: Terrorism Looms Larger as a Weapon of Dissent and Warfare*, 2001. Available on site: <http://www.igc.org/intacad/cwl/terror2.html>

issued messages taking credit for -and explaining in great detail- their actions. However disagreeable or distasteful their aims and motivations may have been, their ideology and intentions were at least comprehensible -although politically radical and personally fanatical.<sup>434</sup>

This old image of a professional terrorist motivated by ideology or the desire for "national liberation," operating according to a specific political agenda, armed with guns and bombs, and backed by overt state sponsors, has not quite disappeared. It has been enlarged by other forms of terrorism.

This new terrorism has different motives, different actors, different sponsors, and demonstrably greater lethality. Terrorists are organizing themselves in new, less hierarchical structures and using "amateurs" to a far greater extent than in the past. All of this renders much previous analysis of terrorism based on established groups obsolete, and complicates the task of intelligence-gathering and counter terrorism.<sup>435</sup> This new age has brought new inspiration for the users of violence along with the old.<sup>436</sup>

Third, virtually all contemporary terrorism, even the seemingly domestic variety, has international aspects mostly because of the rapidly expanding global communication and information network. Computers, satellite phones and other modern technologies offer these terrorists very effective organizational and communication tools. They use them to co-ordinate and support their activities, collect money and spread information and propaganda.

Changes in motives have produced changes in the organization and structure of terrorist groups today. While political terrorists usually have rigid hierarchical structures, new groups rely on looser affiliations and organizations among like-minded people, often from different countries. And in the future, it would appear that smaller and smaller splinter groups are breaking from the main force body of these groups.

These ultra-radicals have become the enforcers of the extreme ends of an ideology or belief and it is they who will use unconventional tactics to carry out particularly heinous

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<sup>434</sup> HOFFMAN, B., *Terrorism Trends and Prospects*, Countering the New Terrorism, Lesser, I.O., et al., RAND, Washington, 1999, p.8

<sup>435</sup> LESSEER, I.O., *Changing Terrorism in a Changing World*, Countering the New Terrorism, Lesser, I.O., et al., RAND, Washington, 1999, p.1

<sup>436</sup> LAQUEUR, W., *Postmodern Terrorism: New Rules For An Old Game*, USIA Electronic Journal, Vol. 2, No. 1, February 1997, p.4.

acts. This devolution of terrorist organizations into smaller and more compartmentalized groups makes detection of these small cells increasing more difficult and intelligence gathering and analysis efforts even more valuable.<sup>437</sup>

Walter Laqueur points out “in the future, terrorists will be individuals or like-minded people working in very small groups (...). The ideologies such individuals and mini-groups espouse are likely to be even more aberrant than those of larger groups. And terrorists working alone or in very small groups will be more difficult to detect unless they make a major mistake or are discovered by accident”<sup>438</sup>

John Arquilla and David Ronfeldt predict that in the near future terrorists will be independent organizations and individuals who may “communicate, coordinate, and conduct their campaigns” without a precise central command. They go on to explain that protagonists use network forms of organization.<sup>439</sup> There are three kinds of network forms: The chain or line network, as in a smuggling chain where people, goods, or information move along a line of separated contacts, and where end-to-end communication must travel through the intermediate nodes. Figure 7.1 illustrates chain network.<sup>440</sup>

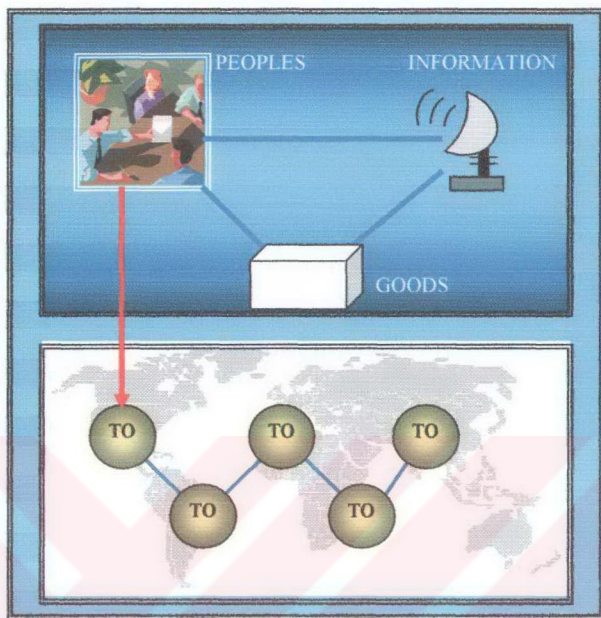
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<sup>437</sup> STATEN, C.L., *Asymmetric Warfare, the Evolution and Devolution of Terrorism; The Coming Challenge For Emergency and National Security Forces*, *The Journal of Counterterrorism and Security International*, Winter, Vol. 5, No. 4., 1999, p.9

<sup>438</sup> HIRSCHMANN, K., *The Changing Face of Terrorism*, 2000. Available on site: [http://www.fes.de/ippg/ippg3\\_2000/arthirschmannneu.htm](http://www.fes.de/ippg/ippg3_2000/arthirschmannneu.htm)

<sup>439</sup> ARQUILLA, J. and Ronfeldt, D., *The Advent of Netwar, Networks and Networks: The Future of Terror, Crime, and Militancy*, Arquilla, J. and Ronfeldt, D. (Ed.), RAND, Washington, 2001, p.7.

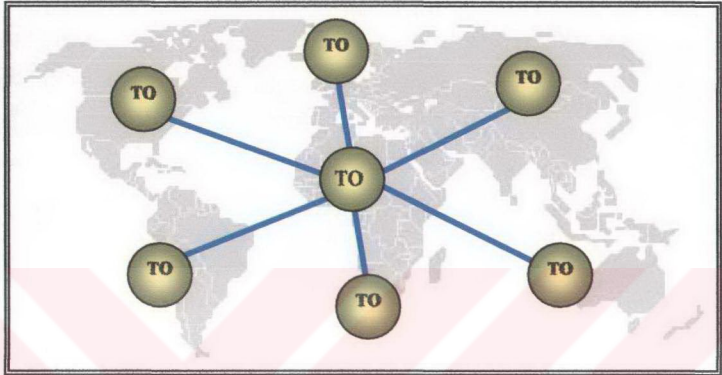
<sup>440</sup> *Ibid*, p.8



**Figure 7.1 Network Forms of Terrorist Organization (Chain Network)**

The *hub*, star, or wheel network, as in a franchise or a cartel where a set of actors are tied to a central (but not hierarchical) node or actor, and must go through that node to communicate and coordinate with each other. Figure 7.2 illustrates star network.<sup>441</sup>

<sup>441</sup> Ibid.

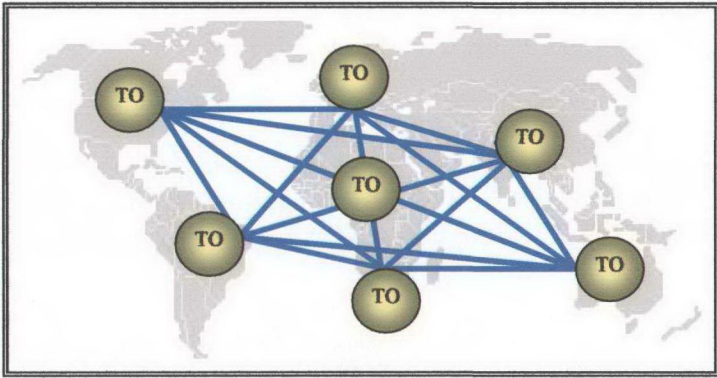


**Figure 7.2 Network Forms of Terrorist Organization (Star Network)**

The all-channel or full-matrix network, as in a collaborative network of militant peace groups where everybody is connected to everybody else. Figure 7.3 illustrates all-channel network.<sup>442</sup>

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<sup>442</sup> Ibid.



**Figure 7.3 Network Forms of Terrorist Organization (All-Channel Network)**

The authors describe the “all-channel” or “full matrix” network as the most highly developed because all of its members are connected to, and can communicate with, all other members. In contrast, “chain” or “line” networks are simpler structures. Information move in a linear direction from one node to the next. Each contact knows his or her next contact, but can identify no one beyond that next contact. Another variation is the “hub” or “star” network. The “star” employs a central node to coordinate communication among members, but not to control them. As with other networks, nodes function fairly independently.

The all-channel network represents the greatest potential threat to traditional hierarchical organizations and established governments, especially as information technologies enhance communication capabilities among constituent members. The all-channel network's flat organizational architecture means that there may be no single leader, no head to cut off. Decision-making and tactical operations will instead be distributed among autonomous groups who share an “overarching doctrine” or strategic point of view. Maintenance of such shared principles, beliefs, and mission will, however, require the means for “mutual consultation and consensus-building” among network nodes. Information technology can play a vital role in providing these means, but personal contact among node members may also be a necessity.<sup>443</sup>

<sup>443</sup> ARQUILLA, J. and Ronfeldt, D., *Ibid*, p.9



In the estimation of most of the analysts, researchers -and of the main intelligence services- terrorism will continue to be a serious threat in the next decade on the strategic and tactical level. The continuous and growing instability of the international environment on the economic, social and political level; the impossibility of attaining a new balance of power in the international system; the extensive technological changes, - all these factors will provide a fertile ground for the old, and probably also the new kind of organizations, such as radical ecological or abortionist movements or various esoteric cults and sects.<sup>444</sup>

The effect of high technology, uninhibited criminals, and ready cash have come together to create superterrorism, a lethal synergy that threatens larger and larger segments of the world's population.

Superterrorism includes:

The use of nuclear weapons or conventional explosives configured to scatter radioactive material;

The release of chemical or biological agents, other than minor poisoning incidents;

The detonation of plastic explosives; and

Cyber attacks on electronic networks that underpin a nation's physical infrastructure.<sup>445</sup>

The emergence of a new breed of terrorists less constrained by traditional ethics or political pressures, coupled with the diffusion of know-how about nuclear, biological and chemical weapons, may increase the probability of a major WMD (Weapons of Mass Destruction) terrorist incident. Statistically, today most terrorists still prefer guns and conventional weapons. However, evidence suggests that some of the "new" terrorist groups may be willing to inflict mass casualties for a variety of motives other than political goals. The 1995 nerve gas attack on subway riders in Japan, which killed at least a dozen and wounded more than 5,000 people, was the ultimate turning point. Addressing the ability of the Aum Shinrikyo sect to acquire some of its toxic material

<sup>444</sup> Intelligence and the Challenge of Terrorism in the 21<sup>st</sup> Century, This paper was presented at the conference "A Counter-Terrorism Strategy for the 21<sup>st</sup> Century: The Role of Intelligence" at The Morris E. Curiel Center for International Studies of Tel Aviv University, on November 1-2, 1998. Available on site: <http://www.ict.org.il/>

<sup>445</sup> SCHWEITZER, G.E. and Dorsch, C. C., Modern Mutations of Global Terrorism, The Bridge Volume 28, Number 3, 1998.

and know-how in Russia, the United States, Australia, and elsewhere in the world, it was concluded correctly that the sarin gas strike represented "a new era" in terrorism and revealed serious difficulties in preventing the indiscriminate spread of weapons of mass destruction.<sup>446</sup>

Terrorists' familiarity with Information Technology (IT) make it also possible that they will resort to cyber attacks or other forms of attacks on information systems, thus exploiting our societies' reliance on computers and networked information systems. Some terrorist (or cyber terrorist) groups are becoming increasingly sophisticated in the use of these technologies, and there is evidence that they could inflict serious damage to our information systems.<sup>447</sup>

### 7.1.1 Getting and Using the Weapons of Mass Destruction

To date most informed opinions on non-state political violence suggest that terrorist of the future will neither seek to develop, nor threaten to use weapons of mass destruction (WMD). Arguments supporting this position are typically presented through a framework of anachronistic assumptions that have been in use since the days of the late nineteenth century Russian Nihilist movement.

These assumptions suggest that: (1), terrorist groups are nothing more than a collection of frustrated, political actors bent on correcting a perceived flaw in the socio-political order of the state. The cause to take up terrorism evolves adjunct to their failure or inability to influence objectional political, economic and/or social conditions that define their environment;<sup>448</sup> (2), it is assumed that these frustrated actors adopt terrorism as a means to force their political agenda through the use of directed and modulated violence.

This violence is designed to communicate a complex message that primarily gains the terrorist group public recognition for their cause. Unmitigated destruction and violence is not the goal as noted by Brian Jenkins who suggests that "terrorists want a lot of

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<sup>446</sup> NACOS, B.L., *After the Cold War: Terrorism Looms Larger as a Weapon of Dissent and Warfare*, 2001. Available on site: <http://www.igc.org/intacad/cwl/terror2.html>

<sup>447</sup> KIRAZ, Erman, *Changing Structure of Modern International Terrorism*, Yeditepe University, Graduate Institute of Social Science, MBA Thesis, Istanbul, 2003, p.165.

<sup>448</sup> CRENSHAW, Martha, *The Logic of Terrorism*, in Walter Reich, ed., *Origins of Terrorism*, New York: Cambridge University Press, 1992, p. 17-24.

people watching, not a lot of people dead;<sup>449</sup> (3) terrorists are "mirror imaging rational actors," e.g., their behavior is normative<sup>450</sup>. As such they are subsumed to understand that exceeding a certain violence threshold may result in a globally enjoined effort to eradicate them.<sup>451</sup> Finally it is assumed that the technology and associated costs involved in the development and production of weapons of mass destruction are beyond the reach of the non-state group. For these reasons the image of the classical terrorist of the twentieth century has not included WMD. However, these traditional arguments have arguably weakened due to the changing nature of the terrorist phenomenon. Specifically these changes are emerging in areas related to supply and demand variables, variables that certainly influence a non-state group's decision to develop and use WMD. Supply issues suggest that: (1), the availability of materials and technical requirements to produce elementary WMD are well within the reach of contemporary non-state groups; (2), that many groups have the financial capacity to fund such programs; and (3), that individual knowledgeable of WMD technologies are involved with groups that might threaten the use of WMD.

Demand issues suggest that ownership and use of WMD by a non-state group provides a powerful negotiating tool, status, and power. Thomas Schelling notes that a terrorist organization which achieves a WMD capability ascends to a higher position of relative power and prestige.<sup>452</sup> Additionally, the absence of territorial boundaries in the case of the non-state group serves to make state retaliation difficult as the terrorist become hard to target, a problem that Marrs suggests serves to "vitate the retaliatory threats of the state."<sup>453</sup>

It is noteworthy that Schelling's argument may have strong appeal to non-state groups that embrace a religious ideology affiliated with apocalyptic millennialism, redemptive fanaticism or racist/ethnic hate. Where traditional terrorists typically conduct their actions within certain violence thresholds, those operating under the aforementioned belief systems are arguably not subject to the same constraints as they conduct their

<sup>449</sup> JENKINS, Brian, *The Potential for Nuclear Terrorism*, Santa Monica, CA: Rand, 1977, p. 8.

<sup>450</sup> KARL-HEINZ, Kamp, *Nuclear Terrorism-Hysterical Concern or Real Risk*, *German Foreign Affairs Review*, v. 46, n. 3, 1995.

<sup>451</sup> GURR, Ted Robert, *Terrorism in Democracies: Its Social and Political Bases*, in Walter Reich, ed., *Origins of Terrorism*, New York: Cambridge University Press, 1990, p. 94.

<sup>452</sup> SCHELING, Thomas, "Thinking about Nuclear Terrorism," *International Security*, v.6, n.4, Spring 1982, p. 68-85.

<sup>453</sup> MARRS, Robert W., *Nuclear Terrorism: Rethinking The Unthinkable*, thesis, Naval Postgraduate School, Monterey, CA, December, 1994, p. 3.

acts to satisfy a higher authority, God. These groups may be attracted to the power ownership of WMD affords precisely because WMD use can result in mass casualties and mass disruption against an "enemy" defined by their religious beliefs. Non-state groups operating under the "cloak of religion" might very well be the most likely candidates to use the unlimited or disproportionate violence WMD affords.

### 7.1.2 Probable Attacks on Urban Areas

Cities, which encompass a large and growing portion of the world population, are primary targets for terrorism and are particularly vulnerable because of the interdependence of their systems. Cities' threats and targets are reviewed and a series of principles and observations about the protection of cities are suggested. Some lessons learned from the events of September 11, 2001 are outlined and complemented by suggestions of needs, both technical and socio-technological.<sup>454</sup>

Over 40% of the world's population (and in the US almost 80% of the population) live in cities—numbers that continue to grow. Economic and social activities, government operations, and extensive infrastructures are concentrated in cities. By the very nature of the activities they host, in their structures and in their monuments, cities are also powerful symbols that embody the pride of a nation. However, cities, especially larger ones, are particularly vulnerable because all their systems are interdependent, and the vulnerability of one system can have a major impact on other systems. For these reasons, cities have been prime targets of terrorist attacks, as exemplified by the bomb that exploded in the World Trade Center in New York City in 1993, by the destruction of the Center eight years later, and by the attacks in Washington on the Pentagon, in other attacks in Tel Aviv, New Delhi, and Moscow's Nord Ost Theater, to mention a few. Most attacks thus far have been predominantly low-tech, executed with simple means. However, many other kinds of attack are possible, as in the case of the attacks using sarin in Tokyo, with anthrax in the US, and, also in the US, with airplanes on September 11, 2001 (airplanes that were hijacked, however, with simple means). Historically, cities have also been sites of major incidents of social violence—riots and street brawls, as well as civil internal wars and external warfare. A brief and by no

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<sup>454</sup> BUGLIARELLO, George, *Urban Security in Perspective, Technology in Society*, ELSEVIER, Washington DC, 11, 2003, p. 499.

means complete listing of what happened in the decade 1989–1999 is given in Table 7.1.

CIVIL/INTERNAL WAR OR URBAN TERRORISM		RIOTS OR STREET PROTESTS BY THE CIVILIAN POPULATION	EXTERNAL WARFARE
Baku	Madrid	Beograd	Baghdad
Beijing	Manchester	Bombay	Beograd
Bogotá	Mogadishu	Calcutta	Groznyy
Buenos Aires	Monrovia	Dhaka	
Cairo	Moscow	Jakarta	
Colombo	New York	Los Angeles	
Kabul	Oklahoma C.	Rangoon (Yangon)	
Karachi	Paris		
Kinshasa	Phnom Penh		
Lahore	Port au Prince		
Lima	Tbilisi		
London	Tokyo		

Table 7.1 Cities with Major Incidents of Social Violence 1989-1999<sup>455</sup>

Cities are not only the targets of attacks but can also be potential suppliers of what terrorists need to carry out their attacks. They possess biological and chemical laboratories and stores and, in many cases, biological and chemical industries; they possess radiation sources in hospitals, laboratories, and instructional nuclear reactors; they have fuel depots, gas pipelines, liquid natural gas storage, electronics stores, computer labs in universities that can give access to cyber-terrorists, and vehicles that can be used in a terrorist attack—trucks, tankers, bulldozers, armored bank vehicles, and cars. Cities are also large potential suppliers of human resources for terrorism, and in libraries, universities, and other institutions, of information terrorists may need to plan and carry out their attacks. Cities can also be significant sources of funding through banks and businesses, as well as through associations and other institutions that can organize fundraising drives.

The threats that can be aimed at a city are well-known: chemical, biological, radiological, and nuclear attacks; cyber and electromagnetic attacks; and psychological attacks. Within cities, such threats and a target-rich environment—a complex interacting

<sup>455</sup> [http://www.ees.lanl.gov/ees5/urban\\_security/](http://www.ees.lanl.gov/ees5/urban_security/)

system of people, buildings, infrastructures (utilities, roads, railroads, ports, airports), hospitals, schools, churches, businesses, government, and military bases, with patterns of work, business, home life, leisure, and shopping activities that, all together, define a city's way of life. One potential target that has grown rapidly is the so-called telecom hotels, specific sites that house the devices that connect networks.<sup>456</sup>

Each threat to a city can target one or more of these interacting systems or activities, as illustrated in Figure 7.4. Thus, explosives can target people or structures, and electromagnetic pulses target elements of the infrastructure such as airports or utilities, which in turn can affect the functioning of hospitals, schools, and other institutions. Psychological threats can be aimed at people and organizations to affect the way of life of the city's inhabitants. In protecting cities from terrorist threats, we frequently tend to focus more on the physical protection of people, structures, and organizations than on the powerful impacts of psychological threats.<sup>457</sup>

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<sup>456</sup> BUGLIARELLO, George, *Urban Security in Perspective, Technology in Society*, ELSEVIER, Washington DC, 11, 2003, p. 499.

<sup>457</sup> EVANS, Crowley J, Malechi EJ, McIntee A., *Planning responses to telecom hotels: what accounts for increased regulation of co-location*. *J Urban Technol* 2002;December.

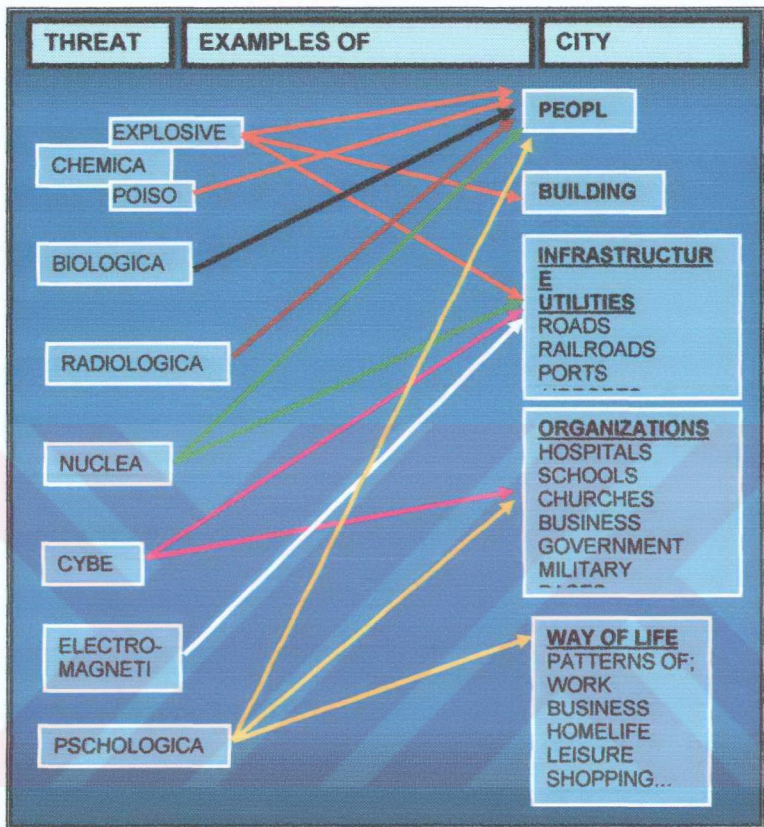


Figure 7.4 The Probable Effects of Terrorism on Cities

In general, the threats can reach their targets via a variety of delivery modalities. Countermeasures may directly address the threats at their origin, or the modalities of their delivery, or the strength and resilience of the target. Countermeasures that directly address threats at their origin or in their transit toward the city (e.g., in a ship, plane, or train) are basically the same whether an urban or non-urban attack is considered. However, many of the countermeasures against the modalities of delivery within the city and for protecting targets are peculiar to an urban environment. Modalities of delivery may range from cars in basement garages, to the arrival of weapons of mass

destruction in shipping containers, from the penetration of heating, ventilation, and air conditioning systems, to attacks on subway stations. Means for counteracting them include sensors, reconfiguration of traffic patterns, and, of course, inspections and checkpoints. Countermeasures to increase the resilience of targets in an urban environment include hardening of structures against explosives, .re, chemical, and biological attacks, cyber firewalls, redundancies, dynamic reconfiguration of buildings and infrastructure, and training of first responders in procedures to evacuate tall buildings.<sup>458</sup>

Given the complexity of possible target systems in a city, an overarching need is a comprehensive system view of a city, one that explicitly addresses the interdependence of components and overall vulnerabilities. It is fair to say that even today such a view is largely lacking. Integration of responses, starting with how persons in charge coordinate in an integrated fashion the response to an attack, is also a critical need that defines the capabilities of an unaided incident commander. Increasingly, however, there are technological tools being developed, such as ad hoc computer platforms that can help the incident commander to integrate all the available resources.<sup>459</sup>

## 7.2 THE FUTURE OF TRANSNATIONAL CRIME

Quite clearly, there is a long history of organized crime transcending national borders; however, traditional patterns explain only part of the surge of illegal activities today. Globalizing tendencies emerging since the 1970s--a time of deep recession beginning in the advanced capitalist countries and ramifying in all regions, accompanied by the collapse of the Bretton Woods arrangements and the dashing of hopes for a new world order--are transforming organized crime.<sup>460</sup> There are newly prominent forms of illegality such as computer crimes, money laundering stealing nuclear materials mainly from the former Soviet Union, and sophisticated fraud (technological complexity among several parties using counterfeit bank instruments, credit cards, letters of credit, computer intrusion, and ingenuity of design--stock market pump-and-dump scams, pyramids, etc.<sup>461</sup>) that crop up between the established codes of international law,

<sup>458</sup> BUGLIARELLO, George, *Urban Security in Perspective, Technology in Society*, ELSEVIER, Washington DC, 11, 2003, p. 499.

<sup>459</sup> *Ibid.*

<sup>460</sup> COX, Robert W., *A Perspective on Globalization*, in James H. Mittelman, ed., *Globalization: Critical Reflections*, Boulder: Lynne Rienner, 1996, p. 2130.

<sup>461</sup> *Jane's Foreign Report* 2448, 22 May 1997, p.10.



challenge existing norms, infiltrate licit businesses, and extend into international finance.

The rise of transnational organized crime groups is spurred by technological innovations, especially advances in commercial airline travel, telecommunications, and the use of computers in business, allowing for increased mobility of people, some of them carriers of contraband, and the flow of illicit goods. Central to this process are innovations in satellite technology, fiber-optic cable, and the miniaturization of computers, all of which facilitate operations across frontiers.<sup>462</sup> Closely related, hypercompetition is accelerating cross-border flows and thereby challenging sovereignty. Deregulation, in turn, furthers borderlessness, because it lowers state barriers to free flows of capital, goods, services, and labor.<sup>463</sup>

Like global firms, transnational organized crime groups operate both above and below the state. Above the state, they capitalize on the globalizing tendencies of borderlessness and deregulation. Embracing the processes of globalization, these groups create demand for their services. They become actors in their own right in the global division of labor and power, organized along zonal or regional and subregional lines, such as in the Golden Triangle, a major production and distribution site for morphine and heroin.<sup>464</sup>

At the same time, transnational organized crime groups operate below and beside the state by offering incentives to the marginalized segments of the population trying to cope with the adjustment costs of globalization. These groups reach down and out to the lower rungs of social structures—the impoverished—a substratum that does not lend itself to the easy strategies prescribed by the state and interstate institutions. These strategies are often cloaked as part of the development project conceived in a national framework but today overtaken and rendered antiquated by the globalization process.<sup>465</sup>

Insofar as the purpose of organized crime is to make money, these groups are typically regarded as predominantly economic actors. Their profit comes not merely from theft,

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<sup>462</sup> SHELLEY, Louise L, *Transnational Organized Crime: An Imminent Threat to the Nation-State?* *Journal of International Affairs* 48, no. 2, winter 1995, p. 465.

<sup>463</sup> MITTELMAN, James H., *The Dynamics of Globalization and How Does Globalization Really Work?* in Mittelman, *Globalization: Critical Reflections*, Boulder: Lynne Rienner, 1996, p. 229-241.

<sup>464</sup> MITTELMAN, James H., *Rethinking the International Division of Labour in the Context of Globalization*, *Third World Quarterly* 16, no. 2, June 1995, p. 273-295.

<sup>465</sup> MCMICHAEL, Philip, *Development and Social Change: A Global Perspective*, Thousand Oaks, Calif.: Pine Forge Press, 1996, p.78.

economy.<sup>468</sup> New hubs of global organized crime--with Johannesburg and Cape Town linked to the Nigerian chain and rapidly emerging as regional centers--are major nodes in these networks. In fact, Nigerians--no longer parvenus in their profession--have penetrated the entire subregion of southern Africa, and are involved in heroin and cocaine trafficking, various types of fraud, car theft, alien smuggling (aided by illegals who work as couriers), and gang activities, prompting US officials to refuse to train Nigerian police and central bankers because antifraud instruction is deemed only to increase the sophistication of Nigerian criminals.<sup>469</sup> Now, the Nigerian trafficking groups fan out beyond Africa and have become big actors in drug smuggling in Southeast and Southwest Asia, with increasing involvement in Latin America as well.

Global cities, more than states, are the main loci of transnational criminal organizations. Some cities--for example, Hong Kong and Istanbul--have formed a second tier and serve as transshipment points. However, it is world cities--especially New York, London, and Tokyo--that offer agglomerations of financial services (which provide vast opportunities for disguising the use and flow of money), sources of technological innovation, and advanced communications and transportation systems.<sup>470</sup> In these locales and elsewhere, a new breed of cybercriminals can exploit inherent vulnerabilities in the electronic infrastructure of global finance through computer intrusions for the purposes of theft, blackmail, and extortion. Given the vast scope of the Internet, cybergangs can assault a global city from virtually anywhere and remain anonymous, crippling the capacity of the state to apprehend and prosecute perpetrators. Yet these cities are epicenters of globalization.

Home to large, diverse populations, global cities allow criminals and even entire criminal organizations to blend into legitimate institutions in ethnic neighborhoods. These shelters pose a problem for the police insofar as they do not know the many languages and diaspora cultures harboring criminals or are not trusted by segments of society outside the mainstream. Nigerian criminal gangs in London and Asian criminal gangs in New York are among those able to exploit these advantages, which is

<sup>468</sup> ROSENAU, James N., *Turbulence in World Politics: A Theory of Change in Continuity*, Princeton: Princeton University Press, 1990, p.97.

<sup>469</sup> BARBER, Simon, *Lessons for SA from Nigeria's Example*, Business Day Online--Comment and Analysis, 20 February 1997. Available on site: <http://www.bday.co.za/96/0917/comment/c3.htm>.

<sup>470</sup> SASSEN, Saskia, *The Global City: New York, London, and Tokyo*, Princeton: Princeton University Press, 1991, p.32.

but today from emulating market mechanisms--forming strategic alliances, investing (and laundering) their capital, plowing it into new growth areas (e.g., dumping toxic wastes that abuse the environment in developing countries and then negotiating lucrative contracts for the cleanup industry), directing a share of their returns into R&D, adopting modern accounting systems, utilizing global information networks that have no frontiers, and insuring (protecting) themselves against risks or threats to their organizations. Whereas these groups may have ostensibly economic objectives, to the extent that they undermine the main actors in the globalization process--transborder firms and dominant states that acquiesce to it--then transnational organized crime groups are both a political component of and a response to globalization.

Crime groups are similar to legitimate businesses in that they embrace the logic of the market, show great flexibility in initiative, and are also hierarchically structured. For example, the Hong Kong triads provide leadership, and the commercial tongs (merchants' guilds), many of them based in Chinatowns, act as local subsidiaries.<sup>466</sup> Enhanced by *guanxi* (connections) in eastern Asia, which has its counterpart in other cultures, this fluidity suggests that organized crime can also be disorganized.

Although some crime groups such as the Cali cartels in Colombia are highly centralized, they typically draw on loose networks of familial and ethnic relations. These networks reduce the transaction costs of acquiring information about illegal activities and provide a framework of trust. Hence, operating where there are neither clear rules nor laws, new entrants arise, such as Nigerian organizations, which first joined the ranks of major transnational crime groups in the 1980s. They have relied on family and ethnic ties in the diaspora, developing links between domestic bases and compatriots abroad. The 1980s drop in oil prices and cuts in government spending precipitated a crime wave in Nigeria and left numerous Nigerian students stranded overseas when their funding was terminated, turning many of them to fraudulent activities.<sup>467</sup>

So too transnational organized crime groups heighten uncertainty, contributing to a larger trend of what James Rosenau conceptualizes as turbulence in the global political

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<sup>466</sup> WILLIAMS, Phil, *Transnational Criminal Organizations and International Security*, Security 36, no. 1, Spring 1994, p.103-104.

<sup>467</sup> STARES, Paul B., *Global Habit: The Drug Problem in a Borderless World*, Washington, D.C.: Brookings Institution, 1996, p. 42.

testimony to the embeddedness of transnational organized crime in neoliberal, economic globalization.<sup>471</sup>

Globalization is a key factor in the rise of transnational organized crime. There are several competing notions regarding how to theorize trans-nationality, marking a different way to configure social spaces.<sup>472</sup> Transnational organized crime cuts across the globalization discourse, ranging from notions of informal markets and new authoritarianism to ideas about global criminal networks.<sup>473</sup> The majority of the globalization literature captures transnational phenomena as dynamic, cross-sectoral, and embedded in global markets, making the concept more than a new level of analysis.

Globalization provides a theoretical boost to historical notions of national or international organized crime, emphasizing the ascendance of nonstate actors as legitimate objects of political inquiry. However, the concept of globalization is far from a settled theory and stirs great debate, ranging from downplay, through social transformation, to near chaos or turbulence.

The categories of state, economics, and institutional structures are useful for capturing the majority of analysis on transnational organized crime in the globalization context. Globalization benefits the capabilities, resources, and strategies that are available to transnational organized crime.

The neoliberal understanding of globalization stresses the role that global free market capitalism and representative democracy play in making the world richer, more connected, and peaceful, as represented in the writings of Francis Fukuyama and traditional political economic interpretations.<sup>474</sup> In this light, transnational organized crime and other similar issues often are seen as the last vestiges of resistance to this "new world order" that eventually will be brought under control.<sup>475</sup>

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<sup>471</sup> MITTELMAN, James H., Johnston, Robert, *The Globalization of Organized Crime, The Courtesan and The Corruption of Civil Society*, *Global Governance*, 10752846, Jan-Mar99, Vol. 5, Issue 1

<sup>472</sup> SASSEN, Saskia, *Globalization and Its Discontents*, New York: New Press, 1998, p.82-83.

<sup>473</sup> *Ibid.*, p.153-158;

<sup>474</sup> FUKUYAMA, Francis, *The End of History and the Last Man*, New York: Avon Books, 1992, p. 39-51.

<sup>475</sup> COX, Robert, *Social Forces, States, and World Orders: Beyond International Relations Theory* in Robert Keohane (Ed.), *Neorealism and Its Critics*, New York: Columbia University Press, 1986, p. 204-254.

### 7.3 ORGANIZED CRIME, TERRORISM AND USE OF INFORMATION TECHNOLOGY

Technology links developed and developing regions by facilitating financing, rapid planning, and all forms of information sharing. Legitimate corporations have exploited the technological revolution to full advantage by use information technology to coordinate their international operations in developed and developing countries. This has helped them overcome problems of inefficient postal services, time differences among different regions and problems of international communication in a multi-lingual environment. The linking of the developed and developing world in the technology area has provided financially beneficial to multinational corporations. They have been able to outsource work so that data processing and other information technology functions can be performed in regions with technical capacity but low labor costs.

Transnational criminal organizations, criminal and terrorist, also take advantage of the possibility of uniting the developed and developing country by information technology. Drug traffickers use encrypted messages to direct their operations.<sup>476</sup> Terrorists use the anonymizer feature of computers to coordinate their activities across countries. Websites facilitating all forms of transnational crime, for example dissemination of child pornography or recruitment sites for terrorist organizations, are often posted in developing countries without the law enforcement capacity to bring down these sites.<sup>477</sup>

Furthermore, law enforcement in these developed countries cannot hire or retain the personnel needed to combat the criminal activity of transnational crime groups. The low salaries and the corruption of law enforcement means that individuals with highly developed technical skills cannot find desirable employment in the state sector. Computer experts in developing countries choose not to work for low law enforcement salaries, instead they work for the private sector and others will work consciously or unknowingly for criminal and terrorist groups.

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<sup>476</sup> FREEH, Louis J., Impact of Encryption on Law Enforcement and Public Safety, Statement before the U.S. Senate Committee on Commerce, Science and Transportation, Washington, D.C., 19 March 1997, reprinted in *Trends in Organized Crime*, 3, no.1, 1997, p.93.

<sup>477</sup> HUGHES, Donna, Pimps and Predators on the Internet, 1999. Available on site: [www.uri.edu/dignity/pubs.htm](http://www.uri.edu/dignity/pubs.htm).

In some countries, even if the state paid adequate wages, the state law enforcement sector may not be a legitimate alternative to the criminal sector. The institutionalized corruption of much of law enforcement and its close links with the criminal sector in some regions of the world means that the criminals can pay for specialists within and outside the government.

In the developed countries, there is a shortage of personnel with adequate IT skills. Many of those who work in the high technology sector in Europe and the United States are immigrants from less developed countries and are not able to serve law enforcement in the countries in which they reside. Moreover, law enforcement has not been able to compete with the private sector in terms of the pay it offers or the promotional options which it provides to make it an employer of choice to talented IT specialists.

Criminals have been very successful in exploiting the international inconsistencies in the system and the failure to regulate technology across jurisdictions. As the love virus from the Philippines illustrates, there are limits on sanctioning offenders whose crimes are extremely costly to society because individual countries have not enacted legislation. While the perpetrator of the love virus did not intentionally cause the harm to computer systems around the world, individuals who intend to cause serious harm exploit the environments in which there is little regulation of computers and little law enforcement capacity to act against this crime.<sup>478</sup> One website containing child pornography was posted on a website indicating that it was located in a Central Asian country. Over four million individuals downloaded images from the site before it was brought down. The reason being is that there was an absence of computer specialists in that country to take down the website.

The lack of coordinated legislation has been exploited not only by criminals but by terrorists as well. The hijackers of the September 11th planes were aware that their phones and cell phones might be tapped. Before post-September 11th legislative changes, separate warrants were needed to tap each phones in the three jurisdictions of the Washington area—Virginia, Maryland and the District of Columbia. The terrorists exploited this knowledge of the limits of law enforcement and used different phones in these different jurisdictions to prevent monitoring of their conversations. Just as the

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<sup>478</sup> <http://news.bbc.co.uk/1/hi/uk/>

future terrorists exploited jurisdictional differences in the Washington metropolitan area to reduce risk, they also did the same internationally.

Much of the plotting for the September 11th attack was carried out in Germany that has the greatest limits on undercover activity. With its protections on the right to privacy and its limitations on police powers, a legacy of the abuses of the Nazi era, terrorists could use the advance telecommunications networks to their advantage without detection.<sup>479</sup> Intelligence and analysis by the terrorist cells helped ensure the ultimate security of operations with access to the most sophisticated information technology.

The merger of transnational organized crime with terrorism is seen on a regular basis. Terrorists use criminal activity to support their operations. The growth of information technology facilitates terrorists' attempts to gain significant profits with relatively low risk. Terrorists can finance their operations without resorting to violent assaults or bank robberies that would raise the risk of detection.

Criminal activity committed internationally via the Internet supports terrorist activity as they can tap into credit card bases and commit various forms of lucrative fraud. Ukrainian specialists at a TraCCC conference in 2000 reported that their country is the source of many financial crimes committed by computer and the Internet. But while Ukraine may be the source country for much of this criminality, it is not now clear that only Ukrainians are committing this crime. There are many foreigners using the computer resources of Ukraine and they may be also contributing to this economic crime because they have identified this country as one with limited capacity to act against this crime. By means of corruption, they are able to obtain the right to reside and operate within the country.

Countries with high capacity in information technology and low capacity to act against crime committed using computers and telecommunications become havens for transnational crime and terrorism. The concept of a safe haven acquires a different concept when the weapon is not a conventional one but a piece of information

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<sup>479</sup> MARX, Gary and Cyrille Fijnaut eds. *Undercover: Police Surveillance in Comparative Perspective* Amsterdam: Kluwer, 1995, p.57.

technology which allows plotting, financing and possibly even executing a serious crime.<sup>480</sup>

### 7.3.1 Future Trends

Over the past years there has been a rise in the use of existing forms of carrying out covert operations by means of information technology. These include ever greater use of encryption, money transfer facilitated by computer system and increasing fraud over the internet. With the retention by top information technology specialists by transnational crime groups and terrorists, we can expect to see new and innovative uses of information technology by these groups. Of greatest concern to many governments and international financial systems is the possibility of serious intrusions into critical systems. These intrusions could include the introduction of viruses that would destroy critical data, the posting of harmful websites that cannot be brought down and even the full scale incapacitation of critical computer systems.

The disruption of international financial markets remains a serious concern. The present interdependence of the world's economic system means that a disruption in one region of the world will have ripple effects in other regions. The constant monitoring of stock, bond and commodity markets by financial analysts world wide means that an intrusion and/or disruption of these systems would not go unnoticed. It would send shock waves outside of the market which is the source of the problem. Money laundering is increasing with the amount of money outside regulated markets growing. This is a result of the growth of the illicit global economy that is supported by the profusion of offshore havens.<sup>481</sup> The proliferation of information technology increases the possibility of moving money covertly outside of any system of regulated banking. Therefore, the recent crackdowns on the banking sector and The Patriot Act, which has ripple effects in international financial markets, means that illicit and terrorist money, may increasingly be pushed outside the regulatory system. Movement of money through tangible commodities, businesses and hawala like currency transfers may be ever more possible because of the monitoring and facilitation of computer systems.

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<sup>480</sup> SHELLEY, Louise I., American University, Washington, D.C. *Organized Crime, Terrorism and Cybercrime*, 2002, p.4. Available on site: [www.american.edu/traccc](http://www.american.edu/traccc)

<sup>481</sup> PASSAS, Nikos, *Informal Value Transfer Systems and Criminal Organizations*, The Hague: Dutch Ministry of Research and Documentation Center, 1999, p.23.



One distinct concern is that there will be more successful mergers and/or cooperation between organized criminal and terrorists in the information technology area. Cooperation between organized criminals and terrorists exists in Latin America, Europe, Asia and other regions of the world. Information technology expertise may be commissioned by one type of transnational criminal group and then subsequently exploited by another either for mutual advantage or as a business proposition.

Already there is enhanced exploitation of areas with sophisticated information technology and corrupt officials and corrupted and incapable law enforcement. This means, for example, that members of terrorist organizations can pay corrupt officials to obtain residence permits in a region where there is a high level of IT capacity. Then they can use the Internet resources or even finance their IT outlets and market them as public facilities. Incompetent law enforcement will not think to look at public Internet outlets as havens for terrorists. If they were to detect such a phenomena, they could be bribed to look the other way. In this way terrorists have secured a safe physical space but also a safe space in which to run their operations.

Enhanced mobilization and recruitment for terrorism by the Internet is an existing concern. This mobilization can be of funds and people. By using steganography, disclosing secret messages within other messages or pictures, communications can be made secretly to a large number of people. Without the linguistic capacity or the intelligence capacity to intervene in these groups, technology can be used to ever greater advantage.<sup>482</sup>

Legitimate civil liberties concerns in many countries may curtail or limit monitoring of information technology. Because most information technology is controlled by the private sector, it is their primary concern to protect their customers rather than to counter transnational crime or terrorism. As cooperative as information technology companies may be, once a risk is defined, their initial interests are to make a profit rather than to prevent a crime or a terrorist act. The constitutional protections existing in countries which now enjoy information technology dominance place a premium on the

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<sup>482</sup> SHELLEY, Louise I., American University, Washington, D.C. *Organized Crime, Terrorism and Cybercrime*, 2002, p.4. Available on site: [www.american.edu/traccc](http://www.american.edu/traccc)

privacy and rights of citizens. Therefore, the possibilities for information gathering are limited.<sup>483</sup>

### **7.3.2 How Does Information Technology Facilitate Transnational Crime and Corruption?**

Information technology is enabling transnational criminals and corrupt individuals to function more effectively.

Information technology is promoting the formation and operation of illicit networks by providing the swift and secure communications they require across vast distances.

Information technology is a revenue source for transnational criminals who use the internet and other technologies to commit fraud.

Government technology contracts are often the objects of corruption.

Information technology professionals in the software and computer engineering fields can also work, knowingly or unwittingly, for criminals in different regions of the world.

### **7.3.3 How Are Trends in Information Technology Affecting Transnational Crime and Law Enforcement?**

The growth of anonymity on the Internet benefits transnational crime groups and hampers the ability of law enforcement to trace communications back to a definite suspect.

The illicit networks of transnational criminals are adapting information technology faster and more efficiently than law enforcement.

Hacker tools are becoming increasingly powerful tools of transnational criminals while the level of expertise required operating them decreases.

Transnational criminals and terrorists are using the full range of technical means (e.g. encryption, steganography) to keep their communications protected from law enforcement.

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<sup>483</sup> SHELLEY, Louise I., American University, Washington, D.C. *Organized Crime, Terrorism and Cybercrime*, 2002, p.4. Available on site: [www.american.edu/tracc](http://www.american.edu/tracc)

## 7.4 CYBER LAUNDERING OF MONEY

Crime is resilient and fast adapting to new realities. Organized crime is in the process of establishing an alternative banking system, only tangentially connected to the West's, in the fringes, and by proxy. This is done by purchasing defunct banks or banking licenses in territories with lax regulation, cash economies, and corrupt politicians, no tax collection, but reasonable infrastructure. The countries of Eastern Europe - Yugoslavia (Montenegro and Serbia), Macedonia, Ukraine, Moldova, Belarus, and Albania, to mention a few - are natural targets. In some cases, organized crime is so all-pervasive and local politicians so corrupt that the distinction between criminal and politician is spurious.

Gradually, money laundering rings move their operations to these new, accommodating territories. The laundered funds are used to purchase assets in intentionally botched privatizations, real estate, existing businesses, and to finance trading operations. The wasteland that is Eastern Europe craves private capital and no questions are asked by investor and recipient alike.

The next frontier is cyberspace. Internet banking, Internet gambling, day trading, foreign exchange cyber transactions, e-cash, e-commerce, fictitious invoicing of the launderer's genuine credit cards - hold the promise of the future. Impossible to track and monitor, ex-territorial, totally digital, amenable to identity theft and fake identities - this is the ideal vehicle for money launderers. This nascent platform is way too small to accommodate the enormous amounts of cash laundered daily - but in ten years time, it may. The problems are likely to be exacerbated by the introduction of smart cards, electronic purses, and payment-enabled mobile phones.

In its "Report on Money Laundering Typologies" (February 2001) the FATF was able to document concrete and suspected abuses of online banking, Internet casinos, and web-based financial services. It is difficult to identify a customer and to get to know it in cyberspace was the alarming conclusion. It is equally complicated to establish jurisdiction.

Many capable professionals - stockbrokers, lawyers, accountants, traders, insurance brokers, real estate agents, sellers of high value items such as gold, diamonds, and art - are employed or co-opted by money laundering operations. Money launderers are likely

to make increased use of global, around the clock, trading in foreign currencies and derivatives. These provide instantaneous transfer of funds and no audit trail. The underlying securities involved are susceptible to market manipulation and fraud. Complex insurance policies (with the "wrong" beneficiaries), and the securitization of receivables, leasing contracts, mortgages, and low grade bonds are already used in money laundering schemes. In general, money laundering goes well with risk arbitraging financial instruments.

Trust-based, globe-spanning, money transfer systems based on authentication codes and generations of commercial relationships cemented in honor and blood - are another wave of the future. The Hawala and Chinese networks in Asia, the Black Market Peso Exchange (BMPE) in Latin America, other evolving courier systems in Eastern Europe (mainly in Russia, Ukraine, and Albania) and in Western Europe (mainly in France and Spain). In conjunction with encrypted e-mail and web anonymizers, these networks are virtually impenetrable. As emigration increases, diasporas established, and transport and telecommunications become ubiquitous, "ethnic banking" along the tradition of the Lombards and the Jews in medieval Europe may become the preferred venue of money laundering. September 11 may have retarded world civilization in more than one way.<sup>484</sup>

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<sup>484</sup> VAKNIN, Sam, PhD, Money Laundering in A Changed World, United Press International (UPI), 2001, Summary.

*"If you sit by the river long enough,*

*you will be able to watch the bodies of your enemies float past."*

*Ancient Chinese Proverb*

## 8 CONCLUSION

The growth of transnational organized crime has emerged as a major security issue in the post-Cold War era. Ironically, an increasingly globalized economy that features international commerce, travel, and the movement of goods and services is also allowing the easy passage of illicit money, narcotics, illegal aliens, and nuclear material. Many organized crime groups are taking advantage of global communications and transportation advances to establish bases in multiple countries in pursuit of illegal profits. Russian crime groups, for example, are active in the Caribbean, Israel, Western Europe, and the United States, among other places. Chinese criminal organizations span the world, including East Asia, Central and South America, Western Europe, and North America. Colombian gangs have a presence throughout the Americas, including the Caribbean region, where they have reportedly forged alliances with their Russian counterparts.

In general, organized crime syndicates operate for one primary purpose: the acquisition of money or other forms of material gain. To earn these illicit profits, they engage in a number of criminal enterprises including narcotics and arms trafficking, human smuggling, prostitution, credit card fraud, extortion, gambling, contract murders, etc. In some cases, particular gangs will specialize in a particular type of criminal enterprise. Nigerian gangs specialize in heroin trafficking, while Colombian syndicates focus on cocaine. Certain Taiwanese gangs, meanwhile, have perfected the art of smuggling people. Among the various transnational crimes, however, narcotics trafficking is arguably the most significant and pernicious, not only because of the huge profits that are gained, but because this illegal activity almost always results in significant collateral violence and destruction of human health. Globally, narcotics' trafficking is considered to be the world's third largest economy. In virtually every part of the world, drug

trafficking is on the increase, despite numerous campaigns at various levels designed to eradicate it.

Transnational crime presents a real and protracted threat to the nation-state. It can undermine political institutions in countries with nascent democratic governments and foster mistrust of legitimate governments.

International terrorism was a major political challenge in the 20th century and is likely to be an even greater concern in the 21st century. Whether motivated by political ideology, nationalist-separatism, or religious fanaticism, terrorists of the 21st century are likely to be more determined than ever to cause massive destruction and human carnage to advance their particular causes. In the past, terrorists practiced a form of "constrained terrorism" that was focused less on destruction than on publicity. The mass media were the terrorists' best friends. Terrorist groups would attempt to cause enough havoc or destruction to get attention, but not so much as to lose popular support.

The new trend, however, seems to be for large-scale violence for its own sake. Wreaking violence and massive destruction has now become the goal itself, while the desire for publicity has evidently become a secondary consideration.

Like international criminal groups, terrorists have benefited greatly from globalization and its attendant benefits, including mass communications, technology, and advanced financial services (which provide the critical covert financial support for terrorist operations). The vast global arms market--including the ubiquitous black market--provides key weapons for terrorist groups. Porous borders and international migration also play a role in facilitating modern terrorism. A terrorist's ability to enter and exit countries is contingent on his or her ability to circumvent a nation's immigration control system--hence terrorists' interest in the growing racket of false passports and fabricated entry-visas.

The threat that transnational terrorism poses to the nation-state is fairly direct. Terrorists may target key infrastructures within nations, and their attacks might prompt a breakdown in civil order (even in those areas far beyond the target of the attack). If terrorists attack a financial target, it could spark financial panic which could, depending on where the attack occurred, spread overseas and disrupt international markets. So-called "cyber-terrorism" could destroy a nation's power grid or destroy sensitive

computer technology or networks through the use of computer viruses. If the trend toward "catastrophic terrorism" continues, then human carnage could increase substantially. The specter of biological or chemical weapons being used in terrorist attacks substantially raises the possibility of widespread human and social destruction.

Transnational crime will be a defining problem of the 21<sup>st</sup> century because of the enormous economic discrepancies between developing and developed countries, the presence of many weak states in which crime and terrorist groups can operate and an international demand for the goods and services which these groups provide. This problem is particularly apparent in the Pacific region where rapid economic developments has created a widening divide between the leaves and have not. This is true within countries such it's the widening financial gap among citizens in China and the very significant differences income per capita among countries within the region. For example, the enormous difference in the standard of living between the citizens of the Russian Far East where monthly income averages less than \$100 per month and neighboring South Korea and Japan with high income levels provides fertile ground for illicit activity of both the criminal and political kind. This outcome is particularly true when one considers the weak political controls and criminalized elite that operated in many regions of the Russian Far East.

The massive international illegitimate economy allows the illicit to operate with facility amongst the licit. The enormous discrepancy in regulation in a globalized world allows criminals and terrorists to exploit this lack of consistency to their advantage. This is particularly true with the large amounts of money that move on the basis of trust and not through formalized financial institutions.

The war against terrorism cannot be separated from the fight against transnational crime. The points of convergence of the two forms of transnational crime make it impossible to address one without the other. By focusing on the crime element of the terrorism problem, it is possible to detect terrorist operations in ways that might not otherwise be detectable.

Moreover, many of the strategies presently being applied to combat terrorism, following of money trails, freezing of assets, and safeguarding borders are ones used to combat transnational crime. The current emphasis on locating the financial resources of

terrorists and harmonizing laws regulating international financial movements are just part of a need to achieve greater transparency and international cooperation in law enforcement and financial regulation.

Transnational organized criminals and terrorists use network structures to run their operations. Our national strategy needs to respond to networks with networks. Coalitions and cooperation are needed as to get at the larger structures that allow the cells to operate effectively.

The national strategy to fight transnational crime and criminals must focus away from the state level policies of the Cold War era to the nonstate actors who operate among the cracks of the state systems, penetrating Countries and exploiting the differences in state based regulation.

Transnational criminals and terrorists have been major beneficiaries of globalization because they benefit from more open borders, greater international mobility and faster and more secure communications. Although the information technology revolution has provided the opportunities for greater access to information and democratization of societies, this development has benefited not only legitimate users but those which seek to harm others on the personal and political level. International drug traffickers have exploited information technology to full advantage. They are not alone. Child pornographers and terrorists have exploited to this technology to their enormous advantage.

The expansion of international communications in the coming years will require much thinking on the appropriate balance between the protection of national security, the most effective means to protect the integrity of financial markets and of individuals from fraudulent schemes or potential sexual exploitation. The ease and security, with which transnational criminals and potential terrorists can transmit information, will provide a challenge in many areas that are not even foreseen at the present time.

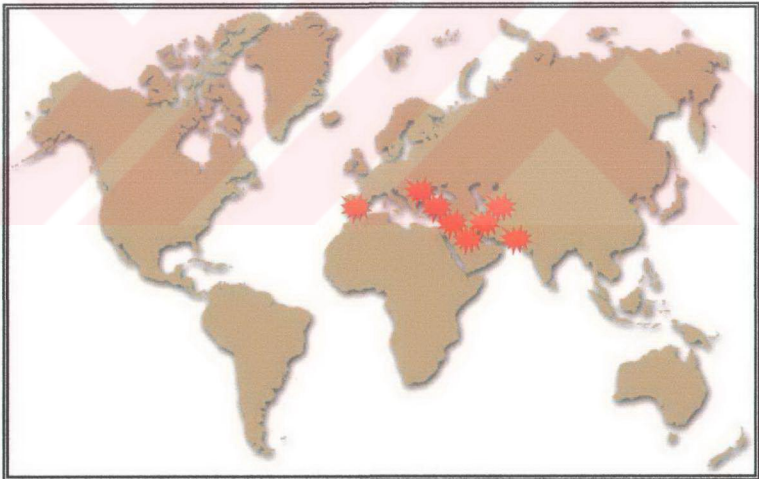
Even in countries that do not place a premium on privacy over national interest, like China, they cannot monitor the content of the messages which are communicating over their ever proliferating computer systems within their country. Therefore, the potential for abuse is even higher in societies that place a premium on free exchange of information.



The challenges to regulation are formidable. Telecommunications systems are often in private hands. Therefore, their control is outside of state authority. The concept of public-private partnerships is a concept alien to many states where the government is authoritarian, corrupt or infiltrated by organized crime. Compounding the problems is the lack of harmonization of laws dealing with the regulation of information technology. Even in the presence of laws, many countries do not have the law enforcement capacity or the even the computer equipment to adequately investigate the crime or detect threats to the system.

The imbalance between too much information and too little, increases international political, financial and personal security. The full consequences of this will be seen in the coming years.

If we consider the events related with terrorism until now, we will notice the non-preventing increase of the international terrorism. The figure below demonstrates the last terrorist events globally. (Figure 8.1)



**Figure 8.1 Current Terrorist Attacks**

During last two months, some cities in some countries have attacked by terrorists. These countries are Spain, Turkey, Kosovo, Israel, Syria, Iraq, Iran, Pakistan and Uzbekistan.

This table demonstrates that terrorism can shut everybody in everywhere in the world. The states which sponsor the terrorism, some day will be attacked by terrorist whom they had sponsored.

If the required measures are not being taken, there may be clashes in Cyprus. And there may be the events of burning<sup>3</sup> church and mosque.

The findings in this study take the general theory and structure of international terrorism and organized crime as a goal. However, the “indefiniteness” component still lasts. So, it is needed for the future studies about both terrorism and organized crime.



## APPENDIX A

### UNITED NATIONS CONVENTION AGAINST TRANSNATIONAL ORGANIZED CRIME (NEW YORK, 15 NOVEMBER 2000)

#### Article 1

##### Statement of purpose

The purpose of this Convention is to promote cooperation to prevent and combat transnational organized crime more effectively.

#### Article 2

##### Use of terms

For the purposes of this Convention:

(a) "Organized criminal group" shall mean a structured group of three or more persons, existing for a period of time and acting in concert with the aim of committing one or more serious crimes or offences established in accordance with this Convention, in order to obtain, directly or indirectly, a financial or other material benefit;

(b) "Serious crime" shall mean conduct constituting an offence punishable by a maximum deprivation of liberty of at least four years or a more serious penalty;

(c) "Structured group" shall mean a group that is not randomly formed for the immediate commission of an offence and that does not need to have formally defined roles for its members, continuity of its membership or a developed structure;

(d) "Property" shall mean assets of every kind, whether corporeal or incorporeal, movable or immovable, tangible or intangible, and legal documents or instruments evidencing title to, or interest in, such assets;

(e) "Proceeds of crime" shall mean any property derived from or obtained, directly or indirectly, through the commission of an offence;

(f) "Freezing" or "seizure" shall mean temporarily prohibiting the transfer, conversion, disposition or movement of property or temporarily assuming custody or control of property on the basis of an order issued by a court or other competent authority;

(g) "Confiscation", which includes forfeiture where applicable, shall mean the permanent deprivation of property by order of a court or other competent authority;

(h) "Predicate offence" shall mean any offence as a result of which proceeds have been generated that may become the subject of an offence as defined in article 6 of this Convention;

(i) "Controlled delivery" shall mean the technique of allowing illicit or suspect consignments to pass out of, through or into the territory of one or more States, with the knowledge and under the supervision of their competent authorities, with a view to the investigation of an offence and the identification of persons involved in the commission of the offence;

(j) "Regional economic integration organization" shall mean an organization constituted by sovereign States of a given region, to which its member States have transferred competence in respect of matters governed by this Convention and which has been duly authorized, in accordance with its internal procedures, to sign, ratify, accept, approve or accede to it; references to "States Parties" under this Convention shall apply to such organizations within the limits of their competence.

#### Article 3

##### Scope of application

1. This Convention shall apply, except as otherwise stated herein, to the prevention, investigation and prosecution of:

(a) The offences established in accordance with articles 5, 6, 8 and 23 of this Convention; and

(b) Serious crime as defined in article 2 of this Convention;

Where the offence is transnational in nature and involves an organized criminal group.

2. For the purpose of paragraph 1 of this article, an offence is transnational in nature if:

(a) It is committed in more than one State;

(b) It is committed in one State but a substantial part of its preparation, planning, direction or control takes place in another State;

- (c) It is committed in one State but involves an organized criminal group that engages in criminal activities in more than one State; or
- (d) It is committed in one State but has substantial effects in another State.

#### **Article 4**

##### Protection of sovereignty

1. States Parties shall carry out their obligations under this Convention in a manner consistent with the principles of sovereign equality and territorial integrity of States and that of non-intervention in the domestic affairs of other States.

2. Nothing in this Convention entitles a State Party to undertake in the territory of another State the exercise of jurisdiction and performance of functions that are reserved exclusively for the authorities of that other State by its domestic law.

#### **Article 5**

##### Criminalization of participation in an organized criminal group

1. Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:

(a) Either or both of the following as criminal offences distinct from those involving the attempt or completion of the criminal activity:

(i) Agreeing with one or more other persons to commit a serious crime for a purpose relating directly or indirectly to the obtaining of a financial or other material benefit and, where required by domestic law, involving an act undertaken by one of the participants in furtherance of the agreement or involving an organized criminal group;

(ii) Conduct by a person who, with knowledge of either the aim and general criminal activity of an organized criminal group or its intention to commit the crimes in question, takes an active part in:

a. Criminal activities of the organized criminal group;

b. Other activities of the organized criminal group in the knowledge that his or her participation will contribute to the achievement of the above-described criminal aim;

(b) Organizing, directing, aiding, abetting, facilitating or counseling the commission of serious crime involving an organized criminal group.

2. The knowledge, intent, aim, purpose or agreement referred to in paragraph 1 of this article may be inferred from objective factual circumstances.

3. States Parties whose domestic law requires involvement of an organized criminal group for purposes of the offences established in accordance with paragraph 1 (a) (i) of this article shall ensure that their domestic law covers all serious crimes involving organized criminal groups. Such States Parties, as well as States Parties whose domestic law requires an act in furtherance of the agreement for purposes of the offences established in accordance with paragraph 1 (a) (i) of this article, shall so inform the Secretary-General of the United Nations at the time of their signature or of deposit of their instrument of ratification, acceptance or approval of or accession to this Convention.

#### **Article 6**

##### Criminalization of the laundering of proceeds of crime

1. Each State Party shall adopt, in accordance with fundamental principles of its domestic law, such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:

(a) (i) The conversion or transfer of property, knowing that such property is the proceeds of crime, for the purpose of concealing or disguising the illicit origin of the property or of helping any person who is involved in the commission of the predicate offence to evade the legal consequences of his or her action;

(ii) The concealment or disguise of the true nature, source, location, disposition, movement or ownership of or rights with respect to property, knowing that such property is the proceeds of crime;

(b) Subject to the basic concepts of its legal system:

(i) The acquisition, possession or use of property, knowing, at the time of receipt, that such property is the proceeds of crime;

(ii) Participation in, association with or conspiracy to commit, attempts to commit and aiding, abetting, facilitating and counseling the commission of any of the offences established in accordance with this article.

2. For purposes of implementing or applying paragraph 1 of this article:

(a) Each State Party shall seek to apply paragraph 1 of this article to the widest range of predicate offences;

(b) Each State Party shall include as predicate offences all serious crime as defined in article 2 of this Convention and the offences established in accordance with articles 5, 8 and 23 of this Convention. In the

case of States Parties whose legislation sets out a list of specific predicate offences, they shall, at a minimum, include in such list a comprehensive range of offences associated with organized criminal groups;

(c) For the purposes of subparagraph (b), predicate offences shall include offences committed both within and outside the jurisdiction of the State Party in question. However, offences committed outside the jurisdiction of a State Party shall constitute predicate offences only when the relevant conduct is a criminal offence under the domestic law of the State where it is committed and would be a criminal offence under the domestic law of the State Party implementing or applying this article had it been committed there;

(d) Each State Party shall furnish copies of its laws that give effect to this article and of any subsequent changes to such laws or a description thereof to the Secretary-General of the United Nations;

(e) If required by fundamental principles of the domestic law of a State Party, it may be provided that the offences set forth in paragraph 1 of this article do not apply to the persons who committed the predicate offence;

(f) Knowledge, intent or purpose required as an element of an offence set forth in paragraph 1 of this article may be inferred from objective factual circumstances.

## **Article 7**

### Measures to combat money-laundering

#### 1. Each State Party:

(a) Shall institute a comprehensive domestic regulatory and supervisory regime for banks and non-bank financial institutions and, where appropriate, other bodies particularly susceptible to money-laundering, within its competence, in order to deter and detect all forms of money-laundering, which regime shall emphasize requirements for customer identification, record-keeping and the reporting of suspicious transactions;

(b) Shall, without prejudice to articles 18 and 27 of this Convention, ensure that administrative, regulatory, law enforcement and other authorities dedicated to combating money-laundering (including, where appropriate under domestic law, judicial authorities) have the ability to cooperate and exchange information at the national and international levels within the conditions prescribed by its domestic law and, to that end, shall consider the establishment of a financial intelligence unit to serve as a national centre for the collection, analysis and dissemination of information regarding potential money-laundering.

2. States Parties shall consider implementing feasible measures to detect and monitor the movement of cash and appropriate negotiable instruments across their borders, subject to safeguards to ensure proper use of information and without impeding in any way the movement of legitimate capital. Such measures may include a requirement that individuals and businesses report the cross-border transfer of substantial quantities of cash and appropriate negotiable instruments.

3. In establishing a domestic regulatory and supervisory regime under the terms of this article, and without prejudice to any other article of this Convention, States Parties are called upon to use as a guideline the relevant initiatives of regional, interregional and multilateral organizations against money-laundering.

4. States Parties shall endeavour to develop and promote global, regional, subregional and bilateral cooperation among judicial, law enforcement and financial regulatory authorities in order to combat money-laundering.

## **Article 8**

### Criminalization of corruption

1. Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:

(a) The promise, offering or giving to a public official, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties;

(b) The solicitation or acceptance by a public official, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties.

2. Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as criminal offences conduct referred to in paragraph 1 of this article involving a foreign public official or international civil servant. Likewise, each State Party shall consider establishing as criminal offences other forms of corruption.

3. Each State Party shall also adopt such measures as may be necessary to establish as a criminal offence participation as an accomplice in an offence established in accordance with this article.

4. For the purposes of paragraph 1 of this article and article 9 of this Convention, “public official” shall mean a public official or a person who provides a public service as defined in the domestic law and as applied in the criminal law of the State Party in which the person in question performs that function.

#### **Article 9**

##### Measures against corruption

1. In addition to the measures set forth in article 8 of this Convention, each State Party shall, to the extent appropriate and consistent with its legal system, adopt legislative, administrative or other effective measures to promote integrity and to prevent, detect and punish the corruption of public officials.

2. Each State Party shall take measures to ensure effective action by its authorities in the prevention, detection and punishment of the corruption of public officials, including providing such authorities with adequate independence to deter the exertion of inappropriate influence on their actions.

#### **Article 10**

##### Liability of legal persons

1. Each State Party shall adopt such measures as may be necessary, consistent with its legal principles, to establish the liability of legal persons for participation in serious crimes involving an organized criminal group and for the offences established in accordance with articles 5, 6, 8 and 23 of this Convention.

2. Subject to the legal principles of the State Party, the liability of legal persons may be criminal, civil or administrative.

3. Such liability shall be without prejudice to the criminal liability of the natural persons who have committed the offences.

4. Each State Party shall, in particular, ensure that legal persons held liable in accordance with this article are subject to effective, proportionate and dissuasive criminal or non-criminal sanctions, including monetary sanctions.

#### **Article 11**

##### Prosecution, adjudication and sanctions

1. Each State Party shall make the commission of an offence established in accordance with articles 5, 6, 8 and 23 of this Convention liable to sanctions that take into account the gravity of that offence.

2. Each State Party shall endeavour to ensure that any discretionary legal powers under its domestic law relating to the prosecution of persons for offences covered by this Convention are exercised to maximize the effectiveness of law enforcement measures in respect of those offences and with due regard to the need to deter the commission of such offences.

3. In the case of offences established in accordance with articles 5, 6, 8 and 23 of this Convention, each State Party shall take appropriate measures, in accordance with its domestic law and with due regard to the rights of the defence, to seek to ensure that conditions imposed in connection with decisions on release pending trial or appeal take into consideration the need to ensure the presence of the defendant at subsequent criminal proceedings.

4. Each State Party shall ensure that its courts or other competent authorities bear in mind the grave nature of the offences covered by this Convention when considering the eventuality of early release or parole of persons convicted of such offences.

5. Each State Party shall, where appropriate, establish under its domestic law a long statute of limitations period in which to commence proceedings for any offence covered by this Convention and a longer period where the alleged offender has evaded the administration of justice.

6. Nothing contained in this Convention shall affect the principle that the description of the offences established in accordance with this Convention and of the applicable legal defences or other legal principles controlling the lawfulness of conduct is reserved to the domestic law of a State Party and that such offences shall be prosecuted and punished in accordance with that law.

#### **Article 12**

##### Confiscation and seizure

1. States Parties shall adopt, to the greatest extent possible within their domestic legal systems, such measures as may be necessary to enable confiscation of:

(a) Proceeds of crime derived from offences covered by this Convention or property the value of which corresponds to that of such proceeds;

(b) Property, equipment or other instrumentalities used in or destined for use in offences covered by this Convention.

2. States Parties shall adopt such measures as may be necessary to enable the identification, tracing, freezing or seizure of any item referred to in paragraph 1 of this article for the purpose of eventual confiscation.

3. If proceeds of crime have been transformed or converted, in part or in full, into other property, such property shall be liable to the measures referred to in this article instead of the proceeds.

4. If proceeds of crime have been intermingled with property acquired from legitimate sources, such property shall, without prejudice to any powers relating to freezing or seizure, be liable to confiscation up to the assessed value of the intermingled proceeds.

5. Income or other benefits derived from proceeds of crime, from property into which proceeds of crime have been transformed or converted or from property with which proceeds of crime have been intermingled shall also be liable to the measures referred to in this article, in the same manner and to the same extent as proceeds of crime.

6. For the purposes of this article and article 13 of this Convention, each State Party shall empower its courts or other competent authorities to order that bank, financial or commercial records be made available or be seized. States Parties shall not decline to act under the provisions of this paragraph on the ground of bank secrecy.

7. States Parties may consider the possibility of requiring that an offender demonstrate the lawful origin of alleged proceeds of crime or other property liable to confiscation, to the extent that such a requirement is consistent with the principles of their domestic law and with the nature of the judicial and other proceedings.

8. The provisions of this article shall not be construed to prejudice the rights of bona fide third parties.

9. Nothing contained in this article shall affect the principle that the measures to which it refers shall be defined and implemented in accordance with and subject to the provisions of the domestic law of a State Party.

### **Article 13**

International cooperation for purposes of confiscation

1. A State Party that has received a request from another State Party having jurisdiction over an offence covered by this Convention for confiscation of proceeds of crime, property, equipment or other instrumentalities referred to in article 12, paragraph 1, of this Convention situated in its territory shall, to the greatest extent possible within its domestic legal system:

(a) Submit the request to its competent authorities for the purpose of obtaining an order of confiscation and, if such an order is granted, give effect to it; or

(b) Submit to its competent authorities, with a view to giving effect to it to the extent requested, an order of confiscation issued by a court in the territory of the requesting State Party in accordance with article 12, paragraph 1, of this Convention insofar as it relates to proceeds of crime, property, equipment or other instrumentalities referred to in article 12, paragraph 1, situated in the territory of the requested State Party.

2. Following a request made by another State Party having jurisdiction over an offence covered by this Convention, the requested State Party shall take measures to identify, trace and freeze or seize proceeds of crime, property, equipment or other instrumentalities referred to in article 12, paragraph 1, of this Convention for the purpose of eventual confiscation to be ordered either by the requesting State Party or, pursuant to a request under paragraph 1 of this article, by the requested State Party.

3. The provisions of article 18 of this Convention are applicable, *mutatis mutandis*, to this article. In addition to the information specified in article 18, paragraph 15, requests made pursuant to this article shall contain:

(a) In the case of a request pertaining to paragraph 1 (a) of this article, a description of the property to be confiscated and a statement of the facts relied upon by the requesting State Party sufficient to enable the requested State Party to seek the order under its domestic law;

(b) In the case of a request pertaining to paragraph 1 (b) of this article, a legally admissible copy of an order of confiscation upon which the request is based issued by the requesting State Party, a statement of the facts and information as to the extent to which execution of the order is requested;

(c) In the case of a request pertaining to paragraph 2 of this article, a statement of the facts relied upon by the requesting State Party and a description of the actions requested.

4. The decisions or actions provided for in paragraphs 1 and 2 of this article shall be taken by the requested State Party in accordance with and subject to the provisions of its domestic law and its procedural rules or any bilateral or multilateral treaty, agreement or arrangement to which it may be bound in relation to the requesting State Party.

5. Each State Party shall furnish copies of its laws and regulations that give effect to this article and of any subsequent changes to such laws and regulations or a description thereof to the Secretary-General of the United Nations.

6. If a State Party elects to make the taking of the measures referred to in paragraphs 1 and 2 of this article conditional on the existence of a relevant treaty, that State Party shall consider this Convention the necessary and sufficient treaty basis.

7. Cooperation under this article may be refused by a State Party if the offence to which the request relates is not an offence covered by this Convention.

8. The provisions of this article shall not be construed to prejudice the rights of bona fide third parties.

9. States Parties shall consider concluding bilateral or multilateral treaties, agreements or arrangements to enhance the effectiveness of international cooperation undertaken pursuant to this article.

#### **Article 14**

Disposal of confiscated proceeds of crime or property

1. Proceeds of crime or property confiscated by a State Party pursuant to articles 12 or 13, paragraph 1, of this Convention shall be disposed of by that State Party in accordance with its domestic law and administrative procedures.

2. When acting on the request made by another State Party in accordance with article 13 of this Convention, States Parties shall, to the extent permitted by domestic law and if so requested, give priority consideration to returning the confiscated proceeds of crime or property to the requesting State Party so that it can give compensation to the victims of the crime or return such proceeds of crime or property to their legitimate owners.

3. When acting on the request made by another State Party in accordance with articles 12 and 13 of this Convention, a State Party may give special consideration to concluding agreements or arrangements on:

(a) Contributing the value of such proceeds of crime or property or funds derived from the sale of such proceeds of crime or property or a part thereof to the account designated in accordance with article 30, paragraph 2 (c), of this Convention and to intergovernmental bodies specializing in the fight against organized crime;

(b) Sharing with other States Parties, on a regular or case-by-case basis, such proceeds of crime or property, or funds derived from the sale of such proceeds of crime or property, in accordance with its domestic law or administrative procedures.

#### **Article 15**

Jurisdiction

1. Each State Party shall adopt such measures as may be necessary to establish its jurisdiction over the offences established in accordance with articles 5, 6, 8 and 23 of this Convention when:

(a) The offence is committed in the territory of that State Party; or

(b) The offence is committed on board a vessel that is flying the flag of that State Party or an aircraft that is registered under the laws of that State Party at the time that the offence is committed.

2. Subject to article 4 of this Convention, a State Party may also establish its jurisdiction over any such offence when:

(a) The offence is committed against a national of that State Party;

(b) The offence is committed by a national of that State Party or a stateless person who has his or her habitual residence in its territory; or

(c) The offence is:

(i) One of those established in accordance with article 5, paragraph 1, of this Convention and is committed outside its territory with a view to the commission of a serious crime within its territory;

(ii) One of those established in accordance with article 6, paragraph 1 (b) (ii), of this Convention and is committed outside its territory with a view to the commission of an offence established in accordance with article 6, paragraph 1 (a) (i) or (ii) or (b) (i), of this Convention within its territory.

3. For the purposes of article 16, paragraph 10, of this Convention, each State Party shall adopt such measures as may be necessary to establish its jurisdiction over the offences covered by this Convention when the alleged offender is present in its territory and it does not extradite such person solely on the ground that he or she is one of its nationals.

4. Each State Party may also adopt such measures as may be necessary to establish its jurisdiction over the offences covered by this Convention when the alleged offender is present in its territory and it does not extradite him or her.

5. If a State Party exercising its jurisdiction under paragraph 1 or 2 of this article has been notified, or has otherwise learned, that one or more other States Parties are conducting an investigation, prosecution



or judicial proceeding in respect of the same conduct, the competent authorities of those States Parties shall, as appropriate, consult one another with a view to coordinating their actions.

6. Without prejudice to norms of general international law, this Convention does not exclude the exercise of any criminal jurisdiction established by a State Party in accordance with its domestic law.

## **Article 16**

### **Extradition**

1. This article shall apply to the offences covered by this Convention or in cases where an offence referred to in article 3, paragraph 1 (a) or (b), involves an organized criminal group and the person who is the subject of the request for extradition is located in the territory of the requested State Party, provided that the offence for which extradition is sought is punishable under the domestic law of both the requesting State Party and the requested State Party.

2. If the request for extradition includes several separate serious crimes, some of which are not covered by this article, the requested State Party may apply this article also in respect of the latter offences.

3. Each of the offences to which this article applies shall be deemed to be included as an extraditable offence in any extradition treaty existing between States Parties. States Parties undertake to include such offences as extraditable offences in every extradition treaty to be concluded between them.

4. If a State Party that makes extradition conditional on the existence of a treaty receives a request for extradition from another State Party with which it has no extradition treaty, it may consider this Convention the legal basis for extradition in respect of any offence to which this article applies.

5. States Parties that make extradition conditional on the existence of a treaty shall:

(a) At the time of deposit of their instrument of ratification, acceptance, approval of or accession to this Convention, inform the Secretary-General of the United Nations whether they will take this Convention as the legal basis for cooperation on extradition with other States Parties to this Convention; and

(b) If they do not take this Convention as the legal basis for cooperation on extradition, seek, where appropriate, to conclude treaties on extradition with other States Parties to this Convention in order to implement this article.

6. States Parties that do not make extradition conditional on the existence of a treaty shall recognize offences to which this article applies as extraditable offences between themselves.

7. Extradition shall be subject to the conditions provided for by the domestic law of the requested State Party or by applicable extradition treaties, including, inter alia, conditions in relation to the minimum penalty requirement for extradition and the grounds upon which the requested State Party may refuse extradition.

8. States Parties shall, subject to their domestic law, endeavour to expedite extradition procedures and to simplify evidentiary requirements relating thereto in respect of any offence to which this article applies.

9. Subject to the provisions of its domestic law and its extradition treaties, the requested State Party may, upon being satisfied that the circumstances so warrant and are urgent and at the request of the requesting State Party, take a person whose extradition is sought and who is present in its territory into custody or take other appropriate measures to ensure his or her presence at extradition proceedings.

10. A State Party in whose territory an alleged offender is found, if it does not extradite such person in respect of an offence to which this article applies solely on the ground that he or she is one of its nationals, shall, at the request of the State Party seeking extradition, be obliged to submit the case without undue delay to its competent authorities for the purpose of prosecution. Those authorities shall take their decision and conduct their proceedings in the same manner as in the case of any other offence of a grave nature under the domestic law of that State Party. The States Parties concerned shall cooperate with each other, in particular on procedural and evidentiary aspects, to ensure the efficiency of such prosecution.

11. Whenever a State Party is permitted under its domestic law to extradite or otherwise surrender one of its nationals only upon the condition that the person will be returned to that State Party to serve the sentence imposed as a result of the trial or proceedings for which the extradition or surrender of the person was sought and that State Party and the State Party seeking the extradition of the person agree with this option and other terms that they may deem appropriate, such conditional extradition or surrender shall be sufficient to discharge the obligation set forth in paragraph 10 of this article.

12. If extradition, sought for purposes of enforcing a sentence, is refused because the person sought is a national of the requested State Party, the requested Party shall, if its domestic law so permits and in conformity with the requirements of such law, upon application of the requesting Party, consider the enforcement of the sentence that has been imposed under the domestic law of the requesting Party or the remainder thereof.

13. Any person regarding whom proceedings are being carried out in connection with any of the offences to which this article applies shall be guaranteed fair treatment at all stages of the proceedings,

including enjoyment of all the rights and guarantees provided by the domestic law of the State Party in the territory of which that person is present.

14. Nothing in this Convention shall be interpreted as imposing an obligation to extradite if the requested State Party has substantial grounds for believing that the request has been made for the purpose of prosecuting or punishing a person on account of that person's sex, race, religion, nationality, ethnic origin or political opinions or that compliance with the request would cause prejudice to that person's position for any one of these reasons.

15. States Parties may not refuse a request for extradition on the sole ground that the offence is also considered to involve fiscal matters.

16. Before refusing extradition, the requested State Party shall, where appropriate, consult with the requesting State Party to provide it with ample opportunity to present its opinions and to provide information relevant to its allegation.

17. States Parties shall seek to conclude bilateral and multilateral agreements or arrangements to carry out or to enhance the effectiveness of extradition.

#### **Article 17**

##### Transfer of sentenced persons

States Parties may consider entering into bilateral or multilateral agreements or arrangements on the transfer to their territory of persons sentenced to imprisonment or other forms of deprivation of liberty for offences covered by this Convention, in order that they may complete their sentences there.

#### **Article 18**

##### Mutual legal assistance

1. States Parties shall afford one another the widest measure of mutual legal assistance in investigations, prosecutions and judicial proceedings in relation to the offences covered by this Convention as provided for in article 3 and shall reciprocally extend to one another similar assistance where the requesting State Party has reasonable grounds to suspect that the offence referred to in article 3, paragraph 1 (a) or (b), is transnational in nature, including that victims, witnesses, proceeds, instrumentalities or evidence of such offences are located in the requested State Party and that the offence involves an organized criminal group.

2. Mutual legal assistance shall be afforded to the fullest extent possible under relevant laws, treaties, agreements and arrangements of the requested State Party with respect to investigations, prosecutions and judicial proceedings in relation to the offences for which a legal person may be held liable in accordance with article 10 of this Convention in the requesting State Party.

3. Mutual legal assistance to be afforded in accordance with this article may be requested for any of the following purposes:

- (a) Taking evidence or statements from persons;
- (b) Effecting service of judicial documents;
- (c) Executing searches and seizures, and freezing;
- (d) Examining objects and sites;
- (e) Providing information, evidentiary items and expert evaluations;
- (f) Providing originals or certified copies of relevant documents and records, including government, bank, financial, corporate or business records;
- (g) Identifying or tracing proceeds of crime, property, instrumentalities or other things for evidentiary purposes;
- (h) Facilitating the voluntary appearance of persons in the requesting State Party;
- (i) Any other type of assistance that is not contrary to the domestic law of the requested State Party.

4. Without prejudice to domestic law, the competent authorities of a State Party may, without prior request, transmit information relating to criminal matters to a competent authority in another State Party where they believe that such information could assist the authority in undertaking or successfully concluding inquiries and criminal proceedings or could result in a request formulated by the latter State Party pursuant to this Convention.

5. The transmission of information pursuant to paragraph 4 of this article shall be without prejudice to inquiries and criminal proceedings in the State of the competent authorities providing the information. The competent authorities receiving the information shall comply with a request that said information remain confidential, even temporarily, or with restrictions on its use. However, this shall not prevent the receiving State Party from disclosing in its proceedings information that is exculpatory to an accused person. In such a case, the receiving State Party shall notify the transmitting State Party prior to the disclosure and, if so requested, consult with the transmitting State Party. If, in an exceptional case,

advance notice is not possible, the receiving State Party shall inform the transmitting State Party of the disclosure without delay.

6. The provisions of this article shall not affect the obligations under any other treaty, bilateral or multilateral, that governs or will govern, in whole or in part, mutual legal assistance.

7. Paragraphs 9 to 29 of this article shall apply to requests made pursuant to this article if the States Parties in question are not bound by a treaty of mutual legal assistance. If those States Parties are bound by such a treaty, the corresponding provisions of that treaty shall apply unless the States Parties agree to apply paragraphs 9 to 29 of this article in lieu thereof. States Parties are strongly encouraged to apply these paragraphs if they facilitate cooperation.

8. States Parties shall not decline to render mutual legal assistance pursuant to this article on the ground of bank secrecy.

9. States Parties may decline to render mutual legal assistance pursuant to this article on the ground of absence of dual criminality. However, the requested State Party may, when it deems appropriate, provide assistance, to the extent it decides at its discretion, irrespective of whether the conduct would constitute an offence under the domestic law of the requested State Party.

10. A person who is being detained or is serving a sentence in the territory of one State Party whose presence in another State Party is requested for purposes of identification, testimony or otherwise providing assistance in obtaining evidence for investigations, prosecutions or judicial proceedings in relation to offences covered by this Convention may be transferred if the following conditions are met:

(a) The person freely gives his or her informed consent;

(b) The competent authorities of both States Parties agree, subject to such conditions as those States Parties may deem appropriate.

11. For the purposes of paragraph 10 of this article:

(a) The State Party to which the person is transferred shall have the authority and obligation to keep the person transferred in custody, unless otherwise requested or authorized by the State Party from which the person was transferred;

(b) The State Party to which the person is transferred shall without delay implement its obligation to return the person to the custody of the State Party from which the person was transferred as agreed beforehand, or as otherwise agreed, by the competent authorities of both States Parties;

(c) The State Party to which the person is transferred shall not require the State Party from which the person was transferred to initiate extradition proceedings for the return of the person;

(d) The person transferred shall receive credit for service of the sentence being served in the State from which he or she was transferred for time spent in the custody of the State Party to which he or she was transferred.

12. Unless the State Party from which a person is to be transferred in accordance with paragraphs 10 and 11 of this article so agrees, that person, whatever his or her nationality, shall not be prosecuted, detained, punished or subjected to any other restriction of his or her personal liberty in the territory of the State to which that person is transferred in respect of acts, omissions or convictions prior to his or her departure from the territory of the State from which he or she was transferred.

13. Each State Party shall designate a central authority that shall have the responsibility and power to receive requests for mutual legal assistance and either to execute them or to transmit them to the competent authorities for execution. Where a State Party has a special region or territory with a separate system of mutual legal assistance, it may designate a distinct central authority that shall have the same function for that region or territory. Central authorities shall ensure the speedy and proper execution or transmission of the requests received. Where the central authority transmits the request to a competent authority for execution, it shall encourage the speedy and proper execution of the request by the competent authority. The Secretary-General of the United Nations shall be notified of the central authority designated for this purpose at the time each State Party deposits its instrument of ratification, acceptance or approval of or accession to this Convention. Requests for mutual legal assistance and any communication related thereto shall be transmitted to the central authorities designated by the States Parties. This requirement shall be without prejudice to the right of a State Party to require that such requests and communications be addressed to it through diplomatic channels and, in urgent circumstances, where the States Parties agree, through the International Criminal Police Organization, if possible.

14. Requests shall be made in writing or, where possible, by any means capable of producing a written record, in a language acceptable to the requested State Party, under conditions allowing that State Party to establish authenticity. The Secretary-General of the United Nations shall be notified of the language or languages acceptable to each State Party at the time it deposits its instrument of ratification, acceptance or approval of or accession to this Convention. In urgent circumstances and where agreed by the States Parties, requests may be made orally, but shall be confirmed in writing forthwith.

15. A request for mutual legal assistance shall contain:
- (a) The identity of the authority making the request;
  - (b) The subject matter and nature of the investigation, prosecution or judicial proceeding to which the request relates and the name and functions of the authority conducting the investigation, prosecution or judicial proceeding;
  - (c) A summary of the relevant facts, except in relation to requests for the purpose of service of judicial documents;
  - (d) A description of the assistance sought and details of any particular procedure that the requesting State Party wishes to be followed;
  - (e) Where possible, the identity, location and nationality of any person concerned; and
  - (f) The purpose for which the evidence, information or action is sought.
16. The requested State Party may request additional information when it appears necessary for the execution of the request in accordance with its domestic law or when it can facilitate such execution.
17. A request shall be executed in accordance with the domestic law of the requested State Party and, to the extent not contrary to the domestic law of the requested State Party and where possible, in accordance with the procedures specified in the request.
18. Wherever possible and consistent with fundamental principles of domestic law, when an individual is in the territory of a State Party and has to be heard as a witness or expert by the judicial authorities of another State Party, the first State Party may, at the request of the other, permit the hearing to take place by video conference if it is not possible or desirable for the individual in question to appear in person in the territory of the requesting State Party. States Parties may agree that the hearing shall be conducted by a judicial authority of the requesting State Party and attended by a judicial authority of the requested State Party.
19. The requesting State Party shall not transmit or use information or evidence furnished by the requested State Party for investigations, prosecutions or judicial proceedings other than those stated in the request without the prior consent of the requested State Party. Nothing in this paragraph shall prevent the requesting State Party from disclosing in its proceedings information or evidence that is exculpatory to an accused person. In the latter case, the requesting State Party shall notify the requested State Party prior to the disclosure and, if so requested, consult with the requested State Party. If, in an exceptional case, advance notice is not possible, the requesting State Party shall inform the requested State Party of the disclosure without delay.
20. The requesting State Party may require that the requested State Party keep confidential the fact and substance of the request, except to the extent necessary to execute the request. If the requested State Party cannot comply with the requirement of confidentiality, it shall promptly inform the requesting State Party.
21. Mutual legal assistance may be refused:
- (a) If the request is not made in conformity with the provisions of this article;
  - (b) If the requested State Party considers that execution of the request is likely to prejudice its sovereignty, security, ordre public or other essential interests;
  - (c) If the authorities of the requested State Party would be prohibited by its domestic law from carrying out the action requested with regard to any similar offence, had it been subject to investigation, prosecution or judicial proceedings under their own jurisdiction;
  - (d) If it would be contrary to the legal system of the requested State Party relating to mutual legal assistance for the request to be granted.
22. States Parties may not refuse a request for mutual legal assistance on the sole ground that the offence is also considered to involve fiscal matters.
23. Reasons shall be given for any refusal of mutual legal assistance.
24. The requested State Party shall execute the request for mutual legal assistance as soon as possible and shall take as full account as possible of any deadlines suggested by the requesting State Party and for which reasons are given, preferably in the request. The requested State Party shall respond to reasonable requests by the requesting State Party on progress of its handling of the request. The requesting State Party shall promptly inform the requested State Party when the assistance sought is no longer required.
25. Mutual legal assistance may be postponed by the requested State Party on the ground that it interferes with an ongoing investigation, prosecution or judicial proceeding.
26. Before refusing a request pursuant to paragraph 21 of this article or postponing its execution pursuant to paragraph 25 of this article, the requested State Party shall consult with the requesting State Party to consider whether assistance may be granted subject to such terms and conditions as it deems necessary. If the requesting State Party accepts assistance subject to those conditions, it shall comply with the conditions.
27. Without prejudice to the application of paragraph 12 of this article, a witness, expert or other person who, at the request of the requesting State Party, consents to give evidence in a proceeding or to

assist in an investigation, prosecution or judicial proceeding in the territory of the requesting State Party shall not be prosecuted, detained, punished or subjected to any other restriction of his or her personal liberty in that territory in respect of acts, omissions or convictions prior to his or her departure from the territory of the requested State Party. Such safe conduct shall cease when the witness, expert or other person having had, for a period of fifteen consecutive days or for any period agreed upon by the States Parties from the date on which he or she has been officially informed that his or her presence is no longer required by the judicial authorities, an opportunity of leaving, has nevertheless remained voluntarily in the territory of the requesting State Party or, having left it, has returned of his or her own free will.

28. The ordinary costs of executing a request shall be borne by the requested State Party, unless otherwise agreed by the States Parties concerned. If expenses of a substantial or extraordinary nature are or will be required to fulfil the request, the States Parties shall consult to determine the terms and conditions under which the request will be executed, as well as the manner in which the costs shall be borne.

29. The requested State Party:

(a) Shall provide to the requesting State Party copies of government records, documents or information in its possession that under its domestic law are available to the general public;

(b) May, at its discretion, provide to the requesting State Party in whole, in part or subject to such conditions as it deems appropriate, copies of any government records, documents or information in its possession that under its domestic law are not available to the general public.

30. States Parties shall consider, as may be necessary, the possibility of concluding bilateral or multilateral agreements or arrangements that would serve the purposes of, give practical effect to or enhance the provisions of this article.

## **Article 19**

### **Joint investigations**

States Parties shall consider concluding bilateral or multilateral agreements or arrangements whereby, in relation to matters that are the subject of investigations, prosecutions or judicial proceedings in one or more States, the competent authorities concerned may establish joint investigative bodies. In the absence of such agreements or arrangements, joint investigations may be undertaken by agreement on a case-by-case basis. The States Parties involved shall ensure that the sovereignty of the State Party in whose territory such investigation is to take place is fully respected.

## **Article 20**

### **Special investigative techniques**

1. If permitted by the basic principles of its domestic legal system, each State Party shall, within its possibilities and under the conditions prescribed by its domestic law, take the necessary measures to allow for the appropriate use of controlled delivery and, where it deems appropriate, for the use of other special investigative techniques, such as electronic or other forms of surveillance and undercover operations, by its competent authorities in its territory for the purpose of effectively combating organized crime.

2. For the purpose of investigating the offences covered by this Convention, States Parties are encouraged to conclude, when necessary, appropriate bilateral or multilateral agreements or arrangements for using such special investigative techniques in the context of cooperation at the international level. Such agreements or arrangements shall be concluded and implemented in full compliance with the principle of sovereign equality of States and shall be carried out strictly in accordance with the terms of those agreements or arrangements.

3. In the absence of an agreement or arrangement as set forth in paragraph 2 of this article, decisions to use such special investigative techniques at the international level shall be made on a case-by-case basis and may, when necessary, take into consideration financial arrangements and understandings with respect to the exercise of jurisdiction by the States Parties concerned.

4. Decisions to use controlled delivery at the international level may, with the consent of the States Parties concerned, include methods such as intercepting and allowing the goods to continue intact or be removed or replaced in whole or in part.

## **Article 21**

### **Transfer of criminal proceedings**

States Parties shall consider the possibility of transferring to one another proceedings for the prosecution of an offence covered by this Convention in cases where such transfer is considered to be in the interests of the proper administration of justice, in particular in cases where several jurisdictions are involved, with a view to concentrating the prosecution.

## **Article 22**

### **Establishment of criminal record**

Each State Party may adopt such legislative or other measures as may be necessary to take into consideration, under such terms as and for the purpose that it deems appropriate, any previous conviction in another State of an alleged offender for the purpose of using such information in criminal proceedings relating to an offence covered by this Convention.

## **Article 23**

### **Criminalization of obstruction of justice**

Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:

(a) The use of physical force, threats or intimidation or the promise, offering or giving of an undue advantage to induce false testimony or to interfere in the giving of testimony or the production of evidence in a proceeding in relation to the commission of offences covered by this Convention;

(b) The use of physical force, threats or intimidation to interfere with the exercise of official duties by a justice or law enforcement official in relation to the commission of offences covered by this Convention. Nothing in this subparagraph shall prejudice the right of States Parties to have legislation that protects other categories of public officials.

## **Article 24**

### **Protection of witnesses**

1. Each State Party shall take appropriate measures within its means to provide effective protection from potential retaliation or intimidation for witnesses in criminal proceedings who give testimony concerning offences covered by this Convention and, as appropriate, for their relatives and other persons close to them.

2. The measures envisaged in paragraph 1 of this article may include, inter alia, without prejudice to the rights of the defendant, including the right to due process:

(a) Establishing procedures for the physical protection of such persons, such as, to the extent necessary and feasible, relocating them and permitting, where appropriate, non-disclosure or limitations on the disclosure of information concerning the identity and whereabouts of such persons;

(b) Providing evidentiary rules to permit witness testimony to be given in a manner that ensures the safety of the witness, such as permitting testimony to be given through the use of communications technology such as video links or other adequate means.

3. States Parties shall consider entering into agreements or arrangements with other States for the relocation of persons referred to in paragraph 1 of this article.

4. The provisions of this article shall also apply to victims insofar as they are witnesses.

## **Article 25**

### **Assistance to and protection of victims**

1. Each State Party shall take appropriate measures within its means to provide assistance and protection to victims of offences covered by this Convention, in particular in cases of threat of retaliation or intimidation.

2. Each State Party shall establish appropriate procedures to provide access to compensation and restitution for victims of offences covered by this Convention.

3. Each State Party shall, subject to its domestic law, enable views and concerns of victims to be presented and considered at appropriate stages of criminal proceedings against offenders in a manner not prejudicial to the rights of the defence.

## **Article 26**

### **Measures to enhance cooperation with law enforcement authorities**

1. Each State Party shall take appropriate measures to encourage persons who participate or who have participated in organized criminal groups:

(a) To supply information useful to competent authorities for investigative and evidentiary purposes on such matters as:

(i) The identity, nature, composition, structure, location or activities of organized criminal groups;

(ii) Links, including international links, with other organized criminal groups;

(iii) Offences that organized criminal groups have committed or may commit;

(b) To provide factual, concrete help to competent authorities that may contribute to depriving organized criminal groups of their resources or of the proceeds of crime.

2. Each State Party shall consider providing for the possibility, in appropriate cases, of mitigating punishment of an accused person who provides substantial cooperation in the investigation or prosecution of an offence covered by this Convention.

3. Each State Party shall consider providing for the possibility, in accordance with fundamental principles of its domestic law, of granting immunity from prosecution to a person who provides substantial cooperation in the investigation or prosecution of an offence covered by this Convention.

4. Protection of such persons shall be as provided for in article 24 of this Convention.

5. Where a person referred to in paragraph 1 of this article located in one State Party can provide substantial cooperation to the competent authorities of another State Party, the States Parties concerned may consider entering into agreements or arrangements, in accordance with their domestic law, concerning the potential provision by the other State Party of the treatment set forth in paragraphs 2 and 3 of this article.

## **Article 27**

### *Law enforcement cooperation*

1. States Parties shall cooperate closely with one another, consistent with their respective domestic legal and administrative systems, to enhance the effectiveness of law enforcement action to combat the offences covered by this Convention. Each State Party shall, in particular, adopt effective measures:

(a) To enhance and, where necessary, to establish channels of communication between their competent authorities, agencies and services in order to facilitate the secure and rapid exchange of information concerning all aspects of the offences covered by this Convention, including, if the States Parties concerned deem it appropriate, links with other criminal activities;

(b) To cooperate with other States Parties in conducting inquiries with respect to offences covered by this Convention concerning:

(i) The identity, whereabouts and activities of persons suspected of involvement in such offences or the location of other persons concerned;

(ii) The movement of proceeds of crime or property derived from the commission of such offences;

(iii) The movement of property, equipment or other instrumentalities used or intended for use in the commission of such offences;

(c) To provide, when appropriate, necessary items or quantities of substances for analytical or investigative purposes;

(d) To facilitate effective coordination between their competent authorities, agencies and services and to promote the exchange of personnel and other experts, including, subject to bilateral agreements or arrangements between the States Parties concerned, the posting of liaison officers;

(e) To exchange information with other States Parties on specific means and methods used by organized criminal groups, including, where applicable, routes and conveyances and the use of false identities, altered or false documents or other means of concealing their activities;

(f) To exchange information and coordinate administrative and other measures taken as appropriate for the purpose of early identification of the offences covered by this Convention.

2. With a view to giving effect to this Convention, States Parties shall consider entering into bilateral or multilateral agreements or arrangements on direct cooperation between their law enforcement agencies and, where such agreements or arrangements already exist, amending them. In the absence of such agreements or arrangements between the States Parties concerned, the Parties may consider this Convention as the basis for mutual law enforcement cooperation in respect of the offences covered by this Convention. Whenever appropriate, States Parties shall make full use of agreements or arrangements, including international or regional organizations, to enhance the cooperation between their law enforcement agencies.

3. States Parties shall endeavour to cooperate within their means to respond to transnational organized crime committed through the use of modern technology.

## **Article 28**

### *Collection, exchange and analysis of information on the nature of organized crime*

1. Each State Party shall consider analysing, in consultation with the scientific and academic communities, trends in organized crime in its territory, the circumstances in which organized crime operates, as well as the professional groups and technologies involved.

2. States Parties shall consider developing and sharing analytical expertise concerning organized criminal activities with each other and through international and regional organizations. For that purpose, common definitions, standards and methodologies should be developed and applied as appropriate.

3. Each State Party shall consider monitoring its policies and actual measures to combat organized crime and making assessments of their effectiveness and efficiency.

## **Article 29**

### **Training and technical assistance**

1. Each State Party shall, to the extent necessary, initiate, develop or improve specific training programmes for its law enforcement personnel, including prosecutors, investigating magistrates and customs personnel, and other personnel charged with the prevention, detection and control of the offences covered by this Convention. Such programmes may include secondments and exchanges of staff. Such programmes shall deal, in particular and to the extent permitted by domestic law, with the following:

- (a) Methods used in the prevention, detection and control of the offences covered by this Convention;
- (b) Routes and techniques used by persons suspected of involvement in offences covered by this Convention, including in transit States, and appropriate countermeasures;
- (c) Monitoring of the movement of contraband;
- (d) Detection and monitoring of the movements of proceeds of crime, property, equipment or other instrumentalities and methods used for the transfer, concealment or disguise of such proceeds, property, equipment or other instrumentalities, as well as methods used in combating money-laundering and other financial crimes;
- (e) Collection of evidence;
- (f) Control techniques in free trade zones and free ports;
- (g) Modern law enforcement equipment and techniques, including electronic surveillance, controlled deliveries and undercover operations;
- (h) Methods used in combating transnational organized crime committed through the use of computers, telecommunications networks or other forms of modern technology; and
- (i) Methods used in the protection of victims and witnesses.

2. States Parties shall assist one another in planning and implementing research and training programmes designed to share expertise in the areas referred to in paragraph 1 of this article and to that end shall also, when appropriate, use regional and international conferences and seminars to promote cooperation and to stimulate discussion on problems of mutual concern, including the special problems and needs of transit States.

3. States Parties shall promote training and technical assistance that will facilitate extradition and mutual legal assistance. Such training and technical assistance may include language training, secondments and exchanges between personnel in central authorities or agencies with relevant responsibilities.

4. In the case of existing bilateral and multilateral agreements or arrangements, States Parties shall strengthen, to the extent necessary, efforts to maximize operational and training activities within international and regional organizations and within other relevant bilateral and multilateral agreements or arrangements.

## **Article 30**

### **Other measures: implementation of the Convention through economic development and technical assistance**

1. States Parties shall take measures conducive to the optimal implementation of this Convention to the extent possible, through international cooperation, taking into account the negative effects of organized crime on society in general, in particular on sustainable development.

2. States Parties shall make concrete efforts to the extent possible and in coordination with each other, as well as with international and regional organizations:

- (a) To enhance their cooperation at various levels with developing countries, with a view to strengthening the capacity of the latter to prevent and combat transnational organized crime;
- (b) To enhance financial and material assistance to support the efforts of developing countries to fight transnational organized crime effectively and to help them implement this Convention successfully;
- (c) To provide technical assistance to developing countries and countries with economies in transition to assist them in meeting their needs for the implementation of this Convention. To that end, States Parties shall endeavour to make adequate and regular voluntary contributions to an account specifically designated for that purpose in a United Nations funding mechanism. States Parties may also give special consideration, in accordance with their domestic law and the provisions of this Convention, to contributing to the aforementioned account a percentage of the money or of the corresponding value of proceeds of crime or property confiscated in accordance with the provisions of this Convention;
- (d) To encourage and persuade other States and financial institutions as appropriate to join them in efforts in accordance with this article, in particular by providing more training programmes and modern equipment to developing countries in order to assist them in achieving the objectives of this Convention.



3. To the extent possible, these measures shall be without prejudice to existing foreign assistance commitments or to other financial cooperation arrangements at the bilateral, regional or international level.

4. States Parties may conclude bilateral or multilateral agreements or arrangements on material and logistical assistance, taking into consideration the financial arrangements necessary for the means of international cooperation provided for by this Convention to be effective and for the prevention, detection and control of transnational organized crime.

### **Article 31**

#### **Prevention**

1. States Parties shall endeavour to develop and evaluate national projects and to establish and promote best practices and policies aimed at the prevention of transnational organized crime.

2. States Parties shall endeavour, in accordance with fundamental principles of their domestic law, to reduce existing or future opportunities for organized criminal groups to participate in lawful markets with proceeds of crime, through appropriate legislative, administrative or other measures. These measures should focus on:

(a) The strengthening of cooperation between law enforcement agencies or prosecutors and relevant private entities, including industry;

(b) The promotion of the development of standards and procedures designed to safeguard the integrity of public and relevant private entities, as well as codes of conduct for relevant professions, in particular lawyers, notaries public, tax consultants and accountants;

(c) The prevention of the misuse by organized criminal groups of tender procedures conducted by public authorities and of subsidies and licences granted by public authorities for commercial activity;

(d) The prevention of the misuse of legal persons by organized criminal groups; such measures could include:

(i) The establishment of public records on legal and natural persons involved in the establishment, management and funding of legal persons;

(ii) The introduction of the possibility of disqualifying by court order or any appropriate means for a reasonable period of time persons convicted of offences covered by this Convention from acting as directors of legal persons incorporated within their jurisdiction;

(iii) The establishment of national records of persons disqualified from acting as directors of legal persons; and

(iv) The exchange of information contained in the records referred to in subparagraphs (d) (i) and (iii) of this paragraph with the competent authorities of other States Parties.

3. States Parties shall endeavour to promote the reintegration into society of persons convicted of offences covered by this Convention.

4. States Parties shall endeavour to evaluate periodically existing relevant legal instruments and administrative practices with a view to detecting their vulnerability to misuse by organized criminal groups.

5. States Parties shall endeavour to promote public awareness regarding the existence, causes and gravity of and the threat posed by transnational organized crime. Information may be disseminated where appropriate through the mass media and shall include measures to promote public participation in preventing and combating such crime.

6. Each State Party shall inform the Secretary-General of the United Nations of the name and address of the authority or authorities that can assist other States Parties in developing measures to prevent transnational organized crime.

7. States Parties shall, as appropriate, collaborate with each other and relevant international and regional organizations in promoting and developing the measures referred to in this article. This includes participation in international projects aimed at the prevention of transnational organized crime, for example by alleviating the circumstances that render socially marginalized groups vulnerable to the action of transnational organized crime.

### **Article 32**

#### **Conference of the Parties to the Convention**

1. A Conference of the Parties to the Convention is hereby established to improve the capacity of States Parties to combat transnational organized crime and to promote and review the implementation of this Convention.

2. The Secretary-General of the United Nations shall convene the Conference of the Parties not later than one year following the entry into force of this Convention. The Conference of the Parties shall adopt

rules of procedure and rules governing the activities set forth in paragraphs 3 and 4 of this article (including rules concerning payment of expenses incurred in carrying out those activities).

3. The Conference of the Parties shall agree upon mechanisms for achieving the objectives mentioned in paragraph 1 of this article, including:

- (a) Facilitating activities by States Parties under articles 29, 30 and 31 of this Convention, including by encouraging the mobilization of voluntary contributions;
- (b) Facilitating the exchange of information among States Parties on patterns and trends in transnational organized crime and on successful practices for combating it;
- (c) Cooperating with relevant international and regional organizations and non-governmental organizations;
- (d) Reviewing periodically the implementation of this Convention;
- (e) Making recommendations to improve this Convention and its implementation.

4. For the purpose of paragraphs 3 (d) and (e) of this article, the Conference of the Parties shall acquire the necessary knowledge of the measures taken by States Parties in implementing this Convention and the difficulties encountered by them in doing so through information provided by them and through such supplemental review mechanisms as may be established by the Conference of the Parties.

5. Each State Party shall provide the Conference of the Parties with information on its programmes, plans and practices, as well as legislative and administrative measures to implement this Convention, as required by the Conference of the Parties.

### **Article 33**

#### Secretariat

1. The Secretary-General of the United Nations shall provide the necessary secretariat services to the Conference of the Parties to the Convention.

2. The secretariat shall:

- (a) Assist the Conference of the Parties in carrying out the activities set forth in article 32 of this Convention and make arrangements and provide the necessary services for the sessions of the Conference of the Parties;
- (b) Upon request, assist States Parties in providing information to the Conference of the Parties as envisaged in article 32, paragraph 5, of this Convention; and
- (c) Ensure the necessary coordination with the secretariats of relevant international and regional organizations.

### **Article 34**

#### Implementation of the Convention

1. Each State Party shall take the necessary measures, including legislative and administrative measures, in accordance with fundamental principles of its domestic law, to ensure the implementation of its obligations under this Convention.

2. The offences established in accordance with articles 5, 6, 8 and 23 of this Convention shall be established in the domestic law of each State Party independently of the transnational nature or the involvement of an organized criminal group as described in article 3, paragraph 1, of this Convention, except to the extent that article 5 of this Convention would require the involvement of an organized criminal group.

3. Each State Party may adopt more strict or severe measures than those provided for by this Convention for preventing and combating transnational organized crime.

### **Article 35**

#### Settlement of disputes

1. States Parties shall endeavour to settle disputes concerning the interpretation or application of this Convention through negotiation.

2. Any dispute between two or more States Parties concerning the interpretation or application of this Convention that cannot be settled through negotiation within a reasonable time shall, at the request of one of those States Parties, be submitted to arbitration. If, six months after the date of the request for arbitration, those States Parties are unable to agree on the organization of the arbitration, any one of those States Parties may refer the dispute to the International Court of Justice by request in accordance with the Statute of the Court.

3. Each State Party may, at the time of signature, ratification, acceptance or approval of or accession to this Convention, declare that it does not consider itself bound by paragraph 2 of this article. The other States Parties shall not be bound by paragraph 2 of this article with respect to any State Party that has made such a reservation.

4. Any State Party that has made a reservation in accordance with paragraph 3 of this article may at any time withdraw that reservation by notification to the Secretary-General of the United Nations.

#### **Article 36**

Signature, ratification, acceptance, approval and accession

1. This Convention shall be open to all States for signature from 12 to 15 December 2000 in Palermo, Italy, and thereafter at United Nations Headquarters in New York until 12 December 2002.

2. This Convention shall also be open for signature by regional economic integration organizations provided that at least one member State of such organization has signed this Convention in accordance with paragraph 1 of this article.

3. This Convention is subject to ratification, acceptance or approval. Instruments of ratification, acceptance or approval shall be deposited with the Secretary-General of the United Nations. A regional economic integration organization may deposit its instrument of ratification, acceptance or approval if at least one of its member States has done likewise. In that instrument of ratification, acceptance or approval, such organization shall declare the extent of its competence with respect to the matters governed by this Convention. Such organization shall also inform the depositary of any relevant modification in the extent of its competence.

4. This Convention is open for accession by any State or any regional economic integration organization of which at least one member State is a Party to this Convention. Instruments of accession shall be deposited with the Secretary-General of the United Nations. At the time of its accession, a regional economic integration organization shall declare the extent of its competence with respect to matters governed by this Convention. Such organization shall also inform the depositary of any relevant modification in the extent of its competence.

#### **Article 37**

Relation with protocols

1. This Convention may be supplemented by one or more protocols.

2. In order to become a Party to a protocol, a State or a regional economic integration organization must also be a Party to this Convention.

3. A State Party to this Convention is not bound by a protocol unless it becomes a Party to the protocol in accordance with the provisions thereof.

4. Any protocol to this Convention shall be interpreted together with this Convention, taking into account the purpose of that protocol.

#### **Article 38**

Entry into force

1. This Convention shall enter into force on the ninetieth day after the date of deposit of the fortieth instrument of ratification, acceptance, approval or accession. For the purpose of this paragraph, any instrument deposited by a regional economic integration organization shall not be counted as additional to those deposited by member States of such organization.

2. For each State or regional economic integration organization ratifying, accepting, approving or acceding to this Convention after the deposit of the fortieth instrument of such action, this Convention shall enter into force on the thirtieth day after the date of deposit by such State or organization of the relevant instrument.

#### **Article 39**

Amendment

1. After the expiry of five years from the entry into force of this Convention, a State Party may propose an amendment and file it with the Secretary-General of the United Nations, who shall thereupon communicate the proposed amendment to the States Parties and to the Conference of the Parties to the Convention for the purpose of considering and deciding on the proposal. The Conference of the Parties shall make every effort to achieve consensus on each amendment. If all efforts at consensus have been exhausted and no agreement has been reached, the amendment shall, as a last resort, require for its adoption a two-thirds majority vote of the States Parties present and voting at the meeting of the Conference of the Parties.

2. Regional economic integration organizations, in matters within their competence, shall exercise their right to vote under this article with a number of votes equal to the number of their member States that are Parties to this Convention. Such organizations shall not exercise their right to vote if their member States exercise theirs and vice versa.

3. An amendment adopted in accordance with paragraph 1 of this article is subject to ratification, acceptance or approval by States Parties.

4. An amendment adopted in accordance with paragraph 1 of this article shall enter into force in respect of a State Party ninety days after the date of the deposit with the Secretary-General of the United Nations of an instrument of ratification, acceptance or approval of such amendment.

5. When an amendment enters into force, it shall be binding on those States Parties which have expressed their consent to be bound by it. Other States Parties shall still be bound by the provisions of this Convention and any earlier amendments that they have ratified, accepted or approved.

#### **Article 40**

##### **Denunciation**

1. A State Party may denounce this Convention by written notification to the Secretary-General of the United Nations. Such denunciation shall become effective one year after the date of receipt of the notification by the Secretary-General.

2. A regional economic integration organization shall cease to be a Party to this Convention when all of its member States have denounced it.

3. Denunciation of this Convention in accordance with paragraph 1 of this article shall entail the denunciation of any protocols thereto.

#### **Article 41**

##### **Depositary and languages**

1. The Secretary-General of the United Nations is designated depositary of this Convention.

2. The original of this Convention, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.

IN WITNESS WHEREOF, the undersigned plenipotentiaries, being duly authorized thereto by their respective Governments, have signed this Convention.

## APPENDIX B

### PROTOCOL TO PREVENT, SUPPRESS AND PUNISH TRAFFICKING IN PERSONS, ESPECIALLY WOMEN AND CHILDREN, SUPPLEMENTING THE UNITED NATIONS CONVENTION AGAINST TRANSNATIONAL ORGANIZED CRIME (NEW YORK, 15 NOVEMBER 2000)

#### **Preamble**

The States Parties to this Protocol,

Declaring that effective action to prevent and combat trafficking in persons, especially women and children, requires a comprehensive international approach in the countries of origin, transit and destination that includes measures to prevent such trafficking, to punish the traffickers and to protect the victims of such trafficking, including by protecting their internationally recognized human rights,

Taking into account the fact that, despite the existence of a variety of international instruments containing rules and practical measures to combat the exploitation of persons, especially women and children, there is no universal instrument that addresses all aspects of trafficking in persons,

Concerned that, in the absence of such an instrument, persons who are vulnerable to trafficking will not be sufficiently protected,

Recalling General Assembly resolution 53/111 of 9 December 1998, in which the Assembly decided to establish an open-ended intergovernmental ad hoc committee for the purpose of elaborating a comprehensive international convention against transnational organized crime and of discussing the elaboration of, inter alia, an international instrument addressing trafficking in women and children,

Convinced that supplementing the United Nations Convention against Transnational Organized Crime with an international instrument for the prevention, suppression and punishment of trafficking in persons, especially women and children, will be useful in preventing and combating that crime,

Have agreed as follows:

#### **I. General provisions**

##### **Article 1**

Relation with the United Nations Convention against Transnational Organized Crime

1. This Protocol supplements the United Nations Convention against Transnational Organized Crime. It shall be interpreted together with the Convention.

2. The provisions of the Convention shall apply, *mutatis mutandis*, to this Protocol unless otherwise provided herein.

3. The offences established in accordance with article 5 of this Protocol shall be regarded as offences established in accordance with the Convention.

##### **Article 2**

Statement of purpose

The purposes of this Protocol are:

- (a) To prevent and combat trafficking in persons, paying particular attention to women and children;
- (b) To protect and assist the victims of such trafficking, with full respect for their human rights; and
- (c) To promote cooperation among States Parties in order to meet those objectives.

##### **Article 3**

Use of terms

For the purposes of this Protocol:

(a) "Trafficking in persons" shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs;

(b) The consent of a victim of trafficking in persons to the intended exploitation set forth in subparagraph (a) of this article shall be irrelevant where any of the means set forth in subparagraph (a) have been used;

(c) The recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall be considered “trafficking in persons” even if this does not involve any of the means set forth in subparagraph (a) of this article;

(d) “Child” shall mean any person under eighteen years of age.

#### **Article 4**

##### **Scope of application**

This Protocol shall apply, except as otherwise stated herein, to the prevention, investigation and prosecution of the offences established in accordance with article 5 of this Protocol, where those offences are transnational in nature and involve an organized criminal group, as well as to the protection of victims of such offences.

#### **Article 5**

##### **Criminalization**

1. Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences the conduct set forth in article 3 of this Protocol, when committed intentionally.

2. Each State Party shall also adopt such legislative and other measures as may be necessary to establish as criminal offences:

(a) Subject to the basic concepts of its legal system, attempting to commit an offence established in accordance with paragraph 1 of this article;

(b) Participating as an accomplice in an offence established in accordance with paragraph 1 of this article; and

(c) Organizing or directing other persons to commit an offence established in accordance with paragraph 1 of this article.

## **II. Protection of victims of trafficking in persons**

#### **Article 6**

##### **Assistance to and protection of victims of trafficking in persons**

1. In appropriate cases and to the extent possible under its domestic law, each State Party shall protect the privacy and identity of victims of trafficking in persons, including, inter alia, by making legal proceedings relating to such trafficking confidential.

2. Each State Party shall ensure that its domestic legal or administrative system contains measures that provide to victims of trafficking in persons, in appropriate cases:

(a) Information on relevant court and administrative proceedings;

(b) Assistance to enable their views and concerns to be presented and considered at appropriate stages of criminal proceedings against offenders, in a manner not prejudicial to the rights of the defence.

3. Each State Party shall consider implementing measures to provide for the physical, psychological and social recovery of victims of trafficking in persons, including, in appropriate cases, in cooperation with non-governmental organizations, other relevant organizations and other elements of civil society, and, in particular, the provision of:

(a) Appropriate housing;

(b) Counseling and information, in particular as regards their legal rights, in a language that the victims of trafficking in persons can understand;

(c) Medical, psychological and material assistance; and

(d) Employment, educational and training opportunities.

4. Each State Party shall take into account, in applying the provisions of this article, the age, gender and special needs of victims of trafficking in persons, in particular the special needs of children, including appropriate housing, education and care.

5. Each State Party shall endeavour to provide for the physical safety of victims of trafficking in persons while they are within its territory.

6. Each State Party shall ensure that its domestic legal system contains measures that offer victims of trafficking in persons the possibility of obtaining compensation for damage suffered.

#### **Article 7**

##### **Status of victims of trafficking in persons in receiving States**

1. In addition to taking measures pursuant to article 6 of this Protocol, each State Party shall consider adopting legislative or other appropriate measures that permit victims of trafficking in persons to remain in its territory, temporarily or permanently, in appropriate cases.

2. In implementing the provision contained in paragraph 1 of this article, each State Party shall give appropriate consideration to humanitarian and compassionate factors.

#### **Article 8**

##### *Repatriation of victims of trafficking in persons*

1. The State Party of which a victim of trafficking in persons is a national or in which the person had the right of permanent residence at the time of entry into the territory of the receiving State Party shall facilitate and accept, with due regard for the safety of that person, the return of that person without undue or unreasonable delay.

2. When a State Party returns a victim of trafficking in persons to a State Party of which that person is a national or in which he or she had, at the time of entry into the territory of the receiving State Party, the right of permanent residence, such return shall be with due regard for the safety of that person and for the status of any legal proceedings related to the fact that the person is a victim of trafficking and shall preferably be voluntary.

3. At the request of a receiving State Party, a requested State Party shall, without undue or unreasonable delay, verify whether a person who is a victim of trafficking in persons is its national or had the right of permanent residence in its territory at the time of entry into the territory of the receiving State Party.

4. In order to facilitate the return of a victim of trafficking in persons who is without proper documentation, the State Party of which that person is a national or in which he or she had the right of permanent residence at the time of entry into the territory of the receiving State Party shall agree to issue, at the request of the receiving State Party, such travel documents or other authorization as may be necessary to enable the person to travel to and re-enter its territory.

5. This article shall be without prejudice to any right afforded to victims of trafficking in persons by any domestic law of the receiving State Party.

6. This article shall be without prejudice to any applicable bilateral or multilateral agreement or arrangement that governs, in whole or in part, the return of victims of trafficking in persons.

### **III. Prevention, cooperation and other measures**

#### **Article 9**

##### *Prevention of trafficking in persons*

1. States Parties shall establish comprehensive policies, programmes and other measures:

- (a) To prevent and combat trafficking in persons; and
- (b) To protect victims of trafficking in persons, especially women and children, from revictimization.

2. States Parties shall endeavour to undertake measures such as research, information and mass media campaigns and social and economic initiatives to prevent and combat trafficking in persons.

3. Policies, programmes and other measures established in accordance with this article shall, as appropriate, include cooperation with non-governmental organizations, other relevant organizations and other elements of civil society.

4. States Parties shall take or strengthen measures, including through bilateral or multilateral cooperation, to alleviate the factors that make persons, especially women and children, vulnerable to trafficking, such as poverty, underdevelopment and lack of equal opportunity.

5. States Parties shall adopt or strengthen legislative or other measures, such as educational, social or cultural measures, including through bilateral and multilateral cooperation, to discourage the demand that fosters all forms of exploitation of persons, especially women and children, that leads to trafficking.

#### **Article 10**

##### *Information exchange and training*

1. Law enforcement, immigration or other relevant authorities of States Parties shall, as appropriate, cooperate with one another by exchanging information, in accordance with their domestic law, to enable them to determine:

(a) Whether individuals crossing or attempting to cross an international border with travel documents belonging to other persons or without travel documents are perpetrators or victims of trafficking in persons;

(b) The types of travel document that individuals have used or attempted to use to cross an international border for the purpose of trafficking in persons; and

(c) The means and methods used by organized criminal groups for the purpose of trafficking in persons, including the recruitment and transportation of victims, routes and links between and among individuals and groups engaged in such trafficking, and possible measures for detecting them.

2. States Parties shall provide or strengthen training for law enforcement, immigration and other relevant officials in the prevention of trafficking in persons. The training should focus on methods used in preventing such trafficking, prosecuting the traffickers and protecting the rights of the victims, including protecting the victims from the traffickers. The training should also take into account the need to consider human rights and child- and gender-sensitive issues and it should encourage cooperation with non-governmental organizations, other relevant organizations and other elements of civil society.

3. A State Party that receives information shall comply with any request by the State Party that transmitted the information that places restrictions on its use.

#### **Article 11**

##### **Border measures**

1. Without prejudice to international commitments in relation to the free movement of people, States Parties shall strengthen, to the extent possible, such border controls as may be necessary to prevent and detect trafficking in persons.

2. Each State Party shall adopt legislative or other appropriate measures to prevent, to the extent possible, means of transport operated by commercial carriers from being used in the commission of offences established in accordance with article 5 of this Protocol.

3. Where appropriate, and without prejudice to applicable international conventions, such measures shall include establishing the obligation of commercial carriers, including any transportation company or the owner or operator of any means of transport, to ascertain that all passengers are in possession of the travel documents required for entry into the receiving State.

4. Each State Party shall take the necessary measures, in accordance with its domestic law, to provide for sanctions in cases of violation of the obligation set forth in paragraph 3 of this article.

5. Each State Party shall consider taking measures that permit, in accordance with its domestic law, the denial of entry or revocation of visas of persons implicated in the commission of offences established in accordance with this Protocol.

6. Without prejudice to article 27 of the Convention, States Parties shall consider strengthening cooperation among border control agencies by, inter alia, establishing and maintaining direct channels of communication.

#### **Article 12**

##### **Security and control of documents**

Each State Party shall take such measures as may be necessary, within available means:

(a) To ensure that travel or identity documents issued by it are of such quality that they cannot easily be misused and cannot readily be falsified or unlawfully altered, replicated or issued; and

(b) To ensure the integrity and security of travel or identity documents issued by or on behalf of the State Party and to prevent their unlawful creation, issuance and use.

#### **Article 13**

##### **Legitimacy and validity of documents**

At the request of another State Party, a State Party shall, in accordance with its domestic law, verify within a reasonable time the legitimacy and validity of travel or identity documents issued or purported to have been issued in its name and suspected of being used for trafficking in persons.

### **IV. Final provisions**

#### **Article 14**

##### **Saving clause**

1. Nothing in this Protocol shall affect the rights, obligations and responsibilities of States and individuals under international law, including international humanitarian law and international human rights law and, in particular, where applicable, the 1951 Convention and the 1967 Protocol relating to the Status of Refugees and the principle of non-refoulement as contained therein.

2. The measures set forth in this Protocol shall be interpreted and applied in a way that is not discriminatory to persons on the ground that they are victims of trafficking in persons. The interpretation and application of those measures shall be consistent with internationally recognized principles of non-discrimination.



## **Article 15**

### **Settlement of disputes**

1. States Parties shall endeavour to settle disputes concerning the interpretation or application of this Protocol through negotiation.

2. Any dispute between two or more States Parties concerning the interpretation or application of this Protocol that cannot be settled through negotiation within a reasonable time shall, at the request of one of those States Parties, be submitted to arbitration. If, six months after the date of the request for arbitration, those States Parties are unable to agree on the organization of the arbitration, any one of those States Parties may refer the dispute to the International Court of Justice by request in accordance with the Statute of the Court.

3. Each State Party may, at the time of signature, ratification, acceptance or approval of or accession to this Protocol, declare that it does not consider itself bound by paragraph 2 of this article. The other States Parties shall not be bound by paragraph 2 of this article with respect to any State Party that has made such a reservation.

4. Any State Party that has made a reservation in accordance with paragraph 3 of this article may at any time withdraw that reservation by notification to the Secretary-General of the United Nations.

## **Article 16**

### **Signature, ratification, acceptance, approval and accession**

1. This Protocol shall be open to all States for signature from 12 to 15 December 2000 in Palermo, Italy, and thereafter at United Nations Headquarters in New York until 12 December 2002.

2. This Protocol shall also be open for signature by regional economic integration organizations provided that at least one member State of such organization has signed this Protocol in accordance with paragraph 1 of this article.

3. This Protocol is subject to ratification, acceptance or approval. Instruments of ratification, acceptance or approval shall be deposited with the Secretary-General of the United Nations. A regional economic integration organization may deposit its instrument of ratification, acceptance or approval if at least one of its member States has done likewise. In that instrument of ratification, acceptance or approval, such organization shall declare the extent of its competence with respect to the matters governed by this Protocol. Such organization shall also inform the depositary of any relevant modification in the extent of its competence.

4. This Protocol is open for accession by any State or any regional economic integration organization of which at least one member State is a Party to this Protocol. Instruments of accession shall be deposited with the Secretary-General of the United Nations. At the time of its accession, a regional economic integration organization shall declare the extent of its competence with respect to matters governed by this Protocol. Such organization shall also inform the depositary of any relevant modification in the extent of its competence.

## **Article 17**

### **Entry into force**

1. This Protocol shall enter into force on the ninetieth day after the date of deposit of the fortieth instrument of ratification, acceptance, approval or accession, except that it shall not enter into force before the entry into force of the Convention. For the purpose of this paragraph, any instrument deposited by a regional economic integration organization shall not be counted as additional to those deposited by member States of such organization.

2. For each State or regional economic integration organization ratifying, accepting, approving or acceding to this Protocol after the deposit of the fortieth instrument of such action, this Protocol shall enter into force on the thirtieth day after the date of deposit by such State or organization of the relevant instrument or on the date this Protocol enters into force pursuant to paragraph 1 of this article, whichever is the later.

## **Article 18**

### **Amendment**

1. After the expiry of five years from the entry into force of this Protocol, a State Party to the Protocol may propose an amendment and file it with the Secretary-General of the United Nations, who shall thereupon communicate the proposed amendment to the States Parties and to the Conference of the Parties to the Convention for the purpose of considering and deciding on the proposal. The States Parties to this Protocol meeting at the Conference of the Parties shall make every effort to achieve consensus on each amendment. If all efforts at consensus have been exhausted and no agreement has been reached, the

amendment shall, as a last resort, require for its adoption a two-thirds majority vote of the States Parties to this Protocol present and voting at the meeting of the Conference of the Parties.

2. Regional economic integration organizations, in matters within their competence, shall exercise their right to vote under this article with a number of votes equal to the number of their member States that are Parties to this Protocol. Such organizations shall not exercise their right to vote if their member States exercise theirs and vice versa.

3. An amendment adopted in accordance with paragraph 1 of this article is subject to ratification, acceptance or approval by States Parties.

4. An amendment adopted in accordance with paragraph 1 of this article shall enter into force in respect of a State Party ninety days after the date of the deposit with the Secretary-General of the United Nations of an instrument of ratification, acceptance or approval of such amendment.

5. When an amendment enters into force, it shall be binding on those States Parties which have expressed their consent to be bound by it. Other States Parties shall still be bound by the provisions of this Protocol and any earlier amendments that they have ratified, accepted or approved.

#### **Article 19**

##### **Denunciation**

1. A State Party may denounce this Protocol by written notification to the Secretary-General of the United Nations. Such denunciation shall become effective one year after the date of receipt of the notification by the Secretary-General.

2. A regional economic integration organization shall cease to be a Party to this Protocol when all of its member States have denounced it.

#### **Article 20**

##### **Depositary and languages**

1. The Secretary-General of the United Nations is designated depositary of this Protocol.

2. The original of this Protocol, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.

IN WITNESS WHEREOF, the undersigned plenipotentiaries, being duly authorized thereto by their respective Governments, have signed this Protocol.

## APPENDIX C

### PROTOCOL AGAINST THE SMUGGLING OF MIGRANTS BY LAND, SEA AND AIR, SUPPLEMENTING THE UNITED NATIONS CONVENTION AGAINST TRANSNATIONAL ORGANIZED CRIME (NEW YORK, 15 NOVEMBER 2000)

#### **Preamble**

The States Parties to this Protocol,

Declaring that effective action to prevent and combat the smuggling of migrants by land, sea and air requires a comprehensive international approach, including cooperation, the exchange of information and other appropriate measures, including socio-economic measures, at the national, regional and international levels,

Recalling General Assembly resolution 54/212 of 22 December 1999, in which the Assembly urged Member States and the United Nations system to strengthen international cooperation in the area of international migration and development in order to address the root causes of migration, especially those related to poverty, and to maximize the benefits of international migration to those concerned, and encouraged, where relevant, interregional, regional and subregional mechanisms to continue to address the question of migration and development,

Convinced of the need to provide migrants with humane treatment and full protection of their rights,

Taking into account the fact that, despite work undertaken in other international forums, there is no universal instrument that addresses all aspects of smuggling of migrants and other related issues,

Concerned at the significant increase in the activities of organized criminal groups in smuggling of migrants and other related criminal activities set forth in this Protocol, which bring great harm to the States concerned,

Also concerned that the smuggling of migrants can endanger the lives or security of the migrants involved,

Recalling General Assembly resolution 53/111 of 9 December 1998, in which the Assembly decided to establish an open-ended intergovernmental ad hoc committee for the purpose of elaborating a comprehensive international convention against transnational organized crime and of discussing the elaboration of, inter alia, an international instrument addressing illegal trafficking in and transporting of migrants, including by sea,

Convinced that supplementing the United Nations Convention against Transnational Organized Crime with an international instrument against the smuggling of migrants by land, sea and air will be useful in preventing and combating that crime,

Have agreed as follows:

#### **I. General provisions**

##### **Article 1**

Relation with the United Nations Convention against Transnational Organized Crime

1. This Protocol supplements the United Nations Convention against Transnational Organized Crime. It shall be interpreted together with the Convention.

2. The provisions of the Convention shall apply, mutatis mutandis, to this Protocol unless otherwise provided herein.

3. The offences established in accordance with article 6 of this Protocol shall be regarded as offences established in accordance with the Convention.

##### **Article 2**

Statement of purpose

The purpose of this Protocol is to prevent and combat the smuggling of migrants, as well as to promote cooperation among States Parties to that end, while protecting the rights of smuggled migrants.

##### **Article 3**

Use of terms

For the purposes of this Protocol:

(a) "Smuggling of migrants" shall mean the procurement, in order to obtain, directly or indirectly, a financial or other material benefit, of the illegal entry of a person into a State Party of which the person is not a national or a permanent resident;

(b) "Illegal entry" shall mean crossing borders without complying with the necessary requirements for legal entry into the receiving State;

(c) "Fraudulent travel or identity document" shall mean any travel or identity document:

(i) That has been falsely made or altered in some material way by anyone other than a person or agency lawfully authorized to make or issue the travel or identity document on behalf of a State; or

(ii) That has been improperly issued or obtained through misrepresentation, corruption or duress or in any other unlawful manner; or

(iii) That is being used by a person other than the rightful holder;

(d) "Vessel" shall mean any type of water craft, including non-displacement craft and seaplanes, used or capable of being used as a means of transportation on water, except a warship, naval auxiliary or other vessel owned or operated by a Government and used, for the time being, only on government non-commercial service.

#### **Article 4**

##### **Scope of application**

This Protocol shall apply, except as otherwise stated herein, to the prevention, investigation and prosecution of the offences established in accordance with article 6 of this Protocol, where the offences are transnational in nature and involve an organized criminal group, as well as to the protection of the rights of persons who have been the object of such offences.

#### **Article 5**

##### **Criminal liability of migrants**

Migrants shall not become liable to criminal prosecution under this Protocol for the fact of having been the object of conduct set forth in article 6 of this Protocol.

#### **Article 6**

##### **Criminalization**

1. Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally and in order to obtain, directly or indirectly, a financial or other material benefit:

(a) The smuggling of migrants;

(b) When committed for the purpose of enabling the smuggling of migrants:

(i) Producing a fraudulent travel or identity document;

(ii) Procuring, providing or possessing such a document;

(c) Enabling a person who is not a national or a permanent resident to remain in the State concerned without complying with the necessary requirements for legally remaining in the State by the means mentioned in subparagraph (b) of this paragraph or any other illegal means.

2. Each State Party shall also adopt such legislative and other measures as may be necessary to establish as criminal offences:

(a) Subject to the basic concepts of its legal system, attempting to commit an offence established in accordance with paragraph 1 of this article;

(b) Participating as an accomplice in an offence established in accordance with paragraph 1 (a), (b) (i) or (c) of this article and, subject to the basic concepts of its legal system, participating as an accomplice in an offence established in accordance with paragraph 1 (b) (ii) of this article;

(c) Organizing or directing other persons to commit an offence established in accordance with paragraph 1 of this article.

3. Each State Party shall adopt such legislative and other measures as may be necessary to establish as aggravating circumstances to the offences established in accordance with paragraph 1 (a), (b) (i) and (c) of this article and, subject to the basic concepts of its legal system, to the offences established in accordance with paragraph 2 (b) and (c) of this article, circumstances:

(a) That endanger, or are likely to endanger, the lives or safety of the migrants concerned; or

(b) That entail inhuman or degrading treatment, including for exploitation, of such migrants.

4. Nothing in this Protocol shall prevent a State Party from taking measures against a person whose conduct constitutes an offence under its domestic law.

## II. Smuggling of migrants by sea

### Article 7

#### Cooperation

States Parties shall cooperate to the fullest extent possible to prevent and suppress the smuggling of migrants by sea, in accordance with the international law of the sea.

### Article 8

#### Measures against the smuggling of migrants by sea

1. A State Party that has reasonable grounds to suspect that a vessel that is flying its flag or claiming its registry, that is without nationality or that, though flying a foreign flag or refusing to show a flag, is in reality of the nationality of the State Party concerned is engaged in the smuggling of migrants by sea may request the assistance of other States Parties in suppressing the use of the vessel for that purpose. The States Parties so requested shall render such assistance to the extent possible within their means.

2. A State Party that has reasonable grounds to suspect that a vessel exercising freedom of navigation in accordance with international law and flying the flag or displaying the marks of registry of another State Party is engaged in the smuggling of migrants by sea may so notify the flag State, request confirmation of registry and, if confirmed, request authorization from the flag State to take appropriate measures with regard to that vessel. The flag State may authorize the requesting State, *inter alia*:

(a) To board the vessel;  
(b) To search the vessel; and  
(c) If evidence is found that the vessel is engaged in the smuggling of migrants by sea, to take appropriate measures with respect to the vessel and persons and cargo on board, as authorized by the flag State.

3. A State Party that has taken any measure in accordance with paragraph 2 of this article shall promptly inform the flag State concerned of the results of that measure.

4. A State Party shall respond expeditiously to a request from another State Party to determine whether a vessel that is claiming its registry or flying its flag is entitled to do so and to a request for authorization made in accordance with paragraph 2 of this article.

5. A flag State may, consistent with article 7 of this Protocol, subject its authorization to conditions to be agreed by it and the requesting State, including conditions relating to responsibility and the extent of effective measures to be taken. A State Party shall take no additional measures without the express authorization of the flag State, except those necessary to relieve imminent danger to the lives of persons or those which derive from relevant bilateral or multilateral agreements.

6. Each State Party shall designate an authority or, where necessary, authorities to receive and respond to requests for assistance, for confirmation of registry or of the right of a vessel to fly its flag and for authorization to take appropriate measures. Such designation shall be notified through the Secretary-General to all other States Parties within one month of the designation.

7. A State Party that has reasonable grounds to suspect that a vessel is engaged in the smuggling of migrants by sea and is without nationality or may be assimilated to a vessel without nationality may board and search the vessel. If evidence confirming the suspicion is found, that State Party shall take appropriate measures in accordance with relevant domestic and international law.

### Article 9

#### Safeguard clauses

1. Where a State Party takes measures against a vessel in accordance with article 8 of this Protocol, it shall:

(a) Ensure the safety and humane treatment of the persons on board;  
(b) Take due account of the need not to endanger the security of the vessel or its cargo;  
(c) Take due account of the need not to prejudice the commercial or legal interests of the flag State or any other interested State;  
(d) Ensure, within available means, that any measure taken with regard to the vessel is environmentally sound.

2. Where the grounds for measures taken pursuant to article 8 of this Protocol prove to be unfounded, the vessel shall be compensated for any loss or damage that may have been sustained, provided that the vessel has not committed any act justifying the measures taken.

3. Any measure taken, adopted or implemented in accordance with this chapter shall take due account of the need not to interfere with or to affect:

(a) The rights and obligations and the exercise of jurisdiction of coastal States in accordance with the international law of the sea; or

(b) The authority of the flag State to exercise jurisdiction and control in administrative, technical and social matters involving the vessel.

4. Any measure taken at sea pursuant to this chapter shall be carried out only by warships or military aircraft or by other ships or aircraft clearly marked and identifiable as being on government service and authorized to that effect.

### **III. Prevention, cooperation and other measures**

#### **Article 10**

##### Information

1. Without prejudice to articles 27 and 28 of the Convention, States Parties, in particular those with common borders or located on routes along which migrants are smuggled, shall, for the purpose of achieving the objectives of this Protocol, exchange among themselves, consistent with their respective domestic legal and administrative systems, relevant information on matters such as:

(a) Embarkation and destination points, as well as routes, carriers and means of transportation, known to be or suspected of being used by an organized criminal group engaged in conduct set forth in article 6 of this Protocol;

(b) The identity and methods of organizations or organized criminal groups known to be or suspected of being engaged in conduct set forth in article 6 of this Protocol;

(c) The authenticity and proper form of travel documents issued by a State Party and the theft or related misuse of blank travel or identity documents;

(d) Means and methods of concealment and transportation of persons, the unlawful alteration, reproduction or acquisition or other misuse of travel or identity documents used in conduct set forth in article 6 of this Protocol and ways of detecting them;

(e) Legislative experiences and practices and measures to prevent and combat the conduct set forth in article 6 of this Protocol; and

(f) Scientific and technological information useful to law enforcement, so as to enhance each other's ability to prevent, detect and investigate the conduct set forth in article 6 of this Protocol and to prosecute those involved.

2. A State Party that receives information shall comply with any request by the State Party that transmitted the information that places restrictions on its use.

#### **Article 11**

##### Border measures

1. Without prejudice to international commitments in relation to the free movement of people, States Parties shall strengthen, to the extent possible, such border controls as may be necessary to prevent and detect the smuggling of migrants.

2. Each State Party shall adopt legislative or other appropriate measures to prevent, to the extent possible, means of transport operated by commercial carriers from being used in the commission of the offence established in accordance with article 6, paragraph 1 (a), of this Protocol.

3. Where appropriate, and without prejudice to applicable international conventions, such measures shall include establishing the obligation of commercial carriers, including any transportation company or the owner or operator of any means of transport, to ascertain that all passengers are in possession of the travel documents required for entry into the receiving State.

4. Each State Party shall take the necessary measures, in accordance with its domestic law, to provide for sanctions in cases of violation of the obligation set forth in paragraph 3 of this article.

5. Each State Party shall consider taking measures that permit, in accordance with its domestic law, the denial of entry or revocation of visas of persons implicated in the commission of offences established in accordance with this Protocol.

6. Without prejudice to article 27 of the Convention, States Parties shall consider strengthening cooperation among border control agencies by, inter alia, establishing and maintaining direct channels of communication.

#### **Article 12**

##### Security and control of documents

Each State Party shall take such measures as may be necessary, within available means:

(a) To ensure that travel or identity documents issued by it are of such quality that they cannot easily be misused and cannot readily be falsified or unlawfully altered, replicated or issued; and

(b) To ensure the integrity and security of travel or identity documents issued by or on behalf of the State Party and to prevent their unlawful creation, issuance and use.

### **Article 13**

#### Legitimacy and validity of documents

At the request of another State Party, a State Party shall, in accordance with its domestic law, verify within a reasonable time the legitimacy and validity of travel or identity documents issued or purported to have been issued in its name and suspected of being used for purposes of conduct set forth in article 6 of this Protocol.

### **Article 14**

#### Training and technical cooperation

1. States Parties shall provide or strengthen specialized training for immigration and other relevant officials in preventing the conduct set forth in article 6 of this Protocol and in the humane treatment of migrants who have been the object of such conduct, while respecting their rights as set forth in this Protocol.

2. States Parties shall cooperate with each other and with competent international organizations, non-governmental organizations, other relevant organizations and other elements of civil society as appropriate to ensure that there is adequate personnel training in their territories to prevent, combat and eradicate the conduct set forth in article 6 of this Protocol and to protect the rights of migrants who have been the object of such conduct. Such training shall include:

- (a) Improving the security and quality of travel documents;
- (b) Recognizing and detecting fraudulent travel or identity documents;
- (c) Gathering criminal intelligence, relating in particular to the identification of organized criminal groups known to be or suspected of being engaged in conduct set forth in article 6 of this Protocol, the methods used to transport smuggled migrants, the misuse of travel or identity documents for purposes of conduct set forth in article 6 and the means of concealment used in the smuggling of migrants;
- (d) Improving procedures for detecting smuggled persons at conventional and non-conventional points of entry and exit; and
- (e) The humane treatment of migrants and the protection of their rights as set forth in this Protocol.

3. States Parties with relevant expertise shall consider providing technical assistance to States that are frequently countries of origin or transit for persons who have been the object of conduct set forth in article 6 of this Protocol. States Parties shall make every effort to provide the necessary resources, such as vehicles, computer systems and document readers, to combat the conduct set forth in article 6.

### **Article 15**

#### Other prevention measures

1. Each State Party shall take measures to ensure that it provides or strengthens information programmes to increase public awareness of the fact that the conduct set forth in article 6 of this Protocol is a criminal activity frequently perpetrated by organized criminal groups for profit and that it poses serious risks to the migrants concerned.

2. In accordance with article 31 of the Convention, States Parties shall cooperate in the field of public information for the purpose of preventing potential migrants from falling victim to organized criminal groups.

3. Each State Party shall promote or strengthen, as appropriate, development programmes and cooperation at the national, regional and international levels, taking into account the socio-economic realities of migration and paying special attention to economically and socially depressed areas, in order to combat the root socio-economic causes of the smuggling of migrants, such as poverty and underdevelopment.

### **Article 16**

#### Protection and assistance measures

1. In implementing this Protocol, each State Party shall take, consistent with its obligations under international law, all appropriate measures, including legislation if necessary, to preserve and protect the rights of persons who have been the object of conduct set forth in article 6 of this Protocol as accorded under applicable international law, in particular the right to life and the right not to be subjected to torture or other cruel, inhuman or degrading treatment or punishment.

2. Each State Party shall take appropriate measures to afford migrants appropriate protection against violence that may be inflicted upon them, whether by individuals or groups, by reason of being the object of conduct set forth in article 6 of this Protocol.

3. Each State Party shall afford appropriate assistance to migrants whose lives or safety are endangered by reason of being the object of conduct set forth in article 6 of this Protocol.

4. In applying the provisions of this article, States Parties shall take into account the special needs of women and children.

5. In the case of the detention of a person who has been the object of conduct set forth in article 6 of this Protocol, each State Party shall comply with its obligations under the Vienna Convention on Consular Relations, where applicable, including that of informing the person concerned without delay about the provisions concerning notification to and communication with consular officers.

#### **Article 17**

##### **Agreements and arrangements**

States Parties shall consider the conclusion of bilateral or regional agreements or operational arrangements or understandings aimed at:

- (a) Establishing the most appropriate and effective measures to prevent and combat the conduct set forth in article 6 of this Protocol; or
- (b) Enhancing the provisions of this Protocol among themselves.

#### **Article 18**

##### **Return of smuggled migrants**

1. Each State Party agrees to facilitate and accept, without undue or unreasonable delay, the return of a person who has been the object of conduct set forth in article 6 of this Protocol and who is its national or who has the right of permanent residence in its territory at the time of return.

2. Each State Party shall consider the possibility of facilitating and accepting the return of a person who has been the object of conduct set forth in article 6 of this Protocol and who had the right of permanent residence in its territory at the time of entry into the receiving State in accordance with its domestic law.

3. At the request of the receiving State Party, a requested State Party shall, without undue or unreasonable delay, verify whether a person who has been the object of conduct set forth in article 6 of this Protocol is its national or has the right of permanent residence in its territory.

4. In order to facilitate the return of a person who has been the object of conduct set forth in article 6 of this Protocol and is without proper documentation, the State Party of which that person is a national or in which he or she has the right of permanent residence shall agree to issue, at the request of the receiving State Party, such travel documents or other authorization as may be necessary to enable the person to travel to and re-enter its territory.

5. Each State Party involved with the return of a person who has been the object of conduct set forth in article 6 of this Protocol shall take all appropriate measures to carry out the return in an orderly manner and with due regard for the safety and dignity of the person.

6. States Parties may cooperate with relevant international organizations in the implementation of this article.

7. This article shall be without prejudice to any right afforded to persons who have been the object of conduct set forth in article 6 of this Protocol by any domestic law of the receiving State Party.

8. This article shall not affect the obligations entered into under any other applicable treaty, bilateral or multilateral, or any other applicable operational agreement or arrangement that governs, in whole or in part, the return of persons who have been the object of conduct set forth in article 6 of this Protocol.

### **IV. Final provisions**

#### **Article 19**

##### **Saving clause**

1. Nothing in this Protocol shall affect the other rights, obligations and responsibilities of States and individuals under international law, including international humanitarian law and international human rights law and, in particular, where applicable, the 1951 Convention and the 1967 Protocol relating to the Status of Refugees and the principle of non-refoulement as contained therein.

2. The measures set forth in this Protocol shall be interpreted and applied in a way that is not discriminatory to persons on the ground that they are the object of conduct set forth in article 6 of this Protocol. The interpretation and application of those measures shall be consistent with internationally recognized principles of non-discrimination.

#### **Article 20**

##### **Settlement of disputes**

1. States Parties shall endeavour to settle disputes concerning the interpretation or application of this Protocol through negotiation.



2. Any dispute between two or more States Parties concerning the interpretation or application of this Protocol that cannot be settled through negotiation within a reasonable time shall, at the request of one of those States Parties, be submitted to arbitration. If, six months after the date of the request for arbitration, those States Parties are unable to agree on the organization of the arbitration, any one of those States Parties may refer the dispute to the International Court of Justice by request in accordance with the Statute of the Court.

3. Each State Party may, at the time of signature, ratification, acceptance or approval of or accession to this Protocol, declare that it does not consider itself bound by paragraph 2 of this article. The other States Parties shall not be bound by paragraph 2 of this article with respect to any State Party that has made such a reservation.

4. Any State Party that has made a reservation in accordance with paragraph 3 of this article may at any time withdraw that reservation by notification to the Secretary-General of the United Nations.

#### **Article 21**

##### *Signature, ratification, acceptance, approval and accession*

1. This Protocol shall be open to all States for signature from 12 to 15 December 2000 in Palermo, Italy, and thereafter at United Nations Headquarters in New York until 12 December 2002.

2. This Protocol shall also be open for signature by regional economic integration organizations provided that at least one member State of such organization has signed this Protocol in accordance with paragraph 1 of this article.

3. This Protocol is subject to ratification, acceptance or approval. Instruments of ratification, acceptance or approval shall be deposited with the Secretary-General of the United Nations. A regional economic integration organization may deposit its instrument of ratification, acceptance or approval if at least one of its member States has done likewise. In that instrument of ratification, acceptance or approval, such organization shall declare the extent of its competence with respect to the matters governed by this Protocol. Such organization shall also inform the depositary of any relevant modification in the extent of its competence.

4. This Protocol is open for accession by any State or any regional economic integration organization of which at least one member State is a Party to this Protocol. Instruments of accession shall be deposited with the Secretary-General of the United Nations. At the time of its accession, a regional economic integration organization shall declare the extent of its competence with respect to matters governed by this Protocol. Such organization shall also inform the depositary of any relevant modification in the extent of its competence.

#### **Article 22**

##### *Entry into force*

1. This Protocol shall enter into force on the ninetieth day after the date of deposit of the fortieth instrument of ratification, acceptance, approval or accession, except that it shall not enter into force before the entry into force of the Convention. For the purpose of this paragraph, any instrument deposited by a regional economic integration organization shall not be counted as additional to those deposited by member States of such organization.

2. For each State or regional economic integration organization ratifying, accepting, approving or acceding to this Protocol after the deposit of the fortieth instrument of such action, this Protocol shall enter into force on the thirtieth day after the date of deposit by such State or organization of the relevant instrument or on the date this Protocol enters into force pursuant to paragraph 1 of this article, whichever is the later.

#### **Article 23**

##### *Amendment*

1. After the expiry of five years from the entry into force of this Protocol, a State Party to the Protocol may propose an amendment and file it with the Secretary-General of the United Nations, who shall thereupon communicate the proposed amendment to the States Parties and to the Conference of the Parties to the Convention for the purpose of considering and deciding on the proposal. The States Parties to this Protocol meeting at the Conference of the Parties shall make every effort to achieve consensus on each amendment. If all efforts at consensus have been exhausted and no agreement has been reached, the amendment shall, as a last resort, require for its adoption a two-thirds majority vote of the States Parties to this Protocol present and voting at the meeting of the Conference of the Parties.

2. Regional economic integration organizations, in matters within their competence, shall exercise their right to vote under this article with a number of votes equal to the number of their member States that are

Parties to this Protocol. Such organizations shall not exercise their right to vote if their member States exercise theirs and vice versa.

3. An amendment adopted in accordance with paragraph 1 of this article is subject to ratification, acceptance or approval by States Parties.

4. An amendment adopted in accordance with paragraph 1 of this article shall enter into force in respect of a State Party ninety days after the date of the deposit with the Secretary-General of the United Nations of an instrument of ratification, acceptance or approval of such amendment.

5. When an amendment enters into force, it shall be binding on those States Parties which have expressed their consent to be bound by it. Other States Parties shall still be bound by the provisions of this Protocol and any earlier amendments that they have ratified, accepted or approved.

#### **Article 24**

##### **Denunciation**

1. A State Party may denounce this Protocol by written notification to the Secretary-General of the United Nations. Such denunciation shall become effective one year after the date of receipt of the notification by the Secretary-General.

2. A regional economic integration organization shall cease to be a Party to this Protocol when all of its member States have denounced it.

#### **Article 25**

##### **Depositary and languages**

1. The Secretary-General of the United Nations is designated depositary of this Protocol.

2. The original of this Protocol, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.

IN WITNESS WHEREOF, the undersigned plenipotentiaries, being duly authorized thereto by their respective Governments, have signed this Protocol.

## APPENDIX D

### PROTOCOL AGAINST THE ILLICIT MANUFACTURING OF AND TRAFFICKING IN FIREARMS, THEIR PARTS AND COMPONENTS AND AMMUNITION, SUPPLEMENTING THE UNITED NATIONS CONVENTION AGAINST TRANSNATIONAL ORGANIZED CRIME (NEW YORK, 31 MAY 2001)

#### **Preamble**

The States Parties to this Protocol,

Aware of the urgent need to prevent, combat and eradicate the illicit manufacturing of and trafficking in firearms, their parts and components and ammunition, owing to the harmful effects of those activities on the security of each State, region and the world as a whole, endangering the well-being of peoples, their social and economic development and their right to live in peace,

Convinced, therefore, of the necessity for all States to take all appropriate measures to this end, including international cooperation and other measures at the regional and global levels,

Recalling General Assembly resolution 53/111 of 9 December 1998, in which the Assembly decided to establish an open-ended intergovernmental ad hoc committee for the purpose of elaborating a comprehensive international convention against transnational organized crime and of discussing the elaboration of, inter alia, an international instrument combating the illicit manufacturing of and trafficking in firearms, their parts and components and ammunition,

Bearing in mind the principle of equal rights and self-determination of peoples, as enshrined in the Charter of the United Nations and the Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations,

Convinced that supplementing the United Nations Convention against Transnational Organized Crime with an international instrument against the illicit manufacturing of and trafficking in firearms, their parts and components and ammunition will be useful in preventing and combating those crimes,

Have agreed as follows:

#### **I. General provisions**

##### **Article 1**

Relation with the United Nations Convention against Transnational Organized Crime

1. This Protocol supplements the United Nations Convention against Transnational Organized Crime. It shall be interpreted together with the Convention.

2. The provisions of the Convention shall apply, mutatis mutandis, to this Protocol unless otherwise provided herein.

3. The offences established in accordance with article 5 of this Protocol shall be regarded as offences established in accordance with the Convention.

##### **Article 2**

Statement of purpose

The purpose of this Protocol is to promote, facilitate and strengthen cooperation among States Parties in order to prevent, combat and eradicate the illicit manufacturing of and trafficking in firearms, their parts and components and ammunition.

##### **Article 3**

Use of terms

For the purposes of this Protocol:

(a) "Firearm" shall mean any portable barrelled weapon that expels, is designed to expel or may be readily converted to expel a shot, bullet or projectile by the action of an explosive, excluding antique firearms or their replicas. Antique firearms and their replicas shall be defined in accordance with domestic law. In no case, however, shall antique firearms include firearms manufactured after 1899;

(b) "Parts and components" shall mean any element or replacement element specifically designed for a firearm and essential to its operation, including a barrel, frame or receiver, slide or cylinder, bolt or breech block, and any device designed or adapted to diminish the sound caused by firing a firearm;

(c) "Ammunition" shall mean the complete round or its components, including cartridge cases, primers, propellant powder, bullets or projectiles, that are used in a firearm, provided that those components are themselves subject to authorization in the respective State Party;

(d) “Illicit manufacturing” shall mean the manufacturing or assembly of firearms, their parts and components or ammunition:

(i) From parts and components illicitly trafficked;

(ii) Without a licence or authorization from a competent authority of the State Party where the manufacture or assembly takes place; or

(iii) Without marking the firearms at the time of manufacture, in accordance with article 8 of this Protocol;

Licensing or authorization of the manufacture of parts and components shall be in accordance with domestic law;

(e) “Illicit trafficking” shall mean the import, export, acquisition, sale, delivery, movement or transfer of firearms, their parts and components and ammunition from or across the territory of one State Party to that of another State Party if any one of the States Parties concerned does not authorize it in accordance with the terms of this Protocol or if the firearms are not marked in accordance with article 8 of this Protocol;

(f) “Tracing” shall mean the systematic tracking of firearms and, where possible, their parts and components and ammunition from manufacturer to purchaser for the purpose of assisting the competent authorities of States Parties in detecting, investigating and analysing illicit manufacturing and illicit trafficking.

#### **Article 4**

##### **Scope of application**

1. This Protocol shall apply, except as otherwise stated herein, to the prevention of illicit manufacturing of and trafficking in firearms, their parts and components and ammunition and to the investigation and prosecution of offences established in accordance with article 5 of this Protocol where those offences are transnational in nature and involve an organized criminal group.

2. This Protocol shall not apply to state-to-state transactions or to state transfers in cases where the application of the Protocol would prejudice the right of a State Party to take action in the interest of national security consistent with the Charter of the United Nations.

#### **Article 5**

##### **Criminalization**

1. Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences the following conduct, when committed intentionally:

(a) Illicit manufacturing of firearms, their parts and components and ammunition;

(b) Illicit trafficking in firearms, their parts and components and ammunition;

(c) Falsifying or illicitly obliterating, removing or altering the marking(s) on firearms required by article 8 of this Protocol.

2. Each State Party shall also adopt such legislative and other measures as may be necessary to establish as criminal offences the following conduct:

(a) Subject to the basic concepts of its legal system, attempting to commit or participating as an accomplice in an offence established in accordance with paragraph 1 of this article; and

(b) Organizing, directing, aiding, abetting, facilitating or counseling the commission of an offence established in accordance with paragraph 1 of this article.

#### **Article 6**

##### **Confiscation, seizure and disposal**

1. Without prejudice to article 12 of the Convention, States Parties shall adopt, to the greatest extent possible within their domestic legal systems, such measures as may be necessary to enable confiscation of firearms, their parts and components and ammunition that have been illicitly manufactured or trafficked.

2. States Parties shall adopt, within their domestic legal systems, such measures as may be necessary to prevent illicitly manufactured and trafficked firearms, parts and components and ammunition from falling into the hands of unauthorized persons by seizing and destroying such firearms, their parts and components and ammunition unless other disposal has been officially authorized, provided that the firearms have been marked and the methods of disposal of those firearms and ammunition have been recorded.

## **II. Prevention**

### **Article 7**

#### Record-keeping

Each State Party shall ensure the maintenance, for not less than ten years, of information in relation to firearms and, where appropriate and feasible, their parts and components and ammunition that is necessary to trace and identify those firearms and, where appropriate and feasible, their parts and components and ammunition which are illicitly manufactured or trafficked and to prevent and detect such activities. Such information shall include:

- (a) The appropriate markings required by article 8 of this Protocol;
- (b) In cases involving international transactions in firearms, their parts and components and ammunition, the issuance and expiration dates of the appropriate licences or authorizations, the country of export, the country of import, the transit countries, where appropriate, and the final recipient and the description and quantity of the articles.

### **Article 8**

#### Marking of firearms

1. For the purpose of identifying and tracing each firearm, States Parties shall:

(a) At the time of manufacture of each firearm, either require unique marking providing the name of the manufacturer, the country or place of manufacture and the serial number, or maintain any alternative unique user-friendly marking with simple geometric symbols in combination with a numeric and/or alphanumeric code, permitting ready identification by all States of the country of manufacture;

(b) Require appropriate simple marking on each imported firearm, permitting identification of the country of import and, where possible, the year of import and enabling the competent authorities of that country to trace the firearm, and a unique marking, if the firearm does not bear such a marking. The requirements of this subparagraph need not be applied to temporary imports of firearms for verifiable lawful purposes;

(c) Ensure, at the time of transfer of a firearm from government stocks to permanent civilian use, the appropriate unique marking permitting identification by all States Parties of the transferring country.

2. States Parties shall encourage the firearms manufacturing industry to develop measures against the removal or alteration of markings.

### **Article 9**

#### Deactivation of firearms

A State Party that does not recognize a deactivated firearm as a firearm in accordance with its domestic law shall take the necessary measures, including the establishment of specific offences if appropriate, to prevent the illicit reactivation of deactivated firearms, consistent with the following general principles of deactivation:

(a) All essential parts of a deactivated firearm are to be rendered permanently inoperable and incapable of removal, replacement or modification in a manner that would permit the firearm to be reactivated in any way;

(b) Arrangements are to be made for deactivation measures to be verified, where appropriate, by a competent authority to ensure that the modifications made to a firearm render it permanently inoperable;

(c) Verification by a competent authority is to include a certificate or record attesting to the deactivation of the firearm or a clearly visible mark to that effect stamped on the firearm.

### **Article 10**

#### General requirements for export, import and transit licensing or authorization systems

1. Each State Party shall establish or maintain an effective system of export and import licensing or authorization, as well as of measures on international transit, for the transfer of firearms, their parts and components and ammunition.

2. Before issuing export licences or authorizations for shipments of firearms, their parts and components and ammunition, each State Party shall verify:

(a) That the importing States have issued import licences or authorizations; and

(b) That, without prejudice to bilateral or multilateral agreements or arrangements favouring landlocked States, the transit States have, at a minimum, given notice in writing, prior to shipment, that they have no objection to the transit.

3. The export and import licence or authorization and accompanying documentation together shall contain information that, at a minimum, shall include the place and the date of issuance, the date of expiration, the country of export, the country of import, the final recipient, a description and the quantity

of the firearms, their parts and components and ammunition and, whenever there is transit, the countries of transit. The information contained in the import licence must be provided in advance to the transit States.

4. The importing State Party shall, upon request, inform the exporting State Party of the receipt of the dispatched shipment of firearms, their parts and components or ammunition.

5. Each State Party shall, within available means, take such measures as may be necessary to ensure that licensing or authorization procedures are secure and that the authenticity of licensing or authorization documents can be verified or validated.

6. States Parties may adopt simplified procedures for the temporary import and export and the transit of firearms, their parts and components and ammunition for verifiable lawful purposes such as hunting, sport shooting, evaluation, exhibitions or repairs.

## **Article 11**

### **Security and preventive measures**

In an effort to detect, prevent and eliminate the theft, loss or diversion of, as well as the illicit manufacturing of and trafficking in, firearms, their parts and components and ammunition, each State Party shall take appropriate measures:

(a) To require the security of firearms, their parts and components and ammunition at the time of manufacture, import, export and transit through its territory; and

(b) To increase the effectiveness of import, export and transit controls, including, where appropriate, border controls, and of police and customs transborder cooperation.

## **Article 12**

### **Information**

1. Without prejudice to articles 27 and 28 of the Convention, States Parties shall exchange among themselves, consistent with their respective domestic legal and administrative systems, relevant case-specific information on matters such as authorized producers, dealers, importers, exporters and, whenever possible, carriers of firearms, their parts and components and ammunition.

2. Without prejudice to articles 27 and 28 of the Convention, States Parties shall exchange among themselves, consistent with their respective domestic legal and administrative systems, relevant information on matters such as:

(a) Organized criminal groups known to take part or suspected of taking part in the illicit manufacturing of or trafficking in firearms, their parts and components and ammunition;

(b) The means of concealment used in the illicit manufacturing of or trafficking in firearms, their parts and components and ammunition and ways of detecting them;

(c) Methods and means, points of dispatch and destination and routes customarily used by organized criminal groups engaged in illicit trafficking in firearms, their parts and components and ammunition; and

(d) Legislative experiences and practices and measures to prevent, combat and eradicate the illicit manufacturing of and trafficking in firearms, their parts and components and ammunition.

3. States Parties shall provide to or share with each other, as appropriate, relevant scientific and technological information useful to law enforcement authorities in order to enhance each other's abilities to prevent, detect and investigate the illicit manufacturing of and trafficking in firearms, their parts and components and ammunition and to prosecute the persons involved in those illicit activities.

4. States Parties shall cooperate in the tracing of firearms, their parts and components and ammunition that may have been illicitly manufactured or trafficked. Such cooperation shall include the provision of prompt responses to requests for assistance in tracing such firearms, their parts and components and ammunition, within available means.

5. Subject to the basic concepts of its legal system or any international agreements, each State Party shall guarantee the confidentiality of and comply with any restrictions on the use of information that it receives from another State Party pursuant to this article, including proprietary information pertaining to commercial transactions, if requested to do so by the State Party providing the information. If such confidentiality cannot be maintained, the State Party that provided the information shall be notified prior to its disclosure.

## **Article 13**

### **Cooperation**

1. States Parties shall cooperate at the bilateral, regional and international levels to prevent, combat and eradicate the illicit manufacturing of and trafficking in firearms, their parts and components and ammunition.

2. Without prejudice to article 18, paragraph 13, of the Convention, each State Party shall identify a national body or a single point of contact to act as liaison between it and other States Parties on matters relating to this Protocol.

3. States Parties shall seek the support and cooperation of manufacturers, dealers, importers, exporters, brokers and commercial carriers of firearms, their parts and components and ammunition to prevent and detect the illicit activities referred to in paragraph 1 of this article.

#### **Article 14**

##### *Training and technical assistance*

States Parties shall cooperate with each other and with relevant international organizations, as appropriate, so that States Parties may receive, upon request, *the training and technical assistance* necessary to enhance their ability to prevent, combat and eradicate the illicit manufacturing of and trafficking in firearms, their parts and components and ammunition, including technical, financial and material assistance in those matters identified in articles 29 and 30 of the Convention.

#### **Article 15**

##### *Brokers and brokering*

1. With a view to preventing and combating illicit manufacturing of and trafficking in firearms, their parts and components and ammunition, *States Parties that have not yet done so shall consider establishing* a system for regulating the activities of those who engage in brokering. Such a system could include one or more measures such as:

- (a) Requiring registration of brokers operating within their territory;
- (b) Requiring licensing or authorization of brokering; or
- (c) Requiring disclosure on import and export licences or authorizations, or accompanying documents, of the names and locations of brokers involved in the transaction.

2. States Parties that have established a system of authorization regarding brokering as set forth in paragraph 1 of this article are *encouraged to include information on brokers and brokering in their exchanges of information under article 12 of this Protocol and to retain records regarding brokers and brokering in accordance with article 7 of this Protocol.*

## **II. Final provisions**

#### **Article 16**

##### *Settlement of disputes*

1. States Parties shall endeavour to settle disputes concerning the interpretation or application of this Protocol through negotiation.

2. Any dispute between two or more States Parties concerning the interpretation or application of this Protocol that cannot be settled through negotiation within a reasonable time shall, at the request of one of those States Parties, be submitted to arbitration. If, six months after the date of the request for arbitration, those States Parties are unable to agree on the organization of the arbitration, any one of those States Parties may refer the dispute to the International Court of Justice by request in accordance with the Statute of the Court.

3. Each State Party may, at the time of signature, ratification, acceptance or approval of or accession to this Protocol, declare that it does not consider itself bound by paragraph 2 of this article. The other States Parties shall not be bound by paragraph 2 of this article with respect to any State Party that has made such a reservation.

4. Any State Party that has made a reservation in accordance with paragraph 3 of this article may at any time withdraw that reservation by notification to the Secretary-General of the United Nations.

#### **Article 17**

##### *Signature, ratification, acceptance, approval and accession*

1. This Protocol shall be open to all States for signature at United Nations Headquarters in New York from the thirtieth day after its adoption by the General Assembly until 12 December 2002.

2. This Protocol shall also be open for signature by regional economic integration organizations provided that at least one member State of such organization has signed this Protocol in accordance with paragraph 1 of this article.

3. This Protocol is subject to ratification, acceptance or approval. Instruments of ratification, acceptance or approval shall be deposited with the Secretary-General of the United Nations. A regional economic integration organization may deposit its instrument of ratification, acceptance or approval if at least one of its member States has done likewise. In that instrument of ratification, acceptance or approval, such

organization shall declare the extent of its competence with respect to the matters governed by this Protocol. Such organization shall also inform the depositary of any relevant modification in the extent of its competence.

4. This Protocol is open for accession by any State or any regional economic integration organization of which at least one member State is a Party to this Protocol. Instruments of accession shall be deposited with the Secretary-General of the United Nations. At the time of its accession, a regional economic integration organization shall declare the extent of its competence with respect to matters governed by this Protocol. Such organization shall also inform the depositary of any relevant modification in the extent of its competence.

#### **Article 18**

##### **Entry into force**

1. This Protocol shall enter into force on the ninetieth day after the date of deposit of the fortieth instrument of ratification, acceptance, approval or accession, except that it shall not enter into force before the entry into force of the Convention. For the purpose of this paragraph, any instrument deposited by a regional economic integration organization shall not be counted as additional to those deposited by member States of such organization.

2. For each State or regional economic integration organization ratifying, accepting, approving or acceding to this Protocol after the deposit of the fortieth instrument of such action, this Protocol shall enter into force on the thirtieth day after the date of deposit by such State or organization of the relevant instrument or on the date this Protocol enters into force pursuant to paragraph 1 of this article, whichever is the later.

#### **Article 19**

##### **Amendment**

1. After the expiry of five years from the entry into force of this Protocol, a State Party to the Protocol may propose an amendment and file it with the Secretary-General of the United Nations, who shall thereupon communicate the proposed amendment to the States Parties and to the Conference of the Parties to the Convention for the purpose of considering and deciding on the proposal. The States Parties to this Protocol meeting at the Conference of the Parties shall make every effort to achieve consensus on each amendment. If all efforts at consensus have been exhausted and no agreement has been reached, the amendment shall, as a last resort, require for its adoption a two-thirds majority vote of the States Parties to this Protocol present and voting at the meeting of the Conference of the Parties.

2. Regional economic integration organizations, in matters within their competence, shall exercise their right to vote under this article with a number of votes equal to the number of their member States that are Parties to this Protocol. Such organizations shall not exercise their right to vote if their member States exercise theirs and vice versa.

3. An amendment adopted in accordance with paragraph 1 of this article is subject to ratification, acceptance or approval by States Parties.

4. An amendment adopted in accordance with paragraph 1 of this article shall enter into force in respect of a State Party ninety days after the date of the deposit with the Secretary-General of the United Nations of an instrument of ratification, acceptance or approval of such amendment.

5. When an amendment enters into force, it shall be binding on those States Parties which have expressed their consent to be bound by it. Other States Parties shall still be bound by the provisions of this Protocol and any earlier amendments that they have ratified, accepted or approved.

#### **Article 20**

##### **Denunciation**

1. A State Party may denounce this Protocol by written notification to the Secretary-General of the United Nations. Such denunciation shall become effective one year after the date of receipt of the notification by the Secretary-General.

2. A regional economic integration organization shall cease to be a Party to this Protocol when all of its member States have denounced it.

#### **Article 21**

##### **Depositary and languages**

1. The Secretary-General of the United Nations is designated depositary of this Protocol.

2. The original of this Protocol, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.



IN WITNESS WHEREOF, the undersigned plenipotentiaries, being duly authorized thereto by their respective Governments, have signed this Protocol.



## APPENDIX E

### INTERNATIONAL CONVENTION FOR THE SUPPRESSION OF THE FINANCING OF TERRORISM (NEW YORK, 9 DECEMBER 1999)

#### **Preamble**

The States Parties to this Convention,

Bearing in mind the purposes and principles of the Charter of the United Nations concerning the maintenance of international peace and security and the promotion of good-neighbourliness and friendly relations and cooperation among States,

Deeply concerned about the worldwide escalation of acts of terrorism in all its forms and manifestations,

Recalling the Declaration on the Occasion of the Fiftieth Anniversary of the United Nations, contained in General Assembly resolution 50/6 of 24 October 1995,

Recalling also all the relevant General Assembly resolutions on the matter, including resolution 49/60 of 9 December 1994 and the annex thereto on the Declaration on Measures to Eliminate International Terrorism, in which the States Members of the United Nations solemnly reaffirmed their unequivocal condemnation of all acts, methods and practices of terrorism as criminal and unjustifiable, wherever and by whomever committed, including those which jeopardize the friendly relations among States and peoples and threaten the territorial integrity and security of States,

Noting that the Declaration on Measures to Eliminate International Terrorism also encouraged States to review urgently the scope of the existing international legal provisions on the prevention, repression and elimination of terrorism in all its forms and manifestations, with the aim of ensuring that there is a comprehensive legal framework covering all aspects of the matter,

Recalling paragraph 3 (f) of General Assembly resolution 51/210 of 17 December 1996, in which the Assembly called upon all States to take steps to prevent and counteract, through appropriate domestic measures, the financing of terrorists and terrorist organizations, whether such financing is direct or indirect through organizations which also have or claim to have charitable, social or cultural goals or which are also engaged in unlawful activities such as illicit arms trafficking, drug dealing and racketeering, including the exploitation of persons for purposes of funding terrorist activities, and in particular to consider, where appropriate, adopting regulatory measures to prevent and counteract movements of funds suspected to be intended for terrorist purposes without impeding in any way the freedom of legitimate capital movements and to intensify the exchange of information concerning international movements of such funds,

Recalling also General Assembly resolution 52/165 of 15 December 1997, in which the Assembly called upon States to consider, in particular, the implementation of the measures set out in paragraphs 3 (a) to (f) of its resolution 51/210,

Recalling further General Assembly resolution 53/108 of 8 December 1998, in which the Assembly decided that the Ad Hoc Committee established by General Assembly resolution 51/210 of 17 December 1996 should elaborate a draft international convention for the suppression of terrorist financing to supplement related existing international instruments,

Considering that the financing of terrorism is a matter of grave concern to the international community as a whole,

Noting that the number and seriousness of acts of international terrorism depend on the financing that terrorists may obtain,

Noting also that existing multilateral legal instruments do not expressly address such financing,

Being convinced of the urgent need to enhance international cooperation among States in devising and adopting effective measures for the prevention of the financing of terrorism, as well as for its suppression through the prosecution and punishment of its perpetrators,

Have agreed as follows:

#### **Article 1**

For the purposes of this Convention:

1. "Funds" means assets of every kind, whether tangible or intangible, movable or immovable, however acquired, and legal documents or instruments in any form, including electronic or digital, evidencing title to, or interest in, such assets, including, but not limited to, bank credits, travellers cheques, bank cheques, money orders, shares, securities, bonds, drafts and letters of credit.

2. "State or government facility" means any permanent or temporary facility or conveyance that is used or occupied by representatives of a State, members of Government, the legislature or the judiciary or by officials or employees of a State or any other public authority or entity or by employees or officials of an intergovernmental organization in connection with their official duties.

3. "Proceeds" means any funds derived from or obtained, directly or indirectly, through the commission of an offence set forth in article 2.

## **Article 2**

1. Any person commits an offence within the meaning of this Convention if that person by any means, directly or indirectly, unlawfully and wilfully, provides or collects funds with the intention that they should be used or in the knowledge that they are to be used, in full or in part, in order to carry out:

(a) An act which constitutes an offence within the scope of and as defined in one of the treaties listed in the annex; or

(b) Any other act intended to cause death or serious bodily injury to a civilian, or to any other person not taking an active part in the hostilities in a situation of armed conflict, when the purpose of such act, by its nature or context, is to intimidate a population, or to compel a Government or an international organization to do or to abstain from doing any act.

2. (a) On depositing its instrument of ratification, acceptance, approval or accession, a State Party which is not a party to a treaty listed in the annex may declare that, in the application of this Convention to the State Party, the treaty shall be deemed not to be included in the annex referred to in paragraph 1, subparagraph (a). The declaration shall cease to have effect as soon as the treaty enters into force for the State Party, which shall notify the depositary of this fact;

(b) When a State Party ceases to be a party to a treaty listed in the annex, it may make a declaration as provided for in this article, with respect to that treaty.

3. For an act to constitute an offence set forth in paragraph 1, it shall not be necessary that the funds were actually used to carry out an offence referred to in paragraph 1, subparagraph (a) or (b).

4. Any person also commits an offence if that person attempts to commit an offence as set forth in paragraph 1 of this article.

5. Any person also commits an offence if that person:

(a) Participates as an accomplice in an offence as set forth in paragraph 1 or 4 of this article;

(b) Organizes or directs others to commit an offence as set forth in paragraph 1 or 4 of this article;

(c) Contributes to the commission of one or more offences as set forth in paragraph 1 or 4 of this article by a group of persons acting with a common purpose. Such contribution shall be intentional and shall either:

(i) Be made with the aim of furthering the criminal activity or criminal purpose of the group, where such activity or purpose involves the commission of an offence as set forth in paragraph 1 of this article; or

(ii) Be made in the knowledge of the intention of the group to commit an offence as set forth in paragraph 1 of this article.

## **Article 3**

This Convention shall not apply where the offence is committed within a single State, the alleged offender is a national of that State and is present in the territory of that State and no other State has a basis under article 7, paragraph 1 or 2, to exercise jurisdiction, except that the provisions of articles 12 to 18 shall, as appropriate, apply in those cases.

## **Article 4**

Each State Party shall adopt such measures as may be necessary:

(a) To establish as criminal offences under its domestic law the offences as set forth in article 2;

(b) To make those offences punishable by appropriate penalties which take into account the grave nature of the offences.

## **Article 5**

1. Each State Party, in accordance with its domestic legal principles, shall take the necessary measures to enable a legal entity located in its territory or organized under its laws to be held liable when a person responsible for the management or control of that legal entity has, in that capacity, committed an offence as set forth in article 2. Such liability may be criminal, civil or administrative.

2. Such liability is incurred without prejudice to the criminal liability of individuals who have committed the offences.

3. Each State Party shall ensure, in particular, that legal entities liable in accordance with paragraph 1 above are subject to effective, proportionate and dissuasive criminal, civil or administrative sanctions. Such sanctions may include monetary sanctions.

#### **Article 6**

Each State Party shall adopt such measures as may be necessary, including, where appropriate, domestic legislation, to ensure that criminal acts within the scope of this Convention are under no circumstances justifiable by considerations of a political, philosophical, ideological, racial, ethnic, religious or other similar nature.

#### **Article 7**

1. Each State Party shall take such measures as may be necessary to establish its jurisdiction over the offences set forth in article 2 when:

- (a) The offence is committed in the territory of that State;
- (b) The offence is committed on board a vessel flying the flag of that State or an aircraft registered under the laws of that State at the time the offence is committed;
- (c) The offence is committed by a national of that State.

2. A State Party may also establish its jurisdiction over any such offence when:

- (a) The offence was directed towards or resulted in the carrying out of an offence referred to in article 2, paragraph 1, subparagraph (a) or (b), in the territory of or against a national of that State;
- (b) The offence was directed towards or resulted in the carrying out of an offence referred to in article 2, paragraph 1, subparagraph (a) or (b), against a State or government facility of that State abroad, including diplomatic or consular premises of that State;
- (c) The offence was directed towards or resulted in an offence referred to in article 2, paragraph 1, subparagraph (a) or (b), committed in an attempt to compel that State to do or abstain from doing any act;
- (d) The offence is committed by a stateless person who has his or her habitual residence in the territory of that State;
- (e) The offence is committed on board an aircraft which is operated by the Government of that State.

3. Upon ratifying, accepting, approving or acceding to this Convention, each State Party shall notify the Secretary-General of the United Nations of the jurisdiction it has established in accordance with paragraph 2. Should any change take place, the State Party concerned shall immediately notify the Secretary-General.

4. Each State Party shall likewise take such measures as may be necessary to establish its jurisdiction over the offences set forth in article 2 in cases where the alleged offender is present in its territory and it does not extradite that person to any of the States Parties that have established their jurisdiction in accordance with paragraphs 1 or 2.

5. When more than one State Party claims jurisdiction over the offences set forth in article 2, the relevant States Parties shall strive to coordinate their actions appropriately, in particular concerning the conditions for prosecution and the modalities for mutual legal assistance.

6. Without prejudice to the norms of general international law, this Convention does not exclude the exercise of any criminal jurisdiction established by a State Party in accordance with its domestic law.

#### **Article 8**

1. Each State Party shall take appropriate measures, in accordance with its domestic legal principles, for the identification, detection and freezing or seizure of any funds used or allocated for the purpose of committing the offences set forth in article 2 as well as the proceeds derived from such offences, for purposes of possible forfeiture.

2. Each State Party shall take appropriate measures, in accordance with its domestic legal principles, for the forfeiture of funds used or allocated for the purpose of committing the offences set forth in article 2 and the proceeds derived from such offences.

3. Each State Party concerned may give consideration to concluding agreements on the sharing with other States Parties, on a regular or case-by-case basis, of the funds derived from the forfeitures referred to in this article.

4. Each State Party shall consider establishing mechanisms whereby the funds derived from the forfeitures referred to in this article are utilized to compensate the victims of offences referred to in article 2, paragraph 1, subparagraph (a) or (b), or their families.

5. The provisions of this article shall be implemented without prejudice to the rights of third parties acting in good faith.

## **Article 9**

1. Upon receiving information that a person who has committed or who is alleged to have committed an offence set forth in article 2 may be present in its territory, the State Party concerned shall take such measures as may be necessary under its domestic law to investigate the facts contained in the information.

2. Upon being satisfied that the circumstances so warrant, the State Party in whose territory the offender or alleged offender is present shall take the appropriate measures under its domestic law so as to ensure that person's presence for the purpose of prosecution or extradition.

3. Any person regarding whom the measures referred to in paragraph 2 are being taken shall be entitled:

(a) To communicate without delay with the nearest appropriate representative of the State of which that person is a national or which is otherwise entitled to protect that person's rights or, if that person is a stateless person, the State in the territory of which that person habitually resides;

(b) To be visited by a representative of that State;

(c) To be informed of that person's rights under subparagraphs (a) and (b).

4. The rights referred to in paragraph 3 shall be exercised in conformity with the laws and regulations of the State in the territory of which the offender or alleged offender is present, subject to the provision that the said laws and regulations must enable full effect to be given to the purposes for which the rights accorded under paragraph 3 are intended.

5. The provisions of paragraphs 3 and 4 shall be without prejudice to the right of any State Party having a claim to jurisdiction in accordance with article 7, paragraph 1, subparagraph (b), or paragraph 2, subparagraph (b), to invite the International Committee of the Red Cross to communicate with and visit the alleged offender.

6. When a State Party, pursuant to the present article, has taken a person into custody, it shall immediately notify, directly or through the Secretary-General of the United Nations, the States Parties which have established jurisdiction in accordance with article 7, paragraph 1 or 2, and, if it considers it advisable, any other interested States Parties, of the fact that such person is in custody and of the circumstances which warrant that person's detention. The State which makes the investigation contemplated in paragraph 1 shall promptly inform the said States Parties of its findings and shall indicate whether it intends to exercise jurisdiction.

## **Article 10**

1. The State Party in the territory of which the alleged offender is present shall, in cases to which article 7 applies, if it does not extradite that person, be obliged, without exception whatsoever and whether or not the offence was committed in its territory, to submit the case without undue delay to its competent authorities for the purpose of prosecution, through proceedings in accordance with the laws of that State. Those authorities shall take their decision in the same manner as in the case of any other offence of a grave nature under the law of that State.

2. Whenever a State Party is permitted under its domestic law to extradite or otherwise surrender one of its nationals only upon the condition that the person will be returned to that State to serve the sentence imposed as a result of the trial or proceeding for which the extradition or surrender of the person was sought, and this State and the State seeking the extradition of the person agree with this option and other terms they may deem appropriate, such a conditional extradition or surrender shall be sufficient to discharge the obligation set forth in paragraph 1.

## **Article 11**

1. The offences set forth in article 2 shall be deemed to be included as extraditable offences in any extradition treaty existing between any of the States Parties before the entry into force of this Convention. States Parties undertake to include such offences as extraditable offences in every extradition treaty to be subsequently concluded between them.

2. When a State Party which makes extradition conditional on the existence of a treaty receives a request for extradition from another State Party with which it has no extradition treaty, the requested State Party may, at its option, consider this Convention as a legal basis for extradition in respect of the offences set forth in article 2. Extradition shall be subject to the other conditions provided by the law of the requested State.

3. States Parties which do not make extradition conditional on the existence of a treaty shall recognize the offences set forth in article 2 as extraditable offences between themselves, subject to the conditions provided by the law of the requested State.

4. If necessary, the offences set forth in article 2 shall be treated, for the purposes of extradition between States Parties, as if they had been committed not only in the place in which they occurred but

also in the territory of the States that have established jurisdiction in accordance with article 7, paragraphs 1 and 2.

5. The provisions of all extradition treaties and arrangements between States Parties with regard to offences set forth in article 2 shall be deemed to be modified as between States Parties to the extent that they are incompatible with this Convention.

#### **Article 12**

1. States Parties shall afford one another the greatest measure of assistance in connection with criminal investigations or criminal or extradition proceedings in respect of the offences set forth in article 2, including assistance in obtaining evidence in their possession necessary for the proceedings.

2. States Parties may not refuse a request for mutual legal assistance on the ground of bank secrecy.

3. The requesting Party shall not transmit or use information or evidence furnished by the requested Party for investigations, prosecutions or proceedings other than those stated in the request without the prior consent of the requested Party.

4. Each State Party may give consideration to establishing mechanisms to share with other States Parties information or evidence needed to establish criminal, civil or administrative liability pursuant to article 5.

5. States Parties shall carry out their obligations under paragraphs 1 and 2 in conformity with any treaties or other arrangements on mutual legal assistance or information exchange that may exist between them. In the absence of such treaties or arrangements, States Parties shall afford one another assistance in accordance with their domestic law.

#### **Article 13**

None of the offences set forth in article 2 shall be regarded, for the purposes of extradition or mutual legal assistance, as a fiscal offence. Accordingly, States Parties may not refuse a request for extradition or for mutual legal assistance on the sole ground that it concerns a fiscal offence.

#### **Article 14**

None of the offences set forth in article 2 shall be regarded for the purposes of extradition or mutual legal assistance as a political offence or as an offence connected with a political offence or as an offence inspired by political motives. Accordingly, a request for extradition or for mutual legal assistance based on such an offence may not be refused on the sole ground that it concerns a political offence or an offence connected with a political offence or an offence inspired by political motives.

#### **Article 15**

Nothing in this Convention shall be interpreted as imposing an obligation to extradite or to afford mutual legal assistance, if the requested State Party has substantial grounds for believing that the request for extradition for offences set forth in article 2 or for mutual legal assistance with respect to such offences has been made for the purpose of prosecuting or punishing a person on account of that person's race, religion, nationality, ethnic origin or political opinion or that compliance with the request would cause prejudice to that person's position for any of these reasons.

#### **Article 16**

1. A person who is being detained or is serving a sentence in the territory of one State Party whose presence in another State Party is requested for purposes of identification, testimony or otherwise providing assistance in obtaining evidence for the investigation or prosecution of offences set forth in article 2 may be transferred if the following conditions are met:

(a) The person freely gives his or her informed consent;

(b) The competent authorities of both States agree, subject to such conditions as those States may deem appropriate.

2. For the purposes of the present article:

(a) The State to which the person is transferred shall have the authority and obligation to keep the person transferred in custody, unless otherwise requested or authorized by the State from which the person was transferred;

(b) The State to which the person is transferred shall without delay implement its obligation to return the person to the custody of the State from which the person was transferred as agreed beforehand, or as otherwise agreed, by the competent authorities of both States;

(c) The State to which the person is transferred shall not require the State from which the person was transferred to initiate extradition proceedings for the return of the person;

(d) The person transferred shall receive credit for service of the sentence being served in the State from which he or she was transferred for time spent in the custody of the State to which he or she was transferred.

3. Unless the State Party from which a person is to be transferred in accordance with the present article so agrees, that person, whatever his or her nationality, shall not be prosecuted or detained or subjected to any other restriction of his or her personal liberty in the territory of the State to which that person is transferred in respect of acts or convictions anterior to his or her departure from the territory of the State from which such person was transferred.

#### **Article 17**

Any person who is taken into custody or regarding whom any other measures are taken or proceedings are carried out pursuant to this Convention shall be guaranteed fair treatment, including enjoyment of all rights and guarantees in conformity with the law of the State in the territory of which that person is present and applicable provisions of international law, including international human rights law.

#### **Article 18**

1. States Parties shall cooperate in the prevention of the offences set forth in article 2 by taking all practicable measures, inter alia, by adapting their domestic legislation, if necessary, to prevent and counter preparations in their respective territories for the commission of those offences within or outside their territories, including:

(a) Measures to prohibit in their territories illegal activities of persons and organizations that knowingly encourage, instigate, organize or engage in the commission of offences set forth in article 2;

(b) Measures requiring financial institutions and other professions involved in financial transactions to utilize the most efficient measures available for the identification of their usual or occasional customers, as well as customers in whose interest accounts are opened, and to pay special attention to unusual or suspicious transactions and report transactions suspected of stemming from a criminal activity. For this purpose, States Parties shall consider:

(i) Adopting regulations prohibiting the opening of accounts, the holders or beneficiaries of which are unidentified or unidentifiable, and measures to ensure that such institutions verify the identity of the real owners of such transactions;

(ii) With respect to the identification of legal entities, requiring financial institutions, when necessary, to take measures to verify the legal existence and the structure of the customer by obtaining, either from a public register or from the customer or both, proof of incorporation, including information concerning the customer's name, legal form, address, directors and provisions regulating the power to bind the entity;

(iii) Adopting regulations imposing on financial institutions the obligation to report promptly to the competent authorities all complex, unusual large transactions and unusual patterns of transactions, which have no apparent economic or obviously lawful purpose, without fear of assuming criminal or civil liability for breach of any restriction on disclosure of information if they report their suspicions in good faith;

(iv) Requiring financial institutions to maintain, for at least five years, all necessary records on transactions, both domestic and international.

2. States Parties shall further cooperate in the prevention of offences set forth in article 2 by considering:

(a) Measures for the supervision, including, for example, the licensing, of all money-transmission agencies;

(b) Feasible measures to detect or monitor the physical cross-border transportation of cash and bearer negotiable instruments, subject to strict safeguards to ensure proper use of information and without impeding in any way the freedom of capital movements.

3. States Parties shall further cooperate in the prevention of the offences set forth in article 2 by exchanging accurate and verified information in accordance with their domestic law and coordinating administrative and other measures taken, as appropriate, to prevent the commission of offences set forth in article 2, in particular by:

(a) Establishing and maintaining channels of communication between their competent agencies and services to facilitate the secure and rapid exchange of information concerning all aspects of offences set forth in article 2;

(b) Cooperating with one another in conducting inquiries, with respect to the offences set forth in article 2, concerning:

(i) The identity, whereabouts and activities of persons in respect of whom reasonable suspicion exists that they are involved in such offences;

(ii) The movement of funds relating to the commission of such offences.

4. States Parties may exchange information through the International Criminal Police Organization (Interpol).

#### **Article 19**

The State Party where the alleged offender is prosecuted shall, in accordance with its domestic law or applicable procedures, communicate the final outcome of the proceedings to the Secretary-General of the United Nations, who shall transmit the information to the other States Parties.

#### **Article 20**

The States Parties shall carry out their obligations under this Convention in a manner consistent with the principles of sovereign equality and territorial integrity of States and that of non-intervention in the domestic affairs of other States.

#### **Article 21**

Nothing in this Convention shall affect other rights, obligations and responsibilities of States and individuals under international law, in particular the purposes of the Charter of the United Nations, international humanitarian law and other relevant conventions.

#### **Article 22**

Nothing in this Convention entitles a State Party to undertake in the territory of another State Party the exercise of jurisdiction or performance of functions which are exclusively reserved for the authorities of that other State Party by its domestic law.

#### **Article 23**

1. The annex may be amended by the addition of relevant treaties:

(a) That are open to the participation of all States;

(b) That have entered into force;

(c) That have been ratified, accepted, approved or acceded to by at least twenty-two States Parties to the present Convention.

2. After the entry into force of this Convention, any State Party may propose such an amendment. Any proposal for an amendment shall be communicated to the depositary in written form. The depositary shall notify proposals that meet the requirements of paragraph 1 to all States Parties and seek their views on whether the proposed amendment should be adopted.

3. The proposed amendment shall be deemed adopted unless one third of the States Parties object to it by a written notification not later than 180 days after its circulation.

4. The adopted amendment to the annex shall enter into force 30 days after the deposit of the twenty-second instrument of ratification, acceptance or approval of such amendment for all those States Parties that have deposited such an instrument. For each State Party ratifying, accepting or approving the amendment after the deposit of the twenty-second instrument, the amendment shall enter into force on the thirtieth day after deposit by such State Party of its instrument of ratification, acceptance or approval.

#### **Article 24**

1. Any dispute between two or more States Parties concerning the interpretation or application of this Convention which cannot be settled through negotiation within a reasonable time shall, at the request of one of them, be submitted to arbitration. If, within six months from the date of the request for arbitration, the parties are unable to agree on the organization of the arbitration, any one of those parties may refer the dispute to the International Court of Justice, by application, in conformity with the Statute of the Court.

2. Each State may at the time of signature, ratification, acceptance or approval of this Convention or accession thereto declare that it does not consider itself bound by paragraph 1. The other States Parties shall not be bound by paragraph 1 with respect to any State Party which has made such a reservation.

3. Any State which has made a reservation in accordance with paragraph 2 may at any time withdraw that reservation by notification to the Secretary-General of the United Nations.

#### **Article 25**

1. This Convention shall be open for signature by all States from 10 January 2000 to 31 December 2001 at United Nations Headquarters in New York.

2. This Convention is subject to ratification, acceptance or approval. The instruments of ratification, acceptance or approval shall be deposited with the Secretary-General of the United Nations.



3. This Convention shall be open to accession by any State. The instruments of accession shall be deposited with the Secretary-General of the United Nations.

#### **Article 26**

1. This Convention shall enter into force on the thirtieth day following the date of the deposit of the twenty-second instrument of ratification, acceptance, approval or accession with the Secretary-General of the United Nations.

2. For each State ratifying, accepting, approving or acceding to the Convention after the deposit of the twenty-second instrument of ratification, acceptance, approval or accession, the Convention shall enter into force on the thirtieth day after deposit by such State of its instrument of ratification, acceptance, approval or accession.

#### **Article 27**

1. Any State Party may denounce this Convention by written notification to the Secretary-General of the United Nations.

2. Denunciation shall take effect one year following the date on which notification is received by the Secretary-General of the United Nations.

#### **Article 28**

The original of this Convention, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations who shall send certified copies thereof to all States.

IN WITNESS WHEREOF, the undersigned, being duly authorized thereto by their respective Governments, have signed this Convention, opened for signature at United Nations Headquarters in New York on 10 January 2000.

#### **ANNEX**

1. Convention for the Suppression of Unlawful Seizure of Aircraft, done at The Hague on 16 December 1970.

2. Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, done at Montreal on 23 September 1971.

3. Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, adopted by the General Assembly of the United Nations on 14 December 1973.

4. International Convention against the Taking of Hostages, adopted by the General Assembly of the United Nations on 17 December 1979.

5. Convention on the Physical Protection of Nuclear Material, adopted at Vienna on 3 March 1980.

6. Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, supplementary to the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, done at Montreal on 24 February 1988.

7. Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, done at Rome on 10 March 1988.

8. Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms located on the Continental Shelf, done at Rome on 10 March 1988.

9. International Convention for the Suppression of Terrorist Bombings, adopted by the General Assembly of the United Nations on 15 December 1997.

## APPENDIX F

### CONVENTION ON THE PHYSICAL PROTECTION OF NUCLEAR MATERIAL (NEW YORK, 3 MARCH 1980)

#### **Preamble**

The States Parties to this Convention,

Recognizing the right of all States to develop and apply nuclear energy for peaceful purposes and their legitimate interests in the potential benefits to be derived from the peaceful application of nuclear energy,

Convinced of the need for facilitating international co-operation in the peaceful application of nuclear energy,

Desiring to avert the potential dangers posed by the unlawful taking and use of nuclear material.

Convinced that offences relating to nuclear material are a matter of grave concern and that there is an urgent need to adopt appropriate and effective measures to ensure the prevention, detection and punishment of such offences,

Aware of the need for international co-operation to establish, in conformity with the national law of each State Party and with this Convention, effective measures for the physical protection of nuclear material,

Convinced that this Convention should facilitate the safe transfer of nuclear material.

Stressing also the importance of the physical protection of nuclear material in domestic use, storage and transport,

Recognizing the importance of effective physical protection of nuclear material used for military purposes, and understanding that such material is and will continue to be accorded stringent physical protection.

Have agreed as follows:

#### **Article 1**

For the purposes of this Convention:

a. "nuclear material" means plutonium except that with isotopic concentration exceeding 80% in plutonium-238; uranium-233; uranium enriched in the isotopes 235 or 233; uranium containing the mixture of isotopes as occurring in nature other than in the form of ore or ore-residue; any material containing one or more of the foregoing;

b. "uranium enriched in the isotope 235 or 233" means uranium containing the isotopes 235 or 233 or both in an amount such that the abundance ratio of the sum of these isotopes to the isotope 238 is greater than the ratio of the isotope 235 to the isotope 238 occurring in nature;

c. "international nuclear transport" means the carriage of a consignment of nuclear material by any means of transportation intended to go beyond the territory of the State where the shipment originates beginning with the departure from a facility of the shipper in that State and ending with the arrival at a facility of the receiver within the State of ultimate destination.

#### **Article 2**

1. This Convention shall apply to nuclear material used for peaceful purposes while in international nuclear transport.

2. With the exception of articles 3 and 4 and paragraph 3 of article 5, this Convention shall also apply to nuclear material used for peaceful purposes while in domestic use, storage and transport.

3. Apart from the commitments expressly undertaken by States Parties in the articles covered by paragraph 2 with respect to nuclear material used for peaceful purposes while in domestic use, storage and transport, nothing in this Convention shall be interpreted as affecting the sovereign rights of a State regarding the domestic use, storage and transport of such nuclear material.

#### **Article 3**

Each State Party shall take appropriate steps within the framework of its national law and consistent with international law to ensure as far as practicable that, during international nuclear transport, nuclear material within its territory, or on board a ship or aircraft under its jurisdiction insofar as such ship or aircraft is engaged in the transport to or from that State, is protected at the levels described in Annex 1.

#### **Article 4**

1. Each State Party shall not export or authorize the export of nuclear material unless the State Party has received assurances that such material will be protected during the international nuclear transport at the levels described in Annex I.

2. Each State Party shall not import or authorize the import of nuclear material from a State not party to this Convention unless the State Party has received assurances that such material will during the international nuclear transport be protected at the levels described in Annex I.

3. A State Party shall not allow the transit of its territory by land or internal waterways or through its airports or seaports of nuclear material between States that are not parties to this Convention unless the State Party has received assurances as far as practicable that this nuclear material will be protected during international nuclear transport at the levels described in Annex I.

4. Each State Party shall apply within the framework of its national law the levels of physical protection described in Annex I to nuclear material being transported from a part of that State to another part of the same State through international waters or airspace.

5. The State Party responsible for receiving assurances that the nuclear material will be protected at the levels described in Annex I according to paragraphs 1 to 3 shall identify and inform in advance States which the nuclear material is expected to transit by land or internal waterways, or whose airports or seaports it is expected to enter.

6. The responsibility for obtaining assurances referred to in paragraph 1 may be transferred, by mutual agreement, to the State Party involved in the transport as the importing State.

7. Nothing in this article shall be interpreted as in any way affecting the territorial sovereignty and jurisdiction of a State, including that over its airspace and territorial sea.

#### **Article 5**

1. States Parties shall identify and make known to each other directly or through the International Atomic Energy Agency their central authority and point of contact having responsibility for physical protection of nuclear material and for co-ordinating recovery and response operations in the event of any unauthorized removal, use or alteration of nuclear material or in the event of credible threat thereof.

2. In the case of theft, robbery or any other unlawful taking of nuclear material or of credible threat thereof, States Parties shall, in accordance with their national law, provide co-operation and assistance to the maximum feasible extent in the recovery and protection of such material to any State that so requests. In particular:

a. each State Party shall take appropriate steps to inform as soon as possible other States, which appear to it to be concerned, of any theft, robbery or other unlawful taking of nuclear material or credible threat thereof and to inform, where appropriate, international organizations:

b. as appropriate, the States Parties concerned shall exchange information with each other or international organizations with a view to protecting threatened nuclear material, verifying the integrity of the shipping container, or recovering unlawfully taken nuclear material and shall:

i. co-ordinate their efforts through diplomatic and other agreed channels:

ii. render assistance, if requested;

iii. the return of nuclear material stolen or missing as a consequence of the above-mentioned events.

He means of implementation of this co-operation shall be determined by the States Parties concerned.

3. States Parties shall co-operate and consult as appropriate, with each other directly or through international organizations, with a view to obtaining guidance on the design, maintenance and improvement of systems of physical protection of nuclear material in international transport.

#### **Article 6**

1. States Parties shall take appropriate measures consistent with their national law to protect the confidentiality of any information which they receive in confidence by virtue of the provisions of this Convention from another State Party or through participation in an activity carried out for the implementation of this Convention. If States Parties provide information to international organizations in confidence, steps shall be taken to ensure that the confidentiality of such information is protected.

2. States Parties shall not be required by this Convention to provide any information which they are not permitted to communicate pursuant to national law or which would jeopardize the security of the State concerned or the physical protection of nuclear material.

#### **Article 7**

1. The intentional commission of:
  - a. an act without lawful authority which constitutes the receipt, possession, use, transfer, alteration, disposal or dispersal of nuclear material and which causes or is likely to cause death or serious injury to any person or substantial damage to property;
  - b. a theft or robbery of nuclear material;
  - c. an embezzlement or fraudulent obtaining of nuclear material;
  - d. an act constituting a demand for nuclear material by threat or use of force or by any other form of intimidation;
  - d. a threat;
  - i. to use nuclear material to cause death or serious injury to any person or substantial property damage, or
  - ii. to commit an offence described in sub-paragraph (b) in order to compel a natural or legal person, international organization or State to do or to refrain from doing any act;
  - e. an attempt to commit any offence described in paragraphs (a), (b) or (c); and
  - f. an act which constitutes participation in any offence described in paragraphs (a) to (f) shall be made a punishable offence by each State Party under its national law.
2. Each State Party shall make the offences described in this article punishable by appropriate penalties which take into account their grave nature.

#### **Article 8**

1. Each State Party shall take such measures as may be necessary to establish its jurisdiction over the offences set forth in article 7 in the following cases:
  - a. when the offence is committed in the territory of that State or on board a ship or aircraft registered in that State;
  - b. when the alleged offender is a national of that State.
2. Each State Party shall likewise take such measures as may be necessary to establish its jurisdiction over these offences in cases where the alleged offender is present in its territory and it does not extradite him pursuant to article 11 to any of the States mentioned in paragraph 1.
3. This Convention does not exclude any criminal jurisdiction exercised in accordance with national law.
4. In addition to the States Parties mentioned in paragraphs 1 and 2, each State Party may, consistent with international law, establish its jurisdiction over the offences set forth in article 7 when it is involved in international nuclear transport as the exporting or importing State.

#### **Article 9**

Upon being satisfied that the circumstances so warrant, the State Party in whose territory the alleged offender is present shall take appropriate measures, including detention, under its national law to ensure his presence for the purpose of prosecution or extradition. Measures taken according to this article shall be notified without delay to the States required to establish jurisdiction pursuant to article 8 and, where appropriate, all other States concerned.

#### **Article 10**

The State Party in whose territory the alleged offender is present shall, if it does not extradite him, submit, without exception whatsoever and without undue delay, the case to its competent authorities for the purpose of prosecution, through proceedings in accordance with the laws of that State.

#### **Article 11**

1. The offences in article 7 shall be deemed to be included as extraditable offences in any extradition treaty existing between States Parties. States Parties undertake to include those offences as extraditable offences in every future extradition treaty to be concluded between them.
2. If a State Party which makes extradition conditional on the existence of a treaty receives a request for extradition from another State Party with which it has no extradition treaty, it may at its option consider this Convention as the legal basis for extradition in respect of those offences. Extradition shall be subject to the other conditions provided by the law of the requested State.
3. States Parties which do not make extradition conditional on the existence of a treaty shall recognize those offences as extraditable offences between themselves subject to the conditions provided by the law of the requested State.

4. Each of the offences shall be treated, for the purpose of extradition between States Parties, as if it had been committed not only in the place in which it occurred but also in the territories of the States Parties required to establish their jurisdiction in accordance with paragraph I of article 8.

#### **Article 12**

Any person regarding whom proceedings are being carried out in connection with any of the offences set forth in article 7 shall be guaranteed fair treatment at all stages of the proceedings.

#### **Article 13**

1. States Parties shall afford one another the greatest measure of assistance in connection with criminal proceedings brought in respect of the offences set forth in article 7, including the supply of evidence at their disposal necessary for the proceedings. The law of the State requested shall apply in all cases.

2. The provisions of paragraph 1 shall not affect obligations under any other treaty, bilateral or multilateral, which governs or will govern, in whole or in part, mutual assistance in criminal matters.

#### **Article 14**

1. Each State Party shall inform the depositary of its laws and regulations which give effect to this Convention. The depositary shall communicate such information periodically to all States Parties.

2. The State Party where an alleged offender is prosecuted shall, wherever practicable, first communicate the final outcome of the proceedings to the States directly concerned. The State Party shall also communicate the final outcome to the depositary who shall inform all States.

3. Where an offence involves nuclear material used for peaceful purposes in domestic use, storage or transport, and both the alleged offender and the nuclear material remain in the territory of the State Party in which the offence was committed, nothing in this Convention shall be interpreted as requiring that State Party to provide information concerning criminal proceeding arising out of such an offence.

#### **Article 15**

The Annexes constitute an integral part of this Convention

#### **Article 16**

1. A conference of States Parties shall be convened by the depositary five years after the entry into force of this Convention to review the implementation of the Convention and its adequacy as concerns the preamble, the whole of the operative part and the annexes in the light of the then prevailing situation.

2. At intervals of not less than five years thereafter, the majority of States Parties may obtain, by submitting a proposal to this effect to the depositary, the convening of further conferences with the same objective.

#### **Article 17**

1. In the event of a dispute between two or more States Parties concerning the interpretation or application of this Convention, such States Parties shall consult with a view to the settlement of the dispute by negotiation, or by any other peaceful means of settling disputes acceptable to all parties to the dispute.

2. Any dispute of this character which cannot be settled in the manner prescribed in paragraph 1 shall, at the request of any party to such dispute, be submitted to arbitration or referred to the International Court of Justice for decision. Where a dispute is submitted to arbitration, if, within six months from the date of the request, the parties to the dispute are unable to agree on the organization of the arbitration, a party may request the President of the International Court of Justice or the Secretary-General of the United Nations to appoint one or more arbitrators. In case of conflicting requests by the parties to the dispute, the request to the Secretary-General of the United Nations shall have priority.

3. Each State Party may at the time of signature, ratification, acceptance or approval of this Convention or accession thereto declare that it does not consider itself bound by either or both of the dispute settlement procedures provided for in paragraph 2. The other States Parties shall not be bound by a dispute settlement procedure provided for in paragraph 2, with respect to a State Party which has made a reservation to that procedure.

4. Any State Party which has made a reservation in accordance with paragraph 3 may at any time withdraw that reservation by notification to the depositary.

#### **Article 18**

1. This Convention shall be open for signature by all States at the Headquarters of the International Atomic Energy Agency in Vienna and at the Headquarters of the United Nations in New York from 3 March 1980 until its entry into force.

2. This Convention is subject to ratification, acceptance or approval by the signatory States.

3. After its entry into force, this Convention will be open for accession by all States.

4.

a. This Convention shall be open for signature or accession by international organizations and regional organizations of an integration or other nature, provided that any such organization is constituted by sovereign States and has competence in respect of the negotiation, conclusion and application of international agreements in matters covered by this Convention.

b. In matters within their competence, such organizations shall, on their own behalf, exercise the rights and fulfill the responsibilities which this Convention attributes to States Parties.

c. When becoming party to this Convention such an organization shall communicate to the depositary a declaration indicating which States are members thereof and which articles of this Convention do not apply to it

d. Such an organization shall not hold any vote additional to those of its Member States.

5. Instruments of ratification, acceptance, approval or accession shall be deposited with the depositary.

#### **Article 19**

1. This Convention shall enter into force on the thirtieth day following the date of deposit of the twenty first instrument of ratification, acceptance or approval with the depositary.

2. For each State ratifying, accepting, approving or acceding to the Convention after the date of deposit of the twenty first instrument of ratification, acceptance or approval, the Convention shall enter into force on the thirtieth day after the deposit by such State of its instrument of ratification, acceptance, approval or accession.

#### **Article 20**

1. Without prejudice to article 16 a State Party may propose amendments to this Convention. The proposed amendment shall be submitted to the depositary who shall circulate it immediately to all States Parties. If a majority of States Parties request the depositary to convene a conference to consider the proposed amendments, the depositary shall invite all States Parties to attend such a conference to begin not sooner than thirty days after the invitations are issued. Any amendment adopted at the conference by a two-thirds majority of all States Parties shall be promptly circulated by the depositary to all States Parties.

2. The amendment shall enter into force for each State Party that deposits its instrument of ratification, acceptance or approval of the amendment on the thirtieth day after the date on which two thirds of the States Parties have deposited their instruments of ratification, acceptance or approval with the depositary. Thereafter, the amendment shall enter into force for any other State Party on the day on which that State Party deposits its instrument of ratification, acceptance or approval of the amendment.

#### **Article 21**

1. Any State Party may denounce this Convention by written notification to the depositary.

2. Denunciation shall take effect one hundred and eighty days following the date on which notification is received by the depositary.

#### **Article 22**

The depositary shall promptly notify all States of:

- a. each signature of this Convention;
- b. each deposit of an instrument of ratification, acceptance, approval or accession;
- c. any reservation or withdrawal in accordance with article 17;
- d. any communication made by an organization in accordance with paragraph 4(c) of article 18;
- e. the entry into force of this Convention;
- f. the entry into force of any amendment to this Convention; and
- g. any denunciation made under article 21.

#### **Article 23**

The original of this Convention, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Director General of the International Atomic Energy Agency who shall send certified copies thereof to all States.

IN WITNESS WHEREOF, the undersigned, being duly authorized, have signed this Convention,

opened for signature at Vienna and at New York on 3 March 1980.

#### ANNEX 1

Levels of Physical Protection to be Applied in International Transport of Nuclear Material as Categorized in Annex II

1. Levels of physical protection for nuclear material during storage incidental to international nuclear transport include:

- a. For Category 111 materials, storage within an area to which access is controlled;
- b. For Category 11 materials, storage within an area under constant surveillance by guards or electronic devices, surrounded by a physical barrier with a limited number of points of entry under appropriate control or any area with an equivalent level of physical protection;

2. For Category I material, storage within a protected area as defined for Category 11 above, to which, in addition, access is restricted to persons whose trustworthiness has been determined, and which is under surveillance by guards who are in close communication with appropriate response forces. Specific measures taken in this context should have as their object the detection and prevention of any assault, unauthorized access or unauthorized removal of material.

3. Levels of physical protection for nuclear material during international transport include:

- a. For Category 11 and 111 materials, transportation shall take place under special precautions including prior arrangements among sender, receiver, and carrier, and prior agreement between natural or legal persons subject to the jurisdiction and regulation of exporting and importing States, specifying time, place and procedures for transferring transport responsibility;

- b. For Category I materials, transportation shall take place under special precautions identified above for transportation of Category 11 and 111 materials, and in addition, under constant surveillance by escorts and under conditions which assure close communication with appropriate response forces;

- c. For natural uranium other than in the form of ore or ore-residue transportation protection for quantities exceeding 500 kilograms U shall include advance notification of shipment specifying mode of transport, expected time of arrival and confirmation of receipt of shipment.

#### ANNEX 2

- a. All plutonium except that with isotopic concentration exceeding 80% in plutonium-238.

- b. Material not irradiated in a reactor or material irradiated in a reactor but with a radiation level equal to or less than 100 rems/hour at one metre unshielded.

- c. Quantities not falling in Category III and natural uranium should be protected in accordance with prudent management practice,

- d. Although this level of protection is recommended, it would be open to States, upon evaluation of the specific circumstances, to assign a different category of physical protection.

- e. Other fuel which by virtue of its original fissile material content is classified as Category I and II before irradiation may be reduced one category level while the radiation level from the fuel exceeds 100 rems/hour at one metre unshielded.

## APPENDIX G

### UNITED NATIONS CONVENTION AGAINST ILLICIT TRAFFIC IN NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES (VIENNA, 20 DECEMBER 1988)

#### **Preamble**

The Parties to this Convention,

Deeply concerned by the magnitude of and rising trend in the illicit production of, demand for and traffic in narcotic drugs and psychotropic substances, which pose a serious threat to the health and welfare of human beings and adversely affect the economic, cultural and political foundations of society,

Deeply concerned also by the steadily increasing inroads into various social groups made by illicit traffic in narcotic drugs and psychotropic substances, and particularly by the fact that children are used in many parts of the world as an illicit drug consumers market and for purposes of illicit production, distribution and trade in narcotic drugs and psychotropic substances, which entails a danger of incalculable gravity,

Recognizing the links between illicit traffic and other related organized criminal activities which undermine the legitimate economies and threaten the stability, security and sovereignty of States,

Recognizing also that illicit traffic is an international criminal activity, the suppression of which demands urgent attention and the highest priority,

Aware that illicit traffic generates large financial profits and wealth enabling transnational criminal organizations to penetrate, contaminate and corrupt the structures of government, legitimate commercial and financial business, and society at all its levels,

Determined to deprive persons engaged in illicit traffic of the proceeds of their criminal activities and thereby eliminate their main incentive for so doing,

Desiring to eliminate the root causes of the problem of abuse of narcotic drugs and psychotropic substances, including the illicit demand for such drugs and substances and the enormous profits derived from illicit traffic,

Considering that measures are necessary to monitor certain substances, including precursors, chemicals and solvents, which are used in the manufacture of narcotic drugs and psychotropic substances, the ready availability of which has led to an increase in the clandestine manufacture of such drugs and substances,

Determined to improve international co-operation in the suppression of illicit traffic by sea,

Recognizing that eradication of illicit traffic is a collective responsibility of all States and that, to that end, co-ordinated action within the framework of international co-operation is necessary,

Acknowledging the competence of the United Nations in the field of control of narcotic drugs and psychotropic substances and desirous that the international organs concerned with such control should be within the framework of that Organization,

Reaffirming the guiding principles of existing treaties in the field of narcotic drugs and psychotropic substances and the system of control which they embody,

Recognizing the need to reinforce and supplement the measures provided in the Single Convention on Narcotic Drugs, 1961, that Convention as amended by the 1972 Protocol Amending the Single Convention on Narcotic Drugs, 1961, and the 1971 Convention on Psychotropic Substances, in order to counter the magnitude and extent of illicit traffic and its grave consequences,

Recognizing also the importance of strengthening and enhancing effective legal means for international co-operation in criminal matters for suppressing the international criminal activities of illicit traffic,

Desiring to conclude a comprehensive, effective and operative international convention that is directed specifically against illicit traffic and that considers the various aspects of the problem as a whole, in particular those aspects not envisaged in the existing treaties in the field of narcotic drugs and psychotropic substances,

Hereby agree as follows:

#### **Article I**

##### **Definitions**

Except where otherwise expressly indicated or where the context otherwise requires, the following definitions shall apply throughout this Convention:

a. „Board” means the international Narcotics Control Board established by the Single Convention on Narcotic Drugs, 1961, and that Convention as amended by the 1972 Protocol Amending the Single Convention on Narcotic Drugs, 1961;

b. „Cannabis plant” means any plant of the genus Cannabis;



- c. „Coca bush" means the plant of any species of the genus *Erythroxylon*;
- d. „Commercial carrier" means any person or any public, private or other entity engaged in transporting persons, goods or mails for remuneration, hire or any other benefit;
- e. „Commission" means the Commission on Narcotic Drugs of the Economic and Social Council of the United Nations;
- f. „Confiscation", which includes forfeiture where applicable, means the permanent deprivation of property by order of a court or other competent authority;
- g. „Controlled delivery" means the technique of allowing illicit or suspect consignments of narcotic drugs, psychotropic substances, substances in Table I and Table II annexed to this Convention, or substances substituted for them, to pass out of, through or into the territory of one or more countries, with the knowledge and under the supervision of their competent authorities, with a view to identifying persons involved in the commission of offences established in accordance with article 3, paragraph 1 of the Convention;
- „1961 Convention" means the Single Convention on Narcotic Drugs, 1961;
- „1961 Convention as amended" means the Single Convention on Narcotic Drugs, 1961, as amended by the 1972 Protocol Amending the Single Convention on Narcotic Drugs, 1961;
- „1971 Convention" means the Convention on Psychotropic Substances, 1971;
- „Council" means the Economic and Social Council of the United Nations; of property or temporarily assuming custody or control of property on the basis of an order issued by a court or a competent authority;
- „Illicit traffic" means the offences set forth in article 3, paragraphs 1 and 2, of this Convention;
- „Narcotic drug" means any of the substances, natural or synthetic, in Schedules I and II of the Single Convention on Narcotic Drugs, 1961, and that Convention as amended by the 1972 Protocol Amending the Single Convention on Narcotic Drugs, 1961;
- „Opium poppy" means the plant of the species *Papaver somniferum* L.;
- „Proceeds" means any property derived from or obtained, directly or indirectly, through the commission of an offence established in accordance with article 3, paragraph 1;
- „Property" means assets of every kind, whether corporeal or incorporeal, movable or immovable, tangible or intangible, and legal documents or instruments evidencing title to, or interest in, such assets;
- „Psychotropic substance" means any substance, natural or synthetic, or any natural material in Schedules I, II, III and IV of the Convention on Psychotropic Substances, 1971;
- „Secretary-General" means the Secretary-General of the United Nations;
- „Table I" and „Table II" mean the correspondingly numbered lists of substances annexed to this Convention as amended from time to time in accordance with article 12;
- „Transit State" means a State through the territory of which illicit narcotic drugs, psychotropic substances and substances in Table I and Table II are being moved, which is neither the place of origin nor the place of ultimate destination thereof.

## **Article 2**

### Scope of the Convention

1. The purpose of this Convention is to promote co-operation among the Parties so that they may address more effectively the various aspects of illicit traffic in narcotic drugs and psychotropic substances having an international dimension. In carrying out their obligations under the Convention, the Parties shall take necessary measures, including legislative and administrative measures, in conformity with the fundamental provisions of their respective domestic legislative systems.
2. The Parties shall carry out their obligations under this Convention in a manner consistent with the principles of sovereign equality and territorial integrity of States and that of non-intervention in the domestic affairs of other States.
3. A Party shall not undertake in the territory of another Party the exercise of jurisdiction and performance of functions which are exclusively reserved for the authorities of that other Party by its domestic law.

## **Article 3**

### Offences and sanctions

1. Each Party shall adopt such measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally:
  - a.
    - I. The production, manufacture, extraction, preparation, offering, offering for sale, distribution, sale, delivery on any terms whatsoever, brokerage, dispatch, dispatch in transit, transport, importation or

exportation of any narcotic drug or any psychotropic substance contrary to the provisions of the 1961 Convention, to the 1961 Convention as amended or the 1971 Convention;

II. The cultivation of opium poppy, coca bush or cannabis plant for the purpose of the production of narcotic drugs contrary to the provisions of the 1961 Convention and the 1961 Convention as amended;

III. The possession or purchase of any narcotic drug or psychotropic substance for the purpose of any of the activities enumerated in (i) above;

IV. The manufacture, transport or distribution of equipment, materials or of substances listed in Table I and Table II, knowing that they are to be used in or for the illicit cultivation, production or manufacture of narcotic drugs and psychotropic substances;

V. The organization, management or financing of any of the offences enumerated in (i), (ii), (iii) or (iv) above;

b.

I. The conversion or transfer of property knowing that such property is derived from any offence or offences established in accordance with subparagraph a of this paragraph, or from an act of participation in such offence or offences, for the purpose of concealing or disguising the illicit origin of the property or of assisting any person who is involved in the commission of such an offence or offences to evade the legal consequences of his actions;

II. The concealment or disguise of the true nature; source, location, disposition, movement, rights with respect to, or ownership of property, knowing that such property is derived from an offence or offences established in accordance with subparagraph a of this paragraph or from an act of participation in such an offence or offences;

c. Subject to its constitutional principles and the basic concepts of its legal system:

I. The acquisition, possession or use of property, knowing, at the time of receipt, that such property was derived from an offence or offences established in accordance with subparagraph a of this paragraph or from an act of participation in such offence or offences;

II. The possession of equipment or materials or substances listed in Table I and Table II, knowing that they are being or are to be used in or for the illicit cultivation, production or manufacture of narcotic drugs and psychotropic substances;

III. Publicly inciting or inducing others, by any means, to commit any of the offences established in accordance with this article or to use narcotic drugs or psychotropic substances illicitly;

IV. Participation in, association or conspiracy to commit, attempts to commit and aiding, abetting, facilitating and counseling the commission of any of the offences established in accordance with this article.

2. Subject to its constitutional principles and the basic concepts of its legal system, each Party shall adopt such measures as may be necessary to establish as a criminal offence under its domestic law, when committed intentionally, the possession, purchase or cultivation of narcotic drugs or psychotropic substances for personal consumption contrary to the provisions of the 1961 Convention, the 1961 Convention as amended or the 1971 Convention. -"

3. Knowledge, intent or purpose required as an element of an offence set forth in paragraph I of this article may be inferred from objective factual circumstances.

4. a. Each Party shall make the commission of the offences established in accordance with paragraph 1 of this article liable to sanctions which take into account the grave nature of these offences, such as imprisonment or other forms of deprivation of liberty, pecuniary sanctions and confiscation.

b. The Parties may provide, in addition to conviction or punishment, for an offence established in accordance with paragraph I of this article, that the offender shall undergo measures such as treatment, education, aftercare, rehabilitation or social reintegration.

c. Notwithstanding the preceding subparagraphs, in appropriate cases of a minor nature, the Parties may provide as alternatives to conviction or punishment, measures such as education, rehabilitation or social reintegration, as well as, when the offender is a drug abuser, treatment and aftercare.

d. The Parties may provide, either as an alternative to conviction or punishment, or in addition to conviction or punishment of an offence established in accordance with paragraph 2 of this article, measures for the treatment, education, aftercare, rehabilitation or social reintegration of the offender.

5. The Parties shall ensure that their courts and other competent authorities having jurisdiction can take into account factual circumstances which make the commission of the offences established in accordance with paragraph I of this article particularly serious, such as:

a. The involvement in the offence of an organized criminal group to which the offender belongs;

b. The involvement of the offender in other international organized criminal activities;

c. The involvement of the offender in other illegal activities facilitated by commission of the offence; -

d. The use of violence or arms by the offender;

e. The fact that the offender holds a public office and that the offence is connected with the office in question;

f. The victimization or use of minors;

g. The fact that the offence is committed in a penal institution or in an educational institution or social service facility or in their immediate vicinity or in other places to which school children and students resort for educational, sports and social activities;

h. Prior conviction, particularly for similar offences, whether foreign or domestic, to the extent permitted under the domestic law of a Party.

6. The Parties shall endeavor to ensure that any discretionary legal powers under their domestic law relating to the prosecution of persons for offences established in accordance with this article are exercised to maximize the effectiveness of law enforcement measures in respect of those offences and with due regard to the need to deter the commission of such offences.

7. The Parties shall ensure that their courts or other competent authorities bear in mind the serious nature of the offences enumerated in paragraph I of this article and the circumstances enumerated in paragraph 5 of this article when considering the eventuality of early release or parole of persons convicted of such offences.

8. Each Party shall, where appropriate, establish under its domestic law a long statute of limitations period in which to commence proceedings for any offence established in accordance with paragraph I of this article, and a longer period where the alleged offender has evaded the administration of justice.

9. Each Party shall take appropriate measures, consistent with its legal system, to ensure that a person charged with or convicted of an offence established in accordance with paragraph I of this article, who is found within its territory, is present at the necessary criminal proceedings.

10. For the purpose of co-operation among the Parties under this Convention, including, in particular, co-operation under articles 5, 6, 7 and 9, offences established in accordance with this article shall not be considered as fiscal offences or as political offences or regarded as politically motivated, without prejudice to the constitutional limitations and the fundamental domestic law of the Parties.

11. Nothing contained in this article shall affect the principle that the description of the offences to which it refers and of legal defences thereto is reserved to the domestic law of a Party and that such offences shall be prosecuted and punished in conformity with that law.

#### **Article 4**

##### **Jurisdiction**

##### **1. Each Party:**

a. Shall take such measures as may be necessary to establish its jurisdiction over the offences it has established in accordance with article 3, paragraph 1, when:

I. The offence is committed in its territory;

II. The offence is committed on board a vessel flying its flag or an aircraft which is registered under its laws at the time the offence is committed;

b. May take such measures as may be necessary to establish its jurisdiction over the offences it has established in accordance with article 3, paragraph 1, when:

I. The offence is committed by one of its nationals or by a person who has his habitual residence in its territory;

II. The offence is committed on board a vessel concerning which that Party has been authorized to take appropriate action pursuant to article 17, provided that such jurisdiction shall be exercised only on the basis of agreements or arrangements referred to in paragraphs 4 and 9 of that article;

III. The offence is one of those established in accordance with article 3, paragraph 1, subparagraph c(iv), and is committed outside its territory with a view to the commission, within its territory, of an offence established in accordance with article 3, paragraph 1.

##### **2. Each Party:**

a. Shall also take such measures as may be necessary to establish its jurisdiction over the offences it has established in accordance with article 3, paragraph I, when the alleged offender is present in its territory and it does not extradite him to another Party on the ground:

I That the offence has been committed in its territory or on board a vessel flying its flag or an aircraft which was registered under its law at the time the offence was committed, or

II. If the offence has been committed by one of its nationals

h. May also take such measures as may be necessary to establish its jurisdiction over the offences it has established in accordance with article 3, paragraph 1, when the alleged offender is present in its territory and it does not extradite him to another Party.

3. This Convention does not exclude the exercise of any criminal jurisdiction established by a Party in accordance with its domestic law.

## Article 5

### Confiscation

1. Each Party shall adopt such measures as may be necessary to enable confiscation of:
    - a. Proceeds derived from offences established in accordance with article 3, paragraph 1, or property the value of which corresponds to that of such proceeds;
    - b. Narcotic drugs and psychotropic substances, materials and equipment or other instrumentalities used in or intended for use in any manner in offences established in accordance with article 3, paragraph 1.
  2. Each Party shall also adopt such measures as may be necessary to enable its competent authorities to identify, trace, and freeze or seize proceeds, property instrumentalities or any other things referred to in paragraph 1 of this article, for the purpose of eventual confiscation.
  3. In order to carry out the measures referred to in this article, each Party shall empower its courts or other competent authorities to order that bank, financial or commercial records be made available or be seized. A Party shall not decline to act under the provisions of this paragraph on the ground of bank secrecy.
  4. a. Following a request made pursuant to this article by another Party having jurisdiction over an offence established in accordance with article 3, paragraph 1, the Party in whose territory proceeds, property, instrumentalities or any other things referred to in paragraph 1 of this article are situated shall:
    - I. Submit the request to its competent authorities for the purpose of obtaining an order of confiscation and, if such order is granted, give effect to it; or
    - II. Submit to its competent authorities, with a view to giving effect to it to the extent requested, an order of confiscation issued by the requesting Party in accordance with paragraph 1 of this article, in so far as it relates to proceeds, property, instrumentalities or any other things referred to in paragraph 1 situated in the territory of the requested Party.
  - b. Following a request made pursuant to this article by another Party having jurisdiction over an offence established in accordance with article 3, paragraph 1, the requested Party shall take measures to identify, trace, and freeze or seize proceeds, property, instrumentalities or any other things referred to in paragraph 1 of this article for the purpose of eventual confiscation to be ordered either by the requesting Party or, pursuant to a request under subparagraph a of this paragraph, by the requested Party.
  - c. The decisions of actions provided for in subparagraphs a and b of this paragraph shall be taken by the requested Party, in accordance with and subject to the provisions of its domestic law and its procedural rules or any bilateral or multi-lateral treaty, agreement or arrangement to which it may be bound in relation to the requesting Party.
  - d. The provisions of article 7, paragraphs 6 to 19 are applicable mutatis mutandis. In addition to the information specified in article 7, paragraph 10, requests made pursuant to this article shall contain the following:
    - I. In the case of a request pertaining to subparagraph a (i) of this paragraph, a description of the property to be confiscated and a statement of the facts relied upon by the requesting Party sufficient to enable the requested Party to seek the order under its domestic law;
    - II. In the case of a request pertaining to subparagraph a(ii), a legally admissible copy of an order of confiscation issued by the requesting Party upon which the request is based, a statement of the facts and information as to the extent to which the execution of the order is requested;
    - III. In the case of a request pertaining to subparagraph b, a statement of the facts relied upon by the requesting Party and a description of the actions requested.
  - e. Each Party shall furnish to the Secretary-General the text of any of its laws and regulations which give effect to this paragraph and the text of any subsequent changes to such laws and regulations.
  - f. If a Party elects to make the taking of the measures referred to in subparagraphs a and b of this paragraph conditional on the existence of a relevant treaty, that Party shall consider this Convention as the necessary and sufficient treaty basis .
  - g. The Parties shall seek to conclude bilateral and multilateral treaties, agreements or arrangements to enhance the effectiveness of international co-operation pursuant to this article.
- 5.
- a. Proceeds or property confiscated by a Party pursuant to paragraph 1 or paragraph 4 of this article shall be disposed of by that Party according to its domestic law and administrative procedures.
  - b. When acting on the request of another Party in accordance with this article, a Party may give special consideration to concluding agreements on:
    - I. Contributing the value of such proceeds and property, of funds derived from the sale of such proceeds or property, or a substantial part thereof to intergovernmental bodies specializing in the fight against illicit traffic in and abuse of narcotic drugs and psychotropic substances;

II. Sharing with other Parties, on a regular or case-by-case basis, such proceeds or property, or funds derived from the sale of such proceeds or property, in accordance with its domestic law, administrative procedures or bilateral or multilateral agreements entered into for this purpose.

6.

a. If proceeds have been transformed or converted into other property, such property shall be liable to the measures referred to in this article instead of the proceeds.

b. If proceeds have been intermingled with property acquired from legitimate sources, such property shall, without prejudice to any powers relating to seizure or freezing, be liable to confiscation up to the assessed value of the intermingled proceeds.

c. Income or other benefits derived from:

I. Proceeds;

II. Property into which have been transformed or converted; or

III. Property with which proceeds have been intermingled shall also be liable to the measures referred to in this article, in the same manner and to the same extent as proceeds.

7. Each Party may consider ensuring that the onus of proof be reversed regarding the lawful origin of alleged proceeds or other property liable to confiscation, to the extent that such action is consistent with the principles of its domestic law and with the nature of the judicial and other proceedings.

8. The provisions of this article shall not be construed as prejudicing the rights of bonafide third parties.

9. Nothing contained in this article shall affect the principle that the measures to which it refers shall be defined and implemented in accordance with and subject to the provisions of the domestic law of a Party.

## Article 6

### Extradition

1. This article shall apply to the offences established by the Parties in accordance with article 3, paragraph 1.

2. Each of the offences to which this article applies shall be deemed to be included as an extraditable offence in any extradition treaty existing between Parties. The Parties undertake to include such offences as extraditable offences in every extradition treaty to be concluded between them.

3. If a Party which makes extradition conditional on the existence of a treaty receives a request for extradition from another Party with which it has no extradition treaty, it may consider this Convention as the legal basis for extradition in respect of any offence to which this article applies. The Parties which require detailed legislation in order to use this Convention as a legal basis for extradition shall consider enacting such legislation as may be necessary.

4. The Parties which do not make extradition conditional on the existence of a treaty shall recognize offences to which this article applies as extraditable offences between themselves.

5. Extradition shall be subject to the conditions provided for by the law of the requested Party or by applicable extradition treaties, including the grounds upon which the requested Party may refuse extradition.

6. In considering requests received pursuant to this article, the requested State may refuse to comply with such requests where there are substantial grounds leading its judicial or other competent authorities to believe that compliance would facilitate the prosecution or punishment of any person on account of his race, religion, nationality or political opinions, or would cause prejudice for any of those reasons to any person affected by the request.

7. The Parties shall endeavor to expedite extradition procedures and to simplify evidentiary requirements relating thereto in respect of any offence to which this article applies.

8. Subject to the provisions of its domestic law and its extradition treaties, the requested Party may, upon being satisfied that the circumstances so warrant and are urgent, and at the request of the requesting Party, take a person whose extradition is sought and who is present in its territory into custody or take other appropriate measures to ensure his presence at extradition proceedings.

9. Without prejudice to the exercise of any criminal jurisdiction established in accordance with its domestic law, a Party in whose territory an alleged offender is found shall:

a. If it does not extradite him in respect of an offence established in accordance with article 3, paragraph 1, on the grounds set forth in article 4, paragraph 2, subparagraph a, submit the case to its competent authorities for the purpose of prosecution, unless otherwise agreed with the requesting Party;

b. If it does not extradite him in respect of such an offence and has established its jurisdiction in relation to that offence in accordance with article 4, paragraph 2, subparagraph b, submit the case to its competent authorities for the purpose of prosecution, unless otherwise requested by the requesting Party for the purposes of preserving its legitimate jurisdiction.

10. If extradition, sought for purposes of enforcing a sentence, is refused because the person sought is a national of the requested Party, the requested Party shall, if its law so permits and in conformity with the

requirements of such law upon application of the requesting Party, consider the enforcement of the sentence which has been imposed under the law of the requesting Party, or the remainder thereof.

11. The parties shall seek to conclude bilateral and multilateral agreements to carry out or to enhance the effectiveness of extradition.

12. The Parties may consider entering into bilateral or multilateral agreements, whether ad hoc or general, on the transfer to their country of persons sentenced to imprisonment and other forms of deprivation of liberty for offences to which this article applies, in order that they may complete their sentences there.

## Article 7

### Mutual legal assistance

2. Mutual legal assistance to be afforded in accordance with this article may be requested for any of the following purposes:

- a. Taking evidence or statements from persons;
- b. Effecting service of judicial documents;
- c. Executing searches and seizures;
- d. Examining objects and sites;
- e. *Providing information and evidentiary items;*
- f. Providing originals or certified copies of relevant documents and records, including bank financial, corporate or business records;
- g. Identifying or tracing proceeds, property, instrumentalities or other things for evidentiary purposes.

3. The Parties may afford one another any other forms of mutual legal assistance allowed by the domestic law of the requested Party.

4. Upon request, the Parties shall facilitate or encourage, to the extent consistent with their domestic law and practice, the presence or availability of persons, including persons in custody, who consent to assist in investigations or participate in proceedings.

5. A Party shall not decline to render mutual legal assistance under this article on the ground of bank secrecy.

6. The provisions of this article shall not affect the obligations under any other treaty, bilateral or multilateral, which governs or will govern, in whole or in part, mutual legal assistance in criminal matters.

7. Paragraphs 8 to 19 of this article shall apply to requests made pursuant to this article if the Parties in question are not bound by a treaty of mutual legal assistance. If these Parties are bound by such a treaty, the corresponding provisions of that treaty shall apply unless the Parties agree to apply paragraph 8 to 19 of this article in lieu thereof.

8. Parties shall designate an authority, or when necessary authorities, which shall have the responsibility and power to execute requests for mutual legal assistance or to transmit them to the competent authorities for execution. The authority or the authorities designated for this purpose shall be notified to the secretary-general. Transmission of requests for mutual legal assistance and any communication related thereto shall be effected between the authorities designated by the Parties; this requirement shall be without prejudice to the right of a Party to require that such requests and communications be addressed to it through the diplomatic channel and, in urgent circumstances, where the Parties agree! Through channels of the International Criminal Police Organization, if possible.

9. Requests shall be made in writing in a language acceptable to the requested Party. The Language or languages acceptable to each Party shall be notified to the secretary-general. In urgent circumstances, and where agreed by the Parties, requests may be made orally, but shall be confirmed in writing forthwith.

10. A request for mutual legal assistance shall contain:

- a. *The identity of the authority making the request;*
- b. The subject matter and nature of the investigation, prosecution or proceeding to which the request relates, and the name and the functions of the authority conducting such investigation, prosecution or proceeding;
- c. A summary of the relevant facts, except in respect of requests for the purpose of service of judicial documents;
- d. A description of the assistance sought and details of any particular procedure the requesting Party wishes to be followed;
- e. *Where possible, the identity, location and nationality of any person concerned;*
- f. The purpose for which the evidence, information or action is sought.

11. The requested party may request additional information when it appears necessary for the execution of the request in accordance with its domestic law or when it can facilitate such execution.

12. A request shall be executed in accordance with the domestic law of the requested Party and, to the extent not contrary to the domestic law of the requested Party and where possible, in accordance with the procedures specified in the re-request.

13. The requesting Party shall not transmit nor use information or evidence furnished by the requested party for investigations, prosecutions or proceedings other than those stated in the request without the prior consent of the requested Party,

14. The requesting Party may require that the requested Party keep confidential the fact and substance of the request, except to the extent necessary to execute the request. If the requested Party cannot comply with the requirement of confidentiality, it shall promptly inform the re-requesting party.

15. Mutual legal assistance may be refused:

- a. If the request is not made in conformity with the provisions of this article;
- b. or if the requested Party considers that execution of the request is likely to prejudice its sovereignty, security, ordre public or other essential interests;
- c. If the authorities of the requested party would be prohibited by its domestic law from carrying out the action requested with regard to any similar offence, had it been subject to investigation, prosecution or proceedings under their own jurisdiction;
- d. If it would be contrary to the legal system of the requested Party relating to mutual legal assistance for the request to be granted.

16. Reasons shall be given for any refusal of mutual legal assistance.

17. Mutual legal assistance may be postponed by the requested Party on the ground that it interferes with an ongoing investigation, prosecution or proceeding. In such a case, the requested Party shall consult with the requesting Party to determine if the assistance can still be given subject to such terms and conditions as the re-requested Party deems necessary.

18. A witness, expert or other person who consents to give evidence in a proceeding or to assist in an investigation, prosecution or judicial proceeding in the territory of the requesting Party, shall not be prosecuted, detained, punished or subjected to any other restriction of his personal liberty in that territory in respect of acts, omissions or convictions prior to his departure from the territory of the requested Party. Such safe conduct shall cease when the witness, expert or other person having had, for a period of fifteen consecutive days, or for any period agreed upon by the Parties, from the date on which he has been officially informed that his presence is no longer required by the judicial authorities, an opportunity of leaving, has nevertheless remained voluntarily in the territory or, having left it, has returned of his own free will.

19. The ordinary costs of executing a request shall be borne by the requested Party, unless otherwise agreed by the Parties concerned. If expenses of a substantial or extraordinary nature are or will be required to fulfill the request, the Parties shall consult to determine the terms and conditions under which the request will be executed as well as the manner in which the costs shall be borne.

20. The Parties shall consider, as may be necessary, the possibility of concluding bilateral or multilateral agreements or arrangements that would serve the purposes of, give practical effect to, or enhance the provisions of this article.

## **Article 8**

### **Transfer of proceedings**

The Parties shall give consideration to the possibility of transferring to one another proceedings for criminal prosecution of offences established in accordance with article 3, paragraph I, in cases where such transfer is considered to be in the interests of a proper administration of justice.

## **Article 9**

### **Other forms of co-operation and training**

1. The Parties shall co-operate closely with one another, consistent with their respective domestic legal administrative systems, with a view to enhancing the effectiveness of law enforcement action to suppress the commission of offences established in accordance with article 3, paragraph 1. They shall, in particular, on the basis of bilateral or multilateral agreements or arrangements:

- a. Establish and maintain channels of communication between their competent agencies and services to facilitate the secure and rapid exchange of information concerning all aspects of offences established in accordance with article 3, paragraph 1, including, if the Parties concerned deem it appropriate, links with other criminal activities;

- b. Co-operate with one another in conducting inquiries, with respect to offences established in accordance with article 3, paragraph I, having an international character, concerning:

- I. The identity, whereabouts and activities of persons suspected of being involved in offences established in accordance with article 3, paragraph;

II. The movement of proceeds or property derived from the commission of such offences;

III. The movement of narcotic drugs, psycho-tropic substances, substances in Table I and Table II of this Convention and instrumentalities used or intended for use in the commission of such offences;

c. In appropriate cases and if not contrary to domestic law, establish joint teams, taking into account the need to protect the security of persons and of operations, to carry out the provisions of this paragraph. Officials of any Party taking part in such teams shall act as authorized by the appropriate authorities of the Party in whose territory the operation is to take place in all such cases, the Parties involved shall ensure that the sovereignty of the Party on whose territory the operation is to take place is fully respected;

d. Provide, when appropriate, necessary quantities of substances for analytical or investigative purposes;

e. Facilitate effective co-ordination between their competent agencies and services and promote the exchange of personnel and other experts, including the posting of liaison officers.

2. Each Party shall, to the extent necessary, initiate, develop or improve specific training programmes for its law enforcement and other personnel, including customs, charged with the suppression of offences established in accordance with article 3, paragraph 1. Such programmes shall deal, in particular, with the following:

a. Methods used in the detection and suppression of offences established in accordance with article 3, paragraph 1;

b. Routes and techniques used by persons suspected of being involved in offences established in accordance with article 3, paragraph 1, particularly in transit States, and appropriate counter-measures;

c. Monitoring of the import and export of narcotic drugs, psychotropic substances and substances in Table I and Table II;

d. Detection and monitoring of the movement of proceeds and property derived from, and narcotic drugs, psychotropic substances and substances in Table I and Table II, and instrumentalities used or intended for use in, the commission of offences established in accordance with article 3, paragraph 1;

e. Methods used for the transfer, concealment or disguise of such proceeds, property and instrumentalities;

f. Collection of evidence;

g. Control techniques in free trade zones and free ports;

h. Modern law enforcement techniques.

3. The Parties shall assist one another to plan and implement research and training programmes designed to share expertise in the areas referred to in paragraph 2 of this article and, to this end, shall also when appropriate, use regional and international conferences and seminars to promote co-operation and stimulate discussion on problems of mutual concern, including the special problems and needs of transit States.

## **Article 10**

### **International co-operation and assistance for transit States**

1. The Parties shall co-operate, directly or through competent international or regional organizations, to assist and support transit States and, in particular, developing countries in need of such assistance and support, to the extent possible, through programmes of technical co-operation on interdiction and other related activities.

2. The Parties may undertake, directly or through competent international or regional organizations, to provide financial assistance to such transit States for the purpose of augmenting and strengthening the infrastructure needed for effective control and prevention of illicit traffic.

3. The Parties may conclude bilateral or multi-lateral agreements or arrangements to enhance the effectiveness of international co-operation pursuant to this article and may take into consideration financial arrangements in this regard.

## **Article 11**

### **Controlled delivery**

1. If permitted by the basic principles of their respective domestic legal systems, the Parties shall take the necessary measures, within their possibilities, to allow for the appropriate use of controlled delivery at the international level, on the basis of agreements or arrangements mutually consented to, with a view to identifying persons involved in offences established in accordance with article 3, paragraph 1, and to taking legal action against them.

2. Decisions to use controlled delivery shall be made on a case-by-case basis and may, when necessary, take into consideration financial arrangements and understandings with respect to the exercise of jurisdiction by the Parties concerned.



3. Illicit consignments whose controlled delivery is agreed to may, with the consent of the Parties concerned, be intercepted and allowed to continue with the narcotic drugs or psychotropic substances intact or removed or replaced in whole or in part.

## Article 12

Substances frequently used in the illicit manufacture of narcotic drugs or psychotropic substances

1. The Parties shall take the measures they deem appropriate to prevent diversion of substances in Table I and Table II used for the purpose of illicit manufacture of narcotic drugs or psychotropic substances, and shall co-operate with one another to this end.

2. If a Party or the Board has information which in its opinion may require the inclusion of a substance in Table I or Table II, it shall notify the Secretary-General and furnish him with the information in support of that notification. The procedure described in paragraph 2 to 7 of this article shall also apply when a Party or the Board has information justifying the deletion of a substance from Table I or Table II, or the transfer of a substance from one Table to the other.

3. The secretary-general shall transmit such notification, and any information which he considers relevant, to the Parties, to the Commission, and, where notification is made by a Party, to the Board. The Parties shall communicate their comments concerning the notification to the secretary-general, together with all supplementary information which may assist the Board in establishing an assessment and the Commission in reaching a decision.

4. If the Board, taking into account the extent, importance and diversity of the licit use of the substance, and the possibility and ease of using alternate substances both for licit purposes and for the illicit manufacture of narcotic drugs or psychotropic substances, finds:

a. That the substance is frequently used in the illicit manufacture of a narcotic drug or psychotropic substance;

b. That the volume and extent of the illicit manufacture of a narcotic drug or psychotropic substance creates serious public health or social problems, so as to warrant international action, it shall communicate to the Commission an assessment of the substance, including the likely effect of adding the substance to either Table I or Table II on both licit use and illicit manufacture, together with recommendations of monitoring measures, if any, that would be appropriate in the light of its assessment.

5. The Commission, taking into account the comments submitted by the Parties and the comments and recommendations of the Board, whose assessment shall be determinative as to scientific matters, and also taking into due consideration any other relevant factors, may decide by a two-thirds majority of its members to place a substance in Table I or Table II.

6. Any decision of the Commission taken pursuant to this article shall be communicated by the secretary-general to all States and other entities which are, or which are entitled to become, Parties to this Convention, and to the Board. Such decision shall become fully effective with respect to each Party one hundred and eighty days after the date of such communication.

7. a. The decision of the Commission taken under this article shall be subject to review by the Council upon the request of any Party filed within one hundred and eighty days after the date of notification of the decision. The request for re-view shall be sent to the secretary-general, together with all relevant information upon which the request for review is based.

b. The secretary-general shall transmit copies of the request for review and the relevant information to the Commission, to the Board and to all the Parties, inviting them to submit their comments within ninety days. All comments received shall be submitted to the Council for consideration.

c. The Council may confirm or reverse the decision of the Commission. Notification of the Council's decision shall be transmitted to all States and other entities which are, or which are entitled to become, Parties to this Convention, to the Commission and to the Board.

8. a. Without prejudice to the generality of the provisions contained in paragraph 1 of this article and the provisions of the 1961 Convention, the 1961 Convention as amended and the 1971 Convention, the Parties shall take the measures they deem appropriate to monitor the manufacture and distribution of substances in Table I and Table II which are carried out within their territory.

b. To this end, the Parties may:

I. Control all persons and enterprises engaged in the manufacture and distribution of such substances;

II. Control under license the establishment and premises in which such manufacture or distribution may take place;

III. Require that licensees obtain a permit for conducting the aforesaid operations;

IV. Prevent the accumulation of such substances in the possession of manufacturers and distributors, in excess of the quantities required for the normal conduct of business and the prevailing market conditions.

9. Each Party shall, with respect to substances in Table I and Table II, take the following measures: \*

a. Establish and maintain a system to monitor international trade in substances in Table I and Table II in order to facilitate identification of suspicious transactions. Such monitoring systems shall be applied in close co-operation with manufacturers, importers, exporters, wholesalers and retailers, who shall inform the competent authorities of suspicious orders and transactions.

b. Provide for the seizure of any substance in Table I or Table II if there is sufficient evidence that it is for use in the illicit manufacture of a narcotic drug or psychotropic substance.

c. Notify, as soon as possible, the competent authorities and services of the Parties concerned if there is reason to believe that the import, export or transit of a substance in Table I or Table II is destined for the illicit manufacture of narcotic drugs or psychotropic substances, including in particular information about the means of payment and any other essential elements which led to that belief.

d. Require that imports and exports be properly labeled and documented. Commercial documents such as invoices, cargo manifests, customs, transport and other shipping documents shall include the names, as stated in Table I or Table II, of the substances being imported or exported, the quantity being imported or exported, and the name and address of the exporter, the importer and, when available, the consignee.

e. Ensure that documents referred to in sub-paragraph d of this paragraph are maintained for a period of not less than two years and may be made available for inspection by the competent authorities.

10. a. In addition to the provisions of paragraph 9, and upon request to the secretary-general by the interested Party, each Party from whose territory a substance in Table I is to be exported shall ensure that, prior to such export, the following information is supplied by its competent authorities to the competent authorities of the importing country;

I. Name and address of the exporter and importer and, when available, the consignee;

II. Name of the substance in Table I;

III. Quantity of the substance to be exported;

IV. Expected point of entry and expected date of dispatch; - . .

V. Any other information which is mutually agreed upon by the Parties.

b. A Party may adopt more strict or severe measures of control than those provided by this paragraph if, in its opinion, such measures are desirable or necessary.

11. Where a Party furnishes information to another Party in accordance with paragraphs 9 and 10 of this article, the Party furnishing such information may require that the Party receiving it keep confidential any trade, business, commercial or professional secret or trade process.

12. Each Party shall furnish annually to the Board, in the form and manner provided for by it and on forms made available by it, information on:

a. The amounts seized of substances in Table I and Table II, and, when known, their origin;

b. Any substance not included in Table I or Table II which is identified as having been used in illicit manufacture of narcotic drugs or psychotropic substances, and which is deemed by the Party to be sufficiently significant to be brought to the attention of the Board;

c. Methods of diversion and illicit manufacture-re.

13. The Board shall report annually to the Commission on the implementation of this article and the Commission shall periodically review the adequacy and propriety of Table I and Table II.

14. The provisions of this article shall not apply to pharmaceutical preparation nor to other preparations containing substances in Table I or Table II that are compounded in such a way that such substances cannot be easily used or recovered by readily applicable means.

### **Article 13**

#### **Materials and equipment**

The Parties shall take such measures as they deem appropriate to prevent trade in and the diversion of materials and equipment for illicit production or manufacture of narcotic drugs and psychotropic substances and shall co-operate to this end.

### **Article 14**

Measures to eradicate illicit cultivation of narcotic plants and to eliminate illicit demand for narcotic drugs and psychotropic substances

1. Any measures taken pursuant to this Convention by Parties shall not be less stringent than the provisions applicable to the eradication of illicit cultivation of plants containing narcotic and psychotropic substances and to the elimination of illicit demand for narcotic drugs and psychotropic substances under the provisions of the 1961 Convention, the 1961 Convention as amended and the 1971 Convention.

2. Each Party shall take appropriate measures to prevent illicit cultivation of and to eradicate plants containing narcotic or psychotropic substances, such as opium poppy, coca bush and cannabis plants, cultivated illicitly in its territory. The measures adopted shall respect fundamental human rights and shall

take due account of traditional licit uses, where there is historic evidence of such use, as well as the protection of the environment.

3. a. The Parties may co-operate to increase the effectiveness of eradication efforts. Such co-operation may, inter alia, include support, when appropriate, for integrated rural development leading to economically viable alternatives to illicit cultivation. Factors such as access to markets, the availability of resources and prevailing socio-economic conditions should be taken into account before such rural development programmes are implemented. The Parties may agree on any other appropriate measures of co-operation

b. The Parties shall also facilitate the exchange of scientific and technical information and the conduct of research concerning eradication.

c. Whenever they have common frontiers, the Parties shall seek to co-operate in eradication programmes in their respective areas along those frontiers.

4. The Parties shall adopt appropriate measures aimed at eliminating or reducing illicit demand for narcotic drugs and psychotropic substances, with a view to reducing human suffering and eliminating financial incentives for illicit traffic. These measures may be based, inter alia, on the recommendations of the United Nations, specialized agencies of the United Nations such as the World Health Organization, and other competent international organizations, and on the Comprehensive Multidisciplinary Outline adopted by the International Conference on Drug Abuse and Illicit Trafficking, held in 1987, as it pertains to governmental and non-governmental agencies and private efforts in the fields of prevention, treatment and rehabilitation. The Parties may enter into bilateral or multilateral agreements or arrangements aimed at eliminating or reducing illicit demand for narcotic drugs and psychotropic substances.

5. The Parties may also take necessary measures for early destruction or lawful disposal of the narcotic drugs, psychotropic substances and substances in Table I and Table II which have been seized or confiscated and for the admissibility as evidence of duly certified necessary quantities of such substances.

## **Article 15**

### **Commercial carriers**

1. The Parties shall take appropriate measures to ensure that means of transport operated by commercial carriers are not used in the commission of offences established in accordance with article 3, paragraph 1; such measures may include special arrangements with commercial carriers.

2. Each Party shall require commercial carriers to take reasonable precautions to prevent the use of their means of transport for the commission of offences established in accordance with article 3, paragraph 1. Such precautions may include:

a. If the principal place of business of a commercial carrier is within the territory of the Party:

- I. Training of personnel to identify suspicious consignments or persons;
- II. Promotion of integrity of personnel;

b. If a commercial carrier is operating within the territory of the Party:

- I. Submission of cargo manifests in advance, whenever possible;
- II. Use of tamper-resistant, individually verifiable seals on containers;

III. Reporting to the appropriate authorities at the earliest opportunity all suspicious circumstances that may be related to the commission of offences established in accordance with article 3, paragraph 1.

3. Each Party shall seek to ensure that commercial carriers and the appropriate authorities at points of entry and exit and other customs control areas co-operate, with a view to preventing unauthorized access to means of transport and cargo and to implementing appropriate security measures.

## **Article 16**

### **Commercial documents and labeling of exports**

1. Each Party shall require that lawful exports of narcotic drugs and psychotropic substances be properly documented. In addition to the requirements for documentation under article 31 of the 1961 Convention, article 31 of the 1961 Convention as amended and article 12 of the 1971 Convention, commercial documents such as invoices, cargo manifests, customs, transport and other shipping documents shall include the names of the narcotic drugs and psychotropic substances being exported as set out in the respective Schedules of the 1961 Convention, the 1961 Convention as amended and the 1971 Convention the quantity being exported, and the name and address of the exporter, the importer and, when available, the consignee.

2. Each Party shall require that consignments of narcotic drugs and psychotropic substances being exported be not mislabeled.

## **Article 17**

### **Illicit traffic by sea**

1. The Parties shall co-operate to the fullest extent possible to suppress illicit by sea, in conformity with the international law of the sea.

2. A Party which has reasonable grounds to suspect that a vessel flying its flag or not displaying a flag or marks of registry is engaged in illicit traffic may request the assistance of other Parties in suppressing its use for that purpose. The Parties so requested shall render such assistance within the means available to them.

3. A Party which has reasonable ground to suspect that a vessel exercising freedom of navigation in accordance with international law and flying the flag or displaying marks of registry of another Party is engaged in illicit traffic may so notify the flag State, request confirmation of registry and, if confirmed, request authorization from the flag State to take appropriate measures in regard to that vessel.

4. In accordance with paragraph 3 or in accordance with treaties in force between them or in accordance with any agreement of arrangement otherwise reached between those Parties, the flag State may authorize the requesting State to, inter alia:

- a. Board the vessel;
- b. Search the vessel;
- c. If evidence of involvement in illicit traffic is found, take appropriate action with respect to the vessel, persons and cargo on board.

5. Where action is taken pursuant to this article, the Parties concerned shall take due account of the need not to endanger the safety of life at sea, the security of the vessel and the cargo or to prejudice the commercial and legal interests of the flag State or any other interested State.

6. The flag State may, consistent with its obligations in paragraph 1 of this Article, subject its authorization to conditions to be mutually agreed between it and the requesting Party, including conditions relating to responsibility.

7. For the purposes of paragraphs 3 and 4 of this article, a Party shall respond expeditiously to a request from another Party to determine whether a vessel that is flying its flag is entitled to do so, and to requests for authorization made pursuant to paragraph 3. At the time of becoming a Party to this Convention, each Party shall designate an authority or, when necessary, authorities to receive and respond to such requests. Such designation shall be notified through the secretary-general to all other Parties within one month of the designation.

8. A Party which has taken any action in accordance with this article shall promptly inform the flag State concerned of the results of that action.

9. The Parties shall consider entering into bi-lateral or regional agreements or arrangements to carry out, or to enhance the effectiveness of, the provisions of this article.

10. Action pursuant to paragraph 4 of this article shall be carried-out; only by warships or military aircraft, or other ships or aircraft clearly marked and identifiable as being on government service and authorized to that effect.

11. Any action taken in accordance with this article shall take due account of the need not to interfere with or affect the rights and obligations and the exercise of jurisdiction of coastal States in accordance with the international law of the sea.

## **Article 18**

### **Free trade zones and free ports**

1. The Parties shall apply measures to suppress illicit traffic in narcotic drugs, psychotropic substances and substances in Table I and Table II in free trade zones and in free ports that are no less stringent than those applied in other parts of their territories.

2. The Parties shall endeavor:

a. To monitor the movement of goods and persons in free trade zones and free ports, and, to that end, shall empower the competent authorities to search cargoes and incoming and outgoing vessels, including pleasure craft and fishing vessels, as well as aircraft and vehicles and, when appropriate, to search crew members passengers and their baggage:

b. To establish and maintain a system to detect consignments suspected of containing narcotic drugs, psychotropic substances and substances in Table I and Table II passing into or out of free trade zones and free ports.

c. To establish and maintain surveillance systems in harbor and dock areas and at airports and border control points in free trade zones and free ports.

## **Article 19**

### *The use of the mails*

1. In conformity with their obligations under the Conventions of the Universal Postal Union, and in accordance with the basic principles of their domestic legal systems, the Parties shall adopt measures to suppress the use of the mails for illicit traffic and shall cooperate with one another to that end.

2. The measures referred to in paragraph 1 of this article shall include, in particular:

- a. Co-ordinated action for the prevention and repression of the use of the mails for illicit traffic;
- b. Introduction and maintenance by authorized law enforcement personnel of investigative and control techniques designed to detect illicit consignments of narcotic drugs, psychotropic substances and substances in Table I and Table II in the mails;
- c. Legislative measures to enable the use of appropriate means to secure evidence required for judicial proceedings.

## **Article 20**

### *Information to be furnished by the parties*

1. The Parties shall furnish, through the secretary-general, information to the Commission on the working of this Convention in their territories and, in particular:

- a. The text of laws and regulations promulgated in order to give effect to the Convention;
  - b. Particulars of cases of illicit traffic within their jurisdiction which they consider important because of new trends disclosed, the quantities involved, the sources from which the substances are obtained, or the methods employed by persons so engaged.
2. The Parties shall furnish such information in such a manner and by such dates as the Commission may request.

## **Article 21**

### *Functions of the Commission*

The Commission is authorized to consider all matters pertaining to the aims of this Convention and, in particular:

- a. The Commission shall, on the basis of the information submitted by the Parties in accordance with Article 20, review the operation of this Convention;
- b. The Commission may make suggestions and general recommendations based on the examination of the information received from the Parties;
- c. The Commission may call the attention of the Board to any matters which may be relevant to the functions of the Board;
- d. The Commission shall, on any matter referred to it by the Board under article 22, paragraph 1b, take such action as it deems appropriate;
- e. The Commission may, in conformity with the procedures laid down in article 12, amend Table I and Table II;
- f. The Commission may draw the attention of non-Parties to decisions and recommendations which it adopts under this Convention, with a view to their considering taking action in accordance therewith.

## **Article 22**

### *Function of the Board*

1. Without prejudice to the functions of the Commission under article 21, and without prejudice to the functions of the Board and the Commission under the 1961 Convention. The 1961 Convention as amended and the 1971 Convention:

a. If, on the basis of its examination of information available to it, to the secretary-general or to the Commission, or of information communicated by United Nations organs, the Board has reason to believe that the aims of this Convention in matters related to its competence are not being met, the Board may invite a Party or Parties to furnish any relevant information;

b. With respect to articles 12, 13 and 16:

I. After taking action under subparagraph a of this article, the Board, if satisfied that it is necessary to do so, may call upon the Party concerned to adopt such remedial measures as shall seem under the circumstances to be necessary for the execution of the provisions of articles 12, 13 and 16;

II. Prior to taking action under (iii) below, the Board shall treat as confidential its communications with the Party concerned under the preceding subparagraphs;

III. If the Board finds that the Party concerned has not taken remedial measures which it has been called upon to take under this subparagraph, it may call the attention of the Parties, the Council and the Commission to the matter. Any report published by the Board under this subparagraph shall also contain the views of the Party concerned if the latter so requests.

2. Any Party shall be invited to be represented at a meeting of the Board at which a question of direct interest to it is to be considered under this article.

3. If in any case a decision of the Board which is adopted under this article is not unanimous, the views of the minority shall be stated.

4. Decisions of the Board under this article shall be taken by a two-thirds majority of the whole number of the Board.

5. In carrying out its functions pursuant to subparagraph 1a of this article, the Board shall ensure the confidentiality of all information which may come into its possession.

6. The Board's responsibility under this article shall not apply to the implementation of treaties or agreements entered into between Parties in accordance with the provisions of this Convention.

7. The provisions of this article shall not be applicable to disputes between Parties falling under the provisions of article 32.

### **Article 23**

#### **Reports of the Board**

1. The Board shall prepare an annual report on its work containing an analysis of the information at its disposal and, in appropriate cases, an account of the explanations, if any, given by or required of Parties, together with any observations and recommendations which the Board desires to make. The Board may make such additional reports as it considers necessary. The reports shall be submitted to the Council through the Commission which may make such comments as it sees fit.

2. The reports of the Board shall be communicated to the Parties and subsequently published by the secretary-general. The Parties shall permit their unrestricted distribution.

### **Article 24**

#### **Application of stricter measures than those required by this Convention**

A Party may adopt more strict or severe measures than those provided by this Convention if, in its opinion, such measures are desirable or necessary for the prevention or suppression of illicit traffic.

### **Article 25**

#### **Non-derogation from earlier treaty rights and obligations**

The provisions of this Convention shall not derogate from any rights enjoyed or obligations undertaken by Parties to this Convention under the 1961 Convention, the 1961 Convention as amended and the 1971 Convention.

### **Article 26**

#### **Signature**

This Convention shall be open for signature at the United Nations Office at Vienna, from 20 December 1988 to February 1989, and thereafter at the Headquarters of the United Nations at New York, until 20 December 1989, by:

- a. All States;
- b. Namibia, represented by the United Nations Council for Namibia;
- c. Regional economic integration organizations which have competence in respect of the negotiation, conclusion and application of inter-national agreements in matters covered by this Convention, references under the Convention to Parties, States or national services being applicable to these organizations within the limits of their competence.

### **Article 27**

#### **Ratification, acceptance, approval or act of formal confirmation**

1. This Convention is subject to ratification, acceptance or approval by States and by Namibia, represented by the United Nations Council for Namibia, and to acts of formal confirmation by regional economic integration organizations referred to in article 26, subparagraph c. The instruments of ratification, acceptance or approval and those relating to acts of formal confirmation shall be deposited with the secretary-general.

2. In their instruments of formal confirmation, regional economic integration organizations shall declare the extent of their competence with respect to the matters governed by this Convention.

These organizations shall also inform the secretary-general of any modification in the extent of their competence with respect to the matters governed by the Convention.

## **Article 28**

### **Accession**

1. This Convention shall remain open for accession by any State, by Namibia, represented by the United Nations Council for Namibia, and by regional economic integration organizations referred to in article 26, subparagraph c. Accession shall be effected by the deposit of an instrument of accession with the secretary-general.

2. In their instruments of accession, regional economic integration organizations shall declare the extent of their competence with respect to the matters governed by this Convention. These organizations shall also inform the secretary-general of any modification in the extent of their competence with respect to the matters governed by the Convention.

## **Article 29**

### **Entry into force**

1. This Convention shall enter into force on the ninetieth day after the date of the deposit with the secretary-general of the twentieth instrument of ratification, acceptance, approval or accession by States or by Namibia, represented by the Council for Namibia.

2. For each State or for Namibia, represented by the Council for Namibia, ratifying, accepting, approving or acceding to this Convention after the deposit of the twentieth instrument of ratification, acceptance, approval or accession, the Convention shall enter into force on the ninetieth day after the date of the deposit of its instrument of ratification, acceptance, approval or accession.

3. For each regional economic integration organization referred to in article 26, subparagraph c depositing an instrument relating to an act of formal confirmation or an instrument of accession, this Convention shall enter into force on the ninetieth day after such deposit, or at the date the Convention enters into force pursuant to paragraph 1 of this article, whichever is later.

## **Article 30**

### **Denunciation**

1. A party may denounce this Convention at any time by a written notification addressed to the Secretary-general.

2. Such denunciation shall take effect for the Party concerned one year after the date of receipt of the notification by the Secretary-general.

## **Article 31**

### **Amendments**

1. Any Party may propose an amendment to this Convention. The text of any such amendment and the reasons therefor shall be communicated by that Party to the secretary-general, who shall communicate it to the other Parties and shall ask them whether they accept the proposed amendment. If a proposed amendment so circulated has not been rejected by any Party within twenty-four months after it has been circulated, it shall be deemed to have been accepted and shall enter into force in respect of a Party ninety days after that Party had deposited with the secretary-general an instrument expressing its consent to be bound by that amendment.

2. If a proposed amendment has been rejected by any Party, the secretary-general shall consult with the Parties and, if a majority so requests, he shall bring the matter, together with any comments made by the Parties, before the Council which may decide to call a conference in accordance with Article 62, paragraph 4, of the Charter of the United Nations. Any amendment resulting from such a Conference shall be embodied in a Protocol of Amendment. Consent to be bound by such a Protocol shall be required to be expressed specifically to the secretary-general.

## **Article 32**

### **Settlement of disputes**

1. If there should arise between two or more Parties a dispute relating to the interpretation or application of this Convention, the Parties shall consult together with a view to the settlement of the dispute by negotiation, inquiry, mediation, conciliation, arbitration, recourse to regional bodies, judicial process or other peaceful means of their own choice.

2. Any such dispute which cannot be settled in the manner prescribed in paragraph 1 of this article shall be referred, at the request of any one of the States Parties to the dispute, to the International Court of Justice for decision.

3. If a regional economic integration organization referred to in article 26, subparagraph c is a Party to a dispute which cannot be settled in the manner prescribed in paragraph 1 of this article, it may, through a State Member of the United Nations, request the Council to request an advisory opinion of the

International Court of Justice in accordance with article 65 of the Statute of the Court, which opinion shall be regarded as decisive.

4. Each State, at the time of signature or ratification, acceptance or approval of this Convention or accession thereto, or each regional economic integration organization, at the time of signature or deposit of an act of formal confirmation or accession, may declare that it does not consider itself bound by paragraphs 2 and 3 of this article. The other Parties shall not be bound by paragraphs 2 and 3 with respect to any Party having made such a declaration.

5. Any Party having made a declaration in accordance with paragraph 4 of this article may at any time withdraw the declaration by notification to the secretary-general.

### **Article 33**

#### Authentic texts

The Arabic, Chinese, English, French, Russian and Spanish texts of this Convention are equally authentic.

### **Article 34**

#### Depositary

The secretary-general shall be the depositary of this Convention.

In witness whereof the undersigned, being duly authorized thereto, have signed this Convention.

Done at Vienna, in one original, this twentieth day of December one thousand nine hundred and eighty-eight.

Afghanistan .20 December 1988  
Algeria ....20 December 1988  
Argentina...20 December 1988  
Bahamas.....20 December 1988  
Bolivia\*1) ...20 December 1988  
Brazil\*2)...20 December 1988  
Canada .....20 December 1988  
Chili .....20 December 1988  
China\*3)....20 December 1988  
Colombia\*4)...20 December 1988  
Cyprus\*5) ....20 December 1988  
Denmark...20 December 1988  
Egypt .....20 December 1988  
Philippines, 20 December 1988  
Ghana ....20 December 1988  
Guatemala 20 December 1988  
Honduras 20 December 1988  
Iran\*6) ...20 December 1988  
Israel ...20 December 1988  
Italia ...20 December 1988  
Ivory Coast 20 December 1988  
Yemen (Noord-)\*7).... 20 December 1988  
Yugoslavia 20 December 1988  
Jordania .20 December 1988  
Malaysia .20 December 1988  
Mauritania 20 December 1988  
Mauritius 20 December 1988  
Nicaragua 20 December 1988  
Norway 20 December 1988  
Panama ...20 December 1988  
Paraguay .20 December 1988  
Peru\*8) ...20 December 1988  
Senegal...20 December 1988  
Spain ...20 December 1988  
Suriname .20 December 1988  
Tanzania\*9) 20 December 1988  
Turkey...20 December 1988  
Vatican state.....20 December 1988  
Venezuela 20 December 1988



United States of America 20 December 1988  
United Kingdom 20 December 1988  
Zaire 20 December 1988  
Sweden 20 December 1988  
Morocco 28 December 1988  
The Netherlands 18 January 1989  
Germany 19 January 1989  
Soviet Union 19 January 1989  
Sudan 30 January 1989  
Finland 8 February 1989  
Zambia 9 February 1989  
France 13 February 1989  
Australia 14 February 1989  
Mexico 16 February 1989  
Greece 23 February 1989  
Monaco 24 February 1989  
Cameroon 27 februari.1989  
Belrussia 27 februari.1989  
Nigeria I maart 1989  
Poland 6 maart 1989  
Ukraine 16 maart 1989  
Indonesia 27 maart 1989  
Cuba 7 April 1989  
Bangladesh 14 April 1989  
Costa Rica 25 April 1989

1) „The Republic of Bolivia places on record its express reservation to article 3, paragraph 2, and declares the inapplicability to Bolivia of those provisions of that paragraph which could be interpreted as establishing as a criminal offence the use, consumption, possession, purchase or cultivation of the coca leaf for personal consumption .

For Bolivia such an interpretation of that paragraph is contrary to principles of its Constitution and basic concepts of its legal system which embody respect for the culture, legitimate practices, values and attributes of the nationalities making up Bolivia's population.

Bolivia's legal system recognizes the ancestral nature of the licit use of the coca leaf which, for much of Bolivia's population, dates back over centuries. In formulating this reservation, Bolivia considers that:

The coca leaf is not, in and of itself, a narcotic drug or psychotropic substance

The use and consumption of the coca leaf do not cause psychological or physical changes greater than those resulting from the consumption of other plants and products which are in free and universal use  
The coca leaf is widely used for medicinal purposes in the practice of traditional medicine, the validity of which is upheld by WHO and confirmed by scientific findings

The coca leaf can be used for industrial purposes

The coca leaf is widely used and consumed in Bolivia, with the result that, if such an interpretation of the above-mentioned paragraph was accepted, a large part of Bolivia's population could be considered criminals and punished as such; such an interpretation is therefore inapplicable;

It must be placed on record that the coca leaf is transformed into cocaine paste, sulphate and hydrochlorate when it is subjected to chemical processes which involve the use of precursors, equipment and materials which are neither manufactured in or originate in Bolivia

At the same time, the Republic of Bolivia will continue to take all necessary legal measures to control the illicit cultivation of coca for the production of narcotic drugs, as well as the illicit consumption, use and purchase of narcotic drugs and psychotropic substances”

2) a. the signature of the Convention is made subject to the process of ratification established by the Brazilian Constitution;

b It is the understanding of the Brazilian Government that paragraph 11 of article 17 does not prevent a coastal State from requiring prior authorization for any action under this article by other States in its Exclusive economic zone

3), Under the Article 32, paragraph 4; China does not consider itself bound by Paragraphs 2 and 3 of that Article

4) „Columbia formulates a reservation to article 9, paragraph 1, of the Convention, specifically subparagraphs b, c, d and e thereof, since its legislation does not permit outside co-operation with the judiciary in investigating offences nor the establishment of joint teams with other countries to that end Likewise inasmuch as samples of the substances that have given rise to investigations belong to the proceedings, only the judge, as in the earlier cases, can take decisions in that regard "

5) „[Signature is effected] subject to ratification, at the time of which reservations in respect of specific provisions of the Convention may be made and deposited in the prescribed manner [It is understood that such reservations, if any, cannot be incompatible with the object and purpose of this Convention "

6) „The Government of the Islamic Republic of Iran wishes to express reservation to article 6, paragraph 3 of the Convention, since this provision is incompatible with our domestic law.



## APPENDIX H

### CONVENTION FOR THE SUPPRESSION OF THE TRAFFIC IN PERSONS AND OF THE EXPLOITATION OF THE PROSTITUTION OF OTHERS (LAKE SUCCESS, NEW YORK, 21 MARCH 1950)

#### **Preamble**

Whereas prostitution and the accompanying evil of the traffic in persons for the purpose of prostitution are incompatible with the dignity and worth of the human person and endanger the welfare of the individual, the family and the community, Whereas, with respect to the suppression of the traffic in women and children, the following international instruments are in force:

(1) International Agreement of 18 May 1904 for the Suppression of the White Slave Traffic, as amended by the Protocol approved by the General Assembly of the United Nations on 3 December 1948,

(2) International Convention of 4 May 1910 for the Suppression of the White Slave Traffic, as amended by the above-mentioned Protocol,

(3) International Convention of 30 September 1921 for the Suppression of the Traffic in Women and Children, as amended by the Protocol approved by the General Assembly of the United Nations on 20 October 1947,

(4) International Convention of 11 October 1933 for the Suppression of the Traffic in Women of Full Age, as amended by the aforesaid Protocol,

Whereas the League of Nations in 1937 prepared a draft Convention extending the scope of the above-mentioned instruments, and

Whereas developments since 1937 make feasible the conclusion of a convention consolidating the above-mentioned instruments and embodying the substance of the 1937 draft Convention as well as desirable alterations therein:

Now therefore

The Contracting parties

Hereby agree as hereinafter provided:

#### **Article 1**

The Parties to the present Convention agree to punish any person who, to gratify the passions of another:

(1) Procures, entices or leads away, for purposes of prostitution, another person, even with the consent of that person;

(2) Exploits the prostitution of another person, even with the consent of that person.

#### **Article 2**

The Parties to the present Convention further agree to punish any person who:

(1) Keeps or manages, or knowingly finances or takes part in the financing of a brothel;

(2) Knowingly lets or rents a building or other place or any part thereof for the purpose of the prostitution of others.

#### **Article 3**

To the extent permitted by domestic law, attempts to commit any of the offences referred to in articles 1 and 2, and acts preparatory to the commission thereof, shall also be punished.

#### **Article 4**

To the extent permitted by domestic law, intentional participation in the acts referred to in articles 1 and 2 above shall also be punishable. To the extent permitted by domestic law, acts of participation shall be treated as separate offences whenever this is necessary to prevent impunity.

#### **Article 5**

In cases where injured persons are entitled under domestic law to be parties to proceedings in respect of any of the offences referred to in the present Convention, aliens shall be so entitled upon the same terms as nationals.

#### **Article 6**

Each Party to the present Convention agrees to take all the necessary measures to repeal or abolish any existing law, regulation or administrative provision by virtue of which persons who engage in or are

suspected of engaging in prostitution are subject either to special registration or to the possession of a special document or to any exceptional requirements for supervision or notification.

#### **Article 7**

Previous convictions pronounced in foreign States for offences referred to in the present Convention shall, to the extent permitted by domestic law, be taken into account for the purposes of:

- (1) Establishing recidivism;
- (2) Disqualifying the offender from the exercise of civil rights.

#### **Article 8**

The offences referred to in articles 1 and 2 of the present Convention shall be regarded as extraditable offences in any extradition treaty which has been or may hereafter be concluded between any of the Parties to this Convention.

The Parties to the present Convention which do not make extradition conditional on the existence of a treaty shall henceforward recognize the offences referred to in articles 1 and 2 of the present Convention as cases for extradition between themselves.

Extradition shall be granted in accordance with the law of the State to which the request is made.

#### **Article 9**

In States where the extradition of nationals is not permitted by law, nationals who have returned to their own State after the commission abroad of any of the offences referred to in articles 1 and 2 of the present Convention shall be prosecuted in and punished by the courts of their own State.

This provision shall not apply if, in a similar case between the Parties to the present Convention, the extradition of an alien cannot be granted.

#### **Article 10**

The provisions of article 9 shall not apply when the person charged with the offence has been tried in a foreign State and, if convicted, has served his sentence or had it remitted or reduced in conformity with the laws of that foreign State.

#### **Article 11**

Nothing in the present Convention shall be interpreted as determining the attitude of a Party towards the general question of the limits of criminal jurisdiction under international law.

#### **Article 12**

The present Convention does not affect the principle that the offences to which it refers shall in each State be defined, prosecuted and punished in conformity with its domestic law.

#### **Article 13**

The Parties to the present Convention shall be bound to execute letters of request relating to offences referred to in the Convention in accordance with their domestic law and practice. The transmission of letters of request shall be effected:

- (1) By direct communication between the judicial authorities; or
- (2) By direct communication between the Ministers of Justice of the two States, or by direct communication from another competent authority of the State making the request to the Minister of Justice of the State to which the request is made; or
- (3) Through the diplomatic or consular representative of the State making the request in the State to which the request is made; this representative shall send the letters of request direct to the competent judicial authority or to the authority indicated by the Government of the State to which the request is made, and shall receive direct from such authority the papers constituting the execution of the letters of request.

In cases 1 and 3 a copy of the letters of request shall always be sent to the superior authority of the State to which application is made. Unless otherwise agreed, the letters of request shall be drawn up in the language of the authority making the request, provided always that the State to which the request is made may require a translation in its own language, certified correct by the authority making the request.

Each Party to the present Convention shall notify to each of the other Parties to the Convention the method or methods of transmission mentioned above which it will recognize for the letters of request of the latter State. Until such notification is made by a State, its existing procedure in regard to letters of request shall remain in force.

Execution of letters of request shall not give rise to a claim for reimbursement of charges or expenses of any nature whatever other than expenses of experts.

Nothing in the present article shall be construed as an undertaking on the part of the Parties to the present Convention to adopt in criminal matters any form or methods of proof contrary to their own domestic laws.

#### **Article 14**

Each Party to the present Convention shall establish or maintain a service charged with the co-ordination and centralization of the results of the investigation of offences referred to in the present Convention. Such services should compile all information calculated to facilitate the prevention and punishment of the offences referred to in the present Convention and should be in close contact with the corresponding services in other States.

#### **Article 15**

To the extent permitted by domestic law and to the extent to which the authorities responsible for the services referred to in article 14 may judge desirable, they shall furnish to the authorities responsible for the corresponding services in other States the following information:

(1) Particulars of any offence referred to in the present Convention or any attempt to commit such offence;

(2) Particulars of any search for any prosecution, arrest, conviction, refusal of admission or expulsion of persons guilty of any of the offences referred to in the present Convention, the movements of such persons and any other useful information with regard to them.

The information so furnished shall include descriptions of the offenders, their fingerprints, photographs, methods of operation, police records and records of conviction.

#### **Article 16**

The Parties to the present Convention agree to take or to encourage, through their public and private educational, health, social, economic and other related services, measures for the prevention of prostitution and for the rehabilitation and social adjustment of the victims of prostitution and of the offences referred to in the present Convention.

#### **Article 17**

The Parties to the present Convention undertake, in connection with immigration and emigration, to adopt or maintain such measures as are required, in terms of their obligations under the present Convention, to check the traffic in persons of either sex for the purpose of prostitution. In particular they undertake:

(1) To make such regulations as are necessary for the protection of immigrants or emigrants, and in particular, women and children, both at the place of arrival and departure and while en route;

(2) To arrange for appropriate publicity warning the public of the dangers of the aforesaid traffic;

(3) To take appropriate measures to ensure supervision of railway stations, airports, seaports and en route, and of other public places, in order to prevent international traffic in persons for the purpose of prostitution;

(4) To take appropriate measures in order that the appropriate authorities be informed of the arrival of persons who appear, prima facie, to be the principals and accomplices in or victims of such traffic.

#### **Article 18**

The Parties to the present Convention undertake, in accordance with the conditions laid down by domestic law, to have declarations taken from aliens who are prostitutes, in order to establish their identity and civil status and to discover who has caused them to leave their State. The information obtained shall be communicated to the authorities of the State of origin of the said persons with a view to their eventual repatriation.

#### **Article 19**

The Parties to the present Convention undertake, in accordance with the conditions laid down by domestic law and without prejudice to prosecution or other action for violations thereunder and so far as possible:

(1) Pending the completion of arrangements for the repatriation of destitute victims of international traffic in persons for the purpose of prostitution, to make suitable provisions for their temporary care and maintenance;

(2) To repatriate persons referred to in article 18 who desire to be repatriated or who may be claimed by persons exercising authority over them or whose expulsion is ordered in conformity with the law. Repatriation shall take place only after agreement is reached with the State of destination as to identity and nationality as well as to the place and date of arrival at frontiers. Each Party to the present Convention shall facilitate the passage of such persons through its territory.

Where the persons referred to in the preceding paragraph cannot themselves repay the cost of repatriation and have neither spouse, relatives nor guardian to pay for them, the cost of repatriation as far as the nearest frontier or port of embarkation or airport in the direction of the State of origin shall be borne by the State where they are in residence, and the cost of the remainder of the journey shall be borne by the State of origin.

#### **Article 20**

The Parties to the present Convention shall, if they have not already done so, take the necessary measures for the supervision of employment agencies in order to prevent persons seeking employment, in particular women and children, from being exposed to the danger of prostitution.

#### **Article 21**

The Parties to the present Convention shall communicate to the Secretary-General of the United Nations such laws and regulations as have already been promulgated in their States, and thereafter annually such laws and regulations as may be promulgated, relating to the subjects of the present Convention, as well as all measures taken by them concerning the application of the Convention. The information received shall be published periodically by the Secretary-General and sent to all Members of the United Nations and to non-member States to which the present Convention is officially communicated in accordance with article 23.

#### **Article 22**

*If any dispute shall arise between the Parties to the present Convention relating to its interpretation or application and if such dispute cannot be settled by other means, the dispute shall, at the request of any one of the Parties to the dispute, be referred to the International Court of Justice.*

#### **Article 23**

The present Convention shall be open for signature on behalf of any Member of the United Nations and also on behalf of any other State to which an invitation has been addressed by the Economic and Social Council.

The present Convention shall be ratified and the instruments of ratification shall be deposited with the Secretary-General of the United Nations.

The States mentioned in the first paragraph which have not signed the Convention may accede to it.

Accession shall be effected by deposit of an instrument of accession with the Secretary-General of the United Nations.

For the purposes of the present Convention the word "State" shall include all the colonies and Trust Territories of a State signatory or acceding to the Convention and all territories for which such State is internationally responsible.

#### **Article 24**

The present Convention shall come into force on the ninetieth day following the date of deposit of the second instrument of ratification or accession. For each State ratifying or acceding to the Convention after the deposit of the second instrument of ratification or accession, the Convention shall enter into force ninety days after the deposit by such State of its instrument of ratification or accession.

#### **Article 25**

After the expiration of five years from the entry into force of the present Convention, any Party to the Convention may denounce it by a written notification addressed to the Secretary-General of the United Nations. Such denunciation shall take effect for the Party making it one year from the date upon which it is received by the Secretary-General of the United Nations.

#### **Article 26**

The Secretary-General of the United Nations shall inform all Members of the United Nations and non-member States referred to in article 23:

- (a) Of signatures, ratifications and accessions received in accordance with article 23;
- (b) Of the date on which the present Convention will come into force in accordance with article 24;

(c) Of denunciations received in accordance with article 25.

**Article 27**

Each Party to the present Convention undertakes to adopt, in accordance with its Constitution, the legislative or other measures necessary to ensure the application of the Convention.

**Article 28**

The provisions of the present Convention shall supersede in the relations between the Parties thereto the provisions of the international instruments referred to in subparagraphs 1, 2, 3 and 4 of the second paragraph of the Preamble, each of which shall be deemed to be terminated when all the Parties thereto shall have become Parties to the present Convention.

IN FAITH WHEREOF the undersigned, being duly authorized thereto by their respective Governments, have signed the present Convention, opened for signature at Lake Success, New York, on the twenty-first day of March, one thousand nine hundred and fifty, a certified true copy of which shall be transmitted by the Secretary-General to all the Members of the United Nations and to the non-member States referred to in article 23.

**FINAL PROTOCOL**

Nothing in the present Convention shall be deemed to prejudice any legislation which ensures, for the enforcement of the provisions for securing the suppression of the traffic in persons and of the exploitation of others for purposes of prostitution, stricter conditions than those provided by the present Convention.

The provisions of articles 23 to 26 inclusive of the Convention shall apply to the present Protocol.



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