



ODUMUNC 2014
Issue Brief for
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Suppression of Transnational Crime and the Trade in Illegal Drugs

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Introduction

Transnational crime is a problem uniquely suited for the United Nations action because its global scope and the need for global coordination and resources required to effectively confront the causes. An influential report by the UN Office on Drugs and Crime (UNDOC) estimates the value of transnational organized crime as USD 875 billion.¹ If related money laundering and tax evasion are included, UNDOC concludes that the cost of transnational crime is about USD 2.1 trillion, roughly the size of the entire economy of Russia.²

The United Nations plays a leading role coordinating international and national action, but the issues involved are diverse and the causes complex. The UN provides a vital role as a source of reliable data, it can recommend paths of action, and it is a vital forum where solutions can be developed, but ultimately action has to be done by the 193 member states.

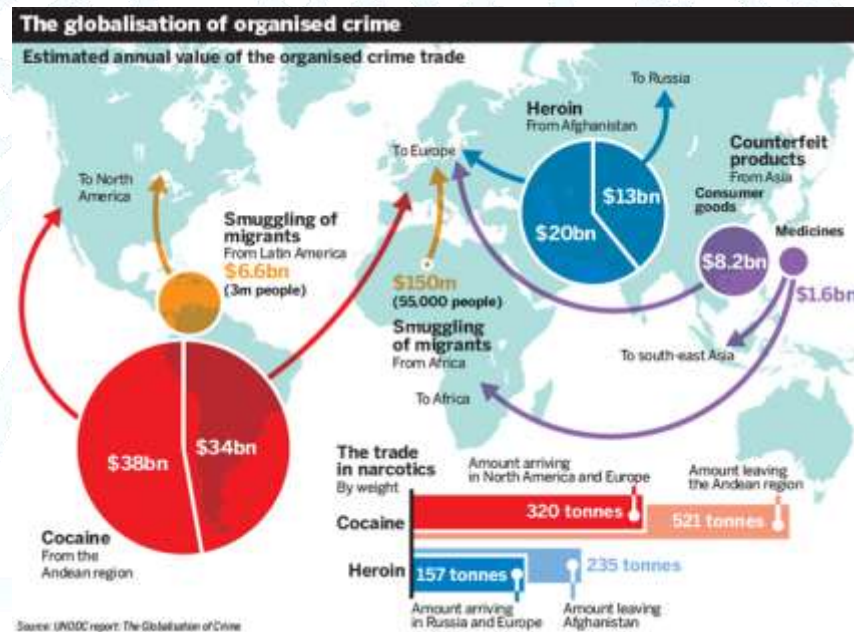
Over the last decade there has been substantial work by the UN and other bodies to combat transnational crime, yet the problem remains and is in fact growing. So far, transnational crime usually is treated only as an extension of domestic crime. However, the forces of globalization and state-instability in war torn regions have created an environment where crime has become septic in many parts of the world. Transnational crime has become too great a challenge for any one nation to deal with, so it is paramount that global minds come together through the United Nations to solve this pressing world issue.

¹ "New UNODC campaign highlights transnational organized crime as a US\$870 billion a year business", *United Nations Office on Drugs and Crime* (UNODC), 16 July 2012.

<https://www.unodc.org/unodc/en/frontpage/2012/July/new-unodc-campaign-highlights-transnational-organized-crime-as-an-us-870-billion-a-year-business.html>

² "UNODC estimates that criminals may have laundered US\$ 1.6 trillion in 2009", *United Nations Office on Drugs and Crime*, 25 October 2011. <https://www.unodc.org/unodc/en/press/releases/2011/October/unodc-estimates-that-criminals-may-have-laundered-usdollar-1.6-trillion-in-2009.html>

Figure 1.



Source: *Financial Times*, 17 July 2010

Background

The concept of transnational crime is different from that of international crime. Roughly speaking, international crimes are closer to the concept of *crimes against humanity*, and are often crimes that are perpetrated by states or state-sponsored groups. In this sense, an international crime might only occur in a single city, such as a government attacking its own citizens. Transnational crimes are similar to the everyday sense of criminal act one might expect, except the acts and/or the effects of the crime go across national boundaries. In this sense, harvesting drugs in one country, transporting them across another, then selling them to a third would be a transnational criminal activity over three states. An area where international and transnational crimes intersect is human trafficking since this crime is considered a human rights violation of the victims but is usually perpetrated by private criminals for profit.

The largest and most urgent categories or transnational crimes can be summarized as:

- *counterfeit goods trade* (medicines, consumer products),
- *illicit drug trading and production*, the various types of
- *human trafficking* (slavery, organ markets), other
- *illicit smuggling* (banned goods, money laundering, arms dealing),
- *environmental crime* (illegal extraction of natural resources, “blood diamonds”),
- *public official corruption* (enabling the aforementioned crimes through bribery), and the relatively new
- *cybercrime*.

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All of these activities affect people across borders and require a multinational approach to address and prevent further spread of crime.

Figure 2. Estimated value of criminal activities by type



Transnational crime is mostly committed by private actors and increasingly by *organized* private actors, which presents a new challenge to the international body. Organized crime often supplants a fledging local government by providing community services, such as welfare assistants and, ironically, a judicial system. This makes investigations more difficult because those benefiting from the organized criminals will become less inclined to testify against the outfit and because as the criminal outfit replaces the government, citizens will see the legitimate legal system as being too weak to help. If unchecked, this outcome can extend to large amounts of territory, such as the previous Taliban control of Afghanistan. Corruption is often seen as a transnational crime because of its effects across boundaries, blurring the line between private crimes and state sponsored crimes. Because the acts are by individuals inside a government, a tremendous amount of police work and investigation is needed to discover who is behind the corruption, and then the judiciary must be strong enough to effectively bring the corrupt official to justice. Making this more difficult, expansive criminal organizations are most likely to form

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and operate in states with weak law enforcement and high levels of corruption essentially making their activities immune from justice.

Current Situation

The United Nations began a push towards dealing with transnational crime in the late 90's. In 1997 the United Nations Office on Drugs and Crime was established to provide knowledge and strategies on combating all issues related to drugs and crime, including terrorism, corruption, and human trafficking. Soon after the office was established debate began on several conventions dealing with the topics of the office.

In 2003, the *United Nations Convention against Transnational Organized Crime and Protocols Thereto* entered into force, calling upon states to harmonize (or create) domestic laws regarding transnational crime and set up offices specifically designed to allow mutual crime investigations to cooperate between countries.³ The convention included three protocols: *Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children*; *Protocol against the Smuggling of Migrants by Land, Sea and Air*; and *Protocol against the Illicit Manufacturing of and Trafficking in Firearms, their Parts and Components and Ammunition*.

Also entering into force in 2003 was the *United Nations Convention against Corruption*, aiming to update, harmonize, and create laws regarding corruption to press states to much more aggressively detect and punish corrupt officials.⁴ A promising non-UN strategy, considered the 'follow the money' approach, has been implemented by some regional economic groups, like the Organization for Economic Cooperation. The strategy is to harmonize laws concerning money-laundering and illegal money transfers since this is the primary mechanism that criminal organizations move their assets around. Often cited is the fact that the Chicago gangster Al Capone was found guilty of tax evasion not murder, yet either way his criminal organization was stopped. This strategy has long been used in sanctioning terrorist organizations and could easily be expanded to transnational crime.

All of the United Nations' measures represent an almost unprecedented agreement between states regarding the criminal justice scope and process; however, the truth of the matter is that there hasn't been much success. Unfortunately, in the states with the weak institutions that allowed the criminal outfits to flourish, criminals and corrupt officials are reticent to turn themselves in to authorities. The problem resides in the fact that transnational crime is still fought as domestic crime and the measures taken don't treat the causes of the criminal activities. The conventions and protocols of the UN and other regional bodies have aided information sharing, but most states are unwilling to cede any actual power to foreign criminal investigators and states often demand that legal jurisdiction remain domestic. Because of the corruption in these nations, this usage of the domestic legal systems often exonerates the criminals and forces the criminal investigations to restart from the beginning.

³ "United Nations Convention against Transnational Organized Crime and the Protocols Thereto", UNODC, n.d. <http://www.unodc.org/unodc/treaties/CTOC/>

⁴ "United Nations Convention against Corruption", UNODC, n.d. <http://www.unodc.org/unodc/en/treaties/CAC/>

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A growing criticism with current crime prevention is that the causes and incentives of crime are not being addressed. As mentioned above concerning corruption, if the domestic legal system is not robust enough to police itself, then there is no way it can police the nation. Accountability in domestic institutions will likely yield greater returns in fighting crime throughout the country. Recently the UN Global Commission on Drug Policy has proposed a policy shift toward public health awareness rather than strictly law enforcement. The foundational 1961 [*Single Convention on Narcotic Drugs*](#) was influenced by developed nations (who are the primary importers of drugs) towards ‘supply side’ law enforcement rather than measures to keep their own citizens from demanding the drugs. ‘Demand-side’ measures would require developed nations to admit that criminal outfits are only responding to the demand from the citizens of wealthy nations. In fact, the disruption of one criminal supplier by law enforcement only opens up more space for other criminal organization to vie for the new market space. If demand were reduced, then drug outfits would decrease supply based solely on their own financial interests. All in all, the current law enforcement environment features many nations with similar laws on the books but limited allowance of either foreign investigations or strategies to combat root causes.

Role of the international community

Thus far the United Nations has provided information through reports by the Office of Drugs and Crime, reports when the topics align with other UN bodies, and facilitated the harmonization of laws in states to make law enforcement easier for investigators. The UN has not had a substantial role in preventing criminal activity. However, UN precedent exists for greater UN involvement through peace-keeping-operations (PKOs) as well as the [*International Commission Against Impunity in Guatemala*](#) (CICIG). PKOs have rarely been charged with crime prevention in the sense being discussed; however, given the destabilizing nature of these criminal activities, adding crime prevention (or at least prevention of specific crimes) to a PKO’s responsibilities could increase the effectiveness of the whole mission.

While global actions get the most attention, a vital approach to the problems of transnational crime is country specific. In the UN system, such initiatives require the support of the member state. They cannot be established against their wishes. Country-specific initiatives like *The International Commission Against Impunity in Guatemala* (usually known as CICIG, its Spanish acronym) of 2006 establish an important precedent for country-specific action. The CICIG was established by a treaty between the UN and the government of Guatemala. The main purpose of the treaty was to provide investigatory and prosecutory support in criminal cases that would otherwise be difficult to advance in Guatemala’s weak legal system. Because of the weak judicial system, organized crime and corrupt officials could intimidate and bribe their way out of prosecution; however, the CICIG introduced an outside organization that could transcend the intimidations and bring cases to court as if it was the Guatemalan government. The CICIG has taken dozens of transnational criminals *and* the corrupt enablers of these crimes to justice. All along the way, these cases have empowered the existing legal system, which could eventually allow Guatemala to no longer need the UN support.

While both of these UN based solutions have potential for success in other parts of the world, the ideas require some relinquishing of sovereignty to investigators, prosecutors, and

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potentially judges from outside the host nation. Both also have limitations to their effectiveness. Adding crime prevention to the mandates of PKOs may provide help to that nation, but PKOs are only established in conflict zones, not just where crime occurs. PKOs do not represent a comprehensive solution; however, a resolution calling on the UN Security Council to augment PKO missions could be forward step if nothing else can pass. The CICIG is monumental but would be difficult to implement globally. Guatemala specifically proposed the bilateral treaty. Getting permission one nation at a time could prove daunting (not to mention costly and complex), yet a universal resolution to allow the UN legal jurisdiction globally is unimaginable due to many nations' ceding any power out their own borders and to the UN (including the United States of America).

To solve this problem states must agree to more than they have heretofore allowed. Any method for addressing transnational crime will only be as effective as the judicial system of most corrupt country. This should be reason to give up on the ideals of justice and rule of law, but it should guide the solution.

Figure 3. UN City in Vienna, home to the UN Office on Drugs and Crime



Source: *Wikimedia*

Proposals for action

These fall into three general categories;

- *Agreements calling on countries to coordinate domestic law and policy.* These non-binding agreements are most popular and easily passed in the UN system, where they do not require states to take action they might find difficult or controversial. The recommendations set standards for implementation at home, leaving member states free

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to interpret and act on them as they want and can. Non-binding agreements allow countries to deal with tough issues as they think best, insuring easier passage, although with less “bite”.

- *Binding treaties*, using the power of international law in which countries agree to accept international standards and insure optimal cooperation on specific problems. These are best for specific action on problems involving many countries, whether as sources or recipients of crime.
- *Country-specific action*, working with especially affected countries, coordinating the maximum value of international support. These are ideal for highly specific transnational crime issues, but countries often resent being targeted or fear expectations they cannot meet.

Country positions

Member states must all say they are committed to the principles of fighting crime, but the amount of sovereignty each is willing to surrender will vary greatly. Roughly speaking, states with strong central governments and adherence to the rule of law will be more likely to allow foreign authority to exist because these states are sufficiently sure that there is no downside for their people. This group consists of affluent nations, especially nations from the Western tradition, like Europe, but not necessarily including the United States.

States with weak central institutions but not corrupt public leaders will also tend to favor more aggressive tactics in combating transnational crime. The public leaders and the citizens want protection from criminal activity because they have no institutional ability to do so autonomously. Some high-ranking official may be corrupt, but the majority of corruption occurs in the lower ranks of administration, such as local police and customs officials. No central criminal group exists, but a few groups may each control specific provinces or business areas. Nations that fall into this category will likely be fragile democracies and lower/middle income countries like Guatemala, Kenya and Mexico.

Lastly, resistance will be found from nations where those who benefit from the criminal activity are able to consolidate and exert power over public policy. Often, those who benefit are public leaders or of powerful corporate interests. Authoritarian sometimes are the fastest to act; they don't have as much worry about rights of innocent. Sometimes they're last to act, protecting interests. The status quo can work for this group because there are fortunes to be made. Leveraging this group is not impossible, but any solution has to acknowledge that it will only succeed if it convinces powerful people to give up their power.

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