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Promoting the Culture of Lawfulness by Teaching about Transnational Organized Crime

Abstract: The mention of “culture of lawfulness” in the Doha Declaration of the Thirteenth United Nations Congress on Crime Prevention and Criminal Justice (Qatar, 2015)¹ prompted the United Nations Office on Drugs and Crime to develop the Education for Justice initiative, aiming to support the integration of crime prevention and the rule of law into all levels of education. This essay gives an example of how the culture of lawfulness can be promoted by teaching a tertiary-level course showing the links among the rule of law, corruption, transnational organized crime, and the need for appreciation of diverse cultures. The essay illustrates this by the case of countering of transnational organized crime, and presents the reasons for and ways to integrate discussion of the rule of law and corruption. Finally, this essay’s author argues for the need to understand and appreciate diverse legal traditions.

Keywords: corruption, cross-national cooperation, education for justice, legal traditions, rule of law, transnational organized crime

1. Introduction

The Doha Declaration of the Thirteenth United Nations Congress on Crime Prevention and Criminal Justice (Qatar, 2015) emphasizes education as a fundamental tool in preventing crime and corruption and in promoting a culture that supports the rule of law and criminal justice. In that context, the Global Programme launched by the United Nations Office on Drugs and Crime (UNODC) aims to help achieve a positive and sustainable impact on crime prevention, criminal justice, corruption prevention, and the rule of law. One of the four components by which that goal is

1 A/RES/70/174, Doha Declaration on Integrating Crime Prevention and Criminal Justice into the Wider United Nations Agenda to Address Social and Economic Challenges and to Promote the Rule of Law at the National and International Levels, and Public Participation, 17 December 2015.

to be achieved is identified as the Education for Justice (E4J) initiative, which intends to support the integration of crime prevention and the rule of law into all levels of education.² This essay provides an example of how the culture of lawfulness can be promoted by teaching at the tertiary and post-graduate education levels the importance of understanding links among the rule of law, corruption, transnational organized crime, and the need for appreciation of diverse cultures.

2. Background

The 2030 Agenda for Sustainable Development³, particularly Sustainable Development Goals 4 and 16, call for quality education and building peace, justice and strong institutions. An academic course at the post-graduate-level can help accomplish this by providing students with information about links between transnational organized crime, the rule of law, and corruption. In this way, we can empower, motivate, and equip students to become ethically responsible agents of change. Importantly, this must be accomplished while remembering the caution by Ambassador Ali bin Jassim Al-Thani of the State of Qatar, who stresses that respect for the diversity of cultures must always be kept in mind⁴. To that end, proposed here are justification and implementation suggestions for a graduate-level academic course that uses transnational organized crime as a topic by which such key issues as the rule of law and corruption can be introduced to students. The information is presented with attention to the relevance of transnational organized crime as the vehicle for discussion, to the importance of the rule of law and corruption as key concepts to be explained and understood with attention to the diversity of cultures.

The course content being described has been taught by the author for three years at the University for Peace, a United Nations-mandated university, in Costa Rica. The course, *IPS 6058: Transnational Organized Crime*, mandatory for students in the International Peace Studies (IPS) program area but is often taken as an elective by students in such programs as International Law and Human Rights, Environment Development and Peace, and by IPS students choosing the specialization in Media, Peace and Conflict Studies. These are all Master's-level students from around the world and with a variety of undergraduate backgrounds. Many of them are planning careers as diplomats, working for NGOs, or seeking additional study to supplement

2 About the Global Programme. The Doha Declaration: Promoting a Culture of Lawfulness. <https://www.unodc.org/dohadeclaration/en/index.html> (10.06.2018).

3 A/RES/70/1, Transforming our World: the 2030 Agenda for Sustainable Development, 25 September 2015.

4 Global Citizenship Education for a Culture of Lawfulness Initiative Begins its Work. <https://www.unodc.org/dohadeclaration/en/news/2018/03/global-citizenship-education-for-a-culture-of-lawfulness-initiative-begins-its-work.html> (10.06.2018).

current occupations. With appropriate adjustments for assignments, the course can easily be made appropriate for bachelors-level students.

3. Transnational organized crime as the topic for discussion and illustration

The subject of transnational organized crime (TOC) provides an interesting and appropriate topic by which such key issues as the rule of law, corruption, and cross-national cooperation can be taught. Beginning with the UN Convention Against Transnational Organized Crime (UNTOC), students are made aware of the need for international cooperation in criminal matters. Although UNTOC includes no precise definition of TOC, it is clear that “groups” and “more than one state” are key components to be considered, and the course begins with the implied definition that TOC encompasses all profit-motivated criminal activities with international implications⁵.

Globalization’s role in TOC is reviewed with attention to both benefits and problems resulting from the facilitation of international trade and communication and the difficulty of regulating both,⁶ and that point leads nicely to a discussion of the direct and indirect impacts presented by TOC. But, the key topic to cover at this initial stage is the link between TOC and the Sustainable Development Goals (SDGs), particularly Goal 16 that is dedicated to the promotion of peaceful and inclusive societies for sustainable development, the provision of access to justice for all, and building effective, accountable institutions at all levels.

Many of the targets for Goal 16 are relevant to TOC, but 16.1 (reducing all forms of violence), 16.2 (ending abuse, exploitation, trafficking, and violence against children), 16.3 (promoting the rule of law), 16.4 (reducing illicit financial and arms flows and combatting all forms of organized crime), and 16.5 (substantially reduce corruption and bribery) should be highlighted and discussed⁷. In fact, these five

5 Transnational Organized Crime - The Globalized Illegal Economy. https://www.unodc.org/documents/toc/factsheets/TOC12_fs_general_EN_HIRES.pdf (8.06.2018).

6 Draw on such readings as N. Gilman, J. Goldhammer, S. Weber, *Deviant Globalization*, (in:) M. Miklaucic, J. Brewer (eds.), *Convergence: Illicit Networks and National Security in the Age of Globalization*, Institute for National Strategic Studies, Washington 2013, pp. 3-13; D.C. Morrison, *Transnational Crime: Globalization’s Shadowy Stepchild*, (in:) Foreign Policy Association (ed.), *Great Decisions 2010*, New York, pp. 31-42; UNODC, *Executive Summary*, (in:) UNODC, *The Globalization of Crime: A Transnational Organized Crime Threat Assessment* Vienna n.d., pp. 1-18.

7 As a pedagogical technique, all target indicators for Goal 16 can be shown then students asked which fit most closely with the topic of TOC - having them offer support and examples for their choices.

target indicators provide a reasonable topic outline for structuring the remainder of course material.

To appreciate the difficulties and possibilities of combatting TOC, it is necessary to review theories that have been developed for understanding TOC's structure and operation. Of those to consider, illegal enterprise theory, the social network approach, and the situational approach,⁸ present thought-provoking material that can lead to discussion of implications for investigation, enforcement, and prosecution efforts and cross-national cooperation.

After introducing the concept of TOC, highlighting its link to globalization, showing its relevance to SDG 16, and offering some thoughts on how TOC is understood theoretically, the groundwork has been provided to consider the need for attention to the rule of law when addressing TOC, and the importance of corruption as the lubricant for TOC.

4. Integrating the rule of law and the role of corruption in relation to TOC

The rule of law develops from recognition of certain fundamental values that are reduced to written form and have both substantive and administrative procedures established to hold the nation's government to those fundamental principles⁹. Examples of fundamental values and their reduction to written form can be reviewed,¹⁰ thereafter discussion should focus on the challenges of recognizing when violation of the rule of law has occurred and on enforcing the law relevant to that violation.

When students have grasped the intricacies of the rule of law concept, they should be asked to consider how it might relate to TOC. That discussion will eventually lead to, or be directed to, the topic of corruption. When corruption is understood to involve the abuse of power or position for personal gain students should be asked to identify some specific costs of corruption (e.g., subverts the rule of law, causes unequal provision of public services, undermines security), possibly returning to and reiterating, SDG 16.5 (substantially reduce corruption and bribery). Specifically, since corruption of government creates impunity for criminal acts by undermining

8 See, for example, E. R. Kleemans, *Theoretical Perspectives on Organized Crime*, (in:) L. Paoli (ed.), *Oxford Handbook of Organized Crime*, Oxford University Press, Oxford, pp. 32-52.

9 As a pedagogical technique, have students (individually or in groups) identify things they consider to be examples of fundamental values at national and international levels. Compare the results with examples found in the literature.

10 For example, *Charter of Fundamental Rights of the European Union*, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:12012P/TXT> (10 June 2018); *What is the Rule of Law?* <https://worldjusticeproject.org/about-us/overview/what-rule-law> (8.06.2018).

the legitimacy of the state and its institutions, SDG 16.5 cannot be achieved without addressing corruption related to organized crime¹¹.

Relevance of the concept can be highlighted by understanding its extent and distribution. An effective and interesting way to accomplish this is with reference to the most recent Corruption Perceptions Index (CPI) from Transparency International¹². After briefly explaining the methodology, some interesting graphics linked to the CPI can be reviewed. The graphic showing perceived levels of public sector corruption in 180 countries (using the 2017 CPI) provides an opportunity to discuss how countries with lower index scores (higher perception of corruption) compared with higher scoring countries (lower perception of corruption) might relate to such discussion points as a nation's role as a country of origin, transition, or destination for various TOC.

At this point, it is possible to make links to specific crime types and to TOC more generally. One might begin with reference to Transparency International's three broad types of corruption (grand, petty, and political),¹³ but should eventually identify specific crimes that reflect public officials or private business persons voluntarily engaging in for their own personal gain or involve a corrupt exchange between public officials and private businesses or citizens that mutually benefits both parties. From here, course material might include coverage of specific TOC (e.g., human trafficking, maritime piracy, cybercrime, wildlife crime) by lecture or student presentation¹⁴.

5. Legal traditions as a reflection of the diversity of cultures

Cross-national cooperation to prevent and combat transnational organized crime requires police and prosecutors from different countries to interact effectively and efficiently with each other. There are key organizations that have been established to facilitate this process such as INTERPOL, Europol, and Eurojust,¹⁵ and it is important to identify the role of each. However, this topic of cross-national cooperation also provides an opportunity to explain the importance of diverse cultures. Specifically, the variety of legal traditions must be appreciated and accounted

11 Global Initiative against Transnational Organized Crime, Results-Based Approaches to Organized Crime and Development: Input into the Post-2015 Development Agenda, The Global Initiative against Transnational Organized Crime, Geneva 2015.

12 Find the most recent version at https://www.transparency.org/news/feature/corruption_perceptions_index_2017.

13 What is corruption? <https://www.transparency.org/what-is-corruption> (10.06.2018).

14 If student presentations (individual or group) are used, a presentation content requirement should be examples of how corruption operates in the context of the crime being discussed.

15 See <https://www.interpol.int/> for INTERPOL, <https://www.europol.europa.eu/> for Europol, and <http://www.eurojust.europa.eu/Pages/home.aspx> for Eurojust.

for when cooperative efforts among police and prosecutors are considered. This is accomplished by discussing legal traditions and by explaining how the variation might affect cooperation.

Students are familiar with the concept of legal systems, even if it's only in terms of the existence in each country of some mechanism for law enforcement, adjudication, and punishment. And they quickly understand that the number of different legal systems is likely the same as the number of different countries. They are encouraged instead to think in terms of legal traditions, which places legal systems in a cultural perspective. Whereas *legal system* refers to a country's legal institutions, procedures, and rules, *legal tradition* refers to deeply rooted and historically conditioned attitudes about things such as the nature of law, the role of law in society, how a legal system should be organized and operated, and the way law is or should be made, applied, or perfected¹⁶. From this perspective, it is possible to analyze the legal system of a considerable number of countries at one time. In doing so, however, we must not forget the variability of systems within the traditions. England, New Zealand, and the U.S. share a common legal tradition but do not have identical legal systems. Similarly, France, Germany, and Italy have their own legal systems but can be grouped in the same legal tradition along with the separate legal systems of Argentina and Brazil.

Legitimate arguments are made for any number of legal traditions having influence in contemporary society¹⁷. Four are identified for the purpose of this course: Common, Civil, Islamic, and Eastern Asia¹⁸. A full understanding of comparative legal traditions is beyond the scope of this course, but enough information can be provided over two or three class periods to show key differences. For example, nations more closely tied to the Civil legal tradition view law as resulting from written laws provided by a political authority. This codification process provides clear statements to citizens regarding their rights and obligations. The adjudication process tends to follow inquisitorial procedures wherein police, attorneys, and judges pool their efforts to determine what happened in a case. Trials provide professional and lay judges with an active courtroom role that includes the calling and questioning of witnesses and the ability to simultaneously consider the defendant's guilt and appropriate punishment.

For countries with legal systems more closely tied to the Common legal tradition, the customs of the people provide the primary source of law. Law should stem from

16 J. H. Merryman, *The Civil Law Tradition: An Introduction to The Legal Systems of Western Europe and Latin America* (2nd ed.), Stanford University Press, Stanford, CA 1985.

17 See D. H. Bracey, *Exploring Law and Culture*. Waveland Press, Long Grove, IL 2006; H. P. Glenn, *Legal Traditions of The World: Sustainable Diversity in Law* (4th ed.). Oxford University Press, New York 2010; and R. Vogler, *A World View of Criminal Justice*, Ashgate Publishing Company, Burlington, VT 2005.

18 Following P. Reichel, *Comparative Criminal Justice Systems: A Topical Approach* (7th ed.), Pearson, New York 2018.

traditional, consistent, and reasonable ways of deciding disputes – that is, from custom. The adjudication process is based in the principle that truth in a case will unfold from a free and open competition over which side has the correct facts. These adversarial procedures position prosecution and defense as opponents in a contest with each side presenting evidence supporting their side and challenging evidence presented by the other side. The judge in such proceedings takes a more passive role and serves as a referee in the contest by assuring that the players abide by the rules.

The legal traditions identified as Islamic and Eastern Asian provide interesting contrasts to the Civil and Common legal traditions. Islamic law (the Shari'a), for example, is intrinsic to Islamic faith and life in Islamic countries and, as such, Islam recognizes no distinction between a legal system and other controls on a person's behavior. The primary sources of Shari'a are the Qur'an (the holy book of Islam) and the Sunna (the statements and deeds of the Prophet Muhammad). Adjudication under Shari'a makes use of both adversarial and inquisitorial procedures – with the latter predominant since historically there has been little division between the judge and the investigator. Further, the defense role is mostly one of presenting favorable evidence and safeguarding against improper incrimination. On the other hand, adversarial aspects are found in the right to confront accusers, to remain silent, and a modified presumption of innocence.

For countries identified as following an Eastern Asian¹⁹ legal tradition, the ethical and philosophical teachings of Confucius – especially an emphasis on collectivism and a preference for legal informalism – provide the primary source of law²⁰. As with the Islamic legal tradition, the Eastern Asia also reflects a mix of inquisitorial and adversarial aspects. Formal procedures in China are more inquisitorial, but the three stages of the process (investigation, charging, and adjudication) are separate and independent from each other – a feature more in association with adversarial proceedings. Other Eastern Asia tradition countries increasingly adapt adversarial aspects such as a quasi-jury system²¹.

With even a brief review of key components in the four legal traditions, students are made aware of how the role of culture is indispensable to understanding a country's legal system. Codification in Civil law, custom in Common law, the

19 Following the United Nations Statistics Division categorization, these countries are P. R. China (including the special administrative regions of Hong Kong and Macao), Japan, Mongolia, and both North and South Korea.

20 H. P. Glenn, *Legal Traditions of The World: Sustainable Diversity in Law* (5th ed.). Oxford University Press, New York 2014; J. Liu, G. B. Palermo, Restorative justice and Chinese traditional legal culture in the context of contemporary Chinese criminal justice reform, "Asia Pacific Journal of Police & Criminal Justice" 2009, vol. 7, no.1, pp. 49-68; P. Reichel, *Comparative. . . , op. cit.*

21 See Japan's quasi-jury and South Korea's as described in P. Reichel, *Comparative. . . , op. cit.*; P. Reichel, Y. Suzuki, Japan's Lay Judge System: A Summary of Its Development, Evaluation, And Current Status, "International Criminal Justice Review" 2015, vol. 25, no. 3, pp. 247-262.

integration of religion and criminal justice in Islam, and a preference in some Asian countries for persuasion over punishment, are examples of cultural elements that aid in the understanding and appreciation of legal systems. That appreciation of cultural diversity is necessary as we seek to arrange cross-national (i.e., cross-tradition) cooperative efforts to combat and prevent TOC. For example, determining whether certain investigation techniques (such as wiretaps) are acceptable in a partner country, or identifying who are the key players (roles) to contact in partner countries during the investigation process are not as simple as knowing the answers for one's own legal system. It behooves individual actors and agencies interested in cross-national cooperation to combat TOC to understand and appreciate the diversity of cultures as reflected in different legal traditions.

6. Summary and Conclusion

In the spirit of the Education for Justice initiative, a post-graduate-level course has been described that uses the topic of TOC to show the importance and relevance of the rule of law, corruption, and diverse cultures. This provides a step toward preparing students to be aware, informed, and active citizens, practitioners, and policy makers working to boost cross-national cooperation to combat TOC. These activities will help educators teach students to better understand and address problems that undermine the rule of law, endorse corruption, and promote TOC. All done with the goal of encouraging students to actively engage in their communities and future professions in a manner that supports a culture of lawfulness.

7. Questions

- Building a culture of lawfulness must involve both civic and school-based education. What lessons learned from school-based efforts are useful in establishing civic-based programs?
- Can, or should, a distinction be made between “rule with law” and “rule of law?”²²
- How can gender issues best be mainstreamed into coverage and discussion of transnational organized crime topics?
- What topics and pedagogical approaches are appropriate when teaching about a culture of lawfulness at the primary education level?

22 For example, see the distinction made by B. Bowling, J. Sheptycki, *Global policing and transnational rule with law, “Transnational Legal Theory”* 2015, vol. 6, no. 1, pp. 141-173.

- Which sources are of greatest importance for educators to access so they can identify and utilize appropriate information about the rule of law and a culture of lawfulness?

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