

THE EFFECTIVENESS OF THE WITNESS SECURITY PROGRAM IN THE FIGHT
AGAINST ORGANIZED CRIME AND TERRORISM: A CASE STUDY OF THE
UNITED STATES AND TURKEY

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ABSTRACT

The Effectiveness of the Witness Security Program in the Fight against Organized Crime and Terrorism: A Case Study of the United States and Turkey

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Over the years, witness security programs have developed sophisticated practices from a safe place as the only effective means of protection for the change of identity of threatened witnesses and their relocation to a new place. The success of those operations has had a positive impact on obtaining vital evidence and made witness security a significant factor in struggles to fight effectively against organized crime and terrorism. That is also why Turkey, along with the other countries, established its own witness security program, similar to WITSEC. Yet, although it has been defended arduously by the law enforcement agencies and prosecutors as one of the most valuable tools used against organized crime in the US, there is widespread criticism of the program by some scholars and the media.

This research is exploratory in nature. In this context, there is one primary question brought forward: What is the impact of the witness security program on the fight against organized crime and terrorism? In order to better explore the primary research question, the following sub-research questions are examined: (a) what can be done to use the witness security program as an effective tool in the fight against cross-national

terrorism and transnational organized crime? (b) How is the witness security program of Turkey differentiated from WITSEC in the context of structure, and how much influence might it have on its own criminal justice system in the future?

Based on key personnel interview data and other open data sources, the research of this study demonstrates that states need protection programs; but, after examining the robustness of the decision-making process for witness participation, it seems that this decision-making process requires a change of thinking, and therefore an urgent evaluation by the governments. It means that the witness security program should not be employed in every case when alternative measures are sufficient to protect the witness. To some extent, its success only comes after completing all the stages forming the control policy. These are preventive methods that are considered by some more important than combating measures.

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CHAPTER 1

INTRODUCTION

Every citizen has a duty to testify when ordered by a court to do so. This is an essential element of civilized life. Even a death threat cannot be a legal excuse to abstain from testifying. As such, the United States Supreme Court has indicated in dictum that not even the fear of death can obviate this obligation.¹ However, owing to fear of reprisal, many people are discouraged from becoming witnesses, especially when the case is related to organized crime.² It means that in addition to having inadequate physical evidence, key witnesses' refusal to testify renders a criminal case void in a court. This is so significant a challenge that many authorities feel a sense of urgency to take action against witness intimidation. Persuading witnesses to testify on behalf of the prosecution sometimes becomes one of the most important obstacles prosecutors encounter in court cases when the defendant has an association with an organized crime group. Organized crime groups have effectively paralyzed the criminal justice system by threatening retribution toward anyone who attempts to testify against them. Despite the fact that intimidation against witnesses is prosecuted vigorously by the government, the intensity of threats has increased considerably in organized crime prosecutions in any case.³

Today, in organized crime cases, witness intimidation is becoming so widespread that if there are not several witnesses to the crime, prosecutors do not pursue a court case.

¹ Slate, N.S. *The Federal Witness Protection Program: Its Evolution and Continuing Growing Pains*. Criminal Justice Ethics, Summer/Fall 1997.

² Levin, L. *Organized Crime and Insulted Violence: Federal Liability for Illegal Conduct in the Witness Protection Program*. The Journal of Criminal Law & Criminology, Vol.76, No.1, 1985

³ Goldstock & Coenen. *Controlling the Contemporary Loan Shark: The Law of Illicit Lending and the Problem of Witness Fear*. 65 Cornell Law Review, Vol.127, 206-08, 1980.

Prosecutors and law enforcement agencies throughout the US have grown increasingly more exasperated by their failure to investigate and prosecute cases successfully, since crucial witnesses do not come forward for information owing to a real fear of retribution by the criminal groups.⁴ With the rising prevalence of witness intimidation, the criminal justice system needs to instill confidence in witnesses that their safety would be thoroughly ensured through protection.

In the United States (US), facing his/her witnesses is one of the fundamental rights of the defendant in the judicial system. According to Demleitner⁵, this is a historical fact that dates back to British times. Because of the abuses during the British reign, the founding fathers of the US drew up guarantees for a fair criminal trial. One of the basic rights in the Constitution is that the accused “*shall enjoy to be confronted with the witnesses against him.*” The use of unnamed or disguised witnesses is not allowed in the US criminal justice system, even in circumstances where witnesses are threatened by the defendant or his associates. Instead, there are other means applied as pre-trial and post-trial procedures to secure the well-being of witnesses.⁶ This comprises the use of traditional practices such as prosecution of witness intimidation, regularly appealing against bail for intimidators, carefully managing crucial witnesses and expanding assistance services for witnesses. While the detention of the defendant prior to the trial is also among the most significant pre-trial protective measures, the placement of witness in the witness security program is another very important measure that is designed to

⁴ United Nations Office on Drugs and Crime (UNODC). *Good Practices for the Protection of Witnesses in Criminal Proceedings involving Organized Crime*. <http://www.unodc.org/documents/organized-crime/Witness-protection-manual-Feb08.pdf>

⁵ Demleitner N.V. *Witness Protection in Criminal Cases: Anonymity, Disguise or Other Options?* The American Journal of Comparative Law, Vol.46, 1998.

⁶ Ibid.

guarantee the efficacy and integrity of the American criminal justice system. As under the auspices of Title V of the Organized Crime Control Act, the Witness Security Program (WITSEC) was created by Congress in 1970. Under the title of “Protected Facilities for Housing Government Witnesses”, only one sentence refers to the program: “*The Attorney General shall provide for the care and protection of witnesses in whatever manner is deemed most useful under the special circumstances of each case.*”⁷ This one sentence was sufficient to pave the way for the foundation of the first witness security program in history.⁸

Right after the establishment of the program, there was unanticipated demand for the program by federal prosecutors and law enforcement agencies. Within a year, WITSEC was flooded by several hundred applicants. After having seen its effectiveness, the US Justice Department employed WITSEC more frequently as a way of guaranteeing convictions of organized crime members. In spite of the fact that the program was initially planned to admit no more than thirty witnesses a year, in its first fifteen years of operation, more than 4,700 witnesses and over 11,000 members of their immediate families were accepted, which overwhelmed the Department of Justice and Marshals Service.⁹

The apparent success of WITSEC in tackling organized crime in the US has affected many other countries in the world, one of which is Turkey. Although there were some primitive programs employed to combat terrorism and organized crime, there was no fully implemented witness security program in Turkey. In response to the call for a

⁷Earley, P.& Shur, G. WITSEC: Inside the Federal Witness Protection Program. Bantam Book, February 2002, p.111.

⁸ Ibid.

⁹ Zuckerman, M.J. *Vengeance is Mine*. Macmillan: New York, 1987.

comprehensive witness security program against organized crime and terrorism, Turkey established its own witness security program in 2008.

This study addresses the issues regarding the effectiveness of the witness security programs of the US and Turkey in the fight against organized crime and terrorism. With this aim in view, a comparative study is conducted between the US and Turkish witness security programs. The research reported here focuses on the reason for the establishment of the witness security program, the evolution of the US and Turkish programs, and the success of the witness security programs against transnational organized crime and global terrorism. Data sources used in this research are the interviews made with federal and local prosecutors as well as federal and local law enforcement officers in the United States; and public prosecutors, officials from the Ministry of Justice and the Turkish National Police in Turkey. It is fair to say that although the media and some scholars have broadly expressed their dissatisfaction with the witness security program from the beginning, the law enforcement community, the real owner of the program, has not been listened to thoroughly. Thus, it is the first time that this study tries to shed light on why this program is seen as a vital tool by the law enforcers.

The Significance of this Study

With the annual \$59.7 million costs in the fiscal year 2003¹⁰, according to Montanino¹¹, WITSEC is regarded as one of the most effective and indispensable law enforcement

¹⁰ United States of America, Department of Justice, Office of the Inspector General, Audit Division, United States Marshals Service: Administration of the Witness Protection Security Program: Executive Summary

tools in organized crime fighting efforts. Along with the Racketeer Influenced and Corrupt Organizations Act (RICO), WITSEC has paved the way for federal and state prosecutors to charge organized crime members and close down their illegal businesses throughout the country. But, despite this apparent success of the program, there are only a few studies that explore the various dimensions of the witness security program. Among these studies, none of them broadly address the effectiveness of the program for combating organized crime and terrorism, nor do they specifically examine the witness security program of Turkey. Even the dismantling of the infamous Italian Mafia by way of using WITSEC as one of the significant tools in this battle has not stirred scholars to pay attention to the role of WITSEC. When the literature is reviewed, we mostly encounter memoirs in which the life of ex-mobs is narrated or a number of newspaper series that helped the same ex-mobs by elevating them to celebrity status. Other than the WITSEC founder's book, which tells the story of WITSEC in the fight against the Mafia, the most comprehensive scholarly study¹² carried out in this field examines only the protected witnesses. The potential impact of the program on global terrorism is almost an untouched topic. It is hoped that this study would address several of the gaps in this area and thus, contribute to the organized crime and terrorism literature.

(March 2005), p. 1.

¹¹ Montanino, F. *Unintended Victims of Organized Crime Witness Protection*. Criminal Justice Policy Review 2, p.392-408, 1987.

¹² Montanino, F. *Federal Witness Security Program: Continuities and Discontinuities in Identity and Life Style*. Doctoral dissertation submitted to Yale University, May 1987.

CHAPTER 2

LITERATURE REVIEW

Before the 1970s, the Italian Mafia was a very powerful criminal organization that had placed itself at the heart of the social and economic life of the US.¹ Although domestic organized crime has been a serious problem for the US since the 1920s, the fight against the American Mafia began with the Kennedy administration. During the 1960s, due to the murdering of crucial witnesses before they had the chance of testifying in courts, the prosecution of the many Mafia figures had to be called off indefinitely. In those cases, most of the witnesses in danger were the ex-members of the organized crime groups who turned against their old friends, and were willing to testify against them, provided that the government could eliminate any threat coming from this crime syndicate. For obvious reasons the government was impotent with respect to carrying out this battle without having effective tools.

A Brief History of the Witness Security Program

Before the witness security program was established, the first member of the Mafia who broke with ‘omertà’, the code of silence, was Joseph Valachi. He was the first witness in the US that the government offered protection to in exchange for his testimony prior to the creation of a formal witness security program. Valachi was the “made member” of the powerful Genovese family. His testimony in 1963 before a congressional committee about the structure of the Mafia and its activities throughout the country was

¹ Early & Shur, 2002.

very sensational. Upon his collaboration with the government, it was feared that he could be killed by Vito Genovese, the boss of the Genovese family. Therefore, at the time of his hearing before the congressional committee, almost 200 US marshals guarded him. It was widely rumored that a price tag of \$100,000 was placed on his assassination. After his testimony, Valachi was put in protective custody and stayed behind bars until his death from a heart attack in 1971. He only had contact with the FBI agents, along with the Federal Bureau of Prisons staff, and was isolated from the other prisoners.

In this atmosphere, while the Mafia was at the height of its power, Congress passed the Organized Crime Control Act of 1970 and with Title V of this legislation the Witness Security Program was created. Its direct target was to dismantle the notorious American Mafia, in regard to which until that time ‘omertà’ held unchallenged sway among the members of the Mafia. Congress aimed at WITSEC to “*provide protection and security by means of relocation*”² for witnesses who testify against “*persons involved in organized crime activity or other serious offenses.*”³ Thus, WITSEC empowered the United States Attorney General to guarantee the protection of witnesses who had consented to testify against members and activities of the organized crime groups. After its inception, as many witnesses were in dire need of protection against the Mafia, over 4,000 witnesses and 8,000 family members participated in the program within the first decade.⁴ The program itself was so effective that the number reached over 7500 witnesses and their 9600 family members within three decades.⁵

² U.S Dep’t of Justice, United States Attorneys manual 9-21.020 (1997).

³ Ibid.

⁴ Levin, 1985.

⁵ Abdel-Monem, T. *Foreign Nationals in the United States Witness Security program: Remedy for Every Wrong?* American Criminal Law Review. Vol.40:1235, 2003.

Yet, as soon as WITSEC was implemented, it was heavily criticized by the media as well as by some scholars. It was asserted that society paid a heavy price for the success of the program, given that the program provided witnesses an opportunity to escape civil and criminal obligations in existence.⁶ With the help of WITSEC, divorced witnesses were enabled to hold their new identities from ex-spouses. And, state and local officials have not been alerted about the witnesses placed in their communities as a rule of the program. Because most of the protected witnesses have had a criminal background, some perpetrated new crimes after being admitted to WITSEC. In particular, the felony crimes committed by the witnesses under the protection of WITSEC drew national attention and brought about extensive media coverage throughout the country.⁷

One of the first and most severe criticisms of WITSEC came from Fred Graham, who wrote a book named *The Alias Program* about WITSEC.⁸ In his book, Graham lashed out against WITSEC and described it as an unknown government program formed in duplicity, fraught with bureaucratic incompetence and contemptuous of justice. At a time when the public had a deep distrust of the government because of the Watergate scandal, Graham expressed doubts about whether a program like WITSEC was needed by the government. In particular, he questioned the act of providing criminals with new identities. According to him, the government officially established a program which was based on telling lies. He also asserted that despite the fact that it was mandated in the Organized Crime Control Act of 1970 that the only obligation was to set up safe places to protect witnesses temporarily, the extra wording inserted by the McClellan Committee gave the Justice Department authorization to spend funds for the protection of witnesses

⁶ Levin, 1985.

⁷ Ibid.

⁸ Graham, F.P. *The Alias Program*, Little Brown, Boston: 1977.

and their close family members in whatever manner is considered most effective under the particular conditions of each case. He accused the government of exploiting that hazy language to excuse changing identities, relocations and practically everything else it desired. Since the government had never said that it was getting occupied in the comprehensive production of creating aliases without anyone's knowledge, he claimed that Congress had been duped. Accordingly, there was not any serious discussion on the legal and moral problems associated with the program, as the government undertook to erase the past lives of hundreds of ex-criminals and to blend them back into society under aliases.

The Alias Program stirred up a lot of debates in the media. Right after Graham's book, a number of reporters wrote stories about WITSEC. Most of them criticized the program and almost every one of them warned the public against the ex-mobsters, who were attributed a long list of criminal activities, from killing innocent people to extortion and loan-sharking. It was this adverse publicity that all kinds of mobsters were cloaked under false names in unwary neighborhoods that unnerved the public.

Witness Security Reform Act

These kinds of harsh criticisms of the program stemming from a number of shortcomings led Congress to take necessary measures and thus, in October 1984, after more than a decade in operation, the Witness Security Reform Act was enacted. And according to Lawson⁹, this reform act largely improved innocent third parties rights by providing a degree of compensation for woeful wrongs wrought by WITSEC and thus,

⁹ Lawson, R.J. *Lying, Cheating and Stealing at Government Expense: Striking a Balance between the Public Interest and the Interest of the Public in the Witness P.P.* Arizona State Law Journal, p.1429-1460, 1992.

set up an execution structure for the program. While Lawson is still doubtful of inherent morality and performance of the program, she says that the reform Act “*made the fundamental idea of a formal program to protect and relocate witnesses across the country more palatable and somewhat less intrusive.*”¹⁰

With this reform act, a number of serious changes were put into effect:¹¹

- a) More strict admission standards, and an evaluation of the threat that ex-con witnesses may pose to the community they relocated to
- b) Signing of a memorandum of understanding delineating the witness’s obligations upon entrance to the program.
- c) Formation of a course of action for the revelation of information about program participants and penalties for this kind of act.
- d) Establishment of a fund to recompense victims exposed to crimes committed by participants after their entrance to the program.
- e) Securing the rights of other persons, particularly the honoring of any non-relocated parent’s custody or visitation rights, and debts of participants.
- f) Outlining of measures to be taken in case the memorandum is violated by the participants.

A personal risk of exposure to a violent crime for involvement in trial proceedings is a necessary precondition for individuals taking part in the WITSEC program. Besides, the testimony given by the witness should be vital to the success of the case and there

¹⁰ Lawson, 1992, p.1455.

¹¹ UNODC. *Good Practices for the Protection of Witnesses in Criminal Proceedings involving Organized Crime*, p.8.

must not be any other way of protecting the physical safety of such witness. The ability to respect the rules and constraints imposed by the program as well as the psychological profile of the witnesses are other conditions that became effective after the 1984 Reform Act. In the 1980s, especially with the “war on drugs” policy instituted by the Reagan Administration, eligibility for coverage under WITSEC was extended not only for witnesses of Mafia crimes but also for witnesses of other types of organized crime, such as drug cartels, and violent street, motorcycle and prison gangs.¹²

Evaluation of WITSEC

A-Criticism of the Program

One of the most significant criticisms of the program is its vague terminology under Title V of the Organized Crime Control Act of 1970. According to Lawson¹³, this terminology enabled the Department of Justice to protect program participants by every means possible. She claims that this mandate gave the Justice Department a wide leeway as to how the program would be structured and implemented. As soon as WITSEC developed into a full range program, preserving critical trial testimony along with protecting participants and their immediate families ultimately turned into a top priority for the Department, which distracted its attention from other structural deficiencies. Because the government initially failed to develop a structured design for WITSEC, one of the first practical problems experienced was determining the exact limits of the protection obligation.¹⁴

¹² Ibid.

¹³ Lawson, 1992.

¹⁴ Ibid.

In this context, Lawson argues, two questions came into prominence for the courts: first, whether the government could be obliged to protect a witness under the WITSEC shield and, second, whether the government could be compelled to provide each and every benefit offered by the program. Courts, challenged by these questions, have unanimously rejected such an entitlement to WITSEC protection in the view that the decision as to which witnesses would participate in the program or the specific manner of that protection is at the discretion of the Attorney General, according to the Organized Crime Control Act of 1970. Moreover, the government is not legally bound to honor its explicit promise of such benefits, even though a witness was lured to participate in WITSEC with these promises.¹⁵ According to Slate¹⁶, in spite of the fact that no witness abiding by the program rules has been hurt so far, yet, approximately 30 witnesses who left or were ousted from WITSEC were murdered. In none of these cases did the courts find the government liable for failing to protect those who were killed.

On the other hand, few studies¹⁷ indicate that even prosecutors and law enforcement officials, as well as defense attorneys, have had concerns that the program could be exploited by corrupt witnesses. The concern of defense attorneys is the point that there could be a prejudice against their clients, once it appears that the witness is protected by the program. According to them, the revelation of the fact that the witness is being protected by the government could lead the jury to imply that their client must be intimidating the witness.¹⁸

¹⁵ Slate, 1997.

¹⁶ Slate, 1997, p. 22.

¹⁷ See Fyfe, N.R & McKay, H. *Police Protection of Intimidated Witnesses: A Study of the Strathclyde Police Witness Protection Programme*, Policing and Study, Vol.10, pp. 277-299, 2000.

¹⁸ Ibid.

In addition to all these deficiencies, Slate¹⁹ claims, because of the inherent secrecy of WITSEC, it is not possible to research the program properly. He remarks that after several attempts, some scholars came to the conclusion that efforts to evaluate the effectiveness of WITSEC by means of cost-benefit analyses were incomplete and unreliable. Even so, these scholars asserted that despite the success of WITSEC, its cost was discovered to be high.

Relocation Problem

Once the government established and began to use WITSEC, relocation of witnesses to the new communities has become its most criticized protection measure. According to the most passionate critics, the government has demonstrated that when it comes to maintaining a good balance, governmental interests have been favored over those of third parties.²⁰ At the time of creating WITSEC, the Department of Justice was interested in sending mobsters behind bars in the first place and at this point, the critics argue, the security of communities in which witnesses were placed was seen by the government as a secondary task. Beyond obtaining conviction of mobsters, the government was not much concerned about anything else.²¹ Hence, some claim that the third parties in the new communities where witnesses are relocated bear almost the full cost of the program, which should be offset by the government in one way or another.

The reason why relocation of witnesses is a hotly disputed issue is the very fact that, as mentioned before, 95 percent of the WITSEC witnesses are individuals who have a criminal record, mostly because of their affiliation to certain organized crime groups.

¹⁹ Slate, 1997.

²⁰ Lawson, 1992.

²¹ Ibid.

Particularly before the reform act of 1984, the crimes perpetrated by protected witnesses provoked a public outcry against WITSEC. For instance, Levin states that 200 witnesses in WITSEC were rearrested in connection with various crimes between 1978-1982 and by 1984, protected witnesses perpetrated 10 murders after their admission to WITSEC since the beginning of the program.²² As the numbers indicate, the formative years of WITSEC caused pain and trouble for many innocent people, and for which, critics say, society paid a heavy price. Consequently, in the initial years of the program, one observer referred to WITSEC witnesses as “untouchables,” since a lot of protected witnesses used the government as a shield to avoid responsibility for their actions.²³

In this context, Zuckerman²⁴ asserts that one of the gravest flaws of the program is its failure to monitor program participants who have gone astray. According to him, a WITSEC participant with a new identity will be easily released when he is caught by police in suspicious circumstances, as he has no past record in the federal crime computer. The case of Marion Pruett is a perfect example of this.²⁵ As a person with a long criminal history, Pruett had been put into the witness security program after testifying in a murder case that occurred in prison. While in the program, Pruett killed eight people including his wife, and later it was revealed that he had lied to the authorities to participate in WITSEC.

Is WITSEC an Easy Escape-Gate for Criminals?

²² Levin, 1985.

²³ Slate, 1997, p.23.

²⁴ Zuckerman, M.J. *Vengeance is Mine*. Macmillan: New York, 1987.

²⁵ Earley.& Shur, 2002.

According to a number of scholars²⁶, there is a lack of a formal implementation structure and a concrete selection process in the program. As such, because witnesses have gradually begun to use their potential testimony as leverage, some fiercely ambitious federal prosecutors have had to cave in to their demands. It means that apart from WITSEC protection, they assert an entitlement to the benefits of the program in return for their testimony.²⁷ The plea bargain that depends on the prosecutorial discretion comes on the scene at this stage in which organized crime members take full advantage of their position. Sometimes prosecutors themselves use their prosecutorial discretion to lure the organized crime members. In both cases WITSEC is an important factor for persuading these witnesses into testifying.

Because of the above-mentioned aspect of the program, to some scholars and critics, WITSEC has certainly become an easy escape-gate for criminals. According to Slate²⁸, the policy of giving heinous criminals the opportunity to participate in WITSEC has attracted its share of criticism, as they had committed appalling violent crimes before being accepted into the program. For instance, in spite of the fact that Jimmy “the Weasel” Fratianno, the highest ranking mobster who became a federal witness before Sammy Gravano, killed eleven people without hesitation and committed a number of other felony crimes, he got a prison term reduced to twenty-two months.²⁹ Likewise, Sammy Gravano, who confessed to taking part in nineteen murders, was convicted of a token racketeering charge and sentenced to just five years. As part of Gravano's

²⁶ Lawson, 1992; Slate, 1997; Zuckerman, 1987.

²⁷ Zuckerman, 1987.

²⁸ Slate, 1997.

²⁹ Zuckerman, 1987.

cooperation agreement, he would never be forced to testify against his former crew, and many other career criminals and mobsters.³⁰

Does WITSEC Need Any Modification?

According to Lawson, despite the fact that WITSEC has no doubt played a crucial role in the battle against the Mafia and other organized crime groups, the program, on the other hand, has also caused important legal and ethical concerns during its chaotic and disorganized implementation.³¹ Although these serious legal concerns were largely allayed with the Reform Act of 1984, Lawson³² nevertheless argues that structural problems are still creating chaos that is must be addressed by the executive and legislative branches. She states that such close scrutiny is essential to maintain a fair equilibrium between the public interest in combating organized crime and the interest of individuals to protect them from deception and violence committed by the WITSEC participants. Therefore, according to Lawson, to become efficient WITSEC needs to be modified by the government.

First, she questions whether protection and long-time relocation of participants with concerted efforts is the most effective way to utilize the program, and whether there are more satisfactory options to provide protection that do not entail distortion of the facts, high expenditure, and intrusion into the life of an innocent third party.

³⁰ Maas, P. *Underboss: Sammy the Bull Gravano's Story of Life in the Mafia*. New York City: HarperCollins, 1996.

³¹ Lawson, 1992.

³² Ibid.

Second, she criticizes the amount of compensation paid to the victims of program participants. Slate³³ is also critical of this issue. According to him, although the federal government admitted some responsibility for individuals victimized by protected witnesses and authorized a \$50,000 payment within the Reform Act of 1984—it cannot be claimed that the government lives up to its obligation to compensate its innocent citizens adequately, when it cannot protect them from the WITSEC witnesses properly.

Slate highlights another modification that needs immediate attention. He points out that if individuals in WITSEC have the option of leaving the program, “*there should still be some governmental supervision and reporting requirements so that their whereabouts can be monitored by appropriate authorities.*”³⁴ As accurately indicated by Slate, terms such as specific penalties for those who do not comply with the rules might be included in the MOU, and even immunity from prosecution for prior crimes could be made conditional upon staying in the program.

In addition to these malfunctions, Demleitner³⁵ articulates that despite the fact that the program is very useful to a few witnesses in organized crime cases, it is not of any help to the vast majority of ordinary witnesses whose collaboration is vital to the daily operations of the criminal justice system. As rightly asserted by her, it is a well-known fact that owing to the excessive costs of WITSEC, it is barely accessible to a particular number of individuals who are key witnesses in important federal organized crime and terrorism cases.

WITSEC and Gang Members

³³ Slate, 1997.

³⁴ Ibid, p.31.

³⁵ Demleitner, 1998, p.659.

In the early 1980s, the face of crime in the US changed dramatically and violence administered by drug cartels and gangs hit the big cities where a large number of homicides occurred in low income communities with devastating effects. In most of these homicide cases, although law enforcement authorities knew who the perpetrators were, they could not bring charges against two-thirds of the suspects, as witnesses were too scared to come forward.³⁶ According to Shur, this new wave of violence led the government eventually to use WITSEC against this new form of organized crime. The government officials felt that they were right to employ the program for combating these groups, due to ineffectiveness of any other appropriate tools. Yet, the use of WITSEC for the members of gangs and drug cartels provoked another public outcry and was seriously criticized by some. Even Shur admits in his book that these undisciplined and violent gangs put the average citizen at greater personal risk than the Mafia. According to him, unlike the Mafia, which had a criminal code of conduct, these new groups has none and therefore, every one is vulnerable to their threat. He was once even warned by an elderly mobster who participated in the program as: *“You are not putting the same class of criminal into the program as you used to. These guys, they kill innocent people for no reason at all.”*³⁷

Cost-benefit Analyses of WITSEC

As Slate³⁸ asserts, the government gives its high success rate in protecting witnesses and in gaining convictions of those involved in organized crime and major criminal activities as evidence for the benefit of WITSEC. In this manner, he says, the

³⁶Earley & Shur, 2002.

³⁷Ibid, p. 420.

³⁸ Slate, 1997.

government shows that it measures the cost of the program merely in numerical terms such as operating budget, expenses for witnesses, and compensation paid to families whose close relatives were victimized by participants in WITSEC. But, according to Slate, the costs and benefits of WITSEC are not solely economic and are not readily converted to numeric comparisons. He articulates that the government unlikely ponders the consequences of the program's stress on witnesses and does not pay much attention to the protection of the public from being victimized by protected witnesses.

Likewise, Fyfe and McKay claim that there are considerable personal costs associated with relocation, as well as very high financial costs.³⁹ In their research conducted about protected witnesses and their family members, these high personal costs for witnesses are depicted as a "*cycle of social death and social rebirth*"⁴⁰, since their past life is expunged to a great extent in order to give way to a new identity. In particular, Fyfe and McKay⁴¹ argue, the family members in the program are those who are the most susceptible to the psychological consequences because of their more vulnerable position. According to the authors, while these individuals have to deal with the drastically changed physical and social environment, their interactions with people in their new communities are overshadowed by the disguise of their previous identity.

B-The Success of the Program

³⁹ Fyfe & McKay, 2000, p.282.

⁴⁰ Montanino, F. *Protecting the Federal Witnesses: "Burying Past Life and Biography"*. American Behavioral Scientist, 27:4, Mar./Apr., 1984.

⁴¹ Fyfe & McKay, 2000.

When one looks at Shur's—the founder of WITSEC's—book⁴², it is seen how he was deeply affected by the criticisms of the program. While he is very proud of being the founder of WITSEC, on the other hand, his disappointment is easily noticed with regard to the criticisms. For this reason, he feels the need to point out the fact that today few people realize how powerful the Mafia was in the United States before the inception of WITSEC and the other criminal justice tools, as well as to justify why the government initiated a fight against it. According to him, the Kefauver commission in Congress found out that the Mafia had corrupted every major city in the country. For instance, he says, in New York City the mob flagrantly gave thousands of dollars as bribes to Mayor William O'Dwyer in unmarked envelopes, and in New Orleans, the chief of detectives confessed that he spent \$150,000 per year despite the fact that his income was less than \$25,000 a year. Today, he argues, people in the US have been captivated by the mob stories and influenced by the Hollywood movies and television shows such as *The Godfather* and *The Sopranos*. But once in this country the same Mafia posed a grave threat to the American society and even to its national security.

According to Shur⁴³, the government has to have persons who are directly knowledgeable about activities of organized crime, as well as the elements and components of the crimes that make up organized crime. He indicates that these crimes are not evident when they are observed. What the witness security program allows law enforcers to do, Shur says, is to offer protection to individuals who have that exclusive knowledge, because for the most part they have been personally involved in these activities. He claims that without the program, it would not have been possible for the

⁴²Ibid.

⁴³ Earley & Shur, 2002.

government to reduce the power of the Mafia, since it could not find anybody willing to testify against the organization.

As pointed out by Shur⁴⁴, employing these kinds of extreme procedures to keep witnesses safe has important consequences for the criminal justice system. Indeed, in the context of organized crime, the major problems caused by witness intimidation make the subject of witness collaboration particularly sensitive. This is also the most likely explanation that although there is widespread criticism of WITSEC like “*the overarching questions of practical feasibility, intrinsic morality and fairness to the public*”⁴⁵, it has been defended arduously by the law enforcers and prosecutors as one of the most valuable tools used against organized crime syndicates in the US.⁴⁶ According to the US Marshals Service⁴⁷, the success of WITSEC is widely acknowledged as exceptional and one of the most significant tools in the government’s fight against organized crime. Law enforcement agencies claim that since the establishment of WITSEC in 1970, there has been a successful conviction rate of 89 percent with more than 10,000 convicted offenders in these criminal cases, when protected witnesses’ testimony is used against defendants.⁴⁸ According to Montanino⁴⁹, before WITSEC, due to the concerted efforts of the Mafia bosses, key witnesses could not be persuaded into testifying for the prosecution. He remarks that without WITSEC it might not have been possible to send many Mafia bosses behind bars, and accordingly dismantle the most notorious Mafia groups in the US. For instance, John Gotti, one of the most significant Mafia bosses

⁴⁴ Ibid.

⁴⁵ Lawson, 1992, p. 1455.

⁴⁶ Slate, 1997.

⁴⁷ <http://www.usmarshals.gov/witsec/index.html>

⁴⁸ Ohr, B. G. *Effective Methods to Combat Transnational Organized Crime in Criminal Justice Processes*. Annual Report, UNAFEI, Tokyo, Japan, 2000.

⁴⁹ Montanino, F. *Protecting Organized Crime Witnesses in the US*. International Journal of Comparative and Applied Criminal Justice 14, 123-31, 1990.

prosecuted by the government, was sent to prison for life by the testimony of protected witness Salvatore Gravano who was the under-boss of the same Mafia group.⁵⁰

In addition to the Mafia, drug lords, members of prison and motorcycle gangs, terrorists and other major criminals have also been adversely affected by WITSEC⁵¹. Especially after the 1980s, WITSEC became one of the most functional tools to combat foreign drug cartels. Such is the case with the terrorist organizations before and after 9/11 in the US.

As the Chief of the Organized Crime and Racketeering Section in the US Department of Justice, Ohr⁵² emphasizes that war against local and transnational organized crime would continue depending primarily on the criminal justice tools utilized in the long battle against the American Mafia. According to Ohr, as one of these tools, the fact that over 10,000 defendants were sent behind bars with the help of the witness security program shows that WITSEC is enormously effective and useful in the fight against organized crime enterprises. Therefore, from the perspectives of law enforcement officials and prosecutors in the US, there is obvious consensus regarding the need for the witness security program.

On the other hand, when one reviews the literature about WITSEC, the vast majority of the criticisms that were made on this subject belong to the period prior to the Witness Security Reform Act of 1984. Therefore, since its first implementations in the 1970s and mostly as a result of experience gained, WITSEC has undergone several changes to make the system more effective. The changes that were made consisted of

⁵⁰ Slate, 1997.

⁵¹ Federal Witness Security Program and Protection of Foreign Nationals Hearing Before the Government Information, Justice, and Agriculture Subcommittee of the Committee on Government Operations, House of Representatives, 101st Cong., 2nd Sess., at 9, 1990.

⁵² Ohr, 2000.

tightening of the admission criteria, making the conditions for leniency stricter and giving some relief and rights to the innocent third parties. With the help of these modifications, it is possible to claim that WITSEC is much more reliable than its initial establishment. This is also the reason for Turkey's need, as well as that of many other countries, to develop their own witness security programs akin to WITSEC in order to become more effective against criminal organizations.

Organized Criminality and the Witness Security Program

A-Definition of Organized Crime

The United Nations Convention against Transnational Organized Crime (UNCATOC) defines organized crime as:

a structured group of three or more persons existing for a period of time and acting in concert with the aim of committing one or more serious crimes or offences... in order to obtain, directly or indirectly, a financial or other material benefit. . . . [a structured group is] a group that is not randomly formed for the immediate commission of an offence and that does not need to have formally defined roles for its members, continuity of its membership or a developed structure.⁵³

As one of the simple definitions, Abadinsky defines organized crime merely as:

⁵³UN Convention against Transnational Organized Crime (UNCTOC) and its Supplemental Protocols, 2000, p.2.

A non-ideological enterprise that involves a number of persons in close social interaction, organized on a hierarchical basis for the purpose of securing profit and power by engaging in illegal and legal activities.⁵⁴

According to Finckenauer, “*the only definition of organized crime contained in a US statute is that in Public Law 90–351, the Omnibus Crime Control and Safe Streets Act of 1968*”:

Organized crime means the unlawful activities of the members of a highly organized, disciplined association engaged in supplying illegal goods and services, including but not limited to gambling, prostitution, loan sharking, narcotics, labor racketeering, and other unlawful activities of members of organizations.⁵⁵

In his study, Van Duyne⁵⁶ remarks that all definitions display a certain approach of focusing on this phenomenon. While some definitions emphasize secret societies like the Mafia or the Yakuza, others highlight the violent nature of this form of crime. In this context, Van Duyne asserts that among many other unsatisfying definitions of organized crime, because it fits appropriately into the dynamics of organizing crime, the definition of the Bundeskriminalamt (BKA, the German Federal Crime Intelligence Office) seems to be an analytically adequate working definition. According to BKA,

⁵⁴ Abadinsky, H. *Organized Crime (2nd ed.)* Temple University, Chicago: Nelson-Hall, p.7, 1985.

⁵⁵ Finckenauer, J. O. *Mafia and Organized Crime*. Oneworld Publication:Oxford, England, p.11, 2007.

⁵⁶ Van Duyne, P. *The Phantom and Threat of Organized Crime*. *Crime Law and Social Change* 24(4):341–377, 1995. Retrieved from <http://www.portill.nl/articles/Van%20Duyne/PHANTOM.pdf>.

Organized crime is the planned violation of the law for profit or to acquire power, which offences are each, or together, of a major significance, and are carried out by more than two participants who cooperate within a division of labor for a long or undetermined time-span using

- a. commercial or commercial-like structures, or
- b. violence or other means of intimidation, or
- c. influence on politics, media, public administration, justice and legitimate economy.⁵⁷

On the other hand, according to Schloenhardt⁵⁸, there are two types of criminal organizations that are different in size and structure. The first is the network model where members are organized in a horizontal manner. The independence of members from a big boss is the advantage of this model. Furthermore, this flexible structure makes it possible for rapid deployment and change based on the consumer demand or on law enforcement reactions. Therefore, this type of model thrives in complex and dynamic illegal markets with multiple competitors. The second type is the corporate model that is hierarchically centralized and bureaucratically structured, in which activities are strictly limited by a boss and several illegal markets are controlled

Finckenauer⁵⁹ explains the difference between crime that is organized and the characteristics of organized crime. He asserts that organized crime, which includes

⁵⁷ Ibid, p.2

⁵⁸ Schloenhardt, A. *Organized crime and the business of migrant trafficking: An economic analysis*. AIC Occasional Seminar, Canberra, 10 November 1999.

⁵⁹ Finckenauer, J. *Mafia and Organized Crime, the Beginner's Guide*. Oneworld Publications, 2007.

several types of crimes, is substantially structured, greatly sophisticated, and stable over time, which is a well-known fact by the public, as it is self-identified. Yet, in the case of crime that is organized, none of these characteristics are at play. Instead, it is a situation of different groups pursuing a single criminal opportunity. In this parallel, the main difference between organized and ordinary crime is its structure, which depends on an ‘organization’

The literature on organized crime reveals a noticeable lack of agreement on major issues. Apart from its definition, there is almost no consensus even on the matter of why organized crime exists. As one of the key organized crime theories, economic theory lays emphasis on the monopoly that organized crime enjoys over illicit goods and services. Therefore, as legal firms do, criminal enterprises organize themselves to control rents or harvest economies of scale. Organized crime monopolies tend to develop in a similar way as traditional monopolies – economies of scale may impose that small producers may merge, only one firm can effectively supply the market, and obstacles to access may be created by governmental rules and regulation. The main instrument for achievement is extortion.⁶⁰ From this economic perspective, Schelling sees extortion as the main business interest, and defines organized crime as “*large-scale continuing firms with the internal organization of a large enterprise, and with a conscious effort to control the market.*”⁶¹ Similarly, Pace and Styles view organized criminal groups as merely

⁶⁰ Milhaupt, C. J. & West, M. D. *The Dark Side of Private Ordering: An Institutional and Empirical Analysis of Organized Crime*. 1999. Retrieved from <http://www.isnie.org/ISNIE99/Papers/milhaupt.pdf>

⁶¹ Schelling, T.C. *Economic Analysis and Organized Crime*, in Task force Report: Organized Crime (President’s Commission on Law Enforcement and Criminal Justice ed. 1971), p. 114.

*“business organizations operating under many different management structures and dealing in illegal products.”*⁶²

Sociological literature, alternatively, concentrates on the ethnic or cultural relations that shape the structure and cohesion of organized crime enterprises and mostly ignores the more essential question of the reason why such organized crime enterprises become apparent. It is argued that organized crime groups develop in societies in which there is a lack of trust. For instance, it is explained that the expansion of organized criminality in the former Soviet Union and ex-communist countries of Europe is an outcome of Communism, which systematically destroyed trust in the state.⁶³

Milhaupt and West say that the spread of organized crime is worsening in this globalized age, in which organized crime thrives in transition economies as well as persists in developed nations. According to the authors, *“the structure and activities of organized criminal groups are significantly shaped by the state.”* In this regard, they claim that *“organized crime is the dark side of private ordering—an entrepreneurial response to inefficiencies in the property rights and enforcement framework supplied by the state.”*⁶⁴

B-Definition of Transnational Organized Crime

Transnational organized crime refers to crime that is coordinated across national borders. According to Shelly,

⁶² Pace, D.F. & Styles, J.C. *Organized Crime: Concepts and Control (2nd ed.)*. Prentice-Hall, p.21, 1983.

⁶³ Ibid.

⁶⁴ Milhaupt & West, 1999, p.3.

Transnational crime will be defining issue of the 21st century for policymakers-as defining as the Cold War was for the 20th century and colonialism was for the 19th. Terrorists and transnational crime groups will proliferate because these crime groups are major beneficiaries of globalization. They take advantage of increased travel, trade, rapid money movements, telecommunications and computer links, and are well positioned for growth.⁶⁵

In a literal sense, transnational criminality is as old as international trade or national governments. Cross-border brigandage, piracy, and smuggling forbidden or stolen goods are ancient occupations that became important as nation states were forming. However, transnational organized crime has often been named as a synonym for international Mafia-type organizations surging across the globe after the early 1990s.⁶⁶ Since then, governments around the world have been involved in an effort for devising new ways to fight against these perilous groups. Even international institutions such as the United Nations have become involved in this process with establishing new agencies and organizing international conventions.

As one of the most important international conventions in this area, the United Nations Convention against Transnational Organized Crime (UNCATOC) defined transnational organized crime in 2000. According to UNCATOC, the geographical parameters of the crimes are an essential factor to determine the definition of transnational crime. Therefore, to be considered transnational, the crime needs

to be committed in more than one state; to be committed in one state, but a substantial part of its preparation, planning, direction or control takes

⁶⁵ Shelly, L. *The Unholy Trinity: Transnational Crime, Corruption and Terrorism*. Brown Journal of World Affairs, Winter/Spring 2005, Vol. XI, Issue 2, 2005.

⁶⁶ Woodiwiss, M. *Transnational Organized Crime: The Global Reach of an American Concept*. In the edited book, *Transnational Organized Crime: Perspectives on Global Security* by Edwards and Gill, New York: Routledge, 2003.

place in another state; to be committed in one state but involves an organized criminal group that engages in criminal activities in more than one state; or to be committed in one state but has substantial effects in another state.⁶⁷

Before the Iron Curtain fell, the international community was largely concerned with the abuse of narcotics and trafficking in illegal drugs. However, according to Adamoli et al.⁶⁸, since the end of the cold war, the world has been faced with the growth of transnational criminal organizations that enter into alliances with each other globally, and contraband goods and illicit activities have expanded into new markets. This expansion of illicit transnational activities has been aided enormously by the great technological advances in recent years. Consequently, criminal organizations have grown immensely in size and strength.⁶⁹ They are stepping up their efforts to cooperate more effectively with the intent to promote their criminal activities. Williams⁷⁰ claims that globalization has progressively expanded the business capacity of transnational criminal groups, and there is a connection between organized crime and diminished state control. In this context, criminal groups particularly rooted in ethnic minority communities and in countries such as Russia and Eastern Europe that function as a safe place for these groups have been very successful in exploiting reduced state control, because of the consequences of globalization.⁷¹

⁶⁷ UN Convention against Transnational Organized Crime (UNTOC) and its Supplemental Protocols, 2000, p.3.

⁶⁸ Adamoli, S; Di Nicola, A; Savona, E; Zoffi, P. *Organized Crime Around the World*. Helsinki: HEUNI, 1998.

⁶⁹ UNODC. *Good Practices for the Protection of Witnesses in Criminal Proceedings involving Organized Crime*.

⁷⁰ Williams, P. *Global Organized Crime*. Hearing before the committee on international relations. House of Representatives, 104th Congress, second session, January 31, 1996.

⁷¹ Ibid.

C- Effects of Russian Criminal Groups on Transnational Criminality

Vsevolod⁷² asserts that since the end of the Soviet Union, one of the most persistent and negative images of Russia is that of a country in the grip of organized crime groups. According to him, rather than rising from the ashes of the Soviet state, the organized crime groups that turned out to be such a significant part of the story after the collapse of the Soviets were the evolutionary offsets of Soviet-era criminal-business collaborations. During the Soviet era, particularly in the 1960s and 1970s, criminal enterprises developed a complex relationship with state bureaucrats since they benefited from the growing Soviet black market economy. In the 1980s, Mikhail Gorbachev's reforms undermined the authority of the central government and, in so doing, contributed to further expansion of criminal enterprises and their activities. After the collapse of the Soviet Union, lawlessness reached the highest point and the term "Wild East" was used to describe Russia's business atmosphere.

Finckenauer and Voronin⁷³ also support this argument and explain that organized crime is an institutionalized part of the economic and political environment in Russia. They argue that this goes back to the Soviet era where there was a reciprocal relationship between state elites and criminals. According to them, in the late 1960s a three-level structure emerged. High-level government and party bureaucrats constituted the top level. The second level was comprised of underground or shadow market entrepreneurs who ran business outside the state-controlled economy. And the bottom level was occupied by professional criminals who operated illicit activities such as drug dealing, gambling,

⁷² Vsevolod, S. *From Guns to Briefcases: the Evolution of Russian Organized Crime*. World Policy Journal. 21(1), 68-74, 2004.

⁷³ Finckenauer, J.O. & Voronin, Y.A. *The Threat of Russian Organized Crime*. Washington, DC: Department of Justice, 2001.

prostitution and extortion. In the 1980s, the economic and political reforms of Gorbachev worked to the advantage of these segments. When the Gorbachev period came to an end, it was found out that high-level party officials had diverted State funds to banks, trading companies and export-import firms. The complex relationship between state bureaucrats and criminals was solidified and expanded with the privatization of state possessions that initiated in Russia in 1992. Today, in Russia, illicit activities are disguised as legal businesses by organized crime groups which, in turn, have generated political cliques who seek to exercise political and economic power.

Owing to the incompetence and corruption of the government, Finckenauer and Voronin⁷⁴ say, instead of opposition to it, there is a widespread support for organized crime. This support depends on the fact that, in Russia, organized crime stimulates the economy and also brings relative stability to the country. As a result, “*criminal networks have taken a more businesslike approach to maximizing profit and, in many cases, have used their ill-gotten gains to fund legal private enterprises.*”⁷⁵

On the other hand, it is fair to say that the West bears the full cost of this economic stimulus and stability, as the greatest menace to the West comes from the activities of Russian organized crime groups abroad. Today, the most creative Russian criminal networks have evolved into dangerous transnational organized crime groups, which accumulate and seek opportunities to launder their substantial money, and continue to look for new ways of expanding their business and illicit activities worldwide.

As these transnational criminal organizations find the most profitable methods to build up money, and hence have enormous power to influence almost anyone blocking

⁷⁴ Ibid.

⁷⁵ Vsevolod, 2004.

their way, the Russian governmental agencies responsible for fighting against them are, unfortunately, in very bad shape in terms of capacity and effectiveness. Furthermore, the current situation within the government sector gives the impression that the political determination alongside a clear strategic vision essential to tackle the problem is definitely missing. Therefore, one can expect that criminal organizations will only continue to grow robustly in the near future.⁷⁶

Of the many negative aspects of it, transnational crime has become one of the main dangers to international security, hindering the social, political, cultural and economic progress of societies globally⁷⁷. Adamoli et al.⁷⁸ remark that the growing concern about this mushrooming of transnational organized crime has led a number of international institutions to take initiatives to combat these illegal organized crime groups. Likewise, with the expansion and diversification of transnational crime to include arms smuggling, money laundering, illegal migration, piracy and so on, states have needed to intensify their efforts to fight these crimes and acknowledged the need for closer cooperation and coordinated actions among themselves.⁷⁹ In this respect, enhancing the capacity and efficacy of law enforcement agencies is essential to improve the ability of the international community to work closely on combating transnational crime. At this point, introducing a witness protection measure in the countries is a matter of vital importance. There is more than enough evidence to concur that any cooperation among the countries in terms of implementing the witness security program will further

⁷⁶ Ibid.

⁷⁷ UNODC. *Good Practices for the Protection of Witnesses in Criminal Proceedings involving Organized Crime*.

⁷⁸ Adamoli et al., 1998.

⁷⁹ UNODC. *Good Practices for the Protection of Witnesses in Criminal Proceedings involving Organized Crime*.

encourage the members of the international community to come forward and give evidence in transnational crime related cases.

From this perspective, the signing of the UNCATOC in 2000 can be named as a historic step in responding to transnational crime activities. According to Article 24 of the UNCATOC, states should apply measures for protection of witnesses from reprisal or threats in cases related to transnational organized crime. These measures should comprise personal protection, the relocation and non-disclosure or limitations on the revelation of the identity and location of the witnesses. States should also participate in arrangements or agreements with other states for the relocation of witnesses.⁸⁰ For this goal, the UNCATOC even offers technical assistance “*to support the implementation of the two Protocols.*”⁸¹

Global Terrorism and the Witness Security Program

A-Defining Terrorism

The definition of terrorism is always deliberately disputed, and the international community has never succeeded in developing an accepted comprehensive definition of terrorism. Attempts at defining the concept consistently stir up debate, since different definitions may be used with a view to including the actions of certain parties, and excluding others. Therefore, each party might still subjectively claim a legitimate basis for employing violence in pursuit of their own political cause or aim. Laqueur has

⁸⁰ Ibid.

⁸¹ Ibid, p.2.

counted over 100 definitions and concluded that the “*only general characteristic generally agreed upon is that terrorism involves violence and the threat of violence*”⁸²

In the Encyclopedia Britannica, the definition of terrorism is:

... is the systematic use of terror or unpredictable violence against governments, publics, or individuals to attain a political objective. Terrorism has been used by political organizations with both rightist and leftist objectives, by nationalistic and ethnic groups, by revolutionaries, and by the armies and secret police of governments themselves.⁸³

The Department of Defense (DoD) Joint Forces 1-02 Dictionary for Military and Associated Terms defines terrorism as:

The calculated use of unlawful violence or threat of unlawful violence to inculcate fear; intended to coerce or to intimidate governments or societies in the pursuit of goals that are generally political, religious, or ideological.⁸⁴

The U.S. Code defines international terrorism as:

...violent acts or acts dangerous to human life that are a violation of the criminal laws of the United States or any state.... (and that)....appear to be intended to intimidate or coerce a civilian population; influence the policy of a government by intimidation or coercion; or affect the conduct of a government by mass destruction, assassination or kidnapping and occur primarily outside the territorial jurisdiction of the United States or transcend national boundaries in terms of the means by which they are

⁸²Laqueur, W. *The New Terrorism: Fanaticism and the Arms of Mass Destruction*. New York: Oxford University Press, 1999, p. 6.

⁸³ Encyclopedia Britannica, vol.2, p.650.

⁸⁴ US, Department of Defense, Joint Forces 1-02 Dictionary for Military and Associated Terms.

accomplished, the persons they appear intended to intimidate or coerce, or the locale in which their perpetrators operate or seek asylum.⁸⁵

Terrorism is defined in the Code of Federal Regulations as:

the unlawful use of force and violence against persons or property to intimidate or coerce a government, the civilian population, or any segment thereof, in furtherance of political or social objectives.⁸⁶

The Secretary General of the UN's report on terrorism shows the need for a definitional standard by attempting to determine certain fundamental definitional components. These include:

Terror outcome;
Instrumental or immediate victims;
Primary targets (population or broad groups and others);
Violence; and
Political purpose.⁸⁷

Obviously, there is not a commonly accepted definition of "terrorism" and it is rather unlikely that one will be adopted in the near future. It appears that the definition of this term is primarily driven by individual or collective and coincident national security interests. One of the biggest problems about terrorism is how to distinguish terrorism from the other uses of violence. Terms, such as insurgency, insurrection, rebellion, guerrilla or partisan wars are mostly used for describing an armed conflict, which are associated with nationalistic or ethnic movements. As a result, many news sources avoid

⁸⁵ 18 U.S.C. § 2331(1).

⁸⁶ 28 C.F.R. Section 0.85.

⁸⁷ Yonah, A. *Terrorism: inter-disciplinary perspectives*. New York, the John Jay Press, and McGraw-Hill Book Company UK Limited, p.18, 1977.

using 'terrorist', opting instead for less accusatory words like "bombers," "militants," etc. However, academic definitions concentrate on the illegitimacy of the acts, not on the ends to which they are applied. Because terrorists' targets are proxies for demonstrating their capability to a primary target that is almost always the government, terrorist groups view targets as the secondary focus. Consequently, a truly accepted definition of terrorism is less likely, due to the lack of consensus on it.⁸⁸

Rising cross-national terrorism threats coincide with the diminishing of the state's authority. Obviously, the globalization process has played a key role in the development of these conditions. It is certain that globalization is double-sided which, on the one hand, is brewing new changes so fast in so many fields that many chances and opportunities are presented to us; on the other hand, it shows its face as a number of global threats, one of which is the rapid rise of global terrorist groups. According to Newman and Clarke⁸⁹, today, many terrorist tactics are similar and more sophisticated because of the circumstances presented by globalization, the effects of which are felt all over the world. Therefore, it is possible to say that in the last two decades globalization has given terrorists new opportunities to launch well-organized and more effective attacks, and successfully publicize their acts via global media.

In this perspective, Sullivan⁹⁰ suggests that law enforcement response to threats from terrorist groups should begin by effective policing methods of intelligence, investigation and community interaction. He asserts that this entails a local eye on new global dynamics and links, and therefore requires police to acquire new skills. It is

⁸⁸ Anarumo, M. C. *What are We Really Afraid of?: the Practitioner View of the Terrorist Threat*. Doctoral dissertation submitted to the Rutgers, The State University of New Jersey, 2005.

⁸⁹ Newman, G.R.& Clarke, R.V. *Outsmarting the Terrorists*. Westport, CT: Praeger PSI, 2006.

⁹⁰ Sullivan, J. P. *Law Enforcement, Intelligence, and Non-Traditional Actors*. 49th Annual ISA Convention, San Francisco, CA, USA, 29 March 2008.

essential for police now to comprehend various cultural and social contexts, in addition to mastering different languages and the nature of diplomacy. In other words, he stresses, local policing has evolved into global policing, which forces police to focus on global incidents equally alongside local ones. From the local perspective that dominated before, today, police should look globally, and bring that global understanding back home. According to Sullivan, tackling global threats also requires international cooperation between local law enforcement agencies worldwide. Building capabilities beyond the formal structures and developing new multilateral cooperation is crucial for fighting against these global terrorist organizations, where states can only deal with these threats by creating their own networks of law enforcement agencies.

With this network potential, law enforcement tools might also be utilized against all kinds of criminal and terrorist networks much more efficiently. Indeed, success depends on cooperation among states, and the success of cooperation comes from the sharing of experience and knowledge about the certain law enforcement tools, one of which is the witness security program.

B-Witness Security Program in the Fight against Global Terrorism

After 9/11, witness protection has gained particular importance in fighting terrorism, especially in the United States. Similarly to the Italian Mafia that used the ‘omertà’ as its main pillar of deterrence against law enforcement agencies, the closed nature of terrorist groups also makes it difficult to apply traditional investigative methods with any degree of success. It often requires exceptional measures, one of which is the witness security program. Accordingly, in some countries, counter-terrorism, rather than

organized crime, has been the primary consideration in introducing witness protection measures.⁹¹

A very complex challenge in this area is the fact that Western countries, particularly the US, have to rely on foreign witnesses. In these circumstances, according to Abdel-Monem⁹², the assurances given by the government agencies play an important role. Unfortunately, such assurances given to foreign witnesses mostly end with the failure of government agencies to fulfill their promises. The case of Adnan Awad, Abdel-Monem says, is a perfect example of this situation. As a Palestinian living in Iraq, in 1982, Adnan Awad was given a bomb to detonate in a Swiss hotel by a Middle Eastern terrorist organization. When he arrived in Switzerland, he changed his mind and voluntarily cooperated with police. In return for his cooperation, Awad was given both Swiss and Lebanese passports by the Swiss government. In 1984, FBI agents contacted and persuaded him into participating in the WITSEC program. He travelled to the US and testified against Middle Eastern terrorist groups. Before entering WITSEC, US attorneys promised him that he would be bestowed US citizenship and given a US passport afterward in exchange for his testimony. Besides, he was told to give his Swiss and Lebanese passports to the US government and was supposedly guaranteed that in case of leaving WITSEC, those documents would be given back to him. After several unacceptable incidents, Mr. Awad left the program in 1986; however, contrary to what had been said to him before, he was unable to get those documents back and, therefore, was unable to leave the US in any way. Sixteen years passed over the promises of the US

⁹¹ Ibid.

⁹² Abdel-Monem, 2003.

attorneys and at last, in the year 2000, he was given the US citizenship and a passport without any governmental assistance.

As indicated by Abdel-Monem⁹³, during the congressional hearings in 1990, it was highlighted that Immigration and Naturalization Service (INS) procedures for foreign nationals had been causing serious problems for alien witnesses on track to obtain citizenship. The main difficulty was that without revealing their real names and backgrounds it was impossible for foreign nationals to apply for permanent residency with temporary documents. It meant that there was considerable uncertainty about the future of foreign WITSEC participants. Upon Awad's testimony, Senator Lieberman saw how a foreign national could run into difficulties and declared:

It seems to me that the ability to break through the normal immigration bureaucracy in order to give appropriate status in this country to a defector, an informant or their family members, is critical to people's lives. It seems like a small bureaucratic matter but, as you well know because this is what you devote yourself to, it may be just enough to entice a would-be terrorist to defect and come to this country as opposed to killing people.⁹⁴

In 1994, as a response to some of these problems, Congress passed the Violent Crime Control and Law Enforcement Act and gave special status to foreign witnesses who participate in WITSEC.⁹⁵ Although this new visa code paves the way for foreign witnesses to acquire permanent residency, the bureaucracy within the INS, which causes long delays, still remains a headache and a complaining issue among the foreign WITSEC participants and their families. Due to such delays, it is claimed that “*the*

⁹³ Ibid.

⁹⁴ See Terrorist Defectors: Are We Ready?: Hearing Before the Comm. On Governmental Affairs, 102d Cong. at 33, 1992.

⁹⁵ Abdel-Monem, 2003.

*government will lose potential witnesses*⁹⁶ and accordingly, this act will not reach its target.

On the other hand, even though the reform of immigration procedure for foreign WITSEC participants and their families is an important step in the right direction, as mentioned above, broken promises are a more significant problem than systemic problems. The experiences of foreign witnesses, such as Awad's, show that these individuals are victims of government agents who make easy promises to foreign nationals and do not keep them. Obviously, when the promises are not honored, the foreign witness has to bear the brunt of adversity stemming from the ensuing circumstances.⁹⁷ This means that the future of WITSEC in terms of combating global terrorism is in danger. Clearly, nobody has the luxury not to pay attention to these failures.

⁹⁶ Ceballos, C.M. Adjustment of Status for Alien Material Witnesses: Is it Coming Three Years Too Late? 54 University of Miami Law Review 75, p.96, Oct.1999.

⁹⁷ Abdel-Monem, 2003.

CHAPTER 3

RESEARCH DESIGN

This is an exploratory study examining the effectiveness of the witness security program for combating organized crime and terrorism in the US and Turkey. The exploratory type of study is an essential and practical method, particularly if the problem is not well known, or theories are unable, or at least, limited to explaining the research objectives and some policy change is being considered.¹

This study has used multiple sources of data, and the data are analyzed by qualitative method to explore the research questions. It is a fact that qualitative data have both weaknesses and strengths. For instance, qualitative data analysis has been criticized as being unreliable and too subjective.²

On the other hand, quantitative outcomes gave us an idea about the execution of each program. Qualitative information has also provided in-depth descriptions and helped to fully explain the problems of the witness security program. Therefore, the use of the qualitative approach made the final results of this study more meaningful.

Research Questions

This research addresses a primary question and two related sub-questions regarding the witness security programs of the US and Turkey. The following questions for this study raise the issue in particular of the value of the witness security program as a

¹ Maxfield, K. G. & Babbie, E. *Research Methods in Criminology and Criminal Justice*. New York: Wadsworth Publishing, 2001.

² Richards, L. *Handling qualitative data, a practical guide*. Sage Publications, 2005.

tool for law enforcement agencies in terms of combating organized crime and terrorism.

In this context, the primary research question of this study is specified as follows:

- What is the impact of the witness security program on the fight against organized crime and terrorism?

In order to better explore the primary research question, the following sub-research questions are examined:

- What can be done to use the witness security program as an effective tool for combating cross-national terrorism and transnational organized crime?
- How is the witness security program of Turkey differentiated from WITSEC in the context of structure, and how much influence might it have on its own criminal justice system in the future?

Data

Obviously, collecting data is the most important part of any research project. To examine the effectiveness and necessity of the witness security program as a criminal justice tool, this study used interviews conducted with officials from the US, Turkey as well as the United Nations (UN), and benefitted from the other open data sources such as the book of the founder of WITSEC, the UN files and reports, and etc.

Data Collection Methods and Data Sources

The planned method of analyzing the effectiveness of the witness security program against organized crime and terrorism was to conduct open-ended interviews with some actors already identified as playing a major role in dealing with the program.

The initial starting points of the interviews used purposeful sampling.³ This sampling is useful for identifying particular types of cases for in-depth investigation.⁴ From there, because not all of the relationships among the actors in this chain could be ascertained prior to the start of this research, the snowball sampling method was applied to pursue relationships among the actors in the chain. “*The crucial feature [of networks] is that each person or unit is connected with another through a direct or indirect linkage*”⁵. Snowball sampling is a multi-stage method and mostly used in specialized interviewing or field observation studies. It begins by identifying with one or a few subjects and spreads out on the basis of identifying anyone like said subject(s) who might be willing to take part in a study.⁶

In the US, officials from the state and federal level law enforcement agencies, as well as from the Office on Drug and Crime, New York Office in the United Nations were selected for interviews. On the Turkish side, experienced officers of rank working for the organized crime, anti-terrorism and the witness protection departments in the Turkish National Police Force (TNPF), as well as prosecutors who were employed in the cities of Ankara and Istanbul were chosen to make interviews. In this context, the interviewees in the US include:

- 1 Former State Prosecutor (Former Deputy Attorney General of New York State)
- 2 Assistant Attorneys (Office of US Attorney for the District of New Jersey)
- 1 Former Assistant Attorney (Office of US Attorney for the Southern District of New York)

³ Neuman, W.L. *Social Research Methods Qualitative and Quantitative Approaches*, 4th edn. Boston: Allyn and Bacon, 2000.

⁴ Ibid.

⁵ Ibid, p.199.

⁶ Maxfield & Babbie, 2001.

- 2 Special Agent (FBI Newark Division)
- 1 Former Special Agent (FBI New York Division)
- 1 Lieutenant (New Jersey State Police-the Witness Security Unit)
- 1 Official (New York Office of the United Nations Office on Drugs and Crime (UNODC))
- 1 Former Official (New York Office of UNODC)

The interviewees in Turkey include:

- 3 Prosecutors in the city of Istanbul (in charge of organized crime and terrorism cases)
- 1 Prosecutor in the city of Ankara (in charge of organized crime and terrorism cases)
- 2 Officials from the Ministry of Justice (All are actively involved in preparation of legislation of the witness security program)
- 1 Police Official (Superintendent from the Anti-Smuggling and Organized Crime Division of the Istanbul Police Department, IPD)
- 1 Police Official (Superintendent from the Anti-Terrorism Division of IPD)
- 1 Police Official (Captain from the Anti-Smuggling and Organized Crime Division of the Ankara Police Department)
- 1 Police Official (Police Chief from the Witness Security Department of the Turkish National Police, TNP)
- 1 Police Official (Police Chief from the Witness Security Department of the TNP)
- 1 Police Official (Police Chief from the Anti-Terrorism Department of the TNP)

- 1 Police Official (Superintendent from the Anti-Smuggling and Organized Crime Department of the TNP)

The subjects were picked out from those who were actively involved in the witness security program. Interviewing these subjects was a matter of vital significance for reaching the goals of this research study, since they played a certain role in using the witness security program against organized crime and terrorist groups. For example, in Turkey, police personnel from the Ankara and Istanbul Departments as well as officials from the TNP headquarters are major sources of information regarding the witness security program. Particularly, some officials from the TNP headquarters and the Ministry of Justice who were interviewed actively participated and played significant roles in the process of establishment of the Turkish witness security program. Furthermore, three prosecutors in Istanbul investigating the case of the Ergenekon Terrorist Organization have contributed to this study by their invaluable experience. This is important, because the Turkish program has seen its first implementation with this case. It means that these prosecutors have first-hand experience with respect to the problems presented by the program.

In the US, interviews made with the federal prosecutors, the FBI agents and other state officials helped the researchers better understand the use of the program because of the fact that the interviewees, who are actively involved with organized crime and terrorism cases, work or worked among the busiest federal and state law enforcement and prosecution offices in the US. Owing to their sphere of duties, these interviewees have employed the program much more than other regions. As a result, interviews both in

Turkey and in the US have represented a wide-range of institutions which are actively involved and have knowledge about the witness security program in both countries.

The study was conducted using face-to-face semi-structured interviews with participants, who were asked open-ended questions to provide necessary information for a better understanding of the witness security program as well as its impact on the criminal justice system. Almost all of the interviews were made mostly in the office of the interviewees in both countries. Although some interviewees did not want to answer all the questions because of the inherent secrecy of the program, these interviews definitely shed light on the current practices of the program practitioners from both sides. With these interviews, the research has attempted to explore whether these programs met the expectations of the agencies of both countries and whether they benefit them in the fight against criminals and terrorists.

Although the interviewees are all experts on the witness security program, the number of interviewees both in the US and Turkey might still be seen relatively low, nevertheless. There are two reasons for this: First, it was highly difficult for the researcher to find relevant people who were ready to make interview because of the secrecy around the program. Second, the witness security program is not utilized by every law enforcement agencies in the US and Turkey. Even in the agencies where the program are employed very few people are in charge and expert on the program. On the other hand, it should be underlined the fact that in this study, in addition to the interviews the other open materials also played a very significant role as data sources in understanding the effectiveness of the witness security program. In particular, these open data sources were utilized effectively in the review of the status of WITSEC and the

Turkish program. At this point, it is fair to say that the book of the founder of WITSEC can be cited as one of the most important open data sources for WITSEC. As the founder of the program, because he endured a great deal of criticism, Shur explains from the beginning all the steps and stages that WITSEC went through. The same argument is true while reviewing global aspect of the witness security program. The researcher greatly benefited from files and reports on the witness security program that were published by the UN.

Data Analysis

Analysis entails a sort of transformative method and thus, the raw data turns into findings or outcomes.⁷ In most theoretical discussions of qualitative analysis, reference to this transformative process is made, either directly or indirectly.⁸ According to Lofland et al.⁹, owing to the inductive nature of qualitative analysis, the researchers are the main agents in the analysis process which is a highly interactive process between the researcher and the data. They say that when we consider this character of qualitative analysis, it means that this process is time-consuming and labor-intensive. *“In other words, analysis should be pursued in a persistent and methodical fashion rather than in a haphazard, seat-of-the pants manner.”*¹⁰

In this perspective, qualitative data that were gathered from the interviews conducted with the subjects were analyzed by using information management software. For this purpose, with the help of a database program that works like a library card-

⁷ Lofland, J., Snow, D., Anderson, L. & Lofland, L.H. Analyzing Social Settings: A Guide to Qualitative Observation and Analysis. Thomson/Wadsworth, 2006.

⁸ Ibid.

⁹ Ibid.

¹⁰ Ibid, p.196.

catalog system, the responses of the participants and interview notes were entered into text format. Then, the text was put into categories and the interviews reframed as a series of paragraphs. These paragraphs were coded into sub-topics created to reflect the research questions. Subsequent to this process, these paragraphs became ready for use as data and thus, analyses were made, and results were compared to each other.

Finally, information collected from the data sources were examined for an appropriate interpretation by the researchers, who were involved in the study. Evaluative conclusions were drawn subsequent to the examination of gathered data in the light of combination of literature so as to reach clear and understandable findings. Lastly, all findings, concerns, considerations, other related issues were reported along with the recommendations in the most systematic way.¹¹

Confidentiality

All the interviews conducted were strictly confidential between this researcher and the subjects. The necessary actions were taken to make sure that information provided by the respondents be kept confidential from any third parties. For this reason, interviews were conducted in the participants' rooms when they were alone in order to maintain privacy. When it was not possible to be alone in the rooms of respondents, interviews were made outside office locations such as in cafés or restaurants. Before all interviews were conducted, participants were asked to sign the consent statement that included relevant information about the research and the protection mechanisms (Appendix-8). In addition, participants' permission was asked to make an audiotape

¹¹Fitzpatrick, J. L., Sanders, J. R., & Worthen, B. R. Program evaluation: alternative approaches and practical guidelines. Boston: Pearson, 2004.

recording, and interviews were not recorded unless audiotape consent forms were signed. Participants were not asked to mention any identifying information about third parties. It was also made sure that the researcher would not use names or any identifiable context in any part of the research. The names of the participants were coded and this coded list was securely stored in order to prevent any third party access.

The handling of the tapes and notes is of the utmost importance. All data including names and confidential information about the interviewees, interview notes, interview tapes, coded name lists and interview forms were stored in a locked cabinet in the TNP headquarters for the duration of the research in Turkey. The locked cabinet could only be accessed by this researcher. On the return from Turkey, the tapes were brought back with the researcher in his carry-on luggage. While this was somewhat of a burden, confidentiality could only be assured through this method. The researcher did not believe that mailing the tapes back to the US or even placing them in his checked-luggage were viable options. After his return to the US, these tapes as well as other data containing confidential information were kept in the researcher's locker in the Division of Global Affairs of Rutgers-Newark Campus, which is a secure building. This locker is accessible only to the researcher.

The data will be kept until the date this research is officially approved by Rutgers University. All data will be destroyed after three years from completion of the research in accordance with the Rutgers University policies. Regarding the planned use of human subjects in this research, the Rutgers IRB made a full review and approved this study.

Strengths and Limitations of this Study

The main strength of this research, primarily, stems from the professional experience of the researcher, as he has been working in the TNPF since 1993. Before coming to the US, he was working for the Narcotics and Anti-Smuggling Department of the TNP. When he was actively on duty, he combated drug dealers, smugglers and members of all kinds of organized crime groups. While working for the department, he used a limited witness protection mechanism as a protective measure for informants. Therefore, he knew first-hand the importance of the witness security program. Thanks to this first-hand experience, he was able to use his professional background efficiently while conducting interviews.

On the other hand, since this study used interviews, each data source has its own strengths and weaknesses. When the researcher's purpose is to gather in depth information about individuals' psychological, sociological and environmental factors that affect their behavior, interviews are functional.¹² Yet, it is a well-known reality that interviews may contain a lot of inaccurate information, such as under or over reporting, deliberate falsification, bias-associated recall errors, testing (interview) effect, and so forth.¹³

The only other limitation for this study was not to be able use additional data measures that would definitely be a strength in this research. It would have been desirable to use multiple data sources for conducting a more accurate and in depth study.

¹² Thornberry T.P. & Krohn M.D. Comparison of Self-report and Official Data for Measuring Crime. In: National Research Council (ed) Measurement issues in criminal justice research: workshop summary, National Academy Press, Washington DC, 2003.

¹³ Kirk D. Examining the Divergence Across Self-report and Official Data Sources on Inferences About the Adolescent Life-course of Crime. *Journal of Quantitative Criminology*. 22, pp.107–129, 2006.

Therefore, it is fair to say that utilizing multiple data sources would enhance the validity of this study.¹⁴

¹⁴ Maxfield G.M., Weiler B. L. & Widom C.S. Comparing Self-Reports and Official Records of Arrests. *Journal of Quantitative Criminology*. 16(1). Pp. 87-110, 2000.

CHAPTER 4

EVALUATION OF WITSEC

From the beginning, WITSEC has attracted widespread criticism and provoked a public outcry with its highly controversial protection methods. There have always been two sides in this debate: on the one side some scholars together with the mass media have been very critical of the program with its existing structure and current implementation; on the other side, law enforcement agencies have always stood for WITSEC and rejected much of the criticism, pointing out that this program is a very effective and indispensable tool in their fight against organized crime and terrorism.

This chapter, with the help of interviews that were used as a primary data source of this research, attempts to cast light on this debate. The interviewees are comprised of state and federal prosecutors as well as state and federal law enforcement officials. They have been asked to elaborate on the much disputed issues of WITSEC, in addition to their thoughts concerning the effectiveness of the program in combating organized crime and terrorism. Thus, this chapter attempts to explore the views of the law enforcement side.

The Impact of WITSEC as a Criminal Justice Tool

All the interviewees in the US see the program as an indispensable tool against organized crime and especially after 9/11 against terrorist groups. In particular, they think that without the program the government would not have been able to bring forward many of the most successful prosecutions made against organized crime in the last 30 years. A former FBI special agent simply puts it as:

Before WITSEC, people were simply afraid to cooperate with the government and become witnesses for fear of retaliation from the Mafia. People knew that the Mafia had pretty long-arms and could reach anywhere they tried to escape. So WITSEC and its ability to give these witnesses a new identification and a new start has turned several witnesses from being uncooperative to ready for cooperation with the government against organized crime groups.

This is the opinion of a former federal prosecutor who was the chief of the organized crime task force in New York City:

There is no question in my mind that the importance of WITSEC was absolutely crucial to the success of combating Cosa Nostra. Even though Cosa Nostra is an organization in the United States that we trace back to 1930-1931, when it truly organized, there had not been a cooperating witness to talk about Cosa Nostra publicly until Joseph Valacic in the 60s. At that point, when the government got a true picture of the size of the organization, its goals and the way it thinks, there is no question that without the witness security program, they would not have been as successful as they have been and the fact that Cosa Nostra still exists shows you that even with understanding it, and with programs like witness security and many other initiatives that have been generated both regionally and nationally, there is no question in my mind it was crucial. It would not have been possible to get control of Cosa Nostra without the witness security program.

According to the interviewees in the US, WITSEC is important, because with the help of the program prosecutors can secure convictions of the members of organized crime and terrorist groups to a great degree. The power of WITSEC, they say, comes from its capability to persuade the key witnesses into telling the exact relationship among the members of any certain criminal group and presenting convincing evidence to the court and the jury that shows 'who is who' in a certain criminal organization. As a former federal prosecutor remarks:

What WITSEC allows prosecutors to do is (to) offer protection individuals who have that inside knowledge, because in most cases they have been personally involved in this.

Another very important point about WITSEC claimed by two interviewees is its rehabilitation power on offenders. According to them, the program means a second chance to gain redemption for past crimes of offenders and allows them start over with a clean sheet. This is important because almost 95 percent of witnesses participating in the program are criminals, many of whom are deeply engaged in criminal activities. In his book, Shur¹ asserts that although there are some criminals who could not take this opportunity to clean up their life, in the majority of cases it has worked for good. As stated by the Marshals Service, “[t]he recidivism rate for witnesses with prior criminal histories who entered the program and were later arrested and charged with crimes is less than 23 percent. This rate of recidivism is less than half the rate of those released from the nation’s prisons.”² Therefore, a federal prosecutor claims:

WITSEC provides the best chance that is given former criminals. I know a witness who had killed seven people before being put in the program. This witness never committed a crime again and lived as an honest citizen until his death... Sometimes some of witnesses might not change their lifestyle, and there may be a number of people dropping out of the program after a certain number of years. But at least, it gives them a chance to live honestly and create a new life for themselves.

WITSEC and the Relocation Problem

¹ Early & Shur, 2002.

² Slate, 1997, p.21.

While some scholars and the media are most outspoken in their opposition to relocation of former criminals, the law enforcement side including the interviewees for this project vigorously defend this protective measure. They claim that having a criminal record does not mean that a WITSEC participant who was relocated to a new community could perpetrate another crime. A former federal prosecutor gives Sammy Gravano as an example of this:

Gravano was not like a serial killer who took pleasure from killing. If he was put in a different business maybe he wouldn't do that. These kinds of criminals mostly kill the individuals who are criminals as well rather than innocent citizens.

Another reason given by the interviewees is the fairly extensive screening process applied by the Marshals Service. Three interviewees point out the screening tests as a very important measure that largely reduces the risk and potential tragedies in the neighborhoods where witnesses are relocated. A former state prosecutor remarks:

This screening process decides whether someone is suitable for WITSEC and at the end of this process if it appears that he is a compulsive sex offender/ rapist he is not allowed out of jail and into the WITSEC program, even if he has information about the Mafia.

A federal prosecutor also comments:

Even though they are eager to enter the program, we dissuade the former criminals who might pose a threat to the society from participating in the program by using various ways such as explaining mostly negative aspects of WITSEC.

Furthermore, an interviewee sees the relocation issue as a value judgment and a trade-off like many other things in this field. These are the remarks of an FBI agent:

This is a reasonable risk which is vastly outweighed by the potential benefits. Changing identities and relocating witnesses whether criminal or not is the crux of WITSEC and particularly useful for protecting witnesses.

Additionally, two interviewees assert that the crimes committed by the protected witnesses are a result of economic factors. One of these interviewees argues:

Former criminals in the program might pose a risk to others, because they do not have any skill to find employment due to their involvement in criminal activities since their early ages. This situation underscores the importance of stipends in supporting relocated witnesses. At this point, instead of cutting off stipends, as claimed by some, it might be necessary for the government to carry out some sort of financial support to some degree and put forth more efforts in finding employment for the protected witnesses.

WITSEC and Ex-Criminals

Another serious argument against WITSEC is the assertion that “*crime pays*”.³ It means that if you have an important role in a certain criminal organization, you have a greater chance to make a good deal with the government. The more a mobster knows about ‘who is who’, the more he gets “*an immunity bath*”⁴ from the prosecutors. It means that a mobster who is responsible for several people’s deaths in the first place can get a much more reduced sentence without making too much effort. This aspect of the program is one of the most criticized issues. However, all the interviewees have vehemently rejected the notion of WITSEC giving criminals a “*jail-free card*”. The interviewees

³ Zuckerman, 1987, p.385.

⁴ Ibid, p.385.

indicate that being accepted into the program is difficult and is determined by a number of different factors. Besides, it is never a good option for witnesses, owing to the nature of WITSEC. In particular, federal prosecutors say that the people who know WITSEC do not recommend it. According to them, there are a lot of misconceptions about the program. One reason they highlight is the image of WITSEC that is shown in movies. While the movies portray the criminals escaping punishment and having a comfortable life, in fact they experience serious difficulty in adjusting to their new life. The prosecutors also mention that the program cannot be used for every criminal, as there is a strict elimination process.

This is one of the federal prosecutors' comments on this issue:

There are a lot of misconceptions about the program. I think movies that have been made about the program look like the people in the program have a cushy life. They have a high-paid job and you don't do anything as the government pays all the bills. That is not really the way it works. The government gives you a new identity, relocates you and helps you find your first job that may be below your expectations. No one makes your life easy in WITSEC.

Another federal prosecutor comments about the life in WITSEC:

It is not true and that kind of criticism is not right. WITSEC is not a jail-free card... And also I don't think the life in the program is particularly easy all the time because of the fear and the pressure and the need to change who you are. So I don't think too many people have improved. It is a very hard thing to do, I mean, to change your life like that.

According to an FBI agent, because their job is to ensure that witnesses are honest about the information they have given, they try their best not to make mistakes. He adds:

Sometimes we have made mistakes, but these are rare and in general, we are on the alert for the criminals who pose a great danger to the public. This program is not for every criminal.

On the other hand, it should be noted that the majority of criticisms made on this issue are prior to the enactment of the witness security reform act of 1984. Before 1984, because the program was used haphazardly by the federal prosecutors, the WITSEC cases lacked an adequate review and a proper elimination process. The reform act corrected a lot of the mistakes and errors made by the governmental agencies. Rather than the chaotic implementations of WITSEC seen before 1984, federal prosecutors and other law enforcement agencies now have to observe rules and regulations more rigorously. According to one of the interviewees working as an FBI agent, the screening process is so tough that it lasts at least 3 months for a witness to be admitted to the program. This long-lasting screening process is actually one of the complaints of this interviewee.

WITSEC and Gangs

Gang members in WITSEC are one of the most controversial issues in the program. Six of eight interviewees share negative views and express strong opposition to the use of WITSEC in the same format for gang members. And almost all agreed that the Mafia respect certain codes of behavior, while the gangs kill people for nothing. A former federal prosecutor sums up his opinion as follows:

If you have a gang member as a witness who has been shooting people over 50 bucks, and drop him in the middle of an unsuspecting community after putting him into (the) program, then I really will be worried about that... I know from wiretaps that when the Mafia kills somebody, it is a fairly considered decision that has to go up through several layers of chain of command to be authorized. On the other hand, street gangs will kill you because you looked the wrong way and didn't give them proper respect. That is a totally different kind of threat to the community from the Mafia, in my opinion.

On the other hand, two interviewees disagree with this argument, even though they say they are aware of the risks involved, once a gang member is relocated to a new community. Their main concern and the point they have raised is not to generalize all the cases related to the gang members and likewise, not to treat them with absolute suspicion. They do not want the government to close the door completely on the possibility of putting these collaborators in the program.

An FBI agent comments on this matter as:

The system is not perfect but that doesn't mean that WITSEC shouldn't be used for the gangs as well. Yes, these kinds of problems are real and it is true that some gangs have a more violent character than the others... But each situation should be evaluated differently. All gangs are not the same. And it is also a fact that a witness from a violent gang could behave in a different way while put into the program.

At this point, instead of using WITSEC for every witness, the other option suggested by some scholars⁵ is to reconsider the original idea of the safe-house facility for those witnesses whose testimony necessitate protection against any potential menace. It seems that more than anything else this alternative can be perfectly employed for witnesses in gang cases. At the beginning of the program, the intention was to protect witnesses in a safe-house facility until the threat abated. Yet, safe-house facilities were

⁵Lawson, 1992.

found to be too expensive for long-standing protection, and although used for some time they were abandoned in favor of the relocation method.⁶ But today the opposite may be true particularly for gang witnesses and accordingly, establishment of safe houses for them might be one of the best options, in terms of diminishing potential threat to the communities.

Similarly, the same critics argue that, rather than permanent relocation, short term location could be another viable option for gang witnesses. As they emphasize, especially in the gang cases not all witnesses are former criminals, and WITSEC is too harsh a solution for innocent witnesses. Many of these witnesses do not want to leave their neighborhoods and families permanently, as they are aware of the fact that most of the gangs operate within a small area in the cities and, unlike the Mafia, are not huge organizations that are able to reach across the country.

The idea of short term relocation for gang witnesses, both innocent and criminal, is also espoused by six interviewees of this study. From their point of view, many of these groups are inner city street gangs, which have control within a few blocks, and do not have ability to stretch across the US. Therefore, according to the authors, short term relocation should be considered as a serious option. A former federal prosecutor reflects this point as:

It depends on their ability to find you and how far they reach you. And I do think the answer is there should be variations... There should be some lesser programs created to deal with short term relocation for street gang groups instead of relocation, and changing their identity could be done in a reduced program, in a smaller program... The key is that Cosa Nostra issues were pretty much the same. There were families in 24 cities in the US from coast to coast, from New York to Los Angeles. And pretty much

⁶ Ibid.

anybody that came from one of those, from that world, could be found. So that was absolutely crucial. With other organizations, that level of security may not be required.

Regarding their permanent relocation possibility, one interviewee who is a federal prosecutor says:

I do not find reasonable the relocation of a former gang member with tattoos all over his body in a Midwest community. I am absolutely sure that WITSEC does not fit these kinds of witnesses. I admit that although I enticed some gang members into testifying by the promise of putting them into WITSEC, I have never allowed them to enter the program. I know from my own experience these witnesses can not observe the rules and hence, are expelled from the program in a couple of months.

WITSEC and Possible Modification Areas

Although WITSEC has no doubt played a crucial role in the battle against the Mafia and other organized crime groups, it has also caused important legal and ethical concerns. Some critics⁷ argue that structural problems create chaos that needs to be addressed by the executive and legislative branches. They indicate that such close scrutiny is essential to maintain a fair equilibrium between the public interest in combating organized crime and the interest of individuals to protect them from deception and violence committed by the WITSEC participants. Therefore, according to these critics, to become more efficient WITSEC needs to be modified by the government.

Yet, five interviewees of this research are more or less satisfied with the current implementation of WITSEC and do not consider any serious modification to be necessary. One interviewee points out that the government should be constantly

⁷ Ibid; Slate,1997.

evaluating the program. However, he adds that he is not prepared to say from the onset what the modification should be. He argues that:

The modifications should follow from careful assessment about how the program is working and what the cons and pros are, as well as strengths and weaknesses.

Another two interviewees indicate that the program may need some minor changes particularly in its operation. A federal prosecutor highlights this as:

Maybe it is better to structure the program in different levels. And it is better to make it a little more flexible and little more responsive to the needs and they may be; at the end of the day it might be more effective.

Because WITSEC is a federal program, the only way for state prosecutors to use the program is getting permission from the federal Authorities. A former state prosecutor has expressed his desire about WITSEC as:

As a state prosecutor, my experience is that I wish that the program were more available to the state prosecutors. But it is very unusual for state prosecutors without getting federal attorneys involved. And when they are involved they usually want to overtake the case.

WITSEC and Cost-benefit Analyses

Because WITSEC is deemed indispensable for law enforcement officials, the cost of the program is not a matter of great importance to the interviewees. This is the thought of an FBI agent:

Even though WITSEC is a very expensive and sometimes brings misery to the life of innocent third parties, the government cannot fight against criminal and terrorist groups effectively without it.

The interviewees assert that if the government puts emphasis on the fight against organized crime and terrorism, under these circumstances the cost comes second. One of the interviewees argues:

When you look at it from the cost-benefits angle, we know what the cost is in terms of dollars. We can measure that. The benefit is much more difficult to measure. Do you think it is important that we have put X number (of) people who were engaged in criminal activities in prison? What is important for you? Is it worth that amount of dollars or not? Again that is a judgment we have to reach.

An interviewee considers that the witness security program cannot be measured solely in figures. He states:

(This) much depends on the broader societal context and how the 'effectiveness' of witness protection is assessed/measured. My own view is that protection programs have saved the lives of witnesses and members of their close family and that one cannot put a price on this.

Findings for WITSEC

1- This research shows that the main advantage of the witness security program is to persuade witnesses to speak up in the court where they may never tell the truth otherwise, because of the potential risk to their life. Indeed, in some cases involving threats, witnesses accept to be imposed the penalties of not talking in the court instead of experiencing serious harm at the hands of the defendants or their associates. The interviewees particularly point out that as the program witnesses have been mostly ex-

members of organized crime groups, they know best how organized crime groups deal with the individuals who dare to give testimony against them.

2- All the interviewees in the US see the program as an indispensable tool against organized crime and especially after 9/11 against terrorist groups. In particular, they think that without the program the government would not have been able to bring many of the most successful prosecutions made against organized crime in the last 30 years.

3- According to the interviewees in the US, the power of WITSEC comes from its capability to persuade the key witnesses into telling the exact relationship among the members of any certain criminal group and presenting convincing evidence to the court and the jury that shows 'who is who' in a certain criminal organization.

4- The interviewees believe that the witness security program has become a scapegoat because of damaging publication and negative movies from Hollywood.

5- Because almost 95 percent of witnesses participating in the program are criminals, WITSEC also gives these people another chance to make a fresh start. The Department of Justice's statistic has revealed that 82 percent of criminals who participated in the witness security program have not perpetuated any other crime after entering the program. In comparison with paroled criminals who 40 percent commit a new crime after freeing prison, the witness security program also has a rehabilitation effect on former criminals, better than parole system.

6- Not all the interviewees share the same idea that the witness security program is the most effective tool against organized crime and terrorism. Five

interviewees, three of them federal prosecutors, have singled out RICO as more important weapon in combating organized crime groups, particularly the Mafia.

7- The federal prosecutors stress that the ‘prosecutorial discretion’ along with ‘plea bargain’ is their vital legal tool in their fight against not only organized crime groups but all criminals. Because almost all the potential witnesses in the organized crime and terrorism cases are criminals themselves, without prosecutorial discretion it is almost impossible to use WITSEC for convincing these individuals to testify against their organizations.

8- Seven in eight interviewees in the US support relocation of protected witnesses to new neighborhoods and see it as a value judgment and a trade-off like many other things in this field. One indicates that the support of establishing relocated witnesses in the new communities is crucial, both in terms of integrating them into the labor market and ensuring that they receive the necessary psychological support to help with adjustment to their new circumstances. However, one interviewee has questioned whether it is legitimate to invest scarce public resources into supporting people with a significant criminal past.

9- All the interviewees have vehemently rejected the notion of WITSEC that gives criminals a “*jail-free card*”. They indicate that being accepted into the program is difficult and is determined by a number of different factors. The prosecutors also mention that the program cannot be used for every criminal, as there is a strict elimination process. The screening process is so tough that it lasts at least 3 months for a witness to be admitted to the program. This long-lasting screening process is actually one of the complaints of an interviewee.

10- Gang members of WITSEC are one of the most controversial issues in the program. Six of eight interviewees share negative views and express strong opposition to the use of WITSEC in the same format for gang members. And almost all agree that the Mafia respect certain codes of behavior, while the gangs kill people for nothing. Two interviewees disagree with this argument, even though they say they are aware of the risks involved, once a gang member is relocated to a new community. They do not want the government to close the door completely on the possibility of putting these collaborators in the program.

Policy Recommendations

This study suggests that permanent witness relocation and the change of identity should be regarded as a last resort and only be used in the most extreme circumstances. Other forms of protection such as short term relocation or court room measures can be considered as alternative options when they are appropriate. Deciding what is proper, however, requires a careful risk assessment and understanding how risks can be mitigated in an area of witness protection.

This short term location can be provided in two ways: either sending the witnesses and their family members to another state for a certain time of period, or placing them in a safe-house facility until the danger have faded away. Because the most gangs operate in a specific area, there is almost no way for them to reach and retaliate against the witnesses beyond their certain neighborhoods.

Witnesses and their family members can also arrange their own relocation as well as protection independently with a very limited governmental involvement. This kind of

arrangement might be formulated on the basis that witnesses will be accepted as an expert and testify in return for a one-time payment after which they would have to accept to arrange their own protection and relocation. As our interviews revealed, this method have already been used actively, in particular by local and state law enforcement agencies in an informal way. Because it is not easily possible for them to employ WITSEC for their own organized crime cases, this is an alternative method developed by local law enforcement agencies to resolve this problem.

The other option is to reconsider the original idea of the safe-house facility for those witnesses whose testimony necessitate the protection against any potential menace. It seems that protection of witnesses in a safe-house facility until the threat abated can perfectly be employed for innocent witnesses of gang cases, since many of gangs are inner city street gangs, which have control within a few blocks, and do not have ability to stretch across the US.

Another important subject is governmental decisions on inclusion and exclusion. A review board is one of the most significant arrangements, which is necessary to restrain the government discretion by setting higher standards for the selection and exclusion practices in WITSEC. It is fair to say that this review board can supervise and give recommendations regarding the participation and expulsion of witnesses. As an independent body, the board with tangible rules and guidelines for entrance into WITSEC would streamline and improve the essential adjustments for admission.

This study also emphasize that innocent witnesses in WITSEC is another problematic issue. WITSEC is not designed to take care of innocent witnesses that do not have any association with criminals or criminal groups. So arguably, quite contrary to the

Turkish program, it is possible to say that WITSEC is not suitable for ‘accidental witnesses’ who are in a grim situation in the program. While witness intimidation by gang type of organized crime groups is a major crisis across the US, a lack of proper protection method for innocent witnesses remains a considerable problem that needs to be addressed urgently.

CHAPTER 5

TURKISH WITNESS SECURITY PROGRAM

For states, there are a number of factors that may require establishing a witness security program. These are: frequency of threat against victims and witnesses in criminal proceedings, the overall intensity and type of criminality in society, availability of resources, and capacity and determination to take legal action against high-profile criminal enterprises as well as crimes. To set up the witness security program, all of these elements should be considered on the basis of a thorough analysis. For instance, the existence of powerful organized crime groups that have fierce determination to use any means to secure their criminal operations are a valid reason for establishing a program that could help prosecutors and law enforcement agencies enormously in the fight against those criminal syndicates.¹ The Mafia in the United States is a classic example of this type of very powerful criminal group. The power that the Mafia had before the full range of governmental fight against it was one of the most significant reasons for the creation of WITSEC by the US government. If the Mafia had not been so powerful before WITSEC was established, the government would not possibly give the program priority and create it in the first place.

This helps to explain the fact that, prior to the 1990s, while only a few countries created their witness security programs to offer special protection, after the 1990s states became increasingly inclined toward establishing their witness security programs and

¹ See, UNODC. *Good Practices for the Protection of Witnesses in Criminal Proceedings involving Organized Crime*.

setting up specific agencies to provide assistance for witnesses, once organized crime enterprises and terrorist groups became a serious threat across the world.

This chapter explores the Turkish witness security program, with the help of the interviews. The interviewees include officials from the Ministry of Justice, public prosecutors working in the cities of Istanbul and Ankara, and TNP personnel working in the Headquarters as well as the Cities of Istanbul and Ankara. They have been asked questions on the Turkish witness security program as well as related issues on WITSEC, in addition to their opinions regarding the effectiveness of the program in combating organized crime enterprises and terrorist organizations. Therefore, this chapter attempts to explain the views of the Turkish side.

History of Witness Protection in Turkey

It is possible to say that Turkey acted slowly to adapt a comprehensive witness security program as a new tool in her criminal justice arsenal. As such, Turkey is the latest country in Europe to set up its own witness security program. A state prosecutor from Istanbul put this as:

It is obvious that Turkey has been late in establishing the witness security program. In fact, although the program was planned to be created in the Code of Criminal Procedure of 2005, it took three years to set up.. If we hadn't been so late to establish the program, there might not be so many unsolved organized crime cases, many of which could have been resolved by now.

Among many, the most important reason for this might be the lack of political will in the country. This has changed with a very influential reform process after 2002.

There was a new dynamic in Turkish politics that provided both an impetus to change and a positive environment for Turkey to initiate wide-ranging reform projects: the European Union (EU). Wide-ranging changes in the Turkish criminal justice system have been realized in recent years with the intention of bringing it in line with European norms and standards, and the candidacy of European Union has been the main driving force behind these broad changes. Thus, it is no exaggeration to claim that the requirement for adoption of European Union standards in the criminal justice system led up to the establishment of the witness security program in Turkey. Otherwise, no one can explain the fact that although there are a number of powerful terrorist and organized crime groups that have been active for at least 30 years, there was not a witness security program to help law enforcement agencies in their fight against these groups. An interviewee working in the Witness Security Department of the TNP summarizes this as:

In reality, more countries than Turkey were aware of the need for a comprehensive witness security program, we promised the EU to establish this program. It doesn't mean that Turkey did not have any intention to create the program, but it is certain that it might take several more years to establish it.

Another police official working in the same department also shares this belief:

Honestly, the real factor behind the establishment of our program is the EU. Without this pressure of the EU, it might not be possible to have the witness security program for law enforcers.

On the other hand, it should be noted that the existence of primitive legislation containing some protective measures for informants was another very important factor

for the Turkish government not to act more swiftly to create the program. The first legislation that sets up a simple witness protection mechanism is the Law about Certain Provisions Regarding Some Criminals of 1988. Also coined as “Contrition Law”, this law was enacted against the PKK, the outlawed terrorist organization. The objective of the government was to ensure the dissolution of the PKK. For this aim, individuals who participated in this terrorist organization were lured by the prospect of being normal citizens again. The Second Article of this Law provides protection measures for these “repentant terrorists”. According to this article, if terrorists turn themselves in to state authorities and give information about the activities of the terrorist organization, they and, if necessary, their close family members are taken into protective custody by the government. Some of the protection arrangements include changing of identities, driving licenses and school diplomas. Even plastic surgery and relocation to a new neighborhood are provided, if these are seen necessary by the government to better protect these repentant terrorists. The law also supplies a monthly stipend for these individuals and their close relatives. All these and other protection measures are carried out by the Ministry of the Interior. Despite the fact that this law was substituted by another one in 2003, the new law also stipulates the same arrangements.

The Anti-Terrorism Law is legislation, several articles of which provide protective measures for informants as well as some state officials combating the PKK. The protection arrangements of this law were taken from the Criminal Procedure Law of Germany and were passed from the National Assembly in order to better equip state officials while the fight against the PKK was its peak. The first article in this law providing protection is Article 14, which prohibits the revelation of informants’ identity,

in any circumstances. Moreover, in Article 20 of the law it is seen that in addition to informants and witnesses, the protection measures are provided not only for law enforcement officers but also for prosecutors, judges, and even military personnel and wardens. Among these protection arrangements, plastic surgery and giving a new identity to the aforementioned individuals are salient measures in this law.

When it comes to the implementation of the protection measures in the Anti-Terrorism Law, this research has explored that there are only a few examples in which all the security arrangements have been used thoroughly. The interviews conducted with relevant personnel working in the TNP reveal that Article 20 of the law has mostly been used for the protection of government officials and some informants. There are not many witnesses who have benefitted from the protection measures. It seems that the first goal of this law is to protect its own officials who might be the direct target of the PKK, as well as individuals giving information about its activities. In the law, it is stipulated that all the protection measures are fulfilled by the Ministry of the Interior. Like the previous law, this legislation did not create a new department that deals with protection arrangements, and this obligation has been conducted by the Anti-Terrorism Department of the General Security Directorate.

In addition to the abovementioned laws enacted to combat terrorism, there is another law that was passed by Parliament in 1999 to fight against organized crime groups. The Organized Crime Control Law also established a witness protection mechanism that was more sophisticated than that envisaged in the other two anti-terrorism Laws. Article 7 of this law provided protective measures for witnesses and their close family members. Although this law filled an important gap in the efforts of

combating organized crime, it was abolished in 2005, and witness protection measures in the law were never used for any witnesses. According to a member of the TNP working in the Anti-Smuggling and Organized Crime Department, in terms of providing the appropriate protection for witnesses and their families, this law was the most significant one of all. This official lays the blame for lack of use of protection measures under this law squarely in the lap of the courts.

An official from the Ministry of Justice says that the faulty protective arrangements for witnesses under the aforementioned laws could not earn the potential witnesses' trust because the government was unable to promote awareness of the laws adequately and properly. His other assessment about the inefficiency of the previous programs is related to the structural problems of the Turkish judicial system:

Until recently, the witness has had negligible impact on criminal proceedings in comparison with prosecution and defense. I know from my own experience that judges always considered the defendant first. The witness was not seen differently than material evidence in the file and was hardly treated with consideration.

The Turkish Criminal Procedure Law

The last law that provides protective measures for witnesses is the Law of Turkish Criminal Procedure, which was enacted by Parliament in 2005 to meet the European Union's requirement. In this law, there are a number of new provisions, one of which relates to the protection of the witness in court proceedings. Article 58 of the law sets the procedure for protective measures:

If the disclosure of the identity of a person who will testify as a witness will lead to a grave risk for the witness or his or her relatives, then necessary action shall be taken in order to ensure that his or her identity is not revealed. A witness whose identity is not disclosed shall explain how he or she learned about the events about which the witness testifies. Personal details about the witness shall be kept by the public prosecutor, judge or court so that the identity of the witness is not revealed.

Where testifying in presence of people who are present in the court room will lead to serious risk for the witness and such risk cannot be avoided otherwise or place the determination of a fact in jeopardy, the judge may hear the witness in a session not attended by those who are entitled to be present. Voice and image shall be communicated during the testimony of the witness. The right to put questions is reserved.

It should be underlined that this Article stipulates that the protective measures are only to be applicable to the crimes perpetrated as part of a criminal organization activity. Because this provision brought about confusion among judiciary, none of these measures have been applied until the enactment of the Witness Security Law, to which the Criminal Procedure Law refers in the same article as follows:

Actions to be taken in order to ensure that the identity of the witness is not disclosed or that his or her security is ensured after the testimony of the witness shall be set forth in the applicable law.

Despite the fact that they were not implemented immediately, the measures mentioned in Article 58 of this law are revolutionary changes in the Turkish legal system. It is the first time that the safety of ordinary citizens is taken into account as soon as they become witnesses in the court.

Views of Turkish Interviewees on the Witness Security Program

Although the Turkish program has been established recently and there is not yet considerable implementation of the witness security program, all of the interviewees have a very positive opinion on the program. They think that with the program, the government will be able to combat criminal organizations more effectively. These are the thoughts of a state prosecutor from the city of Istanbul:

Obviously, any effective criminal justice system must include adequate measures to protect witnesses. This is particularly true when it comes to fighting against organized crime groups and terrorist networks. That is why Turkey has established its witness security program recently.

A prosecutor from Ankara considers that in any criminal justice system, witnesses could provide damaging testimony. He points out this as:

Especially some witnesses' testimony may be connected to high-level cases, such as organized crime and terrorism. It means that there will always be a need for witness protection measures. Therefore, I think Turkish law enforcers will greatly benefit from the program.

Another interviewee from Anti-Smuggling and Organized Crime Division of the TNP points to the level of retaliation against witnesses with respect to organized crime cases in the past:

Turkey saw a dramatic increase over the past several years in organized crime violence and organized crime homicides as well as witness intimidation regarding these cases. The government has realized that this increase in the cases of organized crime along with witness intimidation has deserved special attention. As a result, the witness security program has been established to address these problems by the government.

It is fair to say that the Turkish interviewees regard the establishment of the program as a very positive development in the fight against organized crime groups and terrorist networks. A prosecutor from Istanbul articulates:

These kinds of measures may be seen as unusual services offered by the government because of their complicated structure and formation. Yet, we should keep in mind that the fight against organized crime and terrorism need these types of unusual methods and tools.

On the other hand, all of the interviewees consider that despite the fact that it has been created only recently, the witness security program of Turkey needs urgent modification in some areas. An interviewed TNP official refers to one of these areas:

One of the modification areas is the complexity of taking the protection decision for the secret witnesses. In the program, before testifying in the court, witnesses can be protected only by the classical methods which do not include any sophisticated measures.

According to another TNP official from the Anti-Smuggling and Organized Crime Department, the deficiencies in the program can be attached to the fact that before the establishment of the witness security program, the government examined only the programs of the European countries. He adds:

Although the oldest witness security program belongs to the US, we did not look at that program. We might have benefitted from the US experience, however. Unfortunately, we did not do that.

The Turkish Witness Security Program and Marked Differences from WITSEC

As mentioned before, even though there have been a number of laws providing limited protective measures for witnesses as well as informants in terrorism and

organized crime cases, there was no comprehensive witness security program in Turkey until 2008. Consequently, because both a witness security program was deemed necessary by the law enforcement agencies, and also because it was required within the context of harmonization with EU regulations in order to fight terrorism and organized crime more effectively, the Turkish parliament passed the Witness Security Law on December 27, 2007 which went into effect on July 5, 2008.²

When we look into the law, although some parts of the program were taken from the witness security program of Portugal as indicated by the Turkish interviewees, we recognize the influence of WITSEC upon the Turkish program. Similarly to WITSEC, this law envisages that critical documents such as ID cards, passports, criminal records and university diplomas be given to protected witnesses with a new name. Financial support, relocation and job assistance, as well as alteration of physical appearance with plastic surgery were also put in the legislation. If considered necessary, protected people may even be sent to another country. Not only the spouses, children and parents of the witness, but also siblings, fiancés, former spouses, and spouses' parents, siblings and best friends can participate in the program. According to the law, the power of deciding who is eligible for witness protection belongs to the court and public prosecutors. In some circumstances, this power can be used by law enforcement agencies. However, depending on the sensitivity of the issue on which protected witnesses will testify, a Witness Security Board—which includes officials from the Justice, Defense, and Interior Ministries, Security General Directorate, Coast Guard Command, Customs Control Directorate and Gendarmerie Command—makes the last decision on whether to take complete protective measures for witnesses. Also, if the court decides in favor of

²<http://mevzuat.basbakanlik.gov.tr/Kanunlar.aspx>

protective measures, witnesses have to apply for protective arrangements to the Board individually instead of via court or the respective law enforcement agency. For the protection of witnesses, a Witness Security Department, which comprises eight branch offices, was established within the Security General Directorate.

One of the most significant differences between WITSEC and the Turkish program is that under the Witness Security Law, those who witness ordinary crimes requiring a minimum of 10 years in prison can also benefit from the witness security program. It means that for becoming a protected witness, it is not a pre-condition to be involved in any kind of organized crime or terror cases. This is also a new provision that does not exist in the witness protection article of the Criminal Procedures Law.

In addition to the variation of crime, another very significant difference in the Turkish protection program is the protection of the secret witnesses in the courtroom. Article 9 of the law specifies such protective measures, According to the article, such witnesses can give testimony with masks on, or in a separate room that is connected to the main court room. The law also permits the altering of visual and audio recordings of secret witnesses. One of the criticisms of this article is that because the witness's face can be covered, there is no way to verify if the witness is lying by assessing his/her facial expressions

As outlined by Article 9, secret witnesses can also testify before the judges without the presence of the defendants or their legal representatives. Clearly, this runs counter to the basic principles of the right to a fair trial. Contrary to WITSEC, secret witnesses can be exempted from cross-examination. The defendants and their lawyers can question secret witnesses only through judges, and the judges have the right to prevent

direct questioning of the secret witness, if the answers could even indirectly supply information about the identity of such witness. While every judiciary has its own traditions, in Turkey, with some recent changes, the lawyers of the defendants have the right to cross examination. However, when there are ‘secret witnesses’, it is impossible to exercise the right of cross examination. This is another variation on the Turkish program that can only be explained with the difference in judicial traditions between Turkey and the US. In the American judicial system, witnesses testify before the court with their own identity, and are also exposed to cross examination. In a decision taken on Nov. 20, 1989, the European Court of Human Rights also prevented restriction on cross examination:

As a rule, these rights require that the accused should be given an adequate and proper opportunity to challenge and question a witness against him, either at the time the witness was making his statement or at some later stage of the proceedings³

Another disputed article of the law regards who receives protection and in what manner this protection is provided. The second paragraph of Article 4 of the law says that:

The fiancé or fiancée, spouse – even if the bond of marriage is no longer present – ancestors or descendants that have blood ties or relations due to marriage, and second degree in-laws or blood relations of the persons who testify in accordance with the provisions of paragraph (a) and, those who have ties with them due to adoption and those persons who have close relations with them.”

As formerly stated herein, not only the spouses, children and parents of the witness, but also siblings, fiancés, former spouses, and spouses’ parents, siblings and best

³ <http://www.juridischeuitspraken.nl/19891120EHRMKostovski.pdf>, p.23.

friends can be put into the program. When one ponders the provisions of this law along with the fact that many people are likely to tell a lie for their own sake, it is possible that this regulation may create a new segment of false witnesses. Some people may even think that there are many opportunities to be a “protected witness” and might try to abuse this system. Furthermore, in terms of the implementation of these protective measures, it may be difficult for the distant relatives receiving protection to adhere strictly to the rules and regulations, since they may not be aware of the imminent danger as seriously as the witness. It means that, although inadvertently, they can easily endanger the safety of the witness.

Justice Collaborators and the Witness Security Program

One of the most important differences between the Turkish program and WITSEC is the former’s target in the fight against criminal groups. Obviously, because the Turkish program does not target the justice collaborators, the people who were themselves members of organized crime groups do not have a place in the program. This is also related to the characteristics of the Turkish Penal and Criminal Procedures Laws, which are both taken from Europe. In these codes, the public prosecutors’ duty is highly differentiated structurally from that of their counterparts in the Anglo-Saxon countries. As mentioned in the previous chapter, the US prosecutors have wide-range discretion over the indictment process of defendants. Simply, they have two types of authority related to one another in this system: “prosecutorial discretion” and “plea bargain.” They can bargain with the accused over their crimes and consequently use their discretion. This immense power, in turn, guarantees the efficient work of WITSEC. Despite the fact that

there are a lot of discussions in the US over this power of prosecutors, it is fair to say that, without this power, there may not be so many criminals who are ready to collaborate with the authorities. This is alone the most powerful incentive for justice collaborators.

Sammy Gravano's case is a perfect example of this argument. Although, Gravano confessed that he had committed at least 19 murders, in exchange for his testimony against his fellow mobsters, he was indicted for only one account of murder and sentenced for just 5 years. Gerald Shur, the "father" of WITSEC, makes this comment about the Gravano case:

Yes, Sammy Gravano killed nineteen people. Yes, he is a gangster who did horrible things, and I put him into WITSEC. But Gravano also was responsible for putting LCN crime boss John Gotti and thirty-six other gagsters in prison. How many people's lives were saved because Gotti and his crew were put behind bars?⁴

On the other hand, not only do their Turkish counterparts lack this power in their fight against crime, but they should also take necessary steps to indict the perpetrator as soon as they are aware of the crime. For that reason, it is not possible for them to ignore crimes committed by collaborators. A state prosecutor interviewed in Istanbul reflects his thoughts as such:

I cannot imagine that kind of power. Our code does not give us so much power. This power almost replaces the prosecutor with the judge. In our system, we cannot bargain with criminals; it is not possible for us. Each and every crime, once we are aware of it, has to be investigated and prosecuted. We even have to seek a balance between the benefits of the public and the advantage of the defendant. It is also our legal obligation to present the evidence on behalf of the defendant, once we discover it.

⁴ Earley & Shur, 2002, p.422.

Another state prosecutor interviewed shares the same opinion with his colleague and says:

As we took our criminal justice system from Europe, it is different than that in the US. We lack this kind of power. It is not possible for us to ignore crimes committed by protected witnesses. As a prosecutor, I really would like to have that power. I think without offering ex-criminals some incentives to come forward and testify, we may not use the witness security program effectively.

At this point, it is fair to say that WITSEC was established first and foremost for the people who were mobsters themselves. The target of the program was to persuade these people into testifying against their fellow mobsters in exchange for immunity from many crimes they committed. Their fear of retaliation from the Mafia was then dispelled by the participation in WITSEC. According to Shur, this was the logic behind the setting up of WITSEC. He articulates that *“To all of us the mob was an enemy that had to be stopped but was untouchable because of Omerta. WITSEC broke the code of silence, and once witnesses began talking, the mob’s house of fear collapsed.”*⁵ That is also the reason why 95 percent of the protected witnesses have a criminal record, and had a history of association with organized crime groups. It is obvious that without targeting collaborators in criminal enterprises, it is almost impossible to find convincing evidence to reach the top brass of those organizations. Whereas there are clear provisions for the justice collaborators in the Turkish Contrition Law enacted against the PKK, there is no regulation on this issue in the witness security program. Accordingly, three of four prosecutors who were interviewed expressed the same view that the Turkish witness

⁵ Ibid, p.419.

security program needs an important modification in this respect. One prosecutor from the City of Istanbul tells:

The role of justice collaborators is unclear in the Witness Security Law. Therefore, there is a need to modify the program. We need these people for reaching the top brass of the organized crime groups. There is no clear sentence in the law about the individuals who are criminals themselves. Without a clear expression, nobody can admit these people into the program before they go on trial for their crimes in a certain criminal group.

Another prosecutor from Istanbul deems the program a crucial tool to crack down on the organized crime groups but in the current form, it, he thinks, it cannot be very useful. He gives his reason as follows:

The program should encourage the individuals in the crime groups to testify against their fellow criminals; yet, our program does not give much incentive for witnesses who are criminals themselves to participate in the program. In this regard, it might be necessary to not prosecute them for their past crimes.

It is clear that these two issues, prosecutorial discretion and the use of the witness protection program, are intertwined and need to be evaluated from a broader perspective. Except in the cases of terrorist groups, the Turkish criminal justice system does not offer a standard practice for justice collaborators in organized crime cases in the same sense as the US does. Although some could claim that informants are widely used in the cases of criminal enterprises, their status is vastly different than that of justice collaborators, as the information given by them is not court testimony. Therefore, a simple modification of the

witness security program apparently may not be sufficient to improve the status of justice collaborators in the court.

Witness Security Board

The Witness Security Board in the Turkish program is another main difference between WITSEC and the Turkish witness security program, since WITSEC has no board structure. In the US, subsequent to a protection request by federal prosecutors for a witness, the Justice Department along with the opinion of the Marshals Service decides whether it is essential to put the witness into the program. There is no board or other structure in the decision-making process. This also eliminates unnecessary bureaucracy that could easily endanger the safety of witnesses.

The Turkish witness security program, by contrast, seems to have to deal with excessive bureaucracy from the beginning, because of the structure of the Witness Security Board. Although this board formation can prevent arbitrary decisions, it also might pave the way for too much bureaucracy. Because time is an important factor in the decision-making process, unnecessary bureaucracy can undoubtedly endanger the lives of witnesses and their families. A police official from the Witness Security Department of the TNP explains this situation:

The board structure was taken from the Portuguese program. While preparing the law, there was considerable discussion about the number of representative agencies in the Board. Despite the fact that even an eight-member board, which was put in the draft law, is an unduly high number to take necessary decisions for witnesses, the current eleven-member board means that it is almost impossible to work efficiently.

One official from the TNP has expressed his dissatisfaction with this structure of the board:

I think the structure of the board should be reviewed again. The board cannot operate effectively in this form. There are completely unnecessary governmental agencies in the board. This structure of the board brings about inefficiency and unwieldiness.

The state prosecutors interviewed also have a similar opinion on this issue. A state prosecutor from Istanbul offers his thoughts:

In my opinion, the structure of the Board is an important problem which needs to be modified. It is quite fair to say that there are really unnecessary agencies in the board such as the Customs Control Directorate as well as the Coast Guard Command.

Each and every interviewed prosecutor and official from the Ministry of Justice and the TNP articulates a similar opinion about the structure of the Board. It is quite fair to agree that there are really unnecessary agencies in the Board. The general opinion among interviewees is that the Customs Control Directorate, as well as the Coast Guard Command, have no place in the Board. The only possible explanation for their seat in the Board is intense competition between governmental agencies. Because the Board is regarded by the governmental agencies as a power base over witness protection matters, all the law enforcement agencies have seen the Board as an essential site to have a seat. Unfortunately, this stiff competition is not unusual among the governmental agencies in Turkey, as their classic point of view on governmental issues has mostly been based on holding power rather than serving the interests of the country.

The operation of the Board under the Ministry of the Interior is another discussion subject among the interviewees, particularly from the state prosecutors. While the TNP members interviewed are satisfied with this operational structure, three of four prosecutors and one of the two officials interviewed from the Ministry of Justice express the opposite view. They question the efficiency of the Board under the current structure. They claim that because the decision to take witnesses under protection belongs to the court and prosecutors, the Board should also have been established under the Ministry of Justice. A state prosecutor states:

The Board shouldn't operate under the Ministry of the Interior because of the fact that the responsibility of this program belongs to prosecutors and courts.

The main argument of the law enforcement side about this structure is operational easiness. In general, they say that because protective measures are being implemented by the law enforcers, the Board can better operate under the Ministry of the Interior. An official sums up this argument as follows:

I think the operation of the board and the witness security department under the Ministry of the Interior as the Department is the best form. The Department and the Board could not have operated so efficiently if they had been under the authority of the Ministry of Justice.

Two officials from the Ministry of Justice also oppose the number of TNP representatives in the Board. According to them, 3 officials from TNP are unnecessary, as the TNP is a merely operative agency in this program.

Another argument about the Board is related to the witnesses' rights. An interviewee from the Ministry of Justice comments on this matter:

The other modification area is related to the witnesses' rights. In the program, there is no control mechanism designed for rejected witnesses who can appeal against the ruling, which has a potential to affect their lives enormously. Therefore, rejected witnesses might seek their rights in the administrative courts, and this practice alone would foster a very unusual development. It means a crime related issue would seek to be resolved in an administrative court rather than in a criminal one.

The Ergenekon Case and the Witness Security Program⁶

The witness security program of Turkey saw its first implementation with secret witnesses in the case against Ergenekon, an alleged clandestine ultra-nationalist terrorist organization with close ties to military, press, business, police and politics.

Twenty secret witnesses, who testified with identities withheld, have been the first to benefit from the witness security program. There are, of course, some problematic issues stemming from the law in which some even questioned whether the witness security program would produce any satisfactory result in this case. One of the most challenging issues, beside the aforementioned impossibility of justice collaborator practice, is the complexity of taking the protection decision for the secret witnesses. In the program, there are two steps that have to be observed in order to provide full protective measures for secret witnesses: first, as soon as witnesses testify in the court, they are referred by the court to the Board for protection; and second, the Board decides what kind of protection is required for the safety of such witnesses. Before giving testimony in the court, witnesses can only be protected by the classical methods which do

⁶ The case is still continuing and is highly debated issue in Turkey.

not include any sophisticated measures essential for providing the complete safety of witnesses and their family. In this regard, prosecutors interviewed by this researcher expressed their confusion as well. One of the prosecutors articulates:

We cannot use the program as efficiently as it must be, because of the complicated and problematic aspects of it. First of all, I don't understand why my decision isn't enough to take the witness under full protection. During the investigation process, I cannot protect a witness properly and adequately. Until the beginning of the trial, the life of witnesses and their family members are always at risk in this way.

Evaluation of the Turkish Program

Despite the fact that the Turkish witness security program has been created recently, Turkey is familiar with protection measures in particular with regard to the PKK led-terrorism and relatively organized crime. The abovementioned specific programs have provided basic protective measures for repentant terrorists and organized crime members. Especially during the 1990s, when the fight of the Turkish government against the PKK reached its momentum, the aforementioned two laws with a kind of informant-witness protection arrangement was used as a tool to weaken this terrorist organization. Similarly, the Organized Crime Control Law of 1999 paved the way for utilizing a limited witness protection mechanism in the fight against organized crime. However, this research has explored that although these laws include protective measures very similar to the existing witness security program, they could be employed only to some extent for a number of reasons: first and foremost, unlike the witness security program, previous programs do not have the essential infrastructure to conduct necessary practices, as careful consideration was not given to these issues while enacting the laws. As a result of

this, they were not promoted sufficiently among the public. Second, in the 1990s, witness rights were not considered as vital and did not constitute the first priority for the criminal justice system. It is the reform process accelerated by the accession talks with the European Union that has improved the status of the witness in Turkey.

Under these circumstances, Turkey created its witness security program in 2008, albeit there are a number of deficiencies in the law. When the Turkish program is compared to WITSEC, it seems that the target of the two programs is fundamentally different one from another. First of all, WITSEC was created by Congress for justice collaborators to provide first-hand evidence against their fellow mobsters in the Mafia, whereas the Turkish program was established for “accidental witnesses”. This has been a common theme pointed out by all the Turkish interviewees that deemed this a negative aspect of the program. All agree that with this current structure, the program may not be used as effective a tool as it should be. Apart from the use of justice collaborators, there are also other differences between the Turkish program and WITSEC, one of which is the possibility of employing the Turkish program not only for organized crime and terrorism cases but also for individual crimes that require at least ten-year sentencing. Another difference is related to the protection of witnesses in the courtroom. While in the US protected witnesses have to give their testimony without concealment of their identity in the court as requirement of the constitution, in Turkey protected witnesses can testify with masks on or in a separate room, connected to the main hearing room. According to the Turkish witness security law, if deemed necessary, the voice of the witness is altered and their physical appearance is concealed by a method to be determined by the court. And also *“the judge may decide that the witness should not be asked any questions or he*

prevents the asking of those questions that may reveal the identity of the witness even if indirectly.”⁷

As a disputed issue even among the officials and prosecutors interviewed, the Board is another marked difference in the Turkish program. As opposed to WITSEC, the Turkish program has a board under the Ministry of Interior, which includes 11 representatives from various governmental agencies. These differences largely stem from a variation of the Turkish the legal system and therefore, have a historical background. Obviously, Turkish public prosecutors who are chief actors in the witness security program have less power in comparison with their American counterparts. With prosecutorial discretion and the practice of plea bargain, federal prosecutors in the US have the ability to use WITSEC as an effective and indispensable weapon against criminal syndicates.

Data collected from Turkey indicates that Turkish law enforcement officers and public prosecutors evaluate the witness security program as a certain novelty in their fight against organized crime and terrorism. They are also aware of the fact that with its current structure the program has fallen short of their expectations. Yet, they point out that the creation of the program itself is extraordinary and is a giant step toward better understanding of the potential role of witnesses in the criminal justice system.

Findings for the Turkish Program

1- Despite the fact that the Turkish witness security program has been created recently, Turkey is familiar with protection measures in particular with regard to the PKK

⁷ *Law on Witness Protection*. Official Gazette. January 5th, 2008. No:26747

led-terrorism and relatively organized crime. Especially during the 1990s, two laws with a kind of informant-witness protection arrangement was used as a tool to weaken this terrorist organization. Similarly, the Organized Crime Control Law of 1999 paved the way for utilizing a limited witness protection mechanism in the fight against organized crime.

2- Although laws included protective measures, they could be employed only to some extent for a number of reasons: first and foremost, unlike the witness security program, previous programs do not have essential infrastructure to conduct necessary practices, as it was not given careful consideration to these issues while enacting the Laws. As a result of this, they were not promoted sufficiently among the public. Second, in 1990s the witness rights were not considered as vital, and did not constitute the first priority for the criminal justice system

3- It is the reform process accelerated by the accession talks with the European Union that has improved the status of the witness in Turkey. Although the program has fallen short of their expectations with its current structure, Turkish law enforcement officers and public prosecutors evaluate the witness security program as a certain novelty in their fight against organized crime and terrorism. One of the most challenging issues in the program is the complexity of taking the protection decision for the secret witnesses. Before giving testimony in the court, witnesses can only be protected by the classical methods which are not included any sophisticated measures, essential for providing the complete safety of witnesses and their family.

4- All the interviewees complain about the structure of the Board and point to unnecessary agencies in the Board. The general opinion among interviewees, Customs

Control Directorate as well as Coast Guard Command have no place in the Board. The operation of the Board under the Ministry of Interior is another discussion subject among the state prosecutors. While TNP members are satisfied with this operational structure, third of four prosecutors and one of two officials from the Ministry of Justice express opposite view. They question the efficiency of the Board under current structure. They claim that because the decision to take witnesses under protection belongs to the court and prosecutors, the Board should also have been under the Ministry of Justice. The main argument of the law enforcement side about this structure is operational easiness. Wiretapping is recognized by the Turkish-side as the tool that is more effective than the witness security program for the time-being.

5- The Turkish prosecutors have expressed the importance of the prosecutorial discretion and indicated the lack of a proper mechanism in the organized crime and terrorism cases that is similar to it. Their concern is that because the Turkish program targets accidental witnesses first, it may not be an effective weapon against criminal groups.

Policy Recommendations

The first aspect of the Turkish program that requires an urgent modification is its target group. The Turkish program has been established for “accidental witnesses”. This is the most negative aspect of the Turkish witness security program pointed out by all the Turkish interviewees because of the fact that with its current structure, the program can not be employed as an effective tool to combat organized crime and terrorist groups. It is

clear that these two issues, prosecutorial discretion and the use of the witness protection program, are intertwined and need to be evaluated from a broader perspective.

The structure of the Witness Security Board should be changed and unnecessary agencies should also be excluded from the board. It is fair to say that without necessary modifications in the board, it is not possible to see that the Board can function as it should be.

Obviously, with the current arrangement in the program witnesses cannot be protected thoroughly. Witnesses should be safe and should be able to benefit from all the protection arrangements as soon as they accept to become secret witnesses. Therefore, there is an urgent need to provide secret witnesses with full protection before their court testimony.

In the Turkish program, not only the spouses, children and parents of the witness, but also siblings, fiancés and even former spouses, and spouses' parents, siblings and best friends can be put into the program. This regulation may create a new segment of false witnesses, since some people may even think that there are many opportunities to be a "protected witness" and might try to abuse this system. And also, it may be difficult for the distant relatives receiving protection to adhere strictly to the rules and regulations, since they may not be aware of the imminent danger as seriously as the witness. It means that though inadvertently, they can easily endanger the safety of the witness. Therefore, the number of relatives that are required to be protected by the government should be reduced.

CHAPTER 6

GLOBAL ASPECT OF THE WITNESS SECURITY PROGRAM

Globalization is a process that affects several different aspects of the world, and enables countries, individuals, groups, and corporations to reach across the world faster, deeper, farther and cheaper than ever before.⁸ Today, the term "globalization" has acquired considerable emotive force and the world has become more accessible with current technological advancements which have penetrated every state at some level in different ways.

With the unavoidable effects of globalization, the general consensus is that the sovereign territorial state that serves "*as a bulwark against fragmentation by maintaining the boundaries between domestic and foreign affairs*"⁹ has recently experienced a decrease of its capability, and accelerated globalization has caused substantial changes in the state authority.¹⁰ The role and activities of states have been modified parallel to those changes and as a result, the security of states has been strongly challenged by the new polities, such as transnational organized crime groups, as well as global terrorist organizations. Despite the fact that states have not completely lost their strong position and still continue to have legitimate monopoly over the use of force, their capability to tackle the dynamics of change has lessened. Moreover, as the challenges of transformation have become more pervasive, the main aspects of the power of modern

⁸ Friedman, T.L. *The Lexus and the Olive Tree*. Anchor Book, 2000.

⁹ Rosenau, J.N. *Distant Proximities*. Princeton, 2003, p.65.

¹⁰ Cerny, P. *What is next for the state?* In, *Globalization: Theory and Practice* edited by Young and Kofman, 1996, p.135.

states have undergone considerable reduction.¹¹ Given that over the centuries the states have been the ultimate authority within their territorial jurisdiction, this current situation creates a great deal of tension between states and other polities.

The Nature of Tension: Sovereignty Costs

Four types of sovereignty are defined by Krasner¹²: domestic, interdependence, international legal and Westphalian sovereignty. According to Krasner, even though legal sovereignty is more respected than other types, sovereignty has never been unchallengeable. Indeed, whereas some neo-realists consider sovereignty as a vital and sacrosanct legal notion with regard to state power in the drawing up and ratification of international agreements, recent developments in international relations have showed that such a view is flawed because of the effects of globalization.¹³ Therefore, although sovereignty costs bring about significant resistance, the globalization process is pushing countries in a more cooperative direction.

According to Abbot and Snidal¹⁴, sovereignty is so significant for states that when they have to delegate authority to an international institution, the cost of a binding official agreement may further increase political tensions between states and certain international institutions. They assert that the concept of sovereignty costs is more complex when competing internal and external parties have an influence over the development of international agreements. Certain domestic groups may become hostile toward these

¹¹ Ferguson, Y. H. & Mansbach R. W. *Remapping Global Politics: History's Revenge and Future Shock*. Cambridge: Cambridge University Press, 2004.

¹² Krasner, S.D. *Sovereignty: Organized Hypocrisy*. Princeton University Press. Princeton, NJ: 1999.

¹³ Abbot, K. W. & Snidal, D. *Hard and Soft Law in International Governance*. *International Organization* 54, 3, Summer 2000, pp 421-456.

¹⁴ Ibid.

agreements, since there are three categories of costs involved in recognizing international agreements: Loss of authority, reduction of sovereignty and the potential for poorer outcomes. This makes states reluctant to accept hard legalization, particularly when it includes significant levels of delegation.¹⁵

When states only make an international legal commitment that limits their conduct in specific circumstances, sovereignty costs are moderately low. States normally tolerate these costs so as to reach better outcomes. Greater sovereignty costs materialize when states agree to external authority over important decisions. Such international agreements may place international actors in the national decision-making process and restrict the power of states to administer a variety of issues, as well as oblige them to amend local law or administrative structures. The most significant sovereignty costs emerge when international agreements encroach on the relations between states and their citizens or territory. This may even become very sensitive and may lead to tension when, for example, an international human rights regime limits a state's autonomy to regulate its citizens.¹⁶ A current example of this situation is the United States' opposition to sign the Statute for the International Criminal Court on the ground that it would not be prepared to allow any American to be brought before the International Criminal Court. With this refusal, the US has placed itself outside the realm of international law. It is a deeply disturbing attitude given the fact that the US itself initiated legal action against the Nazi war criminals at Nuremberg as well as Slobodan Milosevic at the International Criminal Tribunal for the former Yugoslavia.

¹⁵Ibid.

¹⁶ Ibid.

Cooperation vs. Tension

As abovementioned, although states are major unitary rational actors in world politics, international institutions have had substantial influence in broad areas worldwide. Today, international institutions govern with increasing power and penetration into the national system, and regulate international behavior with accepted set of rules. As rightly pointed out by Rochester¹⁷,

(transnational) institutions “can be viewed as the set of instruments for making and implementing ‘transnational policy’ or ‘international public policy’ rather than merely as a patterned set of international interactions”

From this perspective, if international relations had been only a zero-sum-game, cooperation might not have been possible. But if there is a room for absolute gain, in other words, if international relations are not necessarily a zero-sum-game, cooperation is possible because actors can find or get mutual gains. When there are global menaces that could lead states even to the de-globalization process, it is obvious that international cooperation and international institutions play a very significant role. Their knowledge and efficiency could save countries from falling into chaos and help get them back on track. In this respect, even under the condition of anarchy in which States pursue their interests, the shadow of the future in this globalized world makes these selfish actors seek cooperation and maintain international order.¹⁸ Therefore, although apparently there have been some continuing conflicts and tensions, we find states concentrating more on cooperation than on conflict.

¹⁷ Rochester, J. M. *IQ as a Field of Study: An Institutional Analysis*. *International Organization*, 40, No: 4 (Autumn), 1986, p.812.

¹⁸ Axelrod, R. *The Evolution of Cooperation*. New York: Basic Books, 1984.

Cooperation against Global Threats

It is fair to say that globalization and related developments have overwhelmingly changed the concept of security in the last few decades. Our security perception today fundamentally varies from the security notions of the 1950s. After having witnessed decreasing capacity, legitimacy and authority of sovereign states in a new era of global politics, it is possible to claim that a definition of security has changed to include collective threats to well-being and survival of societies, such as transnational organized crime, cross-national terrorism and the proliferation of weapons of mass destruction.¹⁹

One, therefore, can argue that one of the most serious inadvertent consequences of globalization is the rapid increase in the activities of transnational organized crime and global terrorist groups. We may count several reasons for these: First of all, elimination of boundaries among the countries owing to the technological development in international communications have rendered the world like a small village, and increased the interaction immensely among the people of different worlds. While the Internet allows people to access information, it also enables criminals to commit various crimes with ease. Secondly, the improvement of transportation means has led to growth in the sheer volume of the trafficking of illegal commodities and would-be immigrants. Thirdly, the fall of the iron curtain in the Soviet states and Eastern Europe has brought about an economic crash, as well as social and economic turmoil in those countries, alongside freedom and democracy. These upheavals have both spawned new organized crime groups within the area of the former Soviet influence, and also facilitated rapid domination of these groups in the other parts of the underworld economy. Finally, the

¹⁹ Ferguson & Mansbach, 2004.

expansion of the volume of global commerce and the growth of the huge number of international banking transactions provide plenty of opportunity for fraud and theft, in addition to enabling organized crime and terrorist groups to easily hide their ill-gotten money.²⁰

From National to Transnational: Organized Crime as an Increasing Threat

Organized crime is basically conceived as a function of the market for illegal goods and services in which market rules considerably shape the way criminals and criminal activities are organized. Criminal organizations and illegal activities, as a result, are deemed to merit a broader social perspective in connection with how organized crime affects society and how organized crime is influenced by law enforcement efforts.

Some studies examine organized crime as a social problem within the broader context. As one of those scholars, Bernstein²¹ tries to analyze organized crime in connection with ethnicity, immigration and citizenship. Bernstein puts his study in the frame of the Cold War history, and he relies on general historical literature and on his primary source material, especially the papers of the Federal Bureau of Narcotics.

In this perspective, he claims that the debate on organized crime in the postwar years helped identify social and economic hierarchies, and emphasized political and cultural differences of criminal groups as well as the crimes themselves. In the 1950s, the prevailing attitude toward organized crime was very much akin to that toward communism: it was perceived by the political corners as a serious threat to national

²⁰ Glenny, M *McMafia: A Journey Through the Global Criminal Underworld*. New York: Random House, 2008.

²¹ Bernstein, L. *The Greatest Menace: Organized Crime in Cold War America*. University of Massachusetts Press, 2002.

security. Anti-crime advocates drew representational power from the perceived threat, and they drew attention to people who seemed to conform in appearance and values in order to make the problem seem less menacing. Like Senator McCarthy's paranoid anticommunist accusations, the Kefauver hearings highlighted the new invisibility of organized crime, in which gangsters looked like business executives, lived in the same neighborhood, played a role in political campaigns and acted like decent citizens.

However, it should be highlighted that since the beginning, the Mafia has not been a single organization but more exactly a system of deeply rooted alliances with close links to the political and economic power system. Similar to the situation in Italy, it is necessary to look at the Mafia in connection with the socio-political and socio-economic life of the American society. The changing social position and internal structure of the Mafia should be analyzed within the broader perspective of transformation happening in the social, political and economic system of the US.²²

Besides these arguments about the Mafia, some criticize the official version of the narrative, and see it as biased and far from the social reality. According to these critics, what is reported about the Mafia is based largely on the view of the reporting agency with a description of institutional belief and the discriminatory use of restricted investigative techniques. As one of these critics, Woodiwiss²³ highlights the inconsistencies, paradoxes and insincerity involving the conventional American perception of organized crime. According to him, while organized crime has never been exclusive to any race or ethnic group and class, however, the traditional story of organized crime mostly focuses on mobsters and Mafia-type groups that exploit the national and international economic and

²² Early & Shur, 2002.

²³ Woodiwiss, M. *Organized Crime and American Power: A History*. Toronto: University of Toronto Press, 2001.

political systems. This perception in the assessment of organized crime is too limited, and has led to unsatisfactory and insufficient national and international strategies to combat organized crime.

On the other hand, organized crime is no more a local or regional problem, since it became global in dimension. While international trade has been expanded with the effect of globalization, the range of organized crime activities has also diversified and broadened. Today, organized crime, which is omnipresent and goes beyond the jurisdiction of any given state, has an international aspect in essence.

With its destructive effects, transnational organized crime generally depends in many countries on the nexus between political elites and criminal groups for its activities, and therefore, should be seen as complex networks of power relationships. This viewpoint emphasizes the significance of individual and close interactions, in addition to group and network power relations.²⁴

In recent years, the conventional hierarchical types of organized crime enterprises have been replaced mostly with loose networks that operate together for exploiting additional market opportunities. Furthermore, criminal enterprises that are engaged in drug trafficking have generally been involved in smuggling of various contraband goods and products as well. Owing to these developments in the last two decades, the connection between other forms of transnational organized crime and drug trafficking requires a more integrated method to tackle this nexus. It means that today, the fight against transnational organized crime entails international cooperation in policing

²⁴ Liddick Jr, D.R. *The Global Underworld: Transnational Crime and the United States*. Westport, CT: Praeger, 2004.

methods wherein witness security programs play a crucial role, along with other criminal justice tools.

The Role of Witness Security Programs in the Fight against Global Threats

Today, the role of witness security programs in combating transnational organized groups and terrorist threats has become more important. As in the case for so many aspects of policing, witness protection programs are no longer an issue that can be used only at the national level, but increasingly need to be employed against global threats as well.

When the interviewees in the US were asked to expand on the role of witness security programs against global threats, three of eight interviewees have supported this role of witness security programs. A former state prosecutor from New York says:

I think that just like the Mafia many of these terrorist organizations are in it for the long term. They are not going to disappear when you take out this particular group of criminals or terrorists. The criminal or terrorist organization is going to continue to exist and since the organization exists people who will testify against the members of the organization will be at risk.

An interviewee who is an FBI agent also has positive views on the role of witness security programs against this global menace. He states:

As in the fight against domestic criminal groups, the witness security program is also very important in the fight against global terrorism and transnational organized crime groups.

When the data are analyzed, it is seen that interviewees from the FBI are more optimistic than the federal prosecutors on this issue. In this regard, a former federal prosecutor expresses his negative thoughts about the role of the witness security program for combating global terrorism as:

I do not think that the existing international atmosphere is suitable for a positive role of witness security programs, especially in the fight against global terrorism. Today, states cannot even get together on the definition of terrorism.

Among the possible problematic areas of the role of witness security programs against transnational criminal and terrorist groups, an FBI agent highlights the cultural barrier.

...the techniques of WITSEC can be transferred but it is more complicated than that, depending on what you are doing. How foreign witnesses assimilate into another country is a question, their language skills are question.

Interestingly, the interviewees from Turkey are more optimistic than their American counterparts regarding the role of witness security programs. All of the Turkish interviewees support the role of witness security programs as a crucial tool in the fight against transnational organized crime and global terrorism. An official from the Ministry of Justice points to the significance of witness participation while fighting against global criminal and terrorist threats:

Witness participation has been especially significant in the fight against global terrorism as well as transnational organized crime. In particular, the

closed character of global terrorist organizations renders it ineffective to employ classic investigative techniques and requires extraordinary methods.

The interviewees from UNODC also share similar beliefs and give a considerable role to witness security programs against global threats. A former UNODC official expresses these remarks:

As in the cases of domestic organized crime groups, successful prosecution of transnational organized crime groups also very much depends on credible witnesses who are able to testify without fear of retaliation.

The UN Initiative in Witness Protection

Transnational witness security cooperation has two aspects: either cooperation with national or sub-national organizations across national borders, or cooperation with international institutions. Although at first cooperation among countries was more prevalent than cooperation with supranational organizations, in recent years, especially since the 1990s, the United Nations has taken the initiative and led countries to establish a framework for a common goal as well as set up field offices for protection of witnesses in the war-torn countries where it has provided legal assistance.²⁵

Today, in the modern world, because witnesses are seen as one of the most important elements in criminal proceedings, their safety and protection is also regarded as a vital tool in the fight against transnational organized crime. This is also the reason for the fact that, as the most important international institution, the United Nations has led

²⁵ UNODC. *Good Practices for the Protection of Witnesses in Criminal Proceedings involving Organized Crime*.

efforts in international cooperation to protect witnesses from retaliation due to their assistance in criminal proceedings. So as to bring countries together for this goal, the UN established a legal framework named the United Nations Convention against Transnational Organized Crime for combating transnational criminal enterprises, in which the protection of witnesses was included in Article 24 of the Convention.²⁶

Article 24 stipulates that each country should provide appropriate protection arrangements for witnesses and their families to protect them from prospective retaliation and imminent danger. According to this Article, these arrangements for witnesses may consist of using an alias in the court, putting restrictions on the disclosure of information regarding the witnesses' identity and setting up measures for physical protection, including relocation. As also mentioned in the Article, while witnesses are giving testimony in the court, it is possible for the court to allow the use of communications technology such as video links and other relevant tools for ensuring the safety of witnesses. Moreover, all countries are encouraged to have agreements with other countries for the relocation of protected witnesses and victims in all kinds of organized crime cases.

This Article, hence, emphasizes that countries are responsible for making adequate provisions for any individuals who have information that is applicable to the investigation or prosecution of a crime specified by the Convention. The Article also suggests that protective arrangements should be extended to justice collaborators, who were involved in the activities of organized crime enterprises in the past and who cooperate with the authorities.

²⁶ *Legislative Guide for the Implementation of the United Nations Convention against Transnational Organized Crime and the Protocols Thereto*: New York, 2004.

International cooperation in witness protection is also considered as a crucial issue by the interviewees, since they regard it as an indispensable part of the international efforts in the fight against organized crime and terrorism. A former UNODC official articulates this as:

International cooperation in witness protection is an important part of the international efforts to combat transnational organized crime and global terrorism. I can say that because there was little incentive to cooperate in witness protection, we saw a lack of leadership at the international level. However, the 9/11 attacks changed this and the US has needed to cooperate with other countries. The international conferences held about witness security programs after 9/11 are a significant indicator showing the sheer determination of the US. After 9/11, the US has understood the fact that without international cooperation no country could ever use its witness security program effectively while confronting today's global threats.

Another interviewee from UNODC also highlights the necessity to increase international cooperation in securing witnesses of transnational organized crime and global terrorism cases. He adds:

While there is an absolute necessity for international cooperation in witness protection, this also requires developing a broader approach and an overall strategy for bringing countries around this goal. I mean there are important dissimilarities among countries. Therefore, we should develop common standards and promote best practices that will serve as guides to states in protecting important witnesses across the world. For achieving this, states should support the UN, which has already initiated a concerted effort to establish an international platform on the issues of witness protection.

The following UNODC official expresses cautious optimism about international cooperation in witness protection policies. He thinks:

The signs here are encouraging in the sense that there are examples of cross-border cooperation with respect to witness protection. And there are examples within Europe of sharing best practice and ensuring that the mechanisms for moving witnesses across borders are effective.

But he also reminds us that many of the difficulties associated with the issues of witness security at a national level, such as parental rights or debt collection may be even more difficult to resolve at a trans-national level.

All these comments suggest that while there is an absolute necessity for international cooperation in witness protection, this also requires developing a broader approach and an overall strategy for bringing countries around this goal. It should be noted that there are important dissimilarities among countries in terms of political atmosphere, society and culture, the legal system, levels and types of criminality and phase of development. Because these dissimilarities indicate the type and degree of protection that each country can offer, to obtain complete cooperation among countries in witness protection measures may take time, an issue that very much depends upon changing the attitude of states towards international cooperation.²⁷

Witness Security at the International Criminal Courts

Apart from the Convention and other international agreements and arrangements that show that the UN has led the initiative in convincing countries to cooperate with each other while providing protective measures for witnesses, the UN also established its witness security mechanism in the cases that have been handled directly by it. In this

²⁷ UNODC. *Good Practices for the Protection of Witnesses in Criminal Proceedings involving Organized Crime*.

context, the 1990s are considered as the years during which great progress was made in the international arena on witness protection measures.

In particular, the creation of the International Criminal Tribunals for crimes against the people in the territories of the Former Yugoslavia and Rwanda and of its neighboring states in the mid-1990s were a vital step to ensure that severe violations of international law such as crimes against humanity, war crimes and genocide would not remain unpunished and those responsible for these crimes would be harshly punished with the help of victims as well as witnesses. In this context, as a novel practice in the international arena, the legal procedure of those courts on the protection of the victims and witnesses was based on the witness security provisions of the Rome Statute creating the International Criminal Court. Therefore, the key aspects of the protection arrangements of the International Criminal Court, and the International Criminal Tribunals for the Former Yugoslavia and for Rwanda are broadly alike. In all these cases, witness security units are set up under the court jurisdiction to protect victims and witnesses. These units are charged with ensuring physical safety and taking protection measures, as well as required to offer proper assistance for victims and witnesses who testify before the court.²⁸

As these international courts deal with very distinctive features of the crimes, protection arrangements are both equally available to witnesses of the defense and witnesses of the prosecution. For instance, to ensure neutrality, the unit at the International Criminal Tribunal for Rwanda is divided up into two separate teams: one for defense witnesses and the other for prosecution witnesses. To protect a witness who is

²⁸ Ibid.

in danger owing to his/her testimony, the judge has authority to take every special protective measure needed for the safety of the witness before, during and after the trial.²⁹

Because the tribunals do not possess their own law enforcers or have territorial authority, the units depend on the collaboration of countries, as well as the host country, to provide security arrangements in out-of-court circumstances. Once the registrar determines that the safety of a witness is at risk, subsequently the unit arranges for relocation of witnesses within or outside of the country of residence. The tribunals try to establish a network of countries ready to accept witnesses via the conclusion of framework agreements. These agreements clearly delineate the way of accepted procedure when relocation is demanded, and of assistance that the receiving country will provide for witnesses. But, the final assessment of admitting witnesses belongs to the receiving country.³⁰

After the interviews with the TNP personnel, this study has explored that the UN gives extra importance to these special witness security units. The TNP personnel who worked in these units in Kosovo before highlight the fact that their status was higher than that of the other personnel working in various units in terms of salary, equipment and office hours. Because of their expertise gained in witness protection, they were even offered to stay in Kosovo for a longer term, which was not possible for their colleagues in other divisions. These statements indicate that in addition to its support and guidance on witness protection issues, the UN itself also sets an example to countries.

The Utmost Threat: Global Terrorism and the Witness Security Program

²⁹ Ibid.

³⁰ Ibid.

Terrorism is the systematic use of violence or threat of violence that is often perpetrated against a civilian population as well as military targets to create fear so as to achieve social and/or political objectives.³¹ Terrorism has been employed by a broad range of political groups for furthering their goals. Korkmaz³² states that “*terrorism is not a new phenomenon though it has been another ‘essentially contested’ concept.*”³³ According to her, before the 9/11 attack, “*the term, terrorism, was generally used as a pejorative term for any insurgency campaign of which we disapprove.*”³⁴ Despite the fact that terrorism has been on the global scene with its international dimensions at least since the 1970s, international cooperation in counter-terrorism efforts became a reality only after the 1980s. For the last two decades it has been widely acknowledged that terrorism has exerted a strong influence on international politics.³⁵

Although the demarcation of these areas sometimes becomes very difficult, some scholars³⁶ classify the terrorism phenomenon as national, international and global terrorism. Before the iron curtain fell, the major terrorist activities were largely local. For many years, as the location of targets was a matter of concern for terrorist groups, they preferred to attack those targets which were not far from their bases. Their activities were largely restricted to specific locations within their country, or the terrorists were able to conduct their operations from a base set up across a bordering country. Terrorists in the past century not only targeted certain governments but also directed their efforts toward

³¹ Wardlaw, G. *Political Terrorism*. New York: Cambridge University Press, 1989.

³² Korkmaz, V. *Global Terrorism and Western Agendas: the Convergence-the Divergence*. Paper presented at the annual meeting of the Midwest Political Science Association, Palmer House Hilton, Chicago, Apr 20, 2006, p.1.

³³ *Ibid*, p.1.

³⁴ *Ibid*, p.1.

³⁵ *Ibid*.

³⁶ Salhi, R. *Borderless Terror in Global World: The Driving Forces of Building Al-Qaida*. Paper presented at the annual meeting of the Midwest Political Science Association. Palmer House Hilton, Chicago, IL, Apr 15, 2004.

gaining control of specific territories. They also did not much care to broadcast their message other than to their targeted local people, since the global community did not interest them to a great extent.³⁷

With the beginning of the 1990s, once globalization became apparent and was felt more strongly, local and international terrorism gave the way to global terrorism.

Literature on terrorism shows that there is a strong connection between globalization and global terrorism. According to Friedman³⁸, globalization puts pressure on traditional values and cultural identities in more conservative and Islamic societies. While globalization challenges the indigenous norms and modes of being in both non-Western and Islamic countries, perpetrators of terrorist acts usually feel victimized, and then launch an attack to air their grievance. The US and the countries sympathetic to the US are often held responsible, and consequently targeted.³⁹

Salhi⁴⁰ asserts that Al-Qaida attacks are absolutely a unique example of global terrorism and that, because of globalization, national borders are not a natural and reliable barrier against their threats. According to Rapoport⁴¹, fueled by globalization, the spread of global terrorism occurred as a result of the rise of the radical Islamic forces, which are represented by Al-Qaida and its associates that have developed borderless terror on the basis of religion. The politicization of Islam has played an important role in the establishment of Al-Qaida as a global terror network. This terror network is composed of multi-dimensional groups that employ a campaign of terror throughout the world. “*They*

³⁷ Newman, G.R. & Clarke, R.V. *Outsmarting the Terrorists*. Westport, CT: Praeger PSI, 2006.

³⁸ Friedman, 2000.

³⁹ Cronin, A. K. *Behind the Curve: Globalization and International Terrorism*. *International Security* 27 (3), pp.30-58, 2003.

⁴⁰ Salhi, R. *Borderless Terror in Global World: The Driving Forces of Building Al-Qaida*.

⁴¹ Rapoport, D.C. *Generations and Waves: The Keys to Understanding Rebel Terror Movements*. The paper presented at a meeting of the Ronald W. Burkle Center for International Studies in Bunche Hall at UCLA, November 7, 2003.

are hostile, religiously motivated, and sacramental with no retaliatory action capable of being imposed."⁴² After the 9/11 attacks by Al-Qaida, the image of terrorism has occupied people's minds all over the world. This was both an attack and a message to the world, because while striking its targets, Al-Qaida also broadcast their message. Since the first strike, terrorists have always tried to deliver their message to the public.⁴³

In this context, Newman and Clarke⁴⁴ claim that although the 21st century terrorists target specific governments, more than that, they aim to conquer the hearts and minds of people. According to these scholars, because the fight is not over territory but more exactly over winning the minds of people globally, terrorists cannot be defeated in the conventional sense. Even in places, they argue, in which territory seems to be the main aspect of contention, the real purpose of terrorist attacks is to provide a wide range of media coverage.

If that is the case, it is necessary for the international community to contemplate how terrorism is to be combated and what are its ramifications in the age of globalization. After the failure of the unilateral approaches against radical global terrorists, we now have a chance to evaluate our strategy in the light of this profound transformation in the world. If we see that the only antidote to global terrorist groups is to better cooperate at the global level and utilize the favorable aspects of globalization, then we can successfully limit the achievements of these global terrorist groups.

In this context, cooperation in law enforcement efforts is an important step concerning states' response to reduce the threat of global terrorism. These law

⁴² Salhi, 2004.

⁴³ Newman, G.R. & Clarke, R.V. *Understanding Global Terrorism*. Paper Presented at 2nd Istanbul Conference on Democracy and Global Security, Istanbul, June 14-16, 2007.

⁴⁴ Ibid.

enforcement efforts also require using effective policing methods. Although current technological developments have provided many new and improved opportunities for fighting against terrorist groups, such as tracking people or products easily with new technologic equipment⁴⁵, the success against global terrorist networks also depends on using some of the same tools employed successfully in the fight against organized crime groups.

As one of these effective tools, the witness security program has gained importance against terrorist organizations in these circumstances. The program has been utilized to combat terrorism first in the US. According to Shur,⁴⁶ the first implementations of the witness security program against terrorist groups were the 1988 Lockerbie, Scotland, airplane bombing and a 1989 bombing in Greece. However, it was after one attack in New York that the program was tested. The bombing of New York's World Trade Center in 1993 killed six people and tore a five story hole. Subsequent investigations led to the arrest of four foreign terrorists, all followers of Ramzi Ahmed Yousef, who fled the US right after the incident. Yousef was finally captured in Pakistan and extradited to the US for trial. Two years later, Sheik Omar Abdel-Rahman, the mastermind of the bombing, and nine of his supporters were convicted of plotting to blast several Manhattan landmarks. In all these cases, federal prosecutors successfully used WITSEC to secure the conviction of terrorists, and opened a new chapter in the history of the program by proving that WITSEC has been an indispensable tool against global terrorism as well.

⁴⁵ Newman, G.R. & Clarke, R.V. *Superhighway Robbery: Preventing E-Commerce Crime*. Cullompton, UK: Willan, 2003

⁴⁶ Earley & Shur, 2002.

Similarly, after 9/11, finding witnesses who would give testimony against international terrorist groups became a matter of the greatest importance to the US and to those countries in which global terrorism might cause a destabilizing effect. It is no exaggeration to say that there are not so many criminal justice tools available to fight effectively against al-Qaida type terrorist groups in particular. These kinds of terrorist organizations have generally had a closed character that always makes it difficult to employ traditional investigative methods successfully, and often necessitate extraordinary measures. If applied properly, there is a real opportunity for the US and also for the free world to use the witness security program for persuading former terrorists into testifying against their organizations, as well as showing others an alternative way out.

That is also the reason for the fact that the interviewees almost unanimously agree on the issue that in the post 9/11 era, the witness security program has emerged as one of the special legal tools to combat global terrorism. They stress that, just like the Mafia, many of those terrorist organizations are not going to disappear soon from the global stage and will remain in the international arena in the foreseeable future. As emphasized by the UNODC official interviewed, after 9/11 global terrorism has become an important phenomenon that requires novel tools like the witness security program. He reflects his points of view as follows:

...global terrorist organizations are going to continue to exist and since they exist, people who will testify against the members of these organizations will be at risk. So, I think, the analogy is quite apt, the Mafia analogy to the terrorist analogy. I think any terrorist organization is not being constructed for a particular single criminal event but to have a long term existence. The Witness Security Program is an important tool to use against those kinds of organizations. You are going to face the same issues.

On the other hand, there are, of course, some serious issues that need to be addressed without delay, if the program will be used in global terrorism cases to its full potential. As indicated by Maier⁴⁷, using former members of terrorist groups as witnesses escalates the complexity of their hiding, since many of those who can give testimony against their fellow terrorists will have to live in the US or any other Western country as illegal aliens. In the US, federal agencies dealing with immigration issues demand several extra documents from foreign-witnesses, thereby preventing the Marshals Service from providing the necessary documents to these witnesses or their close family members and relocating them without completing immigration formalities and paperwork. Law enforcement agencies must also induce immigration officials not to expel foreign-witnesses from the US and to keep these witnesses in wanted terrorist lists. This problem is so serious that even the Audit Division of the Office of the General Inspector in the US Justice Department needed to address it in its 2003 report:

Foreign-born witnesses require immigration documents from the Immigration and Customs Enforcement (ICE) agency of the Department of Homeland Security before they may engage in certain activities. However, the USMS has experienced significant problems in obtaining documentation for WITSEC program participants. We believe the USMS should pursue a formal Memorandum of Understanding (MOU) with the ICE establishing a procedure that ensures the timely provision of immigration-related documents to foreign-born protected witnesses and their dependents. The MOU should also address other matters of concern, such as assurances that ICE employees who process WITSEC-related documents will execute a Secrecy Agreement. The absence of an MOU increases the risk that breakdowns will occur in providing necessary services to foreign-born program participants.⁴⁸

⁴⁷ Maier, T.W. *Terror witnesses may be left in cold; the U.S. Marshals' witness-protection program is teetering on the brink of collapse, the victim of gross financial mismanagement and of political vengeance.* Insight on the News, March 29, 2004.

⁴⁸US Department of Justice Office of General Inspector Audit Division: United States Marshals Service Administration of the Witness Security Program, 2003.

Maier also points out⁴⁹ another serious deficiency as a well-known fact among the people who are familiar with the Marshals Service. According to him, the Witness Security Division is in generally poor condition and stretched really so thin that at sometimes there is not anybody there to open phones or tackle emergencies. Because WITSEC inspectors are already far from able to deal with existing needs, it seems that the US might have trouble handling those penitent terrorists who seek new lives, while prosecutors desire to use their testimony to disintegrate al-Qaeda networks. This matter is also included in the abovementioned 2003 report as a major concern disturbing the inspectors. More alarmingly, the government has trained WITSEC inspectors in neither language nor culture to tackle turncoat radical terrorists participating in the program. That is also why, Maier claims⁵⁰, according to sources aware of the case, the government experienced significant problems in handling the foreign witnesses who gave testimony in the 1993 World Trade Center bombing trial, due to cultural differences and language barriers.

Besides these troubles, another concern on this issue is the lack of necessary international cooperation with some states, in particular the source countries of the global terrorism network. Indeed, unlike the transnational organized crime enterprises, which are deemed a real criminal threat by almost all countries, global terrorist groups are not seen as a serious threat by every country, and do not attract the same immediate attention at the global level. This situation, therefore, has also led to the underperformance of international organizations, primarily the UN, and they are not able to fulfill a useful function, which is necessary to cope with the menace of global terrorism.

⁴⁹ Maier, 2004.

⁵⁰ Ibid.

International Relocation of Protected Witnesses

International cooperation among countries occurs in either a formal way that goes through official channels or in more informal ways that are based on reciprocal forms of arrangements. Bilateral or regional agreements on cooperation in the fight against terrorism or organized crime can be given as examples of formal types of agreements that create an official mechanism for ensuring cooperation among countries, and mostly require approval of the Parliament in the countries in question. On the other hand, memorandums of understanding or special agreements made directly between law enforcement authorities of the individual countries are such agreements that establish direct cooperation in an informal way, and do not require approval of Parliament.⁵¹

Although the UN encourages each country to have official agreements and arrangements with other countries on this issue, cooperation in international relocation has mostly taken place in the latter form hitherto. Nonetheless, because it is regarded as a very important protective measure to ensure the safety of witnesses while combating global threats, international relocation of witnesses and their families is now becoming prominent in the international arena and thanks to the efforts of the UN, it is gradually giving way to a formal type of cooperation largely among small states.⁵²

Because of all these developments, international relocation has begun to be seriously discussed in recent years in terms of both the considerable costs and impact it implies for witnesses and their close family members, in addition to the complex character of international relations. Even so, this measure is mostly the only way of

⁵¹ UNODC. *Good Practices for the Protection of Witnesses in Criminal Proceedings involving Organized Crime*.

⁵² *Ibid.*

guaranteeing effective protection of witnesses for many small countries. An interviewee from UNODC explains this issue as follows:

In a country as large as the US, relocation of witnesses and their families across the country greatly guarantees witness anonymity. For smaller countries like Estonia, relocation within that country may not ensure that witnesses are protected adequately and are immune from harm. That is why many countries are relocating the protected witnesses and their dependants to other countries.

The recent implementations of international relocation show that despite the fact that it is seen sufficient to relocate witnesses and their dependants to a different country, in most cases they still need to participate in the program of the host country in which they would be given a new identity and relevant documents. Although the host country should be determined by the level of danger along with ease of integration, choices are mostly affected by countries' willingness to admit foreign witnesses. At that point, for rhw witnesses, especially cultural and social similarities between the indigenous and receiving countries play a significant role. However, even if witnesses frequently seek to make their testimony conditional on relocation to a specific country, they can hardly ever say a word on this matter.⁵³

On the other hand, there is no uniform regulation accepted by the international community as a whole. Three interviewees from the US paint a relatively negative picture on the outcome of international cooperation in relocation among countries. Primarily, owing to current international politics, these interviewees consider international cooperation on this matter a very complicated issue. Their argument is that the existing international atmosphere, at least for some states, is not completely appropriate for

⁵³ Ibid.

effective cooperation in relocation of protected witnesses. The same states needed for cooperation lie at the very heart of the problem. Besides these issues, as aforementioned, they claim that cultural and political differences among countries are another very important problem that needs to be addressed in one way or another. It is a fact that while even native witnesses are experiencing troubles in becoming accustomed to their relocated places, it is utterly difficult, if not impossible, for some foreign witnesses to adapt to their new communities. As foreign witnesses might meet serious problems in their relocated places, an American interviewee articulates that states should be realistic and particularly pick the right witnesses for relocation.

It should be noted that when it comes to the use of the witness security program for former terrorists, international relocation becomes much more complicated, because of the distinctly modern character of global terrorism. Since the threat has come from the al-Qaeda type radical movements it is obvious that the US and some other Western countries need to induce citizens of other nations, ones from utterly different cultures and religions. If the relocation of these individuals can not be handled properly and a better solution to the problem of integration is found, there is no way that witness security programs could be used successfully in this fight. The crux of the matter is that there may not be easy answer for it, which requires great efforts and wise solutions to deal with.

For global terrorism cases, international relocation is also seen as a highly debatable issue by the interviewees from UNODC. These interviewees think that foreign witnesses of terrorism cases may not fit into the community that they are to be relocated to. Furthermore, they argue that these witnesses cannot be put into their own community as well. The best solution suggested by a former UNODC official to this problem is to

give these individuals a large sum of money without admitting them into the program that will pave the way for their own relocation, or to find a volunteer third country with a similar landscape. As another solution, the same interviewee suggests to put foreign witnesses into urban places, instead of rural areas. According to him, foreign witnesses can be best hidden in cities where they can find certain communities that will make them feel better. He also highlights the need that countries should get assistance from the experts in Middle Eastern culture to prepare foreign witnesses for relocation.

Summary

Contrary to the relative peacefulness of the international order stemming from the power alignments of the Cold War era, today's world abounds with atrocities of civil wars, the carnage of global terrorism and racketeering of transnational organized crime enterprises. While their authority is diminishing rapidly thanks to the globalization process, states are losing their monopoly over the use of force as well. According to Max Weber, a state must have a monopoly of legitimate violence over its territory.⁵⁴ In other words, a state must be able to control opposing groups with a physical force that is acceptable by the majority of the people. Although Weber's assessment may have been accurate during his time, today it is evidently subject to revision,⁵⁵ since promoting and preserving effective unity among diverse social groups is often beyond the capability of frail and failed states. It is obvious that many states are unable to bring order to their war-torn societies.⁵⁶ Therefore, other social groups such as terrorist organizations, drug cartels

⁵⁴ Rosenau, 2003.

⁵⁵ Ferguson, Y.H. *The Crisis of the State in Globalizing World*. Paper in 'Globalization'. Vol.3, No.1, March 2006.

⁵⁶ Rosenau, 2003.

or organized crime enterprises regard themselves as legitimate as the state,⁵⁷ and pose a direct threat to the international order.

It means that national policies and legal practices that were effective against organized crime enterprises including drug cartels and terrorist groups in the past cannot be an answer now and as a result, the international community needs to cooperate more than ever in order to take appropriate measures for combating these new forms of global threats. Needless to say, one of the most important cooperation areas in the international arena today is at the criminal justice level, a point confirmed by the fact that the transnational legal fight against all types of outlawed syndicates will be shaped, more and more, by international cooperation in law enforcement tools.

At this point, this study claims that for the international community, one of the urgent issues on cooperation is definitely the witness security program. Since its inception, while the program has evolved into a crucial tool in the US, other countries have imitated it, and the success of witness security programs against domestic criminal groups in various countries has proved that this program can also be used effectively in the fight against transnational organized crime enterprises and global terrorist networks. However, there are two preconditions for the success in the international arena: first, witness security programs are required to be adjusted to the needs of this new fight; second, states should seek international cooperation in the use of witness security programs.

It should be noted that cooperation directly between countries and cooperation through international organizations are two ways of performing transnational cooperation in witness protection. While the former depends on the reciprocal agreements between

⁵⁷ Ferguson, 2006.

countries, which are more widespread, the latter has begun to increase lately under the guidance of the UN.

In order to assist countries in witness protection problems, the UN has held several international conferences and issued guidelines on transnational cooperation in witness security programs. As the most significant international agreement on transnational organized crime, the UN Convention against Transnational Organized Crime draws up a detailed outline for countries on witness protection, and is signed by the majority of countries. After signing this Convention, as stated by the interviewees from UNODC, countries have facilitated their efforts in setting up their witness security program and became more open to international cooperation on organized crime and, thus, witness protection issues.

Apart from these efforts, the UN also set an example and created her own witness security units in the cases and countries in which it has had direct responsibility. With the establishment of the international tribunals against war crimes committed in former Yugoslavia and Rwanda in the mid 1990s, for the first time witnesses were taken under legal protection internationally, and an international form of witness security program was utilized by the witness security units, which were established as special divisions by the UN. Since then, the UN has broadened the scope of these special units to carry out their operations in every UN mission from Kosovo to East Timor.

International relocation for witnesses and their family members has come into sight in this atmosphere and become functional ever since. Once found out that it has been an effective way in the fight against organized crime and terrorist groups, countries have gradually become inclined to cooperate in international relocation as a part of their

witness security program. Today, in consequence to concerted efforts of the UN, international cooperation arrangements among countries with regard to relocation of witnesses have begun to be incorporated into national legislation by states. As a promising sign of these efforts, particularly countries that share common borders have facilitated cooperation with each other. A cooperation agreement on the protection of witnesses and victims signed by Lithuania, Estonia and Latvia in 2000 provides a perfect example of this. According to this agreement, witnesses are to be relocated within these countries temporarily or, if needed, permanently.⁵⁸

However, this increasing international cooperation in relocation of witnesses does not mean that countries are not facing any problem on this subject. On the contrary, because there has not been a uniform global mechanism yet to regulate international relocation, countries still mostly rely on reciprocal agreements. Despite the fact that there are promising developments as our interviewees point out, it is not wholly satisfactory, and requires the US and other big countries to support the UN in its efforts to reach an international consensus on this matter.

Likewise, the position of European Union is also important and the signs here are encouraging in the sense that there are examples within Europe of sharing best practices on witness protection. Indeed, in order to achieve success, the European Police Office (Europol) has established an unofficial group of witness security agencies from member states of the European Union and accession countries. This group convenes regularly to discuss the issues of witness security, in order to harmonize their practices and promote an open exchange of ideas and information among member countries' witness security

⁵⁸ UNODC. *Good Practices for the Protection of Witnesses in Criminal Proceedings involving Organized Crime*.

agencies. The group has also gradually included agencies from other countries with valuable experience in witness protection, such as the US, Canada and Australia.⁵⁹

Finally, although there are many difficulties associated with witness protection at the international level, these are not beyond the capability of the international community. As stated by one of the interviewees, we now typically live in global neighborhoods that have a lot of similarities and share common ideas, one of which is to save this world from the menace of global criminal groups.

⁵⁹ Ibid.

CHAPTER 7

SUMMARY AND DISCUSSION

Introduction

Witnesses have a vital role in the criminal justice system. They are central figures in any criminal case for both defense and prosecution sides in which convictions mostly depend on their remarks in court. Therefore, in order to ensure the rule of law, states need to protect witnesses from threats, intimidation and reprisals due to their cooperation with the authorities. Especially in the organized crime and terrorism cases the lives of witnesses might be at risk, unless the government takes appropriate measures for protecting them in one way or another. Accordingly, the witness security program was created as part of the governmental efforts to eliminate the risk and intimidation that witnesses are exposed to before and after the trial process.

As the pioneer of all the witness security programs in the world, since its inception in 1970, WITSEC has either attracted severe criticism or received full approval from different corners. Even during the years in which it was used effectively against the Mafia, there were always two sides which clashed with one another over the value of the program in this fight. On the one hand, some scholars and the media condemned the program as one of the worst legal tools endangering society; on the other hand, the law enforcement side vigorously defended it as one of the most valuable criminal justice tools against the Mafia. Today, there is no change in their position. While the media and several scholars are still critical of the program, law enforcement authorities point to the

fact that WITSEC is still being employed effectively from securing conviction of Al-Qaeda terrorists to bringing down the Mafia.

As rightly asserted by the law enforcement side, because organized crime and terrorism cases are difficult to investigate and prosecute without witnesses, they have a particular importance for law enforcement officials. In general, witnesses can provide information that otherwise might never be attained. The power of witnesses of organized crime and terrorism comes from the fact that they have mostly had connection to the criminal groups and have specific knowledge about these groups. It means that a credible witness can mostly guarantee conviction. In many organized crime cases, it may be very dangerous for witnesses to testify before the court without having some kind of protection method. The witness security program has demonstrated that it can provide an effective protection for witnesses.

On the other hand, as some studies illustrate, there are significant questions regarding the operation and accountability of the witness security programs. These are issues that hitherto the governments have paid little attention to. For instance, parental rights of non-relocated parents or protected witnesses' prospective threat to the neighborhoods where they are relocated are some of issues that need to be evaluated more openly and genuinely by the law enforcement side. While even in the US there are still these kinds of unresolved problems in regard to the implementation of WITSEC, needless to say that countries, like Turkey, that have established their programs recently are in a more vulnerable position to the potential setbacks involved with their witness security program.

Overview of the Criticism of the Program

Contrary to what has been claimed by the law enforcement community, some have raised objections to lay emphasis on the “omertà” rule, as they think that it has been overstated deliberately by the FBI and US Attorneys. In this context, Block¹ claims that the evidence supports a robust and crucially significant web of relations between law enforcement agencies and organized crime members, in terms of informing on other mobsters. Because those with crucial information are well aware of the fact that they might be eliminated by their closest accomplices unless they kill or flee, they prefer to be informants for law enforcement agencies. According to Block, “*that organized criminals “grass” (inform) to police is more the rule than is the romantic notion of “omerta”*”.²

On the other hand, the relocation practice, regarded as the most effective protective measure by the law enforcement side, has been severely criticized by several scholars. As one of those critics, Lawson³ argues that since innocent third parties are victimized by relocated witnesses, there is now a growing concern with respect to whether the government could achieve equilibrium in the interests of law enforcement and society. She remarks that owing to the lax admittance policies and fairly rapid growth in WITSEC, more and more witnesses have been sent throughout the country, which denotes there is a high possibility that average law-abiding citizens might have contact with them. Consequently, Lawson says, this situation instills increased concern over the fact that relocated witnesses could see this practice as the perfect opportunity and return to their prior criminal life subsequent to their relocation. However, when the victims of

¹ Block, A.A. *Organized Crime: History and Historiography*. Edited in *Handbook of Organized Crime in The United States*, by Robert J. Kelly et al. Greenwood Press: Westport, 1994.

² Ibid, p.49.

³ Lawson, 1992.

relocated witnesses complained to the courts, the courts have ruled that the government could not be held liable on the basis of “*the discretionary function exception to the Federal Tort Claims Act.*”⁴ According to her, whereas it was decided that “*the government had no ongoing duty to ‘take charge’ of or supervise relocated witnesses so as to form the basis for an actionable negligence claim for failure to supervise.*”⁵, the fundamental issue regarding the third party harm is the fact that it is incumbent upon the government to take necessary steps for ensuring the compensation of those who bear physical, financial or other serious harm because of the implementation of the program.

In addition to the relocation problem, Zuckerman⁶ asserts that WITSEC participants who have a long criminal history enjoy exceptional latitude because of their relationship with authorities, which creates a serious problem when they abuse their status and exploit the system. According to him, their criminal past mostly helps them to cut a better deal with prosecutors. At this point, prosecutorial discretion comes into play. A noteworthy aspect of WITSEC is its association with prosecutorial discretion, a very effective criminal procedure. It is such an important factor in the use of WITSEC for the justice collaborators that without it the program might not have been employed as successfully as it has been.

Zuckerman⁷ adds that the witness security program also gives serious cause for concern with respect to the witness selection method and the type of individuals selected as witnesses. For many critics, the cost of winning convictions with justice collaborators like Sammy Gravano poses a disturbing question. These critics believe that, determined

⁴ Ibid, p.1443.

⁵ Ibid, p.1443.

⁶ Zuckerman, 1987.

⁷ Ibid.

desperately to succeed in destroying the corrupt influence of the Mafia, federal prosecutors have little paid attention to public outcry over the people who were chosen as WITSEC witnesses. Today, according to Zuckerman, it is common sense to think that since the beginning of the war on the Mafia, justice has been distorted by an idea that the end justifies the means in order to halt corrupt organized crime activities.

Likewise, inducements offered to witnesses imply that the use of testimony given by protected witnesses should be carefully scrutinized. This is particularly important in the US, since a single testimony can easily lead to conviction of the accused without the need to submit further evidence. Despite the fact that incentives for individuals to participate in the witness security program is not perceived to tarnish the validity of testimony in general, it has been viewed as a problematic issue in certain cases, since WITSEC witnesses have been often blamed for telling law enforcement officials what they want to hear. So as to ensure the integrity of the testimony and of the witness security program in general, today there is a matter of some urgency for the government to lay down rules and standards regarding the right and proper benefits for witnesses, as well as to regulate the conduct of the program.

What Does the Data Reveal About the Program?

As the interviewees highlight, the main advantage of the witness security program is to persuade witnesses to speak up in the court where they may never tell the truth otherwise, because of the potential risk to their life. Indeed, all the interviewees stress that in some cases involving threats witnesses accept to be imposed the penalties of not talking in the court instead of experiencing serious harm at the hands of the defendants or

their associates. Witnesses may even prefer to be sent to jail to be killed or injured. As a result, having a witness security program is seen by all the interviewees in the US and in Turkey as essential in order to bring charges against members of organized crime and terrorist groups. All agree that the witness security program has enabled law enforcement officials to better combat a wide range of organized crime and terrorist groups both national and international. Interestingly, our study shows that although its program was created recently where there has not been enough evidence to evaluate its efficacy, the Turkish side also shares strong feelings and very positive opinions on the program. The interviewees from both sides commonly believe that the witness security program has become a scapegoat because of damaging publication and negative movies from Hollywood. Their most important argument is that there is no other tool available to convince frightened witnesses to testify against the accused in organized crime and terrorism cases. In order to obtain necessary evidence to secure convictions in these cases, the government should be able to prove that if witnesses come forward, it is capable to protect them from any retaliation. With the program, the government demonstrates that it can honor its promise.

The interviewees in the US particularly point out that as the program witnesses have been mostly ex-members of organized crime groups, they know best how organized crime groups deal with the individuals who dare to give testimony against them. These witnesses would never have testified in the courts if WITSEC would not have been there for them. The interviewees highlight that the government established WITSEC because it was extremely difficult before 1970 to get testimony that was crucial to subdue organized crime groups. According to them, for a successful conviction there is a need for getting

evidence and one cannot convince a jury unless he/she brings a person from that crime group to give testimony in the court. On the other hand, for convincing a witness to testify against his fellow mobsters, WITSEC should be offered to him/her. One of the interviewees summarizes his thoughts splendidly in a way that reflects the view of the rest of the sample:

If you look at particularly organized crime, you see that people are at different levels. You have the bigger guys, what we call the big fish, and little fish. Little fish know who the big fish are. So how do we catch these big guys who are buffered and protected? You know they are not seen. It is known that their fingerprints are not directly on any evidence in any criminal activities. But we can get the little guys and if he accepts to give testimony we can offer him a plea bargain and protection by putting him in WITSEC. So it is an important piece of these various components.

However, not all of the interviewees in both countries have shared the same idea that the witness security program is the single most effective tool against organized crime and terrorism. In the US, five interviewees, three of them federal prosecutors, have singled out RICO as a more important weapon in combating organized crime groups, particularly the Mafia. One interviewee stressed that WITSEC is a merely one piece of a larger control policy package. He said that it is an important piece, but it is not the only piece—and in the overall package, there are several other significant tools that complete each other while fighting against organized crime enterprises, such as RICO, wiretapping, undercover operations and informants. In Turkey, the interviewees have different opinions on this issue. Despite the fact that they are confident that the witness security program would meet their expectations, as they have not seen any result of considerable

implementation of the program, wiretapping is recognized by nine interviewees as the tool that is more effective than the witness security program for the time-being.

On the other hand, the American federal prosecutors interviewed for this study stress that the ‘prosecutorial discretion’ along with ‘plea bargaining’ are vital legal tools in their fight against not only organized crime groups but all criminals. They have expressed that with the use of prosecutorial discretion, they easily ensure cooperation of members of organized crime groups. According to these prosecutors, because almost all the potential witnesses in the organized crime and terrorism cases are criminals themselves, without prosecutorial discretion it is almost impossible to use WITSEC for convincing these individuals to testify against their organizations. When asked their opinions on this issue, even the Turkish prosecutors have agreed with their American counterparts on the importance of the prosecutorial discretion and expressed their concerns over the lack of a proper mechanism in organized crime and terrorism cases that is similar to prosecutorial discretion. According to them, because the main target of the Turkish program is indeed the ‘accidental witness’, they are sure that it would be difficult to persuade criminals to give testimony against their fellows, even if they are offered to be put in the program. That is why they assess the prosecutorial discretion as a crucial part of the witness security program. In this parallel, their concern is that the Turkish program with its current condition is not well equipped to be an effective weapon against criminal groups and as a result, may not provide satisfactory results in this fight.

A-Relocation Problem

Seven of eight interviewees in the US support relocation of protected witnesses to new neighborhoods, and one indicates that the support of establishing relocated witnesses in the new communities is crucial, both in terms of integrating them into the labor market and ensuring that they receive the necessary psychological support to help with adjustment to their new circumstances. However, one interviewee has questioned whether it is legitimate to invest scarce public resources into supporting people with a significant criminal past.

On the other hand, one interviewee sees relocation of witnesses as a value judgment and a trade-off like many other things in this field. He remarks that if the government makes a decision that witnesses will not be relocated in certain places, it will have to load them up in other places. Evaluating this unfair practice, he asks why one community should get unfair distribution of these people, while another community does not get any. According to this interviewee, the relocation practice is a manner of very careful planning that requires tackling the issue of what kind of risk these witnesses pose to the community they are placed in.

At this point, this study suggests that permanent witness relocation and the change of identity should be regarded as a last resort and only be used in the most extreme circumstances. Other forms of protection such as short term relocation or court room measures can be considered as alternative options when they are appropriate. Deciding what is proper, however, requires a careful risk assessment and understanding how risks can be mitigated in an area of witness protection.

B-Global Aspect of the Program

These data also reveal that international cooperation in witness protection is necessary, if the international community wants to fight successfully against transnational organized crime as well as global terrorist groups. Because of the work that has already been initiated by the UN, interviewees from Turkey and UNODC suggest the UN as a platform that could bring countries together for this goal. All of the interviewees from the US oppose this suggestion with the idea that since the US has great experience in this area, for obvious reasons it should lead the international community and could do it better than other international institutions.

In particular, international relocation of witnesses is cited commonly by the interviewees as an example to a prospective cooperation area among states. Yet, they add that there is no a uniform global mechanism to regulate the consequences of international relocation as well as other witness protection measures. Therefore, while being optimistic, they do not hide their doubts about the real possibility of cooperation among states in witness protection. First and foremost, they consider this as a very complex issue because of the current international politics. They point to the fact that countries even cannot agree among themselves about the definition of terrorism where some countries openly support terrorism. It means that the current international atmosphere may not be perfectly suitable to cooperate satisfactorily in relocation of witnesses for their protection.

In addition to these issues pointed out by the interviewees, there are other problems mostly stemming from international law and marked cultural and political differences among countries that need to be addressed in one way or another. As a particular instance of international law, as soon as one moves from the state level to the international level, relocation of a foreign witness creates additional conditions. Because

now one state has individuals participating in a criminal case who come from different countries with crossing jurisdictional lines, there may be two or three different jurisdictions fighting with each other about who has jurisdiction over the case and who can make the proper protection of the witness.

Two interviewees from the US also believe that states have to pick the right witnesses to combat global terrorism. It is obvious that when the government employs the witness security program it has to deal with bad guys. This means that it might pose a threat to the US and to the other Western countries to use this program for luring terrorists to cooperate with themselves. Additionally, seven interviewees in the US think that foreign witnesses in the cases of global terrorism would meet serious difficulty to blend into the American landscape. They claim that while even native witnesses are experiencing trouble in becoming accustomed to the place they've been relocated to, it is unlikely that foreign witnesses coming from a very different culture and environment can adapt to their new neighborhoods. Owing to all these troubles, it seems that relocation of a foreign witness has become a question of adapting them to a safe environment ultimately and allowing them to transition into normal life in a secure way.

C-Modification Areas in Both Programs

This study asserts that both the US and Turkish programs have some aspects that require review. For WITSEC, the most important subject that needs to be considered is the fact of who decides on inclusion and exclusion. For some scholars, the answer to this entails a new structure for the program. As one of these scholars, Lawson⁸ claims that a review board is one of the most significant arrangements, which is necessary to restrain

⁸ Lawson, 1992, p.1458.

government discretion by setting higher standards for the selection and exclusion practices in WITSEC. Despite that seven interviewees in the US do not support any modification idea, it is fair to say that this review board, similar to the Turkish witness security board, can supervise and give recommendations regarding the participation and expulsion of witnesses. As an independent body, the board with tangible rules and guidelines for entrance into WITSEC would streamline and improve the essential adjustments for admission. There is a real possibility that any of the governmental bias in favor of offering and tendering protection to the key witness regardless of his/her potential performance in WITSEC would be reduced notably by this review board process. Most significantly yet, it would provide a complete autonomous evaluation of the witness's prospective for success that is more likely to protect and lay emphasis on the public interests.

For the Turkish program, the first and foremost aspect of the program that requires an urgent modification is its target group, which is totally different than WITSEC. As mentioned before, although WITSEC was created for protecting justice collaborators against the Mafia, the Turkish program has been established for “accidental witnesses”. This is the most negative aspect of the Turkish witness security program pointed out by all the Turkish interviewees because of the fact that with its current structure, the program can not be employed as an effective tool to combat organized crime and terrorist groups.

D-Innocent Witnesses in the Program

According to some scholars⁹, innocent witnesses are the ones that experience the utmost intimidation in organized crime cases, particularly the gang related ones. While the attendance and testifying of witnesses is an essential factor in any trial, it can be an extremely frightening experience for innocent witnesses. However, the real intimidation for many witnesses occurs before the court, which is a central element of their neighborhoods, and there are three layers to this problem.¹⁰ At the first layer, there are witnesses who are not prepared to step forward and cooperate with the police, owing to the possibility of intimidation. At the second layer, actual physical attack or damage to property occurs to discourage witnesses from assisting the police with their investigation. Finally, at the third layer witnesses and even their initial families are exposed to life-threatening intimidation, which has become a growing problem in gang and drug-related cases in recent years.

As several experts and this study emphasize, innocent witnesses in WITSEC is another problematic issue. It means that although some features of the program work, it is not designed to take care of innocent witnesses that do not have any association with criminals or criminal groups. So arguably, quite contrary to the Turkish program, it is possible to say that WITSEC is not suitable for ‘accidental witnesses’ who are in a grim situation in the program. While witness intimidation by gang type organized crime groups is a major crisis across the US, a lack of proper protection method for innocent witnesses remains a considerable problem that needs to be addressed urgently because of the fact that this limits the effective and appropriate operation of the criminal justice system.

⁹ Fyfe, N.R & McKay, H. *Witness Intimidation, Forced Migration and Resettlement: a British Case Study*. Transactions of the Institute of British Geographers, New Series, Vol.25, No.1, 2000, p.78-79.

¹⁰ Maynard, W. *Witness Intimidation: Strategies for Prevention*. Home Office, London.

Limitations of the Study and Recommendations for Future Research

While evaluating the witness security program, it should be noted that the majority of the criticisms leveled at the program in the US belong to American scholars and the media, because of the historical background of the program. Since most of the countries have established their programs in very recent years, when we exclude the US there are few scholarly studies that factor the rest of the world. That is also why this research uses the studies largely conducted by American scholars.

Moreover, there are not enough empirical data to enlighten judgments about the effectiveness of the witness security program. Although the US has been operating the witness security program for almost forty years, research on this subject is limited. There is mostly anecdotal and subjective information that depends on mainly law enforcers' assessments. To some extent, this reflects the confidentiality around the practices of witness protection, as well as, it illustrates the absolute impossibility of making contact with witnesses who participated in these programs.

Hence, as most of the experts¹¹ point out, what is badly needed on this issue is any thorough and objective assessment of the effectiveness of the program that is based on hard empirical data rather than unreliable personal accounts of the law enforcement community. It is definitely a matter of urgency that will also cast a light on the various questions about the success of current organized crime policy.

On the other hand, because the Turkish version of the program has been established recently, it is impossible to find any scholarly studies regarding the implementation of the program. Obviously, there is very much need to see the execution

¹¹ Fyfe & McKay. *Police Protection of Intimidated Witnesses: A Study of the Strathclyde Police Witness Protection Programme*, 2000, p. 280.

of the program in Turkey after which it is hoped that there will be more research in this field in the near future.

Closing Remarks

As the study of Fyfe and McKay¹² shows, most of the protected witnesses interviewed make a very positive judgment about the witness security program. According to these scholars, many of the witnesses have emphasized that if they had not participated in the program, they could not have given their testimony against the accused. For some of these witnesses the protection of the program means that no body could hurt them seriously or even kill them because of giving evidence for justice. As mentioned by the interviewees of this study, notwithstanding a number of shortcomings, there is not any ideal alternative to the program. Everybody knows that retaliation is one of the realities not only for witnesses but also for their families and other people in the incidence of organized crime and terrorism. Today, how the governments can protect their witnesses in their coming forward in the name of justice is a seriously growing problem in the world. Therefore, as claimed by the interviewees, without the witness security program, it seems that it is not realistic to ensure a proper protection for the people who assist the government in the fight against organized crime and terrorism.

Additionally, not only does the program of the US keep witnesses in the organized crime and terrorism cases alive but also it gives them another chance to make a fresh start. The Department of Justice's statistic has revealed that 82 percent of criminals who participated in the witness security program have not perpetuated any other crime after entering the program. In comparison with paroled criminals among whom 40

¹² Ibid.

percent commit a new crime after being freed from prison, the witness security program also has a rehabilitation effect on former criminals, better than the parole system.

This research also illustrates that because the law enforcement community both in the US and in Turkey consider that the witness security program is of vital importance in their fight against organized crime and terrorism, they are not so willing to hear the critical comments on the program. This approach prevents them seeing the fact that although great numbers of organized crime members including their bosses have been put through investigation, prosecution and imprisonment, organized crime groups carry on their illegal operations as usual. The most important factor behind this mentality is their view about organized crime that heavily depends on their professional experience and partially on media stories. As they are seen as experts on this issue, their thoughts on organized crime enormously affect policymakers more than any other specialists and thus, control policy is drawn up more by their influence than it is by any hard evidence of the real success.

Finally, this research claims that states need protection programs; but, after examining the robustness of the decision-making process for witness participation, it seems that this decision-making process requires a change of thinking, and therefore an urgent evaluation by the governments. It means that the witness security program should not be employed in every case when alternative measures are sufficient to protect the witness. This is not to say that the witness security program is inefficient, and as a result should be eliminated. On the contrary, it is a fact that the witness security program has saved a great number of witnesses' lives and the lives of their close family members-- something that one cannot put a price on. Hence, the witness security program is, and

always will be, a necessary weapon in combating organized crime and terrorist groups. However, it should be seen that this program, like any other, is just a part of the whole story. To some extent, its success only comes after completing all the stages forming the control policy. These are preventive methods that are considered by some more important than combating measures. In this context, it is a reality and an urgent need that there should be additional researches in this area enlightening many dark sides. It is hoped that in the near future there will be many more studies addressing these issues.

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APPENDICES:

Appendix-1: Questionnaire for Interview with Practitioners in the US

Appendix-2: B-Questionnaire for Interview with Practitioners in Turkey

Appendix-3: C-Questionnaire for UN Personnel

Appendix-4: Summary of Interviews (US)

Appendix-5: Summary of Interviews (Turkey)

Appendix-6: Summary of Interviews (UDOC)

Appendix-7: Table of Interviews (US)

Appendix-8: Table of Interviews (Turkey)

Appendix-9: Table of Interviews (UNODC)

Appendix-10: Consent Statement

Appendix-1: Questionnaire for Interview with Practitioners in the US

1. When you consider the effectiveness of the witness protection program (WITSEC) for combating organized crime groups, how do you evaluate the impact of the WITSEC?

2. Do you agree that without WITSEC it was not possible to crack down on the Mafia in the US?

3. As the head of an organized crime task force/prosecutor/law enforcement agent, do you use the WITSEC as an effective tool against organized crime groups? In this respect, without the WITSEC could you have become successful in fighting against organized crime groups?

4. In your opinion, are there any other tools for law enforcement agencies more effective than the WITSEC in terms of dealing with organized crime and terrorism?

5. Do you think that the WITSEC can also be a powerful tool to fight against global terrorism? In this regard, is it possible to bring the States together for these goals? Who should play the leading role: the US or the UN?

6. In dealing with global terrorism, is it a good idea to blend a foreign witness from a different country and different culture into the American landscape? I mean, how can the WITSEC be used efficiently for the foreign participants of the program?

7. Do you agree with some critics that the WITSEC is compromising the innocent citizens by sending so many dangerous ex-criminals into neighborhoods that do not have any clue about the new comers' past life? And in this perspective, what can be done to minimize the impact of sending ex-criminals into new neighborhoods?

8. Again, what can you say against the critics that they claim that this program has become an easy escape-gate for the criminals to get away with their crime without punishment?

9. In your opinion, in terms of using the WITSEC against organized crime syndicates, should there become any variation between the Mafia and other violent organized crime groups, such as street gangs or drug cartels? I mean, is it a good idea to put the different class of criminals into the WITSEC without thinking of the differences between the Mafia, and other organized crime syndicates in terms of their potential violent behavior in their new identities? Isn't it possible to offer the different levels of protection, such as short term relocation for witnesses involved in street gangs instead of changing their identities?

10. Are you satisfied with the current implementation of the WITSEC by the law enforcement agencies? If no, which aspects of the WITSEC need to be modified?

11. Some of the critics claim that when the WITSEC is assessed in terms of cost-benefit analysis, it is much more expensive for tax-payers than its real value. Do you share this belief?

Appendix-2: Questionnaire for Interview with Practitioners in Turkey

1. According to you, why did Turkey need to establish a witness protection program? Do you really believe that while combating organized crime and terrorism, Turkish law enforcers will benefit greatly from this program?

2. When you consider the effectiveness of the witness protection program for combating organized crime and terror groups, how do you evaluate the impact of this program?

3. Some of the critics in the US say that when the witness protection program is assessed in terms of cost-benefit analysis, it is much more expensive for tax-payers than its real value. Do you share this belief?

4. There have been serious debates in the US regarding the effectiveness of this program for fighting against organized crime and terrorism. Law enforcement officials find the program an invaluable tool to fight against organized crime and terrorism, whereas several scholars do not share this idea and criticize the program in various aspects. How much are you aware of these debates?

5. Do you think that the witness security program can also become a powerful tool to fight against global terrorism and transnational organized crime? In this perspective, how can a successful cooperation be achieved in the international arena and who can play an important role, UN or US?

- 6.** In your opinion, are there any other tools for law enforcement agencies that can be more effective than this program in terms of dealing with organized crime and terrorism?
- 7.** There are some critics in the US who claim that the witness protection program is compromising the innocent citizens by sending so many dangerous ex-criminals into neighborhoods that do not have any clue about the new comers' past life. Do you agree with them? If yes, what can be done to minimize the impact of sending ex-criminals into new neighborhoods?
- 8.** There are a lot of ongoing debates in the US that in terms of using the program against organized crime syndicates, there should become some variations between the Mafia and other violent organized crime groups, such as street gangs or drug cartels. In this context, is it a good idea to put the different class of criminals and terrorists into the witness protection program without thinking of the differences among the Mafia-type organizations, the other organized crime syndicates, and terror groups? Isn't it possible to offer the different levels of protection, such as short term relocation for witnesses involved in organized crime and terrorism instead of changing their identities?
- 9.** In your opinion, with current implementations of the program, might this program need any modification?

Appendix-3: Questionnaire for Interview with Practitioners in the UNODC

1. In your opinion, why have states needed to establish their witness protection program?

2. Why did the UN need to set up a witness protection unit and how does it use this program?

3. In your opinion, can the witness protection program be used an effective tool in the fight against transnational organized crime and global terrorism?

4. What can be done to bring states together for cooperation in the witness protection program?

5. While using witness protection program against global terrorism and transnational organized crime, in general what types of problems can occur? I mean for example, is it a good idea to relocate a foreign witness to another country?

Appendix-4: Summary of Interviews (US)

1. When you consider the effectiveness of the witness protection program (WITSEC) for combating organized crime groups, how do you evaluate the impact of the WITSEC?

Former State Prosecutor: I think it is very useful as a program. Without it we would not have made some of the most successful prosecutions that made against organized crime in the last 20, 30 years.

Assistant Attorney: We needed to have a place or a way to hide and to give a life to people who are willing to cooperate with us against all kinds of organized crime syndicates. WITSEC has provided us this opportunity.

Assistant Attorney: The program is crucial for the governments as well as for witnesses. It provides the best chance we can give witnesses. If the program was not there, they would not cooperate. The program also gives them a chance to go straight and create a new life for themselves.

FBI Agent: WITSEC, and its ability to give former criminals a new identification and a fresh start, has turned crucial witnesses from being uncooperative to being cooperative against organized crime groups. So it has been a vital program.

FBI Agent: WITSEC was established, because witnesses have been threatened since the beginning. Organized crime groups are always interested in keeping witnesses from cooperating against them.

Former FBI Agent: Before WITSEC, the government had witnesses who were simply afraid to cooperate for fear that the Mafia could retaliate against them. The program changed this. In order to obtain necessary evidence to secure convictions, you have to

have individuals who are directly knowledgeable about activities of organized crime groups. From outside, you may not see and connect certain people to certain criminal activity. WITSEC allows the government to have individuals who can have that inside knowledge, since they have personally involved in activities of criminal groups.

Former Assistant Attorney: If there would not have been retaliation from organized crime groups, then the government wouldn't need WITSEC. This program is a reason to testify and offer evidence about criminal activities and then protect those people from any retaliation stemming from their testimony.

Lieutenant: Because organized crime groups are entrenched in the society and have existed for decades, WITSEC type programs are essential tools against these groups.

2. Do you agree that without WITSEC it was not possible to crack down on the Mafia in the US?

Former State Prosecutor: Without WITSEC we would not be anywhere in near as effective as cracking down on the Mafia. We were doing cases against the Mafia in the past without WITSEC. But the cases were not as successful as they had been. With using WITSEC, we sent many notorious mobsters behind bars.

Assistant Attorney: Once the government developed WITSEC prosecutors have been able to find witnesses who could tell a jury how the Mafia has been structured and what roles its members have played. It has been very compelling to a jury to hear that kind of testimony.

Assistant Attorney: The importance of WITSEC has been absolutely crucial to the success of combating the Mafia. When the government got a true picture of the size of

the Mafia, its goals and the way it thinks there is no question that without the witness security program, they would not have been as successful as they have been.

FBI Agent: The US established WITSEC because it was extremely difficult before 1970 to get testimony that was critical to reach the Mafia. There is no question that it would not have been possible to get control of the Mafia without the witness security program.

FBI Agent: Without WITSEC, it was not possible for us to reduce the power of the Mafia. Our witnesses are mostly the Mafia members themselves so that they know best how the Mafia deals with the individuals who dare to give testimony against them.

Former FBI Agent: The Mafia was a very serious problem in the US before, and it is a fact that it would have been entirely different trials if we didn't have WITSEC in our arsenal.

Former Assistant Attorney: The government saw that without witnesses we would not have gone after the Mafia and the only way the government could do it was to establish WITSEC.

Lieutenant: It is possible to say that the history of the Mafia has two parts: before and after WITSEC. The witnesses of the Mafia trials would never ever have testified in the courts if we had not had WITSEC.

3. As the head of an organized crime task force/prosecutor/law enforcement agent, do you use the WITSEC as an effective tool against organized crime groups? In this respect, without the WITSEC could you have become successful in fighting against organized crime groups?

Former State Prosecutor: I had used WITSEC successfully several times, especially for fighting against the Mafia families in the New York State, one of which was Gambino family. In this case, we sent 62 mobsters behind bars. We used WITSEC to convince the star witness for coming forward against his fellow mobs.

Assistant Attorney: I have used program with a great success when all other options failed. This program is very expensive. Therefore I don't offer it to all the witnesses.

At the same time, you cannot use the WITSEC for the confidential informants unless their identity is found out or there is a need to use their testimony. We use this program for justice collaborators, and sometimes for drug dealers if they have any knowledge about certain drug cartels.

Assistant Attorney: I have used the program whenever it is necessary to convince a witness to testify against certain organized crime group. Without the WITSEC program, we could not have become successful in this fight against organized crime groups.

FBI Agent: We have used WITSEC whenever it's been necessary for a certain case. WITSEC has been one of the most important tools in the way we prosecute successfully the Mafia cases.

FBI Agent: I had used WITSEC in some cases, since having a witness is quite important and difficult in the organized crime cases. If you have that then you need to protect your witness. Without WITSEC we could not protect our witnesses. It means that it was a hundred percent certain that we would not get convictions.

Former FBI Agent: Whenever we handled organized crime cases, we knew that we might need the WITSEC program. And we used it several times with a great success.

Former Assistant Attorney: We have used the witness security program especially against the Mafia with a great success. It is certain that we cannot convince witnesses without offering the program.

Lieutenant: Gangs are serious problem in our jurisdiction. In this fight against gangs, our witness security program is our one of the most valuable tools that we use.

4. In your opinion, are there any other tools for law enforcement agencies more effective than the WITSEC in terms of dealing with organized crime and terrorism?

Former State Prosecutor: We have a whole range of ways that we gather evidence against organized crime groups. I think wiretaps are also very important tool. If you could do a case with wiretaps, then you would not need WITSEC. Because you are only making hidden records and no one is cooperating with you. The value for WITSEC is that you can use it to protect person who are cooperating with you. If you don't have a cooperator but you are able to gather evidence through wiretap or bug then you don't have anybody that you need to put in the program. But as soon as people began to cooperate and you want that then you are going to need WITSEC.

Assistant Attorney: I think WITSEC is a piece of larger policy sort of package that have many pieces. It is an important piece but it is not the only piece. It can not operate on its own. And among our arsenal, RICO is the most important one against the Mafia. Prosecutorial discretion along with plea bargain is also a very effective weapon.

Assistant Attorney: WITSEC is important, but I think our most important tool to fight against not only organized crime groups but all criminals is prosecutorial discretion and plea bargaining , which is our ability to make decision how we resolve crimes. The other

crucial tool for us is RICO as the most effective weapon against the Mafia, in particular. WITSEC is second stage after these tools.

FBI Agent: There are several other important tools for law enforcers in the fight against organized crime groups. These are: RICO, wiretapping, undercover operations and informants. But in my opinion, wiretapping is the most important among these tools. WITSEC is also important so that without WITSEC, you cannot even give any meaning what you hear in the wiretap.

FBI Agent: All the tools mentioned here are the parts of the same picture, but RICO is of the greatest importance in the fight against particularly the Mafia. Sometimes, it depends on the case you are dealing with. But in over all, RICO is our first and foremost weapon against criminal enterprises.

Former FBI Agent: For American organized crime, the witness security program is certainly an important weapon. But I think wiretapping and RICO are more important than the witness security program especially for the Mafia cases.

Former Assistant Attorney: If you deal with symptoms of the problem rather than causes, the witness security program is a very important tool, but not as important as prosecutorial discretion and plea bargaining. RICO is also vital, especially against the Mafia.

Lieutenant: In the fight against organized crime, all the tools such as RICO, wiretapping, undercover operations and informants are important and they all have different functions.

5. Do you think that the WITSEC can also be a powerful tool to fight against global terrorism and transnational organized crime? In this regard, is it possible to bring the States together for these goals? Who should play the leading role: the US or the UN?

Former State Prosecutor: Yes. Because I think that just like the Mafia many of these terrorist organizations are in it for the long term. They are not going to disappear when you take out this particular group of criminals or terrorists. The criminal or terrorist organization is going to continue to exist and since the organization exists people who will testify against the members of the organization will be at risk.

Countries can work together for cooperation and the US may lead the international community, since it has a great experience on the issues of witness security program.

Assistant Attorney: Yes, it is possible. But as soon as you move from the state level to global level it creates additional conditions. Because now you have individuals participating in criminal activity who come from different countries with crossing jurisdictional lines, so you have this issue about who has jurisdiction over a particular case. We don't have a uniform global mechanism to regulate these consequences. What we have is agreement between individual countries. That makes it very much complicated to use this procedure. But I think the US play a significant role in this area than any other countries.

Assistant Attorney: The answer is may be, but not definitely. To my mind the witness security program functions to make the witness secure. When you talk about cross-national activity what you need is to have the ability to place a witness anywhere in the world.

When you talk about global terrorism, it is a very different issue. But in any way, I believe that WITSEC type techniques can function concerning any enterprise.

States can bring together for this goal. The US, off course, should play the leading role.

FBI Agent: It is a fair question and the techniques of WITSEC can be transferred but it is more complicated than that, depending on what you are doing. How foreign witnesses assimilate into another country is a question, their language skills are question.

Cooperation among countries is possible. The US should lead the other countries because of its experience in this area.

FBI Agent: Yes, and it should be. There is a need for international cooperation among countries, just like international criminal groups and terrorist networks. International cooperation in witness protection is necessary, if the international community wants to fight successfully against transnational organized crime as well as global terrorist groups. The US can, and should be, in a leading position in this area.

Former FBI Agent: As in the fight against domestic criminal groups, the witness security program is also very important in the fight against global terrorism and transnational organized crime groups. For example, we have many from these criminal enterprises in the greater New York City metropolitan area, such as Russian Mafia, Albanian Mafia, and Vietnamese Mafia and so on so. Many of these groups have links with third countries. At this point, international cooperation is necessary. I think that countries can get together for this goal, and the U.S could lead the international community for this.

Former Assistant Attorney: I do not think that existing international atmosphere is suitable for a positive role of witness security programs, especially in the fight against global terrorism. Today, states even cannot get together on the definition of terrorism. On the other hand, for transnational organized crime, how can we guarantee that we can protect these international witnesses, while there is an international criminal organization looking for them?

Lieutenant: It is possible but it is much more complicated when you get into the global and transnational content. We don't have a uniform global mechanism to regulate these consequences. What we have is agreement between individual countries. That makes it very much complicated to use this procedure.

Because of its global power, the US can play a key role in this area.

6. In dealing with global terrorism, is it a good idea to blend a foreign witness from a different country and different culture into the American landscape? I mean, how can the WITSEC be used efficiently for the foreign participants of the program?

Former State Prosecutor: It is going to be very hard for foreign witnesses to adapt this country. When they come to the US many people first tend to settle in an area where there are other people from their native country. It is a support network. And it is normal. The problem with doing that in the WITSEC context is that they may be the very group that you need to protect your witness from.

Not to say it couldn't work. But I am just saying that it would really depend very much on the individual and I am sure there are a lot more programs can try to help people assimilate, like extensive language classes.

Assistant Attorney: How you can blend these people from foreign countries into the American landscape is a serious problem. They will not fit into the community they are relocated in this country. You cannot put them their own community as well, if there is in the U.S. What could you do? I think the best way is to give these people a large sum of money and tell them to hide in a better place.

At the same time, you have to pick the right guy to combat terrorism. When you use witness security program, then you have to deal with the bad guys. I don't think that the US and many other Western countries would prefer to use this program for luring terrorists to cooperate with them.

Assistant Attorney: For terrorism, relocation of foreign witnesses is a serious headache when you put them into WITSEC. There should probably be better ways to do it. You know if you are going to take somebody from Pakistan or Iraq and then put them in Illinois and expect that he is going to be able to adapt to that environment, that doesn't work.

FBI Agent: I think WITSEC is very difficult even the people who are thoroughly Americanized and have been here for many generations.

So It depends on how strong those cultural ties and how adaptable person is to changing and assimilating into a culture, but I can see it being very hard.

FBI Agent: That is also difficult. Because what you are going to have is that you are going to take an individual and may be his family as well and you are going to remove them from their country, from their culture and then you are going to place them somewhere that is very strange country to them.

May be as an option we should not put them rural areas. We can find them cities. If you look at across the cities in the US, you can find certain kinds of communities and cultures that may work for foreign witnesses.

Former FBI Agent: I don't think that you can use WITSEC for foreign terrorists in dealing with global terrorism. We have to be realistic on this issue. Where can you send them to Montana, North Dakota? When you do that next day you might have to take them and relocate somewhere else.. There is no way that they can blend into the community they relocated. You cannot allow them to live in their community as well. And you cannot find any Marshals to take proper care of foreign witnesses from Middle Eastern countries.

Former Assistant Attorney: It is complicated. The program is not flexible enough to deal with that on the human side.

The only solution is to find a volunteer country with similar landscape to relocate these foreign witnesses. I am sure that it will be the best way for them as well as for us.

Lieutenant: What we have done in the US is that we take organized crime figures that mostly come from urban paces and we put them in a rural area. It is totally different culture for them. Lifestyle is different, and life in these communities is very difficult. Because you can imagine, you have somebody from another country that tries to fit in. It is very difficult and not realistic.

The program is one thing. But the reality of life is harder than what you expect. You don't want these people unhappy. You don't want them to drop out of the program.

7. Do you agree with some critics that the WITSEC is compromising the innocent citizens by sending so many dangerous ex-criminals into neighborhoods that do not have any clue about the new comers' past life? And in this perspective, what can be done to minimize the impact of sending ex-criminals into new neighborhoods?

Former State Prosecutor: I don't believe that WITSEC is being offered to just any criminal who might have information about other criminal. They do fairly extensive screening process to my knowledge that decides whether or not you are suitable for WITSEC.

There is Sammy Gravano said as an example. But I don't think people thought that Sammy was like a serial killer who took pleasure from killing. Killing was a matter of business for him. If you put him in a different business hopefully, he wouldn't do that. I don't think that the program is dumping homicidal maniacs in the middle of unsuspecting neighborhoods. They are not going to let people that can do that and fit that category.

The rules are also fairly strict and if you go into the program and you commit additional crimes that is the violation of the program and you will now be out of the program, which exactly what happened to Sammy when he committed drug trafficking crime. He was kicked out of the program and he is in jail now.

Assistant Attorney: It is not true. There is zero tolerance and people are kicked out as a rule. Not just this, even contacting a relative is violation of the program. You can be kicked out.

Also relocation of ex-criminals is a value judgment. It is a trade-off like many things in this field. If you made a decision that we are not going to relocate these people in certain places, that means, you are going to load up people in other places. That's not fair. Why

should one community get unfair distribution of these people and another community does not get any?

Assistant Attorneys: The problem is that these people do not have any skill to find employment because of their involvement in criminal activities since their early ages. But it is another fact that for the most part, these people do not stay in the program too long. They are sometimes bothered by the restrictions on the program and other times they miss their old neighborhoods. As a result, they are either kicked out or leave the program themselves. So contrary to public opinion, there are not so many people in the program. And also, we do not recommend the Marshals Service to admit the criminals who might pose threat to the society into the program. We eliminate the bad guys from being accepted into WITSEC by using various methods.

FBI Agent: I know Marshals Service is applying a physiological evaluation test to the potential witnesses. And this helps to prevent future disasters that might happen in the new communities. Yes there is a risk. But we should rely on screening process. Witnesses know that this is their last chance, and if they were in trouble with the law we would not help them. To be honest, I don't want any protected witnesses to be relocated in my neighborhood. But, it doesn't mean that we shouldn't send them over new communities.

FBI Agent: We have to take that risk. I can say that this is a reasonable risk which is vastly outweighed by the potential benefits. You cannot crack down on criminal organizations without the help of these people. But we try to reduce the risk as possible as with the appropriate tests applied to justice collaborators. They are not accepted into the program unless they pass all the relevant tests.

Former FBI Agent: You don't take the position that somebody is going to go away for a hundred years. They are not going to be in jail for the rest of their lives. So I think the real question is the feature of the program which really isn't the program that they got a reduction of their sentences. So people say they got the reduction of the sentences and shouldn't have been out. And then, where you put them in this neighborhood. I know we are not compromising neighborhoods but it is a concern and we have to be very careful about it.

And also, vast majority of people in the program are not violent and have not committed any crime, because they are families of individuals who did commit a crime. It is not as black and white as it is.

Former Assistant Attorney: These kinds of witnesses mostly kill the people who are criminals themselves rather than ordinary innocent citizens. And sometimes, even they use their chance for better life and never participate again in any criminal activity. I know a person who killed 7 people and after admitted into the program, he never committed a crime again and lived as an honest citizen.

Lieutenant: Yes, there is always a danger. But the main issue that any person in the program is going to have is economic and if they are trained to be able to support themselves and they would do better in that one.

8. Again, what can you say against the critics that they claim that this program has become an easy escape-gate for the criminals to get away with their crime without punishment?

Former State Prosecutor: No, going into the program is hard. What it costs people if you seriously think about what it would cost you to give up all contacts for the rest of

life, with your family, with your friends. That is not easy. So, I don't think it is an easy out for criminals to participate in the program.

Assistant Attorneys: It is not true and that kind of criticism is not right. WITSEC is not a free jail-card. And also the life in the program is particularly easy all the time because of the fear and the pressure and the need to change who you are. It is very hard thing to change your life like that.

Assistant Attorneys: The people who know this program do not recommend it to the others. Additionally, we don't use the program for every criminal. We have an elimination process. If the information provided by a criminal is vital to destroy the criminal organization then we convince this person to give testimony before the court. Once we got the testimony, we evaluate the situation. It means that if it is seen necessary to put this guy into WITSEC, then we take him under protection. Otherwise, we dissuade this guy from entering the program.

FBI Agent: I don't agree with this judgment. Like Gravano, some criminals might get away with their crimes. But with the help of them we catch all the organization. With Gravano's testimony in the court, at least 30-40 people including the boss were and taken off the streets and locked up. Without a witness we cannot capture all the people in the group. We need this program to score convictions.

FBI Agent: Sometimes we have made mistakes, but these are rare and in general, we are on the alert for the criminals who pose a great danger to the public. This program is not for every criminal.

Former FBI Agent: I don't agree that. Because all the program does is protect a person that the government and a judge have said. I don't agree the program is being used as an escape-gate for people who have committed crimes.

Former Assistant Attorney: It is the job of the enforcement agency and prosecutors to make sure that this people have been honest about what they have told the government and the information that they have given is honestly evaluated by the government.

There are a lot of misconceptions about the program. I think movies that have been made about the program look like the people in the program have a cushy life. They have a high-paid job and you don't do anything that the government pays all the bills. That is not really the way it works. The government gives you a new identity, relocates you and helps you find your first job that may be below your expectations. No one makes your life easy in WITSEC.

Lieutenant: I disagree with that. I think that prosecutors are thinking very carefully what they are doing when they make this offer to someone and they weigh that decision against what are going to get out of this.

I would say to the critics that if you don't want to do this what would you propose? How do we guarantee the life of people that come forward and how would we be able to protect them? Because we know both the incidences of terrorism and organized crime that the retaliation is one of the facts, not only for those individuals but for their families and other people.

9. In your opinion, in terms of using the WITSEC against organized crime syndicates, should there become any variation between the Mafia and other violent organized crime

groups, such as street gangs or drug cartels? I mean, is it a good idea to put the different class of criminals into the WITSEC without thinking of the differences between the Mafia, and other organized crime syndicates in terms of their potential violent behavior in their new identities? Isn't it possible to offer the different levels of protection, such as short term relocation for witnesses involved in street gangs instead of changing their identities?

Former State Prosecutor: I think it depends on the long term viability of the organized crime groups. I mean, the Mafia has existed for decades and will exist and therefore, your long term security may involve the WITSEC program.

May something less formal for street gangs would work, such as short-term relocation? I guess. If you have a gang member as a witness who have been shooting people over 50 bucks and drop him in the middle of unsuspecting community after putting him into program then, I really will be worried about that. We have to weigh of these, about individual suitability for the program, the necessity for putting him in the program.

Assistant Attorneys: We know from long history with the Mafia that they retaliate and they have long memories. We don't know that much about street gangs, which is relatively newer phenomenon. But street gangs have very local lives. Even though some of them become a national phenomenon, they do not operate as a national organization. They are individual groups.

What I'm saying is that it has to be looked at cases by cases and the judgment about the value of the testimony.

Assistant Attorneys: I personally do not recommend using this program for gang members. I agree on this issue that the community might be at risk if there is a former

gang member is relocated there. Moreover, think about that how a relocated person with tattoos throughout his body can live in a Mid-West community. It is not possible.

Short-term relocation may be a better alternative for gang members.

FBI Agent: The system is not perfect but that doesn't mean that WITSEC shouldn't be used for gangs. Yes, these kinds of problems are real and it is true that some gangs have more violent character than the others. But each situation should be evaluated differently. On the other hand, sometimes short time relocation, without applying the procedure of WITSEC can be a solution. We are doing this time to time with giving some amount of money to a witness and sending him far away from the gang's domain.

FBI Agent: I think the better question is that witness security should be witness security and in that there should be a class of individuals that qualify for that. There should be some lesser programs created to deal with short term relocation for street gang groups instead of permanent relocation, and changing their identity could be done in a reduced program, in a smaller program.

Former FBI Agent: It depends on their ability to find you and how far they reach you. And I do think the answer is there should be variations but again, the program is set up to do to protect any body that is put into it.

Former Assistant Attorney: I know from wiretaps that when the Mafia kills somebody, it is a fairly considered decision that has to go up to several layers of chain of command to be authorized. On the other hand, street gangs will kill you because you looked wrong way and didn't give them proper respect. That is totally different kind of threat to the community from the Mafia, in my opinion. So I would be less likely to use WITSEC for these people. And it is also age factor.

Lieutenant: I would argue that you should take each situation individually to evaluate. But if you look at the individual examples, how important this particular individual and what it is we are trying to achieve and what do we think the risk is. If the person testifies for us and provides evidence to us, what risk is that constituting into them? Is this a short term thing or might it be long term thing?

10. Are you satisfied with the current implementation of the WITSEC by the law enforcement agencies? If no, which aspects of the WITSEC need to be modified?

Former State Prosecutor: By and large I am satisfied with WITSEC. As a state prosecutor, my experience was that I wish that the program were more available to the state prosecutors. But it is very unusual for state prosecutors without getting federal Attorneys involved. And when they involve they usually want to overtake the case.

Assistant Attorneys: May be it is better to structure the program in different levels. And it is better to make it a little more flexible and little more responsive to the needs and they may at the end of the day it might be more effective.

Assistant Attorneys: The government should constantly be evaluating the program. However, I am not prepared to say from the onset what the modification should be. The modifications should follow from careful assessment about how the program is working and what the cons and pros are, as well as strengths and weaknesses.

FBI Agent: I am satisfied with the current implementation of the WITSEC, and there is no need a comprehensive modification. My only criticism is about the screening process of witnesses, which lasts at least three months. It is really long for us.

FBI Agent: I don't think that the program needs to be modified. But I know there are some case studies that if Marshals Service looks at it they may want to change something. And those changes may save them money and may also make their system a little better.

Former FBI Agent: The program protects the participants. Office of Engagement Operation in the Department of Justice oversees the program. I know the people over there are very capable and very good and they have a huge job. There is no need for any modification.

Former Assistant Attorney: There is no need to modify it. Paranoia is possible because the media always fuels speculation. When a protected witness has committed a serious crime, the media stirs up public anger. Because of this news, people suppose that we accept all the bad guys into the program.

Lieutenant: If you are in the program you are safe. You can sleep at nights. That's all the government promises. It doesn't promise a job or a car or comfort. But it protects you. I think the program gets blamed as part of the government procedure. But I wouldn't blame the program for that.

11. Some of the critics claim that when the WITSEC is assessed in terms of cost-benefit analysis, it is much more expensive for tax-payers than its real value. Do you share this belief?

Former State Prosecutor: When you think about the fact that the government wastes a lot of money for nothing how can you say that WITSEC is expensive?

Assistant Attorneys: Yes, it is a very expensive program. But, we can not operate without it. This program is indispensable for us.

Assistant Attorneys: When you look at from cost-benefits, we know what the cost is in terms of dollars. We can measure that. The benefit is much more difficult to measure. Do you think it is important that we have put X number (of) people who were engaged in criminal activities in prison. What is important that for you? Is it worth that amount of dollars or not. Again that is a judgment we have to reach.

FBI Agent: Even though WITSEC is expensive and sometimes bring misery to the life of the innocent third parties, the government cannot fight against criminal and terrorist groups effectively without it.

FBI Agent: I think that if the government puts emphasis on the fight against organized crime and terrorism, under these circumstances the cost comes second.

Former FBI Agent: WITSEC is a crucial criminal justice tool for the law enforcers. So, the cost of the program can not be a matter of great importance to the government.

Former Assistant Attorney: A witness is protected by the FBI up until entering the program. So, the FBI spends millions as well. Why don't you look at that money, if you are concerned for public money?

Lieutenant: This is a very difficult question to answer and much depends on the broader societal context and how the 'effectiveness' of witness protection is assessed/measured. My own view is that protection programs have saved the lives of witnesses and members of their close family and that one cannot put a price on this.

Appendix-5: Summary of Interviews (Turkey)

1. According to you, why did Turkey need to establish a witness protection program? Do you really believe that while combating organized crime and terrorism, Turkish law enforcers will benefit greatly from this program?

Prosecutor: Yes, off course, Turkey will benefit from the witness security program. It is obvious that Turkey has been late to establish the witness security program. In fact, although the program was planned to be created in the Code of Criminal Procedure of 2005, it lasted three years to set up it. If we didn't become late to establish the program, there might not be so many unsolved organized crime cases, many of which could have been resolved until now.

Prosecutor: There are a lot of incidents that cannot be solved in organized crime cases. There must be evidence to resolve these cases. In any of these cases, the most important evidence is the witness of that case. Therefore, the witness security program is necessary to convince the individuals to be witness in the organized crime investigations.

Prosecutor: Obviously, any effective criminal justice system must include adequate measures to protect witnesses. This is particularly true when it comes to fighting against organized crime groups and terrorist networks. That is why Turkey has established its witness security program recently.

Prosecutor: In any criminal justice system, witnesses provide can damaging testimony against the defense. Especially some witnesses' testimony may be connected to high-level cases, such as organized crime and terrorism. It means that there will always be a

need for witness protection measures. Therefore, I think Turkish law enforcers will greatly benefit from the program.

Official: The high level of retaliation to witnesses in the cases of organized crime can directly be related to the lack of proper protection mechanism in Turkey. In my opinion, the witness security program will fill this gap.

Official: Turkish law enforcers have gained a very effective tool in their fight against organized crime and terrorism. I am confident that this new tool will help their fight. Until recently, the witness has had negligible impact on criminal proceedings in comparison with prosecution and defense. I know from my own experience that judges always considered the defendant first. The witness was not seen different than material evidence in the file and hardly treated with consideration. This, in turn, led the government to become concerned in the fight against organized crime groups and terrorist networks. It paved the way for the government to create the witness security program.

Police Official: Turkey has seen a dramatic increase over the past several years in organized crime violence and organized crime homicides as well as witness intimidation regarding these cases. The government has realized that this increase in organized crime cases along with witness intimidation has deserved special attention. As a result, witness security program has been established to address these problems by the government.

Police Official: Although Turkey has fighting against terrorism and organized crime for a couple of decades, there was not a comprehensive witness security program to protect witnesses from any retaliation. It was definitely a need for law enforcement agencies as well as public prosecutors.

Police Official: Despite the fact that the government has had serious problems in the cases of organized crime and terrorism in terms of providing necessary protection methods for witnesses, it did not have a witness security program. Therefore, Turkey had to create the program to enhance its criminal justice system.

Police Official: In reality, more than Turkey was aware of the need for a comprehensive witness security program, we promised EU to establish this program. It doesn't mean that Turkey did not have any intention to create the program, but it is certain that it might take several more years to establish it.

Police Official: We should have the witness security program before. Honestly, the real factor behind the establishment of our program is EU. Without pressure of EU, it might not be possible to have the witness security program for law enforcers.

Police Official: It is obvious that the witness security program provides the best means of protection for witnesses and their family members. After years of delay, Turkey became aware of this fact and then created its own program.

Police Official: Once organized crime has become a serious threat in Turkey after the 90s, the government inclined to create a witness security program to provide specific protection for witnesses of organized crime cases.

2. When you consider the effectiveness of the witness protection program for combating organized crime and terror groups, how do you evaluate the impact of this program?

Prosecutor: I believe that if we can modify some aspects of our witness security program, we can use it against both organized crime terrorist groups very effectively,

since the program will result in the convictions of important members of organized crime groups and terrorist networks.

Prosecutor: There is no question in my mind that witnesses play a key role in the cases of organized crime as well as terrorism. However, in spite of their importance they may be described the forgotten pillars of the criminal justice system. Because of this fact, the witness security program has been established in a variety of countries across the world and become an indispensable tool for the governments.

Prosecutor: These kinds of measures may be seen as unusual services offered by the government because of their complicated structure and formation. Yet, we should keep in mind that the fight against organized crime and terrorism need these types of unusual methods and tools.

Prosecutor: Because our program is a new one, we cannot measure its success yet. However, I can say this: when I have visited some countries in Europe having the witness security program in their arsenal, the officials in these countries said that without the witness security program there is no way that they could combat organized crime effectively. I am a hundred percent sure that the same result will occur in our country as well. But first, we should be able to see the implementation of the program.

Official: The protective arrangements for witnesses in the past laws could not earn people's trust in the terrorist organization as well as organized crime groups, because the government was unable to promote awareness of the Laws adequately and properly. This witness security program can change this and will definitely promote protection of witnesses in the cases of organized crime and terrorism.

Official: There has been witness intimidation in the cases of organized crime as well as terrorism in this country. The witness security program will enhance the Turkish law enforcers' ability to deter witness intimidation and provide services that will protect witnesses from any retaliation.

Official: The role of witnesses in assisting law enforcement agencies and giving evidence in court is vital to the success of criminal prosecutions, especially in the cases of organized crime and terrorism. There shouldn't be any concern in these cases about the intimidation of witnesses from giving evidence. In this respect, I think the witness security program will have a positive impact on the Turkish criminal justice system.

Official: Witnesses occupy a very important position in the criminal justice system. This position becomes much more important in organized crime and terrorism cases because of the fact that in these cases, witnesses and even their families face serious retaliation. Without a kind of witness protection mechanism, there is not possible to provide the witness participation in the cases of organized crime and terrorism.

Official: Years of experience have showed us that in the cases without a witness testimony a conviction would almost become impossible in organize crime. If we can use this program effectively Turkey will definitely benefit from it.

Official: As long as we need witnesses in the cases of organized crime and also terrorism, we have to rely on witness security type extra-ordinary measures. If we can protect a witness with the help of the program it means that this program is an effective one and nobody can question its effectiveness.

Police Official: The severity of organized crime and terrorism cases has showed that an effective means of protection cannot provide without a witness security program. This is

true all over the world, since the characteristics of organized crime and terrorism are ever much similar across the globe.

Police Official: The specific advantage of a witness security program for the criminal justice system is to help witnesses speak up in organized crime cases in the court without any fear of retaliation. It means that it is unnecessary for prosecutor to worry about convincing witnesses for giving their testimony in the court.

Police Official: I know from my past experience that if there is cases that involve serious intimidation, witnesses often choose to accept the penalties of not giving testimony in the court instead of risking serious injury or worse at the hands of the accused or their associates. Having a witness security program is considered as vital by law enforcers all over the world.

3. Some of the critics in the US say that when the witness protection program is assessed in terms of cost-benefit analysis, it is much more expensive for tax-payers than its real value. Do you share this belief?

Prosecutor: We need to see the implementation of the program before what is said about it. It may be an expensive program. However, if a criminal organization would be eliminated with the help of the witness security program, nobody can claim that the program is a waste of tax-payers money.

Prosecutor: In my opinion, our first priority is to take every necessary measure to protect the witnesses in the name of fighting crime. Financial cost is not so important for us. I think our government is in a better shape to allocate enough resources to combat criminal organizations than many countries.

Prosecutor: The actual cost of the witness security program will be parallel with the number of witnesses who benefit from this program. According to our estimates, there will be much more application for this program in the near-future, which means that this would cost a serious amount of money. If this program can be implemented thoroughly and then the power of criminal organizations can be diminished, the cost of the program would not be so significant. What I am trying to say that our country does not avoid any cost while fighting against organized crime.

Prosecutor: The program may cost a lot of money. However, it will help law enforcement agencies in their fight against terrorism and organized crime. I think it is fair to say that you cannot measure the success of control policies while combating these two menaces.

Official: The witness security program is very important for witnesses of high profile cases such as organized crime and terrorism. At this stage, financial cost cannot accept as a burden.

Official: Organized crime and terrorism are high profile crimes that need to be tackled without any financial consideration.

Police Official: Witnesses in organized crime and terrorism cases are always at risk. That is why they do not want to come forward and testify in the court against the members of organized groups and terrorist networks. Therefore, to ensure their protection the government should provide every means available without any financial consideration.

Police Official: After decades in this fight, the government saw that law enforcement agencies and public prosecutors have been in a dire situation for providing protection for

their witnesses. The program has established to guarantee this protection. As a result, financial burden cannot be thought more important than the lives of witnesses.

Police Official: How the government should protect intimidated witnesses of organized crime and terrorism cases is an important question. If the government considers the witness security program as a solution to this problem then nobody claim that this program is more expensive than it is real value.

Police Official: If it is a duty to give testimony on criminal cases as a witness, then the government is obliged to guarantee the protection of the witness from any threat. The risk of any retaliation coming from the accused is a real one in organized crime and terrorism cases. If that is the case how can anybody talk about financial cost of the program?

Police Official: When the case is concerned organized crime and terrorism, fear of retaliation deters many witnesses from providing information to law enforcers. Because the witness security program is a significant incentive to individuals for coming forward in the cases of organized crime and terrorism, the government cannot give up the program due to its financial cost.

Police Official: Organized crime and terrorism has become a top priority for criminal justice system in our country since the 1990s. One result of this priority is the trend the use of witnesses as the central figure in the prosecution of these crimes. If that is the case, we have to protect our witnesses against any harm. In my opinion, there cannot be any excuse, such as financial cost of the witness protection while protecting witnesses of terrorism and organized crime cases.

Police Official: An increasing number of countries have established their witness security program to guarantee protection of witnesses in the cases of organized crime and

terrorism. If it was not a need for the program, they would not create it. Under these circumstances, the cost of the program is not a matter of importance for the governments.

4. There have been serious debates in the US regarding the effectiveness of this program for fighting against organized crime and terrorism. Law enforcement officials find the program an invaluable tool to fight against organized crime and terrorism, whereas several scholars do not share this idea and criticize the program in various aspects. How much are you aware of these debates?

Prosecutor: I don't know anything about this debate. But I think there may be some explanation for scholars' manner about the witness security program. Scholars are almost always pessimistic about everything. This might be another thing for them.

Prosecutor: No, I don't know. But, it is very normal for law enforcers to see this program as an important tool in their fight against organized crime and terrorism. On the other hand, scholars may generally be negative and unenthusiastic towards these kinds of measures.

Prosecutor: I am not aware of any of this debate in the US.

Prosecutor: I have not looked at the American witness security program yet. Therefore, I cannot say anything about the problems of this program.

Official: We took our program for the European countries and I have not examined the American program.

Official: I admit that I have not heard any of these debates in the US.

Police Official: I don't know anything about it.

Police Official: I have not heard or read anything about it.

Police Official: No, I am not. However, scholars usually look at the matters from different aspects. I think it is natural to have these kinds of debates in the US.

Police Official: I am aware a little bit since I have been at a conference held about the witness security program in Lion in 2008. There were some discussions about the problems of the program. But my knowledge is not so comprehensive.

Police Official: I have heard some problems of the American witness security program discussed at a conference held by Interpol in 2008. However, I am not an expert on this issue and have not studied after returning to Turkey either.

Police Official: I am not aware about any debates on this issue.

Police Official: Unfortunately, I do not know any knowledge about this.

5. Do you think that the witness security program can also become a powerful tool to fight against global terrorism and transnational organized crime? In this perspective, how can a successful cooperation be achieved in the international arena and who can play an important role, the UN or the US?

Prosecutor: Yes, it can. But, first, an international cooperation on the witness security program effective among states is of vital importance. There could be developed a mechanism that allow witnesses to testify in various countries in an international organized crime or terrorism case. At the same time, there is a need to establish a witness-exchange program among states. I think the UN could play an important role in this regard.

Prosecutor: I believe that in the fight against international criminal and terrorist organizations, the witness security program will definitely be helpful. But first and

foremost cooperation in this area is vital to be successful. At this stage, the UN should play a mediator role among states.

Prosecutor: It is obvious that the witness security program can be used as an effective weapon against organized crime groups and terrorist networks, I am doubtful that countries can get together without any leader that will lead the international country. That leader can be the UN for achieving this cooperation, which is very much needed.

Prosecutor: The witness security program can play a crucial role for combating against global threats. And nobody can say that there is no need for international cooperation in witness protection. As the most important international institution, the UN should play the leading role in this area.

Official: States should see that extra-ordinary threats need extra-ordinary measures. I think the witness security program is one of them.

And also the ability of states to cooperate in times of increased threat of transnational organized crime and global terrorism is very significant. For achieving this goal, the UN may become a key platform in which countries can get together.

Official: Witness participation has been especially significant in the fight against global terrorism as well as transnational organized crime. In particular, the closed character of global terrorist organizations renders it ineffective to employ classic investigative techniques and requires extra-ordinary methods. Hence, the witness security program and cooperation among countries on this issue become crucial in the cases of global terrorism and transnational organized crime. I believe that this cooperation is best achieved by the UN.

Police Official: In this age of globalization, terrorism and organized crime also become global. If that is the case, witness protection also needs to have a global aspect. The best way to achieve this target is international cooperation in the witness security program. I think the UN should become more active in these efforts as well as states should support the UN more positively.

Police Official: Over the years, the witness security program has become a significant weapon against domestic organized crime and terrorism worldwide. This also makes the program as an alternative tool against global terrorism and transnational organized crime. However, without an international cooperation it is not possible to realize this goal. As the leading international institution, the UN can pave the way for international cooperation in witness protection.

Police Official: There is no doubt that witness testimony can be a fundamental weapon in combating global terrorism and organized crime, if countries can be brought together for cooperation in enhancing the role of witness protection, and I think the UN can be a basis for cooperation,

Police Official: In the 21st century, global terrorist networks as well as transnational organized crime groups will be a great trouble for the international community. In order to minimize the negative effects of these two threats, there should be exceptional methods to be used. The witness security program is one of them. The only question is to be able to provide international cooperation in the witness protection measures. Under the UN's umbrella, countries can establish common procedures.

Police Official: If the international community wants to combat transnational organized crime groups and Al Qaida type global terrorist networks, it should cooperate effectively

in the methods of witness protection as well. Then, we can talk about becoming successful against these global criminal networks. In my opinion, the best results for effective cooperation can be possible under the guidance of the UN.

Police Official: Witness protection measures can be used against transnational organized crime groups and global terrorist networks as effective as domestic criminal groups, when states cooperate with one another to share their experience for increasing their ability. It is obvious that for achieving this there is a need for an arbitrator. I think the UN can play that role in a perfect way. The only condition for this is to support the UN in these efforts.

Police Official: To me, an international cooperation is vital in the fight against all kind of criminal networks. As countries, we should cooperate with each other in all criminal justice measures, one of which is witness security programs. The UN has been working on this issue. Countries can support the UN and determine a common policy on witness protection.

6. In your opinion, are there any other tools for law enforcement agencies that can be more effective than this program in terms of dealing with organized crime and terrorism?

Prosecutor: Apart from the witness security program there are some effective tools used in our criminal justice system. I think among them wiretapping have become more useful in our cases lately.

Question: In the US, prosecutors have two types of authority related to one another in this system: “prosecutorial discretion” and “plea bargain.” They can bargain with the

accused over their crimes and consequently use their discretion. This immense power, in turn, guarantees the efficient use of WITSEC. What do you think over this issue?

I cannot imagine that kind of power. Our code does not give us so much power. This power almost replaces the prosecutor with the judge. In our system, we cannot bargain with criminals; it is not possible for us. Once we are aware of any crime, it has to be investigated and prosecuted. We have to seek a balance between the benefits of the public and the advantage of the defendant. It is even our legal obligation to present the evidence on behalf of the defendant, once we found out it.

Prosecutor: Actually, the effects of the witness security program are maximized if there is a multi-approach, requiring each and every policing measure to be used in essence.

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As we took our criminal justice system from Europe, it is different than the US. We lack this kind of power. It is not possible for us to ignore crimes committed by protected witnesses. As a prosecutor, I really would like to have that power. I think without offering ex-criminals some incentives to come forward and testify, we may not use the witness security program effectively.

Prosecutor: We have been using criminal justice tools in accordance with the type of the case. Therefore, we try to use each tool in a significant case. It is obvious that the witness security program will also be employed whenever it is necessary. But I am not ready to say that other tools are less important than the program. They are all pieces of the same tool box.

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I would like to see that power to be on my hand. But our criminal justice system does not allow it. In our system, we do not have any discretion over crimes.

Prosecutor: After modification of our Penal Code, we have begun to use different tools to combat criminal groups, such as wiretapping and undercover agents. I think wiretapping is more important than the other ones.

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It seems that it is a different criminal justice system than our. Actually, that is a great power for prosecutors. In our country, this kind of discretion used by prosecutors in the US is not possible.

Official: Now, several criminal justice tools are being used in our country. We are better than the previous decade, especially after the implementation of the EU reforms.

I believe that wiretapping is the most efficient one among the criminal justice tools.

Official: In my opinion, wiretapping is the most significant tool for fighting against all kinds of criminal and terrorist groups.

Police Official: I cannot say anything about the witness security program, but I think using undercover agent is as a very effective tool in combating organized crime and terrorism.

Police Official: You know there is almost no example of using the witness security program. Therefore, wiretapping is the most effective criminal justice tool for the present.

Police Official: We haven't seen the results of the witness security program yet. In my opinion, wiretapping is a very effective tool against criminal and terrorist groups.

Police Official: You know our witness security program was established last year. We cannot compare it with the other law enforcement tools yet. Wiretapping and confidential informants are being used effectively by our law enforcement agencies.

Police Official: For the moment, wiretapping and undercover agents are effective tools used by the Turkish law enforcers. But I am sure that when it is fully implemented, the witness security program will be more effective against organized crime and terrorist groups.

Police Official: Although I am sure that the witness security program will meet our expectations, as we have not seen any result of considerable implementation of the program, wiretapping is now more effective than the witness security program.

Police Official: Wiretapping, undercover agent and informants are all effective techniques in our fight against organized crime. I am confident that the witness security program can also be a very effective tool. But it doesn't mean that when the program is fully applicable we won't use other tools. I think all these tools complete each other.

7. There are some critics in the US who claim that the witness protection program is compromising the innocent citizens by sending so many dangerous ex-criminals into neighborhoods that do not have any clue about the new comers' past life. Do you agree with them? If yes, what can be done to minimize the impact of sending ex-criminals into new neighborhoods?

Prosecutor: Actually, I cannot comment on this issue because of the fact that in our program, we cannot use criminals in any way. The only people who can benefit from the program are accidental witnesses.

Prosecutor: It is a fact that if you are using the program for ex-criminals there is always a possibility that they can commit a crime in their new communities. I think what is happening in the US stems from this situation. However, our program is not suitable for ex-criminals or justice collaborators, since we cannot offer them a reduced sentence in exchange for their testimony in the court. Our program is for accidental witnesses only.

Prosecutor: I don't know the American witness security program. But, if that is the case it seems that the critics are not so wrong about their criticism on the program. The government should take every necessary precaution for preventing this kind of incident. On the other hand, our program does not allow us to use criminals. In other words, our program was not created for criminals.

Prosecutor: I think nobody can tolerate easily ex-criminals living in their neighborhood. Because prosecutors are not allowed to employ the program to criminals in a criminal group, this situation won't happen in Turkey.

Official: If a witness has a criminal history, it is sure that you have to be careful. Before participated in the program, these types of witnesses should be evaluated very carefully, and if necessary further preconditions should be met before accepting the program.

However, I should underline a fact that an ex-criminal always has a potential to commit a crime. There is no a hundred percent guarantee that the government can prevent a protected witness from perpetrating a crime. There must be a balance here. The government will evaluate the information and testimony given by an ex-criminal, and if it would be valuable for the interest of the general society, he or she could be put in the program. Sometimes, it might be necessary to take risk in this life.

On the other hand, this is not our problem, since our witness security problem is not for criminals.

Official: These kinds of incidents can occur time to time. But, it does not mean that the program should not be employed to criminals when we need their testimony. As I said before, testimony of a criminal as a witness is one of the best ways to guarantee the conviction of the other members of that criminal group. It is the government's job to be utmost cautious while dealing with justice collaborators.

Police Official: Such incidents can occur time to time. There is a high possibility that an individual who have a criminal history could always commit a crime again. We know as law enforcement officers that ex-offenders are more prone to perpetrate a crime than ordinary people. Witnesses should be subjected to psychological testing before entering

the program. It is the best possible way to solve this problem. If a witness has a potential to hurt innocent people, he/she shouldn't be allowed to participate in the program, even if his/her testimony is of vital importance.

Police Official: As a police officer, I see that it is necessary to use the program for criminals. Otherwise, how can you get inside information about any criminal or terrorist organization? Off course, you have to be careful when you admit these people into the program and you should not implement the program in a haphazard manner.

Police Official: I cannot say much about this. The only thing that I can say is the fact that even though I want to employ the program to justice collaborators, I also want to see that there should be a balance between the fight against criminal groups and the public interest. While accepting individuals who have a criminal background we apply the fullest screening process.

Police Official: In the US, they meet these kinds of problem, but they will not occur in Turkey. If a witness in the program commits a crime, he/she is punished severely. The requirements of the Turkish witness security program are very heavy, which is not providing an extra benefit for witnesses. Past crimes of criminals cannot be ignored in our program. In fact, our program is not offering anything attractive for the members of organized crime groups.

Police Official: Our witness security program was not designed to provide sentence reduction for the witnesses who are involved in criminal activity. Sentence reduction is offered through the penal code. If a witness is entitled to benefit from the "active contrition" in the Penal Code, he/she could get a sentence reduction. Otherwise, it is not

possible for someone to get away with their crimes in this program. I mean the program is closed to this kind of exploitation by would-be witnesses who have a criminal history.

Police Official: This is a serious problem for the US government to deal with. I believe that law enforcement agencies should be able to use the witness security program for criminals who are ready to testify against their fellows in any organized crime groups or terrorist organizations. Yet, the US government shouldn't make any mistake on this issue as well.

As it comes to our country, as far as I know we are not able to employ our program to criminals. It means that we won't experience any problem like this.

Police Official: That kind of trouble does not happen in Turkey, since there is no sentence reduction for justice collaborators in the Turkish program. I can say another issue that may create another problem. We are assessing that the exploitation gate in our program is the stipend for witnesses. Ours is not a wealthy nation so the financial situation of our citizens is not in a good shape. We expect that some witnesses might try to get financial benefits for themselves with abusing their position and their knowledge. But we are ready to prevent these situations.

8. There are a lot of ongoing debates in the US that in terms of using the program against organized crime syndicates, there should become some variations between the Mafia and other violent organized crime groups such as street gangs or drug cartels. In this context, is it a good idea to put the different class of criminals and terrorists into the witness protection program without thinking of the differences among the Mafia-type organizations, the other organized crime syndicates and terror groups? Isn't it possible to

offer the different levels of protection, such as short term relocation for witnesses involved in organized crime and terrorism instead of changing their identities?

Prosecutor: I think it should definitely be a separation among various types of organized crime groups and terrorist organizations, in terms of implementation of the witness security program. Each and every measure in the program shouldn't be used for everybody at the same level. And there should be different levels of protection.

Prosecutor: I can only speak for our country. In this regard, we do not have so many different organized crime groups or terrorist networks in our country. Therefore, we can apply a certain standard for every protected witness.

Prosecutor: I agree on this matter. You cannot employ the program to all criminal organizations in a standard manner. There must be some variations in accordance with the structure of groups. For example, permanent relocation or changing of identification should be the last resorts that may be applicable if there is a imminent threat.

Prosecutor: I believe this: if there are important differences among criminal as well as terrorist organizations, then those differences should take into account when the program is used for protection of witnesses.

Official: The levels and types of criminality, stage of development as well as society and culture differ in the countries across the world. These variations should reflect the type and protection measure that each country is to be provided.

In Turkey, criminal organizations are very much alike to each other. For that reason, we might be able to have a standard, better than the US.

Official: Different methods of protection measures can be applied in accordance with the type of the organized crime group. If it is a violent group, short-term relocation can be possible, instead of permanent one.

Although it creates excessive bureaucracy, the existing of the witness protection board prevents implementation of non-essential protection measures in our program.

Police Official: In my opinion, it is important to have different types of protection measures in the witness security program. You cannot use a standard protection measure for every criminal or terrorist group. There must be some kind of separation.

On the other hand, there is an elimination process in our program. Even though the court decides who will be protected, the level of protection is determined by the witness protection board.

Police Official: What is and what is not applicable for witnesses should be decided according to particular case. In this regard, the type of the criminal and terrorist group should be taken into consideration. I think there should be a panel or a board to oversee this kind of matters.

Police Official: I agree what you say. There should be some variations when you implement the program. Some protection measures should be a last resort. I think it is not right to send every witness to a new place with a changed identity.

Police Official: In our program, once a person is designated as a secret witness, his identity is concealed even from the lawyers of the accused as a first protection measure, and other measures are put into practice if this does not work.

As far as I know, the US does not have a practice like this for its protected witnesses in courts. I think if it is seen as necessary it can be made some changes in operation of the American witness security program.

Police Official: In our program, there are different protection levels, and each case is evaluated individually. The Board determines who will benefit from the type and level of protection measure.

I think the US government needs a review process for its protected witnesses. This may help prevention of harm that is caused by violent protected witnesses to the society.

Police Official: I think there should be some difference especially among terrorist groups. Similar to the US, we might have serious problems with some of our witnesses who were associated with terrorist groups in the past, if we employ the measures in a standard manner. For example, the PKK terrorists live in the mountains for years. It is highly possible that many of them may become more violent because of their living conditions. The government can not employ every measure of the program to these people. It should take their possible violent character into consideration.

Police Official: There is no question in my mind that it is necessary to use protection measures according to background of witnesses. We cannot endanger the lives of innocent people with relocating witnesses who have a very violent past. I hope that we will not make the same mistakes the US have made.

9. In your opinion, with current implementations of the program, might this program need any modification?

Prosecutor: The role of justice collaborators is unclear in the Turkish Witness Security Law. Therefore, there is a need to modify the program. We need these people for reaching the top brass of the organized crime groups. There is no clear sentence in the law about the individuals who are criminals themselves. Without a clear expression, nobody can admit these people into the program before they go on trial for their crimes in a certain criminal group.

The structure of the board is another problem that needs to be changed. There are too many and unnecessary agencies in the board. The Board shouldn't operate under the Ministry of Interior because of the fact that the responsibility of this program belongs to prosecutors and courts.

Prosecutor: It is obvious that this program is necessary to crack down the organized crime syndicates but with this form, the program cannot be useful much. The program should encourage the individuals in the crime groups to testify against their fellows, yet our program does not give much incentive for witnesses who are criminal themselves to participant in the program. In this regard, it might be necessary to offer not to prosecute them for past their crimes.

On the other hand, the board may create unduly bureaucracy, due to its current form. There are unnecessary agencies in the board. And also, the board should operate under the Ministry of Justice, instead of the Ministry of Interior.

Prosecutor: In my opinion, the structure of the Board is an important problem, which needs to be modified. It is quite fair to say that there are really unnecessary agencies in the board such as Customs Control Directorate as well as Coast Guard Command.

The other problem is the fact that as we have talked before, our program does not target the members of any organized crime group. It is only for accidental witnesses. Because of this, it needs an urgent modification, I think.

Prosecutor: The current form of the board should be modified with elimination of some of the agencies. The board should also function as a Ministry of Justice organization.

Another issue is the fact that during the investigation process, I cannot protect a witness properly and adequately. It means that until the beginning of the trial, the life of witnesses and their family members are always at risk in this way.

Official: The present structure of the board should be evaluated again. There is more than enough number of agencies in the board, such as Customs Control Directorate as well as Coast Guard Command. I also oppose the number of TNP representatives in the Board. In my opinion, three officials from TNP are unnecessary, as TNP is merely operative agency in this program.

Official: I think the board should operate under the Ministry of Justice, and there are both unnecessary agencies in the board and also excessive number of officials from TNP, since TNP is only an operative agency and the decision to take witnesses under protection belongs to the court and prosecutors.

The other modification area is related to the witness' rights. In the program, there is no control mechanism designed for rejected witnesses who can appeal against the ruling, which has a potential to affect their lives enormously. Therefore, rejected witnesses might seek their rights in the administrative courts that this practice alone would foster a very unusual development. It means a crime related issue would seek to be resolved in an administrative court rather than in a criminal one.

Police Official: The status of justice collaborators is unclear in our program. As we said before, we should be able to benefit from their assistance as well.

The other issue is that I think the structure of the board should be reviewed again. The board cannot operate effectively with this form. There are completely unnecessary governmental agencies in the board. This, in turn, brings about inefficiency and unwieldiness.

Police Official: As a counter-terrorism police official, I think the path that led to the establishment of our program is different than the US or even than Europe. In this country, the main threat comes from the terrorist organization. For that reason, in my opinion, more than organized crime the focus of the witness security law should have been terrorism.

Police Official: There are some modification areas:

First, the current board structure and the number of agencies in the board are two significant problems.

Second, the program should have targeted justice collaborators as well.

Third, witnesses can only have full protection after giving their testimony in the court.

Police Official: With current board structure, there are agencies that are unnecessary.

I think the operation of the board and the witness security department under the Ministry of Interior as the Department is the best form. The Department and the Board could not have operated so efficiently, if they had been under the authority of the Ministry of Justice.

Police Official: The board structure was taken from the Portuguese program. While preparing the law, there was considerable discussion about the number of representative agencies in the Board. Despite the fact that even an eight-member board, which were put in the draft law, is unduly high to take necessary decisions for witnesses, the current eleven-member board means that it is almost impossible to work efficiently.

Police Official: The modification is necessary for excluding some agencies from the board.

The second one is the complexity of taking the protection decision for the secret witnesses. In the program, before testifying in the court, witnesses can be protected only by the classical methods which are not included any sophisticated measures.

Police Official: Before the establishment of our program we examined the programs of the European countries. However, although the oldest witness security program belongs to the US, we did not look at that program. We might have benefitted for the US experience, however. Unfortunately, we did not do that.

The structure of the board should be modified. There are quite unnecessary agencies in the Board.

Appendix-6: Summary of Interviews (UNODC)

1- In your opinion, why have states needed to establish their witness protection program?

Official: One of the characteristics of organized crime groups is their capability to intimidate witnesses and enforce a code of silence. The Witness Security Program has certainly helped address these problems and thus allowed cases to come to trial that might not have done because of the lack of evidence.

Ensuring the safety and welfare of witnesses sends a strong message to innocent people that the justice system is effective, and demonstrates the commitment to send criminals behind bars.

Former Official: As you know the first implementation of witness protection has initiated first in the US. Since its inception, the program has been used effectively against organized crime groups and terrorist networks. The experience of the US has convinced the other countries that a program like WÝTSEC has been a vital tool in combating organized crime and terrorism. The establishment of witness protection programs worldwide reflects the increasing importance of this particularly demanding aspect of law enforcement work.

2- Why did the UN need to set up a witness protection unit and how does it use this program?

Official: The UN first established witness security units to provide protection measures for witnesses as well as victims in the International Criminal Tribunals for the Former Yugoslavia and for Rwanda. The organization and practice of those Tribunals in the

protection of witnesses of those atrocities has been novel and largely influenced the witness protection measures of the International Criminal Court, which was created by the Rome Statute.

As I said, these witness security units were used very effectively in the International Criminal Tribunals for the crimes against humanity both in Rwanda and Yugoslavia. They are also in function in the other problematic regions where the UN is in charge. These units are responsible for both physical protection and providing counseling and other appropriate assistance to witnesses and victims who are in danger because of their testimony in the court.

Former Official: At the time of the International Criminal Tribunals for Rwanda and the Former Yugoslavia, it was seen that the UN needed a protection mechanism for victims and witnesses who gave testimony before the court. After those Tribunals, a witness protection program as well as the victim and witness unit was established within the International Criminal Court.

This unit is responsible for the effective implementation of witness security measures under the authority of the registrar or the chambers in and outside of the court.

3-In your opinion, can the witness protection program be used an effective tool in the fight against transnational organized crime and global terrorism?

Official: I think the signs here are encouraging in the sense that there are examples of cross-border cooperation with respect to witness protection. And there are examples within Europe of sharing best practice and ensuring that the mechanisms for moving witnesses across borders are effective. But it is also important to remember that many of

the difficulties associated with witness protection at a national level remain and may be even more difficult to resolve at a transnational level.

Former Official: As in the cases of domestic organized crime groups, successful prosecution of transnational organized crime groups also very much depends on credible witnesses who are able to testify without fear of retaliation.

As it comes to global terrorist organizations, they are going to continue to exist and since they exist, people who will testify against the members of these organizations will be at risk. So, I think, the analogy is quite apt, the Mafia analogy to the terrorist analogy. I think any terrorist organization is not being constructed for a particular single criminal event but to have a long term existing. Witness security program is an important tool to use against those kinds of organizations. You are going to face the same issues.

4-What can be done to bring states together for cooperation in the witness protection program?

Official: There is absolutely a need to increase international cooperation in securing witnesses of transnational organized crime and global terrorism. While there is an absolute necessity for international cooperation in witness protection, this also requires developing a broader approach and an overall strategy for bringing countries around this goal. I mean there are important dissimilarities among countries. Therefore, we should develop common standards and promote best practices that will serve as guides to states in protecting important witnesses across the world. For achieving this, states should

support the UN, which has already initiated a concerted effort to establish an international platform on the issues of witness protection.

Former: International cooperation in witness protection is an important part of the international efforts to combat transnational organized crime and global terrorism. I can say that because there was little incentive to cooperate in witness protection, we saw a lack of leadership at the international level. However, the 9/11 attacks changed this and the US has needed to cooperate with other countries. The international conferences held about witness security program after 9/11 are a significant indicator showing sheer determination of the US. After 9/11, the US has understood the fact that without international cooperation no country could ever use its witness security program effectively while confronting today's global threats. In order to become successful in international cooperation, countries should share their own experience in this area and facilitate at least regional cooperation.

5-While using witness protection program against global terrorism and transnational organized crime, in general what types of problems can occur? I mean for example, is it a good idea to relocate a foreign witness to another country?

Official: As many people have observed, we now typically live in global neighborhoods characterized by a wide diversity of social groups so introducing witnesses into such contexts is less problematic than it might have been in the past when geographical mobility was less significant. So while what you describe is possible, the question I would raise is, is it desirable for the witnesses involved, the communities in which they are relocated, and the law enforcement agencies charged with their protection? As I

suggested above, all of the problems encountered with witness protection at a national level, become even more acute when placed in an international context.

Former Official: In a country as large as the US, relocation of witnesses and their families across the country greatly guarantee witness anonymity. For smaller countries like Estonia, relocation within that country may not ensure that witnesses are protected adequately and immune from harm. That is why many countries are relocating the protected witnesses and their dependants to other countries.

For global terrorism cases, the international relocation is a highly debatable issue. I think foreign witnesses of terrorism cases may not fit into the community where they are to be relocated. Furthermore, these witnesses cannot be put into their own community as well. I think best solution to this problem is to give these individuals a large sum of money without admitting them into the program that will pave the way for their own relocation, or to find a volunteer third country with similar landscape. As another solution, you can put foreign witnesses into urban places, instead of rural areas.

Appendix-7: Table for Interviews (US)

Impact of WITSEC as a criminal justice tool against criminal groups	
State Prosecutor (Former)	Positive
Federal Prosecutor	Positive
Federal Prosecutor	Positive
Federal Prosecutor (Former)	Positive
FBI Agent	Positive
FBI Agent	Positive
FBI Agent (Former)	Positive
Police Official (Lieutenant)	Positive

Success of WITSEC against the Mafia	
State Prosecutor (Former)	Positive
Federal Prosecutor	Positive
Federal Prosecutor	Positive
Federal Prosecutor (Former)	Positive
FBI Agent	Positive
FBI Agent	Positive
FBI Agent (Former)	Positive
Police Official (Lieutenant)	Positive
Have you used witness security program against criminal groups?	
State Prosecutor (Former)	Yes

Federal Prosecutor	Yes
Federal Prosecutor	Yes
Federal Prosecutor (Former)	Yes
FBI Agent	Yes
FBI Agent	Yes
FBI Agent (Former)	Yes
Police Official (Lieutenant)	Yes (state version)

Was it a success?	
State Prosecutor (Former)	Yes
Federal Prosecutor	Yes
Federal Prosecutor	Yes
Federal Prosecutor (Former)	Yes
FBI Agent	Yes
FBI Agent	Yes
FBI Agent (Former)	Yes
Police Official (Lieutenant)	Yes

Other tools more effective than WITSEC?	
State Prosecutor (Former)	wiretapping
Federal Prosecutor	RICO, prosecutorial discretion-plea bargaining
Federal Prosecutor	RICO, prosecutorial discretion-plea bargaining
Federal Prosecutor (Former)	RICO, prosecutorial discretion-plea bargaining
FBI Agent	wiretapping
FBI Agent	RICO
FBI Agent (Former)	RICO and wiretapping
Police Official (Lieutenant)	All are important

Can WITSEC become a powerful tool against global terrorism and transnational organized crime?	
State Prosecutor (Former)	Yes
Federal Prosecutor	May be
Federal Prosecutor	May be
Federal Prosecutor (Former)	No
FBI Agent	May be
FBI Agent	Yes
FBI Agent (Former)	Yes
Police Official (Lieutenant)	May be

Can states get together for cooperation?	
State Prosecutor (Former)	Yes
Federal Prosecutor	May be
Federal Prosecutor	Yes
Federal Prosecutor (Former)	No
FBI Agent	Yes
FBI Agent	Yes
FBI Agent (Former)	Yes
Police Official (Lieutenant)	May be

Who should play the leading role: US or UN?	
State Prosecutor (Former)	US
Federal Prosecutor	US
Federal Prosecutor	US
Federal Prosecutor (Former)	No answer
FBI Agent	US
FBI Agent	US
FBI Agent (Former)	US
Police Official (Lieutenant)	US

Is it a good idea to blend a foreign witness into the American landscape?	
State Prosecutor (Former)	Not sure
Federal Prosecutor	No
Federal Prosecutor	No
Federal Prosecutor (Former)	No
FBI Agent	May be
FBI Agent	May be
FBI Agent (Former)	No
Police Official (Lieutenant)	Yes

Is WITSEC compromising new neighborhoods (relocation problem)	
State Prosecutor (Former)	No
Federal Prosecutor	No
Federal Prosecutor	No
Federal Prosecutor (Former)	No
FBI Agent	No
FBI Agent	No
FBI Agent (Former)	No
Police Official (Lieutenant)	There is risk

Is WITSEC an easy escape-gate for criminals without punishment?	
State Prosecutor (Former)	No
Federal Prosecutor	No
Federal Prosecutor	No
Federal Prosecutor (Former)	No
FBI Agent	No
FBI Agent	No
FBI Agent (Former)	No
Police Official (Lieutenant)	No

Is variation between the Mafia and Gangs necessary?	
State Prosecutor (Former)	Yes
Federal Prosecutor	Not always
Federal Prosecutor	Yes
Federal Prosecutor (Former)	Yes
FBI Agent	Not always
FBI Agent	Yes
FBI Agent (Former)	Yes
Police Official (Lieutenant)	Not always

Is short term relocation for gangs possible?	
State Prosecutor (Former)	Yes
Federal Prosecutor	Not sure
Federal Prosecutor	Yes
Federal Prosecutor (Former)	Yes
FBI Agent	Yes
FBI Agent	Yes
FBI Agent (Former)	Yes
Police Official (Lieutenant)	May be

Is any modification necessary for WITSEC?	
State Prosecutor (Former)	No (only, it should be available for state prosecutors as well)
Federal Prosecutor	Positive (structure it in different levels-more flexible)
Federal Prosecutor	Not sure
Federal Prosecutor (Former)	No
FBI Agent	No
FBI Agent	No
FBI Agent (Former)	No
Police Official (Lieutenant)	No

Is WITSEC expensive in terms of cost-benefit analysis?	
State Prosecutor (Former)	No
Federal Prosecutor	No
Federal Prosecutor	No
Federal Prosecutor (Former)	No
FBI Agent	No
FBI Agent	No
FBI Agent (Former)	No
Police Official (Lieutenant)	No

Appendix-8: Table for Interviews (Turkey)

Will Turkey benefit from the witness security program (WSP)	
Prosecutor from Istanbul:	Yes
Prosecutor from Istanbul:	Yes
Prosecutor from Istanbul:	Yes
Prosecutor from Ankara:	Yes
Official from MOJ:	Yes
Official from MOJ:	Yes
Police Official from IPD:	Yes
Police Official from IPD:	Yes
Police Official from APD:	Yes
Police Official from TNP:	Yes

How do you evaluate the impact of WSP on the fight against organized crime and terrorism?	
Prosecutor from Istanbul:	Positive
Prosecutor from Istanbul:	Positive
Prosecutor from Istanbul:	Positive
Prosecutor from Ankara:	Positive
Official from MOJ:	Positive
Official from MOJ:	Positive
Police Official from IPD:	Positive
Police Official from IPD:	Positive
Police Official from APD:	Positive
Police Official from TNP:	Positive

Is WSP expensive in terms of cost-benefit analysis?	
Prosecutor from Istanbul:	No
Prosecutor from Istanbul:	No
Prosecutor from Istanbul:	No
Prosecutor from Ankara:	No
Official from MOJ:	No
Official from MOJ:	No
Police Official from IPD:	No
Police Official from IPD:	No
Police Official from APD:	No
Police Official from TNP:	No

Are you aware of debates between law enforcers and scholars in the US about the effectiveness of WITSEC against organized crime and terrorism?	
Prosecutor from Istanbul:	No
Prosecutor from Istanbul:	No
Prosecutor from Istanbul:	No
Prosecutor from Ankara:	No
Official from MOJ:	No
Official from MOJ:	No
Police Official from IPD:	No
Police Official from IPD:	No
Police Official from APD:	No
Police Official from TNP:	Yes, a little
Police Official from TNP:	Yes, a little
Police Official from TNP:	No
Police Official from TNP:	No

Can WSP become a powerful tool against global terrorism and transnational organized crime?	
Prosecutor from Istanbul:	Yes
Prosecutor from Istanbul:	Yes
Prosecutor from Istanbul:	Yes
Prosecutor from Ankara:	Yes
Official from MOJ:	Yes
Official from MOJ:	Yes
Police Official from IPD:	Yes
Police Official from IPD:	Yes
Police Official from APD:	Yes
Police Official from TNP:	Yes

Should countries cooperate in this area?	
Prosecutor from Istanbul:	Yes
Prosecutor from Istanbul:	Yes
Prosecutor from Istanbul:	Yes
Prosecutor from Ankara:	Yes
Official from MOJ:	Yes
Official from MOJ:	Yes
Police Official from IPD:	Yes
Police Official from IPD:	Yes
Police Official from APD:	Yes
Police Official from TNP:	Yes

Who should play the leading role: US or UN?	
Prosecutor from Istanbul:	UN
Prosecutor from Istanbul:	UN
Prosecutor from Istanbul:	UN
Prosecutor from Ankara:	UN
Official from MOJ:	UN
Official from MOJ:	UN
Police Official from IPD:	UN
Police Official from IPD:	UN
Police Official from APD:	UN
Police Official from TNP:	UN

Other tools more effective than WSP?	
Prosecutor from Istanbul:	Wiretapping
Prosecutor from Istanbul:	All of them important
Prosecutor from Istanbul:	All of them important
Prosecutor from Ankara:	Wiretapping
Official from MOJ:	Wiretapping
Official from MOJ:	Under-cover agent
Police Official from IPD:	Wiretapping
Police Official from IPD:	Wiretapping
Police Official from APD:	Wiretapping
Police Official from TNP:	Wiretapping and confidential informants
Police Official from TNP:	Wiretapping, under-cover agent
Police Official from TNP:	Wiretapping
Police Official from TNP:	All of them important

Is WSP compromising new neighborhoods? (relocation problem)	
Prosecutor from Istanbul:	No
Prosecutor from Istanbul:	No
Prosecutor from Istanbul:	No
Prosecutor from Ankara:	No
Official from MOJ:	No
Official from MOJ:	No
Police Official from IPD:	No
Police Official from IPD:	No
Police Official from APD:	No
Police Official from TNP:	No

Is variation among Organized Crime Terrorist Groups necessary?	
Prosecutor from Istanbul:	Yes
Prosecutor from Istanbul:	No
Prosecutor from Istanbul:	Yes
Prosecutor from Ankara:	Yes
Official from MOJ:	No
Official from MOJ:	Yes
Police Official from IPD:	Yes
Police Official from IPD:	Yes
Police Official from APD:	Yes
Police Official from TNP:	Yes

Is any modification necessary for WSP?	
Prosecutor from Istanbul:	Yes. 1-The role of justice collaborators 2-The structure of the Board
Prosecutor from Istanbul:	Yes. 1-The role of justice collaborators 2-The structure of the Board
Prosecutor from Istanbul:	Yes. 1-The role of justice collaborators 2-The structure of the Board
Prosecutor from Ankara:	Yes. 1- The structure of the Board 2- Timing of protection
Official from MOJ:	Yes. The structure of the Board
Official from MOJ:	Yes. 1-The structure of the Board 2-Witnesses' rights
Police Official from IPD:	Yes.1- The structure of the Board 2-The role of justice collaborators
Police Official from IPD:	Yes. The program should have focused more on terrorism
Police Official from APD:	Yes. 1- The structure of the Board 2-The role of justice collaborators 3-Protection timing
Police Official from TNP:	Yes. The structure of the Board
Police Official from TNP:	Yes. The structure of the Board
Police Official from TNP:	Yes. 1- The structure of the Board 2-Timing of protection
Police Official from TNP:	Yes. The structure of the Board

Appendix-9: Table for Interviews (UNODC)

Why have states needed to establish the WSP?	
UNODC Official	To ensure the safety and welfare of witnesses
Former UNODC Official	States have seen WYTSEC has been a vital tool in combating organized crime and terrorism

Why did the UN need to set up a witness protection unit?	
UNODC Official	To provide protection measures for victims and witnesses testified in the International Criminal Tribunals as well as International Criminal Court
Former UNODC Official	As it was seen as necessary after the International Criminal Tribunals for Rwanda and the Former Yugoslavia that UN needed a protection mechanism for victims and witnesses

How does UN use the WSP?	
UNODC Official	WS units are responsible for both physical protection and providing counseling and other appropriate assistance to witnesses and victims who are in danger because of their testimony in the court.
Former UNODC Official	WS units are responsible for the effective implementation of witness security measures under the authority of the registrar or the chambers in and outside of the court.

Can WSP become a powerful tool against global terrorism and transnational organized crime	
UNODC Official	Yes
Former UNODC Official	Yes

Should countries cooperate in this area? What can be done to bring states for this goal?	
UNODC Official	Yes. States should support UN, which has already initiated a concerted effort to establish an international platform on the issues of witness protection.
Former UNODC Official	Yes. In order to become successful in international cooperation, countries should share their own experience in this area and facilitate at least regional cooperation.

Problems that can be encountered? (Relocation)	
UNODC Official	All of the problems encountered with witness protection at a national level, become even more acute when placed in an international context.
Former UNODC Official	1-For smaller countries, relocation within that country may not ensure that witnesses are protected adequately 2- Foreign witnesses of terrorism cases may not fit into the community where they are to be relocated.

Appendix-10: Consent Statement

You are invited to participate in a research study that is being conducted by me, Hakan Cetin, a doctoral student at Rutgers University in Newark-New Jersey, USA. The purpose of this research is to understand the effectiveness of the witness protection programs for combating organized crime and terrorism. Approximately 30 subjects between the ages of 25-60 years old will participate in the study. And each individual's participation will last approximately 1-2 hours.

The study procedures include the following: the language of the interview will be in Turkish/English. You will be asked open-ended questions which are related to the objectives of this research, the effectiveness of the witness protection programs to combat organized crime and terrorism.

The research records will include some information about you, such as your name, position and institution, but will be confidential. Confidential means that I will keep this information confidential/private by limiting any individual's access to the research data and keeping it in a secure location. The Institutional Review Board at Rutgers University and I are the only parties that will be allowed to see the data, except as may be required by law. If a report of this study is published, or the results are presented at a professional conference, only group results will be stated. All study data will be kept until the research is officially approved by Rutgers University.

There are no foreseeable risks to participation in this study. You may not have any direct or indirect benefits from this study. Participation in this study is voluntary. You may choose not to participate, and you may withdraw at any time during the study procedures without any penalty to you. In addition, you may choose not to answer any questions with which you are not comfortable. Choosing to participate or not will not have any effect on the relations between you and the Turkish/American government.

If you have any questions about the study or study procedures, you may contact me by e-mail at hakancem@pegasus.rutgers.edu, or you can contact my study coordinator, Dr. Leslie Kennedy, by e-mail at kennedy@newark.rutgers.edu

If you have any questions about your rights as a research subject, you may contact the IRB Administrator, Michelle Gibel, at Rutgers University at:
Rutgers University, the State University of New Jersey
Institutional Review Board for the Protection of Human Subjects
Office of Research and Sponsored Programs
3 Rutgers Plaza, New Brunswick, NJ 08901-8559
E-mail: humansubjects@orsp.rutgers.edu

You will be given a copy of this consent form for your records.
Sign below if you agree to participate in this research study:

Subject (Print)_

Subject Signature_Date_

Principal Investigator Signature__Date_

Audiotape Addendum to Consent Form

You have already agreed to participate in a research study entitled: “The Effectiveness of the Witness Protection Programs for Combating Organized Crime and Terrorism”, conducted by Hakan Cetin. You are asked for your permission to allow me to use audiotape (sound), as part of that research study. You do not have to agree to be recorded in order to participate in the main part of the study.

The recording(s) will be used for the analysis by the researcher. The recording(s) will include your name as the only identifier. The recording(s) will be stored in a locked file cabinet and linked with a code to subjects’ identity; and will be destroyed after three years of completion of this research.

Your signature on this form grants the investigator named above permission to record you as described above during participation in the above-referenced study. The investigator will not use the recording(s) for any other reason than that/those stated in the consent form without your written permission.

You will be given a copy of this consent form for your records.

Sign below if you agree to be audio-taped during the interviews in this research study.

Subject (Print)

Subject Signature_Date_

Principal Investigator Signature_Date_

VITA

Hakan Cem Cetin

1971 Born April 18th, Siirt, Turkey

1982-1985 Attended Ataturk Secondary School, Osmaniye, Turkey

1985-1989 Attended Police College, Izmir, Turkey

1989-1993 Attended Turkish National Police Academy (TNPA), Ankara (BA Degree)

1993-1995 Assigned Sergeant, Uzunkopru, Edirne, Turkey

1995-2001 Assigned Narcotics Division, Edirne, Turkey

2001-2004 Assigned Security Attaché, Athens, Greece

2004-2005 Assigned Principal Clerk of the Governor, Edirne, Turkey

2006-2007 Attended MS Program Rutgers Division of Global Affairs (DGA) (MS Degree)

2007-2010 Attended PhD Program at Rutgers DGA, Newark, USA

2005-2010 Awarded Study Abroad Scholarship of the Turkish National Police

2010-Present Assigned to Diyarbakir Police Vocational School of the TNPA

2010 Ph.D. in Global Affairs