

# International Legal Mechanisms for Combating Transnational Organized Crime: The Need for a Multilateral Convention

By  
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## I.

### INTRODUCTION

While the recent discovery of Russian money laundering operations in American banks and businesses may have come as a “rude awakening for Americans,”<sup>1</sup> some experts, more familiar with Russian organized crime, foretold the boom these international criminals would enjoy following the breakup of the Soviet Union:

[T]he Iron Curtain . . . was a shield for the West. Now we’ve opened the gates, and this is very dangerous for the rest of the world. America is getting Russian criminals; Europe is getting Russian criminals. They’ll steal everything. They’ll occupy Europe. Nobody will have the resources to stop them. You people in the West don’t know our mafia yet. You will, you will.

—Serious Crimes Investigator Boris Uvarov in 1992<sup>2</sup>

Globalization has brought prosperity not only to Russian criminal organizations, but also to all of the major transnational criminal groups around the world. Over the last decade, organized crime groups have significantly advanced in size, sophistication, and degree of transnational activity and cooperation.<sup>3</sup> Today’s main international criminal organizations are operating with the technology of

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1. Kevin Johnson, *International Police Discuss Dirty Money*, USA TODAY, Sept. 1, 1999, at 5A. In addition to allegations that up to \$15 billion has been laundered through American banks including the Bank of New York, evidence is mounting that Russian criminals have successfully set up large companies in the U.S. for the purpose of laundering the proceeds of their criminal activities, one of many examples being Semyon Yukovich Mogilevich and YBM Magnex, the company he set up in Philadelphia. See Raymond Bonner, *Russian Gangsters Exploit Capitalism to Increase Profits*, N.Y. TIMES, July 25, 1999, § 1, at 1.

2. CLAIRE STERLING, *THIEVES’ WORLD* 113 (1994).

3. Some groups hire specialists as advisers and even engage in research and development programs. See *Problems and Dangers Posed by Organized Transnational Crime in the Various Regions of the World*, in THE UNITED NATIONS AND TRANSNATIONAL ORGANIZED CRIME 31 (Phil Williams & Ernesto U. Savona eds., 1996) [hereinafter *Problems and Dangers*].

many multinational corporations, rather than the tactics employed by local gangs.<sup>4</sup> The same industrial advances that have allowed legitimate businesses to increase their international operations have similarly affected the activities of organized criminal enterprises.<sup>5</sup>

While some governmental leaders have recognized international criminal organizations as quasi-superpowers to be feared in the new world order,<sup>6</sup> little coordinated action has been taken to address the increasingly transnational nature of organized crime. The international community will be unable to effectively counter the threat—including the threat of nuclear terrorism—posed by international organized crime<sup>7</sup> unless it uses equally sophisticated, cooperative, and comprehensive tactics. As observed by Rodrigo Paris-Steffens, “just as organized crime could not exist without international cooperation, the only possibility of combating contemporary organized crime is through international cooperation.”<sup>8</sup>

Meeting the challenge of this new breed of organized criminals requires a change in the traditional categorization of organized crime and law enforcement as matters of purely domestic concern.<sup>9</sup> Pursuing cooperative arrangements with one country at a time via extradition treaties and mutual legal assistance

4. See JOHN KERRY, *THE NEW WAR: THE WEB OF CRIME THAT THREATENS AMERICA'S SECURITY* 19 (1997). See also *Most Effective Forms of International Cooperation for the Prevention and Control of Organized Transnational Crime at the Investigative, Prosecutorial and Judicial Levels*, in Williams & Savona, *supra* note 3, at 80-81 [hereinafter *Most Effective Forms*].

5. See Rodrigo Paris-Steffens, *The Role of the United Nations in Combating Organized Crime*, in INTERNATIONAL PERSPECTIVES ON ORGANIZED CRIME 15 (Jane Rae Buckwalter ed., 1990).

6. Former Russian President Boris Yeltsin called organized crime a superpower. See John Thornhill, *Making a Killing: Executives Are Still Being Murdered in Russia But Crime Is Down and the State Is Fighting Back*, FIN. TIMES, Jan. 17, 1998, at 7. United States President William J. Clinton also said in a speech recommending the use of force against Iraq in February 1998 that the world is likely to see more and more of the kind of threat posed by non-state actors possessing weapons of mass destruction, including organized criminals, “who travel the world among us unnoticed.” See John F. Harris & John M. Goshko, *Clinton Makes Case for Strike Against Iraq*, WASH. POST, Feb. 18, 1998, at A1. Later in 1998, Clinton “essentially declared war” on global organized crime, calling it the “new empire” of evil, and making it the focus of a global crime-control plan he announced just prior to the G-8 summit in May of 1998. See Francine Kiefer, *Waging War on Global Crime*, CHRISTIAN SCI. MONITOR, May 15, 1998, at 3. The plan Clinton announced included increased cooperation with other countries, international agreements on seizing proceeds of crime, information sharing, enhanced U.S. jurisdiction to prosecute crimes committed overseas, and tighter border control. See Naftali Bendavid, *Clinton Envisions Global Crime Fight; Greater International Effort Called for in Plan to Combat Increase of Cross-Border Felonies*, CHI. TRIB., May 13, 1998, at 8.

7. “Because international criminal law is still in its infancy and is faced with a number of limitations, it is not adequately equipped to respond to the explosive growth of international crimes. Namely, international crime is not recognized by all nations, and no central organization has been established to monitor the enforcement of its rules.” Farah Hussain, Note, *A Functional Response to International Crime: An International Justice Commission*, 70 ST. JOHN'S L. REV. 756-57 (1996).

8. Paris-Steffens, *supra* note 5, at 15.

9. “Traditionally, organized crime has been seen largely as a law and order problem rather than as something that can threaten the viability of societies, the independence of governments, the integrity of financial institutions, and the functioning of democracy. The fact that a particular problem has always been conceptualized and understood within certain parameters does not prevent it from taking on new forms that pose a novel and much more formidable challenge. Organized crime has undergone a transformation of this kind and can no longer be understood as simply a local or national phenomenon.” *Problems and Dangers*, *supra* note 3, at 2.

treaties will also not adequately fortify the world against the threat of international organized crime. While there is a growing body of international criminal law relating to the various activities of organized criminals, it is time for an integrated, universal approach that addresses all aspects of organized crime throughout the world. An international convention clearly codifying the illegality of the major activities of international organized crime under international law and providing for multilateral legal assistance in apprehending and prosecuting leading international organized criminals, would go further toward matching and surpassing the sophistication and cooperation of today's criminal enterprises than any of the current national, bilateral, multilateral, regional, or piece-meal international approaches. Work on drafting an International Convention Against Organized Transnational Crime has commenced under the auspices of the Commission on Crime Prevention and Criminal Justice of the United Nations Economic and Social Council.<sup>10</sup> While there are certainly a host of obstacles to agreement on the provisions of the Convention, every U.N. member should join in this discussion and work toward its conclusion.

To appreciate the need for an integrated, international approach to the problem of transnational organized crime, it is important to understand the nature of the criminals and their crimes. Part I provides background on the main international criminal organizations and describes how their principal activities resemble threats traditionally dealt with under the rubric of international, rather than domestic, law. Part II provides an overview of the current legal mechanisms for addressing the problem of organized crime and their inadequacies. Part III makes the argument for an international convention on organized transnational crime and outlines the key elements of such a convention, the prospects for its conclusion, and the necessary concurrent steps.

## II.

### BACKGROUND: THE GROWING THREAT OF INTERNATIONAL ORGANIZED CRIME

Numerous scholars, lawyers, and social scientists have attempted to define international organized crime. Most have found that it is best defined by its attributes:<sup>11</sup>

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10. See *Question of the Elaboration of an International Convention Against Organized Transnational Crime*, G.A. Res. 51/120, U.N. GAOR, 82d plen. mtg. (1996). See also *International Cooperation in Combating Transnational Crime: Question of the Elaboration of an International Convention Against Organized Transnational Crime: Report of the Secretary-General*, U.N. SCOR, Comm'n. on Crime Prevention and Criminal Justice, 6th Sess., Provisional Agenda Item 6(a), at 2-5, U.N. Doc. E/CN.15/1997/7/Add.1 (1997) [hereinafter E/CN.15/1997/7/Add.1].

11. The list here is a compilation from several sources. Except as specifically footnoted, most of these attributes appeared on multiple lists among these sources. See Anatoli Volobuev, *Combating Organized Crime in the USSR: Problems and Perspectives*, in Buckwalter, *supra* note 5, at 75; Cyrille Fijnaut, *Policing International Organized Crime in the European Union*, in CHANGES IN SOCIETY: CRIME AND CRIMINAL JUSTICE IN EUROPE II (Cyrille Fijnaut et al. eds., 1995); Michael D. Maltz, *On Defining "Organized Crime": The Development of a Definition and a Typology*, in ORGANIZED CRIME 17 (Nikos Passas ed., 1993); Vincenzo Ruggiero, *The Camorra: "Clean" Capital and Organised Crime*, in GLOBAL CRIME CONNECTIONS 141-43 (Frank Pearce & Michael Woodiwiss

- involvement in criminal operations that cross state boundaries, often in response to a demand for goods that are illegal;
- the promotion of corruption of government officials (often exploiting economically weakened states) with the goal of influencing or neutralizing the instruments of state;
- the possession of considerable resources;
- a hierarchical, rigid, or compartmentalized organizational structure<sup>12</sup> that uses internal discipline and thereby protects the leadership, "who carry out organizational, administrative and ideological functions,"<sup>13</sup> from detection or implication in commission of crimes;
- the laundering of proceeds and the use of legitimate "front" businesses to hide criminal activities;
- the use of violence;
- the capacity to "engage in a range of activities," and the "professionalism of its participants,"<sup>14</sup>
- "the aim of . . . the realization of large financial profits as quickly as possible,"<sup>15</sup>
- operation on a sustained, long-term basis; and
- "the tendency to organize international operations together with other groups of different nationalities."<sup>16</sup>

#### A. *The Major International Criminal Organizations*

The "Big Five"<sup>17</sup> international criminal organizations are the Russian "Mafiya,"<sup>18</sup> the Italian mafia families, the Colombian cartels, the Chinese Triads, and the Japanese Yakuza. To elaborate the best approach in combating the problem of organized crime, it is important to consider each of the groups for its differences, similarities, and links to the other groups.<sup>19</sup>

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eds., 1993); Donald Lavey, *Interpol's Role in Combating Organized Crime*, in Buckwalter, *supra* note 5, at 87; *Problems and Dangers*, *supra* note 3, at 3; *The Feasibility of Elaborating International Instruments, Including Conventions, Against Organized Transnational Crime*, in Williams & Savona, *supra* note 3, at 153 [hereinafter *The Feasibility of Elaborating*].

12. This aspect leads some to describe organized crime as a pyramid structure, with the base comprising the "operative block" of professional criminals, the middle section comprising the "supply group and security group," and the tip of the pyramid comprising the "elite group representing the intellectual center or leaders of the entire system." Volobuev, *supra* note 11, at 77. See also *Problems and Dangers*, *supra* note 3, at 30.

13. See Volobuev, *supra* note 11, at 75.

14. See Ruggiero, *supra* note 11, at 141-43.

15. See Lavey, *supra* note 11, at 87.

16. *The Feasibility of Elaborating*, *supra* note 11, at 153.

17. See KERRY, *supra* note 4, at 21.

18. "Mafiya" is the English transliteration of the Russian word and has been used by Stephen Handelman and others to distinguish the Russian version from the Italian. See STEPHEN HANDELMAN, *COMRADE CRIMINAL* 21-22 (1995). "Russian" is used here as shorthand to refer to organized crime in and from all parts of the former Soviet Union. See *Russian Organized Crime in the United States: Hearing Before the Permanent Subcomm. on Investigations of the Senate Comm. on Governmental Affairs*, 104th Cong., 2nd Sess. 2 (1996) (opening statement of Senator Roth) [hereinafter *1996 Hearing*].

19. See *Problems and Dangers*, *supra* note 3, at 2.

### 1. The Russian "Mafiya"

While the Russian criminals are relative newcomers in the West and are not as numerous in the United States as other criminal groups, "the Russians stand out among their peers because they are talented enough and frightening enough to have achieved in two or three years what the others achieved in twenty or a hundred."<sup>20</sup> The rapid rise of the power of Russian organized crime throughout the world led the head of Italy's Parliamentary Anti-Mafia Commission to pronounce in 1993 that "the world capital of organized crime is Russia,"<sup>21</sup> dispelling any lingering notion that the Italians still play the central role. Russia is particularly susceptible to flourishing criminal activity because of the weak state of its government. Law enforcement bodies lack adequate funding, equipment, training, and a solid legal foundation for pursuing criminals or cooperating with foreign officials.<sup>22</sup> "The world's largest, busiest, and possibly meanest collection of organized hoods,"<sup>23</sup> the Mafiya includes as many as three million members,<sup>24</sup> and 8,000 groups,<sup>25</sup> 200 of which are operating outside Russia in fifty other countries.<sup>26</sup>

In terms of organizational structure, the Russian brand of organized crime deviates slightly from the standard definition. Unlike the Sicilians, the Russians are not necessarily organized around family ties, ethnicity,<sup>27</sup> or a centralized command. Indeed, some have disputed whether the Russian groups possess the unified, hierarchical structure that defines organized crime.<sup>28</sup> There does not appear to be an "overall controlling figure or body."<sup>29</sup> Rather, the Russian Mafiya has its "godfathers"—called *vory v zakone*, "thieves within the code," or "thieves in law"—who act as commanders and strategists.<sup>30</sup> A small number of these *vory v zakone* are believed to "loosely rule the Russian criminal world,"<sup>31</sup> and meet from time to time to plot.<sup>32</sup> In addition to the *vory*, modern organized

20. See STERLING, *supra* note 2, at 16.

21. See *id.* at 17.

22. See *id.*

23. *Id.* at 90.

24. See *id.*

25. See Phil Williams, *Introduction: How Serious a Threat is Russian Organized Crime*, in RUSSIAN ORGANIZED CRIME 5 (Phil Williams ed., 1997) (estimate as of 1995).

26. The number of countries in which Russian groups have established a presence increased from twenty-nine in 1994 to fifty in 1997, according to Louis Freeh, director of the U.S. Federal Bureau of Investigation. See CENTER FOR STRATEGIC AND INTERNATIONAL STUDIES, RUSSIAN ORGANIZED CRIME: GLOBAL ORGANIZED CRIME PROJECT 2-3 (1997) [hereinafter CSIS REPORT]. See also *Problems and Dangers*, *supra* note 3, at 15.

27. Only a small percentage of individual crime groups in Russia are ethnically based, whereas most criminal groups in the United States are formed along ethnic lines. See CSIS REPORT, *supra* note 26, at 28.

28. Joseph Serio, *The Soviet Union: Disorganization and Organized Crime*, in ENTERPRISE CRIME: ASIAN AND GLOBAL PERSPECTIVES 158-59 (Ann Lodl & Zhang Longquan eds., 1992).

29. See *Problems and Dangers*, *supra* note 3, at 15.

30. See STERLING, *supra* note 2, at 97. But see CSIS REPORT, *supra* note 26, at 27 (recognizing the historical role of the *vory v zakone*, but noting a recent trend of disregard for their traditional code of behavior).

31. Abraham Abramovsky, *Prosecuting the "Russian Mafia": Recent Russian Legislation and Increased Bilateral Cooperation May Provide the Means*, 37 VA. J. INT'L L. 191, 200 (1996).

32. See STERLING, *supra* note 2, at 98.

crime groups in Russia have coalesced around three other “centers” of criminality: former members of the Soviet power elite, or *nomenklatura*; certain national and ethnic groups such as the Chechens; and “criminal associations based on control of a particular geographical sector, a specific criminal activity, shared experiences, membership in certain athletic sports clubs, or a particular leader.”<sup>33</sup> “What does not seem to be in dispute, however, is that groups do actively cooperate among themselves when necessary . . . . Current levels of ‘organization’ allow for the merging of activities in the criminal and economic spheres.”<sup>34</sup>

The Russian Mafiya is a diversified business. Mafiya groups are engaged in “extortion, theft, forgery, armed assault, contract killing, swindling, drug-running, arms smuggling, prostitution, gambling, loan-sharking, embezzling, money laundering, and black marketing—all this on a monumental and increasingly international scale.”<sup>35</sup> Additional activities include “systematic racketeering . . . trafficking in radioactive material . . . and the infiltration and purchase of Russian banks.”<sup>36</sup> Unlike the Colombians, whose only business is drugs, the Russian Mafiya traffics in anything and everything: drugs, metals, weapons, nuclear materials, even body parts.<sup>37</sup>

If any single characteristic sets the Russian criminals apart from other organizations, it is probably their knack for business and economic crimes—such as financial fraud and money laundering<sup>38</sup>—both at home and abroad.<sup>39</sup> The launching achievement of the Russian criminals in the post-cold war world was the massive plundering of currency and national resources from the former Soviet Union.<sup>40</sup> Currently, organized crime controls or influences most private banks<sup>41</sup> and an alarming number of businesses within the former Soviet Union.<sup>42</sup> The Russian Mafiya has also achieved a remarkable level of control over government officials since the break-up of the Soviet Union and has the potential to achieve the same level of corruption as the Colombians have

33. CSIS REPORT, *supra* note 26, at 27-28.

34. Serio, *supra* note 28, at 159.

35. STERLING, *supra* note 2, at 91.

36. KERRY, *supra* note 4, at 34. *See also* Serio, *supra* note 28, at 159; CSIS REPORT, *supra* note 26, at 18.

37. *See Problems and Dangers*, *supra* note 3, at 15.

38. *See 1996 Hearing*, *supra* note 18, at 17 (testimony of James E. Moody, Deputy Assistant Director, Criminal Investigative Division, FBI). Mr. Moody commented that Russian criminals operating in the United States “display a remarkable aptitude for sophisticated white-collar crime.” *Id.* at 18.

39. Guy Dunn, *Major Mafia Gangs in Russia*, in Williams, *supra* note 25, at 63, 85. *See also* Abramovsky, *supra* note 31, at 195 (attributing Russian criminals’ pursuit of financial fraud schemes in the United States to their education and sophistication).

40. Including “oil, gold, timber, copper, cobalt, aluminum, titanium, steel, uranium, plutonium and rare-earth metals.” STERLING, *supra* note 2, at 113.

41. *See* Abramovsky, *supra* note 31, at 197.

42. According to the Russian Ministry of Internal Affairs, “40 percent of private business, 60 percent of state-owned enterprises, and between 50 percent and 85 percent of banks are controlled” by Russian organized crime, with its total hold on about two-thirds of Russia’s economy. *See* CSIS REPORT, *supra* note 26, at 2.

achieved in their home state.<sup>43</sup> An estimated twenty-five percent of criminal proceeds in Russia are invested in maintaining and increasing ties with corrupt officials.<sup>44</sup>

The development of international operations by the Russian Mafiya was facilitated by the presence of Red Army troops and large immigrant communities abroad. In Germany, activities include trafficking in drugs, weapons, radioactive materials, and stolen cars, as well as money laundering and blackmail.<sup>45</sup> Red Army troops stranded in Germany at the end of the Cold War provided not only a distribution network, but also a willingness to sell their weapons and other possessions and even join the ranks of the criminals.<sup>46</sup>

## 2. Italian Mafia

Both United States and Italian law enforcement, at times working together, have significantly diminished the activity of Italian organized crime groups within their borders. But the Italian criminals have adapted by going global: three Italian-based groups—La Cosa Nostra from Sicily, the Camorra from Naples, and 'Ndrangheta from Calabria—are engaged in a global business worth approximately \$110 billion a year.<sup>47</sup> Together the Italian groups comprise some 374 clans and 17,500 members.<sup>48</sup> Activities include drug trafficking throughout the Americas and Western Europe, training of other ethnic-based organized crime groups, money laundering, loan-sharking, counterfeiting, extortion, infiltration of legitimate business, and corruption of government officials.<sup>49</sup>

## 3. Colombian Cartels

Notorious as the main enemy in the United States' war on drugs, the crowning achievement of the Colombians is probably their stranglehold on the power of Colombia's government. Other criminal organizations strive to emulate Colombia's narcodemocracy model, "with bribed officials now the norm, not the exception."<sup>50</sup> The structure of the Colombian cartels is modeled after Israeli intelligence cells, with minimal communication between separate units.<sup>51</sup> The cartels excel in their degree of organization, particularly for their size: "perhaps the nearest to a formal corporate structure based on a clear hierarchy, func-

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43. Russia may have already become what CSIS's Global Organized Crime Project terms a "criminal-syndicalist state" where gangsters, corrupt government officials, and crooked businessmen cooperatively rule the nation. See CSIS REPORT, *supra* note 26, at 15. Transparency International ranked Russia as the fourth most corrupt nation in the world in 1997, behind Colombia, Nigeria and Bolivia. See *id.* at 2.

44. See Yuriy A. Voronin, *The Emerging Criminal State: Economic and Political Aspects of Organized Crime in Russia*, in Williams, *supra* note 25, at 56.

45. See STERLING, *supra* note 2, at 118.

46. See *id.* at 120-21.

47. See KERRY, *supra* note 4, at 91.

48. See *id.* at 92.

49. See *id.* at 91-92.

50. See *id.* at 23.

51. See *id.* at 78.

tional specialization, and forward integration of activities.”<sup>52</sup> The latest technology—mobile and cellular phones, encrypted faxes, satellites, and beepers—protects what communication there is within the cells from infiltration by authorities. Communication ensures the smooth functioning of distribution networks<sup>53</sup> that are periodically adapted to evade beefed-up enforcement at border points.<sup>54</sup> Cocaine is the bread and butter of the cartels, with annual production that accounts for three-fourths of the world supply.<sup>55</sup> Lately, they have also branched out into marijuana and opium.<sup>56</sup>

#### 4. Chinese Triads

The existence of the Triads can be traced back to their seventeenth century opposition to the Manchu dynasty.<sup>57</sup> Taiwan, Hong Kong, and the United States serve as their headquarters today for worldwide trafficking in a variety of illicit goods, especially heroin.<sup>58</sup> Growth industries for Chinese criminal groups are alien smuggling (estimated \$3.2 billion per year), arms trafficking (\$3 billion), trafficking in stolen cars, boats and electronics (\$4 billion), and drug production and trade (\$200 billion).<sup>59</sup> Other activities of the Triads include illegal gambling, extortion, prostitution, loan-sharking, infiltrating legitimate businesses, and real estate.<sup>60</sup> Like the Soviet Red Army, members of China’s People’s Liberation Army are willing to sell off the store to organized criminals: Kalashnikov machine guns (i.e., AK-47s), grenades, and rocket launchers.<sup>61</sup> They number as many as 160,000 members belonging to fifty groups.<sup>62</sup>

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52. *Problems and Dangers*, *supra* note 3, at 12.

53. See KERRY, *supra* note 4, at 78.

54. Improved interdiction at the U.S.-Mexico border has prompted the Colombians to divert approximately 40% of the cocaine traffic to the U.S. through Caribbean routes—particularly Puerto Rico because of its relative freedom from customs checks as a U.S. territory. The traffickers have also used innovative methods and technology—high speed boats and Global Positioning System devices—to avoid stepped-up law enforcement. See Douglas Farah & Serge Kovaleski, *Cartels Make Puerto Rico a Major Gateway to the U.S.*, WASH. POST, Feb. 16, 1998, at A1. The Colombians hone in on countries where economies and politics are in a shambles so government officials are easily co-opted as allies. Haiti due to its instability, and several Caribbean islands that have been losing out in the banana trade are examples of such weak economies that have been victimized by traffickers. See Serge Kovaleski, *Cartels ‘Buying’ Haiti; Corruption is Widespread; Drug-Related Corruption Epidemic*, WASH. POST, Feb. 16, 1998, at A22; Serge Kovaleski & Douglas Farah, *Organized Crime Exercises Clout In Island Nations*, WASH. POST, Feb. 17, 1998, at A1. See also Laura Brooks & Douglas Farah, *New Breed of Trafficker Replacing Drug Cartels; Small Groups, Shipments Are Trademarks*, WASH. POST, Feb. 22, 1998, at A26 (describing the Colombians’ trade as “robust as ever,” even after arrests or deaths of many major drug lords, due to the ability of the cartels to advance mid-level managers to fill the void and change tactics, using smaller shipments, to avoid detection).

55. See KERRY, *supra* note 4, at 79.

56. See *id.* at 79.

57. See JOHN M. MARTIN & ANNE T. ROMANO, *MULTINATIONAL CRIME: TERRORISM, ESPIONAGE, DRUG & ARMS TRAFFICKING* 65 (1992); see also KERRY, *supra* note 4, at 57.

58. See MARTIN & ROMANO, *supra* note 57, at 65.

59. See KERRY, *supra* note 4, at 53.

60. See *id.* at 57. See also Volobuev, *supra* note 11, at 89; *Problems and Dangers*, *supra* note 3, at 17.

61. See KERRY, *supra* note 4, at 61.

62. See *Problems and Dangers*, *supra* note 3, at 16.

### 5. Japanese Yakuza

Favorite projects of the Japanese Yakuza include casinos, brothels, loan-sharking, blackmail, arms trading, and real estate.<sup>63</sup> The Yakuza has perfected its own style of corporate extortion called *sokiya*, whereby it purchases stock in a company so that it can send armed thugs to disrupt stockholder meetings until they are paid off.<sup>64</sup> In addition to Japan, the Yakuza has known operations in Costa Rica, São Paulo, Honolulu, Los Angeles, San Jose, San Francisco,<sup>65</sup> and other spots in the Pacific region. Methamphetamine is one of the Yakuza's chief exports from Asia and guns are one of its chief imports.<sup>66</sup> The Yakuza has also been a key force in developing the Southeast Asian "sex slave" business.<sup>67</sup> The Yakuza (also known as *Boryokudan*, or "the violent ones") includes approximately 3,000 groups and 85,000 members.<sup>68</sup>

### 6. Other Groups

The larger players have also recruited significant numbers of support staff in other parts of the world, including the Jamaican posses,<sup>69</sup> Nigerian traffickers,<sup>70</sup> Pakistani drug traders, Afghani poppy farmers, and Mexican launderers and distributors.<sup>71</sup> Finding new recruits becomes necessary every time law enforcement increases its focus on a particular link in the network.<sup>72</sup>

## B. The Main Activities of International Organized Crime and Analogies to Acts of Aggression

International organized criminal activity poses a threat to world security, and in that sense, is analogous to acts of aggression that are traditionally dealt with by international organizations, such as the United Nations. International organized crime is an assault on the three pillars of state sovereignty: the control of borders,<sup>73</sup> the monopoly on the use of violence for enforcement,<sup>74</sup> and the power to tax economic activities within state borders.<sup>75</sup> International criminal organizations pose as an alternative to legitimate state power, thereby undermin-

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63. See KERRY, *supra* note 4, at 22. See also Volobuev, *supra* note 11, at 89.

64. See Volobuev, *supra* note 11, at 89.

65. See KERRY, *supra* note 4, at 22.

66. See *Problems and Dangers*, *supra* note 3, at 18.

67. See *id.*

68. See KERRY, *supra* note 4, at 64.

69. See MARTIN & ROMANO, *supra* note 57, at 65.

70. The Nigerian groups arose after the collapse of oil prices in the 1980s and have become expert couriers for other international criminal organizations. They have benefited from the weakness and corruption of the government in their home state and have expanded into other areas such as fraud and extortion. See *Problems and Dangers*, *supra* note 3, at 19-20.

71. See KERRY, *supra* note 4, at 94-103.

72. See Kovaleski & Farah, *supra* note 54, at A1.

73. See *Problems and Dangers*, *supra* note 3, at 32.

74. See Alex Schmid, *Transnational Organized Crime and Its Threat to Democracy and the Economy*, in Fijnaut et al., *supra* note 11, at II.85-86.

75. See *id.*

ing stability and state control.<sup>76</sup> Their espousal of corruption in government threatens the development of democracy in many countries around the world.<sup>77</sup>

### 1. Nuclear Smuggling and Weapons Proliferation

Authorities are aware of over eight hundred attempts to transport nuclear material out of the former Soviet Union since its break-up.<sup>78</sup> Among the hopeful buyers have been representatives of North Korea and Iraq,<sup>79</sup> as well as members of Osama bin Laden's terrorist organization al Qaeda.<sup>80</sup> None of the individual amounts seized so far have been large enough to make more than a crude bomb.<sup>81</sup> Nonetheless, several potential scenarios are cause for alarm.<sup>82</sup> First of all, the known incidents of smuggling may be just the "tip of the iceberg,"<sup>83</sup> because the number of times smugglers have evaded the detection of law enforcement via less guarded borders<sup>84</sup> is unknown.<sup>85</sup> Second, buyers—most likely terrorists or rogue states—may be gradually collecting enough small amounts to build a nuclear bomb.<sup>86</sup> A third prospect is that the criminals themselves may be sitting on stashes, waiting for an opportune moment either to threaten to use the weapons themselves,<sup>87</sup> or to sell to a high enough bidder.<sup>88</sup>

76. See *Problems and Dangers*, *supra* note 3, at 34.

77. See *id.* at 35.

78. See KERRY, *supra* note 4, at 116. See also *Problems and Dangers*, *supra* note 3, at 23 (relating German law enforcement figures for incidents of attempted transactions involving nuclear materials: 176 cases in 1992; 241 cases in 1993).

79. See KERRY, *supra* note 4, at 116. See also Barry Kellman & David S. Gualtieri, *Barricading the Nuclear Window - A Legal Regime to Curtail Nuclear Smuggling*, 1996 U. ILL. L. REV. 667, 671 (1996) (describing the interdiction in 1994 of a transaction involving six grams of weapon-grade plutonium, a Bulgarian trade organization, and an Iraqi buyer).

80. See Steve Goldstein, *Leaky Borders Threaten World Security*, TORONTO STAR, Jan. 23, 1999.

81. See KERRY, *supra* note 4, at 116.

82. But see *Russian Gangsters and Nuclear Material*, NANDO TIMES (March 2, 1998) <[www.nando.net/newsroom/ntn/world/030298/world7\\_590\\_body.html](http://www.nando.net/newsroom/ntn/world/030298/world7_590_body.html)> (This article described comments of FBI director Louis Freeh during a trip to Russia in November 1997 in which he downplayed the security threat posed by Russian organized crime; Freeh's comments were countered by former state department official Robert Galucci, former Ambassador Jack Matlock, and other experts on Russian organized crime.)

83. See Kellman & Gualtieri, *supra* note 79, at 677.

84. The borders of the Former Soviet Union are particularly porous in Tajikistan and other former republics in the midst of civil unrest. See *id.* at 675. See also Goldstein, *supra* note 80 (relating the theory that nuclear smuggling occurs most frequently across the southern border of the former Soviet Union with Iran, Turkey, Afghanistan and China).

85. Rensselaer Lee, *Recent Trends in Nuclear Smuggling*, in Williams, *supra* note 25, at 118-19 ("Russian authorities are able to intercept only 30 to 40 percent of materials taken from Russia's nuclear facilities. The rest, the officers assume, are exported, stashed somewhere, or simply discarded.")

86. See Kellman & Gualtieri, *supra* note 79, at 677.

87. Lee, *supra* note 85, at 116 ("[I]n late 1995 a Chechen military commander Shamil Basayev arranged the burial and the subsequent discovery [by a Russian news team] of a canister of cesium-137 in Moscow's Izmailovsky Park. At the time the Chechen leader threatened to turn Moscow into an 'eternal desert' from radioactive waste.") See also Kellman & Gualtieri, *supra* note 79, at 677.

88. See *Problems and Dangers*, *supra* note 3, at 26 (suggesting that the "distinction between crimes of extortion and political terrorism will become increasingly blurred" as nuclear materials are traded by international criminal organizations and either sold to terrorists or used by the criminals themselves to blackmail governments).

Some authorities believe that nuclear smuggling was “one of the main topics at the Italian and Russian mafia summits during 1993 and 1994.”<sup>89</sup>

So far, the known scenarios indicate a very quiet if not non-existent market for nuclear smugglers.<sup>90</sup> Some recent examples highlight the collaborative global nature of the nuclear smuggling trade. In 1998, Italian police interdicted a shipment of enriched uranium rods, which had been imported from Zaire but originated in the former Soviet Union.<sup>91</sup> Also in 1998, Turkish customs officers seized 5.4 kilograms of uranium 235 and 7.1 grams of plutonium powder from eight men asking \$1 million for the material.<sup>92</sup> Three of the men were from Kazakhstan, one from Azerbaijan, and four from Turkey.<sup>93</sup> The potentially dangerous combination of poorly safeguarded nuclear sites<sup>94</sup> and an efficient and established network for smuggling<sup>95</sup> continues to loom.<sup>96</sup>

For the most part, existing nuclear treaty regimes did not anticipate or do not adequately address the role of non-state actors in nuclear proliferation.<sup>97</sup> Few would deny the argument that proliferation of nuclear materials—whether by state or non-state actors—constitutes an international crime and a crime against peace.<sup>98</sup> Yet there is a scarcity of international agreements explicitly confirming the status of nuclear smuggling as an international crime.<sup>99</sup> Only the Convention on the Physical Protection of Nuclear Material actually codifies nuclear smuggling as an international crime.<sup>100</sup>

89. See KERRY, *supra* note 4, at 117.

90. “There’s no smoking gun yet . . . of [smuggled] nuclear stuff. That doesn’t mean it didn’t happen,” according to Dr. Vladimir Brovkin of the United Research Centers on Organized Crime in Eurasia at American University. See Lee, *supra* note 82.

91. See *id.* (“Italian police say they have hard evidence that the Sicilian Mafia is involved in smuggling of weapons-grade uranium . . .”).

92. See Goldstein, *supra* note 80.

93. See *id.*

94. There have been several reported thefts of nuclear materials from submarine bases in Russia. See Lee, *supra* note 85, at 116. See also Kellman & Gualtieri, *supra* note 79, at 673-75; *The International Black Market: Coping With Drugs, Thugs, and Fissile Materials*, in GLOBAL ORGANIZED CRIME: THE NEW EMPIRE OF EVIL 81, 88-92 (Linnea P. Raine & Frank J. Cilluffo eds., 1994) (statements by Rensselaer Lee and David Kay).

95. The network about which authorities know most follows former Soviet Army positions from Russia through Eastern Europe, then to Italy, Austria, and Switzerland, and lastly to destinations in the Middle East or South Asia. See Kellman & Gualtieri, *supra* note 79, at 675. There is less evidence, but it is logical to assume the organized criminals might also be using routes to the south which are more difficult to police, and therefore more appealing. See *id.* at 676-77.

96. Lee, *supra* note 85, at 112. See generally Wendy L. Mirsky, Comment, *The Link Between Russian Organized Crime and Nuclear Weapons Proliferation: Fighting Crime and Ensuring International Security*, 16 U. PA. J. INT’L BUS. L. 749 (1995) (discussing the potential threat of nuclear smuggling by organized criminal groups in Russia).

97. See generally *The Nuclear Non-Proliferation Treaty and Global Non-Proliferation Regime: A U.S. Policy Agenda*, 12 B.U. INT’L L.J. 407 (1994) (describing inadequacies of the Nuclear Non-Proliferation Treaty).

98. Burrus M. Carnahan, *Symposium on Hot Spots in International Law: Nuclear Smuggling as an International Crime*, 28 AKRON L. REV. 417, 417 (1995).

99. See *id.* at 418-19.

100. Convention on the Physical Protection of Nuclear Material, Feb. 8, 1987, 18 I.L.M. 1419 (codified at 18 U.S.C. § 831 (1994) and 22 U.S.C. § 4831 (1994)). Only 24 states are parties. See *id.*

## 2. Support of Terrorist Groups

Terrorist groups turn to organized criminals as a source of funding for their activities. Many even join in the criminals' exploits—particularly drug trafficking—to pay for weapons and activities.<sup>101</sup> Conversely, organized criminals frequently employ terrorist-style methods, such as political assassinations.<sup>102</sup> The analogy to terrorism has prompted the suggestion that just as the world community sanctions state sponsorship of terrorism, state sponsorship of organized crime should be recognized and sanctioned.<sup>103</sup>

## 3. Drug Trafficking

The drug business holds great allure for organized criminals. In the United States and Europe combined, it is a \$122 billion-a-year business.<sup>104</sup> By some accounts, worldwide, the drug trade may be larger than the trade in oil, with an estimated trade volume of \$500 billion a year.<sup>105</sup> According to Paul Stares, "the rewards of the drug trade are larger than the gross national product of three-fourths of the 207 economies of the world."<sup>106</sup>

The effects of drug trafficking on states are tantamount to an attack on the government itself. Drug crime drains the economy, degrades governmental legitimacy, and causes increased levels of corruption by government officials.<sup>107</sup> One Colombian crime figure admitted the war-like impact on governments:

The drug business is not just money—it is also political. The head of Cali, Gilberto Rodríguez Orejuela, thinks of it as a war in which he is producing a chemical poison against the United States and its people. Since the U.S. is the only threat to him, he will do all he can to weaken the country.<sup>108</sup>

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101. PAUL STARES, *GLOBAL HABIT: THE DRUG PROBLEM IN A BORDERLESS WORLD* 6 (1996) ("Separatist groups and terrorist organizations in such diverse places as Peru, Colombia, Afghanistan, Pakistan, Lebanon, Northern Ireland, Somalia, and Turkey are now believed to purchase weaponry and supplies with money derived from the drug trade."). Other examples of corrupt collaboration between terrorists and organized criminals have included the now largely defunct Shining Path in Peru, which trafficked in coca leaves in order to pay for explosives used in its terrorist campaign; Sri Lanka's Tamil Tigers, who have used kidnapping ransom money to fund their campaigns; and the Montana Freeman, "who fill their coffers with the proceeds from counterfeit financial instruments and forged checks." See KERRY, *supra* note 4, at 112. See also *Problems and Dangers*, *supra* note 3, at 25. Perhaps the most recent example is the Kosovo Liberation Army, which has played a major role in the heroin trade in Europe as a means of financing its separatist campaign. See Frank Viviano, *KLA Linked to Enormous Heroin Trade*, S.F. CHRON., May 5, 1999, at A1; Duncan Campbell et al., *Drug Smugglers' European Union; Case Uncovers New Heroin Links*, THE GUARDIAN, Dec. 12, 1998, at 12.

102. See *Problems and Dangers*, *supra* note 3, at 24-5 (suggesting a "convergence" of criminal and terrorist organizations). See also KERRY, *supra* note 4, at 25.

103. See KERRY, *supra* note 4, at 174.

104. See STARES, *supra* note 101, at 1.

105. See *Problems and Dangers*, *supra* note 3, at 9 (citing Louis Kraar, *The Drug Trade*, FORTUNE, June 20, 1988, at 27-38).

106. See Stares, *supra* note 101, at 2. In Colombia alone, profits from the drug trade are estimated at \$5 billion a year, while the country's most profitable legal trade, oil, has profits of about \$1.5 billion per year. See KERRY, *supra* note 4, at 30.

107. See STARES, *supra* note 101, at 96-7. In the most extreme cases, the state and the criminal organizations become collaborators. See *id.* at 98.

108. See KERRY, *supra* note 4, at 27.

The war has many casualties for the state: lost productivity; strains on state budgets for health care and law enforcement; and actual victims of the violence entailed in both self-protection by the criminals and irrational actions of their addicted customers.<sup>109</sup> There is precedent for an official U.S. war-like response to war-like activities of non-state actors.<sup>110</sup> It is not so far-fetched to view drug traffickers as the Barbary Pirates<sup>111</sup> of the modern age.

The rise and success of the drug trade has been parlayed into other lucrative trafficking enterprises: trafficking in people, whether illegal migrants, children, or sexual slaves; arms; body parts; and nuclear materials.<sup>112</sup> The drug business has also inspired many of the cooperative arrangements between different criminal organizations. For example, drug traffickers in Russia formed logical partnerships along geographic lines, linking the Golden Crescent (the region encompassing Afghanistan, Pakistan, and Iran) via Central Asian contacts.<sup>113</sup>

#### 4. Economic Crime

Organized crime defies one of the primary powers of the state: its power of taxation.<sup>114</sup> "Protection money" demanded by criminal organizations takes the place of taxes<sup>115</sup> and increases the degree to which the shadow state of the criminal enterprise is accorded more respect than the true state. Money laundering allows organized criminals to invest the proceeds of their illicit activities into legitimate business, spreading their taint. Drug traffickers alone launder an estimated \$250 billion a year.<sup>116</sup> In this area, the internationalization and increasing electronic accessibility of financial markets have made them susceptible to exploitation by criminal elements: "money is 'the most fungible of all commodities. It can be transmitted instantaneously . . . it can change its identity easily and can be traced only with great effort.'"<sup>117</sup> Criminal participation in the market undermines efforts of states and international financial institutions

109. See *Problems and Dangers*, *supra* note 3, at 33.

110. See Spencer J. Crona & Neal A. Richardson, *Justice for War Criminals of Invisible Armies: A New Legal and Military Approach to Terrorism*, 21 OKLA. CITY U. L. REV. 349, 361 (1996).

111. *Id.* at 407 ("[T]he crime of piracy, or robbery and depredation upon the high seas, is an offense against the universal law of society; a pirate being, according to Sir Edward Coke, *hostis humani generis*. As therefore he has renounced all the benefits of society and government, and has reduced himself afresh to the savage state of nature, by declaring war against all mankind, all mankind must declare war against him; so that every community hath a right, by the rule of self-defense, to inflict that punishment upon him, which every individual would in a state of nature have been otherwise entitled to do for any invasion of his person or personal property.").

112. *Problems and Dangers*, *supra* note 3, at 21-24, 26-29. Also mentioned are trafficking in stolen cars and auto parts, in animals and animal parts, in cultural objects and art. See *id.* at 38 (describing the ease with which a "trafficking network" in place for one type of illicit trade can be used for other kinds of traffic).

113. See Williams, *supra* note 25, at 18.

114. See Schmid, *supra* note 74, at II.86. The other main characteristic is the state's monopoly on violence. See *id.*

115. See *id.* at II.86-87.

116. See KERRY, *supra* note 4, at 179.

117. *Problems and Dangers*, *supra* note 3, at 8 (quoting L. Krause, *Private International Finance*, in *TRANSNATIONAL RELATIONS AND WORLD POLITICS* 175 (Robert Keohane and Joseph Nye eds., 1993)).

like the International Monetary Fund (IMF) to regulate and support healthy economies.<sup>118</sup>

### 5. *Domestic Activities*

Even activities that fall into the traditional categories of domestic law and order problems—such as murder, theft, extortion and bribery—have international implications. By assembling their own armed enforcement bodies, international organized crime usurps another of the attributes of sovereignty: the state's monopoly on violence.<sup>119</sup> The Russian Mafiya, for example, frequently hires assassins and uses bombs, without regard for injury to bystanders or mistaken targets.<sup>120</sup> The acts of organized criminals and the corrupt officials on their payroll could be viewed as human rights violations,<sup>121</sup> punishable on a universal level.

### C. *Evidence of Cooperation Among the Main Groups*<sup>122</sup>

Leaders of the largest international criminal organizations have formalized their collaborative relationships so that they rival strategic arrangements of legitimate heads of state or multinational corporations.<sup>123</sup> They form alliances and hold summits of their own. As far back as the end of World War II, the vory v zakone convened an "All-Thieves' Conference" in Lvov that included criminal colleagues from within and outside the Soviet Union.<sup>124</sup> In 1990, a summit convened in East Berlin (timed to coordinate with the EC summit in Dublin) which included international mafia groups, as well as Russian Mafiya leaders

118. See *id.* at 36 ("[T]hey can encourage inflationary pressures, a distorted sectoral development, and spending on luxury products by a few when the greatest need is for a wider distribution of resources within the society.")

119. See Schmid, *supra* note 74, at II.86.

120. See Scott P. Boylan, Essay, *International Security in the Post-Cold War Era: Can International Law Truly Effect Global Political and Economic Stability? Organized Crime and Corruption in Russia: Implications for U.S. and International Law*, 19 *FORDHAM INT'L L.J.* 1999, 2014 (1996).

121. See *Briefing on Crime and Corruption in Russia*, CSCE 8 (June 10, 1994) (testimony of Louise Shelley).

122. "But crime today is not simply random or local; more often it is purposeful and global. The vast poppy fields in eastern Turkey are linked to the heroin dealer in downtown Detroit; the banker laundering drug money in Vienna is in league with the thriving cocaine refineries in Colombia. The men of the Chinese triads who control gambling and extortion in San Francisco's Chinatown work the same network as the Singapore gang that turns out millions of fake credit cards. The contract hit man who flies in from Moscow to kill an uncooperative store owner in New York, on behalf of the Organizatsiya, gets his fake papers by supplying the Sicilian Mafia with Soviet Army surplus ground-to-air missiles to smuggle into the Balkans to supply the Bosnian Serbs with the firepower to take on U.N. security forces." KERRY, *supra* note 4, at 24.

123. See Phil Williams, *Transnational Criminal Organizations: Strategic Alliances*, in *ORDER AND DISORDER AFTER THE COLD WAR* 235-50 (Brad Roberts ed., 1995), cited in *Review of Priority Themes: Implementation of the Naples Political Declaration and Global Action Plan Against Organized Transnational Crime: Report of the Secretary-General*, U.N. SCOR, Comm'n on Crime Prevention and Criminal Justice, 5th Sess., Provisional Agenda Item 3, at 10, U.N. Doc. E/CN.15/1996/2 (1996) [hereinafter E/CN.15/1996/2].

124. See STERLING, *supra* note 2, at 51.

operating abroad and in the Soviet Union.<sup>125</sup> Cooperative agreements were solidified further following the dissolution of the Soviet Union:

By the end of 1992, the Sicilian Mafia had in fact reached a secret agreement with the Russian [Mafiya] in Prague, confirmed by a high authority in Russia's Academy of Science. The pact was designed 'to protect their new illicit trade throughout Central Europe, establish a global network for the drug trade and marketing of nuclear components, and create a lethal squad of killers' made of ex-KGB agents, [a representative of the Italian Interior Ministry] said.<sup>126</sup>

Just as the Group of Eight industrial nations combines frequently to discuss international cooperation, the group of five main criminal organizations gathers on a regular basis to discuss global operations. French intelligence reports revealed that a 1994 gathering in Burgundy of Russian, Chinese, Japanese, Italian, and Colombian "businessmen" was really a summit of "representatives of the world's leading organized crime syndicates" in an effort "to discuss carving up western Europe for drugs, prostitution, smuggling and extortion rackets."<sup>127</sup> At least two similar summits took place after 1994 on chartered yachts in the Mediterranean.<sup>128</sup> Specifics reportedly discussed at the summits include dividing drug routes, setting drug flows to avoid flooding markets, and sharing high-tech equipment and specialists.<sup>129</sup>

Aside from the summits, several other alliances have been discovered in recent years. Cooperation between the Russians and Sicilians in the heroin trade began in 1985.<sup>130</sup> Interpol Poland reported in 1992 that Russians had agreements with German and Dutch cocaine traffickers and the Cali cartel.<sup>131</sup> Russian organized crime also works with Asian organized crime in heroin smuggling operations.<sup>132</sup> Reality appears to be approaching Italian Judge Giovanni Falcone's nightmare of a "pax mafiosi."<sup>133</sup>

The Russians are not the only group to reach out to the international brotherhood of criminals. The Yakuza has cooperated with the Sicilian Mafia in at least one project in Australia, infiltrating the construction company building the Sydney Harbor Tunnel.<sup>134</sup> In conjunction with the Chinese Triads, the Yakuza has established one of the world's largest operations for methamphetamine production, on the island of Taiwan.<sup>135</sup> The Triads have arrangements with the

125. See *id.*

126. *Id.* at 88.

127. Andrew Alderson & Carey Scott, *Crime Kings Meet to Carve Up Europe*, SUN. TIMES, Mar. 29, 1998.

128. See *id.*

129. See *id.*

130. See STERLING, *supra* note 2, at 117.

131. See *id.* at 107.

132. See 1996 *Hearing*, *supra* note 18, at 3 (opening statement of Senator Roth).

133. See STERLING, *supra* note 2, at 23. See also CSIS REPORT, *supra* note 26, at 44 (documenting links between Russian organized crime and La Cosa Nostra, Colombian drug cartels, the Sicilian Mafia, the 'Ndrangheta, the Camorra, the Boryokudan [or Yakuza], Chinese Triads, Korean criminal groups, Turkish drug traffickers, and other South American drug organizations in addition to the Colombian cartels).

134. See STERLING, *supra* note 2, at 129.

135. Methamphetamine is the "drug of choice for Japanese addicts, whose population is estimated at between 400,000 and 600,000." KERRY, *supra* note 4, at 65.

Colombians whereby cocaine is exchanged for heroin so that both drugs can reach East and West markets.<sup>136</sup> When Italian and U.S. law enforcement cooperated in "Operation Green Ice" they not only succeeded in making 200 arrests in various countries, they exposed a cooperative arrangement whereby the Sicilians traded a share of the heroin market in New York for a share of the cocaine market in Europe.<sup>137</sup> The Chinese criminals also cooperate with both the Russian Mafiya and the Japanese Yakuza to expand distribution networks and launder the proceeds of their trade.<sup>138</sup> The Triads cooperate with Medellin cartel members in money laundering operations in Europe,<sup>139</sup> and reach agreements with the Sicilians on how to divide up the drug trade in Europe.

The Cali cartel has also forged alliances with the Sicilian Mafia to coordinate global activities.<sup>140</sup> The heroin trade in Europe has become a cooperative venture involving Turkish, Bulgarian, Kosovar, and Czech criminal groups.<sup>141</sup> The purpose of these agreements, particularly with regard to drug trafficking, resembles the purpose of legitimate international trade arrangements: maximization of overall wealth. The parties cooperate in the global business, "to exploit comparative advantages and opportunities in different functional and geographic areas, to share and minimize risks, and generally to expand into new markets."<sup>142</sup>

All of the main groups have active wings within the United States, which therefore serves as a focal point for their international coordination.<sup>143</sup> A 1989 report of the Attorney General recognized the involvement and collaboration of various organized crime groups on U.S. soil, including Colombian, Asian, Mexican, Jamaican, and Sicilian groups.<sup>144</sup> The Yakuza is known to have cooperated with the Sicilian Mafia and the Colombian cartels in activities within the United States.<sup>145</sup> One colorful example of the U.S. serving as the meeting ground for international criminals involved the attempt by a Miami strip club owner to broker the sale of a \$35 million Soviet Navy submarine by Russian organized criminals to representatives of a Colombian cocaine cartel for use in transporting large shipments of drugs to the West coast of the United States.<sup>146</sup>

Cooperation among the international criminal organizations has also advanced to multilateral rather than simply bilateral arrangements. Alien smuggling by Chinese Triads is channeled through organized crime capitals in Russia,

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136. See *id.* at 64.

137. See *Problems and Dangers*, *supra* note 3, at 31.

138. See KERRY, *supra* note 4, at 64.

139. See STERLING, *supra* note 2, at 131.

140. See KERRY, *supra* note 4, at 24.

141. See Campbell, *supra* note 101, at 12.

142. STARES, *supra* note 101, at 4.

143. See MARTIN & ROMANO, *supra* note 57, at 65.

144. See *id.* at 83.

145. See KERRY, *supra* note 4, at 65.

146. See Mark Fineman, *Case Links Russian Sub, Colombian Drugs*, L.A. TIMES, June 21, 1998, at A1; James Kim, *Experts: USA Being Infiltrated; Increasingly Sophisticated Criminals Believed at Work*, USA TODAY, Aug. 24, 1999, at 3B.

Eastern Europe, and Italy,<sup>147</sup> with the support and participation of the criminal organizations in each country along the way.<sup>148</sup> In the former Soviet Union, where legitimate businesses find the vast region nearly impossible to penetrate through regular distribution channels, the "Mafiya delivery system" succeeds in connecting a variety of illicit businesses in Asia and Europe and is used by the main criminal agents of both the Chinese Triads and the Sicilian mafia.<sup>149</sup>

The nationalities of persons apprehended in nuclear smuggling operations also indicates the degree of international collaboration among the criminals. In 1994, in one of the largest seizures of weapons-grade nuclear material, German authorities arrested one Colombian and two Spaniards possessing 350 grams of enriched plutonium.<sup>150</sup> "The presence of individuals of different nationalities adds an alarming element to the issue, leading the authorities to speculate on the involvement of organized crime groups from various countries and the possibility of links and cooperation arrangements between them."<sup>151</sup>

### III.

#### INADEQUACIES OF THE VARIOUS EXISTING LEGAL MECHANISMS THAT RELATE TO ORGANIZED CRIMINAL ACTIVITY

##### A. *International Agreements and Conventions*

###### 1. *The U.N. Drug Convention*

The United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances<sup>152</sup> (hereinafter U.N. Drug Convention) includes extensive provisions on mutual legal assistance, even between countries that do not otherwise have bilateral or multilateral agreements.<sup>153</sup> Although the U.N. Drug Convention ostensibly deals with only one type of transnational organized crime, it recognizes the link between the drug trade and other organized criminal activity.<sup>154</sup> Article 3 provides for criminalization of a broad range of activities related to the drug trade, including not only production, transport, and sale, but also organizing, managing or participating in schemes to traffic in drugs. Article 6 provides that the U.N. Drug Convention serves as an extradition treaty for countries which are parties but do not have separate extradition agreements in place. The U.N. Drug Convention also provides for gradual improvement in

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147. See STERLING, *supra* note 2, at 130-31.

148. See KERRY, *supra* note 4, at 140.

149. See *id.* at 47.

150. See *Problems and Dangers*, *supra* note 3, at 24.

151. *Id.*

152. The United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 28 I.L.M. 493 (opened for signature Dec. 20, 1988).

153. See Kellman & Gualtieri, *supra* note 79, at 716.

154. See Preamble, United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, E/CONF.82/15, 28 I.L.M. 497 (opened for signature Dec. 20, 1988).

international cooperation in the investigation and prosecution of drug trafficking and money laundering.<sup>155</sup> There are over 150 parties to the Convention.<sup>156</sup>

The U.N. Drug Convention offers both a model and a warning for drafters of the proposed convention against transnational organized crime. Laudable for its breadth, the Convention also provides a warning about the consequences of the failure to give teeth to this international agreement. Many signatories to the Drug Convention, including the United States, have failed to implement its measures to the full extent of its broad theoretical scope.<sup>157</sup>

## 2. *Conventions on Money Laundering*

The U.N. Drug Convention requires that all signatories criminalize money laundering, institute banking safeguards, and provide mutual legal assistance.<sup>158</sup> Together, the U.N. Drug Convention's money laundering provisions and the Council of Europe Laundering Convention have succeeded in "facilitat[ing] the emergence of an international anti-money laundering regime . . . [and] focus[ing] the attention of world leaders on the extent of the laundering problem."<sup>159</sup>

The Council of Europe's Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime<sup>160</sup> (hereinafter Laundering Convention) provides for domestic criminalization of money laundering,<sup>161</sup> cooperation in investigation and prosecution,<sup>162</sup> and confiscation of the proceeds of crime.<sup>163</sup> As of September 9, 1999, twenty-seven countries had ratified the Convention, and eleven others had signed but not yet ratified it.<sup>164</sup> While the Laundering Convention allows signatories to criminalize laundering of proceeds from illicit activities other than drug-related crimes,<sup>165</sup> most parties have not

155. See *Appropriate Modalities and Guidelines for the Prevention and Control of Organized Transnational Crime at the Regional and International Levels*, in Williams & Savona, *supra* note 3, at 116 [hereinafter *Appropriate Modalities*].

156. See *United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances* (visited Sept. 9, 1999) <[http://www.un.org/Depts/Treaty/final/ts2/newfiles/part\\_boo/vi\\_boo/vi\\_19.html](http://www.un.org/Depts/Treaty/final/ts2/newfiles/part_boo/vi_boo/vi_19.html)> [hereinafter *List of Parties*].

157. See generally Jimmy Gurule, *The 1988 U. N. Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances – A Ten Year Perspective: Is International Cooperation Merely Illusory?*, 22 *FORDHAM INT'L L.J.* 74 (1998).

158. See STERLING, *supra* note 2, at 238.

159. Bruce Zagaris, *The Emergence of an International Anti-Money Laundering Regime: Implications for Counseling Businesses*, in *THE ALLEGED TRANSNATIONAL CRIMINAL: THE SECOND BIENNIAL INTERNATIONAL CRIMINAL LAW SEMINAR* 183 (Richard D. Atkins ed., 1995) [hereinafter *Zagaris I*].

160. The Council of Europe's Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime, Nov. 8, 1991, Europ. T.S. No. 141, 30 *I.L.M.* 148.

161. *Id.* at 151-52 (including national legislation on confiscation of proceeds, investigative measures, and criminalizing not just laundering, but knowing receipt of proceeds).

162. *Id.* at 153-61 (creating an obligation to assist in tracing proceeds, to enforce confiscation orders from other states, not to invoke bank secrecy as a ground for refusal to cooperate, to recognize foreign decisions, and designate a central authority to handle requests).

163. See also Kellman & Gualtieri, *supra* note 79, at 736.

164. See *Council of Europe: Signatures and Ratifications ETS No. 141* (last modified Sept. 9, 1999) <<http://www.coe.fr/tablconv/141t.htm>>.

165. See *Zagaris I*, *supra* note 159, at 145.

gone this far in their criminalization of money laundering. The Council of Europe's Laundering Convention is open to signatories outside of Europe, and the U.S. government has considered joining.<sup>166</sup> One non-member state—Australia—has already ratified the Convention.<sup>167</sup>

The Basel Declaration of Principles (1988) applies to central banks in twelve countries, requiring greater disclosure of large or otherwise suspect transactions and assistance in investigations.<sup>168</sup> The Principles include “know your customer” practices and full cooperation with law enforcement.<sup>169</sup> The Basle Committee's work also spurred the formation of regional supervisory groups in the Caribbean, Latin America, Asia, the Middle East, and Africa.<sup>170</sup>

The Financial Action Task Force (hereinafter FATF), formed by the G-7 in 1989 to discuss improved methods to combat money laundering,<sup>171</sup> has formulated the “Forty Recommendations”<sup>172</sup> on money laundering that have attained the status of soft law internationally.<sup>173</sup> The FATF includes twenty-six member countries and the IMF as an observer.<sup>174</sup> Among the forty recommendations are the following: ratification of the U.N. Drug Convention and other multilateral agreements on extradition and mutual legal assistance;<sup>175</sup> criminalization of money laundering;<sup>176</sup> enacting legislation allowing confiscation;<sup>177</sup> regulation regarding customer identification, record-keeping and diligence of financial institutions;<sup>178</sup> and measures to assist countries without adequate anti-money laundering regimes.<sup>179</sup> The FATF Recommendations also call on governments to strengthen international cooperation through exchange of information, legislative harmonization, and bilateral and multilateral agreements, such as the Council of Europe Laundering Convention.<sup>180</sup>

In 1994, the “International Conference on Preventing and Controlling Money Laundering and the Use of the Proceeds of Crime: A Global Approach” convened at Courmayeur, Italy, under the auspices of the U.N.'s Crime Prevention and Criminal Justice Branch.<sup>181</sup> Representatives from forty-five countries

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166. See *id.* at 146.

167. See *Council of Europe: Signatures and Ratifications ETS No. 141*, *supra* note 164.

168. See STERLING, *supra* note 2, at 238.

169. See Zagaris I, *supra* note 159, at 143.

170. See *id.* at 143.

171. See STERLING, *supra* note 2, at 238.

172. The Forty Recommendations of the Financial Action Task Force on Money Laundering, 1996, 35 I.L.M. 1291 [hereinafter Recommendations].

173. The FATF Recommendations have been called “the single most comprehensive, significant and forceful international declaration on money laundering to date.” Kellman & Gualtieri, *supra* note 79, at 736 (quoting Deputy Treasury Secretary John E. Robson).

174. See Recommendations, *supra* note 172, at 1291.

175. See *id.* at 1293 (Recommendations 1-3).

176. See *id.* at 1293-94 (Recommendations 4-6).

177. See *id.* at 1294 (Recommendation 7).

178. See *id.* at 1296-97 (Recommendations 10-19).

179. See *id.* at 1297-98 (Recommendations 20-21).

180. See *id.* at 1298-1320 (Recommendations 22-40).

181. See *Special Double Issue on the International Conference on Preventing and Controlling Money Laundering and the Use of the Proceeds of Crime: A Global Approach*, CRIME PREVENTION AND CRIM. JUST. NEWSL. (Jan. 1996) <<http://www.ifs.univie.ac.at/~uncjin/news124.htm>>.

attended. Participants advocated establishing an international anti-money-laundering regime through the adoption by all states of the provisions of the U.N. Drug Convention, the Basel Declaration, and the FATF's Forty Recommendations.<sup>182</sup> In particular, the Conference stressed measures by all nations to limit bank secrecy; enact "know your customer" rules; identify and report suspicious transactions; improve regulations of all businesses (not just banks) engaged in financial operations; enact asset forfeiture measures; and establish effective international cooperation mechanisms.<sup>183</sup>

### 3. *Anti-Corruption Agreements*

Although official corruption represents a threat worthy of separate attention and concern from the problem of transnational organized crime, corrupt government officials and international criminals often enjoy symbiotic relationships. Thus, recent efforts to reach international agreement on the criminality of official corruption and the need for cooperation in countering it, are significant and promising signs in the fight against transnational crime. On December 17, 1997, the member nations of the Organization of Economic Cooperation and Development (hereinafter OECD), alongside five other non-OECD nations, signed the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (hereinafter OECD Anti-Bribery Convention).<sup>184</sup> Article 1 of the Convention requires all signatories to criminalize the acts of offering, promising or giving a bribe to a public official, as well as attempting, conspiring or aiding in those acts.<sup>185</sup> In addition, signatories must make both legal and natural persons punishable for bribery of officials.<sup>186</sup> The Convention also contains provisions on mutual legal assistance (Article 9) and extradition (Article 10).<sup>187</sup> The working group that prepared the Anti-Bribery Convention is likely to continue to follow up on implementation of the Convention by "developing a system of mutual evaluation," similar to that of the FATF.<sup>188</sup> In addition to the OECD's Anti-Bribery Convention, the member nations of the OAS have agreed to the Inter-American Convention Against Corruption.<sup>189</sup>

### 4. *Interpol*

Established after World War I, the International Police Organization (Interpol) acts as a coordinating body among disparate domestic law enforcement entities, a storehouse for information on criminal activity, and a source for im-

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182. *See id.*

183. *See id.*

184. *See* Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, Dec. 18, 1997, 37 I.L.M. 1 [hereinafter OECD Anti-Bribery Convention]. *See also* Bruce Zagaris & Shaila Lakhani Ohri, *The Emergence of an International Enforcement Regime on Transnational Corruption in the Americas*, 30 LAW & POL'Y INT'L BUS. 53, 54-67 (1999).

185. *See* OECD Anti-Bribery Convention, *supra* note 184.

186. *See id.*

187. *See id.*

188. *See* Zagaris & Ohri, *supra* note 184, at 74.

189. *See* Section B, entitled *Other Regional Arrangements*, *infra*.

proving relationships and law enforcement techniques among domestic police forces.<sup>190</sup> Interpol has significantly advanced the concept of international law enforcement in three ways: first, by linking national and local police agencies from all over the world through a quick and reliable network; second, by providing an international professional association for personnel that allows them to share new law enforcement methods; and third, by increasing the degree of harmonization in tactics and concerns of law enforcement all over the world.<sup>191</sup> Almost every member of the U.N. is also a member of Interpol, including most former Soviet and East Bloc nations.<sup>192</sup> A majority (sixty percent) of Interpol's activity focuses on drug trade, but it also has task forces concentrating on international terrorism and nuclear smuggling.<sup>193</sup> Interpol's technical assistance programs had a particularly noticeable impact in the Caribbean and Latin America, where Interpol working groups developed model legislation on money laundering.<sup>194</sup>

Interpol's authority and jurisdiction, however, are limited. "Interpol does not have the power to investigate or arrest suspects."<sup>195</sup> Individual countries participate on a voluntary basis through separate bilateral agreements between national police forces and Interpol, rather than pursuant to an overall treaty.<sup>196</sup> If Interpol were given greater power—even the modest ability to share information without first obtaining express and time-consuming permission from individual states—it could serve as a valuable resource in battling transnational crime.<sup>197</sup>

## B. Multilateral & Regional Arrangements

### 1. The European Union<sup>198</sup>

Unlike most regions of the world where cooperation typically proceeds on a bilateral basis, Europe, since 1950, adopted a largely multilateral approach.<sup>199</sup> The Europeans have been discussing for years the creation of a unified police and criminal prosecutorial system. The result so far is a hodgepodge of treaties

190. See Kellman & Gualtieri, *supra* note 79, at 720.

191. See NADELMANN, *COPS ACROSS BORDERS* 184-85 (1993).

192. See Kellman & Gualtieri, *supra* note 79, at 722.

193. See *id.* at 721-23.

194. See Zagaris I, *supra* note 159, at 136.

195. Peter J. Vassalo, Note, *The New Ivan the Terrible: Problems in International Criminal Enforcement and the Specter of the Russian Mafia*, 28 *CASE W. RES. J. INT'L L.* 173, 186 (1996).

196. See M. Cherif Bassiouni, *Policy Considerations on Inter-State Cooperation in Criminal Matters*, in *PRINCIPLES AND PROCEDURES FOR A NEW TRANSNATIONAL CRIMINAL LAW: DOCUMENTATION OF AN INTERNATIONAL WORKSHOP IN FREIBURG, MAY 1991*, 812 (Albin Eser & Otto Lagodny eds., 1992).

197. See STERLING, *supra* note 2, at 252-54.

198. See generally Francis R. Monaco, Comment, *Europol: The Culmination of the European Union's International Police Cooperation Efforts*, 19 *FORDHAM INT'L L. J.* 247 (1995) (describing the proposed Europol Convention as well as various other European initiatives on cooperation in combating organized criminal activity).

199. See Peter Wilkitzki, *Development of an Effective International Crime and Justice Programme: A European View*, in Eser & Lagodny, *supra* note 196, at 280.

and agreements.<sup>200</sup> Different groupings of members of the EU belong to each of these arrangements, and often have made reservations that affect their obligations.<sup>201</sup> The Council of Europe succeeded in producing several important agreements in the area of cooperation in criminal prosecution, including conventions on Extradition (1957), Mutual Assistance in Criminal Matters (1959), the International Validity of Criminal Judgments (1970), and the Transfer of Criminal Proceedings (1972).<sup>202</sup> But reservations and other problems encumber each of these conventions.<sup>203</sup>

As a supplement to the Council of Europe's Money Laundering Convention, the European Community agreed on a Directive on Prevention of Use of the Financial System for the Purpose of Money Laundering,<sup>204</sup> that also requires domestic criminalization of money laundering and greater disclosure of financial transactions.<sup>205</sup> A significant portion of the Directive relates to international cooperation at all stages, from investigation to trial to forfeiture of proceeds.<sup>206</sup>

In discussions leading up to the Maastricht Treaty on European Political Union, the members agreed in principle to the establishment of a Central European Investigation Bureau—the EC's own Europol.<sup>207</sup> The Europol Convention was adopted by Council Act of July 26, 1995, but did not enter into force until each member state had notified the Council that its individual national government bodies had adopted the convention.<sup>208</sup> Europol did not officially begin operating until October 1998.<sup>209</sup> Europol assumes the role its predecessor, the Europol Drugs Unit (hereinafter EDU), which since 1993 has carried coordinated law enforcement efforts in the area of drug trafficking.<sup>210</sup> In addition to its anti-drug efforts, Europol is charged with combating trafficking in nuclear and radioactive substances, illegal immigrant smuggling, trade in human beings,

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200. See Christine Van Den Wyngaert & Guy Stessens, *Mutual Legal Assistance in Criminal Matters in the European Union*, in Fijnaut et al., *supra* note 11, at II.137-38.

201. See *id.* at II.138.

202. See *id.* at II.139.

203. See *id.* at II.137-38. For example, the Convention on Mutual Assistance in Criminal Matters does not set out exact procedures for making and fulfilling requests for assistance and all members have made reservations limiting the conditions under which they are required to render assistance. See *id.* Even the Convention on Extradition, "probably one of the most successful conventions of the Council of Europe" is limited in that it only applies for offenses which are serious, and only six member states (Germany, Italy, the Netherlands, Denmark, Spain and Portugal) consider fiscal offenses to be serious enough to merit extradition. See *id.* at II.157. Exceptions and grounds for refusal in the Convention on Extradition include political offences, military offences, offences punishable by death, and extradition by a state of its own nationals. See *id.* at II.158-59. The Convention on the Transfer of Criminal Proceedings is a "dismal failure: only three member-states of the European Union have ratified the convention (Denmark, the Netherlands and Spain)." See *id.* at II.161.

204. Council Directive 91/308/EEC, 1991 O.J. (L 166) 77. See also Zagaris I, *supra* note 159, at 146.

205. See Van Den Wyngaert & Stessens, *supra* note 200, at II.172-73.

206. See *id.*

207. See Fijnaut et al., *supra* note 11, at II.186.

208. See *Convention Based on Article K.3 of the Treaty on European Union on the Establishment of a European Police Office (Europol Convention)* (visited Sept. 13, 1999) <[http://europa.eu.int/eur-lex/en/lif/dat/1995/en\\_495A1127\\_01.html](http://europa.eu.int/eur-lex/en/lif/dat/1995/en_495A1127_01.html)> [hereinafter *Europol Convention*].

209. See Charles Bremner, *EU Police Force Finally Ready to Fight Crime*, *TIMES*, Oct. 2, 1998.

210. See Monaco, *supra* note 178, at 249. See also STARES, *supra* note 101, at 119.

and motor vehicle crimes. Moreover, within two years of the entry into force of the Europol Convention, Europol is to take on the added objective of dealing with crimes committed in the course of terrorist activities.<sup>211</sup> Europol's main tasks are facilitating information exchange among member countries, aiding investigations by national law enforcement agencies, and maintaining a computerized database of collected information.<sup>212</sup>

Despite the lengthy history in Europe of attempting to pool resources for combating crime, individual governments still hesitate to give a single body independent law enforcement powers. Europol and the EDU were both preceded by the Trevi Group, consisting of members of the European Union, which coordinated national efforts to combat various international criminal activities.<sup>213</sup> Trevi ministers were consulted in establishing the EDU,<sup>214</sup> and the K.4<sup>215</sup> Coordinating Committee in 1993<sup>216</sup> officially took up the Trevi Group's Mandate. Both the EDU and Europol have failed to significantly improve upon the level of coordination established during the Trevi era, and will work primarily as channels for information exchange among national law enforcement bodies, not as independent enforcement organizations.<sup>217</sup> Individual nations determine their participation in Europol on a voluntary basis, as in Interpol. Thus Europol is doomed to fall short of the hopes of some EU members for stronger regional law enforcement,<sup>218</sup> and enforcement will still be in the hands of domestic police forces.

Notwithstanding the proliferation of European agreements on money laundering, investigative cooperation, and other law enforcement issues, collaboration in combating organized crime continues to elude the European states. As greater unification advances, this may change. For example, Article K of the Treaty of Maastricht includes several general aspirational provisions for cooperation in criminal and police matters that could be adopted into practice.<sup>219</sup> Nevertheless, the regulation of crime is largely left to domestic legislation, and many members of the EU have exhibited reluctance to draft legislation implementing

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211. See *Europol Convention*, *supra* note 208.

212. See *id.*

213. See STARES, *supra* note 101, at 119. See also Jacqueline Klosek, *The Development of International Police Cooperation Within the EU and Between the EU and Third Party States: A Discussion of the Legal Bases of Such Cooperation and the Problems and Promises Resulting Thereof*, 14 AM. U. INT'L. L. REV. 599, 612-15 (1999) (discussing the history of Trevi).

214. See Fijnaut et al., *supra* note 11, at II.188.

215. Referring to Article K of the Treaty on European Union, Mar. 1992, 31 I.L.M. 247.

216. See Stares, *supra* note 101, at 119.

217. See Fijnaut et al., *supra* note 11, at II.189.

218. Germany, in particular, which recommended the idea of Europol in 1990, argues for the body to have executive powers and independent existence outside of the "intergovernmental framework of the EU." Fijnaut et al., *supra* note 11, at II.186-91. Measures to combat EC fraud have been taken along the lines of more centralized command and control. See Nicholas Martyn, *The Fight Against EC Fraud*, in Fijnaut et al., *supra* note 11, at II.208. The rapporteur on Europol for the Committee on Civil Liberties and Internal Affairs of the European Parliament has excused the failure to fortify Europol with independence as a result of the lack of "the political, legal and procedural structures we need for an operational European federal police force." See Klosek, *supra* note 213, at 630.

219. See Van Den Wyngaert & Stessens, *supra* note 200, at II.142.

these aspirational agreements.<sup>220</sup> Existing European treaties allow parties to use their own laws to interpret treaty provisions—such as the meaning of the political offense exception<sup>221</sup> for extradition—potentially jeopardizing harmonization.<sup>222</sup>

Smaller groupings of nations within Europe have also attempted to reach stronger cooperative arrangements between their law enforcement programs. For example, the Schengen Convention regulates cross-border pursuit and information sharing by police forces of different countries.<sup>223</sup> This Convention is expected to increase the ability of law enforcement bodies to cooperate in criminal matters, in particular by establishing region-wide police communications.<sup>224</sup> The original parties to the Schengen Convention in 1985 were Luxembourg, the Netherlands, Belgium, France, and Germany.<sup>225</sup> Spain, Portugal, Italy and Greece joined in 1990 (Schengen II),<sup>226</sup> and Austria joined in 1997.<sup>227</sup>

While laudable for its attempts, the European approach demonstrates the weaknesses of a piecemeal approach to combating the various activities of organized crime:

[T]he multitude of instruments may be in itself, problematic: the texts, because they are so multiple and complex as a result of the fact that they bind different states on different terms and conditions due to the possibility of reservations, are difficult to apply in practice . . . . What on the surface is a multilateral convention may, in reality, be more like a patchwork of bilateral conventions, due to the operation of reservations and declarations which work like a boomerang, as they have a reciprocal effect.<sup>228</sup>

To counter this dilemma, the Council of Europe has proposed a “Comprehensive Convention on Interstate Co-operation in the Penal Field,” in the hopes of both clarifying the existing jumble of conventions and agreements and advancing and modernizing older provisions.<sup>229</sup> Talks have stalled due to disagreement on

220. See *id.* at II.143.

221. Most modern extradition treaties include a political offense exception, which allows the state of whom extradition is requested to decline on the ground that the offense for which extradition is requested is a political offense. Rarely do treaties define the term “political offense.” For example, the extradition treaties between the U.S. and the six countries of the Organization of Eastern Caribbean States generally provide that extradition shall not be granted for political offenses, then describes three categories of offenses that will not be considered political offenses, but never defines affirmatively what constitutes a political offense. This practice is typical of extradition treaties, leaving it to the state-parties to interpret the political offense exception. See Marian Nash, *Contemporary Practice of the United States Relating to International Law*, 92 AM. J. INT’L L. 44, 45 (1998); see also RESTATEMENT (THIRD) OF FOREIGN RELATIONS § 476 cmt. g (1987).

222. See Paul Gully-Hart, *Loss of Time Through Formal and Procedural Requirements in International Co-Operation*, in Eser & Lagodny, *supra* note 196, at 248.

223. Brice De Ruyver et al., *Structural Forms of Cross-Border Crime*, in Fijnaut et al., *supra* note 11, at II.25. See also Van Den Wyngaert & Stessens, *supra* note 200, at II.153.

224. De Ruyver et al., *supra* note 223, at II.28. See also Klosek, *supra* note 213, at 619-24 (discussing the Schengen Agreement and characterizing it as “the most broad-based effort thus far to establish a pan-European police communications system”).

225. See Van Den Wyngaert & Stessens, *supra* note 200, at II.140.

226. See *id.* at II.141.

227. See Klosek, *supra* note 213, at 622.

228. See Van Den Wyngaert & Stessens, *supra* note 200, at II.175 (advocating that “all forms of co-operation should be dealt with in one big instrument”).

229. Wilkitzki, *supra* note 199, at 282-83.

how much of an advancement over existing regimes the Comprehensive Convention should make.<sup>230</sup>

## 2. *Other Regional Arrangements*

No other regions have produced as voluminous a record as the Europeans have in the fight against transnational crime. But other regional efforts do exist and include the Inter-American Drug Abuse Commission (hereinafter CICAD) of the Organization of American States (hereinafter OAS), the Caribbean Financial Action Task Force (hereinafter CFATF),<sup>231</sup> and the various conventions entered into by League of Arab States.<sup>232</sup> Regional arrangements surpass bilateral ones in efficiency and effectiveness, and they can fortify weaker states against the attacks by organized criminals that typically follow heightened national enforcement.<sup>233</sup>

Under the OAS umbrella, countries in the Caribbean and Latin America have concluded several regional agreements aimed at increasing cooperation against organized crime. Agreements on extradition date back to the nineteenth century, with the current regime set forth in the 1981 Inter-American Convention on Extradition.<sup>234</sup> In practice, regional agreements are merely hortatory and separate bilateral arrangements determine whether or not cooperation will be possible in individual cases.<sup>235</sup> CICAD, an autonomous organization within the OAS, prepared model anti-money laundering legislation in 1991, which was approved by the OAS General Assembly for adoption by OAS members in 1992.<sup>236</sup> A major drawback of the Model Regulations is that they limit the scope of money-laundering offenses to proceeds from drug-related crimes.<sup>237</sup>

Regional efforts in the Americas seem to be modeled on the European experience and are gradually approaching an overall, hemispheric framework. At the Summit of the Americas meetings in the past several years, cooperation in fighting corruption and crime has been on the agenda, resulting in a number of agreements and initiatives.<sup>238</sup> In the 1994 Plan of Action, OAS members agreed to do the following: ratify the U.N. Drug Convention; enact laws on forfeiture of proceeds; implement the CFATF recommendations; implement other drug control programs and legislation; and consider an Inter-American convention on money laundering.<sup>239</sup> In 1996, twenty-one members of the OAS signed the In-

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230. *See id.* at 283.

231. *See The Feasibility of Elaborating, supra* note 11, at 147.

232. *See Appropriate Modalities, supra* note 155, at 116.

233. *See The Feasibility of Elaborating, supra* note 11, at 148-49.

234. Inter-American Convention on Extradition, O.A.S. Document OEA/Ser.A/36 (SEPF), *reproduced* at 20 I.L.M. 723 (1981). *See also* GEOFF GILBERT, ASPECTS OF EXTRADITION LAW 21 (1991).

235. *See GILBERT, supra* note 234, at 21.

236. *See Zagaris I, supra* note 159, at 150-51.

237. *See id.* at 151.

238. *See Bruce Zagaris, Essay, International Security in the Post-Cold War Era: Can International Law Truly Effect Global Political and Economic Stability? Constructing a Hemispheric Initiative Against Transnational Crime*, 19 FORDHAM INT'L L.J. 1888, 1892 (1996) [hereinafter Zagaris II].

239. *See id.* at 1894.

ter-American Convention Against Corruption,<sup>240</sup> and others have joined the Convention subsequent to its entry into force.<sup>241</sup> The OAS Convention Against Corruption surpasses the OECD Anti-Bribery Convention in at least one respect—it allows extradition not only of bribe-givers, but bribe takers as well.<sup>242</sup>

One scholar has suggested the formation of an “Americas Committee,” patterned after the European Committee on Crime Problems, to review existing legislation, suggest legal measures, draft legislation, and move the region toward harmonization.<sup>243</sup> The U.N. organized a regional workshop in Buenos Aires in 1995 resulting in the Buenos Aires Declaration on Prevention and Control of Organized Transnational Crime (hereinafter Buenos Aires Declaration).<sup>244</sup> The Buenos Aires Declaration acknowledges the need for a coordinated hemispheric approach, exhorts states not yet parties to the U.N. Drug Convention to join, and proposes consideration of elaborating an international convention against organized transnational crime.<sup>245</sup>

In the last decade, Caribbean countries have become very active in striving for regional cooperation and seeking assistance in combating organized crime. Many Caribbean leaders recognize that the benefits of giving up some sovereignty are well worth the sacrifice because of the ravaging effects of the drug war on their countries.<sup>246</sup> The CFATF has convened several times since 1990 to discuss adoption of a money laundering convention.<sup>247</sup> In 1992, the CFATF agreed to adopt the forty recommendations of the FATF, plus twenty-one additional recommendations of its own.<sup>248</sup> The Caribbean Common Market and Community (hereinafter CARICOM) has also discussed developing joint strategies to protect banking systems in the region from exploitation by international drug traffickers.<sup>249</sup> A 1997 Summit of the United States and the Caribbean resulted in the Bridgetown Declaration of Principles and Plan of Action.<sup>250</sup> Part II of the Plan, labeled “Justice and Security,” calls for a number of measures that include: U.S. assistance in law reform and the training of law enforcement per-

240. Inter-American Convention Against Corruption, Mar. 29, 1996, 35 I.L.M. 724. See generally Zagaris & Ohri, *supra* note 184.

241. See Philip M. Nichols, *Colloquy: Regulating Transnational Bribery in Times of Globalization and Fragmentation*, 24 YALE J. INT'L L. 257, 267 (1999).

242. See *id.*

243. See *id.* at 1900.

244. See *Review of Priority Themes: Implementation of the Naples Political Declaration and Global Action Plan Against Organized Transnational Crime: Report of the Secretary-General, Addendum*, U.N. SCOR, 5th Sess., Provisional Agenda Item 3, at 1-2, U.N. Doc. E/CN.15/1996/2/Add.1 (1996) [hereinafter E/CN.15/1996/2/Add.1].

245. See *id.* at 5.

246. For example, Joseph Theodore, the minister of national security for Trinidad, said: “We understand the criticism that we are giving up a lot of sovereignty in terms of the United States entering our waters and flying in our airspace. But our answer is simple . . . This drug war has no borders, and we realized that we did not have the wherewithal to put a stop to it. We felt that giving up some sovereignty in today’s world was justified in our bid to get the wherewithal to deal with the drug situation.” Serge F. Kovaleski & Douglas Farah, *Organized Crime Exercises Clout in Island Nations*, WASH. POST, Feb. 17, 1998, at A1.

247. See Zagaris I, *supra* note 159, at 148-49.

248. See Kellman & Gualtieri, *supra* note 79, at 736.

249. See Zagaris I, *supra* note 159, at 153.

250. Bridgetown Declaration of Principles and Plan of Action, 1997, 36 I.L.M. 792.

sonnel; consideration of concluding agreements on extradition and mutual legal assistance by Caribbean countries that have not yet done so; cooperation among law enforcement in enabling information exchange and joint training; collaboration through the OAS and CICAD in strategic planning for law enforcement agencies and to enhance intelligence capabilities; and better implementation of the U.N. Drug Convention and banking regulations. The Bridgetown Plan recognizes not only the drug trafficking problem in the region, but also addresses arms trafficking, corruption, money laundering, and alien smuggling. While some Caribbean states have been reluctant to enact the FATF's forty recommendations out of concern that their financial sectors may be jeopardized by such regulations,<sup>251</sup> others, such as Trinidad, have led the way in developing regional initiatives and inviting international assistance.<sup>252</sup>

The League of Arab States has sponsored several conventions. At least nineteen states have ratified the 1983 agreement on extradition, which serves as a supplement to previous extradition conventions.<sup>253</sup> "It is a comprehensive extradition convention which now provides for the surrender of fugitive offenders throughout a significant portion of the world."<sup>254</sup>

The United Nations has attempted to bring regional initiatives to other areas of the world where the countries in the region have been less able to start discussions on their own. The Crime Prevention and Criminal Justice Programme of the U.N. has established a network of regional institutes for the purpose of gathering information from Africa, Asia, and other parts of the world on organized criminal activity.<sup>255</sup> In 1997, the U.N.'s Crime Prevention and Criminal Justice Division (formerly branch) held an African Regional Ministerial Workshop on Action against Organized Crime and Corruption in Dakar, Senegal. The result—the Dakar Declaration—expressed the concern of African states about the problem and called for strengthening domestic justice systems,

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251. See Zagaris I, *supra* note 159, at 149.

252. See Kovalesky & Farah, *Organised Crime Exercises Clout in Island Nations*, *supra* note 54, at A6.

253. See GILBERT, *supra* note 234, at 21.

254. *Id.*

255. See *International Cooperation in Combating Transnational Crime: Implementation of the Naples Political Declaration and Global Action Plan Against Organized Transnational Crime: Report of the Secretary-General*, U.N. SCOR, 6th Sess., Provisional Agenda Item 6(a), at 11, U.N. Doc. E/CN.15/1997/7 (1997) [hereinafter E/CN.15/1997/7]. The U.N.'s Interregional Crime and Justice Research Institute is affiliated with the Asia and Far East Institute for the Prevention of Crime and the Treatment of Offenders, the Latin American Institute for the Prevention of Crime and the Treatment of Offenders, the European Institute for Crime Prevention and Control, and the African Institute for the Prevention of Crime and the Treatment of Offenders. Associate institutes include the Arab Security Studies and Training Centre, the Australian Institute of Criminology, the International Centre for Criminal Law Reform and Criminal Justice, among others. Together, these institutes form the United Nations crime prevention and criminal justice programme network. See *Cooperation and Coordination of Activities With Other United Nations Bodies and Other Entities: Activities of the Institutes Comprising the United Nations Crime Prevention and Criminal Justice Programme Network: Report of the Secretary-General*, U.N. SCOR, 5th Sess., Provisional Agenda Item 8, at 2-3, U.N. Doc. E/CN.15/1996/21 (1996) [hereinafter E/CN.15/1996/21]. See also *Institutes of the Crime Prevention and Criminal Justice Programme Network* (visited Sept. 13, 1999) <<http://www.ifs.univie.ac.at/~uncjin/unojust.htm>>.

harmonizing legislation across the continent, adopting new national laws and regulations, and obtaining better training for law enforcement personnel.<sup>256</sup>

Conferences have been held in Eastern Europe and the former Soviet Union as well. The Crime Prevention and Criminal Justice Division co-sponsored a seminar with the Organization for Security and Cooperation in Europe (hereinafter OSCE) and the U.N. International Drug Control Programme (hereinafter UNDCP) for Central Asian states in 1995 on drugs and crime in the region.<sup>257</sup> In 1997, Moldova, Romania, and Ukraine signed statements on cooperation in combating organized crime, on pledging coordination of national legislation, on intensifying law enforcement measures, on cooperation between national law enforcement bodies, and on exchange of information.<sup>258</sup>

In Asia, the Asia Crime Prevention Foundation established a working group on extradition and mutual legal assistance in 1995.<sup>259</sup> The Australian government has proven to be one of the leaders in the region in addressing the problem of transnational organized crime, establishing a Sophisticated Crime Team of the Australian Institute of Criminology,<sup>260</sup> and ratifying the Council of Europe's Laundering Convention. Australia also hosts the FATF Secretariat for activities in Asia and the Pacific.<sup>261</sup>

One recent encouraging sign is the development of agreements among regional organizations. The European Community as a whole has been involved in negotiating agreements with the United States and the OAS on the control of drug precursors and chemical substances.<sup>262</sup> In further establishing the operating procedures for Europol, the Council of the EU has adopted rules governing external relations between Europol and "third States and non-European Union related bodies,"<sup>263</sup> the receipt of information by Europol from third parties,<sup>264</sup>

256. See *U.N. Crime Prevention and Criminal Justice Division* (Sept. 1997) <<http://www.ifs.univie.ac.at/~uncjin/corrupt.htm>>.

257. See E/CN.15/1997/7, *supra* note 255, at 10.

258. See *Statement by the Presidents of Ukraine, the Republic of Moldova and Romania on Cooperation in Combating Organized Crime*, Annex I, U.N. Doc. A/52/257 (1997).

259. See *Review of Priority Themes: Arrangements for Convening an Intergovernmental Expert Group to Examine Practical Recommendations for the Further Development and Promotion of Mechanisms of International Cooperation, Including the United Nations Model Treaties on International Cooperation in Criminal Matters and for the Development of Model Legislation on Extradition and Related Forms of International Cooperation: Note by the Secretary-General*, U.N. SCOR, 5th Sess., Provisional Agenda Item 3, at para. 17, U.N. Doc. E/CN.15/1996/6 (1996).

260. See E/CN.15/1997/7, *supra* note 255, at 11.

261. See *Review of Priority Themes: Control of the Proceeds of Crime: Report of the Secretary-General*, U.N. SCOR, 5th Sess., Provisional Agenda Item 3, at 15, U.N. Doc. E/CN.15/1996/3 (1996) [hereinafter E/CN.15/1996/3].

262. See European Community—United States Agreement on Precursors and Chemical Substances Frequently Used in the Illicit Manufacture of Narcotics Drugs or Psychotropic Substances, Notice of Other Recent Documents, Nov. 1997, 36 I.L.M. 1692.

263. *Council Act of 3 November 1998 Laying Down Rules Governing Europol's External Relations With Third States and Non-European Union Related Bodies* (visited Sept. 13, 1999) <[http://europa.eu.int/eur-lex/en/lif/dat/1999/en\\_499Y0130\\_05.html](http://europa.eu.int/eur-lex/en/lif/dat/1999/en_499Y0130_05.html)>.

264. See *Council Act of 3 November 1998 Laying Down Rules Concerning the Receipt of Information by Europol from Third Parties* (visited Sept. 13, 1999) <[http://europa.eu.int/eur-lex/en/lif/dat/1999/en\\_499Y0130\\_04.html](http://europa.eu.int/eur-lex/en/lif/dat/1999/en_499Y0130_04.html)>.

and the transmission of data by Europol to “third States and third bodies.”<sup>265</sup> In 1995, the EU and twelve Middle Eastern countries formed the Euro-Mediterranean Partnership (hereinafter EMP), which includes a political and security agreement for the purpose of cooperating in dealing with transnational crime, money laundering, and alien smuggling.<sup>266</sup> The European Community has been unique in its multi-lateral approach to transnational crime; once again, it may again be setting a lead that other countries and regions will be slow or reluctant to follow.

### C. Bilateral Agreements

#### 1. Extradition Treaties

Extradition is plagued by weaknesses as a method of international cooperation.<sup>267</sup> “The present extradition laws belong to the ‘world of the horse and buggy and the steamship, not in the world of commercial jet air transportation and high speed telecommunications.’”<sup>268</sup> Even countries that are parties to extradition treaties frequently refuse extradition requests on a variety of grounds: that it would violate the country’s law; that it would allow punishment for a crime that is not illegal in the requested state; or simply that it involves a political issue.<sup>269</sup> A Model Treaty on Extradition<sup>270</sup> has been advanced by the Crime Prevention and Criminal Justice Branch of the U.N.<sup>271</sup> Should a large number of countries choose to follow the U.N. Model, greater harmonization and an increase in the number of extraditions would likely result. Currently, extradition treaties bind only a limited number of states, and criminals can simply escape prosecution by “forum living,” residing in states not a party to an extradition treaty with the country seeking their prosecution.<sup>272</sup>

#### 2. Mutual Legal Assistance Treaties

Conclusion of a Mutual Legal Assistance Treaty (hereinafter MLAT) markedly improves the ability of law enforcement officials from two different countries to directly cooperate,<sup>273</sup> as compared to the letters rogatory process<sup>274</sup>

265. Council Act of 12 March 1999 Adopting the Rules Governing the Transmission of Personal Data by Europol to Third States and Third Bodies (visited Sept. 13, 1999) <[http://europa.eu.int/eur-lex/en/lif/dat/1999/en\\_499Y0330\\_01.html](http://europa.eu.int/eur-lex/en/lif/dat/1999/en_499Y0330_01.html)>.

266. See Klosek, *supra* note 213, at 606-7.

267. See generally Hussain, *supra* note 7 (describing the ineffectiveness of existing extradition treaties and recommending an International Justice Commission to serve as an enforcement body of a universal extradition agreement). See also Kellman & Gualtieri, *supra* note 79, at 730-32.

268. See GILBERT, *supra* note 234, at 1 (quoting from a letter to Senator Edward Kennedy from former U.S. Attorney-General Benjamin R. Civiletti).

269. See *Most Effective Forms*, *supra* note 4, at 99.

270. United Nations: General Assembly Resolution on a Model Treaty on Extradition, G.A. Res. 45/116, U.N. GAOR, 45th Sess., Supp. No. 49A, U.N. Doc A/45/49 (1991).

271. See *Most Effective Forms*, *supra* note 4, at 103.

272. See Hussain, *supra* note 7, at 755, 761-62.

273. See *Most Effective Forms*, *supra* note 4, at 101. See also Kellman & Gualtieri, *supra* note 79, at 726; Vassalo, *supra* note 195, at 188-90.

274. “Letters rogatory are the medium . . . whereby one country, speaking through one of its courts, requests another country, acting through its own courts and by methods of court procedure

typically available in the absence of such a treaty. An MLAT provides guaranteed cooperation and coordination, rather than *ad hoc* arrangements via courts and diplomats.<sup>275</sup> MLATs typically set forth which offenses will be covered by the agreement, what types of assistance will be rendered, what rights the requesting and requested state have to control the scope and manner of cooperation, what rights targets of investigation have, and what procedures must be followed in making and reviewing requests.<sup>276</sup> The United States currently has MLATs with many of the countries in which criminal organizations operate, including the Bahamas, Colombia, Italy, Jamaica, Mexico, the Netherlands, Switzerland, Thailand, the United Kingdom (including the Cayman Islands), Austria, and Hungary, among others.<sup>277</sup>

Some MLATs have proven successful in increasing the number of prosecutions of organized criminals. The U.S.-Switzerland MLAT (1977) has facilitated investigations and prosecutions of drug traffickers and money launderers.<sup>278</sup> Some of the successes of the U.S.-Italian collaboration through the MLAT process include<sup>279</sup> the immobilization of the "Pizza Connection" between the U.S. and Sicilian mafias<sup>280</sup> and "Operation Green Ice," resulting in the uncovering of a money laundering joint venture between the Sicilian and Colombian criminal groups.<sup>281</sup> The U.S.-Italy partnership has also successfully enlisted the participation of law enforcement in Canada, Brazil, Germany, Spain and Switzerland.<sup>282</sup> The Mexico-U.S. MLAT contains specific provisions aimed at organized criminals,<sup>283</sup> establishing a working group similar to the

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peculiar thereto and entirely within the latter's control, to assist the administration of justice in the former country . . . ." *Tiedemann v. The Signe*, 37 F.Supp 819, 820 (E.D. La. 1941), *quoted in* Vassalo, *supra* note 195, at 188.

275. Typical MLAT provisions include execution of requests regarding penal matters; taking testimony or statements; production of documents; service of writs, summonses, or other judicial documents; locating persons; and providing judicial records, evidence, and information. *See* Kellman & Gualtieri, *supra* note 79, at 727. *See also* Abramovsky, *supra* note 31, at 191, 207.

276. *See* Bruce Zagaris, *International Tax and Related Crimes: Gathering Evidence, Comparative Ethics, and Related Matters*, in *THE ALLEGED TRANSNATIONAL CRIMINAL: THE SECOND BIENNIAL INTERNATIONAL CRIMINAL LAW SEMINAR* 364-80 (Richard D. Atkins ed., 1995) [hereinafter Zagaris III].

277. *See* Abramovsky, *supra* note 31, at 207. *See also* Gurule, *supra* note 157, at 88.

278. *See Most Effective Forms*, *supra* note 4, at 101-02.

279. The U.S. and Italy actually have treaties on both mutual assistance and extradition, as well as a joint working group on organized crime. *See* Sara Jankiewicz, Comment, *Glasnost and the Growth of Global Organized Crime*, 18 *Hous. J. INT'L L.* 215, 247 (1995).

280. The "Pizza Connection" operation resulted in 18 convictions in the U.S. and 338 in Italy. *See id.* at 248.

281. *See The Feasibility of Elaborating*, *supra* note 11, at 144-45.

282. *See id.* at 144.

283. For example, the treaty "specifically includes attempts and conspiracies to commit an offense, as well as the participation in the execution of an offense." Bruce Zagaris & Julia P. Peralta, *Mexico-United States Extradition and Alternatives: From Fugitive Slaves to Drug Traffickers - 150 Years and Beyond the Rio Grande's Winding Courses*, 12 *Am. U. J. INT'L L. & POL'Y* 519, 579 (1997). The U.S.-Bolivia extradition treaty also specifically mentions organized crime activity. *See id.* at 615.

U.S.-Italian body that has been so successful in pursuing organized criminals.<sup>284</sup> In addition, the two countries signed an agreement on financial information exchange to combat money laundering.<sup>285</sup>

Authorities in both the U.S. and Mexico have expressed satisfaction with the results of the MLAT thus far.<sup>286</sup> The U.S. has collaborated in several other successful joint law enforcement activities aimed at debilitating transnational organized crime, such as joint investigations with Peruvian and Venezuelan authorities.<sup>287</sup>

But very few other MLATs have proven as successful as these examples, and many countries have resisted discussion or conclusion of an MLAT with the United States.<sup>288</sup> MLATs, as well as extradition treaties, tend not to include obligations as to the timeliness of a requested state's response, and some states have lengthy and irrational proceedings for responding.<sup>289</sup> Many of the MLATs entered into by the United States use discretionary language ("may") instead of mandatory language ("shall"), leaving it entirely to the discretion of the parties whether to cooperate in any given investigation.<sup>290</sup> Bilateral arrangements are also inefficient because usually only two countries are coordinating operations at a time, resulting in both gaps and duplication of effort.<sup>291</sup>

Germany and Russia concluded a bilateral cooperation agreement in 1994 in response to increasing numbers of incidents of nuclear smuggling.<sup>292</sup> Russian officials have held separate bilateral talks with Hungarian, Belarusian, Ukrainian, Latvian, Swiss, Polish, and Slovak authorities on the development of cooperative arrangements for combating organized crime.<sup>293</sup> Collaboration with Hungary's government has intensified recently as Budapest has been recognized as "a key battleground in the struggle against international organized crime" due to the attraction it has long held for criminals from Central and Eastern Europe.<sup>294</sup> In October 1998, the FBI announced it would be working as part of a

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284. See Bruce Zagaris & Jessica Resnick, *The Mexico-U.S. Mutual Legal Assistance in Criminal Matters Treaty: Another Step Toward the Harmonization of International Law Enforcement*, 14 ARIZ. J. INT'L & COMP. L. 1, 54 (1997).

285. See *id.* at 70-71.

286. The U.S. has rendered at least thirty-seven suspects to Mexico since 1984, with eighteen extradition proceedings pending. In the same time period, Mexico surrendered at least twenty persons, in addition to detaining, expelling, and pursuing extradition proceedings against others. See Zagaris & Peralta, *supra* note 283, at 531-32.

287. See Bruce Zagaris, *Symposium: U.S. International Cooperation Against Transnational Organized Crime: XVI International Congress of Penal Law: Report Submitted by the American National Section, AIDP: Topic IV: International Criminal Law*, 44 WAYNE L. REV. 1401, 1417 (1998).

288. See *The Feasibility of Elaborating*, *supra* note 11, at 145.

289. See Gully-Hart, *supra* note 222, at 264.

290. See Gurule, *supra* note 157, at 93.

291. See *The Feasibility of Elaborating*, *supra* note 11, at 146.

292. See *Problems and Dangers*, *supra* note 3, at 24.

293. See *Recent Developments*, in Williams, *supra* note 25, at 238-44.

294. Peter Finn, *Gangs Find Budapest Appealing; Hungarian Capital Focus of Organized Crime Fight*, WASH. POST, Dec. 21, 1998, at A21 (reporting that the Hungarian police estimate there are 200 criminal organizations represented in Hungary, most of them controlled by Russian organized crime).

Hungarian-U.S. strike force against organized crime,<sup>295</sup> to increase the training and information exchange that had begun under U.S. auspices in 1995.<sup>296</sup>

Perhaps most significantly, Russia and the United States concluded a Mutual Legal Assistance Agreement (hereinafter MLAA)<sup>297</sup> in 1996 that is a prelude to eventual conclusion of an MLAT.<sup>298</sup> Legitimate concerns about the state of Russian law and law enforcement have slowed the conclusion of more binding cooperative agreements with Russia.<sup>299</sup> A large number of Russian officials and politicians are corrupt or belong to criminal organizations, and it is hard for U.S. law enforcement to discern whom to trust.<sup>300</sup> The United States has faced similar problems in other countries, such as Mexico, with which an MLAT was concluded,<sup>301</sup> and has been moderately successful in instituting measures to discourage corruption.<sup>302</sup> In Russia and the former Soviet Union, U.S. assistance such as the Freedom Support Act<sup>303</sup> includes funding for exchanges, training, and technical assistance for law enforcement to better combat organized crime and legal reform projects to assist in drafting legislation and training judges and prosecutors.<sup>304</sup> One impediment was theoretically lifted when Russia implemented new legislation criminalizing money laundering, fraud, and criminal conspiracy—many of the activities typical of organized crime—for the first time.<sup>305</sup>

One problem with the U.S.-Russia MLAA, as with many MLATs, is the requirement of dual criminality, whereby assistance is only possible if the alleged offense violates both countries' law.<sup>306</sup> Countries in the former Soviet Union and Central and Eastern Europe are still developing their legal systems, which are a long way from approaching the coverage of U.S. criminal law. In addition, the MLAA includes a narrow list of offenses to which it applies, without any catch-all category.<sup>307</sup> Dealing with Russia on criminal matters is also

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295. *See id.*

296. *See* David Holley, *Joint Force in Hungary Targets East Bloc Gangs*, L.A. TIMES, Dec. 5, 1998, at A2.

297. Agreement on Cooperation in Criminal Law Matters, June 30, 1995, U.S.-Russia, Hein's No. KAV 4518, Temp. State Dep't No. 96-38.

298. *See* Abramovsky, *supra* note 31, at 192.

299. *See id.* at 204.

300. *See id.*

301. *See id.* at 191, 205.

302. *See generally* Jennifer M. Hartman, Note, *Government by Thieves: Revealing the Monsters Behind the Kleptocratic Masks*, 24 SYRACUSE J. INT'L L. & COM. 157 (1997) (suggesting enhanced efforts to respond to the problem of government corruption and summarizing some current initiatives).

303. 22 U.S.C.A. §§ 5801-74 (West Supp. 1998).

304. *See* Mack Reed, *Ukraine Crime Investigators Pick Up Clues on U.S. Justice; Law: Kiev Officials Visit the County FBI Office to Study the American System and Exchange Information on International Criminal Elements*, L.A. TIMES, July 21, 1998, at B14; *Crime Assistance Package for the Russian Federation*, U.S. Newswire, Sept. 29, 1994, available in LEXIS, News Library, Curmws File.

305. *See* Abramovsky, *supra* note 31, at 205, 211.

306. *See id.* at 208.

307. *See id.* at 210.

constrained by the lack of an extradition treaty.<sup>308</sup> Without the possibility of extradition, criminals within Russia are at the mercy of Russia's judicial system, which is weak and easily corrupted.<sup>309</sup> Russia's improved laws regarding organized criminal activities will have little effect so long as the judiciary remains in its current state.

MLATs have also proven to have minimal effectiveness in facilitating the seizure of criminals' assets. The DEA estimates that less than two percent of Colombian cocaine money is actually seized.<sup>310</sup> The U.N. has completed a Model Treaty on Mutual Assistance<sup>311</sup> as a guide to countries in concluding such agreements,<sup>312</sup> but few countries have hewn closely to the Model Treaty's provisions.

#### D. Domestic Law

Domestic legislation is a prerequisite to harmonization and cooperation in the fight against international organized crime. A survey of the leading nations' anti-organized crime legislation is beyond the scope of this paper.<sup>313</sup> However, it is important to note that even countries with elaborate laws against organized criminal activities encounter the limits of jurisdiction.<sup>314</sup> The jurisdiction of national law enforcement bodies, such as the FBI, is usually limited when criminal activity extends beyond national borders.<sup>315</sup>

Domestic judicial bodies are similarly constrained. Customary international law recognizes five bases of extraterritorial jurisdiction: (1) territorial; (2) nationality of the perpetrator (active personality); (3) nationality of the victim (passive personality); (4) protective; and (5) universal.<sup>316</sup> Three of these are of particular interest when considering possible bases for prosecuting international criminals. First, territorial jurisdiction—or its extension, objective territoriality—allows states to prosecute on the basis that the conduct alleged has harmful consequences in the state's territory or on the basis that an alleged criminal

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308. The Russian Federation has signed and ratified the U.N. Drug Convention, but did so prior to the dissolution of the Soviet Union and therefore one scholar has claimed that Russia is not yet a party. See *id.* at 212. See also List of Parties, *supra* note 156.

309. See Abramovsky, *supra* note 31, at 215.

310. See STERLING, *supra* note 2, at 229.

311. General Assembly Resolution on a Model Treaty on Mutual Assistance in Criminal Matters, December 14, 1990, 30 I.L.M. 1419.

312. See *Most Effective Forms*, *supra* note 4, at 102-03.

313. See Gurule, *supra* note 157, at 97-99 (discussion of U.S. money laundering legislation). See also Dorean M. Koenig, *Symposium: The Criminal Justice System Facing the Challenge of Organized Crime: XVI International Congress of Penal Law: Report Submitted by the American National Section, AIDP: Topic II: Special Part*, 44 WAYNE L. REV. 1351, 1364-77 (1998) (discussing U.S. federal criminal law dealing with organized crime).

314. See Vassalo, *supra* note 195, at 182 (citing the Lotus Case, 1927 P.C.I.J. (ser. A) No. 9, for the principle that "a state may not exercise its power in any form in the territory of another state"). See generally NADELMANN, *supra* note 191.

315. See generally Shoshanah V. Asnis, Note & Comment, *Controlling the Russian Mafia: Russian Legal Confusion and U.S. Jurisdictional Power-Play*, 11 CONN. J. INT'L L. 299 (1996) (describing statutory limits on the FBI's ability to investigate nuclear smuggling).

316. See Kellman & Gualtieri, *supra* note 79, at 718-19.

conspiracy was consummated within its territory.<sup>317</sup> Many states could assert that international organized crime has harmful consequences within their territory and thereby arguably exercise territorial jurisdiction. Second, protective jurisdiction extends to activities, that would not be punished otherwise, having particularly grave consequences for the prosecuting state,<sup>318</sup> or threatening specific national interests such as security, integrity, sovereignty, or other governmental functions.<sup>319</sup> As the power of international organized crime increases, so does the threat posed to essential state functions, thereby giving rise to a reasonable argument for the exercise of protective jurisdiction. Third, universal jurisdiction covers particularly heinous or harmful offenses to mankind, such as piracy and war crimes.<sup>320</sup> Asserting universal jurisdiction as a basis for prosecuting international criminals would almost certainly be met with strong objections because of its traditional limitation to a narrow list of crimes, however the suggestion has been made.<sup>321</sup>

#### IV.

##### THE NEED FOR A MORE INTEGRATED APPROACH

###### A. *Arguments for an International Convention*

Without universal prohibitions and a strong enforcement regime against international organized criminal activities, these groups will simply continue to find those parts of the world where governments are unwilling or unable to control them.<sup>322</sup> The criminals act without respect for borders, in contrast to law enforcement, which trips over strict notions of sovereignty and domestic control.<sup>323</sup> "Ironically," as noted by one commentator, "the transnational trafficking organizations are able in many respects to operate more extensively and freely than state actors that have more resources and legitimacy."<sup>324</sup>

A single, comprehensive convention against international organized crime of all varieties is preferable to multiple conventions focusing on specific criminal activities one at a time. While the U.N. Drug Trafficking Convention and the developing anti-money laundering regime demonstrate the prospects for success at the international level, they do not adequately cover all the activities of international organized crime. For example, although the Drug Trafficking Convention contains provisions regarding anti-money laundering measures, most countries have only criminalized money laundering of proceeds from drug-re-

317. See BARRY E. CARTER & PHILLIP R. TRIMBLE, *INTERNATIONAL LAW* 730 (2d ed. 1995).

318. See *id.* at 734-35.

319. See Kellman & Gualtieri, *supra* note 79, at 718 n. 214.

320. See CARTER & TRIMBLE, *supra* note 317, at 735.

321. See Kellman & Gualtieri, *supra* note 79, at 719 n. 215.

322. See Stares, *supra* note 101, at 12 (describing the ability of drug traffickers to get around "negative control measures" by adapting their routes and methods).

323. See *id.* at 13-14. See also KERRY, *supra* note 3, at 169-70. "We need to move beyond traditional notions of national sovereignty when those traditional notions benefit only the bad guys . . . it is the criminals who are taking advantage of national sovereignty to conduct their criminal enterprises, and the governments and the citizens whose security those governments were created to protect who are being violated by their own reluctance to respond." *Id.*

324. Stares, *supra* note 101, at 13.

lated crime, leaving out other predicate offenses.<sup>325</sup> All of the pursuits of international organized criminals have in common their transcendence of national boundaries, and the inability of any one state to effectively combat them alone.<sup>326</sup> There is a “symbiotic relationship”<sup>327</sup> among the different activities, as funds from one criminal enterprise are invested in pursuing another. The common attributes of organized criminal activity, of whatever kind in whatever part of the world, make an integrated approach the logical one.<sup>328</sup> Arguments for treating each of the main crimes of transnational groups separately make some sense with regard to nuclear smuggling,<sup>329</sup> due to its unique threat. But many of the measures necessary to create an effective international legal regime to counter the nuclear smuggling threat<sup>330</sup> are identical to measures necessary to counter other forms of smuggling and transnational crime.

A broad-based international agreement is also necessary even if bilateral or regional arrangements continue to increase. Criminal organizations have as little regard for regional divisions as they do for national ones. Furthermore, there is enough commonality among their methods and operations to make a universal approach workable.<sup>331</sup> Looking to world trade as a model,<sup>332</sup> regional organizations can operate in tandem with more universal arrangements. But the world community cannot afford to move as slowly toward harmonization in the fight against organized crime as it has in the harmonization of trade regulation. One possibility is to link control of organized criminal activities to the advancing free trade movement.<sup>333</sup> Rather than looking to traditional notions of sovereignty and relations among law enforcement bodies as a guide, nations should look to the level of cooperation among criminals as a model: “The challenge posed by transnational organized crime can only be met if law enforcement authorities are

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325. See E/CN.15/1996/3, *supra* note 261, at 18.

326. See Stares, *supra* note 101, at 14.

327. See *id.* at 100.

328. “What criminal networks share in common is a strategy to establish and sustain their activities in the face of opposition. Whether dealing in ivory in Africa, in marijuana in the Caribbean, in portable radios in Poland, in contraband cigarettes in Naples, or in stolen securities and bonds in the United States, each crime network attempts to build a coercive monopoly and to implement that system of control through at least two other criminal activities—corruption of public and private officials, and violent terrorism in order to enforce its discipline.” KERRY, *supra* note 3, at 17.

329. See generally Kellman & Gualtieri, *supra* note 79 (suggesting an integrated international legal regime to safeguard against nuclear proliferation by international criminal groups).

330. See *id.* at 679-81. The nineteen-point plan proposed by these authors includes some measures unique to the nuclear problem, such as prohibiting further production, reprocessing and enrichment of weapon-grade materials; universal accession to the Convention on the Protection of Nuclear Material; and better dismantling operations. But it also includes measures that would help solve other problems: improved border control, and record keeping measures; universal criminalization of smuggling activities; an unified coordinating body; better mutual legal assistance, extradition, forfeiture, transfer of proceedings, anti-money laundering, and anti-corruption provisions. See *id.*

331. Stares describes the potential for a “Colombia-style process” to occur in Central Asian republics if “extensive drug cultivation gathers momentum,” meaning that the criminals would become more powerful than the state itself. The process has already repeated itself in diverse areas of the world. See STARES, *supra* note 101, at 7.

332. See KERRY, *supra* note 4, at 172. “A world moving toward a seamless web of commerce cannot protect itself without enforceable law and standards that are almost equally as seamless.” *Id.*

333. See Stares, *supra* note 101, at 113.

able to display the same ingenuity and innovation, organizational flexibility and cooperation that characterize the criminal organizations themselves.”<sup>334</sup> In addition, while domestic and bilateral agreements may be effective in nabbing the perpetrators of criminal acts, a multilateral agreement would be a better tool for finding and prosecuting heads of criminal organizations, rather than simply their henchmen.<sup>335</sup>

M. Cherif Bassiouni, one of the foremost proponents in the movement to establish an international criminal court, has explained the reluctance of national governments to accept an integrated approach to law enforcement as stemming “from the familiarity and comfort which government representatives feel toward the bilateral approach.”<sup>336</sup> While this approach has provided an adequate solution to other problems in the past, Bassiouni cautions that the familiar, current modalities should be abandoned:

[bilateral approaches] are clearly inadequate in coping with increased international, transnational and national criminality, particularly with respect to the new international manifestations of organized crime, drug traffic and terrorism. Consequently, international, transnational and national criminal phenomena are not controlled as effectively as possible due to unwarranted political and diplomatic considerations which limit states in their international penal cooperation.<sup>337</sup>

Unless all regional approaches develop at the same quick speed, advancements by law enforcement in one region will simply lead to increased activity by the criminals in other regions. Zagaris has termed this the “balloon effect”: “whenever you squeeze part of a balloon, it expands elsewhere. That is, wherever regions and/or countries close loopholes in money laundering, organized criminals will be quick to invest in other jurisdictions in which opportunities exist.”<sup>338</sup>

The Secretary General of the United Nations has expressed qualified support for an international convention asserting that it “would provide a way of augmenting resources and mobilizing mutual support and assistance for what individual states are unable to do alone.” However, he stressed that “multilateral

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334. See *Most Effective Forms*, *supra* note 4, at 82.

335. See Vassalo, *supra* note 195, at 195. Because organized criminals use divisions of labor across boundaries, governments must respond with coordination at the national, regional and global levels. “More comprehensive strategies that target the leaders, their accrued wealth and the organization itself are likely to have much more impact.” See E/CN.15/1996/3, *supra* note 261, at 13.

336. Bassiouni, *supra* note 196, at 817.

337. *Id.* Bassiouni recommends that “multilateralism should replace the archaic inefficient and politicized bilateralism and all modalities of inter-state penal cooperation should be integrated. Thus, multilateral treaties and national legislation should integrate the modalities of: extradition; legal assistance; transfer of criminal proceedings; transfer of prisoners; transfer of sentences; recognition of foreign penal judgments; tracing, freezing and seizing of assets deriving from criminal activity; and law enforcement and prosecutorial cooperation.” *Id.* at 826.

338. Zagaris I, *supra* note 159, at 184. Another expert has analogized the organized crime business to “mercury at room temperature. If you push your finger into it, it moves out of the way – it flows to where there is less pressure. If pressure is applied in one place, it easily and quickly flows to another. As long as there are low pressure opportunities for the money laundering business to exist and to thrive, then that is exactly where the business and the activity will flow to.” *Joint Hearings Before the Subcomm. on Int’l Trade of the Comm. on Finance and the Caucus on Int’l Narcotics Control of the United States Senate*, 104th Cong. 56 (1996) (statement of Alan S. Abel).

responses can only work if each party makes sacrifices commensurate with those of others."<sup>339</sup> That is the main obstacle—willingness of nations to part with traditionally-held notions about sovereignty and law enforcement. But sovereignty is being eroded by the transnational criminal, so what is given up in forming cooperative arrangements is potentially regained if the threat is diminished.<sup>340</sup> Clinging to traditional law enforcement methods makes equally little sense, according to one former deputy assistant secretary of state for narcotics:

Get yourself into an international case that involves a drug cartel, an arms-smuggling ring, a bank fraud, you have got hundreds of thousands if not millions of documents in dozens of languages with many, many witnesses, many of who are from different cultures and different backgrounds. And now you take this mess into court and you try to prosecute . . . the jury is hopelessly, totally lost and confused . . . . So, our legal system is really not suited for complicated international crime.<sup>341</sup>

These are difficult obstacles to overcome. The traditional notion that law enforcement is a purely domestic matter purports that no other authority should dictate to state governments how their own instruments of force should be used.<sup>342</sup> States have different legal systems, different levels of sensitivity to each of the problems of organized crime, and different criminal justice systems with varying levels of efficiency and effectiveness.<sup>343</sup>

### B. Key Elements of an International Convention

An effective convention against international organized crime should include the following elements:<sup>344</sup>

- (1) Recognition of the threat and need for cooperation;
- (2) A description and/or definition of the features<sup>345</sup> and activities<sup>346</sup> of international organized crime;
- (3) Required harmonization of national legislation in prohibiting the defined activities of organized crime;

339. See *Report of the Secretary-General: Implementation of the G.A. Res. 49/150 on the Naples Political Declaration and Global Action Plan Against Organized Transnational Crime*, in Williams & Savona, *supra* note 3, at 178 [hereinafter *Report*].

340. See Stares, *supra* note 101, at 118. "[S]tates will have to accept that to regain some de facto control over what comes across their territorial borders and takes place within them they will have to reconsider their staunch defense of de jure principles that are becoming increasingly meaningless . . . . Just as many military forces have accepted the value if not the necessity of confronting common security threats through collective action . . . so police forces and criminal justice systems will have to see that similar practices can have benefits in their own field of work." *Id.*

341. KERRY, *supra* note 4, at 31 (quoting Bill Olson).

342. See *Most Effective Forms*, *supra* note 4, at 83.

343. See *id.* at 85.

344. See *The Feasibility of Elaborating*, *supra* note 11, at 153-55; see also *Report*, *supra* note 339, at 188.

345. See Part II for a list of attributes, *supra*.

346. The activities should include, at a minimum, all forms of illicit trafficking (drugs, people, arms, art objects, human organs, etc.) and their related activities: fraud; extortion; large-scale, cross-border theft operations; kidnapping; murder; corruption of government officials; nuclear smuggling; money laundering; and computer crimes. The list should include a catch-all category, or some expression that allows for the changing nature of organized crime as new technologies and circumstances allow transnational criminals to diversify their activities.

- (4) Regulation of commercial and banking sectors that increases transparency, guards against money laundering, and eliminates tax havens;
- (5) Required adoption of the U.N. Model Treaties on Extradition, and Mutual Assistance in Criminal Matters;
- (6) Establishment of improved centralized information gathering and sharing;
- (7) Measures aimed at the upper echelons of criminal organizations, including required domestic criminalization of participation, conspiracy, etc.;<sup>347</sup> and
- (8) Freezing and forfeiture of the proceeds of organized crime.

Perhaps most crucial to the effectiveness of an international legal regime to combat organized crime is the inclusion of forfeiture provisions. Seizing criminals' assets incapacitates their operations and provides recompense for countries that have felt organized crime's effects and have made significant expenditures of money and manpower in their efforts to combat organized crime.<sup>348</sup>

Ideally, the convention would include provisions on the transfer of criminal proceedings in cases in which extradition is not possible. This would allow the state "deemed to be in the best position to try the case," usually the state where the accused is located, to prosecute according to the "representation principle" or subsidiary universal jurisdiction.<sup>349</sup> While only three members of the EU signed the European Convention on the Transfer of Criminal Proceedings,<sup>350</sup> more pressure would be brought on laggard legislatures to bring domestic law into harmony with an agreement if consensus were international rather than regional. A logical counterpart to transfer of criminal proceedings is transfer of enforcement of criminal judgments, allowing sentences to be served in locations other than that of the trial.<sup>351</sup>

The list above represents the ideal, but not the realistic outline of an international convention. Inherent to this list are several difficulties, including agreeing on an all-embracing inventory of organized crime activities, achieving consensus of a large number of countries without sacrificing the real meaning, and convincing countries to change long-standing legal methods.

### C. *Progress Toward an International Convention*

In the past fifteen years, the United Nations has been the main venue for discussion and gradual progress toward an international convention. The prospects for a U.N. convention against transnational organized crime increased when the Group of Eight industrial nations agreed at its 1998 summit to support intensified negotiations on the text of the convention aimed at concluding talks

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347. See Report, *supra* note 339, at 188.

348. See KERRY, *supra* note 4, at 176-77. The U.S. Department of Justice has been using an international asset-sharing program since 1989. As of December 1995, over \$50 million had been paid to foreign governments for their cooperation in investigations which resulted in the seizure of approximately \$125 million in illegal proceeds. See *id.* at 177.

349. See Van Den Wyngaert & Stessens, *supra* note 200, at II.161, II.163.

350. See *id.* at II.161.

351. See *id.* at II.165.

during the year 2000.<sup>352</sup> Within the U.N., the Economic and Social Council (hereinafter ECOSOC) has taken on the responsibility for advancing international cooperation in the area of crime prevention.<sup>353</sup> Every five years, the Committee on Crime Prevention and Control of ECOSOC convenes an international congress to discuss international crime prevention.<sup>354</sup> The Seventh Congress in 1985 recognized the increasingly international nature of organized crime and adopted two resolutions concerning the issue, in addition to the "Milan plan," relating to international cooperation.<sup>355</sup>

The Eighth U.N. Congress on the Prevention of Crime and the Treatment of Offenders in 1990 called for greater international coordination in the fight against transnational organized crime. The Congress recognized both the increasing sophistication of international criminals and their "highly destabilizing and corrupting influence on fundamental social, economic, and political institutions."<sup>356</sup> The Secretary General's remarks at the Eighth Congress suggested that organized crime of all kinds—not just drug trafficking—should be dealt with through a common solution. The Secretary-General placed a specific emphasis on combating money laundering worldwide.<sup>357</sup>

In 1994, the U.N. convened a World Ministerial Conference on transnational organized crime in Naples.<sup>358</sup> The result was the Naples Political Declaration and Global Action Plan against Organized Transnational Crime (hereinafter Global Action Plan or Naples Document),<sup>359</sup> an attempt to spur further development of international cooperation in combating organized crime.<sup>360</sup> The Preamble to the Naples Document specifically notes the regional initiatives in the European Union and the Americas.<sup>361</sup> The Political Declaration section pledges closer alignment of legislative texts; greater international cooperation in investigations and prosecutions; agreement on modalities for cooperation at the regional and global levels; elaboration of international agreements on organized transnational crime; and development of strategies to combat money-launder-

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352. See Elizabeth Shogren & Tyler Marshall, *Summit's Focus Turns to International Crime, Debt Relief*, L.A. TIMES, May 17, 1998, at A14.

353. See Julia Heredia, *The United Nations Role in Crime Prevention*, in Lodl & Longuan, *supra* note 28, at 97.

354. See *id.* at 97-99.

355. See Paris-Steffens, *supra* note 5, at 14. The first resolution calls for greater harmonization in internal legislation concerning international cooperation. The second concerns drug trafficking and calls for bilateral or multilateral agreements on assistance. The "Milan plan" addresses the concerns of both resolutions and prompted further discussion of organized crime at the Eighth conference. See *id.*

356. Heredia, *supra* note 353, at 103-04.

357. See Wu Han, *Comparison of China's Group Crime to the West's Organized Crime*, in Lodl & Longuan, *supra* note 28, at 106.

358. See Phil Williams & Ernesto U. Savona, *Introduction*, in Williams & Savona, *supra* note 3, at viii.

359. *Report of the World Ministerial Conference on Organized Transnational Crime: Report of the Secretary-General*, U.N. GAOR, 49th Sess., Agenda Item 96, at 5, U.N. Doc. A/49/748 (1994) [hereinafter A/49/748].

360. See E/CN.15/1996/2, *supra* note 123.

361. See A/49/748, *supra* note 359, at 5.

ing.<sup>362</sup> The Global Action Plan recommends agreement on a definition of organized crime; adoption of national legislation dealing with organized crime, using the model of more experienced states' laws; development and improvement of bilateral and multilateral agreements on extradition and legal assistance; strengthened regional initiatives, including technical assistance; consideration of international instruments against organized transnational crime; and anti-money laundering measures on the national and multinational levels.<sup>363</sup> One-hundred and forty-two of the member states of the United Nations participated in the World Ministerial Conference at Naples, making it the best-attended conference in the field of crime prevention and criminal justice in U.N. history.<sup>364</sup> In conveying the results from Naples to the General Assembly, the Secretary-General noted that "a convention on transnational crime could be one of the ways to strengthen the legal instruments available to the international community," in addition to the model treaties adopted previously.<sup>365</sup> The General Assembly approved the Naples Document in resolution 49/159, urging states to implement its principles as matters of urgency.<sup>366</sup>

Subsequent to Naples, the General Assembly in December of 1998 passed resolution 53/111 establishing an Ad Hoc Committee for the purpose of elaborating an international convention against transnational organized crime and additional protocols on illegal trafficking of migrants, illicit manufacture and trafficking in firearms, and trafficking in women and children.<sup>367</sup> Toward the goal of concluding a draft convention by the year 2000, the Ad Hoc Committee scheduled five sessions for 1999 with further meetings tentatively planned for 2000 "depending on the pace of negotiations."<sup>368</sup> Prior to the first session of the Ad Hoc Committee in March 1999, representatives of forty-nine nations as well as several international and non-governmental organizations convened informal preparatory meetings in 1998.<sup>369</sup>

Even before the informal preparatory meetings, a draft convention had begun circulating and generating comments among U.N. members. In 1997, the Government of Poland took the initiative of drafting a U.N. framework convention against organized crime and the General Assembly requested that the Secretary General invite comments from member countries on the draft.<sup>370</sup> Of the twenty-four governments that initially returned comments, all but three ex-

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362. *See id.* at 9.

363. *See id.* at 9-15.

364. *See id.* at 16 for list of attendees. *See also Action Against National and Transnational Economic and Organized Crime: Working Paper Prepared by the Secretariat*, U.N. GAOR, 9th U.N. Congress on the Prevention of Crime and the Treatment of Offenders, at 16, U.N. Doc. A/CONF.169/5 (1995) [hereinafter A/CONF.169/5].

365. *See A/49/748, supra* note 359, at 18-19.

366. *See id.* at 16.

367. *See Draft Convention Against Transnational Organized Crime* (visited Sept. 13, 1999) <<http://www.ifs.univie.ac.at/~uncjin/dcatoc.htm>>.

368. *Id.*

369. *See Report of the Informal Preparatory Meeting*, A/AC/254/3 (Dec. 14, 1998).

370. *See E/CN.15/1997/7, supra* note 255, at 2.

pressed at least qualified support for the draft.<sup>371</sup> Before the Ad Hoc Committee officially began its work, the draft convention had been the subject of discussion at meetings in Warsaw in February 1998, Vienna in April 1998, and Buenos Aires in August 1998.<sup>372</sup> The draft convention has now evolved through substantive revisions at subsequent sessions of the Ad Hoc Committee, which have attracted increasing numbers of participants.<sup>373</sup>

Comparing the revised draft U.N. Convention Against Transnational Organized Crime<sup>374</sup> with the list of key elements of an international convention, *supra*, the draft Convention measures up to the ideal list in most respects. For example, Article 1 of the draft Convention adequately recognizes the threat of transnational organized crime and the need for international cooperation in combating that threat.<sup>375</sup>

Perhaps one of the most significant failings of the drafters of the U.N. Convention thus far has been the removal from the draft of any attempt to describe or define the activities of international organized crime, a key element of an effective international convention addressing transnational organized crime. Article 2 formerly contained a list of the offences considered to be indicative of transnational organized crime, but lack of consensus on the appropriate items for such a list led the Chairman of the Ad Hoc Committee to suggest that the list be included in an annex to the Convention or as part of the *travaux preparatoires*.<sup>376</sup> The members of the Ad Hoc Committee adopted this suggestion and the list formerly contained in Article 2 now appears in an attachment to the revised draft.<sup>377</sup> Placing such a defining provision of the convention in an attachment will make it easier for eventual signatories to become lax in recognizing criminal activities and operations within their borders as symptomatic of

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371. Austria's position was that a convention on organized crime would not be useful because the problem is too complex and cannot be adequately covered by a document such as the draft. Japan's comments were that there were only a few provisions in the draft that were part of a common understanding and that it had reservations about many other provisions. The United States argued that the process needs to decelerate to allow greater discussion. See E/CN.15/1997/7/Add.1, *supra* note 10, at 2-5.

372. See *Report of the Ad Hoc Committee on the Elaboration of a Convention Against Transnational Organized Crime on its First Session, Held in Vienna from 19 to 29 January 1999*, at 4, A/AC.254/9 (Jan. 29, 1999).

373. The first session of the Ad Hoc Committee was attended by representatives of 91 states (as well as representatives of international and non-governmental organizations), up from 49 at the preparatory meetings. See *id.* at 2. The second session was attended by representatives of 95 states. See *Report of the Ad Hoc Committee on the Elaboration of a Convention Against Transnational Organized Crime on its Second Session, Held in Vienna from 8 to 12 March 1999*, at 2, A/AC.254/11 (Mar. 25, 1999). The third session was attended by representatives of 111 states. See *Report of the Ad Hoc Committee on the Elaboration of a Convention Against Transnational Organized Crime on its Third Session, Held in Vienna from 28 April to 3 May 1999*, at 3, A/AC.254/14 (May 19, 1999). Attendance was down slightly at the fourth session as representatives of 97 states participated. See *Report of the Ad Hoc Committee on the Elaboration of a Convention Against Transnational Organized Crime on its Fourth Session, Held in Vienna from 28 June to 9 July 1999*, at 3, A/AC.254/17 (July 21, 1999).

374. See generally *Revised Draft U.N. Convention Against Transnational Organized Crime*, A/AC.254/4/Rev.4 (July 19, 1999) [hereinafter A/AC.254/4/Rev.4].

375. See *id.* at 1.

376. See *id.* at 2, n. 3.

377. See A/AC.254/11, *supra* note 373, at 3.

the problem of transnational organized crime. While a list need not be exhaustive, a list that is at least indicative, if it were to be included in the main text of the convention, would enhance universal recognition of the most common and damaging activities of organized criminals, such as drug trafficking, trafficking in persons, counterfeiting, trafficking in cultural objects, nuclear smuggling, terrorist activities (as defined by the U.N. conventions against terrorism), trafficking in firearms, theft and smuggling of motor vehicles, and corruption of government officials.<sup>378</sup>

The attachment is the only provision of the draft Convention that comes close to defining organized crime, referring to previous U.N. Conventions<sup>379</sup> for definitions of drug trafficking, money laundering, trafficking in persons, and counterfeiting currency, which are all listed as activities of organized crime. Other activities listed include illicit traffic in cultural objects, nuclear smuggling, terrorist acts, illicit trafficking in arms and explosives, illegal trafficking in motor vehicles, and corruption of public officials.<sup>380</sup> The argument that other activities could be added to this list was made by several countries in comments on previous drafts. Proposals include adding offenses such as extortion, kidnapping, fraud, trafficking in human organs, murder, and environmental and computer crimes.<sup>381</sup> Other countries and leaders expressed concern about including terrorism on the list because other international efforts have been initiated that deal with it separately.<sup>382</sup> However, neither of these arguments should have been allowed to prevent inclusion of a list which aims only to be indicative, not exhaustive.

What remains as Article 2 in the revised draft is a vague statement that the Convention applies to the prevention of "serious crime" and the "offenses established in Articles 3 and 4."<sup>383</sup> Serious crime will be defined in Article 2 based on the maximum sentence of imprisonment associated with that crime in a signatory country, but members of the Ad Hoc Committee have yet to agree on the appropriate number of years of imprisonment required to make a crime "serious."<sup>384</sup> "Organized criminal group" is defined in Article 2 of the draft convention as "a structured group existing for a period of time and having the aim of committing a serious crime in order to obtain, directly or indirectly, a financial

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378. These are the activities that were formerly listed in paragraph 3 of article 2 of the draft convention and have now been moved to an attachment. See A/AC.254/4/Rev.4, *supra* note 374, at 52-53.

379. The U.N. Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988, the Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others of 1949, and the International Convention for the Suppression of Counterfeiting Currency of 1929. See *id.*

380. See *id.*

381. See *id.* at 8-9 (comments of Cuba, Estonia, and Greece).

382. See *Report of the Informal Meeting on the Question of the Elaboration of an International Convention Against Organized Transnational Crime, Held at Palermo, Italy from 6 to 8 April 1997: Report of the Secretary-General*, U.N. SCOR, Comm'n on Crime Prevention and Criminal Justice, 6th Sess., Provisional Agenda Item 6(b), addendum at 3, U.N. Doc. E/CN.15/1997/7/Add.2 (1997) [hereinafter E/CN.15/1997/7/Add.2].

383. A/AC.254/4/Rev.4, *supra* note 374, at 2.

384. See *id.* at 4-5.

or other material benefit.”<sup>385</sup> The Ad Hoc Committee has yet to agree on whether a minimum number of members of an organized criminal group should be listed, such as three or more persons, and whether the phrase “committing a serious crime” should be further modified by including the phrase “by using intimidation, violence, corruption or other means.”<sup>386</sup> Article 2 also contains a proposed paragraph explicitly excluding from the scope of the Convention crimes that are committed entirely within a single state when its perpetrators and victims are also nationals of that particular state.<sup>387</sup>

Article 3 requires that parties criminalize not only the commission of serious crimes, but conspiracy to commit such crimes or aiding and abetting in their commission.<sup>388</sup> This provision would be more meaningful if there were a more definitive list of what constitutes serious crime, or if, as discussed above, a list of the activities of transnational organized crime were included in the text of Article 2. However, the requirement that each signatory establish as a criminal offense “organizing, directing, aiding, abetting, facilitating or counseling the commission of serious crime”<sup>389</sup> takes a significant step in recognizing that those chiefly responsible for organized crime are often not the perpetrators alone, but the other links in the hierarchical chains of command.

Article 4 accomplishes what is needed in the way of requiring that signatories harmonize regulation of their banking sectors to guard against money laundering. It requires that all parties proclaim money laundering a crime, no matter what the predicate offense was that generated the money.<sup>390</sup> Article 4 further requires regulation of financial institutions, including periodic examination, lifting of bank secrecy, keeping of clear and complete records, prohibition of secret or anonymous accounts, and reporting of suspicious transactions, *inter alia*.<sup>391</sup> The members of the Ad Hoc Committee are split as to whether Article 4 should mandate adoption of the forty recommendations of the FATF, or merely suggest that parties consider adopting those recommendations.<sup>392</sup> Article 4 also proposes “Measures against corruption,” such as criminalization of the offering or giving of bribes to public officials as well as the solicitation or acceptance of bribes by such officials.<sup>393</sup>

Rather than simply referring to the U.N. Model Treaties on Extradition and Mutual Assistance in Criminal Matters, the drafters proposed separate and extensive articles on those two key topics. Article 10, covering extradition, commendably follows the model of the U.N. Drug Convention, making the convention itself serve as a functional extradition treaty between parties even if

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385. *Id.* at 2-3.

386. *Id.*

387. *See id.* at 2.

388. *See id.* at 6-7.

389. *Id.* at 7.

390. *See id.* at 8-9.

391. *See id.* at 10-11.

392. *Compare id.* at 11 (“option 1” using the term “should consider”), *with id.* at 12 (“option 2” using the term “shall adopt”).

393. *See id.* at 13.

they have not signed a bilateral agreement on extradition.<sup>394</sup> Other notable provisions of Article 10 include the obligation to prosecute a suspect within the country where he is located if an extradition request is refused and the consideration of transferring persons sentenced to serve their sentences elsewhere.<sup>395</sup>

Article 14, dealing with mutual legal assistance, lists the types of assistance which should be afforded. These include taking evidence or statements, effecting service of judicial documents, executing searches and seizures, providing evidence, information, documents, tracing proceeds of crime, facilitating the appearance of witnesses, and any other type of assistance allowed by domestic law.<sup>396</sup> Article 14 then includes some more stringent provisions which are made applicable only to states that are bound by separate mutual legal assistance treaties.<sup>397</sup> Most significantly, Article 14(6) would deny such states the ability to decline to render assistance on the basis of a lack of dual criminality.<sup>398</sup> This would be a significant step forward from the current status of mutual legal assistance treaties, which almost invariably require dual criminality. However, several participants in the drafting negotiations have expressed reservations about eliminating the doctrine of dual criminality from the law of mutual legal assistance.<sup>399</sup> Article 14 also provides that each party designate a central authority for handling requests for mutual legal assistance and sets forth the elements that should be included in such requests.<sup>400</sup>

The Polish draft provided a good starting point. In just two years since the Secretary-General invited initial comments, subsequent working groups have already improved upon the draft significantly, incorporating more directly some of the language from the U.N. Drug Convention and elaborating on measures for cooperation between law enforcement agencies.<sup>401</sup> There seems to be a consensus on the need for a more integrated, cooperative approach. At Naples, only three of the eighty-six participants who addressed the issue of an international convention expressed opposition to the elaboration of a convention.<sup>402</sup> Support was similarly strong among those in attendance at the Ninth Congress on the Prevention of Crime and the Treatment of Offenders.<sup>403</sup> At least twenty countries have committed themselves to concluding an international convention. Other countries will arrive more gradually at a consensus on the details of that approach, but it is not unreasonable to aim for a conclusion shortly after the Tenth U.N. Congress in the year 2000.

Like extradition and mutual legal assistance, several other portions of the draft Convention also pertain to enhanced efforts in bringing organized

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394. *See id.* at 21.

395. *See id.* at 22-23.

396. *See id.* at 24-25.

397. *See id.* at 25.

398. *See id.* at 26.

399. *See id.* at 26, n. 136.

400. *See id.* at 27-28.

401. *See* E/CN.15/1997/7/Add.2, *supra* note 382, at addendum 6-9.

402. *See* E/CN.15/1996/2, *supra* note 123, at 21.

403. *See id.*

criminals to justice. Article 6, titled "Prosecution, adjudication and sanctions," encourages parties to ensure that enforcement powers are maximized under domestic law and that long statute of limitations periods are enacted to increase the likelihood that criminals are eventually prosecuted. Article 9 provides that each party establish as a basis for jurisdiction the territory in which the offense is committed and suggests that other bases for jurisdiction may include the residence of the criminal or victim, the place where the offense has substantial effects, or the place where the offense is committed or planned to be committed.<sup>404</sup> Article 15 contains a softened requirement that states institute the practice of using special investigative techniques such as controlled delivery, surveillance, and undercover operations, but only if their domestic legal principles are in accord with such measures.<sup>405</sup> One significant concern among developing countries is the costs associated with such techniques and the need for technical assistance from developed countries.<sup>406</sup> Article 16 deals with transfer of proceedings, but only encourages consideration of that possibility.<sup>407</sup>

Article 19 and 20 address the fifth ideal of establishing improved centralized information gathering and sharing.<sup>408</sup> Much of the language in Article 19 comes from the U.N. Drug Convention, and therefore should not give potential signatories any reason to pause.<sup>409</sup> Article 20 designates the Secretary-General of the U.N., as well as the U.N. Interregional Crime and Justice Research Institute and other institutes of the U.N. Crime Prevention and Criminal Justice Programme as the parties responsible for collecting and researching information on organized crime.<sup>410</sup>

As discussed above, the draft Convention adequately addresses the need to enact laws criminalizing participation and conspiracy rather than simply commission of the activities of organized crime. The draft Convention also contains key provisions regarding freezing and forfeiture of the proceeds of crime. Article 7 covers confiscation of proceeds and requires signatories to enable confiscation, specifically eliminating the obstacle of claiming bank secrecy as a ground for declining to make bank records available or allow assets to be seized.<sup>411</sup> Article 7 goes on to detail the procedures for making a request that another state party confiscate assets, identify, trace and freeze or seize the proceeds of a crime, and for disposing of confiscated assets by contributing them to international organizations combating organized crime or sharing them with other state parties.<sup>412</sup> These provisions are significant steps forward in the fight against organized crime and the scope of Article 7 should not be narrowed even in the face of concern by some countries about the breadth of its requirements.<sup>413</sup>

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404. *See id.* at 19.

405. *See id.* at 31.

406. *See id.* at 31, n. 165.

407. *See id.* at 32.

408. *See id.* at 35-38.

409. *See id.* at 35, n. 188.

410. *See id.* at 38.

411. *See id.* at 16.

412. *See id.* at 17-18.

413. *See id.* at 16, n. 88.

Overall, the draft Convention is shaping up well in accordance with what experts have recognized as the key elements of an effective international convention against transnational organized crime. The goal of concluding the negotiations soon after the year 2000 is not unreasonable, particularly if the U.S. takes a more leading role in supporting that goal.

Significantly, the Clinton administration has indicated support for a more integrated, global approach to the problem of transnational crime. In his speech at the fiftieth anniversary of the United Nations, President Clinton focused on the advancement of initiatives against international crime.<sup>414</sup> The U.S. response to Poland's draft convention indicated that "the time had come to give serious consideration to the elaboration of a single new international convention in that area [of combating organized crime]."<sup>415</sup> President Clinton ratcheted up his support for international cooperation in fighting organized crime in his speeches prior to and at the 1998 G-8 Summit.<sup>416</sup> Specific U.S. backing for the U.N. Convention would go a long way toward bringing other countries to the signing table.<sup>417</sup>

Countries that support the general idea of a convention, but have concerns about its implementation voiced them both at the Naples Conference and in response to the draft. Some feel that a new treaty would be inappropriate until existing model treaties on extradition and mutual legal assistance and the U.N. Drug Convention have been fully implemented.<sup>418</sup> Other countries argued that work should begin on a convention even before all countries reached consensus. These countries assert that the process of adopting a forward-looking convention now, even with few signatories, would encourage other countries to come around to agreement with its principles in later years to come. This was the effect the U.N. Drug Convention had: winning wide acceptance of concepts which at first seemed novel to many countries.<sup>419</sup>

Even a somewhat watered-down convention would serve many important functions. An international convention against transnational organized crime would focus attention on the problem, legitimize stiffer domestic law enforcement measures, provide aspirational standards and expectations, facilitate smoother cooperation among states willing to make agreements by increasing harmonization, and have great symbolic force.<sup>420</sup> An international convention would exert a kind of "peer pressure" on countries around the world that have not yet developed effective modalities to combat organized crime.<sup>421</sup> A weak

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414. See Zagaris II, *supra* note 238, at 1888.

415. E/CN.15/1997/7/Add.1, *supra* note 10, at 5.

416. See generally Kiefer, *supra* note 6; Bendavid, *supra* note 6.

417. "The threefold processes of regularization, accommodation, and homogenization by which states transcend the frictions of international law enforcement have hardly been equal or reciprocal. By and large, the United States has provided the models, and other governments have done the accommodating." NADELMANN, *supra* note 191, at 470.

418. See AJ49/748, *supra* note 359, at 30.

419. See *id.*

420. See *The Feasibility of Elaborating*, *supra* note 11, at 149-53.

421. See E/CN.15/1996/2, *supra* note 123, at 19. Japan represents one illustration of the effectiveness of such "peer pressure" from the international community. The Japanese government's

international convention is certainly better than nothing, which is what presently exists between some governments, who are unable to reach bilateral agreements due to political hostilities or other differences.<sup>422</sup>

#### D. Necessary Concurrent Measures

As efforts to reach consensus on a universal convention against organized criminal activity continue, states should form more effective bilateral and multilateral arrangements in preparation for a more integrated approach.<sup>423</sup> Concluding an international convention does not preclude regional and bilateral arrangements. Rather, these three levels should operate in a complementary way, creating a global "net" or "web" to catch organized criminals.<sup>424</sup> The steps involved in this approach would involve gradual harmonization in criminal justice systems, elimination of safe-haven states, and coordination among existing law enforcement and policy-making bodies, such as Interpol, the Schengen Group, and the Commission on Crime Prevention and Criminal Justice.<sup>425</sup> This has been termed the "thickening web" strategy, referring to the overlapping bilateral, multilateral, and regional arrangements for combating the global problem of organized crime.<sup>426</sup> The hope is that these various instruments will be complementary and synergistic rather than confusing and contradictory. An international convention in tandem with these bilateral and regional arrangements will improve coordination and hopefully avoid the likelihood that the array of arrangements will become "a rather untidy mix of global, regional, and bilateral arrangements, established without a great deal of thought given to the overall pattern."<sup>427</sup> The thickening web approach without a concurrent international convention also means that legitimate state authorities will fail to catch up to the level of integration and cooperation that already exists among the various illegitimate criminal organizations. Another, more modest concurrent step is expansion and harmonization of domestic laws on organized crime.<sup>428</sup>

Other concurrent measures necessary for an effective campaign against international organized crime include technical assistance, joint training programs, and centralized repositories for information about organized crime. A convention alone will not be sufficient to end the problem of organized crime globally. Technical assistance to developing countries and countries in transition will allow them to develop laws and enforcement procedures that are up to par with

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recent efforts to pass tighter laws against organized criminal activity came in response, in part, to encouragement from foreign governments. See Tatsuya Fukumoto, *Gov't Looks at Bills to Fight Organized Crime*, THE DAILY YOMIURI, Mar. 11, 1999, at 3.

422. See NADELMANN, *supra* note 191, at 9.

423. See *Most Effective Forms*, *supra* note 4, at 87.

424. *Special Double Issue on the International Conference on Preventing and Controlling Money Laundering and the Use of the Proceeds of Crime: A Global Approach*, CRIME PREVENTION AND CRIM. JUST. NEWSL. (visited Jan. 12, 1996) <<http://www.ifs.univie.ac.at/~uncjin/news124.htm>>.

425. See *Most Effective Forms*, *supra* note 4, at 88-89.

426. See *The Feasibility of Elaborating*, *supra* note 11, at 141.

427. *Id.* at 142.

428. See KERRY, *supra* note 4, at 188.

internationally-approved standards.<sup>429</sup> As a step in this direction, the United States founded the International Law Enforcement Academy in Budapest in 1996 to provide training and allow increased interaction among law enforcement officials from Eastern Europe and Eurasia.<sup>430</sup> The United States and the United Nations have taken the lead in providing training for foreign law enforcement, particularly in developing countries and countries in transition.<sup>431</sup> The Naples Plan included setting up a task force to examine the possibility of establishing an international training center for law enforcement personnel.<sup>432</sup> Some efforts attempt to expand interaction and training programs to include representatives from all countries with common organized crime-related concerns<sup>433</sup> and to leverage assistance funds from individual countries through U.N. and international programs. In the course of negotiating the draft Convention Against Transnational Organized Crime and its protocols, representatives of many developing countries have emphasized the need for technical assistance and welcomed the provisions of the draft Convention that encourage such assistance.<sup>434</sup>

Within the U.N., there has been increased discussion since Naples of creating a central database containing information from all nations on their national legislation, their participation in bilateral and multilateral agreements, and their intelligence about criminal organizations, leaders, and activities.<sup>435</sup> The database would build on information already gathered by Interpol.<sup>436</sup>

Finally, a convention will only be effective if every signatory fulfills its commitment to enact provisions against international organized crime and to cooperate in investigation, prosecution, and forfeiture proceedings. Even if a majority of the U.N. members were to ratify such a convention, some states would continue to be reluctant or unable to truly combat the criminals. Myanmar, for example, acceded to the U.N. Drug Convention, yet its government continues to involve itself in the large-scale drug trade that goes on in its territory.<sup>437</sup> Some within the U.S. government have proposed identifying countries who fail to adhere to existing international conventions that relate to organized criminal activity and imposing sanctions on those who have failed to act for lack

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429. See *Most Effective Forms*, *supra* note 4, at 96-97.

430. See *1996 Hearing*, *supra* note 18, at 22-23 (testimony of Edward L. Federico, Jr., Director, National Operations Division, Criminal Investigation, IRS).

431. During Fiscal Year 1995, the FBI trained 4,400 foreign law enforcement personnel. During the first few months of 1996, 212 Russian police officers attended U.S. training seminars in Russia and at the FBI academy in Quantico. See *id.* at 126, 129 (statement of Jim E. Moody, Deputy Assistant Director, Criminal Investigative Division, FBI).

432. See A/CONF.169/5, *supra* note 364, at 17.

433. See *1996 Hearing*, *supra* note 18, at 131 (statement of Jim E. Moody, Deputy Assistant Director, Criminal Investigative Division, FBI).

434. See A/AC.254/9, *supra* note 372, at 5 (representatives of Algeria spoke for members of the Group of 77 and China at the first session of the Ad Hoc Committee in expressing the need for long-term assistance).

435. See, e.g., E/CN.15/1996/3, *supra* note 261, at 19.

436. See *id.*

437. See KERRY, *supra* note 4, at 174.

of will.<sup>438</sup> Those who have failed not due to a lack of will but a lack of resources would receive assistance instead.<sup>439</sup>

Concluding an international convention against transnational organized crime represents only one step—but an essential one—in the overall effort to create a seamless web of legal measures to counteract the growing problem. An international convention assures that resources of wealthier countries are pooled in providing technical assistance to less developed countries. A convention overarches national and regional efforts, providing a greater degree of coordination and harmonization. Finally, an international convention identifies targets for “peer pressure” by other members of the international community to join in the fight against organized crime or lose standing in the international community. The efforts so far to elaborate an international convention are encouraging and should receive continued support by states that are typically seen as world leaders. National governments should not forsake their other efforts, but should complement them with assistance and support for the elaboration of an international convention against transnational organized crime by the end of the year 2000.

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438. President Clinton proposed sanctions on countries that fail to comply with the FATF's 40 recommendations on anti-money laundering actions. *See Zagaris II, supra* note 238, at 1889. Senator Kerry proposes dividing nations into three categories: “A normal state is one with the will, desire, and resources to cooperate in the struggle against global crime . . . others, like Russia and China, where corruption is rife . . . can be worked with, and must be . . . [A] criminal state, like Myanmar or Noriega's Panama is one in which the government is actively involved in activities that are criminal by common international consent.” For the middle category, Kerry recommends identification and assistance to the institutions that are willing to combat crime. For the last category, Kerry suggests imposing limitations on travel, trade, and access until they take measures to “justify re-admittance to the community of nations.” *See KERRY, supra* note 4, at 174-75.

439. *See id.*