

2002

The Fourth Annual Grotius Lecture: Five Wars of Globalization

Moisés Naím

Follow this and additional works at: <http://digitalcommons.wcl.american.edu/auilr>



Part of the [International Law Commons](#)

Recommended Citation

Naim, Moisés. "The Fourth Annual Grotius Lecture: Five Wars of Globalization." American University International Law Review 18, no. 1 (2002): 1-18.

This Article is brought to you for free and open access by the Washington College of Law Journals & Law Reviews at Digital Commons @ American University Washington College of Law. It has been accepted for inclusion in American University International Law Review by an authorized administrator of Digital Commons @ American University Washington College of Law. For more information, please contact fbrown@wcl.american.edu.

THE FOURTH ANNUAL GROTIUS LECTURE*

FIVE WARS OF GLOBALIZATION

MOISÉS NAÍM**

I. THE FIVE WARS	2
A. THE WAR ON DRUGS	3
B. THE WAR AGAINST ARMS TRAFFICKING	5
C. THE WAR AGAINST THE ILLEGAL TRADE OF INTELLECTUAL PROPERTY	7
D. THE WAR AGAINST TRAFFICKERS OF PEOPLE	9
E. THE WAR AGAINST MONEY LAUNDERING	11
II. WHAT DO THESE FIVE WARS HAVE IN COMMON?	13
III. WHY ARE GOVERNMENTS NOT WINNING THE FIVE WARS?	14
IV. WHAT TO DO?	15

The criminal events of September 11 injected into the national conversation concepts that until then had been used mainly within small groups of experts. Concepts like “asymmetrical war,” “transnational terrorist networks,” “sleeper cells,” or “military tribunals” leapt from specialized journals to the Teleprompters of

* *Editor's Note:* The following is a revised version of a lecture presented at the American Society of International Law's ("ASIL") 96th Annual Meeting on March 13-16, 2002. The Grotius Lecture Series is co-sponsored by the American University Washington College of Law, the ASIL, and the International Legal Studies Program. The purpose of the Grotius Lecture is to open the ASIL forum to distinguished scholars for discussion about new and important voices that might not be heard in international law and to create expanded space and opportunities to explore the intellectual underpinnings of international law and the issues of our time.

** Moisés Naím is Editor-in-Chief of FOREIGN POLICY magazine where an adapted version of this lecture will be published in the January-February 2003 issue www.foreignpolicy.com.

news anchors and from dry government reports to opinion columns in newspapers and magazines everywhere. The tragedy also made the general public painfully aware of how vulnerable governments were to the activities of small groups of like-minded individuals determined to achieve their goals. The world now knows that small groups of highly motivated individuals can successfully overcome governmental attempts to constrain, eliminate, or neutralize them. Government forces, and particularly armies, are designed to confront other armies, not stateless, decentralized, civilian networks with military training that move freely and stealthily across national borders.

The spotlight on al Qaeda and religious, particularly Islamic, terrorism, has obscured the fact that the war on terrorism is just part of all the five global wars where governments are pitted against international networks of stateless civilians. Governments everywhere have long been trying to stamp out, or at least curb, the illegal international trade in drugs, arms, intellectual property, people, and money.

These five wars are more than just different examples of a growing tide of “transnational crime.” These “wars” have many common characteristics, drivers, and outcomes.¹ Looking at them as different expressions of a broader phenomenon fueled by globalization yields interesting insights into the challenges the world is facing in terms of security, politics, economics, and international relations in general. The implications for international law are, of course, enormous.

I. THE FIVE WARS

In the last decade, and way before the war on terrorism monopolized everyone’s attention, everyday the media gave us—and still gives us—the dispatches from the front lines of the five wars. Pick any newspaper anywhere in the world, any day and you will find news about illegal migrants, a drug bust, smuggled weapons, laundered money, or a story about the speed and effectiveness with which counterfeiters have copied the latest Gucci bag or Microsoft product. The statistics of the resources—financial, human,

1. See generally R.T. NAYLOR, *WAGES OF CRIME* (2002); LINNEA P. RAINE & FRANK J. CILLUFO, *GLOBAL ORGANIZED CRIME – THE NEW EMPIRE OF EVIL* (1994) (providing an introduction to this topic).

institutional, technological—deployed in these wars have reached orders of magnitude that are hard to fathom. So do the numbers of victims. The anecdotes about the tactics and tricks or the violence used by the combatants boggle the mind. The “globality” of these five wars was unimaginable just a decade ago. The fact that they are part of the same phenomenon and that they are driven by the same global trends is not, however, typically found in the reports from the front. Before discussing their commonalities let me first briefly describe each of the five wars.

A. THE WAR ON DRUGS²

The best known, of course, is the war on drugs. The violence in the battles and skirmishes in this war seems only to be exceeded by the profits involved. Retail sales of illicit drugs are about \$150 billion a year, roughly equivalent to half the total sales of the pharmaceutical industry worldwide. The U.S., for example, spends between \$35 to 40 billion each year on the war on drugs, most of it on interdiction and intelligence. Increases in governmental resources and effectiveness seem to be immediately matched by increases in the drug cartels’ creativity and boldness.³ In March of 2002, for example, a tunnel was found under the U.S.-Mexican border that was used to move tons of drugs to the U.S. and billions of dollars in cash back.⁴ Commercial jetliners, private submarines and all types of boats, planes and vehicles are customarily deployed by the drug cartels. One of the unintended consequences of the war in Afghanistan is a bumper harvest in poppies that has authorities in Europe and the U.S. bracing for a flood of opium and heroine in their

2. See generally MIKE GRAY, *DRUG CRAZY – HOW WE GOT INTO THIS MESS AND HOW WE CAN GET OUT* (1998) (providing further information on this topic).

3. See *Stumbling in the Dark*, *ECONOMIST*, July 26, 2001, at S3 (stating that, when calculated using retail prices, the illegal drug market is most likely the world’s largest illicit market), available at <http://www.economist.com> (last visited Sept. 20, 2002).

4. See Kevin Sullivan, *Drugs Worth ‘Billions’ Moved Through Tunnel*, *WASH. POST*, Mar. 1, 2002, at A1 (explaining that investigators are referring to the 1200 foot tunnel as one of the most lucrative drug-smuggling mechanisms that drug agents have ever discovered along the U.S.-Mexican border).

markets.⁵ The U.S.-crafted Plan Colombia has already displaced coca production and processing labs to neighboring Ecuador and Peru.⁶ Britain's High Commission in Jamaica says that one in ten passengers flying to the U.K. from that island is smuggling drugs.⁷ The war on drugs, protracted, global, costly, and murderous, does not show any sign of abating or of an imminent victory on the part of governments.

Even when the top leaders of drug cartels are captured or killed by police, authorities are quick to point out that the vacuum left in the market will soon be filled by one or more of their rivals. This happened when Colombian kingpin Pablo Escobar Gaviria was killed by the police a few years back and was what most likely happened after the arrest of one of the Arellano Felix brothers—leaders of one of Mexico's main drug trafficking networks—in early 2002.⁸

5. See Marc Kaufman, *Surge in Afghan Poppy Crop is Forecast; World Drug Control Authorities Consider Force and Funds to Limit Production*, WASH. POST, Dec. 25, 2001, at A22 (discussing Afghanistan's poppy production, which has earned Afghanistan the notoriety of being the world's largest illicit opium supplier).

6. See Claire Marshall, *Peru Set to be Drug Leader*, BBC NEWS (Feb. 11, 2001) (discussing Plan Colombia's influence on drug trafficking in Peru), at <http://news.bbc.co.uk/1/hi/world/americas/1176452.stm> (last visited Sept. 20, 2002).

7. See John Steele & David Millward, *Britain Hit by Cocaine Flights from Jamaica*, DAILY TELEGRAPH (London), Apr. 1, 2002, at P5 (noting that Jamaican drug couriers are potentially smuggling as much as thirty kilograms of cocaine into the United Kingdom on each flight); see also *Jamaican Drug Mules 'Flooding' UK*, BBC NEWS, Jan. 3, 2002 (relating that the U.K.'s Deputy High Commissioner in Jamaica has suggested that the number of Jamaican drug smugglers from Jamaica could be higher than previously estimated), at <http://news.bbc.co.uk/1/hi/uk/1739808.stm> (last visited Sept. 20, 2002).

8. See S. Lynne Walker & Marisa Taylor, *Outsiders May Make Move on Drug Cartel*, SAN DIEGO UNION-TRIB., Mar. 13, 2002, at A1 (explaining that several Mexican drug traffickers might take advantage of the power vacuum that resulted after authorities arrested Benjamin Arellano Felix, leader of a prominent Mexican drug cartel). See generally LUIS ASTORGA, DRUG TRAFFICKING IN MEXICO: A FIRST GENERAL ASSESSMENT (UNESCO MOST Discussion Paper No. 36, 1999) (providing an overview of Mexican drug trafficking), at <http://www.unesco.org/most/astorga.htm> (last visited Oct. 4, 2002).

Most Americans know this. According to Pew Research Center poll conducted in February of 2001, three out of four Americans believe that “we are losing the drug war.”⁹

B. THE WAR AGAINST ARMS TRAFFICKING¹⁰

Drugs and arms often go together. In 1999, ten thousand of the assault rifle Automat Kalashnikova 1947, or the infamous AK-47, originally bought for the Peruvian Army in Jordan were parachuted to the FARC [Revolutionary Armed Forces of Columbia] guerrillas in Colombia—a group closely allied to drug growers and traffickers.¹¹ According to the United Nations (“UN”), small arms fueled forty-six of the forty-nine largest world conflicts of the last decade and the UN also estimates that about half of all these weapons are from illegal sources. Of the 550 million small arms and light weapons in circulation today, only eighteen million [about three percent] are used by government, military, or police forces.¹² Speaking only of AK-47s, the weapon of choice for most guerrilla groups, there are fifty to eighty million units in circulation today throughout the world.¹³ The weapon is officially manufactured in fourteen countries, but illegal production has become quite common and as a result its price has plummeted to about \$100 in Nicaragua

9. See PEW RESEARCH CENTER FOR THE PEOPLE & THE PRESS, INTERDICTION AND INCARCERATION STILL TOP REMEDIES (2001) (noting that public opinion regarding the drug war has not changed since the late 1980s), at <http://peoplepress.org/reports/display.php3ReportID=16> (last visited Oct. 4, 2002).

10. For an introduction to this topic see *Running Guns: The Global Black Market in Small Arms* (Lora Lumpe ed., 2000).

11. See Douglas Farah, *Colombian Rebels Tap E. Europe for Arms-Guerrillas' Firepower Superior to Army's*, WASH. POST, Nov. 4, 1999, at A1 (discussing the weapons supply that the Revolutionary Armed Forces of Colombia (“FARC”) has purchased from sources in the former Soviet Union and Eastern Europe).

12. See Kofi A. Annan, *Small Arms, Big Problems*, Remarks at the United Nations Conference on the Illicit Trade in Small Arms and Light Weapons in All Its Aspects (July 9-20, 2001), in INT'L HERALD TRIB., July 10, 2001, at 9 (reporting on the dangers that small arms pose to the world).

13. See Margaret Coker, *Illegal Small Weapons Pose Global Threat*, SEATTLE POST-INTELLIGENCER, July 9, 2001, at A1 (relating that the AK-47 is the most widely used variety of small arms).

for example.¹⁴ In 1986, the price of an AK-47 in Kolowa, a town in Kenya, was fifteen cows. Today is just four cows.¹⁵

Illicit trade in small arms is estimated to be responsible for one thousand deaths a day worldwide and more than eighty percent of the victims are women and children.¹⁶ Governments have long tried to control the illicit trade in arms but we have yet to find a determined rogue state, a guerilla movement, a terrorist organization, or a criminal cartel that cannot procure the arms it needs. After procuring the weapons, they seldom seem to lack a steady supply of munitions for them.

And it is not just small arms. Governments are also at war with the international traffickers of weapons of mass destruction.¹⁷ The actual supply of stolen nuclear materials and technology or biological and chemical “weapons” may still not be very large. But there is no doubt that the potential demand for these materials and technology is there, it is huge and it is growing.¹⁸ The world does not lack secessionist conflicts, civil wars, or ethnic disputes where one of the parties would be more than willing to resort to a weapon of mass destruction to completely recast the situation to its advantage. A huge and soaring demand and a constrained supply means exorbitant

14. See Michael Reid, *Central America Still in the Grip of War's Dangerous Legacy*, GUARDIAN (London), Aug. 20, 1993, at 10 (commenting that in Managua's market, an AK-47 and four magazines sell for less than one hundred dollars); see also Annan, *supra* note 12 (adding that the direct and indirect costs of small arms violence is estimated to be between \$140 and \$170 billion per year in Latin America alone).

15. See Karl Vick, *Small Arms' Global Reach Uproots Tribal Traditions*, WASH. POST, July 8, 2002, at A1 (discussing how the AK-47, the assault weapon of choice, is changing tribal warfare in Kenya).

16. See Annan, *supra* note 12 (illustrating that an AK-47 is so easy to purchase that it sells for as little as fifteen dollars or for a bag of grain).

17. See *Weapons of Mass Destruction: The New Strategic Framework*, 7 U.S. FOREIGN POLICY AGENDA 2, 5-6 (2002) (discussing the spread of chemical and biological weapons and the threat these weapons pose to the world), at <http://usinfo.state.gov/journals/itps/0702/ijpe/ijpe0702.pdf> (last visited Sept. 20, 2002).

18. See, e.g., Bill Miller, *Panel Questions New Agency's Intelligence Powers*, WASH. POST, June 10, 2002, at 2 (noting that Homeland Security Director Tom Ridge believes that al Qaeda terrorists want to use nuclear, biological, and chemical weapons against the United States).

prices. These, in turn, mean exorbitant incentives to satisfy this pent up demand. While historically the design and production of weapons of mass destruction was in the hands of governments and required huge capital investments, this is no longer the case. The technology to produce weapons of mass destruction is not any more the monopoly of governments and the capital and the infrastructure needed to produce them are no longer outside the realm of possibilities of the private sector.¹⁹ Therefore, it is not prudent to assume that biological, chemical, and Internet “weapons” can only be produced by governments. Moreover, the historical record shows how difficult it is to contain the dissemination of technology and know-how once it becomes available, especially to non-state actors. The tools and trends of globalization facilitate this proliferation.

C. THE WAR AGAINST THE ILLEGAL TRADE OF INTELLECTUAL PROPERTY

The war that governments are waging against the international trade in stolen intellectual property used in producing weapons is just one front of the larger war they are fighting to curb the production and trade of pirated software, bootlegged movies, records, and medicines and a panoply of other counterfeited goods and branded services. The International Intellectual Property Alliance estimates that in 2001, \$9.4 billion were lost to copyright piracy.²⁰ When the estimates for other forms of theft and illegal commerce of intellectual property are added, the sums involved are as staggering as the speed at which intellectual property is copied and illegally merchandized internationally. In 2001, two days after recording the voice track of a movie in Hollywood, actor Dennis Hopper was in Shanghai where a street vendor sold him an excellent, but pirated, copy of the movie

19. See, e.g., Richard Lloyd Parry, *Sarin Cult “Doing Nuclear Research,”* INDEPENDENT (London), Apr. 3, 1995, at 14 (reporting that the Aum Shinri Kyo Cult that released sarin gas in the Tokyo subway killing eleven people and injuring over five thousand was also engaging in biological and nuclear weapons research).

20. International Intellectual Property Alliance (“IIPA”), USTR 2002 “Special 301” Decisions and IIPA Estimated U.S. Trade Losses Due to Copyright Piracy (In Millions of U.S. Dollars) and Estimated Levels of Copy Right Piracy for 2000-2001, at 1 (2002) (reporting that \$9.4 billion were lost to copyright piracy in 2001), at http://www.iipa.com/pdf/2002_Jul11_USTRLOSS.pdf (last visited Oct. 4, 2002).

with his voice already on it. "I don't know how they got my voice into the country before I got here" he said.²¹ In 1993, a piracy group called DrinkOrDie founded in Russia with leaders operating from bases in Australia and the U.S. "released" its own [pirated] version of Windows 95 operating system three days before Microsoft's official release.²² Forty percent of Procter and Gamble shampoos, sixty percent of Honda motorbikes, eighty percent of all DVD's, and ninety-four percent of the brand name software sold in China in 2001 were pirated.²³

The problem is not only confined to software, fake Prada bags, popular toys, expensive watches, and Cuban cigars. Industrial valve makers in Italy are worried that their \$2 billion a year export market is being eroded by counterfeit valves made in China and sold in world markets with the same Italian brand names but a price that is forty percent cheaper.²⁴ Cheaper copies of electrical goods and engine and car parts also account for a booming market. Nor is the problem only confined to China. The piracy rate of business software in Japan and France is forty percent, in Greece and South Korea it is about sixty percent, and in Germany and Britain it hovers around thirty percent. The average for the world has been increasing and in

21. *Fast Track Avenue of the Americas*, FIN. TIMES (London), Jan. 25, 2002, at 13 (indicating that if the story is true, this act might "rate as one of the fastest examples of piracy"). According to Dennis Hopper, "it was an excellent copy too." *Id.*

22. See Philip Shenon, *Guilty Plea by Suspect in Web Theft*, N.Y. TIMES, Feb. 28, 2002, at C5 (reporting that one of DrinkOrDie's leaders pled guilty to a federal conspiracy charge nine years after the group released a pirated copy of Windows 95 two weeks prior to the software's public release); see also WIKIPEDIA, DRINKORDIE (stating that the DrinkOrDie Network is considered criminal for its copyright infringement), at <http://www.wikipedia.com/wiki/DrinkOrDie> (last modified May 11, 2002).

23. See IIPA & Office of U.S. TRADE REPRESENTATIVE, SPECIAL 301 REPORT, 16-17 (2002) (describing China's high levels of piracy and counterfeiting and its efforts to enforce intellectual property rights), <http://www.ustr.gov/reports/2002/special301-report.pdf> (last visited Oct. 4, 2002).

24. See Peter Marsh, *Fakes are Blotting the Horizon in Italy's Valley of the Valves: Chinese Counterfeit Goods Have Reached Europe's Valve Sector*, FIN. TIMES (London), Mar. 20, 2001, at 35 (noting that not only do Italian companies lose sales because of counterfeit valves, the inferior quality of the copied valves damages the company's reputation).

2001 reached an all time high of thirty-seven percent.²⁵ Technology is obviously boosting both the demand and the supply of illegally copied products. Users of Napster, the Internet technology that allows anyone, anywhere to download and reproduce copyrighted music for free grew from zero to twenty million in just one year.²⁶ The courts in some countries have acted to stem this trend but it does not seem safe to assume that in the long run governments, lawyers and courts will trump technologies designed to facilitate using other people's intellectual property for free. Napster emulators have already occupied the market that was opened once Napster's offerings were curbed by legal actions. See for example www.Kazaa.com.²⁷

D. THE WAR AGAINST TRAFFICKERS OF PEOPLE

In the same way that the illegal trade in drugs and arms are often intertwined, the international distribution of counterfeited merchandise is also closely related to the international trafficking of people. The man or woman that sells a Louis Vuitton bag or a Cartier watch in the streets of Florence or New York for a tenth of its price in stores is probably an illegal alien. Very likely, he or she was transported across several continents by a network of traffickers in humans that has a strategic alliance with another network that specializes in the worldwide and illegal copying, manufacturing, and distribution of high-end, branded products.

Alien smuggling is a \$7 billion a year business and according to the UN is the fastest growing business of organized crime.²⁸

25. See *Global Software Piracy Rate Flattens to 37 Percent*, May 21, 2001 (reporting on the piracy rates in the six major world regions and estimating that software piracy groups copied one of every three business software applications released during the previous year), at <http://dc.internet.com/news/article.php/769381> (last visited Sept. 20, 2002).

26. See Vickie L. Feeman et al., *Napster: Innocent Innovations or Egregious Infringement? Revenge of the Record Industry Association of America: The Rise and Fall of Napster*, 9 VILL. SPORTS & ENT. L. FORUM 35, 35 (2002) (discussing the Napster's technology and the intellectual property issues that evolved from it).

27. This website, which provides applications for file-sharing, boasts that 130 million Kazaa Application Desktops have been downloaded so far (last visited Sept. 29, 2002).

28. See NAT'L SEC'Y COUNCIL, ALIEN SMUGGLING, INTERNATIONAL CRIME

Approximately 150 million people or roughly 2.5 percent of the world's population live today outside their countries of origin.²⁹ This number has doubled since 1965 and the data shows that legal and illegal migration is accelerating. Many are voluntary migrants that enlist the help of smuggling rings to help them enter illegally another country.³⁰ Others instead, are trafficked—that is bought and sold internationally—as commodities. The U.S. Congressional Research Service [“CRS”] reckons that each year between seven thousand to two million people, the majority of them women and children, are trafficked across international borders.³¹ Thirty-five percent are under the age of thirty-five.³² Girls from villages in Nepal and Bangladesh are sold to brothels in India for \$1,000.³³ UNICEF estimates that 200,000 children are enslaved by cross border smugglers in Central and West Africa.³⁴ According to the CRS, trafficking in people is now the third most important source of

THREAT ASSESSMENT (2002) (noting that migrant smuggling involves four million people worldwide), <http://clinton4.nara.gov/WH/EOP/NSC/html/documents/pub45270/pub45270chap2.html> (last visited Sept. 20, 2002).

29. See *UN Warns of Migrants' Miserable Lot*, BBC NEWS, Dec. 18, 2001 (adding that many of the 150 million aliens that live out of their country experience discrimination and substandard living conditions), at <http://news.bbc.co.uk/1/hi/world/1716899.stm> (last visited Sept. 20, 2002).

30. See WORLD RESOURCES INST., WORLD RESOURCES 1998-99 (1998) (describing that the annual growth rate of immigration is mostly attributed to the migration of peoples from developing countries), <http://www.wri.org/trends/migratio.html> (last visited Sept. 20, 2002).

31. See FRANCIS T. MIKO, TRAFFICKING IN WOMEN AND CHILDREN: THE U.S. AND INTERNATIONAL RESPONSE (CONG. RES. SERVICE, Report 98-649C, 2002) (distinguishing between human trafficking and human smuggling, in that smuggling involves knowingly purchasing an illegal service to gain access into a foreign country), available at <http://usinfo.state.gov/topical/global/traffic/crs0510.htm> (last visited Sept. 20, 2002).

32. See *id.* (relating that many trafficked woman are only teenagers).

33. See *id.* (explaining that India is a source of and a destination for trafficked women).

34. See U. N. OFFICE FOR DRUG CONTROL AND CRIME PREVENTION FACT SHEET ON HUMAN TRAFFICKING (2002) (“International organized crime has taken advantage of the freer flow of people, money, goods and services to extend its own international reach.”), at http://www.undcp.org/odccp/trafficking_fact_sheet.html (last visited Sept. 20, 2002).

revenue for international criminal networks, after drugs and guns.³⁵ Initially tempting the victims with offers of jobs or, in the case of children, with offers of adoption in wealthier countries, human traffickers then keep them in subservience through physical violence, debt bondage, passport confiscation, and threats of arrest, deportation, and violence against the victims' families back home.³⁶

Governments everywhere are enacting tougher immigration laws and have boosted both their budgets and their technologies to fight the flow of illegal aliens. In response, individuals desperate to leave countries rife with political instability, civil war, or with a bleak economic future and the international networks that exploit the enormous demand for illegal immigration are using increasingly bold and imaginative tactics to defeat the efforts of governments. The booming numbers of Moroccans smuggled last year into Spain, Mexicans, Central Americans, and Chinese into the U.S., Albanians into Italy, or Eastern Europeans and Turks into Germany indicate that governments are far from winning this war.³⁷

E. THE WAR AGAINST MONEY LAUNDERING

One reason why governments are not winning and in some cases even losing ground in their efforts to contain the international commerce in drugs, arms, pirated goods, and people is because there is just too much money being made in these activities. These enormous quantities of money are also traded internationally and illegally, and governments are also at war against illegal money traffickers. The profits of those involved in these wars are not, of course, the only sources of money laundered internationally. In general, this giant pool of money consists of any funds that owners want to hide from governments, creditors, business partners, or family members—such as the proceeds of tax evasion, corruption,

35. See MIKO, *supra* note 31 (estimating that each year, between one and two million people are trafficked worldwide).

36. See *id.* (noting that gangs from China, Asia, Mexico, Central America, Russia, and other former Soviet Union countries are the leading traffickers of people).

37. See NAT'L SEC'Y COUNCIL, *supra* note 28 (according to the U.S. government estimates, 500,000 to 600,000 illegal migrants who entered the United States in 1999 were Mexican and 225,000 were from Central America).

gambling and other forms of crime—and each year it is estimated to equal around two to five percent of the global GDP. This means that governments are trying to detect and contain the international trade of between \$800 billion to \$2 trillion each year.³⁸

The U.S. Treasury estimates that it loses \$70 billion a year through offshore tax evasions just by individuals, while developing countries lose about \$50 billion a year in taxes through these modalities. In 1998, \$74 billion were transferred from Russian banks to overseas accounts. Of that amount, \$70 billion went to accounts at banks in the small island-state of Nauru.³⁹ The following year, Nauru's banks were used to illegally move \$7.5 billion from Russia to the Bank of New York.⁴⁰

Among nation states, Nauru is of course neither the only nor the most important player. The Cayman Islands, with a population of 35,000, is home to almost 600 banks and trust companies, more than 2,200 mutual funds, 500 insurance companies, and 45,000 foreign businesses. Its banking system has almost \$700 billion in assets. In more traditional Switzerland, banks have \$2.3 trillion under management, more than half owned by foreigners.⁴¹

Again, faced with this growing tide, governments have stepped up their efforts to clamp down on rogue international banking, tax havens, and money laundering. While some progress has been made, advances in information and communication technology, the limits of sovereignty, greed, and globalization are conspiring against the governmental efforts to limit and regulate the illegal international trade in money.

38. See William F. Wechsler, *Follow the Money*, FOREIGN AFF., July-Aug. 2001, at 40, 45 (describing the problem of the globalization of money laundering, tax evasion, and rouge banking and explaining that underregulated banking systems facilitate abuses of money laundering and tax evasion).

39. See *id.* at 47- 48 (describing how rogue banking affects the world stage through the illegal transfer of money from Russia to Nauru and explaining that one single bank from Nauru ordered a transfer of three billion dollars from Russia).

40. Wechsler, *supra* note 38, at 40, 48.

41. See *id.* at 42 (detailing the size and scope of the financial industries in the Cayman Islands and Switzerland).

II. WHAT DO THESE FIVE WARS HAVE IN COMMON?

A lot. Perhaps their most salient common characteristic is that they are not new. In one form or another they all have been part of the human experience since time immemorial. But one other aspect that they have in common is that they all have boomed in the last decade, propelled by the collection of forces we call globalization.

But these five wars also share other important traits.

First: They all pit governments against market forces. Each of the five wars consists of one or more government bureaucracies fighting to contain the disparate, uncoordinated actions of thousand of independent, stateless organizations motivated by the huge profits that can be obtained by exploiting international price differentials, a huge, unsatisfied demand, or the cost advantages produced by theft. Hourly wages for a Chinese cook are far higher in Manhattan than in Fujian.⁴² A gram of cocaine in Kansas City is 17,000 percent more expensive than in Bogota.⁴³ Fake Italian valves are forty percent cheaper because the counterfeiters do not need to cover the costs of developing the product.⁴⁴ A well-funded guerrilla group will pay anything to get the weapons it needs. In each of these five wars the incentives to successfully overcome government imposed limits to trade are, simply, enormous.

Second: They are not bound by geography. Where is the theater or the front line of the war on drugs. Is it Colombia or Miami? Myanmar or Milan? Where are the battles against money launderers being fought? In Nauru or in London? Is China the main theater in the war against the infringement of intellectual property or are the trenches of that war to be found on the Internet? If so what is the Internet equivalent of trench wars or guerrilla warfare?

42. *Hoping Their Kids Could Do Better*, NEWSDAY, July 3, 1990, at 8 (discussing the plight of Chinese immigrants in New York City).

43. See generally Michael Massing, *Pervasive Influence of Crack May Make Drug War Useless*, L.A. DAILY NEWS, Oct. 1, 1989, at V1 (describing how cocaine use is spreading across the United States).

44. See Marsh, *supra* note 24 (reporting that counterfeit valves looked identical to the originals and were selling abroad for significantly less).

Third: Governments are at a disadvantage in these wars. While their enemies can exploit the advantage of moving freely between jurisdictions, nations are bound by sovereignty, borders, and international law. States have to rely on centralized, hierarchical, Weberian bureaucracies to fight against highly mobile, decentralized networks of highly motivated individuals. A senior official at the Central Intelligence Agency once told me: “in my experience it was often easier for international gangs to move people, money, and weapons internationally than it was for us to re-assign assets inside the U.S. government agencies.”

Fourth: In each of the five wars the government side is not winning and in some of them it is in fact losing. Drugs, weapons, pirated products, illegal aliens, and opportunities to illegally move, hide, and launder money internationally have not become scarcer despite governmental efforts to do so.

III. WHY ARE GOVERNMENTS NOT WINNING THE FIVE WARS?

Globalization has done more to empower international criminal networks than governments. Globalization and other changes that characterized the end of the last decade made available to the public—and therefore to the groups acting in these wars—the technologies, resources, and possibilities that until the early 1990's were often only available to governments. The Tamil Tigers, for example, obtained night-vision goggles and Global Position Satellite devices to direct their projectiles before the Sri Lankan military against which they were fighting.⁴⁵ The telecommunication and logistics infrastructure of drug traffickers, counterfeiters, or smugglers of people is often superior to that of the regulatory and law enforcement agencies of most countries. The information and communication technology, the sophisticated financial instruments, and the myriad of new financial institutions that exist today make the regulation of international flows of money a daunting task. The

45. Janaki Bahadur Kremmer, *Tamil Conflict at India's Doorstep*, CHRISTIAN SCI. MONITOR, May 16, 2000, at 6. See generally David M. Rothenberg, *Negotiation and Dispute Resolution in the Sri Lankan Context: Lessons from the 1994-1995 Peace Talks*, 22 FORDHAM INT'L L.J. 505, 510-37 (1998) (reviewing the history of the Sri Lankan ethnic conflict).

imminent, large-scale introduction of e-money—cards with microchips that can store large amounts of money and thus can be easily transported outside regular channels or simply exchanged among individuals—will make this task all the more daunting.

But it is not just technology that boosts the capabilities of criminal networks. More porous borders, a larger number of countries, many new democracies with institutions that are vulnerable to being captured or heavily influenced by criminal gangs, higher levels of international travel, trade, and investment, more civil wars and weak or even failed states are also some of the legacies of the 1990's that create advantages for the networks fighting the five wars.

IV. WHAT TO DO?

The nature of these five wars, of their combatants, and of the technical, economic, political, legal, and social trends that give them strength suggest five avenues for governments that seek to make progress.

First, develop more flexible notions of sovereignty. Governments need to recognize that restricting the scope of multilateral action for the sake of protecting their sovereignty is often a moot point. Their sovereignty is compromised, in some cases even daily, by the stateless networks that break their laws and cross their borders to conduct their business. In a recent example, the Venezuelan government denied authorization for U.S. planes to fly over Venezuelan territory in order to monitor the air routes commonly used by narco-traffickers.⁴⁶ The fact that the planes of the drug traffickers violated Venezuelan territory on a daily basis was given less importance than the symbolic value of asserting national sovereignty over the air space.

Second, strengthen existing multilateral institutions. The global nature of these wars means that no government, regardless of its economic power, political influence, or military superiority will

46. See *Venezuela Presidents Denies US Request to Use Venezuela Air Space for Narcotics Flights at U.S. Scrambles to Replace the Loss of Panama for Counterdrug Efforts*, 15 INT'L ENFORCEMENT L. REP. 270, 270-71 (1999) (explaining why Venezuela objected to the United States' request to monitor its airspace in counterdrug efforts).

make much progress acting alone. If this seems obvious, then why does INTERPOL, the multilateral agency in charge of fighting international crime, have a total staff of 373, only 120 of which are police officers, and an annual budget of \$23 million, less than the price of a single boat or plane used by drug traffickers?⁴⁷ In fact, EUROPOL, INTERPOL's European equivalent, has a staff of 338 and a budget of \$44 million.⁴⁸

One of the reasons why INTERPOL is not better funded and staffed is because its 178 member governments do not trust each other.⁴⁹ Many assume, and perhaps rightly so, that the criminal networks they are fighting have penetrated the police departments of other countries and it would not therefore be prudent to share information with them or with INTERPOL. Others fear that today's allies can easily become tomorrow's enemies. Others have legal impediments to sharing intelligence with other nation states or, what is an even more formidable barrier, the organizational culture and habits of their intelligence services and law enforcement agencies makes it almost impossible for them to collaborate effectively with other agencies. But these are institutional obstacles that can and must be overcome, if only through painful experience; they are not an adequate justification for inaction.

Third, devise new mechanisms and institutions. These five wars stretch and even render obsolete many of the existing institutions, legal frameworks, military doctrines, weapons systems, law enforcement techniques, and even basic definitions on which we have relied for years.

47. See INTERPOL, FACT SHEETS: INTERPOL—AN OVERVIEW (detailing updated statistics on Interpol activity and productivity), available at <http://www.interpol.int/Public/Icpc/FactSheets/FS200101.asp> (last visited Sept. 23, 2002).

48. See Judy Dempsey, *Europol Labours to Forge Bonds Among EU's Crimefighters*, FIN. TIMES (London), Feb. 28, 2002, at 7 (citing Europol's problems with budget, staff, and cooperation between EU member states). See generally EUROPOL, THE EUROPEAN POLICE OFFICE: FACT SHEET (listing the updated numbers of the Europol staff and budget), available at <http://www.europol.eu.int/facts/en.htm> (last visited Sept. 23, 2002).

49. See generally MALCOLM ANDERSON, POLICING THE WORLD: INTERPOL AND THE POLITICS OF INTERNATIONAL POLICE CO-OPERATION 186-94 (1989) (discussing Interpol's shortcomings as a multinational agency, including problems of sovereignty and trust between nations).

The concept of war “fronts” defined by geography or the definition of “combatants” according to the Geneva convention,⁵⁰ the functions of intelligence agents, soldiers, police officers, customs agents or immigration officers need rethinking and adaptation to the new realities. The notion that ownership is essentially a physical reality and not a “virtual” one or that money can only be issued by sovereign nations will also need adjustments.

Fourth, where possible, move from repression to regulation. Beating market forces is next to impossible. In some cases, this reality may mean that governments will need to move from repressing the market to regulating it. In others it may mean that instead of using bureaucracies to curb the excesses of these markets, it would be better to use market incentives. For example, it is clear that in some cases technology can do a better job of protecting intellectual property rights than patents, lawyers, and courts. Powerful encryption techniques and other such technologies can better protect software or a CD from being copied in Ukraine than forcing Ukraine to develop a reliable and transparent system to enforce patents and copyrights and trademarks.

Note that I have not called these four points “solutions” but “avenues.” This is because I am trying to sound very tentative, and even experimental. I don’t think anyone can offer definitive solutions to these problems because our understanding of their nature, scope, and interconnections is still very primitive.

The central message of this lecture is that we have entered into new territory, one that demands new maps, new approaches—in short new thinking

In this sense, I thought that it was appropriate to conclude by quoting Christopher Weeramnatry and Nathaniel Berman who in the First of these Grotius Memorial Lectures and as opening tribute to Hugo Grotius said:

“It was an unprecedented situation that faced the newly emerging states of Grotius’s time. Detached from their traditional moorings to

50. See *Diplomatic Conference on Reaffirmation and Development of International Humanitarian Law Applicable in Armed Conflict: Protocols I and II to the Geneva Conventions*, 16 I.L.M. 1391, 1410 (1977) (detailing the articles of the Geneva Convention, including the definition of a “combatant”).

church, empire, and a higher law, they were groping for new principles of conduct and interrelationship to provide a compass for the tempestuous waters that lay ahead.

Grotius rose to the occasion—a towering intellect with a passionate vision of an ordered relationship among nations—a relationship based not on the dogma of religion or the sword of conquest, but on human reason and experience. He based his principles largely on knowledge gleaned a posteriori from the experience of history, not on a priori pronouncements prescribing in advance how humanity should behave.”⁵¹

We obviously are in dire need of one or more towering intellects who, like Grotius, can rise to the occasion and provide the world with ideas that will ensure international stability and prosperity.

Thank you very much.

51. Christopher Weeramantry, *The Grotius Lecture Series*, 14 AM. U. INT'L L. REV. 1515, 1516 (1999).