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SUMMARY

The Measures to Control Transnational Organized Crime

Defining and measuring transnational organized crime

1. Transnational criminal activity has increased in scale and extent, becoming a complex worldwide threat. Transnational criminals ignore borders, they move sums of money through the international financial system that are so huge they dwarf the combined economies of many nations. They are often organized in multi-crime businesses, and they have capitalized on growth in international communications and transportation to expand their criminal operations and form potent alliances. The corrosive activities of transnational criminal groups in the post-Cold War era no longer threaten particular countries or regions. They threaten all nations. Transnational organized crime is not only a law enforcement problem, it is a formidable and increasing threat to national and international security.

Transnational organized crime is not something completely new, but there is no standard, universally accepted definition of these kind of criminality in the criminological and criminal law theories. The problem of definition is an important factor contributing to the inability of international law enforcement bodies to identify the size and scope of transnational organized crime accurately. Efforts to form a definition were made many times, but they only made this problem more difficult or created new problems. Some definitions of this kind came to light during the international simposium on organized crime in Sant Claud (France), 1988, which is where the headquarters of Interpol was situated. Just before this event, 84 participants from 46 member-countries of Interpol agreed to accept the working formula «transnational organized crime» as a basis for further discussion. It was designated to mean any concern or organized group of people, which continuously practices its criminal activity and whose main goal is to make a profit everywhere, without reference to national state boundaries. Certainly, it was a criminological term, with no claim to providing a juridical concept. But the transnational element of the mentioned category (organized criminal activities across national boundaries) was

essential and helped using it by the international organizations for their programs and treaties.

We must admit, that a variety of other definitions, with all their diversity, nevertheless include the following essential elements and features, which are typical for transnational organized crime communities.

First, the activity of such organizations is criminal by nature, breaks legal taboos and must carry a penalty within existing procedures of law enforcement organs. It is obvious that a majority of social systems consider the so-called informal (hidden) economic activity, which is the bulk of organized transnational criminality, to be illegal and destructive to the development of the formal, legal economy. It breaks business laws and overturns normal economic activity. And this «essence» is a necessary element of the definition of transnational organized crime.

Second, despite the banality of this statement, it is very important to fix the fact that subjects in this activity is expediently executed, by people, who are intentionally united into a group (but more often cooperating groups) under the guidance of their established leaders. Hereby, the fact that they are well organized is not ephemeral and temporary. It is a key, constituent element of the phenomenon and definition of transnational organized crime.

Third, an essential constituent feature of transnational organized crime is the most important goal of the full spectrum of its activities. Any activity must be gainful. Bank fraud, blackmail, prostitution, theft of automobiles, drugs and weapons trafficking are equally acceptable if it makes a profit.

The fourth essential element of the transnational criminal rings is in the particular way they achieve their main goal, namely, in their readiness to use violence and bribery for the accomplishment and protection of their interests. Violence and bribery very often accompany each other, and are used deliberately with premeditation, in particular circumstances and to solve quite specific problems.

Thus, transnational organized crime rings act outside the law with the goal to make a profit and use bribery and violence for the realization and defence of group interests. These characteristics does not add anything special into the description of the phenomenon that have existed many years ago. At the same time, there are some distinctions inherent in it today, which increase to a new level the danger to the global social peace and stability. In particular, the ability to carry out global operations differentiates transnational criminal rings and organizations from traditional organized crime groups. The last one are rooted in the national territory of specific states, and even if they develop foreign connections in some cases, they do not operate on the wide international level. They act on the territories,

regions or cities mostly within the national jurisdiction of a single state. For example, the American Mafia, which is also called La Cosa Nostra, is a very well known example of such a criminal syndicate. La Cosa Nostra appeared in the 1930s as a result of a conflict among Sicilian immigrant gangs in American cities. Despite the fact that its members introduced their ethnic traditions into the new community, La Cosa Nostra has never been a dummy organization or instrument of the Cisilian Mafia. It is really an American criminal organization. Although La Cosa Nostra was not without transnational connections, mainly they were for the purchase of alcohol and heroin from foreign illegal structures.

New transnational criminal groups are essentially different from national, domestic organizations more than anything else by the fact, that they were either created or transformed especially for criminal activity at a high level and international standard. The Colombian cartels are the most typical for such organizatuions. They correspond to vertically integrated global business, which has hundreds of thousands of employed specialists and assosiated workers in sevice. The Cinese Triads equally belong to the transnational generation of criminal groups, though they do not have such a strict structure. But their foreign operations are very intensive, very often in the flow of increasing Chinese immigration.

Transnational organized crime possesses a powerful potential and is highly dynamical. Therefore it possesses a serious danger to the existence of both single states and the world community as a whole. Transnational criminal groups are very well organized and equipped. It is extremely difficult for law enforcement organs to find their way into the organizational structures of these groups, because many of them are based on ethnicity and act in the spheres jo jurisdiction of different states. Transnational criminal groups use violence and bribery. Their activity undermines the authority of legal power and weakens democratic institutions. They destroy financial markets and economies of many states. The governmental resources that are designed to solve many social and economic problems are not enough to offset the criminal organizations at all. Many of them consolidate their connections with militant, ethnic, and religious movements.

A series of factors boosts the potential of transnational criminal rings. They act as parasites, for example, in cases where there are weak governments which have neither the resources nor political power to oppose them. They prosper on the fantastic amounts of money which they get as a result of illegal activity, particulary the production and sale of drugs. They are able to benefit from the increasing migration of people through countries and continents. Modern sophisticated weapons and appropriate technologies,

which they have at their disposal, are effective means for the realization and protection of interests of transnational criminal groups. The inability of many states and international organizations to design and coordinate effective anti-criminal programs creates a favorable climate for the criminal community to maneuver in their resistance to law enforcement organs. So it is extremely important to develop the appropriate countermeasures to transnational organized criminal activity.

The main kinds of transnational organized crime activity consist the following illicit businesses: illegal migration, trafficking in women and children, trafficking in body parts, corruption, theft and illegal export of cultural property, theft and trafficking in automobiles, fauna and flora trafficking, computer crimes, software piracy, nuclear material theft and trafficking, trafficking in firearms, trafficking in drugs, money laundering. No doubt, there can be identified other organized crime activities which have a transnational character or transnational implications. But in any case, if there is some uncertainty about the categorization of particular organized criminal activities in the mentioned range, however, their most common and distinctive feature is that it involves the crossing of borders or national jurisdictions. Therefore, control measures are especially important on the international level and also within affected countries if these measures have international implications.

The national level of control transnational organized crime

1. Despite the necessity to design and realize measures to control transnational organized crime at the state level, the timeliness and effectiveness of a solution to this problem still leaves much to be desired. It can be explained by a number of circumstances. This falls into the following categories: the real state of financial and personnel resources of every state; the degree of corruption of the administrative machine, especially law enforcement agencies; and the specifics of mutual relations between criminal groups and the separate links among political and economic systems in concrete societies.

Nevertheless, the structure of methods to control transnational organized crime within the framework of national jurisdictions (as well as on the international level) consists of general preventive and special measures, which ideally are a united complex, but in practice are seriously flawed in their completeness and systematization.

General preventive measures traditionally refer to the socio-economic sphere and are designed with the concept of “dualism”, which is appropriate for organized crime. It is expressed, on the one hand, in providing illegal commodities and services, and on the other hand, in persistent penetration into the legal economy.

Politics directed towards decreasing the demand of illegal commodities and services inevitably limits the abilities of criminal rings and interrupts the spread of their activity. Disintegration of the monopolization of markets, which criminal societies traditionally dominate, can contribute a lot to achieve this goal. Unfortunately, both elements of such a strategy are rarely realized in practice, because this problem is very complicated.

However, concrete steps in this direction are quite real.

In particular, constriction of the possibilities for transnational and national organized criminal activity can be achieved by providing such a situation, where commodities and services monopolized by criminals appear more and more on the legal market. It is to a great degree connected with decreasing the vulnerability of the legal economy by a redistribution of resources, and stimulation of employment in regions with an undesired socio-economic situation. The steps in thus direction also are fraught with certain costs and negative consequences in various regions of the world. But their total effect will be promising in any case, on the condition that they are carefully planned and realized.

In addition to the steps already mentioned, the experience of several countries has shown that strict regulation and licensing of all kinds of economic activity, especially bank and other financial services, which are so attractive for transnational criminal organizations, are very effective. All this must be tied to careful control by banks of business, particularly foreign economic, in order to block the laundering of dirty money. New legislative regulations directed towards maintaining civilized standards of economic activity and preventing penetration by organized crime can have a powerful prophylactic effect.

Specialists rightly state that recently general preventive measures are more and more often used in order to control transnational organized crime. But they look especially promising in combination with special measures, which are conventionally called the “measures of special prevention”.

2. In the framework of special preventive measures against transnational organized crime the importance of criminal legislation should be emphasized first of all. In response to the increasing threat from transnational and domestic criminal rings, a number of states passed substantial amendments and changes into the norms of national criminal law. Their core is primarily

in the regulations: a) about criminal penalties for the creation, management or participation in the activity of criminal organizations; b) on the seizure of income from such activity by making it legally possible to bring a civil suit. In this case the legislation of a number of countries differentiates the criminal activity of criminal societies (organizations of Mafia type) and crimes which are committed in complicity, but without the creation of a criminal organization. The latter is consequently characterized by a lesser degree of public danger. Perhaps the most recent example of new criminal legislation, which demonstrates such an approach, is the Criminal Code of Russia, which came into operation January 1, 1997.

In regard to categorizing certain kinds of crimes as organized, despite their well-known variety, the majority of states are still rather unanimous with their criminal legislation in the circle of crimes included. In particular, the federal criminal law of the U.S. places in these categories illegal drug trafficking, extortion by private people or state officials, illegal gambling, interstate transportation or receiving of stolen property, and some other publicly dangerous activities. In Germany a number of kinds of criminal activity, which, as a rule, criminal groups engage in, are forbidden. Illegal drug trafficking, group piracy, receiving of stolen things, illegal fire-arms trade, extortion, pimping, and the organization of illegal gambling fall into this category. The status law of England labels as organized criminal activity various kinds of fraud, falsification of accounts, storing of stolen property, drug trafficking, forgery, living on income from prostitution, as well as various kinds of criminal attacks.

Italian legislation places in this category the distribution of illegal drugs, kidnapping people for a ransom, extortion, fraud, usury, and forgery of money and securities. In the republics of the former Soviet Union banditism, commodities contraband, extortion, theft, drug crimes, and assassinations are the most widespread crimes categorized as organized criminal activity.

The presence of the feature "participation in an organized criminal society" is a unifying theme for all these quite dissimilar crimes when they are labeled as organized criminal activity. To find a subject guilty in these cases it is necessary to prove the fact that he participated in a criminal conspiracy of a group consisting of two or more people, which exists for the constant realization of their joint criminal designs.

Perhaps the most typical item corresponding to the peculiar model for other law systems is the U.S. legislation of the 1970s on racketeering and organized crime activity, which is well-known as RICO, as well as the law on constantly acting criminal business. In addition to these normative regulations in the U.S. were enacted the law on the Prohibition of General

Criminal Collusion and the law on the Prohibition of Conspiracy for Drug Trafficking Purposes. Despite a certain differences in the definition of the minimum membership in a criminal society in every of named legislative act (from 2 to 5), the meaning of the terms "criminal conspiracy", and "participation in an organized criminal society" is worded clearly enough and covers almost all kinds of the most widespread and dangerous criminal activity. Included most of them in federal criminal legislation and criminal codes of states are premeditated murder, drug trafficking, fraud and a number of other serious crimes.

A little bit later Italy followed the example of the U.S., having experienced serious difficulties in proving conspiracy using the old legislation. In 1982 a new law was adopted in Italy, carrying a criminal penalty for participation in any Mafia society with a membership of 3 or more people. A society is considered to be Mafia if its members aim to provide management or control of any kind of economic activity, public jobs, or services in order to make an illegal profit or to get other illegal benefits. In addition to this special standard, the Italian legislation contains a general definition of criminal conspiracy while committing other crimes, as well as special wording about drug trafficking.

The enactment in the U.S. and Italy of these laws turned out to be a very effective means in the fight with organized crime. The norms therein allowed the implementation of criminal persecution of leaders and common functionaries of criminal societies because of the fact of their participation in a Mafia organization, whose activity is connected with committing crime. In a number of trials during recent years, leaders of national and transnational organized crime were sentenced to long terms of imprisonment.

We should admit that many countries with a comparatively low level of organized crime still abstain from following the example of the U.S., Italy and Russia, in acknowledging as an independent crime the fact itself of participation in a Mafia society. But the development of more and more worrisome tendencies in organized crime allows one to suppose that in many states such a legislative tome could give substantial results in the fight with criminal rings.

Another considerable milestone in the transformation of criminal legislation in many countries, related to the task of intensification of control of different kinds transnational organized crime activity.

For instance, this is the introduction of a criminal penalty for laundering dirty money made through criminal means. These legislative changes were in many ways stimulated by the UN Convention on the Fight against the illegal distribution of narcotics and psychotropic substances of 1988, which

recommended members of the world community to use such document regarding drug addiction. The fight against dirty money laundering is becoming one of the main components of the global strategy of organized crime prevention. But the effectiveness of this strategy in many ways depends on political support in concrete states, and the provision of necessary resources on the international, regional, and national levels.

The following component of the legislative strategy in the fight with transnational organized crime is the design of new and effective uses of old criminal laws on responsibility for corruption. Corruption to a great extent aids the activity of criminal groups and is a part of transnational dimension of organized crime. That is why support by members of the international community is so important for the recommendations on the fight against corruption, formulated in Resolution #7 at the eighth UN Congress on the prevention crime and treatment of criminals. They are being realized successfully enough in legislation of the leading western countries – the U.S., Great Britain, Germany, and a number of other states.

In particular, in the United States of America there is a direct legislative ban on state officials to demand, extort, or receive bribes. To an equal degree, the law forbids promising, offering or giving bribes. In addition to this, the kinds of commercial activities, which are allowed for a former state official after his retirement are restricted by a number of laws. There is also a legislative directive on a number of subjects about the compulsory submission of income declaration. The federal law of the U.S. contains demands on certain officials to place their financial investments into a trust managed by other people during their state service.

In Germany, the giving and receiving of a bribe not only by a state official, but giving a bribe to any official in connection with his state functions, including entering into and realization of a business contract, carries a criminal penalty.

The quintessential development of legislation on corruption was achieved in Italy. In particular, the criminal penalty for abuse of rank by a state official, expressed in the extortion of a bribe in exchange for service, which is in the sphere of competence of this official, was intensified. Other ways of illegal enrichment of an official, including money appropriated as a result of an action contradictory to his official duties, are considered to be criminal offenses.

The justice system of Great Britain, counter to the practice of the fight with corruption in the mentioned countries, uses both norms of common law and modern criminal legislation (statute law) pertaining to people guilty in giving or receiving a bribe.

However, despite active legislative and executive practice in this sphere, criminal prosecution is still very complicated. Unfortunately, in many countries native businessmen who give bribes to foreign officials are not punished. In this way, international corruption is practically legalized. In connection with this a special commission of the Organization for Economic Collaboration and Development designed recommendations regarding international corruption to influence the legislation of different countries; the Council of Europe and the International Chamber of Commerce recommended acceptance of appropriate conventions and the signing of bilateral treaties as effective means to prevent its spread.

Another direction of transnational organized crime control is a harmonization of criminal legislation in many transit countries where alien smuggling is not illegal. Serious initiatives have been taken to alter this situation in Central America, with Panama and Nicaragua joining Honduras in imposing criminal penalties for alien trafficking.

The fight with transnational organized crime must not exhaust itself by using only traditional criminal law sanctions like imprisonment or fines. That is the reason for the court practice of a number of states to use restrictions on residency in certain places or membership in certain organizations for guilty people. The confiscation of assets of criminal organizations, their blocking, or arrest is very important. The economic method is one of the most effective means of restraint of growth of organized crime, including transnational, because it deprives criminal groups of the financial advantages of their antisocial activity. It is efficient to spread confiscation measures to the maximum enumeration of property bought with the profit from criminal business or used in any way for committing crimes by organized criminal groups.

The confiscation practice must be widely legalized not only for national, but also transnational corporations, which collaborate with organized crime, because some of the perpetrator-officials very often appear to be beyond national jurisdiction and avoid personal responsibility. In this sense, we should pay more attention to the activity of legal firms against the background of growth of such crimes as various kinds of fraud, which are carried out by organized criminal groups. Organized crime aims to penetrate into legal business, criminalizing the legal economy in this way. It is absolutely fair, that according to the legislation of a number of countries, in particular the U.S., it is possible to apply criminal punishment, such as fines, property confiscation or deprivation of juridical rights against corporation (as a juridical person) in cases where they commit criminal offenses.

The American practice indicates that such an approach, which threatens legal firms with not only criminal penalties, but loss of their reputation because of their connection with organized crime, is a powerful means of prevention of economic crime and contributes to the decrease of the defenselessness of economic systems.

3. The experience of many countries of the world demonstrably indicates that criminal procedural methods, which allow the police, investigators, attorneys and judges to properly and with high effectiveness carry out investigation and court proceedings in this category of criminal cases play a very important role in the fight against transnational organized crime.

This primarily concerns the practice of the so-called mandatory criminal prosecution. In particular, Italian and German justice keeps to the principal of mandatory criminal prosecution. In this case police and the state prosecutor's office are obliged to bring a case before a court if they discover enough evidence of a concrete crime. In the U.S., in contradistinction to this approach, there is provided a certain freedom of action for law enforcement organs. They have the right to independently start an investigation regarding a concrete person (physical or juridical) or submit a final decree for the prosecutor's consideration. The prosecutor has discretionary right, and may forgo bringing a court action for a small offense in exchange for this subject's information about leaders of organized criminal groups. In Great Britain investigative organs, that is leaders of investigative subdivisions, have the right to decide about investigations at their discretion. In this case the Attorney General has the discretionary right at any stage of the investigation. Of course, the effective use of such a right requires a high level of professional responsibility. And, though the discretionary system is flexible and effective, potentially there are more possibilities of violations of the rights of defendants in this system. Both the pros and cons of this model are quite reasonable.

The problem of proof is very real in the framework of criminal processing regulations in the fight against organized crime. In practice, the criteria of evaluation of evidence in cases of crimes committed by transnational criminal groups are not different from those, applied to other categories of criminal acts. And the prosecutor acts on behalf of the state, which traditionally must carry out the process of proof. The problem of evidence collection is more specific. In the majority of states, information received with the help of electronic observation, secret agents, testimonies of accomplices, and controlled deliveries is successfully used regarding investigations of cases involving organized criminal activity.

From the point of view of observing the right to privacy, the method of electronic observation is the most delicate, and at the same time very effective. Listening to a suspect's conversation is carried out without permission of any of the participants. To keep workers of law enforcement organs from the temptation to use electronic observation without court authorization, facts received through violation of law are not accepted in court proceedings, and are excluded from the general mass of evidentiary material.

According to German legislation, the use of electronic methods of investigation is allowed, but the facts received this way are accepted with certain limitations. For example, application of such a method of investigation, which at any point affects the sphere of private life, is allowed only in cases of a serious crime committing by suspect.

In Italy, connecting to the telephone network and listening to conversations is also allowed only in serious criminal cases. The judge participating in the investigation gives sanction for the application of this method at the request of the prosecutor. In special cases, the prosecutor has the right by justified decree to allow the organization of wire-tapping. However, within 24 hours he must turn to the judge with a written request to sanction this decree. Within 48 hours the judge must approve or cancel the prosecutor's authorization of electronic listening. The Italian legislation on the fight against organized crime allows also preventive electronic listening, which must be authorized by the state. But the information received in this way although used during the investigation, cannot be submitted as legal evidence during court proceedings.

Regarding the services of secret agents and use of the method of controlled deliveries, there are serious differences in the legal regulation of these methods of obtaining of evidence in different countries; from direct outright ban to widely accepted, though clearly restricted by law and practice. To an equal degree, it is true of testimonies of accomplices in the same or related cases. In some countries, such testimonies are accepted as legal evidence, but in other countries the law allows their use with certain stipulations. In a number of states it is forbidden to use anonymous testimonies of secret denouncers as legal evidence.

We should also note the presents in many countries of the world of an appreciable tendency to the compulsory provision of testimonies, which is especially important in cases of transnational organized crime. In particular, in the U.S., in spite of the existence of the Fifth Amendment to the Constitution, which prohibits compulsory testimony against oneself, the federal prosecutor, subject to a certain procedure, may be ordered by a

federal judge to force the witness to give testimony. The refusal to testify in this case carries imprisonment of up to 36 months, until the person testifies. Legal action for false testimony might be brought against an obdurate witness. In Germany, for refusal of a witness to testify without legal grounds, the court imposes a disciplinary fine on the witness.

However, in the fight against organized crime, legislation and executive practice of a number of states provide for not only forcible provision of testimony. At the same time, they take measures for the effective defense of witnesses to guarantee their physical safety, the possibility to change their place of residence, last names, provision of a living allowance, employment assistance, etc. In fact, witness protection programs today play a key role in providing an effective fight against organized crime. Due to them, the number of people, who agree to testify in court, is growing. As a rule, witness protection programs are included in appropriate legislation. For example, in the U.S. there is a detailed normative regulation of the grounds and procedure for the realization of arrangements for the protection of witnesses. On the list of such arrangements, in addition to the private safety guarantee, the rendering of such services is included: temporary housing, assisting in moving property to a new place; a living allowance, employment assistance, and provision of other aid, with the goal to help the witness painlessly adjust to a new life. In addition, there is unofficial, but a normatively well regulated procedure for the defense of informers who do not openly testify in court. Comparatively recently in Italy there was legislation which regulates all questions connected with the defense of witnesses. Although in Great Britain and Germany such legislation does not exist, the workers of law enforcement organs may take appropriate measures of safety, but on a more limited basis, than in the USA and Italy. This is especially true of the limited possibilities of the German police services. Finally, we should mention that in addition to programs for defense of witnesses and informers, there are measures for aid to those who are aggrieved due to collection of strategic information about drugs. All this data comes to the National service on collection of information about criminal activity.

5. Success in the fight against transnational organized crime to a great extent depends on the effective resolution of problems of coordination and the design of complex approaches to the solution of current problems facing national law enforcement organs. It concerns the consistency of the spheres of jurisdiction and concrete acts against Mafia societies of organs of various territorial and departmental levels, between central and provincial structures. Forms and methods of such coordination in various states are to a certain

extent similar and different at the same time. But in the majority of cases, the main responsibilities for investigations regarding organized criminal activity and the design of a strategy in this sphere are assigned to the only one organ.

As was already mentioned, the FBI is the main investigative organ of organized crime cases in the U.S., but some other (already mentioned earlier) law enforcement services contribute a lot to this. In addition, special police units are created in the places where Mafia organizations are the most active. Experienced federal investigators are attached to these brigades. In the governmental district of Washington (District of Columbia) there is a Bureau on organized Crime as a part of the Criminal Department of the Ministry of Justice of the U.S. This Bureau is manned by expert attorneys, who go to the "places" for strategic investigation pertaining to Mafia structures. The Council on organized crime under the Department of Justice of the U.S. coordinates the activity of all these departments. The leaders of various investigative organs and executive officials of the Department itself staff it.

In Germany, the Commission on organized crime coordinates criminal investigations pertaining to criminal groups on a national basis. The leaders of the BKA (Federal Criminal Service) and territorial investigation brigades man this Commission.

In Great Britain in the framework of the activity of so-called criminal investigation brigades, and municipal police brigades there is a continuing collaboration during the investigation of criminal cases and collection of strategic information, including information about transnational organized crime.

In Italy, numerous police organizations, where the fight against criminal rings is also a part of their competence, regularly coordinate their activity on the interregional and national level. In particular, they do this by using a joint database, which is situated in the appropriate center of the Ministry of Interior Affairs. Responsibilities for the coordination of the preliminary and court investigation are assigned to special district attorneys on the fight against organized crime.

Thus, provision of close coordination of the activity of all law enforcement organs at the national level positively influences the solution of problems related to control of organized, including transnational, crime.

International collaboration in the control transnational organized crime

1. The level of international collaboration in the fight against transnational organized crime has substantially grown for the last two decades. At the same time, a lot of problems are still unresolved, and there are serious obstacles and restraints.

The inability of a single state or government to effectively oppose transnational organized crime activity by itself is the main motivating factor of the development of international cooperation in this sphere. Transnational criminal rings are becoming more and more powerful and universal, and their mobility is growing. The means and resources of any state are not enough to seriously harm them. Thus is especially the case, since transnational criminal societies understand the situation very well, and choose countries with weak and corrupted systems of criminal justice as places of their main deployment. And in cases where they start to experience serious pressure from law enforcement agencies, the criminals relocate their networks to countries with a more favorable "climate".

What are the main difficulties constraining the so obviously necessary interstate collaboration and creation of a powerful enough infrastructure of international cooperation of law enforcement agencies in their fight against transnational criminal communities?

First of all, it is necessary to admit that entering into cooperation in the sphere of criminal justice depends very much (and until recently, in particular) on the character of political relations between states, differences in their ideology, and their approach to the observance of human rights. This fact is very often a stumbling block in the way of international cooperation.

In addition, despite the vital necessity of collaboration in the sphere of criminal law, the hypertrophical understanding of sovereignty, including the monopoly right of a singly state to use criminal-judicial constraint on their own citizens according to the domestic legislation, has always been a serious obstacle. For this reason, states seldom and very unwillingly extradite their citizens to the jurisdiction of another country, even if there are strong reasons for their criminal prosecution by the legislation of this country.

Serious differences in the juridical systems of different countries, in the handling punishability or non-punishability of some acts, and in the culture of justice make it much more difficult to enter into collaboration. In particular, in a lot of countries the permissibility of evidence in court received through using informants from the criminal relationship, still provokes serious resistance. But this method is very important for the successful control transnational organized crime. Legislation on the fight against drug addiction is another striking example of aggravating inconsistency. Despite the fact that a lot of countries signed the UN

Convention of 1988 "On the fight Against the Illegal Circulation of Narcotic Drugs and Psychotropic Substances", the normative acts which regulate the same questions are essentially differentiate in different countries. This makes implementation of comprehensive drug abuse prevention politics difficult in many ways. This is why harmonization of national legislation is a cornerstone, on which an effective system of coordination of international efforts to control transnational organized crime is based.

Another serious obstacle is the fact that in a number of cases the sides are simply not interested in entering into collaboration. The corruption of political administration of some countries is in the background of this. A real fight against drug business, and money laundering in cooperation with another international subjects would torpedo the positions of corrupted officials. For the same reason, law enforcement agencies themselves do not very willingly participate in join operations with their colleagues from other states, as they fear the leakage of information to criminals through corrupted governmental officials.

2. Despite these difficulties, the problem of control of the developing spheres of activity of transnational criminal rings may not remain unsolved. States must be ready to waive some of the formal orders of sovereignty, customs and traditions, which have existed for hundreds of years. Developing of collaboration in this situation does not have an alternative, and the international community should take more firm measures to overcome the difficulties, which are in its way.

Collaboration can be realized at different levels, in various directions, be bilateral or multilateral, but in any case it must be objective and take into account all aspects of the organized criminal activity.

One of the main goals of international cooperation in this sphere is in the provision of consistency in the systems of criminal justice of different countries as much as possible, including aid to countries with a weak normative basis or states which are refuges for criminal business, and in the development of national legislation on the fight against organized crime. It is obvious that it is impossible to achieve complete identity of legal regulation in this sphere for a number of reasons. However, to be able to take coordinated effective measures against transnational criminal communities, the maximum possible comparability of different national jurisdictions involved in the realization of these measures is necessary.

Effective international collaboration today implies the maximum use of the potential of existing structures and mechanisms, joining their efforts for the purposes of employment of more efficient means against transnational organized crime. The Interpol, the Special group on financial measures in

the framework in the framework of fight against money laundering, created by the seven leading industrially developed countries, the Council of Europe, the Shengen group, the Commission on crime prevention and criminal Justice, and some other organizations are among such structures. For example, Interpol has established an Automatic Search Facility International Stolen Vehicle Database that can be accesses by member states in their efforts to identify and where possible recover stolen vehicles. This database, however, needs to be augmented by national databases and by information sharing arrangements at the bilateral, regional and subregional levels. Together they posses a powerful potential and that is why it is necessary to actively stimulate the development of contacts between them. Simultaneously, the governments of collaborating states should grant more financial support to the international organizations in the framework of the fight against transnational crime. It is very desirable for the provision of effectiveness of such a collaboration to establish a strategic exchange of information between states and carry out applications for aid in connection with criminal investigations without delay. It also concerns the mutual readiness to facilitate decisions of a court of another state and transfer investigation and surrender the criminal himself from one jurisdiction into another.

Such methods of international cooperation as programs of systematic exchange of personnel of law enforcement departments, which are directed towards strengthening of connections between their workers, implementation of joint actions against transnational criminal organizations, exchange of information and expert opinions about current situation, and mutual growth in accumulated experience in the fight against criminal rings have been actively developing in recent years.

The experience of the creation of international bilateral and multilateral target groups has shown itself to be especially advantageous. Intensification of this process is a vital need today and produces obvious positive results. In practice, as a rule, one country of the international community takes an initiative on the creation of such groups during concrete operations. Naturally a high enough level of professionalism of all the participants is necessary in this case. Coordinated measures also require attracting workers with special knowledge and a wide education. In particular, specialists of one country must be well acquainted with not only the methods of transnational criminal activity, but with the financial and procedural law of the appropriate states. They are also required to know international conventions, agreements and other legal mechanisms which regulate

extradition of criminals, transfer of prisoners, confiscation of property which is purchased as a result of criminal activity, etc.

A program adopted by the U.S. Congress in 1986 to increase the effectiveness of investigation of organized crime cases in the countries of Latin America and the Caribbean basin, is an example of the organization of such a task. Its main goal is the preparation and retraining of staff of law enforcement organs, consolidation of cooperation networks and increasing the regional collaboration of security services. Enhancing the capacity of destination states to respond to the problem is a priority not only for the United States, but also for the states of European Union, and would make it more likely for the former Soviet bloc countries. The United Nations is trying to solve the same problems at the global level. So, the program of the UN on the international control of drugs and the Sector on the prevention of crime and criminal justice of the UN Secretariat support the creation and development of appropriate infrastructure by carrying out courses and seminars, promoting information exchange, and preparing personal on concrete issues. In addition, there are consultative services in the sphere of legislative reform of criminal justice on issues in the realization of measures provided by the UN Convention of 1988 "On the Fight against the Illegal Circulation of Narcotic Drugs and Psychotropic Substances". Finally, there are certain measures on technical aid for developing countries and states with transition economies, which will allow them to more effectively oppose international criminal activity. In particular, this means the provision of computerization, technical means of detection of radioactive materials and drugs. In other words, there is a certain progress in the accomplishment of a high enough level of technical collaboration.

3. In addition to the comparatively informal kinds of international cooperation already mentioned, the more formalized methods of collaboration are used in the fight against transnational organized crime, carried out only at the official level. Unfortunately, their accomplishment is the most complicated.

First of all, this is the problem of extradition of criminals. The solution of this problem, due to the very delicate attitude of states to their own sovereignty, is still very far from being achieved. In a number of countries, extradition of their citizens to other states is simply forbidden. In others (even in the case when an agreement on extradition exists) in a number of cases extradition is not used, partly because of different interpretations of the criminal or non-criminal character of a concrete action. Trying to avoid these obstacles to international cooperation in the fight against transnational criminal organizations, some countries allow workers of their law

agreement between the U.S. and Italy, which was put into operation in 1995, grants the possibility of the so-called international subpoena. It concerns the appeal of one of the countries, which signed the agreement to the other to oblige a person to appear in the court of the applying state to testify. In addition, this agreement allows the possibility of freezing and confiscation assets to the advantage of the applying state. The agreement between the U.S. and Switzerland (of approximately the same content), which in a number of cases was a good legal basis for the collection of evidence and confiscation of assets of organized criminal groups, is another vivid example of such collaboration. To develop the mentioned and a number of other agreements used in world practice the UN General Assembly adopted the Model Treaty on mutual aid in the sphere of criminal investigation, which obviously will be widely used as a basis for mutual agreement of members of the world community about the named circle of issues.

4. The logic of the fight against transnational organized crime and certain progress in the unification of international efforts in the framework of this opposition, make the problem of design of an International Convention on the control of transnational organized crime actual, and really solvable. Its main advantage would be an exit beyond the framework of bilateral or regional collaboration (which is peculiar to the documents analyzed here) and the provision of a global, multiform approach to the solution of existing problems. The creation of an effective system of collection, analysis and exchange of information about the illegal activity of transnational criminal rings is first of all included in the number of advantages which the creation such a convention could give. This would be in accord with the global character of such kind of criminality. Powerful potential possibilities are established in this step. And, obviously, the creation of an appropriate international coordination center with secure technical equipment would be necessary for their realization. Second, the conclusion of the convention would provide a standardized formula of collaboration for a wide community of countries, which would sign it. This opens much bigger possibilities in comparison with bilateral cooperation of states on the same issues, which influence unification of national systems of justice much less. Absolutely, the adoption of the convention will require diligent work, and real readiness of states to unite their efforts for an active fight against transnational organized crime.

Appendix 1.

enforcement agencies to go to the territory of another state (with its approval) to arrest criminals if seeking. Deportation of criminals from the country, instead of their formal extradition, is another variant, as a result of efforts to find a more conventional extradition solution.

But in this case the problem is not solved really efficiently. It is necessary to increase the level of interaction of states and unify procedures of extradition. In this connection, the adoption by the Council of Europe of procedures to cut down the number of restrictions connected with the disparate definition of the technical aspects of extradition of criminals in different countries of Europe, is a serious contribution to the solution of existing difficulties. The Model Treaty on Extradition and the Model Treaty on Mutual Assistance in Criminal Matters, adopted by the UN General Assembly in 1995, is another step to improve the situation in this sphere, where the universal agreement of members of the world community was achieved. This Treaty sets the stage for a treaty about the extradition of any person, whom the state applying for extradition is searching for, for further prosecution for an offense, is punishable by imprisonment with a term of not less than a year according to the legislation of both countries. In the Model Treaty there is an optional possibility for the state applied to, in the presence of certain grounds, to assign the case to its own law enforcement organs for consideration of the question about court action against the person being sought for extradition.

It is noticeable that the Model Treaty also contains regulations about the possibility of devolution of property, gained as a result of committing a crime. It is a good ground for bilateral agreements. For example, the United States has signed a treaty with Mexico, which led to the tracking down of 5,000 stolen cars in one year. This has provided a model for further treaties with countries in Central America and the Caribbean (Belize, Costa Rica, Dominican Republic, El Salvador, Guatemala, Honduras, Nicaragua and Panama) which should help to identify, recover, and return stolen wheedles to the United States.

The possibility to obtain evidence, including testimony of witnesses, from other countries is very important for a successful fight against transnational organized crime. The main means of solution of this problem are agreements of mutual help, which in many ways destroy obstacles to evidence collection on the territories of other countries and promote progressive unification of the criminal procedure legislation. As a rule, the agreements do not limit mutual aid of states to solution of just these issues, and promote satisfaction of the more complicated and multiform needs in the fight against transnational organized crime structures. In particular, the

Major extradition treaties:

1. Pact of the League of Arab States, March 22, 1945;
2. The Benelux Extradition Convention, June 27, 1962
3. The Commonwealth Scheme Relating to the Rendition of Fugitive Offenders, 1966;
4. The European Convention on Extradition, December 13, 1957;
5. Convention between the UK, Australia, New Zealand, South Africa, India and Portugal as a Supplementary to the Extradition Treaty of October 17, 1992;
6. The Montevideo Convention on Extradition, December 26, 1935;
7. The Nordic States Scheme Extradition Treaty of 1962;
8. The OCAM Convention Former French Territories in Equatorial and West Africa on September 12, 1962.
9. The Model Treaty on Extradition, UN, 1995

Major Conventions on Judicial and Legal Assistance:

1. The European Convention on Mutual Assistance in Criminal Matters, April 4, 1959;
2. The European Convention on the Transfer of Proceedings in Criminal Matters, May 15, 1972
3. The Model Treaty on Mutual Assistance in Criminal Matters, UN, 1995

Appendix 2.

International anti-money laundering documents:

1. The UN Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988;
2. The Basle Committee on Banking Regulations and Supervisory Practices Statement of Principles of December 1988;
3. The Financial Action Task Force (FATF) Report of April 1990 (with its 40 recommendations for action);
4. The Council of Europe Convention on Laundering, Search, Seizure and Confiscation of Proceeds of Crime of September 8, 1990;
5. The 61 recommendations of the Caribbean Drug Money Laundering Conference of June 1990;

6. The Agreement on EC Legislation by the European Community's Ministers for Economy and Finance of December 17, 1990;
7. The Organization of American States Model Regulations on Crimes Related to Laundering of Property and Proceeds Related to Drug Trafficking of March 1992;
8. The FATF Supplementary Recommendations of 1996

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