

The Current State of Transnational Organized Crime

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Abstract: The paper indicates that criminal groups may differ in terms of size, the scope of operations, types of activities, territorial range, relations with authorities and management, internal organization, and the set of means and methods used to promote their criminal activities and to guard against measures taken by the Government and law enforcement bodies. When national, historical, and cultural differences are taken into account, the diversity of criminal organizations becomes even more evident, while prevention and suppression pose even greater challenges for law enforcement agencies, especially in countries where these organizations are active in their illegal activities. The study is aimed at analyzing national-level legislative measures that may be efficient about one type of organized criminal group, but may not be appropriate for other types. To solve the problems formulated, a complex methodology will be required, combining empirical studies of specific facts and a fundamental theoretical understanding of the conceptual foundations of the problem posed. The results of the analysis made it possible to theoretically substantiate the increased social danger of transnational organized criminal groups, which entails the adoption of appropriate legislative measures. Identifying the latency level of transnational crimes will make it possible to assess the efficiency of the existing sets of measures against it, as well as to formulate recommendations on improving the system of legislative measures to prevent the activities of transnational criminal organizations. A gap in the study can be attributed to the insufficient amount of statistical information on the analyzed crime. The novelty of the research lies in the comprehensive analysis of the current state of transnational organized crime.

Keywords: Organized transnational crime, international cooperation, national legislation, transnational criminal organizations, crime, prevention.

INTRODUCTION

Transnational criminal organizations that derive significant profits from their links to legal businesses find it necessary and beneficial to deal with government officials to assist in money laundering and counterintelligence. Established links may be based on bribery, coercion, or a combination of the two. Organized criminal groups prefer systematic corruption that aims to ensure that a favorable and secure base in their country or a suitable environment in their host countries is maintained. The widespread use of bribes is typical for the implementation and application of this method to ensure compliance of officials in key positions and institutions, and to finance political parties so that politicians feel obligated to criminal organizations and carefully pay law enforcement officials for providing information to criminals. These links between the illegal and legal worlds undermine the system of governance.

For example, decades of phone tapping and electronic surveillance in the U.S. have allowed law

enforcement agencies to be effective against criminal groups. At the same time, this method proved useless in the struggle against Nigerian and Chinese groups, who negotiated in a variety of dialects.

Only a few countries with transition economies have managed to establish efficient criminal justice systems that can adequately respond to organized crime. Most new democracies lack a regulatory framework that allows for action directly against criminal organizations per se or that facilitates issues related to the protection of witnesses, confiscation of assets, and electronic surveillance. Such measures are among the most important tools for preventing and countering organized crime.

Migration is essential for the development of transnational crime. The large majority of immigrants are law-abiding citizens. However, there are persons with criminal intentions and criminal past, with connections and contacts in the criminal world among them. Criminals exist in all diasporas: Chinese, Italian, Nigerian, and Russian. In some cases, criminal networks imported into other countries are becoming more powerful than local criminal organizations. Even if foreign criminal organizations cannot penetrate the structure of a new society, law enforcement bodies find

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it very difficult to combat them, which is evident in the case of Chinese organized crime in South Africa and Russian organized crime in most European countries. The individual States are overly selective in granting citizenship, which is not the case for the Russian Federation.

In 2019, almost 500,000 people obtained Russian citizenship. The number of new citizens is almost 2.5 times higher than the average annual figure for the past 10 years. It has become easier for certain categories of foreigners, including qualified specialists, residents of Donbas to obtain Russian citizenship.

Another feature of modern criminal organizations is the technical equipment with computer facilities. States at the post-industrial stage of development can easily become victims of both transnational criminal organizations and individual criminals. As the use of interconnected information and communication systems becomes more and more active, the possibility of abuse or disruption of those systems becomes more and more real, and the consequences can be catastrophic.

With the further computerization of society, computer criminals – hackers – have emerged. Having a computer and a modem as well as the necessary knowledge and skills one can completely disrupt the functioning of national and global information systems, including those protected by security and blocking mechanisms. Moreover, a hacker has many opportunities to ensure his or her anonymity through the “cyber” equivalent of a fictitious company. Such opportunities are enhanced by the influence of transnational criminal organizations. It can be assumed that in the 21st century an experienced hacker is a valuable and indispensable member of any serious criminal organization. The close merger of organized crime with a white-collar crime has already taken place in countries with transition economies.

By using global information systems, primarily for financial gain, transnational criminal organizations can cause serious harm to the system itself. Global information systems offer new opportunities not only for fraud and embezzlement but also for extortion and disruption. Depending on the degree of threat to their activities by law enforcement agencies, transnational criminal organizations may attempt to disrupt such systems, so it is dangerous and unpredictable to bring together organized group members and hacker programmers. Transnational criminal organizations can

take full advantage of these opportunities, if only because they already have the maximum flexibility and willingness to innovate structurally.

LITERATURE REVIEW

In various years, the issues of transnational organized crime and the activities of transnational organized criminal groups have been studied by many scholars specializing in the theory of government and legislation, criminal law, economics, psychology, criminology, sociology, and political science. It is worth mentioning the following fundamental publications that had served as a scientific basis for combating this crime in modern Russia (Kudryavtsev, Luneyev, and Naumov 2000; Luneyev 1999; Russian Association for Criminology, 2000; Bogdanov and Kalinin 2001; Kladko 2019; Kunts 2019; Golubovsky 2019).

Transnational corruption was also considered by foreign scholars suggesting a range of solutions to transnational crime: John Braithwaite (1979); Hung-En Sung (2009); Luciano Vaz Ferreira and Fabio Costa Morosini (2013); Susan Rose-Ackerman and Bonnie J. Palifka (2016).

Alyson Warhurst (2011) explored some of the interrelationships between climate change and corruption, as corruption can undermine efforts to combat the impacts of climate change.

John Wilkinson (2012) made a thorough analysis of corruption in Russia and suggested an anticorruption program. However, he acknowledged that it would never be perfect, and recommended companies to “maintain a healthy balance between identifying and preventing corruption”, trying to “adapt their anti-corruption strategy to a constantly changing business environment”, which will enable them to mitigate the risk of corruption.

Yet no specialized comprehensive research has been conducted so far on criminal justice responses to transnational organized crime.

MATERIALS AND METHODS

The study is based on a dialectical and worldview approach that defines the main directions and general principles of cognition in general. This approach, as is known, is predetermined by the law of unity and struggle of opposites, the law of mutual transition of quantitative and qualitative changes, and the law of the negation. Transnational organized crime is a complex

historically variable phenomenon with a multitude of external and internal relations, which has its regularities, contradictions, differences, and identities. This crime is rapidly developing in a time of high technology, globalizing, penetrating new spheres of life and economy, while criminals are looking for new ways to illicitly legalize their activities and ways to conceal criminal gains from justice. In parallel, the system of combating this crime is also developing, improving criminal and other legislation. In parallel, the system of combating this crime is also developing, improving criminal and other legislation. Social, economic, and other benefits are offered to honest employees and officials; international political, legal, financial, and economic institutions are created to combat this crime, and new, more efficient laws are adopted (the law of the negation). The research is based on a wide range of general methods of scientific cognition: analysis and synthesis, induction and deduction, the system method, structural and functional method. The analysis will be used to explore the main categories such as "transnational organized crime" and "criminal law enforcement".

The synthesis method enables us to gain knowledge in the course of the study about such categories as "transnational organized crime" and "transnational organized criminal groups".

The systematic method in the present study will be used, *inter alia*, in formulating a system of transnational crimes. Also, this method will consist of creating a source base for research, which will include normative, scientific, theoretical, empirical information. The structural and functional method will be used to construct a system of criminal justice responses that will be structured based on the normative nature of prescriptions and their ability to influence the fight against transnational organized crime.

A special part of the criminal law, containing a description of the relevant elements of the crime, is the only basis for criminal liability. However, the norm itself is "dead" if it is not applied in the course of law enforcement activity. Even though the doctrine of criminal law is not its source, it nevertheless performs an important function being the scientific interpretation of the criminal law that can fill the gaps in the interpretation of certain provisions of the General and the Special Parts of the Criminal Law in the absence of an explicit position of the legislator or law enforcement officer on these issues. A comparative legal method will

be used when studying the criminal legislation of foreign states on responsibility for transnational crimes.

Also, this method is widely used in the study of relevant criminological legislation, as well as positive legislation from foreign countries, the violation of which is a prerequisite for criminal liability for transnational crimes.

A sociological survey provides factual information about the investigated socially dangerous phenomenon and methods of counteraction.

The statistical method is used to collect and analyze various statistical materials relating to the phenomenon under study. Relevant data from domestic, foreign, and international statistics will be studied, including data from international organizations such as the United Nations (UN Office on Drugs and Crime), the World Bank, the Council of Europe, the African Union, Transparency International, Interpol, Europol, International Association of Ant-Corruption Authorities.

Other empirical methods include content analysis of documents, in particular court decisions, analysis of media materials.

RESULTS

With more efforts and increased cooperation at the international level, significant progress can be made in the fight against organized transnational crime. However, rarely is there an attempt to make a real assessment of the balance of power, that is, of the capacity of organized transnational crime on the one hand, and state authorities, including law enforcement bodies, on the other. By its very nature, law enforcement activities are primarily aimed at responding. That means that the efforts made for that purpose are disproportionately large compared to the corresponding efforts made by criminal organizations. This is most evident in the case of money-laundering. The procedure itself, given the capabilities of modern technology, can take several minutes, although the investigation of such cases may require significant resources of law enforcement agencies, which will take months and years. Transnational criminal organizations are very mobile and closed, so their activities take place unnoticed. States are governed by existing laws and regulations and are accountable to their citizens. By contrast, criminal organizations by their very nature violate laws and regulations, and the lack of accountability gives them great leeway. Another

important factor is the ability to use available funds quickly. Criminal organizations do not have to wait for the results of the parliamentary vote on the allocation of the required funds; they are not closely scrutinized in the use of those funds.

A comparison of the capabilities of the two parties demonstrates the advantages of transnational criminal organizations over the state authorities of many countries. For law enforcement agencies, the introduction of their people into criminal structures is critical. For criminal organizations, infiltrating the state apparatus means obtaining operational data that provides better protection for themselves. Ultimately, it is easier for transnational criminal organizations to do so than for state authorities. Many parts of state structures are vulnerable to infiltration. For example, infiltration into a state or law enforcement body requires access to a person who can be bribed or intimidated. However, government agencies cannot do this. Infiltration means infiltrating one's people into the ranks of criminal organizations, which is greatly complicated by existing kinships, ethnic ties, innate suspicions towards outsiders, and propensity for violence. Thus, infiltration into criminal organizations by law enforcement officials is a much more difficult task. Penetration into a transnational criminal organization is extremely dangerous and the benefits are disproportionate to the risk. In terms of the infiltration of criminal organizations into government bodies, the opportunities are directly opposite: low risks and good results. To some extent, public authorities can compensate for this ratio by encouraging members of criminal organizations to cooperate with the police. This kind of cooperation and subsequent testimony in court can be extremely important and can strike a tangible blow to criminal organizations.

DISCUSSION

Transnational organized crime is recognized by many states and in this regard, they are taking appropriate legislative measures.

Since 1993, Austria has had legislation relating to participation in the laundering of the proceeds of criminal groups. In particular, the Criminal Code has been amended accordingly and money-laundering is now considered an offence. This legislation is an efficient way to combat organized transnational crime and enables Austria to respond to requests for legal assistance. The proposed additional amendment to the Austrian Criminal Code provides for several measures

to facilitate the seizure of proceeds of crime, further amendment of existing legislation on extradition and legal cooperation.

Canadian legislation allows banks and financial institutions to report suspicious transactions to the police. This removes liability to customers for breaches of deposit secrecy. Under the 1994 Seized Property Management Act, the Government of Canada is obliged to administer and sell property acquired from proceeds of crime that are confiscated for the benefit of the state. The Act also provides for the possibility of transferring part of the proceeds of the sale of such property to law enforcement bodies in Canada, as well as to other governments whose law enforcement bodies were involved in investigations that led to the confiscation of the property. The Proceeds of Crime Act 1991 set out accounting requirements for industrial financial services to facilitate the investigation of wrongdoing under Canadian law and the prosecution of defendants. The basic requirements for financial institutions are set out in the Proceeds of Crime Ordinances. They provide, *inter alia*, that financial institutions subject to these requirements must have the required documentation of major transactions if the same person transfers or receives a total of 10,000 or more Canadian dollars from or into their account on the same day.

Law enforcement officials in Australia, Canada, Cuba, Japan, Italy, and the Philippines believe that the material resources of transnational organized crime should be minimized. In the Philippines, for example, the 1995 Crime Control Act "penalizes the transfer and use of illicit funds or property for legitimate transactions", which is a significant step towards criminalizing money laundering. The effectiveness of such legislation is noted in Australia, where confiscation of the proceeds of crime has been ongoing for eight years and is an efficient tool in the fight against organized crime. In December 1991, Australia established the Confiscated Money Trust to use confiscated funds to combat the criminal world.

Successful responses to transnational organized crime require not only strong national commitment, but also long-term coordinated strategies at the national, regional, and global levels. Also, law enforcement activities need to focus on what is of greatest value to transnational criminal organizations, namely, property and income, organizational structure and leadership, rather than on activities that are currently being carried out and that are primarily aimed at seizing goods,

seizing participants and terminating revenue-generating activities or preventing money-laundering. Comprehensive strategies targeting the ringleaders, their proceeds, and the organization itself are much more efficient.

An efficient international response to the threat posed by transnational criminal organizations requires comprehensive and coordinated policy solutions of an alternative nature. Efforts are needed to address not only the technical issues of law enforcement cooperation, but also to create a transnational network for joint activities that should become global in scope.

CONCLUSION

Under the current circumstances, comprehensive and effective cooperation in the fight against transnational criminal organizations becomes essential. In that regard, it is of paramount importance to: (a) identify and continuously monitor the various ever-changing challenges posed by transnational organized crime; (b) pay special attention to those types of crime considered to be the most dangerous and most alarming; (c) be aware of the problems arising from existing or emerging differences between individual countries in their understanding and assessment of transnational crime; (d) study issues related to the development of legislative frameworks in different States; (e) consider problems relating to the expansion or relocation of transnational criminal organizations activities from one country to another with weak protective mechanisms; (f) examine the conditions conducive to the growth and expansion of transnational criminal organizations, including social, economic and political factors; the structural characteristics of organized crime; shortcomings in the measures taken to combat it; insufficient funding for institutions that deal with crime; (g) gradually develop an integrated framework; (h) work out a global strategy for more efficient interstate cooperation

Success in the fight against transnational organized crime cannot be guaranteed unless a dialectical relationship between law enforcement and organized crime is in place. We need comprehensive and protective mechanisms, dynamic actions of the international community, taking into account priorities, and preventive measures. The real danger posed by criminal transnational formations is noted both for individual states, where such organizations are located, and for the stability of the international community as a whole.

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