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Transnational Organized Crime: U.S. Policy, Programs, and Related Issues

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Summary

Transnational organized crime presents a serious threat to U.S. national security and global stability. Organized criminal groups have benefitted from the demise of legal structures following the collapse of the Soviet Union and in many failed states. They have been able to expand their networks across national borders. Globalism serves these groups which increasingly rely upon advanced technology and the global financial system to accumulate wealth from their illicit activities. These groups engage in a wide array of criminal activities across national borders that include the illicit drugs trade, trafficking in persons, alien smuggling, and financial crimes. These transnational crimes directly threaten American communities and businesses.

Experts also warn of the potential opportunistic links between such criminal groups and terrorist organizations. The recent decrease in state-sponsorship and support may lead terrorist groups to increasingly rely upon transnational criminals for finances, weapons, or other forms of assistance. Such alliances between terrorist and criminal groups could create additional threats to American interests.

This report presents the direct and potential threats which emerge from transnational organized crime and describes the U.S. government response to combat global crime. It outlines the overall framework of U.S. policies formulated to combat transnational organized crime. Both the Clinton and Bush Administration's response to transnational crime is framed within the 1998 International Crime Control Strategy. Federal agencies have formulated additional national strategies related to specific dimensions of transnational crime. Congress has also directed U.S. policy and programs, and provided law enforcement agencies with several tools to combat transnational organized crime

Key federal law enforcement and intelligence programs that focus broadly on transnational crime are discussed. Some of these programs are designed to monitor, investigate and prosecute transnational organized criminals. Other programs facilitate bilateral and multilateral law enforcement cooperation from foreign government institutions. Moreover, some programs seek to provide law enforcement training and assistance to foreign governments. Federal agencies leading the U.S. government's efforts to combat transnational organized crime include the Departments of Defense, Justice, Treasury, Homeland Security, and State. Finally, it examines potential Congressional concerns related to U.S. efforts to combat transnational crime as organized criminal groups accumulate wealth and leverage affecting American interests. The report will not be updated.

Contents

Introduction	1
Background	1
Threats to the United States	3
Terrorism Nexus	5
U.S. Response to the Threats	7
The Clinton Administration	7
The Bush Administration	7
Congressional Action	8
Key Federal Programs	8
Potential Congressional Concerns	13
CRS Reports	16

Transnational Organized Crime: U.S. Policy, Programs, and Related Issues

Introduction

Transnational organized crime threatens American communities, businesses and financial institutions.¹ In a larger sense, it is also seen as endangering the security of the United States and other nations, undermining the rule of law, corrupting governments, impeding sustainable development, and jeopardizing local and regional stability by possibly providing arms and supports for terrorists and insurgents. This report looks at the extent of the threat posed by transnational crime and U.S. efforts to respond to this threat. It discusses key federal programs of law enforcement and intelligence agencies designed to monitor, investigate and prosecute transnational organized crime. It also addresses programs of bilateral and multilateral law enforcement cooperation with foreign governmental institutions. Finally, the report suggests some policy concerns for Congress, which has continued to give considerable attention to U.S. national security dimension of the threat posed by transnational organized crime. While giving priority to the war on terrorism, Congress has supported the continuing fight against drugs, trafficking in persons, intellectual property violations, money laundering, and other crimes that threaten the day to day activities of American citizens and businesses.

Background

Organized criminal groups exploit the global economy with sophisticated means to accumulate illicit profits. Furthermore, some criminal groups have been linked with terrorist organizations in money laundering and other activities.² According to a United Nation's estimate, organized crime controls one quarter of the world's gross domestic product.³ The International Monetary Fund estimates that figure to be between two and five percent.⁴ Another study estimates that nine percent of the U.S. gross domestic product is under the control of organized crime.⁵ Should U.S. policy

¹ U.S. Department of State, Bureau of International Narcotics and Law Enforcement Affairs, *Fiscal Year 2003 Budget Congressional Justification*, May 2002.

² U.S. Department of State, Bureau of International Narcotics and Law Enforcement Affairs, *Fiscal Year 2004 Budget Congressional Justification*, June 2003. (Hereafter cited as INL, *FY04 Budget Justification*.)

³ Fletcher N. Baldwin, Jr., *Organized Crime and Money Laundering in the Americas: Introduction*, Florida Journal of International Law, vol. 14, no. 1, fall 2001, p. 44. (Hereafter cited as Baldwin.)

⁴ Congressional finding in Title III of the USA-PATRIOT ACT of 2001 (P.L. 107-56).

⁵ Reference made to Rowan Bosworth-Davies' study in the Financial Times Fraud Report. (continued...)

and programs neglect to address transnational crime, experts fear that criminal groups might expand their activities and perhaps strengthen their alliance with terrorist organizations, thereby creating more serious strategic threats to U.S. interests for the sake of their own profits.

There is no single accepted definition of transnational organized crime. In 1994, researchers defined “transnational crime” to include offences whose inception, prevention and/or direct or indirect effects involve more than one country.⁶ Other experts suggest that “transnational organized crime” involves “any concerned 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.”⁷ U.S. law defines organized crime as a “transnational threat” to the national security of the United States.⁸

Transnational organized crime thrives especially in nations where law enforcement institutions are weak, money laundering and corruption are rampant, and citizens have few viable economic alternatives. Following the collapse of the Soviet Union, for example, transnational criminal groups took advantage of the decline of government institutions, reduction in border controls, and resurgence of ethnic and regional conflicts in the states of the former Soviet Union and Eastern Europe to expand their criminal activities and networks across national borders. Criminal groups also took advantage of economic globalization, expanded international travel, faster and more direct communications, and the rapid transfer of money in the financial system.⁹ Regions most affected by organized crime include Sub-Saharan Africa, Eastern Europe, Latin America and the Caribbean.¹⁰ But all regions are affected by the growth in transnational organized crime globally.

Transnational organized crime has particular characteristics that distinguish it from other types of crime. Experts in a United Nations pilot survey distinguish transnational criminal groups from other criminal groups in that they have a durable hierarchical structure, employ systematic violence and corruption, and extend their

⁵ (...continued)

See Baldwin, p. 43.

⁶ Gerhard O. W. Mueller, *Transnational Crime: Definitions and Concepts*, Transnational Organized Crime, vol. 4, autumn/winter 1998, numbers 3&4.

⁷ Yuriy A. Voronin, *Measures to Control Transnational Organized Crime, Summary*, U.S. Department of Justice, National Criminal Justice Reference Service, October 5, 2000.

⁸ Definition of “transnational threat”: “(A) [A]ny transnational activity (including international terrorism, narcotics trafficking, the proliferation of weapons of mass destruction and the delivery systems for such weapons, and organized crime) that threatens the national security of the United States. (B) [A]ny individual or group that engages in an activity referred to in paragraph (A).” 50 U.S.C. 402(i)(5).

⁹ Phil Williams and Ernesto U. Savona, *The United Nations and Transnational Organized Crime*, Frank Cass (London, UK), 1996, p. 8. (Hereafter cited as Williams.)

¹⁰ M2 Presswire - UN: “Third Committee focuses on corruption, organized crime, as debate begins on illicit drugs, criminal justice issues,” M2 Communications Ltd., October 10, 2003.

activities into the legal economy.¹¹ These groups vary considerably in structure, strength, size, geographical range and the scope and diversity of their operations.¹² Other experts describe these groups as decentralized flat networks that take advantage of modern technology to frequently adapt their criminal activities.¹³ A Central Intelligence Agency study predicts that groups based in North America, Western Europe, China, Colombia, Israel, Japan, Mexico, Nigeria, and Russia will increasingly form networks with each other to expand their criminal activities.¹⁴

Threats to the United States

Experts caution that measuring the true extent of transnational organized crime is difficult because the clandestine nature of criminal activity means that much of the crime is unreported. In some countries, law enforcement officials manipulate data to produce self-serving reports.¹⁵ Another challenge for those trying to get a complete picture are the differences in criminal penal codes and definitions of crime. Despite these challenges, there is a consensus that transnational organized crime has grown dramatically.

The U.S. government's International Crime Threat Assessment has been developed by an interagency working group to provide various measures of global crime. The latest assessment, released in December 2000, concludes that the most significant areas of criminal activity include: (1) terrorism and drug trafficking; (2) illegal immigration, and trafficking in persons; (3) trafficking of products across international borders; (4) economic trade crimes; and (5) financial crimes.¹⁶ From this and other recent assessments, the following picture emerges:

- Every year illegal drugs kill more than 19 thousand Americans, and impose \$160 billion in social and economic costs¹⁷ and \$50 billion in direct costs to the United States.¹⁸ Only half of the estimated \$750 billion to \$1 trillion laundered globally each year is attributed

¹¹ R.T. Naylor, "Mafias, Myths and Markets: On the Theory and Practice of Enterprise Crime," *Transnational Organized Crime*, vol. 3, no. 3, 1997, p. 6.

¹² Williams, p. 6.

¹³ Melvyn Levitsky, *Transnational Criminal Networks and International Security*, *Syracuse Journal of International Law and Commerce*, vol. 30, no. 2, pp. 227-249, summer 2003. (Hereafter cited as Levitsky.)

¹⁴ National Intelligence Council, NIC 2000-02: *Global Trends 2015: A Dialogue About the Future With Nongovernment Experts*, December 2000, p. 41.

¹⁵ Gene Stephens, "Global Trends in Crime," *The Futurist*, vol. 37, issue 3, May 1, 2003.

¹⁶ International Crime Threat Assessment, December 2000. Available at [<http://www.fas.org/irp/threat/pub45270index.html>], last accessed on January 7, 2004.

¹⁷ U.S. Department of State and United States Agency for International Development, *Strategic Plan: Fiscal Years 2004-2009*, August 2003, p. 15.

¹⁸ Statement of John P. Walters, Director, Executive Office of National Drug Control Policy, before the House Government Reform Committee, Subcommittee on Criminal Justice, Drug Policy and Human Resources, February 27, 2003.

to drug trafficking suggesting that other crimes produce a major share of criminal profits.¹⁹ Experts identify trafficking in cocaine and heroin as the most profitable criminal activity for transnational groups.²⁰ A national survey reveals that one third of state and local law enforcement agencies nationwide identify cocaine as their greatest drug threat.

- Following trafficking in drugs and weapons, trafficking in persons is widely seen as the most profitable activity for organized criminal groups,²¹ and is globally estimated to generate between \$3.5 billion and \$10 billion per year.²² Approximately 18,000 to 20,000 people are trafficked into the United States every year according to the annual trafficking report.²³ Experts note that trafficked humans forced into bondage can keep paying returns to the criminal organization,²⁴ so trafficking in persons can generate both short and long term profits.
- Organized smugglers also make short-term profits from transporting undocumented migrants into the United States for work in licit and illicit industries.²⁵ Alien smuggling is estimated to generate a global profit of \$9 billion per year.²⁶ One expert estimates that organized criminal groups smuggle 10 to 50 percent of illegal migrants.²⁷ Another observer calculates that approximately one million people are smuggled every year from poor to wealthier countries.²⁸

¹⁹ INL, *FY04 Budget Justification*.

²⁰ Levitsky, pp. 227-249.

²¹ Paul Jaskunas, "Activists Combat Sex Trafficking in east Europe," *The Post-Gazette* (Pittsburgh, PA), July 1, 2002.

²² Andreas Schloenhardt, "Migrant Trafficking and Regional Security," *Forum for Applied Research and Public Policy*, vol. 16, no. 2, summer 2001, p. 85. (Hereafter cited as Schloenhardt.)

²³ U.S. State Department, *Trafficking in Persons Report*, June 2003.

²⁴ Louise I. Shelley, *Transnational Organized Crime in the United States: Defining the Problem*, *Kobe University Law Review*, 1998.

²⁵ Statement of Charles Demore, Interim Assistant Director of Investigations of Bureau of Immigration and Customs Enforcement, Department of Homeland Security, before the Senate Judiciary Committee, Subcommittee on Crime, Corrections and Victims' Rights, July 25, 2003.

²⁶ Statement of Tom Homan, Interim Associate Special Agent in Charge for Bureau of Immigration and Customs Enforcement, San Diego, Department of Homeland Security, before the House Judiciary Committee, Subcommittee on Immigration, Border Security, and Claim, June 24, 2003.

²⁷ Schloenhardt, p. 85.

²⁸ Williams.

- The global trade in counterfeit goods is estimated to be \$450 billion.²⁹ U.S. businesses estimate annual losses of up to \$250 billion from this form of counterfeit and intellectual property crime. Transnational criminal groups organize and control the manufacture, transport, storage and sale of counterfeit or pirated groups. Like trafficking in persons, intellectual property crime is dominated by criminal organizations due to the relatively low level of risk and comparatively high level of profits.³⁰
- Organized criminals are attracted to the United States' open society and free markets, and some of these groups have been known to invest the proceeds of their illegal activities into legitimate American financial institutions through direct and indirect means. Other groups, mainly those involved with trafficking in drugs, engage in bulk cash smuggling to place their illicit profits in jurisdictions with lax financial regulations and law enforcement. Drug traffickers use various methods to launder their profits both inside and outside of the United States. In the United States, the primary drug money launderers are Colombian and Mexican criminal organizations.³¹

Terrorism Nexus

One issue of considerable concern is the possibility of opportunistic links between criminal and terrorist organizations. Both terrorist and organized criminal groups thrive in areas with weak governmental control and law enforcement, and lax border controls. Both groups operate in cell structures, use similar means to move and launder money,³² and threaten the destabilization of third world governments.³³ In addition, both groups target civilian populations and youth for recruitment.³⁴ Despite these similarities, there are fundamental differences between organized criminals and terrorists.

²⁹ Statement of Ronald K. Noble, Secretary General of Interpol, before the House International Relations Committee, July 16, 2003.

³⁰ Statement of Asa Hutchinson, Under Secretary of Border and Transportation Security, Department of Homeland Security, before the House International Relations Committee, July 16, 2003.

³¹ U.S. Department of Justice, National Drug Intelligence Center, *National Drug Threat Assessment*, January 2003.

³² Statement of Deborah A. McCarthy, Under Secretary of State of Bureau of International Narcotics and Law Enforcement Affairs, Department of States, before the Senate Judiciary Committee, May 20, 2003.

³³ Robert S. Mueller, III, Director of Federal Bureau of Investigation, before the House Appropriations Committee, Subcommittee on Commerce, Justice, State and Judiciary, June 18, 2003.

³⁴ Statement of Raphael Perl, Specialist in International Affairs of Congressional Research Service, Library of Congress, before the Senate Judiciary Committee, May 20, 2003.

Organized criminal groups are distinct from terrorist organizations in that they focus on profit, and engage in terror only to provide a more congenial environment for their criminal enterprises. Organized criminal groups do not generally seek to overthrow the existing power structure,³⁵ whereas terrorist groups by definition have a political motivation. Some criminal organizations have used terrorist attacks against foreign governments to disrupt investigations, eliminate effective law enforcement officials, coerce judges into more lenient sentencing policies, and create an environment conducive to more criminal activity. In contrast, terrorist organizations usually engage in organized criminal activity, aside from terrorism, only to support themselves financially,³⁶ because terrorists view crime as a means to a political end.

Drug trafficking investigations³⁷ reveal that 14 of the 36 designated foreign terrorist organizations³⁸ engage in “narco-terrorism, often in alliance with other traffickers.”³⁹ Much like transnational organized crime, there is no formal definition of “narco-terrorism.” The Department of Defense (DoD) defines the term as “terrorism conducted to further the aims of drug traffickers. It may include assassinations, extortion, highjackings, bombings, and kidnappings directed against judges, prosecutors, elected officials, or law enforcement agents, and general disruption of a legitimate government to divert attention from drug operations.” According to the Drug Enforcement Administration (DEA):

“[N]arco-terrorism [i]s a subset of terrorism, in which terrorist groups, or associated individuals, participate directly or indirectly in the cultivation, manufacture, transportation, or distribution of controlled substances and the monies derived from these activities. Further, narco-terrorism may be characterized by the participation of groups or associated individuals in taxing, providing security for, or otherwise aiding or abetting drug trafficking endeavors in an effort to further, or fund, terrorist activities.”⁴⁰

[A] narco-terrorist organization [i]s an organized group that is complicit in the activities of drug trafficking in order to further, or fund, premeditated, politically

³⁵ Williams, pp. 24-25.

³⁶ Speech of Louise I. Shelley, Director of Transnational Crime and Corruption Center, American University, before the National Defense University, February 20, 2002.

³⁷ Statement of Steven W. Casteel, Assistant Administrator of Intelligence, Drug Enforcement Administration, before the before the Senate Judiciary Committee, May 20, 2003.

³⁸ U.S. Department of State Fact Sheet: Foreign Terrorist Organizations, May 23, 2003. Available at [<http://www.state.gov/s/ct/rls/fs/2003/12389.htm>], last accessed on December 5, 2003.

³⁹ DOD Dictionary of Military and Associated Terms, as amended through June 5, 2003. Available at [<http://www.dtic.mil/doctrine/jel/doddict/index.html>], last accessed on December 5, 2003.

⁴⁰ Statement of Asa Hutchinson, Administrator of the Drug Enforcement Administration, Department of Justice, before the Senate Judiciary Committee, Subcommittee on Technology, Terrorism, and Government Information, March 13, 2002. Available at [<http://www.state.gov/g/inl/rls/rm/2002/9239.htm>], last accessed on December 18, 2003.

motivated violence perpetrated against noncombatant targets with the intention to influence.”⁴¹

Experts warn about other potential links between transnational criminal groups and terrorist organizations. Some fear that terrorists may start relying upon criminal group’s alien smuggling infrastructures to move between countries.⁴² Academic experts allege that in some parts of the world terrorists have used criminal organizations’ transportation networks to move operatives. Researchers caution that nuclear weapons grade material might be passed to terrorist groups or pariah states attempting to acquire some kind of strategic nuclear capability by criminals.⁴³ Some transnational criminal groups are believed to act as weapons providers to insurgent and terrorist groups worldwide.⁴⁴ The growing number of arms-for-drugs deals since the late 1990s illustrates the relationship between organized crime, the illicit drug trade, and arms smuggling.

U.S. Response to the Threats

The Clinton Administration. The threat of international crime to U.S. national security was recognized in October 1995 with the Presidential Decision Directive 42 (PDD-42). In a joint response to this threat, several federal agencies developed the U.S. government’s International Crime Control Strategy in June 1998.⁴⁵ This strategy intends to serve as “a dynamic, evolving roadmap for a coordinated, long-term attack on international crime,” and to supplement previous crime strategies. Despite the Administration’s efforts, an international crime control bill,⁴⁶ consisting of measures designed to deter and punish international crime and promote global cooperation, was not enacted by the 105th Congress or subsequently.

The Bush Administration. In April 2001, the Assistant to the President for National Security Affairs established a multiagency Policy Coordination Committee on International Organized Crime (PCC) under the National Security Council (NSC), to coordinate policy formulation, program oversight, and new initiatives related to transnational crime issues. According to a General Accounting Office (GAO) report

⁴¹ Drug Intelligence Brief, *Drugs and Terrorism: A New Perspective*, Drug Enforcement Administration, September 2002. Available at [<http://www.usdoj.gov/dea/pubs/intel/02039/02039p.html>], last accessed on December 18, 2003. (Hereafter cited as DEA Terrorism Brief.)

⁴² INL, *FY04 Budget Justification*.

⁴³ Williams, p. 23.

⁴⁴ Tamara Makarenko, “Tracing the Dynamics of the Illicit Arms Trade,” *Jane’s Intelligence Review*, September 1, 2003.

⁴⁵ National Security Council, *International Crime Control Strategy*, June 1998. Available at [<http://clinton4.nara.gov/media/pdf/iccs.pdf>], last accessed on December 4, 2003.

⁴⁶ On July 14, 1998, the International Crime Control Act (S. 2303) was introduced, and referred to the Senate Judiciary Committee.

on international crime control,⁴⁷ the Administration is reviewing “the issue of international crime and the framework of the U.S. response.” Meanwhile, the framework for the U.S. response, created by PDD-42 and the International Crime Control Strategy of 1998, remain in effect until the Administration completes its review. Other national security priorities related to transnational crime include the National Security Strategy of the United States, the National Strategy for Homeland Security, and the National Strategy to Secure Cyberspace.⁴⁸

Congressional Action. Congress has relied upon the authorization and appropriation process to direct U.S. policy and programs to combat transnational crime. Congress has taken a lead role in pressing federal agencies to develop programs dealing with crimes such as trafficking in persons. During formal committee hearings, Members have questioned executive officials about their agency’s activities related to combating transnational crime. Officials from the Department of Justice, Homeland Security, and State, among others, have testified about their respective programs and responded to Members’ queries. A number of hearings have focused on crimes such as drug trafficking, trafficking in persons, and smuggling in counterfeit products. Appropriation hearings also have addressed transnational crime issues in the context of reorganization of law enforcement agencies such as the Federal Bureau of Investigation.

In addition to authorizing and funding programs, Congress has provided law enforcement agencies with several tools to combat transnational organized crime through legislation. Prosecutors and law enforcement officials have relied upon forfeiture laws to seize criminal assets. Congress continues to add offenses to federal Racketeer Influenced and Corrupt Organization (RICO) provisions of the Organized Crime Control Act of 1970 on a regular basis. Congress expanded federal extraterritorial criminal jurisdiction in 2002 by passing the USA PATRIOT Act and other homeland security and counterterrorism legislation.

Key Federal Programs. A number of federal programs have been put in place to fight transnational organized crime unilaterally and in cooperation with other countries. The NSC has identified 34 federal entities that have significant roles in fighting transnational crime, but cautioned that it is not an exhaustive compilation.⁴⁹ Federal agencies leading the U.S. government’s efforts to combat transnational organized crime include the Departments of Defense, Justice, Treasury, Homeland Security, and State. Each agency has offices and programs that address some element of the United States’ fight against transnational crime. For some types of crime, agencies have designed programs that require coordination among federal law enforcement and intelligence officials to develop an integrated approach to their activities. While other programs treat specific elements of international crime, the following programs focus broadly on transnational organized criminal activities.

⁴⁷ General Accounting Office Report to Senator Ben N. Campbell, *International Crime Control: Sustained Executive-Level Coordination of Federal Response Needed*, GAO-01-629, August 2001, p. 27. (Hereafter cited as GAO Report.)

⁴⁸ INL, *FY04 Budget Justification*.

⁴⁹ GAO Report, p. 38.

Drug Interdiction and Monitoring Operations. According to the Executive Office of National Drug Control Policy, interdiction can damage the drug trade because agencies such as the DoD rely on intelligence to narrow the search and seek out natural choke points where drug trafficking organizations exist.⁵⁰

Department of Defense. As the lead federal agency for detecting and monitoring aerial and maritime movement of illegal drugs toward the United States, DoD provides intelligence support to U.S. law enforcement agencies to disrupt the flow of drugs while in transit into the United States.⁵¹ Intelligence analysts are deployed to key countries, where illicit drug production and transit occurs, to assist the DEA in planning and executing major counternarcotics cases. Joint interagency task forces coordinate interdiction operations in the transit zone, and the Customs' Domestic Air Interdiction Center monitors air approaches into the United States. In addition, under the Department of Justice's Southwest Border Initiative, the Armed Forces's Joint Task Force-Six and Operation Alliance coordinate drug-control activities along the southwest border of the United States.

Criminal Investigations. Both the Departments of Justice and Homeland Security have programs in place to investigate transnational crimes. Whereas some of these investigations require coordination among federal, state, and local law enforcement officials and U.S. Attorneys, others require federal law enforcement officials to coordinate transnational investigations with foreign governments.

Department of Justice. The Criminal Division's Organized Crime and Racketeering Section (OCRS) provides prosecutors to U.S. Attorneys' Offices' Crime Strike Force Units, who supervise investigations and prosecutions of transnational organized criminal groups.⁵² OCRS prosecutors work with U.S. and foreign law enforcement agencies to facilitate the necessary flow of information and evidence among these agencies, and to counsel U.S. agents on timing and strategy issues.⁵³ The Federal Bureau of Investigation's (FBI) Organized Crime program places Special Agents in domestic field offices to investigate criminal organizations within their jurisdiction. Joint task forces composed of federal, state and local law enforcement officials allow the FBI to pool additional resources to combat organized

⁵⁰ Executive Office of National Drug Control Policy, *National Drug Control Strategy Update 2003, III. Disrupting the Market: Attacking the Basis of the Drug Trade*, February 2003. Available at [http://www.whitehousedrugpolicy.gov/publications/policy/ndcs03/iiidisrpt_mkt.html], last accessed on December 18, 2003.

⁵¹ The White House Office of National Drug Control Policy, *National Drug Control Strategy, FY2004 Budget Summary*, February 2003, p. 13. Available at [<http://www.whitehousedrugpolicy.gov/publications/policy/04budget/fy04budgetsum.pdf>], last accessed on December 8, 2003.

⁵² U.S. Department of Justice Fact Sheet: *Organized Crime and Racketeering Section*. Available at [<http://www.usdoj.gov/criminal/ocrs.html>], last accessed on December 2, 2003.

⁵³ Statement of Bruce S. Swartz, Deputy Assistant General of Criminal Division, Department of Justice, before the Senate Foreign Relations Committee, Subcommittee on European Affairs, October 30, 2003.

crime.⁵⁴ Currently, the Organized Crime Section has 245 ongoing cases dealing just with Eurasian organized crime,⁵⁵ of which the most cited cases involve fraud, money laundering, extortion, drug trafficking and auto theft.

For overseas investigations, the FBI's Office of International Operation directs the Legal Attache Program to foster cooperation with foreign law enforcement officials. FBI agents, known as Legats, are stationed overseas in 52 countries to provide foreign law enforcement agencies assistance with training activities, and in turn receive foreign cooperation in gathering evidence related to domestic investigations of crimes such as drug trafficking.⁵⁶ In addition, DEA special agents are stationed in 58 foreign countries to work with foreign law enforcement agencies in bilateral drug investigations. Tasks of DEA agents include: to develop sources of information and interview witnesses; to provide information about drug traffickers to their foreign counterparts and pursue investigative leads; and, to seek indictments against major foreign traffickers who have committed crimes against American citizens.⁵⁷

Department of Homeland Security. The U.S. Immigration and Customs Enforcement (ICE) is the Department of Homeland Security's largest investigative bureau. Within ICE, the Office of Investigations has a mission of investigating crimes including alien smuggling, narcotics and contraband smuggling, and financial crimes.⁵⁸ The Financial Investigations Division seeks to protect American financial service systems from money laundering, bulk cash smuggling, intellectual property rights violations, counterfeit goods trafficking, and other financial crimes. The Smuggling/Trafficking Branch seeks to disrupt and prosecute criminal organizations that smuggle people into the United States or traffic in persons. In addition, the Contraband Smuggling Branch focuses its investigations on organized smuggling groups.

Multilateral Investigative Cooperation. Federal agencies have designed certain programs for U.S. law enforcement officials to participate in international organizations and foster regional and global cooperation. Agencies involved in these programs include the Departments of Justice, Treasury, and Homeland Security.

⁵⁴ FBI Investigative Programs Fact Sheet: *About Organized Crime*. Available at [<http://www.fbi.gov/hq/cid/orgcrime/aboutocs.htm>], last accessed on December 2, 2003.

⁵⁵ Statement of Grant D. Ashley, Assistant Director of Criminal Division, Federal Bureau of Investigation, before the Senate Foreign Relations Committee, Subcommittee on European Affairs, October 30, 2003.

⁵⁶ FBI Fact Sheet: *Legats*, Available at [<http://www.fbi.gov/contact/legat/legat.htm>], last accessed on December 2, 2003.

⁵⁷ DEA Programs Fact Sheet: *Foreign Cooperative Investigations*. Available at [<http://www.dea.gov/programs/fci.htm>], last accessed on December 2, 2003.

⁵⁸ U.S. Department of Homeland Security, U.S. Immigration and Customs Enforcement Fact Sheet: *Office of Investigations*. Available at [http://www.bice.immigration.gov/graphics/about/organization/org_oi.htm], last accessed on December 3, 2003.

Departments of Justice and Homeland Security. The International Criminal Police Organization (INTERPOL), promotes cooperation among foreign law enforcement institutions in different countries to combat transnational criminal activities such as organized crime, drug trafficking, weapons smuggling, trafficking in persons, money laundering, and financial crimes. A National Central Bureau (NCB) in every INTERPOL member country serves as the single point of contact for cooperating in overseas criminal investigations. Each member country staffs its Bureau with its own law enforcement officials who are authorized to act within its jurisdiction.

The Departments of Justice and Homeland Security jointly control the USNCB, which coordinates U.S. federal, state and local law enforcement efforts to assist U.S. and foreign law enforcement agencies in INTERPOL member countries in investigating international criminal activities.⁵⁹ INTERPOL's new global communication system, I-24/7, allows NCBs to search and cross-check law enforcement intelligence from multiple sources within seconds. INTERPOL hopes that this network will assist NCBs in responding more quickly and efficiently to transnational criminal activities.⁶⁰

Department of Treasury. The Financial Crimes Enforcement Network (FinCEN) supports U.S. law enforcement agencies in international financial crime investigations, and provides U.S. policymakers with strategic analyses of global money laundering developments, trends, and patterns. FinCEN cooperates with 32 counterpart foreign government institutions in the Financial Action Task Force (FATF), an inter-governmental organization, to address global money laundering issues. FATF encourages countries to adopt agreed standards, designed as a blueprint for national anti-money laundering legislation and programs.⁶¹ In June 2000, FATF engaged in a major initiative to identify non-cooperative countries and territories (NCCTs)⁶² which either have deficient anti-money laundering systems, or have refused to cooperate in international anti-money laundering efforts. The United States has reviewed the countries and territories on the NCCT list, and issued advisories to U.S. financial institutions about the risks they face in those countries' jurisdictions.

FinCEN acts as the United States' Financial Intelligence Unit (FIU) to participate in global networks that coordinate strategies to combat transnational

⁵⁹ U.S. Department of Justice, USNCB Fact Sheet: *Mission*. Available at [<http://www.usdoj.gov/usncb/usncborg/mission.html>], last accessed on December 8, 2003.

⁶⁰ INTERPOL Fact Sheet: *Connecting Police: I-24/7, Interpol's Global Communication System*. Available at [<http://www.interpol.int/Public/ICPO/FactSheets/FS200301.asp>], last accessed on December 8, 2003.

⁶¹ FATF's newest anti-money laundering standards were released on June 20, 2003. For more information on FATF, visit [<http://www.fatf-gafi.org/>], last accessed on December 8, 2003.

⁶² As of December 2, 2003 the current list of NCCTs includes: Cook Islands, Egypt, Guatemala, Indonesia, Myanmar (Burma), Nauru, Nigeria, Philippines, and Ukraine. FATF document, June 20, 2003. Available at [http://www.fatf-gafi.org/pdf/PR-20030620_en.pdf], last accessed on December 8, 2003.

crime. In general, FIUs analyze financial information to support their respective governments' anti-money laundering efforts. The Egmont Group is an international network comprised of FinCEN and FIUs from 68 other countries. The Group supports expanding and systematizing the exchange of financial intelligence information, and applying technology to foster better and secure communication among the FIUs.

Foreign Law Enforcement Training and Assistance. Endeavoring to improve cooperation with foreign governments and law enforcement authorities, U.S. government agencies have developed foreign assistance programs to build relationships and capabilities. Programs designed by the Departments of State, Justice, and Defense seek to provide foreign law enforcement officials investigative training, equipment, and related assistance.

Department of State. The Bureau of International Narcotics and Law Enforcement Affairs (INL) develops, implements, and monitors U.S. international narcotics control strategies and foreign assistance programs that support the President's National Drug Control Strategy and other anti-crime policies. After recognizing a nexus between drug traffickers, terrorists, and other criminal groups, INL shifted to a more integrated law enforcement effort.⁶³ The Bureau also funds and oversees several programs to combat trafficking in humans through the Department's Office to Monitor and Combat Trafficking in Persons.

INL's International Narcotics Control and Law Enforcement (INCLE) Global Anticrime Programs bring in multiple federal agencies to assist foreign governments in strengthening their capacity to investigate and prosecute major drug trafficking organizations and attack narcotics production and trafficking centers. INCLE global anticrime programs require U.S. law enforcement officials to engage in bilateral cooperation with foreign governments through extradition and mutual legal assistance treaties, information exchanges, technical assistance, law enforcement training and provision of equipment. These programs focus on financial crime and money laundering, corruption, alien smuggling, border security, cyber- and intellectual property crime, and other law enforcement training needs.

Several U.S. law enforcement agencies participate in the U.S. sponsored International Law Enforcement Academies' (ILEAs) programs, coordinated among the Departments of State, Justice, Treasury and foreign governments. The ILEAs provide training and technical assistance to foreign law enforcement and judicial officials, foster relationships between U.S. agencies and their counterparts in the regions where the ILEAs are located, and promote international law enforcement cooperation generally.⁶⁴ Specialized training programs, coordinated with INL, the Department of Justice entities and research institutions, familiarize foreign

⁶³ INL, *FY04 Budget Justification*, p. 4.

⁶⁴ Currently, INL is operating ILEAs in Budapest, Bangkok, Gaborone and Roswell, and negotiating with the Government of Costa Rica to establish an ILEA in San Jose. U.S. Department of State Fact Sheet, *International Law Enforcement Academies*, May 7, 2003. Available at [<http://www.state.gov/g/inl/rls/fs/20280.htm>], last accessed on December 3, 2003.

prosecutors and investigators with problems unique to organized crime cases, and provide them practical exposure to investigative tools.⁶⁵ The ILEA in Roswell, New Mexico, opened in 2001 to provide training and assistance to foreign officials who have graduated from the regional ILEAs. One of the ILEA Roswell courses teaches techniques for conducting statistical research in crime analysis, transnational crime trends and rates, community expectations, and employee perspectives. The course also exposes students to strategies for addressing cultural, social, legal, and political obstacles to effective policing.⁶⁶

Department of Justice. Under the auspices of the INCLE anticrime programs, officials from the International Criminal Investigative Training Assistance Program (ICITAP) assist foreign governments in enhancing capabilities of police forces in emerging democracies.⁶⁷ These training and assistance programs intend to develop professional civilian-based law enforcement institutions, and foster team-building approaches to detect, investigate and prosecute organized crime. In an effort to strengthen bilateral investigations, the DEA Sensitive Investigative Unit (SIU) Training program identifies and trains foreign drug enforcement officials at the DEA Training Academy in Quantico, Virginia. This five-week specialized training program is organized by DEA's Office of International Operations, and has provided training to over 1,500 SIU personnel in countries that include Mexico, Colombia, Pakistan, and Uzbekistan.⁶⁸

Department of Defense. DOD is also authorized to provide training for U.S. and foreign drug law enforcement agencies and foreign military forces with drug enforcement responsibilities. Section 1004 of the National Defense Authorization Act (NDAA) authorizes DOD to assist foreign military, law enforcement, and intelligence agencies, and our domestic law enforcement with activities such as: establishment of bases of operations or training facilities; detection, monitoring, and communication of trafficking activities; and aerial and ground reconnaissance missions. Section 1033 of the NDAA allows DOD to provide foreign governments with various types of non-lethal equipment for their counternarcotics activities.

Potential Congressional Concerns

Does the United States Give Adequate Priority to Transnational Crime, with the Heightened Focus on Terrorism? While recognizing the impact of

⁶⁵ Statement of Steven Schrage, Deputy Assistant Secretary for International Narcotics and Law Enforcement Affairs, Department of State, before the Senate Foreign Relations Committee, Subcommittee on European Affairs, October 30, 2003.

⁶⁶ U.S. Department of State, International Law Enforcement Academy - Roswell, Course Description, June 2001. Available at [<http://www.ilearoswell.us/pdf/course.pdf>], last accessed on December 5, 2003.

⁶⁷ U.S. Department of Justice Organization Fact Sheet: *International Criminal Investigative Training Assistance Program*. Available at [<http://www.usdoj.gov/criminal/icitap/index.html>], last accessed on December 2, 2003.

⁶⁸ DEA Training Programs Fact Sheet: *International Training*. Available at [<http://www.dea.gov/programs/training/part19.html>], last accessed on December 2, 2003.

transnational criminal activities on American communities and businesses, U.S. policymakers also have to concentrate on other national security threats. Following September 11, 2001, federal agencies have restructured their programs and resources to focus on the war on terrorism. Analysts who criticize the level of federal spending on counterterrorism programs compared to other anti-crime efforts argue that the economic losses from terrorist attacks are small by comparison to transnational crimes such as drug trafficking. However, other analysts warn policymakers that psychological and political costs, in addition to direct economic losses, are potentially enormous and unquantifiable.

Some analysts have criticized the tendency for law enforcement officials to use “terrorist,” “criminal,” and “insurgent” to define the same person or organization. For example, the DEA calls Pablo Escobar a “narco-terrorist,” both a drug trafficker and a terrorist.⁶⁹ Some agencies are suspected of using the terrorism nexus to receive additional funds for programs related to transnational crime under the guise of counterterrorism. Experts argue that some of the same vulnerabilities in the global financial system allow both terrorist and criminal organizations to pursue their illegal activities. A coordinated law enforcement and intelligence approach that targets key vulnerabilities may effectively combat both groups.

What, If Any, Performance Measures Are in Place to Monitor the Effectiveness of Federal Programs Related to Transnational Crime? Following a GAO inquiry, an NSC official revealed that a performance measurement system, envisioned under the 1998 International Crime Control Strategy, was never established, because individual agencies were given discretion to devise and implement their own measurement systems.⁷⁰ Analysts urge agencies to establish a system to measure the effectiveness of their transnational crime control programs. Such a mechanism may provide an agency some flexibility to adapt its strategies and program activities. Agency officials may argue that performance measures are hard to formulate because of the challenges associated with obtaining accurate international criminal data. Another challenge for agencies is to establish a uniform system across programs to measure the overall impact on transnational crime.

Some observers propose developing a network similar to the Department of Justice’s Organized Crime and Drug Enforcement Task Force (OCDETF), which coordinates federal law enforcement efforts to combat national and international organizations that cultivate, process, and distribute illicit drugs. Whereas OCDETF focuses on drug trafficking, a parallel task force could focus on other forms of trafficking that involve transnational criminal organizations. This task force could also expand its network overseas to include foreign law enforcement and intelligence officials in pursuing major investigations.

Are Benefits Associated with Increase Overseas Presence of U.S. Law Enforcement and Intelligence Officials Worth the Corresponding Risks? Some experts support the increased overseas presence of FBI, DEA and other federal agents in an effort to gain cooperation from foreign law enforcement officials on

⁶⁹ DEA Terrorism Brief.

⁷⁰ GAO Report, pp. 81-83.

criminal investigations to dismantle transnational organizations. Law enforcement experts commend the ILEA programs for building networks to combat transnational crime. DOD officials are also supported for their overseas military operations to pursue counternarcotics activities. Other experts remind policymakers that objections to American presence have provoked terrorist attacks in the past. For example, in 1993, Osama bin Laden trained the Somali tribesmen who ambushed U.S. peacekeeping forces in Somalia.⁷¹ In 2003, leftist guerrillas in Colombia kidnaped three American contractors and, according to a journalist, have killed four American contractors since 2002.⁷²

Would Increased Participation in Multilateral Institutions Help or Hinder U.S. Criminal Investigations? Some observers propose that the United States build additional international law enforcement networks because transnational cooperation supports domestic investigations, intelligence gathering, and helps to develop a worldwide strategy to combat transnational crime. Proponents argue that multilateral institutions can develop international standards for documentation requirements (e.g., passports, bills of lading) among nations, and efficient mechanisms to identify fraudulent documents that facilitate criminal activities. Others are concerned about possible complications that might arise from the sharing of law enforcement techniques and intelligence with foreign governments. Organized criminal groups invest in the corruption of government officials in several countries in order to weaken law enforcement institutions that would otherwise undermine their activities. Furthermore, some experts believe multilateral organizations are not very effective, while participation is time-consuming and labor-intensive.

⁷¹ Ivan Eland, *Does U.S. Intervention Overseas Breed Terrorism?* CATO Institute, Foreign Policy Briefing, No. 50. December 17, 1998. Available at [<http://www.cato.org/pubs/fpbriefs/fpb50.pdf>], last accessed on December 19, 2003.

⁷² Nicole Elana Karsin, *Escalating U.S. Casualties in Colombia*, Colombia Report, Information Network of the Americas, April 14, 2003.

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