

Conclusions of the Workshop on Globalisation and Organised Crime*

The panelists of the workshop agreed that globalization has both positive and negative aspects and consequences at all levels of society. Globalization has entailed fundamental changes in scale, speed and cognition and fundamentally changed the contours of social existence.

Globalization questions the traditional notion of “state” and “national sovereignty”. Organized crime has benefited from the increased degree of integration and interdependence between states world wide.

Globalization has put pressure on national governments and parliaments not only to suppress and repress criminal acts post facto, but to act pro-actively and pre-emptively to provide human security globally.

Political leadership is required to address the consequences and the root causes of organized crime. Governments responses need to adopt innovative, multifaceted and holistic policies and strategies to tackle issues of global concern e.g. climate change, trafficking of drugs or of human beings and international terrorism.

Representative fora should be given preference when developing common platforms for international cooperation, for harmonization of legislation and elaboration of international standards. Universal values like human rights can contribute to give globalization a human face. There is a need to strengthen existing mechanisms for international cooperation and to set up new bodies for building national capacity in this field.

Patricia Lopez Gonzalez stated that the UN has developed a body of international law as a basis for international cooperation to fight crimes in a number of areas. She further argued that globalization has created links between state entities and criminal organizations. In some countries a “mafioscracia” overshadowed the role of democratically elected leaders and private sector.

Luis Carlos Cruz Torrero argued that human behaviour is subject to influence from social, economic and cultural factors. Societal values were changing over time. What was considered as a crime today might be decriminalized tomorrow. Before resorting to penal sanctions, one should consider other options to discourage a certain behaviour. Criminal law is thus only one of several instruments of many in social engineering.

Joao Paulo Martinelli argued that globalization had lead to traditional legal concepts being abandoned. In itself globalization does not constitute a public legal interest, which justifies enlarging the scope of criminalization. The legal interest should be defined in the penal law. It is important to adhere to democratic values. Penal law has to respect a minimum of constitutional principles also in times of globalization. Criminal law is not the only instrument to solve social conflicts.

Fernando de los Monteros argued that there is a need to reform the traditional system of criminal law. Globalization should trigger criminal reform efforts notably on how to tackle corruption and drug trade. One option to consider in the fight against organized crime is decriminalization of certain conducts,

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jointly with other actions. In this respect other countries experiences and lessons learned should be taken into account.

Professor de la Cuesta underlined the need to construe a common platform for future collaboration based on universal human rights and democratic values. Some have argued that the only way to effectively address organized crime is by attacking its root causes. In order to achieve this, one has to work for the globalization of democratic values and human rights as well as global economic development to effectively meet the challenges of globalization.

In the ensuing discussion, participants agreed that globalization was a concept which is difficult to give a precise definition. However, it had become a catchword with both- positive and negative- connotations. It was now considered as a historical movement and a defining feature of our times. It covered everything from environmental, economic and political issues to the spread of western culture. Its status was controversial, but it was a fact of life.

Some viewed globalization as the triumph of neoliberal and characteristically Anglo-american ideology, which brings rapid transformation for businesses, governments and ordinary people. It would eventually result in ending marginalization, the spread of democratic values and greater development opportunities for all. Others saw globalization as a threat to national sovereignty, national cultures and identities and to traditional political life, including to authoritarian regimes.

Globalization was discussed from both viewpoints and in three key terms: scale, speed and cognition. Scale involved a discussion of magnitudes, a number of economic, political, social and human linkages between societies. Speed meant the conceptualization of globalization in time and space. Globalization represented a compression of time and space never experienced before. Cognition referred to an increased awareness of the globe as a smaller place. Events elsewhere might have consequences for our every day political, social and economic lives and might affect individuals' sense of being.

The phenomena had increased states' interdependence and interrelationships, also between individuals. Globalization had brought about fundamental changes in scale, speed and cognition and played a pivotal role in most types of social changes.

Some interlocutors felt that it had also blurred historical, political and diplomatic boundaries, to which we had gotten accustomed like the "state concept" from the peace in Westphalia 1648. It had increased mobility with easier and faster transportation means and promoted global trade. It increased the flow of information world wide as well as the global coverage by the media, TV, radio and internet, also of the most remote corners of the globe.

The speed at which news traveled and at which public opinion through telecommunications and Internet now could be informed and mobilized had resulted in increased pressure on national governments and parliaments to address issues of public interest or concern and show leadership. Globalization had also increased the demands on international organisations to act in case of political crisis, natural or man made disasters like the Tsunami.

One interlocutor advocated that globalization had increased popular mobilization on issues like ICC-coalition, Safe Darfur& Urgence Darfur and Enough campaigns. These movements had put pressure on governments to take swift actions and supported the quest for international justice. It was no longer possible for national parliaments and legislator to try to suppress or repress certain acts, or even to act post-facto.

In fact, it was argued that both national and international organs were now expected to act in real time, pro-actively and if possible pre-emptively to provide human security, also for the individual. Governments were expected to provide justice for victims and ensure accountability of criminals. Justice had been moved up to the top of the world's political agenda.

The time had come to abandon traditional notions of time, space and national sovereignty in favour of common and concerted actions. It had become necessary to develop common platforms for transnational or international cooperation, to harmonize or approximate national legislations. International or regional standards based on universal human rights values needed to be developed to humanize globalization.

There was also a need to set up innovative, multifaceted and holistic responses in terms of policies and strategies to tackle issues of global concern like climate change, trafficking of women and children, the plight of migrant workers, drug trafficking, organized crime, corruption or international terrorism.

The discussion in this respect focused on the bilateral relationship between Mexico and the United States. Several participants raised concerns about cross boundary criminality and the need to effectively fight corruption at all levels in the Mexican society. Globalization had played right into the hands of organized criminal elements, where instant transfers, interconnectivity and anonymous transactions of money was now possible.

Organized crime has greatly used the advantages of globalization to its benefit. These criminal networks have set up new centers of power within countries. In some countries, like Mexico, criminal organizations were so powerful, in particular economically, that they could clearly challenge or pressure traditional or democratically elected leaders.

Some participants underlined that organized crime in the form of international terrorism, money laundering, corruption, cyber crimes, drug trafficking, trafficking of arms and trafficking of human persons represented threats to both states and to individuals on a global scale. These actors also committed war crimes and crimes against humanity.

The fight against organized crime required concerted and comprehensive efforts by the legislative, intelligence and investigative bodies and the judiciary. Such actions needed to be bilateral, regional or global. To tackle it effectively actions on several fronts and levels were needed: effective international cooperation between states; international standards to govern the cooperation; the setting up of international bodies to monitor the effectiveness of the international cooperation and new bodies or strengthened ones to provide technical assistance and build national capacity.

Additional efforts could include national criminalization, harmonization of legislation and agreed definitions of crimes. Effective cooperation between law enforcement and intelligence agencies was key, but it should be subject to judicial review and oversight. Effective prosecution necessitated mutual legal assistance, transfer of proceedings or extradition requests as well as effective cooperation between the judicial systems and courts.

Among the questions raised by the participants during the discussion were universal jurisdiction; how to resolve competing claims of jurisdiction between national and international courts; how to ensure effective safeguards for the accused and the rights of victims; when to use the instruments of transfer of prosecutions, proceedings and of sentenced persons?

To achieve a common platform for international cooperation, political will and leadership was crucial. So far groups such as G8, G5 or the Security Council had taken upon this role, but were they really the most appropriate ones? In these fora, the agenda for codification and harmonization efforts had been set by economic powers or super powers. Was it not be better to discuss these actions in more democratic or representative fora like EU, OECD or the UN? Was it sufficient to strengthen existing bodies like INTERPOL or were new ones needed like the UN Counter Terrorism Committee and its Executive Directorate to ensure effective responses to the challenges of globalization.

What new contributions were needed from the international organisations such as the UN with regard to technical assistance and national capacity building?