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Globalization, Criminogenic Asymmetries and Economic Crime

Nikos Passas*

A. Introduction

We are inundated by press reports and official statements on the danger of transnational crimes, ranging from drug trafficking, terrorism and political corruption to car theft, the smuggling of aliens, nuclear materials and money laundering. The issue is high on the agenda whenever Heads of States meet. Topical as it has become, the problem is hardly new. Sophisticated criminals have always been able to transcend national borders. Governments, corporations, white-collar professionals, as well as illegal enterprises and professional crooks have been committing transnational offences for ages. There is a plethora of documented cross-border crimes, such as piracy, arms trafficking, genocide, environmental pollution and the ruthless exploitation of Third World countries by multinational corporations.¹

What is new in the 1990s, however, is the intense official concern about transnational crime. Just about every international and regional agency has been proposing and implementing policy initiatives and concrete measures. Some of these proposals are quite controversial and risky, as they involve the merging of law

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¹ G.J. Andreopoulos, *Genocide: Conceptual and Historical Dimensions* (Philadelphia, University of Pennsylvania Press, 1994); A.A. Block, *Masters of Paradise: Organized Crime and the Internal Revenue Service in the Bahamas* (New Brunswick NJ, Transaction 1991); J. Braithwaite, *Corporate Crime in the Pharmaceutical Industry* (London, Routledge and Kegan Paul 1984); W.J. Chambliss, *On the Take: From Petty Crooks to Presidents* (Bloomington, Indiana University Press 1988, 2nd ed.); M.B. Clinard, *Corporate Corruption: The Abuse of Power* (New York, Praeger 1990); R. Falk, 'Nuremberg: Past, Present, and Future' in (1971) 80 *Yale Law Journal*, at pp. 1501–1528; A. Labrousse, *La Drogue, L'Argent et les Armes* (Paris, Fayard 1991); R.J. Michalowski and R.C. Kramer, 'The Space Between Laws: The Problem of Corporate Crime in a Transnational Context' in (1987) 34 *Social Problems* 1, at pp. 34–53 reprinted in N. Passas, (ed.), *Transnational Crime* (Aldershot, Dartmouth 1998).

enforcement and intelligence services, a certain militarization of policing, privacy piercing methods and the use of undercover operations.² This begs the question: is the threat of transnational crime growing so fast that draconian measures are indispensable or are we overreacting? Is it possible that the proposed cures are as harmful as the problem they seek to solve? Some of these policies are quite drastic and carry risks to democratic principles and transition processes in many countries.

Unfortunately, discussions about the nature and extent of transnational crime are often based on speculation, exaggerations, soft data or false information. We do not have even a universally accepted definition of 'transnational crime'. In the absence of reliable evidence, the task of policymakers and social scientists is to analyse current conditions and carefully outline what we might expect at least theoretically. This is the first and most essential step before taking policy measures we might later regret. In this paper, the author poses three interrelated questions:

- (1) What factors cause transnational crime?
- (2) How does the process of globalization affect such crime?
- (3) How does globalization affect crime control efforts?

It will be argued that cross-border crime is the product of 'criminogenic asymmetries': conflicts, mismatches and inequalities in the spheres of politics, culture, the economy and the law. Globalization multiplies and intensifies such asymmetries. At the same time, there is no widely accepted and effective transnational law making and law enforcement body or mechanism. While the international community becomes a global village, controllers are generally constrained by their divergent domestic rules and limited within their jurisdiction. Precisely when we need better controls, the world is characterized by *dysnomie*.

Yet, there is no need to panic. The problem appears to be neither new nor out of control. Despite a gradual loss of autonomy, states are still able to do something about transnational crime. The author concludes with policy implications and argues that the best strategy is to make full use of new formal and informal control opportunities, which are also produced by the process of globalization.

B. A Definition of Transnational Crime

While the public debate is ongoing, the definition of transnational crime remains relatively unclear. Some equate transnational crime to stereotyped 'organized crime',

² P. Andreas, 'The Rise of the American Crimefare State' in (1997) 14 *World Policy Journal* 3, at pp. 37–45; R.T. Naylor, 'From Cold War to Crime War: The Search for a New 'National Security' Threat' in (1995a) 1 *Transnational Organized Crime* 4, at pp. 37–56; N. Passas and J. Blum 'Intelligence Services and Undercover Operations: The Case of Euromac' in *Inventing the Private? Accountability and the New Policing in Europe* (Stewart Field and C. Pelsler (eds.)) (Aldershot, Dartmouth in press).

which crosses national borders. The problems with employing the term 'organized crime' or limiting it to Mafia type ethnic associations are well known from the study of domestic forms of criminal enterprises.³ Others distinguish between international crime and transnational crime. International crimes are those proscribed by international law and custom.⁴ Transnational crimes, on the other hand, are sometimes defined as acts prohibited by the penal laws of more than one country.⁵

In the past, only state actors were subject to international law or could refer to it for the resolution of their disputes. Recent developments, however, have completely changed the situation. Individuals can now bring action against state actors and can be prosecuted for breaches of international criminal laws. In this new context, the distinction between the above-mentioned two types of crime is not particularly helpful. More importantly, the reliance on national laws for the definition of transnational crime leads to an impasse. Powerful domestic or international actors can and do influence the laws of nation states. This means that what is a crime and what is not can be decided by corrupt legislators, dictators, ruthless corporations, resourceful lobbies, etc. Should such forces influence the scope of a social scientist's object of study or a public policymaker's actions? In addition, even if all legislative processes were well-intentioned and lawful, there is a substantial diversity of laws and standards in the global community. So, we need substantive criteria for the definition of the concept of transnational crime.

In the search for a definition, which avoids the use of one or a few nation states' standards, one might be tempted to adopt completely non-legal criteria. Yet, this approach can easily lead to a subjective or relativist definition. So, the point is to define transnational crime in an inclusive manner, but without distancing ourselves too much from the law. As a first approximation, the following definition is proposed: transnational crime is cross-border misconduct, which entails avoidable and unnecessary harm to society, which is serious enough to warrant state intervention and similar to other kinds of acts criminalized in the countries concerned or by international law. Crime will be viewed as cross-border when the offenders or victims are located in or operate through more than one country.

³ N. Passas, (ed.), *Organized Crime* (Aldershot, Dartmouth 1995).

⁴ E.g., aggression, piracy, war crimes, genocide, etc.: C. Bassiouni, (1983) 'The Penal Characteristics of Conventional International Criminal Law' in (1983) 15 *Case Western Reserve Journal of International Law*, at pp. 27–37; T.L.H. McCormack and G.J. Simpson, 'The International Law Commission's Draft Code of Crimes Against the Peace and Security of Mankind: An Appraisal of the Substantive Provisions' in (1994) 5 *Criminal Law Forum* 1, at pp. 1–55.

⁵ A. Bossard, *Transnational Crime and Criminal Law* (Chicago, Office of International Criminal Justice 1990).

C. Criminogenic Asymmetries and Economic Crime

This article focuses on economic crime, which includes state crime, corporate and individual white-collar crime, as well as illegal enterprises (popularly called 'organized crime'). Most analyses of contemporary transnational economic crime concentrate on control issues, which reflect a certain anxiety on the part of (primarily Western) governments who realize that their ability to address even domestic forms of crime is diminishing. However, a complete explanation of any sort of crime requires adequate accounts with respect to illicit opportunities, motives to take advantage of such opportunities and wanting controls.

Students of global crimes have noted the influence and importance of wars, embargoes, protectionist policies, economic crises, political instability or oppression, supply shortages, differences in values and priorities among states, etc.⁶ These and many other forces contributing to economic crime can be examined under the umbrella concept of 'criminogenic asymmetries', which refers to structural discrepancies, mismatches and inequalities in the realms of the economy, law, politics, and culture. Asymmetries can cause crime:

- (1) by fuelling the demand for illegal goods and services;
- (2) by generating incentives for people and organizations to engage in illegal practices; and
- (3) by reducing the ability of authorities to control crime.

The cases illustrating the criminogenic effects of asymmetries are legion.

For example, regulatory discrepancies along with substantial economic and political asymmetries have given rise to an enormous illegal market for toxic waste. Many Third World countries either do not regulate toxic waste or do so much less

⁶ W.J. Chambliss, 'State-Organized Crime' in (1989) 27 *Criminology* 2, at pp. 183–208; J.P. Eaton, 'The Nigerian Tragedy, Environmental Regulation of Transnational Corporations and the Human Right to a Healthy Environment' in (1987) 15 *Boston University International Journal*, at p. 261 et seq.; P.L. Margules, 'International Art Theft and the Illegal Import and Export of Cultural Property: A Study of Relevant Values, Legislation, and Solutions' in (1992) 15 *Suffolk Transnational Law Journal*, at pp. 609–647, reprinted in N. Passas (ed.) *Transnational Crime* (Aldershot, Dartmouth 1998); R.T. Naylor, 'The Insurgent Economy: Black Market Operations of Guerilla Organizations' in (1993) 20 *Crime, Law and Social Change*, at pp. 13–51; R.T. Naylor, 'Loose Canons: Covert Commerce and Underground Finance in the Modern Arms Black Market' in (1995b) 22 *Crime, Law and Social Change*, at pp. 1–57, reprinted in N. Passas (ed.) *Transnational Crime* (Aldershot, Dartmouth 1998); Observatoire Géopolitique des Drogues, *The Geopolitics of Drugs* (Boston, Northeastern University Press 1996); N. Passas, 'Structural Sources of International Crime: Policy Lessons from the BCCI Affair' in (1993) 20 *Crime, Law and Social Change* 4, at pp. 293–305; W.R. Swinyard, H. Rinne and A.K. Kau, 'The Morality of Software Piracy: A Cross-Cultural Analysis' in (1990) 9 *Journal of Business Ethics*, at pp. 655–664.

rigorously than industrial states. This provides the opportunity for companies to get rid of their dangerous waste in areas where rules are lax or non-existent. Rich and 'filthy' countries ship their waste to other countries, less able to adequately deal with the ultimate disposal of such imported 'goods'.⁷

The huge financial and competitive advantages that can be gained by regulatory and cost asymmetries are a strong incentive to profit from illicit opportunities. Additional companies join in because their competitors do it and their survival is at stake. Power and economic asymmetries lead recipient countries to allow all this to go on because of their dependence on foreign investment, the need for cash in order to service external debt and the desire to create jobs. Economic and knowledge asymmetries shape the motivation of local participants in this questionable trade, too. The decision to go along reflects their lack of understanding of the full extent or nature of the hazard, their desperate need for additional income, or corruption.

Asymmetries contribute in complex ways to the absence of adequate controls. In some cases there are simply no controls at all. Technological and knowledge asymmetries are again at play, as local expertise or resources necessary to recognize the risks and deal with the waste are in short supply. Political and power asymmetries play their role when people notice the negative effects, but oppressive regimes disallow protests and ensure that poisoning practices continue unimpeded.⁸ Bribes may be paid to ensure that officials' eyes remain blind to the injustice and exploitation that takes place in their jurisdiction. Even when governments of affected countries seek redress and international instruments to remedy the situation, powerful Western governments undermine corrective actions.⁹

Many criminal practices are both the result and a cause of asymmetries in a vicious circle. Corruption, for example, is a conservative force that maintains or increases asymmetries. In the Third World, it has seriously hampered social, economic and political progress. Through the transfer of illicit payments to the West, corruption undermines economic development. This, in turn, leads to political instability as well as poor infrastructure and social services, lower education standards, and the non-completion of projects. Funds are allocated unfairly and inefficiently, which frustrates skilled and honest citizens, and increases the general population's level of distrust. As a consequence, a lot of foreign aid disappears, productive capacity is weakened, administrative efficiency is reduced and the

⁷ U. Beck, *The Risk Society* (London, Sage 1992) at p. 40; Center for Investigative Reporting and B. Moyers, *Global Dumping Ground: The International Traffic in Hazardous Waste* (Washington DC, Seven Locks Press 1990).

⁸ M.B. Clinard, *Corporate Corruption: The Abuse of Power* (New York, Praeger 1990).

⁹ E.g. see the disagreements over the language in the Basel Convention: M. Criitharis, 'Third World Nations are Down in the Dumps: The Exportation of Hazardous Waste' in (1990) 6 *Brooklyn Journal of International Law* 2, at pp. 311–339, reprinted in N. Passas (ed.) *Transnational Crime* (Aldershot, Dartmouth 1998).

legitimacy of political order is undermined.¹⁰ Political violence and other conflicts are likely to spring up in such contexts, which then give rise to illegal weapons markets and possible connections with drug trafficking as a source to finance arms purchases.¹¹

Corruption is also a consequence of asymmetries. Companies operating in countries with slow and inefficient administrations are tempted to pay 'speed money', in order to 'get the job done'. In other cases, a company may lose contracts, if it is squeamish about matching the bribes offered by other companies. The more non-meritocratic and unequal societies are, the higher is the preparedness of individuals to pay bribes in order to secure a job or other favours.

In that process, controls are weakened; widespread rationalizations of bribery as a necessary evil ease the minds of corporate managers. Diverse interpretations of the public interest may turn a corrupt practice into a patriotic act.¹² Economic asymmetries foster attitudes justifying corruption as functional to local economies and as a way of redistributing wealth.¹³ The more generalized a clientelist system is, the less participants feel that they are doing something objectionable. Moreover, legal asymmetries provide a shield against the discovery or sanctioning of corruption. The funds may end up in a secrecy jurisdiction with anonymous accounts. Additional protection is offered by the differential treatment of bribes to foreign officials. In some countries they are a serious offence, while in others they constitute tax deductible business expenses.

D. Globalization and Asymmetries

These problems increase significantly as a result of the dynamics of globalization, whereby asymmetries are multiplied, intensified and their criminogenic potential is

¹⁰ M. Johnston, 'Corruption, Inequality and Change' in *Corruption, Development and Inequality* (P.M. Ward (ed.)) (London and New York, Routledge 1989) pp. 13–37; R. Klitgaard, *Controlling Corruption* (Berkeley, University of California Press 1988); N. Passas, 'Promotion and Maintenance of the Rule of Law and Good Governance: Action Against Corruption' in (1997a) 3 *International Journal of Technical Co-operation* 2, at pp. 237–253.

¹¹ R.T. Naylor, 'The Insurgent Economy: Black Market Operations of Guerilla Organizations' in (1993) 20 *Crime, Law and Social Change*, at pp. 13–51; R.T. Naylor, 'Loose Canons: Covert Commerce and Underground Finance in the Modern Arms Black Market' in (1995b) 22 *Crime, Law and Social Change*, at pp. 1–57, reprinted in N.Passas (ed.) *Transnational Crime* (Aldershot, Dartmouth 1998); Observatoire Géopolitique des Drogues *supra* note 6.

¹² J. Kwitny, *The Crimes of Patriots: The True Tale of Dope, Dirty Money, and the CIA* (New York, W.W. Norton & Co 1987).

¹³ E.g., in some underdeveloped regions of the EU, the fight against fraud in cases involving money coming from Brussels has not been a high priority in the past; N. Passas, 'European Integration, Protectionism and Criminogenesis: A Study on Farm Subsidy Frauds' in (1994) 5 *Mediterranean Quarterly* 4, at pp. 66–84.

activated. In a nutshell, globalization refers to a set of contradictory processes and dynamics resulting into the transformation of the world order through the multiplication and intensification of linkages and interconnectedness. Capital, goods, services, people and ideas cross borders with increasing speed, frequency and ease. Actions in one country have consequences and significance in distant places. Local events and destinies can hardly be interpreted and understood without looking beyond national boundaries. The world is being reconstituted as 'one place' with global communications and media, transnational corporations, supranational institutions, integrated markets and a financial system that trades 24 hours a day.¹⁴

As the world is shrinking, both space and time are 'compressed'.¹⁵ The time space compression is most visible in the economic domain, especially in finance and manufacturing. It has enhanced the global mobility of capital and led to a new international division of labour. Further, globalization extends and intensifies the linkages of the local with the global, thereby leading to a conflation of 'presence' with 'absence'. Social relations no longer require simultaneous presence in a single location.¹⁶ Giddens¹⁷ has pointed to the intensified process of 'disembedding' social relations, which are taken out of local contexts and reconstituted across space and time. In the sphere of business, the internationalization of capital can be conceptualized as 'territorial non-coincidence of capital'.¹⁸ The fall of trade barriers and technological advances enable the expansion of transnational corporations and financial networks which seek to take advantage of regions with low production costs and new markets.

Cultural identities also become disembedded as a result of easy travelling and global consumerism. The more global media networks spread and promote foreign styles and images, the more identities become detached from specific time and space.¹⁹ This process is illustrated by the TV series 'Hercules' and 'Star Trek'. Typically American ways of thinking, manners of speech, Manicheism, virtues, flaws and weaknesses are projected well into the past and the future. 'Hercules' reconfigures age old mythological personalities, while 'Star Trek' suggests that the future of earth will look very much like the core of 'good' US values. Both series thereby effectively universalize things American as they are shown to a world audience.

¹⁴ T. McGrew, 'A Global Society?' in *Modernity and its Futures* (S. Hall, D. Held and T. McGrew (eds.)) (Cambridge, Open University Press 1992) pp. 62–102; L. Sklair, *Sociology of the Global System* (New York and London, Prentice Hall and Harvester Wheatsheaf 1995).

¹⁵ D. Harvey, *The Condition of Postmodernity* (Oxford, Basil Blackwell 1989).

¹⁶ A. Giddens, *Modernity and Self-Identity* (Cambridge, Polity 1991); D. Harvey, *The Condition of Postmodernity* (Oxford, Basil Blackwell 1989).

¹⁷ A. Giddens, *The Consequences of Modernity* (Cambridge, Polity 1990).

¹⁸ R. Murray, 'The Internationalization of Capital and the Nation-State' in (1971) 67 *New Left Review*, at pp. 84–109.

¹⁹ S. Hall, 'The Question of Cultural Identity' in *Modernity and its Futures* (S. Hall, D. Held, and T. McGrew (eds.)) (Cambridge, Open University Press 1992) pp. 273–316.

In the processes of globalization, the nation state is being increasingly transcended and considered inadequate as the basis for social analysis.²⁰ Society and the nation state are becoming conceptually distinguishable. Moreover, the independence, sovereignty and autonomy of nation states are systematically undermined by external actors and supranational bodies. Monetary and fiscal policies in one country deeply affect those in other countries. Decisions which constituted and symbolized sovereign powers now have to be shared and co-ordinated. Regional and international organizations are emerging as major players who foster further expansion of global capital and a degree of homogenization in world markets. The World Bank, the IMF, the OECD, and the European Union (the 'EU') exemplify agents of harmonization. The EU more clearly illustrates the process of 'pooling of sovereignty' among interdependent nation states, as powers and functions are transferred to supranational institutions.²¹

All these developments have inherent criminogenic consequences, as they multiply and intensify existing asymmetries. Just as globalization serves well the needs of legal capital, so does it facilitate criminal enterprises. Just as ordinary international business transactions can be concluded at the speed of light, so can unethical and illegal ones. Just as local destinies often cannot be explained without taking into account global factors, local crime victimization may not be fully understood without reference to global forces. Just as social relations do not require a simultaneous 'presence' in a given place, no longer are all elements of serious crimes in one country or region. The social organization of crime is increasingly international and sophisticated rendering national control mechanisms obsolete. As the autonomy of nation states is reduced, even domestic crimes can increasingly neither be prevented nor sanctioned without cross national collaboration.

In the past we have seen how organizations became a weapon for crime.²² We have also seen how they served to distantiate the criminal hand from the criminal mind.²³ In the global age, this distance is stretched even further as the organizations are more compartmentalized and spread throughout the world. In addition, both criminal hands and criminal minds may be absent, far away from the locus of the crime. In many instances, crimes are so well camouflaged that only specialists can detect them and realize the risks involved.

Globalization reinforces inequalities of power and wealth both within nation states and among them. It maintains and intensifies global hierarchies of privilege,

²⁰ Z. Bauman, *Intimations of Postmodernity* (London, Routledge 1992).

²¹ R.O. Keohane and S. Hoffman, (1990) 'Institutional Change in Europe in the 1980s' in *The New European Community: Decisionmaking and Institutional Change* (R.O. Keohane and S. Hoffman (eds.)) (Boulder, Westview 1990) pp. 1–39.

²² S. Wheeler and M.L. Rothman, 'The Organization as Weapon in White-Collar Crime' in (1982) 80 *Michigan Law Review*, at pp. 1403–1427.

²³ J. Braithwaite, 'Criminological Theory and Organizational Crime' in (1989) 6 *Justice Quarterly* 3, at pp. 333–358.

wealth and control.²⁴ Power asymmetries can be discerned in most spheres of social and economic interactions in different forms. For instance, knowledge asymmetries and risk distribution asymmetries end up systematically attracting and linking the powerful with the powerless.²⁵ This is clearly demonstrated in the case of toxic waste (non-) regulation discussed above. Technological asymmetries are also increased in global markets, leading to underground markets for nuclear and other material that is embargoed or in short supply.²⁶ By reproducing and intensifying divisive social relations,²⁷ globalization inevitably generates poles of resistance and opposition.

The tendency towards universalization is countered by a resurgence of nationalism and emphasis on ethnic identities.²⁸ This contradictory dynamic combines with asymmetric power relations and politics in various parts of the world to give rise to fundamentalisms. These, in turn, nurture all sorts of illegal markets as conflicts may translate into armed confrontations, which necessitate weapons, information, and skills that are in short supply because of prohibitions and embargoes. Treaties aiming at the non-proliferation of particular weapons or dual use technology may be proposed and promoted by nation states which already possess them. This adds fuel to the fire of geopolitical, religious or ethnic conflicts. More to the point for the purposes here, this series of power, ideological and demand supply asymmetries create illegal markets for technology, arms and other controlled goods and services. In addition, such illegal markets will be interconnected with drug trafficking, terrorism, corruption, money laundering, capital flight, etc. Plenty of arguments and justifications will enable numerous individuals, groups or organizations to participate in those markets. Some will be motivated by profit, others by religious or ideological convictions, and still others by the pursuit of the perceived national interest. In that context, blind eyes will be easy to secure and border controls will become porous.

The time space compression activates the criminogenic potential of existing power and economic asymmetries too. Power asymmetries are again at work when transnational corporations employ global media to market their goods and services in places where substantial numbers of people cannot afford them. Disjunctions between goals and means may be very few in rigidly stratified societies that do not encourage high social mobility. In such societies, people may not feel that they are lacking something, even if they are 'objectively' deprived. As Durkheim and Merton have shown, societies in turmoil or characterized by structural and cultural

²⁴ R. Walker, *One World, Many Worlds* (New York, Lynne Rienner 1988).

²⁵ U. Beck *supra* note 7.

²⁶ M.T. Klare, 'Secret Operatives, Clandestine Trade: The Thriving Black Market for Weapons' in (1988) 44 *Bulletin of Atomic Scientists* 3, at pp. 16-24; M.T. Klare, *Rogue States and Nuclear Outlaws: America's Search for a New Foreign Policy* (New York, Hill and Wang 1995).

²⁷ G. Modelski, *The Principles of World Politics* (New York, Free Press 1972).

²⁸ D. Harvey, *The Condition of Postmodernity* (Oxford, Basil Blackwell 1989); I. Wallerstein, *Historical Capitalism* (London, Verso 1983).

contradictions can expect high rates of deviance. Whenever a culture promotes ambitions that the society cannot help fulfil, there are frustrations and strains towards crime. Globalization breaks societal barriers and encourages new needs, desires, fashions. In this way, it promotes the adoption of non-membership reference groups for comparisons that can be unfavourable and upsetting. Globalization systematically causes in other words, relative deprivation, which may lead to deviance and crime.²⁹ It creates or dramatically broadens awareness of pre-existing economic asymmetries, which only now are criminogenic.

The criminogenic potential is activated through the cultivation of awareness of economic asymmetries and the widespread interpretation of them as unnecessary and changeable. Newly constructed needs, new ideals that are culturally promoted, legitimated and widely regarded as attainable, old and intensified economic asymmetries combine to increase discontent. Shortages of desired goods give rise to smuggling operations and black market networks, as illustrated by the illegal car trade between Eastern and Western Europe and the illegal trade in various commodities between China and Hong Kong.³⁰ People from deprived areas are strongly motivated to emigrate to the places where the 'goodies' are available.³¹ Many become vulnerable to serious crime as they are prepared to naively trust fraudsters who guarantee them decent jobs in promised lands, only to end up in forced prostitution.³² When quotas are imposed on new immigrants, highly corrupt and exploitative smuggling operations develop for those who wish to emigrate.³³

Many criminogenic effects of political asymmetries, economic asymmetries and relative deprivation can be seen in the aftermath of the collapse of the USSR and disillusionment with Western democratic policies and capitalism.³⁴ Relative deprivation has a revolutionary potential too.³⁵ Cross-border communications convey the evitability of injustice and inequality, inspire change and foster rebellion. In the past, the ideals of the French Revolution generated violent upheavals in the Balkan peninsula against the autocratic Ottoman rule.³⁶ In the process of

²⁹ N. Passas, (1997b) 'Anomie, Reference Groups, and Relative Deprivation' in *The Future of the Anomie Theory* (N. Passas and R. Agnew (eds.)) (Boston, Northeastern University Press 1997b) pp. 62–94.

³⁰ J. Vagg, 'The Borders of Crime' in (1992) 32 *British Journal of Criminology* 3, at pp. 310–328.

³¹ S. Hall *supra* note 19.

³² L. Shelley, 'Post-Soviet Organized Crime' in (1994) 2 *Demokratizatsiya* 3, at pp. 341–358.

³³ W.H. Myers, 'The Emerging Threat of Transnational Organized Crime from the East' in (1995–1996) 24 *Crime, Law and Social Change* 3, at pp. 181–222.

³⁴ S. Handelman, 'The Russian "Mafiya"' in (1994) 73 *Foreign Affairs* 2, at pp. 83–96; L. Shelley *supra* note 32.

³⁵ U. Eco, *Travels in Hyperreality* (London, Picador 1987).

³⁶ R.G. Hovannisian, 'Etiology and Sequelae of the Armenian Genocide' in *Genocide: Conceptual and Historical Dimensions* (G.J. Andreopoulos (ed.)) (Philadelphia, University of Pennsylvania Press 1994) pp. 111–140.

globalization now events in one corner of the planet can affect feelings and encourage people located in another corner, to rebel against aggression by a neighbouring state. East Timor is a case in point. The independence of the Baltic States and the UN response to Iraq's annexation of Kuwait 'have given rise to unequivocal statements about the unacceptability of aggression by a big power against its small neighbor and the sacrosanct nature of that right to self determination of which the Timorese were so cynically deprived'.³⁷

Globalization renders cultural asymmetries criminogenic and brings about another sort of more questionable and criminal type of disembeddedness. The increased contact between countries with art-rich pasts and countries with art collecting presents results in illicit transfers of national treasures from their original sites to artificial contexts. There is a huge global market of art items which are removed or stolen from primarily economically underdeveloped countries and channelled to Western private collections, museums or galleries. In the process of rooting paintings or frescoes out of their original context, many pieces of art are destroyed or damaged.³⁸

A combination of legal and cultural asymmetries leads to the cleansing of stolen art through countries with laws that conveniently legitimate the ultimate possessors, in a way reminiscent of money laundering.³⁹ In addition, there is a market in counterfeit art, as supply is insufficient to satisfy the thirst of international art collectors. Again, the profits in these markets are substantial and the risks of punishment low. Economic problems in some Third World countries motivate counterfeiters to sell fake art to rich foreigners. This activity 'is looked on favourably as a source of income that can improve the standard of living in the villages where the counterfeiters work'.⁴⁰

Other institutions facilitate the globalization of trade by promoting exports of domestic products. They often do this, however, through protectionist policies which produce a number of asymmetries. Protectionism generates incentives for the diversion of trade, adds inequalities, creates strains among traders from various countries, and introduces disincentives for effective controls. The EU's Common Agricultural Policy (the CAP) and similar programmes, for example, create demand and supply asymmetries, maintain artificial price asymmetries for the same goods, perpetuate unequal economic exchanges (something-for-nothing transactions), and

³⁷ J. Dunn, 'East Timor: A Case of Cultural Genocide?' in *Genocide: Conceptual and Historical Dimensions* (G.J. Andreopoulos (ed.)) (Philadelphia, University of Pennsylvania Press 1994) at p. 186.

³⁸ P.L. Margules *supra* note 6.

³⁹ J.E. Conklin, *Art Crime* (Westport CT, Praeger 1994).

⁴⁰ J. Brooke, 'Faced with a Shrinking Supply of Authentic Art, African Dealers Peddle the Illusion', *New York Times*, 17 April 1988 at H51.

enhance global inequalities.⁴¹ Differential pricing depending on the country of origin or final destination encourages smuggling activities, false declarations and 'phantom trade'. Subsidies and price supports foster surplus production of goods that not infrequently have to be destroyed. Ironically, as people in many parts of the world die of starvation, people in other parts destroy food supplies in order to keep the prices high.

Third World countries are then even more dependent on Western/Northern countries for their development. The aid they receive, however, is often 'imposed' or of debatable quality.⁴² In addition, aid programmes themselves are criminogenic. They facilitate fraud against recipient countries, which are anxious to receive as much as possible and therefore unlikely to complain if a part of the aid is rotten or sub-standard. Not surprisingly, we have seen cases of powdered milk sent to drought areas or machines delivered without training staff and manuals. Moreover, much of what is officially recorded as aid comes in the form of military equipment and weapons, which fuels conflict and the associated illegal markets (Rwanda and the 'aid' from European countries preceding the genocidal events is a case in point).

E. Globalization, *Dysnomie* and 'Crimes Without Lawbreaking'

As the world becomes increasingly interconnected and asymmetries are multiplied, crime rates should be expected to rise unless effective control systems are in place. Yet, official controls are weakened by processes leading to *dysnomie*; that is, to conditions undermining the ability of authorities to control individual and organizational behaviour. In this respect, *dysnomie* has some affinity to *anomie*, which connotes the relative absence of norms or people's weak allegiance to prevailing norms. In contrast to *anomie*, however, *dysnomie* is constituted by:

- (1) the absence of a widely accepted transnational normative framework to regulate cross-border activities; and
- (2) the existence of many different, inconsistent and often conflicting legal frameworks.

So, *dysnomie* refers to an ineffective regulatory patchwork and fragmented controls, which make possible the commission of 'crimes without lawbreaking'.

⁴¹ N. Passas *supra* note 13; M.J. Roarty, 'The Impact of the Common Agricultural Policy on Agricultural Trade and Development' in (February 1987) *National Westminster Bank Quarterly Review*, at pp. 18–28.

⁴² EU Court of Auditors (1987). Special Report No. 1/87 on The Quality of Food Aid. Brussels, OJ No. C 219/1.

More than ever before, international law is a *conditio sine qua non* for the maintenance of world order and security. This, however, requires additional shifts of competence and power from nation states to transnational institutions. The more powerful a government is, the more it has to lose by contributing to such pooling of sovereignty. Hence the resistance by countries in the North to the establishment of international norms and procedures. US President Bush's rhetoric about a 'new world order' and enthusiastic commitment to some international laws lost its momentum after the end of the Persian Gulf War. The promise of a more active UN proved to be illusory and the re-election of its 'daring' Secretary General was vetoed by the US. The UN has limited independence and cannot be expected to act against the countries that finance it or have veto power.

Indeed, the US and other prominent members of the coalition against Iraq have blocked the development of an international criminal code and permanent court. The same applies to specific initiatives regarding *inter alia* aggression, genocide, the protection of the environment or the prevention of theft of natural and cultural property from countries in the South.⁴³ International law used to legitimate policies and practices of powerful nation states (e.g., slavery). Now, its role is more ambiguous, as it can be used against powerful states (see *Nicaragua v. USA* before the World Court, although the ruling was never enforced). Further, as the US–USSR bi-polarity disappeared, the geopolitical context that supported international law for decades disappeared, leaving little to replace it.⁴⁴

Transnational institutions have failed to provide a comprehensive normative framework and enforcement mechanisms to ensure predictability in economic activity and the control of illegal transactions. It is true that the UN, the World Trade Organization, the OECD, the EU, the Council of Europe, and other organizations have assumed a growing number of responsibilities in directly regulating international transactions or in influencing national regulation and promoting processes of harmonization.⁴⁵ These organizations' guidelines and suggestions, however, are only occasionally and inconsistently followed by national governments. Experience shows that even when some regimes, principles, laws or 'gentlemen's agreements' (e.g., the Basle Concordat on banking practices) are in place, their implementation or enforcement is most of the time purely symbolic and

⁴³ M. Critharis *supra* note 9; R. Falk *supra* note 1; R. Falk, 'Rethinking the Agenda of International Law' in *Beyond National Sovereignty: International Communication in the 1990s* (K. Nordenstreng and H.I. Schiller (eds.)) (Norwood NJ, Ablex 1993) pp. 418–431; B.B. Ferencz, 'An International Criminal Code and Court: Where They Stand and Where They're Going' in (1992) 30 *Columbia Journal of Transnational Law*, pp. 375–399; P.L. Margules *supra* note 6.

⁴⁴ R. Falk *supra* note 43.

⁴⁵ R. Cox, *Power, Production and World Order* (New York, St. Martin's Press 1987); N. Passas *supra* note 13; N. Passas *supra* note 10.

selective (compare the long list of unenforced UN resolutions with the determination to punish Iraq's invasion of Kuwait).

In effect, both regulatory and criminal law enforcement functions are stubbornly in the hands of national bodies which pursue objectives and employ methods that are inconsistent with each other. Regionalism, nationalism, and the insistence on exclusive competence to enact and enforce laws within national territories bring about further asymmetries. This is because gaps generated by the resistance to global control mechanisms are filled by national measures. At the same time, despite efforts to harmonize standards and approaches in some areas (e.g., copyright, drugs), legal traditions remain extremely diverse and often incompatible. The internationalization of business, the frequent travel and the familiarization of executives with conflicting rules further facilitate misconduct. In such cases of confusing polynomie, globalization leads to a relativization of norms and to law violations without pangs of conscience.⁴⁶

Thus, the globalization of markets and enterprises entails increasingly fragmented regulation. The more a company grows into new markets, the less amenable it becomes to control, accountability and consolidated supervision. These processes foster the *par excellence* global crime, the 'crime without lawbreaking'. Misconduct falling under our substantive definition of crime may be committed in such ways that the criminal laws of no country are violated. Criminals can slip through the cracks of the parochial regulatory patchwork.⁴⁷ We have seen how this is possible in the description of the trade in toxic waste and of corrupt practices. Lawyers, accountants, former government or military officials who act as consultants or private businessmen can offer advice on how to engage in harmful practices without breaking the laws of the countries where different operations take place. Transactions criminalized in various parts of the world can be concluded in countries that allow or welcome them. Transactions can be structured so that no country's laws are broken although the final outcome is clearly unethical or 'criminal'. Compartmentalized corporate structures effectively raise firewalls protecting both the company and its executives from knowledge of wrongdoing and liability. Financial transactions that are disallowed or must be reported can be booked to offshore subsidiaries and branches. Research, experiments, manufacturing and distribution of commodities or services that are outlawed or controlled in some countries can take place in countries with friendlier regulations.

The pharmaceutical industry illustrates how such opportunities are maintained and exploited by transnational corporations. The initial testing of drugs can be conducted in the Third World where safeguards are lower, civil lawsuits are unlikely, and other forms of protest have slim chances of success. Countries with lax standards are used for first approval and manufacture, so that Third World markets

⁴⁶ This is consistent with the more general 'compliance crisis' noted by J. Rosenau, *Turbulence in World Politics* (Brighton, Harvester Wheatsheaf 1990).

⁴⁷ R.J. Michalowski and R.C. Kramer *supra* note 1.

can be entered, before final approval is made by more demanding First World agencies. Components of dangerous and banned drugs can be made in places allowing their manufacture and then marketed in countries that have not banned them.⁴⁸ The Third World is not only used as a laboratory with guinea pigs, but also as a dumping ground for dangerous products. Drugs with serious side effects are exported to several countries with the list of side effects getting shorter the farther to the South the drugs are going. Defective and harmful products, such as the Dalkon Shield IUD, can be exported and sold around the world despite their ban in the home country.⁴⁹

Other examples of crimes without lawbreaking include the use of child labour in poor countries that condone it by companies that then export the manufactured goods to countries that criminalize the practice. Taxes may be evaded legally through the practice of price transfer, which allows the profits to be booked in countries with no income tax.⁵⁰ Dirty money can be laundered in countries requiring no reporting of even substantial amounts of cash deposits and then transferred to Western banks that may not know its criminal origin (and do not care to find out).⁵¹ Globalization has enabled financial institutions to do overseas what they are disallowed to do at home. As the BCCI has shown, it has become possible for a financial institution to not have a home at all.⁵²

Secrecy and anonymity hinder investigators by covering the tracks of the 'global offender'. Illegal financial transactions and losses that must be reported can be conducted and hidden through offshore entities of global enterprises, practically pulling the wool over the eyes of controllers. Secrecy jurisdictions serve as a 'black box' through which all manner of illegal activities can be shielded against prosecution and punishment.⁵³ In a sense, this sort of black box makes serious crimes disappear. Few, if any, outsiders know that they have been committed. Victims realize their losses only when it is too late (all these systemic problems are highlighted by the recent financial scandals of BCCI, Barings, Daiwa and Sumitomo).

⁴⁸ J. Braithwaite *supra* note 1.

⁴⁹ P. Cashman, 'The Dalkon Shield' in *Stains on a White Collar* (P. Grabosky and A. Sutton (eds.)) (Sydney, The Federation Press 1989) pp. 92–117.

⁵⁰ S. Picciotto, *International Business Taxation* (New York, Quorum Books 1992).

⁵¹ M. Levi, 'Pecunia non Olet: Cleansing the Money-Launderers from the Temple' in (1991) 16 *Crime, Law and Social Change*, at pp. 217–302. Interestingly, the very criticism of the role and responsibility of Swiss banks relative to 'Nazi gold' during the Second World War could be made of the role and responsibility of big Western banks today. Just as the neutral Swiss could tell that the gold coming from Germany was forcibly taken from Jews, banks can at least suspect that the hundreds of billions of dollars coming from the Third World are proceeds from drug and arms trafficking, dictators' plunder, flight capital, corrupt payments, evaded taxes, etc.

⁵² N. Passas, 'The Mirror of Global Evils: A Review Essay on the BCCI Affair' in (1995b) 12 *Justice Quarterly* 2, at pp. 801–829.

⁵³ J. Blum, and A. Block, 'Le Blanchiment de l' Argent dans les Antilles: Bahamas, Saint Martin et Iles Caïmans' in *La Planète des Drogues* (A. Labrousse and A. Wallon (eds.)) (Paris, Seuil (1993) pp. 73–102.

In short, to the extent that transactions take place within one jurisdiction or within jurisdictions with similar legal traditions, the task environment is relatively easy to handle. Businesses are clear about the rules of the game, while supervisors can regulate more readily. To the extent that transactions cross jurisdictions with differing legal traditions and cultures, both compliance and control become highly problematic. In addition to these problems, legal cacophonies are accompanied by jurisdictional conflicts, nightmares in collaboration, cultural conflicts and power differentials among both actors and regulators.

European integration and the regulation of EU programmes, such as the CAP, highlight the clash between centralizing forces of globalization and attempts at decentralization. Powers and competence to make decisions and policies affecting its 15 members are shifted to EU organs. Despite the pooling of sovereignty, national authorities remain in charge of enforcing EU regulations and policing the borders.⁵⁴ There is no EU power to enact or enforce criminal law. As a result, the EU funds, to which Member States contribute unequally, are protected by national and local authorities, whose priorities lie elsewhere and may be reluctant to prosecute contributors to the regional economy. Despite good efforts at harmonization,⁵⁵ the national penal laws applicable to EU frauds vary substantially. EU regulations and fraud are hard to explain to juries, boring and unintelligible to national judges and law enforcers.⁵⁶ Efforts to resolve jurisdictional issues for multinational cases started in the 1970s and are still ongoing.

EU regulations are not only imperfect but also too numerous for national controllers to keep up with. The changing national moods and ruling parties in Member States, shifting priorities and commitment to European integration, the enlargement of the EU and the need to remedy problems created by loopholes in previous regulations, make for constant amendments and rule proliferation. The combined effect of the uneven process of European integration, piecemeal controls, regulatory inflation with intended ambiguities is to render some EU programmes inherently dysnomic. The whole process leads to an over legalization of certain areas, which requires increased reliance on legal and accounting experts. This in turn leads to reduced visibility, accountability and detectability of misconduct.⁵⁷

If the problems are serious within the relatively developed and integrated EU, they are barely manageable in the global markets. By operating in countries with conflicting standards corporations not only have higher compliance costs, but they can also find it hard to abide by the laws of all countries where they operate. Occasions arise when they may have to break the laws of one country, if they observe

⁵⁴ With the exception of the very contested powers of the EU Commission with respect to competition and anti-trust rules.

⁵⁵ M. Delmas-Marty (ed.), *Corpus Juris* (Paris, Economica 1997).

⁵⁶ N. Passas and D. Nelken, 'The Fight Against Fraud in the European Community: Cacophony Rather Than Harmony' in (1991) 6 *Corruption and Reform*, at pp. 237–266.

⁵⁷ N. Passas *supra* note 13.

those of another. In such cases, globalization produces yet another type of crime: 'crime due to respect of domestic law'. Cases from the banking sector exemplify this dilemma. Many financial institutions operate both in the US and in 'black box' jurisdictions in the Caribbean, the Pacific, and Europe. As criminal clients use the offshore banking facilities for their transactions, US law enforcers ask the US branches of these institutions to produce the records, which are indispensable for prosecution. Since the records are physically within secrecy jurisdictions, the banks cannot comply with US court orders. The governments in such secrecy jurisdictions regard these demands as a violation of their sovereignty and take further measures to ensure that US attempts to obtain confidential records are frustrated. Caught in the middle are the banks, the non-party witnesses, who are required to either ignore a US court order and face contempt of court charges or to produce the records and violate banking and criminal laws of the country in which the records are located.⁵⁸

At stake is not only the question of sovereignty, but also strong financial interests. Tax havens and secrecy jurisdictions derive substantial revenues from the banking industry. It is tax advantages and confidentiality that draws legitimate and illegitimate businesses to offshore locations. Given the lack of universal tax and regulatory standards, globalization has unleashed a competitive struggle among nation states to attract as many investments and businesses as possible. Given the gigantic market for secrecy and tax advantages,⁵⁹ countries have succumbed to the temptation to regulate more laxly than others. In other words, at precisely the time when better regulation was needed, globalization has fostered 'competitive deregulation'.⁶⁰

In the end, attempts to regulate nationally and curb globalization are doomed to fail. In fact, they become a Sisyphean task given that 'much of the globalization today is the result of regulatory barriers, which drove borrowers and investors to find ways around national regulation'.⁶¹ We finally come full circle. We started with processes whereby globalization undermines state autonomy and increases or activates asymmetries, including discrepancies in legal traditions and regulatory practices. We now see that it is also independent actions of states and asymmetric national regulations that make for globalization.

⁵⁸ H. Harfield and R.E. Deming, 'Extraterritorial Imperatives' in (1988) 20 *Case Western Reserve Journal of International Law*, at pp. 393–403; S.B. Piñera-Vázquez, 'Extraterritorial Jurisdiction and International Banking: A Conflict of Interests' in (1988) 43 *University of Miami Law Review*, at pp. 449–491.

⁵⁹ I. Walter, *Secret Money: The World of International Financial Secrecy* (London, George Unwin & Allen 1985).

⁶⁰ R. Dale, *The Regulation of International Banking* (Cambridge, Woodhead-Faulkner 1984).

⁶¹ L.L. Bryan, *Bankrupt: Restoring The Health and Profitability of Our Banking System* (New York, Harper Business 1991) at p. 183.

F. Conclusion and Policy Implications

If globalization is inevitable, what can be done about the economic crime problems that accompany it? Globalization has brought into closer contact, interaction and interdependence countries with unequal power and diverse cultures, legal traditions, economic and political outlooks. The roots of the growing problem of economic crime have been located in the criminogenic asymmetries that offer illegal opportunities, create motives to use such opportunities, and make it possible for offenders to get away scot free. Asymmetries will continue to exist, some of them will even grow. In fact many asymmetries ought to remain, especially in the sphere of culture. Crime fighting cannot and should not seek the standardization of everything on a global level. The task is to diminish or eradicate undesirable asymmetries and to reduce the criminogenic effect of those we wish to preserve or cannot do much about.

There are also some reasons why the problem is not as grave as one may fear. First of all, criminal entrepreneurs have no desire to destroy the state. Only politically motivated offenders seek the overthrow of government and a change in political regime. Economic offenders, however, benefit from the relative certainty, predictability and other services provided by the government. They often have a symbiotic relationship with legitimate business and other organizations,⁶² as they use the same infrastructure or offer goods and services in demand by conventional society. Similarly to domestic illegal entrepreneurs, they only wish to neutralize the state and use it to their advantage.⁶³ So, self-preservation of criminal entrepreneurs dictates minimal confrontation with state actors and no attacks on the economic system, as such.

In addition, serious offenders have always crossed borders with little difficulty. The problem is not as new as some media and sensationalist reports make it appear. The difference now is that cross-border crime is becoming more of an equal opportunity employer than before. Globalization and new technologies make it possible for small time criminals and small non-state related groups to also commit transnational offences. This is the most worrying aspect in some respects, because the degree of predictability is lower. However, just as transnational crime is in a sense 'democratized', so is the control of such misconduct. Communication technologies and the wider use of the Internet enable coalition building, sharing of ideas and information, and thereby can support informal control mechanisms (the internet can also assist criminal justice efforts). Non-governmental organizations and

⁶² N. Passas, (1998) 'Transnational Crime: The Interface Between Legal and Illegal Actors' presented at the *National Research Council Workshop on Transnational Organized Crime* (Washington DC 1998).

⁶³ D.C. Smith, 'Some Things That May Be More Important to Understand About Organized Crime Than Cosa Nostra' in (1971) 24 *University of Florida Law Review* 1, at pp. 1-30.

pressure groups can be quite effective even when they take on powerful opponents. As has been pointed out, there is also a process of 'globalization from below'.⁶⁴ In other words, small communities and countries are empowered in some respects.⁶⁵ The cases of *Shell* and *Nestlé* illustrate the point. More recently, Colombian indigenous people waged a successful battle against Occidental Petroleum.⁶⁶ The effect of informal controls can be bolstered through boycotts, the shaming of powerful actors into socially responsible practices, and the use of civil law suits.

At the same time, policymakers need to work towards a reduction of legal asymmetries through harmonization of provisions and sanctions. Fewer regulatory asymmetries will lower both criminogenesis and compliance costs. Corporations are more likely to comply with rules they accept than with rules they perceive as arbitrary and unwarranted.⁶⁷ It may be possible, thus, to collaborate with companies for better all round results without resort to criminal law.⁶⁸ In the banking sector, there are serious efforts underway by think tanks, academics and financial institutions to develop international standards that the industry can live with and the regulators can enforce. The same process may be encouraged in other industries.

National authorities must resist the temptation to use asymmetric powers and enforce their laws extraterritorially without genuine consent by concerned governments. Unilateral actions and selective enforcement must be shunned, because they are counterproductive. They may produce short-term results (i.e., the capture and punishment of certain offenders). Yet, in the long term, they undermine the legitimacy of international norms. National bodies ought to collaborate constantly and consistently. Furthermore, they need to promote and encourage the development of an international criminal code and the establishment of a permanent international criminal court.

Powerful states and corporations will not always participate whole heartedly in processes that ultimately involve power sharing. Co-operation, harmonization of rules and the emergence of international regimes require a degree of consensual knowledge, a shared understanding of common risks and problems to be solved.⁶⁹ A vital element of a strategy to fight global economic crime, therefore, is to contribute to consensual knowledge about its causes and consequences. Policymakers and the

⁶⁴ R. Falk, 'Rethinking the Agenda of International Law' in *Beyond National Sovereignty: International Communication in the 1990s* (K. Nordenstreng and H.I. Schiller (eds.)) (Norwood NJ, Ablex 1993) pp. 418–431.

⁶⁵ J. Braithwaite *supra* note 1; J. Rosenau *supra* note 46.

⁶⁶ *The Economist*, 7 June 1998.

⁶⁷ M.D. Ermann, and J.R. Lundman, 'Deviant Acts by Complex Organizations: Deviance and Social Control at the Organizational Level of Analysis' in (1978) 19 *Sociological Quarterly*, at pp. 55–67.

⁶⁸ B. Fisse and J. Braithwaite, *Corporations, Crime and Accountability* (Cambridge, Cambridge University Press 1993).

⁶⁹ E.B. Kapstein, 'Resolving the Regulator's Dilemma: International Co-ordination of Banking Regulations' in (1989) 43 *International Organization* 2, at pp. 323–347.

public must be made aware of the boomerang effects of their country's domestic and foreign policies and the practices of transnational corporations.

Most importantly, the crime problem must be addressed at its root. It must be emphasized that, despite the gradual loss of nation states' power to act and influence their own environment without external constraints, it is the exercise of state power that ultimately contributes to global crime opportunities and crime facilitation. Reduced national autonomy does not make states less responsible for crime causation. It is national policies, the exercise of asymmetric state powers, an obsession with sovereignty and nationalist resistance against international regulation that account for many criminogenic asymmetries.

Almost all asymmetries discussed above are the making of national authorities. Their economic policies bear responsibility for relative and objective deprivation. It is their protectionism and subsidization of domestic industries, while they preach 'free markets' and 'liberalization of trade' to others, that impair the efforts of less developed countries to narrow the gaps. It is their monetary policies and control of international organizations that preserve asymmetric development and growth. It is authoritarian regimes that cause ethnic and political violence. It is their hegemonic policies and support for dictatorial regimes overseas that provoke international terrorism and fundamentalisms. It is their selective control and promotion of domestic military industries that fuel armed conflicts (note that industries from the permanent members of the UN Security Council produce the overwhelming majority of weapons). It is their unwillingness to share knowledge, information and technology that breeds unease and inequalities. It is their prohibitions of commodities and services in demand that create illegal opportunities. It is their inability or unwillingness to reduce the demand for prohibited goods and services that perpetuates the illegal markets. It is their imposition of quotas for new immigrants that gives rise to the inhumane smuggling of illegal aliens. It is their resort to criminal justice methods to deal with the consequences of their policies that provide incentives for more sophisticated organization of crime and raise the price of corruption. In many instances, conflicts between foreign policies and covert activities of secret services generate illegal markets and facilitate crime.

In some cases, state actors are direct participants in transnational crimes.⁷⁰ In other cases, the creation of illegal opportunities is an unintended consequence of

⁷⁰ E.g., in piracy: W.J. Chambliss, 'State-Organized Crime' in (1989) 27 *Criminology* 2, at pp. 183–208; the misuse of nuclear capability: D. Kauzlarich and R. Kramer, *Crimes of the American Nuclear State* (Boston, Northeastern University Press 1998); the Iran–Contra affair: L.E. Walsh, *Final Report of the Independent Counsel for Iran/Contra Matters* (Washington DC, US Court of Appeals for the District of Columbia Circuit 1993); the illegal arming of Iraq: M. Phythian, *Arming Iraq: How the US and Britain Secretly Built Saddam's War Machine* (Boston, Northeastern University Press 1996).

governmental policies, as seen in the war on drugs,⁷¹ or subsidy programmes. In yet other cases, governments simply do not wish to act. Secrecy jurisdictions, for example, are routinely demonized for the crimes they facilitate. The same governments, which complain about these jurisdictions can take effective action against them. However, there are many important users of these jurisdictions with influence over government policies. In addition to criminals, secrecy jurisdictions are also used by government agencies, business people and corporations,⁷² who are bound to resist aggressive action through lobbying and political campaign contributions. The problem, thus, is one of government unwillingness rather than powerlessness. Transnational crime is the hidden cost of certain government policies. The main point for our purposes, however, is that to the extent that there is a government responsibility to transnational crime causation, there is also a government capacity to do something about it.

As we have seen, globalization causes crime as well as possibilities for its control. Nation states lose autonomy, but they are still able to influence crime patterns (at least some of them). Due to the lack of sound empirical data, we cannot be sure exactly how much transnational crime is being committed and whether it is rising. There is an urgent need for systematic research into different forms of transnational crimes. The author's final point is that, until we develop a solid empirical database on this problem and we implement policies resulting from careful theoretical analyses, we should avoid the adoption of controversial measures, which risk undermining the very freedoms we wish to preserve and promote.

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⁷¹ A.A. Block, and A.W. McCoy, (eds.), *War on Drugs: Studies in the Failure of US Narcotics Policy* (Boulder, CO: Westview Press 1992); E.A. Nadelmann, 'Commonsense Drug Policy' in (1998) 77 *Foreign Affairs* 1, at pp. 111–126; Observatoire Géopolitique des Drogues *supra* note 6.

⁷² Walter *supra* note 59.

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