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Effective National and International Action against Organized Crime and Terrorist Criminal Activities

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EFFECTIVE NATIONAL AND INTERNATIONAL ACTION AGAINST ORGANIZED CRIME AND TERRORIST CRIMINAL ACTIVITIES

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I. Introductory Observations On Offenses Categorized As "Organized Crime" And "Terrorism"

Every form of violence is potentially terror-inspiring to its victim and to those it indirectly affects, whether committed by an individual, an organized group or the agents of a state.[1] However, not all criminal activities that are deemed to be terror-inspiring are within the general meaning of "terrorism." Likewise, not all group activities committed by persons who are seeking to further a group criminal goal or activity are deemed "organized crime." Both of these selectively applied labels depend on a social-political judgment which may or may not further depend on a deliberate criminal justice policy.

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[1] *See* Bassiouni, *A Policy-Oriented Inquiry into the Different Forms and Manifestations of "International Terrorism,"* in Legal Responses to International Terrorism: U.S. Procedural Aspects, XV-Liii (M.C. Bassiouni ed. 1989) [hereinafter Legal Responses to International Terrorism]. For relevant U.N. reports and studies, see generally, U.N. Secretariat Discussion Guide (A/CONF. 144/PM. 1); *Report of the Meeting of the ad hoc Group of Experts on International Cooperation for the Prevention and Control of the Various Manifestations of Crime, Including Terrorism,* presented to the International Institute of Higher Studies in Criminal Sciences and the Centro Nazionale di Prevenzione e Difesa Sociale (Siracusa, January 24, 1988); *Report on the Effective National and International Action Against (a) Organized Crime; (b) Terrorist Criminal Activities,* Interregional Preparatory Meeting for the Eighth U.N. Congress on the Prevention of Crime and the Treatment of Offenders (Vienna, March 14-18, 1988) (A/CONF. 144/PM.I, April 11, 1988).

What essentially distinguishes "organized crime" and "terrorism" with respect to all the offenses falling within these two categories is a single characteristic, namely the motive of the actor. While "organized crime" is characterized by a profit motive, and "terrorism" is characterized by an ideological motive.[2]

Beyond this distinction, "organized crime" and "terrorism" characteristics may overlap, depending upon the strategic or tactical goals of its adherents in the course of a specific criminal activity or as part of a pattern of activities. There are several examples of this. First, by definition, organized crime cannot be committed by a single individual while terrorism can be. Virtually all crimes in both these categories of conduct are committed by groups. Second, "organized crime" is virtually always committed with profit as a motive, although it could sometimes, like "terrorism," be committed for an intermediate power-oriented goal. "Terrorism" however, is most usually committed for a power outcome or motivated by the ideology of the actors, although they too, for tactical reasons, may also resort to conduct which has a profit motive similar to "organized crime." Third, some "organized crime" activities are consensual in nature, e.g., drug distribution, and do not depend upon a terror-inspiring effect. However, "organized crime" does use violence to inspire terror among extortion victims and competitors for power, including rival gangs and even among the forces of order in some societies. Conversely, a "terrorist" organization may engage in some act of violence or other criminality without seeking a terror-inspiring effect, e.g., the execution of a member who has become unreliable, or counterfeiting done to generate funds for revolutionary activity. Finally, "organized crime" groups can be large or small, with or without international connections, and can be capable of reaching into socio-political layers of given society or

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[2] For a discussion of "terrorism," see Bassiouni, *Ideologically Motivated Offenders and the Political Offense Exception in Extradition - A Proposed Juridical Standard for an Unruly Problem*, 19 DEPAUL L. REV. 217 (1969). For a discussion of "organized crime," see Cressey, *The Functions and Structure of Criminal Syndicates*, in TASK FORCE REPORT: ORGANIZED CRIME, (President's Commission on Law Enforcement and Administration of Justice, 1969) Appendix A at 25; G. TYLER, ORGANIZED CRIME IN AMERICA (1962); E.H. SUTHERLAND, WHITE COLLAR CRIME (1949); E. REID, MAFIA (1964); *La Mafia Oggi: Individuazione Del Fenomeno E Sistemi Di Lotta*, 2 ATTI E DOCUMENTI ISISC, (G. Tinebra ed. 1988).

be outcasts, such groups may engage in every form of common criminality. The same characteristics apply in part to "terrorist" groups, with the notable exception that "terrorism" may include state-action supported by or conducted under state policy. Public officials may be part of "organized crime" as well as "terrorism."

As indicated above, unlike "terrorism," "organized crime" requires group participation and is essentially motivated by profit, although this does not exclude resort to the use of terror-inspiring means in order to achieve its goals. "Organized crime," like "terrorism," may also seek to destabilize governments and governmental authority, but only for the purpose of being able to operate with greater freedom without governmental controls.

Thus, the ultimate fundamental goals of "organized crime" differ substantially from those of "terrorism," as do the fundamental motives of the perpetrators. Furthermore, while the perpetrators of "terrorism" may have a political goal which ultimately results in acts of terror-violence, those engaged in "organized crime" do not have such finality of goals and inherently seek the perpetuation of the organization. By its very nature, "organized crime" tends to grow and develop, whereas "terrorism" may not. Because of the profit motive factor in "organized crime," the links with other like-minded groups, nationally or transnationally, can be broader and more durable than the occasional or temporary alliances that groups engaging in "terrorism" may forge with others. The greater durability of "organized crime" alliances is premised on the fact that the greed factor is a stronger basis for mutuality of interests and is more stable than the commonality of ideological values, goals and strategies among those engaging or supporting groups. The political agendas of the latter are of far less universal and permanent human appeal than the financial motivation of "organized crime."

Despite their distinctive characteristics, both "organized crime" and "terrorism" have become part of the world community's consciousness, as a result of improved and increased international communication, and mobility. Furthermore, due to mass global communication, societies and governments are more conscious of the national and transnational implications of these activities. In-

deed, the mass media's psychological impact has become so overpowering that it has become part of the problem, at least with respect to encouraging "terrorist" acts by guaranteeing a global audience if an atrocity is sufficiently vicious and well staged.[3] Conceptually, the media has also contributed to ineffective analysis of the appropriate response to "organized crime" and "terrorism," by using these terms as sensational labels, without clear or consistent definition of their meaning and scope. The need for clarification of the misleading nature of these labels is addressed below.

II. Relationship Between "Organized Crime" and "Terrorism"

Persons engaging in "organized crime," being profit motivated, commit consensual or violent crimes, or both, depending upon which is the more effective means to achieve financial gain. "Terrorism" by definition relies upon violence, or its threat, and the resulting terror-inspiring consequences, for a political outcome. The violence resulting from either "organized crime" or "terrorism," or indeed any other type of violence, can be placed on a single continuum. Distinctions as to goals, means, perpetrators and victims are socio-political judgments often made in furtherance of a criminal justice policy in order to devise and apply social and legal controls.[4] It is also axiomatic that all forms of violence cause harm to persons and things, and that all societies grade the nature and severity of that harm in order to develop appropriate responses for control and prevention of harm. Thus, even though the substantive definition of each and every crime may vary, there can be great similarity in the modalities developed to control them. However, one should not be misled by the similarity in modalities for controlling "organized crime" and "terrorism" to mistakenly

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[3] *See* Bassiouni, *Terrorism: Law Enforcement and the Mass Media: Perspectives, Problems, Prospects*, 72 J. Crim. L. & Criminology 1 (1981); *see also* A. Schmid and J. de Graaf, Violence as Communication: Insurgent Terrorism and the Western Media (1982).

[4] For a philosophical and political perspective, see Franck and Senecal, *Porfiry's Proposition: Legitimacy and Terrorism*, 20 Vand. J. Transnat'l. L 195 (1987). For a philosophical, legal policy and criminal justice perspective, see M.C. Bassiouni, The Law Of Dissent and Riots (1973); M.C. Bassiouni, International Terrorism and Political Crimes (1971).

assume that these diverse categories of socially harmful conduct have common characteristics with respect to their potential definition under substantive criminal law.

There can, of course, be a practical nexus between some of the manifestations of these two types of conduct. Some of these similarities are accidents of time and place, such as revolutionary movements providing violent services to organized criminality. For example, drug traffickers may frequently form associations with terrorists when mutual opposition to the established regime leads to a temporary joining of forces. Other similarities between "organized crime" and "terrorism" occur whenever the perpetrators of a crime fit either a popular or even substantive definition of one category, e.g., "organized crime," but use a tactic or commit an offense normally associated with the other category, i.e., "terrorism." For example, an "organized crime" group can place explosives or kidnap persons in order to commit extortion by instilling terror, which is usually a "terrorism" tactic. Similarly, a "terrorism" group can traffic in drugs, engage in kidnapping, or commit a common crime usually representative of "organized crime" in order to finance its activities.[5]

Therefore, no generally useful substantive norm can be developed to distinguish "organized crime" and "terrorism" based upon the tactical means employed (the offense) because almost all common crimes can be performed in a way that could place them either in the category of "organized crime" or "terrorism." Notwithstanding these occasional similarities, the typology and etiology of the two categories of conduct are essentially unrelated. Nevertheless, practical and policy considerations may dictate that similar modalities be used to prevent, control, and suppress activities falling within the meaning of these two categories, irrespective of either the diversity of actual crimes committed, the motivation of the actor, or the goal of the conduct and means employed in its

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[5] United States v. Bagaric, 706 F.2d 42 (C.A.N.Y. 1983), *cert. denied*, 464 U.S. 840 (1983). In *Bagaric*, a Croatian terrorist group was convicted under the Racketeer Influenced and Corrupt Organizations Statute, 18 U.S.C. § 1961 *et seq.*, [hereinafter RICO] for an international scheme and pattern of extortions and accompanying violence committed to finance its political agenda.

commission. The three common denominators of these two categories are: (i) the vulnerability of national and international society to these types of criminal activities; (ii) the limited ability of national and international society to prevent, control and suppress these types of activities; and, (iii) the scope and magnitude of the social and human harm they inflict.

Because the problems of "organized crime" and "terrorism" are essentially problems of social vulnerability, they both require the development of more effective means by which the national and international legal systems can cope with them.

III. The Particularities of Organized Crime and Terrorism

A. *Terrorism*[6]

It is important to distinguish between three concepts which are frequently used imprecisely: terror, terrorism and the terrorist. The first is a general concept of emotionally enhanced fear; the second is descriptive of the processes of terror-violence; and, the third is a label popularly attributed to the perpetrator of a terror-inspiring act of violence.

At the national level, acts deemed "terrorism" are essentially common crimes committed in a particularly spectacular manner or with particularly significant social and political results. They are committed by ideologically motivated persons in order to achieve an economic, social or political outcome within a given society. It is therefore a strategy of terror-inspiring means designed to achieve a power outcome. Experience indicates that this type of strategy at the national level is employed in three contexts: to achieve a social, economic or political transformation within that society; to publicize individual or collective grievances; and, as a means for social, ethnic, religious or linguistic groups to either attain power or to secede from a state structure in order to establish its own state.

In the first two contexts, the power-outcome of terror-violence is intended to remain purely internal. In the third context, however,

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[6] For a discussion of this topic generally, see R. Friedlander, Terrorism: Documents of International and Local Control (Vols. 1 & 2, 1979; Vol. 3, 1981).

the power-oriented goal is the creation of a new state, which obviously has international consequences.

Even in the first two contexts, there may be international ramifications. For instance, when perpetrators commit acts of terror-violence on citizens of another state, attack internationally protected targets, commit acts using the territory of more than one state, or have accomplices in more than one state, there are international consequences.

Even though the third context could call into question the applicability of international principles concerning the regulation of armed conflicts with respect to "conflicts of a non-international character,"[7] the first two would not. However, all three contexts call for the application of international criminal law when their manifestations constitute a specific violation of substantive international criminal law.

These three contexts have in common acts of violence which constitute violations of national criminal laws. Thus, when such acts are committed exclusively within national boundaries, they involve national criminal law; when the conduct has transnational or international dimensions, such conduct involves international criminal law.[8]

As stated above, all of the crimes which fall under the category of "terrorism" are common crimes within the national legislation of almost all national legal systems. At the international level, most of the conduct deemed "terrorism" is covered by a variety of substantive international criminal law norms which proscribe the

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[7] For an expansive discussion of this term, see M. VEUTHEY, GUERILLA ET DROIT HUMANITAIRE (1983).

[8] *See generally*, M.C. BASSIOUNI, A DRAFT INTERNATIONAL CRIMINAL CODE AND A DRAFT STATUTE FOR AN INTERNATIONAL CRIMINAL TRIBUNAL (1987). For a recent report distinguishing between "national" and "international" terrorism, while linking certain forms of these activities, see A. BERIA DI ARGENTINE, RELAZIONE DEL PROCURATORE GENERALE PER L'INAUGURAZIONE DELL'ANNO GIUDIZIARIO 66-79 (Corte d' Appello di Milano, 14 Gennaio 1989). A similar position is taken by Wardlow, *Linkages Between the Illegal Drugs Traffic and Terrorism*, 8 CONFLICT Q. 5 (1988); *see also Drugs, Law Enforcement and Foreign Policy: Panama: Hearings Before the Subcommittee on Terrorism, Narcotics and International Communications and International Economic Policy of the Senate Committee on Foreign Relations*, 100th Cong., 2d Sess., 100-773/pt. 2 (Feb. 8-11, 1988).

activities with varying degrees of specificity.

Internationally proscribed conduct applicable to "terrorism" is covered by a number of international conventions requiring states to criminalize, prosecute, punish, extradite and judicially cooperate with other states. These conventions cover the following specific crimes: aggression; war crimes; crimes against humanity; genocide; apartheid; unlawful human experimentation; torture; slavery and slave-related practice; piracy and unlawful acts against the safety of commercial maritime navigation; hijacking and sabotage of aircrafts and acts of violence at airports; kidnapping of diplomats and other internationally protected persons; international taking of civilian hostages; serious environmental damage; destruction of submarine cables; theft of nuclear materials; destruction and/or theft of archeologic treasures; and lastly, though not part of international criminal law, serious violations of fundamental human rights.[9] These crimes apply to virtually all forms and manifestations of "terrorism," depending upon the understanding of the scope and meaning of "terrorism," and the specific conduct of the perpetrator of certain acts of terror-violence.

The present status of substantive international criminal law regarding what is considered "terrorism" largely ignores or at least avoids focusing on state conducted or state-sponsored terror-violence which may occur in a variety of internal and international contexts. Nevertheless, even though that aspect of "terrorism" is treated with some neglect by the international community, it is nonetheless covered by the substantive international criminal law proscriptions identified above.

The question remains, however, with a number of scholars and government experts, as to whether "terrorism" can be defined consistently with the "principle of legality"[10] or whether it is better to

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[9] For a more complete listing of international crimes, see M.C. BASSIOUNI, INTERNATIONAL CRIMES: DIGEST/INDEX OF INTERNATIONAL INSTRUMENTS 1815-1985 (Vols. 1 & 2 1986).

[10] For the Federal Republic of Germany, see JESCHECK, STRAFRECHT: ALLEGEMEINE TEIL (4th ed. 1988). For France, see R. MERLE AND A. VITU, TRAITE DE DROIT CRIMINEL (6th ed. 1979). For Italy, see F. MANTOVANI, DIRITTO PENALE (Parte Generale; 2nd ed. 1988). For Egypt, see A.F. SOUROUR, AL-WASSIT FI QANOUN AL-OUKOUBAT (*"Manual of Criminal Law"*) (1988). For the Islamic legal system, see M.C. BASSIOUNI, THE ISLAMIC CRIMINAL JUSTICE SYS-

continue to substantively identify specific violations and to proscribe them under specific international criminal law norms. Empirically, it seems clear that manifestations of acts deemed "terrorism" are rarely outside the purview of existing substantive international criminal norms.

At the national level, it also seems clear that substantive criminal laws provide norms with which to control and punish those who engage in the criminal acts deemed to be "terrorism." As a consequence, the contemporary legislation of most countries has focused on jurisdiction, such as an extension of the passive personality basis of jurisdiction,[11] and on procedural and administrative means to control this type of behavior.[12] Nevertheless, political ex-

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TEM (1982). For the U.S.S.R., see M.C. BASSIOUNI & V. SAVITSKI, THE CRIMINAL JUSTICE SYSTEM OF THE U.S.S.R. (1979). For the United States, see M.C. BASSIOUNI, SUBSTANTIVE CRIMINAL LAW (1978). The "Principles of Legality" are designed to avoid the application of criminal law by analogy, as exemplified in the nationalist socialist law of Germany, passed on June 28, 1935, which stated:

> whoever commits an action which the law declares to be punishable or which is deserving of punishment according to the fundamental idea of a penal law and the sound perception of the people, shall be punished. If no determinate penal law is directly applicable to the crime, it shall be punished according to the law, the basic idea of which fits it best.

Text of law *reprinted in* Preuss, *Punishment by Analogy in National Socialist Penal Law States*, 26 J. CRIM. L. & CRIMINOLOGY 847 (1946).

[11] In recent decades, international events have provoked the following legislation in the United States: Act for the Prevention and Punishment of Crimes Against Internationally Protected Persons, Pub. L. No. 94-467, 90 Stat. 2186 (1976); Anti-hijacking Act of 1974, Pub. L. No. 93-366, 88 Stat. 409 (1974); 1984 Act to Combat International Terrorism, Pub. L. No. 98-553, 98 Stat. 2706 (1984) (providing rewards and witness protection); Omnibus Diplomatic Security and Antiterrorism Act of 1986, Pub. L. No. 99-399, 100 Stat. 853 (1986) (providing for passive personality jurisdiction); Victims of Terrorism Compensation Act, Pub. L. No. 99-399, 100 Stat. 879 (1986). These recent legislative acts recognize the passive personality principles of jurisdiction.

In 1988, the International Maritime Organization adopted the Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation, Rome, March 10, 1988, which contains a provision on passive personality. For a reprint of the text of the Convention, see 27 I.L.M. 672-84 (1988). For a commentary on the Convention, see Halberstam, *Terrorism on the High Seas: The Achille Lauro, Piracy and the I.M.O. Convention on Maritime Safety*, 82 AM. J. INT'L L. 269 (1988).

[12] *See* Grotenroth, *Interpol's Role in International Law Enforcement*, in LEGAL RESPONSES TO INTERNATIONAL TERRORISM, *supra* note 1, at 375-84, and *Interpol's Guide for Combatting International Terrorism* (n.d.). *See also* Müller-Rappard, *The European Response to International Terrorism*, in LEGAL RESPONSES TO INTERNATIONAL TERRORISM, *supra* note 1, at 385; Mock, *The INS Response to Terrorist Threats*, in LEGAL RESPONSES

pediency and the pressure of public opinion magnify concerns by the forces of order, and can tempt legislative bodies to attempt to fend off the spectre of "terrorism" by the creation of new substantive norms against "terrorism." The new substantive norms are often simply variations on the theme of existing legislation.[13] A greater problem than the absence of norms may well be the deficiencies in the international system of cooperation and the weaknesses in national systems. This problem is discussed below.

B. *"Organized Crime"*

"Organized crime" is modern urban civilization's counterpart to the ancient crime of banditry, with the additional elements of Mafia-like extortion, corruption and control of enterprises satisfying public demand for certain consensual forms of criminality, e.g., drugs and illegal gambling. Within particular societies there may be disagreement, both official and scholarly about which groups constitute "organized crime." This essentially popular, non-juridical term can be so all-encompassing as to be juridically useless. Literally, the term includes any non-spontaneous crime committed by more than one person. However, this literal definition is not commonly understood in the popular perception of organized crime, and is certainly not a concept which assists in identifying what criminal law improvements are necessary to control the problem of organized criminality. Some other test is necessary to distinguish the difference in nature and effect represented by street gangs and burglary rings on the one hand, and an institutional criminal enterprise, such as a Mafia band, on the other. An increasingly recognized criterion is whether the group organized for criminal profit can be defeated by the existing forces of order, or whether such group has become so large, violent, well equipped and so manipulative of the levers of power that it can significantly compete with legitimate authority in a significant way.

In the past, organized criminality was rarely considered a problem outside the society in which it was rooted. In the last few de-

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TO INTERNATIONAL TERRORISM, *supra* note 1, at 231.

[13] *See generally supra* note 1.

cades, however, organized crime has come to the forefront of the attention of the world community because of the transnational ramifications of drug trafficking. Domestic criminal organizations have projected their ability to inflict social damage by exploiting the alarming increase in drug consumption. These organizations have also become international enterprises by virtue of their transnational dealings, alliances, and the assets and influence derived from the unprecedented profits of drug trafficking.

Although international efforts to combat organized criminality are still in a nascent stage,[14] at the national level most of the conduct engaged in by "organized crime" is subject to existing substantive criminal norms. Yet, on an international scale most of the antisocial conduct attributable to "organized crime" has yet to be defined as an international offense.[15]

Despite the existing criminalization of its activities, the pervasive nature of "organized crime" and its corrupting influence throughout the social, political and economic fabric of society is such that the traditional substantive criminal norms must be implemented more effectively to combat it.

Indeed, experience and observation reveal that "organized crime" is not so much a problem caused by the absence of substantive and procedural criminal laws as it is due to two factors: (i) public apathy, acquiescence in, and connivance with the criminal activities or corrupting influence of groups engaged in organized crime; (ii) the endemic problem within the criminal justice system of individual countries with respect to bureaucratic divisions of the various criminal justice system agencies, including the gaps between the components of the system, and their general inefficiency

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[14] *See generally, Reports of the Council of Europe Committee on Crime Problems, Select Committee of Experts on International Cooperation as Regards Search, Seizure and Confiscation of the Proceeds from Crime*, (1987-1989); *New Dimensions of Criminality and Crime Prevention in the Context of Development: Challenges for the Future*, Reports of the International Association of Penal Law, International Society for Criminology, International Society of Social Defense, International Penal and Penitentiary Foundation, presented to the Seventh U.N. Congress on the Prevention of Crime and the Treatment of Offenders, (Milan, Aug. 26- Sept. 6, 1985) (A/Conf. 121/NGO3).

[15] *See* M.C. BASSIOUNI, *supra* note 9.

and ineffectiveness.[16]

The same is equally true of international cooperation in the prevention, control and suppression of organized crime. The overriding problem is not the absence of substantive or procedural international criminal law, although improvements are always needed, but rather a need for improved organization and administration of criminal justice within the national system, as well as enhanced cooperation in the international system.[17] (This observation also applies to the prevention, control and suppression of "terrorism.")

Indeed, the problems of "organized crime" transcend questions of substantive and procedural criminal law at the national and international levels. Organized crime is essentially a socio-economic phenomenon that has more to do with society's view of certain types of "organized crime" activity, e.g., as a provider of employment, a boon to the economy, an earner of foreign exchange, a counterweight to the established power structure, a provider of desired goods and services and a source of wealth shared through corruption. These are basic attitudes and value judgments, founded upon harsh economic, political and sociological realities, which are beyond the power of the criminal law to fundamentally change. Obviously, other instruments of social policy must be enlisted in efforts to re-orient a society's value system. The inability of law enforcement measures to reduce drug demand is an example of the need for other policy instruments such as education and the redis-

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[16] *See Processus et Perspectives de la Justice Pénale dans un Monde en Evolution*, Reports presented to the Seventh U.N. Congress on the Prevention of Crime and Treatment of Offenders (Milan, Aug. 26 - Sept. 6, 1985) (A/CONF. 121/NGO 1).

[17] *See Report of the International Committee on Legal Problems of Extradition in Relation to Terrorist Offenses*, Warsaw Conference of the International Law Association (1988); *Report of the Ad Hoc Multi-Disciplinary Working Party of Senior Officials Responsible for Questions Relating to the Combat of Terrorism*, Report to Committee of Ministers, (Strasbourg, June 30 - July 1, 1986); Council of Europe, *Letters Rogatory for the Interception of Telecommunication; Recommendation No. R (85) 10, adopted by* the Committee of Ministers of the Council of Europe (June 28, 1985, with Explanatory Memorandum, Strasbourg, 1986); Council of Europe, *Cooperation Internationale en Matierè de Poursuite et de Repression des Actes de Terrorisme: Recommendation No. R (82) 1, adoptée par* le Comité des Ministres du Conseil de l'Europe le 15 Janvier 1982 et Exposé des motifs, (Strasbourg 1983); Council of Europe, *Measures to be Taken in Cases of Kidnapping Followed by a Ransom Demand: Recommendation No. R (82) 14, adopted by* the Committee of Ministers of the Council of Europe (Sept. 24, 1982, with Explanatory Memorandum, Strasbourg 1983).

tribution of social opportunities.

Just as punishment through the criminal justice system for heroin possession only addresses drug demand symptomatically, and not at all effectively as shown by recent experience, so the reactive prosecution of ordinary offenses committed by organized criminality addresses only the symptoms of that phenomenon and not its causes. Because financial profit is the essential motivation of "organized crime," one more effective and systemic counter-measure would seem to be the development of mechanisms to identify and interdict the utilization of illegally obtained profits and the recycling of the proceeds of illegal activity.[18] It is ultimately through the control of financial and commercial activity that truly large scale organized criminality can best be controlled and its influence on society reduced.[19] The question thus arises as to whether the

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[18] For Italy's anti-Mafia and organized crime confiscation laws, see Italian Pen. Code, article 240, which provides for confiscation of proceeds of crime by judgment of a criminal court after conviction. The "Anti-Mafia" Law No. 646 of Sept. 13, 1982 provides for "Anti-Mafia" confiscation for persons suspected of being part of a "Mafia-like" criminal organization, which includes persons who are part of a group living off criminal proceeds such as kidnapping. Other confiscations following convictions under Law No. 646 are in the nature of those provided for by article 240 of the Italian Pen. Code. Article 648 *bis* of the Italian Pen. Code, in connection with article 240, also applies to money laundering and permits its confiscation.

In 1987, the Swiss Bankers Association and its member banks developed new rules and practices on limiting bank secrecy. This Agreement takes into account article 52, § 3 of the Swiss Civil Code which pertains to companies or legal entities having an unlawful, illicit or immoral scope. For a study on Swiss banking violations, see Bernasconi, *Banques et Delinquence Economique: 50 Jugements*, in REVISION BANCAIRE (2nd rev. ed. 1988); Bernasconi, *Le Recyclage de L'Argent D'Origine Criminelle*, 4 REVUE INTERNATIONALE DE CRIMINOLOGIE ET DE POLICE TECHNIQUE 403 (1981); H. SCHULTZ, LE SECRET BANCAIRE ET LE TRAITÉ D'ENTRAIDE JUDICAIRE EN MATIERÈ PÉNALE CONCLU ENTRE LA SUISSE ET LES ETATS-UNIS D'AMERIQUE (1976). For a Council of Europe study, see *Secrecy and Openness: Individuals, Enterprises and Public Administrators*, Proceedings of the Seventeenth European Colloquium (Zaragoza, Spain, October 21-23, 1987); *see also*, *The Cash Connection: Organized Crime, Financial Institutions, and Money Laundering*, President's Commission on Organized Crime (1984).

[19] *Id.* For a discussion of the role of international organizations in the enforcement of international money laundering, see Zagaris, *Dollar Diplomacy International Enforcement of Money Movement and Related Matters - A United States Perspective*, 22 GEO. WASH. J. INT'L L. & ECON. (*in print*, 1989); Zagaris and Papavizas, *Using the Organization of American States to Control International Narcotics Trafficking and Money Laundering*, 57 REV. INT'L DE DROIT PENAL 119 (1986). For a discussion of the role of regional organizations, see Zagaris, *Inter-American Drug Abuse Commission Progresses on Legal Development Pro-*

substantive criminal law is the most effective primary means to accomplish that result, or whether administrative and regulatory means (designed to detect illegal proceeds, their recycling and their utilization for further acquisition of wealth) are the more appropriate primary legal measures.[20]

An important factor to be considered in selecting among criminal and administrative measures is the degree of actual or potential participation, connivance or acquiescence of public officials and private persons from various sectors of society with respect to the acquisition of the illegal proceeds of organized criminality and its recycling and re-use. Certain financial, business and professional sectors of society, such as bankers, accountants and attorneys, may have a vested interest in preserving secrecy and a free market for illegal proceeds.[21] Similarly, public officials may be profiting from their passive tolerance of, or active participation in, the accumulation and recycling of illegal proceeds. Mere criminalization of such connivance is unlikely to eradicate it, as the conduct is passive or at least covert and difficult to detect, and the whole purpose of corrupting public officials is to ensure the non-enforcement of applicable laws. Consequently, new methods of administrative controls and verification must be developed, and an integrity element must be built into the system of social control, whether criminal or administrative. In short, the development of systems to watch the watchmen, to control the controllers, is essential, whether such systems are penal or administrative.

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ject, 4 INT'L ENFORCEMENT L. REP. 186 (June 1988); Zagaris, *Inter-American Drug Abuse Control Commission Holds 3rd Session*, 4 INT'L ENFORCEMENT L. REP. 114 (April 1988).

[20] The Fourteenth International Penal Law Congress of the International Association of Penal Law considered the important topic of "The Legal and Practical Problems Posed by the Difference between Criminal Law and Administrative Penal Law" at the Vienna Congress on October 1 - 7, 1989. The national reports and the general reports discussed at the Preparatory Colloquium held in Sweden in 1988 served as the basis for the presentation of the subject. *See also* 59 REVUE INTERNATIONALE DE DROIT PENAL (Vols. 1-2 1988).

[21] *Id.* For problems of tax evasion and international enforcement, see Pansius, *Tax Crimes and Extraterritorial Discovery*, in INTERNATIONAL CRIMINAL LAW: A GUIDE TO U.S. PRACTICE AND PROCEDURE 105, 135 (Nanda and Bassiouni eds. 1987); Wassenaar, *Current Enforcement Priorities of the Internal Revenue Service*, CRIMINAL TAX FRAUD 9-12 (BNA 1986 Course handbook); *see also* Bernasconi, *supra* note 18 (articles on the interests of financial institutions in secrecy laws); Pisani, *I Reati Fiscali Nella Prospettiva Internazionale*, 26 RIVISTA ITALIANA DI DIRITTO E PROCEDURA PENALE 37 (1983).

IV. The Legal Characterization of "Terrorism" and "Organized Crime" as Distinct Offenses in National Legal Systems

Violations deemed to fall within the categories of "organized crime" and "terrorism" are already common crimes which are punishable to some extent under the laws of almost every legal system of the world. Empirical observation reveals that such violations are almost always among the common crimes of arson, assault, battery, bribery, counterfeiting, customs, currency and revenue offenses, drug violations, extortion, explosives and weapons crimes, hijacking, hostage taking, kidnapping, murder, perjury, piracy and other crimes on vessels, and property offenses, e.g., burglary, fraud, robbery, and theft. In addition, there are also a host of criminal law provisions in the areas of commercial and administrative law which also apply to these forms of criminal behavior, e.g., antitrust, securities regulations, concealment, misrepresentation and non-disclosures, prohibited trade practices, price fixing, etc. Thus, in considering the possibility of defining the categories of conduct which comprise "organized crime" and "terrorism" activity, one must consider: (a) whether a need exists within a particular legal system to define such activity as a substantive crime; (b) the cumulative effect of adding an additional element peculiar to each act of "organized crime" and "terrorism" as an aggravating factor for punishment to existing offenses; (c) what procedural consequences should be attached to the investigation, prosecution and adjudication of charges in these two categories of conduct; (d) what penal, correctional and rehabilitative measures are appropriate for persons convicted of each type of conduct; and, (e) what administrative and regulatory mechanisms of control can be applied to prevent or control "organized crime" or "terrorist" activity, which obviously implicates areas of the law other than substantive criminal norms.

Another issue in considering the problems of "organized crime," and particularly "terrorism," is whether the motivation, impact or goal of a particular crime changes the nature of the offense. For example, does or should the kidnapping of a head of state constitute a different crime than the kidnapping of a child? Does a bank

robbery committed to finance a revolutionary movement constitute a different offense from one committed by professional criminals motivated simply by greed? In short, do the phenomena of "organized crime" and "terrorism" require the substantive criminal law to recognize new offense elements relating to motivation of the actor or impact of the crime, not solely as legislative policy considerations, as has traditionally been the case, but as express offense elements introduced as a means of defining and punishing these two categories of conduct? This possible innovation is but one alternative, and others must be considered.[22] If the purpose of the inquiry is essentially to increase penalties, then these characteristics can easily be considered as aggravating factors. If the purpose is to develop more effective means of procedural and administrative control, then existing measures may need to be supplemented by new and imaginative methods of supervising individual and social activity, e.g., restraints on travel, and public contracting procedures.

V. Characteristics of Contemporary Special Legislation on "Organized Crime" and "Terrorism"

There are few offenses which are categorized criminal activity *per se*, probably because the conduct is largely undefinable within the framework of traditional criminal law and the requirements of the "principles of legality."[23] For similar reasons there are also very few national laws which specifically criminalize actual participation in an "organized crime" or "terrorist" group. Among those nations with existing laws which apply to participation in "organized crime" are Italy, with the crimes of "associazione per delin-

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[22] This includes: increased international cooperation; improvement in national criminal justice systems; cooperation between different organizations; enhanced tracing and verification of origins of funds; international cooperation in tracing illegally obtained funds; and enhanced cooperation of international law enforcement. Additionally, considerations of economic development and social policy planning must be taken into account, as enunciated in the United Nations report entitled *Guiding Principles for Crime Prevention and Criminal Justice in the Context of Development and the New International Economic Order* (United Nations Publications). For a commentary of this report, see Bassiouni, 6 Nouvelles Etudes Penales 121 (1987).

[23] *See generally supra*, note 10.

quere" and "associazione di tipo mafioso,"[24] and the United States of America, with the Racketeer Influenced and Corrupt Organizations Act [RICO].[25] Such examples are rare among the world's legislative initiatives.

More commonly, national legislation is denominated with general titles referring to one of these categories of conduct, e.g., the "Organized Crime Control Act" in the United States of America.[26] An anti-terrorism act also exists in the United States of America,[27] as well as in the United Kingdom,[28] the Federal Republic of Germany,[29] and Italy.[30] But even so, such laws rarely criminalize con-

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[24] *See* arts. 416, 416 *bis* and 414 (*istigazione a delinquere*) of the Italian Pen. Code. Italian laws against "organized crime" and "terrorism" include: Law No. 1423, Dec. 27, 1956, (prevention measures against dangerous persons); Law No. 575, May 31, 1965, (special measures against the "Mafia"); Law No. 497, Oct. 14, 1974; Law No. 110, April 18, 1975 (covering the control of arms, munitions and explosives); Law No. 533, Aug. 8, 1977 (concerning general dispositions on public order); Decree Law No. 59, March 21, 1978, transformed into Law No. 191, May 18, 1978, (penal norms for the prevention and repression of "grave offenses"); Decree Law No. 625, Dec. 15, 1979, transformed into Law No. 15, Feb. 6, 1980, (concerning "urgent measures" for the protection of democratic order and public security); Law No. 304, May 29, 1982, (concerning "urgent measures" for the defense of the constitutional order); Decree Law No. 629, Sept. 6, 1982, transformed into Law No. 726, Oct. 12, 1982,("urgent measures" for the coordination of the fight against "Mafia" delinquency); Law No. 646, Sept. 13, 1982,(preventive measures concerning assets deriving from criminal activities, complementing several laws previously passed: Law No. 1423, Dec. 27, 1956, Law No. 57, Feb. 10, 1962; Law No. 575, May 31, 1965); and, Law No. 34, Feb. 18, 1987, (measures concerning those who disassociate themselves from terrorism - the so-called *Pentiti* law). On crimes of association (*"reati di associazione"*) in Italy, see DeFrancesco, *Associazione Per Delinquere e Associazione di Tipo Mafioso*, in 1 DIGESTO IT. (4th ed. 1987); G. FIANDACA and E. MUSCO, DIRITTO PENALE, PARTE SPECIALE (1988); G. INSOLERA, L'ASSOCIAZIONE PER DELINQUERE (1983); F. PALAZZO, LA RECENTE LEGISLAZIONE PENALE (3rd ed. 1985); V. PATALANO, L'ASSOCIAZIONE PER DELINQUERE (1971). For a comparative analysis about crimes of association in Italy and the law of criminal conspiracy in the United States, see M. PAPA, LA "CONSPIRACY" DEL DIRITTO PENALE STATUNITENSE (1989).

[25] *See* 18 U.S.C. §§ 1961-68 (1970).

[26] *See* Organized Crime Control Act, Pub. L. No. 91-452, § 84 Stat. 922 (1970).

[27] *See* Anti-Terrorism Act, Pub. L. No. 100-204, § 101 Stat. 1406 (1987). *See also*, Act to Combat International Terrorism, 18 U.S.C. § 3077 (i) (Supp. 1988); Terrorist Prosecution Act, 18 U.S.C. § 2321 (c)(1985), *discussed in* George, *Federal Anti-Terrorist Legislation*, in LEGAL RESPONSES TO INTERNATIONAL TERRORISM, *supra* note 1, at 25; Fricdlander, *The U.S. Legislative Approach*, in LEGAL RESPONSES TO INTERNATIONAL TERRORISM, *supra* note 1, at 3.

[28] *See* Prevention of Terrorism Act of 1984, *reprinted in* Y. ALEXANDER, LEGISLATIVE RESPONSES TO INTERNATIONAL TERRORISM 261-301 (1988).

[29] *See* the Federal Republic of Germany Law on Terrorism, in ALEXANDER, *supra* note 28, at 259. *See also* for France, Loi No. 86-1020 Relative to Combatting Terrorism, arts. 44, 257-3, 462, 463-1 and 463-2 of the French Penal Code; *see also* Ottenhof, *Le Droit Pénal*

duct which was previously legal. This type of legislation typically provides for special means and methods of investigations, different standards of proof, and increased penalties. Typical "organized crime" and "terrorism" laws use these categories or labels as a basis for the application of a number of measures, mostly procedural, concerning forfeiture of property and funds, seizure of assets,[31] supervision of personal movement and other measures of personal control,[32] evidentiary rules[33] and investigative and prosecutorial technique.[34] In addition, there are provisions in criminal procedure laws specifically applicable to "organized crime" or "terrorism," but which do not substantively define the conduct as constituting new offenses.[35] Lastly, a number of countries, such as Chile, Israel,

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François à l'Epreuve du Terrorism, 1987 REVUE DE SCIENCE CRIMINELLE 607; MERLE AND VITU, TRAITÉ DE DROIT CRIMINAL 273 *et seq.* (6th. ed. 1979). For Spain, see Law 1988-3 of Dec. 26, 1984 and 1988-4 of May 25, 1988; *see also* De la Cuesta, *Traitement Juridique du Terrorism en Espagne*, REVUE DE SCIENCE CRIMINELLE 589.

[30] *See supra* note 10.

[31] The RICO Act allows for twenty-year prison sentences, forfeiture of criminal proceeds, interests, licenses and contracts, along with civil remedies for numerous crimes normally subject to lesser penalties when committed as part of a pattern of criminal activity. 18 U.S.C. § 1961-68 (1970). Various crimes have been added to the enumerated list since the statute was enacted in 1970. Offenses falling within the purview of the statute include: murder; kidnapping; gambling; arson; robbery; bribery; extortion; drug trafficking; counterfeiting; theft from interstate commerce; embezzlement from unions or from employee pension or welfare funds; extortion of loans and collections; fraud by mail or other interstate means; obstruction of investigations or court proceedings; public corruption; witness intimidation or retaliation; prohibited payments to influence union officials; laundering of money and illegal property; trafficking in contraband cigarettes; and interstate prostitution and pornography offenses. *Id.* It should be noted that this rather specific enumeration of offenses is due in part to the peculiar federal structure of United States law, which delegates criminal law to be within the jurisdiction of the individual states. The federal government has jurisdiction over criminal matters only when federal statutes, designed for protection of national and interstate interests, are implicated. The United Kingdom Drug Trafficking Offenses Act of 1986, is the British version of such legislation. The Act deals essentially with confiscation of proceeds (§ 1) and investigation of drug trafficking activities (§§ 27-33).

[32] *See* Italian, Law No. 1423, Dec. 27, 1956, as modified by Law No. 646, Sept. 13, 1982 (authorization for enforced residence in a specifically determined locality). *See also* Yearwood, *Data Bank Control*, in LEGAL RESPONSES TO INTERNATIONAL TERRORISM, *supra* note 1, 249; Mock, *The INS Response to Terrorist Threats*, in LEGAL RESPONSES TO INTERNATIONAL TERRORISM, *supra* note 1, 231.

[33] *See* 18 U.S.C. § 1968 (1970).

[34] *See* Italian Law No. 646, Sept. 13, 1982, at art. 16 (granting magistrates the power to authorize telephone surveillance for investigative purposes, but precluding its use as evidence in court).

[35] *See* Northern Ireland Emergency Provisions Act of 1978; Special Powers Act of 1922,

Egypt, India, Pakistan and Sri Lanka refer to "terrorism" as a basis for the application of emergency laws which derogate from or suspend the application of certain basic procedural rights, whether such rights arise under international human rights norms, national constitutional law or criminal procedure laws.[36]

The conclusion is that the terms "organized crime" and "terrorism" under both the criminal laws of most countries and under international criminal law are not used primarily for the purpose of criminalizing specific conduct as new substantive crimes. Legal provisions which refer to these two categories are largely of a procedural nature.

VI. Substantive Criminal Law and Problems With the "Principles of Legality"

The legislative function is to identify and appraise conduct harmful to society, establish means by which to prevent such conduct, and punish its perpetrators. The function of the criminal law

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applicable to Ireland. The United Kingdom imposes limitations on trial by jury in Northern Ireland for persons accused of "terrorism." For the United Kingdom, see Suppression of Terrorism Act 1979, Current Law Statutes, 1978, c.26 and Criminal Justice Act 1988, (part I), Current Law Statutes, 1988, c.33. *See also, infra* note 53.

[36] For the states which have emergency laws suspending some or all of the internationally protected human rights in criminal proceedings, and particularly suspend the applicability of all or part of the International Covenant on Civil and Political Rights, see *Report on the Administration of Justice and the Human Rights of Detainees and States of Emergency, Sub-Commission on the Prevention of Discrimination and Protection of Minorities* (E/CN.4/Sub. 2/1988/18/Rev. 1, Dec. 6, 1988). The report lists the countries which have notified the United Nations, the Council of Europe and the Organization of American States of derogations taken with regard to the Covenant. The Inter-American Court of Human Rights, in its Advisory Opinion Relative to Judicial Guarantees During States of Emergency, held that certain principles of the Inter-American Convention, specifically articles 8, 25, and 27, para. 2, could not be suspended or derogated from even during declared states of emergency. (Advisory Opinion OC-9/87 of Oct. 6, 1987). A Committee of Experts meeting at the Siracusa Institute drafted guidelines on the limitations of states in derogating from provisions of the Covenant. These guidelines were formally submitted by the Netherlands to the U.N. as the Siracusa Principles on the Limitations and Derogations Provisions in the International Covenant on Civil and Political Rights. For discussion of the validity of such derogations, see 7 Hum. Rts. Q. 3 (1988); *see also,* N.S. Rodley, The Treatment of Prisoners Under International Law 270-276 (1987). For a discussion of article 15 of the European Convention on Human Rights and Fundamental Freedoms, see R. Ergec, Les Droits de l'Homme a l'Epreuve des Circonstances Exceptionnelles (1987).

qua is normative in defining the violation, establishing its elements, and expressing the penalties applicable to the transgression.[37]

The traditionally clear boundary between legislative policy and its practical embodiment in the mechanics of criminal law norms and procedures has eroded somewhat in recent years. Criminal law is no longer seen as a mere technical instrument of legislative policy, but as an integral part of criminal justice policy which is expressed not only in legislative norms, but also through procedural and administrative means to achieve the overall intended goal of social control over dangerous behavior.[38]

Nevertheless, the criminal law continues to reflect certain traditional characteristics which can be called the identifying "technique of the criminal law." These characteristics are predicated upon fundamental human and social values. One of the cardinal principles of the "criminal law technique" is expressed in the legal maxim *nulla peona sine lege, nullum crimin sine lege.* This rule reflects the higher value of the "principle of legality" which is the predicate necessary to give legitimacy to criminal norms under enlightened theories of human rights and governmental authority. This "principle of legality" excludes vagueness and ambiguity, requiring that crimes, their elements and their punishments be clearly and publicly defined.

Over the course of years, these doctrinal precepts have been embodied in international human rights instruments, in national constitutions, and in domestic criminal laws. Their theoretical and practical rationale is two-fold. First, clear and unambiguous notice of the prohibited conduct is needed as a just and fair prerequisite for punishment. Secondly, the practical benefit of deterrence is lost

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[37] For a general listing of the work of the major scholars, see *supra* note 10. One of the more dangerous tendencies in contemporary national legislation on the prevention and control of "terrorism" and "organized crime" is to weaken the presumption of innocence and effectively shift the burden of proof from the state to the individual. Such an approach infringes upon basic principles of justice, which, as evidenced by the history of criminal law, have taken centuries to develop and strengthen. *See generally,* A. LAINGUI, HISTOIRE DU DROIT PÉNAL (1980), and L. RADZINOWICZ, A HISTORY OF ENGLISH CRIMINAL LAW AND ITS ADMINISTRATION FROM 1750: THE MOVEMENT FOR REFORM 1750 - 1833 (Vols. 1-5 1948).

[38] *See, e.g.,* CAHIERS DE POLITIQUE CRIMINELLE (*passim* 1978-1987).

without such notice, thereby sacrificing a principal purpose of criminalization.

In addition, history teaches that without these restraints, the criminal law easily becomes an instrument of repression and a tool for tyranny. Thus, the "principle of legality" has become the most important element of the "technique of the criminal law" from which no legal system should derogate.

These considerations are important in international and national efforts to deal with manifestations of "organized criminal" and "terrorism" activity because they compel a precise and scrupulous examination of whether such conduct can be clearly defined in conformity with the principle of legality, and, if so, whether such definitions should focus upon the goal, the motivation, the associational characteristics, the type of violence, or the effect resulting from the harmful conduct.

VII. Criminal Procedural Aspects and the Dangers to Human and Civil Rights

"Terrorism" and "organized crime" are usually, if not always, ongoing activities which are conducted in secrecy by persons who are part of a closely knit group, and who are carefully screened before being admitted into that group. Consequently, the investigation of such groups, whether before or after a given criminal activity has taken place, poses more difficult problems than does the investigation of common crimes committed by individual offenders.

One of the necessary means of investigating such group criminality is by means of: informants or undercover agents who can infiltrate the groups; inducement of a member of the group to provide information or evidence about the group or its members; wiretapping telephone lines; utilization of listening devices; gaining access to bank accounts or corporate records; and exchanging information between cooperating law enforcement and intelligence agencies. In order to allow law enforcement agencies and administrative investigating authorities to use such investigative methods, special legislation is usually required. But such legislation is also likely to infringe upon, or at least limit, the right of privacy and other

procedural rules designed to protect civil and human rights. Such special legislation may also violate international or regional human rights or national constitutional norms. Thus, the dilemma for national legislative policy is to develop the appropriate means necessary to combat these peculiar forms of criminality while simultaneously avoiding the infringement of existing human and civil rights.

As the dangers to a given society increase from the manifestations of these forms of criminality, so do the temptations of such a society to develop special laws and administrative measures which abridge or curtail existing legal rights. Rationalizations based on practical exigencies tend to override the higher principles and values embodied in normative procedural safeguards. In addition, the temptation increases for law enforcement and prosecuting officials to bend the rules, and even to break them when it comes to offenders who are perceived to be highly threatening to society yet highly popular as well. Such official action may include the violation or evasion of procedural rules, fabrication or coloration of inculpatory evidence, concealment of exculpatory evidence, arbitrary arrest and detention, physical and psychological abuse and even torture. However, individual incidents tend to lead to generalized conduct by public officials which ultimately affect the integrity of the legal system and curtail the democratic process.

These dangers exist in the potential abuse of almost every special measure designed to control "terrorism" and "organized crime," such as: violating the right of privacy in tracing assets; unjustified seizure of property; searches and inquisitions based on mere suspicion or insufficient evidence; arrest and detention on mere suspicion or without sufficient evidence; wiretapping and eavesdropping with less than the quantum of evidence otherwise needed in investigating other forms of criminality; unwarranted preventive detention; unjustified prolonged detention; improper limitations on the right to counsel during pre-trial or pre-accusation stages of the proceedings; developing secret dossiers with prejudicial information that cannot be corrected by the person in question; and the dissemination of such information to other public agencies without the knowledge of the person in question and using harassing forms of investigation which affect a person's every-

day life.[39]

At the level of interstate cooperation, the same dangers to the lawfulness of the process exist and are even more widespread because of the inadequacy in procedural safeguards.[40] Modalities of interstate cooperation, discussed above, are derived from international, regional and bilateral treaties which are usually limited in terms of procedural safeguards for the person who is the subject of these proceedings. The public officials who negotiate these treaties represent states and are usually more concerned with furthering state investigative and prosecutorial interests than insuring individual safeguards, which can only impede such state interests. Furthermore, because the practice of international cooperation in penal matters is relatively recent in time and has benefitted only from a few decades of practical experience, procedures are still uncertain and expert personnel are still lacking. The latter shortcoming is a general problem throughout all legal professional levels and law enforcement categories because of the absence of educational courses on international criminal law in almost all law schools of the world, and certainly in all judicial institutes and police academies.

Interstate cooperation in penal matters derives from treaties favorable to the state which are administered by state agencies in a manner neither subject to judicial supervision nor scrutiny, or subject to it only in a limited matter. Thus, extradition may be entirely or partially within the prerogatives of the executive branch of a given state, or subject only to limited review in the administrative courts or to a limited review before the ordinary judiciary.[41]

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[39] *See* Yearwood and Mock, *supra* note 32; *Right of Privacy in Terrorism Control*, 1985 PROC. OF THE AM. SOC. INT'L L. 288 (panel discussions of the proceedings of the seventy-ninth annual meeting of the American Society of International Law).

[40] *See International Procedures for the Apprehension and Rendition of Fugitive Offenders*, 1980 PROC. OF THE AM. SOC. INT'L L. 274 (proceedings of the seventy-fourth annual meeting of the American Society of International Law.)

[41] *See* M.C. BASSIOUNI, INTERNATIONAL EXTRADITION: U.S. LAW AND PRACTICE (Vols. 1 & 2 1987); O. LAGODNY, DIE RECHTSSTELLUNG DES AUSZULIEFERNDEN IN DER BUNDESREPUBLIK DEUTSCHLAND (1987); HAFID ALAOUI BOURKHRISS, LA COOPERATION PENALE INTERNATIONALE PAR VOIE D'EXTRADITION AU MAROC (1986); B.P. BORGOÑÓÑ, ASPECTOS PROCESSALES DE LA EXTRADICIÓN EN DERECHO ESPAÑOL (1984); R. LINKE, GRUNDRISS DES AUSLIEFERUNGRECHTS (1983); V.E. HARTLEY BOOTH, 1 BRITISH EXTRADITION LAW AND PROCEDURE (1980); I.A.

Interstate law enforcement cooperation, however, almost entirely eludes legal controls, as does data-bank information accumulated by law enforcement and intelligence agencies.[42] The seizure and transfer of evidence from one state to another may also elude judicial scrutiny, while such unlawful or questionable legal processes as abduction and use of immigration laws to seize wanted individuals routinely circumvent the letter and surely the spirit of national laws and internationally protected human rights.[43]

Above all other difficulties are those associated with administrative practices, which fall outside the purview of judicial controls and are usually accomplished in secrecy. Such practices tend to lead to abuses of power and to corruption, which constitute both a violation or potential violation of law and detrimentally affect the integrity of the legal system. Throughout this entire area of practice it is the professional competence and personal integrity of government officials which is the basic guarantee for the legality of the process. Yet, experience indicates that even when high levels of competence and integrity are found in such public officials, the pressures of senior level politicians in government may lead to distortions and even outright violations of the law.

A legal system must, in the final analysis, depend more on rules than on the judgment of its operators, especially when it can be manipulated by political interests. The difference between a government of laws and a government of people is what ultimately distinguishes democracies from dictatorships. In this respect, procedural rules embodying fundamental rights of due process of law and specific guarantees enunciated in international and regional human rights instruments are the guarantors of the integrity of the legal process. The erosion of individual basic rights undermines the legal process and the fabric of legality in a society and ultimately

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SHEARER, EXTRADITION IN INTERNATIONAL LAW (1971); T. VOGLER, AUSLIEFERUNGSRECHT UND GRUNDGESETZ (1970); S. BEDI, EXTRADITION IN INTERNATIONAL LAW AND PRACTICE (1966); G. FORREST, EXTRADITION TO AND FROM CANADA (1977); H. SCHULTZ, DAS AUSLIEFERUNGSRECHT (1952).

[42] *See generally,* Yearwood, *supra* note 32.

[43] *See supra* note 40. *See also, Abduction and Unlawful Service as Alternatives to Extradition* in 1 M.C. BASSIOUNI, INTERNATIONAL EXTRADITION: UNITED STATES LAW AND PRACTICE (1987).

leads to totalitarianism. The dangers and threats of "terrorism" and "organized crime" to any society must never be allowed to override the integrity of the legal process.

VIII. International Cooperation in the Prevention, Control and Suppression of "Organized Crime" and "Terrorism"

International modalities of cooperation are essentially the same with respect to "organized crime" and "terrorism."[44] The formal modalities relied upon are: extradition; legal assistance in securing tangible evidence and witnesses; recognition of foreign penal judgments; transfer of proceedings and prisoners; and law enforcement and prosecutorial cooperation under some recent instruments.[45]

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[44] *See* E. Müller-Rappard and M.C. Bassiouni, European Inter-State Cooperation in Criminal Matters ("La Cooperation Inter-Etatique Europeenare en Matieré Penalé") (Vols. 1-3 1987) (hereinafter referred to as European Inter-State Cooperation). For international cooperation in penal matters, see Müller-Rappard, Schutte, Epp, Poncet, Zagaris, *et. al.* in 2 M.C. Bassiouni, International Criminal Law (1986).

The fact that the same modalities of inter-state cooperation in penal matters apply to all forms of criminality, and thus to "terrorism" and "organized crime" does not, however, mean that the same problems exist within these modalities with respect to these two forms of criminality. To that extent it would be misleading to believe that extradition as applied to each of these two forms of criminality faces the same problems. Inter-state cooperation in combatting "terrorism" faces the problems posed by the "political offense exception" to extradition requests. *See*, Van den Wyngaert, *The Political Offense Exception to Extradition: How to Plug the "Terrorist's Hole" Without Departing From Fundamental Human Rights*, 1989 Israel Y.B. Hum. Rts. 297; C. Van den Wyngaert, The Political Offense Exception to Extradition (1980); Blum, *Extradition: Common Approach to the Control of International and Traffic in Narcotic Drugs*, 2 Israel L. Rev. 194 (1978). Interstate efforts against "organized crime" meet with the problem of "double criminality." *See* Herman, S. Bernholz and M. Bernholz, *Double Criminality and Complex Crimes*, International Criminal Law: A Guide to U.S. Practice and Procedure 365 (Bassiouni & Nanda eds. 1987).

[45] *See generally*, Blum, *supra* note 44. *See also* Grutzner, *International Judicial Assistance and Cooperation in Criminal Matters*, A Treatise on International Law 189 (Bassiouni and Nanda eds. 1973). For a survey of recent Mutual Legal Assistance Treaties (MLATs) between the United States and other countries, *see* Nadelman, *Negotiations in Criminal Law Assistance Treaties*, 33 Am. J. Comp. L. 467 (1985); Zagaris and Simonetti, *Judicial Assistance Under U.S. Bilateral Treaties*, in Legal Responses to International Terrorism, *supra* note 1, at 219. For an example of bilateral treaties, see Agreement on Cooperation in Combatting Narcotics Trafficking and Drug Dependency, Feb. 23, 1989, United States of America - United Mexican States; *see also* Mutual Legal Assistance Cooperation Treaty, Feb. 16, 1988, United States - Mexico, U.S.T. 100-13. For a discussion of the proposed United States - Mexico MLAT, see Zagaris, *U.S. and Mexico Sign Mutual Legal Assistance Treaty*, 2 Int'l Enforcement L. Rep. 44 (1989). For a Socialist perspective on

The majority of international criminal law conventions contain provisions on extradition and mutual judicial assistance.[46] Most countries in the world recognize and utilize one or more of the modalities described above. A number of regional and sub-regional arrangements have developed at the multilateral level.[47] These include arrangements between: Latin America and the United States;[48] the Arab states;[49] the Benelux countries;[50] the Scandinavian countries;[51] certain African countries and France;[52] and the Commonwealth countries.[53] However, piecemeal negotiation and complicated historical and political considerations have resulted in a situation wherein none of these multinational and regional or subregional agreements integrate the various modalities into a comprehensive codified form of interstate cooperation in penal

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MLATs, see Krapac, *An Outline of the Recent Development of the Yugoslav Law of International Judicial Assistance and Cooperation in Criminal Matters*, 34 NETHERLANDS INT'L L. REV. 324 (1987); Gardocki, *The Socialist System of Judicial Assistance and Mutual Cooperation in Penal Matters*, in 2 M.C. BASSIOUNI, INTERNATIONAL CRIMINAL LAW 133 (1987); Shupilov, *Legal Assistance in Criminal Cases and Some Important Questions of Extradition*, 15 CASE W. RES. J. OF INT'L L. 127 (1983) (discussion of extradition law in the U.S.S.R.).

[46] *See* M.C. BASSIOUNI, *supra* note 9.

[47] *See* 1 M.C. BASSIOUNI, INTERNATIONAL EXTRADITION IN UNITED STATES LAW AND PRACTICE 25 (1987); I.A. SHEARER, EXTRADITION IN INTERNATIONAL LAW (1971).

[48] *See* OAS Treaty Series No. 36.

[49] *League of Arab States Collection of Treaties and Agreements* 95, *reprinted in* 8 REVUE EGYPTIENNE DE DROIT INTERNATIONALE 328 (1952). *See also*, A.Y. Khadr, *Extradition Law and Practice in Egypt and Other Arab States* (1977) (unpublished doctoral dissertation, available at School of Oriental and African Studies, University of London).

[50] *See Tractanblad* No. 97 (1962). *See also* DeSchutter, *International Criminal Law in Evolution: Mutual Assistance in Criminal Matters between the Benelux Countries*, 14 NETHERLANDS J. INT'L L. 382 (1967).

[51] *See, e.g.*, the Swedish Law of June 5, 1959, No. 254; *see also*, I.A. SHEARER, *supra* note 47, at 332.

[52] The parties are: Cameroon; Central African Republic; Chad; Congo (Brazzaville); Dahomey; Gabon; Ivory Coast; Malagasy Republic; Mauritania; Niger; Senegal and Upper Volta. *See* I. SHEARER, note 47, at 333. Concerning other treaties of these countries, see D.P. O'CONNELL, STATE SUCCESSION IN MUNICIPAL LAW AND INTERNATIONAL LAW 58 (1967).

[53] *See* Extradition Act 1989, CURRENT LAW STATUTES, 1989, c.33, and C. WARBRICK, *The New Law on Extradition*, CRIM. L. REV 4 (1989). For the Republic of Ireland, see Extradition Act of 1987, IRISH CURRENT LAW STATUTES No. 87, 1987; *see also generally*, G. HOGAN AND C. WALKER, POLITICAL VIOLENCE AND THE LAW OF IRELAND (1989). For United Kingdom and Commonwealth extradition law, see 1 V.E. HARTLEY BOOTH, BRITISH EXTRADITION LAW AND PROCEDURE (1980); *see also* Rendition of Fugitive Offenders Within the Commonwealth, 1966, Cmnd. 2008 at 1.

matters.[54] Such an approach would permit better alternative utilization of the most appropriate modalities and reduce the loopholes or gaps left by the accidents of historical development. The desirability of this integrated codification has, conversely, appeared evident to a number of states which have developed such codes in their national legislation, such as Austria,[55] the Federal Republic of Germany,[56] and Switzerland.[57]

At the regional level, the Council of Arab Ministries of Justice developed such a model code in 1988, but it has not yet been ratified. The Council of Europe has been considering such an integrated approach since 1987, on the basis of a project developed by an *ad hoc* Committee of Experts which convened twice at the International Institute of Higher Studies in Criminal Sciences in Siracusa.[58] Other than the three countries mentioned directly above, national legislatures have not yet accepted the importance and effectiveness of an integrated approach. As a result, the modalities of international cooperation are still dealt with on a piecemeal basis. Other countries, however, have the integrated approach under consideration, such as the Soviet Union and Hungary.

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[54] *See* E. MÜLLER-RAPPARD AND M.C. BASSIOUNI, *supra* note 44, Vol. 3, app. 1-30 in English, 1-32 in French. In support of this approach, see Recommendation No. R/87/1 of the Committee of Ministers of Justice to the Member States on Inter-State Cooperation in Penal Matters Among Member States, *adopted* Jan. 19, 1987 by the Committee of Ministers of Justice, Council of Europe.

[55] Austria Law on Mutual Assistance in Criminal Matters, Bundesgesetz vom 4. Dezember 1979 über die Auslieferung und die Rechtshilfe in Strafsachen (Auslieferungs und Rechtshilfegesetz - ARHG), BGBI.Nr. 529/1979. *See also*, LINKE, EPP AND FELSENSTEIN, INTERNATIONALEN STRAFRECHT (1981).

[56] F.R.G. Act Concerning International Mutual Assistance in Criminal Matters (*"Geset Über Die Internationale Rechtshilfe in Strafrecht"*), Dec. 31, 1982, *entered into force* Jan. 7, 1983, Federal Official Gazette 1982, pt. 1, 2071. The act replaced the German Extradition Act of 1929, and provides for comprehensive measures of extradition and other forms of mutual assistance in penal matters, including execution of foreign sentences. For further discussion of German codification, see also O. LAGODNY, *supra* note 41. *See also* T. VOGLER, AUSLIEFERUNGSRECHT UND GRUNDGESETZ (1970); Vogler, *The Expanding Scope of International Judicial Assistance and Cooperation in Legal Matters,* Die Friedens-Warte 287 (*Band* 66, *Heft* 3-4, 1986).

[57] For an example of such codification by Switzerland, also also applying to international terrorism, see Swiss Federal Law on International Cooperation in Penal Matters (*"Entraide Internationale en Matieré Penalé"*), Mar. 20, 1981, which also applies to international terrorism, at articles 3b and 12.

[58] *See* E. MÜLLER-RAPPARD AND M.C. BASSIOUNI, *supra* note 44.

The relatively hesitant acceptance of the integrated approach stems from the familiarity and comfort which government representatives feel towards the bilateral approach and the process of gradually strengthening modalities by a piecemeal approach.[59] The efforts of a few scholars and government experts to spur the multinational integrated approach have been met with reluctance in international conferences and negotiations, because of the perception by some that national sovereignty might thereby be potentially limited. This reaction may be more representative of diplomatic considerations than practical experience in international criminal law, but it has been undeniably apparent and influential. Partially as a result of these sentiments the world community has not advanced beyond existing modalities, which are not sufficient even to cope with ordinary transnational crime, let alone the new international manifestations of "organized crime" and "terrorism."

These phenomena which transcend national boundaries are not hampered by political and diplomatic considerations, nor do they suffer from the impediments created by bureaucratic divisions among the national organs of law enforcement and prosecution. The international response to phenomena which know no national boundaries is piecemeal, divided, and more frequently than not, divisive of any effective efforts at international cooperation. This leaves little opportunity for the development of new modalities of cooperation in other fields, such as sharing law enforcement intelligence, increasing teamwork in law enforcement cooperation, tracking the flow of international financial transactions, and the development of regional "judicial spaces."

This latter idea was entertained by France in the Council of Europe in the late 1970's, but was later discarded within that regional context.[60] It has survived in application in 1990 among certain

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[59] *See* Supplementary Treaty on Extradition, U.S. - U.K., 1986. *See also* Sofaer, *The Political Offense Exception and Terrorism*, 15 DEN. J. OF INT'L L. & POL'Y 125 (1986). For a contrary position, see Bassiouni, *The Political Offense Exception Revisited: Extradition Between the U.S. and the U.K. - A Choice Between Friendly Cooperation Among Allies and Sound Law and Policy*, 15 DEN. J. OF INT'L. L. & POL'Y 255 (1987).

[60] *See* Mosconi, *L'Accordo di Dublino del 4/12/79, Le Comunita Europee e La Repressione del Terrorisimo*, LA LEGISLAZIANE PENALE (No. 3, 1986) 543 (referring to the European Judicial Space). *See also Consiglio Superiore Della Magistratura*, ESTRADIZIONE E SPAZIO

countries of that region, including the Benelux countries and the Federal Republic of Germany in 1990. In the Andean Region, a parliamentary commission is considering that option, and is also working on the elaboration of an integrated code of inter-regional cooperation which would include the traditional modalities described above.

A multilateral or regionally integrated approach seems an eminently desirable course of conduct. The United Nations could significantly contribute to this by elaborating such a model code, which would also include new approaches to the problems of jurisdiction. Such an effort has already begun, in a more modest form, with the Comprehensive International Convention on Illicit Drug Traffic, adopted by a 1988 United Nations conference held in Vienna. The Convention includes multilateral provisions on extradition, mutual judicial assistance, and on the control and seizure of proceeds of illicit drug traffic.[61] By its very nature though, such a new arrangement is limited and does not take into account other forms of international criminality beyond illicit drug trafficking. Thus, it excludes the transactional linkage between illicit drug traffic, "organized crime," "terrorism," and illicit traffic in arms. As such, it remains only a partial approach to a segment of one of the two phenomena addressed in this article.

All international efforts would profit from acceptance of two fundamental premises that would render interstate cooperation in pe-

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GIURIDICO EUROPEO (1979); Van Den Wyngaert, *L'Espace Judiciarie Européen Face á L'Euroterrorisme et la Sauvegarde des Droits Fondamentaux*, 3 REVUE INTERNATIONALE DE CRIMINOLOGIE ET DE POLICE TECHNIQUE 289 (1980). *See also* M. MARCHETTI, INSTITUZIONI EUROPEE E LOTTA AL TERRORISMO (1986); *International Cooperation in the Prosecution and Punishment of Acts of Terrorism, Recommendation No. R(82)1 adopted* Jan. 15, 1982 by the Committee of Ministers of the Council of Europe (with accompanying Explanatory Memorandum, Strasbourg 1983).

[61] United Nations Convention Against Illicit Drug Traffic, Narcotics, Drugs and Psychotropic Substances, *adopted* Dec. 19, 1988, (E/Conf. 82/15). For the history of the Convention, see United Nations Economic and Social Council, Final Act of the U.N. Conference for the Adoption of a Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, Vienna, Austria, Nov. 25 - Dec. 20, 1988; United Nations Division of Narcotic Drugs, *Extradition for Drug-Related Offenses: A Study of Existing Extradition Practices and Suggested Guidelines for Use in Concluding Extradition Treaties* (ST/NAR/ Nov. 5, 1985).

nal matters more effective. The first premise is acceptance of the basic rule *aut dedere aut iudicare.*[62] The second is that modern forms of international criminality, including "organized crime" and "terrorism," must be addressed in a comprehensive manner.[63] Without these premises, the world community's efforts will remain fragmented, leaving gaps and loopholes in what should be an integrated system of interstate cooperation. The results will therefore remain ineffective, though they will eventually improve to some degree. Unfortunately, those few and painstakingly slow improvements will be overtaken by the more inventive and ingenious approaches of those whose business it is to violate the law and evade interstate cooperation.

Though international means of cooperation are essentially the same with respect to "organized crime" and "terrorism," additional means are necessary at the national level. In particular, substantial strides must be taken in numerous important areas. Inter-agency cooperation, specifically between law enforcement, prosecutorial, judicial, and corrections agencies, must be strengthened. Measures of economic and financial controls must be developed, in conjunction with methods of control over public officials in the performance of their duties. Efforts at improving technical and scientific preparation of personnel in the criminal justice system must be stepped up, making available financial resources and personnel needed for both the administration of criminal justice and for those administrative bodies that monitor certain activities and certain types of persons known or suspected to engage in these activities. Related to these administrative goals, maximization of the use of modern technology, especially in linking national and interna-

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[62] A contemporary example of the application of the rule *aut dedere aut iudicare* is found in Swiss law. On July 1, 1983, a Swiss law, passed Dec. 17, 1982, entered into effect, which expanded the jurisdiction of Swiss penal law. Under article 6, the law extended the jurisdiction of the Swiss Penal Code to any non-Swiss committing a crime which the Confederation of Switzerland undertakes to prosecute in accordance with an international treaty, if: (1) the offense is deemed criminal in the state where committed at the time the accused is found in Switzerland; and, (2) Switzerland chooses not to grant extradition. This law was enacted to implement the ratification of the European Convention on the Repression of Terrorism (E.T.S. No. 90, 1977), which relies on the rule *aut dedere aut iudicare.*

[63] *See* Recommendation of the Committee of Ministers of Justice, Council of Europe, *supra* note 54.

tional data bases to correlate relevant data, must be a priority.

While professional and legal accountability of certain privileged professions, such as lawyers and accountants, must be broadened, new standards of responsibility with respect to other professions, e.g., bankers and financial and business consultants, must also be formulated. Finally, on a more general scale, the development of instructional programs at all levels of education and society, through active promotion of public awareness campaigns by private sector organizations and the mass media.

Modern manifestations of "organized crime" seem to have essentially focused during the last two decades on international drug trafficking. Therefore a pertinent question arises as to whether the current problem is properly one of "organized crime" requiring substantive norms directed at that activity *per se*, or whether it is a problem of drug use in modern societies, against which substantive norms are already directed, subject to constant debate and refinement. Whatever the answer, once again it is clear that substantive national and international criminal law norms alone cannot prevent or control the problem. Fundamental issues of social apathy, acquiescence or connivance with criminality, and demand for drugs are the breeding and feeding grounds of "organized crime." These issues cannot be resolved primarily by national or international criminal law, but only by the re-shaping of social values and attitudes.

IX. Conclusion

It is clear that further means to enhance national effectiveness and international cooperation need to be identified. "Terrorism" and "organized crime" are two different forms of criminality whose characteristics, strategies and goals are clearly distinguishable and should not be confused or commingled. Each activity in its manifestations may, on occasion, employ the same tactics, but the points of convergence or commonality of tactics or other particular characteristics (which may appear with respect to certain manifestations of the two phenomena) are not enough to link the two phenomena.

A major weakness in the linkage of these two phenomena is that the inarticulated premise of "terrorism" embodied in the United Nations Discussion Guidelines[64] is limited to individual and small group terror-violence. Thus, it ignores the state-sponsored, state-conducted, state-supported forms of "terrorism." A consequence of this limited approach is that international law pertaining to the most significant aspects of this phenomenon are ignored by this United Nations study, even though other United Nations Studies have clearly identified these problems.[65]

The fact that certain modalities of international cooperation in the prevention and control of some aspects of these and other international and transnational criminal phenomena are commonly applicable is an insufficient basis to link "terrorism" and "organized crime." Furthermore, as to these modalities, the different problems that arise in their application to each of these two forms of criminality are also quite different, and serve to underscore the dissimilarity between them. The additional modalities of international cooperation needed to make the prevention and control of these forms of criminality more effective are different in many respects and thus do not justify the linkage between these two phenomena.

National legislation in the areas of substantive criminal law and procedural law tend to have certain characteristics in common, which have the potential to violate the criminal law "principles of legality" and erode or violate national and international norms on the protection of human and civil rights. Among these characteristics and their violative potential outcomes are:

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[64] *See* U.N. Doc. A/Conf. 144/IPM.

[65] For example, see two studies prepared by the Secretariat in accordance with the decision taken by the Sixth Committee at its 1314th meeting: (1) *Measures to Prevent International Terrorism Which Endangers or Takes Innocent Human Lives or Jeopardizes Fundamental Freedoms;* and, (2) *Study of the Underlying Causes of Those Forms of Terrorism and Acts of Violence Which Lie in Misery, Frustration, Grievance and Despair and Which Cause Some People to Sacrifice Human Lives, Including Their Own, In An Attempt to Effect Radical Changes.* Sept. 27, 1972, 27 U.N. GAOR C.6 (Agenda Item 92), U.N. Doc. A/C.6/418 (1972).

(1) a lack of definition of each of these two phenomena;

(2) a lack of specificity as to the elements of new offenses relating to these two phenomena;

(3) a tendency by specialized legislation to overturn or restrict the presumption of innocence;

(4) a tendency by specialized legislative and administrative control measures to place the burden of disproving the accusation and applicable administrative measure on the suspect or accused;

(5) special legislation and special administrative measures that reduce the legal threshold of the various types of criminal action, thereby lessening legal standards of proof;

(6) procedural and administrative measures that increase the level of legal intervention in otherwise protected areas of privacy;

(7) procedural and administrative measures tending to decrease legal safeguards for the suspect and the accused; and,

(8) increased administrative cooperation between law enforcement, intelligence, prosecutorial and administrative control agencies that grow outside the scrutiny of the judiciary tending to infringe upon nationally and internationally protected human and civil rights.

The international and national legal systems fail to address a number of issues which could increase their respective effectiveness. At the international level, the inability to integrate all modalities of interstate cooperation in a comprehensive and integrated code, that can also include new modalities of cooperation while at the same time upholding internationally protected norms and standards of human rights, is an obvious shortcoming. The failure to even consider new schemes of direct enforcement such as the establishment of an international criminal jurisdiction is a significant weakness in the international system.

At the national level, the bureaucratic divisions within the administration of criminal justice, which plague and sometimes paralyze the system, remain unaddressed. Furthermore, these divisions

are aggravated by the addition of new bureaucracies involved in the prevention and control of these two forms of criminality, such as administrative and banking agencies and agencies responsible for international relations.

Both the international and national legal systems have failed to develop measures for the prevention of all forms and manifestations of "terrorism" and certain types of abuse of power and corruption of public officials that support "organized crime," or at least permit it to exist. The U.N. Discussion Guide fails to address a number of relevant issues of international criminal law and public international law, chief among which is the subject of state responsibility.[66] Responses to these two phenomena, whether at the international or national levels, regretably remain fragmented and largely ineffective.

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[66] *See* the various reports of the International Law Commission concerning the Draft Principles of State Responsibility (1976 to 1988), in YEARBOOK OF THE INTERNATIONAL LAW COMMISSION. *See also* M. SPINEDI & B. SIMMA, UNITED NATIONS CODIFICATION OF STATE RESPONSIBILITY (1987); Lillich & Paxman, *State Responsibility for Injuries to Aliens Occasioned by Terrorists Activities*, 26 AM. U. L. REV. 217 (1977); Slomanson, *Indemnización par Daños y Prejudicios Establecida por el Tribunal Internacional de Justicia: Remedio Basado en la Culpa por Dejar de Castigar o Extraditar a los Terroristas Internacionales*, 14 COMP. JUD. REV. 175 (1977).