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INTER-AMERICAN DRUG ABUSE CONTROL COMMISSION

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***BACKGROUND TO TRANSNATIONAL ORGANIZED CRIME.***

### ***Background to transnational organized crime.***

In the era of globalization, economic interdependence, increased volume of world trade, the opening of borders, liberalization of communications and technological advances, as well as the geopolitical readjustments that have occurred, a new situation has taken form in the international environment, one that indirectly promotes, among criminal organizations, vast opportunities and strong prospects for developing their illicit activities.

Transnational organized crime is a problem that is international in scope. The broad field of action it encompasses and the high levels of corruption have allowed it to strengthen its activities and position itself geographically, giving it the ability to move billions of dollars and hundreds of thousands of persons.

For transnational organized crime organizations, national territories have been transcended and, therefore, borders have been ignored in order to achieve their objectives. This is one of the main reasons that criminal organizations have expanded their presence to all regions of the globe, increasing their participation in illicit activities that transcend, by thousands of kilometers, the borders of the affected states.

The dynamic of illicit activities seen in the last few years throughout the world has been gaining increasing importance, manifesting itself in complex, ever-changing and global forms.

The global reach attained by certain groups dedicated to transnational organized crime is becoming increasingly alarming, representing, as it does, a serious threat to the normal development of populations, while at the same time imposing enormous social, economic and political costs on states.

This international expansion has been possible largely due to new technologies, primarily in the areas of communication and transportation, creating unprecedented opportunities for criminal organizations, which are now able to easily expand their activities beyond borders. For this reason, today, transnational organized crime – a product of what some have called the dark side of globalization – transcends the capacity of different states to secure and administer justice.

### ***What is transnational organized crime?***

In referring to the phenomenon of transnational organized crime, one thinks of words such as mafia, corruption, contraband, drugs, cartels, violence, money laundering and arms trafficking, all of which are inter-connected. For this reason, in the framework of international law, organized crime has been defined as the activity of a group comprising three or more persons, who are linked through a hierarchical or personal relationship.

Links of this type have allowed its members to accrue earnings or control territories or markets – domestic or foreign – using, as a primary instrument, corruption, both to promote the criminal activity and to infiltrate the legitimate economy through illicit activities.

### ***Crimes that involve transnational organized crime.***

Currently, the phenomenon of organized crime has taken on a set of characteristics that make it a major threat to the security of states.

Precisely because of this risk, the international community decided to establish, as crimes of transnational organized crime, those crimes whose repercussions affect a number of states, whether with regard to their commission, preparation, planning, direction or control. Examples of such crimes, based on their repercussions, are:

- Illicit trafficking in drugs, narcotics or psychotropic substances;
- money laundering;
- trafficking in persons;
- currency counterfeiting;
- illicit trafficking in stolen cultural property;
- theft of nuclear material, its misuse or threats of misuse to cause public harm;
- terrorist acts;
- trafficking in or theft of automobiles; and
- corruption of public officials.

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### ***What is organized crime in Mexico?***

In terms of Mexican law, organized crime, from a legal point of view, is a basic, autonomous type of crime envisaged in the federal law against organized crime, established in 1996.

In this law, the following are specified as criminally relevant acts:

- ❖ Agreeing to organize for the purpose of carrying out crime considered to constitute organized crime; and
- ❖ Forming an organized group to commit, on an ongoing or repeated basis, acts that, jointly or separately, have the objective of, or result in, committing any crimes considered to constitute organized crime, these being:
  - crimes against health (solely as concerns drug trafficking and drug possession);
  - counterfeiting or alteration of currency;
  - transactions involving resources of illicit origin;
  - stockpiling and trafficking in firearms;
  - trafficking in undocumented persons;
  - trafficking in organs;
  - robbery;
  - kidnapping;
  - trafficking in minors;
  - theft of vehicles; and
  - terrorism.

In Mexico, the agency legally responsible for combating organized crime is the Office of the Attorney General of the Republic, which is an agency of the federal executive branch, authorized, among other things, to investigate federal crimes and monitor them in the federal courts.

In line with this concept, the Attorney General's office, through its specialized units and prosecutors, engages in comprehensive efforts to combat crimes of this type.

Organized crime, from Mexico's point of view, begins when the crime develops to such an extreme level that it establishes special lines of action, based on a complex business structure, supported by corruption schemes.

***Actions of the Public Prosecutor's Office (ministerio público) on issues related to organized crime.***

The purpose of the federal law against organized crime in Mexico is to provide authorities with special legal tools and structure, as well as a uniform means of investigating and prosecuting crimes linked to organized crime, including the following procedures:

A unit specializing in the investigation and prosecution of crimes committed by members of organized crime, made up of agents from the federal Public Prosecutor's Office, with assistance from the federal agency of investigation and expertise

In preliminary inquiries carried out, the investigation should attempt to gain a knowledge of the structures, types of operation and spheres of action of criminal organizations. To this end, the Attorney General of the Republic may authorize infiltration by agents, and the judge may order bail under supervision of the authorities.

When there is risk to the integrity of persons providing testimony against a member of organized crime, their identities may be kept secret until the legal proceeding takes place.

Likewise, support and protection are provided to judges, experts, witnesses, victims and other persons, when due to their participation in a criminal proceeding on crimes involving organized crime, their physical integrity is at risk.

At the same time, a judge may authorize search warrants for investigative purposes, and if deemed necessary, the interception of private communications, based on the facts, circumstances, data and other elements on which evidence is being sought.

A member of organized crime who provides effective assistance in investigating and prosecuting other organized crime members may obtain a reduction in the applicable sentence.

***Drug trafficking is not an autonomous crime.***

Among different types of crime, drug trafficking has been, at the global level, one of the most far-reaching, and has had some of the strongest impact, establishing a major place in the hierarchy of crimes considered to constitute transnational organized crime.

Nevertheless, under the analysis that views the above-mentioned corruption schemes as being capable of serving the purposes of all types of criminals, one begins to see inter-related patterns that provoke serious concern.

Thus, in most cases involving the collusion of corrupt officials, drug trafficking has gradually been insinuating itself into other crimes, expanding its harmful influence.

It has been discovered that at times public servants responsible for enforcing the law maintain relationships with criminal organizations involved in various crimes.

Thus, often, within the drug trafficking scheme, there is an inter-connection with trafficking in firearms, money laundering, currency counterfeiting, trafficking in persons, automobile theft, kidnapping, contraband and, sometimes, terrorism.

By way of example, one might imagine that there is a freeway that has been paved by organized crime, and that its road surface is corruption, upon which various crimes, associated with transnational organized crime, drive freely.

Thus, as the types of activities of transnational organized crime have been refined, it has become harder for the authorities to contain and eliminate it.

In a broader sense, drug trafficking should not be viewed as a crime whose dynamic is unilateral and unconnected. Rather, at present, it is part of a multi-faceted pattern, which with each passing day takes increasing advantage of the methods that transnational organized crime is developing and strengthening to achieve its ends.

**Conclusions.**

By way of conclusion, it is worth highlighting a number of points:

- Transnational organized crime reaches its ultimate expression in drug trafficking. Thus, an analysis of this topic should be included in the overall context of the phenomenon.
- Transnational organized crime, based on the vast profits it generates, puts into play all of the means provided by technology.
- Transnational organized crime makes use of the corruption of individuals and systems in order to operate safely and with increasing impunity.
- Transnational organized crime tends to bring together the methods that each crime provides to facilitate its operations.

- Transnational organized crime takes advantage of the lack of coordination among authorities involved in preventing, prosecuting and imparting justice within nations, in order to be able to carry out its illicit activities.
- Transnational organized crime uses existing gaps in the laws of countries to act with impunity in seeking its objectives.
- Transnational organized crime makes use of the lack of coordination between different countries in order to be able to operative freely and with impunity.
- Transnational organized crime becomes more dangerous when links are established among criminal organizations involved in different crimes.
- Transnational organized crime directly and indirectly affects the political, economic and social systems of nations, often jeopardizing their security.
- Transnational organized crime tends to become constantly stronger, given its broad sphere of action, generally encompassing continents and territories of two or more countries.
- Within the scheme of nations comprising CICAD, giving prompt attention to transnational organized crime is considered essential, given the effects it can bring about in our countries. It would be wise to gain a deeper understanding of how this phenomenon is unfolding on our continent, as well as of the links that drug trafficking may be building with other crimes in order to increase its power.

### **Proposal:**

In view of the considerations expressed above, it is appropriate to propose, in the framework of CICAD, that a meeting be held during the second half of this year to focus on drug trafficking and its connections with other crimes involving transnational organized crime, so that any proposals that are generated may be submitted for consideration by the Commission in its 34th ordinary period of sessions, to which end the following objectives are presented:

- Conduct an assessment of the effects of transnational organized crime in the area encompassed by the member countries of CICAD.
- Exchange experiences on the subject of transnational organized crime.
- Enhance the exchange of information on the subject among the intelligence and police agencies of the countries involved, as well as in regard to existing laws in those countries.
- Define schemes for mutual legal assistance among the countries in order to address the various crimes being considered, including the exchange of experiences in the areas of prevention and training.

Lastly, the Government of Mexico is pleased to provide the headquarters for this initial meeting and invites the Commission's member states to participate by offering their experiences and contributing their proposals, in order to enrich this hemispheric effort.