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Constructing a Hemispheric Initiative Against Transnational Crime

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Abstract

This Essay first reviews the recent initiatives on fighting international crime and then suggests the need for a regional initiative on international criminal cooperation and criminal justice. The Author makes the proposal almost ten years after suggesting the establishment of the Inter-American Drug Abuse Control Commission ("CICAD"), whose creation was suggested as the precursor to a more comprehensive Americas Committee on Crime Problems.

CONSTRUCTING A HEMISPHERIC INITIATIVE AGAINST TRANSNATIONAL CRIME

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INTRODUCTION

On October 22, 1995, President William J. Clinton announced a number of new initiatives against international crimes, especially against narcotics trafficking and money laundering. Already, on December 4, 1994, at a meeting for the heads of governments in the Western Hemisphere, the heads of governments had pledged to act against a number of criminal problems by strengthening enforcement cooperation on issues such as corruption and illicit drug trafficking. They also committed to cooperating on eliminating national and international terrorism, promoting and protecting human rights, and enforcing international environmental standards. This Essay first reviews the recent initiatives on fighting international crime and then suggests the need for a regional initiative on international criminal cooperation and criminal justice. The Author makes the proposal almost ten years after suggesting the establishment of the Inter-American Drug Abuse Control Commission ("CI-CAD"), whose creation was suggested as the precursor to a more comprehensive Americas Committee on Crime Problems.

II. UNITED NATIONS INITIATIVE AGAINST TRANSNATIONAL CRIME

On October 22, 1995, President Clinton, using the occasion of his fourteen minute speech before the fiftieth anniversary of the United Nations, announced a number of new initiatives against international crime, especially against narcotics trafficking and money laundering.¹ While ostensibly made to the more

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1. For the text of the speech, see *Remarks of President Clinton to the United Nations on Occasion of the 50th Anniversary of the Creation of the United Nations*, FED. NEWS SERVICE, Oct. 22, 1995, available in LEXIS, Nexis Library, Curnws File [hereinafter *Remarks to the*

than 130 world leaders at the United Nations, much of the rhetoric and initiatives seemed aimed at a U.S. domestic audience. While other leaders focused on problems of war and peace, hunger, housing, and the condition of the environment, President Clinton focused almost entirely on international crime.

In an effort to lead a new international initiative against international drug traffickers, terrorists, and money launderers, President Clinton announced during his speech that he had signed an executive order² to freeze any assets of the Cali cartel,³ which allegedly is responsible for eighty percent of the cocaine and fifteen percent of the heroin entering the United States. Mr. Clinton explained that he had directed his Attorney General and the Secretaries of the Treasury and State to identify countries that help in money laundering and to notify them that, unless they adhere to the international standards set forth in the Financial Action Task Force's forty anti-money-laundering recommendations,⁴ the Administration would consider imposing sanctions that could prevent them from doing business in the United States and, more specifically, preclude them from making electronic transfers of money through banks in the United States.⁵ According to Clinton, "[c]riminal enterprises are moving vast sums of ill-gotten gains through the international financial system with absolute impunity. . . . We must not allow them to wash the blood off profits from the sale of drugs, terror, or organized crimes."⁶

U.N.]. For background on the speech, see Alison Mitchell, *U.S. Freezes Assets of Cartel in New Effort Against Drugs*, N.Y. TIMES, Oct. 23, 1995, at A11; John F. Harris, *U.N. Anniversary Celebration Opens with Notes of Discord: Clinton Urges Global Effort Against Crime*, WASH. POST, Oct. 23, 1995, at A1.

2. Exec. Order No. 12,978, 60 Fed. Reg. 54,579 (1995) [hereinafter *Anti-Drug Trafficking Executive Order*].

3. See *Remarks to U.N.*, *supra* note 1.

4. The Financial Action Task Force ("FATF") was formed at the Group of Seven Paris Summit in 1989 to monitor and coordinate international enforcement of anti-money laundering. See G-7 Task Force to Make Recommendations on Curbing Money Laundering, Paris Economic Summit, July 16, 1989, 28 I.L.M. 1293, 1299 (1989). The membership of the FATF includes 26 countries and two organizations, the European Union, and the Gulf Co-operation Council. See 1990-1991 FATF Rep. (May 13, 1991), reprinted in INTERNATIONAL EFFORTS TO COMBAT MONEY LAUNDERING 44 (W.C. Gilmore ed., 1992) [hereinafter *INTERNATIONAL EFFORTS*]. In February of 1990, the FATF issued a series of 40 recommendations on how to combat, prevent, and deter money laundering. The Recommendations are reprinted in *INTERNATIONAL EFFORTS*, *supra*, at 14-24.

5. *Remarks to U.N.*, *supra* note 1.

6. *Id.*

Urging countries to join in a declaration against international crime, including a pledge of no sanctuary for criminals, terrorists, and smugglers, Mr. Clinton sought an international effort to combat the security threats posed by terrorism, international criminal gangs, narcotics, and weapons proliferation. Additionally, Mr. Clinton sought action by other countries to sign anti-terrorism treaties and take more aggressive actions against drug cartels.⁷ He also called for a greater effort against the sale and smuggling of illegal arms and deadly materials like plutonium and biological weapons.⁸ Finally, Mr. Clinton called for additional international police training centers like the one that now exists in Budapest.⁹

An executive order issued by President Clinton under the International Emergency Economic Powers Act¹⁰ ("IEEPA"), which authorizes the President to take action in the case of an "unusual and extraordinary threat . . . to the national security,"¹¹ requires U.S. financial institutions to search for and freeze accounts held in the names of persons or companies determined by the Government to assist or have a significant role in international drug trafficking.¹² The order prohibits U.S. businesses and officials from trading with those individuals and front companies.¹³ Pursuant to the executive order, the United States has identified four principal figures in the Cali cartel, thirty-three businesses, and forty-three other individuals whose property would be subject to the freeze, all of which are based overseas. According to Administration officials, it is too early to know which holdings would be affected, and they could not yet identify the kind of assets that might exist in the United States. Because the firms identified as belonging to the cartel include export-import firms, auto dealers, stores, chemical companies, and Colombia's largest pharmaceutical chain, the ban on doing business and trade is likely to affect the cartel's ability to do busi-

7. *Id.*

8. *Id.*

9. *Id.*

10. International Emergency Economic Powers Act, 91 Stat. 1626 (1977) (codified as amended at 50 U.S.C. §§ 1701-08 (1988)).

11. 50 U.S.C. § 1701(a).

12. See Anti-Drug Trafficking Executive Order, *supra* note 2, 60 Fed. Reg. 54,579.

13. *Id.* For further discussion of the executive order, see generally Bruce Zagaris, *Clinton Administration Issues Order Blocking Assets and Prohibiting with Significant Narcotics Traffickers*, 11 INT'L ENFORCEMENT L. REP. 484 (1995).

ness.¹⁴

The most innovative substantive legal aspect of the speech is the decision to use the IEEPA to freeze assets and attempt to prevent U.S. persons from dealing with companies owned and/or controlled by drug traffickers. This measure is a logical extension of the finding in 1986, by former President Ronald Reagan, that international drug trafficking poses a serious threat to the U.S. national security, a finding reiterated many times thereafter. In essence, the measure is an effort to impose an economic embargo on the seemingly more legitimate enterprises of cartels, since the United States will try to convince other countries to join its economic embargo against the allegedly criminal enterprises. Already this year the United States has used the IEEPA to freeze assets of terrorist groups that are involved in fund-raising activities.¹⁵ Hence, it appears that the United States is in the process of expanding its Byzantine labyrinth of economic sanctions to encompass a series of international crimes. If this trend continues, it will constitute a new horizon for business and criminal attorneys.

The threat to identify, isolate, and punish countries and financial institutions that do not comply with international standards of anti-money laundering is based on the 1988 amendments introduced by Senator Kerry to the 1988 Anti-Drug Abuse Act.¹⁶ The citing of, and threat to sanction, transgressor countries and financial institutions is an effort to get the attention of other countries. The difficulty will be finding a method that is internationally acceptable to evaluate countries that have been deficient in implementing anti-money laundering procedures.

The most important element of Clinton's speech is that, at the fiftieth anniversary of the United Nations, he chose to concentrate his priorities on combatting international crime. Although Clinton has suggested some valuable measures during his Administration, until now he has never made fighting inter-

14. Mitchell, *supra* note 1, at A11.

15. Ann Devroy & Laurie Goodstein, *Clinton Freezes Assets of Mideast Groups Linked to Terrorism*, WASH. POST, Jan. 25, 1996, at A9.

16. For a critical analysis of the Kerry Act provisions, see 1988 Anti-Drug Abuse Act § 4702 [to be codified at 31 U.S.C. § 5311]; 134 CONG. REC. S15, 993 (daily ed. Oct. 14, 1988) (passing Amendment 397, which was introduced by Senator Kerry [D-Mass.]). For background, see Bruce Zagaris, *Dollar Diplomacy: International Enforcement of Money Movement and Related Matters—A United States Perspective*, 22 GEO. WASH. J. INT'L L. & ECON. 466, 476-79 (1989).

national crime a priority. The expanding use of economic sanctions cuts against the grain of President Clinton, who from his second term as Governor of Arkansas through his campaign for the Presidency and his Administration, has made international economic policy his priority. The speech may signal a number of new initiatives by the United States and result in others by other governments and international organizations.

The likely success of the use of economic sanctions in international narcotics policy will depend on achieving multilateral support. The effort to obtain broad-based support for economic sanctions will be a function of U.S. power and its ability to lead on this issue. Until now, the United States has had some major successes in galvanizing support of countries in law enforcement initiatives to combat narcotics trafficking.

II. *SUMMIT OF THE AMERICAS ENFORCEMENT INITIATIVES*

On December 11, 1994, at a meeting attended by the heads of governments in the Western Hemisphere,¹⁷ the governments pledged to act against a number of criminal problems and strengthen enforcement cooperation on those issues.¹⁸ While the actual effectiveness of the promises must await future follow up, this Essay reviews the issues discussed at the meetings and the actions that were actually pledged.

A. Corruption

The Plan of Action¹⁹ ("Plan" or "Plan of Action") identifies corruption in both the public and private sectors as a problem that weakens democracy and undermines the legitimacy of governments and institutions.²⁰ The modernization of the state, including deregulation, privatization, and the simplification of government procedures, reduces the opportunities for corruption. The Plan states that all aspects of public administration in a democracy must be transparent and open to public scrutiny.²¹

Governments agreed to do the following: (1) promote

17. Summit of the Americas: Declaration of Principles and Plan of Action, Dec. 11, 1994, 34 I.L.M. 808 (1995) [hereinafter Summit of Americas Declaration].

18. *Id.* at 811.

19. *Id.* at 814-35.

20. *Id.* at 818.

21. *Id.*

open discussion of the most significant problems confronting government and develop priorities for reforms required to make government operations transparent and accountable; (2) ensure proper oversight of government functions by strengthening internal mechanisms, including investigative and enforcement capacity with respect to acts of corruption, and by facilitating public access to information required for meaningful outside review; (3) establish conflict of interest standards for public employees and effective measures against illicit enrichment, including stiff penalties for persons who utilize their public position to benefit private interest; (4) ask governments of the world to adopt and enforce measures against bribery in all financial or commercial transactions with the states of the hemisphere and invite the Organization of American States²² ("OAS") to establish liaison with the Organization for Economic Cooperation and Development²³ ("OECD") Working Group on Bribery in International Business Transactions; (5) develop mechanisms of cooperation in the judicial and banking areas to make possible quick and effective response in the international investigation of corruption cases; (6) prioritize strengthening regulations and procurement, tax collection, the administration of justice, and the electoral and legislative processes, utilizing the support of the Inter-American Development Bank ("IDB") and other financial institutions where appropriate; and (7) develop within the OAS, with due regard to applicable treaties and national legislation, a hemispheric approach to acts of corruption in both the public and private sectors that would include extradition and prosecution of individuals so charged, either through negotiation of a new hemispheric agreement or through new arrangements within ex-

22. See CHARTER OF THE ORGANIZATION OF AMERICAN STATES, Apr. 30, 1948, 2 U.S.T. 2416, as amended by the Protocol of Buenos Aires, Feb. 27, 1967, 21 U.S.T. 607, 721 U.N.T.S. 324 (entered into force Feb. 27, 1970). The OAS is a regional organization with members from North America, South America, Central America, and the Caribbean. Its members include nearly every country in the Western Hemisphere, and one of its major aims is to solve common legal problems. Bruce Zagaris & Constantine Papavizas, *Using the Organization of American States to Control International Narcotics Trafficking and Money Laundering*, 57 REV. INT'L DE DROIT PENAL 119, 120. (1986)

23. The Organization for Economic Cooperation and Development ("OECD") was founded in 1960 by 20 countries, including the United States. Its goals include promoting economic and social welfare throughout the OECD area by assisting member governments in harmonizing their efforts to aid developing countries. JERRY M. ROSENBERG, *THE NEW EUROPE: AN A TO Z COMPENDIUM ON THE EUROPEAN COMMUNITY* 124 (1991).

isting frameworks for international cooperation.²⁴

On April 7, 1996, the media announced that twenty-one members of the OAS have signed an anti-corruption convention,²⁵ the Inter-American Convention Against Corruption ("Corruption Convention").²⁶ The Corruption Convention requires signatories to criminalize and extradite persons for offenses of bribing foreign officials and to criminalize illicit enrichment.²⁷ The agreement signals an important milestone in fashioning international obligations to punish corruption.

B. *Combating Illicit Drug Trafficking*

The Plan of Action calls for a broad coordinated hemispheric strategy to reduce drug use and production, including new enforcement methods that can disrupt drug trafficking and money laundering networks and prosecute those engaged in such activities.²⁸ In particular, the participants endorsed the efforts of the Inter-American Commission on Drug Abuse Control²⁹ ("CICAD") and agreed to cooperate to formulate a counter-narcotics strategy for the twenty-first century.³⁰

The governments agreed to take the following actions: (1) to ratify the 1988 U.N. Convention Against the Illicit Traffic of Narcotics and Psychotropic Substances³¹ and make it a criminal offense to launder the proceeds of all serious crimes; (2) to enact laws allowing the freezing and forfeiture of the proceeds of

24. Summit of the Americas Declaration, *supra* note 18, 34 I.L.M. at 818-19.

25. Thomas W. Lippman, *After 20-Year Campaign, U.S. Balks at OAS Pact Against Business Corruption*, WASH. POST, Apr. 7, 1996, at A11.

26. Inter-American Convention Against Corruption, Mar. 29, 1996, OEA/ser.K/XXXIV.1 CICOR/doc.14/96 rev.2 [hereinafter Corruption Convention]. For background, see Bruce Zagaris, *21 OAS Members Conclude Anti-Corruption Agreement*, 12 INT'L ENFORCEMENT L. REP. (forthcoming May 1996).

27. See Corruption Convention, *supra* note 26.

28. Summit of the Americas Declaration, *supra* note 18, 34 I.L.M. at 819.

29. The Inter-American Drug Abuse Commission ("CICAD") is an autonomous organization within the OAS. It was created as a result of an OAS conference on drug traffic held in Rio de Janeiro on April 22-26, 1986, and the OAS General Assembly established CICAD in November of 1986. See Bruce Zagaris & Sheila M. Castilla, *Constructing An International Enforcement Subregime: The Implementation of Anti-Money Laundering Policy*, 19 BROOK. L. REV. 871, 902, 965 n.135 (1993) (discussing origins and background of CICAD).

30. Summit of the Americas Declaration, *supra* note 18, 34 I.L.M. at 819.

31. Convention Against Illicit Traffic of Narcotics and Psychotropic Substances, *opened for signature* Dec. 20, 1988, 1992 Gr. Brit. T.S. No. 26 (cmd. 1927), 28 I.L.M. 493 (1989).

money laundering and consider the sharing of forfeited assets among governments; (3) to implement the recommendations of the Caribbean Financial Action Task Force on Money Laundering³² and work to adopt the Model Regulations of the CICAD;³³ (4) to encourage financial institutions to report large and suspicious transactions to appropriate authorities and develop effective procedures to collect information from financial institutions so as to create an audit trail; (5) to identify the region's narcotics trafficking and money laundering networks, prosecute their leaders, and seize assets derived from these criminal activities; (6) to adopt programs to prevent and reduce the demand for and the consumption of illicit drugs; (7) to adopt effective and environmentally-sound national strategies to prevent or reduce substantially the cultivation and processing of crops for the illegal drug trade, paying particular attention to national and international support for development programs that create viable economic alternatives to drug production; (8) to control precursor chemicals and support comprehensive drug interdiction strategies; (9) to strengthen efforts to control firearms, ammunition, and explosives in order to avoid their diversion to drug traffickers and criminal organizations; (10) to convene a working-level conference, followed by a ministerial conference, to study and agree on a coordinated hemispheric response, including consideration of an inter-American convention, to combat money laundering; and (11) to hold a hemispheric-wide conference of donors, including multilateral development banks and U.N. agencies, to seek resources for alternative development programs aimed at curbing the production, trafficking, and use of illicit drugs and the rehabilitation of addicts.³⁴

C. Eliminating National and International Terrorism

The Plan of Action noted that actions by governments to combat and eliminate the threat of national and international

32. For background on the Caribbean Financial Action Task Force, see Bruce Zagaris, *Caribbean Financial Task Force Aruba Meeting Presages Cooperation by Caribbean Jurisdictions*, 6 INT'L ENFORCEMENT L. REP. 217 (1990).

33. Model Regulations Concerning Laundering Offenses Connected to Illicit Drug Trafficking and Related Offenses, adopted by the Organization of American States, May 23, 1992, OAS/Ser. L/XIV.2, CICAD/INF.58/92, *reprinted in* INTERNATIONAL EFFORTS, *supra* note 2, at 322.

34. Summit of the Americas Declaration, *supra* note 18, 34 I.L.M. at 819-20.

terrorism are essential elements in guaranteeing law and order and maintaining confidence in government, both nationally and internationally.³⁵ The international community must hold responsible for their action persons who sponsor terrorist acts or assist in their planning or execution through the abuse of diplomatic privileges and immunities or other means.

The governments agreed to take the following actions: (1) to promote bilateral and subregional agreements with the aim of prosecuting terrorists and penalizing terrorist activities within the context of the protection of human rights and fundamental freedoms; (2) to convene a special conference of the OAS on the prevention of terrorism; and (3) to reaffirm the importance of the extradition treaties ratified by the states of the hemisphere and note that these will be strictly fulfilled in accordance with international law and domestic legislation.³⁶

D. *Promoting and Protecting Human Rights*

The Plan of Action noted that, while much progress has occurred in the hemisphere in the development of human rights concepts and norms, serious gaps remain in their implementation.³⁷ Reforms are required to promote the further development of respect for human rights and provide universal access to justice and effective means to enforce basic rights.

The Governments agreed to take the following action: (1) to give serious consideration to the adherence to international human rights instruments to which they are not a party; (2) to cooperate fully with all U.N. and inter-American human rights bodies; (3) to develop programs for the promotion and observance of human rights, including educational programs to inform people of their legal rights and their responsibility to respect the rights of others; (4) to undertake all measures necessary to guarantee the rights of children and, if not already done, give serious consideration to ratifying the U.N. Convention on the Rights of the Child;³⁸ (5) to guarantee the protection of the human rights of all migrant workers and their families; (6) to

35. *Id.* at 820.

36. *Id.*

37. *Id.* at 816.

38. Convention on the Rights of the Child, Nov. 20, 1989, G.A. Res. 44/25, U.N. GAOR, 44th Sess., Supp. No. 49, at 1, U.N. Doc. A/44/736 (1989), 1992 Gr. Brit. T.S. No. 44 (Cm. 1976).

remedy inhumane conditions in prisons and minimize the number of pretrial detainees; (7) to review training curricula for law enforcement agents, ensuring that they adequately cover the proper treatment of suspects and detainees as well as relations with the community; (8) where possible, to cooperate in the development of law enforcement and security force training or other programs to reduce the potential for human rights violations; (9) to call on the OAS and the International Development Bank ("IDB") to establish or reinforce, as appropriate, programs to support national projects for the promotion and observance of human rights in the Western Hemisphere; and (10) to further strengthen the Inter-American Commission on Human Rights and the Inter-American Court for Human Rights.³⁹

E. *Environmental Enforcement*

The Plan of Action calls for strengthening frameworks for environmental protection and mechanisms for implementing and enforcing environmental regulations.⁴⁰ The governments agreed to: (1) strengthen national environmental protection frameworks and mechanisms for implementation and enforcement, and include sustainability criteria and objectives in national and other development strategies; (2) undertake national consultations to identify priorities for possible international collaboration; (3) establish mechanisms for cooperation among government agencies, including in the legal and enforcement areas, to facilitate environmental information exchange, technology cooperation, and capacity-building; and (4) develop compatible environmental laws and regulations at high levels of environmental protection and to promote the implementation of international environmental agreements.⁴¹

39. Summit of the Americas Declaration, *supra* note 18, 34 I.L.M. at 816-17. The Inter-American Commission on Human Rights and the Inter-American Court for Human Rights were provided for in the American Convention for Human Rights, Opened for Signature Nov. 22, 1969, Chs. VII-VIII, O.A.S.T.S. No. 36, at 11-19, 9 I.L.M. 673, 685-93 (1970) (entered into force July 18, 1978). These bodies serve to safeguard the implementation of the rights set forth in the Convention. Fionnuala Ni Aolain, *The Emergence of Diversity: Differences in Human Rights Jurisprudence*, 19 FORDHAM INT'L L.J. 101, 142 n.108 (1995).

40. Summit of the Americas Declaration, *supra* note 18, at 34 I.L.M. 833-35.

41. *Id.*

F. *Implementation*

The Plan of Action provides, in the Appendix, that the primary responsibility to implement the Plan will rest with the governments individually and collectively, with the participation of all elements of the civil societies.⁴² In addition to the specific recommendations and agreements in the individual criminal areas, specific recommendations are made regarding hemispheric organizations. The OAS will have a support role in connection with promoting and protecting human rights, combating corruption, and eliminating the threat of national and international terrorism. CICAD has a prominent role in combating drug trafficking. The IDB has a particularly important role in providing for a partnership for pollution prevention, promoting and protecting human rights, combating corruption, and combating drug trafficking.

G. *Analysis*

The Summit of the Americas has put on a hemispheric level several important areas of criminal cooperation. Obviously, the Plan of Action is "soft" law and does not bind the governments. The absence of real obligations represents, in part, a lack of agreement on the goals and trade-offs that are required to enforce the law and reflects the immature status of hemispheric mechanisms and institutions on enforcement. Nevertheless, another step has been taken. Some vision and political will are among the elements that will propel the broad goals into concrete action.

III. *NEED FOR ENFORCEMENT INSTITUTIONS AND MECHANISMS*

Meaningful enforcement initiatives against transnational crime should be based on a comprehensive criminal justice policy and permanent, ongoing work by dedicated civil servants under high level political leaders and criminal justice professionals. For illustration purposes, on a hemispheric level the United States and other governments should consider the creation of an Americas Committee on Crime Problems ("Americas Commit-

42. *Id.* at 835.

tee" or "Committee").⁴³

The purpose of the Americas Committee would be to discuss and take action on questions of common criminal justice needs. Membership in the Americas Committee should be open to all countries in the hemisphere and should allow observer or associate membership for interested international organizations, non-governmental organizations, and governments outside the hemisphere.

The Americas Committee could emulate the European Committee on Crime Problems ("European Committee"), which was established by decision of the Committee of Ministers of the Council of Europe in June 1958.⁴⁴ The European Committee is composed primarily of senior officials of the Ministries of Justice in the member states who have worked on exchanging experiences and coordinating research relating to the prevention of crime and the treatment of offenders.

The European Committee has five basic modes of operation. First, the European Committee itself meets once a year so as to set policy for related bodies such as the Criminological Scientific Council. Second, the European Committee establishes ad hoc subcommittees and working parties composed of experts that submit draft conventions or draft resolutions to the full European Committee on Crime Problems, which in turn rejects or accepts the draft proposals. The full European Committee passes on, through the Council of Europe to member governments, those draft proposals that it accepts. Third, the European Committee has established permanent bodies, such as the Criminological Scientific Council, to provide assistance in the area of criminological research. Fourth, the European Committee has convened specialized topical conferences such as the Conference of Directors of Prison Administrations. Finally, the European Committee was instrumental in the regular convening

43. For an earlier discussion of the proposal to create an Americas Committee on Crime Problems, see Zagaris & Papavizas, *supra* note 22, at 119-33 (suggesting organization like CICAD as first step towards Americas Committee on Crime Problems).

44. For background on the Council of Europe and the Committee on European Crime Problems, see Hans G. Nilsson, *Money Laundering — the European Situation, in FORFEITURES AND ASSET FREEZES: A COMPREHENSIVE SURVEY OF ASSET FORFEITURE, RESTRAINTS AND THIRD-PARTY RIGHTS*, at tab 5 (A.B.A. Inst. Crim. Just., 2d ed. 1990); *EUROPEAN INTER-STATE COOPERATION IN CRIMINAL MATTERS* (Ekkehard Muller-Rappard & M. Cherif Bassiouni eds., 1987)

of a Conference of European Ministers of Justice every two years since 1961.

Assuming that the Americas Committee would be established under the auspices of the OAS, the Americas Committee would be established after a meeting of the Ministers of Justice of the respective states of the OAS and other interested states, much like the establishment of the European Committee. Since matters of international criminal cooperation concern policy matters as well as technical matters, the Americas Committee would need input from both the Ministries of Justice as well as the ministries of foreign affairs. The work of the Americas Committee would be regularized by an annual meeting and eventually by a secretariat with a technical staff of senior officials from the Ministries of Justice. The Americas Committee would also develop its own specialized resources on international criminal conventions and criminal justice planning. Initially, technical assistance could be furnished by developed states, international organizations, and non-governmental organizations.

One of the first tasks of the Committee would be to review the existing instruments and institutions responsible for international criminal cooperation, so that the instruments could be coordinated effectively. The scope of the charter of the Committee should embrace all criminal law and justice matters facing the hemisphere, including crime prevention and detection, and criminal justice development planning.

The Americas Committee could also review legal, administrative, and judicial measures taken in the member states in fighting specific crime areas for innovation worthy of emulation. As a result of findings and reports, recommendations would be made for harmonization and unification of law projects by the Committee, the establishment of domestic or international organizations, and improved measures of international cooperation. The Committee, in some cases, could draft uniform legislation for adoption by member states.

At present, governments in the region are liberalizing their rules regarding trade and investment as well as the movement of people. Examples are the U.S.-Canada Free Trade Agreement⁴⁵

45. Canada-United States: Free Trade Agreement, Dec. 22, 1987 & Jan. 2, 1988, U.S.-Can., 27 I.L.M. 281 (1988) (entered into force Jan. 1, 1988).

and the North America Free Trade Agreement.⁴⁶ While these agreements have several provisions on criminal cooperation, these provisions are limited to intellectual property protection and customs enforcement, and it is clear that criminal justice and criminal cooperation are neglected issues. As a result, governments are facilitating the easy movement of illegitimate, as well as legitimate, goods, people, and capital. Criminal syndicates are doing well. Rather than an after-the-fact reaction to individual problems, such as drugs, corruption, arms trafficking, and money laundering, governments must create mechanisms to enable themselves to view crime just as it is viewed by criminals — as a business with vast opportunities and networking possibilities. Indeed, free trade and globalization compel innovative approaches to criminal cooperation.

As criminals and criminal groups inevitably take advantage of opportunities flowing from globalization, the traditional actors in international relations — the nation-state and international organizations — will be challenged to maintain their hegemony and survive. Either they will be able to adapt their conception of international organizational theory to account for and counter new international criminal actors or they will eventually find themselves eclipsed by their new rivals. Increasingly, the international system will become infected by the poison of criminal groups.

International lawyers, relations experts, and criminologists will increasingly have to become multidisciplinary in their vision and strategic planning, flexible in their ability to form alliances and construct methods to interact with each other and develop their own networks, while deflating those of criminal groups. Until national governments confer on a regional organization the mandate and resources to intensively and regularly work objectively on criminal justice planning, uniform laws, treaties, agreements, memoranda of understanding, institutions, and other ways of cooperating on crime problems, the U.S. Government and international organizations will be reacting to crime problems and criminals. To be effective in a technoelectric age requires a proactive, comprehensive, and visionary approach to

46. Canada-Mexico-United States: North American Free Trade Agreement [Done at Washington on December 8 and 17, 1992, at Ottawa on December 11 and 17, 1992, and at Mexico City on December 14 and 17, 1992], 32 I.L.M. 605 (1993).

criminal justice. The Americas Committee on Crime Problems is an idea worth exploring.