

Globalization, Transnational Crime and State Power: The Need for a New Criminology

*Emilio C. Viano**

Riassunto

Questo articolo si focalizza sulla globalizzazione legata al crimine transnazionale, mettendo in evidenza come i modelli e le dinamiche che rendono possibile ed efficace la globalizzazione portano anche a conseguenze collaterali negative, cioè criminali e facilitano l'introduzione e la rapida crescita del numero di crimini internazionali. D'altra parte, esistono anche crimini commessi contro la globalizzazione. Dal canto suo, la globalizzazione rende più facile la lotta contro il crimine grazie alla cooperazione ed al coordinamento degli sforzi in questa direzione. Di conseguenza, la globalizzazione instaura un rapporto molto complesso con il crimine: positivo, negativo e di prevenzione. Questo articolo si concentra anche su aspetti relativi a come la criminologia dovrebbe rivedere i suoi modelli di ricerca e di intervento tenendo conto del modo in cui la globalizzazione ha cambiato la maniera con la quale si può e si dovrebbe affrontare il crimine. Nell'ambito di tale articolo si ipotizza anche un mancato interesse della criminologia per i crimini della globalizzazione e si contesta la prospettiva della criminologia tradizionale che vede le definizioni legali del reato come sacrosante e immutabili. Noi abbiamo bisogno di una più ampia concettualizzazione del crimine che vada al di là delle prescrizioni del diritto penale e che utilizzi differenti tradizioni intellettuali (crimini di globalizzazione, di violenza strutturale e critica del neoliberalismo) che sottolineino l'influenza contingente del male sociale nelle scelte delle persone. C'è la necessità di nuove modalità di pensare e di predisporre dei modelli. L'articolo ne fornisce alcuni esempi.

Résumé

Cet article se concentre sur la globalisation liée au crime transnational. Il essaye de montrer comme les mêmes modèles et dynamiques qui rendent la globalisation possible et efficace amènent aussi à des conséquences collatérales négatives, c'est à dire criminelles, et facilitent l'introduction et la croissance rapide des crimes internationaux. En revanche il y a aussi des crimes commis contre la globalisation. De son côté la globalisation rend la lutte contre le crime plus facile parce que la coopération et la coordination des efforts contre le crime sont plus faciles. Par conséquent, la globalisation a un rapport très complexe avec le crime: positif, négatif et de prévention. Cet article traite aussi de comme la criminologie devrait réviser ses modèles de recherche et d'intervention pour prendre en compte comme la globalisation a changé la manière dans laquelle on peut et on devrait aborder le crime. Il adresse le manque d'intérêt criminologique pour les crimes de la globalisation. Il conteste la supposition de la criminologie traditionnelle que les définitions légales du crime sont sacro-saintes et gelées. Nous avons besoin d'une plus large conceptualisation du crime qui dépasse les prescriptions du droit pénal et utilise des différentes traditions intellectuelles (crimes de globalisation, de violence structurale et de la critique du néolibéralisme) qui soulignent l'influence contingente du mal social dans les choix que les gens font. On a besoin de nouvelles façons de penser et de préparer des modèles. Des exemples sont fournis.

Abstract

This paper focuses on globalization as it relates to transnational crime. It attempts to show how the very patterns and dynamics that make globalization possible and effective as a positive force in the world also give rise to "collateral" negative, that is criminal, consequences and facilitate the spawning and rapid growth of transnational crimes. Moreover, there are also crimes committed opposing globalization. And globalization also makes it easier to fight crime since it facilitates cooperation and coordination of anti-crime efforts. Thus it has a complex relationship with crime: positive, negative and preventative. The paper also addresses how criminologists should review and revise their research and intervention models to take into account how globalization has changed the way we can and should approach crime. It addresses the lack of criminological interest in the "crimes" of globalization. It challenges the essentialist assumption of mainstream criminology that the legal definitions of crime are sacrosanct and frozen. We need a broader conceptualization of crime which goes beyond the prescriptions of criminal law and draws on different intellectual traditions (crimes of globalization, structural violence and the critique of neo-liberalism) which emphasize the contingent influence of social harm in people's life choices.

New and bold ways of thinking and modeling are needed. Examples are provided.

* American University and Washington College of Law, Washington D.C., USA.

A. Globalization: a process affecting everyone.

The lives of everyone today, and particularly our consuming habits, have becoming more and more globalized. Globalization has become an everyday world but is a phenomenon of considerable relevance, of great significance¹ and touches upon several larger issues and problems like inequality between countries, between North and South, inequalities of social class and genders, democratization and international relations. It also generates strong negative reactions and even criminal acts of opposition to it.² Globalization also touches on crime, crime policy and their effects on society. It has been aptly described as “compressing”³ and making the world “smaller,” typified by the substantial and quickening progress in the transportation, communication,

¹ See J. D. Sachs, *Globalization and the Rule of Law* (Yale Law School Occasional Papers, Second Series, Number 4, 1998); see also C. Francois, *El Camino de la Globalizacion: Una Vision Sistemica*, 5, 1999; W. Twining, *Globalisation and Legal Theory*, 7, 2000.

² An example of a target of anti-globalization efforts is the controversial and popular institution of McDonald's in France, which is loved and hated to the point of occasionally provoking a national crisis as well as a number of social conflicts and criminal prosecutions in recent years. McDonald's has expanded rapidly in France with over 1,100 outlets in the country, making it the most profitable subsidiary in Europe. McDonald's has aroused both political opposition and opposition in the workplace, which takes the form of a struggle against working conditions, the conception of McWork and McManagement. The opposition is often justified or explained in terms of resistance to “Americanization” and globalization. Jose Bove, the Farmers' Confederation firebrand, led a strong anti-McDonald's campaign in the south of France a few years ago and partially destroyed a “McDo” in Millau with a tractor. Brittany separatists bombed a McDonald's in 2000, killing a young French woman employee. In bitter backlash, thousands rallied outside the Breton regional parliament to protest the death. See also M. Debouzy, “Working for McDonald's, France: Resistance to the Americanization of Work”, *International Labor and Working-Class History*, 70, 2006, pp. 126-142.

and information sharing areas. Seen in a historical perspective, globalization is the natural outcome of a process that began centuries ago and that advanced through several major technological innovations, some of which, like the telegraph, have already become obsolete while others, like the internet, are constantly growing and morphing into new forms and applications.⁴ In the economic sphere, there have also been major changes like the rapid expansion of commercial and financial instruments and markets and the speed, ease and privacy with which these transactions are now being conducted. There is no question that a borderless global economy has been created and is expanding⁵. Thus, globalization can be described as “the closer integration of countries and peoples of the world which has been brought about by the enormous reduction of costs of transportation and communication, and the breaking down of artificial barriers to the flows of goods, services, capital, knowledge, and (to a lesser extent) people across borders”⁶. Cheaper transportation and communication play a big role in making globalization possible and successful. Globalization increases the velocity of interactions. Thus, transnational activity takes place faster, more easily, and more often than in the past. Vast numbers of people can now do very

³ R. Robertson, *Globalization: Social Theory and Global Culture*, 8-32, 1992.

⁴ E. Rotman, “The globalization of criminal violence”, *Cornell J. L. & Pub*, 10, Fall 2000.

⁵ See generally M. Hardt & A. Negri, “Globalization as Empire”, in D. Held & A. McGrew (eds), *The Global Transformations Reader*, 2000, pp. 116-117; A. McGrew, “Models of Transnational Democracy”, in D. Held & A. McGrew (eds), *The Global Transformations Reader*, 2000, pp. 500-05.

⁶ J. E. Stiglitz, “Globalization and Its Discontents”, 9, 2002.

often and quickly what few people were able to do only occasionally and slowly in the past⁷.

Among other important consequences of globalization and of the world becoming “smaller”, there has also been a growing awareness of the earth as a community, of the existence of a “common good or patrimony of humanity” as an important value to be protected and fostered,⁸ and of our duty to be careful stewards of the earth for future generations.⁹ This has given impetus and value to fostering human rights, protecting the environment¹⁰, and improving the overall economic, social and living conditions of fellow humans.¹¹ Issues like human rights, especially those of women and children, environmental protection, global warming, and of the threat of new and infectious diseases like HIV, AIDS, Ebola, the flu pandemic and others are now recognized as important and operational at the worldwide level.¹² Globalization and intermediate, serious steps towards it like regionalization, are recognized as supporting the establishment of a

⁷ P. J. Keenan, “The New Deterrence: Crime and Policy in the Age of Globalization”, *Iowa L. Rev.*, 91, January 2006, p. 505.

⁸ See Rotman, *supra*, note 5.

⁹ Symposium: The Multinational Enterprise as Global Corporate Citizen, Sydney M. Cone, III - Moderator, J. E. Alvarez, J. L. Gunmderson, J. R. MacArthur, S. R. Ratner, 2001, 21 N.Y.L. Sch. J. Int'l & Comp. L. 1; See also Rotman, *supra*, note 3.

¹⁰ A. Bernabe-Riefkohl, “To Dream the Impossible Dream: Globalization and Harmonization of Environmental Laws”, *N. C. J. Int'l L. & Com. Reg.*, 20, 2005, pp. 205-206 (stating that the increase in economic globalization is not accompanied by a globalization of environmental protection).

¹¹ Mixed Reception: Culture, International Norms, and Legal Change in East Asia. D. Nelken, “Comment: Signaling Conformity: Changing Norms in Japan and Chine”, *Mich. J. Int'l L.*, Spring 2006, 27, p. 933.

¹² Symposium: Global Justice: Poverty, Human Rights, and Responsibilities: Panel 1: Richard W. Miller, Human Rights and Global Responsibilities: Global Institutional Reform and Global Social Movements:

global order founded on democracy and peaceful relations between countries.¹³ For example, countries aspiring to belong to the European Union (EU) often acquire first membership in the Council of Europe which promotes democracy, human rights and the rule of law as a pre-condition to EU membership¹⁴. Our planet is “shrinking” because problems such as the environment, nuclear weapons, disease, and terrorism are now of global concern, and are thus measured by international law standards.¹⁵ That the world is becoming “smaller” every day strengthens the awareness of interdependence, of the advantages of cooperation and coordination, of the importance of instituting strategic, economic and political alliances while also stressing the importance, value and uniqueness of regional and local culture, music, food and drink, faiths, and mores. It is one of the ironies of today that the more the world is becoming unified and free of various barriers, the more it is also becoming local and protective of tradition, language, customs, local products and their areas of origin.¹⁶ The European Union is a prime example of a successful effort to create an economic and political union while also valuing, protecting and fostering regional differences,

From False Promise to Realistic Hope, 2002, 39 Cornell Int'l L.J. 501.

¹³ J. Chen, “Pax Mercatoria: Globalization as a second chance at peace in our time”, *Fordham Int'l L.J.*, November / December 2000, 24, p. 217. See also Rotman, *supra*, note 3.

¹⁴ J. Delbrück, “Globalization of Law, Politics, and Markets-Implications for Domestic Law--A European Perspective”, *Ind. J. of Global Legal Stud.*, 9, 1993, pp. 14-19.

¹⁵ See J. A. Cohan, “Sovereignty in a Post-sovereign World”, *Fla. J. Int'l L.*, 18, 2006, pp. 907-910.

¹⁶ S. A. Riesenfeld, “Symposium 2003: International Money Laundering: From Latin America to Asia: Who Pays?”; Lan Cao, “The Transnational and Sub-

products, and cultures. Even more importantly, globalization or at least regionalization are also seen as guaranteeing peace among nations united and interdependent through trade, commerce, various exchanges, and an increasing web of interpersonal relations made possible, as in the EU, by the free movement of people, goods, capital and services.¹⁷

Globalization and the growth of international commerce, the exporting of jobs from more developed regions of the world to underdeveloped ones, thus creating employment and revenue, the remittances of emigrants that sustain their families, relatives, and at times literally their countries back home, the advances in farming, production of crops and food, medicine and surgery, the growing investment in developing countries, the dizzying speed of today's communications, information and economic transactions and many other phenomena affecting our daily lives and made possible by globalization have vastly improved the way in which most of us live our lives, even though major inequalities still exist between different parts of the world.¹⁸

National in Global Crimes", *Berkeley J. Int'l L.*, 2004. See also Rotman, *supra*, note 5.

¹⁷ See I. Clark, "Globalization and Fragmentation: International Relations in the Twentieth Century", 17, 1997 ("There is pervasive resort to the twin themes of globalization and fragmentation in a wide variety of literature."); Boutros-Boutros Ghali [sic], 50th Anniversary of the United Nations, Vital Speeches, Nov. 15, 1995, at 66 (stating that globalization and fragmentation are the two great forces that will shape the world in the 21st century).

¹⁸ For more information on this related to health, see generally, G. J. Annas, "Human Rights and Health - The Universal Declaration of Human Rights at 50", *New England J. Med.*, 339, 1998, p.1778, pp. 1780-81. On globalization in general and its effect on the law, see generally R. Falk, *Predatory Globalization: A Critique* (1999); P. J. Spiro, "Globalization, International Law, and the Academy", *N. Y.U. J. Int'l L. & Pol.*, 32, 2000, p. 567; B. Stern, "How to Regulate

Poverty is, after all, a relative concept. For example, in less than 50 years, countries that were net exporters of people through emigration are now the coveted destination of legal and undocumented immigrants from other parts of the world, just as countries that were until recently welcoming jobs outsourced by richer countries where labor was more expensive, are now themselves already beginning to export jobs to still poorer parts of the world and even back to richer ones.

B. The negatives in globalization.

But unfortunately not all consequences of globalization are positive. Globalization can be seen in the advancement of technology, as well as in the global expansion of trade. But these developments that are expected to help us achieve prosperity, freedom, and peace, can also produce social fragmentation, economic dislocations and exacerbate critical vulnerabilities, opening the door to violence and conflict. The more negative aspects of globalization are often attributed to capitalism and labeled as "McDonaldization" and "Americanization"¹⁹. Threats have become global in scope ironically in great part because of the achievements of increased and more diffused knowledge, powerful and readily available technologies, and the apparently uncontrollable mass movements of people. Ironically, the advances and the improvements in the conditions of daily life for millions of people, especially the increasing wealth across the world (relatively speaking), also have the potential of creating and fostering negative consequences favorable to the

Globalization?", in Byers M. (ed.), *The Role of Law in International Politics*, 2000, p. 247.

flourishing of transnational crime. Globalization has been connected to a range of social problems like poverty, economic and health care inequalities, global crime and corruption, international sex commerce, terrorism²⁰ and negative consequences for agriculture and the environment. International criminal networks have been quick to take advantage of the opportunities resulting from the revolutionary changes in world politics, business, technology, and communications²¹ that have by-and-large strengthened democracy and free markets, brought the world's nations closer together, and given especially to the European Union and the United States, and also growingly to China, India, Brazil and others, unprecedented security and prosperity. Crime cannot be understood outside of its social context. Consequently, this article is at the same time an attempt at and a plea for comparative contextual analysis.

C. Globalization, transnational crime and state power

During the last two decades, neoliberal globalization has resulted in significant growth in transnational crimes such as global terrorism, trafficking in antiquities, people and drugs, immigrant smuggling, and money laundering. Beyond being pressing social problems, they are the consequences of a significant extension &

reconfiguration of state power on various fronts, resulting from the progressive intersection of the internal and external coercive functions of the political state in ways that have implicated crime control in foreign policy and merged law enforcement with issues of national security.

The dramatic political-economic, social, and cultural transformations shaping the contemporary global environment call for a new approach to transnational crime, one that transcends the verities of orthodox criminology by examining the role of criminal organizations and individuals, and that of political states and their economic partners in the generation of transnational crime. Although globalization has rendered the borders between nation-states less significant in terms of capital and financial flows, the border has simultaneously become an important symbol of state power, fortified against unregulated flows of goods, money, and people. Countermeasures against transnational crime have increasingly treated the boundaries between military and police action, domestic and international law, and criminal justice and international relations as ever more indistinct. In addition, the development and deployment of preemptive countermeasures and the application of retrospective legislation increasingly undermine the distinction between past and present as states "colonize the future" and "rewrite the past."

Border politics, border reconstruction, geographically and temporally mobile borders, and a trend toward "a-national" sites of enforcement are the hallmarks of state responses to transnational crime and the conditions leading to transnational crime. Globalization's challenge

¹⁹ G. Ritzer, *The Globalization of Nothing 2*, Thousand Oaks CA: Pine Forge Press, 2007, pp. 21-30.

²⁰ Symposium: Corporate Governance, Stakeholder Accountability, and Sustainable Peace : Keynote Address; L. Lim, "Terrorism and Globalization: An International Perspective", *Vand. J. Transnat'l L.*, 35, March 2002, p. 703.

²¹ I. Garger, "Merchants of Mayhem Why the biggest beneficiaries of globalization may be pimps, drug runners and other crooks", *Time International* (Asia ed.). New York, Vol. 166, Iss. 19, Nov 7, 2005, p. 74.

to geographic and temporal borders has been matched and reflected by challenges to the boundaries that historically marked the limits of sovereignty, citizenship, and nation-state. In as yet relatively unexamined ways, these shifts are evident in the nature of transnational crime, & animated through state responses to it.

D. Key factors favoring transnational crime.

Some of the more important developments and influential factors in the last twenty years or so are:

1. *The changed post-Cold War landscape.* The end of the Cold War resulted in the breakdown of political and economic barriers not only in Europe but also around the world. This change opened the way for substantially increased trade, movement of people, and capital flows between democracies and free market countries and the formerly closed societies and markets that had been hampered by Soviet power. The end of the Cold War also brought with it an end to superpower jockeying for power in other regions of the world. This relative peace has allowed international criminals to expand their networks and increase their cooperation in illicit activities and financial transactions. Moreover, the collapse of the Soviet Union, just as the overthrow of Saddam Hussein did in Iraq, threw thousands of state employees onto the labor market. All sorts of operatives were now unemployed: secret police, counterintelligence officers, special-forces commandos and border guards, along with homicide detectives and traffic cops. They were trained in skills that are quite valuable to organized crime including surveillance, forging documents, smuggling, eliminating people, knowing how to access and extort from key

people in banking, finance, transport and security, creating networks and blackmail. The demise of the Soviet Union also ensured a steady supply of women for Western Europe and other markets and gave criminal gangs profitable areas for their activities like the sex trade, smuggling of cigarettes and other goods, drug trafficking and more²².

2. *Economic and trade liberalization.* Increasing economic interdependence has both promoted and benefited from reforms in many countries opening or liberalizing state-controlled economies with the intention of boosting trade and becoming more competitive in the global marketplace. Criminals have taken advantage of transitioning and more open economies to establish front companies and quasi-legitimate businesses that facilitate smuggling, money laundering, financial frauds, piracy of intellectual property, identity theft and other illicit ventures. Bilateral or multilateral economic agreements reducing trade barriers in North America, Europe, Asia, and other regions of the world have substantially increased the volume of international trade. Criminal and terrorist groups²³ have taken advantage of the high and growing volume of legitimate trade to smuggle along drugs, arms, people and other contraband across national boundaries. At the same time liberalized financial and commodities markets have offered lucrative new opportunities for criminal syndicates, facilitated by the wide-open possibilities offered by the use of computers and of the internet.

²² M. Glenny, *McMafia: A Journey through the Global Criminal Underworld*, London, Knopf, 2008.

²³A. Lambert, "Underground Banking and Financing of Terrorism", *Fla. J. Int'l L.*, 15, 2002, pp. 9-12.

3. Technological advances. The last decade has presented revolutionary advances in information and communications technologies that have brought the world closer together. Modern telecommunications and information systems that underpin legitimate commercial activity in today's fast-paced global market are as easily used by criminal networks as they are by legal businesses. Commercially available and constantly improving state-of-the-art communications equipment greatly facilitates international criminal transactions-including making deals and coordinating the large volume of illicit trade²⁴. In addition to the reliability and swiftness of communications, constantly evolving and improving technology, like for example disposable phones, also affords criminals considerable security and being shielded from law enforcement detection²⁵.

4. Through the *use of the World Wide Web and of related technology* (computers, Blackberry, cell phones etc.), international criminals have an unprecedented capability to obtain, process, and protect information and sidestep law enforcement investigations. They can use the interactive capabilities of advanced computers and telecommunications systems to plot marketing strategies for drugs and other illicit commodities, to map the fastest and most efficient routes and methods for smuggling and moving money in the financial system, and to create false trails to

²⁴ See, for example, D. M. Hughes, Council of Europe, *Final Report: Group of Specialists on the Impact of the Use of New Information Technologies on Trafficking in Human Beings for the Purpose of Sexual Exploitation*, 2003, available at <http://www.uri.edu/artsci/wms/hughes/eg-s-nt-final-report>.

mislead law enforcement or banking security. International criminals also take advantage of the speed and magnitude of financial transactions and the fact that there are few safeguards to prevent abuse of the system to move large amounts of money without scrutiny. Some criminal organizations also appear to be adept at using technology for counterintelligence purposes and for tracking law enforcement activities. Identity theft and cybercrime in general are certainly on the increase today and represent a serious threat to individuals, companies and entire countries.

5. Globalization of business.²⁶ The revolution in modern telecommunications and information systems and the lowering of political and economic barriers that have so greatly quickened the pace, volume, and scope of international commerce are being exploited on a daily basis by criminal networks worldwide. International criminals are attracted to major global commercial and banking centers²⁷ where they take advantage of gateway seaports and airports, the high volume of international trade, the concentration of modern telecommunications and information systems, and the presence of major financial institutions. They count on avoiding close scrutiny of their activities because of the importance that businesses and governments give to facilitating commercial and financial transactions and the rapid transshipment

²⁵ F. N. Baldwin, Jr., "Organized Crime, Terrorism and Money Laundering in the Americas", *Fla. J. Int'l L.*, 2002, 15, pp.17-18.

²⁶ P. F. Drucker, "The Global Economy and the Nation-State", *Foreign Aff.*, Sept./Oct. 1997, at 159, 163. See also G. Thompson, "Economic Globalization?", in D. Held (ed.), *A Globalization World? Culture, Economics, Politics*, 2000, p. 108.

²⁷ www.academicmind.com/unpublishedpapers/business/..../2005-04-000aaf-just-in-time-inventory-management.html;
www.ashland.edu/~rjacobs/m503jit.html

of products, especially for export. Thus, ironically, the shipping speed made possible by computer software, and best symbolized, for example, by the “just on time” inventories which make sizeable savings and expedited service possible, also helped transnational crime ship its products quickly and undetected, taking advantage of the elimination of thorough inspections in the interest of boosting commerce and the speed of delivery²⁸.

6. Explosion in international travel. With the breaking down of international political and economic barriers, the globalization of business, and the lowering of the cost of international travel (this may be changing now with the skyrocketing cost of fuel), there is more freedom of movement. International transportation of goods and services is also easier and cheaper. The proliferation of air transportation connections and the easing of immigration and visa restrictions in many countries to promote international commerce and lucrative tourism,²⁹ especially within regional trade blocs, have also facilitated criminal activity. In the past, more limited travel options between countries and more stringent border checks made crossing national boundaries difficult for international criminals. Now, criminals have great many choices of travel routes and can arrange itineraries so as to minimize risk. Border controls within many regional economic blocs -such as the European Union - have for the most part and normally, disappeared. Even where there is still an international border, like between Mexico and the

U.S.A., traffic in both directions through the border is quite heavy as well. About 700,000 persons cross that Mexico-U.S. border every day along with 150 million vehicles a year and over 5 million shipping containers³⁰. This great volume of traffic and trade into the United States provides international criminals tremendous opportunities to smuggle contraband -including drugs and counterfeit products- into the country, as well as to illegally export firearms, stolen vehicles, and other contraband overseas. But these classical developments that attract organized crime and its ability to adapt and exploit new situations and opportunities also impact society at large and in turn give reason to and revenues for transnational crime to flourish. International political economy scholarship has posited a criminal underside of globalization facilitated by technological change, broad patterns of state liberalization of trade and capital flows, and the rise of global markets.³¹ There are also liberal arguments conceptualizing transnational organized crime as the epitome of capitalism within this illicit global economy- embracing laws of supply and demand in the global marketplace and challenging the very integrity of the territorial state, basically mirroring on the illegal side the role and function played worldwide by multinational corporations on the legal side³².

J.J.J. Pigram (eds.), *Tourism, Development and Growth*, London, Routledge, 1997.

³⁰ www.dallasfed.org/eji/global/0109border.html

³¹ Friman H. R. , "Globalization's Poster Child: Transnational Organized Crime and the Triumph of Liberalism?" *Paper presented at the annual meeting of the International Studies Association, Hilton Hawaiian Village, Honolulu, Hawaii Online* from http://www.allacademic.com/meta/p70570_index.html

³² M. Findlay, *The Globalisation of Crime: Understanding Transitional Relationships in Context*, Cambridge, Cambridge University Press, 1999.

²⁸See fcw.com/Articles/2008/07/02/Commerce-versus-security.aspx; www.cargolaw.com/z.tcl395.html

²⁹ www.articlesbase.com/.../statistics-expects-growth-for-tourism-worldwide-500803.html; Wahab S. and

E. Positive developments with negative repercussions.

The most important general trends that favor transnational crime are:

Increasing prosperity and improvements in the financial, housing, communications, information, travel, educational, and power of acquisition circumstances of vast numbers of people across the world and especially in areas previously under-developed.

When people have more money to spend, are better informed on what is available, are aware of fashion trends worldwide, buy into the hedonistic, glamorous, self-affirming, self-rewarding, and sexually charged values and lifestyle of today, then the demand for all sorts of goods and services skyrockets. The problem is that not all goods and services desired are available legally. At times they are forbidden for morality, accessibility or protectionist reasons³³. Moreover not everyone can afford the legally sanctioned version of those goods and services, be it a Prada bag, a Piaget watch or an original CD/DVD. It is at this point that organized transnational crime can provide the goods and services that millions clamor for. Thus, ironically, the overall steady improvement of the human condition coupled with the ease of shipping, travel, communications, information, transfer of funds, and abolition of many borders create some of the best conditions for transnational crime to be established and flourish³⁴. The same goes for prostitution³⁵,

human trafficking, traffic in organs, antiquities, exotic animals and their organs etc. The growing relative affluence of people in many parts of the world make it so that local people find certain forms of employment not attractive any more nor paid well enough to maintain the lifestyle they feel they are entitled to. This promptly creates an unstoppable demand for labor to be imported from poorer parts of the world, at times neighboring countries, most often illegally. The illegality is also a function of the slowness of the law to update itself and adapt to rapidly changing conditions on the terrain. It is also a function of powerful vested interests that control levels of employment in order, for example, to sustain high wage and compensation levels for the locals. At the same time, when advanced economies, like the EU and the USA, succeed through various trade agreements and the backing of the World Trade Organization (WTO) to open world markets to their goods but at the same time continue to provide large protectionist subsidies to their own agricultural sectors, they fatally undermine, even destroy, food production in developing countries unable to compete on world markets because their food is too expensive when compared to that sold by the European Union and the United States³⁶. This in turn creates a vast army of the

³³ [inks.jstor.org/sici?sici=0026-2234\(194905\)47%3A7%3C1032%3ASPSAJF%3E2;www.answers.com/topic/scarcity-1](http://inks.jstor.org/sici?sici=0026-2234(194905)47%3A7%3C1032%3ASPSAJF%3E2;www.answers.com/topic/scarcity-1)

³⁴ F. Shanty, P. P. Mishra (eds.), *Organized Crime: From Trafficking to Terrorism*, Santa Barbara CA, ABC CLIO (Greenwood Press), 2007.

³⁵ See for example, "High Priced Prostitutes Sharing in India's New Prosperity"; www.iht.com/articles/2008/09/14/business/escort.php

³⁶ M. Scoppola, "Multinationals and agricultural policy in the EC and USA", Istituto Nazionale di Economia Agraria, Via Barberini 36, 00187, Roma, Italy. Available online: inkinghub.elsevier.com/retrieve/pii/030691929598546Z; F. Brouwer, P. Lowe, *CAP and the Rural Environment in Transition: a Panorama of National Perspectives*, Wageningen, Wageningen Pers, 1997.

dispossessed and the desperate and, consequently, a lucrative market in illegal immigration and prostitution³⁷. Thus, almost perversely, progress in some areas of life for millions of people that creates the financial ability to improve one's dwelling, lifestyle, education, travel, and station in life generally; that allows more leisure time and recreational choices; that stresses the importance and dignity of each individual to the detriment of the obligations to the group; that eliminates certain religious and cultural barriers, thus making possible a freer and less constrained lifestyle and contact between the genders, can also unleash an enormous and almost insatiable demand for goods, services, capital and labor that can be satisfied only through illegal or criminal means by transnational crime because of its scarcity, high price or illegality³⁸. Transnational crime is taking full advantage of all the most recent technological, travel, communications, shipping and financial advances to satisfy those needs. But it is not always necessarily crime. It can be legitimate or at least "semi-legitimate." For example, globalization in general and the rapid development of some countries like China and

³⁷ M. Lehti and K. Aromaa, "Trafficking for sexual exploitation", in M. Tonry, *Crime and Justice: A review of research*, Chicago, 2006, pp. 133-227.

³⁸ An indication of the powerful and insatiable demand for goods and services, even if unaffordable, is the dramatic financial crisis that affected especially the United States in late 2008 caused in great part by the so-called "toxic loans" that is real estate loans by financial institutions to people who did not have the money to pay them back. Thus the crisis was fueled by both the insatiable demand for goods beyond their reach by consumers eager to live the "good life" even if they could not afford it and the greed and irresponsibility of banks and Wall Street institutions offering credit without verifying the borrower's ability to repay the loan, wanting to derive maximum financial gains without in the end taking responsibility for it. The U.S. taxpayer is now saddled with an enormous

India, that then become formidable competitors, and the ensuing need to cut costs in other countries to compete internationally, has justified moving manufacturing plants to areas where labor laws protecting workers may be weaker or unenforced and where wages are quite low³⁹. Manpower for these factories, located at times in remote areas of the world or hidden in the very heart of American or European metropolises, is often provided through criminal enterprises but also through legal labor suppliers, both engaging in unsavory practices like the buying and selling of human beings, indentured servitude, human trafficking, smuggling, or sending people to work under appalling conditions⁴⁰. The line between legal and illegal, legitimate and criminal is often quite difficult to discern in situations like this when vast amounts of money are at stake, when the "national good" is in play and can be used as a justification, and a whole human chain of decision makers and bureaucrats are vulnerable to bribery⁴¹ and corruption⁴² and are known to actually engage

debt, calculated at the end of September 2008 as the cost of two Iraq wars at least.

³⁹ Anecdotal evidence and case law corroborate the belief that most corporate human rights abuses occur in the developing world. See, e.g., *Doe I v. Unocal Corp.*, 395 F.3d 932, 937-39 (9th Cir. 2002); Evan Clark, *Advocacy Group Finds Violations at Bangladesh Apparel Factory*, *Women's Wear Daily*, Oct. 26, 2006, at 14.

⁴⁰ Commission on Human Rights, *Interim Report of the Special Representative of the Secretary-General on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises*, 62d Sess., 27, U.N. Doc. E/CN.4/2006/97 (Feb. 22, 2006) (prepared by J. Ruggie), available at <http://www.ksg.harvard.edu/m-rcbg/papers/JGR%20Interim%20Report%20to%20the%20UN.pdf>.

⁴¹ See K. M. Meessen, "Fighting Corruption Across the Border", *Fordham Int'l L. J.*, 18, 1995, p. 1647 ("Times of transition are times of corruption.")

⁴² P. M. Nichols, "Regulating Transnational Bribery in Times of Globalization and Fragmentation", *Yale J. Int'l L.*, 24, Winter 1999, 257.

in corrupt practices⁴³. There are those who argue that global economic and legal conditions foreshadow an increase in corporate human rights abuses because corporate actors can avoid liability under most existing legal theories while they simultaneously increase their operations across the globe⁴⁴. In the absence of congressional action on the issue of corporate human rights abuses, the United States could become the world's largest underwriter of private torturers and the largest consumer market for abusive producers⁴⁵. This regrettable conclusion would occur, despite its obvious repugnance to American and global values, because international and domestic law as currently interpreted offer little in the way of deterrence for non-state actors who are abusive of human rights⁴⁶.

F. Vulnerability of countries to globalized crime.

Globalization under its various forms can also impact the behavior of countries and ensnare them in the wide network of globalized crime. Several major vulnerable areas come readily to mind.⁴⁷

The first is indeed labor. While countries may sign and ratify all sorts of treaties, including human rights and labor conventions (the International Labor Office (ILO) has introduced

about 200 different treaties and conventions),⁴⁸ they may turn a blind eye and even favor the illegal smuggling and trafficking in human beings taking place in or out of their territory⁴⁹. Why? When it comes to smuggling people out in very populated countries, with high levels of poverty in rural areas and of unemployment of unskilled workers in urban areas, this relieves the pressure on the government to create jobs, to develop the needed infrastructure in non-urban regions and to reduce poverty and unemployment. Second, some countries tolerate or even approve of illegal emigration because those workers going abroad will eventually begin to send back money earned there to support their family of origin. This can amount to billions of dollars⁵⁰. There are countries in Central America that would not be able to survive economically without the “remesas” (remittances) sent back home by their citizens working legally or illegally abroad⁵¹. Every major player gains: the government of the exporting

⁴⁸ www.ilo.org/ilolex/english/convdisp1.htm

⁴⁹ Zhang S., *Smuggling and Trafficking in Human Beings*, Westwood CT, Greenwood, 2007.

⁵⁰ Alternative remittance systems (ARSs) are also linked to transnational crime. Money associated with the drug trade is laundered through ARSs in Hong Kong, China, India, Indonesia, Nepal, Pakistan, the People's Republic of China, the Republic of the Philippines, Sri Lanka, Thailand, Turkey, and Vietnam. Remittance systems in India, Sri Lanka, and Turkey encounter profits from smuggling. The Indian system also launders funds from smuggled gold and precious stones, terrorism, and corruption. The ethnic banking systems of Hong Kong, China, Indonesia, Japan, and the Republic of the Philippines are used to launder illegal gambling profits, and the proceeds of human traffic, including alien smuggling and ransom, are washed through alternative remittances in India, Japan, the People's Republic of China, the Republic of the Philippines, Vietnam. L. C. Carroll, *Alternative Remittance Systems: Distinguishing Sub-Systems of Ethnic Money Laundering in Interpol Member Countries of the Asian Continent* (Jan. 31, 2003), available at <http://www.interpol.com/public/FinancialCrime/MoneyLaundering/EthnicMoney/default.asp>

⁴³ J. Iontcheva Turner, “Transnational Networks and International Criminal Justice”, *Mich. L. Rev.*, 2007, 105.

⁴⁴ J. McKenzie, “The Limits of Offshoring--Why the United States Should Keep Enforcement of Human Rights Standards In-House,” *Ind. L.J.*, 2008, 1121.

⁴⁵ S. Pillay, “And Justice for All? Globalization, Multinational Corporations, and the Need for Legally Enforceable Human Rights Protections”, *U. Det. Mercy L. Rev.*, 81, Summer 2004, 489.

⁴⁶ *Id.* at 1139.

⁴⁷ E. Rotman, “The globalization of criminal violence”, *Cornell J. L. & Pub. Pol'y* 1, 10, 2000.

country because it relieves unemployment and, with the remittances, it fuels their economy. Employers (and they are not any more just Western employers) appreciate the cut-rate labor provided and the submissive position of undocumented workers that can be dismissed at will and actually turned over to the authorities for repatriation, if they make too many demands. The family or villages that pooled their money to send a worker abroad also like it, because the investment is returning dividends.

This financial link may at times influence a government to turn a blind eye or to not enforce the law against human trafficking too zealously because of the obvious financial benefit to be derived⁵². Some countries are suspected of funding NGOs supposedly working in the problem area -- trafficking of women, children, people in general - with the actual mandate of projecting a positive image of the government as if it is making major strides to resolve the problem. At times, if especially needed, powerful and professional lobbyists are hired to stave off criticism and sanctions. But we are not talking here necessarily of overt corruption or of open approval. The support can be quiet and even tacit but it thwarts any serious effort to stop the trafficking of human beings,⁵³ especially women and children, for sexual exploitation, and of laborers for factories and for the agricultural, tourism, and the unskilled services sectors of the

economy of the receiving country⁵⁴. The agricultural, farming, tourism, restaurants, and hotels sectors are often those most strongly opposed to a meaningful reform of immigration laws,⁵⁵ especially amnesties and regularizing undocumented immigrants. These sectors of the economy earn more money and exercise much more control when dealing with a vast pool of undocumented, unskilled, eager, if not desperate, compliant, competing, highly disposable and cheap workers than with legal immigrants who have a better chance of possibly enforcing their rights, earn at least minimum wage, maybe belong to a union, and have some standing when expecting the protection of the law and of the authorities⁵⁶. At times these situations are also created through the illogical aspects of globalization. For example, the European Union has a labor shortage and an aging population that is not being replenished because of low birthrates. At the same time, restrictive immigration policies remain in force and are actually just now being tightened⁵⁷. The result? Another wide opportunity, almost an open invitation, for

⁵⁴B. Crossette, "UN Warns that Trafficking in Human Beings is Growing", *N.Y. Times*, June 25, 2000, at A10. Trafficking in children has also increased. The Center for Protection of Children's Rights estimates that as many as 800,000 children worldwide are in prostitution. In India alone, UNICEF estimates that there are approximately 400,000 to 500,000 child prostitutes. Manuel Castells, *End of Millennium* 155 (1998).

⁵⁵18th Annual Corporate Law Symposium: David Weissbrodt, Corporate social responsibility in the international context: Business and Human Rights, Fall, 2005, 74 *U. Cin. L. Rev.* 55.

⁵⁶L. Cata Backer, "Multinational Corporations, transnational law: The United Nations' norms on the responsibilities of transnational corporations as a harbinger of corporate social responsibility in international law", *Colum. Human Rights L. Rev.*, Winter 2006, 37, 287.

⁵¹ remesasydesarrollo.org/

⁵²A.I Schwartz, "Sex Trafficking in Cambodia", *Colum. J. Asian L.*, Spring 2004, 17, 371; G. Chang, "The Global Trade in Filipina Workers", in S. Shah (ed.), *Dragon Ladies: Asian American Feminists Breathe Fire*, 1997, 132, 135.

⁵³ I. Wolffers, *Migration, human rights, and health*, New York, Elsevier, 2003.

transnational criminal enterprises to earn more profits smuggling undocumented workers into the EU⁵⁸. Thus, clearly, not all the consequences of globalization are positive.

G. Globalization and “violent commodities”.

Globalization facilitates demand and supply of certain types of commodities that can elicit considerable violence as they are traded.⁵⁹ This violence ranges on a continuum of acts and areas that includes murder and serious wounding, psychological harm, and damage to other living creatures and to the environment⁶⁰. One of the best examples are the so-called “blood diamonds” from West Africa. The diamond, we all know, is a stone artfully marketed as an essential symbol of love, caring, fidelity and engagement to millions of women involved in a relationship they hope will lead to marriage. The engagement ring is one of the most coveted trophies many women dream to finally display to friends, family and co-workers. It is not uncommon today for a woman in the U.S. to expect a diamond engagement ring in the range of \$20,000 to \$50,000. And the DeBeers of the world are astutely investing in promoting what they call “the diamond experience” and in exporting this “requirement” to countries where it is still not a widespread custom. We all know of the 1000s of people who were killed, cruelly mutilated, their limbs often cut off with a machete, displaced, raped, abandoned,

especially the elderly and children now without parents or a family, in the name of those who controlled diamond mines and their traffic in West and Central Africa.⁶¹ Yet, calls to boycott diamonds as gift in rings, watches, necklaces, pendants etc. have mostly fallen over deaf ears. The blood diamond trade prospers because demand not only continues unabated but is actually expanding. There are other major examples of criminal activities substantially increasing because of more widespread prosperity and therefore growing affordability and demand. One is the commerce in rhinoceros’ horns. Prohibited under the Convention on International Trade in Endangered Species (CITES),⁶² a thriving illegal market operates in China, Taiwan, South Korea, Thailand, Vietnam, Macau and Yemen. Rhino horns are smuggled overland through Nepal, Tibet and Burma to China, by international crime syndicates. This trade has been illegal in China since 1993. Reportedly a horn can earn \$20,000 per kilogram on the black market. A horn can weigh between 500 grams and 3 kilograms, depending on the age of the animal. Poachers who actually kill the rhino may earn only \$1,000 per horn which is still a large sum in their economy. The quest for these horns, sought after because in traditional Chinese medicine they are believed to increase sexual vigor and endurance,⁶³ has transformed the areas where the

⁵⁷H. Overbeek, “Neoliberalism and the Regulation of Global Labor Mobility”, *Annals Am. Academy Pol. Social Science*, 74, May 2002, 581.

⁵⁸ Feld S., “Active Population Growth and Immigration Hypotheses in Western Europe”, *European Journal of Population*, 2000, 16, pp. 3–40.

⁵⁹ See E. Rotman, *supra*, note 5.

⁶⁰A. Y. Seita, “The Role of Market Forces in Transnational Violence”, *Alb. L. Rev.*, 60, 1997, pp. 635-637.

⁶¹ www.un.org/peace/africa/Diamond.html

⁶² www.CITES.org

⁶³ There is no scientific basis for this belief. The rhino horn is mostly composed of keratin also common in nails, hair, skin and teeth. This fact however does not curb the increasing demand for it.

rhinoceros live into killing fields⁶⁴. Poaching has exploded especially with increased wealth spreading in China. Only 2,400 rhinos remain in the world. Tiger penises are thought to have aphrodisiacal powers as well, especially in Korea, Vietnam and Indonesia. Endangered Sumatran tigers are especially killed for this item that can fetch \$5,000 in the case of a white tiger. Bear gallbladders and elephants' feet are also poached. It is estimated that 23,000 elephants were illegally killed last year and 20 tons of ivory smuggled. A foot can fetch \$675 and more, depending on its size. The same is true of shark fins used to make gourmet soup reportedly sold for \$150 a bowl and fashionable at wedding banquets in China and Japan. The tailfin of a whale shark can cost \$10,000⁶⁵. Once prohibitively expensive but for the very rich, now it is affordable by many and thus the demand and the slaughter have increased exponentially. It is estimated that thirty-eight million sharks are killed every year for this reason alone, the rest of the carcass left to rot unused, even though the taking of fins is prohibited in 60 countries.

H. Drugs and violence in a globalized context.

Users may perpetrate crimes of violence to raise the money to buy drugs. Traffickers and suppliers use violence for a variety of reasons: to obtain and defend their control and possession of the commodity, to protect their shipments, to guarantee themselves a market free of competitors, to distribute the goods, and to protect

⁶⁴ www.ecoafrika-travel.com/.../rhino-threatened-by-hunting/

⁶⁵ www.flmnh.ufl.edu/fish/sharks/innews/Galapfin2002.htm; sports.espn.go.com/outdoors/general/news/story?id=www.nola.com/news/.../pictures_of_a_local_spear_fish.html

their earnings. Other areas where there is a strong violent component are human trafficking, prostitution, arms sales, illegal deforestation and the seizing of land. This is of course nothing new. The so-called “discovery of America” by the Europeans started one of the bloodiest land grabs in recent history in the Americas. In Asia, in the 1800s the Opium Wars represented the climax of a trade dispute between China under the Qing Dynasty and the United Kingdom. British smuggling of opium from British India into China and the Chinese government's efforts to enforce its drug laws erupted in conflict. China's defeat in both wars forced the government to have to tolerate the opium trade that benefited the British and their balance of trade with China. Colonial wars and other conflicts, including the current ones in the Middle East, have also been defined in terms of guaranteeing more powerful or technologically advanced countries the control and monopoly over free labor, raw and precious materials, and energy sources, to ensure the continuation of their high level of living at the expense of the people and resources of the occupied lands.

I. The globalization of problems.

There is no doubt that today most problems impacting a country or a group of countries become global almost instantly. Economic problems and downturns spread from country to country. An economic crisis in the United States or the European Union (EU) quickly impacts the rest of the world⁶⁶. The same is true with health epidemics (at one point recently there was world mass fear of a chicken flu pandemic), cross border

⁶⁶ “Is Financial Globalization Beneficial” In: ideas.repec.org/p/nbr/nberwo/11891.html

environmental problems and pollution, atomic energy, the depletion of the ozone layer, global warming, tsunamis, hurricanes, typhoons, tornadoes, earthquakes, computer viruses and piracy of intellectual property. None of these problems stop at national borders; all can potentially impact wide regions of the world⁶⁷. No doubt the instant and live coverage of news from all over the world for 24 hours/7days a week has played a crucial role in making the world a small village indeed and in magnifying crises and problems at times many times over. We can see this at work now even during U.S. presidential election campaigns with candidates trying to garner international support: John McCain traveling to South America; Barack Obama to Iraq, Afghanistan and Europe; candidates for the presidency of Mexico and of Argentina traveling to the U.S. and more.

J. Crime: from a local to a global event.

One of the major changes brought about by globalization has especially been about crime⁶⁸. Until now, crime has always been mostly a local event⁶⁹. The majority of murder victims know their killers; most abused children know their abusers; theft victims generally only have to look in their own neighborhoods to find the thieves. “The poor prey on the poor,” it is often said, to stress that criminal most often victimize their neighbors. And intimate crimes, like sexual assault, are described as mostly occurring between

acquaintances, often in the victim’s own apartment, and intra-rationally, that is again impacting mostly people close to the victimizer. Crime is local also in the way it is controlled⁷⁰. In federal countries, like the United States, it is the states, not the federal government, that prosecute the largest number of criminal cases. Law enforcement budgets may depend at least in part on monies from the central federal government, but enforcement priorities are decided locally⁷¹. Although, for example, there are varying degrees of coordination among different law enforcement agencies from various states in the United States and also between agencies from different countries, crime remains mostly a local problem⁷². Globalization is changing this in ways that have not yet been fully explored. While crime as an event will always possess a substantial local component with officials and victims normally reacting to it in the place where it occurs, it is rapidly becoming more and more of a transnational phenomenon. Increasingly, an activity that is regulated or proscribed in one country because it is deemed dangerous or unwanted can become more common in other, neighboring countries⁷³. The difference is that in

⁶⁹P. J. Keenan, “The New Deterrence: Crime and Policy in the Age of Globalization”, *Iowa L. Rev.*, January 2006, 91, 505.

⁷⁰ ezinearticles.com/?Crime-Control-Strategies-Myth-Magic-and-Metaphor&id=770418

⁷¹ S. A. Riesenfeld, Symposium 2003, International Money Laundering From Latin America to Asia, Who Pays?; Mariano-Florentino Cuellar, “The Mismatch Between State Power and State Capacity in Transnational Law Enforcement”, *Berkeley J. Int’l L.*, 22, 2004, 15.

⁷² S. A. Riesenfeld, Symposium 2003: International Money Laundering from Latin American to Asia. Who pays?; Lan Cao, “The Transnational and Sub-National in Global Crimes”, *Berkeley J. Int’l L.*, 22, 2004, 59

⁷³ This can take place at the local level too like when vigorous police action against prostitution or drug trafficking in one section of a city simply displaces

⁶⁷P. Schiff Berman, “From International Law to Law and Globalization”, *Colum. J. Transnat’l L.*, 43, 2005, 485.

⁶⁸M. Cherif Bassiouni, “Introduction: The Future of International Criminal Justice”, *Pace Int’l L. Rev.*, Fall 1999, 11, 309.

the latter countries, while the activity is just as unwanted, it may however be less effectively regulated or vigorously forbidden. What happens then when an activity that is unwanted in two places is however more effectively regulated in one place than in the other? Does the unwanted activity just move from the first state to the second? How much of it migrates, and what factors impact how much is displaced? How should scholars and policymakers consider regulation in this situation - as a local response to a local problem or as part of a broader effort to diminish the overall incidence of the unwanted activity?⁷⁴ These questions are basic to determining what globalization will mean in the near future⁷⁵. Until now, they have not been fully explored. The existing scholarship on deterrence is of limited use in a globalized context⁷⁶.

There is no question that progress in transportation, communications, the provision of information increasingly with “live images,” the practical abolition of borders in certain parts of the world, the constant increase of internet users and networks which makes borders less and less relevant, the gradual decrease in state authority either by design, as in the context of the EU, or

those activities to another part of the city, without truly solving the problem.

⁷⁴ There is commonsensical and empirical evidence that this happens at the neighborhood level as well. For example, if the police crack down on drug use in one neighborhood, drug dealers move to a nearby neighborhood where various circumstances may make it possible for them to establish themselves and operate successfully.

⁷⁵ A. Herberg-Rothe, “New Containment Policy: A Grand Strategy for the Twenty-first Century?”, *RUSI Journal*, London, Apr 2008, Vol. 153, Iss. 2, p. 50.

⁷⁶ J. Delbrück, “Structural Changes in the International System and its Legal Order: International Law in the Era of Globalization”, *Swiss Rev. Int'l & Eur. L.*, 1, 4, 2001.

because of a weakening of the state,⁷⁷ the ability to efficiently and instantly conduct financial operations cross-borders, the existence of offshore banking and tax heavens, the speed, secrecy and anonymity of today’s communications have all allowed transnational crime to firmly establish itself and successfully avoid detection, regulation and investigation.⁷⁸ Transnational crime, after creating a market for violence, today subcontracts its execution to be carried out by locals. The ever growing chasm between the wealthy and the poor, generated as it is by differential access to capitals markets, also stirs up considerable interest in criminal options to “catch up,” so to speak.

K. Positive aspects of globalization.

On the other hand, one should not think of globalization as only a negative and destructive force. Many of the positive trends⁷⁹ in today’s world are the fruit of the many aspects of globalization already mentioned. Increased longevity, higher survival rates for infants, children and women giving birth, better nutrition, more education, more and higher quality information, great entertainment and the increasing awareness of a smaller world, whose problems impact all of us and whose solutions benefit all of us, represent distinct advantages of globalization. This can also be transferred to crime control through more cooperation, coordination, and mutual assistance. Globalizing

⁷⁷ O. Schachter, “The Decline of the Nation State and Its Implications for International Law”, *Colum. J. Transnat'l L.*, 36, 1995, pp. 7-15.

⁷⁸ Book Review: Introduction to International Criminal Law, Mark A. Drumbl, Washington & Lee University, School of Law and edited by R. B. Bilder, *A.J.I.L.*, January 2005, 99, 287

crime control is considered by some one of the more positive responses to the challenge of transnational crime in a world that is more and more interdependent⁸⁰.

L. What does the globalization of crime mean to criminologists?

The ways in which transnational crime and its countermeasures confront the traditional borders of crime control, national security, politics, and international relations challenge the disciplinary boundaries of orthodox criminology, which has traditionally focused on matters internal to nation-states. Well grounded analyses of crimes, social harms, and wrongful acts require an engagement with and understanding of the broadest political, economic, and social terrain. Thus, analyzing crimes and harms that occur in the transnational context -and increasingly all contexts are transnationalized- requires close attention to the processes of globalization and the dynamics between states, and between states and non-state actors, particularly the relationship between the states and corporations. So, what does all of this in the end mean to criminologists?

First of all, criminology as a profession must take globalization and its consequences much more seriously into account in our studies and analyses of crime⁸¹.

Just as crime is mostly local, so the work of criminologists is likewise mostly localized to the community where the crimes occur or to the region or country. Most criminology studies within a wider area are effectively mostly national in scope, at the most. International or transnational studies generally are limited to comparing two or a few countries. The American approach to the study of crime favors empirical studies which however normally respect national boundaries. The European approach emphasizes mostly case studies which can be highly individualistic and narrow. Comparative studies also utilize mostly national survey data. But the world is indeed rapidly changing in the direction of globalization that transcends national boundaries⁸². To understand today's crime, a wide variety of crimes, we must become adept at taking a holistic approach that understands, operationalizes, stresses and underlines the various points of connection, potentially worldwide, that characterize crime today⁸³. Limiting ourselves geographically, culturally, legally to a particular place, even if it is a whole country or even a region, and to a predominantly sociological approach is no longer sufficient to fully grasp what is happening in reality, to analyze it correctly, and to develop sensible deterrence countermeasures that have a chance of

⁷⁹ C. Nash, "Positive Aspects of Globalization", http://EzineArticles.com/?expert=Craig_Nash

⁸⁰ H. L. Buxbaum, "Conflict of Economic Laws: From Sovereignty to Substance", VA. J. Int'l L., 42, 2002, p. 931, pp. 942-954. (discussing ways in which "regulatory power traditionally enjoyed by sovereign states has shifted" to supranational level, to private actors, and to "informal networks constituted among sub state-level agencies in different countries").

⁸¹ Florida Ruth P. Romero, "Lecture: Legal challenges of globalization, delivered as part of the Indiana Supreme Court Lecture Series at Indiana University

Law School", Indianapolis, *Ind. Int'l & Comp. L. Rev.*, 15, 2005, 501

⁸² G. Teubner, "Global Private Regimes: Neo Spontaneous Law and Dual Constitution of Autonomous Sectors", in G.r Teubner (ed.), *Public Governance in the Age of Globalization*, 1997, 74.

⁸³ Symposium: International Company and Securities Law. Paul Redmond, *Transnational Enterprise and Human Rights: Options for Standard Setting and Compliance*, *The International Lawyer*, *Int'l Law.*, 37, Spring 2003, 69.

succeeding⁸⁴. It offers only a compartmentalized and chopped vision, formalistically correct, but realistically handicapped. A quick example of this could be sex tourism that originates as a plan in one continent but is executed in another one.

Secondly, criminologists need to be aware and mindful of the very high level of links between political, strategic, economic and trade variables and the topics that they are researching and studying. The traditional focus on the perpetrator(s), the victim(s) and their communities is no longer sufficient. Understanding crime cannot any more be linked only to explanations that focus on the perpetrators, the victims, and the immediate circumstances. There are powerful variables that play a much deeper, wider role in setting the stage for criminal activity and that must be taken into consideration if we want to develop effective preventive measures. For example, populations today are very transient, mobile, in flux. Massive immigration is changing the composition, dynamics, culture, language and food of the communities of destination. While race is a variable examined in numerous studies, especially in the U.S., it is static. It reflects recognized groups as if they were totally Americanized or Italianized or British instead of building into the research ways that allow one to detect, examine and account for a continuum of variations that reflects events, experiences, links and influences at times 1000 miles away. There are those who strongly believe that 'shared citizenship' requires the official recognition of different identities and allegiances. Thus, for example, in February 2008 the Archbishop of

Canterbury in a controversial speech proposed that in the limited areas of marriage, divorce, inheritance and custody, Muslim communal judgments, voluntarily agreed to, might be recognized within what would remain a common framework of law – much as Talmudic provisions are for Orthodox Jews. This is an example of the impact of massive immigration and of the complexity of the reality that we as criminologists now face. Another powerful example is the growth of Islamic banking which operates according to the law of the Sharia, the body of Islamic religious law. In the United States it is estimated that the American Muslim community has a purchasing power of \$170 billion. The financial industry in the U.S. and elsewhere is racing to develop products that are tailored to meet the needs of the Muslim community⁸⁵. The world in front of us has become much more nuanced and complex. Most of all criminologists must take more into account forces, phenomena, changes in society that have nothing necessarily to do with free will, psychiatric disorders, bad associations but rather reflect powerful forces that at times are per se positive. One can think about the impact of the increase in relative wealth across the world on all sorts of positive and negative behaviors, including skyrocketing demand for drugs, recreational sex and therefore sexual services and therefore prostitution and therefore trafficking in people. More disposable income also leads to a desire to escape the ordinary, to seek the unusual, the risqué, a high level of entertainment and excitement. Thus, the surprisingly and worrisome growing demand for children and minors, even very young ones, for

⁸⁴ D. M. Kahan, "Between Economics and Sociology: The New Path of Deterrence", *Mich. L. Rev.*, 95, 1997, p. 2477.

sexual activities⁸⁶ and the widespread use of drugs to alter consciousness⁸⁷. And these are just some examples.

Third, we must realize that the state often has or takes a stake in the transnational criminal activity. While it may give lip service to combating criminality, it may not be ready to intervene and break the balance of power, financial gain, and relative social peace that are generated by silent or open agreements with transnational crime organizations and their members. For example, some states gain from illegal immigration that provides cheap labor in the fields, restaurants, hotels, factories and other services. This helps keep prices down, which in turn makes exports more attractive and competitive, and earnings up; allows the citizens to have more of a disposable income to fuel the economy through consumption and discretionary spending; ensures that critical but low-prestige jobs and chores are done for the benefit of the community, especially the upper classes; and allows the citizens to continue to enjoy a higher standard of living that otherwise they could not afford. The country exporting people gains as well since emigration reduces unemployment and the pressure to provide training and educational services to prepare those citizens for employment and to create jobs, and eventually generates millions or even billions of dollars annually in remittances which quickly become essential to the financial well being and

prosperity of the country of origin. This symbiosis creates ambiguous situations when the legal posture of a state or number of states does not coincide with their actual practices⁸⁸. Trafficking in arms is a prime example of this ambiguity in the role of the state prosecuting “illegal” arms trafficking while taking active part and competing fiercely for arms sales. As another example, a state may ratify treaties and enact laws that prohibit and sanction human trafficking and forced sex work but at the same time derive substantial financial benefits, being a major destination country for sex tourism. The contribution of sex work to the GDP of some Southeast Asian countries⁸⁹ is so visible and impressive that a few years ago the ILO called for them to openly recognize it and take more responsibility for it. The ILO report⁹⁰ stresses that the growth of prostitution is probably linked, albeit inadvertently, to the macro-economic policies of governments which have a tendency to spawn rapid urbanization at the expense of rural development, to promote cheap labor for industrialization, to facilitate the export of female labor for overseas employment and to promote tourism as a foreign exchange earner.⁹¹ All these features of modern, export-oriented economies, combined with the pervasive lack of social safety nets and deep-rooted gender discrimination against females, probably contribute to the growth

⁸⁵ S. Q. Qadri, “Islamic Banking”, *Business Law Today*, vol. 17, no. 6, American Bar Association, 59

⁸⁶ M. Melrose and D. Barrett, “The flesh trade in Europe and the trafficking in women and children from commercial exploitation”, *Police Practice and Research*, vol. 7, no. 2, 2006, p. 113-123.

⁸⁷ C. Thomas, “Disciplining globalization: International law, illegal trade, and the case of narcotics”, *Mich. J. Int'l L.*, 24, 2003, 549.

⁸⁸ N. Caraway, “Human Rights and Existing Contradictions in Asia-Pacific Human Trafficking Politics and Discourse”, *Tul. J. Int'l & Comp. L.*, 14, Spring 2006, p. 295.

⁸⁹ R. Emerton, “Translating international and regional trafficking norms into domestic reality: A Hong Kong case study”, *Buff. Hum. Rts. L. Rev.*, 10, 2004, p. 215.

⁹⁰ Lin Lean Lim (editor), *The Sex Sector: The economic and social bases of prostitution in Southeast Asia*, International Labor Office, Geneva, 1998.

of the sex sector. Moreover, sex work is often better paid than most of the options available to young, uneducated women excluded from access to the education and training leading to better paying jobs⁹².

It is not and will not be easy to operationalize the state's participation and connivance in the establishment, continuation and even flourishing of a transnational crime activity but we cannot even begin to study it and/or to propose remedies, solutions and avenues for change if we do not take into account the double role that governments can and do play in these types of murky situations⁹³.

Fourthly, this perspective obviously impacts the response to transnational crime that criminologists may propose. Typically, studies and papers on transnational crime call for more cooperation between countries, more resources for policing and tracking of transnational crime, more treaties and conventions, more money for INTERPOL, the expansion of EUROPOL, the establishment of more and similar "POLs" in other continents etc. But how can we expect these measures to succeed when most countries derive tangible benefits as well from transnational crime? In attempting to study, analyze, remedy, prevent and maybe even solve the puzzle of transnational crime, we must factor into the equation the variable of the ambiguous role of the state and not just accept at face value laws, treaties and agreements and

⁹¹M. Y. Mattar, *Trafficking in Persons: An Annotated Legal Bibliography*, Fall, 2004, 96 *Law Libr. J.* 669

⁹²Symposium: *Globalization and the Erosion of Sovereignty* in honor of Professor Lichtenstein: Dinah Shelton, *Protecting Human Rights in a Globalized World*, Spring, 2002, 25 *B.C. Int'l & Comp. L. Rev.* 273

⁹³Edi C. M. Kinney, "Appropriations for the Abolitionists: Undermining Effects of the U.S. Mandatory Anti-Prostitution Pledge in the Fight

assume that more state and interstate resources are going to seriously impact a sensitive area that especially affects the economy of a country or entire region. An example maybe some European Union countries decrying illegal immigration from Eastern Europe or South America while at the same time tens of thousand of their elderly depend on Romanian or Ecuadorian undocumented women for their daily care.

In analyzing transnational crimes, especially money laundering and other financial transactions, criminologists need again to show their ability to see through the apparent contradictory and competitive role of the established authorities. The fundamental question could be: "Is the state and/or the international organism's prohibition of certain financial operations and modalities, like for example bank secrecy, genuinely motivated by a well articulated desire to stamp out transnational money laundering or does it represent a power grab against the private sector by the state or against a smaller state by more powerful ones in order to guarantee themselves the maximum financial benefits possible?"⁹⁴ In other words, is the state's intervention motivated by a true desire to combat crime or simply to maximize revenues? We have seen controversial measures taken by some governments supposedly to stamp out corruption and money laundering that have instead raised an articulated suspicion that they were actually moves to eliminate political rivals and consolidate the power of the central government in controlling national assets (Russia under Putin comes to mind as a prime example of

against Human Trafficking and HIV/AIDS", *Berkeley J. Gender L. & Just.*, 21, 2006, p. 158.

⁹⁴I. Simonovic, "State Sovereignty and Globalization: Are Some States More Equal?", *Ga. J. Int'l & Comp. Law*, 28, Summer 2000, p. 381.

this). This is actually nothing new. The abolition of the order of the Knights Templar in the 14th century was not truly motivated by a desire to stamp out the debauchery of their alleged homosexual practices confessed to by its leaders under harsh torture but rather a calculated move by Philip IV of France to eliminate a potential parallel state threatening his power and most of all to cancel the heavy debt he owed the Knights. The establishment of the Church of England, one could argue, was not so much motivated by a sincere and austere desire for religious reform and to recover the purity of the faith but rather by coveting the substantial wealth of the Catholic Church and monasteries in England at that time when the monarchy was heavily indebted to the nobility and needed money to assert its power. Confiscating and appropriating the riches of the religious orders and of the church in both cases provided an irresistible motivation while the publicly stated motives sounded much more pure and noble. Closer to us in time, there are those who have said that banks in Florida, for example, would not have prospered and survived were it not for the massive laundering of drug money. And there are indications that the continuing remarkable boom in real estate development in some countries, for example in the eastern Arabian Peninsula, is fueled not just by an ample supply of petrodollars but also by large money laundering activities⁹⁵.

Thus, while criminologists may applaud the efforts of the Organization for Economic

Cooperation and Development (OECD), the United Nations, the U.S., the EU and others in combating corruption and money laundering, they must critically ask if this is truly to stamp out transnational crime or instead to ensure the monopoly of the state on the proceed of legal and illegal activities alike, thus incorporating transnational crime into the financial “books” of a country with the potential of making the state a less than impartial party. A more skeptical look at international efforts to take out corruption and taking the state more vigorously to task relative to its true intentions, objectives and methodology may give our profession more relevance, more bite, and truly help the difficult process of finding reasonable solutions to a very complex problem⁹⁶.

M. Conclusion.

This paper addresses the lack of criminological interest in the “crimes” of globalization. It challenges the essentialist assumption of mainstream criminology that the legal definitions of crime are sacrosanct and frozen. We need a broader conceptualization of crime which goes beyond the prescriptions of criminal law and draws on different intellectual traditions (crimes of globalization, structural violence and the critique of neo-liberalism) which emphasize the contingent influence of social harm in people's life choices. We should go beyond the state-centric definition of crime by addressing the “structural and institutionalized” victimization of the people

⁹⁵ S. A. Riesenfeld, “Symposium 2003: International Money Laundering from Latin America to Asia: Who Pays?”; B. Zagaris, “The Merging Of The Anti-Money Laundering And Counter-Terrorism Financial Enforcement Regimes After September 11, 2001”, *Berkeley J. Int'l L.*, 22, 2004, p. 123.

⁹⁶ Many theorize that a future real danger is a general weakening of state laws and protections in favor of making conditions more accommodating to corporations. See K. Ladeur, “Globalization and the Conversion of Democracy to Polycentric Networks: Can Democracy Survive the End of the Nation State?”, in K. Ladeur (ed.), *Public Governance in the Age of Globalization*, 2004, pp. 89-90.

by the market in an increasingly globalizing world. We should lay a foundation for a transnational or global criminology that begins with critical understandings of the state, borders, and crime. I hope this paper will contribute to creating a new space for the development of useful theories, empirical investigations, and the formulation of constructive social policy regarding the phenomena labeled transnational crime and those frameworks, laws, policies, and actions that are produced in response to it.

We must also recognize that while state coercive powers have been increasingly globalized under the auspice of transnational crime frameworks, rights frameworks are still often territorially bounded, requiring enforcement from a particular place. In other words, international frameworks related to state power and rights have developed asymmetrically, with the result that discourses, laws, and measures related to transnational crime have significantly eroded, undermined, and eclipsed the international human rights frameworks that potentially limit state power and avoid or at least mitigate associated social harms. Orthodox, state-centered ways of labeling and responding to troublesome transnational activities also obscure the social, political, and economic conditions that give rise to them, relieving states of the responsibility for creating and ameliorating these conditions, and thus creating a fertile context for blaming, stigmatizing, and punishing victims instead. Although transnational crime enforcement strategies are purportedly aimed at organized criminals, these countermeasures typically miss their targets altogether. Instead, they are responsible for generating a range of serious transnational social harms borne

disproportionately by the world's poorest and most vulnerable people, especially refugees and "illegalized" migrants. In conclusion, we now fully live in the world of the post September 11, 2001 attack on the twin towers in New York; the post March 11, 2004 train bombings in Madrid, the post July 7, 2005 tube bombings in London and post other similar bombings in East Africa, Saudi Arabia, Bali, Jakarta, Mumbai and other places. The world has just begun to fully comprehend, digest and react to large scale, war-like terrorist attacks.⁹⁷ At the same time, massive shifts in wealth, manufacturing, trade and in the balance of world power are taking place and center stage in our vision of the world and its dynamics. The ascendancy in the last few years especially of China and India economically, politically and also militarily, are changing the balance of wealth and power in the world. They also herald a time of sustained and increased relative prosperity there and elsewhere, hopefully and eventually for billions of people. China's wholesale purchasing of soybeans everywhere possible has, for example, allowed many farmers in other hemispheres, especially in South America, to renovate their homes, buy the latest farm machinery, and purchase expensive goods and cars. The monopoly on wealth, information, communications, power and influence enjoyed until recently by the U.S. and the EU is now being increasingly shared with other countries in the world, until recently "underdeveloped." Many countries previously dependent on international institutions like the World Bank, the International Monetary Fund (IMF) and others do not need

⁹⁷ M. Cusimano Love, "Globalization, ethics and the war on terrorism", *ND J. L. Ethics & Pub Pol'y*, 2002, 65

them any more. For example, energy resources in Bolivia and Venezuela; copper in Peru and Chile; and bio-fuels in Brazil are generating their financial independence⁹⁸. This is in turn creating a massive demand in all sectors of the economy imaginable offering untold opportunities for legal and illegal commerce and trade. The geographical and mental frontiers of our research, theorizing, and policy-recommending must change accordingly. Contextual analysis is required. This will be neither easy nor error free but it is unavoidable and necessary. Best of all, this challenge offers us unparalleled opportunities to truly think, research and act globally and really make the work of criminologists relevant at a worldwide level⁹⁹. It is a challenge that we will and must meet skillfully and successfully in order to alleviate and, if possible, eliminate the widespread transnational criminality engendered by the massive changes taking place in the world today and that are impacting our daily lives both positively and negatively.

⁹⁸ In the fall of 2008, for example, the IMF only has one country as a client, Turkey, instead of several as in the recent past.

⁹⁹ M. Sterio, "The evolution of international law", *B.C. Int'l & Comp. L. Rev.*, 31, Spring 2008, 213.