Protecting the Rule of Law from Assault in the War Against Drugs and Narco-Terrorism

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Abstract

This paper discusses the rule of law under attack in the context of international narcotics trafficking and narco-terrorism.

KEYWORDS: terrorism, drugs, war
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I. INTRODUCTION

This paper discusses the rule of law under attack in the context of international narcotics trafficking and narco-terrorism. To set the stage, the paper discusses the role of law, both internationally and nationally, in the fight against narcotics trafficking, and particularly, organized crime and narco-terrorism. Organized crime is used as the focus of the

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paper because narco-terrorists are extremely organized and powerful. Increasingly, the battle against international narcotics trafficking and narco-terrorism is a power struggle.¹ So powerful, wealthy, and intent on maintaining their position are the drug barons that they now have an inordinate amount of influence and power over many of the highest echelons of government in certain countries.

For discussion purposes, international law as a target of organized crime and narco-terrorism is treated. Surprisingly, many professionals and lay persons that follow narcotics policy are not even aware of the existence of a comprehensive policy of an international organization. Rather, they only know excerpts from the narcotics policy of the country in which they live. For instance, most professionals in the U.S. believe that international narcotics policy comes from the pronouncements of the U.S. Government, as set forth by President Bush or the Drug Czar. However, the international drug policy set by the United Nations is the international policy within which national governments must adopt and fund their own policy so that the international policy can become operational and effective. Failure to coordinate national policy with the international policy and failure to fund international drug policy weakens the rule of law.

The importance of national law in combatting narcotics trafficking and organized crime as manifested in narco-terrorism can be seen almost on a daily basis. Especially in the United States, attention is riveted on the need to adopt our country’s laws and on the assaults that other countries’ judicial systems operate (e.g., the constant terrorism of the judicial system in Colombia).

In order to discuss the rule of law as a target and how to safeguard it requires an overview of the growing internationalization.

A. Organized Crime

The paper discusses in part the growing internationalization of organized crime activity: its impact on different aspects of society and international relations, and indicates possible avenues of action to counter this development, including modalities of international cooperation and instruments therefore.

The term “organized crime” refers to complex criminal activities,

¹. This paper is based in part on an assignment of the author for the United Nations on international cooperation to counter the growing internationalization of organized crime activities.
carried out on a large scale by organizations with the intent to establish, maintain and exploit markets for illegal goods and services, for the sake of profit and enrichment of their members, and at the expense of society. Such activities generally occur outside the law and often involve crimes against persons, such as threats, intimidation, and physical violence, including murder and mutilation. While organized crime has not been precisely defined, some of its elements are clear. It is conspiratorial crime aimed at economic gain using a hierarchical coordination of a number of persons planning and executing illegal acts or pursuing legitimate objectives by unlawful means or through the use of funds derived from illicit activities. A main characteristic of organized crime is the hierarchical structure of closely knit groups. The tight organization and the method of keeping it intact characterizes many of the organized crime groups. Organized crime has moved from classical forms of illegal activities such as gambling, narcotics, and prostitution into business crimes such as planned bankruptcies, fraud, and loan sharking. Many of the new internationalized forms of organized crime have not yet gone into business crimes and have concentrated on their own brands of crime. However, durability and the conspiratorial characteristics of organized groups provide common elements and an inevitable evolution into different \textit{modus operandi} if the groups are to successfully survive. A secondary, but extremely harmful effect of such activities on society is the corruption of public officials and political figures through bribes and graft or mere collusion. The characteristics of a criminal organization are: continuity in time, a hierarchical structure, a defined group of members, criminal involvement, recourse to violence, and the acquisition of power as the main goal.

2. In reviewing the types and characteristics of organized crime, one should consider the identification by the U.S. National Advisory Committee on Criminal Justice of seven descriptive characteristics:
   a. Organized crime is a conspiratorial crime, sometimes involving the hierarchical coordination of a number of persons in the planning and execution of illegal acts, or in the pursuit of a legitimate objective by unlawful means. Organized crime involves continuous commitment by key members, although some persons with specialized skills may participate only briefly in the ongoing conspiracies.
   b. Organized crime has economic gain as its primary goal, although some of the participants in the conspiracy may have the attainment of power or status as their objective.
   c. Organized crime is not limited to patently illegal enterprises or unlawful services such as gambling, prostitution, drugs, loan sharking, or racketeering. It also includes such sophisticated activities as laundering of illegal money through a legitimate business, land fraud, and computer manipulation.
Traditionally, organized crime has developed monopoly control and continues to derive resources from five areas of illicit activity: illegal gambling, illicit narcotics trafficking, racketeering, prostitution, and loan sharking. Legitimate businesses which were early targets of organized crime include the fields of juke-box and vending machine operation, laundry services, liquor and beer distribution, nightclubs, food wholesaling, record manufacturing, and the garment industry.3 A distinction between the traditional forms of organized crime and the illicit drug trafficking operations is the inter-linkage between modern organized crime and terrorist and guerilla movements. The methods of organized crime have been characterized by extortion that seeks as its targets persons who are poorly situated and unable to protect themselves. They typically are without ready access to the law, unable to avoid monitoring by organized criminals because their earnings and activities are regular or can be metered, and are “victims” whose regularly conducted activity can be treated “fairly” by extortionists who are dealing with other targets.

Although this paper addresses the problem of the internationalization of emerging criminal groups generally, and in particular the problem of narco-terrorism, the international community can successfully design mechanisms by directly pinpointing the nuances of each group.

d. Organized crime uses predatory tactics such as intimidation, violence, and corruption, and it appeals to greed to accomplish its objectives and safeguard its gains.

e. By experience, custom, and practice, organized crime's conspiratorial groups are usually very quick and effective in controlling and disciplining their members, associates, and victims. Hence, organized crime participants are unlikely to disassociate themselves from the conspiracies and are in the main incorrigible.

f. There is not one organized crime family or group. Rather, a variety of groups engaged in organized criminal activity.

g. Organized crime does not include terrorists dedicated to political change, although organized criminals and terrorists have some characteristics in common, including types of crime committed and strict organizational structures. Organized crime groups tend to be politically conservative, and want to maintain the status quo in which they succeed, contrary to terrorist groups dedicated to radical political change through violent acts. See U. S. National Advisory Committee on Criminal Justice and Goals, ORGANIZED CRIME REPORT OF THE TASK FORCE ON ORGANIZED CRIME 7-8 (1976).

3. Organized crime usually controls legitimate business concerns in four main ways: 1) investing concealed profits acquired from gambling and other illegal activities; 2) accepting business interests in payment of the owners debt from illicit activities such as gambling or narcotics; 3) foreclosing on usurious loans; and 4) using various forms of extortion. President's Commission on Law Enforcement and Administration of Justice, TASK FORCE REPORT: ORGANIZED CRIME 4 (1967).
Hence, in order to deal with drug trafficking by persons in Andean countries, the international community and even national governments have signed a specific multilateral convention as well as bilateral conventions on drug trafficking alone. Nevertheless, some criminal groups have several criminal activities that require attention by other than persons training in just in type of crime such narcotics and in particular narco-terrorism.

B. The Impact of International Narco-Terrorism

At the recent Eighth U.N. Congress on Crime Prevention, the complexity of dealing with organized crime and narco-terrorism was underscored. Many countries that lack essential institutional capabilities, financial resources, and skilled personnel are not capable of designing or implementing well-defined strategies for dealing with narco-terrorism. The lack of resources of many countries and the transnational nature of narco-terrorism requires effective international action.

Narco-terrorism is used to describe the role played by drug trafficking in international politics. In recent years, the power of narco-terrorism, their ability to manipulate sovereignty, and the comparative slowness with which governments adopt to change has enabled narco-terrorism to gain significant power both nationally and internationally. Narcotics, trafficking in narcotics, terrorism, international money movement, drug bartering for arms, arms trafficking, insurgent guerrilla movements, and covert activities by governments are all recognized mechanisms to destabilize governments. Narcotics and narcotics trafficking are considered by some to be an integral part of the symbiotic relationship between groups involved in transnational organized crime and persons seeking destabilization through the "invisible wars" of terrorism.

Narco-terrorism is a popular term employed by the media and pol-
iticians to convey images of conspiracies between narcotics traffickers and terrorist organizations. The term can be misleading because it applies to a wide range of relationships, situations, and groups. In terms of the rule of law, narcotics-trafficking groups employ terrorism as a means to intimidate governments and the judiciary, prosecutors, law enforcement officials, and the military. Terrorism enables them to avoid or substantially diminish the risk of apprehension, prosecution, and incarceration. The tactics of narco-terrorists in Colombia, for instance, have been well documented.

In some cases, narco-terrorists can be so intrusive that they assume the role of the state itself in trafficking drugs and in cooperating with drug-trafficking organizations. For instance, in the early 1980s under the Luis Garcia Meza government, Bolivia was taken over by a group of military officers who also dominated the drug trade. A similar situation is alleged to have occurred in Panama under the Administration of General Manual Noriega.

One aspect of the relationship between drug trafficking and the state has been the use of drugs and drug trafficking to foster and promote a state's policies and positions. For instance, a country uses transnational criminal groups, such as drug and arms traffickers, as links to terrorist and insurgent organizations. In the case of the U.S., a report by the U.S. Senate Foreign Relations Committee documented the arms-drugs trade in the support of the contra operations in Nicaragua.

Organized crime and narco-terrorism have infiltrated into the international financial system. A problem in combatting international terrorism has been defining terrorism. Many experts have suggested that rather than try to define terrorism, conventions should merely establish a list of specific acts that are criminalized and excluded from the list of political crimes. Many experts believe that, rather than preparing new conventions, the best approach is to revise and improve existing agreements through concluding additional protocols to close gaps and strengthen enforcement. The U.N. could take a leading role in monitoring implementation of existing treaties and obtaining informa-

7. Id. at 16.
8. SENATE PERMANENT SUBCOMMITTEE ON INVESTIGATIONS, COMMITTEE ON GOVERNMENT AFFAIRS, STAFF STATEMENT ON HEARING STRUCTURE OF INTERNATIONAL DRUG CARTELS (Sept. 12, 1989).
tion by the use of extensive surveys and questionnaires.

State terrorism has been an important phenomenon. It includes operations sponsored, organized, encouraged, directed or supported, either individually or collectively, materially or logistically, by a state or group of states for the purpose of intimidating another state, person, group or organization.

The relationship between terrorists and narcotics traffickers depends on a variety of the following: need, organizational infrastructure development, ability, worth or value, and the availability of modern technology.

As measures to combat international terrorism are strengthened, it is also important to ensure the right of the defendant to seek and obtain information that might contribute to his or her defense and to safeguard the fairness of the system.

C. Impact of Organized Crime Activities on Society and International Relations

The rapid internationalization of both organized crime and terrorist activities are threatening social and public institutions in many countries. Organized crime is infiltrating legitimate businesses. Its reach has extended into the international financial system and its association with economic and white-collar crime has become increasingly more evident. Its diversification and expansion, its new forms of association with highly profitable operations and inter-linkages with the illegal arms trade, illicit drug trafficking, terrorist activities, corruption, and professional sports are seriously undermining legitimate business activity and society in general.

The activities of organized crime and narco-terrorists are far more destructive in developing countries, which are often highly vulnerable to the operations of criminal organizations. Organized crime has deeply infiltrated the agencies of public administration and political structures in a number of developing countries, where it bribes government officials at all levels, including the armed forces, and contributes to the

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11. See supra note 4.
electoral campaigns of political parties, thereby undermining the fabric of society, generating widespread demoralization and having a pervasive effect through all levels of society.\footnote{12}

Widespread corruption constitutes, moreover, a serious impediment to effective international cooperation by the countries concerned. In some cases, the officials in charge of implementing such cooperation were on the payroll of organized crime. In addition, money laundering and other financial operations carried out by organized crime in developing countries are a source of grave financial problems in those countries. Organized crime in those countries brings a new entrepreneur class, the financial power of which is often used in a manner contrary to national interests. Organized crime, therefore, has a devastating effect in all countries, and tends to spill over national borders in a most insidious manner.

The role of some new forms of international organized crime have assumed new importance, emphasis, and perspective, in part due to their own nature, and in part due to technological changes. Drug trafficking, terrorism, transnational money laundering, drug bartering for arms, arms trafficking, insurgent guerilla movements, and cover activities by governments have destabilized national governments and their regimes. Drug trafficking is now an integral part of the symbiotic relationship between groups involved in transnational organized crime and revolutionary ideological groups seeking to overthrow or destabilize governments.\footnote{13}

Despite writings of pundits on “narco-terrorism,” suggesting simplistic alliances between narcotics traffickers and ideological criminals/terrorists, scholars and law enforcement, intelligence demonstrate that a wide range of relationships, situations, and groups occur.\footnote{14} Indeed, collaboration between drug traffickers and insurgent guerilla groups has occurred in countries, such as Colombia, Burma, Lebanon, and Sri Lanka. Revolutionary insurgent groups on some occasions have exploited and extorted drug trafficking organizations. More recently, narcotics-trafficking organizations have employed terror to intimidate governments and their judiciary, police, and military, in order to prevent their members from apprehension, prosecution and incarceration.\footnote{15}

Another new phenomenon arising out of narco-terrorism is the in-

\footnote{12}{Id. at 7.}
\footnote{13}{Lupsha, supra note 5, at 22.}
\footnote{14}{Id. at 16.}
\footnote{15}{Id. at 16-17.}
volvement of the state itself in trafficking drugs and in cooperating with
drug-trafficking organizations. A national government whose top offi-
cials control the drug trade and trafficking is indeed a pernicious force
since it has de jure legitimacy and the right to use force.

Another facet of the relationship between drug trafficking and the
state has been the use of drug trafficking and the profits therefrom to
promote a state’s policies and activities. This use can be traced to the
activities of the British East India Company in China. More recently,
nation-states have used transnational criminal groups, such as arms
and drug traffickers, as links to terrorist and insurgent organizations. A
variant of this practice is the use of drug trafficking and its profits to
provide funds either directly, covertly or indirectly to other states that
act as surrogates for other persons in the power struggle. Another vari-
atation is the use of connections between drug traffickers and representa-
tives of nation-states to hide and protect private criminal activities.

The ubiquity of and enormous amounts of profits from drug traf-
ficking enable persons to use illicit drugs as a type of currency that can
be traded for money or for other commodities such as arms or jewels.
In recent times, technological innovations have enabled individuals to
garner types of property which used to be the sole province of govern-
ments: airplanes, radios, satellite communications, electronic fund
transfers, and automatic weapons, rockets, grenades, and other military
hardware. These developments have facilitated easy participation for
individuals and groups to engage in transnational criminal activities. ¹⁶

Today, international organized crime groups—money launderers,
arms traffickers, ex-intelligence operatives, crime brokers, drug traffick-
ers, international fraudsters, and other intermediaries who can set up
and coordinate international criminal operations are in demand. Many
examples quickly come to mind of symbiotic ties between organized
criminal groups and the agents and agencies of legitimate governments.
The linkages among the diverse organized criminal groups, including
between narcotics traffickers, vary with the following: need, organiza-
tion infrastructure development ability, worth or value, and the availa-
bility of modern technology. One of the key components linking dispa-
rate groups is the need for funding. For instance, revolutionary groups
utilize both traditional and nontraditional means. Traditional crimes to
obtain financing have included bank robbery, kidnapping for ransom,
and extorting a “revolutionary tax” on persons within the areas con-

¹⁶. Id. at 18.
trolled by the revolutionaries. Drug and arms trafficking, and money laundering represent new forms. In many countries drug traffickers have developed enormous amounts of capital and modern organizational structures. To some insurgent revolutionary groups, drug traffickers offer the potential opportunity for funds and access to technology. Due to the similarity of their needs, organizational skills, and infrastructures, drug traffickers in some areas of the world have cooperated. When drug traffickers and insurgent or terrorist groups find enough similarities and opportunities, they will cooperate. However, significant difficulties nevertheless exist between them. For instance, while drug traffickers are politically conservative, insurgent revolutionaries are propelled by a Marxist-Leninist ideology or its variants. In order to properly chart the latest developments in the links among cooperating groups of organized crime, especially the international elements, including those only marginally involved (e.g., professionals providing services on a regular basis), law enforcement officials should share intelligence and take collective action against such groups where appropriate.

II. THE RULE OF LAW UNDER ATTACK

A. International Law

International law is under attack in the fight against narcotics trafficking and organized crime because international law has not been as flexible and as dynamic as either the organized criminals or the narco-terrorists. International law develops new mechanisms only over time. Normally it takes two to four years to negotiate, conclude, ratify, and exchange instruments of ratification, even in the case of a bilateral treaty. Multilateral treaties, such as the U.N. Convention on Narcotic Drugs and Psychotropic Substances, take much more time. Organized criminals and narco-terrorists are not as limited by political boundaries, borders, sovereignty, double criminality or resource problems, and can quickly change their routes, couriers, and modes of operation.

The absence of effective cooperation in extradition and mutual assistance in the fight against organized crime and narco-terrorists results in circumvention of international law. The taking of short-cuts in order to accomplish a country’s goals in catching and prosecuting suspects has resulted in the abandonment of extradition of defendants and the
seizure of defendants. Examples are Yunis, Caro Quintero, Verdugo-Urquidez, and Manuel Antonio Noriega. The Noriega case was especially egregious because of the use of masses of troops and wholesale violence that killed hundreds of innocent civilians, wiped out neighborhoods, and destroyed thousands of businesses.

The rule of law and particularly international law is a target because some governments do not follow international law and policy. For instance, the U.N. Comprehensive Multidisciplinary Outline of Future Activities in Drug Abuse Control sets forth four major areas of work:

1. Prevention and Reduction of the Illicit Demand for Narcotic Drugs and Psychotropic Substances;
2. Control of Supply;
3. Suppression of Illicit Trafficking; and
4. Treatment and Rehabilitation.

One problem has been that some governments do not pay proper attention or devote resources to each of the four categories. Some governments, for instance, emphasize control of supply and suppression of illicit trafficking to the expenses of demand prevention, treatment and rehabilitation.

Another problem is that governments do not provide the resources to the international organizations charged with making and carrying out anti-narcotics activities. For instance, the U.S. has fallen seriously in arrears with its obligations to both the U.N. and the O.A.S. In recent years, the U.S. contribution to international organizations in anti-narcotics activities has increased and its cooperation generally with

intergovernmental organizations has also improved.

B. National Law

National law has been under attack by narco-terrorists and organized crime. By intimidating and killing judges, prosecutors, police, and the media, narco-terrorists and organized criminals ensure that the rule of law and a democracy cannot function properly. Similarly, by financing the campaigns of national and local politicians and by running for office themselves, narco-terrorists and organized criminals also influence and control law-making and electoral processes. Indeed, the distribution of money, jobs, and other forms of wealth of largesse by narco-terrorists and organized crime provide the donors with an inordinate amount of political power. The use of violence against politicians complements the use of influence by narco-terrorists and organized criminals.

So infiltrated with corrupt officials are the police, military, and virtually all aspects of law enforcement in some countries that most investigations and prosecutions become impossible to successfully design or execute.

An important development is that the small-time amateur operations of fifteen years ago have developed into sophisticated illegal conglomerates that routinely terrorize their adversaries, whether they are rival terrorist groups, political, or law enforcement figures. The powerful activities of the narco-terrorists and organized criminals require a strategy with intelligence to identify the groups, determine weak links in their operations, and to design and successfully implement a strategy to break them up.23

III. MECHANISMS TO COUNTER ORGANIZED CRIME DEVELOPMENTS

To effectively design international modalities to combat new forms of organized criminals operating internationally requires an indepth use of multidisciplinary approaches. In particular, international organizational science (theory), public international law, and criminal law should be applied to various organized groups since international orga-

23. For a discussion of organized crime and international narcotics trafficking, see the written statement of the Permanent Subcommittee on Investigations, "Structure of International Drug Cartels" (Sept. 12, 1989).
nizational theory and international criminal law are relatively new sciences and neither nation-states nor academicians have devoted intensive research to the interaction of these disciplines. Many of the mechanisms to counter organized crime can also be used against narco-terrorists.

A. Establishment of a Regime for International Criminal Law

Some global interactions are initiated and sustained entirely, or almost entirely, by nation-states. Other interactions, such as the ones initiated by organized criminal groups (i.e., narcotics transactions, laundering criminal proceeds, traffic in guns), involve private persons. One of the prerequisites to successfully combat organized criminals is to view the law enforcement community as an actor in a world politics paradigm and to contrast it with the state-centric paradigm in which only nation-states have significant practical roles. If they are to succeed in the battle against organized crime, nation-states and countries confronting problems of emerging new criminal groups must become more sensitive to a world politics paradigm in which organizations other than the nation-states are accorded power. A successful effort will entail a more innovative use of existing and new bilateral and multilateral legal mechanisms, as well as more uniformity in national actions, so that law enforcement officials can be as mobile and efficient as new organized criminals. Already, law enforcement officials suffer from the lack of close-knit family ties that facilitate the operations of criminal groups. Likewise, they often lack the cultural skills to combat these new ethnic organized criminals.

Fostering the world politics paradigm would permit national governments as well as inter-governmental organizations (IGOs), international non-governmental organizations (INGOs), and non-governmental organizations (NGOs) to make more effective use of limited resources. Another result of international cooperation or transnational coordination would be an attitude change in favor of international cooperation. The attitude change toward increased cooperation would further assist politically international efforts against drug smuggling and money laundering. Still another result of international pluralism would be to create and strengthen law enforcement organizations, IGOs, INGOs, and NGOs, thereby adding additional actors with which national governments can cooperate in combatting crime.

By improving transnational relations to combat organized crime, national governmental law enforcement organizations should also as-
sume larger roles in transnational organizations. Actors and especially national governments should enable not only traditional law enforcement agencies to participate in a world politics paradigm of international criminal cooperation, but should also facilitate participation by IGOs, such as INTERPOL, the anti-crime organizations within United Nations, and regional organizations (i.e., the Council of Europe, the European Community, and the regional organizations for tax administration), NGOs, such as the American Bankers Association (e.g., in the case of money laundering), and INGOs, such as the Association Internationale de Droit Penal, International Association of Chiefs of Police (IACP), the International Society for Social Defense, the International Society of Criminology, and the International Penal and Penitentiary Foundation. National governments and other concerned actors would facilitate the establishment and development of long-term alliances among the law enforcement community (e.g., a type of pattern of an elite network).

Interested members of the world community, especially law enforcement officials, should plan and study the interactions of the above-mentioned categories of organizations in the international criminal arena in order to determine the best ways to design and implement a regime for international criminal law. For instance, to chart the best role for regional organizations and gauge their potential interactions with IGOs, INGOs, NGOs, and national governments, studies of the international relations of these organizations is required. To the knowledge of this author, such a study has yet to occur. Any of five basic approaches can be used: the historical approach, the normative approach, the structural-functional approach, the decision-making approach, and the interest approach.

After examining the role of intergovernmental organizations in the context of these five approaches, the concept of an international regime for international criminal law and its existence and future in a new world paradigm should also be examined. International regimes are defined as principles, norms, rules and decision-making procedures within which actors (governments, IGOs, INGOs, and NGOs) converge in a given issue area such as international criminal law, or a subarea, such as the international regulation of money laundering. Regimes are intervening variables standing between basic causal factors, on the one hand, and outcomes and behavior on the other. Two basic questions are raised by this formulation: first, what is the relationship between the basic causal factors such as power, interest, values, and regimes? Second, what is the relationship between regimes and related outcomes.
and behavior? The answer to the first question requires an application of a paradigmatic framework. The answer to the second involves the issue of whether regimes make any difference, and, if so, how.

Another approach to the study of international regimes has been to utilize a supply-demand approach that borrows extensively from microeconomic theory. One study, for instance, has focused on the demand for international regimes in order to determine why international regimes wax and wane. This approach focuses on why states desire to institute international regimes and how much they will be willing to contribute to maintaining them. This approach considers the list of conditions which must apply if regimes are to be of value in facilitating agreements among states. Such an approach enables researchers to specify regime functions more precisely and understand the demand for international regimes. Similarly, the methodology can be used to understand the performance of international regimes over time. In addition to studying and analyzing organized crime and trying to react to the diverse emerging and powerful groups, international actors that want to diminish and control these groups must take proactive approaches, so they dictate the battles before the organized criminals become so powerful that the law enforcement community can no longer cope.

Within the regime of international criminal cooperation, many subregimes can and should be established to combat organized crime. For instance, subregimes in many of the areas of enforcement modalities include, *inter alia*, transportation, customs, immigration, and fiscal cooperation. Law enforcement officials, and all persons throughout the world outside the law enforcement community who are concerned with organized crime, should be included in the design of future subregimes. The task is to effectively design new principles, norms, rules, and decision-making procedures that will combat organized crime without detracting significantly from normal business operations, human rights and constitutional protections. Because of size constraints imposed on this paper, I will discuss only the potential subregime against financial crime, for illustration purposes.

1. Establishment of Subregime against Financial Crime

The studies of the new world politics paradigm, applied to the creation of a new regime for international criminal law, should be applied to the subregime of international money laundering regulation. The IGOs, INGOs, and NGOs that constitute international actors as well
as the nation-state actors, have many similarities. However, different organizations and indeed, different individuals are involved. Within nation-states, ministries of finance, central banks, and bank regulatory agencies, rather than ministries of justice and police commissions, are involved. Within IGOs, a different set of individuals and organizations may also be involved. The INGOs and NGOs, with expertise to establish and assist in the operation of an international money laundering subregime, tend to be specialized in financial activities, corporate security, and money management. The need to scrutinize and improve interactions among national governments and international actors in money laundering regulation is enormous since, until now, this activity has not been highly active.

2. Establishment of Other Subregimes

The international community should decide, when certain types of substantive crime are developing quickly or have reached a point of great harm to the international community, to establish additional subregimes. For instance, the international community has become so alarmed about narcotics that it has agreed to surrender some sovereignty in order to achieve new forms of cooperation. They have agreed to do this partly by agreeing to new types of cooperation, such as extradition and mutual assistance. They have also agreed to allow U.N. bodies, such as the Commission for Narcotic Drugs, to monitor the compliance with the U.N. drug convention. In the event that new types of internationalization of crime become significant, the international community will want to develop other subregimes. For instance, in the area of stolen art, which is often the domain of organized groups, Interpol has developed international modalities. They include monthly and semiannual bulletins, with descriptions and pictures of stolen objects. When an Interpol National Central Bureau member believes a stolen work of art may be in transit, Interpol circulates urgent messages in an attempt to have it intercepted. Similarly, Interpol issues special circulars on international thieves and recipients of stolen objects. NCBs in receipt of such notices are encouraged to circulate copies among deal-


ers, private institutions, buyers, sellers, and custodians of art objects.

The development of cooperation between an IGO, such as INTERPOL, states (NCBs), and INGOs and NGOs in stolen art is an example of a small, but emerging subregime of criminal cooperation. These subregimes should be monitored from the perspective of international politics and international organizational theory, so that the regimes can stay ahead of new forms of organized criminals. Regional organizations, such as the Council of Europe, are playing a key role. Other regional organizations, such as the U.N. Committees for the Crime Prevention and Treatment, can and should play an important role in combatting new forms of crime.

One reason for research, discussion, analysis and careful planning of the development of subregimes and regimes in international criminal cooperation is that the existing IGOs, INGOs, and NGOs are mostly in the beginning stages of their own development. To become efficient, duplication must be avoided and linkages between different organizations and individuals active in law enforcement must be cultivated. The space limitations of this paper have resulted in the discussion of only one specific subregime.

B. Specific Mechanisms and Avenues

Within the context of regimes and subregimes, the international community can develop specific mechanisms. The discussion of specific mechanisms employs primarily the perspective of a lawyer, especially the fields of criminal law and international law.

Generally the need to develop international modalities to combat new international forms of organized crime is only the reflection of the more general need to design better international enforcement models for international criminal law. One modality that would assist in the ability to fairly adjudicate international criminal cases involving organized crime is the establishment of jurisdiction of an international court. Two models have been suggested—the International Court of Justice and the International Criminal Court. The United Nations Members would expand the Charter of the International Court of Justice, so that it could, in limited instances, handle selected cases of international criminal law, especially cases dealing with certain organized criminal groups. Another potential model for an international court is to create a Permanent International Criminal Court. Initially, such a court would be able to handle only specialized types of crimes, such as illicit narcotics transactions and related money laundering. Another useful
mechanism would be the creation of an International Indictment (or accusation) Chamber as an attachment to the court. Its tasks would be to hear the prosecution’s evidence ex parte and determine whether facts are sufficient to indict and order the arrest of an accustomed person. Once the Chamber issued a warrant of arrest, any signatory state would be obligated to arrest the defendant. Even if the state with custody did not arrest the defendant, such defendant would be virtually immobilized, since travel to any other country could result in his arrest. Still, another potentially useful variation of an international criminal court would be Permanent Regional International Criminal Courts, perhaps with the International Court exercising appellate jurisdiction over the decisions of the regional courts.

The establishment of international ad hoc bodies of inquiry for the purpose of fact-finding in cases of alleged flagrant violations of certain international criminal laws by organized groups, such as the involvement of states or their governmental entities or leaders in trafficking in cultural property, would focus world opinion on such violations. Such bodies and their reports have succeeded in focusing world attention on human rights violations. To have credibility, such ad hoc bodies must be strictly impartial. A condemnatory report by a duly established, impartial body would amount to an indictment without a trial.

Another useful enforcement modality would be the establishment of a mechanism for Complaints and Reports. It would be a communication procedure that would function similar to the Optional Protocol to the Covenant on Civil and Political Rights and the Convention on the Elimination of All Forms of Racial Discrimination. Interested or affected persons could lodge complaints to determine whether states are fulfilling their obligations in combatting international organized crime, and/or that they are themselves actively participating in and contributing to such crime. The complaint procedures would determine whether consistent patterns of gross violations are occurring. The spotlight of public attention consequent to such a finding, and its public discussion, would be an important, albeit “soft,” means of persuading miscreant governments and some organized groups and their members into compliance with international law. In circumstances in which the complaint and report procedure does not achieve results, one could resort to the remedy of an ad hoc body of inquiry committee, discussed above. In the end, few governments would want to have a reputation for committing international crimes.

A periodic reporting system could be established whereby each United Nations member state must report annually on the extent of
implementation of United Nations agreements, guidelines, standards, and other rules concerning certain international crimes of organized groups, such as trafficking in arms and illicit narcotics. These reports should receive wide dissemination and interested persons and organizations should have access to such reports. The world community should consider conditioning the allocation of credits and eligibility for benefits of intergovernmental organizations, such as the World Bank Group and United Nations organizations, on compliance by states with the above-mentioned U.N. agreements, guidelines, standards, and other rules concerning certain international crimes.

With the above introduction on general enforcement modalities for international criminal law, the remainder of the paper discusses more specific modalities directed at organized crime.

1. Create Universality of Jurisdiction for Organized Crime and Subspecies of Crimes Therein

The issue of jurisdiction needs attention. Due to the complexity of transboundary criminality in the modern world, the traditional, almost exclusively territorial concept of jurisdiction requires revision. Although some expansion of the concept of jurisdiction has been introduced in recent years in a number of international instruments, such extensions were still inadequate to cope with the present challenges. Closely linked with the question of international jurisdiction is the issue of the establishment of an international criminal court. Pursuant to the discussion in III(B) above, support should be given to the efforts to establish international criminal courts, so that jurisdictions in which organized criminal groups have rendered the criminal justice inoperable or ineffective will have alternatives to try persons involved in serious crimes having international effects.

2. Strengthen Enforcement Modalities

a. International Organization to Supervise Adoption of Mechanisms in U.N. Drug Convention

To ensure compliance with the enforcement modalities that the world continually has agreed to implement, the U.N. Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substance (hereinafter U.N. drug convention) and other enforcement modalities for which there is agreement should be scrutinized. In particular, the Commission on Narcotic Drugs of the Economic and Social Council of
the U.N. has the responsibility, pursuant to Art. 21 of the U.N. drug
convention, to review the operation of the convention, to make sugges-
tions and general recommendations based on the examination of the
information received from the contracting parties, and to bring matters
to the attention of the International Narcotics Control Board. More-
over, the Board will prepare an annual report on its work. Its work will
include making recommendations on: the prevention and the diversion
of precursor substances used for the purpose of illicit manufacture of
narcotic drugs or psychotropic substances; the prevention of trade in
and the diversion of materials and equipment for illicit production or
manufacture of narcotic drugs and psychotropic substances; and the
proper documentation and labelling of lawful exports of narcotic drugs
and psychotropic substances.

Under Article 20 of the U.N. Convention, contracting parties must
furnish information to the Commission on the text of laws and regula-
tions promulgated to give effect to the Convention and the particulars
of illicit trafficking cases within their jurisdiction that they consider im-
portant because of new trends disclosed, the quantities involved, the
sources from which the substances are obtained, or the methods em-
ployed by persons so engaged.

The Commission should consider disseminating a report certifying
compliance with the U.N. drug convention and with the enforcement
modalities in The Declaration of the International Conference on Drug
Abuse and Illicit Trafficking and Comprehensive Multi-disciplinary
Outline of Future Activities in Drug Abuse Control (e.g., Targets 17
through 28 on the suppression of illicit trafficking). In particular, the
report should discuss legislation, treaties, and other international agree-
ments, and adherence to the U.N. plan on combatting organized crime
and drug policy. States with high marks should receive tangible benefits
in economic development and other national objectives over which the
world community has control. States with unexplained low marks
should lose benefits. Certification should be distributed to concerned
INGOs, NGOs, and they should be asked to disseminate the report and
to take whatever actions they deem appropriate. The certification
should give both praise and criticism, where warranted.

b. The U.N. Interregional and regional institutes and concerned
intergovernmental and non-governmental organizations should give in-
creased attention to the issue of organized crime.

c. The U.N. Development Programme and other funding agencies
of the U.N. system, as well as member states, should be urged to
strengthen their support for national, regional, and international pro-
grams for the prevention and control of organized crime.

d. The International Monetary Fund (I.M.F.) and the World Bank should integrate into their loan programs the recommendations of the U.N. certification reports, especially since the failure to take proper steps against narco-terrorism and the continuation of programs to nation-states dominated or substantially penetrated by organized crime groups only serves to further benefit such groups. The integration of criminal development planning and the subsector dealing with organized crime should be reviewed by the United Nations Development Programme (U.N.D.P.) and I.M.F.-World Bank in consultation with the U.N. Crime Prevention Committee. Improved planning processes designed to integrate and coordinate relevant criminal justice agencies that often operate independently of each other will also serve as a deterrent to crime.

e. In view of the complexity and volume of the financial operations of organized crime, it is essential to take an interdisciplinary approach that involves the combined expertise of lawyers, police, accountants, financial analysts, computer specialists, and investigators of corporate affairs. Interdisciplinary law enforcement teams should be established. Countries that have done this successfully should share information and provide technical assistance to other governments. Sharing law enforcement methods to combat narco-terrorism should be encouraged and facilitated. The complicated links between executives of entities controlled by narco-terrorists and the alleged illegal activities must be proven. This requires perseverance, effective investigative skills, solid and reliable intelligence, a capacity to understand the complicated financial arrangements, effective cooperation in the production and collection of evidence, and above all, a great dose of courage to resist corruption and intimidation. Electronic surveillance and wire-tapping have been important means of trapping the heads of organized crime syndicates, with full regard for basic human rights concerns.

f. Simultaneous tax examinations should occur of organized criminal groups involved in narco-terrorism and individuals therein. Simultaneous tax examinations are especially valuable for detecting persons engaging in transnational business, whether illicit drug trafficking, environmental crimes, and related money laundering crimes.

g. Systematic attention should be paid by researchers and law enforcement officials to the property holdings of persons involved in narco-terrorism, or to the property holdings of the groups in which they participate. Because of the high degree of compartmentalization of information among law enforcement agencies, existing knowledge does
not efficiently support specific case development or proactive law enforcement operations. For instance, knowledge about the title to property of organized groups may enable law enforcement agencies to anticipate the directions of the groups. Knowledge about the property holdings of organized crime may enable certain law enforcement agencies to operate more effectively, (e.g., estate and inheritance revenue officials). Several recommendations should be reviewed. Intelligence units should enrich their individual and group files by developing and maintaining separate file sections on the subjects’ property interests. Property interest information should be regularly analyzed and distributed to potential users. Intelligence units should give special attention to collecting and analyzing significant events that produce property interest data (i.e., purchase or acquisition of real property or a business, a divorce or a death). Intelligence units should develop, maintain, and index an inventory of methods and devices used to create, maintain, extinguish, and adjudicate organized crime property interests. A systematic and expanded effort should be made to study the estates of deceased organized crime figures. Internally, IGOs, INGOs, and NGOs should hold workshops and training programs or these techniques. Bilaterally, states with Mutual Legal Assistance Treaties should have a working group on organized crime where their resources and the amount of organized crime activity warrant such a working group. The U.S.-Italian working group is an example of the success of such groups. The recent series of bilateral narcotics agreements and the commissions that implement such agreements can also include working groups that, inter alia, exchange information on cases and techniques of studying property holdings with each other.

3. Uniform Legislation

a. An international central data bank should keep track of and disseminate to interested governments laws and regulations on various types of measures taken against organized crime, such as racketeering and continuing criminal enterprises, sanctions against organized crime


27. Id. at 226-27. For a discussion of the formation of the working group, see Meese Addresses Italy-USA-Switzerland Conference, 1.2 Int’l Enforcement L. Rep. 29 (Oct. 1985).
and against activities in which organized crime are known to participate, including illicit drug trafficking, money laundering, theft of cultural property, use of mails, and various types of frauds. In particular, an international central data bank would show that, insofar as illicit drug trafficking is concerned, the offenses defined in Article 3 of the U.N. drug convention include, *inter alia:*

- 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, as amended or the 1971 Convention; the manufacture, transport or distribution of equipment, materials or of substances listed in Table I and Table II of the U.N. drug convention, knowing that they are to be used in or for the illicit cultivation, production or manufacture of narcotic drugs or psychotropic substances; and the organization, management or financing of any of the offenses enumerated in Article 3 dealing with illicit narcotics trafficking.

Article 3 of the U.N. drug convention also requires that the contracting parties ensure that their courts and other competent authorities with jurisdiction take into account factual circumstances that make the commission of offenses established in accordance with certain articles of the Convention particularly serious, such as the involvement in the offense of an organized criminal group to which the offender belongs; and the involvement of the offender in other international organized criminal activities.

b. States and international actors should begin to design, monitor, disseminate manuals, and hold programs on the importance of the following laws:

i. Money laundering (right to financial privacy, currency transactions reporting, criminalization of money laundering, remedial measures, and blocking laws). Stricter regulation on a uniform basis should govern the persons who are able to establish and operate financial institutions, money exchange businesses, paper banks, and other businesses that offer potential for near money (i.e., scarce commodity business, such as gold, silver, and jewelry houses). The world community should have a list of minimum requirements to establish such businesses and an annual means to ensure conformity. Intergovernmental organizations, perhaps initially with technical and financial assistance from IN-GOs, should participate.

ii. For serious cases of trafficking by narco-terrorist groups and/or persons who belong to the groups, it would be helpful to introduce leg-
islation that placed on the person holding the assets the onus of demonstrating that the assets had been lawfully acquired. This is a revolution in legal practice and theory, and as such should include the necessary safeguards to protect the human rights of the suspect.

iii. The establishment of a specific agency to deal with all matters concerning the activities of organized crime and to centralize all pertinent information on that subject.

iv. The establishment of special anti-corruption measures.

v. The adoption of new laws and methods on investigation and the techniques to combat organized crime.

vi. Protection against violence and intimidation are increasingly important in the criminal investigation and trial process and in enforcement efforts against organized crime. The procedures involve the provision of protected accommodation and physical protection, relocation, monetary support, and a new identity.

4. Financial and Technical Assistance

a. Special legislation aimed at narco-terrorist groups, include: the Racketeering Influenced Corrupt Practices Act (RICO) and Continuing Criminal Enterprises (CCE), in which the Government can impose draconian penalties upon conviction of defendants and in which the law provides procedural advantages to the law enforcement officials and prosecutors (i.e., ability to wire-tap and conduct undercover operations). Other countries, such as Italy, have counterpart laws that may be adoptable, especially in civil law countries.

b. Legislation should provide rights and remedies to citizen groups that are impacted by organized crime. For instance, in some civil law countries, victims have a right to participate in the criminal proceedings and in decisions to charge the defendant, and make their views known to the court on evidence and appropriate sentences after conviction. In the U.S., although victims and citizens do not have the right to participate in the pretrial and trial aspect as parties, they can bring civil actions. In the case of RICO, treble damages are allowed. The laws concerning participation by victims and other interested citizen groups should be reviewed and recommendations on uniform laws provided. Once individuals are mobilized to participate in groups to combat organized crime, they can funnel their efforts into officially participating in the legal system to ensure that the criminal justice system effectively works against narco-terrorists.

c. Uniform tax laws should be enacted around the world, specifi-
ally targeting narco-terrorists. Since the organized criminals earn a great deal of money through criminal activities, they do not report and pay tax on such activities. Hence, many countries have found that tax laws provide a useful means to successfully prosecute organized criminals. Manuals showing the specific tax laws, methods of investigating and prosecuting organized criminals in the various legal systems, and recommendations for training should be provided. Technical assistance should be available to requesting countries on these techniques.

d. There should be established, through existing IGOs, INGOs, and nation-states, technical assistance groups to provide technical services to requesting states. Some of the methods for providing technical assistance by nation-states and IGOs can be utilized (i.e., use of retired executives and use of NGOs on a state level).

e. Assets seized and forfeited should be shared with IGOs, INGOs and NGOs, which participate in combatting the narco-terrorist crimes from which the assets forfeited are derived, as well as national governments.

f. A fund to provide technical assistance in narco-terrorism cases should be established. It should be maintained by an appropriate U.N. organ.

g. Technical assistance should be a part of regional conferences bringing together members of law enforcement, prosecution, and judicial authorities. They should all develop a network to facilitate communication between meetings and exchanges.

5. The Model Extradition Treaty Adopted at the Eighth U.N. Crime Congress Should Be Widely Disseminated

Most experts supported the idea that the provisions of future model international criminal cooperation treaties should complement rather than replace existing cooperative arrangements. The view of many experts is that the drafts could actually serve as a model for new national legislation, thereby contributing to the harmonization and increasing uniformity of domestic legislations.

Care must be exercised in the drafting of extradition treaties, so that states can fulfill the dual criminality requirement in narco-terrorism cases. Extradition treaties should replace the list method of defin-

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ing dual criminality in favor of a simple, all-inclusive statement which defines extraditable offenses as crimes punishable under the laws of both states by deprivation of liberty for a period of more than one year period of incarceration for a felony. Such a broad decision eliminates the problems of constantly trying to update the lists. Another problem in the application of the dual criminality provision in complex prosecutions, especially those involving narco-terrorism and organized crime, is the need to match particular criminal statutes adopted by individual states to combat organized activities with parallel provisions in the laws of other states. The need to demonstrate that the offense, for which extradition is sought, is a criminal offense in the requested state gives rise to the need to find an analogous crime punishable under the laws of the requested state. For instance, difficulties are encountered by the new laws that seek to combat organized crime by criminalizing participation in organized groups that derive financial benefit from the commission of traditional crimes, such as extortion, usury or narcotics trafficking. To strengthen the prospects for satisfying the dual criminality standard, the extradition treaty should specify that particular types of statutes will constitute grounds for extradition. For example, Article II(2) of the U.S.-Italian Extradition Treaty provides that “any type of association to commit offenses described in (the dual criminality Article), as provided by the laws of Italy, and conspiracy to commit an offense described in (the dual criminality Article) as provided by the laws of the United States, shall also be extraditable offenses.” Such language will facilitate the fulfillment of the dual criminality requirement by modern statutes that are aimed at organized crime and narcotics trafficking.

6. The U.N. Model Mutual Legal Assistance Treaty (MLAT) Should Be Disseminated

When concluding an MLAT, governments should apply as many of the instruments of judicial assistance as possible.

In the case of MLATs, it can be useful to establish a working group to develop on-going cooperation in focused areas and cases. For instance, after concluding an MLAT in 1983, the U.S. Department of Justice and Italian Ministry of Interior established an Italian-American working group to further cooperation on law enforcement problems. Initially, the working group focused only on combating organized crime and narcotics. More recently, the working group broadened its agenda to include cooperating on terrorism.
Pending conclusion of a formal MLAT, states can and should explore more informal methods of cooperation if permitted under law. For instance, on October 17, 1986, the French and U.S. governments announced an accord to increase cooperation in the fight against terrorism by improved intelligence exchanges and law enforcement contacts in absence of a former treaty. In substantive areas, such as securities enforcement cooperation, governments have entered into memoranda of understanding to cooperate on enforcement matters. Such memoranda, providing for cooperation and mutual assistance against certain types of organized crime, may be appropriate as an interim step for governments. Studies should be done of the initiation, operation, and potential of less formal arrangements for mutual assistance. The studies would see to what extent they are working and can be improved. The studies would be shared with interested governments.

As a result of the attention focused on the U.N. drug convention, several states, such as Australia, have strengthened their mutual assistance infrastructure, and particularly, the new investigatory and enforcement measures that can serve as models for some states to emulate. New investigation techniques exist to follow the document and money trails including the issue of court orders for the production and seizure of relevant documents, the monitoring of transactions by financial institutions and the reporting of large scale cash transactions. New powers enable states to freeze, confiscate, and forfeit the proceeds of crime and to enforce monetary penalties representing the monetary value of benefits derived from committing serious crimes. States have new powers to search and seize property, articles and documents. New authority exists for the taking of evidence under oath and for the production of documents for transmission to another country for use in proceedings in that country. States have new powers to make arrangements for persons to travel to a requesting state to give evidence or assist in investigations in that country.

As the Australian government has noted, the establishment of effective international mutual assistance arrangements requires enormous political will. The exposure of a country’s citizens to compulsory measures such as search and seizure or the tracing, freezing and confiscation of proceeds of crime at the request of another country requires a political decision by sovereign governments. The political aspect of that decision cuts through every aspect of mutual assistance, from revising domestic legislation so that mutual assistance can be given and received, to establishing appropriate bilateral and multilateral treaties and arrangements, and to deciding whether to grant or refuse a request.
in a specific cases. The U.N. should compile and disseminate information on how states have changed domestic law to, *inter alia*: create money laundering and related crimes; authorize telecommunication interception for certain criminal activities; subject to judicial authorization, facilitate the monitoring by law enforcement agencies of the movement of large amounts of cash by requiring the reporting to an agency of certain types of cash transactions; and provide the necessary legal basis for Australia to give and receive a wide range of mutual assistance in criminal matters, as well as to enter into extradition treaties in a wider basis for making a mutual assistance request to, or executing a request from such a country.

For most countries, strengthening its ability to cooperate internationally against narco-terrorism and other organized crime requires a comprehensive treaty negotiating program to conclude conventions with countries with which there are no conventions and to modernize existing cooperation conventions. In this connection, model extradition and mutual assistance treaties that the U.N. Crime Prevention Committee is preparing should be helpful. Once adopted, it should be reviewed and, if appropriate, revised on a regular basis.

In order to ensure the efficient operation of mutual assistance against new forms of organized crime, states must establish a Central Office. A Central Office becomes especially important because the new forms of mutual assistance, such as the development of a financial subregime, requires the use of coercive investigatory or enforcement measures against citizens of one country and their property at the request and for the benefit of another country, thereby directly impacting the sovereignty of the requested country and producing divergent diplomatic, political, policy, and operational interests in both countries. The establishment of the Central Office has the responsibility of: ensuring the appropriate reconciliation of these interests; determining or helping determine whether the request should be granted or refused; and ensuring adequate coordination of all relevant agencies in the request and consistency of approach to the making and execution of requests. The U.N. drug convention requests in Article 7(8) that parties designate an authority, or, when necessary, authorities, which will have responsibility and power to execute requests for mutual assistance or to transmit them to the competent authorities for execution.

States should establish liaison units with the Central Office to deal with certain forms of organized crime (i.e., ethnic groups and/or substantive crimes, such as illicit narcotics trafficking and stolen art).
7. Adoption and Dissemination of Transfer of Proceedings, Transfer of Prisoners

Pursuant to the U.N. drug convention and other international conventions, states should provide for transfer of proceedings and prisoners.

8. Education and Promotional Programs to Raise the Consciousness of the Public

Education and promotional programs should raise the consciousness of the public to the pernicious nature and the level of power of narco-terrorist groups, so that they will support new enforcement efforts of IGOs and nation-states. The support of general public and of targeted groups should be solicited for participation in existing and new NGOs and INGOs concerned with combatting organized crime.

9. Assistance to Journalists and Other Media

One of the best modalities to identify and expose narco-terrorists is to reward and motivate journalists and the media to focus on these groups. The attention brought by media exposure removes the anonymity from narco-terrorist groups and the comfort they enjoy. In some cases, an effective piece or series of pieces by a journalist will reveal conduct or assets that may enable law enforcement officials to act to immobilize persons in a narco-terrorist group.

a. A fund should be established to assist media/journalist victims of organized crime.

b. In countries such as Colombia, stories by the media have resulted in concerted violence against the media, including the murder of journalists and arson and bombing of their businesses and homes. In order to assist the media, especially since the media-victims are often very knowledgeable about existing operations of organized criminals, states, IGOs, INGOs, and NGOs should establish a fund to assist journalists and the media to continue to undertake their important work.

c. Better communication between local and international media/journalists should be facilitated.

d. Multidisciplinary research into the structure and operations of organized crime has proven effective in identifying the weak points of the criminal syndicates. There exists a need for the frequent and regular exchange of experiences in these and similar matters.

e. IGOs, NGOs, INGOs, and nation-states should educate the
public on the important role of media/journalists in combatting narco-terrorism.

f. IGOs, NGOs, and NGOs, especially those that deal with the media and/or with international terrorism, and/or narcotics policy should educate the public on the important roles of the media/journalists, so that the general public will support the media/journalists, especially at critical moments. Governments should also provide education to the public in this regard.

10. Support for Comparative Research and Data Collection

Comparative research and data collection related to issues of transnational narco-terrorism, its causes, its links to domestic instability and other forms of criminality, as well as its prevention and control, should be supported. Research in target areas for combatting organized crime should be encouraged. The encouragement of research must occur on the local and state levels as well as by the IGOs, NGOs, and INGOs. Internationally accessible data banks should be established. Some should be available to general public. Others should have more limited access (to serious academicians, journalists). Others should only be available to law enforcement officials. Law enforcement officials should be encouraged to keep records of their findings for dissemination within the data banks.

Appropriate authorities should arrange for civic and professional recognition or awards to individuals and non-governmental associations that have made outstanding contributions to comparative research and data collection on combatting organized crime.

11. Telecommunications and Other Communication Modes

Proper telecommunications and other communications modes should be evaluated and designed, so that police and other interested persons at the local, regional and national levels of the nation-state, IGOs, NGOs, and INGOs have the most modern communication channels to learn about and adopt the latest means of combatting narco-terrorism. Interpol can likely provide leadership in this area.

12. Links Between Different Organized Criminal Groups

Particular attention and action should be directed at the links between different organized criminal groups, such as insurgent revolutionary organizations and drug- and arms-trafficking organizations, partic-
ularly with regard of the acquisition of sophisticated weapons. National legislation for the effective control of weapons, ammunition, and explosives and international regulations on the import, export, and storage of such objects should be developed in order to prevent those weapons from being used by terrorist or organized crime syndicates. International cooperation in securing evidence with respect to the prosecution or extradition of terrorists is especially important. In that connection, the U.N. model treaties on mutual assistance and extradition have significance. The political offense exception for the extradition of terrorists should be limited to cases where the requested state decides to undertake prosecution of the person or agrees to transfer the proceedings to another state to conduct the prosecution.

13. Strengthening Controls of Movement Through Official Points of Entry

By strengthening international modalities to control security of airports, exports, and land border crossings, these entry points will be less vulnerable to penetration. The organization and layout of facilities often present opportunities for evasion of controls. Few entry points are equipped with modern or appropriate means of detecting illicit movements of contraband, such as stolen art, illegal arms, or illicit narcotics. Service personal that carry out activities such as maintenance, cleaning, refuelling, catering, and crew members, are not always adequately controlled. Although customs services are under the jurisdiction of central government authorities, the management of airports and seaports may be conducted by a variety of local government or corporate entities. Organized private messenger and courier services also move across borders and pose potential risks.

The largest seizures of contraband is in commercial freight, especially for drugs, since they are often concealed either among goods in normal traffic or inside specially made cavities in means of transport. The expansion of international trade, the accelerated rotation of international means of transport and the development of containerized traffic should induce the supervising authorities to initiate action with respect to the establishment of effective national and international mechanisms to deter and enforce transportation of contraband which are compatible with a rapid flow of international trade.

Appropriate IGOs, INGOs, and NGOs should contact air and rail transportation entities and shipping and trucking firms that operate internationally, and/or the associations of such firms. A plan should be
designed for them to review their procedures for the purpose of not only safeguarding their services against misuse by traffickers, but also to ensure that information about any trafficking operation or activity of narco-terrorists is reported promptly. In particular, the International Civil Aviation Organization (ICAO), the International Maritime Organization (IMO), the World Tourism Organization (WTO), IATA and the International Chamber of Shipping should consider and adopt, insofar as they have not already done so, standards or codes of conduct for their members designed to improve control of the movement of passengers and goods, with the objective of curbing the illicit traffic in drugs. In this respect, they should establish memoranda of understanding with the Customs Cooperation Council (CCC).

Universal and regional IGOs and bilateral programs should assist countries that require assistance in equipping the law enforcement authorities, at points of entry, with mechanisms to detect contraband (e.g., illicit narcotics), such as drug sensing mechanisms, trained sniffing dogs, drug identification kits and other means of control. On request, the ICAO, IMO, the Universal Postal Union (UPU), WTO, Interpol, CCC, IATA, the International Chamber of Shipping and the International Association of Ports and Harbors should provide technical advice and assistance to Governments with respect to modalities to provide appropriate physical security in standard layout and sign of premises at official points of entry.

If narco-terrorist activity is deemed especially significant in two or more particular countries, one or more of them should be able to call on the above-mentioned IGOs, INGOs, and NGOs to furnish modalities to correct the problem, including law enforcement officials to assist in investigations and other measures.

Legislatures should exchange information on the enactment of legislation applying penalties to transportation entities that are aware of narco-terrorism and do not take prompt and adequate steps to correct and report it or are reckless and grossly negligent in this connection. In such circumstances, model and uniform legislation should provide in such circumstances for the seizure and immobilization of transport equipment used in drug trafficking, where such legislation is not already in force.

In some new types of organized crime, the transportation component is extremely important to the traffickers and is also thought to be one of their most vulnerable areas. Many of pilots used by the organized traffickers are citizens of consuming, developed countries and pilots are always in great demand. Pilots, even relatively new ones, are
often brought to the producing countries (e.g., Colombia) to meet the bosses of the organizations. This reliance on non-Colombians as pilots seems analogous in organizations which otherwise rely on family members or trusted associates from their region of Colombia, necessary because foreign-based pilots (e.g., American) have better technical know-how and skill, and they are more familiar with terrain of the consumer country. Also the transportation leg is the riskiest part of the operation, since the transporter is in close physical proximity to the narcotics and travels through areas where there are high concentrations of law enforcement officials. Hence, the consuming countries in which pilots reside should closely monitor the activities of pilots. For instance, by requiring reports on international trips they make and then being able to match the information would enable regulatory agencies to identify certain suspicious activities. Pilots flying small planes could be required to report on their passengers and cargo. Pilots could be held to a “know your customer” standard, similar to that to which financial institutions are held. Pilots and associated persons that fail to report would be subject to criminal penalties. Airports and other persons involved in the trips could also be required to obtain and process reports. They could also be required to report suspicious activities of pilots and planes.

14. Improving Cooperation with Economic Integration Groups

In economic integration groups, in which sovereign states have joined together to cooperate in economic matters, free movement of goods, persons, and capital exists. In these cases, it may be difficult or even impossible, in the case of an absence of intracommunity border controls, to detect illicit movements of drugs and traffickers from one state to another. Hence, the community and its members should confer and agree to cooperative measures. They should, for example, exchange law enforcement intelligence and form special narco-terrorism groups, particularly when done according to unique characteristics (e.g., by ethnic or specialized forms of groups) and on cooperation between different groups of narco-terrorists and other organized criminals. They should permit member law enforcement officials the ability to operate within their borders (e.g., the recent Schenegen Agreement signed in June of 1990 between Belgium, The Netherlands, France, West Germany and Luxembourg) and on request they should provide mutual assistance. The more advanced economic integration groups (i.e., the Council of Europe, the European Committee on Crime Problems, the Trevi and Pompidou groups), working with IGOs such as the United
Nations and INGOs such as the International Association of Chiefs of Police, should provide technical assistance on request to other economic integration groups (i.e., ASEAN, CARICOM). Special opportunities and research on functional integration (e.g., a branch of international organizational theory) in law enforcement cooperation exist in connection with economic integration groups. Such opportunities and research should be encouraged, especially in developing countries.

15. Improved Protection of Land, Water and Air Approaches to the Frontier

The difficulty of protecting frontiers has proffered opportunities for organized criminals to build private air strips and to make parachute deliveries in remote areas. More complete surveillance of frontiers, airspace and remote areas is required to protect societies from the activities of organized criminals.

IGOs, INGOs, and NGOs should design minimum levels of controls at a national level to protect land, water and air approaches to the frontier. Once these minimum levels of controls have been prepared and disseminated, states around the world should report on their efforts to meet them. Appropriate authorities should strictly enforce existing domestic and international regulations regarding the registration of all aircraft, commercial or private, and the obligation of all aircraft operators to operate strictly in accordance with approved flight plans and with the instructions of the air traffic control agencies.

Better controls should be imposed on the commerce of privately owned boats, including pleasure craft, arriving from abroad outside any official port of entry. Regulations should require that they report immediately to the nearest designated authority, giving full details of port of origin, cargo, passengers, owners and master of the ship or skipper, in order to request permission to refuel and obtain supplies. Similarly, an aircraft entering or leaving the territory of the state should be strictly required to land at, or take off from, a designated customs airport pursuant to Article 10 of the Convention on International Civil Aviation. The appropriate authorities of each state have an internationally recognized right, without unreasonable delay, to search any aircraft prescribed by national law and/or by international conventions. The non-observation of such regulations would be punishable. The IGOs should provide for a uniform document to report this information and such information should be entered into a computer. If feasible, an IGO should monitor the information, especially for suspect patterns. Persons
providing fuel or supplies to such craft would be required to verify compliance or would be liable to fines or other penalties.

The IGOs should establish goals for minimum levels of efficient communication networks and means of transport and training and education of law enforcement officials dealing with certain activities of narco-terrorism. States should report annually on their capabilities and IGOs should reassess the minimum levels of capability annually and upgrade according to the changes in technology and business needs. If states fall below the level of minimum capability, its national government or IGOs could propose projects qualifying for multilateral or bilateral assistance or for assistance from IGOs.

INGOs and NGOs of amateur pilots, yachtsmen and owners of pleasure craft and owners of private aircraft, boats and ferries, as well as associations of commercial and private fishermen and hunters and their individual members should work with IGOs and national governments in designing better ways for law enforcement officials to establish surveillance of land, water and air approaches to the frontier and to assist them in implementing their strategies. The participating INGOs and NGOs should arrange for recognition or awards to individuals and organizations that make outstanding contributions in this regard.

States should act at the regional and international levels to improve the protection of land, water and air approaches to the frontier. The air traffic control agencies and other authorities concerned should improve flight control regulations in cooperation with their counterparts in the region and on a world-wide basis. The ministry or authority concerned, together with law enforcement agencies at the national and local levels, should ensure that clear and effective channels of communication, with corresponding agencies in other countries, are established and maintained. States, IGOs, INGOs, and NGOs should organize regional seminars to facilitate the exchange of ideas and techniques designed to strengthen frontier controls. The ministries or authorities concerned should utilize regional and interregional cooperative mechanisms, of the sessions of the law enforcement organizations, such as the Commission on Narcotic Drugs and its Subcommission on Illicit Drug Traffic and Related Matters in the Near and Middle East, regional meetings of Heads of National Drug Law Enforcement Agencies, and of ICAO, IMO, CCC and Interpol, and IATA, in order to ensure maximum cooperation and consistency of implementation and training methods in safeguarding and tightening the security of frontiers.
16. Protecting Against Use of Mails by Organized Criminals

States should ensure that they have implemented international agreements that require action against certain international criminal activity. In particular, Article 19 of the U.N. drug convention provides that, in conformity with the Conventions of the Universal Postal Union and in accordance with the basic principles of their domestic legal systems, contracting parties will take measures to suppress the use of the mails for illicit traffic and will cooperate with one another to that end. In particular, they agree to undertake the following:

a. coordinated action to prevent and repress the use of the mails for illicit traffic;

b. introduction and maintenance by authorized law enforcement officials of investigative and control techniques designed to detect illicit consignments of narcotic drugs psychotropic substances and substances in Table I and II of the U.N. drug convention in the mails; and

c. legislative measures to enable the use of appropriate means to secure evidence required for judicial proceedings.

If a suspicious item is in transit in the mails through the territory of the state whose authorities detect the illicit shipment, Article 1 of the Universal Postal Convention and of the Constitution of UPU provides that postal items in transit through a state party may not be opened. When this problem was discussed between CCC and UPU, the latter invited postal administrations:

d. to cooperate in combating illicit narcotics traffic whenever they are legally required to do so by their national authorities responsible for this matter; to ensure respect for the fundamental principles of the international post, in particular, the freedom of transit; and

d. to make arrangements with their relevant national authorities to ensure that bags of mail in transit suspected of enclosing items containing illicit narcotics substances are not opened, but to advise by the quickest means, at the request of their customs authorities, the administration of destination so that the suspected bags can easily be identified on arrival; and to verify the origin of the mail. Hence, the procedure is analogous to controlled delivery for postal items in transit, a procedure already available with respect to items addressed to domestic destinations.

States, IGOs, INGOs, and NGOs should also consider appropriate action at the regional and international levels for combating activities of narco-terrorists. In particular, the UPU should provide state parties to the Universal Postal Convention with models of standard procedures.
for cooperation of postal authorities with customs. The state parties to the Universal Postal Convention might further consider how to prevent the use of the international mails for illegal activities and contraband, such as drug trafficking. For this purpose, they may want to consider and propose appropriate amendments to the Convention. A study of this problem and of appropriate action which may be taken to combat it would be useful.

17. Controls over Ships on the High Seas and Aircraft in International Airspace

Vessels and aircraft are used for illegal activities by organized crime, especially for the illicit transport of drugs between countries, outside national boundaries, on the high seas and in international airspace. Many countries may be affected by organized crime activities, such as the shipment of drugs, appropriate cooperative procedures for interception must be devised which do not interfere with legitimate passage and commerce, subject to compliance with existing relevant international conventions.

States should review their national and state laws to determine whether jurisdiction over illegal activities of organized crime groups on the high seas and aircraft in international airspace requires broadening. If the national or state authority have reasonable grounds to suspect that a vessel or aircraft registered under the laws of the state is illicitly carrying drugs or other similar contraband, it may request another state to assist in carrying out a search. For instance, the other state may be asked to direct its authorities to board and inspect the vessel and, if drugs are found, to seize them and arrest persons involved in the trafficking. In such circumstances, the state's own authorities may board or seize a vessel or aircraft registered under its laws.

Subject to international law provisions, law enforcement officials should, to the extent allowed under national law, undertake to board and seize a vessel unlawfully carrying drugs, provided that the authorization of the state of registry and, when applicable, of a coastal state, has been obtained. A state should respond promptly when requested for permission to stop, board and search a vessel under its registry due to illicit drug trafficking control. Subject to the same considerations, a state should be able to search an aircraft upon landing at a designated airport.

States, IGOs, INGOs, and NGOs should consider whether they can establish international standards for the identification, seizure, and
disposition of vessels and aircraft suspected of carrying drugs illicitly, and of the drugs and traffickers found thereon. States should be encouraged to conclude bilateral, multilateral, and regional agreements to strengthen such cooperation between states. Existing intergovernmental fora, including transport and shipping programs of the regional commissions, should take up the issue of activities of narco-terrorists, the need to coordinate efforts to halt it, and the importance of support for the U.N. drug convention.

18. Monitoring Movement of Persons Among Countries

Migration among countries is an area in which cooperation can be vastly improved in the fight against organized crime. Intergovernmental organizations, such as the United Nations, should sponsor conferences and exchange of information on the ways in which immigration authorities operate.

a. Studies have shown that automated look-out systems are required to enable border entry officials to have access to computers that input information on criminals. Countries, such as the U.S., are improving their automated law enforcement systems to more effectively apprehend fugitive alien criminals. They are experimenting with a national level of successful local choke point criminal referral and processing models. Immigration officials should be able to initiate administrative and management remedies to more expeditiously hear cases and effect deportation.

b. On a national and international basis, more communication should occur, and agreements reached, to design acceptable procedures for the notification of suspected aliens involved in serious criminal activities. Memoranda of understanding should be concluded to establish choke points at the time of arrest and provide for: a definition of criminal aliens who pose a particular threat to the citizens in a specific area; procedures for notifying national immigration investigations of suspected illegal aliens; and a commitment to conduct immigration record checks, ideally through provisions of an immigration database line to the law enforcement agency and the commitment to do follow-up processing.

c. On a national and international basis, arrangements should be made among law enforcement agencies on what categories of criminal aliens should be defined for joint investigations/apprehensions on which to commit resources, and to ensure logical guidelines and mutual responsibility for use of manpower resources and detention facilities re-
quired in joint operations.

d. On a national basis, arrangements should identify choke points at the point of the criminal justice system that is post-arrest, but prior to a determination to incarcerate, to provide for:

i. immediate notification to immigration officials of the determination not to prosecute or otherwise terminate proceedings in favor of the alien defendant, who may in some instances still be amenable to deportation proceedings;

ii. contact with the immigration authorities at the time of pre-bail, pre-sentence or pre-parole investigations by probation and parole officers, to ensure that the adjudicating authorities are fully aware of the alien's immigration status in issuing their decisions(s);

iii. sentencing, or conditions of release on bail, probation, or parole that require submission of the alien defendant to immigration authorities for processing, appearance at deportation proceedings, and submission to removal if deportability is determined by an immigration judge.

e. Internationally, national governments should share intelligence about the ethnic groups committing entitlement, credit card, and other types of fraud, where such crimes are significant, and they should share law enforcement mechanisms. Where appropriate, working groups should meet, perhaps in the context of the implementation of a MLAT. Consideration can be given to exchange of law enforcement officials and joint operations to combat fraud. Such procedures should assure the presence of the alien at all required hearings while ensuring compliance with his or her due process rights. They also provide for special conditions of release that stipulate that, if the alien should return illegally during the period of probation, parole, pie-trial diversion, etcetera, he or she will be returned for full completion of sentence or trial, as appropriate.

IV. MECHANISMS TO COMBAT NARCO-TERRORISM

The experts meeting before the 8th U.N. Crime Congress proposed a number of basic measures that would help to combat narco-terrorism. Although some of the measures apply to organized crime, many of them are unique to combatting narco-terrorism.

A. Identification of the Problem

Some experts appropriately note the need to establish additional
norms to control terrorist violence. 29 Among the issues are: the lack of a clear definition of innocent civilians; the limits of the use of force in connection with wars of national liberation and conflicts of a non-international character; the limits of the use of force by states in response to what they may perceive as constituting acts of violence; state policies and practices that may be considered by other states as constituting a violation of international treaty obligations; the lack of specific norms on state responsibility in failing to implement existing international obligations; the abuse of the privilege of diplomatic immunity and the diplomatic pouch; the absence of norms concerning the responsibility of states for acts not prohibited by international law; the absence of international regulation and control of the traffic and trade in arms; the insufficiency of international mechanisms for the peaceful resolution of conflicts and for the enforcement of internationally protected human rights; the lack of universal acceptance of the principle aut dedere aut iudicare and the lack of adequate international cooperation in the effective and uniform prevention and control of all forms and manifestations of terrorist violence; and the absence of international norms on the use of mercenaries. 30

The discussion of the establishment of subregimes applies to international terrorism. Among governments, intergovernmental organizations, and other persons, the establishment of rules to deal with the types of crimes perpetrated by terrorists in general and narco-terrorists in particular must be developed. Due to the variables in the interaction between narcotics traffickers and terrorists, social scientists outside of law must be used (i.e., political scientists, sociologists, geographical area specialists).

When governments circumvent international law to deal with international terrorism, there must be better enforcement mechanisms to punish states and individuals who try to violate the rule of law. Such mechanisms seem best integrated into an international criminal court with jurisdiction over terrorism.

29. See generally J. F. Murphy, Punishing International Terrorists, the Legal Framework for Policy Initiatives (1985); Zagaris & Simonetti, supra note 26.

B. Specific Mechanisms

1. Jurisdiction

Better uniformity in the laws and practices of states concerning both criminal and extraterritorial jurisdiction must be developed as a means to prioritize and resolve cases of conflicting jurisdictional claims.

2. Extradition

The political offense exception should be better refined, so that its use is minimized for extradition for crimes of terrorist violence, except where the requested state decides to undertake prosecution of the requested person or transfer the proceedings to another state to conduct the prosecution.

Some experts have advocated the preparation of a multilateral extradition treaty covering all forms and manifestations of terrorist violence dealt with in prior international conventions as a means to complement the existing treaties.

The use of lawful alternatives to extradition, such as deportation or voluntary return of the subject to appropriate judicial guarantees, should be encouraged.

3. Non-applicability of defenses

The defense of "obedience to superior orders," "act of State," and other eventual international immunities should not apply with respect to persons who have violated international conventions prohibiting acts of terrorist violence.

4. State Terrorism

States that violate international law and resort to terrorist violence should be more effectively sanctioned by the international community. The U.N. should develop mechanisms for the control of such behavior, especially through the strengthening of U.N. machinery for the protection of human rights and preservation of peace and security.

5. Control of Weapons, Ammunition, and Explosives

States must develop national legislation to effectively control arms, ammunition, explosives, and other dangerous materials that may be-
come accessible to terrorists. International regulations on the transfer, import, export, and storage of such objects should be developed so that customs and border controls can be harmonized to prevent their transnational movement, except for established lawful purposes.

6. Protection of Victims and Witnesses

States should establish appropriate mechanisms for the protection, and should introduce relevant legislation for the assistance, of victims of terrorism, pursuant to the Declaration of basic Principles of Justice for Victims of Crime and Abuse of Power.

States should adopt measures and policies to protect witnesses of terrorist acts.

7. Treatment of Offenders

Because ideologically motivated offenders are not often susceptible to resocialization, programs must be designed for such offenders and alternative measures of correction and programs oriented to social defense. Care must be taken so that all offenders are treated without discrimination and according to international recognized human rights, as contained in several conventions.

8. The Role of the Mass Media

States should consider the development of guidelines for the mass media or encourage the establishment of voluntary guidelines to control the following: sensationalizing and justifying terrorist violence; dissemination of strategic information on potential targets; and dissemination of tactical information while terrorist acts are occurring, thereby possibly endangering the lives of innocent civilians and law enforcement personnel or impeding effective law enforcement measures to prevent or control such acts and to apprehend the offenders.

9. International Criminal Court

When feasible, the establishment of an international (or regional) criminal court with jurisdiction for terrorist acts is desirable.

10. Monitoring and Ensuring Improved Compliance

To ensure better compliance with international law on terrorist
acts, the U.N., in cooperation with specialized agencies, should prepare reports on compliance with existing international conventions, including detailed reporting on incidents and cases for international circulation.

States that are not signatories to international conventions prohibiting terrorist violence should be urged to accede to such conventions at the earliest opportunity and to take effective measures to enforce their provisions.

V. SUMMARY AND CONCLUSION

Through designing and implementing a multidisciplinary program that seeks to develop effective regimes of international criminal cooperation, states and international actors can begin to mobilize resources sufficient to combat the power and perniciousness of new international activities of organized crime and narco-terrorism. Within the establishment and development of regimes and subregimes, the individual measures should be adopted and utilized.