

Synopsis Submitted by Alan Bersin
Re: Keynote Presentation – January 24, 2018
BTI Institute’s Distinguished Speakers Series
University of Houston

Lines, Flows and Transnational Crime:
Toward a Revised Approach to Countering the Underworld of Globalization

My keynote presentation will propose a new framework for combatting transnational criminal activity. I argue that global illicit flows perpetrated by organized crime, in the interstices of lawful trade and travel, constitute the principal security threat in today’s world; and further that existing regulation through the Westphalian system of nation-states is ill-equipped to confront it. The propositions I advance in support of a revised approach include: (a) terrorism is one species of transnational crime; (b) national security and law enforcement functions should be viewed analytically as a continuum rather than as separated by bright lines; (c) the criminal justice model of arrest, prosecution, conviction and incarceration is a laudable but insufficient response to transnational crime; (d) joint border management within nations and between them is required and inter-agency cooperation and multilateral institutions must be strengthened materially; and (e) North America could serve downstream as the model for the new approach proposed here.

A. New Border Paradigm: Global Lines and Flows

Globalization is the cumulative cause and effect of the intensified and (often) instantaneous “borderless” flows of labor, capital, people, goods, ideas, images, data and electrons that characterize the modern world. Borders traditionally have been viewed as lines in the sand (and on a map) demarcating the edges of sovereign states (or empires) according to the Westphalian system dating from the Seventeenth Century. As the process of globalization expands, the concept of “borderless” is enlarged to encompass the unprecedented flows of all kinds that cross border lines continuously on a 24/7/365 basis. Borders in a globalized world are flows toward and across lines marking national sovereignty. The new border paradigm thereby links jurisdictional lines to flows toward and across them.

B. The Underworld of Globalization: Transnational Criminal Organizations (TCOs)

Globalization includes illicit flows on a massive scale. The illicit enterprises behind them compose gigantic businesses that are shadow reflections of multilateral corporations like Shell, Huawei, Gazprom, and Google. TCOs use modern institutions and means, including cyber space and the contemporary financial system, but often operate as well along ancient smuggling routes. The total proceeds of transnational organized crime are (roughly) estimated at \$6.2 Trillion or about 10 percent of the Gross Global Product. These illicit economies generate and control enormous concentrated power and embody a grave and substantial contemporary challenge to public order and safety.

C. Transnational Crime and TCOs Are the Principal Public Safety and Security Threat

TCOs function in the seams between the boundaries of nation states. In the context of globalization, TCOs operate successfully, and largely with impunity, within these seams -- the gaps -- between national law enforcement jurisdictions. The global framework of national sovereignty -- begun with the Treaty of Westphalia in the 1648 -- is not equipped as such to deal with the threat of transnational crime. The TCOs which operate in the netherworld of globalization control that dangerous space and have outstripped the capacity of international law enforcement including the United States Government to control it. There is a pronounced need to develop a revised approach.

D. Beyond 9/11: The Parameters of a New Approach

1. Terrorism Is One Species of Transnational Crime

Terrorism constitutes one species of transnational crime along with human trafficking, narcotics production and smuggling, migrant smuggling, and the piracy of intellectual property among the many other staples of illicit market activities. To characterize terrorism as a sub-species of transnational crime is not to minimize the problem but rather to place it in context and into perspective. This not only introduces a necessary measure of proportionality, but also leads us closer to applying the tools and techniques, and means and methods, to the broader TCO challenge that have proven so effective in the counter-terror context.

2. Blurred Boundaries: Law Enforcement and National Security, International Affairs and Domestic Matters

Nation-states remain the building blocks of geopolitical calculation and activity. However, transnational factors dominate what matters in the global security world theatre. Homeland or Internal Security is inherently transnational. There is nothing -- man-made or natural -- that affects the homeland adversely that does not have a cause or effect that is generated abroad from outside its border lines. The boundaries between law enforcement and national security are blurred by the merger of their subject matters. This highlighted the need for intellectual reengineering of traditional dichotomies and the creation of new standards and institutional mechanisms.

3. Beyond the Criminal Justice Model: Disruption, Prevention and Protection

The law enforcement paradigm -- the criminal justice model -- is not designed to take down organizations but rather imprison the individuals who run them. Because the revenue stream remains intact, the criminal incentive to sustain operations and maintain continuity, is pronounced. To defeat a TCO, its business model must be compromised and then broken through disruption. This must involve both the interdiction of the TCO's products as well as the seizure of illicit monetary proceeds. Nothing short of a unified strategy of persistent pressure against the TCO business core will suffice. The revised approach relies on a variety of sanctions in addition to traditional criminal justice system penalties.

4. Joint Border Management – Internally and Externally – Are Required

Divided and fragmented management of borders is an anachronistic artifact of the Westphalian System. What is required is a whole of government strategy that utilizes and applies the five dimensions of official power: intelligence, military action, law enforcement response, financial sanction, energy/national resource leverage, and diplomatic partnership with foreign government authorities. The military approach to identifying and defeating networks through counter-networks may have much to commend itself to law enforcement. This effort shall require the development of a military/law enforcement strategic doctrine and may suggest the creation of a force of warrior/lawmen and women who can deliver kinetic and/or law enforcement finishes to counter-TCO operations. The challenges of accomplishing this objective obviously should not be underestimated just as the necessity for it should not be ignored.

5. Multilateral Organizations – Public and Private -- Must Be Strengthened for Purposes Both of Enhanced Data Sharing and Coordinated Operations

The revised approach proposed here for protecting globalization – with its global supply chains and international travel zones -- requires significantly enhanced collaboration among public safety and police agencies at the international as well as national levels and between the private and public sectors. The operational weakness of multilateral and transnational organizations – from the United Nations to Interpol through Europol and the WCO, IMO and ICAO – in the face of transnational threats is palpable and reflective of the stubborn resistance of Westphalian sovereign politics to change and the relinquishment of even a small portion of power. As a result, information and intelligence sharing, let alone operational coordination, among national law enforcement agencies, is woefully deficient and more conspicuous than not by their absence. The same is true, broadly speaking, in terms of the pronounced lack of cooperation between the public and private sectors. The consequence is that the global criminality of TCOs, unlike that of terrorist organizations, remains barely challenged today by the international community.

6. The North American Model

The new approach to understanding borders and the transnational essence of homeland security in a global age has special implications for Mexico and Canada and the North America they share with the United States. Following wars in the nineteenth century with each of its neighbors, the United States has been blessed with the longest demilitarized borders in the world. Flows north and south among Canada, Mexico and the United States are in the process of becoming more important than the border lines running east and west between them. What drives these relationships are not regimes of shared sovereignty but rather shared production platforms, markets, and borders. The likelihood is that continental “perimeter security” over time will overshadow internal cross border concerns as the economic competitiveness of North America becomes more critical to all three countries. The “homeland security enterprise” will have much to do with the management of this promising future and could produce a model for reconciling security with expediting global flows of trade and travel.