

Heinrich-Böll-Stiftung and
Regine Schönenberg (eds.)

Transnational Organized Crime

Analyses of a Global
Challenge to Democracy

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[transcript]

Conception: Regine Schönenberg and Annette von Schönfeld



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Preface

In June 2011, the Heinrich Böll Foundation hosted an international conference on transnational organized crime (TOC). It was the first time that the Foundation addressed the issue of transnational organized crime in such a comprehensive manner. The intention of this event was to raise awareness about the interdependency of international criminal structures, legal economic processes, and the respective political orders. A further aspect that was addressed was the interwovenness of drug, arms, human and organ trafficking, and money laundering.

With our conference we also intended to contribute toward overcoming the well-established stereotype of organized crime as being a marginal problem. And we tackled another dominant stereotype in Germany, namely that TOC only exists in other countries and that Germany is not much involved, affected, or responsible. The conference was a big success and well documented in the national and international media.

Organized crime is not a new phenomenon; however, it has become fatal for more and more people. Violence and the violation of human rights have become almost ordinary occurrences. Since democracy is one of the central concerns, it is important that TOC be recognized as a structural element of international relations. Internationally as well as nationally, the price that a society and its individuals must pay as a result of the infiltration of TOC should be much more transparent. The international conference was not meant to be a one-time event but the beginning of a deliberate process that links the policy field of (transnational) organized crime to the issue areas of our daily work – such as freedom, democracy, human rights, anti-racism, ecology, and gender equality. We should expect those in politics, media, and civil society – on a global scale – to focus on the problem and act rather than ignore it. Therefore, we are currently strengthening civil society engagement against TOC in various countries and are fostering networking and knowledge-exchange on the issue.

We are especially interested in the dialectics between committing and combating (transnational) organized crime. We are also interested in civil engagement as a means to protect civil, political, and economic life against infiltration by TOC. We want politicians and lawyers to assess those interdependencies with a new vision and assert their responsibilities within the context.

Who shapes our current role models? And where does our general orientation come from? How can we define the fine line between a successful businessman earning millions a year through financial speculation on staple foods and an unscrupulous Mafia boss dealing with drugs and women? Who consumes such drugs and women, and who is involved in money laundering in our societies?

The answers are difficult and it is our responsibility to work them out! With this book we hope to contribute toward the responsible handling of the questions. Hopefully, many interested readers across the whole world will feel enriched by its offerings and will benefit from our having assembled so many authors to address transnational organized crime from many different countries and perspectives, to analyze it, and to elaborate on policy recommendations. Many thanks for their commitment.

This book was only possible thanks to the energy, the knowledge, and the networks of Regine Schönenberg; the engagement and the enthusiasm of Annette von Schönfeld, Head of the Heinrich Böll Foundation's Regional Office for Mexico and Central America; the valuable contributions and interview skills of Verena Zoppei; and the efforts of Daniel Backhouse, who maintained the overview of all partners involved and contributed with his always reliable project management.

Berlin, January 2013

*Barbara Unmüßig
President of the Heinrich Böll Foundation*

I. Introduction

Today, transnational organized crime is an inherent feature of economic globalization and represents more than just the dark side of that development path. It is increasingly difficult to distinguish light from shadow in this context, and the fine line between legal and illegal forms of economic exchange is becoming increasingly blurred. There are networks operating in both legal and illegal sectors, depending on what brings them the greatest benefit. Currently, few experts can claim to have comprehensive knowledge and understanding of the laws and regulations governing the international flow of trade. International companies rely increasingly on intermediaries and arbitration agencies for much of this trade, and thereby cede a certain amount of their overall responsibility for the specific circumstances of the international and local handling.

A further source of uncertainty is the cultural specificity of concepts of legality and illegality, as well as their local implementation. In most parts of the world, ideas about the legitimacy of activities have a greater influence than written law; customary law plays at least as large a part as trade legislation, and the legitimacy of ensuring one's own survival has an undisputed place alongside the state's inability to guarantee just that.

The goods transported within the context of TOC are the same worldwide – arms, narcotics, people, as well as other goods, depending on the region: rare animals, plants, medicines, (toxic) waste, all types of counterfeit goods, and, in general, any goods that can be traded illegally because legal access to them is precluded by legislation or borders. In addition, global trends toward the homogenization of the norms governing the production of – and trade in – goods and access to capital, land, and natural resources create imbalances and injustices in accessing markets, which are then typically circumvented by means of corrupt practices.

The intermediary stages described above create gray areas, which are essential for the entire process to keep going, and which are entirely removed from any legal or democratic control. Since TOC involves huge sums of money, these gray areas are increasingly the place where direct influence is exercised over authorities and the political establishment. Thus, TOC becomes a direct threat to democratic decision-making structures. We maintain that the global economic system would be unable to survive without these gray areas, since it is geared exclusively toward

short-term profit rather than inclusive, sustainable development. The ends justify the means, and democratic decision-making structures, transparency, and civic participation disrupt both legal and illegal profit-seeking in equal measure.

These forces, which have long since escaped any kind of control, are now compounded by problems of legitimacy in our cultural sphere. This is, for example, true for speculating with staple foods, which, although it remains legal, is now regarded in most contexts as socially unacceptable. Seeking profit at the expense of the natural world is equally frowned upon, although it has not yet been fully defined and regulated by consumer law.

An understanding of the causes of the complex and growing dimensions of TOC in the context of the global market economy can be greatly facilitated by adopting a wide range of different perspectives and analyses. However, this will require a rejection of traditional considerations in terms of academic disciplines, professional responsibilities, and (party) political formulas in order to rise above such divisions and enter into a new dialogue.

This book offers contributions from 12 countries around the world authored by academics from a wide range of academic disciplines, representatives from civil society organizations, journalists, politicians and representatives from private industry, as well as activists. They offer 25 views on the causes, historical development, forms, and effects of TOC. Combined, we intend to construct a holistic picture that, among other things, shows:

- where and how organized crime can establish itself and spread within societies;
- how a globalized definition of legality or illegality does not necessarily correspond to local experiences, cultures, and traditions;
- how the worldwide social orientation toward the market as the sole regulatory force also promotes illegal money-making, while destroying other values of social life to such an extent that corrective social forces no longer exist;
- that the concept of national sovereignty, and therefore also of national security and police forces, as well as national legislation, are pushed to their limits by TOC;
- that TOC is quick to exploit lucrative loopholes, particularly in connection with new technologies – and has long since learned how to benefit from this business until each loophole is discovered and closed.

Assessed from such multidisciplinary (e.g., political science, sociology, economy, history, law, criminology, anthropology) and cross-cultural perspectives, the interdependent complexity of TOC and global loss of social cohesion will hopefully become increasingly ascertainable to our readers and to us through a multi-faceted

network. Hence, we intend to initiate a debate on our thesis within that network and beyond.¹

This book is divided into two parts. In the first part, authors from various academic and institutional backgrounds provide a view of some of the current global challenges posed by transnational organized crime. These range from money laundering, cybercrime, and inadequate reforms of the international justice system to the enormous difficulties in fighting corruption effectively.

This first part starts with Christine Jojarth of Stanford University, who analyzes the origins of money laundering, as well as the motives behind it and the methods employed. She also examines international instruments to combat money laundering – and their aims and effectiveness – from the perspective of industrialized and developing nations.

John Christensen, a Jersey-based tax expert, speaks in an interview about the role of tax havens, tax evasion, and the way corruption is deeply embedded in the international finance system.

Steffen Salvenmoser, legal expert at PricewaterhouseCoopers, offers an insider's view of the company's operations in Germany from the time of its establishment, and comments on the role of the private sector in preventing corrupt practices.

Tatiana Tropina provides an introduction to the growing field of online crime, also called cybercrime. Her contribution includes an examination of the way cyberspace can become both a medium for traditional organized crime and an eminent space for new forms of organized crime.

Finally, the legal expert and economist Edgardo Buscaglia describes possible best practices for the fight against organized crime. Taking as his basis the results of surveys carried out in many countries, the author analyzes the possibilities of transferring legal systems between countries and transforming international law into national law. The basic hypothesis is that legal reforms must be met with social approval and acceptance among the stakeholders of civil society if they are to be successful. Social support and monitoring must be complemented by strict financial controls that are able to identify and prosecute criminal economic activities.

In the second part of this book, contributions from Asia, Africa, Latin America, and Europe offer insights into the very different regional aspects of transnational organized crime, showing that, despite the diversity of local conditions and features, they have much in common and thus similar structures. The reasons for TOC gaining leeway in many regions of the world are deeply rooted in history and dependent on important historical moments favoring the evolution of new criminal structures. Detailed and well-described case studies allow readers from different backgrounds to understand thoroughly abstract terms describing transnational organized crime. We provide a kaleidoscope of vivid examples of the role

1 | See list with author's profiles and contact details in the back of the book.

and deep-rootedness of organized crime in many societies of our world and make the case driven by that all these stories are connected by powerful processes of social transformation, invisible global economic flows and accompanying cross-effects.

Florian Kühn, Christoph Reuter, and Yama Torabi report from Afghanistan. With different methodological approaches, the political scientist Florian Kühn and the journalist Christoph Reuter consider the impact of the transformation of the Afghan state and its economy under foreign influence on the structures and routes of organized crime and the illegal economy. Yama Torabi, who heads the NGO Integrity Watch Afghanistan in Kabul, describes the connection between poorly controlled international funding and widespread corruption, and describes the community-based anticorruption monitoring sponsored by the NGO to address the situation.

The economist Arun Kumar describes many aspects of the Indian shadow economy (illicit economy) and the extent to which it permeates society. He makes a connection to the emergence of corrupt structures under British colonial rule.

The Nigerian criminologist Etannibi Alemika describes the activities of organized crime in West Africa and places these in relation to the regional conditions of poverty, weak institutions, civil conflicts, and political crises. Referring to empirical examples from Nigeria, the article deals with drug smuggling and human trafficking, money laundering, and terrorism. The author analyzes the effectiveness of legal and political measures, including international pressure, to put a stop to the organized criminal groups in the region. Charles Goredema from South Africa, head of the program against organized crime and money laundering at the Institute of Security Studies office in Cape Town, gives a fascinating insight into his daily work.

The contributions on Latin America are from Mexico and Brazil. The journalists José Reveles and Marco Lara Klahr deal with the impact of the growing presence of organized crime in Mexico. On the one hand, Reveles describes the official policy on combating drug trafficking and places the influence of TOC in the context of the socioeconomic conditions and the prospects for young people in the country. He also refers to the repressive policies that target social players in the country, under the pretext of combating the drug trade. Lara Klahr provides an insight into the interplay of extortion, violence, and impunity, and its impact on everyday life and social relations in the country.

Ingrid Spiller, who headed the Mexico office of the Heinrich Böll Foundation until mid-2012, reports on the difficult paths that Mexican civil society must take to define its own role in the efforts to create security and justice in a weak state that is permeated by criminal structures.

Ignacio Cano works at the Observatory on Violence at the University of Rio de Janeiro. He explains in his article the different structures of organized violence in Brazil, especially the fluctuating illegal power structures in Rio de Janeiro, where local gangs – be they drug cartels or hybrid militias, all of whom are deeply in-

volved in the drug trade in the city – work against any positive developments in marginal neighborhoods.

The political scientist Regine Schönenberg hearkens back to her Amazonian laboratory where she has been doing research for decades. In her article she describes how organized crime draws on local traditions of informality that have been successively criminalized by legislation, and thus can also connect to established paternalistic loyalty structures. Due to political centralization and the sheer size of the region, the state is often absent and only one actor among many others, especially on the local level.

The state prosecutor Aurelio Rios describes in an interview the challenges in the proactive struggle of his institution for dialogue and civil rights in Brazil.

From the practitioner's perspective, Wolfgang Hees shows alternatives to strong-arm policies on the local level, which usually go hand in hand with the criminalization of drug users, by giving examples for the reconstruction of local social structures.

We have two contributions from the Balkans: The political scientist Berit Bliesemann de Guevara explains how closely the constantly changing economic opportunities and the political and administrative structures are intertwined in Bosnia-Herzegovina. She also describes the collateral damage of foreign interventions.

The police officer Ivana McIlwiane reports in an interview about the routes and practices of organ and stem-cell trafficking in Balkan countries. In this context she relates how the long-running war changed views of living without certain body parts, thus facilitating the spread of illegal practices in the medical sphere.

And, finally, articles concerning Italy, Germany and the European Union show that structures favouring the extension of organized crime are also imminent in Western European societies. Wolfgang Hetzer and Vincenzo Militello explore in their articles the political and legal views of the deficiencies of the European Union's actions on TOC.

The articles by Claudio La Camera from the Museo della ndrangheta and by Lorenzo Bodrero, head of the FLARE organization, both from the "traditional" country of the Mafia – Italy – describe the opportunities and experiences connected with the way the interplay between state and civil society can seriously affect TOC by, for example, confiscating illegally acquired property in a targeted way and allocating it to other purposes. Moreover, Bodrero emphasizes the necessity of tackling the problem of TOC at the European level in a concerted effort.

It was important for us not to leave readers with the impression that TOC is something that exists only in distant and exotic parts of the world. For this reason the final regional contribution deals with Germany. In his detailed and critical description, the journalist and author Jürgen Roth gives an insight into how organized crime operates, is perceived, and is combated in Germany; moreover, he points out the role that Germany plays in the international – and in particular European – network of criminal groups.

To guide the reading of this volume, we advise our readers to observe the interwovenness between legal and illegal economic activities and the underlying normative conflicts regarding the legitimacy of action. It is this broader debate that makes TOC politically relevant.

Regine Schönenberg, Political Scientist, Free University, Berlin
Annette von Schönfeld, Head of the Heinrich Böll Foundation's Regional Office
for Mexico and Central America

II. Transnational Issues of Organized Crime

1. MONEY LAUNDERING: MOTIVES, METHODS, IMPACT, AND COUNTERMEASURES

by Christine Jojarth*

1.1 Introduction

Money laundering is big business. An estimated 2–5 percent of global gross domestic product – corresponding to \$1.3–3.2 trillion in 2010 (Camdessus 1998; World Bank 2011¹) – are being laundered annually. Demand for money laundering is driven by the need to create a false legitimate appearance for funds that are tainted by their illegal origin or indented purpose. All sorts of underworld figures, such as drug traffickers, tax evaders, corrupt officials, and terrorists, feel this need out of fear that their money trail will lead to detection and confiscation.

To obfuscate their transactions, money launderers use an ever-widening range of methods to first conceal dirty money, then to convert it into other forms of assets, and finally to integrate the funds into the licit economy.

The threats posed by money laundering are just as diverse as the people and organizations engaging in it and the methods used. The most immediate threat is the undermining of efforts to combat crime and terrorism with negative consequences for a country's security and political stability. More indirect, but by no means less severe, is the threat money laundering poses to economic development as a result of its distorting effect on investment decisions and competition.

It was only in the late 1980s that policy makers started to become aware of these threats and to discover the importance of “follow the money” and confiscation as a policing and a crime deterrence strategy. The United States was the first country to criminalize money laundering and the initiator of the internationaliza-

* Christine Jojarth teaches at Stanford University, USA, and is an expert on transnational organized crime.

1 | The United Nations Office on Drugs and Crimes estimates that around \$1.6 trillion, or 2.7 percent of global GDP, was laundered in 2009 (UNODC 2011).

tion of these norms. Other Western nations followed suit and adopted a series of anti-money laundering measures that spread rapidly around the globe. The underlying institutional approach represented a novel way to foster international cooperation in terms of the type of actors involved, the legal form chosen for codifying the norms, and its treatment of state sovereignty.

The motives, methods, impact, and countermeasures related to money laundering will all be discussed in turn in this chapter. The goal is to provide an overview² of these four central aspects of money laundering and to build a foundation for the other chapters in this part of the book.

1.2 Motives

While the legal concept and criminalization of money laundering is a fairly recent invention, the motives for engaging in this practice date back a long time.

Throughout history, people deployed a variety of tactics to ensure that enjoying the proceeds from their criminal activities would not lead to prosecution and the confiscation of their assets. A villager who had stolen his neighbor's cow most likely did not keep it. Instead, he led it out of the village to sell it or to exchange it for some other livestock in order to disassociate himself from the theft. He might even have felt the necessity to fabricate a story about an unexpected inheritance to create a seemingly legitimate rationale for the sudden increase in his wealth.

Back then, as much as today, the extent to which criminals feel a need to deploy techniques to conceal their loot, to convert it into other forms of assets, and to create a legitimate appearance depends directly on the extent to which they face a real risk of detection and sanctions by law enforcement officials or by their community. In the absence of criminalization and effective sanctions, money laundering is nonexistent, simply because criminals feel no need to turn on the "washing machine" when they know that they can enjoy their loot with impunity.³

Over the past decades, a widening range of practices have been outlawed and moved toward the top of law enforcement priorities. This development led to an increase in the diversity of individuals and organizations that resort to money laundering as a means to evade these control efforts.⁴ Initially, money laundering was most relevant to networks engaged in blue-collar crime – in particular drug

2 | For a more in-depth discussion see Jojarth (2009).

3 | Guatemala's President, Otto Pérez Molina, is thus correct when arguing that by decriminalizing drug trafficking, one would largely get rid of money laundering (*Economist* 2012).

4 | Another reason for this increase is of purely definitorial nature. Money laundering is a derivate crime, that is, it is predicated on other criminal endeavors. The list of predicate offenses for money laundering has expanded significantly over the past two decades so that today, the crime of money laundering is associated with most serious offenses.

traffickers⁵ – as they were in the spotlight of law enforcement. In the context of this book, the most important “newcomers” to the money laundering scene were corrupt government officials, sanction busters, and terrorists.

In the 1990s, international corruption gained significantly in salience. Corruption scandals like those involving the former Philippine President Ferdinand E. Marcos⁶ or Nigeria’s former military ruler Sani Abacha⁷ propelled Western leaders into action. They established national and international⁸ regulations, making it considerably harder for companies to bribe foreign officials. Until then, many Western companies had openly declared how much they had paid in “facilitation fees” to win overseas contracts, as such payments were not only deemed legal in their home countries but often even made tax deductible.⁹ The introduction of these new regulations forced companies to either compete fairly or to turn to techniques to conceal the flow of bribes. Similarly, corrupt government officials started to engage in money laundering in order to reduce the risk of having their (overseas) assets seized.¹⁰

Sanction busters present another type of money launderers of particular relevance to the democracy focus of this book. The end of the Cold War enabled the United Nations to agree on the imposition of economic sanctions much more frequently than in the past. This increase in the frequency and geographic reach of international sanctions strengthened the need for sanction busters to devise schemes that would obfuscate their dealings with a quarantined state or group and thereby boosted the demand for money laundering. The trend toward smart sanctions, and in particular targeted financial sanctions, has accentuated the

5 | In fact, the legal concept of money laundering was initially exclusively tied to gains from the illicit drugs business. See United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988 (Article 3 paragraph 1) or FATF (1990). Over the past two decades, the list of so-called predicate offenses for money laundering has been – and continues to be – expanded with the effect that it now encompasses most categories of serious offenses. See Interpretative Notes to Recommendation 3 of the FATF Recommendations of 2012.

6 | Marcos and his associates are alleged to have illicitly accumulated an estimated \$5-\$10 billion through a variety of corrupt schemes (World Bank 2010).

7 | Abacha, together with his family and accomplices, allegedly siphoned off \$4 billion from his poor country (Olson 2002).

8 | For example, OECD Anti-Bribery Convention of 1997; United Nations Convention against Transnational Organized Crime of 2000; United Nations Convention against Corruption of 2005.

9 | For example, Germany only barred this practice in 1997, in response to the OECD’s 1996 Recommendation on the Tax Deductibility of Bribes to Foreign Public Officials.

10 | For a recent example of an overseas asset freeze involving an allegedly corrupt official, see Teodoro Nguema Obiang Mangue, a son and likely successor of Equatorial Guinea’s incumbent President (BBC 2012; Silverstein 2011).

importance of money laundering further (Cortright et al. 2002). For example, Swiss authorities accuse associates of Syria's President Bashar al-Assad of trying to launder the more than \$50 millions Syria's first family holds in Switzerland in an attempt to circumvent international sanctions and the freezing of their assets (NZZ 2012).¹¹

Already before – and with an even greater sense of urgency after – the terrorist attacks of September 11, 2001, the United States and many other countries and international organizations increased their efforts to disrupt the flow of money to terrorist organizations.¹² Within the same month of the attacks, the United Nations Security Council adopted resolution 1373, which requires all member states to freeze funds and assets controlled by people or entities with links to terrorism.¹³ This and other initiatives targeting terrorists' soft financial belly made money laundering¹⁴ essential for terrorists to continue their operations.

In sum, every individual or organization – including criminals, corrupt government officials, sanction busters, and terrorists – with a reason to fear detection and forfeiture has a motive to engage in money laundering. The broader the scope of criminalization and the stronger the law enforcement offensive, the harder these wrongdoers will try to launder their assets.

1.3 Methods

Penal codes and law enforcement efforts determine the categories of individuals and organizations that will resort to money laundering and the intensity with which they will do so, as discussed in the previous section. In addition, policing strategies also shape the *methods* criminals will deploy in order to evade detection and forfeiture. Not unlike air in a balloon, money laundering adjusts to those areas with the lowest pressure. When policing initially focused on the banking sector, money launderers shifted to the insurance industry. When anti-money laundering (AML) efforts were broadened to include the insurance sector, crimi-

11 | The overwhelming majority of the \$1.5 bn Bashar al-Assad has allegedly amassed for his family and his close associates is kept in countries that have not adopted economic sanctions against his regime, notably Russia and China (Inman 2012).

12 | For example, the International Convention for the Suppression of the Financing of Terrorism of December 1999 (entered into force on April 2002); Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA Patriot Act) of October 2001.

13 | United Nations Security Council Resolution 1373 of September 28, 2001, Paragraph 1(c).

14 | Nb., in contrast to most other money launderers, terrorists resort to money laundering primarily in an effort to conceal the intended illegitimate purpose of their assets while the origin of those assets is often legitimate, for example, donations to charitable organizations (Greenberg 2002; Naím 2005; United States General Accounting Office 2003).

nals intensified laundering operations in real estate. The cat-and-mouse game continues, and money laundering keeps expanding into ever more sectors. In the process, criminals and their intermediaries have invented a myriad of different money laundering schemes. All these various schemes have in common that they seek to disassociate funds from their dirty origins (or purposes) and to create a false legitimate appearance through a series of transactions that are usually categorized into three distinct stages: placement, layering, and integration (cf. Zagaris 1992). This categorization serves primarily as a heuristic tool and does not represent some fixed “natural law”: Not all money laundering transactions run through all three stages, and additional layers of complexity are sometimes added. These transactions are usually, but not necessarily, carried out involving a number of different countries.¹⁵

During the placement stage, money launderers deposit their illicit cash into bank accounts, usually in the same country where the illicit profits were generated. They typically break up their funds into smaller amounts so that each individual deposit remains below the designated threshold level,¹⁶ above which financial institutions are required to perform customer due diligence.¹⁷ Money launderers will likely involve a number of trusted people and companies to make these deposits on their behalf over the course of some time.

The purpose of the second stage – the layering or moving stage – is to disassociate the “dirty” money from its source or intended purpose. Money launderers seek to achieve this through a complex series of financial transactions, such as the wiring of funds through a globally scattered network of bank accounts.

In the third and final stage – integration – the launderer integrates the processed funds and inserts them into the legitimate economy. Any legal investment vehicle (in the broadest sense) that generates some financial return – even if that return is smaller than the initial investment – can serve this purpose. The harder it is for outsiders to verify the declared sums spent on or earned from that enterprise, the better suited it is for money laundering purposes.

Following are a few examples illustrating the immense diversity of schemes devised by creative money launderers.

In one case, an individual raised suspicion with his unusual betting strategy. Over a long period of time, he deployed the very same betting strategy, which, with a high degree of certainty, made him win relatively small sums but resulted in an average net loss of 7 percent. To receive his payouts, he had checks issued to a total of 14 different bank accounts in the names of 10 third-parties. Some of

15 | For example, 80 percent of the money laundering operations detected in Canada (Beare and Schneider 1990) and 90 percent of those detected in Belgium (Stessens 2000) involved money that had been brought in from abroad.

16 | The FATF recommends a threshold of \$/EUR 15,000 (FATF 2012a).

17 | This process of breaking up larger sums into small individual deposits is also called “smurfing.”

these recipients turned out to be armed robbers or their immediate families. The money launderer had funneled a total of approximately \$3.3 million through this system (FATF 2002).¹⁸ In another cases, criminals establish front companies with the purpose of creating a cover for the dirty origins of the money they invest in the enterprise. Probably the most notorious illustration of this phenomenon is the Mafia's dabbling in gastronomy (e.g., "Pizza Connection" of the 1980s). More singular examples include laundering operations run through horse racing stables (Koppel 2012) and soccer clubs (FATF 2012b). By establishing overseas subsidiaries, a front company can also launder money internationally through trade-based operations. It can move value across borders by over-invoicing and under-invoicing commodities that are imported or exported around the world, often in several iterations (carousel transactions) (US Immigration and Customs Enforcement 2012). A front company officially engaged in the trade of exotic leather can, for instance, move drug money from the United States back to Colombia by overpaying for a shipment of caiman leather it received from Colombia. It would then later return that shipment, claiming some defect, but never receive a refund.

While by no means comprehensive,¹⁹ the discussion above provides a sampling of some of the most common money laundering techniques and illustrates the boundless creativity criminals develop to evade the ever-tightening net of anti-money laundering regulation.

1.4 Impact

If left unchecked, money laundering can cause significant economic and political harm as will be discussed in this section.

1.4.1 Economic impact

The negative economic impact money laundering exerts is hard to quantify but can be significant.²⁰ There are two main channels through which money laundering can suppress economic growth: the weakening of crime control and the distortion of market mechanisms.

First, successful money laundering operations weaken the fight against the offenses that generated the illicit cash or that use funds for illicit purposes. The policing tactic of "follow the money" to find the perpetrator is rendered ineffective when the money trail is successfully obfuscated through a web of complex transactions. Criminals, terrorists, and corrupt government officials – among many other

18 | See FATF (2009a) for an in-depth analysis of how casinos and the gaming sector can be abused for money laundering.

19 | The FATF's annual typologies reports provide a wide range of case studies on different money laundering schemes.

20 | The United Nations Office on Drugs and Crime estimates that every \$1 billion laundered reduced overall economic growth by 0.04 to 0.06 percentage points (UNODC 2011).

money launderers – remain undetected and continue to operate with impunity. As a result, households and businesses face increased expenses for private security. Jobs are lost when businesses relocate to safer places and investments are stalled. Tax money is squandered when public contracts are awarded to non-competitive – but well-greased – bids. And there are many more causal mechanisms linking high levels of crime with economic losses.²¹

Second, money laundering can impose significant economic losses on a society by distorting the licit economy. Money laundering undermines the effectiveness of the market mechanism in allocating investment money to projects that yield the highest expected returns, and thus, on aggregate, the strongest economic growth. In the licit economy, investment projects compete with one another for capital on purely economic grounds. To generate competitive returns and to attract sufficient capital, businesses face ongoing pressure to increase the efficiency of their operations and to move into segments with strong growth potentials. It is through this competitive pressure that an economy sustains growth. In contrast, in the shady world of money laundering the “investment grade” of competing projects is predominantly determined by non-economic factors. Dirty money is not invested in projects that offer the highest returns but in those with the lowest risk of detection and forfeiture. In exchange for reducing this sort of risk, underworld figures and organizations are even willing to accept a negative payback, as illustrated by the betting example in the previous section. The greater the risk of getting caught the greater the willingness of criminals to pay for laundering services. The greater the obfuscation and conversion potential, the more attractive the investment project. Well-regulated and transparent sectors will be shunned in favor of investment targets that offer *sui generis* transactions with profits that are harder to quantify for an outsider (see section on “Methods” above). In addition to this inter-sector distortion of investment flows, money laundering also distorts competition *within* the sectors that attract dirty money. Businesses that accept shady investments may eventually crowd out businesses that raise their capital in legal ways. How can a law-abiding pizzeria owner who needs to generate competitive returns compete with a pizzeria that can stay afloat even if it never turns a profit on its official gastronomic operations?

1.4.2 Political impact

In addition to economic losses, successful money laundering operations and the crimes and terrorist activities they allow to flourish also undermine the chances for democratic transition and consolidation. Three aspects are worth highlighting.

First, high levels of crime or terrorist attacks undermine a democratic government’s legitimacy, as citizens expect their government to provide security (cf. Pérez 2003–04) and conditions favorable for economic growth. Public support

21 | For a more in-depth discussion see Pinotti’s (2012) analysis of how the Mafia’s strong presence in Sicily stifled the island’s economic development.

for democracy is further eroded when authorities misuse their offices for private gain. The dangerous promise of a “strong leader” unfettered by constitutional or parliamentary restrictions in his or her relentless fight against these evils gains much appeal at the expense of the democratic process. Second, money laundering can also pose a threat to democracy by helping to cover up financial transactions related to crimes that unlawfully alter the conditions for political competition – ranging from violations of campaign financing laws to contract killings of opponents. Third, successful money laundering undermines the effectiveness of international sanctions against dictatorial regimes and thus the prospects of military containment or regime change.

In sum, by obfuscating financial flows associated with a wide range of illegal activities money laundering allows these crimes to flourish at the expense of economic and political development.

1.5 Countermeasures

The international coordination of the fight against money laundering and terrorist financing is remarkable, both in terms of the great speed with which the new norms were diffused around the globe and its underlying institutional approach.

Money laundering was not illegal anywhere until the mid-1980s. The United States was the first country that dedicated a national law exclusively to the laundering of illicit proceeds (Money Laundering Control Act of 1986). From the outset, the US government was keen to convince other countries to follow suit. It realized that given the international mobility of capital a unilateral approach to combat money laundering was doomed to fail and risked jeopardizing the international competitiveness of its financial sector. These efforts first bore fruit in December 1988 with the adoption of the Basel Statement of Principles for the Prevention of Criminal Use of the Banking System for the Purpose of Money Laundering and – only a few days later – with the inclusion of anti-money laundering provisions in the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances.²² The Financial Action Task Force (FATF) was formed in the summer of 1989. Less than a year later, the Paris-based institution released the most important of all international agreements on money laundering: the first version of the so-called Forty Recommendations.²³ A number of additional inter-

22 | Article 3, paragraph 1. See also the 1998 Political Declaration and the related Action Plan (“Countering Money-Laundering”), which details the money laundering-specific obligations under the 1988 Convention.

23 | These recommendations were fully revised in 1996, 2003, and most recently, in February 2012. In October 2001, the FATF also issued the Eight (later expanded to Nine) Special Recommendations on Terrorist Financing, which were incorporated into the 2012 version of the Recommendations.

national agreements²⁴ on money laundering have since been created with regional or global reach; and a number of specialized private sector²⁵ and governmental organizations²⁶ have been established specifically to focus on this issue.

The FATF is an intergovernmental body that functions largely as a loose policy forum in which government officials (typically from the finance ministry) deliberate on legally non-binding measures to counter money laundering. It thus represents a prototypical example of Slaughter's (2004) concept of "government networks," which she contrasts with the "old world order" characterized by formal international organizations and binding international agreements negotiated by career diplomats of foreign ministries. The central normative document produced by the FATF are its Recommendations. After their first release in 1990, these Recommendations were fully revised in 1996, 2003, and most recently, in February 2012. In October 2001, the FATF also issued the Eight (later expanded to Nine) Special Recommendations on Terrorist Financing, which were incorporated into the 2012 version of the Recommendations. Each revision expanded the scope of the money laundering offense: first from only drug-related crimes to all serious crimes – with one recommendation specifically dedicated to high-level corruption – later also terrorism and terrorist financing, and, most recently, the proliferation of weapons of mass destruction. These revisions also brought about an expansion of the circle of addressees from governmental authorities to the private sector, including financial institutions and a growing list of designated non-financial businesses and professions.²⁷ The private sector is thereby assigned the main responsibility for preventive measures.

However, despite of their legally non-binding nature the FATF Recommendations are far from toothless. Quite to the contrary – the FATF has been very successful in not only imposing its standards on its members but also, and most remarkably, on non-members. In violation of the traditional understanding of the sovereignty of nations, the FATF set out to monitor and sanction nations for non-compliance with standards that they had never officially endorsed, and in the creation of which they had not been granted any official say. Most countries found the

24 | For example, Council of Europe Convention on Laundering, Search, Seizure, and Confiscation of the Proceeds of Crime of 1990; United Nations Convention against Transnational Organized Crime of 2000; United Nations Convention against Corruption of 2003.

25 | For example, the Wolfsberg Group was formed in October 2000 as an association of 12 global banks.

26 | For example, the Egmont Group was established in 1995 as an informal group of Financial Intelligence Units to facilitate international cooperation. At present, the Egmont Group has 128 members (Egmont Group 2012).

27 | Namely, casinos; real estate agents; legal professionals; accountants; dealers in precious stones and metals; trust and company service providers.

reputational and financial²⁸ costs of being classified as a “Non-Cooperative Country or Territory”²⁹ to be too high and felt compelled to subscribe to these norms (Sharman 2008). While highly successful in spreading the anti-money laundering norms, this approach earned the FATF considerable criticism for being imperialistic, biased against the “small fish” (Palan, Murphy, and Chavagneux 2010), and methodologically weak. The FATF has reacted to this criticism by strengthening its methodology for assessing compliance (FATF 2009b) and through the expansion and diversification of its membership base. The initial 16 Western members³⁰ were complemented by 20 members³¹ from every continent. To further strengthen its geographic reach, the FATF grants eight so-called FATF-Style Regional Bodies the status of associated members.³²

1.5.1 Intended effects

The most remarkable success of the FATF is the rapid diffusion of its norms for anti-money laundering (AML) and the combating of the financing of terrorism (CFT). Only a decade after its first appearance on the international stage, the legal concept of money laundering was adopted by more than 130 jurisdictions (Myers 2001). Today, the criminalization of money laundering is virtually universal, with more than 180 jurisdictions around the world endorsing the FATF Recommendations (FATF 2012c). The extent to which the global criminalization of money laundering and terrorist financing has helped reduce the underlying crimes remains disputed.³³ The United Nations Office on Drugs and Crime estimates that maybe only 0.2 percent of global illicit financial flows are being currently seized and frozen (UNODC 2011). While this number is certainly low, it would be overly

28 | Johnson (2001) finds evidence that blacklisting led indeed to financial flows to these countries being constricted or even severed.

29 | The practice of labeling non-compliant countries as NCCT was in place between 2000 and 2006 and stirred up the most controversy. The FATF has since changed its monitoring process and terminology.

30 | The G-7 members plus the European Commission and Australia, Austria, Belgium, Luxembourg, Netherlands, Spain, Sweden, and Switzerland.

31 | Thirty-four jurisdictions and two regional organizations (namely the Gulf Cooperation Council and the European Commission) (FATF 2012d).

32 | Namely the Asia/Pacific Group Against Money Laundering; the Caribbean Financial Action Task Force; the Eastern and Southern African Anti-Money Laundering Group; the Financial Action Task Force of South America; the Inter-Governmental Action Group against Money Laundering (covering West Africa); the Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism (covering Central and Eastern Europe); and most recently, the Eurasian Group in Central Asia; and the Financial Action Task Force for the Middle East and North Africa (FATF 2012d).

33 | For a critical discussion of the effectiveness of anti-money laundering measures in suppressing crime, see Levi and Reuter (2006) and Sharman (2008).

hasty to conclude that AML/CFT efforts are worthless. For one, measures against money laundering and terrorist financing may be no less cost-effective than other strategies to fight crime. Also, the confiscation of criminal proceeds is of symbolic importance, as it signals to law-abiding citizens that crime does not pay, at least not always (Levi and Reuter 2006). Finally, the arsenal of laws and regulations to fight money laundering and the financing of terrorism has proven to be useful in the investigation and prosecution of certain criminals and in the recovery of ill-gotten assets in instances where it would have been difficult to win a case otherwise (Levi and Reuter 2006).

1.5.2 Unintended effects

As with any policy intervention, the drafters of AML/CFT regulation need to analyze possible direct costs³⁴ and unintended negative side effects of their proposal, identify mitigation measures, and balance the remaining unmitigated effects with the expected benefits. The following paragraphs highlight four examples of how AML/CFT legislation can unintentionally harm developing nations and vulnerable members of society.

First, the cost of establishing and maintaining a designated anti-money laundering office – as required under international money laundering regulations – can be disproportionately high for small countries with an infant banking sector.³⁵ The international community acknowledged this problem in 2000 and created donor-supported trust funds at the IMF to finance technical assistance in the implementation of AML/CFT regulation (IMF 2009).

Second, AML/CFT provisions can make it harder for marginalized people to access the formal banking sector. Compliance with these provisions results in higher administrative costs, which banks tend to pass on to customers. Furthermore, “know your customer” requirements for proper identification can present a serious obstacle for undocumented immigrants or people living in countries where identification papers are not readily available or prohibitively expensive to obtain for the poor.

Closely related to this second point, is a third mechanism through which AML/CFT regulation can harm poor people and nations by increasing the transfer costs of remittances. The money immigrants send back to their families in their home countries constitutes an important source of income not just on the family level but also in terms of many nations’ overall economies. In 2011, global flows of remittances were estimated to amount to a staggering \$372 billion, almost

34 | Financial firms in Europe and America spent more than \$5 billion on tackling money laundering in 2003 (The Economist 2004). These costs have risen sharply since then (KPMG 2011). See also Levi and Reuter (2006).

35 | See Sharman and Mistry (2008) for a detailed analysis of the costs and benefits for three small developing nations – namely Barbados, Mauritius, and Vanuatu – from global AML/CFT initiatives.

three times higher than official development assistance, contributing more than 15 percent to the total gross domestic product of a dozen developing countries (World Bank 2012a). In response to the terrorist attacks of September 11, 2001, the international community strengthened controls over money transfers,³⁶ realizing that even relatively small sums can cause unimaginable harm.³⁷ These efforts to curtail the flow of funds to terrorist activities need to carefully take into account that even small changes in money transfer costs can have a big impact on the ability of immigrants to support their families in their poor home countries.³⁸

Fourth, the experience of the small Pacific island nation of Nauru illustrates how tightened international AML/CFT regulation can dash the hopes of developing nations to establish themselves as international financial centers. Nauru's "no questions asked" approach to banking had transformed the tiny island nation of about 10,000 people from being entirely dependent on its almost depleted phosphate deposits into an international financial hub. At its peak, it registered a total of 400 banks – virtually all without a physical presence on the island itself ("shell banks") (US State Department 2002). These banks allegedly helped to launder about \$70 billion of illicit proceeds from Russian criminals in 1998 alone (Hitt 2000). In response to Nauru's lacking willingness to implement tougher oversight of its banking sector, the Financial Action Task Force black-listed³⁹ Nauru in 2000. Financial institutions in FATF member states were requested to apply enhanced surveillance and reporting procedures of financial transactions involving Nauru. These measures robbed Nauru of its appeal for money laundering and international finance in general, resulting in the bankruptcy of all its banks. With the depletion of its primary reserves of phosphates and the loss of its only alternative strategy for future income generation – banking – Nauru depends today almost exclusively on aid transfers from its far away neighbor Australia.⁴⁰ Nauru represents unquestionably an extreme case. However, it illustrates how efforts to ensure global implementation of minimum AML standards and a level playing

36 | The focus of particular interest became so-called alternative remittance systems or value transfer systems like *hawala* or *hundi* (see Cao 2004 or US State Department 2005).

37 | The National Commission on Terrorist Attacks upon the United States (2004) estimated that the terrorist attacks of September 11, 2001, cost Al Qaida a total of \$400,000 to \$500,000 to execute, of which only \$270,000 was spent within the United States on inconspicuous expenses such as lodging, flight training, and airplane tickets. The Madrid train bombings in 2004 cost as little as \$15,000 (Levi and Reuter 2006).

38 | The World Bank estimates that a reduction of five percentage points in money transfer costs can save up to \$16 billion annually (World Bank 2012b).

39 | The official terminology used by the Financial Action Task Force in its first assessment round in 2000 and 2001 was to designate Nauru (along with 23 other nations) as one of the "Non-Cooperative Countries or Territories."

40 | The Australian government budgeted aid transfer of Aus\$31.6 million to Nauru for the Fiscal Year 2012-13 (DFAT 2012).

field can deprive newcomers of one of the few attractive selling propositions they can offer, namely light-touch regulation and ease of business.

The above discussion highlights four important mechanisms through which global AML/CFT efforts can unintentionally harm developing countries and marginalized members of society, and the drivers of this agenda – mainly the governments of developed nations – should take this into account.

1.6 Conclusion

Globalization – the increasing cross-border circulation of goods, funds, and people – offers important opportunities for economic and political development. By the same token, globalization offers criminals, corrupt officials, sanction busters, and terrorists a myriad of ways to obfuscate the trail of their dirty money and thus enjoy the rewards of their illicit activities or fund their terrorist cause. The challenge policymakers face is to devise mechanisms that reduce this dark side of globalization without unduly jeopardizing its positive aspects. On the one hand, prevalent money laundering keeps crime – including corruption and the violation of international sanctions – undetected and financially rewarding and terrorist attacks and weapons proliferation funded, thereby undermining economic and political development. On the other hand, overly zealous anti-money laundering and anti-terrorist financing efforts risk marginalizing vulnerable members of society and imposing unduly high implementation and opportunity costs on developing nations. Efforts to control illicit financial flows face an uphill battle, as money launderers are highly innovative, the volume of proceeds laundered through the international financial system is massive, and even small sums of money can cause major harm in the hands of terrorists. The Financial Action Task Force can pride itself on driving the rapid global diffusion of regulation to combat money laundering and the financing of terrorism. However, the effectiveness of these measures in suppressing crime and terrorist activities remains disputed. Making headway on this front requires the closing of remaining loopholes and, a fortiori, a shift away from a compliance system that is too heavily focused on whether recommended policies and procedures have been adopted – and instead a shift toward an assessment of whether the intended results of those policies and procedures have been achieved.

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Organisation for Economic Co-operation and Development (OECD) Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (“Anti-Bribery Convention”) of 1997

2. WHAT DO A TAX EVADER AND A MONEY LAUNDERER HAVE IN COMMON? THE ROLE OF SECRECY IN THE FINANCIAL SECTOR

Interview with John Christensen, Director of Tax Justice Network

John Christensen from the island of Jersey, a tax haven – which is how he describes his home island – worked for 11 years as senior economic advisor in Jersey. One of the reasons why he knows so much about tax havens is that he has been studying this subject for his entire 35-year career.

Q: How is transnational organized crime related to the current global financial system? Corruption and criminality are deeply embedded in the global financial system. The global financial system acts as a supply side for corruption and criminality; it encourages and facilitates these phenomena because of its secretive nature. Financial structures that permit secret activities behind walls of non-disclosure of information encourage criminality.

Secrecy is the supply side of corruption and transnational organized crime. It would be far less easy for individuals or organizations to carry out criminal activities if they were required to disclose what they are doing in offshore companies, offshore trusts, offshore foundations, and in secrecy jurisdictions. I use the term “secrecy jurisdiction” rather than “tax haven” because what those countries are selling to their clients is secrecy. Why secrecy? Because within a secrecy jurisdiction, it’s very easy not to disclose who they are, what they do, and with whom they work. Behind the offshore system, transnational criminal organizations can carry out a wide range of criminal and corrupted activities with little fear of investigation or prosecution.

Jurisdictions like Switzerland, Jersey, Bermuda, and Cayman Islands guarantee effective secrecy.

These days capital can move across borders without impediment; this includes capital from any kind of illegal activities, like drug trafficking, insider trading, corruption. It’s very easy to move money arising from criminal activities and hide it behind secrecy and offshore structures. Globalization has created what I describe as a “criminogenic environment,” which encourages criminal activities.

Q: Do criminal organizations and private investors who want to avoid taxes use the same tools?

The tools used for money laundering are exactly the same tools used for tax evasion and similar economic crimes and practices. These tools involve creating elaborate structures, which guarantee in almost all circumstances to inhibit or prevent effective investigation and prosecution.

In the global illicit economy, laundering money is typically organized through secrecy jurisdictions. This suits criminals very well, for two reasons: First criminals like the guarantee of impunity from prosecution, and they want to be confident that their profits are secure. Therefore, criminals use offshore companies, offshore foundations, and trusts – all tools used also in the commercial world. Criminals are helped by prominent law firms, major banks, and accountants, all of which are very happy to manage their money through these structures, though they don't want to directly handle narcotics or arms trafficking.

In conclusion, we can say that, yes, criminals are using the same tools and secrecy jurisdictions used by major multinational companies to avoid taxes.

Q: So, tax evasion is part and parcel of money laundering?

The good news is that tax evasion is becoming a predicate for money laundering in many countries, like in the United Kingdom, which recognizes tax evasion as the motive for a great deal of cross-border financial flows. Tax evasion sustains secrecy jurisdiction systems, since tax havens make a lot of business by attracting tax evading capital. Many lawyers, bankers, and accountants agree to support tax evasion: By making tax evasion a predicate crime for money laundering, they would feel less comfortable in creating offshore structures that are used for criminal purposes.

This solution would be appropriate, but in order to really tackle the supply side, we have to mount campaigns to tackle the lack of transparency in the global financial markets and not only banking secrecy. Secrecy is protected under national laws – as with banking secrecy in Luxembourg, Austria, and Switzerland – or through secretive trusts created under Common Law. By deepening transparency and creating a much less secret environment, we can tackle this problem.

Q: Is it more urgent to tackle the phenomenon at a national or at an international level?

It is not a question of either/or – action is needed at both levels. There is a lot that can be done at a national level. Australia, for instance, has set up combined operations that involve not just tax authorities, but also the police, judiciary, secret services, and intelligence services, because they recognize that the culture of tax evasion seriously degrades tax compliance and is a threat to democracy.

But tax evasion is an international phenomenon, so there is a need for global standards of information-sharing across borders. There are already a few examples: The EU is applying a directive that allows automatic exchange of tax information across the Union. It's not a perfect system, but it's already a beginning, and

this is a work in progress. Africa, Latin America, and Asia should consider adopting automatic information exchange as their preferred standard for tackling tax evasion. We consider the standards promoted by the Organisation for Economic Co-operation and Development far too weak and ineffective. We need to move beyond the OECD, which is effectively a rich man's club, and we need to involve the UN in pushing these standards.

Q: But how can one deal with corrupted governments and the lack of political will to make reforms?

This is an amazing challenge. It is the challenge they gave me when they appointed me as director of the Tax Justice Network in 2003 to create a global campaign of almost unprecedented scale to generate public awareness and momentum to counter the huge political lobbying power of the tax haven complex. There are too many countries, including the United Kingdom, Switzerland, Austria, and the United States, that have an interest in keeping the status quo because they are themselves secrecy jurisdictions and receive huge inward flows of capital as a result of providing this secrecy.

Q: What is the role of civil society in this?

There are many tools we can use – boycotting is one of them and can be very effective. In my early life, I campaigned against the apartheid movement in South Africa, boycotted companies supporting the apartheid system, and protested against apartheid. Boycotts were effective, but “naming and shaming” also works very well. There's a whole variety of tactics that can be used: I've been very much involved in the Occupy movement. There is no question that this movement has opened up debates that senior politicians and powerful companies certainly didn't want to have opened up. It's been very successful in doing that. Taking to the streets in mass mobilization is very important. The Tax Justice Network is already involved in public awareness-raising programs – with the publication of books, through online media – in order to raise public interest and build political momentum.

Q: Is there much social awareness of this issue in Africa?

Because of the extremely high importance of exporting minerals and agriculture products, Africa is particularly prone to illicit financial flows and tax evasion.

The Tax Justice Network is present throughout sub-Saharan Africa. There is a well-established secretariat in Kenya. Public awareness is rising and there's still a long way to go, but it's a good starting point. Shaping tax policies that promote sustainable and equitable growth is probably the most important political task facing African leaders in the coming years.

Q: In “Treasure Islands”¹, it is mentioned that Ghana was on the way to becoming a tax haven. Can you give us more information about that?

Ghana is a good news story in so far as the plans to create an offshore financial center in Accra have been put on hold. The bad news, however, is that Kenya and Rwanda are exploring the possibility of moving in that direction. The impetus frequently comes from banks, law firms, accounting firms, and multinational companies, which use offshore centers to avoid taxes. For the bankers, lawyers, and accountants, there are huge fees to be earned from supporting tax dodging, so this is a very tempting and contagious activity. Botswana already has an established offshore financial center and Mauritius has emerged as a key secrecy jurisdiction in the southern hemisphere.

Q: How is the population of a tax haven affected?

We should avoid generalizing on this question. I can talk about my experience in Jersey, which is where I grew up and practiced professionally for many years. When I decided to investigate tax havens, this was an obvious starting point. I spent 12 years – from 1986 to 1998 – working in Jersey to investigate how a tax haven works from the inside.

For a small island like Jersey, hosting a large and sophisticated offshore banking sector involves huge risks because it is dealing with very dynamic and powerful companies that can rapidly capture political processes and use that captive state to push for low taxes and lax regulations. At the same time, the dynamic growth of the banks, law firms, etc., “crowds out” the other industries by pushing up property prices and labor market costs, which makes the local government even more dependent on the tax haven activity. In many respects, this process of political capture is similar to the “resource curse” that afflicts mineral exporting countries, which is why we talk about tax havens suffering from the “finance curse.”

Jersey is an interesting case study, but the City of London shows similar features of the “finance curse.” This is particularly dangerous not only for Britain, but for the rest of the world, because the City is stimulating a race to the bottom in terms of both regulation and taxes, which is undermining other countries. Sadly the G-20 countries haven’t recognized the severity of this problem, and the measures they’ve taken against tax havens since 2009 just don’t go far enough to tackle the problem.

As far as the local population is concerned, most people in Jersey don’t see the big picture of how the island’s role as a tax haven impacts on other countries. Sadly, in many cases they don’t want to see the complete picture, and there’s a lot of media propaganda about how tax havens stimulate economic growth and create jobs when in fact they do the exact opposite.

1 | Nicholas Shaxson, *Treasure islands – Tax havens and the men who stole the world*, 2011.

Q: What is the situation in South Africa?

South Africa has weaknesses in its disclosure regime, for example relating to trusts and offshore companies, which support tax evaders. But at the same time, the scale of mineral production and exporting makes South Africa prone to illicit financial outflows. As a G-20 country, South Africa has an important part to play in shaping new policies to tackle tax havens, for example pushing for automatic information exchange as the international standard for tackling tax evasion, and a country-by-country financial reporting standard for transnational companies.

Cape Town, March 14, 2012

Verena Zoppei²

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3. “PEOPLE SHOULD NOT BE PUNISHED FOR BEING HONEST!”

*Interview with Steffen Salvenmoser,
Forensic Services of PricewaterhouseCoopers,¹ Frankfurt am Main*

Q: Would you describe briefly your portfolio and the typical profile of your clients?

The portfolio of our services ranges from fraud investigation to all kinds of anticorruption policies. These include preventive compliance services, compliance reviews, the setting up of codes of conduct, guidelines for employees, whistleblowing hotlines, and the implementation of rules. Rules will only be followed if people know there is a risk that non-compliance will be detected and sanctioned.

Q: When was the PWC “forensic services” division established – including compliance services, fraud risk-management, and the above-mentioned services?

In Germany the current labeling of services using this name was adopted in 1999. In the Anglo-Saxon countries like the United States and the United Kingdom, these services have been in effect for at least 20 years. But if you go back, PWC always offered such services: In Germany the first Statement of the Institute of Chartered Accountants (IDW – Institut der Wirtschaftsprüfer) covering the issue was published in 1934 under the title *Ordnungsgemäße Durchführung von Unterschlagungsprüfungen* (How to properly lead a fraud investigation). So, it is not totally new that auditors deal with those issues – but naming them “compliance services” dates back 10 to 20 years. Austria, for example, only introduced them five years ago.

Q: What is the typical profile of your clients? And are they more interested in dealing with difficulties inside their companies affecting their company culture, or, for instance, dealing with foreign businesses in countries that are not very transparent?

We advise all kinds of companies and even the public sector is requesting such services. This is mainly due to the initiative of the respective boards or supervisory boards – depending on the relevant jurisdiction under which the company operates. Obviously, it is more the case for larger entities, although lately it is becoming more relevant for smaller companies. For the markets that I am working in –

1 | See <http://www/pwc.de>

mainly Germany and Austria, but it is probably the same in Western Europe – the emphasis is on external affairs. In respect of prevention of corruption, the worries are focused on risks abroad. In terms of internal misconduct like embezzlement, the focus is more on the home turf, the home country, the head office, and company structures abroad. This is a bit surprising if you consider the corruption perception index (CPI) of Transparency International (TI): Most companies should observe the risk of corruption in their own country, but they want to see the risks as existing abroad rather than accepting that the risk is probably almost equally present in their home country.

It's a kind of "blind spot" effect, with people assuming that the risks are high in foreign countries, where bribery and fraud are thought to be common. But if we look at the information from TI showing how high the risk of corruption is in Western Europe, we have to recognize that the risk is not always by the "others" – and that we must look to ourselves, too. A lot of companies worry a great deal about the damage originating from outside, from third parties, suppliers, etc. But we know from research – and the figures have been steady for a long time – that 50 percent of economic crimes originate internally, within the company. That's a fact that is often ignored, for understandable reasons, but it is one that we must face up to.

Q: You participated in various studies on economic crime in Germany. Which are the most common and which are the most destructive features of organized crime in Germany? How about the interconnections of transnational crime networks?

I think that's one of those questions I can't really answer because the studies don't really cover the issue of organized crime. It depends on how you define it. If you're talking about the classical definition of organized crime, then the usual kind of economic crime is *well-organized* crime, but not organized crime in the police sense.

Q: And if we take the definition given by Cartier-Bresson (1997) of crime networks – that is, the seamless transition from legal to illegal systems of social exchange?

Of course, there is a lot I could say about it according to that definition. Some of the cases where we helped larger clients would fit into that definition. It is not possible to identify such structures in the studies, which are mainly quantitative. So it is still difficult to judge how representative our operative experiences are.

A debate we could have every day is the one about how far economic resourcefulness goes before it becomes criminal – and when does crime become organized, in the sense of companies consciously choosing it as a business model.

The study we published at the end of 2011 includes some figures on this. We asked companies that were victims of economic crime what the causative factors were. There were two responses that were shocking: More than 50 percent said that the practices in question were part of the other company's business model and that they were supported by management. That's a pretty clear indication that

efforts to get the compliance message across have not been successful everywhere. Cases where employees act on their own initiative due to a misunderstanding of what is good for the company are less frequent than is generally assumed. Rather, these illegal practices are actually part of company policy. Corporate culture is a very important aspect here.

Q: What is quite intriguing is the connection between society's tolerance of criminal practices and the leeway criminal networks enjoy. Talking about Germany, do you think economic crime has become more acceptable over the past 10 years? If so, why?

I don't believe the situation has deteriorated seriously over that time period. There are various reasons for that. The legal framework has changed. Things that were legal 10–15 years ago – such as paying bribes abroad, for example, which were even tax-deductible until 1999 – are now punishable under the law. Things that were common practice and legal for more than 100 years have been changed with the stroke of a pen. It takes a while for people to understand the fact that something that used to be legal and was seen as a legitimate practice is now against the law. Social attitudes have also changed rapidly. Things that no one would have treated as a problem or as corrupt or questionable 15 years ago are now suspected of being a crime – no matter whether a regulation has actually been broken or not.

To judge by the newspapers, there would appear to have been an increase in these kinds of crimes. We see reports every day about people lining their own pockets or about the crazy bonuses that executives are being paid. But not everything that civil society sees as scandalous falls into the category of economic crime. At least, as long as we concentrate on the question whether a law was broken or not.

Taking into account the increased level of awareness in society and the increased reporting on things that, only recently, were not considered newsworthy, we see that we are at about the same level as 10–15 years ago.

Q: Globalization resulted in legal loopholes regarding international trade, which is being mediated, in the better cases, by international arbitrage firms and, in the worse cases, by transnational crime networks. Two questions: Do you think those gaps are inherent to the system? And, as a consulting company, which instruments do you utilize to prevent criminal involvement to help your clients?

Let me answer the second question first: A consulting company is dependent on what its client actually wants. Is this someone who does not want to exploit every option because of moral concerns, or is it someone who sees anything that is not expressly forbidden in writing as allowable and therefore open to exploitation? A consultant can also choose to espouse one or the other of these schools of thought. I, or rather we, always raise a finger and say that although something is not expressly forbidden, from a business point of view it would be better to leave well enough alone because of its potentially damaging effect on the client's reputation. If I think about our daily work as consultants, there are things that are not ille-

gal and so not forbidden under anti-corruption law, but we advise clients to avoid them because they are difficult to explain to the public and can cause outrage.

One example is the case of the “pleasure trips” at the ERGO insurance company. I am in a position to talk about them even though I have been an adviser to ERGO – in this case, as ERGO itself published our findings. The fact that sales personnel were invited to a spa in Budapest where, it is beyond doubt, prostitutes were provided, does not constitute a crime in any way. The trips were properly described in the tax documentation – the necessary tax was paid on the non-cash benefits for the participants. And so you could say, everything was fine from a legal point of view. The CEO of ERGO said in a news conference that there was nothing wrong with the trips in the eyes of the law, but they did break the company’s code of conduct and were simply unacceptable.

A consultant can work toward such a statement, but he can also support the exploitation of such legal loopholes. When it comes down to it, all employees are judged according to whether they meet their sales targets or the business targets of the company they work for. If an employee were to say “We didn’t reach our business targets but our morals are impeccable,” then you have to ask yourself whether that is something that the company’s investors, which could include any one of us, want to hear.

This raises the important question of how we can incentivize moral behavior. This is a debate that is only just getting underway in Germany. We are gradually realizing that it is not enough simply to have a code of conduct that says something like “We don’t support corruption,” and then to tell employees to go and keep selling, because the salespeople will go to countries that are low on the CPI list and where there is absolutely no way of doing business without paying bribes. So, if some of these salespeople come home at the end of the year and say they did not reach their sales target because they complied with the guideline that forbids paying bribes, they should not be disadvantaged. However, companies where that is implemented are few and far between. People should not be punished for being honest!

It is easy to take the moral high ground when you are doing well financially. Yet, when a company is facing bankruptcy, it will be interested in exploiting all legal and all thinkable loopholes. I don’t know how far personal integrity will stretch in such a crisis situation. And how can I criticize a company that has identified business opportunities to do with a legal loophole when we live in a world that is based on market principles? What are the sources of development and change? Someone tries something, and that results in a legislative response according to the positive or negative reaction of society. This is the way legal loopholes that have developed in the past are closed. In an ever more interconnected and globalized economy, different regulatory systems are in competition – and lack the necessary corrective force. And that’s why it is so difficult to come to a global consensus.

Q: Which further governmental and non-governmental actors and instruments would be important to prevent economic crime?

That depends on the cultural context. In the case of central Europe or Germany, we have initiatives that come from civil society: Transparency International is a good example. Collective actions like the UN Global Compact also offer opportunities for companies and other social groups to get involved. TI has just published its national integrity report, for which I was on the advisory council. It is based on a survey of 27 European countries. One question, for example, was, "To what extent do companies strive to put in place measures to deal with corruption?" and "Which measures originate explicitly from companies?" In Germany there are no major company initiatives. There are some companies that are involved with TI and others are involved in collective actions, etc. However, Germany does have a legal framework for combating corruption, so there is less cause for criticism than in other countries in the study. But there remains a question about what is actually being compared here. Should Germany receive a negative evaluation because of the lack of civil society initiatives, even when other countries do not have a legal framework comparable to the one in Germany?

Of course, there are a couple of critical issues in this country, too. Germany has not yet ratified the UN Convention against Corruption, because the issue of bribes to members of parliament is not regulated. But no one can blame commercial companies for that.

It is very embarrassing for Germany, especially in view of the fact that the Deutsche Gesellschaft für Internationale Zusammenarbeit is involved in projects abroad aimed at promoting the implementation of the Convention against Corruption.

Q: Are there any moves in Germany to implement that Convention?

There are now two initiatives in the German parliament, the Bundestag, to introduce new regulation on the issue of bribes paid to members of parliament, which would fulfill the requirements for ratification of the Convention. The government's attitude to all matters concerning the regulation of members' rights is that such initiatives can only be raised by parliament itself. That has to do with the constitutional basis of democracy in our country and with the separation of executive and legislative powers.

In this respect it is interesting to note that Austria has ratified the Convention, although its regulations dealing with bribes paid to parliamentarians is almost identical, word-for-word, to ours in Germany. So Germany is exposing itself to criticism here, but that is because it is being open and honest and saying it cannot yet ratify the Convention because it has not yet implemented its provisions.

In a world organized according to the principles of the market, is it realistic to expect companies to miss business opportunities because of moral considerations? Probably not, since such qualms would obstruct the pursuit of profit. On this issue, individuals must decide for themselves how far they are prepared to go. On a few occasions clients approached us and wanted advice on how to pay bribes without being caught, or they wanted help in identifying legal gray areas. I don't accept such commissions. My advice is always to keep a safe distance from the limits of legality so you can always be assured of being on the right side of the law, even when the issue is a matter of legal interpretation. It is not a good idea to exhaust every last possibility because that can be very damaging to a company's reputation – you can easily go too far, and the cost of dealing with the resulting problems can be very high. But not everyone agrees with me. There are people who believe that any business opportunity that exists should be exploited.

You may consider that morally reprehensible – arms-dealing is an example: As long as no law is broken, arms-trading is permitted. As a moral individual, you can decide not to be involved in it, because arms can be abused, used to kill people, etc. So the consensus in society and the letter of the law may be at odds here. Sometimes a similar tension exists because the consensus in society is that a given law may be broken – for example regarding honesty in dealings with the tax authorities.

Conclusion

Tax evasion is accepted by social consensus. How often do tradesmen ask whether we require an invoice? Almost always! If such companies can only survive by evading taxes, the situation is not one that warrants protection and the legal framework must be revised. There is always a certain amount of understanding for the “little fish,” but the “fat cats” are often condemned even when they avoid paying taxes by ostensibly legal means. I have worked as a civil servant for so long that I find it difficult to judge these two identical cases by different standards.

*May 31, 2012
Regine Schönenberg*

4. ORGANIZED CRIME IN CYBERSPACE

by Tatiana Tropina

Introduction

The growing importance of information and communication technologies in all facets of business and everyday life has dramatically changed our way of living. With its anonymity, ease of use, communication speed, and the possibility to share information across borders and reach a large audience, the Internet has become a key enabler both for legitimate users and for those who wish to exploit all the benefits of global information networks to commit crimes.

The problem of cybercrime is clearly evident and is now one of the biggest international concerns. However, while the number of crimes committed in cyberspace is constantly growing and criminal activities are becoming more sophisticated, the combination of a lack of reliable sources of information, the international character of cybercrime, and continually evolving tools used by cybercriminals makes it difficult to obtain an accurate picture of the “dark side” of the information networks. In this regard, one of the ongoing debates is whether cybercriminality can be attributed to organized criminal groups. Though there are some clear indications that organized crime groups are getting increasingly involved in cybercrime (Commission of the European Committees 2007, 1), it is still not clear to what extent online crime is organized (BAE Systems Detica 2012, 1). Do organized crime groups use the Internet to facilitate crimes in the same way that they use any technologies, such as mobile phones or, earlier, the telegraph? Or does cyberspace create a new form of organized crime with new types of structures and interactions between members as well as new business models and criminal supply chains? Does the international community face a new and evolving form of criminality in global information networks?

This article examines the issue of the possible transformation of cybercrime into a global, fast-expanding, profit-driven illegal industry with a new form of organized criminal groups thriving behind it. Firstly, the paper provides some insights into the debate around cyberspace being either a medium for traditional

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organized crime or a perfect environment for the creation of a new form of organized crime. Then it analyzes the structure of the online criminal groups and defines the business models used by those operating in the underground economy in cyberspace. Finally, the article identifies the possible future trends of organized crime in cyberspace and the problems of tackling this phenomenon.

1. Organized crime and cyberspace: A new medium or a new form?

It is already evident that the current era of cybercrime is no longer dominated by young “computer geeks” committing attacks and stealing data just for fun as demonstrations of their technical skills or for peer recognition (BAE Systems Detica 2012, 5; POST 2006, 2). The development of the digital economy and the increasing dependence of many financial services on the information networks has changed dramatically both the criminal landscape and the motivation of offenders. High rewards combined with low risks have made digital networks an attractive environment for various types of profit-driven criminals, who, according to some research, might shape the new form of organized criminal networks (Ben-Itzhak 2008; BAE Systems Detica 2012; Rush et al. 2009; KPMG 2011, 5; Council of Europe 2004).

There is an ongoing discussion about how organized crime groups can – and already – use global information networks. The main assumption that initiated this discussion was that, in the non-digital era, organized crime sought “safe havens” offered by countries with weak governments and unstable political regimes (Williams 2002, 2). With the possibility to commit cybercrimes across national borders and without needing to be physically present at the crime scene, organized crime groups can benefit from national jurisdictions that do not have proper legal frameworks nor the technical capabilities to fight cybercrime (Williams 2002, 2; Rush 2009, 3; Goodman 2010).

Though it is obvious that traditional organized crime and terrorist groups can gain significant advantages from the use of information and communications technologies (ICTs) (Shelley 2003, 307; Williams 2002, 2) and “safe haven” jurisdictions, the discussion revolves around the question of whether cybercrime can be ascribed to organized crime. This debate is characterized by McCusker (McCusker 2006, 257) as a tension between logic and pragmatism, where logic postulates that traditional organized crime will engage in criminal activities in cyberspace as they would in any low-risk and high-reward illegal business in the physical world; pragmatism, in turn, questions the necessity for traditional organized crime to step into this area and its capacity to secure a return on investment and to produce the desired financial benefits.

A decade ago Williams (2002, 1) suggested that although there was growing evidence that organized crime groups use the Internet, organized crime and cybercrime would never be synonymous because organized crime will continue to operate offline, and most of the cybercrimes will be committed by individuals

rather than criminal organizations. Brenner (2002, 25) highlighted the same fact of not having an indication that online crime was reaching the gang level of organization. During the past 10 years, the criminal landscape has changed dramatically, but there is still no clear concept of the synergy between organized crime and cyberspace. Analytical reports now produced by security companies reveal the professionalization and sophistication of cyber attacks and financial crimes committed in global networks, suggesting that cybercrime represents a new type of organized crime with different, constantly evolving structures, and new ways of using hi-tech tools to attain criminal goals. The scholarship research in this field is somewhat confusing because of the existing concept of transnational organized crime. It is very hard to fit cybercrime, even when committed in the traditionally organized way, into this concept.

To avoid confusion in the debate on organized crime in cyberspace, it is perhaps necessary to make a distinction between the migration of traditional organized crime to the virtual world (as well as the synergy between traditional organized crime and online crime) and the organized groups focused on committing cybercrimes.

Cyberspace has already become a tool for facilitating all types of offline organized criminality, including child abuse, illicit drug trafficking, trafficking in human beings for sexual exploitation, illegal migration, different types of fraud, counterfeiting, and the firearms trade. It provides anonymity in communication; greater possibilities for advertisement and product placement as well as money laundering via online gambling; and allows for trade in virtual currencies and virtual precious metals (Europol 2011, 5; Goodman 2010, 313). However, some studies suggest that we are entering the new era of organized crime, where the exploitation of cyberspace by traditional organized crime groups coexists with a new phenomenon, namely, organized structures operating solely in global information networks (BAE Systems Detica 2012, 2; Ben-Itzhak 2008).

It should be noted that the two afore-mentioned tendencies – organized criminality moving into cyberspace and the emergence of a new form of organized crime – are not mutually exclusive. Rather, they complement each other, giving rise to the synergy between traditional organized crime and criminal structures operating online. However, while the first phenomenon – namely, the use of cyberspace by traditional crime to facilitate its activities – has already been widely discussed in the academic literature, there is a lack of research concerning this new form of organized crime online. This article concentrates more on the latter, providing analysis of the structures of the new online groups and the models of their operation.

2. Underground economy in cyberspace: Model of operations

Recent studies of organized crime in the hi-tech era point out that, with the convergence of offline and online worlds, the information society has arrived at a point where new digital crime is being organized, though it has not yet been consolidated (BAE Systems Detica 2012, 2; Symantec 2008). The new groups operating in cyberspace enjoy more rewarding and less risky operations and represent newer types of criminal networks that operate only in the area of e-crime.

Illegal activities online, such as credit card fraud, trading compromised users' accounts, selling banking credentials and other sensitive information, have given rise to the increasingly sophisticated and self-sufficient digital underground economy (Europol 2011, 4). Specific Internet forums and communications channels are used as underground marketplaces for the trading of illegal goods and services (Fallmann et al. 2010, 1). Any data traded on these shadow platforms has its own monetary value.¹ This value represents an illicit commodity, intangible and easily transferrable across borders. It drives the development of illegal markets: Specific criminal activities have been developed and are being constantly improved to steal sensitive information (e.g., phishing, pharming, malware, tools to attack commercial databases). Online criminality includes a broad spectrum of economic activity, whereby various offenders specialize in developing specific goods (exploits, botnets) and services such as malicious code-writing, crimeware distribution, lease of networks for carrying out automated attacks or money laundering (Cárdenas et al. 2009, 1; Europol 2010, 4).

Criminals in global information networks borrow and copy business models from legitimate corporations. Cybercrime business models were similar to those of high-technology companies in the early 1990s, when digital criminality was still in its infancy. Since the early 2000s, cybercriminals have developed patterns imitating the operations of companies such as eBay, Yahoo, Google, and Amazon (Kshetri 2010, 190). One factor indicating the current maturation of the cybercrime industry is the degree of professionalization of the IT attacks, for example fraudulent activities such as classic phishing, which is becoming the greatest identity-theft threat posed to professional businesses and consumers (BSI 2011, 4). Another factor is the increasing specialization of perpetrators (BKA 2010), which means that cybercrime involves a division of labor. Other factors include the so-

1 | For example, according to Symantec (2008, 12), the advertized prices for bank account credentials ranged from \$10 to \$1,000, with prices depending on the amount of funds available, the location, and the type of account (corporate accounts might cost more than double the price of personal bank accounts; EU accounts are advertised at a considerably higher cost than their US counterparts).

phistication, commercialization, and integration of cybercrime² (Grabosky 2007, 156).

Technological developments, research, innovation, and the transformation of value chains into value networks has driven the globalization of the legal sector and has affected the organizations, making them more decentralized and collaborative, with regard to external partners. In the same way, innovation has fueled the creation of new patterns in criminal ecosystems, with regard to product placement, subcontracting, and networking (Rush et al. 2009, 37). Cybercriminals employ schemes similar to the legitimate B2B (business-to-business) models for their operations, such as the highly sophisticated C2C (criminal-to-criminal) models, which make very effective crime tools available through digital networks (Ben-Itzhak 2008, 38). Computer systems' vulnerabilities and software are exploited to create crimeware: "malware specially developed with the intention of making a profit and which can cause harm to the user's financial well-being or valuable information" (ESET 2010a, 4). These crimeware tools such as viruses, Trojans, and keyloggers offer criminal groups the flexibility of controlling, stealing, and trading data.

It is argued, though, that there is a difference between cybercrime business models and legitimate business in terms of core competencies and important sources: While the latter is aimed at creating the most value for customers, cybercrime involves defrauding prospective victims and minimizing the risk of having illegal operations uncovered (Kshetri 2010, 189). However, if one considers cybercrime as a model establishing a relation between the supplier of illegal tools and services and the customer who uses these tools to commit the crime against the victim, this difference does not have much significance: Cybercrime business models are focused on providing the most value for the "consumers," who are not the victims of crimes but of the criminals using the tools.

Automation plays a significant role in the development of C2C models. Automation tools use technology to avoid the operational requirement for physical groupings and force of numbers (Europol 2011, 6). In this regard, botnets – networks of compromised computers running programs under external control – were one of the main factors in transforming some types of cybercrimes, such as phishing, into a worldwide underground ecosystem, run, supposedly, by organized groups (Barroso 2007, 7). With a botnet, cybercriminals can make use of many computers at the same time to automate attacks on private and corporate systems, distribute spam, host phishing websites, disseminate crimeware, launch denial of service attacks, and scan for system vulnerabilities: Without one, they must target victims and machines manually and individually (Europol 2011, 6).

2 | Offenses subsequently lead to other offenses, for example, attacks result in information theft, and then stolen information can be sold and used by those who bought it to commit fraud.

The estimated financial gains of crime groups using botnets range from tens of thousands to tens of millions of dollars. The trading of botnets has also become a high-revenue C2C activity. Criminal organizations offer botnets for relatively low costs, profiting from the turnover based on the number of “customers.” For example, a server with stored malware, exploit kits, or botnet components costs anywhere from \$80 to \$200 a month; the botnet administration pack, known as the Eleonore Exploit Pack, has a value of \$1,000; hiring a botnet of between 10 and 20 computers, if administered using the pack mentioned above, costs an average of \$40 a day; Zeus kit v1.3 costs \$3,000 to \$4,000 (ESET 2010b, 7). These costs are relatively low compared to the criminals’ financial gains. But the damage to individual consumers and businesses, as well as to the financial health, reputations, and trust in online transactions as a whole is extremely high.

Crimeware is also used to deploy Crime-as-a-Service business models that represent the system of trading and delivering crimeware tools. Data-supplying models are also used to share the tools to commit cybercrimes. For instance, by creating “customer” systems where instruments are available on demand, “users” just log into the server and choose from the range of tools suitable for fraud, phishing, and data-stealing and then download them. When user data is stolen, criminals can use crimeware servers to commit organized attacks. Crimeware servers allow for controlling compromised computers and managing the stolen data (Ben-Itzhak 2008, 38).

Monetization of the intangible commodity – data – nowadays seems to be the main “bottleneck” for cybercrime groups. One major problem with any type of cash-out operation involving money mules is that there are not enough of them in service. Mules typically work only for a very short time before they are either abandoned by their handler or are captured by law enforcement. The ratio of stolen account credentials to available mule capacity could be as high as 10,000 to 1 (Cisco 2011, 9). Money mules are typically recruited via employment search websites and social networking sites. Their goal is to “cash in” stolen personal and financial information, very often in different jurisdictions than those in which the crimes have been committed. The mules are the visible “face” of the organized cybercrime since they are particular individuals turning the data into money (Europol 2011). Often the money is put into their personal accounts before they transfer it (Kshetri 2010, 177). As the cybercrime economy continues to expand, it will be increasingly challenging for scammers to maintain an adequate supply of these temporary “employees” to profit fully from their illegal activities. Many sophisticated techniques have already been developed to hire the mules, including masking the supposed illegal activities as legitimate services, such as help in a job search (Cisco 2011, 9), and these techniques very likely are going to continue evolving.

3. Organized crime in cyberspace: Changing structure

Since cybercrime has moved away from individual, fragmented activities to the models that are mimicking modern corporate business (Rush et al. 2009, 42), it is inevitable that it has changed the structure on the operational side. The most common view on the structure of organized criminal groups is that they are formed by high-skilled, multi-faceted virtual criminals (UK Home Office 2010, 12). This is in contrast to traditional organized crime groups, which are ethnically homogeneous, formally and hierarchically structured, multi-functional, bureaucratic criminal organizations (Council of Europe 2004, 2). These networks mark “the cleanest break to date from the traditional concept of Organized Crime groups as hierarchical” (Europol 2011, 5).

In fact, the Internet represents the platform where new and old forms of organized groups can coexist without disturbing each other because of the very specific characteristics of Internet crime. It is known that traditional organized crime groups violently maintain a monopoly over their assets and territory to control certain scarce or illegal commodities on the black market (Rush et al. 2009, 35). With stolen, intangible data, which represents a commodity for the shadow digital economy (Europol 2011, 5), cybercriminals do not require control over a geographical territory; need fewer personal contacts and less enforcement of discipline between criminals; and, in the end, there is less necessity for a formal organization. Moreover, the classic hierarchical structures of organized crime groups may even be unsuitable for organized cybercrime (Council of Europe 2004, 7). This new type of organized crime in information networks is non-competitive and allows collaboration across criminal networks (UK Home Office 2010, 13). Another major difference between traditional organized crime groups and cybercrime groups is, again, the automation technique. In other words, the power of the group is in the strength and sophistication of its software, not in the number of individuals (Brenner 2002, 27; Choo and Smith 2007, 41).

Criminal groups operating in cyberspace are believed to be more flexible as compared to traditional organized crime groups, allowing for the incorporation of members for limited periods of time due to their flexibility (United Nations 2010, 10). These networks are structured on a “stand alone” basis, as members of the groups are often not supposed to meet (Choo 2008, 7) – or, very rarely, meet in person – thereby relying solely on electronic communications and sometimes not even having virtual contact with other colleagues. Supposedly, the majority of them function using a number of web-based forums devoted to online fraud (Symantec 2008, 5; Rush 2009) or Internet Relay Chats (Fallmann et al. 2010, 1), channels where members know each other only by their nicknames.

The higher the degree of sophistication of these networks, the more cautious its operators are about potential members to ensure that only trusted people get access to the illegal goods and services traded on the underground markets (UK Home Office 2010, 12). This complex structure – together with access to the core

operations granted only to trusted associates – prevents organized cybercrime groups from being detected and infiltrated by law enforcement agencies. In this regard, though, both web forums and IRC channels are operated by administrators and serve the same goal, forums seem to be more advanced ways of organizing criminal activity online, because web forums have a peer-review process that every potential vendor needs to go through before status is granted. In contrast, virtually anyone can use IRCs for advertisement, which makes them more accessible to law enforcement agents or unreliable criminals. As a solution, IRCs offer services to check the validity of the data offered for sale (Rush et al. 2009, 50).

Online forums serve as a vital introduction and recruitment medium for the digital shadow economy, since they facilitate cooperation within and between the groups and exhibit a certain degree of organization at the administrative level, enabling offenders to get together to work on specific projects. At the same time, online marketplaces represent the platform for advertising, learning, and information-sharing (Europol 2011, 5).

Speculation and debate as to the professionalism and organization of criminal groups online are fueled by the nature of such forums, because they can be considered more as tools for collaboration between individuals loosely connected to each other than as platforms for highly organized groups (Symantec 2008, 5). Nevertheless, it is obvious that there is a certain level of organization occurring on these platforms, at least on the administrative level.

It should be noted that recent research argue that there is an incorrect assumption that organized crime in global networks relates only to distributed non-hierarchical “networks” with no links to traditional organized crime families, which are assumed to be lacking technical capacity and relying on physical and geographical proximity as well as violence; rather, there is a movement toward long-term organized crime activities online (BAE Systems Detica 2012, 6). Symantec states that there is significant evidence that organized crime is involved in many cases involving the online underground economy (Symantec 2008, 5).

The main problem of assessing the structure of cybercrime groups and their level of organization is that there is much more information about what they are doing – or can possibly do – than about *who* is behind those groups (Rush 2009, 49). Moreover, a single individual or group of perpetrators can play separate or simultaneous roles (developers of malware, buyers, sellers, enablers, administrators) in the cybercrime economy, which makes the structure of the illegal market “complex and intertwined” (Trend Micro 2006, 6).

In addition to the discussion within the framework of the analysis of supposed cybercrime structures, there are also controversies in assessing the possible social and demographic characteristics of the members of these groups. On the one hand, according to Europol, the demographic profile of members of online crime groups is very different to what is traditionally associated with transnational organized crime: More than 60 percent of hackers are under the age of 25 (Europol 2011, 6). On the other hand, some studies, such as the BAE Systems Detica re-

port, challenge the assumption of digital criminal organizations being related to their network types, trans-jurisdictional natures, and the type of member, who is normally perceived to be a young, technically literate individual (BAE Systems Detica 2012, 6). In contrast, the results of the research show that there are more organized digital crime group members over 35 years of age (43%) than under 25 years of age (29%). This might be explained by increased levels of computer literacy and the availability of different tools to commit crimes, which can be easily distributed or purchased online without special, high-level skills (BAE Systems Detica 2012, 5).

As to the size of the networks, the estimates vary from 10 to several thousand members, when the affiliated networks are incorporated into the structure. Regardless of the number of members and affiliates, virtual criminal networks are usually run by a small number of experienced online criminals who do not commit crimes themselves, but act rather as entrepreneurs (UK Home Office 2010, 12). The criminal structures collaborate in teams where the roles are defined and the labor is divided (Rush et al. 2009, 42). For instance, the first group writes malicious code, such as the “Trojan”; the next group is responsible for the distribution and use of malicious software on the Internet; while another group collects data from the illegal platforms and prepares everything for the identity theft. This data may then be used by other groups of offenders (BSI 2011, 4). The leading members of the networks divide the different segments of responsibility (spamming, controlling compromised machines, trading data) among themselves. Some “elite” criminal groups act as closed organizations and do not participate in online forums because they have enough resources to create and maintain the value chains for the whole cycle of cyber-offenses, and therefore have no need to outsource or to be active in other groups.

4. Addressing the problem

Fighting cybercrime has always been a complex task due to the number of ICT network users, the transnational nature of the Internet, and its decentralized architecture (Gercke 2011). Organized criminal groups in cyberspace, both traditional ones and those operating solely online, remain – and probably will continue to remain – several steps ahead of legislators and law enforcement agencies. C2C networks are very likely to continue benefiting from anonymous communications, automation of attacks, and the difficulties that law enforcement agencies experience in determining locations: Servers with crimeware could be in one country, while members of the network could be in another one targeting victims across the world.

In addition to strengthening the current legal frameworks, updating old legislation, and harmonizing laws on an international level, what is needed is also cross-sector cooperation on the national level as well as international cooperation in detecting, investigating, and preventing e-crimes committed by organized

criminal groups (Europol 2011). The development of a comprehensive understanding and a forward-looking approach are required, since organized cybercrime seems to be a moving target.

International collaboration between states is the key, since the problem has a trans-border nature. Some states just do not have the necessary tools to respond to the activities of the organized cybercriminals, or they may lack the technical skills or face legal drawbacks (Goodman 2010). The development of a common understanding that no country can be safe alone in the global ICT network is very important. The problem of the legal harmonization can be solved only on the global level (Sieber 2008).

With the absence of a global strategy to counter organized cybercrime, the problem is very likely to deepen in the foreseeable future. With the development of ICT networks and the opportunities they offer, organized criminal groups will benefit from the entire range of tools and models available to legitimate economy sectors. The information's availability makes it easier for organized groups to foster and automate their fraud-committing activities. It will also probably tie more opportunistic criminals to existing criminal networks.

Cybercrime might be going through a transformation into an organized illegal industry, where syndicates are highly sophisticated and very hard to identify. Soon, some cybercrime industries may be run solely by organized criminal groups that are constantly seeking the newest technical solutions and the creation of new markets. As a result, it is likely that the cybercrime ecosystem will soon be dominated by criminal organizations, as cybercrime networks that have already become international will multiply the opportunities and reach to a global scale by exploiting the weaknesses of legal frameworks while searching for safe havens in countries with fewer resources to detect and fight them. This will make fighting cybercrime an even more difficult task for law enforcement agencies.

Conclusion

Though it is still not clear how organized networks in cyberspace are structured and how they operate, it is evident that this new form of organized groups is emerging in cyberspace, although it is not yet consolidated but dangerous nonetheless. As markets and trading itself have always attracted organized criminal groups seeking benefits from illegal activities, the growth of digital operations and services in legitimate markets are key enablers for organized cybercriminals, both for committing traditional crimes and for developing new types of illegal activities. Using business models that have proved their effectiveness in the legal business sector, organized cybercrime groups deploy highly sophisticated tools for online criminal activities. The risks to individuals, businesses, and governments grow with the further digitalization of the economy. E-criminal activities are conducted as long-term sustainable operations. Due to the borderless nature of the Internet, the problem of organized cybercrime has truly global consequences

when a country can only ensure safety within its borders. The way to address the problem is to develop long-term responses that would include coordination and harmonization of efforts on both the national and international levels.

Glossary

Botnet – a network of Internet-connected computers whose security defenses have been breached and control ceded to an unknown party. Their owners are unaware that computers have been set up to forward transmissions, which also include malicious programs or spam, to other devices over the Internet. Each compromised device is also known as a “bot” (short for “robot”), or “zombie.” The controller of the botnet is able to direct the activities of these compromised computers and perform automated attacks that include large numbers of bots.

Crimeware – malware specially developed with the intention of making a profit and which can cause harm to the user’s financial well-being or valuable information.

Denial of service attack (DoS attack) or distributed denial-of-service attack (DDoS attack) – an attempt to make a machine or network resource (website or service) unavailable to its intended users. By targeting a computer and its network connection, or the computers and network of the sites people are trying to use, an attacker may be able to prevent users from accessing email, websites, online accounts (banking, etc.), or other services that rely on the affected computer. The most common type of DoS attack occurs when an attacker “floods” a network with information and requests to view the website or to access the services. The server can only process a certain number of requests at once. Thus, an attacker overloads the server with illegally generated requests and the server cannot process requests from legitimate users.

Exploit (from the verb “to exploit”, in the meaning of using something to one’s own advantage) – a piece of software, or data, or sequence of commands that takes advantage of computer security vulnerabilities in order to cause unintended or unanticipated behavior to occur on computer software or hardware. This frequently includes such things as gaining control of a computer system, or allowing illegal access to data, or launching denial of service attacks.

Internet Relay Chat (IRC) – a protocol for real-time Internet messaging (chat) and conferencing, mainly designed for group communications in discussion forums, called channels. However, one-to-one communication is also possible via private message and chat.

Keylogger – software that tracks the keys struck on a computer keyboard, typically in a covert manner so that the person using the keyboard is unaware that their actions are being monitored.

Malicious code – any code in any part of a software system or script that is used to cause undesired effects, security breaches, or damage to a system.

Malware – an abbreviated term for malicious software. It is software used, or created, to disrupt computer operations, gather sensitive information, or gain access to private computer systems. This term is used to refer to a variety of forms of hostile, intrusive, or annoying software.

Money mule – regarding cybercrime, this term is used to describe a person who electronically transfers stolen money.

Pharming – is an attack that redirects a website's traffic to another, bogus site. Pharming can be conducted either by changing the hosts file on a victim's computer or by exploitation of a software vulnerability. Malicious code is installed on a personal computer or server, misdirecting users to fraudulent websites without their knowledge or consent.

Phishing – a criminal activity using variations of social engineering techniques, typically carried out using email or an instant message, or phone contact. Phishers attempt to fraudulently acquire sensitive information, such as passwords and credit card details, by posturing as a trustworthy person or business in an electronic communication. Communications purporting to be from popular social websites, auction sites, online payment processors, or IT administrators are commonly used to lure the unsuspecting public. Phishing emails may contain links to websites that are infected with malware.

System vulnerability – a weakness that allows a criminal to reduce a computer system's information assurance.

Trojan – a type of malicious software that masquerades as a legitimate file or helpful program with the ultimate purpose of granting cybercriminals unauthorized access to a computer. Trojans do not attempt to inject themselves into other files, like computer viruses do. Trojans may copy themselves, steal information, or harm their host computer systems.

Virtual currencies – currencies that are used to purchase virtual goods within a variety of online communities (social networks, online games, virtual worlds). Some virtual currencies can be exchanged to real currencies, like, for example, Linden Dollar, the currency of the virtual world "Second Life."

Virtual precious metals – relatively new way of transferring value online, enables users to secure cash deposits against precious metals held offshore.

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5. JUDICIAL AND SOCIAL CONDITIONS FOR THE CONTAINMENT OF ORGANIZED CRIME: A BEST PRACTICE ACCOUNT

by Edgardo Buscaglia

Introduction

Organized crime represents a pernicious outgrowth of social, political, and economic dysfunctions within states and societies. These crime groups are characterized by the presence of individuals (politicians, businesspeople, union members, or simply gunmen) who are embedded at the regional, local, national, and transnational levels. They are part of an underworld governance to provide services (e.g., protection) to those who pay for and commit serious crimes. In order for these groups to grow, they need political and social protection. This definition of organized crime touches on the social and political roots of organized crime and is based on the fact that stable criminal groups do more than just commit serious crimes. Authors from Shelling to Milhaupt and West have pointed out the multidimensional social and economic roles of criminal groups in the provision of “protection” to individuals and legal persons (i.e., legal businesses) within environments where the state fails to provide adequate law and order in an effective and non-corrupt manner, resulting in social, economic, and political power vacuums (Schelling 1967; Milhaupt and West 2000). In this context, organized crime provides an imperfect governance social structure when the state fails and becomes absent in people’s lives.

In the average person’s perception, organized crime is associated with serious and complex predatory crimes, such as human and organ trafficking and many other types of economic crimes (including arms trafficking, smuggling, gambling, and cybercrime). To the extent that organized crime is allowed to engage in the most serious types of crimes (e.g., trafficking in humans, organs, arms, and migrants, as well as support for acts of terrorism), it becomes a threat to international human security.

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Illegal trafficking in biological, radioactive, and chemical materials for weapons of mass destruction is only possible with the explicit or tacit support of corrupt state authorities.¹ These transnational criminal organizations manage all this with the help of corrupt public officials at the highest levels and enjoy considerable levels of social protection from marginalized groups (e.g., groups subject to ethnic discrimination seeking protection) (Buscaglia 1997). In these contexts, it is often the case that the state has failed to provide the most basic public goods in the form of health, education, and justice, making it easier for organized crime to exploit the voids left open by the states.

At the same time, it must be recognized that organized crime's involvement in complex crimes, such as human trafficking, does not always have the pyramid-shaped "mafia" organizational structures, some imagine.² Criminal organizations are more frequently dynamic networks with loose horizontal structures and international connections among sometimes autonomous cells, which makes law enforcement evidence-gathering much more difficult (Williams 2001). Moreover, the links between organized crime and corruption in the public sector also constitute a clear threat to the development of democracy and to international peace and security. Criminal groups hamper the development of democracies to the extent that they "bias and buy" electoral processes to their advantage and hamper peace when arms trafficking feeds regional wars.

This chapter focuses on best judicial and civil society practices to prevent and combat organized crime. It should not be forgotten that law enforcement and judicial channels are necessary – but far from sufficient – conditions for eradicating the social and political roots of organized crime.

In short, transnational organized crime and corruption are shaped by the lack of political strength, social dysfunctions, and lack of international coordination between states to generate adequate public polices, as well as by the lack of civil society's preventive mechanisms. In this framework, corruption and organized crime are much more than a behavioral phenomenon linked to criminal law. In this regard, social and political phenomena such as organized crime need to be addressed through social and political international policy instruments above all. Empirical research supports this assertion. For example, the analytical results found in Buscaglia and van Dijk (2003) and in Buscaglia (2008; 2012) are based on a sample of more than 67 and 108 countries, respectively, and attest to the deep links between the growth of organized crime and the growth of public sector corruption within a large number of countries.

1 | See Buscaglia and Gonzalez-Ruiz (2002).

2 | Ibid.

The empirical foundation of policy recommendations

This chapter aims to delineate the best ways to contain (combat and prevent) organized crime and public sector corruption in order to reduce serious crimes involving political, economic, and armed actors within criminal enterprises. The empirical analytical foundation of supporting policy recommendations in this chapter are based on prior calculation of an index of high-level corruption for 108 countries developed in Buscaglia (2008). Corruption is defined in this chapter as the abuse of public power for private gain.

To assess the prevalence of street-level corruption, previous empirical studies used an indicator compiled by the International Crime Victimization Survey, which measures the frequency at which citizens personally experience requests for bribes (Buscaglia and van Dijk 2003) – mainly through street-level and medium-level corruption – as part of the interaction between average citizens and public agencies of the state in 108 countries. The extent and frequency with which organized crime penetrates public institutions and biases public policies in their favor (i.e., high-level corruption) was not measured in any prior corruption index. To survey the prevalence of high-level corruption, Buscaglia (2012) measures violations of the clauses contained in the United Nations Convention against Corruption (Mérida Convention).³

In order to assess organized crime, this chapter also relies on the results of applying an index of organized crime found in Buscaglia and van Dijk (2003, 7–12), which was further improved and expanded upon in Buscaglia (2008) by adding objective factors linked to complex crimes.

Organized crime is defined by Article 2 of the United Nations Convention against Transnational Organized Crime (the Palermo Convention) as a group of three or more individuals committing serious crimes for profit or material benefit.⁴ Buscaglia (2008) seeks available country data on the core activities of organized crime groups such as credit card fraud, drug trafficking, human trafficking, arms trafficking, stolen cars, and smuggled cigarettes. A composite index is later built that includes indicators of seven core activities (including: trafficking in human beings, trafficking of migrants, arms trafficking, counterfeiting, smuggling, extortion, and credit card fraud) and five secondary aspects (the cost of organized crime on business, informal economy as a percentage of gross domestic product, money laundering, and tax evasion).

Based on the above, public policies that reduce both complex crimes – high-level corruption and organized crime indicators – are branded by Buscaglia (2012)

3 | See <http://www.unodc.org/unodc/en/treaties/CAC/> and Buscaglia (2012).

4 | United Nations Convention Against Transnational Organized Crime and the Protocols thereto at: http://www.odccp.org/odccp/crime_cicp_convention.html

as “best practice.” As explained below, only 13 countries⁵ out of a sample of 108 have been able to develop best practices across the board and thus contain both types of crimes.

Organized crime and high-level corruption

Successful national and international experiences in containing high-level corruption have been identified in past studies (Buscaglia 2012). In all these cases, effective public policies (i.e., with the capacity to reduce both indicators of corruption and organized crime as explained above) were developed from the bottom up, with civil society networks deeply involved throughout the delineation and implementation stages. Buscaglia (2008, 2012) confirms a very strong level of association between high levels of organized crime and high levels of public sector corruption.

It is well known that public officials provide a logistical base for organized crime to expand and that these officials provide protection from prosecution. In this corrupt process, organized crime fragments the state when several criminal groups compete for power (e.g., Mexico). Therefore, policy recommendations to address organized crime containment need to simultaneously address the high levels of corruption within states as well as the private sector of countries where organized crime is present. Given that organized crime disregards political borders, the prosecution and judicial processing of organized crime should be an internationally coordinated matter. Results found in Buscaglia (2012) show that only 13 countries (in a sample of 108 UN member states) coordinate judicial action adequately. In this context, one crucial premise is that, on its own no state can tackle organized crime successfully.

There are five levels of organized crime-related penetrations of the state that need to be addressed by policymakers (Buscaglia and Gonzalez-Ruiz 2002). On the first level, we consider isolated acts of abuse of public office at the lowest operational levels of government agencies. On the second level, we take into account acts of corruption that occur on a very frequent basis within the lower payroll ranks of the state. On the third level, organized crime penetrates the mid-level management of public agencies in order to bias law enforcement operations, neutralize the regulation of financial markets, and place members of organized crime on the state’s payroll. A fourth level of penetration of the state involves capturing the leaders of public agencies directly or indirectly who are in charge of containing organized crime (e.g., drug czars or chief of customs). By capturing this fourth level, organized crime is able to freeze entire institutions of the state, making them useful to the purposes of criminal enterprises. Finally, a fifth level of penetration involves the capture of political appointees at the highest level, such as

5 | The 13 countries are Austria, Botswana, Chile, Colombia, Costa Rica, France, Germany, Iceland, Italy, Japan, Netherlands, Spain, and the United Kingdom (Buscaglia 2012).

deputies, ministers, senators, supreme court justices, and presidents, all in order to generate a bias in policymaking and policy implementation. This fifth level of penetration of the state goes hand-in-hand with organized crime's financing of political campaigns. Buscaglia (2012) focuses on this fifth level of infiltration, which explains why – despite their ratification of international UN conventions – countries do not: seize and confiscate assets linked to organized crime; allocate state funding for social prevention of organized crime; allow for judicial independence and judicial accountability to develop judicial effectiveness; develop political cultures within which high-level corrupt officials acting within organized crime groups are brought to justice.

Administration of criminal justice: Laws in action vs. laws on the books

In order to address organized crime and high-level corruption, it is always necessary (though not always sufficient) to rely upon state-of-the-art legal instruments and institutional capacities to implement these laws. Buscaglia (2012) affirms the existence of legal instruments in 86 percent of countries worldwide (within a sample of 108 UN member states) – instruments that are fully compatible with the United Nations anticorruption and organized crime conventions mentioned before. Yet, only 13 of these UN member states fully implement laws against corruption and organized crime. The 86 percent of countries complying “in theory” versus the 14 percent of countries actually meeting practical compliance requirements represents a gap between the laws on the books and the same laws in action.

For example, very few nations are pioneers in the enactment of legal instruments addressing conspiracy to commit a crime. Among the 13 best-practice countries, membership or active participation in organized crime is criminalized, as well as illicit association with criminal activities. Legal transplants from the United States and France to developing countries inspired these criminal statutes around the world, especially within Latin America. Other nations have passed collective criminal statutes such as the so-called Mafia-type laws in Italy and in the United States, where legislators have enacted the Racketeer Influenced and Corrupt Organizations Act (known as RICO), which addresses patterns of criminal activities (or racketeering) within enterprises. In the latter, judicial authorities are required to indicate that an alleged RICO organization has a structure aimed at committing economic crimes and that there is a high probability that similar criminal activities will be committed in the future. These highly effective statutes have led to the dismantling of criminal groups.⁶

6 | French Criminal Code, Title V, Art. 450-1 to Art. 450-4; Italian Penal Code, Regio Decreto 19 Oct. 1930, N.1390, Art. 416 (Associazione a Delinquere) and Art. 416-bis (associazione a delinquere di stampo mafioso) and Spanish Criminal Code, Association Illicit Art. 515 y 516 Código Penal.

The analysis in this chapter addresses the most serious expressions of “transnational” organized crime in cases where international criminal organizations compete to corrupt high-level public officials with the sole purpose of avoiding punishment and acquiring market power to conduct illicit transactions within markets. Under weak public sector governance environments, traditional judicial deterrence frameworks (i.e., jail time) will simply not work and levels of organized crime and corruption within the public sector will increase. Under such a low-governance institutional environment (where public corruption is high), increasing economic resources that are aimed at expanding policing and expanding prosecutorial domains – or simply increasing sentencing on the books – will, paradoxically, translate into higher levels of organized crime. This occurs because high-level public officials receive incentives to extend and expand protective corruption rings, resulting in gain greater impunity and reducing actual expected punishment. This is known as “the paradox of expected punishment” (Buscaglia 2008), wherein added state punishment has the effect of increasing payments to public officials to avoid this punishment and/or increase violence; as a result, the state’s good intentions of added punishment generate more criminal activities. Hence, in order to avoid this “paradox,” public authorities should first aim to enhance asset forfeitures of criminal enterprises; undertake more successful prosecutions of illegal political campaign financing; and achieve more successful convictions of high-level corrupt officials. These preliminary actions will create a much more effective institutional framework for the successful prevention and dismantling of transnational crime (Buscaglia 2012).

The preventive, law enforcement, judicial, and intelligence tools contained in the UN Convention against Transnational Organized Crime provide a comprehensive set of policy measures to address private and public sector corruption. However, one needs to discover if these provisions have lived up to their potential in those states that have ratified the Convention. Berkowitz, Pistor, and Richard (2003) show that countries transplant international legal frameworks into their domestic legislations with varying degrees of success concerning actual implementation of these laws. Success in transplanting these frameworks is mostly determined by the nature of the process used to adapt the legal instrument to the existing national institutional structure as well as to the legal traditions of the importing country. Berkowitz, Pistor, and Richard (2003) have also shown that prior familiarity and cultural affinity with the transplanted legal instrument, regional proximity, gradual adaptation of the transplant to the local legal context, and frequent use of the legal instrument by legal intermediaries (e.g., judges and prosecutors) will lead to more effective implementation of the transplanted legal instruments over time.

Transplanting legal rules and standards found in the Palermo Convention (and Protocols) into domestic legislations and legal practices can be expected to follow this general pattern. In this context, a state framed within a rule-of-law consists of a social environment within which laws are socially delineated and per-

ceived as legitimate before later being enacted, interpreted, applied, and enforced by a judicial system in a coherent, consistent, and predictable manner. In other words, within the rule of law, the judicial and legal systems need to enjoy popular support. Hence, after enactment, the law is enforced through effective and efficient adjudication systems that citizens perceive as socially legitimate. In this kind of environment, a culture of legality prevails and lower crime rates emerge as a result. In contrast, systemic organized crime and corrupt practices constitute the outgrowth of a lacking rule of law. In these pernicious environments, corrupt “rings” of public officials emerge as a direct result of a partial or total breakdown of the rule of law within a society. Within society, public institutions are perceived as being divorced from people’s lives and individuals break laws on a continual basis, justifying their behavior with the logic that “everyone does it.” In such pernicious contexts, those who operate inside national political structures and electoral systems benefit from criminal contributions to their campaigns.

Many developed and developing countries have attempted to reform their laws and judiciaries through partial or total transplants in their efforts to strengthen democracy, to enhance the protection of human rights, and to foster private-sector investment. Yet, within the civil and criminal justice domains, an international comparative analysis demonstrates that legal and judicial reforms have shown mixed results around the world (Buscaglia and Dakolias 1999) due to their inability to build a widespread social and political consensus around these transplanted reforms. In this context, criminal infiltration of public agencies occurs on a frequent basis and is orchestrated by transnational organized crime groups. For example, high levels of human trafficking are always associated with high levels of corruption at the political level. The correlation between political corruption – coupled with a lack of international coordination among judicial systems and high levels of organized crime – and low human development indicators produces a “perfect storm” (Buscaglia 2008).

Institutional feasibility of democratic legal transplants

A democratic political system goes hand in hand with democratic law-making. International legal and judicial reform transplants cannot be labeled as democratic when they do not enjoy a widespread social and political consensus within the importing countries (e.g., Mexico). To a greater or lesser degree, actual implementation of the UN Palermo Convention and its Protocols requires the understanding of how feasible it is to transplant its clauses democratically into a multitude of domestic legal jurisdictions. The adoption of a common international legal definition of organized crime is not a necessary condition for addressing transnational crimes, yet it will make judicial and legal international cooperation less complex. When addressing specific cases of complex crimes – such as transnational human trafficking, transnational arms trafficking, transnational fraud, or transnational human smuggling of migrants – a common framework

for legal and judicial cooperation is required in order for prosecutors, police, and judges to cooperate across borders. As an example, before the signing of the UN Palermo Convention in December 2000, only 17 percent of all UN members included proper organized crime definitions on their criminal codes and statutes. By late 2011, 86 percent of all UN member states had adopted legally adequate definitions of organized crime. Moreover, member states established international coordination mechanisms contained within the Palermo Convention with a mandate to improve their capacity to combat and prevent private and public sector corruption through the monitoring and international technical assistance measures provided by of the Convention. This represents a carefully coordinated institutional framework to help ensure the international transplant of legal instruments. Nevertheless, coordinated mechanisms within the Palermo framework cannot explain the success of actual policy implementation within 13 of the 108 states assessed. The key element shared by this small group of states can be found in how these legal transplants were implemented. In all cases, legal and judicial reforms enjoyed widespread political and social support, which explains the success in implementing these legal and judicial reforms. In other words, the delineation and approval of the laws in the 13 country-group were based on the existence of legislative consultation channels seeking actual consensus with the largest number of civil-society stakeholders. This prior political and social work explains why – from an international pool of laws available for transplant – certain laws and institutions are more respected in best-practice countries.

Yet, legal and judicial reform transplants can also be effected by the most powerful economic actors within a society through the political supply and demand exercised by lobby pressure groups. In other words, public/private interest groups (licit lobbyists or criminal groups) may feel threatened or benefit from alterations in the legal system that ultimately determine whether there is effective legal enforcement of these new laws. For example, Mexico's civil asset forfeiture laws were drafted and enacted to satisfy international pressures to identify and neutralize criminal assets. Yet, the Mexican asset forfeiture laws were designed by lobby groups. These private sector lobby groups exercised pressure on Mexican legislatures to include legal clauses aimed at making it very complex and costly for the state to seize and forfeit criminal assets.

Involving civil society

The criminal justice systems with the highest degrees of effectiveness in fighting organized crime and public sector corruption need to rely on citizens' support and on the willingness of citizens to collaborate with the state's law enforcement efforts in an operational manner. Without citizens' collaborative efforts, it is not possible for a judicial system to function.

Reforms of the criminal justice systems in best practice countries were not achieved without the help and support of non-state actors. Civil society groups are

required to monitor the degree of independence and accountability of the criminal justice system and its capacity to fight organized crime and public sector corruption.⁷ In most countries, civil society networks lack the technical capabilities, and judicial systems do not allow civil society to exercise its monitoring role (e.g., Mexico and Russia). Having recognized the civil-society monitoring requirement early on, the 13 country-group following best practices have sought to build bridges between the public sectors and civil-society stakeholders. In this context, soft measures alone – such as civil-society demonstrations, speeches by leaders of civil-society, meetings between such leaders and high-level state officials, and integrity awareness campaigns – do not make much of a difference in containing criminal groups. Moreover, limiting civil-society participation to symbolic gestures without tangible results and tangible products (in terms of saving lives and providing services that make people's lives better) will just increase the public's levels of cynicism and result in lower levels of public participation in all future efforts.

As stated in Buscaglia (2008), organized crime and high-level corruption need to be addressed through a simultaneous two-pronged approach. Civil society-based operational social control networks that prevent organized crime and corruption (e.g., civil-society networks undertaking social audits of public local and central budgets) are needed. However, the capacities of judicial and intelligence officials to dismantle the vast networks of economic assets allowing for the transportation, production, and distribution capacities of organized crime within all types of markets need also be enhanced.

The relative success in fighting the Mafia-driven capture of the Italian state and the social fabric of Palermo has shown that public, school-based education campaigns – coupled with the recovery of public space by bringing together civil society networks and local governments – have been essential in hampering the pernicious effects of organized crime and public sector corruption.⁸

In addition, civil society actors such as victims' associations, bar associations, and law schools can play an important role in legitimizing and implementing legal and judicial reform processes. For example, establishing civil society bodies – each composed of a panel of lawyers and other members of the public acting as “court watchers” focusing on organized crime and public sector corruption cases – has proven to enhance the legitimacy of the judiciary in Colombia, Costa Rica, Indonesia, Italy, and the United States (Buscaglia 2012, 1997). In this context, for example, a network-based approach to civil-society monitoring of state institutions would go a long way to improve public sector performance, and reduce corruption. In this kind of scenario, specialized panels of civil-society networks focusing on public health providers (e.g., hospitals) would generate periodic reports addressed to a health ministry and followed by a monitoring process. Furthermore, special-

7 | These elements were all present in legal and judicial reforms implemented in Chile and Costa Rica (Buscaglia 2012).

8 | See Orlando (2001).

ized panels of civil society focusing on justice providers (courts) would generate periodic reports aimed at legal institutions. Specialized panels of civil society networks focusing on public education would generate periodic reports aimed at assessing the performance of schools and proposing mechanisms to improve such performance.

Countries that have been successful in containing organized crime and public sector corruption also incorporated state-of-the-art economic and financial policies, going far beyond the legal and judicial measures stated above. It is clear by now that in order to tackle organized crime, regulatory measures are required.

Following are some measures required within the economic-financial domain to contain organized criminal groups:

- (i) addressing social vacuums left by state failures that create a “distance” between the state and the population’s access to basic public services due to geographical, ethnic, economic, and political repression;
- (ii) reducing the incidence and dimension of informal markets (which provide the economic inputs and human resources to criminal enterprises) by reducing the complexity and corruption in registering new companies or paying taxes;
- (iii) improving the distribution of income and wealth;
- (iv) introducing regulation of labor within markets previously declared illegal by the state (e.g., prostitution) and discarding the “illegality” approach to drugs by regulating the drugs market through the same type of food and drug administration laws applied to medicines;
- (v) identifying, monitoring, seizing, and confiscating financial assets linked to the production and distribution of smuggled and counterfeit materials are part of a key strategy in any organized crime containment program. This requires moving far beyond money laundering statutes. Many illegal transactions forced upon average citizens (such as the forced-notarized transfer of land to organized crime) occur outside the financial domain, where financial intelligence units possess no jurisdiction. Yet, one could claim that the world’s political landscape has been transformed within a decade, as, today, an increasing number of UN member states is enforcing disclosure of assets statutes and mutual legal assistance programs. In this context, bank secrecy has become less of an option.

The final impacts of non-punitive regulatory approaches to prevent organized crime have been very “modest” at best. Operational constraints remain due to the lack of operational capacities of police, prosecutors, and judges when required to handle cases involving financial investigations. At the same time, civil society networks are still operationally underdeveloped in most countries, as they have limited capacities to save lives and to monitor public officials through well-funded networks. In this scenario, the development of democratic means to prevent

and contain organized crime requires improvements in both state and non-state mechanisms.

Conclusions

Based on the analysis presented in previous sections, one can conclude that the most effective policy measures against transnational organized crime mainly rest on three pillars: (i) the introduction of more effective judicial decision-making controls in the hands of civil society networks that can lead to reductions in the frequency with which the discretion of procedural and substantive criminal courts is abused; (ii) the higher frequency of successful asset forfeitures of legal businesses and individuals linked to criminal enterprises – all based on effective financial intelligence systems that can generate evidentiary material to ensure the systematic dismantling, confiscation, and recovery of assets in the hands of legal firms providing the transportation and production infrastructure needed for the exploitation of human trafficking; and (iii) the presence of government and/or non-governmental preventive programs addressing the health, labor, and educational needs of high-risk groups of youth falling under the influence of criminal enterprises.

Furthermore, if one hopes to eliminate the social and economic roots of criminal enterprises, public policies should be much more focused on filling the social vacuums (e.g., lack of social investment in public health, lack of education options for youth, lack of social infrastructure, and lack of adequate job training) and less concerned about repressive operations. In addition, disrupting the operations of organized crime requires civil asset forfeitures, thus reducing the illicit funds that can expand public corruption rings within the public sectors. At the same time, developing a state infrastructure to address civil service reforms as well as developing auditing capacities of public institutions and public sector officials have also shown unparalleled power to reduce corruption. Finally, regulatory approaches to markets that are in the hands of organized crime (e.g., drugs and prostitution) need to be addressed through food and drug regulation and labor laws, coupled with social prevention in order to obtain the desired containment.

Certainly, it would be quite naïve to think that ratifying and enacting United Nations conventions (and their protocols) will be enough to successfully combat organized crime. Moreover, one should have no illusions that all 22 types of organized crimes can be contained, given the scarcities of human and financial resources that all nations face. In this context, public policy must give priority to reducing the most predatory organized crimes (e.g., human trafficking and kidnapping) through the criminal justice systems, while better regulating non-predatory crimes (e.g., gambling and adult prostitution) through economic and labor policies.

The reforms to the judicial and intelligence systems described in the previous sections – as applied in best practice countries – have always required a consen-

esus prior sociopolitical consensus that encompasses legislative, executive, judicial, and civil society domains and with actors willing and able to design, implement, and support “politically painful” reforms. The afore-mentioned gaps between the Palermo Convention-related domestic laws on the books and the same laws in action will be reduced whenever the political will to enact legal reforms coexists with the technical capacities to implement these reforms. Failures to fully implement much-needed institutional improvements have been mostly linked to the lack of a governmental long-term commitment within authoritarian regimes (e.g., North Korea, Russia, and Syria) or in political systems with scarce political competition (e.g., Jordan and Venezuela), or in environments with political instability characterized by chronic social inequities (e.g., Mexico and Paraguay), in failed states subject to armed conflicts (e.g., Afghanistan and Somalia), and in countries undergoing political transitions (e.g., Mexico, Nigeria, and Pakistan). These state and political failures have also been characterized by legal transplants of the Palermo Convention into domestic legislations without true implementation (i.e., huge gaps between laws on the books and laws in action).

The above lessons from international experience must be taken into account whenever national and international authorities plan strategies to address transnational crime and public sector corruption. Yet, it is crucial to remember that combating and preventing organized crime requires first and foremost addressing state failures in ensuring the exercise of human (civil, political, economic, social, and cultural) rights while, at the same time, eliminating the fragments of criminal enterprises operating within the state. In this context, when governments use the term “war” against organized crime, many public officials may be unaware of the fallacy involved: A repressive “war” of the state against organized crime is equivalent to a war of the state against itself.

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III. Regional Perspectives

1. INTRODUCTION

In an introductory first part of the book, we sought to establish some general understanding of the current features and cornerstones in the debate on transnational organized crime.

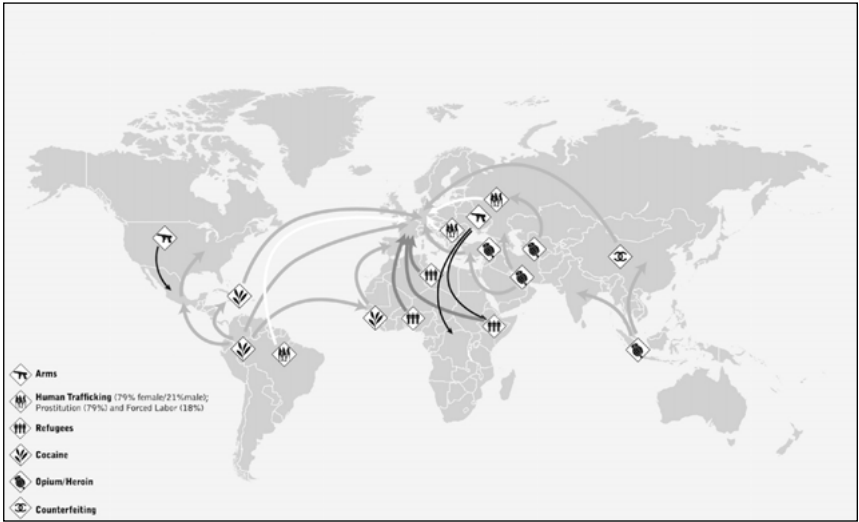
Money laundering, cybercrime, as well as possible forms and pathways toward containment of national and transnational organized crime were explained and discussed. Additionally, the fine line between legality and illegality of economic transactions was raised and discussed regarding compliance and business ethics.

Whereas, in this first part, some frame conditions that enable the current outreach of transnational organized crime were set, in the second part of the book we intend to travel around the world to stress the highly differentiated nature that organized crime may assume. Whether in Afghanistan, India, Mexico, Brazil, West Africa, the Balkans, or in countries of the European Union, historic and local specificities of societal organization lead to different features of organized crime. The following map visualizes roughly the current crime routes we are dealing with in this book and puts them in a global context.

Internationally crime networks, the state, and the locally dominant economic actors are closely interconnected. By considering the academic, practitioners', and civil society perspectives, organized crime is being situated in the center of other societal conflicts.

The question whether transnational organized crime is currently an intrinsic feature of a globalized economic life or an indicator of its collateral conflicts will be taken up again in the Outlook at the end of this book.

World Map of Organized Crime



Source: www.wired.com/magazine/2011/01/ff_orgchart_crime

2. Afghanistan

2.1 TWO SIDES OF A COIN? STATEBUILDING AND TRANSNATIONAL ORGANIZED CRIME NETWORKS IN AFGHANISTAN

by Florian P. Kühn*

I. Multi-disciplinary and cross-cultural perspectives

The analysis of state-building in Afghanistan as a political endeavor to end Taliban support for the international terrorist network Al Qaida needs to take into account the political economy of state-building as an international policy. Many books and articles have been written about the cultural and procedural differences that interventionists as well as Afghans have been experiencing since 2001 with Western involvement (Rashid 2008; Bergen 2011). However, many of the intrinsic and – in their own logic – consequential developments during the political stabilization and support missions have been counter-productive, not least because of what Astri Suhrke has termed an “aid-and-war economy” (2011, 233). This perspective focuses on the extensive funds given to the Afghan government – coupled with demands for “good governance” and reforms – as well as on the enormous cost of the synchronous military engagement. What started as a mission to scare off spoilers and win the hearts and minds of the population for supporting the new government, which, in turn, ought to rule Afghanistan in a manner consistent with the norms of the international system (Bliesemann de Guevara and Kühn 2010), over time turned into a full-fledged fighting mission tactically termed “counter-insurgency.” In both approaches, political and kinetic, the outcome of political institution and norm-building has been prescribed; it is merely the way to achieve these ends that has differed (Kilcullen 2009). During this period, Afghanistan slipped into a small war while under Western influence. It is nearly impossible to distinguish between civilians and combatants, sketchy or non-existent frontlines, and what to make of the eroding effects a long-term engagement with the insurgents has on Western constituencies (Daase 1999).

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The aspects this article analyses cover a range of factors: cultural ones that provoke a questioning of established understandings of states as default actors to define what is lawful and what is not; political-economic ones that point to unintended consequences of international policy; security-related ones that raise questions about what the differences are between state-sponsored security agents and private ones; network and social connectivity-related ones that indicate that the social fabric of an intervention society is, if not complicit in, then at least conducive to, transnational organized crime, because it links high-value markets in the West with low-value labor that is involved in the production of illicit but much-demanded goods. In Afghanistan, which is often termed a “global opium monopolist,” several layers of organized crime networks unfold from the *rentier* class and opium traders. Due to the precarious nature of a society in conflict, other fields have become equally important, such as weapons trade, transport of goods of all sorts, as well as smuggling of refugees trying to evade the chaos that is assumed will take hold after Western troops have withdrawn.

II. Causes – history and analysis

The history of state formation is, according to Charles Tilly (1992), one in which violent actors engage in a Janus-faced endeavor to provide cover against assaults that originate from this very actor. In Tilly’s words, war-making and state-making are comparable to organized crime, in that protection rackets have to be paid by citizens for the state to protect them. In this model, the state taxes citizens for services that may serve their interest – for example, providing access to and guaranteeing the endurance of markets – and defends its existence against internal as well as external competitors. In an ambiguous process, this leads to the formation of a state system, as any ruler depends on external recognition for legitimacy. This state formation model, then, explains how the institutionalization of armed forces, including the police, requires funds to support them. This necessitates taxation of economic gains achieved under the cover of protection provided by such forces. Both of these, in turn, lead to the development of a formal administrative apparatus that collects taxes and organizes the means of violence.

While this model goes a long way toward shedding light on European state formation, the already existing state system, which later was exported and expanded on global scale, led to different results in non-European contexts. Most states were formed mimicking the ideal of a state prescribed by the system and its demands for accessibility and interoperability of state institutions (Schlichte 2005). Beginning with diplomatic exchanges such as state representatives in other capitals, to binding rules of trade, human rights, or military relations, it is always the state that is at the ideational center of social relations. Hence, the preconditions of forming states were distinctly different outside what is (roughly) today’s OECD world; the circumstances further deviate if external actors meddle with internal state formation dynamics (Kühn 2012). However, it is worthwhile for analytical purposes

to salvage the connection between the state and organized crime to illustrate the mutual dynamics of trying to establish a state and hybrid economic and political developments that may or may not support the state (Bliesemann de Guevara 2009).

In Afghanistan, this hybridity of state-stabilizing economic connectors, which, at the same time, have kept the state at bay from social figurations in the country to allow free economic conduct, date back very far. After establishing a nominally modern state in the late 18th century (as opposed to dynastic empires, periodically expanding and shrinking by way of conquest and retreat, but only periodically establishing a formalized order), Afghanistan's kings struggled to implement central rule. Until formal independence in 1919, the Afghan state was riddled by internal strife, periodically interrupted by unity against outside invaders like the British, who, in trying to keep the Russian Empire away from the warm seas of the Indian Ocean, sought to establish a buffer state (Ewans 2002, 43). It was, however, internal politics that lead to the consolidation of statehood, partly respecting the social norms of local tribes, partly mimicking the form of statehood now demanded by the evolving international system (Barfield 2010, 110–130).

Even after independence, however, the state was so weak in its normative legitimacy and economic base that whatever state agents had in mind, they needed funding from outside donors. In other word, the economic power of Afghanistan – currently a country with one of the lowest productivity rates worldwide – never warranted the consolidation of rule. Instead, whoever was willing and able to fund groups competing internally for power and influence may have found it easy to acquire access to internal political negotiation processes. As a result, different groups were empowered – or, if funds dried up, disempowered, in cases where social heft may have differed vastly from political influence. A case in point is the political influence of the communists, who – while internally feuding – took over the state in 1978. While public resistance against their policies grew, epitomized by co-educative literacy courses and reforms of land-ownership, the Soviets had to make a decision and risk losing influence and all they had already invested in those “indigenous communists.” Instead of handing Afghanistan to a growing tide of Islamist actors, who, it was feared, would establish a counter-model of a faith-based system on the Soviet Union's southern border (which was the route the Iranian revolution was taking), Soviet leaders decided to become directly involved (Feifer 2009).

The well-established structure of a rent-dependent elite trying to expand state rule and implement policy was thus radicalized, especially when the US administration started to covertly fund opposition Islamist forces through Pakistan's military intelligence branch, Inter-Services Intelligence (ISI). By deciding which of the insurgent groups should receive aid in money and arms, the ISI decidedly shaped the future political landscape of Afghanistan, which was molded by the empowered mujahedin groups, who consolidated their leading political role by virtue of their military fighting skills and charisma (see Schlichte 2009). The so-

called Peshawar Seven, seven mujahedin groups favored by a large flow of funds, thus became leaders in the fight against the Soviets, whereas other, sometimes politically opposed groups had to get in line with them in order to access funds.

The *rentier* structure thus became divided into two branches – one of the state and one against the state. As Barnett Rubin wrote, “A rentier state produced rentier revolutionaries” (2002, 81). The *rentier* state was mirrored by consolidating political-military figurations, which tried to resist the forced modernization efforts, and both depended on the continuous inflow of foreign funds. Needless to say, external donors tried to influence internal politics by providing these funds. However, they failed to actually determine the course of events. It is in this light that the Afghan wars since 1979 cannot simply be viewed as proxy wars; fighting factions had their own agendas to follow, which were often quite detached from what Cold War opponents assumed them to be fighting for. When the Soviets withdrew their troops in 1989 – subsequently triggering the end of the Soviet empire and diminishing the interests of the United States in the region – funds stopped fueling the war economy. This increased incentives to capture the remaining state structures in order to secure a share of the funds that were still available.

Increased mujahedin infighting – which included the shelling of Kabul, the destruction of some of the main areas of agrarian production such as in the Shomali plains, and massacres against populations of different ethnic affiliation – can be largely explained in such economic terms. That the fighting led to an increased ethnicization of the conflict is clear, therewith establishing firm rifts between members of different groups whose animosities and sometimes open enmities date back a long time. However, Schetter points out the problems of analyzing the war in Afghanistan after 1990 as being ethnically motivated: “Ethnic groups and conflict parties are being viewed as congruent entities [...] Generally, society appears as being dominated in its societal segmentation by monolithic ethnic blocks” (Schetter 2003, 580; paraphrased, FK). This lacks a grasp of the differentiation within Afghan society and reifies ethnic stereotypes to a status of indisputable truths. In buying into these categories, according to Schetter, the UN cemented such ethnic categories by mandating a “multi-ethnic” government after 2001.

Importantly, societal segmentation ran along the lines of economic interests. Of course, what might be viewed as organized crime was virtually in all cases transnational. The economic networks of cooperation only existed due to their transnational component. Most notably, opium production and trade, which dates back several decades and has undergone several accelerating phases, makes Afghanistan the single biggest producer of opium in the 21st century (see below), and it has been useful in supporting elites over the last decades. The same applies to the mostly southern trade syndicates, who have an oligopoly on goods imported from Pakistan into Afghanistan. Since this is the lion’s share of goods consumed in Afghanistan, one may imagine the importance – and, consequently, the power – such a position brings. Similarly, but structurally different, is the position of those local strongmen, often misleadingly called “warlords,” who have established

semi-statehood in provinces by controlling political, military, and economic affairs. Embodying the merging of political activity with what would usually be seen as criminal activity, these actors manage to unite social services and economic activity as well as military power in one hand – thus providing an often welcomed function in an area where the state fails to provide justice and reliable governance (Giustozzi 2009).

The opium economy is the focus of the following section. This is merited by the importance opium has in economic terms – in Afghanistan it amounts to about one-third¹ of gross national product. It is argued that it is precisely its transnationality that makes huge profits possible – and at the same time, profits reach the observed amounts precisely because of the international criminalization of opium products. To get a clear picture of the nature of opium-related transnational crime, one needs to distinguish between opium producers and opium *rentiers*. The international policy to reduce opium production, it is argued, is counterproductive in that it actually provides incentives to get involved. Finally, I attempt to relate the networks of opium trade to other illicit goods trade. However, I argue that drawing a line between licit and illicit goods may be misleading, as it is the same groups from profiteers who gain most from the international military presence in Afghanistan.

III. Forms, cases, and interfaces

During the international presence in Afghanistan over the last 10 years, opium production has been named the most important problem countless times. This section illustrates that this is misleading, mostly politically motivated, and a clear case of focusing on the wrong target. In retrospect, after 2001, the international intervention provided the grounds for a surge in opium production in Afghanistan. The Taliban had stopped opium production (though not its trade!) in 2001, assumedly to strengthen their international reputation, which was tarnished due to their treatment of women (and the Afghan population in general) and for hosting Osama bin Laden. When the Taliban disappeared, the amount of opium produced skyrocketed. What had happened?

Much of the infrastructure was damaged after more than two decades of internal war. Few influential actors had capital to lend to poor farmers. Those who had to rely on loans in winter were forced to grow poppy in order to repay their debts. Poppy is a very useful crop in a country like Afghanistan, as it is relatively robust and may be grown in areas where irrigation is impossible or non-existent. Also,

1 | Opium revenues can hardly be calculated reliably, and different ways to estimate them leads to very different results – for example, taking opium revenue as part of gross national product changes its relative share as opposed to calculating it outside licit economic activity. Also, trade-offs, such as profits from increased consumption of opium producers, may be understood as stemming from the opium economy or analyzed separately.

unlike wheat, it works as a cash crop; farming for subsistence on small fields often fails to produce a surplus, limiting the maneuverability of families dependent on money. In global comparison, poppy farming works in Afghanistan as it is very labor-intensive.

Farmers harvest the sap [...] by scoring the buds with a curved scraping knife and collecting the sticky brown resin that dries on the buds. In rudimentary “laboratories,” often nothing more than a mud hut with metal mixing drums and a brick stove, raw opium is mixed with lime and boiled in water to make morphine base. Once poured into molds and sun-dried into hard bricks, it is reduced in weight and volume by a factor of 10, making it easier to smuggle. (Peters 2009, 30)

Later stages of refining into heroin require cleaner facilities, clean water and charcoal filters, and chemicals such as anhydride or hydrochloric acid. The supply of these base materials is also part of the network of transnational organized crime.

Afghanistan has a history of producing drugs, especially opiates. Because medical treatment was impossible in the remote villages, it used to be consumed against pain and illness. It was, however, the Soviet war that catapulted Afghanistan to the forefront of opium production: On one hand, the revenues paid the mujahedin’s fight against the Red Army, and on the other, the CIA thought it might be a great idea to undermine the morale and health of Soviet soldiers by fostering vast supplies of harmful drugs to them through ISI channels (Napoleoni 2004, 147–148; Feifer 2009, 183). The Taliban, when in power, attempted to enhance their international reputation by stopping the production of poppy – but not the trade. Although this caused social hardships for farmers, the traders – relying on full stocks – compensated for decreased trade with higher prices. This illustrates that market fluctuations do little harm to traders, as the morphine base is durable and can be stored for lengthy periods of time. However, this policy enforced by the Taliban rendered them unreliable in the eyes of traders – namely the few families who traditionally organized exports using far-reaching networks (Buddenberg and Byrd 2006). These structures, predictably, survived the fall of the Taliban and persons involved became active in rebuilding the Afghan state.

The economic edge traders had traditionally had, including lending money to producers (called *salaam*), put them in powerful social and economic positions. While political leadership was shifting, traders remained in their positions – not directly involved in politics but silently able to structure and influence the composition of political arrangements.

In the course of the Western intervention, a significant professionalization and concentration of the opium trade has taken place. What Janet Kursawe has termed “vertical integration” is a consolidation of market relations between the producers, the traders at different levels, and the buyers, all of whom are valves for funneling the opiates onto the world market. According to her assessment, it is this integration that merits talk about organized crime, which has a higher degree

of institutional capacity than the local/regional tribe and kin-based trading relationships that existed in the past. Those loosely organized cells have now become more concentrated, forced to counter repression – resulting in the disappearance from the market of those who are unable to fend off law enforcement – and take advantage of the economies of scale. The ever more influential groups have increasingly managed to gain access to state institutions, either through cooptation of officials or strategically positioning their own straw men. While this results in symbiotic relations between parts of the government and the opium economy, it also serves to keep contenders off the market; the opium business is no longer open for competition (Kursawe 2010, 127–140). This is important, as the ongoing war in Afghanistan – where opium competitors can be turned into targets for the United States and other Western militaries by pointing out their affiliations with the Taliban – has diminished the positions of those traders close to the insurgency, thereby leaving the market to those close to the government. Whether this is a good thing leading to future control and subsequent regulation of the illicit opium sector, or a bad thing resulting in the state of Afghanistan being turned into a full-fledged narco-state, remains to be seen² (Kühn 2011, 121–122).

Thus, in several ways, Western intervention is supportive of – or even complicit in – exacerbating the Afghan drug problem: By fighting on the side of the government, the Western military helps oligopolize the opium market for the benefit of those drug entrepreneurs who are well connected with – or, indeed, part of – the government. Frequent denunciations of the most prominent case of drug involvement (Hamid Karzai's brother Ahmad Wali, who was governor of Kandahar and killed in July 2011) was only intended to pressure the president publicly, but it did little to help tackle the consolidating professionalization of opium politics. Indeed, cooperating with him – and other powerful figures of his kind – seemed more attractive for Western actors as this was calculated to facilitate an orderly exit.

Another way to help the opium traders is to keep resisting Afghan moves to join the pharmaceutical producers of opiates. While regulation is of concern (Which poppy types would be legal? Which ones illegal?), there is also a market being protected by countries like Turkey, Australia, and the Netherlands – countries that, understandably, have little incentive to share the lucrative business of medical opiates demanded by palliative medicine in Western countries.

Finally, as some in the field of development have observed, a “dual use” problem exists: Processing of heroin moves closer to the source of production (poppy), which is a sign of the capital saturation that Afghan traders have now reached. While heroin was formerly processed downstream on trading routes, for example in Pakistan or Iran, it is increasingly processed in Afghanistan. Laboratories profit from more widespread access to clean water – which is often facilitated by Western

2 | Author's phone interview with member of Western intelligence service, March 5, 2011.

development agencies. Mobile laboratories are quick to relocate upon detection, and in many cases they enjoy the support of local strongmen, who, simultaneously, are often commissioned by the military and aid agencies for protection.³ Close cooperation of Western military and local units, who are patrolling side-by-side, fosters the flow of information, wherefore violent encounters that were frequent in the first years, when Western military sometimes stumbled upon drug deals, have ceased to happen: Information about the military's whereabouts allows for avoidance of detection. While roads lower the cost of transporting agricultural goods, they also support the concentration of deliveries of opium; transporting huge bulks rather than small portions of opiates has helped concentrate business in a few hands. Likewise, the crossing of borders has become more dangerous when goods have more value (heroin vs. opium base) and when batches are bigger; this raises the incentive to involve border guards and bribe security agents, thus tightly entwining state agents and the opium economy.

In this light, it is hard to tell who is gaining the most: In a state dependent on rents, which are now mainly supplied by Western donors, elites are likely to secure all sorts of *rentier* income. The numbers supplied by the United Nations Office on Drugs and Crime over the years indicate that income generated by drugs supports state agencies; in a general mood of war-weariness and dwindling foreign funds, opium income will likely be vital for many state functions. Following the logic of the *rentier* state, Afghanistan may well have found a political-economic equilibrium that secures minimum legitimacy of the state (as a supposed source of order) but that is also highly productive in terms of opiates and, increasingly, hashish (Kühn 2008, 323; 2012). The question is how this could be made legally and socially acceptable within existing structures. At the moment, rather than following a coherent strategy, Western countries are hiding behind the Afghan state, which is officially in charge of drug policy. For example, there are virtually no attempts to implement demand reduction in Western countries (Kühn 2012, 127–128).

Overall, as opium is a cash crop, Afghan producers are unlikely to change to other agrarian produce in the near future. Since the illegality of opium and its derivatives guarantees fluctuating but comparably high returns, and since traders are also involved in other economic sectors, thereby giving them an edge in manipulating markets, the eradication policy based on the fiction that the problem might be solved in Afghanistan has proved to be futile. Traders have secured considerable influence over government institutions, partly funding the state, which ought to enforce opium bans. Many of those involved in the security branch – police, law enforcement, and border guards – are in reality often complicit in its export. Likewise, global networks provide very reliable structures to distribute supply, while demand in Western states remains virtually constant. It is this international dimension and its social and political consequences that the next section covers.

3 | Author's interview, development agency staff, February 25, 2011.

IV. Processes of social transformation, global economic flows, and routes

Drug-exporting networks are the largest profiteers of opium and hashish in Afghanistan. Because of their involvement with the state – either as authorities or tightly connected to those in office for the sake of stability – they are able to adapt to and survive countermeasures for combating the opium trade. These have led to the consolidation of the exporting groups, as traders associated with the Taliban and other insurgent groups have been targeted, whereas those close to the state have not. After some years of dysfunctional anti-drug policies, attempts to tackle the producers have finally ceased. This came after realizing that these measures disenfranchise the population and that volatile structures of production allowed for the growing of poppy to shift from one province to another. The sheer amount of capital that can be accumulated by the domestic traders (numbering about 150–200), but even more so by those exporting the drugs (now down to about 15–20 families, as compared to higher numbers 25–30 years ago) allows for the financing of a policy of specialization and consolidation of the traders:

Coordination (including across ethnic groups); close association between government, business, and criminal operators; exclusion of new entrants especially at upper levels; dynamic responses to law enforcement (including higher levels of secrecy); and development of more systematic and well-organized mechanisms of criminal protection.⁴ (Buddenberg and Byrd 2006, 17)

In terms of social transformation, paradoxically, that may mean that the drug economy may have become more predictable for those involved. Consolidating structures brings a certain level of reliability; the escalating fight against insurgents during the intervention has funneled resources and attention away from eradication and the enforcement of counter-narcotics policy. International capital networks work well and are indistinguishable regarding their “content of criminality”: Afghan elites have tended to remain in contact with diaspora communities, and those able to mobilize capital have profited from imports of everyday commodities such as cars and food; also, the transport of military supplies has been a profitable industry in recent years. The capital gained is often sent from Afghanistan to investment havens like Dubai, from where money is invested in other sectors of the global economy. These economic activities may partly involve money laundering. Also, the mainly trust-based system of *hawala* has been widely used to transfer funds (Napoleoni 2004, 205–207; Kursawe 2010, 139–140), making it impossible to calculate the economic impact of the drug economy. The grey area in which virtually all economic activity takes place is well described by Cockayne:

4 | Author’s phone interview with member of Western intelligence service, March 5, 2011.

Organised crime and corruption are central to the social experience in violent and insecure communities – especially those affected by wholesale armed conflict. What is labelled “organised crime” may at times manifest a deeper politico-economic system that satisfies the survival, dispute-resolution and other basic needs and interests of extensive constituencies straddling the state-society boundary. [...] the lines between legality and illegality, and between legitimacy and illegitimacy, do not run along parallel tracks. State-backed laws may lack popular legitimacy, and state officials – or outside peacemakers – may risk *losing* local legitimacy by enforcing law. Alternatively, state official may engage in activities – such as corruption and bribery – that are illegal but entirely normalised or legitimate in the local context. A similar disconnect can emerge between international norms and local legitimacy. (2010, 201)

For Afghanistan, in its social and local heterogeneity, it is all of the above. This is exacerbated by some historical continuity, in which borderlands – that is, areas of disputed rule such as the mountainous areas around the virtual border to Pakistan – play a role as “spaces of avoidance.” In the example of the Federally Administered Tribal Areas, the ethical differences between those Pashtuns under state control (and paying taxes: *qalang*) versus those living according to the ideal of freedom and honor (*nang*) is very important for people’s identities. There, the local economy profits from re-importing tax-free goods into Pakistan brought to Afghanistan under the Afghan Transit Trade Agreement (Goodhand 2008, 234, 241). Violence, as part of the greater economic pattern, depends to a significant extent on the “temporal scope of its rationality and assessments of its expected payoffs” (Scofield 2011, 47).

In addition to being an illustration of the “all politics is local” idea, this indicates what happens with other borders such as those shared with Central Asia or Iran: Select groups cooperating in transnationalizing trade patterns are required as counterparts to organize the export (and import) of goods. While the Iranian influence is distinct for its state-like approach – in which support was given to the comparatively stable province of Herat through substantial economic exchanges – Iran still serves as the main route to export opium products from Afghanistan to Turkey and on to markets in Europe. Despite the Iranian state’s interest to keep hostile Sunni segments of Afghan society at bay and control the drug market, work and refugee migration on the scale of 2.5 million people is of social significance. Such sub-state relations also affect ties with Uzbekistan and Tajikistan.

In effect, one may identify three layers of politics and political-economic ties: The first is on a local scale, from kinship-based politics in villages and districts or provinces, as in the case of consolidated provinces such as Herat or Balkh. The second is between provinces representing larger, internally connected economic patterns and – as in the case of the opium trade, where goods easily cross Afghan domestic fault lines of conflict (Kursawe 2010, 134) – neighboring countries. Ethnic and linguistic ties as well as kinship and migration contacts may foster these

ties, for example, between Badakhshan and Tajikistan; Herat and Iran; and Kandahar and other predominantly Pashtun areas on Pakistan's side of the border. On a third level, there are global economic connectors, with trade ending downstream on the streets of London or Hamburg (in case of drugs), but also in other centers of the capitalist West in the case of carpets and refugees. Afghanistan, on the other hand, is an importer of chemicals to refine opium into heroin, but also of small weapons from the former Soviet states and Africa. In monetary terms, as already described, Afghanistan is a major recipient of rents, of which there is the economic rent for the illegal goods, a political rent paid mainly by the Western intervention to the state of Afghanistan and its elites (see Kühn 2008) but also to opposition groups by Saudi Arabia, Pakistan, and others. Money from Afghanistan, in turn, is being invested on global markets via, for example, Dubai. Finally, and not to be underestimated, there are migration rents, which are transfers between diasporas and Afghan constituencies, with the latter often relying on these payments for survival.

V. Consequences and impacts on the state, the rule of law, and victims' accounts

Ten years and counting into the Western intervention, and with the withdrawal of a significant number of forces looming large, there is little one can predict for the future of transnational organized crime. There are, however, some indicators that need to be considered and that shed some light on the categories that are applied to defining transnational organized crime. Since the Afghan state, and indeed Afghan society, is very dependent on the inflow of money in the form of economic, political, and migration rents, criminal activity – or what might be understood as such – is likely to remain in place. Depending on the economic opportunities opening up for actors, these will be used: In political terms, this means that even though Western donors have pledged huge sums for the funding of state institutions until 2024, opportunities for others who are willing to pay those with domestic political interests are likely to increase. The influence, however, should not be overestimated: Afghan rulers have mostly managed to keep the donors at bay when it comes to the substance of decision-making. To gain legitimacy, however, rulers have to be viewed as independent of foreigners (Barfield 2010, 341–342). Absent the significant internal sources of finance, the legitimacy of an Afghan state is likely to remain weak.

This relates to another, possibly bleak perspective: If security cannot be provided by the state, people – in the case of Afghanistan ethnic factions along tribal and kinship lines – will feel they have to organize militarily. To fund this, they will make use of opportunities that themselves are contingent upon the random distribution of goods and may serve to finance such basic sub-state functions: for example, the smuggling of lapis funded the Panjir resistance against Taliban rule in northern Afghanistan; Aymak copper deposits near Kabul sent along favor-

able trade routes to neighboring markets; or, drugs. Because they are impossible to centralize, migrant rents are politically irrelevant but provide a vital source of income to many. Because they strengthen ties between diasporas and people in Afghanistan, they are also open to external influences.

As long as the ability of the state to define what is legal and illegal in a socially accepted way does not exist, Western policy-makers ought to develop a more realistic evaluation of what drives Afghan politics. The state's weakness is not limited to actually enforcing laws; on a more basic level, it also needs to change social norms in the heads of people. This points to vital characteristics well beyond a state's functional side – and this, in turn, ought to foster recognition of what external meddling may or may not achieve. The functional side of the state may or may not be addressed, but international policy ought to abstain from aiming at the mental re-education of non-Western societies.

It is within this template that organized crime is understood as a menace to societies, neatly defining and demarcating spheres of legality or illegality. This may turn out to be a fiction upon closer look, however. For one, criminal structures are often well-woven into the economic patterns of Western consolidated statehood. The non-Western, post-conflict criminal activity follows logical patterns of economic incentives and barriers of regulation. While, in Afghanistan, corruption and disruptive influences exerted by the one-sided empowerment of certain groups that rely on the heavy influx of funds are still seen as undesirable by many in Afghan society, the occasional bribe and opportunistic use of economic structures are regular features of life for most.

This should not be viewed as cultural flaw, weak character, or backwards mentality, as Johnson convincingly argues at the end of his book: “Afghans are not culturally determined in their actions, but are reactive and adaptive. Their operations are shaped and influenced by a cultural ‘lens’, but they are also pragmatic” (Johnson 2011, 305). Lacking a lens of European statehood (and also many of its flaws), what may look from such a perspective like transnational organized crime may at the same time appear acceptable, if not normal, from a non-Western perspective. In Afghanistan, the newspaper *Cheragh*'s assertion that Western efforts to reduce opium production was a failure rang true with many: “[b]ecause the British [as key partner for opium reduction] cannot reduce the 90% demand of its citizens for Afghanistan's opium in their own country [...] they are trying to find a pretext and evade responsibility rather than find a solution” (quoted in Shayer 2008, 8). Rather than pointing fingers, Western actors should carefully balance donor priorities and local pressures rising in the face of the prospective decline in *rentier* income (Suhrke 2011, 232). To do that, it might be worth considering transnational organized crime and transnational disorganized order as parts of one continuum rather than as polar binaries.

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2.2 “Mired in Deception” — Narcotics and Politics in Afghanistan

by Christoph Reuter*

I. Introduction

Since the arrival of US troops in Afghanistan in 2001, and later multinational North Atlantic Treaty Organization (NATO) troops, the production of narcotics in the Hindu Kush has increased enormously. It is an amazing contradictory phenomenon that 10 years of well-funded counternarcotics activities have seen unprecedented levels of poppy and heroin production. Despite declarations to combat illegal drug production, the intervention even seems to have facilitated the poppy business. Today, Afghanistan is the supplier of more than 90 percent of global opium production – a position it only reached after the intervention of international troops. This study tries to explain why and how this happened.

In 2008, Thomas Schweich, a disillusioned former head of US counternarcotics efforts in Afghanistan, summed up his experience:

At the beginning of 2006, I went to the high-profile London Conference on Afghanistan. It was a grand event mired in deception. Everyone from the Afghan delegation and most in the international community knew that poppy cultivation and heroin production would increase significantly in 2006. But the delegates to the London Conference instead dwelled on the 2005 harvest, which was lower than that of 2004, principally because of poor weather and market manipulation by drug lords like Sher Muhammad Akhundzada, who had been the governor of [...] Helmand province and then a member of Afghanistan's Parliament. (Schweich 2008)

Official statements about narcotics in Afghanistan have often focused on the Taliban as being the main beneficiaries of the drug business, claiming a nexus between drug money and terror finance. This argument tends to overlook the deep involvement of Afghan government officials in the same trade. This study draws on classified documents of the US government (published 2011 by Wikileaks), “NATO secret” reports of the Swedish PRT in Mazar-e Sharif, intelligence

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reports,¹ “province profiles” as well as multiple interviews with experts in Kabul to describe the nature of this connection. The drug industry has permeated every sector of Afghanistan’s power system. While insurgents are involved mainly in poppy farming and the domestic trade, the lucrative heroin refining and cross-border smuggling are mostly controlled by those forces that control the border areas, that is, the border police, powerful militia commanders allied to Western troops, governors, or their proxies.

As this study will show, there is no such thing as an organized effort to curb the poppy business. In the cold light of day, many counternarcotics efforts of the Afghan government turn out to be fights with rivals over market shares. And even the international military forces openly follow a policy of neglecting counternarcotics for winning over Afghan powerbrokers as well as peasants. If production levels decreased in some of the past years (as was the case in 2009 and 2010), this was not due to effective counternarcotics policies, but to surplus production that the global consumer market could not absorb.

Today, the issue of Afghanistan’s narcotics industry has practically disappeared from the international agenda. It was hardly mentioned, for instance, in the Afghanistan conference in early December 2011 in Bonn, Germany – and this despite the fact that the narcotics trade remains the biggest single source of income in the Afghan economy. Tackling the issue of narcotics with more integrity would not immediately change the situation. But to ignore reality and to intentionally mislead decision-makers in parliaments and governments will only lead to a further increase in trafficking and the undermining of governmental structures in Afghanistan.

Research methodology

This study was compiled with the help of researchers in nine provinces. They conducted interviews with poppy farmers, drug dealers, and counternarcotics officials. Further sources are interviews the author conducted with UN, Western embassy, and NATO officials, as well as with Afghan government officials. The study also draws on extensive research of media reports, academic studies, and classified documents of diplomats and the military.

Some of the 85 prominent figures who play leading roles in the Afghan drug business and were identified are mentioned in this study, but their names are withheld for security reasons.

Chapters

The study starts by going back to the historical roots of opium and, subsequently, heroin production in Afghanistan. Chapter III gives an overview of the processes involved in the drug industry: from farming to trading, stocking, refining, and

1 | For example, the Swedish NATO secret report “Critical Infrastructure Protection Project” from Sept. 11, 2011.

cross-border trafficking. Chapter IV portrays the main beneficiaries of the drug industry and compares the role of the Taliban versus government officials. Chapter V analyses the counternarcotics efforts of the Afghan government and illustrates the conflicting agendas of various Western actors in Afghanistan in terms of counternarcotics policies.

II. How it all began – the historic context

Poppy cultivation in Afghanistan dates back centuries, but until the 1970s it was confined to a few areas and used only for the local consumption of opium and was not to be refined into heroin or trafficked internationally. Large-scale smuggling and the processing emerged during the time of the mujahedin resistance to the Soviet occupation after 1979. According to US historian Alfred W. McCoy, who has published extensively on international drug trafficking, the new business was initially controlled by the Pakistani intelligence service, Inter-Services Intelligence (ISI) – and tolerated by its US counterpart, the Central Intelligence Agency (CIA). Both secret services cooperated during the Cold War in supporting the fight of the mujahedin against the Soviet Army and the communist Afghan government. With the profits from the trade, the ISI financed “separatist movements in India and the civil war in Afghanistan” (McCoy 2003, 649). Pakistani army trucks brought CIA-delivered weapons to the border and returned loaded with heroin.² Hizb-i Islami leader Gulbuddin Hekmatyar, a US ally at the time and now one of their fiercest enemies, reportedly was one of the first Afghans to run his own heroin laboratories (McCoy 2003, 621).

The former CIA director of the Afghan operation, Mr. Charles Cogan, later admitted turning a blind eye on the drug trade. In 1995, he told Australian television in an interview: “Our main mission was to do as much damage [as possible] to the Soviets. We didn’t really have the resources or the time to devote to an investigation of the drug trade. [...] There was fallout in terms of drugs, yes, but the main objective was accomplished. The Soviets left Afghanistan” (Chossudovsky 2001).

After the withdrawal of the Soviet troops in 1989, opium cultivation continued, as the mujahedin factions financed their civil war with drug money. One of the major drug lords at the time was the Jihadi commander Mullah Nasim Akhundzada from Helmand. His son, who became the first governor of Helmand under President Hamid Karzai’s government, inherited his drug networks.

During the time of the Taliban regime (1996–2001), the radical Islamic movement pursued a contradictory policy on drugs: They banned the consumption of drugs as *haram* (sin), but they initially did not object to the cultivation of opium. The head of the counternarcotics department of the Taliban in Kandahar, Abdul Rashid, argued that poppy – as opposed to hashish – was “only consumed by the

2 | Documented by Lawrence Lifschultz in *The Nation*, 1988, quoted in McCoy (2003, 621).

Kafirs in the west, not by Afghans and Muslims” and could therefore be cultivated legally (McCoy 2003, 657). Presumably, the real reason was the enormous profits that could be reaped from the trade. From 1996 to 1999 the annual opium harvest increased from 2,250 tons to 4,600 tons. There is also evidence that the Taliban collaborated with members of the Northern Alliance – their enemies in the civil war – to transport the poppy harvest through enemy territory and up to the Tajik border.

However, Taliban leader Mullah Omar tried to use a ban on poppy as a bargaining chip in exchange for international diplomatic recognition. In July 2000 he passed a religious edict declaring drug cultivation to be irreconcilable with the tenets of Islam. The ban was enforced vigorously and effectively in that season. For instance, in Nangarhar province, about 1,000 poppy farmers were arrested and jailed until they agreed to destroy their crops. A delegation of the United Nations International Drug Control Programme (UNDCP) confirmed that cultivation in Taliban-controlled areas had come to a nearly complete stop.³ However, the international community did not grant the Taliban regime the anxiously awaited international recognition, but only \$43 million as “humanitarian aid” (McCoy 2003, 668).

Apart from politics, there was probably an economic reason for the ban. The stores of the poppy traders and farmers were full due to overproduction, causing a decline in prices. The ban resulted in a tenfold increase in prices (UNODC 2006a). Thus, the move helped traders and stockholders become rich – especially those who had, due to insider knowledge, enlarged their stock at the right time. One of them later founded the Ansari Hawala scheme and the Afghan United Bank. At the same time, the ban had devastating effects on 3.3 million farmers, according to UNDCP estimates.

After the fall of the Taliban, interim President Hamid Karzai asked for help at the Bonn conference in December 2001 to fight the drug trade and finance alternative livelihoods (McCoy 2003, 672). Shortly before the donors conference in Tokyo in January 2002, Karzai declared a ban on drug production; in 2004 he called for a “jihad” against drugs – but seven years on it is clear that all measures have utterly failed.

III. The process

An explanation of the local cost-benefit chain (farming, harvesting, stocking)

Opium is an attractive cash crop for a number of reasons: It needs half as much water as wheat, brings several times its profit, can be easily transported, and even increases its value when stored. This is what makes any effort to curb it or replace it with other cash crops so difficult. Especially in Afghanistan, where large parts

3 | Author’s interview with a Bernard Frahi, the regional director for the UN program in Afghanistan and Pakistan, Islamabad, July 2002.

of the soil are only rain-fed, that is, without irrigation, the robust poppy plant that needs little water is an attractive choice.⁴ Still, growing poppy on irrigated land is even more profitable despite the higher costs. In the district of Koshka Kohna in Herat province, interviewed farmers estimated that they could harvest 7 to 10 kg of Taryak (opium paste) at a cost of 5,000 afghani on one *jirib* (approximately 200 sqm) of rain-fed land, while on irrigated soil they could harvest 15 to 20 kg of Taryak at a cost of 15,000 to 20,000 afghani.

In comparison to wheat, a farmer in Nangarhar estimated that he earned three times more with poppy. Other crops such as, for example, strawberries require better roads as well as storage and cooling capacity. Roses require a complicated technical infrastructure to extract the oil and a highly disciplined workforce to harvest the petals immediately after flourishing, which remains a challenge.⁵ Other high-value agricultural products often take a long time to mature. A pomegranate orchard takes between six and nine years, almonds up to four years, and apricots up to five. In contrast, poppy takes just six months.

This also means that poppy cultivation can be easily shifted to other areas, if pressure is locally increased. An example of this phenomenon is the district of Bakwa in Farah province, where cultivation rose from 39 ha in 2004 to 3,090 ha in 2008 (UNODC 2009a, 77). The dramatic increase was initiated by traders from neighboring Helmand province who offered advance payments as start-up capital to persuade farmers to grow opium.⁶ This points to another factor that draws farmers to poppy cultivation: the availability of low-interest credits. Especially after the Taliban cultivation ban, many farmers were dependent on loans and advance payments. In some areas such as in Farah province, traders have provided so called *salam* – loans without interest to poppy farmers. Such loans require the farmers to sell all their harvest exclusively to the trader who provided the loan – at the current market price of the time of the harvest.

Poppy cultivation is a labor-intensive process. For harvesting, the capsules are lanced in the evening and a latex-like opium gum oozes out, which is gathered by hand the next morning. This process requires skilled labor. Therefore, apart from farmers and traders, a large pool of migrant workers is also part of the poppy economy. As research for this study shows, laborers in Farah and Takhar province, for instance, can earn 300 afghani per day (approx. \$6–7), which is much more than is paid for other manual work. Many migrant workers travel across Afghanistan, following the harvest calendar from the south (April, May) up to Badakhshan in

4 | According to the Afghan researchers for this report, who worked in nine provinces (Badakhshan, Takhar, Kunduz, Nangarhar, Helmand, Farah, Herat, Kunar, Kandahar), and who interviewed farmers, local traders, and Afghan security personnel to get an in-depth overview of the local situation.

5 | Author’s interview with the Afghan and international staff of the rose-oil project of German Agro Action in Jalalabad, May 2011.

6 | According to local researchers, March 2011.

the north (June, July) (UNODC 2009a, 95). Also, there seems to be a trend toward an increased division of labor, with specialized smugglers delivering the seeds from national centers to local markets.

The profit a farmer or trader can make depends on his ability to stockpile opium in order to sell when prices are highest. Since 2001, Afghanistan's opium production has consistently exceeded the entire global demand for opiates, despite all international efforts to stamp out the trade. According to the United Nations Office on Drugs and Crime (UNODC), in 2011 the stockpiled surplus was estimated at 12,000 tons, or more than twice the world demand, which is estimated at 3,700 to 4,400 tons a year. Since the fall of the Taliban, production in Afghanistan has consistently exceeded this demand, reaching 8,200 tons in a peak year like 2007 (UNODC 2009a, 25). As a result of overproduction, the "farm-gate" price for opium paste realized by farmers has seen a dramatic decrease, from \$425 in 2003 to \$64 in 2007 (UNODC 2009a, 95). After the crop failure in 2010 due to a blight that destroyed large parts of the harvest, the price rose significantly by 250 to 300 percent within one year.⁷

Seeing the obvious advantages of the poppy crop, an important question arises: Why are there certain areas with no cultivation? After all, opium is only cultivated on about 3 percent of the total agricultural land in Afghanistan (UNODC 2006b). According to local sources and counternarcotics officials in Kabul, religious sentiments are one of the main factors that discourage farmers from growing poppy. Many mullahs tell their constituents that poppy will curse their fields or that pilgrimage paid with drug money will not be accepted by God.⁸ But other mullahs collect *ushr* (tax) from poppy farmers and declare it *halal* (legal), arguing that only infidels consume the drugs or that the drug money is used to wage a holy war against infidels. Other mullahs abstain from condemning poppy out of fear. As one mullah from Koshka Kohna district in Herat said: "It is not *halal*, but when I say this in public, the Taliban will kill me."

Transport, refining, and smuggling

According to Afghan and foreign investigators, police officers, and ex-smugglers interviewed for this study, smugglers rarely use trails, mules, and clandestine routes, but main roads and official frontier crossing points into Iran, Pakistan, and Tajikistan, which are controlled by the police and the border police (UNODC 2007, 139).⁹ A 2007 United Nations Office on Drugs and Crime (UNODC) study on opiate flows concluded that approximately 70 percent of drug trafficking takes

7 | *Asia Times*, June 21, 2010.

8 | According to local researcher, April 2011.

9 | As mentioned in the Taliban chapter: "70 percent of drug trafficking takes place along the main roads, sustained by the strong support and involvement of the local governmental authorities."

place along the main roads, sustained by the strong support and involvement of the local governmental authorities (UNODC 2007).

In some cases, police have even provided uniforms and police vehicles to smugglers in order to cover up their operations. This was confirmed, for instance, by testimonies against a former commander of the border police in Herat, General Malham Norozi Khan, who was arrested in May 2008 and sentenced for drug smuggling to 10 years in prison. In the hearing, one of his battalion commanders, identified as Gulbuddin, testified that the general provided a regional drug boss named Jalil Farahi with border police uniforms and a police pickup truck so he could transfer narcotics across the frontier unopposed. He said he had witnessed the drug boss giving \$30,000 in cash to the general in return.¹⁰ In other cases, border police officials are bribed to allow smugglers to pass without being controlled.

While in the past, most of the raw opium was transported unprocessed across the border into Pakistan, Iran, and Tajikistan, for a few years now Afghan traffickers have increased their profit share by establishing labs inside the country. The UN estimates that two-thirds of all Afghan opiate exports are now refined into morphine base or heroin domestically.¹¹ Located in remote, mountainous border areas, the simple labs can be contained easily in any given compound, which makes them difficult to detect. However, the refining process requires a precursor – mostly acetic anhydride is used. The substance has to be illegally imported at very high costs, mainly from Pakistan. While the international licit price for acetic anhydride is approximately \$1–2 per liter, in Afghanistan prices have shot up over the past decade from \$24 to \$350 per liter. Although large quantities of the liquid are brought into Afghanistan, interdiction remains limited, as a study of the Afghan Research and Evaluation Unit notes: “In order to produce the required volumes of heroin [380 metric tons per year], as much as 1,000 tons of acetic anhydride are needed to be smuggled into Afghanistan in 2008. The interdiction of 14,233 liters in Afghanistan in 2008 remains marginal at a ratio of approximately 1 percent” (AREU 2009).

IV. The main beneficiaries

As a UNODC report states: “The intermediaries are not only shady characters linked to international Mafias. They are also (i.) white collar Afghan officials, who take a cut by protecting the drug trade, as well as (ii.) religious fanatics and political insurgents who do the same to finance their course.” (UNODC 2009a) This chapter looks at both groups of beneficiaries and analyzes their respective roles in the drug business.

10 | According to the Afghan researcher from Herat.

11 | Author’s interview with UNODC officials, Kabul, April 2011.

The role of government-affiliated powerbrokers

Back in 2005, a team of the former Minister of the Interior, Ali Ahmad Jalali, compiled a list (or various lists, this remains unclear) of alleged drug traffickers that contained about 70 names, according to one source familiar with the list – while another source claimed only 35 names. Shortly afterwards, the minister resigned after complaining about the impunity of senior officials involved in drugs and corruption. According to US sources, most of the people on the list, if not dead, are still involved in the business and are simply too powerful to be arrested.¹² The list included the president’s murdered brother, Ahmed Wali Karzai, who was the head of the provincial council of Kandahar and the unofficial ruler of the province. Other people on the list were Jan Mohammed Khan, the ex-governor of Uruzgan, and Gen. Daud Daud, the head of the Afghan National Police in the northern provinces – both of whom were killed in 2011.

Similarly, the attorney general, Abdul Jabbar Sabit, told the then chief US counternarcotics official in Afghanistan, Thomas Schweich, that “he had a list of more than 20 senior Afghan officials who were deeply corrupt – some tied to the narcotics trade. He added that President Karzai – also a Pashtun – had directed him, for political reasons, not to prosecute any of these people.”¹³ Months later, Sabit was dismissed. In autumn 2011, he was kidnapped and disappeared without any demands for ransom, which indicates that he was probably killed.¹⁴

This wide range of state actors involved in the drug trade is confirmed by the research for this study, which identified 85 prominent figures who play leading roles in either their province or nationwide. Only such persons have been included who were named by various sources. Their names are being withheld for fear of reprisal.

Most of them had one thing in common: Apart from their drug business, they were also involved in licit businesses – and often worked as contractors for the US troops, ISAF, or the Afghan National Security Forces (ANSF). This seems to be a deliberate strategy to protect themselves against prosecution. In Helmand, one trafficker,¹⁵ who is the biggest trader of the Sangin district, holds a contract to supply the 215th ANA Corps with all necessary goods as well as the border police in Spin Boldak. In the Shinkay district of Zabul province, another trafficker and big trader from Sangin is the main contractor for a US-funded road-building project. In Kandahar, yet another one holds a contract to supply the 205th ANA Corps as well as other contracts with the Ministry of Defense. A trafficker from Kandahar owns a construction company that is working on several US-funded projects at the Kandahar airport. And in Nimroz, a trafficker who originally comes from

12 | Author’s interviews with counternarcotics officials from the United States, Germany, the United Kingdom, and Afghanistan, February – June 2011.

13 | *New York Times Magazine*, July 27, 2008.

14 | Interview with international law enforcement personnel, Kabul, November 2011.

15 | Traffickers are being anonymized for the protection of the researchers.

Uruzgan has contracts to supply the border police and the ANA in Nimroz with food and other commodities. All these men have successfully developed an image among US and other ISAF officials of key allies in the war against the insurgency.

Additional reasons to invest in those businesses are money laundering and other forms of camouflage: Construction companies, for example, have fewer problems importing chemicals needed for processing. Profits from the trade can be laundered in large construction projects. Several big smugglers who also have businesses in Dubai often use the profits from the smuggling to buy used cars in Dubai and ship them to Afghanistan to maintain a legal cover.

Investigations into the trade are complicated by the fact that most financial transactions within the drug business are handled through *hawala*, an Islamic money transfer system that leaves hardly any paper trail. One of the wealthiest traffickers established the Ansari Hawala network and later founded the Afghan United Bank.¹⁶ About New Ansari, as the company was renamed, the US Treasury noted, it “used the billions of dollars it transferred in and out of Afghanistan to conceal illicit narcotics proceeds.”¹⁷

Case study: General Daud Daud, the “wolf in sheep’s clothing”

The relatively well-documented drug business of the deceased General Mohammed Daud Daud offers a good insight into the linkages between criminal and government networks. Born in the northern province of Takhar in 1969, Daud was an associate of Ahmed Shah Massoud, the murdered leader of the Northern Alliance. Due to the supportive role of the Northern Alliance in the US invasion in late 2001, people like Daud were integrated into the new leadership of Afghanistan. In 2004, he was appointed Deputy Minister of the Interior – in charge of the Counternarcotics Police of Afghanistan – despite his name being mentioned on an official list of the biggest drug traffickers in Afghanistan.¹⁸

Daud used his new position to eliminate business competitors under the pretext of doing his duty to fight narcotics. This, for instance, was the case with a mid-level trafficker from Daud’s home province of Takhar – the trafficker was arrested in 2006. Witnesses from the Ministry of the Interior claim that after his arrest, Daud’s family took over his business and he was released for \$200,000 shortly afterwards.

Another source who implicated Daud with the drug trade was the then head of the anti-drug squad of the Kunduz police. He told the *Los Angeles Times* in May 2005 that he saw traffickers arrested with up to 57 kg of heroin, only to be

16 | According to the local researchers in Kandahar and Kabul.

17 | *Wall Street Journal*, April 20, 2011.

18 | According to two persons, one of which was involved in researching and compiling the list for the Ministry of the Interior, and the other authored the list; interviews in May and June 2011 in Kabul.

released hours or days later without trial.¹⁹ Shortly after the report was published, he disappeared. Two sources familiar with the incident said British advisers to the Counternarcotics Police of Afghanistan scrambled to ensure the lieutenant's safety, holding a meeting in which General Daud admitted ordering his arrest.

In June 2005, a dealer named Sayyed Jan was arrested with 183 kg of heroin. A letter signed by Daud, dated March 15, 2005, urged the governor of Helmand province to assist the dealer. The governor seemed to have obeyed the counternarcotics chief, as investigators found a letter from the governor telling the police chief to allow safe passage for said dealer.²⁰ A relative of the dealer recalled a conversation in which he confided that he had paid the deputy minister \$50,000 for permission to run a single convoy through his zone of control.²¹ Gen. Daud repeatedly denied his involvement.

Western officials high up the chain of command were fully aware of the private drug business of the country's head of counternarcotics police: "Better you have someone peeing out than peeing in," a US official recalls from a conversation he had with Zalmay Khalilzad, the former US ambassador in Kabul.²²

In the meantime, Daud's drug business continued. In 2008, according to the local researchers of this study, Daud personally negotiated with traffickers in Helmand to have 6,000 *jirib* of poppy fields exempted from eradication, for which he was paid \$400,000.

In 2010, Daud was promoted to become the highest police general in northern Afghanistan. Weeks before Daud's assassination, a Western intelligence official in Kabul said that Daud had come clean: "He personally is no longer involved in the business. He wants to become a real politician, president if possible, and purge his record now. It's only his one brother who does the smuggling business now and another brother who runs the alcohol smuggling from Uzbekistan."²³

The role of the Taliban

The Taliban are also profiting from the drug business, but it is not the main source to finance the insurgency. UNODC officials as well as Afghan and Western counternarcotics experts all agree that the trade makes up for 8 to 12 percent of their budget (UNODC 2009a, 122). Other sources of income such as commissions from security companies guarding ISAF convoys, from construction companies, or *ushr* (tax) on other crops, are more important sources of income.

The Taliban are mostly benefitting in two ways from the drug trade: They collect *ushr* from the farmers, 10 percent of their harvest, and they take a percentage from owners of drug laboratories and smugglers for protecting them – and, ac-

19 | *Los Angeles Times*, May 28, 2005.

20 | *Globe and Mail*, March 21, 2009.

21 | *Ibid.*

22 | Author's interview, Kabul October 2010.

23 | Interview with international police investigator, Kabul, April 2011.

According to one source, to make sure that in Pakistan the business partners pay for the shipments, “They function like an insurance company.”²⁴

No one knows the Taliban’s exact income from poppy cultivation. A US Senate report estimated an amount of \$70 million per year, UNODC puts its estimates at \$100 to \$400 million,²⁵ while a German government report calculates \$80 million²⁶ – less than 10 percent of the overall business, which amounts to between \$1.6 and \$1.9 billion (UNODC 2009b).

But for the Taliban, the opium cultivation generates a different profit than just money: political support. According to numerous reports, confirmed by the interviews conducted for this study, the Taliban use the governmental threat of eradication to offer protection – in exchange for support and loyalty. They acknowledge this openly: “This is a good opportunity for the Taliban to win local support. Our Taliban are ready to go anywhere in Helmand to help people fight the eradication campaign.”²⁷ Farmers in Helmand confirmed that poppy eradication has played a significant role in pushing locals into the hands of the insurgency in order to safeguard their income. In the district of Marja, known as the focus of the American offensive in 2010, a farmer says: “The Taliban have already promised us that they will keep fighting the government and foreign forces until we collect our harvest from the fields.”²⁸

V. Counternarcotics efforts

Counternarcotics efforts were one of the earliest demands of foreign governments after the US-led intervention in October 2001, and from the beginning, President Karzai declared the “war on drugs” a top priority of his government.²⁹ This chapter analyzes the announcements by international actors and the Afghan government to fight poppy cultivation – and why they all failed.

The role of ISAF and Western government agencies

Within ISAF as well as among the military and civilian organizations, there were conflicting agendas that prevented a coherent strategy from the start. On the one hand, there were those who argued for an aggressive campaign against drug cultivation, including aerial spraying and even targeted killings of kingpins. After the

24 | Interview with Afghan counternarcotics official, Kabul, April 2011.

25 | Senate Caucus on International Narcotics Control, 111th Congress second session, “U.S. Counternarcotics Strategy in Afghanistan,” July 2010.

26 | *Spiegel online*, October 11, 2010.

27 | *Washington Post*, January 4, 2011.

28 | *New York Times*, March 20, 2010.

29 | Karzai reiterated this promise once again at the International Afghanistan Conference in Bonn on December 5, 2011, whereas the European governments (except for Russia) and the United States did not stress this point.

resurgence on of the Taliban in 2006, this camp emphasized the link between the drug trade and terror financing, creating and circulating the pleasant fiction that mainly the Taliban were benefitting from the illegal business. On the other hand, there were those who saw eradication campaigns as a danger for their “hearts and minds campaign,” fearing that affected farmers would turn to the Taliban. And there were those who argued against taking on militia leaders and members of the ANSF because they were important allies in the counterinsurgency.

The assumption that drug business and insurgency were two sides of the same coin was promoted by the journalist and author Gretchen Peters in her book *Seeds of Terror* (Peters 2009) and became a prominent narrative among US officials in Washington. For instance, when US President Barack Obama unveiled his first strategy for Afghanistan, he said that the country’s economy “is undercut by a booming narcotics trade that encourages criminality and funds the insurgency.”³⁰

In 2008, US General John Cradock, NATO’s supreme allied commander, pressed for a more aggressive counternarcotics approach, saying that NATO had “recognized a clear nexus between drug trafficking and insurgency.”³¹ Cradock pushed for a resolution at the NATO summit in Budapest in October 2008, giving ISAF soldiers the authorization to attack Afghan traffickers. In August 2009, 50 Afghans who were believed to be drug traffickers with ties to the Taliban were placed on the “joint integrated prioritized target list” to be captured or killed.³²

However, Cradock’s approach met with fierce resistance from within ISAF. The German General Egon Ramms, head of the NATO command center in Brunssum and responsible for Afghanistan, as well as General David McKiernan, ISAF supreme commander in Kabul, vehemently questioned the legality of Cradock’s proposal, warning that it would “violate international law and rules governing armed conflict.”³³

Ramms argued against a role of the military in counternarcotics efforts in general. He said: “We would infuriate more Afghans against the US and endanger our mission – which is to fight the insurgency, not the drugs.”³⁴ Even the US administration in Washington was split over the issue: The State Department endorsed it vehemently, Special Envoy Richard Holbrooke argued against it, and the Pentagon was divided internally. As the chief US counternarcotics official in Afghanistan, Thomas Schweich noted:

In 2006, Benjamin Freakley, the two-star US general who ran the eastern front, shut down all operations by the DEA [Drug Enforcement Agency] and Afghan counternarcotics police

30 | *Associated Press*, March 30, 2009.

31 | *Spiegel online*, January 28, 2009.

32 | *New York Times*, August 10, 2009.

33 | For David McKiernan: *New York Times*, February 12, 2009; for Egon Ramms: *Stern*, Nr. 2/2009, interview by the author.

34 | Interview with the author, Mazar-e Sharif, Dezember 2008.

in Nangarhar – a key heroin-trafficking province. The general said that anti-drug operations were an unnecessary obstacle to his military operations.³⁵

The British forces in Helmand went as far as issuing leaflets and bought radio advertisements telling the local criminals that the British military was not part of the anti-poppay efforts, despite Britain being the lead nation within the counter-narcotics efforts.³⁶

When it comes to prosecutions, a number of kingpins have been arrested by, or with the help of, US officials. All of them were closely related to the Taliban – or cooperated with them. However, other powerful business operators like Daud (killed in 2011), Commander Raziq, Matiullah Khan, and Ahmed Wali Karzai (killed in 2011) were left untouched for obvious reasons: The international troops were dependent upon their cooperation, as the same people who trade drugs also operate security and construction companies, run police operations, and command proxy militias. Brigadier General Jonathan Vance, the Canadian commander of ISAF forces in Kandahar province, told a reporter about the then border police chief of Spin Boldak (the current provincial police chief of Kandahar) General Abdul Raziq:

We are completely aware that there are a number of illicit activities being run out of that border station. He runs effective security ops that are designed to make sure that the business end of his life runs smoothly, and there is a collateral effect on public order. Ideally, it should be the other way around. The tragedy of Kandahar is that it's hard to find that paragon of civic virtue. (Aikins 2009)

Afghan government's counternarcotics efforts

The various counternarcotics approaches of the Afghan government (worked out in cooperation with international experts) sounded nice on paper but were never meant to function – all their “pillars” were turned into dysfunctional structures (judicial reform), into half-hearted measures (alternative livelihood), or into the opposite of their intentions (crop eradication, which was used mainly as a tool to stop competing farmers without sufficient links to powerbrokers or as a method to extract bribes from farmers).

International money was not the problem – but rather the unwillingness of Afghan authorities on all levels to implement counternarcotics measures against their own economic interests. The British government, which spearheaded the fight against drugs, had pledged more than 850 million pounds, about \$1.7 billion, for the period from 2002 to 2009.³⁷

35 | Ibid.

36 | Ibid.

37 | Interviews with the author, 2010/2011.

Most of the pledged assistance went into the pockets of government officials and police officers and never reached its destination. Farmers who tried to plant, for example, saffron, wheat, or strawberries were left without the promised support in terms of fertilizers, financial aid, and seeds. For instance, in 2002 the British government promised to pay \$1,750 for each hectare of voluntarily destroyed poppy cultivation in Helmand. But, according to Afghan journalists, the farmers “never received” the money. Nevertheless, 10,000 hectares were officially accounted for and \$17.5 million went into the pockets of corrupt officials. “This strengthened the enmity against the British troops.”³⁸ The Institute for War and Peace Reporting wrote in 2010 that “According to a UN source, almost \$500 million have been given to alternative livelihood programs over the past two years.” But the counternarcotics ministry, whose job it is to implement the programs, denied that any such program was in place. A ministry spokesman told the reporter, “Poppy cultivation is a crime and we have no plans to reward criminals by giving them alternative crops” (IWPR 2010).

Similarly, eradication campaigns were undermined by corruption and enraged the population. This is confirmed by a report of UNODC:

In an environment of poor governance, weak capacity, and lack of rule of law, the significant albeit patchy eradication efforts [...] are a vehicle for corruption, with farmers being forced to pay in order not to have their opium poppy crop eradicated, police confiscating drugs and then selling them on and/or returning part of the seizure in return for a payment... (UNODC 2006b)

Eradication campaigns have been limited to a very small total of the poppy-cultivated land. For instance, in 2008–2009, less than 4 percent of plants was eradicated, according to UNODC. The real numbers are likely to be even lower, as many government officials tended to report higher numbers to pretend success. For instance, the governor of Helmand in 2006 stated that 7,000 hectares of poppy cultivation had been eradicated. Western observers estimated the number to be around 1,000 hectares.³⁹ A farmer from Nangarhar province describes how numbers are being inflated:

The police come, they destroy the most visible fields close to the main road and say, “We have eradicated 10 *jirib*!” But that is not true, only one *jirib* was destroyed, the head of the village or the militia commander make a deal with them and pay them. The villages even make deals with the police to bring in people who pretend to fight so the police have an excuse for not eradicating, while the others finish the harvest. This is like a game.

38 | Local official, according to: *die tageszeitung*, February 20, 2010.

39 | Interview with former UNODC investigator, Kabul, April 2011.

While farmers whose poppies were eradicated did suffer losses, many traders who still have stocks of poppy paste, benefitted from the campaigns. As a trafficker in Helmand declared, “If they don’t destroy poppy, I am afraid the price will come down” (IWPR 2007). Ironically, the biggest decrease of production in the past 10 years was not the result of any counternarcotics efforts, but of a blight that destroyed much of the harvest in 2010.⁴⁰ This resulted in a price hike and a dramatic increase in production levels the following year. According to UNODC, at least four formerly poppy-free provinces saw a “strong increase.” This shows that a temporary slump of production is not sustainable in Afghanistan, as long as counternarcotics measures are “treated as a parallel policy or strand of activity” and not “integrated within the wider process of state building and economic development” as demanded by David Mansfield and Adam Pain, two known experts on rural economy (AREU 2008).

Likewise, little has been achieved on the prosecution side for two reasons: the complicity of the police and the protection of perpetrators by political networks up to the highest levels of government. As UNODC states, “‘The majority of police chiefs are involved,’ stated a senior professional police officer, ‘if you are not, you will be threatened to be killed and replaced.’ [...] A judge agreed: ‘The top drug dealers are beyond the law. No one can touch them.’” (UNODC 2006b)

Two examples: In December 2005 British troops found nine metric tons of opium in the compound of Sher Mohammed Akhundzada, the governor of Helmand. Instead of being prosecuted (after he was dismissed due to British pressure), he was appointed to the upper house of the Afghan parliament. His younger brother was appointed as deputy to the new governor of Helmand, overseeing the family’s business. President Karzai also pardoned five border policemen who were caught with 124 kg of heroin in their border police vehicle – the five had been under surveillance by a special task force, which was established with millions of dollars from the US government. One of the five was a nephew of a close ally of the president, who had organized his reelection campaign in 2009.⁴¹

International actors have often claimed that it is hard to prove the involvement of government officials in the drug trade, but cables of the US embassy in Kabul, published by Wikileaks in 2011, show clearly that as early as 2005, US officials had in-depth knowledge of the systematic involvement of government officials in the drug trade.

For instance (excerpts):

E.O. 12958 N/A: “Since 2003, General Abdul Khalil Andarabi has been leading a government condoned drug cartel known as the North and Northeast Highway Police Brigade (also known as Second Brigade), controlling the roads and much of the narco-trafficking from Faryab to Badakhshan provinces.”

40 | *die tageszeitung*, October 1, 2010.

41 | Cable Reference ID 09KABUL2246, 2009-08-06, 05:05, Classification SECRET, Origin Embassy Kabul.

“The recurrent theme in the northeast region remains Kabul’s lack of political will to remove known warlords and drug traffickers from office, especially police chiefs.”⁴²

Needless to say that all officers and other power brokers mentioned in the cable still hold prominent positions within the Afghan government. Even when successful counternarcotics operations took place, they were often motivated not by fighting the drug business per se, but by clearing up the market and removing competitors. The few people in the Afghan government who seriously fought the narcotics business were removed sooner or later: General Sadat as head of the counternarcotics department in the Ministry of Interior; General Khodaidad as Minister for Counternarcotics. The latter is one of the very few people who agreed to be quoted regarding his experience: “The government was never really interested to arrest or even only to stop the big smugglers – because they were acting from within the government or had close relations to the ruling people.”⁴³

By now, Western support for Afghan counternarcotics has stalled, and the topic has been taken off the agenda. As one frustrated Western law-enforcement official in Kabul noted in April 2011, “most have given up on counternarcotics, since there are no successes to be expected.”⁴⁴ Jean-Luc Lemahieu, the Kabul representative of UNODC, said in early 2011: “In fact drugs didn’t even make it onto the list of Afghanistan’s 22 top issues from last year’s conference of the Afghan government and donors in Kabul.”⁴⁵

VI. Conclusion

Afghanistan is not a narco state. It is a narco imbroglio, since the trafficking is better organized than the state itself. The business permeates all levels of society and all political factions, which, under other circumstances, are in deadly conflict with each other.

The 10-year presence of the international forces in Afghanistan has not helped to curb this illegal business. In fact, it has rather contributed to its flourishing – due to questionable strategies informed by false assumptions and due to conflicting agendas of various international actors. The false assumption that the insurgency is mostly funded by the drug business has drawn attention away from the much larger involvement of government actors in the trade.

This bias is also the result of a dependence of the international forces on shady government officials linked to the drug trade. Big drug traders have actively

42 | Cable Reference ID 05KABUL5181, 2005-12-20, 12:12, Classification UNCLASSIFIED, Subject: “KUNDUZ POLITICS OF CORRUPTION IN THE BAGHLAN,” Origin Embassy Kabul.

43 | Interview with General Khodaidad in Kabul, June 2011.

44 | Several interviews by the author in Kabul, 2010/2011.

45 | Interview by the author, Kabul, May 2011.

sought a protective cover by infiltrating businesses that are central to ISAF and the ANSF, such as private security, logistics, and reconstruction services. The bigger the presence of international forces in Afghanistan, the bigger their vulnerability to attacks, cuts in their supply lines – and thus to blackmail.

At the same time, selective eradication campaigns undermined by corruption and the lack of alternative livelihoods have played into the hands of the Taliban, who managed to recommend themselves as protection guards against a corrupt police force. In this regard, counternarcotics efforts have undermined state-building efforts in Afghanistan.

The opium business contributes more than 50 percent to the Afghan economy. The country needs viable economic alternatives far beyond limited alternative livelihood programs. The Afghan population is by far too large to be fed with legal agricultural products only. And to transform Afghanistan’s economy in a way so that it can compete with its more industrialized neighbors in the mid-term is something hard to imagine. To offer a comparable income, Afghanistan either would need a competitive industry, or a better infrastructure for agriculture, or a larger number of educated migrants who provide revenues from outside. None of these factors apply to the situation in Afghanistan so far. Economically, the situation will become worse once the international community pulls out its troops, with large parts of the legal economy depending on the service demands and employment their presence generates.

With the withdrawal of the international troops, the current equation of power is likely to collapse. As long as it is not clear who will rule the country in the future, no decisive steps against the most lucrative business can be expected. Ironically though, after the withdrawal, which will reduce the capacity of the traders to blackmail the international community, pressure to fight the drug trade can be more easily applied.

Glossary

ANA: Afghan National Army

ANSF: Afghan National Security Forces, i.e. ANA, ANP, ANCOF, etc.

ANP: Afghan National Police

DEA: Drug Enforcement Administration (US gov. counternarcotics agency)

Halal: permitted by religious standards

Haram: not permitted by religious standards

Hawala: A traditional form of financial transaction without leaving any paper trail behind. Agents of a big *hawala* banker or partners contact each other by phone to disburse a payment made to the other contact person

ISAF: International Security Assistance Force of NATO in Afghanistan

ISI: Inter-Services Intelligence, Pakistan’s intelligence service

Jirib: unit of land measurement, approximately 2,000 sqm, one-fifth of a hectare

Kafir: infidel

Malik: local authority

Marab: The person traditionally responsible for coordinating the water distribution in villages

Salam: A common form of advance payment where the amount is provided for a future harvest at an already fixed, normally low price

Taryak: the dried opium paste that is later refined into morphine and heroin

Ulama: Islamic religious scholars

UNDCP: United Nations International Drug Control Programme, predecessor of UNODC

UNODC: United Nations Office on Drugs and Crime

Ushr: traditional tax, 10 percent of the harvest or profit

Zakat: obligatory Islamic alms, the percentage varies

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2.3 HOW TO FIGHT CORRUPTION IN AFGHANISTAN: A COMMUNITY PROJECT EXAMPLE

*Interview with Yama Torabi,
Executive Director of Integrity Watch Afghanistan (IWA)*

Q: What is the relation between corruption and transnational organized crime in Afghanistan?

In the past years there has been a policy of patronage and accommodation – of putting former warlords into power. This patronage means that there is an environment for corruption to thrive. Some of these former warlords are people who have been accommodated by the power in order to create a kind of stability and peace. Because they feel protected since they are still active in the political arena and within the political elite, many would commit crimes such as kidnapping or drug trafficking, or other typical organized crimes, in connection with corruption and patronage. Patronage per se is not a crime, but it creates an environment where the actors who are working for the state or who are involved in the international military or aid system can abuse the power they get.

Q: What is the focus of your anticorruption activities?

In Afghanistan organized crime is widespread, however the typical crimes connected to transnational organized crime, such as human and drug trafficking, are already tackled by international agencies operating in the country, such as the UN Office on Drugs and Crime, UN Development Programme, and the UN High Commissioner for Refugees. We decided to fight corruption because it had not been addressed before, and that although it is a big issue in Afghanistan affecting a large part of society.

Q: What is the involvement of people in anticorruption – and in the community-based monitoring programs?

We started community-based monitoring programs because the state was absent. Such programs provide for citizen oversight over different types of things, service deliveries for instance. The implementation of aid is another area. What we basically do is encourage the community to reduce these gaps in oversight: Instead of having the government oversee things, we encourage the communities that are present in an area that benefits from a service to go and monitor the projects. This

would happen for infrastructural projects such as schools, clinics, roads, but we also apply this to justice. People go to courts, they attend trials, and they monitor the performance of the judiciary. They look into the very basic procedures a trial is supposed to follow. This approach will improve the delivery of justice.

These programs are pretty effective, because in an environment where there is almost no presence of the state in terms of fighting corruption, the community can play a very effective role. We have been able to improve 50 percent of the infrastructural projects, because people are able to detect problems and address them. But the impacts may even go beyond that 50 percent. It is actually difficult to measure the efficiency of the programs because we prevent acts of abuse and corruption, and we are not able to account for the preventive part of the programs. I also personally think that our impact is a lot more than that. These programs transform communities and towns into active agents of change – integrity champions who will move ahead and ask for accountability in other areas.

The program works with communities of the four provinces of Nangarhar, Balkh, Herat, and Parwan with the aim of monitoring reconstruction projects. This program started in 2008 with 12 communities, and, over the years, has grown due to its success in empowering citizens to play an active role in promoting integrity and accountability. Integrity Watch Afghanistan (IWA) instructs the community-elected monitors on integrity and engineering. The community-based monitoring, although not highly technical, has the advantage that the monitors are present during the construction cycle, and they are more capable of identifying irregularities.

Typically, 90 percent of development projects are funded by international aid, yet they have failed in Afghanistan because there is no meaningful independent monitoring. With the country's security situation being a major problem, donors are not able to ensure that the projects that they fund in the provinces will be implemented according to plan. What IWA does is to make up for the deficiencies and oversights of the donors through accountability measures that are provided by the communities on a voluntary basis and are free of cost. We do not pay people, since we consider this work to be part for a civic undertaking – a duty for each citizen. This program has been very successful. The infrastructural projects we monitor are the basis for delivering public services, such as schools, clinics, roads, etc. These services are essential for the community, and the infrastructure projects need to remain in the best condition for as long as possible in order to reduce the costs of maintenance, which are usually paid for by the Afghan state, meaning by the communities themselves, and not by the donors.

India has created this model of community monitoring and has disseminated it. In Uganda communities monitor the budgets of such infrastructural projects. In many places in the world people will monitor the presence of teachers in order to prevent phantom teachers. In Kyrgyzstan, for instance, people are monitoring the delivery of social services, meaning that people get their pension and retire-

ment money from the state. In case this does not happen, they act at a high level, and by doing so they manage to improve the lives of millions of people.

Q: What is the social perception of corruption in Afghanistan?

Corruption is perceived as a problem. People are experiencing it on a daily basis, and the issue is that they are not able to effectively fight against it when it is at a higher level, like at the national or provincial level, where people of great influence and power are involved. Thus, what we do with our programs is to empower the communities, give them access and resources, and thus help them to put pressure on some powerful people not to commit of corruption. Technically, it is a preventive approach. We are able to make changes because people are aware of the problem of corruption. They have empirical evidence corruption, even though they do not have the analytical understanding of the issue. And they condemn it. This is why we have succeeded, so far, in operating with the communities. Over the four years that we have implemented this community monitoring program, no community has abandoned the project.

Q: What is the role of the international community in this?

The international community should help Afghanistan in fighting corruption, however the United Nations Convention Against Corruption and other UN treaties, such as on Human Rights, still give the responsibility for implementation to the national authorities. Therefore, fighting corruption easily becomes a problem of sovereignty, and it gives local authorities a pretext for not tackling corruption at an international level. I believe the international community should have done – and could do – a lot more. The donors fund the development budget of the Afghan government in its entirety, and 75 percent of the aid money that is spent in Afghanistan comes directly from donors. The donors face the same corruption problems as the Afghan state. We can not just blame Afghanistan. The international community has its own responsibilities. The fight against corruption starts with accountability and transparency, yet the international organizations operating here are totally opaque and non-transparent. If you ask for basic information, like how they spend their money, or which current projects are going on, it is very hard to receive any answers. This is typically the case for most UN agencies, which have been active in the country since 2001. Similarly, billions of US dollars, donated by US agencies and to be spent in Afghanistan, are unaccounted for and we do not know how they have been spent.

If you look at the aid coming from outside, 90 percent of the aid money spent in Afghanistan comes from the United States, be it for military or civilian aims. If you look at the companies that are being awarded infrastructure contracts, those that invested a lot on lobbying the US Congress: These companies have a lot of power. In terms of costs, they are more expensive, ten times more expensive compared to local companies. A lot of money is indeed wasted or kept for corporate profits, instead of really being invested in the projects. Money is spent on huge

salaries for those that oversee employees. I have seen one case of an expatriate in Afghanistan who was getting \$60,000 a month.

Q: What should be the role of the media?

The media could help a lot because they are the eyes through which we look at corruption; they are responsible for informing citizens about these issues. They can play a role in terms of transparency. Investigative journalism should highlight cases that, otherwise, would remain unknown. At the moment there is a lack of capacity because many journalists are very young and do not have the capacities to investigate. Moreover, the media are organized in factions reflecting political and ethnic divides. Most of the media groups belong to either commanders, or political parties, or influential figures, like the patrons of Afghan politics. Therefore, they cannot independently cover the issue of high-level corruption and often the reports are biased. The content in terms of information and the analysis you expect from the media is not there. For this reason many people do not watch television, do not read newspapers because they cannot expect free information. This is a big problem in Afghanistan. We try to work with the few media organizations –five or six –that are known for being independent and professional, in order to advance the cause of anti-corruption.

Q: Do young people participate in anti-corruption programs?

The younger generations are not involved in anti-corruption. The typical activist profile is of a man, although women are starting to play a greater role. Youths face corruption but they are not organized to fight it. We are trying to work with youth organizations because often the mere denunciation of the problem is not enough. There is a need to take action to reduce the space and opportunities for corruption, but so far the the activism of young people has not been directed toward anti-corruption. One good example of involving the youth is the anti-corruption race that was launched last year. This increases the awareness of the youth by even physically engaging them in this activity.

Q: How about tax evasion in Afghanistan?

Tax evasion is a big issue in Afghanistan, but there is little information on this. I see many companies that are not paying taxes because there is no verification. For example, construction companies should pay taxes on the import of materials, but usually there is no possibility to verify this except by sending an investigator or auditor, but until now this has not been done. Companies thus under-declare the amount of money they pay to employees or simply declare fewer employees than they actually have. In Kandahar Province in Afghanistan, the government doesn't have much control. Moreover, the officials who work at the border in the war on terror are allied with the coalition and the patronage network that dominates the region, and therefore customs duties are not being paid. The head of

anti-corruption in Afghanistan recently said that very many people in the region do not pay taxes.

If you look at the Afghan economy, you can see that it is mostly based on imports: Around \$400 million worth of goods are exported and \$8 billion worth of goods are imported. It is an urgent problem and it is also underreported. The customs offices are the most corrupt institutions in Afghanistan, so people pay bribes and everything goes underreported. The former head of the anti-corruption unit once gave me the figures from Dubai in the Emirates – exports to Afghanistan totaled \$2 billion in 2011 and the figure recorded by the Afghan government was \$500 million, four times less. That means that the importers paid at least four times less customs duties than what they were supposed to. And this is an example of tax evasion on products coming from only one country, the United Arab Emirates.

Cape Town, April 18, 2012

Verena Zoppei

3. India

3.1 BLACK ECONOMY IN INDIA AND TRANSNATIONAL ORGANIZED CRIME: UNDERMINING DEMOCRACY

by Arun Kumar*, **

1. Definitional aspects

Illegality typically leads to the generation of black incomes. The activities in which black incomes are generated constitute the black economy. Hence, the size of a black economy represents the prevalence of illegality in a country. Illegal acts can be committed either through legal activities or illegal activities. Legal activities are those that are allowed by law (e.g., agriculture, finance, and construction) and produce social “goods.” Incomes from these activities are counted as part of the national income. The implication is that they improve the welfare of the citizens and make society better off.

Illegal activities are not permitted by law (e.g., smuggling, peddling of narcotic drugs, and theft) and are said to produce social “bads,” since they lead to a reduction in the welfare of society, if not also of the individuals indulging in these activities. Incomes from these activities are not counted in national income totals. Such activities are linked to criminal activities of various kinds (see Government of India 2011 for data on crime in India). However, not all crime is linked to generating an income, for example murder or gender violence. Hence, the black economy will not capture such crimes. Furthermore, crime linked to economic activities that generate incomes is often connected with organized crime, whether within countries or across borders – the latter is referred to as transnational organized crime.

The black economy can be understood as broadly reflecting illegality in an economy, even if it does not capture all criminal activities within a society (Kumar

* This paper is based on the author’s two books, *The Black Economy in India* (1999/2002) and *Indian Economy since Independence: Tracing the Dynamics of Colonial Disruption in Society* (2012).

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1999). In India, the black economy pervades all sectors of the economy. Elite professions have also been found to be involved in it, for example businessmen, politicians, bureaucrats, police, legal representatives, medical personnel, chartered accountants, and education professionals, among others.

The size of the black economy has been rising since India's independence in 1947. It has been estimated to have increased over the years: it was 4 to 5 percent of GDP in 1955/1956 (Government of India 1956); 7 percent in 1970 (Government of India 1971); 21 percent in 1980/1981 (NIPFP 1985); 40 percent in 1995/1996 (Kumar 1999); per projections by this author, it was 50 percent in 2005/2006. Thus, illegality and crime are constantly on the rise in the country, not only in absolute terms but in relative terms. It has grown from being petty and sporadic to becoming more organized (national and transnational).

Organized crime in India operates within a multitude of areas: illegal forestry and mining; drug trafficking; gun-running; human trafficking; sex trade; illicit liquor making and distribution; encroachment of public land; production of spurious medicines and fake goods; adulteration of food items; malpractices in medical professions, including the sale of blood and organs and other malpractices, such as recycling of hospital waste; *hawala* (an alternative remittance system that operates outside of traditional financing structures); flight of capital; illegal financing of trade; smuggling of goods, including gold and electronic items; and so on. Underlying these illegalities is the "Triad" of the corrupt businessmen, politicians, and the executive, which is made up of the bureaucracy, the police, and the judiciary.

2. Causes, history, and analysis

The black economy and illegality have existed in all societies at some point. In India, it became systematic during World War II, when shortages appeared, especially of essentials. Rationing of food was introduced but there was black marketing. To escape detection, perpetrators bribed the bureaucracy and the police. Inflation led to increases in the prices of property, so that those without property found it difficult to get housing on rent. The government introduced rent control laws, which became a source of corruption in the courts.

The British set up a civil service to administer (keep control of) India. The public servant became the public master with enormous power over the public, and this was used to extract bribes. However, the bulk of the population was poor, self-employed, and worked in agriculture. They had few public dealings, so that the level of corruption and the black economy was small. The civil service was accountable to the colonial masters who were interested in efficient control of the country, so they did not allow corruption to grow. They also paid the civil servants high salaries, as compared to the per capita incomes of locals, and gave them many privileges to lessen the temptation for corruption.

There was a landlord class ruling over the peasantry that extracted rent from the farmers on behalf of the colonial masters. They were a part of the tiny colonial

ruling elite and had substantial powers, which were misused to extract money from the people they ruled. They were a law unto themselves and could extract money from the peasantry.

After independence, a political class came to power and replaced the colonial ruling elite. They started the task of development in a very poor country. They depended on the civil service for governing the country and did not transform it into a public service that was accountable to the people. The political class that emerged from the national freedom movement was democratic in its aspirations, but its members came from the country's elite class and had feudal aspirations. They thought of themselves as rulers and not as representatives of the people.

Consequently, independent India started with high aspirations but a weak democracy because the power was transferred from the colonial masters to a relatively unaccountable political class and a civil service that was accountable mostly to itself. As the democratic restraint of the national movement weakened, the political class became more corrupt. The government of India (1956) talked about the need to keep the black economy in check so that more resources could be raised for development. It found businesses generating black incomes in all sectors of the economy.

The Indian national movement understood that colonial rule was the source both of the poverty and the helplessness of the common man in dealing with their problems of unemployment, illiteracy, and so on. Therefore, it was decided that society as a whole had to overcome these basic problems of the people and the state was given a large role in economic matters. Furthermore, optimal utilization of resources required central planning, which required licensing of capacity in industries. This reinforced the role of the state in the economy.

Due to deindustrialization in India during colonial rule, Indian capitalists were too small to provide capital for the creation of the necessary infrastructure such as transportation and power. They lacked the technology and capital to invest in basic goods like metals and petroleum, or in capital goods manufacturing. The corollary was that a large public sector was needed to support both the growth of the private sector and the planning process. This required the mobilization of savings in a country that was poor. Consequently, consumption had to be restrained through taxation, limiting production, and regarding the import of luxury goods. Imports were limited so as to conserve the foreign exchange required to import capital goods for development. A strategy of import substitution was adopted to boost industry, and high customs duties were introduced for this purpose.

In 1944, the Indian capitalist class drew up a plan of industrialization in post-independence India that contained the above-mentioned elements of policy (Thakurdas 1944). These plans were also incorporated in the industrial policy statements of 1948 and 1956. However, what the capitalists agreed to collectively, they undid through their private actions by fouling up policies through illegality. They cornered licenses by bribing authorities and creating monopolies to corner economic gain. In the various development activities and projects, corruption was

introduced to make extra profits. This was not feasible without the connivance of the politicians and the bureaucracy – so they were drawn into corruption. Luxury goods – or those goods that faced high customs duties – were smuggled in.

As India developed, the size of the middle class increased and shortages of basic goods – like food, scooters, and cement or basic services (telephone and railway reservations) appeared. For each of them waiting lists appeared, and soon thereafter black markets developed. Businesses took advantage of these black markets and this spread corruption to the lower levels of society.

Big business in India realized that manipulating policies required close proximity to political power. It started exercising direct control over the political process by financing political parties and individual candidates for legislatures. It also increasingly interfered in appointments at the senior levels of the bureaucracy in key ministries. The Triad proved useful for this purpose and it was mutually convenient for the three arms of the Triad. The businessmen could manipulate policies, whereas the other two could get the help of businessmen to invest their ill-gotten gains.

Another aspect of colonial rule helped to spread corruption – the policy of divide and rule. The end of colonial rule left behind antagonisms and instability in India's immediate neighborhood, which helped illegality to spread. There have been several wars with Pakistan and continuing communal tension in the country. With China, there have been border disputes and strategic conflicts. These realities have fostered terrorist/separatist movements in India's border states – Kashmir, Punjab, and in the North East. In turn, these areas became sources of smuggling, gun-running, counterfeit currency, human trafficking, the sex trade, and so on.

India has had historically close relations with Nepal and, therefore, open borders. Large-scale poverty in Nepal and Bangladesh has spurred illegal activities in the border areas. The corrupt monarchy in Nepal and the unstable political climate in Bangladesh led to the spread of large-scale corruption. Ethnic problems emerged in Sri Lanka between the dominant Sinhala community and the Tamils concentrated in the north. The Liberation Tigers of Tamil Eelam emerged to fight a civil war over three decades. To finance its activities, it indulged in a wide array of illegalities. Their links with Tamils in India and across the globe helped in the proliferation of illegalities around the world.

Growing illegality in India was also linked to the oil crisis and the sharp increase in the petro goods prices in the 1970s. The sudden wealth in the oil-exporting countries led to large-scale economic activities there, but they lacked the necessary skilled labor (carpenters, plumbers, drivers, teachers, engineers, doctors), which they imported from South Asia on a large scale. These migrants started sending money back home to their families. This encouraged the spread of *hawala* internationally because the *hawala* operators provided cheap services and a premium on the money sent through them. Simultaneously, this service also allowed Indian businesses to send their capital abroad.

In 1991, India changed its policies and made massive concessions to the private sector – whatever it had been demanding in the 1980s was granted. Taxes were reduced, licensing was eliminated, and imports were liberalized, and so on. The role of the public sector and planning was minimized. With the arrival of the World Trade Organization in 1995, there was a further opening up of the economy to foreign trade and capital. The amount of illegality grew, and the nature of the black economy changed – but it grew as well. As the market economy grew, lines ended but money determined who would get what. Anything could be imported, and the private sector was allowed to produce luxury goods. Thus, shortages of telephones, automobiles, televisions, and so on, disappeared, as did the black markets associated with them.

But, as restraints on business declined with the weakening of the state, business indulged in corruption in an even bigger way. The Triad, already in place, started functioning differently and shared the gains from corruption differently. Many politicians became businessmen – openly or in the name of family members. Businessmen also entered politics in larger numbers. Privatization and the setting up of infrastructure in the private sector (or in public-private partnerships) offered new opportunities for making illegal gains by cornering resources like land, forests, and mines. Greater participation by the private sector since 1991 in the education and health sectors has created enormous opportunities to indulge in illegalities. The number of scams and the amount of money involved per scam has grown exponentially since the 1990s (Kumar 2012).

In brief, systematic illegality and corruption in the country has its roots in big business and the Triad it created. This has led to the emergence of organized crime in the country. The problems fostered at the borders by the neighbors and the *hawala* system enabling the flight of capital have strengthened the linkage between local illegality and transnational crime. Finally, the indiscriminate opening up of the economy in 1991 has led to a further spread of illegality and crime.

3. Forms, cases, and interfaces of Indian illegality

For the black economy to be 50 percent of GDP, as is currently the case, it has to be both systematic and systemic. Laws have to be systematically violated so that those in charge of maintaining the law of the land have to be a party to the violation of the law. For a consideration they will look the other way while businesses commit illegal activities. Take, for instance, the way the police and the judiciary in India function.

Illegalities are to be checked by the police, and the persons committing the illegal action should be brought to justice through the courts. In India, presently there are 40 million cases in the courts and they go on for years or decades (sometimes more than 30 years). The time in prison for many under trials is longer than any sentence they might have to serve if they are convicted for the crimes they

were supposed to have committed. Thus, in many jails, there are more inmates under trial than people who have been convicted.

The delays are due to the widespread corruption in the courts and the non-accountability of the judges. Judges postpone hearing cases for frivolous reasons. The legal profession is also interested in such delays, since they collect fees on the basis of the number of appearances in court. Often, in routine cases, – in which a decision should come in less than a year – procedures drag on for more than five years. This leads to a fivefold increase in the number of cases pending. The pressure on the judges also increases. They may have to go through 50 cases in a six-hour working day, meaning that they have an average of seven minutes per case. Each case may come up for a hearing after a few months and the judge must refresh her memory, thereby taking up precious time and often resulting in mistakes.

To smooth the work of the courts, a bribe might be paid. For instance, a court bailiff may charge a party between INR 1,000 (US\$20) to INR 25,000 (\$500) for having a property vacated by the losing party. The local police, who are required to accompany the court bailiff, charges separately. For the inspection of files, filing papers, and so on, an underhand payment to the clerks may be required. Judges have also been caught letting one of the parties to a case see whether the judgment suits their need. One cannot publicly talk about these matters due to the fear of being hauled up for “contempt of court.”

The poor are mostly unable to approach the courts, since filing cases is expensive and the laws are so opaque that often the poor, who are not very literate, do not understand their complexity. Even if they do go to court against a stronger party, the latter is able to bribe their way through the court and delay or subvert justice. Often there is a nexus between the judges and the lawyers. The well-off party hires a lawyer who is able to manipulate the legal system and who can fix a case to appear before a judge of choice. To minimize this kind of manipulation, the judge in a case is often changed. This has created its own problems, sometimes resulting in situations where up to eight judges hear a case over a two-and-a-half-year period. This means each of the judges is unfamiliar with the case and often postpones the case on frivolous grounds.

Powerful persons in politics, business, organized crime, etc., can get cases against themselves spoilt by the prosecution. This is done at the initial stage of investigation, when crucial evidence is misplaced or not presented carefully so that the case fails in the court. Thus, these people do not even need to use corruption in the courts to obtain favorable decisions. Judges have often commented on the poor preparation of cases by the police. The powerful are known to influence witnesses to change their testimony. Threats – coupled with inordinate delays (the witnesses also forget what they had seen or heard) – lead to the spoiling of cases against powerful people.

The result is that the members of the Triad have contempt for the law and violate it with impunity. In India, laws on paper differ substantially from how they are implemented due to the judicial delays and manipulations by those in power. For

instance, there are laws against child labor, but these are circumvented in large parts of the country, including in the cities. In such violations, the police play an important part.

Illegality flourishes because the police connives in it. They collect a weekly or monthly sum (*hafta*) to allow the illegal activities to continue. This money is collected from beggars in the streets, street vendors, encroachers on public land, businessmen, sex workers, car thieves, pickpockets, those doing illegal construction, and other kinds of illegal activities. The post of head of a police station (called *thana*) is auctioned. This person sets targets for the collection of money for each of the “beat” constables. The more the commercial activity or the higher the level of illegality in the jurisdiction of a police station, the more money is collected. The money is then shared right up to the top (political bosses) (Kumar 1999). At every level, half the money collected is kept and the rest is passed on. Since the pyramid narrows steeply, a lot of money goes up to the few at the top.

The *hafta* from illegal activities is also collected by the local municipal officers and the local politicians. Thus, a substantial part of the earnings of a poor person is siphoned away by these officials and the politicians. The *hafta* results in linkages between the criminals and the officials. For instance, the pickpocket gets protection from the police and no new pickpocket can encroach on their territory. Organized crime is part of this payment of *hafta* and it flourishes because of the official protection it receives.

In India, since land in urban areas is expensive, relative to per capita incomes, a large number of people migrating annually to the cities cannot afford any kind of formal housing. So the migrants either become homeless and sleep under overpasses, bridges, etc.; or they encroach on public land with the connivance of the police and local politicians; or they crowd into existing slums, most of which have various degrees of illegality associated with them. Thus, with the illegal tenure of their shelter, they tend to fall into the grip of criminals. Since they need income, the family members at times get into illegal work, like bootlegging, sex trade, and so on. Organized crime uses these migrants’ insecure tenure of shelter and their poverty to recruit them for illegal work.

In private professional educational institutions, weak students pay for admissions (called capitation fees). In case of medical education, the capitation fee can be up to \$100,000. The situation is similar in the case of engineering, management, and other professional courses. These institutions are often run by politicians and businessmen. On the pretext of providing social service, these institutions are allotted land at low prices and granted concessions. The involvement of politicians guarantees quick government approvals.

Software and information-related services have experienced a boom in India since the mid 1990s. These lend themselves to under- and over-invoicing and, therefore, to the flight of capital from the country. During the dot-com boom, many fake companies floated initial public offerings on the stock market and then disappeared with the public’s money. The recent scandal involving Satyam Computer

Services (see box on the next page) is instructive in learning about the various kinds of illegalities that such software companies can indulge in: under-invoicing; registering in tax havens; creating fictitious employment records; diverting funds to other companies owned by the same owner; funding politicians; buying real estate; and so on.

As already mentioned, *hawala* is a reality in India. It is not regulated by the Central Bank. It is used to transfer funds within the country and outside of it. Since it deals purely in cash, large sums of money are moved from the premises where *hawala* operates. The police and the intelligence agencies know of these places, but they do not act because of the high-level political protection available to the *hawala* operators. The top politicians in power also know of them, since they use this channel, but they do not act against these *hawala* operators out of self-interest. Thus, what is known privately is not known officially. The *hawala* channels are used by organized crime units to transfer money around the country and outside of it. Terrorists, drug dealers, and others use these channels because of the anonymity they provide.

In summary, due to existence of the Triad, all kinds of illegal activities and crime flourish in India. The common man is helpless in the face of these powerful people.

4. Social processes, global economic flows and routes

Local criminal activities described above have been linked to transnational crimes through terrorism; the printing and circulation of counterfeit currencies; the operation of *hawala*; the production and distribution of narcotic drugs; arms trafficking; and the smuggling of electronic items, gold, and gems. As discussed in section II, in all these cases, the neighboring countries – and at times their secret services – are involved. The income from these activities help finance terrorism and destabilize the nation.

Myanmar has been a closed nation until recently and there has been much ethnic conflict. Thus, it was easy to move narcotic drugs through these territories into India's northeast, where separatist movements were active. Similarly, Bangladesh presents another porous border through which human trafficking has been taking place and where terrorist movements have found sanctuary. They also became conduits for organized crime.

Conflict in Afghanistan since the beginning of the 1970s has led to international rivalries. The Western nations armed the Taliban – fundamentalist Muslims – to fight the Soviet forces that entered Afghanistan to help the left-leaning regime that came to power by dethroning the King. Soon, Afghanistan became the Vietnam of the Soviets and they had to eventually withdraw. But by then, Afghanistan was awash with weapons supplied by the West. Afghanistan was also known for its production of narcotic drugs. When the central power weakened and

Satyam was one of the high-flying software companies of India and an exemplary one, according to the government and the business community. It was controlled by the highly respected Raju family of Andhra Pradesh. In January 2008, Mr. Raju of Satyam, the chairperson, stunned everyone when he admitted to committing massive fraud against the public over the years. Apparently, the company was defrauded of Rs 7,000 crore (\$1.5 billion) but the final tally could be larger. The loss to the shareholders and employees was a multiple of this sum.

Mr. Raju claimed that Satyam was operating with margins of 3 to 4 percent, when for comparable software companies, they were in the range of 25 percent. Was Mr. Raju lying under the auspices of telling the truth? The puzzle is that Satyam should have had higher profit margins, but its owner, Mr. Raju, claimed that it had lower margins, thereby willingly implicating himself in fraud. Was he trying to cover up a bigger fraud?

In India, there have been concessions in taxation on profits from exports. So, it may pay to divert profits from a company that is not entitled to tax concessions to another group company that is entitled to tax concessions, and thereby save on tax payments. Mr. Raju was siphoning funds from Satyam to sister companies dealing in real estate.

To take advantage of the provisions for exports, they have to be over-invoiced. Hence, more foreign exchange has to be brought into the country than has been earned. This way, undeclared wealth held outside the country or profits of other companies transferred out of the country through *hawala* are brought back – that is, reverse *hawala*.

Satyam tried to buy its sister companies at high and inflated prices. So, its fictitious bank accounts, worth Rs 7,000 crores, would have been drawn down and money transferred to the owners of the sister companies, that is, to themselves, and then there would have been no one to ask where the money went. So, using book transfers, the earlier siphoning off of funds would have been covered up and the false entries of the bank balances and fixed deposits reversed/set right. Satyam was forced to reverse its decision to buy the sister companies by the investment bankers who approached SEBI (stock exchange regulator) with the story of the non-existent balance in the banks. There was little time to bring back other undeclared funds, and perhaps due to the global crisis of 2008, they became stuck. Since the funds did not exist in the Satyam bank accounts, Mr. Raju had to cover up by saying that the actual profitability of Satyam was lower and that he had been inflating profits for years.

The Satyam affair points to the practices adopted by crooked Indian businesses – siphoning profits, fudging muster rolls, the cozy relations with politicians and bureaucrats, and finally, manipulating bankers, “independent” auditors, and “independent” directors. Mr. Raju’s admission has brought into question the notion of the “respectable” or “honest” businessman.

regional warlords emerged, the Taliban smuggled weapons and narcotic drugs to enrich themselves.

A nexus emerged between the Taliban and the Muslim fundamentalists in Pakistan. This impacted the separatist movement in Kashmir and also became a major source of financing Muslim fundamentalism in India. In the process, India became a route for transnational crime. This was facilitated by a corrupt bureaucracy and police force.

An amnesty was given to smugglers in 1983 so that they could come into the mainstream. But this led to the entry of criminals into politics, or at least their more active participation in politics. Before, they had financed politicians but remained largely in the background. The Triad now had criminals in it – either the businessman or the politician in the Triad had criminal backgrounds. As criminals entered the legislatures, the rule of law weakened. They manipulated the police, the bureaucracy, and the judiciary to get favorable decisions and also interfered more blatantly in decision-making.

Smugglers developed links with organized crime abroad to carry on their activities systematically. These links also required them to be in touch with *hawala* operators, who did not distinguish between clean (but illegal) money and dirty money. So they transferred the money of terrorists just as often as that of businessmen under-reporting exports. In fact, the gold smugglers often needed foreign currency to buy gold for smuggling into India, and they got it from drug rings that needed to send funds to finance their activities in India. Thus, many interlinkages developed.

Smuggling was driven by the chance of making easy money, since custom duties were high for the import of luxury goods, liquor, tobacco products, gold, and gems. It required corrupting the customs officials and the politicians. Airports and ports turned into dens of corruption with all kinds of illegal activities taking place. Very complex importing rules were deliberately set up so that the misclassification of goods and services was possible. The threat of harassment is an important driver for the willingness to bribe the official machinery.

In India, laws on paper differ substantially from the way law is practiced. Being in power implies the ability to offer favors for utilitarian considerations. For instance, traffic rules are violated with impunity, especially by those in power. When the average citizen gets caught, they offer a small bribe to the police to be let off. Hence, traffic on the roads is chaotic. A driving license can be obtained without taking a test. This is symptomatic of the entire gamut of rules and laws in the country. The honest get harassed while the dishonest make money or jump the lines.

It is the Triad of corrupt businessmen, politicians and the executive that has facilitated systematic illegality in the country, and as it has strengthened over time, illegality has spread. The citizen is not able to resist it individually and is more willing to offer bribes and commit illegal acts. The Triad takes advantage of this by pushing for more illegality. In the process, people have moved from collec-

tive action to individual action and weakened democracy in the country. With the Triad operating unhindered, international organized crime gangs have also found it easy to penetrate into India and set up operations.

5. Consequences for victims – outlook and impacts on the rule of law

The consequences of the growing black economy have been that development has been set back due to widespread policy failure. Kumar (2005) shows that the Indian economy has been losing 5 percent of its annual growth rate since the mid-1970s due to the growing black economy. Otherwise, by today, the Indian economy could have become the second largest in the world. Income distribution is highly skewed against the poor, and this is having an adverse social impact. India has the largest number of the poor people in the world as well as malnourished children and women, illiterate people, and sick people.

The state is considered to be weak and unable to carry out its mandate. The institutions of democracy (e.g., legislature, judiciary) have been weakened due to all of this, and there is a feeling that the nation lacks social justice. Thus, today, every section of society is trying to gain something at the expense of others. This has resulted in massive conflicts in society and often chaotic conditions. The political structures are badly fragmented, meaning there are a few hundred political parties, each jostling for its space and share of power, which is exercised not for the national good but for the section it represents. Thus, faith in the nation has weakened.

The poor face a criminal environment and live insecure lives. Their children often engage in various kinds of illegal activities and get into drugs, smoking, and other addictive behaviors. Women engage in other kinds of illegal activities and have to bear a double burden of taking care of the home as well as working outside.

The black economy leads to both higher costs of production with lower quality and to environmental damage. Thus, the rate of inflation is higher than it need be and health costs rise due to increased levels of disease and low capacities to fight them. Corruption in the medical profession adds to health costs, and as a result, the poor often fall below the poverty line when treating a major illness in the family.

Tackling the black economy is the key to making a dent in crime, whether national or transnational. Since India's independence, dozens of committees and commissions have looked into the problem of the black economy (and its various aspects) all around the country. They have made thousands of suggestions and hundreds have been implemented: reducing tax rates; reducing controls and regulations; demonetization of high denomination currency; voluntary disclosure schemes; bearer bond schemes; acquisition of undervalued property; and so on. There are already enough laws to check corruption; the problem is that they are not being implemented. Intelligence about organized crime exists, but no action is taken since top businessmen and politicians are involved. The problem, therefore,

is not a technical one, and the size of the black economy has increased in spite of the steps taken to check its growth. The issue is one of political will, which is non-existent.

It is crucial to have political movements wanting to strengthen democracy and bring about accountability among the members of the Triad. Movements on the right to information, judicial accountability, the right to education, the right to food, and the right to housing are all needed to strengthen democracy and bring about accountability in the political process. Movements centered around these issues have emerged in the last two decades and they may eventually change things for the better.

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4. West Africa

4.1 ORGANIZED AND TRANSNATIONAL CRIME IN WEST AFRICA

by *Etannibi E. O. Alemika*

Introduction

Transnational crime thrives in West Africa due to several factors. Some of the major factors and conditions are: weak state capacity and capabilities; weak democratic culture and institutions; underdeveloped and disarticulated economy and lack of norms associated with the penetration of – and assimilation into – cultural ethos and practices of globalization; poorly policed borders; absence or ineffective boundary demarcation; and cross-border population homogeneity engendered by arbitrary determination of national boundaries by colonial authorities. Other factors are inadequately resourced border security agencies; poorly trained and remunerated border policing agencies with the attendant widespread corruption and collusion with transnational criminal actors; and absence or ineffective cooperation among the border security agencies of countries in the Economic Community of West African States (ECOWAS). Generally, there is a weak governance of border security in ECOWAS countries, which threatens both national and regional security. In this chapter, the sources, manifestations, and effects of organized and transnational crime in West Africa are examined with empirical illustrations from Nigeria.

Organized crime and criminal networks: conceptual conversations

The concepts of transnational crime, organized crime, and transnational organized crime are often (unconsciously) used synonymously. This usage is untidy and hinders analysis and appropriate policy responses to issues that, though interwoven, are often distinct in terms of motives, clients, practitioners, and victims. Transnational, or trans-border, crime refers to criminal activities by an individual or individuals, organizations, or even regimes that traverse two or more countries.

The significant element that distinguishes transnational crime is the breach of territorial sovereignty symbolized by state authority, borders, customs and immi-

gration laws, and border police. By its nature, trans-border crime connects source, transit, and destination countries. It involves crimes across or beyond borders. In contrast, organized crimes may be confined within a national border. Organized crimes that are perpetuated across national borders are referred to as transnational organized crimes and the organizations that are behind them are labeled as transnational criminal organizations.

Transnational crimes are not necessarily organized or perpetrated by organizations. This may be attributed to fluid borders and substantial control over goods distribution or supply networks by informal sectors in West African nations. Organized crime has been variously defined (Lupsha 1983; Cressey 1969; Finckenauer and Voronin 2001; Albanese 1989; Abadinsky 1990). Most definitions of organized crime emphasized, (a) its primary aim is profit-making; (b) its activities focus on outlawed goods and services; (c) the significance of violence and corruption in protecting the illegal operations, enforcing discipline among members, and for elimination of competition and competitors; and (d) its hierarchical structure and relative organizational permanency (Albanese 1989).

Albanese rightly points out that “organized crime does not exist as an ideal type, but rather as a ‘degree’ of criminal activity or as a point on the ‘spectrum of legitimacy’” (Albanese 1989, 5). This implies that organized criminal groups may, indeed, simultaneously engage in legal and illegal activities, as is the practice of many multinational companies involved in official corruption cases in Africa. Organized crime has serious negative consequences for individuals, communities, and nations. Criminal organizations “have varying capacities to inflict economic, physical, psychological, and societal harm. The greater their capacity to harm, the greater the danger they pose to society” (Finckenauer and Voronin 2001).

Transnational crime may be described in terms of the following activities across national borders: illegal activities are carried out through illegal means or legal activities are carried out through illegal means. The critical point for us in this article is that transnational crime may be organized or unorganized and perpetrated by organizations, individuals, and even regimes (UNODC 2005). Criminal networks and organized crime groups engage in legal businesses for three major purposes. First, it conceals their illegal activities; second, it serves as means for “washing the dirty money” from crime; and third, the laundering of profit from organized crime serves as a means of gaining respectability in society.

The characteristics of organized crime as identified in the literature can be summarized as follows:

1. absence of ideological underpinning of activities. This means that activities are not driven by political, economic, religious, and ethnic grievances and goals. Criminal activities are seen as means rather than ends;
2. an intent to commit, or the actual commission of, substantive crimes;
3. a conspiracy to execute these crimes;

4. a persistence of this conspiracy through time (at least one year) or the intent that this conspiracy should persist through time;
5. acquisition of substantial power or money as means for political or economic security;
6. roles are organized in a typical hierarchical structure, with the boss at the helm of affairs;
7. roles and positions may be assigned on the basis of kinship affinity, friendship, or competence;
8. organization and activities are relatively permanent – organized crime, in this sense, is undertaken over a relatively long period by an organization;
9. willingness to use violence or bribery to facilitate and achieve its goals (Abadinsky, 1990, 6; IIT 1971, 264);
10. complex criminal activity involving long-term planning and multiple levels of execution and organization;
11. operations that are often undertaken beyond national jurisdictions;
12. use of fronts, buffers, and “legitimate” associates to insulate key members from risks of identification, involvement, arrest, and prosecution;
13. maximization of profits through attempts at cartelization or monopolization of markets, enterprises, and crime matrices (Lupsha in: Kelly 1986, 33).

Organized crime may also employ the following means to protect their criminal enterprises: enforcement of code of loyalty and secrecy; exercise of discipline through and loyalty through surveillance, coercion, and violence. They also protect their operations against legal constraints by means of inducement; representation in government, especially in law enforcement agencies and parliament; alliance with armed groups, and provision of service to communities poorly administered and served by government (Kenney and Finckenauer 1995, 29).

Analyzing transnational and organized crime

In the past two decades, there have been increasing criticisms of the traditional conceptualization of organized crime. Critics argue that the traditional conception of organized crime has been dominated by the Mafia-style organization. In the new conception, most crimes involving groups at the national and international levels do not involve many of the attributes of organized crime as traditionally portrayed in the literature.

Contemporary thinking is that “criminal network” or “crime network” are better terms for many of the contemporary criminal enterprises and businesses. Many criminal collaborations do not exhibit permanence but transient collaboration; roles are assigned on the basis of capability along the business chain; the use of violence is becoming less frequent; and bribery continues to be used to secure the cooptation of or protection from law enforcement agents, judicial of-

ficials, politicians, and other influential figures within the environment in which criminal business is transacted.

The terms “organized crime” and “criminal network” have implications for law enforcement. For example, the operations of organized crime can be disrupted if the people in the top rungs of the organization can be identified and put out of business. Investment in long-term intelligence is therefore worthwhile under this scenario. However, in the context of criminal networks, relationships tend to be transient or occasional, as “business” may demand. As a result, it is difficult to detect organizational structures and leadership of networks. To police them effectively, intelligence needs to be secured from different sources using diverse technologies and shared among security and intelligence agencies.

Understanding and responding to organized crime in West Africa

A recent seven-page background paper (NYUCIC 2012) for a conference on the impact of organized crime and drug trafficking in West Africa provides some of the most insightful comments on the phenomenon of organized crime in the region. Some of the critical observations can be summarized as follows.

- a. West Africa is “a major transit and repackaging hub for cocaine and heroin flowing from the Latin American and Asian producing areas to European markets.”
- b. The significance of West Africa as a transit and repackaging hub is due to “a strategic shift of Latin American drug syndicates towards the rapidly growing European market in part due to the operational ‘successes’ of U.S. law enforcement agencies in mitigating the flow of drugs into the United States.”
- c. “West Africa presented an ideal choice as a logistical transit center: its geography makes detection difficult and facilitates transit; the region boasts well-established networks of West African smugglers and crime syndicates, and a vulnerable political environment.”
- d. The vulnerable political environment in West Africa “has its roots in the region’s colonial history and includes endemic poverty as well as a combination of weak institutions and systems, instability, and ill-equipped and corruptible political party representatives, law enforcement and intelligence officers, and judicial authorities.”
- e. In some West African countries, “the legacy of civil wars led to diminished human capital, social infrastructure and productive national development assets” and also “gave way to a rise in the number of armed groups operating in the region and the circulation of small arms and light weapons.”
- f. Manifestations of organized crime in the region “include drug trafficking, and increasingly, drug consumption, broader organized criminal activity such as human trafficking, illicit logging, illicit capture of resources, piracy, money-laundering, and terrorism.”

- g. “Intense urbanization and youth unemployment ... are having a corrosive effect on democratic institutions and processes, security and economic development across the region and driving violence and reemergence of conflict.”
- h. Significantly, “research shows that the evidentiary base underpinning perceptions of challenges remains weak, as do mechanisms to assess and respond to vulnerabilities, threats and challenges that enable organized crime and drug trafficking.”
- i. Notwithstanding several and diverse interventions and interests by African nations, foreign governments and international organizations, “there is still limited evidence of effective, strategic responses to the multi-faceted challenges posed by organized crime and drug trafficking in the region.”
- j. Further, current “strategies tend to omit the importance of ensuring that security centered efforts are accompanied by efforts aimed at strengthening political institutions and processes, justice and health institutions, and responding to widespread youth unemployment.” As a result “less focus and investment is being placed on developing the capacity of civil society and academia to monitor and analyze trends and effects of organized crime and trafficking across the region,” just as “the private sector remains largely removed from current debates on the issues.”

This is a highly perceptive analysis of the manifestations and causes of organized and trans-border crimes in West Africa and offers responses to the problems.

One of the most critical hindrances to the understanding of organized and trans-border crime in the region and responses to it is the nature of intervention by foreign governments and international organizations. This is because foreign governments are selective in the types of organized crime whose prevention and control they consider a priority. Foreign governments – especially Western governments and the US government in particular – exert pressure on West African governments to adopt repressive legal and security-centered approaches to curb the crimes instead of developing comprehensive social, economic, and political strategies and policies. In so doing, they focus on crimes of concern to them and their citizens, especially drug trafficking. It is therefore not an accident that most discussions of organized crime in West Africa revolve around drug trafficking.

Until the attacks on World Trade Center in New York on September 11, 2001, very little attention was given to corruption, through which African politicians and Western multinational companies steal and siphon African wealth and purchase expensive properties and other luxury goods in Western nations. The current concern with this corruption and the proceeds from it originates less from the implications for African nations about the prospects of such resources being used to finance terrorist activities in Western nations. At present, the massive trafficking in arms, psychotropic substances, and the substandard goods that constitute a more serious threat to human security in Africa – as well as African politics,

economics, and society – does not attract the required interest, attention, and intervention from foreign governments.

The nature of control strategies foisted on Africa governments by foreign governments and UN agencies has also created – or engendered – an absence of reliable evidence-led policies and strategies. As a result, there is no investment in scientific and academic research on the subject of organized crime in the region or even the strengthening of public security and law enforcement agencies to develop reliable systems of record-keeping and databases. As a result, most publications on the nature, extent, pattern, and trend of organized and trans-border criminal activities are based on anecdotal evidence and estimates from isolated and unique cases of large confiscations. Perhaps, as sociologists might explain, this is deliberate, because the absence of reliable evidence and the publication of alarming estimates justify the diplomatic pressure on West African governments to adopt repressive legal approaches to control selected types of organized crime that threaten the interests of powerful Western nations. It is therefore no surprise that “there is a broad perception in the region that many of the existing initiatives are broadly conceived outside West Africa and that there is limited ownership of the existing policy framework and operational responses in the region” (NYUCIC 2012, 7).

Pattern of transnational crime in West Africa

Increasing transnational crime in the region has been engendered by several factors, including progressive regional integration; globalization; political and economic reforms aimed at enthroning liberal democracy and free enterprise; political conflicts; instability; and technological advancements in the transport and communication sectors. Trans-border crime may be seen as the latent or unintended consequences of globalization as well as regional economic integration promoted by the ECOWAS Protocol.

Several forms of transnational criminal activity by organizations, networks, and individuals in West Africa have been reported in the literature (UNODC 2005; Wannenburg 2005). The major forms include:

1. corruption and money laundering within the West African nations, Europe, and the United States;
2. human trafficking between West African countries and from West Africa to the Middle East and Europe;
3. drug trafficking – West African countries are used as transit nations for cocaine and heroin. However, cannabis is produced in some West African countries and traded within and beyond the region;
4. arms trafficking into and within the West African region;
5. advanced “fee fraud” with propositions emanating from West Africa (especially Nigeria) to Europe and North America;

6. Internet fraud, including identity theft;
7. smuggling of used cars, for example used cars are imported from Europe into the Republic of Benin and smuggled into Nigeria;
8. smuggling of prohibited or controlled goods such as pharmaceutical psychotropic drugs, chemicals, etc.;
9. piracy, especially in the Gulf of Guinea;
10. armed robbery, especially automobile hijacking; gangs of robbers, for example, snatch expensive cars from their owners in Nigeria and take them to neighboring countries like Benin, Togo, and Chad;
11. smuggling of goods out of West Africa:
 - a. diamonds from Sierra Leone through Liberia and Guinea
 - b. oil and precious stones from Nigeria
 - c. gold from Ghana
 - d. rubber and timber, for example from Sierra Leone
 - e. ivory and timber from Equatorial Guinea
12. vices (gambling, prostitution, etc.);
13. fraudulent trade practices, including dumping of sub-standard products and misrepresentation; illicit foreign exchange transactions (including money laundering) and stripping of assets from Africa to developing economies (e.g., over-invoicing, under-invoicing, abuse of investment concessions, tax and duty evasions, etc.);
14. dumping of toxic materials.

The most common forms of transnational crime remain corruption and money laundering; drug trafficking; human trafficking; smuggling of both licit and illicit goods; fraudulent trade practices; and advanced fee fraud. These crimes are committed within the region between countries in the region and other countries.

Facilitative environment for transnational crime in West Africa

One of the outstanding aspects of the dynamics of transnational criminal activity in West Africa is its growth over the past three decades. This development has been attributed to several factors. The literature has identified several factors that enhance the growth of transnational crime (Finckenauer 2000; Library of Congress 2003). In the context of West Africa, they include the following factors and conditions:

1. the ECOWAS Protocol on regional economic integration facilitated the emergence of region-wide organized criminal syndicates due to ease of movement from one country to another in the region with minimum documentation and surveillance;
2. civil wars, armed rebellion and banditry in the region bred crimes like arms trafficking, war-zone sex slavery, human trafficking, drug trafficking, smug-

- gling of minerals and goods (e.g., alcohol, cigarettes, etc.). The civil wars also created refugees, some of which may have engaged in organized criminal activities, especially trafficking of persons, weapons, and other goods between their country of origin and host countries during and after the war;
3. civil war and political instability is responsible for high emigration and the African Diaspora in Europe and the United States. Some of the people in the Diaspora engage people back home in transnational criminal enterprises. A careful study of the ethnic identities of West African people, especially Nigerians, involved in transnational crime indicates overrepresentation of ethnic groups that were – or considered themselves – targets of civil wars or political violence and who therefore fled to foreign countries. After the civil wars, some of the emigrants establish criminal networks that operate between their countries of origin and residence. Such patterns and relationships can be observed between the Nigerian civil war (1967–1970) and political crisis (1993–1999) on the one hand, and the ethnic representation in arrests for transnational crimes in Nigeria on the other (NDLEA 2008, 2010a);
 4. criminalization of the state – routine criminal practices in governance for the accumulation of personal wealth;
 5. weak economic regulatory framework; inconsistent import, export, and tariff policies; ineffective customs managements coupled with widespread corruption among border security officials fostered the activities of criminal syndicates in areas like trafficking or smuggling;
 6. weak customs and immigration controls due to porous borders as well as ineffective border patrols, including aerial surveillance;
 7. poor scanning and intelligence gathering equipment at entry ports (air, land, sea);
 8. spatial distribution of persons with the same ethno-cultural identities across international borders in West African countries, due largely to the arbitrariness of national boundaries created and imposed by the colonizers in the 19th century. Local populations relate to people and not boundaries;
 9. weak state authority and capacity, leading to insurgency that thrives in part on trans-border criminal activities;
 10. ineffective interagency collaboration and coordination;
 11. high volume of trade between countries, which hinders efficient scrutiny by law enforcement agencies;
 12. economic policies foisted on the country since the 1980s by multilateral agencies like the IMF and World Bank and supported by the governments of advanced capitalist nations engendered profound socioeconomic dislocation, impoverishment, widening inequality;
 13. improved communication technologies, which facilitate both legitimate and illegitimate business transactions;
 14. advancement and increasing utilization of air transportation systems minimizes scrutiny at numerous national borders;

15. disputed territories;
16. significant disparity in economic and sociopolitical conditions in neighboring countries;
17. high degree of corruption, especially among the ruling elite;
18. weak legislation and corrupt law enforcement agencies;
19. inadequate training and remuneration of border police and regulatory agencies for the movement of goods and services, leading to connivance with transnational criminals;
20. political conflicts and instability;
21. political and economic transitions that lead to worsening economic deprivations.

These factors represent challenges that need to be addressed through comprehensive legal, political, and economic policies and strategies at national, regional, bilateral, and multilateral levels.

Organized crime in West Africa: empirical illustrations from Nigeria

Empirical studies of organized crime are confronted by several methodological problems. Cressey argued that the study of organized crime presents serious methodological challenges and constraints. He identified some of the challenges as secrecy of activities and identity of members; lack of access to available records and intelligence on the activities and actors involved (Cressey 1967, 101–112). To these may also be added the threat and use of violence by a substratum of organized crime groups to protect activities and membership or actors, which also serve as a deterrence to research in the area. In West Africa, there is a lack of a culture and a capability to collect, analyze, publish, disseminate, preserve, and retrieve reliable administrative intelligence and investigative information. These inadequacies constitute serious obstacles to the study of criminality and criminal actors in the region. There must be intervention and investment must be made to correct this through a reorientation of law enforcement officials, capacity-building in the agencies, and collaboration between researchers and officials of the criminal justice agencies.

Corruption as organized crime in Nigeria

The most neglected topic in the study of organized crime in Africa is corruption, yet it is the most devastating form of crime that promotes or aggravates other crimes, including transnational organized crime. Corrupt government officials and politicians constitute an incentive for organized crime and an impediment to its control. Corruption in Africa can be classified into two categories: financial corruption and nepotism. Both involve actions that contravene morality, laws, and rules governing actions in specific contexts. Nepotism is the allocation of resourc-

es (employment, admissions, contracts, location of infrastructure, services, etc.) to associates, relatives, members of one's community, religious and ethnic groups, clubs, etc., as a favor, without following due process, and without regard to merit and equity.

Nepotism is an egregious factor in decision-making within public and corporate organizations as well as communal or civil associations. Its effects are destructive. It engenders inequality and also fosters negative and manipulative mobilization of ethnic, religious, and other divisive identities in politics with the attendant consequences of political instability and an unreliable electoral process. Politics and elections are seen as opportunities to put people in office so as to enjoy favor or patronage rather than as means for ensuring development, security, freedom, and justice.

Nepotism engenders inefficiency, the fraudulent use and diversion of resources, impunity, as well as disincentives for excellence and performance in organizations. When an individual is appointed to a position for which they are not qualified, the tendency is for them to find means to co-opt, repress, or terminate those deemed more competent, as they are considered a challenge and threat. Further, such an individual tends to violate, ignore, or modify the rules that are designed for effectiveness, efficiency, and equity. Nepotism is a major problem in Nigeria, and Africa generally. It accounts largely for the ineffectiveness, electoral fraud, violence, political instability, as well as recurring social and economic crises. It also promotes financial corruption as both are usually mutually reinforcing. Adequate attention has not been given in the literature to nepotism as a form of corruption, nor to its effect on the economy, polity, society, and governance of African nations.

Financial corruption is the form of malpractice and crime that has generally attracted the attention of scholars, politicians, oversight agencies, international and donor agencies, etc. Its manifestations in Nigeria and other African countries are:

- a. bribery – an offer of money or favor in return for, or anticipation of, services;
- b. embezzlement – use of fraudulent documents to appropriate funds from government agencies or other organizations;
- c. kickback – inflation of cost procurement and services and the appropriation of the inflated margin by the participants in the scheme. It may also involve situations where a contract for procurement or services is not executed, poorly executed, or abandoned in order to share disbursed money among the schemers;
- d. misappropriation – use or appropriation of funds belonging to government or corporate organizations for personal projects, travel, welfare, etc.

Corruption as a crime is perpetrated by individuals, organized groups, and networks of individuals. Corruption by individuals takes the form of bribery and inflation of costs for procurement and services. In contrast, corruption is also per-

petrated by non-criminal (corporate) organizations involved in offering bribes or kickbacks for contracts relating to procurement and services. Foreign companies involved in the execution of major government construction and equipment installation contracts, including Julius Berger (a German company), Siemens, and Halliburton (an American company) have been named in bribery and corruption scandals in Nigeria during the past decade.

A common practice in Nigeria is for senior government officials to register genuine and bogus companies to which grossly inflated government contracts are awarded. Such companies are often registered and operated with the collaboration of relations and business associates. Proceeds from major corruption in the country are most often laundered through the purchasing of property in foreign countries; deposited in foreign bank accounts; and invested in real estate in exclusive districts of major Nigerian cities (especially Abuja, Lagos, and Port Harcourt).

Corruption by networks of officials and associates in individual or multiple corruption cases is the most egregious form of corruption in the public sectors of Nigeria and West African countries generally. In the public sector, corruption takes the form of collaboration between government officials and contractors or among public officials. Bribery and kickbacks usually involve the head technical and financial staff of a department organization responsible for awarding, supervising, and certifying contracts and contractors. Cases of embezzlement and misappropriation often tend to involve collaboration among officials in the department with assistance from individuals who provide forged documents for the fraudulent transactions.

Although there are variations in terms of the extent and responses due to historical and structural factors within the countries, corruption in Nigeria provides an insight into the manifestations of corruption in West African countries. Visitors to the region listening to public conversations will frequently hear the expression that “corruption is the major problem in this country.” In the past three decades, foreign governments, the media, donors, and scholars have repeatedly tried to demonstrate that corruption is pervasive and persistent in Nigeria. However, they often fail to acknowledge that corruption in Nigeria is linked to the way that companies from Western and other societies do business in Nigeria. This applies to most African countries, where the major construction, infrastructure, and equipment supply contracts are handled by foreign companies.

Bribery by foreign companies takes various forms, including cash payments; opening of foreign accounts; deposited funds for public officials; sponsorship of overseas vacation and medical treatment; as well as purchasing of landed properties and other luxury goods for public officials. Local contractors also engage in this form of corruption, especially cash payment and acquisition of property on behalf of their corrupt benefactors.

The Nigerian government has established two anti-corruption agencies. These are the Economic and Financial Crimes Commission, and the Independent Corrupt Practices Commission, in 2000 and 2002 respectively. Information available

from the Economic and Financial Crimes Commission in early 2012 showed that the agency had filed high-profile corruption cases in various High Courts across the Federation. Persons under prosecution include:

- a. three former state governors
- b. six former Ministers of the Federation
- c. six former and serving national legislators
- d. several bank chief executives
- e. several heads of federal and state ministries, departments, and agencies
- f. thirteen Filipinos and six Ghanaians involved in oil theft (bunkering)
- g. an Indian businessman involved in corruption and fraud of an estimated at 3.2 billion Naira (1 USD = 160 Naira in July 2012)

Due to weak criminal justice institutions and corrupt influences on law enforcement and judicial agencies, only four major public figures have been convicted on the basis of charges filed against them by the Economic and Financial Crimes Commission between 2002 and 2011. These were a former Bayelsa State Governor (Diepreye Alamieyeseigha); a former Inspector-General of the Nigeria Police Force (Tafa Balogun); a former Governor of Edo State (Lucky Igbinedion) and a former Western Zonal National Deputy-Chairman of the ruling People's Democratic Party (Olabode Geroge). Cases involving foreign companies like Halliburton and Siemens were abandoned. Corruption, therefore, thrives in the country with impunity. This scenario is similar to those in other West African countries, and differences are only in terms of scale.

Drug trafficking in Nigeria

Drug trafficking by Nigerian citizens in different countries across the globe has remained a major concern for the government and the citizens. This crime, along with the advanced fee fraud (scam), has produced a negative image of the country in the international community over the past three decades. As a result, Nigerians are subjected to intensive searches at airports and extensive surveillance all over the world. Because of efforts by the government to curb drug trafficking, drug dealers and couriers continuously adjust their modes of operation and routes. With respect to regional trafficking of drugs, the National Drug Law Enforcement Agency noted that:

Current trends in the illicit traffic of narcotics and psychotropic substances indicate the existence of a thriving illicit drug trafficking route within the West African sub-region. Drug traffickers importing drugs into Nigeria fly into neighbouring countries, from where the drugs are smuggled through illegal routes along the vast land borders. (NDLEA 2008, 4; 2010a; 2010b)

In contrast, the predominant route for outward bound drug trafficking is by air. As data from the National Drug Law Enforcement Agency (NDLEA) shows:

Air transportation remains the most common mode of transportation by [...] traffickers; although large consignments are transported by sea. NDLEA data reveal that 80% of the cocaine and heroin traffickers arrested between 1999 and 2006 travelled by air. It is however necessary to note that large seizures of illicit drugs have also been made at the sea-ports. For instance, in the year 2001, sixty kilograms (60kgs) of cocaine was intercepted at the Tin Can Island Seaport in Lagos. In the same vein, the largest consignment of drugs ever intercepted in West Africa was made in May 2006 at the Tin Can Island seaport, Lagos, Nigeria where fourteen (14) metric tonnes of illicit drugs were seized. (NDLEA 2008, 4)

The use of courier companies (including internationally reputable companies like IMPC, FEDEX, DHL, UPS, and TNT) for trafficking small quantities of illicit drugs has also been reported (NDLEA 2010a, 24, 62).

Drug seizures

There is considerable annual variation in the quantity of drugs seized. Nonetheless, the quantity of drugs seized remains high (Table 1).

Table 1: Quantity of cocaine and heroin seized in Nigeria by NDLEA

Year	Quantity seized in kg	
	Cocaine	Heroin
1999	15.64	81.35
2000	53.42	56.06
2001	195.82	46.63
2002	35.35	55.62
2003	134.74	87.58
2004	124.47	90.94
2005	395.91	70.42
2006	14,435.88	33.09
2007	393.68	120.69
2008	365.49	11.60
2009	392.05	104.71
2010	706.43	202.08

Sources: NDLEA (2010; 2008)

Occasionally, there are dramatic seizures involving Nigerians and other nationals. On July 22, 2010, NDLEA intercepted 450.4 kilograms of cocaine aboard a vessel from Chile. A Taiwanese, a Chinese, and three Nigerians were arrested in connection with the shipment. In November 2010, the agency seized heroin valued at \$9.9 million at the Tin Can Island Container Terminal Apapa, Lagos. The drugs were meant for the European market (NDLEA 2010b, 5, 20–21). The single-largest seizure ever recorded in the country occurred in 2006, when 14,000 kilograms of drugs were seized by the NDLEA in Lagos.

Nigerian ports are used largely as transit. Cocaine and heroin are neither produced nor widely consumed in the country. Cannabis is produced and more widely consumed but not often trafficked beyond West African nations, largely due to bulk, weight, value, and demand. The NDLEA (2010a, 25) attributes the use of Nigeria as a transit route for illicit activities to the following factors:

1. direct air links with many consumer nations;
2. easy connecting links to the source countries;
3. strategic location of the country between Asia and Latin America (the main sources of cocaine and heroin);
4. increased trade and communication links between Nigeria and the rest of the world; and
5. large areas with porous land borders, which makes entering and exiting the country by land relatively easy.

The NDLEA (2010a, 25–26) classifies Nigerian traffickers as belonging to the following four groups: (a) home-based couriers, who generally work for dealers who often reside in source countries; (b) West African couriers, a network of traffickers that operate within the region; (c) Euro-American-based couriers, who maintain links with couriers from Nigeria and are also involved in distribution networks within their host countries; (d) source country couriers/dealers, who are “largely connected to local networks in the source countries and procure drugs for other couriers based in West Africa or at relay points.”

Trafficking in psychotropic substances:

A problem unacknowledged by the international community

Consumption of cocaine and heroin is generally low in the country. For these drugs, Nigeria is largely a transit route. Psychotropic drugs are, however, imported into the country for local consumption and large quantities are imported annually. However, trafficking in psychotropic substances and their local consumption does not attract the attention of powerful consuming nations, especially the United States, which exerts enormous pressure on Nigeria to repress drug trafficking and traffickers. Statistics for seizure of psychotropic drugs by the NDLEA for 2010 shows 2,550.67 kilograms, compared to cocaine (706.43 kgs) and heroin (202.08

kgs). Comparative statistics for 2009 were: psychotropic drug (712.77 kgs); cocaine (392.05 kgs) and heroin (104.71 kgs) (NDLEA 2010a, 51).

Destination and deportation of Nigerian traffickers

Nearly four-fifths (78.5%) of the 190 traffickers arrested in 2010 at Murtala Muhammed International Airport, Ikeja (the nation's busiest airport), by the NDLEA were apprehended at the point of departure. Slightly more than one-fifth were arrested at point of entry (NDLEA 2010, 59). Out of the total 190 apprehended traffickers, 20 percent (38) were flying to Italy; 14.21 percent (27) to Spain; 12.63 percent (24) to the United Kingdom; 5.26 percent (10) to the United States; and 4.21 percent (8) to Germany (NDLEA 2010, 59). The airlines of choice for those arrested were Iberia (19.9%), Alitalia (16.23%), Emirates (7.85%), Turkish Airlines (7.85%), Qatar (7.33%), KLM (5.76%), South Africa Airways (5.24%), Arik – Nigeria (5.24%), Air France (4.71), Virgin Atlantic (4.19%), Delta (4.19%), British Airways (3.66%), and Ethiopian Airlines (3.14%). Other airlines such as Lufthansa, Kenya Airways, and Saudi Airlines were patronized by very few traffickers (NDLEA 2010a, 58). In 2010, a total of 87 Nigerians (82 males and 5 females) were deported from various countries for drug-related offenses. The majority of the couriers were deported from seven countries: United States (38), Spain (13), France (8), Italy (4), Thailand (4), Germany (3), and Pakistan (3) (NDLEA 2010a, 61).

Transnational crime in West Africa: Implications for development and security

Transnational and organized crime has corrosive and destabilizing effects on the politics, economy, culture, security, and development of countries, especially in weak states and disarticulated economies, such as those found in West Africa. They cause or aggravate several economic, political, and security problems. They can result in loss of revenues through tax and duty evasion; weaken legitimate government; corrupt the political process, politicians, public officials, and security agencies, thereby undermining the rule of law; and distort national economic planning through money laundering and illicit foreign exchange transactions. Trans-border crime undermines economic development as well as state, national, communal, human, and individual security.

Impacts of organized crime

Organized crime has serious negative consequences for individuals, communities, and nations. Criminal organizations “have varying capacities to inflict economic, physical, psychological, and societal harm. The greater their capacity to harm, the greater the danger they pose to society” (Finckenauer and Voronin 2001).

Policing organized and transnational crime is very challenging due to the following factors:

As a form of crime, organized crime is difficult for police to handle because of the amount of political power, wealth, and use of violence associated with the perpetrators. Criminals deploy these factors against law enforcement agents.

Perpetrators of these crimes use bribes to ensure the cooptation and protection of the lawmakers, law enforcement, as well as security, intelligence, and judicial officers and those occupying the highest offices in a nation.

The perpetrators infiltrate law enforcement and intelligence agencies in order to have prior access to plans of action against them.

Transnational crime in West Africa: responses

West African nations have adopted and adapted several regional, continental, and international legal instruments to combat criminal activities within and across their borders. Some of the legal instruments are:

- a. The United Nations Convention against Transnational Organized Crime
- b. UN Convention against Corruption
- c. The African Union Convention against Corruption
- d. AU Drug Plan of Action
- e. The ECOWAS Protocol on the Fight against Corruption
- f. The ECOWAS Convention on Small Arms and Light Weapons
- g. The ECOWAS Protocol on Mechanisms for Conflict Prevention, Management Resolution, Peacekeeping and Security, 1999
- h. The Intergovernmental Action Group against Money Laundering in West Africa
- i. The West African Police Chiefs Committee
- j. The ECOWAS Convention on Assistance in Criminal Matter of July 1992 and the ECOWAS Convention on Extradition

Conclusion and recommendations

The prevention and control of organized crime require effective measures against the political, economic, and legal factors that engender the growth of trans-border crime in a nation or region like West Africa. Such measures should aim at achieving and sustaining the following conditions:

1. consolidation of democracy and good governance in order to create an environment in which (a) impunity, political instability, conflicts, and wars are eliminated, or at least minimized; (b) effective conflict resolution mechanisms are maintained to stem conflicts; (c) rule of law and accountability are entrenched; and (d) citizens energy and will are mobilized against organized and transnational crime and criminal syndicates;
2. economic development strategies that promote, guarantee, and sustain high

- standards of living and employment; minimize poverty, inequalities, and incentives for crimes;
3. implementation of region-wide legal and diplomatic measures against trans-border crime, including the effective safeguarding of the provisions in the ECOWAS Protocols on the movement of persons and goods and on the residency of citizens of member countries within the region;
 4. effective measures against corruption in the nations generally, and especially among politicians and security and judicial officials;
 5. state capacity and capability for effective regulation of trade; monitoring of economic activities of foreign organizations – especially those engaged in the extractive industries and the financial and commercial sectors;
 6. effective capacity for surveillance, intelligence, investigation, and management by border security agencies;
 7. strong, effective, and accountable regulatory agencies (in the financial, trade, mining, and industrial sub-sectors of the economy);
 8. consistent import, export, and tariff policies;
 9. proper delineation of national boundaries;
 10. effective patrol and policing of the borders, including efficient aerial patrol as well as scanning and intelligence-gathering facilities;
 11. adequate training and remuneration of officials responsible for border patrol; regulation of movement of persons and goods at borders and ports;
 12. strong collaboration among security agencies of the West African nations;
 13. comprehensive bilateral and multilateral instruments (protocols, treaties, agreements, mutual law enforcement assistance, joint border patrol, etc.);
 14. reliable record-keeping and comprehensive data collection, analysis, storage, retrieval, and publication by law enforcement, judicial, and research agencies to aid development of strategies and policies, and to enhance planning, operations, management, research, and policy implementation and evaluation.

These measures entail the entrenchment of democratic measures and good governance; strengthening the integrity and capacity of state institutions and officials; establishing and maintaining effective cooperation among nations, especially those within the West African region; and developing strong economic systems characterized by appropriate and effective regulatory frameworks, competition, social security for vulnerable groups, efficiency, and equity.

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5. South Africa

5.1 FROM APARTHEID TO 2020: THE EVOLUTION OF ORGANIZED CRIMINAL NETWORKS IN SOUTH AFRICA

Interview with Charles Goredema, Institute of Security Studies, Cape Town

Q: What is South Africa's place within the transnational net of organized crime?

It is very difficult to determine which criminal groups are active in South Africa at any given point or time. What we have been experiencing here, at least for the last 20 years, is that there are criminal networks, rather than criminal groups. When I say criminal networks, I mean loose working arrangements involving a number of criminals, who tend to shift from criminal activity to criminal activity and comprise nationals from various countries, without maintaining a degree of permanence. It is also very difficult to isolate foreign criminal groups from local criminal groups, because whatever markets we are describing, invariably the networks that are active in each of those markets bring together foreign criminals and local criminals. It is more accurate to talk about predominant criminal markets.

A general distinction can be drawn between predatory criminal activities and market-based criminal activities. The first comprises activities that involve deprivation of property from victims; the latter are those crimes where we cannot easily identify real victims, because participants are willing buyers and willing sellers of commodities, such as drugs or marine resources or counterfeit commodities.

Regarding predatory offenses, armed robbery is among the most visible, with the most significant type being the robbery of cash-transporting vehicles. In most cases this is not an opportunistic crime, but rather planned and organized by networks that are linked and plan in advance what to do with the proceeds. Through corruption, the criminals are able to get detailed information so that they can be accurate in selecting targets and arming themselves. In some instances, criminals are able to predict how much money they can expect from a "job." The supply side of corruption in this case would be the security sector, the private guards.

In the area of theft and trafficking of motor vehicles, South Africa is predominantly a supplier and not a destination, even though there are a few vehicles brought into the country – mostly luxury models stolen from the United Kingdom.

Organized criminal activities concerning the theft of vehicles in South Africa have linkages beyond the borders of this country. The same can be said about rhino poaching, since there is no market for it in South Africa. In this regard, there appears to be insufficient cooperation with “demand side” countries, where illegal commodities coming from South Africa are destined. For instance, collaboration with Vietnam, China, and Cambodia is not up to scratch. A higher level of cooperation in tracking routes and culprits through transit and destination countries is clearly required.

It is very difficult to determine how widespread human trafficking is in South Africa, partly because of delays in criminalizing it. South Africa does not have a law against human trafficking, therefore there are no official records and documentation of the phenomenon. The predominant origin of victims appears to be the Horn of Africa, but there are also people trafficked from Mozambique, Zimbabwe, Angola, as well as southeast Asian countries. It is known that young women are still being brought into South Africa involuntarily from some parts of Eastern Europe to serve in the entertainment and sex industries. Our research found some Zimbabweans in virtual labor bondage on farms adjacent to the border with Botswana. The phenomenon is tackled legally through the offense of illegal immigration; if victims are not prosecuted, they become witnesses in trials against organizers of illegal immigration.

Q: Can you offer a brief historical analysis of organized crime in South Africa?

Organized crime has been known to South Africa since at least 1985. Drugs originating in India, especially Mandrax and heroin, were coming through Zambia and Zimbabwe into South Africa. Within the country, a market was gradually established on the Cape Flats, a vast network of residential suburbs in eastern Cape Town. The evolution of the drug markets there demonstrates the insidious relationships that were established by the apartheid state and organized criminals, as part of a political project – in terms of which the state sought to disrupt political activism, and delay the liberation process. Some of those relationships have survived the formal demise of apartheid and are apparent in continuing police corruption. There are still instances of organized criminals obtaining firearms from the police. Corruption acts are perpetrated especially in drug-related crimes. The relationship between organized crime and the public sector is, however, not one-sided.

Transitions are period when the capacity of the state to understand and react against organized crime is weak. Transitions facilitate an escalation of organized crime because of the uncertainty they create and because some people lose their jobs during the transition and become desperate enough to be recruited by organized crime groups. Parts of the private security industry in South Africa have benefited from the transition, but parts have been infiltrated by organized crime.

Q: How is the level of awareness among people?

The public in South Africa is aware of certain forms of organized crime, but I doubt that it is aware of all forms of organized crime happening. Market-based organized criminality is perhaps less well known. The media also promotes the view that predatory forms of criminality are predominant.

The media should draw attention to emerging forms of criminality, such as cybercrime, which needs to be understood within the broader community in view of the phenomenal escalation in the use of the Internet and smartphones. The risks have grown immensely.

Market-based crimes have a great impact on South Africa because of the high levels of poverty in the country. People are vulnerable to the marketing of counterfeit pharmaceutical drugs and other commodities. Levels of poverty have worsened rather than improved in the last five years. Indications are that by 2020, we will have a larger urban population than we have now, which probably means that levels of poverty will be worse. It will comprise more people living without a reliable source of income. In that scenario, market-based forms of crime can only increase. Drug trafficking can be expected to escalate, as the demand for drugs grows with the young population that is not in school, nor gainfully employed. Greater demand stimulates higher levels of supply. Therefore, increasing levels of employment is a priority to contain organized crime in this part of the world.

Q: Which measures have been adopted in South Africa to counteract organized crime and money laundering?

South Africa, to its credit, was one of the pioneers in terms of enacting legislation against organized crime. As far back as 1998, South Africa adopted the Prevention of Organised Crime Act (POCA), which made it a criminal offense to belong to a crime syndicate, and made it easier to follow the profits of organized crime and to seize and confiscate them. It made money laundering a broad offense, involving all proceeds of crime and not just the proceeds of drug trafficking; it created a dedicated asset recovery unit and an account into which proceeds of organized crime could be deposited for possible use to fund law enforcement. Along with POCA, South Africa saw the creation of a unit combining prosecution and investigations in the form of the Directorate of Special Operations, whose members came to be known as “the Scorpions.” This unit has been dismantled, but while operational it achieved quite a lot of success in targeting organized crime and corruption. It was dismantled following accusations of lack of accountability. The fact that the agency shared investigative authority and power with the police proved problematic. It was argued that such a unit should have been housed within the police force. Thus, it has been replaced by the Directorate of Priority Crimes investigation, whose members are often referred to as “the Hawks.” Using proceeds of crime for law enforcement purposes raised philosophical issues and triggered a political battle. Fortunately, South Africa took the view that it was legitimate to utilize proceeds from crime to fight crime.

Money laundering first became a crime under the POCA in 2000. Subsequently, in 2003, the Financial Intelligence Centre Act came into effect, creating a repository of data on suspicious financial transactions. Since 2003, South Africa has accumulated experience in terms of acting against money laundering. Money laundering is a daily occurrence, which is to be expected in a country where drug trafficking continues to be a significant and profitable industry. In addition, a whole range of predatory criminal activities persist. Money laundering regulation has been tightened as far as financial institutions are concerned. South Africa has more than 40 banks and the financial center is relatively strict in terms of monitoring and ensuring compliance.

What remains a point of weakness is the extent to which the non-financial institutions – such as car dealers, luxury commodities dealers, and estate agents – are regulated. With certain forms of criminality, the trend is that proceeds will not be taken to the bank as a first step of inserting the money into the economy. Proceeds will rather be used to acquire an asset that generates clean money, which is subsequently banked. This makes it quite difficult, if not impossible, for the bank – in the absence of additional information – to determine the connection between the money and a crime.

Part of the solution probably lies in reducing the dominance of cash transactions. In addition, the hand of the financial sector can be strengthened through incentives for people holding assets to use the banking system rather than resorting to other methods. The continuing dominance of cash as a preferred way of doing business will always be a point of weakness in reducing money laundering.

Cape Town, September 27, 2012

Verena Zoppei

6. Mexico

6.1 SOCIAL AND ECONOMIC DAMAGE CAUSED BY THE WAR AGAINST DRUGS IN MEXICO

*by José Reveles**

When we use a very coarse brush, in the way Goya did, to draw the frightening face of barbarism that has established itself in Mexico – and to describe the bloodiest violence this country has seen in decades – the unavoidable truth this reveals may, at the same time, be hiding other crimes. These are the offenses against social justice, namely the unpunished looting of natural resources, the abandonment of farmers – leaving them completely on their own – as well as the incapacity of the government to create jobs, provide education, health services, housing, drinking water, sewage disposal, and other minimum service requirements for most of the population.

Recent government administrations have not even demonstrated the minimum level of efficiency required to stop the advance of poverty, which already afflicts more than 52 million people in Mexico (46.2% of the country's population).

Of course it is necessary, wherever possible, to remember, and to lament, the human tragedy brought to Mexico by this war against drug traffickers and organized crime – a war badly planned and even more poorly executed. A “failed war,” some analysts say, and a “faked war,” others believe, because there have been no positive results so far. After more than five years of armed combat, current data reveals devastating realities.

- The term of conservative President Felipe Calderón (National Action Party, PAN) will end on November 30, 2012, with around 70,000 Mexicans having been violently assassinated and at least another 10,000 who are missing and who have not been found in six years. The costs for civilians are extremely high. It is not true, as the government maintains, that the immense majority of victims were involved in organized crime or were executed or kidnapped by

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criminals. There are several thousand homicides and kidnappings (cynically labeled “liftings”) that are increasingly being attributed to the armed and police forces who are fighting crime.

- In 2011, more than 1.6 million people were displaced from their original homes, which corresponds to 2 percent of the country’s population above 18 years of age. More than 80 percent of these people who left their houses, their land, work, and schools were forced to do so because of violence, according to a Parametría poll. The exodus has mainly affected the states of Chihuahua (where Ciudad Juárez is situated, the city with the highest rate of insecurity and violence in Latin America), Tamaulipas, Sinaloa, Coahuila, Durango, Baja California, Nuevo León, Michoacán, Guerrero, and Veracruz. These are among the 32 states in the Mexican Republic where extremely bloody disputes between the drug cartels themselves and fights between them and the federal forces have taken place – and still take place. The most vulnerable in the population, namely widows, orphans, and old people, were among those who fled from their homes. However, this is also true for thousands of violated women or indigenous peoples who have been deprived of their land in the south of the Republic, as doctor Marcos Arana from the José María Luis Mora Research Institute explains. According to the United Nations, the problem does not seem to bother the government, which has not even carried out an analysis to explain the phenomenon of displaced people. A figure disseminated by the Internal Displacement Monitoring Centre of the Norwegian Refugee Council states that there were about 160,000 Mexicans displaced in 2011 – a number that is identical to that in Palestine during the same period but lower than the number displaced in Columbia (260,000), yet a lot more than the number of those displaced in Libya (30,000).
- The cultivated area for marijuana (cannabis) and opiates (opium poppy) is far from diminishing – more than 5,000 hectares of new plants have been sown in the past five years (almost 40%), which is an obvious paradox in view of the violence that has been unleashed by the army, the navy, and the federal police against organizations that trade their products in other countries or sell them on the internal drug market. Without any official explanation, these plantations were fumigated by airplanes in November 2006, above all in the so-called Golden Triangle in the north (Chihuahua, Sinaloa, Durango), but also in the mountainous region between Guerrero and Oaxaca on the southern Pacific coast, as well as in other production areas in the Gulf of Mexico and on the border to Guatemala. In December 2006, the entire fleet of aircraft of the Attorney General of the Republic (108 aircraft and helicopters) was transferred to the National Defense Ministry. Despite this, the armed forces did not destroy the plants from the air, but instead deployed 20,000 soldiers to destroy the plants manually – a much slower and less efficient method. Mexican heroin accounts for 9 percent of the total world production; this covers 39 percent of total consumption in the United States, which procures the rest of its supply

from Colombia and Afghanistan, according to information published by the International Narcotics Control Board in 2011.

- As such, in the very midst of the “War on Drugs,” with troops invading several regions of Mexico – although it is not even officially recognized that an armed conflict exists – we have a situation that has brought about the exact opposite. The production, bagging, and export of Mexican marijuana and opiates have increased. This is also true for the processing of synthetic drugs (methamphetamines, “ice,” “crystal”) produced in laboratories that are emerging all over the country. This is made possible because tons of ephedrine, pseudoephedrine, and other chemical derivatives (which are needed to make the drugs) enter Mexican ports, where controls are very lax. In line with information also provided by the International Narcotics Control Board, the Mexican government dismantled 21 clandestine laboratories in 2008, and in 2009 such discoveries and destructions multiplied nine-fold (191 total). The Mexican armed forces confirm that more than 500 designer drug laboratories were destroyed while the present government was in office. Some labs were camouflaged in mountain zones, others were in urban zones, and some were even underground.
- The cocaine comes from South America, mainly from Colombia, Peru, and Bolivia, but almost all of the cocaine that reaches the US market inevitably passes through Aztec territory. This even includes the cocaine that traffickers now prefer to store in temporary “warehouses” in Central American countries, whose governments have fewer capacities for controlling illicit activities, as intelligence reports have confirmed. The annual quantity that simply passes through Mexico on a transit route has also remained unchanged (“We are the springboard and the USA is the pool,” as Mexican President Gustavo Díaz Ordaz put it almost half a century ago). We are talking about 300 to 500 tons of alkaloid each year. However, the Mexican government is confiscating less and less cocaine. In the 1990s, there was one record year with seizures totaling 51 tons, but in 2009 this amount decreased to only 21 tons; in 2010, it decreased further to only 9.4 tons; 2007, however, was a good year for the government, as almost 48 tons were seized.
- A growing internal market serving Mexican drug addicts has developed. The country has 1 million new consumers of cocaine and 1.5 million consumers of marijuana, along with hundreds of thousands of designer drug users, which adds up to more than 7 million addicts. In 2008, Federal Public Safety Minister Genaro García Luna acknowledged that 4.7 million Mexicans were addicts of marijuana and cocaine. This was in addition to an excessive consumption of methamphetamines, resulting in almost 5 million users who consumed 515 tons of marijuana, 27.6 tons of cocaine, and 4.2 tons of ecstasy and other designer drugs, as outlined in a document submitted by Luna to the Congress of the Union. Some experts think this is a result of the closure of terrestrial and maritime borders in the south of the United States, and of employing more soldiers and border patrols to prevent the entry of prohibited substances into

the territory of the northern neighbor. However, other analysts estimate that “payment in kind” – that is, by a certain percentage of the cargo instead of cash – is becoming increasingly common, motivating the criminal organizations to deliberately create a market of Mexican addicts.

- The detention of around twenty criminal leaders over the past three years has had absolutely no impact at all, and has left the operative, armed, economic, and financial structure of the Mexican cartels virtually intact. The most important among these they are: Sinaloa or el Pacífico, Golfo, Zetas, Juárez, Tijuana, Familia Michoacana and Caballeros Templarios, Milenio, and the Beltrán Leyva. In addition to these there are a variety of subdivisions and temporary alliances that make up an extremely complicated map of organizations that are not only involved in the bagging of drugs, but also in the exploitation and trafficking of migrants with no papers, the trafficking of women, the smuggling of goods (including fuel theft from the official ducts and installations of Petroleos Mexicanos, fuel which is sold to “legal” enterprises in the south of the United States), extortion, and protection money (which is an illegal and forced “tax” on so-called *giros negros*, such as bars, discotheques, hotels, restaurants, but also companies and factories of any kind). We can also add kidnapping, child pornography, and exploitation of children, as well as book, music, video, and film piracy to this list, adding up to 22 different crimes, including the illegal purchase of votes during elections.
- Politicians and government officials protecting illegal activities are neither investigated nor punished in Mexico, apart from isolated cases and where doing so helps to support manipulation. This was the case, for example, with the detention, bail, and subsequent liberation (for lack of evidence) of 36 mayors and officers in Michoacán, most of whom were members of the left-wing Democratic Revolution Party (PRD). This attack – which politicized justice, or judicialized politics, depending on how you look at it – is referred to as “El Michoacanazo” in popular slang. The entire act was carried out by the federal government against local authorities, conveniently in the run-up to intermediate elections. The aim was to pave the way for the sister of the president of the Republic, Luisa María Calderón, to become candidate for governor. The same happened three years later, yet still she lost against Fausto Vallejo of the Institutional Revolutionary Party (PRI). Following her defeat, the president’s sister accused drug traffickers of imposing governors on the land where the Calderóns were born. This was an unexpected acknowledgement that the “drug war” had failed (five years after it was initiated by her brother, the president). Felipe Calderón himself backed his sister’s statement and publicly admitted that organized crime “threatened and led to the withdrawal of the candidature of 50 candidates” in their election campaigns to become mayors in the state of Michoacán at the end of 2011. The candidates were told “either you go along with us or we will have you disappear,” and so “they withdrew their candidacies.” Referring to candidates in the municipalities from all parties, the presi-

dent said that this was a “serious problem which is neither a personal matter, nor a matter of party.”

Criminal reserve army

It must be emphasized that the armed conflict taking place across much of the Mexican territory is causing perverse damage. What is happening there is a far cry from what is vaguely referred to as “collateral” and must be taken into consideration when analyzing the most harmful effects of the declared war on drugs from social, economic, and health points of view. It is not enough to merely list figures concerning cases of violence, as we are talking about murders of civilians; concealed graves making up entire clandestine cemeteries; kidnappings and thousands of people missing; a rupture in the very tissue of society in many regions of Mexico; and even the development of parallel criminal structures that compete or openly manage to take the place of official structures.

Statistical data can give us a clearer picture of the devastation already caused to Mexican society, which it will take many years to reverse. We are witnessing the irretrievable loss of an entire generation of Mexicans at the worst possible time, namely when the country should be benefiting from the so-called democracy bonus, which is, however, being wasted (without any official or private solution in sight). According to economics professor *Ciro Murayama*, it will only end after millions of young people have been converted into a “criminal reserve army” due to the lack of productive employment.¹ He claims that between 2011 and 2020, there will be around 20.4 million Mexicans who are 18 years of age. They are of full age, meaning they can claim their voting card for the first time, but they will also demand work. All of them, who at the present time are between the third grade in elementary school and twelfth grade in high school, theoretically form the so-called demographic bonus, which is “the unique opportunity of having a low rate of dependent population, which means that we have a high proportion of Mexicans of productive age in relation to the population to be maintained.”

The problem is that this “bonus” must be made use of, meaning that all of these young people must be brought into education and later into employment. *Murayama’s* conclusions are terrible: This decade will see 11.5 million new citizens who have not even finished high school. “The situation is critical: United Nations studies show that we must have at least 12 years of schooling to avoid falling into a state of poverty ... Thus, the majority of our young people today will have lost the chance for productive integration and sufficient income for the rest of their lives, because they left school too early.” Mexicans who arrive at an age where they can start providing income to their homes “will have to deal with a situation of informality and precarious work,” and without any access to higher education. This means that “a vast ‘criminal reserve army’” will take shape during the years

1 | See his article in issue 409 of *Nexus* magazine from January 2012.

in which Mexico is shaken by violence and suffering from the massive early exclusion of children from school, and later from employment.

From another academic field, the rector of the National Autonomous University of Mexico (UNAM), Dr. José Narro Robles, coined a new word to describe this generation of young people who have no opportunity of progressing and a very uncertain future: He calls them “ninis” (neither-nors), who “neither study nor work,” a term considered to be pejorative and discriminatory by many. This is not because they have decided to live their lives this way. Rather, it is because the lack of jobs and education in the country is far from good in terms of macroeconomic and financial policies. For this, the World Bank and the International Monetary Fund have blamed the government of the right-wing National Action Party.

“Compared with the other countries in the Latin America region, Mexico is one of the countries that best manages its monetary policy, interest rates, fiscal and inflation control and the balance between revenues and public expenditure,” said Augusto de la Torre, chief economist at the World Bank for Latin America and the Caribbean, in April 2012.

However, while comparing Mexico to other countries of the region, he complained that “it is one of the countries that has had the lowest growth over the past 30 years (average rate 2.5%), which means that Mexico is less vulnerable from the macroeconomic point of view, and yet still experiences reduced growth.” It is vital that the country finds “the path to boost growth” (Mexico is already very much lagging behind Brazil, whereas some years ago its indicators exceeded that of the South American country), since Mexico represents a fifth of the Latin American economy, the World Bank official noted.²

At the same time, it seems that Mexico – a country with enormous natural and human resources – is doomed to make its policies (which should be sovereign) dependent on its fatal geographic proximity to the hegemonic world power to the north. From corrupt governments that repeatedly emphasized their sovereignty (during the reign of the PRI for seven decades), the country moved on to 12 more years of similarly corrupt regimes (two six-year terms under the conservative National Action Party with an encouraging political change in 2000, which, in the end, was overthrown), and all of this put a determined and unlimited appeasement policy – with respect to projects from Washington – on the official agenda.

In the face of this, and being the comfortable neighbor of the United States that Mexico is nowadays, the country has gradually become a reliable drug supplier to the United States (opium, heroin, morphine, marijuana, methamphetamines, and other designer drugs produced on Mexican territory, along with the cocaine that comes from the south of the continent, but inevitably passes through the vast territory of 2 million square kilometers).

Mexico is a country of just laws and has a history of being committed to social justice. But in practice it is a country with one of the highest concentrations of in-

2 | See *La Jornada*, April 19, 2012.

come. It is also a reliable supplier of oil and natural gas to its neighbor to the north, a haven for foreign investment, and a massive supplier of cheap labor for agricultural production, trade, tourism, hotels and restaurants, the construction industry, and domestic services required in the United States. It provides migrants to its powerful neighboring economy, and it also provides Central American citizens who – in huge numbers and traumatized – cross through the Mexican Republic in an attempt to make the “American dream” come true.

There is a kind of accepted inevitability that US drug addicts give their noses, lungs, mouths, veins and money, while Mexicans deliver the deaths in midst of uncontrollable violence, allowing drugs to cross the northern border and satisfy the needs of the most demanding – and largest number of – consumers in the world.

As said above, the traditional division between Mexican supplier and US consumer has changed and the number of Mexicans addicted to cocaine, marijuana, and designer drugs has increased substantially over the last five years, making the country an important consumer too.

The wealth of the cartels remains untouched

Organized crime has created a parallel economy that allows its members to buy sophisticated weapons, distribute bribes to the police and the army, fund armies of gunmen, and dispose of armored vehicles, aircrafts, boats, trailers, and all kinds of transportation to traffic tons of drugs.

The publicized detention of drug barons was not sufficient to achieve a dismantling of the criminal organizations. It did not even deprive them of their economic power. This became apparent in the case of two of the most notorious drug barons, Osiel Cárdenas Guillén (former leader of the Gulf Cartel) and Benjamin Arellano Félix (former leader of the Tijuana Cartel). They were initially detained for several years in a high-security prison in central Mexico (La Palma, in Almoloya) before being extradited to the United States, where judges benevolently sentenced them to 25 years each. Although these syndicates were among the most dangerous and bloody in the world, they were only ordered to pay €50 and €100 million, respectively. These amounts did not cause them any sleepless nights, nor did paying them leave their families without money, because both were able to keep their multimillion-dollar fortunes intact. Former Mexican anti-drug tsar José Luis Santiago Vasconcelos even maintained that the cartels formed an alliance in prison to merge their organizations so that they could confront the very powerful Sinaloa cartel, whose famous bosses are Joaquín “El Chapo” Guzmán, Ismael “El Mayo” Zambada, and Juan José Esparragoza Moreno “El Azul,” who all remain at large. What this basically means is that they continued their illicit business from prison. (Vasconcelos died in the same air accident that killed the young Secretary of the Interior, Juan Camilo Mouriño, on November 4, 2008, when the Lear Jet 45 arriving from a short flight from San Luis Potosí crashed into a luxury residential area of Mexico City).

Although the number of the dead and missing as a result of fighting organized crime is insane, Mexico only decided at a very late stage – it was announced in 2012 – to directly combat the money laundering within the context of organized crime, which is said to amount to up to €40 billion annually.

When, in February 2012, the Attorney General's Office published data about seized assets from organized crime, this initially seemed to impress public opinion, however, when compared to other countries and to Mexican statistics, the achievements are actually pathetic. In the five and a half years of Felipe Calderón's government, the Attorney General's Office seized dollars, euros, and Mexican pesos in cash equivalent to almost a billion dollars (VI presidential Pronouncement/Informe). The average for 2,000 days was half a million dollars a day, which is more or less 7 million pesos a day. But when we divide the estimated earnings that Mexican cartels generate from drug trafficking and the whole range of related and parallel offenses every day (let us say the amount is \$36 billion, although some sources calculate more), the daily profit would be at least \$100 million, or, converted into pesos, 1.4 billion pesos every day, of which authorities only seize less than 7 million pesos daily. This quantity represents only 0.005 percent.

The information that best reveals this official incapacity to deprive organized crime of its economic and financial power was provided by Dr. Edgardo Buscaglia, who is studying the phenomenon at the University of Virginia, USA, and at the Instituto Tecnológico Autónomo de México, and who is a United Nations advisor to missions in dozens of countries. "These random seizures represent 20 or 25 times less than those confiscated in the same period in Colombia, whose economy is much smaller than that of Mexico," says Buscaglia. Strangely enough, while in Mexico seizures and detentions take place against the adversaries of the Sinaloa cartel, in Colombia, it is precisely the Sinaloa organization that was deprived of part of its infrastructural assets and its aircraft fleet. "This is a media show," Buscaglia continues:

After years of open and obscene financial and criminal impunity in Mexico, they are now starting a confiscation show in the media, while entering a new era of general financial impunity. They want to convince a poor, subdued, and hypnotized people that they are now going to attack the financial backbone of the traffickers.

Buscaglia insists that these are random seizures and not the result of an investigation or a specific campaign against money laundering or an attempt to get at the economic nerve of the cartels.

The head of the Financial Intelligence Unit of the Ministry of Finance, José Alberto Balbuena, acknowledged at the 13th International Seminar for the Prevention of Money Laundering and Financing of Terrorism, organized by the Bankers' Association of Mexico in 2011:

When I am asked at international meetings: “Listen, how much money is laundered in Mexico?” I answer that the figures range from \$15,000 to \$50 billion. [...] What we now know for sure, is that we will no longer seize the \$14 billion a year in the Mexican banking system, the origin of which we did not know in the past.

This figure has decreased to \$7 billion “and the trend is continuing downward.” Mexico is establishing “a robust prevention system against money laundering within the financial system” Balbuena boasted. “Maybe there are still many things to do, but we have made clear progress,” he added.

Criminal organizations try to invest their resources in real estate, jewelry, and vehicles, or they store them. They also invest in security firms, casinos, and betting offices, Balbuena said at the seminar. The Assistant Attorney of the Republic, Patricia Bugarín, referred to cases in which criminals are returning to a “prehistoric scheme” of keeping or hiding the money. “I would not say under the mattress, but we have definitely observed that, and we are looking for intelligent mechanisms to seize this money and to prevent it from entering the financial system.”

The Attorney General of the Republic, Marisela Morales, confirmed that the government strategy is to curtail the operational, logistic, and financial capacities of criminal groups and, in doing so, demolish their capabilities to bribe, acquire weapons and vehicles, and hire gunmen to fight opposing groups and even the authorities. The government, at that time, still had 15 months in office when Morales stated that “[w]e will only be able to defeat crime when we deprive criminals of the material resources that enable them to buy the means to generate violence and achieve impunity.”

President Felipe Calderón launched an initiative to combat money laundering in 2011, which was approved by the Senate committees, but which, as of 2012, still had not become law. The National Institute of Criminal Sciences researcher Ramon Garcia Gibson estimated that between \$25 and \$40 billion is laundered in Mexico. There is also a great deal of cash-smuggling resulting from drug trafficking, which is difficult to calculate, he added.

A survey by the Chamber of Deputies on indicators of money laundering and government actions estimated that the amount of deposits in the Mexican banking system that were not justified by a legitimate source was still \$10 billion in 2011.

There is reliable data that income from organized crime activities in Mexico generates between \$36 and \$38 billion annually, according to Global Financial Integrity and the University of Columbia, which say the figure equals to 3.6 percent of GDP. The same source estimates that earnings from drug trafficking in the United States amount to \$196 billion, which is, however, hardly 1.3 percent of GDP. In contrast, the independent organization No Money Laundering calculates that the illegal gains of Mexican trafficking groups have reached 5 percent of GDP, which would amount to more than \$59 billion a year.

Are criminal organizations superceding the state?

In Mexico a factually weak civilian government is protected by increasingly repressive armed forces. Add to this emergency the threat of a National Security Law that is still being debated in Congress, and which would give absolute powers to the executive to declare states of the military and the government. All of this reveals a fundamental contradiction: On the one hand, is implicitly admit the failure of the anti-drug strategy because the government is losing control in some regions of the country. On the other hand, the military and the government explicitly insist on maintaining the punitive paradigm against drugs.

General Guillermo Galván Galván is the National Secretary of Defense. In some of his most honest moments, he has confirmed that criminal organizations have taken over state institutions in some regions where “public security has been completely overrun.” He admitted that “we must acknowledge that security is under a serious threat today.”

Then there is the confession made by President Felipe Calderón at the 6th Summit of the Americas in Colombia that organized crime is usurping the functions of the state. He made that statement in a conversation with President Ollanta Humala of Peru, who translated the content of this bilateral exchange to the media as follows:

We not only have to find out what measures we should take jointly, but also establish what we do not want for the coming years – and this raises the issue of illicit drug trafficking and other illegal economic activities which are developing. Some heads of state have noted that drug trafficking is about to usurp the functions of the state in some places, as the President of Mexico has already maintained: look at the issue of tax levying, for example, where such organizations are competing with the state in such areas.

Calderón did not deny this version, but confirmed and reinforced these comments a few days later at the World Economic Forum on Latin America held in Puerto Vallarta, on Mexico’s Pacific coast. He maintained that if the functions of a state are, among other things, to guarantee security and raise taxes, drug traffickers operate as a “parallel state” because they levy duties as if they were taxes, and impose their own rule of law:

In traditional theories of state and law, the state is defined by its monopolistic characteristics: it has the monopoly of law, the monopoly of levying taxes and the monopoly of power [...] Nowadays, the misters (drug barons) have come to a position where they contest the monopoly of state power, establish their own power, come to a place and impose their own law there, and finally, levy their duties which are like taxes the state does not levy: we are talking about a parallel state.

The Mexican president added:

We must ask ourselves: Who rules, the mayor of a place or the drug baron? Who rules, the governor of this state, or the boss of the group, or the boss of the Mafia established in that state? Who rules in a country, the President and Congress or the laws of the drug barons?

All these discussions were followed by a repetition of the anti-drug strategy in Mexico – despite the fact that it had totally failed. It is a “big mistake” to let the criminals do what they want and (allow them) to cause a shockwave in which they even dispute territories, Calderón said. “We must fight them, we must arrest them, in that we cannot give in.” On the other hand, he recommended establishing more powerful institutions, because those existing in Mexico and throughout Latin America “are tremendously vulnerable; the police forces are fragile, corruptible, poorly armed, and poorly recruited.”

In turn, the International Narcotics Control Board declared that drug traffickers have succeeded in undermining the state apparatus, including the federal and state police, the criminal justice system, and the media, exercising corruption, threats, and intimidation.

To fight crime, the Mexican government employs almost 70,000 soldiers and marines, as well as more than 30,000 federal police officers who organize massive operations to suppress crime in more than half of the states of the Federation.

The problem is, however, that with the entry of the federal forces (who act like an invading army, says human rights activist Gustavo de la Rosa Hickerson in Ciudad Juárez), brutal violence has increased dramatically and is far from diminishing. Juárez is a good example, as it was the location of about 150 brutal murders in 2007. The army moved in massively in March 2008, and in the same year violent murders numbered 1,600 – a figure which rose to 2,400 in 2009 and to 3,200 in 2010. Federal, state, and municipal governments tell us that figures fell in 2011 – not compared to 2007, however, but only in relation to the previous year, in which the number of murder victims in one border community had multiplied by 20. In this community, the phenomenon of “femicides” also shot upwards, which has made Juárez a place of notoriety worldwide since the 1990s. By the second half of 2012, figures for femicides stood at around 500 victims for the period between 2007 and 2011, a number higher than in the previous 15 years combined.

It is almost commonplace to say that the major challenge is to bring the army back into the barracks.

The Mexican case is paradigmatic in this regard. Discussion on a presidential initiative on national security has been pending in the Congress of the Union for more than two years. This initiative aims to proclaim a state of emergency in areas where crime – according to the ruling government’s opinion – threatens the stability of the country. Meanwhile, the Penal Code and the Federal Criminal Procedure Code are being reformed, giving prosecutors and the police the possibility to search homes, track people, carry out all kinds of espionage activities, and to intercept telephone calls, mail, and emails without requiring a court order. This means that the police state, which already exists in the laws and in practice, will

be complemented by the ominous force of an intimidating militarized state that is repressive and not accountable to the authorities.

On the other hand, although the Mexican armed forces were still acting as their own judges in 2012 in cases where severe human rights violations had been committed by them against civilians, the Supreme National Court of Justice declared in August 2012 that provisions in Article 57 of the Code of Military Justice, which allow for the extension of military jurisdiction, were unconstitutional. This means that, in the future, members of the armed forces will have to answer to local or federal civilian courts for human rights violations against the civilian population.

The controversy was immediate. Civil organizations applauded the decision that the Supreme Court judges adopted by an 8–2 vote, while legal experts maintained that the decision of the Supreme Court judges was limited to “interpreting military jurisdiction” (in force since 1933), because the power to alter laws is an exclusive power of the Congress of the Union, which by then had not pronounced itself on the issue. It should be remembered here that the Inter-American Court of Human Rights had urged the Mexican government to reform Article 57 of the Code of Military Justice, but that Congress had not reached any agreement on this matter.

There is another article in the Code of Military Justice that has not been rescinded – Article 81. In its fourth section, it grants power to the Secretary of National Defense to grant pardons, even to soldiers and officials who have already been sentenced. Brigadier General José Francisco Gallardo has confirmed that during the administration of Felipe Calderón criminal prosecutions ordered by the civil courts were stopped in this way in hundreds of cases by the Secretary of Defense, General Galván.

In 2012, for the third time, there were highly contested presidential elections in Mexico (the others were in 1988 and 2006). They were characterized, for example, by the use of many millions of dollars of uncertain origin to secure votes, thereby guaranteeing the return to power of the Institutional Revolutionary Party. This was preceded by several years of media campaigns – using resources from the Treasury – creating the image of an unbeatable candidate who was unconditionally supported by the powerful electronic media. In addition, there were biased surveys prior to the election that artificially elevated the electoral advantage of this “invincible” candidate for the presidency. Enrique Peña Nieto was finally recognized as winner by the Federal Election Court and will be president of the Republic from 2012 to 2018. However, at least 15 million voters did not vote for him but for Andrés Manuel López Obrador, who had already been denied the presidential victory by official institutions and the powers that be on two previous occasions.

6.2 Extortion in Everyday Life in Mexico

*by Marco Lara Klahr**

Social relationships in Mexico can, in many ways, be considered to be “extortionary social relationships.” This is not, unfortunately, a trivial generalization but an empirical observation that reveals that the offense of extortion is a common and normalized practice in everyday interactions – although its visibility in the public is virtually zero. The same applies to its judicial prosecution due to ambiguous, contradictory, and anachronistic laws. Public prosecutors and judicial administrations are corrupt and bureaucratic. Victims prefer not to turn to the police authorities or to public prosecutors because of apathy, disbelief, distrust, and fear – including the fear that the authorities are accomplices of the criminals, or corrupt, or merely inept.

One truism fueled by the rhetoric of high-ranking officials and politicians – whose vision of power focuses on a so-called punitive populism – supposes that it is mainly criminal organizations that are engaged in blackmailing. However, it is not that simple. There are many documented cases of children who blackmail their schoolmates, or of municipal police forces, as in Tapachula, on the southern border, who sexually blackmail children from Chiapas and Central America. There are couples who revert to extortionary practices to gain advantage in a divorce or maintenance claim case – for example, bringing unsubstantiated charges against the other person for domestic violence or sexual aggression against children. There are relatives, colleagues, cellmates, neighbors, tenants, partners, police and military officers, and public prosecution officers who “select” persons who will then be blackmailed by others. There are police and military officers, prosecutors, and judges who are involved in extortionary networks or who allow for the impunity of such networks. There are extortionary journalists, civil servants, and entrepreneurs. There are corporate conglomerates with financial branches that attract extortionary money, and there are organizations, such as The Knights

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Templar in the State of Michoacán, that are highly specialized in the field – which does not mean that they are the only criminal organization engaged in extortion.

But perhaps the most harmful thing is that there are citizens who consider certain forms of this criminal practice to be normal, necessary, and even beneficial or inevitable – as happens in some places in Michoacán. A senior municipal official in Uruapan, a city located in that state, expressed such fatalism toward systematic, extensive, and unpunished extortion as committed by The Knights Templar, when he stated in an interview for a local study on violence, crime, and the media in late August 2012 that: “If it happens to you, it happens to you, and if it happen to others, what can you do? The only thing is to tell them, ‘I give you my condolences and period, because I cannot do anything.’ It is like that, of this scale, because, in addition, to whom do you complain, where do you go?” Six months earlier, in Tacámbaro, in the Michoacán zone of Tierra Caliente, a businessman engaged in the production and export of avocados to Japan expressed a similar opinion: “They [The Knights Templar] have cleared the region of thugs, they provide justice and a service for the collection of difficult debts. We are safer and that’s what they charge us for, or that is what they tell us.”

According to Mexican criminal law, extortion is considered to be “serious,” if someone forces “somebody else to give, make, cause or tolerate something for obtaining a profit for him/herself or somebody else, or causes financial loss to someone.”¹ In reality, thousands of victims are, first, victims of extortion, and then, become victims of harassment and psychological torture, home searches, coercion to commit a crime, dispossession, kidnapping, physical torture, and murder, which sometimes extends to their family and friends.

All this happens surreptitiously without the victims knowing the identities – or sensing the powers of – the perpetrators that harm them, and it all happens without recourse to the police, the military forces, or a public prosecutor. A 45-year-old lawyer from Michoacán, who twice became the victim of extortion in the metropolitan area of Monterrey, reports:

I wanted to go crazy, scream, disappear. We stopped at a public prosecutor’s office on Avenida Gonzalitos and I got off screaming like crazy, “Help me, they kidnapped my daughters, give me the phone number of the navy, talk to the army, please!” No one listened to me. The officials laughed at me. “Calm down, Madam, what the hell happened to you? You are crazy!” They brought me to an office and told me to sit down so that they could take my statement. They had taken my daughters, and I thought I would never see them again! Neither the army nor the police or the public prosecutor wanted to listen to me, then, devastated as I was, I cried out to God with all my heart.

1 | Federal Criminal Code, Article 390.

Her husband and daughters survived the kidnappings. Their home was raided and looted and today she is still fleeing criminal harassment with their family.²

This testimony, along with hundreds of others, clearly tells us that, unlike other crimes, extortion not only produces financial damage but is usually followed by a spiral of violence, a damage to psycho-emotional and physical integrity, a revictimization, and total neglect of victims by institutions.

The CIDAC (Center of Research for Development) defines eight offenses (CIDAC 2012) that should be prioritized by the criminal police – if the government wants citizens to feel safe – because of the severe psycho-social impacts they inflict. Unlike other offenses, these eight cause great social upheaval, an extreme sense of personal and collective powerlessness, a sense of certainty that the perpetrators will go unpunished, and a predictable change in the behavior of citizens in public spaces because of fear. However, partial responsibility for this also lies with a news industry that profits from social fears and refuses to accept its social responsibility.

According to CIDAC, extortion occupies the fourth position among the eight most intimidating offenses, followed by kidnapping, murder committed by organized crime, and willful injury. The federal states of Tabasco, Michoacán, San Luis Potosí, Chihuahua, Baja California Sur, Baja California, Quintana Roo, Jalisco, Durango, Mexico City, Oaxaca, and Morelos are those that suffer from the highest incidences of these crimes.

CIDAC concludes that something that starts out as extortion can result in kidnapping, looting, coercion to commit crimes, and murder. It must be taken into account that the ability to dispose of the necessary criminal infrastructure needed to engage in extortion often leads, in turn, to threats, bribes, blackmailing, murder, and arms trafficking in an atmosphere of impunity, producing a “cascade effect” of unpunished crimes, which increases the level of illegality and violence. In addition, economic and financial aspects apply: “The strong links between the offenses may be, in part, due to the existence of economies of scale within criminal activities” (CIDAC 2012, 42).

Viewed in context, this phenomenon leads to the consideration that the Mexican state creates incentives to break the criminal law; it also explains, in part, the universalization of extortionary practices with its maelstrom of associated offenses. The National Survey on Victimization and Perceptions of Public Safety 2011³ found that, for example, with respect to 87.7 percent of the crimes committed, victims did not report them to the competent authority – the public prosecutor – in particular because they considered it a “waste of time” or because of “mistrust of the authority,” “fear of the aggressor,” “red tape,” “hostile attitude of the authority,” or “fear of being blackmailed” by the public servants themselves. As far as the

2 | This quote was taken from the author’s report “Extorsión y otros círculos del infierno,” which will be published in early 2013 by Grijalbo.

3 | National Institute for Statistics and Geography Mexico, 2011.

reported crimes are concerned, only 1.3 percent of those responsible for the crime were sentenced by a judge.

This scenario is already overwhelming, but it must be added that regarding the offense of extortion – and even worse, regarding kidnapping – the *hidden figures*, that is, the numbers including those offenses not reported within the criminal system, are higher in some federal states than those for all other crimes combined; at the same time, judicial proceedings in which a conviction is obtained are fewer in number. According to information provided by the Citizens' Institute for Insecurity Research (ICESI 2011), there is,

almost total impunity for extortionists in Chihuahua and the Federal State of Mexico, a situation which is aggravated by the fact that 69 percent of investigations of extortion are concentrated in Chihuahua and in the State of Mexico. The figures are appalling: of 3,158 preliminary investigations initiated in cases of extortion in the State of Mexico, only 2.5 percent went to trial, that is, 79 cases. In Chihuahua, only 7 (0.9%) of the 764 preliminary investigations initiated went to court.

In turn, generalized impunity at a national level – which is even stronger in certain local areas – and global integration, create an explosive mixture.

Another truism fueled by “punitive populism” is that of the “drug cartels,” which are being presented as highly structured criminal organizations specializing in the production, purchase, sale, and distribution of illegal drugs, when they are, in fact, opportunistic structures which go far beyond supplying the illegal drug market, and are able to develop scale economies and explore the most diverse activities, including extortion. Moisés Naím of the Carnegie Endowment for International Peace writes:

We are used to dividing trafficking into different product lines [...] But these product lines are no longer separate from each other. Those engaged in illegal trade change the product line depending on the economic incentives dictated or due to practical considerations. [...] We definitely must forget the idea that we can distinguish between different types of illegal business, and must start thinking of those involved as commercial agents who have simply developed functional features without being permanently confined to them. Rather than distinguishing between drug traffickers, smugglers, pirates, “coyotes,” snakeheads, mules or camels, we should rather, when thinking about those involved in such illegal business activities, consider the role they actually play, for example, as investors, bankers, entrepreneurs, agents, carriers, storekeepers, wholesalers, logistics managers, distributors. [...] When we start to see them as commercial opportunists whose incentive is profit, it becomes clear that there is no reason for them to confine themselves to a single product. All illegal businesses are profoundly intertwined with legal ones. [...] traffickers find strong incentives to combine their illegal operations with legal business initiatives. The extraordinary profits they accumulate, exert, for example, a logical pressure towards diversification. This often means investing in activities that are legal and have nothing to do

with any unlawful business. And whether they are voluntary or involuntary accomplices, there are many professions and institutions of all kinds that eventually function as a support for illegal business, as there are banks, airlines, shipping lines, transport agencies, truck drivers, messenger services, jewellers, art galleries, physicians, lawyers, chemical and pharmaceutical laboratories, international money transfer companies and many more that provide the infrastructure which allows illegal trade to operate quickly, effectively and inconspicuously. (Naím 2006, 300-301)

This is the reason why the Financial Action Task Force has described 22 categories of offenses (Financial Action Task Force 2003) as terrorism, among them smuggling, sexual exploitation, and contract killing, as well as trafficking in persons, organs, weapons, and stolen property, theft, piracy, counterfeiting, environmental crime, illegal restraint, kidnapping, and extortion. The Task Force proposes that these crimes be combated in an integrated way. The criminal organizations are thought to work in collusion with government officials and entrepreneurs of all kinds. They depend on a broad social foundation and function through economies of scale that allow and oblige them to diversify their illegal market products and services.

The Knights Templar is one of the criminal organizations that, since its inception as The Michoacán Family, has consolidated itself most efficiently as described above. For its leaders, there is no social group or economic activity that cannot be subject to extortion, and there are no geographical or market boundaries. The organization functions in line with a global logic, in the same way as Coca-Cola or any other transnational corporation does. It has a sound social and territorial basis in its state of origin and in the neighboring states – Guanajuato, Jalisco, Colima, Guerrero, and the State of Mexico – where it has co-opted municipal, state, and federal authorities by corruption or terror, and where it employs hundreds of people in its illegal activities. Thus, the organization is not only involved in the sale, purchase, production, import, and export of marijuana, methamphetamines, heroin, and cocaine, but also in the trafficking of persons into the United States. It charges for “right of way” and collects tolls from traders, craftsmen, entrepreneurs, civil servants, and politicians. It buys and sells weapons. It massively produces and distributes pirated products. It steals and traffics fuel, and participates in or “expropriates” businesses, always relying on bribed or coerced notaries, in a wide range of industries, including the avocado business, mining, and transport, counting on networks both in the United States and in China.

In sum, it is a “criminal syndicate” – as Georges W. Grayson from the Center for Strategic and International Studies put it – that at its base commands a popular paramilitary force, and at its apex has executives with CEO profiles (Grayson 2010, 18). All this takes place under a charismatic leadership that not only manages the retail market for marijuana in the mid-west of Mexico, but is also responsible, to a great extent, for the extraction, transport, and export of minerals to China via the

port of Lázaro Cárdenas – a business that is associated with “legal” entrepreneurs of various nationalities.

Legitimized by a belligerent rhetoric, President Felipe Calderón militarized public safety as a core element of what he pathetically called a “war on drugs” from 2007 onwards – an effective bait for a news industry that is, to a large extent, submissive and uncritical toward the authoritarian nature of his public security policy. This war has exacerbated lawlessness and violence, which has led to tens of thousands of unsolved deaths, victims, massive human rights violations, and new spirals of crime and violence. It has also led to entire regions falling under the control of criminal groups that are usually associated with members of the state security forces, such as is the case with The Knights Templar.

Despite this public policy – which prejudices human rights, civil security, criminal justice, welfare in the public space, and social peace – and despite President Calderón’s justifications of this policy’s tragic social costs, corruption and impunity in Mexico allow, encourage, and empower not only organizations with the profile of The Knights Templar, but also any other organization opting for extortion, even “on a small scale.” All of these activities certainly involve public civil servants at all levels, as can be seen from Mexican prisons, police institutions, prosecution agencies, and courts, as well as from events like the criminal attack against the Casino Royale in Monterrey, Nuevo León, in August 2011, in which 52 people were killed. Another example is the police operation that cost the lives of 12 people in the News Divine discotheque in June 2008, which happened in the north of the federal district.

A third truism within “punitive populism” is that security, justice, and peace can only be achieved if “violent elements” are exterminated, whatever that means. According to this preconception, the violation of human rights may become legitimate, and even vital, if this allows the government to fulfill its responsibility of guaranteeing public welfare.

In the regulatory criminal framework, there is no such criminal type as “violent.” According to the law, the competent public institutions are obliged to prosecute and punish a person or group of people who have committed a crime – in a fair, appropriate, and proportionate manner – and to ensure, above all, that the violated rights of the victims are reinstated. In contrast, “punitive populism” proposes in its medieval, *reloaded* perspective that there are citizens who – because of their acts, or alleged acts – must be eliminated, while ignoring victims’ interests at the same time. This is a breeding ground for extortion and other crimes that are usually committed surreptitiously. Since it is often impossible to effectively punish those responsible, institutions opt to punish those who are within their reach, further encouraging impunity and allowing extortion to continue. The expert Guillermo Zepeda Lecuona thinks that the inquisitorial criminal justice system “does not seek the one who did it, but the one who pays for it” (Lecuona 2010, 21).

The detrimental impact such a state of affairs has on the quality of democracy is overwhelming. As has been shown, extortion not only damages the victims

materially and submits them to criminal pressures that might severely damage of their physical and emotional integrity, resulting in their complete helplessness, it also fails to punish habitual offenders, because, in principle, the crime is not even reported. All this causes a permanent state of collective alarm and disrupts coexistence in the public space.

A couple of years ago, the International Bar Association published a revealing document about the full observance of human rights as a prerequisite for democracy: *In Human Rights in the Administration of Justice. A Manual on Human Rights for Judges, Prosecutors and Lawyers*. In this it is stated that: “[I]f the state pursues a deliberate policy of denying fundamental rights [...] this will endanger the internal security of the state.” While on the other hand, “[A]n effective protection of human rights promotes peace and stability at a national level, meaning both that people may enjoy their rights and basic freedoms, and providing a basic democratic, cultural, economic, political and social framework in which conflicts may be resolved peacefully” (IBA 2010).

This is not to argue that violence or crime may cease to exist – nor organized crime and the violence that is inherent to it – but that respecting human rights is an “essential prerequisite for peace and justice at an international level, as it [the effective protection of human rights] provides a rooted safeguard, offering people ways to reduce social tension at home before it reaches dimensions which create a threat of a major scale.” And, moreover, this protection must come about from the lowest institutional level, the municipal level, simply because it is “the basis for justice, peace and economic and social development throughout the world” (OHCHR 2003, 5).

When explaining his reasons for seeking exile in Poland, with the experience still fresh, a Mexican businessman who had been persecuted mercilessly by the extortion branch of the criminal organization Zetas in Xalapa (Veracruz), stated: “I did not want to waste my life on that damn dream that I could find a place for myself in Mexico. Here, I found a way out. Mexico, in fact, did not allow me to have long-lasting dreams. All that we were and had is gone. If I had stayed in Mexico, I would have had to hide like a rat, a rat with money: I couldn’t be at home, drive my car, stay in my office or see a brother because all that would be dangerous, so to hell with it!” (Klahr forthcoming).

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6.3 CIVIL SOCIETY'S STRATEGIES TO CONFRONT GROWING INSECURITY AND VIOLENCE IN MEXICO

*by Ingrid Spiller**

For around the past five years, both public and private life in Mexico have been dominated by violence and insecurity to a shocking extent. This can be mainly attributed to the influence of organized crime, and in particular to the actions of drug cartels. However, the state security forces such as the police and the military are often also involved in crime through corruption and nepotism. In turn, they enjoy the protection of politicians at almost every level for their illegal – and often cruel – activities.

Mexican society has been slow to react to these recent developments. Most of the population appears to be paralyzed by this escalation of violence, as if to say, “It’s not happening to me, but to other people, and it is best not to get involved.” Consequently, the election campaign for the 2012–2018 presidency in Mexico took place with almost no mention of the issues of lack of security and violence, although this was perceived as the second most pressing problem after the state of the economy.¹

“Enough is enough!”

Despite this general paralysis, there are more and more courageous people who refuse to simply accept the current situation and have decided to fight for security, justice, and the rule of law. The Movement for Peace with Justice and Dignity, formed at the beginning of 2011, has gained international attention. The Mexican poet and journalist Javier Sicilia set up the movement following the brutal murder of his son Juan Francisco and six other people. The murderers were linked to the world of organized crime.

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1 | Consulta Mitofsky: México Evaluación De Gobierno, Trimestre 21 de Felipe Calderón, February 2012.

Juan Francisco's murder became a wake-up call for the paralyzed civil society. He was a member of "mainstream society" with no suspicion of links to organized crime, nor was he connected to the circles of money and power.

Sicilia is held in high regard in Mexico, and his very public display of grief and his open accusation of those responsible for his son's death touched a nerve with many people. His call "*Estamos hasta la madre*" ("we are fed up") was adopted by many as their motto. Sicilia criticized the government and the political classes for their complicity in – or their inability to put an end to – the violence and terror. The success of President Felipe Calderón's strategy, introduced at the start of his presidency in 2007, of deploying the military to combat organized crime, was far less than promised. Indeed, those years saw a literal explosion of violence and increasing numbers of people who were not directly involved were caught in the crossfire, many losing their lives. Their deaths are brushed off by the government as "collateral damage." Activists and human rights organizations, however, also claim that the security forces use their deployment to target inconvenient political activists.

Sicilia was also the first to address the cartels directly with his accusations: "Sort out your business among yourselves. Why kill us?" Thanks to his privileged access to the media and his friendship with many intellectuals, people working in the culture and media industries – as well as his own celebrity status and his work as a journalist – Sicilia's message was heard throughout the country. This is despite the fact that the large media outlets, in their usual way, were interested more in sensationalizing his grief and less in promoting his political message.

Many thousands of people heeded his call for protest marches across the country; the three-day silent march from Cuernavaca to Mexico City had swollen to some 100,000 participants by the final rally on May 8, 2011. Two "Caravans of Consolation" across the republic followed. One set off in June of the same year from the north of the country, traveling through the cities of Monterrey, Saltillo, and Durango to Ciudad Juárez – all of which have been particularly hard hit by the violence. The second march began in September and led through the states of Guerrero, Oaxaca, and Chiapas to Mexico's southern border. One year later, a caravan set off for the United States.

"Protest march in white"

These demonstrations were not the first mass outcry in the country against violence and crime. In August 2008, almost 200,000 people in Mexico City alone heeded the call of businessman Alejandro Martí to attend a protest march in white, after his 14-year-old son was kidnapped and murdered. In 2004, an estimated 250,000 people marched in silence through the capital in protest against the rising number of kidnappings and the increasing lack of security. The large response was due in part to the fact that the major media outlets supported the call to protest that was issued by members of the business community. Many from

the political left distanced themselves from the actions at the time, believing them to be right-wing propaganda; these included the then PRD mayor of the capital, Andrés López Obrador, who saw the demands of the protest marches in 2004 as a direct political campaign by the right against his government project. In 2008, the left also found it difficult to give its support to the "Protest march in white." The calls for a greater presence of the (often corrupt) state security forces and tougher punishments for the perpetrators – even including for the reintroduction of the death sentence – made these differences appear to be unbridgeable.

The new protest movement

The new protest movement today is substantially different from the two other demonstrations, which were basically sporadic, if impressive, manifestations without far-reaching consequences. Today, Mexican society has changed somewhat. The movement – particularly in its infancy – gathered together a very broad spectrum of people in spite of their disparate political standpoints: Christians and Zapatistas, feminists, human rights organizations, indigenous groups, the political left, young adults, and media representatives. Notably, the movement was the first time victims' relatives also became organized. Until then, such people had been largely left to fend for themselves, with little support. Not only had their loved ones been killed by criminals, the police, or the military, for a long time the government, in its "war against the drugs mafia," also denounced the victims as involved in organized crime. This made the death or unexplained disappearance of these people seem unimportant, as if to say, they had brought it upon themselves. This also resulted in the stigmatization and isolation of their families.

The movement managed to change society's perception of these events somewhat. The media now increasingly reported on the deliberate or accidental targeting of innocent people by the cartels or the security forces. Family members joined together to search for their missing relatives. They received almost no state support in their efforts, and eyewitness reports say they were often deliberately led astray. The movement began to draw up a register, not only to give the victims a name and an identity, but also to keep their cases open and eventually achieve justice. Finally, the movement attracted so much attention, both nationally and internationally, that government members and President Calderón found themselves personally obliged to show they were willing to engage in dialogue. The first meeting of the president and members of his security cabinet at Chapultepec Castle, which was streamed live on the Internet, was followed by further meetings, including with members of parliament and with the presidential candidates during the election campaign. The results of these meetings were rather meager; many high-profile promises, for example to investigate the fate of family members, were not kept. However, some real political successes were achieved, although they were insufficient in number. For example, it was possible to stop the passage of a security law that would have given the military even more wide-

ranging powers. Also, a special state prosecution service was set up for the victims of violence. The required victims' law remains under political debate, after President Calderón vetoed a law drawn up jointly with Congress, due to concerns about its constitutionality.

Diversity is not always strength

Political and strategic differences have now caused the movement to lose some of its power to mobilize people. Members of the more radical spectrum on the left in particular were unwilling to enter into a dialogue with the government and parliament. They did not believe there was serious interest in a real exchange, especially since they held many members of the government and parliament directly responsible for the violence; consequently, they had no wish to be utilized for propaganda purposes. There was also disagreement within the movement concerning some core demands. The platform of issues became very broad, weakening the movement overall. Agreement was eventually reached on six demands and areas, yet these can barely be tackled using the existing human and material resources. They range from demands to investigate the fates of murder victims and the disappeared, to fighting corruption and impunity and calls for a participatory democracy.

Even if the Movement for Peace with Justice and Dignity cannot live up to the initial, excessive expectations to instigate political and social change, it has attained a high degree of significance in the fight to tackle the apparently hopeless situation regarding violence and the lack of security.

The fight against the “normalization” of violence against women

Numerous initiatives have been set up at the local level that carry out extremely courageous and important work in the field – often at great risk to those involved. In Ciudad Juárez in particular, as well as in other northern Mexican cities, (women's) initiatives and organizations have formed in response to the insane number of unsolved murders of women. Activists call this phenomenon “femicide,” highlighting the specific character of these murders, which are directly related to the gender of the victims, and which are often particularly gruesome. They are an extreme expression of the structural violence against women. The perpetrators are to be found mainly in the family environment, but also within organized crime structures. The lack of sufficient data makes it impossible to establish a systematic link between the cartels and femicidal murders. Although different motives may lie behind each individual case, they are all characterized by the incredibly low esteem, or even hatred, in which women are held, which in turn is an extreme expression of structures within Mexico's “macho” society.

Within these structures, it is then only “logical” that the police and justice system, as well as the political system, have little or no interest in investigating

and punishing these crimes, and may even display a certain tolerance for them. For this reason, activists are also fighting the “normalization” of violence against women. Their demands are not only for the state to accept its responsibilities to investigate these crimes, punish the perpetrators, and to protect women, but also for society as a whole to accept its responsibility. In this context, many female activists are themselves in the firing line, including for example, Norma Andrade, founder of the organization *Nuestras Hijas de Regreso a Casa* (May Our Daughters Return Home), who has been the target of several attacks. Another activist, Marisela Escobedo Ortiz, was killed in cold blood and in broad daylight by an unknown assailant in December 2010 as she demonstrated outside the Governor's Palace in Chihuahua in protest against the authorities' inaction in seeking the person who murdered her daughter, then aged 16.

No impunity for the military

One of the issues tackled by traditional human rights organizations is that of the role of state security organs in the fight against organized crime. In this respect, the military has been the focus of observation in recent years. The Mexican military has repeatedly committed human rights violations during its anti-organized-crime operations in the country. These crimes almost always go unpunished, since soldiers are subject only to military jurisdiction due to the *fuero militar* (special code of justice for the military), which has generally given cover to the perpetrators. Organizations have now succeeded in garnering important international support for their demands that the military courts be reformed and their remits curtailed; this support came in part from a decision handed down by the Inter-American Court of Human Rights. After both Mexico's Supreme Court and President Calderón spoke out in favor of such reforms, it is now in the hands of the legislative powers to turn them into law. Human rights organizations and others are working to ensure that the new draft law on military jurisdiction is based on the American Convention on Human Rights.

Those working to defend human rights in the field face increasing threats as a result of their activities. According to the office of the UN High Commissioner for Human Rights, 156 attacks against human rights activists occurred between 2006 and 2010, of which 98.5 percent remain unpunished. In an open letter to the Rapporteur for Human Rights Defenders at the Inter-American Commission for Human Rights in August 2011, more than 100 social organizations criticized this climate of menace, which had increased notably since the beginning of the “drugs war” in 2006. Soldiers or police officers are responsible for many of these attacks.

Since journalists in Mexico who report on the illegal activities of the cartels and their links to political and business circles also place themselves in great danger,²

2 | Reporters Without Borders names Mexico as the world's second most dangerous country for journalists.

both groups have demanded that the state provide guaranteed preventive and protective mechanisms in risk situations. They were supported in their demand by the Inter-American Court of Human Rights, which repeatedly called on the Mexican government to act in this matter. One initial success has now been achieved – the Mexican Congress passed a protection law in April 2012. The law's final form will decide how effective it is. However, those affected by such threats and attacks believe the best protection lies in effective prosecutions. In view of the fact that an estimated 96 percent of all crimes go unpunished, effective action is urgently required.

Migrants are particularly at risk

The individuals and networks who advocate for the protection of migrants are few in number but of great importance, since migrants have almost no rights. Most of these people originate from Central and South America and intend to pass through Mexico en route to the United States. They are particularly vulnerable, since they generally travel with little money and no official papers. They have been exposed for some considerable time to the terror tactics and unpredictable violence of the youth gangs, known as *maras*, and of the Mexican state security forces, who rob them, extort money from them, harass them, and sometimes even kill them. Women face the additional threat of rape. This situation has worsened in recent years, since the drugs cartels have begun targeting migrants as an additional source of income. The Mexican cartels – and in particular the extremely violent Zetas (made up of former members of Mexico's elite forces) – have specialized in kidnapping migrants and holding them for ransom. If the kidnap victims or their relatives cannot, or will not, pay the demanded ransom, the victims' only choice is to work for the cartel. Those who are unwilling or unable to do this are summarily executed. Repeated discoveries of mass graves bear witness to these brutal crimes.

Support initiatives have been founded – mostly by a range of different churches – along the main transit route to the United States. They provide shelter, a place to sleep for migrants – for a few hours or a few days at least – as well as food and medical care. They are public reminders of what is so often suppressed – that is, the huge dangers faced by migrants, their lack of any rights, and the complicity of local politicians, police, and migration authorities with organized crime. The case of the priest Alejandro Solalinde, which attracted international attention, gives an idea of just how dangerous such work is. His shelter, opened in 2007 in Ixtepec, Oaxaca, has been the object of repeated attacks. He has also received several death threats himself, and had to leave the country for some months in the summer of 2012.

Searching for the disappeared

The bloody drugs war in Mexico has claimed many lives over the past five-and-a-half years, but there is also an increasing number of people who have disappeared and about whose fate nothing is known. They may already be dead, buried in one of the many mass graves that are regularly discovered. Or they may be alive, perhaps kidnapped by the cartels, or even the police or the military. Their families receive little or no support from the state. Corruption and the complicity of politicians, security forces, and civil servants, as well as a lack of training or resources and a lack of interest on the part of the relevant authorities, all conspire to make the search for these disappeared people more difficult. Often, the families of the disappeared invest a great deal of time and money to find information on the whereabouts of their children, parents, or spouses. However, even when they do manage to come by important information and pass it on to the authorities, there is usually no result. Their only sources of support are organizations like Fuerzas Unidas por Nuestros Desaparecidos (United Forces for our Disappeared), which began working locally in Saltillo, Coahuila, but which has spread throughout Mexico as the number of new cases has increased. These organizations gather and collate information and give advice on how to negotiate around the state's indifference, as well as apply public pressure by means of their public relations operations.

No education, no job: Is organized crime the only alternative?

The groups and initiatives working at the local level who find themselves confronted with organized crime now also include many organizations engaged in traditional prevention work with young people. In locations where young adults have no prospects for the future, since no education or employment opportunities are available to them, these people are particularly susceptible to recruitment into the drug cartels. These “ninis” (*ni educación ni trabajo* – neither education nor work) may be attracted by the prospect of making a relatively large amount of money quickly, and the opportunity to acquire other symbols of power such as cars, girls, and respect within their group. Many subscribe to the popular maxim that it is “better to die young and rich than old and poor.”

This can make the work of organizations extremely difficult. They have to gain the trust and respect of young adults, who often have no family roots. In the industrial zones of the north of the country in particular, which were built rapidly to respond to the growing global demand for processed products, without considering the need for social infrastructure, many children are left to fend for themselves. Often, they are the children of migrants from rural areas of Mexico who have to work long hours with no opportunity to arrange childcare for their offspring. Today, these children do not even have the prospect of getting a job in the same factories as their parents, the world's hunger for cheap products resulted long ago in the relocation of production to other countries with even cheaper labor.

All this has led, over the past five years, to an apparently insatiable hunger for new members of Mexico's cartels. The so-called drug war has already claimed between 50,000 and 60,000 lives, and most of those deaths occurred within the environment of organized crime. But for every member who dies, there are others willing and eager to take his place. Prevention work in such a situation is both challenging and dangerous. How can young people be offered an attractive alternative life path? Many organizations offer sporting or artistic activities as a way of boosting self-confidence; they also raise awareness of violence and launch education and even business projects. They campaign for state recognition of this social group and the corresponding funding. They also campaign to improve the public's perception of young adults. All this work must always be based on a foundation of trust from the young people, and this often results in organizations gaining a close insight into the structures and crimes in the field. The result can be hazardous, for example when the cartels begin to feel inconvenienced by such work or when state institutions assume they are complicit in the activities of the cartels.

Indigenous self-determination

Special mention must also be made of the initiative launched by the residents of Cherán, a community in the federal state of Michoacán, where the majority of residents are of indigenous descent. In April 2011, after the La Familia cartel had allowed illegal loggers to cut down and sell much of their forest over a period of three years and for high profits, the residents decided to set up a blockade along the transport route through their village and thus stop the illegal logging. Initially, the community came out victorious in the ensuing violent clashes with the cartel. The route through the village is still patrolled, particularly at night, by guards organized by the residents themselves. The mayor and his people have been driven out of office, since they were accused of maintaining close contacts with the cartel. The community now runs itself according to traditional indigenous rules. They also boycotted the local and federal state elections of November 2011, as they decided no party was deserving of their trust. Violence and crime rates have fallen significantly, and the village is now possibly one of the safest in the entire country. However, attacks from the outside have recently increased – the battle for control of the natural resources has not yet been won.

The important role of civil society

Mexico is a state with weak public institutions. Corruption, unpredictability, and impunity all negatively affect their ability to function. Against this background, the drug cartels have been able, in recent years, to increase their influence continuously. In some regions, particularly in the north of the country, the state has virtually lost its monopoly on the use of force. In other areas, that monopoly has been seriously weakened by the high levels of corruption among the police, authorities,

and politicians. In some areas the local population definitely show acceptance of the “new rulers” – not only out of fear, but also out of gratitude when the drug barons move to improve the social development and infrastructure neglected by the state. In such a context, all efforts by the state to combat organized crime and the lack of security – as well as the high levels of violence that accompany it – must be very limited.

This explains why the many (local) civil society initiatives are so important. They are not able to replace the necessary state functions, and must certainly not allow the state to shirk its responsibilities. But they remain an important and necessary complementary factor in the establishment of security, justice, and the rule of law. They are not only indispensable in the raising of the public's awareness of injustice and abuse and in demanding fundamental reform, they also carry out important, real work, for example in prevention and in victim support. At the local level in particular, their commitment is admirable, especially in the face of the dangers and obstacles they must deal with in order to achieve anything.

It is difficult to make predictions about Mexico's future. The situation is changing constantly and at breakneck speed. Every success achieved by the state's security policy, every gap left, for instance, when a famous drug baron is arrested, is instantaneously filled by organized crime structures. The Sinaloa cartel, for example, began long ago to turn its hierarchical structure into a network, making it much more difficult to pursue and break up.

The answer to the question of whether Mexico will continue devolving in the direction of a failed state,³ or whether it will manage to introduce the reforms that are urgently needed for the rule of law to be re-established – resulting, partly at least, in preventing illegal activities – will depend, not least of all, on whether a strong and active civil society will be able to unite on the most fundamental issues.

3 | Mexico currently is in the mid-range of the Failed State Index, at position 98. By comparison, El Salvador occupies position 93, Honduras 75, and Guatemala 70. Source: Fund for Peace: The Failed State Index 2012 Interactive Grid.

7. Brazil

7.1 VIOLENCE AND ORGANIZED CRIME IN BRAZIL: THE CASE OF “MILITIAS” IN RIO DE JANEIRO

*by Ignacio Cano**

1. The debate on organized crime in Brazil

As in many other countries, the concept of organized crime is widely used by the media and in public debates in Brazil, yet in the penal codes it is vague and its translation into law has been limited. Even though Law 9034/1995 refers to “criminal organizations” and Law 10217/2001 to “criminal organizations or associations,” neither defines what a criminal organization is. Without a precise legal definition, there is no clear consensus on the meaning of “organized crime.”

Brazil is a signatory to the Convention against Transnational Organized Crime of 2000 – also known as the Palermo Convention – so we can assume that its concepts can be considered part of the Brazilian legal system, despite the fact that they have not been translated into national legislation. According to the Palermo Convention, an “organized criminal group” is 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 established in accordance with this Convention, in order to obtain, directly or indirectly, a financial or other material benefit.” “Serious crimes,” on their part, are those punishable with a sentence of at least four years in prison, whereas a “structured group” is one “that is not randomly formed for the immediate commission of an offence” even when they may not “have formally defined roles for its members, continuity of its membership or a developed structure.”

According to this broad definition, one could argue that a sizeable proportion of all crimes committed in most countries could be labeled as “organized crime.”

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As a result, the proposed concept potentially covers many different situations and actors, from international networks that command hundreds of members to a few friends from the neighborhood who regularly engage in robberies or drug-dealing. The main problem with this conceptual breadth is that the term risks losing its specificity and its analytical edge. If “organized crime” can be so many different things, one should ask whether it is a useful term for thinking about crime and designing public policies.

Whereas, in legal terms, there is an obvious need for a clear-cut definition to decide when special legislation addressing organized crime can be applicable, in a broader analysis, “organized crime” should be conceived of as a continuum rather than as a specific phenomenon. In other words, rather than ask whether a certain kind of criminality is organized or not, one should ask to what degree it is organized, and then how this organization operates in practice.

In Brazil, “organized crime” is often employed in public debates to refer to either of the two following scenarios. First, it is commonly used to describe the activities of local criminal networks in poor communities, such as drug-dealers, death squads, or, more recently, militias. These groups typically control small areas and their populations and base their criminal activities precisely on this territorial control. As a result, the disputes over these territories between different groups can be fierce and can result in very high levels of violence. The vast majority of state interventions against “organized crime” attempt to address these kinds of criminal structures. Furthermore, the police are often viewed as one more actor within this territorial dispute.

The second scenario is that of the more sophisticated criminal networks, which infiltrate the state and carry out criminal actions that the public would define as “corruption.” These groups do not have a territorial base and only occasionally resort to violence, acting with more discretion and impunity. They can bribe high-ranking public officials or make them part of their organizations, and they rarely make newspaper headlines.

The differentiation between the above-mentioned scenarios is oversimplified in several ways. Foremost is that both realities are often connected, whereby drugs that are sold by local dealers in *favelas* (Brazilian slums) may have been introduced to the country by international networks that have bribed public officials. On the other hand, local criminal groups also tend to pay off corrupt state agents, albeit of a more modest rank, so they can operate. Ultimately, one of the main distinctions between both realities is the degree of sophistication. Limited though the distinction may be, it serves the purpose of highlighting the sharp contrasts between scenarios to which the label “organized crime” is attached. In other words, some types of crime are truly much more organized than others. Hence, some voices refer to “semi-organized” or “poorly-organized” crime when they describe local criminal gangs in *favelas* composed of young kids with limited education.

In Rio de Janeiro, the gangs that control their respective slums are affiliated with “criminal factions” (*facções criminosas*), larger groups that also fight each oth-

er for territorial control. These factions were created by convicts in jail and then extended their influence to the streets. To this day, each jail in Rio typically houses members of a single faction to avoid violence between their members. There are three main criminal factions in the state. The fact that over the last few years the state of Rio has made a priority of fighting the most powerful of them, the *Comando Vermelho*, has served to fuel the violence, since the others have been trying to take advantage of this in order to gain influence and territory. Meanwhile, in São Paulo the practical monopoly of crime by a single organization, the PCC, has been an important contributing factor in the strong decline of homicide rates over the last decades (Dias 2011).

The existence of criminal factions in Rio has consistently raised alarms concerning their ability to mount a direct challenge to the state, particularly after a few very well-publicized episodes of attacks against police stations, buses, cars, and other public targets, presumably in order to generate fear and intimidate the government. These incidents were defined as “terrorist attacks” by some, though the label was controversial. Despite these concerns, criminal factions in Rio are not structured organizations with centralized command, planning, operations, and targets. They could be better conceived of as loose networks of mutual support that serve local gangs to fend off attacks from the outside or, alternatively, to gather resources to invade new territories. Also, they help settle disputes among members of the same faction.

Given that state repression has been centered on these local gangs, the degree of organization of these criminal factions has been overstated by the government and the media, to the point that they have been equated with “organized crime.” While this has served a political purpose for the government and the elites – overshadowing the role of the more organized and sophisticated criminal circles in which members of these elites partake – the above-mentioned attacks on public institutions and public targets has undoubtedly strengthened this view.

If debates on organized crime and statements by public officials on this issue are common, the topic has received comparatively little attention by academics. Although there are some publications within the juridical realm that deal with the legal aspects of organized crime, in the social sciences and in criminology, research on this topic is relatively rare and mostly focused on specific manifestations and examples. An exception is the work of Mingardi (1998), who claims that organized crime of any significant scale is impossible without collusion with sectors of the state. He distinguishes two types: “traditional” and “entrepreneurial” organized crime. The former could be characterized as comprising a group of people dedicated to illegal and clandestine activities, with a hierarchy of their own and entrepreneurial planning, which includes division of labor and planning of profits. Its activities are based on the use of violence and intimidation, and profits originate from the sale of illicit products or services – plus, they are protected by civil servants. The traits that differentiate them from any other criminal group are a system of clientelism, the imposition of a “law of silence” within their circles,

and the control of territories through force. “Entrepreneurial crime,” on the other hand, appears to be a more blurred concept, mainly defined by the use of methods typical of companies, and by the dismissal of old symbolic values such as honor and loyalty.

The scarcity of studies on organized crime in the social sciences and criminology contrasts with the relative abundance of research on drug-dealing in the slums, mainly ethnographies (Zaluar 1994; Barbosa 1998). This somehow reinforces the interpretation that drug dealing in poor communities constitutes the central manifestation of organized crime in Brazil.

2. Historical roots of organized crime

It has been said that the main difference between colonization in North and South America was the fact that, while the former was led by people who migrated to a new land in search of a new life for themselves and their families, the latter consisted of fortune hunters – including the representatives of the monarchy – who intended to accumulate riches as quickly as possible before returning to their homeland. An economy based on the extraction of precious metals fits very well with this aim.

Whatever the precise historical causes, Latin American countries developed weak states with a low ability to generate revenue and to impose the rule of law, which was mistrusted by their own citizens. Also, authorities were often perceived as individuals attempting to extract personal benefits, which further undermined state legitimacy. On the other hand, social relations in Brazil were always governed by interpersonal connections and by the position of actors within the social pyramid, rather than by abstract and impersonal rules (Da Matta 1981). As a result of all these elements, corruption, which we could conceive of as ignoring or bending official norms in order to achieve personal gains, was traditionally considered as being systemic in the country. Campaigns of candidates based on the principle that they “deliver to the people even if they also steal” for themselves (“*rouba mas faz*”) or former President Luiz Inácio Lula da Silva’s admission that the alleged illegal financing of his party meant that “they did what everybody else did” bear witness to the perception that corruption was widespread.

If, as we have seen, the cooperation of state officials is often thought of as a crucial ingredient of organized crime, there is no doubt that systematic corrupt practices by officials fall neatly within the concept and also constitute the perfect breeding ground for the phenomenon as a whole.

In Rio de Janeiro, leaders of illegal lotteries (*jogo do bicho*) have been financing Carnival parades and political campaigns for decades. Questioned about illegal practices, lower-rank state officials often justify themselves by the fact that their superiors carry out similar behavior, only with higher profits. Along the same lines, lower-rank policemen complain that the disciplinary system treats them

more harshly than officers higher up the ladder, and there is some empirical evidence to support that claim (Lemgruber et al. 2003).

3. The case of “militias” in Rio de Janeiro

Around 2006 the term “militia” was coined in Rio to describe groups of armed state agents (policemen, prison guards, firemen, etc.), who took control of small territories, charging residents and small business owners a fee in order to “protect” them, and monopolizing most economic services and transactions. For instance, gas and water could only be bought at designated shops, at a higher price, whereas transport or Internet services were provided exclusively by their organizations. Often, a levy was placed on real estate transactions in the community. Research showed that this phenomenon had existed for many years in certain areas of the city under different names (Cano 2008), even though there had been a quick process of expansion during 2006 and 2007, including territories that had been traditionally dominated by drug dealers. During those years, these “militias” had purported to “liberate” communities from the dealers, which led to an intense public debate in which some authorities indeed defended such groups as liberators, or at least as a “lesser evil.”

Some militia leaders successfully ran for office in municipal and state elections. Other federal representatives were elected with an overwhelming share of the vote in militia-controlled districts (Assembléia Legislativa do Estado do Rio de Janeiro 2008), which clearly indicated the existence of coercive voting practices (*curral eleitoral*) in such areas.

However, the notion of an anti-drug crusade was weakened by the fact that there had been no drug-trafficking in some of the areas occupied by militias and also by the revelation that a few militias continued to profit from drug sales. Furthermore, it was apparent that the “protection fee” was compulsory, as was the control of economic transactions, so that the whole operation could legally be characterized as extortion. Control was guaranteed through violence, and reports of threats and summary executions abounded in these areas.

In fact, coercive domination by militias shared many traits with other groups that exert similar pressures, such as drug dealers and death squads, that are centered around the control of small territories and their populations as a way to obtain illegal profits. On the other hand, militias, like drug dealers, also developed social assistance in the communities, often paying for parties, medicine, and burials.

Yet there are indeed some differences. Militias, unlike other groups, openly resorted to a legitimization discourse (“liberators”) as a way to help their expansion. They also represent a more organized enterprise that tries to dominate all economic activities. If death squads are supposed to be controlled by local politicians and businessmen – to the point that they can sell their services to different bidders – militias are self-controlled and respond to the initiative of their members. Also,

whereas all criminal groups that exert local control count on the participation of corrupt civil servants (e.g., death squads are routinely composed of police officers and drug-dealing could not exist without the complicity of sectors of the police), militias publicize widely that their ranks comprise state officials, since that is an inherent part of their identity and their legitimization discourse. In other words, they claim to be not just one more armed gang, but a semi-official iron fist that can provide security where the state fails. As a result, they consciously played with the ambiguity of being private and public at the same time.

In May 2008, members of the militia in the *favela* of Batan tortured a group of journalists who were investigating their activities undercover. The incident became a turning point. After this, the media actively spoke out against militias, the legislature began a parliamentary inquiry on this topic, and public officials did not dare defend them in public again. The final report of the inquiry listed the names of hundreds of individuals allegedly associated with the militias. Public prosecutors started bringing charges against some of the leaders of the militias, and many of them were sentenced and lost their seats in the State Assembly and on the City Council. Interestingly, state interventions against militias followed traditional investigative methods against organized crime: wire tapping, intelligence, and arrests. This was a far cry from the way in which the state fights drug dealers, that is through militarized operations involving shootouts to repossess the territory for short periods of time. Apparently, there have been no widespread armed confrontations between the police and the militias. This is due to the fact that the police uses a totally different approach and also that members of militias, many of them policemen themselves, are probably reluctant to shoot their colleagues.

However, an ongoing research project on militias reveals that militias are still very present and widespread. Despite the sentencing of some of their leaders, they were hardly ever dismantled and the payment of fees and levies continued. In a few cases, where these groups seemed to have been removed, new groups sprang up to occupy the vacuum. The main difference with respect to the situation a few years back is that militias seem to have renounced the claim to publicly legitimize their activities. Admittedly, some of the local residents do support the militias, while some others oppose them, but there has been no further public discussion of their role. They seemed to have learned that visibility is a risk factor rather than an advantage, and few candidates for public office associate their names with them anymore. Likewise, residents are very fearful of talking about this issue, so the research project found it very difficult to obtain testimonies, even from individuals who came out in support for their presence.

A few years ago, it was thought that militias – lacking a centralized organization – could end up fighting each other for territorial control in much the same way as drug dealers do. Indeed, there has been an escalation of violence arising from disputes in the last few years between militia members – both between dif-

ferent militias but mainly within. In fact, the leadership of some of these groups has been wiped out by internal strife.

In short, the intervention of the criminal justice system against the militias over the last few years was successful in taking out the most visible leaders of the most conspicuous groups but was, by and far, ineffective in the attempt to prevent them from operating. One could say that the main impact of these prosecutions has been a lower profile on the part of these criminal organizations and a significant reduction in their ability to infiltrate the state at the highest levels, such as the State Assembly and the City Council. The most modest of these groups – composed of a few policemen that have dominated small communities for decades – in all likelihood continue to operate undisturbed, given that investigators and prosecutors have focused on the best-known and the biggest groups.

On the other hand, the state of Rio has been engaging in a new policing project since 2009 under the name of Units of Pacifying Police (UPPs). Under this initiative, a number of military policemen occupy a certain slum permanently and try to establish a more constructive relation with local residents. The new objective is to eliminate territorial control by criminal groups and to stop the shootouts rather than to win the unwinnable "war on crime." By and large, these UPPs appear to have been successful in these aims, with a sharp decrease in homicides and shootouts in these areas. Doubts arise as to the sustainability of this initiative, since it has been applied in around 40 communities so far and there are hundreds of slums existing in similar conditions. The level of police saturation applied in the UPPs makes it impossible to apply the model to the whole territory, since the police force would have to be multiplied.

In any case, it has been suggested that – given the criminal justice system's inability to prevent militias from operating – the strategy of UPPs could be a viable alternative against these groups. Police presence could put an end to territorial control and stop extortions and the coercive imposition of monopolies. So far, only one area formerly occupied by militias has been taken over by a UPP, namely the community of Batan, as a result of its symbolic value after the torturing of the journalists. Even though the project appears to be successful in this community, several elements make it unlikely that the UPP project will incorporate many areas dominated by militias. First, the UPPs have focused on rich and touristic areas in the south of the city and on neighborhoods that will host the Football World Cup and the Olympic Games. Second, if criteria were realigned to give priority to the more violent regions where shootouts are common, these would probably be, for reasons mentioned above, areas connected to drug-dealing factions rather than to militias.

4. Militias from local, national, and international perspectives

Undoubtedly, the phenomenon that has been defined as “militias” in Rio de Janeiro has deep connections with other types of organized crime in which it finds its roots. Indeed, one of the main hypotheses to explain the rapid expansion of these groups in 2006 and 2007 was that some corrupt policemen realized that it was more profitable to control a community directly and impose a tax on different economic activities than it was to take bribes from local drug dealers. Prior to that, some evidence (Observatório de Favelas 2006) pointed to the fact that dealers in the slums were paying steadily decreasing wages to the youth they employed and that, as a result, it was safe to assume that their ability to generate profits was being eroded. This would fit with the notion of a transformation from the old model of taking bribes to a new model of direct territorial control and economic exploitation. The existence of previous connections between the dealers and the members of these militias would also help in understanding why the takeover was so swift in some communities. Witnesses described how the militias arrived overnight, killed a few key dealers, and completely dismantled their network, sometimes incorporating some of those who worked for the dealers into their new organizations. This kind of operation could only be carried out by individuals who had very good intelligence on how local dealers operated, who they were, and where they could be found.

Drug dealers, even at the local level, were traditionally considered to be part of a wider network that extended beyond national borders. The main reason for this is that most drugs and all heavy weapons are made outside of the country. Drugs originate in Andean countries, with the exception of some marijuana grown in Northern Brazil, and machine guns are mainly brought in from the United States, allegedly using the same circuits. Hence, there was an obvious – though perhaps distant – connection between kids who sold drugs in the slums and international crime.

Nevertheless, militias do not justify this international link. To the extent that they do not deal drugs (though some of them do, as we have seen), they do not need to import anything from outside. They establish monopolies for the sale of national products and services, which ensures that no economic transaction can happen without their authorization. Therefore, their main commodity is still territorial control, as in the case of drug dealers. But while the latter tend to use it for the purpose of processing and selling one single product, that is, drugs, militias try to incorporate any economic activity that they can extract a profit from. This implies that residents have to pay a higher price for many goods, which leads to frustration and resentment. While some residents support militias due to the social control and “peace” they bring, others would rather have the dealers back, since the latter did not interfere with peoples’ lives as long as they did not affect their business.

Thus, militias can be conceived of as a genuine adaptation of local organized crime to increase their profits. Since 2008, some other Brazilian states have also reported the existence of “militias” in their cities. While in some cases, the phenomenon appears to be different despite the common label, some other states do describe groups of state agents who impose fees and establish monopolies on cable TV, Internet, gas, transport, etc. It is unclear how far these structures will grow, but the Ministry of Justice has already launched an initiative to create a group of experts to reflect on the problem at the national level.

5. Consequences and impacts of militias as organized crime

Militias are a particularly perverse form of organized crime. Agents of the state – armed and trained to protect citizens – use their weapons, their training, and even the dubious legitimacy derived from their official roles in order to extort people. Hence, they are an example of the worst face of privatization of security, whereby public officers use public means to pursue private gains at the expense of those they are supposed to serve.

To accomplish their aims, they prey on the most vulnerable sectors of society who lack the means and the voice to defend themselves and who have been subjected for decades – if not centuries – to violent social control by the state and by various armed groups. This brutal control is all they have known, to the point that many do not believe that any other way to regulate conflicts is possible.

When criminal groups are formed by members of the state, they are particularly hard to fight because their members know how the police operate and can act preemptively to protect themselves. There have been testimonies of people who have accused policemen of wrongdoing in connection with such militias, only to realize shortly afterwards that the accused were informed of the nature of the accusation and the identity of the complainant. It is no wonder that witnesses are particularly scared to testify against armed state agents and that researchers find it extremely hard to find interviewees who dare speak out on this.

Also, members of such groups may count on the possible reluctance of some state officials to take hard action against their colleagues, despite their criminal behavior. As explained above, there are no shootouts between policemen and militia members, even if the latter exert territorial control in the same way as drug dealers do. We are certainly not advocating police shootouts as a policy, but the difference between the treatment of the dealers and the militia is certainly revealing.

We tend to think of transnational crime as particularly threatening and difficult to eradicate, given the limitations of national states compared to the ease with which crime can be perpetrated across borders, legislations, and jurisdictions. Yet one could build the argument that in some cases it is precisely the local, fragmented, and adaptive nature of organized crime that makes it all the more difficult to eliminate. Without a centralized structure that can be dismantled, and preying opportunistically on local conditions, militias in Rio have shown that it is

one thing to arrest a few individuals at the top of these organizations and a very different thing to stop them from functioning.

On the other hand, to the extent that they do not deal drugs, these criminal groups can avoid the attention of the state, which is often focused on the misguided “war on drugs,” and continue their expansion. Likewise, to the degree that they operate in degraded and forgotten territories, their visibility is minimized.

This is not the place to address the possible measures that could be taken to diminish the influence and the harm caused by these groups – measures that would likely entail many different approaches: criminal investigations; regaining territorial control; regulation of irregular activities; internal and external control of police and other official corporations; reform of electoral legislation to fight corruption, etc.

Whatever the measures and whatever the characteristics of the criminal groups that currently control the slums (militias, death squads, drug dealers, etc.), one thing is certain: It can no longer be accepted that significant sectors of the Brazilian urban population live deprived of their basic rights in conditions that we could define as neo-feudalism, that is, subjected to the arbitrary decisions of the leader of the local armed group who rules over their lives and property.

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7.2 ROOTS OF ORGANIZED CRIME IN THE AMAZON

by Regine Schönenberg*

Introduction

Crime comes into existence by definition. Consequently, crime correlates with values of societies and states as they define and execute rules and formulate laws.

The incorporation of the Amazon into the newly formed Brazilian nation took place in cycles that always responded to external demands and had weak institutional links to previously formed local structures. To make such a heterogeneous institutional landscape operational for the survival of the Amazonians, a dense social web of informal social, political, and economic exchange developed over the centuries.

To get to the roots of modern (transnational) organized crime throughout the Amazon region, one has to transcend the outward appearances of state structures and of concepts such as corruption and understand processes of transformation within the local webs of social reproduction and of economic survival.

I. Perspectives

In political science the object of investigation is first and foremost the state, its relationship with its citizens, and the relations between states. For example, peace and conflict studies frames its scope of analysis frequently with reference to the role of the affected states and its institutions.¹ Since the turn of the century, debates on the changing nature of the state, especially regarding the non-OECD world, have grown (Migdal and Schlichte 2005). Increasingly, it became clear that societal regulation may not always take the form of an ideal-typical Weberian state

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1 | Cf. Forschungsfelder der Hessischen Stiftung für Friedens- und Konfliktforschung: www.hsfk.de

but may vary with regard to the autonomy, outreach, and division of powers, as well as regarding the formation of social consensus, representation, and financing. Instead of treating diverging forms as incomplete and deficient, scholars, for example, of postcolonial studies (Loomba 2006) tend to describe them as *different*.

Additionally, during the last two decades, studies on globalization and unions of states such as the European Union, the Association of Southeast Asian Nations, and MERCOSUL, etc., have expanded. Discussions on state sovereignty, representativeness, and accountability toward its citizens reflect the problematic processes within such unions.²

In this context, organized crime is being discussed: as “shadow-globalization” (Stares 1996; Kurtenbach and Lock 2004; Naim 2005; Nordstrom 2007); within the analysis on the implications of the war on drugs on Latin America (Thoumi 2002; McCoy 1972; Jelsma and Roncken 1998); as part of US foreign policy (Andreas and Nadelmann 2006; Scahill 2007); as the subject of international cooperation (Jojarth 2009); and as an integral constituent of the state (Mingardi 1998). One crucial debate revolves around the question of whether organized crime is intrinsic to capitalist reproduction or a shortcoming of state regulation.

As a political scientist, I consider the above-mentioned discussions as constitutive for the framing of (organized) crime, but I will shift the focus toward the analysis of the local entanglement of transformative factors – regarding their inclusive or exclusive effects on social cohesion. From that point of view, policies – whether they are formulated in Washington, Brasilia, or Belém, or by a more or less coherent state – impact on local survival strategies, often with collateral effects beyond initial intentions. For example, the declaration of undifferentiated protection zones that conflict with local reproduction strategies might incentivize new systems of state corruption.

In Brazil, one sees all possible types of organized crime embedded in extensive and non-transparent social and political networks. In this article, I will focus on the specific situation in the Brazilian Amazon, where boundaries between informality and illegality are blurred, new laws and regulations become instantly incorporated into the local power balance, and where – due to understaffed and often corrupt local law institutions – impunity is still the norm.

II. Historic roots and current mechanisms of criminalization in the Amazon

The reasons for transnational organized crime gaining leeway in many regions of the world are deeply rooted in history. In the Amazonian case, the known history begins with the raptorial occupation by foreign adventurers in the 16th century

2 | Cf. Forschungsfelder und Publikationen der Forschungsgruppe Globale Fragen der Stiftung Wissenschaft und Politik: www.swp-berlin.org/de/forschungsgruppen/globale-fragen.html

who were aiming at fast riches based on the extraction of natural resources using a cheap labor force. The region and its indigenous inhabitants were confronted with alien laws and adventurers with an alien relationship to nature. When possible, they hid in far-away places and organized their survival *despite* the unfamiliar activities on their territories.

In principle, the described practice is still in place – it is just that the situation has become increasingly ambiguous and complex over time. Over the centuries, more and more migrants arrived and closely connected themselves to the different extractive cycles on different frontiers of the Amazon: gold, spices, rubber, nuts, timber, iron ore, bauxite, hydropower, meat, and lately, soy. Each economic cycle introduced new actors, new habits, and new rules – and more of the apparently inexhaustible nature was consumed. With decreasing access to land and natural resources, evasive survival strategies became scarcer. Consequently, conflicts regarding access to any resource grew, as did the complexity and incoherence of the legal framework for regulating such conflicts.

This is where the state comes in. Due to the magnitude of the Brazilian territory,³ state formation predominantly took place as a private enterprise: The respective colonial representative entrusted a businessman or a soldier⁴ with the occupation of a given territory.⁵ Such a hereditary assignment included the rights to exploit nature and the people, to adjudicate them, to enforce colonial law, and to form colonial institutions. It is from this time that the social construction of the *patrão* originates, which describes someone with absolute power to solve all problems and to be the master of life and death. The idea of the state thus framed the activities of the *patrão*, if suitable; however, the same state was, and still is denounced as exercising outward interference in case it collides with the interests of the local *patrão*.

Over time, the situation became increasingly complex, since the interests of a multitude of actors overlap and state regulation remains contradictory and is enforced only sporadically. In the Amazon, in principle, the patronage system is still in place, which might be due to the fact that the concentration of cultivable land is constantly growing. The 2006 national agrarian census undertaken by IBGE, documented an increase of the GINI-Index regarding the Brazilian agrarian structure: 0.872 in 2006, 0.856 in 1995, and 0.857 in 1985. That means that smallholders with less than 10 ha occupy 2.7 percent of arable lands and owners of estates larger than 1,000 ha own 43 percent.⁶ Current data shows that 3 percent of estates occupy 57 percent of arable land, whereas 4.8 million smallhold-

3 | 8.5 million km².

4 | Always in conjunction with a priest.

5 | So-called capitánias: http://en.wikipedia.org/wiki/Capitanias_hereditarias

6 | www.estadao.com.br/noticias/economia,concentracao-de-terras-aumenta-no-brasil-aponta-ibge,443398,0.htm

ers are landless and waiting for the implementation of the agrarian reform.⁷ For formally powerless peasants without land or without land title, informal institutions like the *patrão* gain strength.

Either one *patrão* or a number of competing patronage networks determine each locality, region, and issue – they are relatively easy to identify – their well established economic, social, and political networks guarantee their power. Those persons, and respectively their (family) networks, are involved in everything of importance and cannot be overruled without a major conflict. Conflicts arise among such networks or if new elites are introduced due to new economic activities or new regulations. Usually, new and old elites negotiate under the roof of common organizations such as the Freemasons and Lions Clubs. After a while, they find new common ground without allowing state interference or advantages for their perceived adversaries, such as organized civil society. With this basic social structure in mind, we will now discuss the implications for transnational organized crime.

Since the division of municipalities is ongoing in the Amazon, one can presume that the penetration of more abstract legislation – accompanied by varying state capacities or the will to impose such laws – is underway, too. Often, abstract laws do not correspond with the local pattern of socioeconomic reproduction and, hence, will lead to the creation of new, informal institutions of mediation between abstract legal sets of rules and those that are local and informal. In the better case, such mediation happens through negotiation processes between local associations and state representatives; in the worst case, informal networks are being transformed into illegal networks by corrupting gatekeepers who manage to control state inspectors.

In more general terms, one can correlate the proliferation of organized crime in the Brazilian Amazon with the illegalization of local economic activities – the latter being a collateral effect of ill-defined state regulation.

III. Social transformation, global economic flows, and trafficking routes

One great experience while researching organized crime is to learn that all stories are interconnected through powerful processes of social transformation that are driven by fairly invisible global economic flows with their accompanying cross-effects (Nordstrom 2007). In the case of the Brazilian Amazon, we talk of the accumulation of the following cross-effects, which certainly can be found in many post-colonial settings:

- The original purpose of state institutions was the administration of extractive activities and not the well-being of the location itself – a history that is being incorporated into the practice of current state institutions.

7 | www.sasp.org.br/index.php/notas/75-concentracao-de-terras-na-mao-de-poucos-custa-carro-ao-brasil.html

- The post-colonial state has treated the region as a periphery – meaning the laws and development plans are directed by the interests of the Brazilian center-south, thereby marginalizing the needs of an extremely heterogeneous region such as the Amazon.
- The global demands for natural resources such as energy, minerals, timber, meat, soy, and lately, land, are being met without considering regional development.
- On the other hand, the local access to national, regional, and international markets and to credit is being blockaded by norms and standards that local production forms cannot meet.
- State institutions are too weak (capacity, budget, integrity) to be able to mediate and regulate this increasingly precarious situation – as Amazonians often live at a great distance from state institutions, suffer from generalized impunity and the constantly growing importance of informal power structures and gatekeepers.

In the case of the Brazilian Amazon, the fact that it borders on Peru, Bolivia, and Colombia – the major coca and cocaine production sites of the world – makes it an almost natural trafficking route to Europe. However, two further factors have helped to connect the local vulnerabilities described with the international trafficking routes. First, the effects of the US-financed and steered Plan Colombia, which closed various preexisting trafficking routes and made it cheaper to utilize the longer and slower Amazonian routes. Second, the fact that the Brazilian central government enjoys much greater sovereignty than the Andean states has made it almost impossible for US counter-drug measures to penetrate Brazilian territory.

A further local specificity has fostered the interconnection with transnational crime routes: It is commonplace for the Amazonian informal economy to incorporate new products into existing structures without endangering stable informal proceedings, such as, for example, the trading of illegally cut timber or illegally produced meat. As a consequence, Amazonian cocaine trafficking happened quite peacefully and proved to be a secure enterprise for the clients. The fact that informal power networks dominate the local state and juridical institutions makes it easy and cheap to guarantee the smooth transport of cocaine on Amazonian routes to the south via Mato Grosso, to Suriname via Amapá, or to Rotterdam via Amazonas and Pará.

IV. Internal consequences of the illegalization of economic activity

Various interconnected impacts of the above-mentioned trend toward a formalization of the internal social and economic structures can be observed. The most relevant in our context is the growing social vulnerability caused by the exclusion

of people from economic activities combined with the steady growth of informal power structures and powerful gatekeepers.

In the Amazon, apart from some city dwellers, the majority of economic protagonists contributes to a type of greater family economy that relies on a mix of economic activities. One example for the poorer segment of Amazonian society: subsistence agriculture and some cash crops, some cattle, some fishing, some gathering, one job in a local factory or industry, one job in the municipal administration, one pension, etc. One example for the richer segment of Amazonian society: cattle farming and/or timber trading and/or soy production, some family members own a construction firm, others own a supermarket and/or a petrol station, one works in the city administration, one son is a lawyer, one daughter a doctor, etc.

The higher the diversity of income sources, the higher the resilience of a given locality and family, and vice versa – the lower the diversity of economic activities, the higher the societal vulnerability to socioeconomic transformation.

Case study: Abaetetuba/Pará

One good example is the small east-Amazonian town of Abaetetuba, where the sheer number of factors contributing to the social transformation of almost all sectors of economic life – without the addition of any significant new legal activity – is exceptional: illegalization of the fishing sector via inadequate and badly compensated closing seasons; illegalization of the bricks industry via labor laws; illegalization of the cachaça industry via labor and sanitation laws; combined with cheap food and cachaça imports and ISO standards for local products, this has led to the total collapse of the local economy between 1975 and the mid-1990s.

In addition to the described processes, Abaeté looks back on a 100-year smuggling tradition due to its being surrounded by hundreds of islands. It was not long before the small town, situated on the route to Suriname, came into the sights of drug traffickers during their search for a new route for cocaine-arms swaps of Colombian traffickers suffering the effects of the Plano Colombia. Knowing about the decay of the local economy, the vulnerability of Abaeté for becoming an Amazonian hot spot for drug trafficking was no surprise: Old fur and cigarette routes can easily be transformed and, in this case, even the old local elites who control the activities of the local state and act in cooperation with the local church remain in charge.

Detailed in: Schönenberg (2002), Drug Trafficking in the Brazilian Amazon, chapter 6, in: www.unesco.org/pv_obj_cache/pv_obj_id_4A9457FB7DFF1BF4E9D03208B7CAD783FA331600/filename/drugs_vol2.pdf

With the introduction of innumerable new laws and regulations, accompanied by new institutions and the people who access those institutions, the whole socio-economic equilibrium of the Amazonian hinterlands has been transformed within the last 30 to 40 years, leading to a simplification and an ever-increasing socioeconomic vulnerability of its populations.

Since governmental efforts to incorporate local populations into the new ways of economic life are almost nonexistent, the capitalization and formalization of the region has not corresponded with the growing adherence to the new logic and to the rule of law – the latter because the rule of law cannot be implemented due to incompetence, ignorance, and the lack of financial resources. On the contrary, informal networks have been monopolized and have become more powerful because more people began depending on them to be able to organize their economic survival. Each license requires negotiating an array of bureaucratic hurdles, and that can often only be accomplished informally⁸ – meaning: by paying a bribe or by being owed a favor. “Owing someone a favor” is often the gateway for criminal involvement since it often makes it impossible to say “no.” Regarding the active side, we are talking about money laundering and the transport of cocaine. The latter is done either alongside the legal transport of timber, fish, agricultural products, or using the thousands of non-registered airstrips on Amazonian farms; the former, predominantly, by means of public bidding procedures and ghost investments. The fact that abundant money is available for bribing impacts negatively on the local democratic culture and reconfirms the already widespread impunity of the whole region.

V. Outlook

The assessment of the possible future of criminal involvement within the Amazon region of Brazil will be focused on different aspects of state conduct and the reaction, respectively action, of the concerned civil society. People affected by the criminalization of their worlds will form part of this balance, too, and new ideas of human development that eventually sprout locally and globally might impact positively on local history.

Regional development: A great share of the Brazilian Program of Accelerated Growth (PAC – Programa de Aceleração do Crescimento⁹) is planned to be realized in the Amazon. Apart from many undisputed investments such as in sewage

8 | Due to the fact that the local capitals of the municipalities are often situated hundreds of miles away from the affected citizens, a direct contact with state bureaucracy is rarely possible in the Amazon; usually such tasks are delegated to powerful gatekeepers of the concerned locality.

9 | http://en.wikipedia.org/wiki/Programa_de_Acelera%C3%A7%C3%A3o_do_Crescimento

systems, new schools, and hospitals, the construction of numerous hydroelectric dams will cause continuous social upheaval, displacement, and disturbance of local economic cycles. The Brazilian involvement in the transcontinental infrastructure program Initiative for the Integration of the Regional Infrastructure of South America (IIRSA),¹⁰ which aims to integrate the continent from the point of view of infrastructure development and to open up export corridors to the Pacific, will change the local realities of affected populations – in most cases they will not be targeted as part of the infrastructure development and their possibilities for socio-economic participation will be reduced. At the same time, global environmental pressure is constant in many global and national contexts where the Brazilian state is taking part. Although the environmental policy field is not as strong as, for example, economic policy, the government has to respond to a number of claims and will do so by decreeing protective measures – again, without studying local socioeconomic impacts or even offering economic alternatives.

Brazilian climate policy: Two important pillars of the official Brazilian climate policy are the construction of hydroelectric dams and the production of agro-fuels (soy and corn). In both cases, the government claims that it contributes to the reduction of CO₂ emissions by reducing fossil energy consumption. The side-effects for affected populations are the disturbances in their economic cycles as well as their access to basic resources such as fish and land, which are needed for simple subsistence.

Brazilian agricultural policy: The above-mentioned exclusion from local informal socioeconomic reproduction is reconfirmed by the fact that governmental safeguarding strategies, tax-incentives, credit lines, and international trade agreements target the booming sector of agro-industry and disregard the typical Amazonian smallholder without a land title, without venture capital, and without access to more profitable markets.

Brazilian implementation of national and global trade rules: The latter is being done through norm implementation (labor/sanitation/ISO) and often corrupt enforcement (bribing claims) that will further limit the capacity for economic survival.

Brazilian policy of implementing the rule of law: The presence of Brazilian state institutions, which are responsible for the enforcement of predominantly federal laws, remains sporadic in the Amazon. Even regions where economic activity has been curtailed due to massive deforestation do not have permanent representation within the responsible federal environmental institution (IBAMA). Consequently,

10 | http://en.wikipedia.org/wiki/Initiative_for_the_Integration_of_the_Regional_Infrastructure_of_South_America

impunity remains the norm in the Amazon – although the public prosecutors of the so-called *Ministério Públicos* try to reverse this. In cases where a concerned locality is situated next to a cocaine route, the distance between local elites and the government is escalated via abundant drug money for bribing representatives of the state and the judiciary.

Civil society: Civil society's capacity to unite and focus a large number of small protest issues into a comprehensive claim for a different development model has been limited until now due to the great heterogeneity of the involved actors. Those who are interlinked with global civil society through project financing and who have different access to information and support remain, in most cases, distant from the affected populations. Mostly, cooperation efforts are being organized around concrete campaigns and disintegrate soon thereafter. Additionally, Brazilian civil society has suffered from the fact that *their* party formed the government, and it has only slowly regained its dynamic as an opposition movement.

Amazonians: Amazonian populations,¹¹ be they comprised of indigenous peoples, smallholders, or medium-sized farmers, struggle with a declining patience toward state institutions, new regulations, programs, and even participatory development proposals. This is because their experiences, for at least three generations, was to be neglected and marginalized as far as their specific economic, social, and cultural needs were concerned.

New lifestyles: Recently, consumption patterns and lifestyles in big cities all over the world have changed – exotic products, preferably organic and Fair Trade from far-away regions – are being incorporated into alternative trade cycles. Additionally, communication technologies have helped to bridge the information and communication gap between like-minded people, no matter where they live. Due to this trend, an increasing number of Amazonian products¹² are being sold worldwide and new economic and social networks have been formed – still on a small scale, however.

Considering all of these aspects, the tendency toward marginalization, exclusion, and, hence, declining resilience of the social fabric of the Amazonians, seems to be inevitable.

Whoever is the first to offer social integration, participation in economic life, and a vision for a viable future will gain the support of the network – *apadrinhamento* in Portuguese.¹³ The following institutions will function as goodparents: inefficient, incoherent, and often corrupt state institutions; local power networks

11 | Approximately 26 million (20 million rural).

12 | Açaí, Guaraná, Brazil nuts, Acerola, rubber, etc.

13 | Meaning: endorsement by one's godfather, that is, sponsorship.

of different formats and degrees of informal/illegal/criminal involvement; a church; the Labor Party (PT), where it exists; a big NGO; the Freemasons and others. The choice is not exclusive and the mix depends on the history of the specific location – as does its outcome.

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7.3 IF THE MPF WOULD NOT GO FOR IT, WHO WILL?

Interview with Aurélio Veiga Rios, Brazilian Federal Public Ministry

Aurélio Veiga Rios has been a federal prosecutor since 1987 and a close observer of the evolution of the Brazilian Federal Public Ministry (MPF) for the last 25 years. His law degree was obtained from the University of Brasília in 1984 and he received his master of law (LLM) degree from Bristol University, United Kingdom, in 1996/1997.

Since the constituency of the MPF is quite unique in its constitutional guarantees and practical outreach, the interview focuses on the role of this institution as a safeguard for social inclusion, citizenship, implementation of law, and the safeguarding of democratic governance.

Q: Please describe the role of the MPF and, more specifically, your role as a Federal Prosecutor for the Rights of Citizens.

The role of the MPF is being regulated under the Brazilian Constitution (Art. 127). It is a national institution that acts as part of the judiciary in defense of the legal order, of democracy, and the election process. Our department is in charge of the defense of citizenship rights like the social inclusion of all citizens in all areas: health, security, information, anti-racism, anticorruption, etc. It acts mainly in preventive ways and focuses on the mediation of societal conflicts, since the MPF has another branch oriented toward prosecution.

The independence of the prosecutors from state and federal governments – financially and thematically – is guaranteed by the Brazilian Constitution. This is why the prosecution of very well-known corrupt politicians is being promoted by the General Prosecutor of the Republic. The latest example for this practice, named “mensalão,” has involved former ministers and federal deputies from the cabinet of Luiz Inácio Lula da Silva.¹

For 24 years now, the MPF has been empowered by its visible actions and, at the same time, has continually been attacked because of its independence. As the Federal Prosecutor for the Rights of Citizens, my opinion is that it is of great importance to stimulate mechanisms for controlling the acts of the government and

1 | http://en.wikipedia.org/wiki/Mensal%C3%A3o_scandal

its institutions, especially the police. The MPF acts as a kind of federal ombudsman and cannot be arbitrarily removed from any case.

Q: Which kinds of political or administrative limits are imposed on the MPF?

Currently, the MPF is active in the Belo Monte case, where a consensual mediation has failed, and now the battle is being fought in the judiciary. Here, the political and economic interests are so strong that the government is prosecuting the involved prosecutors personally for abuse of their powers.

Additionally, the government is exercising pressure upon the judges. They are independent by law but they need the support of the state governor to be promoted – meaning that a judge who is “too independent” would not make career advancements. Here, the limits of the judiciary are to be seen in the personal integrity of its members.

The same is true for the General State Prosecutors of the Public Ministries of the States, who have to present lists of three candidates for each person to be appointed – and the State Governor will then make the decision. On the federal level of the MPF, there is no such election, but the Brazilian president has to consent to the choice of the General Prosecutor of the Republic. Until now it has never happened that a president interfered, but theoretically it is possible.

A further limit is in the field of criminal investigation – namely, the police. Lately, the professional capacities of the federal police have improved considerably – most of them are on the side of law and not on the side of the government. But the civil and military police of the states are often not reliable. There have even been cases where they act as death squads defending the economic interests of groups – there was recently one in Goiás that was prosecuted by the MPF. In cases like that, the police are directly linked to politics, and politics is linked to the economic power of the state. Those problems are not so straightforward as with conventional crime, since in cases of white-collar crime, the proximity to local power structures of the civil and military police is a real problem. There have been some moves toward professionalization – but there still is a long way to go.

Q: How would you describe the role of MPF to bridge the gap between legality and legitimacy, which is so present in Brazil?

Part of the MPF works proactively in the mediation of those conflicts, generally, by inviting all involved parties and discussing possible solutions to overcome this gap. In the case of Belo Monte, we tried mediation with IBAMA [the environmental agency] because the environmental audit was of such bad quality and the new version did not fulfill the legal conditions. Meanwhile, the government had already emitted the provisional license without caring about the environmental audit, and the construction firms started to “prepare” construction. The government signaled that it was not willing to negotiate, and it was trying to create facts that would inflate the price of any mediation. For us, the main point is the lack of prior consultations with local indigenous populations, namely the Kayapó, who

are against the construction. Brazil signed ILO Convention 169 – and consequently, the government is in contravention of international law – as the human rights court in Washington confirmed. With this verdict, the government became more aggressive and, consequently, the case had to be solved following legal proceedings. Mediation did not work due to the proximity of politics with economics.

Q: How does the MPF deal with the so-called grand corruption of huge clientelistic networks in Brazil?

Each case is a long-term endeavor. First, one has to identify the network: who, how, where, etc. In cases where we identify a political leader who is being influenced by businesses, there is no space left for mediation or negotiation because the person has lost credibility and cannot be a partner at the negotiation table. But in most cases, the networks are predominantly invisible. Then I talk to all participants in the whole network, starting from the assumption that they are willing to listen. If this is not the case, we start to collect proof. For this, we need the federal police, the tax administration, and judges to give us bank data and lift telephone and email secrecy, for example. Depending on the case, further institutions can help, like the federal agency for environmental and land disputes. For the success of the operation, all involved have to cooperate and remain silent about the investigation – it is complicated and may take a long time.

In the MPF we have a colleague, Raquel Dodge, who is in charge of coordination of criminal affairs, and she is mostly involved in those cases of network criminality. It is a non-conditional obligation of the MPF to combat organized and white-collar crimes: “*Se não for o MPF quem fará?*” [If the MPF would not go for it, who will?]

*Brasília, August 28, 2012
Regine Schönenberg*

7.4 UNHOLY ALLIANCES OR CREATIVE PROCESSES? SOCIO-ENVIRONMENTAL APPROACHES POINT OUT NEW WAYS TOWARD LOCAL HARM REDUCTION

by Wolfgang Hees*

The rapid spread of crack and synthetic drugs can be witnessed all over Latin America. The cartels systematically push the consumption of cheap drugs or the residues from cocaine production into the former production and transfer countries. Helpless governments exacerbate the situation with their hard-handed politics by killing and criminalizing the victims, and violating fundamental civil rights. However, solutions can only be developed in cooperation with citizens and communities within their social environments.

There was a great deal of perplexity. While it is true that it had been expected for years, it had been repeatedly brushed aside and suppressed. This was no longer possible – the reality was too brutal. For so long, people had worked successfully and assumed that things would continue as always – a little more professionally, but with the old charisma. One had achieved and learned a great deal since Paulo Freire and his *educação popular* had been set up – literacy campaigns for the people that actually led to an increase in social awareness among the oppressed. The *educadores populares* in Brazil is a group – which it would be incorrect to translate directly as “the people’s educators” – made up of socially committed volunteers, students, professionals, grassroots movements, and dreamers, and it has a tradition of almost four decades of fighting for those marginalized and excluded by society. They had come to focus increasingly on street kids and adolescents, underaged prostitutes, and young people at risk from the *favelas* (slums). And funding from abroad made it relatively simple to obtain money for the street kids. Organizations, movements, and networks were established. These initiatives led to the emergence, in 1990, of the progressive Children and Youth Statute, which in the meantime has led to the setting up of local, regional, and national child and youth councils with equal representation that are responsible for shaping and controlling child and youth welfare policies. The rights of children and youth were being

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guaranteed, also with the involvement of youths themselves. Until the new drugs came along.

Drugs were already widespread before and being consumed by the young people living on the streets and in poor districts, like all over the world – perhaps even more so, considering how diminished their prospects in life were. Cheap sugar cane spirits are cheaper than milk, sniffing glue banishes hunger and stress, and marijuana allows you to dream. But tobacco, alcohol, glue, and marijuana never had the same effects on young people as crack and the new synthetic drugs. Until they appeared, the usual practice in youth programs was to simply ban drugs within the organizations and during common activities – sniffing, drinking, and smoking weed was to be done only on the streets. Of course, attempts were made to prevent youths from consuming outside of the institutions, but soft drugs continued to be used and accepted without comment. The “No to drugs,” “Nobody is allowed in who is carrying drugs,” and “Zero drugs” campaigns represented a not very well-reflected position that differed little from the hardline “zero tolerance” policies of the state, its police force and legislation.

A serious shortcoming became apparent later. With the emergence and fast spread of crack – a residue left over during the production of cocaine (cocaine salt plus baking soda) – and synthetic methamphetamines (meth, crystal), it was already too late to change course. There was no longer time for drug prevention, education about the effects of drugs, or for practicing “functional” and responsible forms of consuming drugs, because these two new drugs have such a high and fast potential for addiction that the NGO employees – who had little training and hardly any experience in such matters – were like rabbits in the headlights of a fast-approaching vehicle and, in the beginning, they had no strategies for action.

Their clientele began disappearing rapidly. Guilty consciences and addictive habits that had to be fed were among the reasons why young people no longer came to the meetings or to the institutions. There was an increase in how much drug-dealing was happening as well as in the number of shootings among one another. There was fighting over the new profits and fighting with the police, who reacted with heavy hands, resulting in many deaths and the imprisonment of youths, who were increasingly becoming organized in gang-like structures.

The wave of violence and the willingness to use it literally exploded. Brazil became the country with the third highest murder rate in Latin America. Particularly affected are young black males from the slums. With 95.7 murder victims per 1,000,000 inhabitants, Recife is right at the top of the country when it comes to such statistics. Violent death has become the most common cause of death for youths between 12 and 18 years of age.

As the consultant responsible for Latin America in the foreign division of the German Caritas Association, I experienced this process up close with our partners. At that time, we supported the Tecendo Parcerias (interwoven partnerships) network, which we had been involved in setting up. We did this in cooperation

with around a dozen organizations that carried out youth welfare work with a focus on youth protagonism, which aims to make young people capable of taking care of themselves, and of assuming responsibility in the youth councils and in their own environments (school, city district, youth centers). As different partners in the network were involved in different tasks, activities like the following could be offered and promoted: proactive social work on the street; a reintegration into family and school; homework help; preventive action against sexual violence; cultural and sport leisure activities; support for criminal youths outside of the prisons; vocational training and integration into employment. Self-organization, participation, and emancipation for youths were the primary objectives, and a great deal of attention was given to peer education, with youths supporting other youths.

It was an approach in line with current trends and was marked by various innovative features, which continued to be based on the partner's traditional approach of individual orientation. It became apparent that this "subject-related approach," which was also firmly established in Caritas' concept, could not cope with the massive emergence of highly addictive drugs. Individual solutions such as withdrawal and therapies were not sufficient responses to the phenomenon, which had taken hold of almost the entire community and therefore required a collective response.

The search for new approaches and a reorientation in the work being carried out was a drawn-out process. It was not until the first exchange projects took place with those active in Columbia and Central America – where parallel programs succeeded in involving extremely violent youth gangs (*maras, pandillas*) in the community – that a willingness to discuss and initiate a socio-environmental, process-oriented approach emerged. Attempts to convince people of the methodological approaches (MeCom and Eco 2) behind this were first viewed with skepticism and only accepted because of the lack of alternatives. A realignment from "clients" – with their subject-oriented supportive approaches – to a social environment with a great number of stakeholders and the active minorities fighting for change meant a paradigm shift for the *educadores populares*. This meant having to think in terms of new structures and to go down a completely unfamiliar path. Nevertheless, the practice of contextual analysis with a self-initiated diagnosis of the social environment and the questions this gave rise to – as well as a prioritization of the necessary changes with the population and, in particular, the active minorities – made a considerable contribution toward an understanding of community life. However, above all, it led to an exchange and to the development of essential knowledge about that local community life.

A stakeholder analysis, which clearly shows the different spheres of influence in a visualization presented in one of the method modules, helped most to achieve a mental breakthrough. It became clear to them in whose hands the power was concentrated, on what this power was based, with whom he/she was connected to, as well as how an own lack of relationships and/or lack of diversity in relationships had led to marginalisation and a lack of influence.

Thanks to the protagonism program and the processes of active participation, they became active in their *comunidades* (= their social environments) and were also better networked with other groups and stakeholders via their peer groups. However, it turned out that they hardly used this “wealth” in relationships to strengthen their positions. Without further-reaching goals and without corresponding strategies, they were exploited within asymmetric relationships and, in the process, drawn into the structures of drug-dealing as dealers or as so-called “airplanes” (*avaio/couriers*). In the short term, they were able to earn money, power, and respect. But, in most cases, their own consumption got in the way.

As part of the methodical training courses, they quickly came to understand their deficits – faster than most of their *educadores* – at the same time recognizing their potential and their possibilities, which opened up new perspectives for action for them. After having largely overtaken their “instructors” conceptually, they also managed increasingly to build up new contacts – to stakeholders within their communities, who can be described as key figures. These are people – sometimes officials – who take their roles seriously, whether they are mayor, head of a cooperative, teacher, head of a police station, or health facility, priest, public prosecutor, etc., and who are interested in the social development of their communities. In addition, there are citizens who also have the same interests: the baker, the hairdresser, the widow, the young person, the retailer, the midwife, etc. These committed key figures, who are referred to as the “active minority” in the methodology, have a great number of contacts and knowledge, especially inside of, but also outside of, the *comunidades*. They are therefore in a position to activate both endogenous and exogenous potentials for change. In this understanding of the social environment as a relational space or environment of relationships, which goes beyond mere geographic space, the paradigm shift away from traditional community work in areas with social problems – the *favelas* – also becomes clear: It is not the deficits or problems that are prioritized, but rather the potentials and relationships among one another and toward the outside. The active minorities are, by definition – and in the project reality – willing to, and in a position to, activate this relationship potential when this is necessary for the benefit of the common welfare.

In a common effort by the *educadores*, the youths, and the additionally mobilized minorities, the situation and context of the community was diagnosed – discussed in detail and independently – over a period of several months in talks with citizens and officials, following a one-week introduction. Other active minorities came on board during this period, while some who had expected fast solutions and financial support left, because the process was taking too long for them or was organized too openly. It became clear to the youth welfare organizations that – in a context in which more than 3 percent of the regional population of north-eastern Brazil were crack consumers, a figure that easily rose to 15–20 percent in the deprived areas – clientele-related and subject-related social work was no longer

in keeping with the times and that the challenges facing them could only be met with concentrated and networked community approaches.

What is more, in the diagnoses, the varied changes that had come about as a result – fear, mistrust, parents, schools and police unable to cope, hopelessness, a withdrawal into the family sphere, people leaving the district, etc. – and that had intensified in the city districts when drugs moved in and the ensuing violence emerged were accentuated differently within the respective *comunidade*, depending on the particular context. However, when the topic “origin of the community, the present situation and perspectives” was linked in the discussions to the analysis of the stakeholders, it became apparent to those involved what their roles were with respect to change and how much power they had in this respect. Instead of waiting for someone else to do something, the community itself got moving in order to demand change and then decide what form this change should take. They defined and prioritized their needs, weighted them between necessity and practicability by analyzing their potential and their corresponding power to act, and began carrying out the process of change.

Despite the stakeholder analysis carried out beforehand and with a heightened awareness coming from the discussions about questions of influence and power as well as structural violence, the active minorities were treading new ground by establishing contact to the stakeholders and creating new local network structures. This new ground, however, was mined territory, because not every police president, drug boss, leader of a youth gang, or even mayor was enthusiastic about this initiative and, in the beginning, many were not even willing to take part in the dialogue. However, this made it increasingly apparent what other money and power interests – as well as mutual dependencies, agreements, and corruptive elements – had established themselves in a vacuum devoid of state and civil society presence. And yet, in the medium term, the community-family environment allowed hardly anyone involved to escape the discussion taking place, because that meant isolation, a loss of face, and loss of power. The more consolidated the network became, the more important it was to participate in it. At the beginning, straw men and informants were sent to the meetings and training events. They did not take part in the actual happenings, but rather looked for opportunities to restrain the new movement. However, in most communities, the numbers of those taking part increased and they became more active, both in making suggestions and in putting these into practice.

And so, in 8 out of 12 communities participating in the project, it was actually possible to enter new processes of negotiation and create a new scope for development. This “success rate” is strongly dependent on the dedication of the active minorities, the strength of the opponents, the intensity of the support for these processes, as well as on the implementation of initial steps and achievement of small successes. These “successes” are the projects that the stakeholders have developed from their analyses of their social environments and jointly put into practice. They do not have to concentrate primarily on the drugs, but should act, above

all, to reinforce the shared social life of the community. These projects arise out of the respective context, they are varied, and they are owned 100 percent by the respective community. They include activities such as getting rid of rubbish and litter; improving the water and electricity supply or sewage systems; planting initiatives to make the district greener; repairing and improving the roads; building community meeting rooms, a chapel, or a neighborhood football pitch; providing mutual childcare; improving school buildings; and they can go as far as organizing a collective bakery, community gardens, and so on.

The creativity of the communities knows no bounds. The examples mentioned here are only a small sampling of those that methodologically trained communities in our project environment have put into practice – on their own and with only local financing.

Of course, there are also activities that work directly within the drug context. As such, “gun-free periods” have been negotiated with the drug bosses, so that the children can play outside during these times. Police have been trained about human rights and how to deal respectfully with drug users. Protected community spaces for drug users have been set up to take drug use out of the public arena. Shop owners were persuaded against and prevented from employing death squads to “get rid of” drug-dependent street kids. Due to intervention by the community, healthcare facilities undertook classic harm-reduction measures by handing out needles and condoms – all small measures and every single one a matter for debate.

However, the communities have a response to this: What is fundamental are the measures for social survival oriented toward the respective context and not the provision of help in individual states of hardship. It is not the drugs that have priority, but rather social relations in the community, for example, on how to deal with the drugs situation.

It is clear that these steps will not do away with drug use or drug-dealing; this will only happen when all drugs have been legalized and then controlled, are pure and of consistent quality, and can be sold on the market without the illegality surcharge. Only then will the severe and expensive collateral damage caused by the “war and the heavy hand against drugs” cease and a self-determined and functional *conviver* (cohabitation) with drugs and addiction become possible. The key to this and the path toward it lies within the *comunidade*, in the social environment.

Caritas international, the foreign department of the German Caritas Association, has been working since 1998 with a Latin American program to develop alternatives in the “War on Drugs” and has developed and tested socio-spatial procedures for prevention and harm reduction as well as projects to empower and include drug users, working together with Latin American partners and using the ECO 2 methodology and community-based treatment. Today, more than 600 organizations are in contact with the RAISS network, which was the result of this work. There are five specialized drug colleges that train people in Mexico, Central America, Colombia, Brazil, and Chile as well as a great number of Latin American governments – from the local communities to the Inter-American Drug Abuse Control Commission (CICAD), an agency of the Organization of American States. The partners are in close contact with one another and use the new approach to influence the policies in their countries.

8. The Balkans

8.1 A “BLACK HOLE” IN EUROPE? THE SOCIAL AND DISCURSIVE REALITY OF CRIME IN BOSNIA-HERZEGOVINA AND THE INTERNATIONAL COMMUNITY’S TACIT COMPLICITY

by Berit Bliesemann de Guevara*, **

1. Introduction: The Balkans’ “black hole” image

The Balkans is deemed to be a stronghold of transnational organized crime (TOC). This is not without reason: During Yugoslavia’s violent demise in the first half of the 1990s, large-scale trafficking of drugs, human beings, cigarettes, alcohol, fuel, and weapons was widespread in Southeast Europe. The region figured both as an important transit corridor to Western Europe and as a destination for global illegal trade. It is this image of “states in the grip of organised crime” (Mappes-Niediek 2003) that has shaped much of the region’s perceptions by the Western European public up to the present day.

It was thus a surprise for many when the United Nations Office on Drugs and Crime (UNODC) published a report in 2008 that proved otherwise.¹ It showed that the level of conventional crimes such as murder, rape, robbery, and theft was, on average, below that of Western European states (UNODC 2008, 9–10, 35–43). Furthermore, the level of classic organized crime, which had dominated the region during the years of crisis and violent conflict, had decreased significantly (UNODC 2008, 12–16, 55–85).² What was seen as much more problematic than TOC was economic crime and corrupt state institutions: Practices at the interface of politics, the economy, and organized crime – like tax evasion, smuggling of le-

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1 | Compare Anastasijević (2010).

2 | This said, it has to be clarified that a decrease in organized crime in the Balkans does not mean its absence. Although in decline, the retail value of heroin trafficked by ethnic

gal goods, and misappropriation of public funds – were even judged as potentially hindering the Balkan states’ political and economic stabilization (UNODC 2008, 17–20, 85–107).

The discrepancy between the Balkans’ persistent perception as the “stronghold of organized crime” and the empirical evidence provided by the UNODC is illustrative of the way in which the bigger part of the discipline of International Relations has dealt with TOC over the last two decades. Fighting TOC is part of an extended understanding of security that evolved as a guiding concept in the post-bipolar era and eventually led to concepts of human security.³ In these latter approaches, which put the individual at the center of security thinking, TOC – often in relation with transnational terrorism – is believed to destabilize the international order and to harm individuals in the states harboring the criminals (Benedek 2010).⁴

Linkages between state weakness and bad governance, on the one hand, and the occurrence of TOC, on the other, are often taken for granted, while there is less reflection on the deeper logics of illegal practices and their connections to the legal sphere. Most importantly, external actors’ roles in creating enabling conditions for crime are not taken into account to the same extent as the presumable defects of “local” structures and actors. Interestingly, in dominant security thinking the world tends to be imagined as highly globalized when it comes to the *threats*, which states in the “zone of peace” are facing, while *causes* for transnational activities such as organized crime and terrorism are imagined to be rooted rather in non-Western states or regions, which belong to the “zone of turmoil.”⁵ This disregards that illegal practices are embedded into the same structures of world society that encompass the legal sides of politics and economy, and that both spheres are indissolubly tied together.⁶

Using the example of Bosnia and Herzegovina (BiH) – which in the Western mind is frequently imagined as at risk of becoming a “black hole” in (Southeast) Europe⁷ – this article sets out to challenge stereotypical views on TOC in the region. Taking into consideration historically and sociologically informed state and society practices, the aim is to offer a more nuanced picture of organized crime, its roots, and logics. This includes the effects that the “black hole” discourse has on

Albanian smugglers to Western Europe – by far the highest value contraband flow in the Balkans – was still higher in 2008 than the (low) gross domestic product of some countries in the region (UNODC 2008, 12–14).

3 | For an overview, see Daase (2010a).

4 | For a nuanced discussion of differences between TOC and transnational terrorism, see Daase (2010b).

5 | Compare Buzan and Little (1999); van der Pijl (2002); Geis et al. (2007).

6 | Compare, for example, Lock (2001); see also Jung (2001).

7 | For example, *Financial Times* (2011), *Le Monde diplomatique* (2008); *The Independent* (2009); von Sydow (2011, 7); *WorldNetDaily* (2002).

social realities. Throughout the article, a special focus is put on the role of international actors in enabling the conditions of persistent economic crime and state corruption. It will be argued that “the international community’s”⁸ involvement is in this regard best understood as tacit complicity.

2. Historical roots of crime in Bosnia and Herzegovina

Historically, crime is anything but an unknown in the Balkans. Going back to pre-communist times, romanticized imaginations of the military-historical figure of the *hajduk*, the “Robin Hood of the Balkans,” are part of regional popular culture (Allcock 2000, 390 et seq.; Bougarel 1999a). During communist rule, the smuggling of consumer goods thrived, and the fact that the citizens of non-aligned Yugoslavia could travel freely to countries in East and West put organized criminals from the SFR Yugoslavia into an ideal position as smugglers (UNODC 2008, 48). Communist leaderships, and especially their secret police and intelligence services, also contracted criminals as informants or to liquidate dissidents abroad (ibid.). These roots are important, as historically established functions and linkages might hint at certain path dependencies in the relationship between state representatives and criminal actors (ibid.).⁹ However, to understand and explain organized and other forms of crime and their political linkages in the region today, it is crucial to look at the more recent causes and functions of illicit activity that boomed before and during the Balkan wars of the 1990s.¹⁰

It was during the 1980s, when the role of illegal economic activities became significant for large segments of Yugoslav society. The reason for this was the rapidly deteriorating economic and political situation in the Federal Socialist Republic. During the 1950s and 1960s, Yugoslavia’s economic model of the “Third Way” between a market and command economy had gained international attention and seemed, at first, to bring about economic modernization and prosperity. Yet this economic strategy had two main pitfalls. On the one hand, economic growth depended to a high degree on public investment financed by international aid and credit, which led the state into a severe debt crisis in the early 1980s (Kiza 2003). Credit-financed mismanagement of industrial assets in the republics sub-

8 | The catch-all phrase “international community” is used here and there for readability. Throughout the text, I will explain in more detail which actors and dimensions are meant by it. On the different notions of the problematic concept of “the international community,” see critically Bliesemann de Guevara and Kühn (2011).

9 | The authors of the UNODC report argue, for instance, that due to these historical linkages between state agents and criminals, TOC in the Balkans is not accompanied by the high levels of violence known from other world regions, especially Central America (UNODC 2008, 47).

10 | For a detailed account of the relationship between stateformation and economic development in Yugoslavia and BiH, see Bliesemann de Guevara (2009, 107-166).

sequently caused a breakdown of production and rising levels of unemployment. This situation was further aggravated by waves of returning guest workers from Western Europe.

On the other hand, the so-called workers' self-management, the core pillar of the Third Way model, did actually little to democratically empower workers (Kiza 2003, 200–201).¹¹ Rather, this decentralization of the industry enabled elites in the republics, provinces, and municipalities to seize control of industrial assets and establish local spheres of power, which built on the vertical ties with workers and local communities: "Society was permeated by vertical patron-client relationships as well as nepotist networks of mutual favours, originating in self-management workers' collectives, local communities, revitalised rural-urban ties, and the widespread black-market economy" (Schierup 1998, 229). Clientelist redistribution, subsistence farming, and black-market trade became the backbone of many families' everyday economic survival in view of unemployment, unpaid salaries, and dwindling remittances in the 1980s.^{12 13}

Economic decentralization in the republics was paralleled by political centrifugal developments on the national level. In the early 1970s, an extensive transfer of state functions from the central government to the six republics left the Yugoslav central state weak, while "republican etatism" grew. In this situation of a dire national economy and a highly fragmented sociopolitical landscape based on vertical ties between local elites and their clientele, the international financial institutions, that is, the World Bank Group and IMF, prescribed reforms in the late 1980s that were aimed at economic and political liberalization and financial austerity of the state. While the reforms led to improved macro-economic indicators, they also fundamentally challenged established structures of rule, causing severe struggles among elites over ever-scarcer power resources.¹⁴ The reforms meant cutbacks in an already weak federal state, yet, paradoxically, it was expected that this very state would provide for stability and order during political and economic liberalization (Woodward 1995, 17).¹⁵ Some scholars have thus argued that the Balkan wars of the 1990s were, above all, a product of the internationally determined transformation from a socialist society to the model of a market economy and democracy.¹⁶ Along the same lines, we can argue with regard to TOC that it was international

11 | Cf. Dominik (2001); Lampe (2003).

12 | For BiH, see Bojičić and Kaldor (1997, 156); Anđelić (2003, 51–56).

13 | In the case of Kosovo, illicit economic activities were tied much closer to the deteriorating political situation of Kosovo-Albanians, who were steadily excluded from public institutions and built up underground political and social institutions in reaction to Serbian politics. The illicit economy finally played a crucial role in the decision for war as a state-building strategy; see Sørensen (2012) for more detail.

14 | Compare Pugh (2002, 469–470).

15 | Compare Pugh and Cooper (2004, 152–153).

16 | Especially Woodward (1995, 1996).

orthodox-neoliberal policies that, although they may not have caused TOC directly, at least created perfect enabling conditions for a boom in informal and illicit economic activities in the region.

It is against this background of severe crisis that the state of Bosnia and Herzegovina came into formal existence in 1992. Multi-ethnic BiH was particularly affected by Yugoslav fragmentation. Due to a lack of horizontal stratification, new political parties were deeply divided along ethno-nationalist lines in their struggle for power. They soon started to carve up the political, economic, and social institutions of BiH among them, creating three parallel ethno-nationalist systems of rule. In a referendum on the question of BiH’s political future, Bosniaks and Bosnian Croats supported the creation of an independent state. The Bosnian Serbs, by contrast, boycotted the referendum and declared the separation of Serb-inhabited areas. In spring 1992, war broke out between the two sides. In April 1993, with the declaration of an independent republic by the Bosnian Croats, a second conflict emerged. This Bosniak-Croatian “war within the war” ended with the Washington Agreement in March 1994, which established a federation between the two groups. Finally, in December 1995, the war between the federation and the Serbs came to an internationally brokered end with the signing of the Dayton Peace Agreement.¹⁷

Throughout the war, the smuggling of weapons and small arms, fuel, cigarettes, and essential goods thrived. Economic production in the three ethno-nationalist para-states declined due to the fighting, while the importance of illicit activities – from asset-stripping and theft to extortion, irregular taxes and tariffs, and large-scale smuggling – grew in importance, as did international forms of financing by neighboring countries, diasporas, and humanitarian aid agencies (Bougarel 1999b). Illicit trade thrived regardless of ethno-political divides, turning the war into “a continuation of business by clandestine means” (Andreas 2004a, 30). The war economy served a double purpose: On the one hand, it (poorly) financed the war parties and their systems of rule; on the other hand, it privately enriched those in control of illicit trade.¹⁸ The effect was a profit-oriented creation of rent and mafia structures at the local level, which did not correspond with political and military conflict lines (*ibid.*, 40–41). Due to these profit-driven dynamics of privatization and criminalization, the Bosnian war was taken as the primary example, with reference to which the disputed “new wars” hypothesis of the 1990s was formulated.¹⁹

Yet organized crime was more than the expression of war profiteers’ greed. Criminal actors and activities had very different and often ambivalent roles. Smuggling was a way to organize weapons for defense in view of an international arms embargo that especially affected the Bosniak war government, which, com-

17 | On the war see, for example, Burg and Shoup (1999); Calic (1996).

18 | Compare Ehrke (2003, 133–136); Pugh and Cooper (2004, 153–157).

19 | For example, Bojičić and Kaldor (1997).

pared to the Bosnian-Serb war party, was militarily heavily underequipped (*ibid.*, 38–39; Bougarel 1999b, 196). In the besieged capital, Sarajevo, criminals evolved into kinds of guardians of the Bosnian rump state at the beginning of the war, as it was only due to their help and weapons that the city could be defended against the militarily superior Bosnian-Serb attacks. It was only much later that the war government took steps to contain criminal activities (Andreas 2004a, 2008). Most importantly, however, in many places, and especially in enclaves and besieged cities, smuggling guaranteed people's everyday survival. In this sense, the criminalization of the economy by war profiteers, on the one hand, and the processes of informalization and subsistence-orientation among the broader population, on the other, were but two sides of the same coin. The small group of war profiteers comprised both powerful persons from pre-war times who had managed to preserve their power, as well as parvenus whose social advancement was based on their criminal or violent competencies (Pugh 2002, 470; Pugh and Cooper 2004, 156). Most importantly, the war created and strengthened relations between political and economic elites and criminal actors,²⁰ whose networks and interests persisted in post-war times (Andreas 2004b).

With the 1995 Dayton Peace Agreement, the “international community” assumed the task of guiding the peace process. During the first four years of the intervention, the international agencies focused on reconstructing the destroyed infrastructure, democratizing the political structures, and liberalizing the remainders of the socialist economy. This approach was built on the liberal idea that democracy and market economy are the ideal basis for sustainable peace and that these reforms would marginalize peace spoilers. Reality looked different, however. Wartime ethno-nationalists triumphed in the elections because the electorate regarded them as being the strongest safeguards of their interests (Manning 2004; Gromes 2007).

The intervention furthermore strengthened the old elites economically. BiH was swamped with aid money (Suhrke and Buckmaster 2006, 343–345), most of which was distributed in decentralized ways, evading the central state structures that were seen as lacking the capacity to channel the resources (Hertić et al. 2000). Local politico-economic networks used this arrangement for rent-seeking, that is, the illegal siphoning off of large amounts of public funds (Ehrke 2003, 141–142; ESI 2000, 15). The privatization process, which started in 1997, was another measure that unintentionally played into the hands of wartime elites and their networks of profit. Privatization was hoped to contribute to a modernization of the country's industrial assets and to a depoliticization of the economy (Donais 2002, 2; Pugh 2002, 474). Factually, however, the hasty privatization

20 | Often such a neat differentiation between elites and criminals is impossible, as single actors personify different of these roles, for example when politicians heavily engage in economic activities and use connections to criminal networks or misappropriate their positions in order to gain profits or power.

process enabled influential politicians and their cronies to appropriate socially-owned companies and apartments in dubious, sometimes criminal ways, and to make considerable profits.²¹ Through its politics of liberalization, the intervention thus strengthened the very politico-economic networks that had already profited from war, while neither a modernization nor a considerable depoliticization of the economy took place. At the same time, the institutions of the Bosnian central state remained weak and proved unable to counter the politico-economic networks with state regulation. Many of the relations between political and economic entrepreneurs – legal as well as illegal ones – and of the informal channels established or strengthened in the first phase of the peace process are still effective today (Bliesemann de Guevara 2009, 139).

In view of the shortcomings and limits of the liberalization strategy, the international actors decided upon a policy shift by the end of the 1990s: The aim of the new “statebuilding” strategy was to build up and strengthen (central) state institutions (PIC 2000). A permanent pacification of society was now seen to depend on a state framework that was able to regulate societal interaction.²² The “rule of law” was a central part of this strategy: Reforms of the police and justice sectors were meant to render the state capable of acting against crime. Firstly, reforms were aimed at countering the war-related ethnicization of state agencies, that is, their illegal alignment in favor of one ethnic group. This problem was minimized: State officials were vetted with regard to war crimes, ethnically mixed police patrols were created, and policemen, judges, and prosecutors received better training and pay.²³

The second reform aim was depoliticizing the rule of law agencies, that is, strengthening their autonomy from powerful elites. This, however, proved to be a more obstinate problem that, to date, has not been solved. It is against this background that today’s links between politics, the economy, and organized crime have to be assessed.

3. Organized crime and corruption in Bosnia and Herzegovina today

Current practices of organized crime in BiH include different interlinked dimensions, which will be illustrated and discussed with reference to the following three episodes.

Episode 1: In August 2011, the trial against Zijad Turković – the alleged ring-leader of a notorious criminal gang – and nine other gang members commenced. Turković was charged with “organized crime, drug trafficking, founding a crime organization, robbery, extortion, money laundering, murder, and unlawful arms dealings” (BH-News 2011a). His group, which is believed to have a reach “well

21 | For detailed accounts, see Donais (2002); Pugh (2002).

22 | Compare Paris (2004).

23 | For more detail, see Bliesemann de Guevara (2009, 190–194, 245–271); on police reforms, see also Collantes Celador (2006).

beyond BiH” (*SE Times* 2010), is said to have murdered – or attempted to murder – several persons in drug-gang rivalries (OCCRP 2011). Turković’s gang is also allegedly responsible for a “string of spectacular robberies, including the theft of 1.3 million euros from Sarajevo Airport’s cargo center in 2007” (*SE Times* 2010).

Episode 2: In 2010, the police of the Republika Srpska (RS), the Serb-controlled area of the two Bosnian political entities, dismantled a cigarette smuggling network that had operated throughout the country. Among the more than 60 detained persons were 22 active policemen from the municipalities of Stolac, Trebinje, and Čapljina. Stolac and Čapljina are situated in the southwest of the Federation of BiH, the Bosniak-Croatian controlled entity, bordering Croatia. Nearby Trebinje, which is in the southernmost corner of the RS, borders Montenegro, the country that became infamously known for its thriving, state-tolerated cigarette smuggling industry in the 1990s and early 2000s.²⁴ The detained police officers were “suspected of selling information about police patrols in certain locations, which helped the criminal network transport non-customs cleared commodities from Montenegro to BiH through the Bileca border crossing” (*SE Times* 2010). Next to cigarettes, this allegedly also included other high-tariff commodities, weapons, and cash (*ibid.*).

Episode 3: In May 2011, Catherine Ashton, the EU High Representative for Foreign Affairs and Security Policy, traveled to BiH to hold “crisis talks” with Bosnian-Serb President Milorad Dodik in Banja Luka, the capital of the RS. The reason for the talks was that, following a proposition by Dodik, the RS parliament had decided to hold a referendum, asking voters “whether the federal court and prosecution – Bosnia’s only central judicial institutions – ought to be abolished” (*European Voice* 2011). The parliament also planned to ask for voters’ stance on the international High Representative’s authority in BiH. The referendum would not have been in conformity with the Bosnian constitution, yet RS officials justified it by pointing to an alleged bias of national courts against Bosnian Serbs. The talks between Ashton and Dodik resulted in the RS authorities calling off the referendum and the EU pledging to establish a justice reform commission to review BiH’s judicial institutions (RFE/RL 2011).

What do these three episodes tell us about the intertwined situation of TOC, economic crime, and corruption in BiH and the region? The first episode is a classic story about a ruthless criminal gang involved in different types of lucrative illegal activities and deeply entangled in violent rivalries with competing organized gangs. The Turković case is thus illustrative of the existing rings of organized crime in BiH and the wider region. According to the UNODC, drug trafficking from Afghanistan via Iran and Turkey to Western Europe on the so-called Balkan route is “the highest value criminal activity in South East Europe” (UNODC 2008, 12–13). While especially the heroin trade is mainly controlled by ethnic Albanians, the Turković case suggests that other gangs in the region also look for their share

in the business and do so, if necessary, with violent means. Money laundering is a necessary activity for all criminal organizations, since their businesses are mainly based on cash, the origins of which have to be concealed (UNODC 2008, 94).²⁵ Arms dealing, by contrast, is supposedly losing attractiveness, as demand has shrunk significantly since the end of the wars in the region (UNODC 2008, 16). The same applies to human trafficking: Migrant smuggling has lost relevance due to the EU’s eastern enlargement and its Stabilisation and Association agreements with countries in the region, and trafficking for the purpose of sexual exploitation has also declined in view of saturated markets and higher risk-awareness among the potential victims (UNODC 2008, 14–16).

The Turković episode thus highlights some of the major traits of TOC in the region. Yet, there is little evidence that such activities are more “endemic” to this region, as suggested by the “black hole” discourse, than they possibly are to other parts of Europe.²⁶ There also seems to be a trend that “Balkan organised crime is [...] diminishing in importance” (*ibid.*, 16). Last but not least, the episode also hints at some positive developments in the Bosnian police and justice system: The fact that a ringleader such as Turković is detained and brought to court testifies to the increased capacity of the state’s law enforcement agencies, a finding that is in line with other sources.²⁷

The second episode only seemingly contradicts this latter observation, although it involves corrupt police officers. The dismantled cigarette smuggling network is a typical example of an economic crime involving licit goods – in this case, tariff evasion for cigarette imports – that was enabled and backed by corrupt state agents who serve as border-crossing facilitators and get their share of the profits at the cost of the state’s income. Just like in war times, the cooperation is profit-oriented and takes place across the supposed political and ethnic divides that guide political rhetoric at the national level.²⁸

The improved general performance of the police and its persistent corruption are no contradiction. The former is basically a result of international reforms, training programs, and oversight as well as of the successive creation of federal security services since 2000, above all the State Border Service, which ended the entities’ exclusive control of the borders, and the State Investigation and Protection Agency, which is in charge of investigating organized crime and war crimes. Furthermore, the very fact that RS police dismantled the cigarette smuggling net-

25 | Throughout the article, the UNODC data is used because it is grounded in the most comprehensive database as compared to other accounts of TOC in the region. Other sources that discuss the topic are, for example, Anastasijević (2010), Randoux (2010), Stojarová (2007); on BiH especially, see Smajič (2010).

26 | Think, for example, of the role of the rivaling biker gangs Hells Angels and Bandidos in Germany.

27 | For example ESI (2007).

28 | Compare episode 3.

work and stopped the police officers involved testifies to a general capacity of BiH's police to perform their duty.

The persistent levels of corruption, on the other hand, can be attributed to low and/or belated salaries and a dire economic situation in general.²⁹ Police and customs officers have found many illicit ways to cope with this situation – including the cooperation with organized and economic crime networks – and other illicit activities such as the creation of an informal traffic fee system. Smugglers of licit goods – especially cigarettes, oil, goods from China, and counterfeit products – make a profit by evading customs duties and taxes on the smuggled products; the state's customs and police agents are thus in strategic positions regarding these activities. With its 400 border crossings, BiH is difficult to control in this regard, and smugglers have used long-established routes and networks to bring in black-market goods (UNODC 2008, 85).³⁰ Different taxation systems in the region, too, are said to favor forms of economic crime. Ironically, it was only after the international agencies introduced a single value-added tax in BiH, that the country evolved into an interesting market for transnational value-added tax fraud (the so-called carousel fraud) – one of the biggest economic crime problems in the EU at the time (Blieseemann de Guevara 2008, 155).

As corruption surveys show, low-intensity state corruption is widespread in BiH and “is most pervasive at the local (municipal and particularly cantonal) level,” that is, where citizens' interactions with state agents mainly take place (Divjak and Pugh 2008, 376).³¹ However, “the incriminating trail of activities such as the misappropriation of public funds, the mismanagement of public companies, and irregularities in the privatisation process, does lead to the top levels of power” (*ibid.*). This is where the third episode comes in.

The Dodik episode is least obviously connected to the questions of TOC, yet it is actually the most interesting case, as it contains an underlying story of high-level economic crime and impunity that points to deep structural problems of the Bosnian state. The surface topic of this episode is political struggles over the institutional and power arrangements in BiH, especially the transfer of competencies from the entity to the federal level (here: judicial powers). Such power struggles have accompanied the peace process in BiH from the beginning and involve both local politicians and international agencies.³² Speaking in broad terms, a repeating

29 | Compare Divjak and Pugh (2008, 379–383).

30 | Customs duty evasion is a known problem in BiH, and although the amount of smuggled goods seems to have decreased with the establishment of the federal State Border Service (cf. ESI 2007, 3, 5–6), the episode suggests that the centralization of border control alone has not been enough to eradicate the problem.

31 | Compare Chêne (2009); Transparency International (2006); Transparency International BiH (2004).

32 | Since December 1997 the High Representative of the “international community” in BiH has the power to decree legislation and reforms and to remove politicians and other state agents from office – and thus to interfere deeply with the political process.

pattern of such struggles has been the convergence between international actors’ and Bosniak politicians’ interest in centralization. The Bosniaks have the strongest interest in a unitary state and would profit most from proportional representation in centralized state agencies, as they are the biggest ethno-national group. Bosnian Serbs, by contrast, have tended to oppose any centralization efforts. As they dominate politics in the RS, they have little interest in weakening the entity by transferring prerogatives to the central state. The Bosnian Croats – the smallest among the three constituent groups in BiH – have usually accepted reforms as long as these did not aim at abolishing the cantons of the FBiH, two of which are Croat-controlled. Occasionally, however, they have also called for the creation of a third, Croat-dominated, entity, which would give them a formal status equaling that of the other two ethno-national communities.

In such a “political power” reading, the struggle described in the third episode centers around questions of institutional settings and/or reforms, which aim at changing a precarious political power arrangement in a context that is highly sensitive to questions of ethno-national interests and prerogatives and vulnerable to destabilization. In this reading, Dodik threatens with a referendum because he fears a loss of political power for the RS and its elites and because he takes seriously the fears among his voters, who see their ethno-national interests threatened by growing Bosniak influence over state institutions such as the judiciary.

In a “political economy” reading, however, there is more to Dodik’s frequent referendum rhetoric, which has included threats of separation. As an article on corruption in BiH summarizes, Dodik’s

...two terms in 1998 and 2006 led to a number of embezzlement and corruption scandals surrounding his cabinet ministers, but no investigations or prosecutions were pursued. [...] Even recent findings of highly non-transparent public contracts issued by the Dodik government involving hundreds of millions of euros-worth of undisclosed deals have provoked little reaction by any law enforcement agency. Yet in reporting this news, pressure was exercised against the media, nongovernmental organizations (NGOs) and other watchdogs to the point where many democratic advances may have been reversed.³³ (Divjak and Pugh 2008, 378)

The Dodik case, among others,³⁴ is a prominent example of the persistent politicization of Bosnian state agencies, which allows powerful elites to pursue their

33 | In 2008, for example, the NGO Transparency International temporarily closed its BiH office due to hostilities and accusations by Dodik, who blamed TI staff for being involved in extortion and organized crime.

34 | To be sure, the Bosnian-Serb Dodik is only one example out of many; the Bosniak war-time prime minister, Haris Silajdžić, provides a very similar example of high-level impunity, as does the head of the main Bosnian-Croat party, Dragan Čović (Anastasijević 2010, 163; Divjak and Pugh 2008, 378). Čović was supposed to stand trial in the cantonal court in Sa-

political and economic interests. Although economic crimes and corruption by high-level politicians are known and sometimes (though seldom) prosecuted, this usually has few effects on the powerful perpetrators of such crimes. The international agencies have blamed the political and administrative fragmentation of BiH into the two entities RS and FBiH, the latter of which is further divided into 10 cantons, for enabling the misappropriation of public positions and funds.³⁵ Consequently, the centralization of state functions evolved as a mantra of the international community. Yet, reforms have either failed due to local resistance or were unable to live up to their goal of depoliticizing the Bosnian law enforcement agencies.

The police reform process, initiated by the international agencies in 2004, is a prime example for the former case of local resistance (Bliesemann de Guevara 2009, 218–224). Creating a centralized police that would not be under the oversight of the ministries of interior in the entities and cantons constituted a primary issue of the international statebuilding agenda. Centralization was meant to foster the police's efficiency, budgetary sustainability, multiculturalism, and accountability. While Bosniak politicians welcomed the reform, the plans found little favor with political elites in the RS. After a successful military centralization, the police had evolved into the "last bastion" of their control over the state's security apparatus. Even the EU's tactic of declaring successful police reform as being one of the prerequisites for the convergence process between the EU and BiH was unable to break local resistance, but rather contributed to a deep political crisis. In order to avoid the reform's complete failure, international actors finally accepted a compromise, which was mostly cosmetic; factually, police in BiH remain under the control of the state's political elites.

In the justice sector, too, there was only limited reform success, despite the international community's deep involvement and successes in the centralization of functions (Bliesemann de Guevara 2009, 260–271). The Bosnian justice system earns good grades when it comes to the criminal prosecution of conventional crime. Yet in the areas of organized and economic crime, that is, in those areas in which powerful actors are concerned, the state's prosecution is usually ineffective (Chêne 2009, 4–5). Cases in which any charges were brought against powerful political or criminal individuals usually involve the commitment of international

rajevo for abuse of authority during his time as minister of finance. In May 2012, the charge was dropped and Čović was acquitted due to a lack of evidence; observers commented, however, that the trial had been a farce from the beginning. Another case concerns Zlatko Lagumdžija from the multi-ethnic party SDP, who, together with another SDP politician, was accused of trying to extort money (2.2 million BAM) from Sarajevo businessmen in exchange for building licenses. In June 2011, the investigations ceased despite an audio recording, which documented "SDP's racketeering" (BH-News 2011b, 2011c).

35 | Compare Chêne (2009, 3); Randoux (2010); for a critical discussion, see Divjak and Pugh (2008, 374).

jurists deployed to BiH's courts. However, since 2009 the latter only have advisory functions, and it is highly questionable whether Bosnian courts will be able to do their job in a politically independent way without external help. Our third episode rather hints at difficult times for federal justice agencies in prosecuting organized crime and war crimes.

What is more, although possessing the power to intervene, international actors at times prefer to turn a blind eye to high-level economic crime. In the case of Dodik, for instance, international actors can be said to have empowered him in the first place, as “Dodik was first installed in 1998 with the significant support of the international community, who kept him in power as interim prime minister; his government was the largest recipient of donor funds in post-war RS” (Divjak and Pugh 2009, 378). This might explain why up until the present international agents in BiH have been reluctant to adopt harsher means against Dodik.

Summarizing the observations from the three episodes, it can be said that the activities of organized criminal networks and the everyday corruption of state officials enabling criminal activities are the most visible aspects of organized crime in BiH. People come into contact with them, for example, when buying low-priced goods such as smuggled cigarettes from the many black-market traders at local markets, or in their everyday dealings with state officials, for instance when applying for a business license or dealing with traffic police. High-level corruption and economic crime of political and economic elite figures, by contrast, are only partly visible. Although local media, NGOs, and international observers keep denouncing these sorts of criminal activities, rendering them prime issues of public debate, the accused have thus far been able to evade any form of serious prosecution by Bosnian law enforcement agencies. The three aspects (and actor groups) of crime and corruption in the country are not neatly separated but highly interlinked; yet, while TOC gangs and low-level state officials are increasingly becoming objects of state prosecution, political elites have thus far successfully hindered a complete clarification of their involvement in Bosnian crime – sometimes, as shown, enabled by and with the tacit complicity of international actors.

4. Enabling conditions for persistent crime and corruption

In a post-war society that has witnessed tremendous transformations since the late 1980s, phenomena such as smuggling, corruption, and a weak police and judiciary would not come as a surprise, was it not for the ongoing international intervention with its manifold reform projects explicitly aimed at fighting crime and corruption and strengthening the rule of law. Why is it that these problems have persisted despite the international community's comprehensive statebuilding agenda that is meant to curb them?

The apparent analysis would seek the answer to this question in local elites' particularistic interests and their resulting resilient behavior, as illustrated by the Dodik case. However, a complementary answer to this question is that the eco-

conomic intervention itself has created enabling conditions for the persistence of organized and economic crime and corruption. This “tacit complicity” is the invisible side of crime in BiH.

The war only constituted a short break in the economic liberalization process that had started in the 1980s. After 1995, the international agencies tied in with the earlier neoliberal policies. The efforts to privatize socially-owned assets, which played into the hand of war-time elites and thus enabled persistent economic crime, have already been discussed above; they laid the foundations for the enduring role of socioeconomic elite networks in the country. Since the strategic shift to statebuilding, the international complicity in providing enabling conditions for persistent crime has been less visible. Over the last 12 years, the international community’s economic strategy has been geared toward the creation of a conducive business and investment environment and the promotion of macroeconomic stability as the basis for economic growth. Strict budgetary discipline, effective taxation, and structural adjustment have been further aims.

These economic strategies have brought about some of the wished for effects with regard to macroeconomic and fiscal indicators; yet they also have been unable to fight the high levels of unemployment and poverty that plague BiH – thus leaving the socioeconomic push factors for low-level corruption and smuggling activities unaltered.³⁶ Although real growth between 2001 and 2007 reached an average of 5.4 percent (with peaks of almost 7 percent in 2006 and 2007), the unemployment rate was still more than 47 percent in 2006 (UNECE 2009) and 44 percent in 2012 (Sladojević 2012).³⁷ Activities in the informal sector were estimated at 43 percent of total employment in 2004 (Krstić and Sanfey 2006). The poverty rate in Bosnia was nearly 20 percent in 2004 (Council of Ministers of BiH 2004), and the United Nations Development Programme found that around 50 percent of the Bosnian population was socially excluded in one way or another, with women, pensioners, and young people being those most affected and vulnerable (UNDP BiH 2007).³⁸ In 2008 nearly two-thirds of young people between 18 and 35 years of age said they would emigrate if they could due to the lack of socioeconomic prospects (Early Warning System 2008, 47). For many families, the most important cushion has been money transfers from relatives who live and work abroad. Officially, these remittances amount to around 20 percent of the gross domestic product, with actual numbers probably much larger (World Bank 2007).

On the one hand, the high percentages of unemployed and poor citizens and the precarious employment contexts in the shadow economy boost the group of (young) Bosnians without job prospects who could possibly seek their income in

36 | Compare also Smajič (2010).

37 | The article reports that the official number of people looking for work by mid-2012 was 519,160 – that is, more than one-fourth of the total population of the small country with its estimated 3.8 million people.

38 | Compare also Cenic (2011).

illegal activities in the future.³⁹ In this sense, the international economic strategy can be seen as “tacitly complicit,” in the sense that it is geared toward business interests, not social welfare.⁴⁰ On the other hand, the indicators also hint at deepening problems of the already weak Bosnian state, which is deprived of income taxes and faces costs for social service provision. This is one reason why the state’s possibilities to actively deal with economic problems and to regulate the negative effects of economic liberalization are severely limited (Bliesemann de Guevara 2009, 150–166).

The other reason is that, although the level of international budget aid has decreased significantly since the early 2000s, direct interference by the “international community” into the state’s economic and social policies has not ceased. Under the headings of “partnership” and “political ownership,” the internationalization of Bosnian economic, fiscal, and social policies has changed in form rather than in substance: Bosnian representatives remain under international oversight and thus are unable to formulate alternative economic programs (*ibid.*, 146–150). This deprives the state of an important source of (output) legitimacy, prolonging its disputed status among Bosnian citizens. In this sense, too, the intervention could be said to be “tacitly complicit” in maintaining a situation of uncertainty about the future that may be conducive to persistent crime.

5. Conclusions and outlook:

The unintended effects of the “black hole” discourse

In terms of the transition from war to peace, Bosnia has come a long way since the end of the war in 1995, not least because of the comprehensive international intervention. Nonetheless, there seem to be limits to the possibilities of external actors to shape state institutions and enforce the rule of law, due to which economic crime and corruption have shown marked persistence. However, what we see in BiH is not case-specific, but rather a general dilemma of statebuilding: External interventions may be able to establish state institutions that look like their Western counterparts. Yet interventions are usually unable to anchor these

39 | The relation between the dire economic situation and illegal economic activities is as yet unexplored in the case of BiH. We can thus only assume, though with some plausibility, that the high levels of unemployment and poverty constitute enabling conditions for organized crime and corruption.

40 | The question of whether the recent global financial crisis has deepened this problem can only be answered with an informed guess here. Although the Bosnian finance sector was not deeply affected by the “casino collapse” due to its limited integration into the global financial market, the trade and service sectors experienced the effects of recession in the form of falling demand. Remittances were also expected to fall. These developments may have deepened the tense economic situation in the country and thus contributed to the potential push factors of illicit economic activities.

institutions locally. The political logics behind the façade continue to conform to local rules and logics, which can hardly be shaped by the intervention. Statebuilding thus creates what could be called “Potemkin states” (Bliesemann de Guevara and Kühn 2010).

The gaps between the façade of these states and their “content” open up possibilities for illegal business activities. The country’s elites have profited most from these gaps, especially the de-facto impunity, and the economic strategy behind the intervention has done little to either foster the state’s rule of law agencies or overcome the enabling socioeconomic conditions for persistent illegal activities in the country – the majority of which concern (low-level) corruption and the smuggling of licit goods. As argued above with regard to the first two episodes, it is not that Bosnian rule of law institutions completely lack capacity; they have, in some cases, been very effective in fighting TOC and corruption. Furthermore, civil society actors such as Transparency International BiH and different media outlets have repeatedly named and shamed TOC, economic crime, and corruption in the country, thus creating awareness of the problems and putting those involved under public pressure.⁴¹ In general, however, anticorruption and anti-crime strategies have not been able to live up to their goals, due to a lack of political will and the politicization of rule of law institutions.⁴²

NGO activities and media coverage are not the only reasons why TOC, economic crime, and corruption – and especially the linkages between them, that is, the criminalization of politics and the politicization of crime – are among the most discussed issues in Bosnian public discourse. Since the late 1990s, international actors have held that these issues are a main problem threatening the success of statebuilding and that tackling them and creating public awareness of the problems should thus be central concerns (Chandler 2006, 143 et seq.). Although international accusations targeting ties between state agents and criminal actors have not been without substance, the international approach has been criticized for the way in which the charges were used to further the general statebuilding project. For instance, Chandler (2006, 160) has argued that the international anticorruption discourse led to what could be called “corruptionization” (following the Copenhagen School’s idea of “securitization”): Defining an issue area as corrupted enabled the international actors to exempt it from local political processes and to put it under their direct jurisdiction.

This international strategy, which heavily relied on the “black hole” rhetoric, contributed to a high visibility of issues of crime and corruption in the Bosnian public. Yet, although this definitely contributed to the intended problem-awareness, it also had unintended effects that overshot the mark: Western discourse

41 | On September 14, 2004, for instance, the Banja Luka-based newspaper, *Nezavisne Novine*, published a special issue under the title “Crna Bosna” (Black Bosnia), with articles on crime, corruption, drugs, terrorism, and related issues between 2002 and 2004.

42 | Compare Divjak and Pugh (2008, 376); Chêne (2009, 5–6).

about the Balkans as a “black hole” in Europe and a “stronghold of crime” also resulted in low levels of citizens’ general trust in public institutions and a climate of anxiety. Despite low ordinary crime rates in the region, the citizens’ fears of becoming crime victims was – and is – higher than in Western Europe (UNODC 2008, 18, 99–100). Such an unjustified climate of anxiety runs contrary to both sinking crime levels and growing state capacities, and it is little suited to consolidate young democratic institutions. Rather, it plays into the hands of ethno-national elites, who in past elections have regularly profited from people’s perceptions and anxieties. This way, however, the “black hole” rhetoric ironically strengthens the same actors who profit from economic crime, cooperation with organized crime, corruption, and impunity.

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8.2 TRAFFICKING IN ORGANS, TISSUES, AND CELLS IS SOMETIMES PART OF HUMAN TRAFFICKING

Interview with Ivana McIlwiane, Police Officer and Scientist in Serbia

I am working as a police officer and as a scientist. With the police, I work for the anti-trafficking unit and I am engaged in overall police work regarding the trafficking of human beings (criminal investigation) and illegal migration, where there is a reemerging connection between smuggling and trafficking in some phases.

I am a medical doctor, as well – therefore my special interest and expertise is in this area.

As an academic, I am currently writing my thesis about the trafficking of organs as one form of trafficking of human beings. Methodologically, this involves a lot of research into official documents (from the EU Council, Organisation for European Economic Co-operation, the police, UN, etc.) to be able to map the routes of human trafficking.

I think we should address this problem in a more structured and more public way in order to take advantage of the existing global political will to address the issue of organ trafficking. The focus of my academic activities is on the global level. Within our police institution, the issues of organ trafficking and the abuse of the legal framework for preserving stem cells as well as in vitro fertilization procedures created a new area for white-collar criminal activity and it is still quite exotic. Currently, we are structuring a small unit to work on it with the approval of our superiors. In this context, we initiated cooperation with the Ministries of Interior and Health and are planning to include the Ministry of Finance.

Q: Within the field of human trafficking, how do you classify organ trafficking and how do you describe it?

Regarding the legal definition, organ trafficking is a part of human trafficking, they are addressed jointly. At the same time, the Republic of Serbia has adopted a *lex specialis* regulating the transplantation of human organs and transplantation of cells and tissues. In Articles 79 and 99, respectively, the sale of organs, tissues, and cells is punishable by law – be it for the person who offers them in exchange for reward, or the person who accepts them.

From my perspective, this is not to the point, since it is part of organized crime and is tied to the hardly controllable legal regulation of transplantation, which stipulates that the person who offers an organ on a commercial basis commits a crime, too. On a practical level, organ trafficking seems to be one visible effect of an economic situation in which desperate people offer their organs for sale. This seems to be similar to some other countries where this phenomenon has been detected. On the other side, one can presume that there are organized rings that mediate the jumping of the transplantation waiting lists as well as the illegal exchange of organs.

Unfortunately, there is no police evidence on this issue in Serbia yet. We also have some information via international channels about people being trafficked for that purpose from Bosnia and Montenegro to Italy – but again no police evidence.

There is a third area, in which organ trafficking is overlapping with war crimes in Kosovo. In September 2012, parts of the statement of a protected witness were made public, in which he stated that he was part of a gang that was killing people, mainly Serbs being abducted from Kosovo to Albania, to extract organs. The witness reported that he was forced to take out the heart of a young guy without anesthesia – and he was not even a doctor. This case will be classified as a war crime. At the moment, colleagues of mine are having a series of meetings with Serbian officials, including the chief prosecutor for war crimes.

A regular organ-trafficking procedure could happen, or will happen, as follows: Two parties meet in a third country and the hospitals perform the act. In that you have different classes: First class is least dangerous for the victim and for the recipient; business class: the standard is a bit lower; economy class: you have two victims – the donor and the recipient, since there is not enough medical expertise on both sides. Therefore, infections happen and both sides end up damaged. My personal stand is that in those cases, we have two victims and acts against humanity have been committed against both. From literature we have documented examples of such problems in Moldova, India, and Pakistan.

Q: Concerning the Balkans, how frequent is organ trafficking?

On the Internet you can find many ads of people offering their kidneys, but only a few ads that state, *kidneys required*. Such ads originate from Serbia, Bosnia, Croatia, and Montenegro.

Q: How are the medical personnel involved?

There must be a couple of rings, which also include medical personnel – but again there is no police evidence yet. No one is making an appointment directly with a doctor; it is more subtle, with talk about “speeding up the process,” and the involved actors have something to gain from it. It is a grey zone: There is the form of jumping the list for money – here we talk of corruption; a second form would be the actual purchasing of an organ; and the third form, the killing of a

person to obtain organs, is perhaps not so common in the region, apart from that case in Kosovo. Montenegro is heavily involved in those practices. Forms one and two exist all over the region, plus the personnel who help with the matching and operations – there is a lot of money involved. Even regarding the second form, they would still represent it as being a humane act, although it is immoral and illegal.

In case of blood donations, the problem is slightly different: Often, people do not know that blood is a commodity and that their blood will be traded on a very badly controlled market. This lack of information is unethical, too.

There is a general lack of ethical approaches to the matter. In Serbia you can find doctors treating terminal cancer cases against good practice, taking money from the relatives, playing on their hopes. I guess in times of war, the yardsticks are modified: You deal with triage and approaches to contain the damage on a daily basis. Thereby, the whole conception concerning the human body has changed. Therefore, people think: Yes, I can live without my kidney and the doctors do not think that this is a critical act. Morals shift during a war. People who are criminals think of themselves as acceptable. This explains as well why, for example, South Africa is such a good territory for illegal transplantations – this is why they do not see the problem.

Q: You mentioned that you have developed a strong interest in the issue of trading in stem cells?

The field of use and procurement of stem cells in Serbia is regulated by legislation adopted in September 2009, and that came into force on January 1, 2010. It regulates the whole field: definitions to medical procedures, relevant bodies, use, transportation, safe-keeping, treatment, and there is a section regarding criminal penalties (art. 99, 100, and 101).

My point is that lack of precise procedures about who can take blood from the umbilical cord and sample tissues, which are both rich in stem cells, facilitates criminal activity. Also it is against the law to advertise the service of taking samples, transporting it to the so called “private banks,” and preserving it there. In Serbia you do not have any bank, so everything is taken abroad and also the state does not require feedback info what has happened to it. Patients pay approx. €2,000 per sample, and yet they do not always receive complete and exact information about the course and costs of possible treatments – therefore it is if nothing else than a fraud.

The most active companies are Cryosave, and there is also a very active German company called Seracell GmbH. On the “market” here in Serbia, there are about eight very active companies and approximately 5,000 samples per year are taken and exported; most of them have the required paperwork, but as I mentioned before, *procedure is not good and there is space for criminal activity*, be it that services are publicly advertising via Internet – something that is against the above-mentioned law.

Regenerative medicine is probably the market where some of the cells end up for commercial use without knowledge of the donors. Interesting is the fact that when the samples are exported, the declared value for customs is only €10 per sample. As we do not have a cell bank in Serbia, the samples are not traced by the state. The whole business is in the hands of so-called private reps of foreign companies, and the doctors who perform the procedure after delivery receive money for it, which again is against the law.

Q: How would you describe the impact of such practices on society and on democracy?

When I see those systems from the impact-side, I think it really undermines democracy because it determines who will live and who will die. The rules that determine this field are international; they have incorporated a human rights perspective and rely on the scientific judgment of the doctor. Those rules are well known and there is no excuse for doctors who deviate in their judgment of choosing candidates for transplantation and for donation. Also, for shipping organs there are strict laws and regulations. If you shift sides in such matters, you go directly against democratic principles and are violating human rights. Corruption in organ transplantation definitely goes against basic democratic principles in all countries involved.

Q: In the future, what should international cooperation look like?

It would be very helpful to streamline regional and international teams. This should include specialized police officers with additional medical knowledge as well as knowledge of the financial flows involved. Close cooperation with prosecutors is essential here, since the medical documentation has its own privacy rules. Such teams would have to collect evidence on very high standards, because any accusation might damage the carriers and even the lives of those involved and might shift the image of a whole profession.

In addition, the revision of all legislation regulating transplantation of organs is vital; loopholes have to be closed. When corrupt medical teams gather to undertake illegal acts, for example on tissue-matching or organ transplantation, they can do so because medical documentation is rarely checked. For example, if the focus is on matching tissue, and it is assumed that the doctor is acting on ethical grounds, the status of alleged relatives is not checked. To stop illegal matching, this status would have to be checked thoroughly.

When I raised the issue of medical documentation in the Ministry of Health, they panicked because they had not been aware of the possible loopholes in the procedure for obtaining the positive identification of the donor and the recipient and in the monitoring of the process. I know how documentation is being done, for example after a tricky and tiring surgery or in cases of death.

When it comes to organized crime, it is certainly interlinked and organ trafficking needs a special unit. Pharmaceutical industries are involved, too, and there are many possibilities one could follow up with a professional team: For example to correlate the documentation of official transplantation with the documentation of anti-resistance medicines provided to hospitals.

Belgrade, September 2012

Regine Schönenberg

9. European Union

9.1 ORGANIZED CRIME AND CORRUPTION — NATIONAL AND EUROPEAN PERSPECTIVES

by Wolfgang Hetzer*

I. Introduction

In the declaration issued on the occasion of the 50th anniversary of the signing of the Treaties of Rome (“Berlin declaration” of 2007), the European Union (EU) promises to act together on countering terrorism, organized criminality, and illegal immigration. However, this promise can only be fulfilled if a wide range of demanding conditions are met, including a clear concept of organized criminality valid throughout Europe as well as moving away from a narrow understanding of the forms of criminality. Until now, certain keywords have been associated – almost instinctively – with it: drugs, red-light districts, human trafficking, smuggling of goods, foreigners, violence, and mafia.

Terms like this lead to a specific form of stigmatization. Organized crime, especially the “Mafia,” means always other people, foreigners, outsiders, an odd threat that comes from elsewhere. A glance at any daily newspaper will, however, open up other views. The news on criminal events at all levels of business, government, and politics may and must lead to a fundamental change regarding notions of the phenomenon of “organized criminality.”

Changes must be made to the criminological *and* criminalistic interpretation of organized criminality. The extremely attractive opportunities for crime presented by the size of the funds available within the EU and in public budgets, and the ongoing change in terms of the economy and regulatory policy have led to increasingly sophisticated methods of criminal activity. The particularly dangerous proponents of organized criminality adopt a far-sighted, businesslike approach, making commercial calculations and identifying the highest profit margins and

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the lowest risks. Not least due to these reasons, organized criminality has made a number of *qualitative* steps forward over recent years. This has allowed for the increase of its systematic exploitation of the welfare system within the EU, the increase of the control of deficits typical for a liberal internal market, of the diversity and complexity of legislative acts, and of the corruptibility of factions of the economic, political, and administrative elites in all states.

II. Statistics and no facts

The government of the Federal Republic of Germany has believed for many years that the difficulties are rooted in the very nature of the matter (organized crime) itself.¹ This is defined as a complex, ramified, often diffuse field of structures, partnerships, and acts that affects many areas of criminality. There is, however, a lack of reliable information based upon empirical evidence. The “law of silence” (*omertà*) frequently impedes the gathering of reliable empirical data. Furthermore, the practice frequently adopted by those involved in organized criminality, whereby they have a “foot in both camps” – one foot in the illegal camp and one foot in the legal camp – makes it more difficult to pursue a prosecution with adequate efficiency. In this context, it must be understood that organized criminality, in its developed form, is not just about planning and committing criminal offenses. The personal relationships, connections, and networks mentioned exist and operate outside concrete fields of criminality. Organized criminality is characterized by social networks within a residential area, a town, a region, or a country. This also makes it easier to disguise illegal activities.²

The government of Germany believes that organized criminality is more a matter of professionally organized groups of offenders and networks than of hierarchical structures, firmly established, throughout the country or even throughout the whole Federal Republic, with an acute influence upon legal markets and social and political structures. It believes this to be a “thoroughly reassuring finding in terms of criminal policy.”³ Although it is recognized that a differentiated approach must be adopted toward assessment of the situation in Europe, the conclusion reached was that the “Mafia” or other endemic structures did not have the state, business, or society in thrall to such an extent as to justify any suggestion of a direct risk to the people or to the common democratic good.

1 | Zweiter Periodischer Sicherheitsbericht vom 15. November 2006 (2. PSB) Available at: www.bmi.bund.de/nn_122688/Internet/Content/Broschueren/2006/2_Periodischer_Sicherheitsbericht_de.html

The “Organised Criminality” and “White-collar criminality” chapters in the First Periodic Security Report (2001) provoked critical responses: Hetzer, *Kriminalistik* (2001), 762 ff.; 767 ff.

2 | 2. PSB, pp. 442, 443.

3 | *Ibid.*, p. 445.

Germany does actually have a directive on countering organized criminality, but it does not include a sufficiently precise definition of organized criminality.⁴ In fact, it describes a phenomenological field of criminal activities.⁵ The principles set down in the directive are intended to help German criminal prosecutors to interpret organized criminality as a sub-category of “normal criminal” conduct, in order to condemn specific activities, not generally confined to a single offense, and their effect in terms of presenting a threat to society.

The police criminal statistics cannot be used to obtain either detailed or conclusive evidence on the amount of offenses with a clear link to organized criminality. Nor do the criminal prosecution statistics fit the bill in this respect. It is acknowledged that the statistical categories are inadequate to determine the threat posed by organized criminality, since they do not account for interconnectedness. The investigations do no more than scratch the surface.

There are structural reasons for this situation:

- lack of or late disclosure of offenses, because legal persons are involved as injured parties
- identity between those with information and accomplices
- lack of social controls
- high proportion (50%) of collective victims (e.g., state, social institutions)
- lack of a sense of victimhood among collective victims
- reduced awareness of loss
- reduced willingness to report an offense
- high proportion of companies among individual victims
- risk of damage to one’s own interests if an offense is reported (holder of un-taxed earnings as victim of a capital investment fraud)
- preference to resort to civil law methods
- interest in exercising discretion, with a view to possible damage to reputation

However, there is hardly any well-founded knowledge even outside the undetected areas, that is, on the extent and structure of – and trends in – registered white-collar criminality. The current format of the official statistics either does not permit white-collar criminality to be recorded at all, or, at best, gives an incomplete picture.⁶

White-collar criminality is always characterized by a high degree of damage to society, in particular because of the material losses it causes. The government of Germany would like to emphasize, however, that there is no reliable information available on this. It states that in the past, global estimates were made that were not backed up with sufficient data, either in terms of amount or in terms of the

4 | This is more or less a “mantra of criminal policy”: Hetzer, *Kriminalistik* (2007), p. 251.

5 | For details see 2. PSB, pp. 447, 448.

6 | See, overall, *ibid.*, p. 221.

increase in the losses claimed. There is a correspondingly large variation between the losses estimated for individual areas of the economy. And it believes that the intangible losses arising from white-collar criminality are even more serious than the material losses. These include:

- distortion of competition
- turning competitors into accomplices
- associated criminality by way of assistance by third parties
- risk posed to law-abiding business partners as a chain reaction after economic collapse
- hazards and damage to health
- reduced confidence among competitors and consumers in the honesty of certain professions and trades and/or even in the functioning of the prevailing social and economic systems

It goes without saying that it is extremely difficult, if not impossible, to put a figure on the losses arising from a loss of confidence.⁷ All in all, the government of Germany's analysis of white-collar criminality in Germany reaches a number of conclusions and makes a number of recommendations⁸:

- variety of forms of white-collar criminality
- offender profile significantly different from the average
- essential significance, for the sake of an effective market economy, of prevention and combating of white-collar criminality
- high degree of public interest in effective prosecution of white-collar crime
- requirements for sufficient police and legal resources
- institutional development and combination of specialized knowledge
- involvement of auditors in the siphoning off of profits
- rigorous development of cooperation with the branches of affected industries
- prevention by transparency specifications within business circles
- improved "corporate governance" (information provided to control bodies, guaranteed independence of these bodies, early warning system, internal controlling, assessment by auditors)
- special allowance for international links and for the globalization of markets

The term "organized criminality" is almost unique in the extent to which it is surrounded by myths, conjecture, and speculation. Nevertheless, organized criminality is even referred to as a "form of business."⁹ Our context is not just "the Mafia," as a concrete historical – but unfortunately still current – version of organized

7 | *Ibid.*, p. 232.

8 | *Ibid.*, pp. 218, 245.

9 | Hetzer, *wistra* (1999), 126 ff.

criminality in Italy; it is in fact a globalized system of uncontrollable power. The term must be interpreted as a metaphor for various forms of abuse of power. Organized criminality is not just found in societies with weak structures. Today, it has become established in all economic orders and political systems. No level of hierarchy in trade, government, or politics has escaped unaffected.

Tax evasion, corrupt practices, and systemic illegality in commercial enterprises operating worldwide have resulted in functional and structural overlaps with organized criminality. It is not actually possible to say that certain companies, governments, and authorities are all covering the same ground. However, there is already evidence to suggest that there may be dangerous clashes between parties' funding requirements, politicians' power interests, corporate groups' profit orientation, and the vulnerability of leading members of trade unions.

Corruption has actually become one of the most important functional principles of the globalized economy.¹⁰ It helps organized criminality along the way. The use of force is becoming obsolete. This may be due to the quiet efficiency, the fact that white-collar criminality is a "capital" risk, which is increasing all the time, in terms of its national importance and in its international links and organization, which tends to be overlooked.

The instruments of criminal law alone are not sufficient to combat either conventional organized criminality or white-collar criminality with the degree of necessary effectiveness. The requirements include stable guidelines and institutions, for example, clear guidelines on "compliance" and "corporate governance," which lend themselves to practical implementation. Ultimately, this is one way in which an effective governance of companies can be defined and compliance with statutory provisions and internal standards can be made more straightforward.¹¹

The findings and assessments to date have resulted in the following conclusions:

- It is not possible to use those methods applied in the official reports to make a sufficiently realistic quantitative or qualitative assessment of the threat that organized criminality poses to society, business, and the state.
- The established official term of "organized criminality" is insufficiently precise, not least because it has at least two functions, as a means of discrimination and as legitimation.
- Social inertia and economic profit-seeking may condense into structures that are, in part, identical with organized criminality.
- Political parties' funding requirements and the corrupt complicity of state bureaucracies provide organized criminality with opportunities to exercise an influence with the maximum leverage.

10 | Hetzer, *Kriminalistik* (2007), pp. 251, 255. On the international aspects of combating corruption: Korte, *wistra* (1999), 81 ff.; Wolf, *NJW* (2006), 2735 ff.

11 | Leyendecker, *loc. cit.* p. 13.

- Organized criminality is also a consequence of the egomaniacal-asocial energies developed by those with status in business, government, and politics in order to obtain and to defend their positions of power.
- Efficient prevention and prosecution of organized criminality by the police authorities also often fails simply because, in all states, it is “simply” a radical expression of the balance of administrative, economic, military, and political power.
- Organized criminality reflects the ethical-moral contradictions in social systems and the living lie of middle-class respectability.
- White-collar criminality is often a sophisticated and particularly damaging form of organized criminality, the perception of which is also impaired because of failings in terms of definition and because of empirical failings.
- Crime in the world of business reflects the special features of the particular economic systems, technological developments, and the level of international integration and culminates in groups that operate across borders, some of which have become nothing more than a refuge for systemic illegality.
- Even more so than with conventional organized criminality, prompt prevention and effective prosecution of white-collar criminality is an obligation of social justice, which is frequently not fulfilled, because the individual and collective powers-that-be – in business, government, and politics worldwide – attach more importance to self-interest and presumption.

III. Questions and no answers

In Germany, the reputations of heads of big businesses have fallen lower than in any other member state of the EU. According to a survey by the German Banking Association of April 2008, only 15 percent of Germans consider the members of this professional group to be trustworthy. The dramatic loss of credibility is largely attributable to white-collar crime. The subject of “corruption” features prominently under this heading.

“Slush funds” and bribes have become part of company policy. This is more than remarkable because corruption is, in fact, extremely detrimental to the market economy. It is also against the law and contrary to legal certainty. Even bribes have to be financed, for example through inflated bills. This frequently leads to the misuse of development aid or European aid. European taxpayers are footing the bill. Corruption flourishes in the shadows and often feeds the powerful.

Many states have ignored corruption at home for a long time, while others even promoted bribery undertaken by national companies abroad. During the Cold War, Western governments used to give unconditional support to corrupt regimes in developing countries. In fact, corruption was seen as part of an advisable political strategy, while increasing global competition hiked up the value of bribes in international procurement.

It is not only for these reasons that everything must be done to prevent corruption in international business and government affairs. In trying to define the necessary measures, we should not perceive of corruption as an isolated phenomenon. Indeed, it involves all aspects of society as it interrupts the decision-making process at all levels, it restrains economic development, it disturbs social politics, and undermines the stability of entire countries. At the same time, we should not think that legal transplants alone can cure social diseases such as corruption.

It would be a serious analytical mistake to deal with corruption primarily according to criminal law guidelines. The complexity of the topic cannot be covered by the crude conceptual framework of criminal law. Corrupt interrelationships reflect changed corporate and business practices, the effects of which may be indicative of a change of awareness with dramatic repercussions. For quite some time now, it has become increasingly difficult in various parts of the world to distinguish between political parties, governments, business enterprises, the judiciary, the police, the army, and organized crime. The funding requirements of political parties, the power demands of individual politicians, and the profit expectations of companies clearly overlap more and more frequently. At the relevant points where they intersect, there is “white-collar” corruption that cannot be tackled by the relatively primitive categories of criminal law.

1. Do we know what we mean?

There is still no sufficiently unambiguous *and* generally recognized definition of corruption – not even in the United Nations Convention against Corruption. Many attempts have been made. The spectrum includes moral, ethical, criminological, political, economic, and regulatory perspectives. From one academic perspective, corruption is seen to be the abuse of a public office, a position in commerce or industry, or a political mandate for the benefit of another – at the instigation of the latter or on one’s own initiative – with a view to obtaining an undue advantage for oneself or a third party, with the occurrence or expectation of damage or disadvantage to the general public or to an enterprise. According to another definition, corruption covers all forms of abuse of power aimed at obtaining unlawful advantages. In short:

Corruption is an attack on the proper performance of duties through an unlawful relationship of exchange between giver and receiver.

There is no uniform and fully recognized definition of corrupt conduct in the whole European legal and judicial arena. The term is used to describe a multitude of situations. One reason for this problem is that traditional designations and terms, which differ from one language to another, cannot always be reconciled. For example, in the EU treaties and documents, the English term “corruption” was translated as “*Bestechung*” in German, although the latter (English: “bribery”) in no way includes all aspects of the phenomenon of corruption. “Corruption”

means, among other things, bribery, patronage, nepotism, and misappropriation of common property, and the illegal financing of parties or election campaigns.

The different terms and legal systems give rise to differences both in the legislation governing the bribery of members of parliament, party financing, and the distinction between corruption in the public and private sectors and in the level and type of penalties available.

Nevertheless, in one special area (protection of the European Communities' financial interests), there are the beginnings of a legal definition. According to the Convention on the Protection of the Communities' Financial Interests, the deliberate action of an official, who, directly or through an intermediary, requests or receives advantages of any kind whatsoever, for himself or for a third party, or accepts a promise of such an advantage, to act or refrain from acting in accordance with his duty or in the exercise of his functions in breach of his official duties in a way that damages the European Communities' financial interests constitutes passive corruption.

Each member state must ensure that the acts referred to are criminal offenses. The uniform combating of corruption in the private sector within the EU is to be ensured by means of the Framework Decision of July 22, 2003, on combating corruption in the private sector, which also includes an attempt to define the term.

Whether such definitions are practicable is open to debate. The situation is further complicated by the fact that corruption ceased, some time ago, to be concerned solely with the "classic" offenses of corruption on the part of public officials and now also relates to unlawful conduct in the private sector. In this context, the term "economic corruption" has gained currency. This is not a term of law but is commonly used in penal policy, criminal science, and criminology. Essentially, it describes dishonest conduct in the private sector that is more than ostensibly comparable with conventional corruption by public officials.

Economic corruption is said to exist where a private economic operator, secretly or covertly, receives or requests advantages for himself or another in return for economic conduct by another private economic operator, or grants or offers such as advantages to the other party, in contravention of generally recognized standards and with adverse effects on individuals or the general public.

If the foregoing is correct, economic corruption is therefore a kind of unwelcome competition in non-performance. Finally, one thing which economic corruption certainly has in common with corruption by public officials is that they both involve an unlawful exchange of advantages.

2. Do we know where we are?

The problem of definition is not only theoretical – it also has practical consequences. The quantitative reality of corruption-related crime is influenced by the understanding that each state brings to that term in the first place. In Germany, the actual extent of criminally corrupt conduct cannot yet be defined as accurately as is desirable, and this is even more true for the other 26 member states of the EU. To

judge by a standard legal commentary on the German Criminal Code, corruption cases do not figure largely in criminal prosecution in this country. The number of cases is low, and only a small proportion of those that come to light result in the bringing of charges. The number of unrecorded cases is very high because there are offenders on both sides of a corrupt relationship. Nevertheless, the damage caused by corruption is “unquestionably” very extensive.

It is even more difficult to give a reasonably realistic, comprehensive, and useable assessment of the situation across Europe. Such an assessment should, logically, be based on meaningful processes to monitor implementation of the relevant provisions. This is, however, a pious hope. The contribution of international organizations to the implementation, in sovereign states, of the rules developed by them is naturally limited. Nevertheless, incentives for regulatory compliance can be provided. This can be achieved through international evaluation of the implementation of international provisions. Three models have been established:

- monitoring by the executive body of the relevant international organization
- evaluation by a special group of experts
- monitoring by some or all of the member states of the relevant regime (“peer review”)

It is not all that surprising that the implementation of international recommendations on evaluation does not lead to a reduction in corruption itself. Firm conclusions cannot readily be drawn in this regard because, in practice, corruption is not even remotely measurable. This is true despite the various sets of case statistics and corruption-awareness indices. Whether one of the reasons for this immeasurability is that bribery is (allegedly) a “victimless” crime in which none of those involved has an interest in detection, is open to question.

Be that as it may, in contrast to the Council of Europe and the OECD, the EU has decided not to set up a specific committee to monitor its anticorruption rules. Nor is there any intensive monitoring of the rules that – particularly in the field of private-sector corruption – go beyond the mandatory provisions of the Council of Europe and the OECD. Even the EU Convention on the Fight against Corruption makes no provision for implementation review. The 1st Protocol to the Convention on the Protection of the Communities’ Financial Interests does at least require member states to transmit to the Commission the texts of their laws concerning implementation.

It was against this background that the Commission adopted its First Report on the implementation by member states of the Convention on the Protection of the Communities’ Financial Interests and its protocols on October 24, 2004. Even at that time, there were complaints about various shortcomings in the implementation of the provisions on bribery in the 1st Protocol. These included the fact that member states were very hesitant in ratifying the Convention and its protocols and showed no interest in considering the Commission’s proposal for a directive

on the protection of the Communities' financial interests under criminal law for many years. The directive would transfer the fundamental provisions of the Convention and the protocols to the first pillar of the structure of the Union and allow the Commission to bring an action against defaulting member states before the European Court of Justice for failure to implement – an approach which, in light of the Lisbon Treaty, may need to be discussed.

In its aforementioned Second Report, the Commission comes to the conclusion that the harmonization objective of the instruments on the protection of the Communities' financial interests has still not been fully achieved for all 27 member states, either formally or materially. *De facto* the current system of protection creates a multi-speed situation. It results in a mixture of different legal situations in terms of the binding effect of the instruments on the protection of the Communities' financial interests in the individual member states' internal legal order. Formally, this situation does not produce the desired effective and dissuasive penal protection. Many of the responsible parties in certain "old" member states should remember this when it comes to assessing the situation in new member states such as Romania and Bulgaria.

Nevertheless, the Commission has made impressively clear statements and delivered resolute assessments. In its reports to the European Parliament and the Council, published on July 23, 2008, on progress in Romania and Bulgaria under the cooperation and verification mechanism, it points out that both countries faced serious challenges in the year of their accession, 2007, that is they needed to set up a functioning judiciary and to take effective action to tackle corruption and organized crime. At the time, the Commission and the other member states considered these challenges to be surmountable. In particular, there was agreement that concerted action against corruption and organized crime was absolutely necessary. The reasons for this are clear: Bulgarians and Romanians must be able to exercise in full their rights as citizens of the Union. They must be able to take full advantage of the opportunities created by membership in the EU. At the time, it was also generally acknowledged that the fundamental principles of the EU (rule of law, recognition and cooperation on the basis of mutual trust) would only be meaningful if the aforementioned problems were tackled at the root.

The cooperation and verification mechanism set up by the Commission is used to monitor progress and to provide support in remedying shortcomings. The European Anti-Fraud Office of the Commission (known more commonly as OLAF) plays an important role in this regard. The above-mentioned reports are the third in a series of reports to be produced on a six-monthly basis. Although initial successes have been recorded, it can nevertheless be observed that the Bulgarian and Romanian authorities are finding it difficult to make real progress in the areas of judicial reform and the fight against corruption and organized crime. There is little evidence that the system is functioning correctly. Progress is slowing and therefore proves to be less than expected. The following can be listed as successes for Bulgaria:

- amendment of the Constitution and adoption of a Code of Civil Procedure, a Law on the Constitution of the Courts, and the related implementing provisions
- establishment of a national security authority (SANS), which has been exercising its investigative powers since the beginning of April 2008
- restructuring of the border police
- closing of shops and petrol stations selling duty-free goods

It is beyond dispute that those two new member states have made extensive efforts to establish relevant institutions and procedures. However, there is still a lack of satisfactory results. The priorities now are to ensure that the institutions are able to function properly and that legislation is effectively implemented. However, there is unfortunately a whole raft of lacunae, as the example of Bulgaria shows. The situation in Romania is similar. The situation can be described as follows:

- overloading of the justice system as a result of deficiencies in the rules contained in the Criminal Code and the Code of Criminal Procedure
- inefficiency of the preliminary investigation procedure
- lack of certainty as a result of the unclear allocation of duties between the judiciary, the police, and other authorities
- unnecessary referral of cases back to the investigating authorities because of minor procedural errors
- delays in proceedings
- lack of procedural guarantees to prevent the reluctance of courts to deal with cases
- lack of an appropriate administrative apparatus within the prosecuting authorities and the judiciary
- lack of staff
- training and equipment deficiencies
- failure to investigate the suspicion of corruption and vote-buying in the local elections of 2007 and the by-elections of June 2008 in at least two towns
- inadequate efforts to combat corruption at the highest level and organized crime
- unreliability and inconsistency of the statistical data submitted
- little progress in the freezing or seizing of assets acquired through criminal activities
- insufficient proof of the capacity to administer EU funds properly
- obstruction of the prompt and effective prosecution of corruption and fraud cases through the creation of procedural barriers, delays in court proceedings, information leaks, and the suspected exertion of influence on the administrative and judicial authorities.

Up to now, Bulgaria and Romania have failed to provide evidence that the justice system is operating in this way. However, they should manage to dispel these doubts as to their abilities to combat corruption and organized crime rigorously. This would also have long-term positive effects on the economies of both countries. Bulgaria and Romania have a responsibility towards other member states not only in the sphere of judicial and home affairs but also in the joint administration of EU funds.

The Commission takes the view that aid is more effective than sanctions. Up to now, therefore, it has refrained from applying the safeguard clauses in the accession treaty. It has now become clear that the cooperation and verification mechanism must remain in place for some time to come. For that mechanism to succeed, it is essential that the recipient state is granted access to information and uses the advice given strategically so that appreciable progress is made on the reforms necessary.

3. Do we know where we come from?

As several observers point out we are confronted with an extreme susceptibility of the EU to corruption. This is based on the following facts and hypotheses:

- Subsidies, which are particularly attractive targets for criminals, account for over 90 percent of the EU budget.
- The area involving one of the greatest expenditures, the Common Agriculture Policy, is organized by an extremely complex web of regulations, rather than by free competition. This agricultural protectionism offers great opportunities for corruption, while the impenetrability of the web of regulations makes control more difficult.
- Only a small proportion of the EU budget is managed by the EU institutions themselves; about 80 percent is administered by the member states. This intertwining of administrations makes control more difficult.
- When it comes to the perception of – and importance attached to – corruption, there is a North-South divide in the EU. As a result, attempts to combat it at the EU level tend to be based on the lowest common denominator.
- Scandalous cases of “political corruption” at the EU level (e.g., legalized fraud involving donations, legalized nepotism, and legalized moonlighting by MEPs) undermine the credibility of attempts to combat corruption in the administration and world of business.

Other arguments are brought into play as well: The key aspect of the EU budget, it is claimed, is that the better part of it is disbursed as subsidies. However, so the argument, subsidizing tends “inherently” to encourage people to fabricate the prerequisites for receiving subsidies or conceal details from the taxman in the case of concessions. The complexity of the rules governing how subsidies are awarded, which is often not justified by any sensible market requirements and appears to be

misused through targeted lobbying, further increases the temptation. In the final analysis, the public seldom perceives EU budget funds as taxpayers' money. This makes it easier to view the budget as a "self-service store" and encourages the view that misappropriating funds from the budget is a mere peccadillo.

It is true that the prices of EU agricultural products are kept artificially high, often at many times the price that would otherwise be paid on world markets. If EU farmers sell their products on the world market, they can claim "refunds" to cover their "losses." Time and again, this leads to large fraud involving exports of, for example, dairy products, beef, and cereals. Reforms will have to change this system. At the same time, the EU's external customs duties are determined by a whole host of criteria – which makes it difficult to prove compliance. The problem of control is exacerbated by the fact that agricultural lobbies in the member states tend to be particularly influential, which makes it impossible to implement effective rules in the manner desired.

The peculiar intertwining of member states' and supranational powers and duties with regard to implementation and control, it is claimed, also increases susceptibility to corruption. The member states are said to have no great incentive to combat corruption effectively, as it is "only" the EU that pays the price of corruption that may have an effective "functional" value for the local economy. What is more, claim procedures may prove counterproductive. Which is, of course, a classic dilemma.

4. Do we know where we go?

Corruption is one of the oldest and most effective means of social, economic, and state self-organization. It is now depicted even as a "growth sector." The idea that there should be a Europe-wide sense of what is and is not fair, of what eases or threatens our co-existence, lies at the interface between naivety and despair. It is ultimately a paradox. We have corrupt structures in society, business, and politics that the crude framework of criminal laws is entirely incapable of accommodating. The same is true of objective structures. Social institutions, political parties, democratic and undemocratic governments, the judiciary, the administration, but also the police, the army, and business enterprises have created "productive" associations in a number of countries around the world. Their potential capacity easily outstrips that of conventional criminal organizations.

As indicated earlier: The proposition that a distinction between spoils and profit can be drawn is sustainable only in fairy-tales ("The emperor's new clothes"). Be that as it may, the fact that the profit-making intentions of economic agents, the ambitions of politicians, and the financing requirements of parties and the greed of public officials are increasingly interconnected can no longer be ignored. This leads to a particularly "high-powered" corruption with which the comparatively simple terminology of criminal law cannot contend.

The day-to-day business of politics offers a broad spectrum of possibilities for the emancipation of entrepreneurial spirit, expertise, and democratic control.

The toolbox is overflowing and contains well-paid jobs, favors, legislative initiatives, subsidies, and promises of pensions. In a world in which material prosperity has become the meaning of life, and there is no longer any discernible connection between work and income, corruption is everywhere. It has a crucial pivotal function. Observance of the law is no longer a *modus vivendi* for communities as mutually supportive associations. Criminal-law provisions to combat corruption may result in a dual paradox: In principle, their ability to steer behavior cannot be guaranteed to the extent necessary because of the undefeatable human constants of greed, openness to temptation, and ambition for power. Criminal law is apparently supposed to appeal to our morality, but it can do nothing to change the basic principles of institutions and individuals. Criminal justice does not replace upbringing. It cannot condition the morality, of citizens, business leaders, and politicians. Ideally, it protects legal interests through prevention and punishment.

In the case of corruption, however, something else, something much more important might be at work. The influencing of human behavior that it seeks to achieve is always connected with humiliation. As long as those involved will not or cannot understand that conducting a corrupt relationship puts their self-respect at risk, all debate on the fight against corruption remains futile. A lack of respect for individual dignity will lead to the devaluing of all relationships, the hallmarks of which should be work and loyalty. Nevertheless, the corruptive acceptance of money is an attack on self-respect.

IV. Conclusions

The Commission has a serious interest in combating corruption effectively but lacks the powers to do so. The member states have the powers but are often not interested. While corruption is becoming increasingly transnational, as critics argue, penalties and law enforcement systems are still organized nationally, with the result that the risk of prosecution and conviction is relatively small. Anti-corruption policy tends to be made up on the fly because it is usually a reaction to scandals and crises. Consequently, it is often hurried and not thought through.

Political corruption in the EU is generally seen as particularly rife. It is a widespread perception that Members of the European Parliament are legally defrauding millions in the form of donations, employing spouses and other relatives at the taxpayer's expense, and receiving more than one salary.

Proposals for far-reaching reforms (for example, standardizing the VAT rate, harmonizing criminal law, or abolishing subsidies) are thought to have no chance of success, and therefore the tendency to engage in corrupt practices at the EU level is not expected to decline significantly. Suspicions have even been voiced that the lack of scope for control and imposing penalties at the EU level is due to a secret plan on the part of each individual member state to ensure it has the same possibilities to engage in fraud.

However, as of yet there is no reliable evidence for such a strategy, which would be tantamount to a special form of conspiracy. Nevertheless, it is debatable wheth-

er the historical background and current objectives of the EU budget have created specific risks and whether the budget's political implications and characteristics have not helped to create an environment that attracts crime. Nobody should look for quick and easy answers. In the next few years in particular, the EU is facing some highly complex tasks. The effective protection of its financial interests will determine whether the EU's taxpayers and voters will retain or regain their faith in the historically necessary continuation of European integration.

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9.2 TRANSNATIONAL ORGANIZED CRIME AND EUROPEAN UNION: ASPECTS AND PROBLEMS

by Vincenzo Militello*

1. The fight against criminal organizations and their ability to carry out illegal activities that reach beyond national boundaries has long since signaled the need to go beyond a type of European integration that is confined to merely economic aspects. Amongst the objectives of the European Union – implicitly dealt with in the 1992 Maastricht Treaty, and then expressly in the 1999 Amsterdam version – there is the intent to create not only a shared space for goods and citizens, but also for “justice, freedom and security” (today art. 3, in the TEU post-Lisbon).

The fight against organized crime in particular represents a “bridgehead” in the European campaign to harmonize criminal laws in the member states. The peculiar ability of criminal organizations to expand beyond national borders, facilitated by the abolition of the barriers once restricting the movement of people and goods within the EU, has gradually affected the traditional national authority in the field of criminal law. Formerly, such national sovereign authority had prevented any European interventions in this area and, even when the need for greater European cooperation in the fight against transnational crime had been acknowledged, it still influenced the guidelines developed by the European Union. The reason was not only resistance against giving up part of one’s national sovereignty, but also the need to reconsider the consequences of such a new transnational dimension on the traditional guarantees given under national systems of criminal law.

After explaining what role the harmonization of criminal law plays in the current European Union treaties (2.), we will discuss how the difficulty of defining the concept of transnational organized crime may lead to European interventions that go beyond the limits of “reasonableness” (3.). In order to avoid such a risk, it is useful to refer to other relevant international sources, such as the 2000 Palermo UN Convention (4.). Nevertheless, the more recent European decisions on the

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matter (in particular, a resolution by the European Parliament of October 25, 2011) seem to have paid a lot of attention to the main problems involved (5.).

However, the effectiveness of normative instruments in tackling organized crime highlights a more general problem. The European Union's action concerning criminal law shows the need to rethink the traditional guarantees and fundamental principles developed within the political context of nation states: In order to maintain the criminal law system as a means to protect all citizens, it is necessary to reconsider traditional guarantees within the framework of the new European dimension. This difficult topic will be addressed in the final sections of this essay – with reference to the European Court of Human Rights (6.) and the European Charter of Fundamental Rights as counterweights meant to avoid unbalanced European action against organized crime (7.).

2. Over the last decade, the competencies of the European Union in matters of criminal law have progressively grown. The Lisbon Treaty extended the rules regarding a harmonization of criminal offenses and their penalties to up to ten areas of “particularly serious crime with a cross-border dimension” (art. 83.1.1 TFEU).¹ A EU intervention is also granted in cases where “the approximation of criminal laws and regulations of the Member States proves essential to ensure the effective implementation of a Union Policy in an area which has been subject to harmonization measures” (art. 83.2).² Lastly, a special area is defined regarding offenses against the Union's financial interests (art. 325 and art. 86.2).³

1 | A different view is propounded by *Satzger*, *Internationales und Europäisches Strafrecht*, Baden-Baden 2010 (4. ed.), p. 117, who holds that the Lisbon Treaty has narrowed the scope to harmonize questions of criminal law. However, the Treaty does not seem to limit but rather enhance possibilities for harmonization, as it specifies areas that may be integrated (see below).

2 | See *Bernardi*, *La competenza penale accessoria dell'Unione Europea: problemi e prospettive*, in www.penalecontemporaneo.it, 2 s.; *Grasso*, *Il Trattato di Lisbona e le nuove competenze dell'Unione*, in *Studi in onore di Mario Romano*, Napoli 2011, 2326 s.; *Sicurella*, *Questioni di metodo nella costruzione di una teoria delle competenze dell'Unione Europea in materia penale*, *ibid.*, 2626; *Siracusa*, *Il transito del diritto penale di fonte europea dalla 'vecchia' alla 'nuova' Unione post-Lisbona*, in *Riv.trim.dir.pen.ec.* 2010, 796 s. See also *Heger*, *Perspektiven des Europäischen Strafrechts nach dem Vertrag von Lissabon*, in *ZIS* 2009, p. 410.

3 | The autonomy of this specific area is claimed by *Sieber*, *Einführung*, in: *Europäisches Strafrecht*, Sieber et al. (cur.) Köln 2011, n. 175; *Sicurella*, “*Prove tecniche*” per una metodologia dell'esercizio delle nuove competenze concorrenti dell'UE in materia penale, in *L'evoluzione del diritto penale nei settori di interesse europeo alla luce del Trattato di Lisbona*, Grasso et al. (ed.), Milano 2011, 42 s. See also *Grandi*, *Riserva di legge e legalità penale europea*, Milan 2010, 125 s. The three different juridical grounds for European intervention in criminal matters are also highlighted by the European Commission in a recent

The tendency to expand the EU's competencies regarding criminal law and to diversify areas of intervention reflects the ever-greater role played by the European Union and its institutions. After all, the EU's citizens have supported European action in the fight against crime, which is perceived as one of the EU's main objectives, as shown by *Eurobarometer* data (in issue nos. 74 and 75, Autumn 2010 and Spring 2011).

In this respect it seems curious that, in par. 83.1.2. TFEU, organized crime is listed last among the sectors that can be subject to harmonization, as this seems to neglect the fact that organized crime, as a clear example of transnational crime,⁴ has very much accentuated the need that member states coordinate their national criminal policies both within the EU and within the wider context of the United Nations.⁵

Since 1997, organized crime, along with terrorism and drug trafficking, has been named in European Treaties as a possible subject for the harmonization of criminal law (par. 31.1.e EUT Amsterdam version, already referred to by par. 61.1.a ECT).⁶ Harmonization of criminal legislation is aimed at "developing a close coop-

communication [COM(2011) 573 of 20.11.2011] "Towards a European Union's Criminal Policy: Ensuring the Effective Implementation of EU Policies Through Criminal Law", 5-6. On this aspect, see *Klip*, *European Criminal Policy*, (2012) 20 *Eur.J.Crime Cr.L.Cr.J.*, 6 s.

4 | Along with terrorism, especially after the 9/11 attacks: see *Maruhn/Meljnik*, *Völkerrechtliche Massnahmen zur Bekämpfung von organisierter Kriminalität und Terrorismus*, in *Organisierte Kriminalität und kriminelle Organisationen*, Gropp-A.Sinn (Hrsg.), Baden Baden 2006, 479 s.; *Kress/Gazeas*, *Terrorismus*, in *Europäisches Strafrecht* (cit. nt. 136), 349.

5 | On this matter see *Herlin-Kernell*, *The Treaty of Lisbon and the Criminal Law: Anything New Under the Sun?*, in *Eur. J. Law Reform* 2008, 331; *Hegler*, *Europäische Strafgesetzgebung*, in *ZIS* 2009, 340; *Bernardi* (quoted in note 2), 2 nt. 7; *A. Centonze*, *Criminalità organizzata e reati transnazionali*, Milan, 2008, 25 s., 367 s. For a critical assessment see *Elholm*, in *Does EU Criminal Cooperation necessary mean Increased Repression?*, (2009) 17 *Eur.J.Crime Cr.L.Cr.J.*, 191 s., 219 s. For United Nations documents see *A compilation of UN Document 1975-1998*, Bassiouni-Vetere (eds.), New York 1998. See also *Fijnaut*, *Transnational Crime and the Role of UN in Its Containment through International Cooperation: A Challenge for the 21st Century*, (2000) 8 *Eur.J.Crime Cr.L.Cr.J.*, 119 s., 124 s.; *Mueller*, *Transnational Crime: Definitions and Concepts*, in *Combating Transnational Crime. Concepts, Activities and Responses*, Williams/Vlassis (eds.), London 2001, 13 s.; *Micheli-ni/Polimeni*, *Il fenomeno del crimine transnazionale e la Convenzione delle N.U. contro il crimine organizzato transnazionale*, in *Criminalità organizzata transnazionale e sistema penale italiano. La convenzione ONU di Palermo*, Rosi (ed.), Milan, 2007, 2 s., 6.

6 | For the link between these sectors see, for instance, *Zeder*, *Mindestvorschriften der EU in materiellen Strafrecht: Was bringt der Vertrag von Lissabon Neues?*, in *Era forum* 2008, 211 s.; and also, *Militello*, *Agli albori di un diritto penale comune in Europa: il contrasto al crimine organizzato* (The dawn of a common criminal law in Europe: the contrast against

eration in the fields of Justice and Home Affairs,” something beyond the scope of the original intent of the European Economic Community (art. B EUT, Maastricht version of 1992). In the 1990s, the importance of cooperation against cross-border crime, including its organized forms, led to a two-fold intervention strategy: The mutual recognition of judicial decisions and an approximation of criminal law. These two approaches will have to be integrated in order to overcome differences between the criminal justice systems of individual member states (as highlighted in art. 67.3 and 82.1 TFEU).⁷

Within this general framework, the European Union has adopted many regulations to fight criminal organizations. Even before the Amsterdam Treaty came into effect (May 1, 1999), this was regarded as one of the first “European duties of incrimination”⁸: At the end of 1998 the Council passed a “joint action” concerning the involvement in criminal organizations in the EU’s member states.⁹ This innovative point was also included in the 1997 Action Plan against Organised Crime,¹⁰ which has long represented a European policy program on criminal matters.¹¹

organized crime) in *Il crimine organizzato come fenomeno transnazionale* (Organized crime as a transnational phenomenon), Militello-Paoli-Arnold (ed.), Milan, 2000, 34 s.

7 | For recent studies see *M.Harms/P.Knauss*, Das Prinzip der gegenseitige Anerkennung in den strafrechtlichen Regelung der EU, in FS-Roxin, Heinrich et al. (eds.), Berlin 2011, 1479 s., 1486; *Suominen*, The Principle of Mutual Recognition in Cooperation in Criminal Matters, Antwerpen 2011, 51 s., 56 s. The lack of consideration for the connection highlighted in this article characterizes the radical criticism on the principle of mutual recognition made by *Schünemann*, for instance in *Ein Kampf ums europäische Strafrecht – Rückblick und Ausblick*, in FS-Szwarc, Joerden et al. (Hrsg.), Berlin 2009, 109 s. 119 s. A contrary opinion is held by *Klip* (quoted in note 3) 5, who points out that the European arrest warrant was successful in a context that lacked the harmonization of domestic legislations. – Actually, this proves quite the contrary: The differences between national criminal law systems the basis for the resistance against the European arrest warrant in several countries (e.g., Germany and Italy).

8 | Even if, originally, the concept had a weaker meaning as there was no judicial control in case of non-fulfillment by the member states. For an in-depth examination of such a delicate issue see *Paonessa*, Gli obblighi di tutela penale, Pisa 2009, 10 s., 14 s.

9 | Joint Action of 12.21.1998, in OJEC L 351 29.12.1998, which accompanies the other two joint actions dealing with illicit proceeds and corruption in the private sector, respectively 3.12.1998, in OJEC L 333 of 9.12.1998, and 22.12.1998, in OJEC L 357 of 31.12.1998.

10 | The plan was published in OJEC C 251 of 15.8.1997. An updated list of other European actions and documents relating to organized crime can be found in *Kress/Gazeas*, Organisierte Kriminalität, in *Europäisches Strafrecht*, 327 s.

11 | The first Action Plan on the topic was followed by a similar document (in OJEC C124/1 of 3.5.2000) on the Prevention and Control of Organized Crime at the Beginning of the Millennium. References to organized crime are also contained in the wider “The Hague Pro-

However, the outstanding importance thus accorded to the topic of organized crime is not reflected in article 83.1.2 of the Treaty, where, as pointed out earlier, the reference to organized crime is only to be found at the end of a long list of criminal activities requiring harmonization – a list on which terrorism is named first (unlike art. 31.1.e of the Amsterdam version of the TEU, where terrorism was only mentioned after organized crime).¹² Such a marginal placement of organized crime, together with the traditional vagueness of the concept, carries the risk that the scope of the legal provisions of article 83.1.2 will be widened excessively, so as to (ideally) include any form of crime among the fields of possible European harmonization.¹³

This risk has to be avoided, in order to prevent a definition of organized crime so wide that, although it is endorsed by art. 83.1.2, TFEU, will be nothing but a worthless duplicate concerning many of the criminal activities named in the same article. In particular, the trafficking in human beings, drugs, and arms, but also money laundering and corruption, are all activities that share the characteristic that they are “normally” carried out in organized forms, especially when performed transnationally.¹⁴

gramme: strengthening Freedom, Security and Justice in the European Union”(in OJEC C 53/1 of 3.3.2005), especially par. 2.3, 2.6, 2.7.

12 | This impression is strengthened by the lack of reference to organized crime among the priorities named by the European Council in relation to matters referred to by art. 83.1: see The Stockholm Programme, an Open and Secure Europe Serving the Citizen, adopted by the EU Council on 3.3.2010, in OJEC C 115 of 4.5.2010, par. 3.3 (where the priorities are as follows: trafficking in human beings, terrorism, drug trafficking, sexual exploitation of children and child pornography, cyber-crime). Appropriately, the European Parliament has nevertheless pointed out the non-exhaustive character of “these objectives... and that the order of priorities could have been better structured” and, at the same time, it also accurately highlighted how “the fight against terrorism and organized crime is and must remain a key priority within the framework of internal security strategy”: Committee on Civil Liberties, Justice and Home Affairs, Report on the European Union’s Internal Security Strategy [2010/2308 (INI)] rep. on 24.4.2012 (Rapporteur *Rita Borsellino*).

13 | This argument is expressed by *Grandi*, Riserva (quoted in note 3 – Rule of Law), 120 at fn 25. On the spaces of uncertainty of the concept of organized crime in the previous 2008 Framework Decision (mentioned below in this article), see e.g. *Calderoni*, A definition that could not work: the EU Framework decision on the fight against organized crime, (2008) 16 *Eur.J.Crime Cr.L.Cr.J.*, 270 s.; *Pasculli*, Una umanità una giustizia. Contributo allo studio della giurisdizione penale universale, Padova 2011, 92.

14 | See *Sanchez Garcia de Paz*, Perfil criminológico de la delincuencia transnacional organizada, in *Serta – In memoriam A. Baratta*, Madrid 2004, 641 s. See also the Europol Reports on the phenomenon, compiled annually since 2000, Europol (ed.), 2000 European Union Organised Crime Situation Report, Luxembourg 2001, in specie 10 s.; on this topic see *A. Sinn*, Das Lagebild der organisierten Kriminalität in der EU - Tendenzen, rechtliche

In order not to lose sight of the real meaning of organized crime, it is necessary to identify its typical characteristics. A definition of organized crime is even more important if we consider that, even before the Lisbon Treaty came into effect, many criminal activities now enumerated in article 83.1.2 had already been the object of European decisions. These measures established minimum standards concerning both illicit conducts and corresponding penalties.¹⁵ Therefore, the fact that the Amsterdam Treaty only referred to organized crime, terrorism, and drug trafficking did not hamper the further inclusion of several of the sectors, now expressly contained in the list referred to by art. 83.1¹⁶ as areas of European harmonization.

Besides, the current Treaty on the Functioning of the European Treaty envisages the possibility to extend harmonization measures to forms of crime that are not explicitly listed in art. 83.1.2. This will happen with regard to the evolution of crime, for example, when new criminal activities surface that are similar to those that are already the object of a possible harmonization of criminal law (art. 83.1.3). Nevertheless, two characteristic elements are necessary a particular “seriousness” and a “cross-border dimension” of the crime. Therefore, future efforts to harmonize criminal law may not exploit the vague definition of organized crime. In particular, formal procedures (unanimity of the Council and consent of the

Initiativen und Perspektiven einer wirksamen OK-Bekämpfung, in *Organisierte Kriminalität* (quoted in note 4), 503 s. Lastly, a confirmation of the connection pointed out in this article can be found in the Internal Security Strategy for the EU, approved by the Council of Europe on 25 and 26 March 2010 (Internal Security Strategy for the European Union – Towards a European Security Model, Luxembourg 2010, 14).

15 | The following framework decisions go in the same direction: the decision of the Council of 29.5.2000 on protecting the euro against counterfeiting (2000/383/JHA); FD of 28.5.2001 combating fraud and counterfeiting of non-cash means of payment (2001/413/JHA); FD of 26.6.2001 on money-laundering and confiscation of crime-related proceeds (2001/500/JHA); FD of 13.6.2002 on combating terrorism (2002/475/JHA); FD of 19.7.2002 on preventing and combating trafficking in human beings (2002/629/JHA); FD of 28.11.2002 on the strengthening of the legal framework to prevent the facilitation of unauthorized entry, transit and residence (2003/568/JHA); FD of 27.1.2003, on the protection of the environment through Criminal Law (2003/80/JHA) (annulled by the Court of Justice–Great Chamber, 13.9.2005, case C-176/03); FD of 12.7.2005 against ship-source pollution (annulled by the Court of Justice–Great Chamber, 23.10.2007, case C-440/05); FD of 22.12.2003 on combating the sexual exploitation of children and child pornography (2004/68/JHA); FD of 24.2.2005 again on confiscation (2005/212/JHA); FD of 28.11.2008 amending the framework decision 2002/475/JHA on combating terrorism (2008/919/JHA).

16 | See articles 29 and 31 (e) TEU, Amsterdam version, according to which all areas of “organized and non-organized” crime may be the object of criminal harmonization measures. See *Satzger* (nt. 1) II ed. 2008, 114–15.

Parliament) may not be taken as the sole basis to extend areas that are subject to harmonization. On the contrary, it will be necessary to verify that each new form of crime that is to be the subject of harmonization meets the two above-mentioned conditions (“seriousness” and “cross-border dimension”) referred to in the Treaty.

3. However, the reference to the transnational dimension of a specific crime may turn out to be rather useless when it comes to determining which new criminal phenomena should be subject to a harmonized legal reaction by the European Union. In fact, in the Lisbon Treaty system, the transnational dimension is not derived solely from the “nature” and “impacts” of the offenses discussed, that is, the objective fact that criminal activities affect different states, there is also reference to the “need to combat” particular types of crime “on a common basis.” Such a perspective is no longer objective, as it expresses the wish to harmonize criminal law across a number of states – and such a definition will not be able to limit an (over-)extension of legal harmonization.

In order to avoid this risk, the above-mentioned indications included in art. 83.1.3 should not be considered the only elements that define the transnational dimension of European harmonization in criminal law. Here, it is useful to refer to the concept mentioned in art. 3(2) of the 2000 UN Convention of Palermo that was also signed by the EU. This document refers to criminal offenses occurring in more than one state and involving organized criminal groups and views the involvement of a criminal organization as a particularly serious offense, because it makes it more difficult to ascertain the liability of individual participants.

Provided that European harmonization follows the standards set for its extension to new forms of crime and respects the principle of subsidiarity, this will legitimate further European interventions, especially as action by individual states will not produce results (art. 3ter TUE). It is precisely this difficulty to fight transnational criminal groups that establishes a “special need to combat them on a common basis,” as referred to by art. 83.1.3; otherwise such a requisite would appear empty or dangerously vague.¹⁷

4. The reference to organized crime in the above-mentioned European treaties is not to be interpreted as a merely criminological concept, with an inevitably uncertain definition.¹⁸ Rather, the concept of organized crime as object of action by the Union has to be derived from supranational measures with defined legal characteristics, at least on the international level.

17 | The wording appeared problematic in the decision of 20.6.2009 on the Lisbon Treaty of the German Bundesverfassungsgericht (*Neue Juristische Wochenschrift* 2009, 2288 n. 359).

18 | This opinion is maintained by Ambos/Rackow, *Erste Überlegungen zu den Konsequenzen des Lissabon-Urteils des BVG für das Europäisches Strafrecht*, in ZIS 2009, 402.

There are three different international regulatory frameworks: the above mentioned European Joint Action of 1998; the Palermo UN Convention of 2000 on transnational organized crime; and the more recent Framework Decision of the Council of 2008 on the fight against organized crime (2008/841/JHA of October 24, 2008).

In all of these texts criminal organization are being described using naturalistic and normative elements, both of which require further definition. Among the naturalistic elements, the most recent formulation in the 2008 Framework Decision stresses the participation of more than two people in a crime and its persistence over a period of time. The requisites concerning the “seriousness” of the offense and the existence of a “structured association,” on the other hand, are normative and need to be evaluated. Generally, the references here are too narrow in one case and too vague in the other.

The “seriousness” of the relevant “offenses” is defined as follows: The crimes in question must be punishable by detention of at least four years (art. 1.1). In this way, however, the law ends up including criminal activities that are viewed very differently by individual criminal law systems. Thus, the reference to a specific penalty neglects to address the still very considerable differences between criminal law systems in different EU countries.¹⁹

On the other hand, the definition of “structured association” does seem to appear vague: Excluded from this are only groups “randomly formed for the immediate commission of an offence.” Subsequently, however, it is specified that “the group does not need to have formally defined roles for its members, continuity of its membership, or a developed structure” (art. 1.2 FD 2008).

The wording of this provision is overly general, and it fails to draw a distinction between organized crime and other cases, in which a number of people commit a single offense. In order to define such a difference, elements of criminal organizations, such as a division of tasks involving at least three people and with the intent of committing multiple offenses, will have to be included.

The unclear approach adopted by the Framework Decision was probably caused by the need to find a compromise with criminal justice systems based on Common Law. Within these systems, the offense of “conspiracy” encompasses both the simple agreement to commit an offense, and the commission of one or more offenses by an organized group. This same model is to be found in international documents (art. 2.1.a-b) FD 2008).²⁰

The first such definition of “conspiracy” describes the subjective and objective factors that justify prosecution for the participation in a criminal organization. On the subjective level, it is stressed that the perpetrator must have had knowledge of

19 | For an example see *Militello*, Partecipazione all'organizzazione criminale e standard internazionali di incriminazione, in Riv. it. dir. proc. pen. 2003, 188 s.

20 | On this dual model see *Maliević*, Participation in a Criminal Organisation and Conspiracy, Freiburg-Berlin, 2011, 123 s.

the criminal group's illegal activities or at least of its illegal aims; on the objective level, it is pointed out, that he/she will have to have actively participated in the group's criminal activity. This is followed by a long list of examples (art. 2.a).

The second definition of "conspiracy" describes the agreement, even with just one other person, to commit a serious offense with the aim to directly or indirectly obtain a financial or other material benefit. Here, the derivation from the Anglo-Saxon concept of conspiracy is very clear, and includes precisely the agreement between two or more persons to engage jointly in an unlawful act or a lawful act carried out by illegal means. The specific dangerousness of criminal organizations – as different from the simple complicity in a crime – is thus lost.

This problem cannot be solved by reference "to aims of benefit" agreed upon before the crime was perpetrated. The intent to illegally acquire material benefits is typical for a great number of offenses – it is a necessary condition, but it is not sufficient to justify prosecution for participating in an organized criminal group.

The criminalization of the agreement to carry out a particular offense conflicts with the traditions of criminal systems that punish only criminal acts that have been perpetrated. In this regard, the European Framework Decision recognize the possibility that state parties agree that an act of furtherance of the unlawful agreement is needed in order to justify prosecution for the participation in a criminal organization. Such an approach, although it may jeopardize the process of harmonization, would be in line with the "harm principle."

A whole system of rules defines liability for the participation in a criminal organization. The 2008 Framework Decision mentions terms of imprisonment (art. 3); the possibility to consider the commission of a serious offense within the framework of a criminal organization as an aggravating factor (art. 3 co. 2); the possibility that crown witnesses may receive reduced sentences or none at all (art. 4) and the liability of legal persons for offenses established in art. 1 and 2, with corresponding penalties (art. 5–6).

5. The European Parliament, in an important resolution on organized crime, recently adopted by a large majority, seems to have become aware of the problematic nature of some of the European regulations mentioned.²¹ The Parliament calls for greater harmonization and demands clearer definitions of the offenses. Moreover, it points to the need to go beyond the current dual approach regarding liability (membership/conspiracy) (par. 7).

Particular attention is given to the fight against the proceeds of crime. The Parliament stresses that, besides the "extended confiscation" and the seizure of assets registered in the name of third parties, there is a need for legislation allowing the use of confiscated assets for social purposes (par. 8–9). Specific attention is also given to the protection of witnesses and informers (par. 12) and the creation

21 | Resolution of EU-Parliament P7_TA(2011)0459 (Rapporteur S. Alfano) approved by the Plenary Assembly on 25.10.2011.

of a special Committee of the European Parliament (par. 15). This Special Committee on Organized Crime was set up in March 2012 with the task of analyzing and assessing the implementation of the Union's legislation on organized crime, corruption, and money laundering. The resolution also calls for the extension of the remit of the European Public Prosecutor's Office to include cross-border organized crime and corruption, and it stresses the importance of strengthening agencies such as Eurojust, Europol, and OLAF (par. 18–23).

Beyond the individual measures tackled in the resolution, it is worth highlighting the scope and organic structure of the document. It expresses an integrated approach to the phenomenon similar to that to be found in theoretical analyzes of organized crime.²² The European Parliament has adopted other similar documents on this topic: for example, the Action Plan of 1997,²³ the Joint Action of 1998 on the participation in a criminal organization,²⁴ and the proposal for a Framework Decision on the same matter.²⁵ The added value of the more recent resolution lies in that it is not bound to a specific precedent. The resolution was adopted by the Parliament in its autonomy, and it may encourage further initiatives by the Parliament and the Council.

The document, however, also has some weak points. Firstly, it does not devote adequate attention to prevention, which is indispensable in the fight against organized crime. In order to tackle the phenomenon effectively, it will be necessary to develop social prevention measures and to heighten the regard for legality in our societies. Such an integrated approach has been highlighted, for example, in the Memorandum on the Prevention and Control of Organised Crime (2000).²⁶

An additional weakness of the 2011 Resolution is its inadequate focus on the harmonization of penalties. This aspect is especially pertinent, as there still are considerable discrepancies between the legal systems of the member states.²⁷

Lastly, the mechanisms to combat organized crime are not balanced by references to a need to harmonize legal guarantees, something that is needed to translate them into the different legal systems. In this respect, the rather general reference to basic rights and fundamental freedoms, included in the opening remarks

22 | Recently, e.g. see *Spapens*, Macro Networks, Collectives, and Business Process: An integrated Approach to Organized Crime (2010) 18 Eur.J.Crime Cr.L.Cr.J., 185 s.

23 | EU-Parliament, Comm. On Civil Liberties and Internal Affairs, Report on the Action Plan against organised Crime, doc-it\RR\331\338487 - PE 223.427/def., n. 17 (rapporteur. *Cederschöld*).

24 | EU-Parliament, Report on the 1998 Joint Action against Organised Crime (rapporteur. *Orlando*).

25 | EU-Parliament, Comm. LIBE Resolution 28.09.2005 (rapporteur *Dunn*).

26 | Prevention and Control of Organized Crime at the Beginning of the Millennium (see nt. 11).

27 | See e.g. *Bernardi*, L'armonizzazione delle sanzioni in Europa: linee ricostruttive, in *Per un rilancio del progetto europeo*, Grasso/Sicurella (cur.), Milano 2008, 381 s.

of the Framework Decision of 2008, is just a “style clause,” that is, something that cannot be translated consistently into the different national constitutional traditions. What is really needed is a supranational framework of guarantees.

6. The fight against illicit proceeds, particularly through confiscations and penalties, is a crucial field. This aspect of organized crime is not explicitly discussed in the 2008 Framework Decision, yet it is the object of many harmonization measures laid out in previous Framework Decisions, and it is forcefully addressed in the above-mentioned resolution of the European Parliament.²⁸

Here, especially for Italian scholars, the most problematic point regarding the protection of the rights of individuals, concerns confiscation undertaken as a preventive measure. On this topic, the ECHR has stressed the need for guarantees (in particular, *Sud Fondi SRL c. Italia* Jan. 20, 2009). However, the overall validity of the seizure of proceeds of crime was not denied, something that has become crucial in Italy’s fight against organized crime (recently, see *Bongiorno et al. c. Italia* Jan. 5, 2010).

Nevertheless, although Italy has recently improved its compliance with the rulings of the ECHR, the actual impact of the relevant case law is still limited to a few areas – areas that are undoubtedly important, yet this is not sufficient to overhaul a whole legal system as needed in the fight against organized crime.²⁹

7. A firmer basis to achieve such a goal may be found in the European Charter of Fundamental Rights, which is now legally binding and has the same status as the EU Treaty. The Charter contains a long list of rights that aim to expand and harmonize the overall level of justice in Europe, and it thus runs counter to an uncritical increase of the use of repression at a national level.³⁰

28 | See the Framework Decision of 26.6.2001 on money laundering and confiscation (2001/500/JHA) and the Framework Decision of 24.2.2005 on confiscation of crime-related proceeds (2005/212/JHA). In the European Parliament Resolution see, especially, D and points 8-10.

29 | On this aspect, see the recent collection of essays edited by *Manes/V.Zagrebel-sky*, *La convenzione europea dei diritti dell'uomo nell'ordinamento penale italiano*, Milan, 2011, and also *Militello*, *Der Einfluss der Entscheidungen des Europäischen Gerichtshofes für Menschenrechte auf die italienische Strafrechtsordnung*, in *Strafrecht und Wirtschaftsstrafrecht - Festschrift für K. Tiedemann, Sieber et al.* (Hrsg.), München 2008, 1421 s.

30 | *Militello*, *I diritti fondamentali fra limite e legittimazione di una tutela penale europea*, in *Ragion pratica* 2004, 139 s. On the importance of the Charter, see the recent and precise analysis by *Manacorda*, *Carta dei diritti e CEDU: una nuova topografia delle garanzie penalistiche in Europa*, in *La convenzione europea dei diritti dell'uomo* (quoted above in note 29) 147 s.; see also *Maugeri*, *I principi fondamentali del sistema punitivo comunitario: la giurisprudenza della Corte di giustizia e della Corte Europea dei diritti dell'uomo*, in *Per*

The expansion of EU action into the area of criminal law has long been criticized, and even the end of the Rule of Law has been predicted should this continue.³¹ However, there are also many attempts to explore new directions: from *corpus juris* to Euro-crimes, from the European project for combating organized crime to the recent Manifesto on the European Criminal Policy.³²

Today, the framework offered by the Treaty of Lisbon seems to have largely overcome many of the disadvantages produced by the lack of democratic legitimation for a European intervention in matters of criminal law. The Treaty provides legislative procedures, including the co-participation of the European Council and Parliament, in order to safeguard democratic values. Nevertheless, the EU may still get involved in areas to do with criminal law without intervening too much in areas of national sovereignty. The principles of proportionality and subsidiarity that have to guide interventions in criminal law can draw important lessons from the values enshrined in the European Charter of Fundamental Rights, which constitutes, at the same time, the limit and the foundation of the new Criminal Law of the European Union.

un rilancio del progetto europeo, 88 s.; *Cortens/Limborgh*, Grondrechtenbescherming na het Verdrag van Lissabon, in *Universalis Liber amicorum C. Fijnaut*, Antwerpen 2011, 41 s.

31 | See e.g. *Albrecht/Braum*, Defizite europäischer Strafrechtsentwicklung, *Kritische Vierteljahresschrift für Gesetzgebung und Rechtswissenschaft* 1998, 465 s.; *Hassemer*, “Corpus Juris”: Auf dem Weg zu einem europäischen Strafrecht?, *ivi* 1999, 133 s., 136; *Braum*, Das “corpus juris” – Legitimität, Erforderlichkeit und Machtbarkeit, in *Juristenzeitung* 2000, 493 f.; *P.A. Albrecht et al.*, 11 Thesen zur Entwicklung rechtsstaatlicher Grundlagen europäischen Strafrechts, *KritV* 2001, 279 s.; *Moccia*, L’involuzione del diritto penale in materia economica e le fattispecie incriminatrici del corpus juris, in *Bartone* (ed.), *Diritto penale europeo*, Padova 2001, 34, 54; *Kaiafa-Gbandi*, Bemerkungen zur Entwicklung rechtsstaatlicher Grundlagen europäischen Strafrechts, *KritV* 2001, 290.

32 | Cf. *The implementation of the corpus juris in the member states*, *Delmas-Marty/Vervaele* (eds.), Antwerp 2000; *Towards a European Criminal Law Against Organised Crime. Proposals and Summaries of the Joint European Project to Counter Organised Crime*, *Militello/Huber* (eds.), Freiburg 2001; *Wirtschaftsstrafrecht in der Europäischen Union*, *Tiedemann* (Hrsg.), Berlin 2002; *Schünemann*, *Alternative Project for a European Criminal law and Procedure*, in *Bassiouni/Militello/Satzger* (eds.), *European Cooperation in Penal Matters: Issues and Perspectives*, Padova 2008, p. 119 ss.; *amplius Id.* *Ein Gesamtkonzept für die europäische Strafrechtspflege. A Programme for European Criminal Justice*, Köln 2006. Lastly, the *Manifesto sulla politica criminale europea*, in *ZIS* 2009, 737 (on this, see *Satzger*, *La carenze della politica criminale europea. Appendice al manifesto del gruppo scientifico internazionale “European Criminal Policy Initiative”*, in *Riv. it. dir. proc. pen.* 2010, 127 s.).

10. Italy

10.1 CIVIL SOCIETY'S ROLE IN THE FIGHT AGAINST THE 'NDRANGHETA

by *Claudio La Camera**

Introduction

This paper presents the role played by Italian civil society in the prevention of and fight against the 'Ndrangheta – a Mafia organization whose roots are in Calabria (a southern region in Italy) but which nowadays has expanded its presence across the whole country and all over the world. Using a critical approach, the paper aims to describe the work conducted by civil society organizations in the field in order to give an overview of the social engagement against the Mafia, and to assess its effectiveness. Firstly, some background information on the presence of the 'Ndrangheta will be provided; secondly, the social reaction and level of awareness of the phenomenon will be discussed; subsequently, a list of civil society organizations will be presented; in conclusion, the author shares challenges and perspectives about the topic.

The presence of the 'Ndrangheta

In September 2009, in Reggio Calabria, the capital city of the Calabria region located in southwest Italy, the Special Operations Department of the Carabinieri police force (which intervenes during the investigations under the orders of the Prosecution Service) managed to film a secret meeting taking place at the sanctuary *Madonna di Polsi*, one of southern Italy's most impressive places of worship. The event was the annual meeting of the 'Ndrangheta bosses, in which they

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make decisions about the tasks and roles for all the *Locale*¹ distributed in Italy and around the world, about who should live and who must die, and about alliances and agreements. The existence of these legendary meetings had been known for about 40 years, but it had never been possible to obtain any direct evidence before.

On October 31, 2009, in Lombardy in northern Italy, another meeting was filmed by the police. The heads of the *Locale* of Lombardy gathered for a convivial meeting at a community center for the elderly, “Falcone and Borsellino,”² to elect the new representatives of the 'Ndrangheta in Lombardy. On this occasion, the orders that had come from Calabria had to be observed. A few months later, through the police operation “*Reale*,” the existence of a network of complicity and collusion was discovered. This network linked the 'Ndrangheta with very important institutional clubs of politicians and judges. Thanks to this investigation, the perpetrators of a number of attacks on judges and prosecutors, as well as the authors of a strong intimidating threat against the president of the Republic, Giorgio Napolitano, could be identified.

These investigations highlighted that the 'Ndrangheta remains the most powerful criminal organization in Italy and one of the most dangerous in the world. Indeed, in the province of Reggio Calabria, there are towns where 300–400 out of 10,000 inhabitants are full members of a *Locale* of the 'Ndrangheta – a ratio which, nowadays, would hardly be reached in a city like Palermo in Sicily.³ The criminal density index (based on the percentage of the population involved in different forms of criminal activities) has been estimated at 27 percent of the Calabrian population, compared to 12 percent in Campania, 10 percent in Sicily, and 2 percent in Puglia (a region in southeast Italy where the organized crime group Sacra Corona Unita originated).

There are many reasons why criminal density in the Calabria region is so high: family ties between 'Ndrangheta members, which strengthen the criminal bonds; the respect for a number of traditions and rituals, which eliminate the possibility of *pentiti* (members turned state informants); the extraordinarily pervasive control over the territory and over many aspects of Calabria's administration, society, and economy. Above all, the 'Ndrangheta is a secret society. There are great difficulties in identifying its real structure and presence because its identity is in constant evolution. Unlike the Sicilian Mafia, there has been little attention given to the

1 | The *Locale* is an organizational unit of the 'Ndrangheta comprising a number of families of the same geographical area.

2 | Giovanni Falcone and Paolo Borsellino, magistrates of the Anti-Mafia Prosecution Service of Palermo, are symbols of the fight against Cosa Nostra. Falcone, his wife, and his police escorts were killed on May 23, 1992. Borsellino was killed on July 19, 1992. The murders were part of Cosa Nostra's strategy to challenge the Italian state.

3 | For data on the criminal density index in the province of Reggio Calabria, see the annual report of the anti-Mafia prosecutor, Giuseppe Pignatone, for 2010–2011. Published in “Vincere la ndrangheta,” Aracne editrice, Roma 2011.

study and knowledge of the 'Ndrangheta. The first official report of the Italian Parliamentary Anti-Mafia Commission was published only in February 2008.⁴ Four months later the US Treasury Department put the 'Ndrangheta on the black list of organizations engaged in money laundering in the United States (Forgione 2009, 368).

Social reaction and awareness

The first signs of a presence of this criminal organization in Calabria date from the second half of the 19th century (Cicone 2008; Cingari 1982) – a lengthy period during which the 'Ndrangheta came to penetrate all levels of civil society, as well as the culture and mentality of the people. Indeed, it is important to remember that the 'Ndrangheta has a century of history behind it and is structured according to a system of family transmission. Over time this resulted in the assimilation of Mafia behaviors and values, a process of enculturation that has been operative for several generations (Satriani 2012, 172). For this reason, change will only be achievable through the formulation of alternative values, which are to be passed on to future generations with the support of educational institutions, such as schools and universities.

Throughout its history, the 'Ndrangheta has continually encouraged social mis-thesis and camouflage, as well as the construction of useful stereotypes. The most recurrent stereotypes are those that represent the Mafia boss as a god-fearing man and charismatic figure. The instrumental use of religious symbolism and the construction of heroic tales of the Mafia through folk music are two concrete examples.

All the Italian Mafias make instrumental use of religious symbolism. When Bernardo Provenzano, one of the most cut-throat Mafia bosses, was captured, his hideout yielded: 91 images of saints, 72 images of Jesus, two wooden crucifixes, two Bibles, one copy of the Gospels, and various other sacred images.⁵ Pietro Aglieri, the Cosa Nostra (Sicilian Mafia) boss, even had a small altar in his hideout, where twice a week a priest celebrated Mass. Italian *mafiosi* reconcile murder with the Bible. Sure of God's approval, they consider themselves good Catholics and trust that Jesus and the Virgin Mary are by their sides.

Another very frequent stereotype is the representation of the '*Ndranghetista* as a hero fighting against the injustices of the state and as a protector of traditional values. This stereotype is principally spread through Mafia folk music. In fact, the production in Calabria of *Canti di malavita* (songs of a life of crime) and in Campania of *Canti neo-melodici o musica nera* (neo-melodic songs or black music) enjoys great popular success, especially among young people. These songs feed all

4 | Annual report on the 'Ndrangheta supervised by Francesco Forgione and approved by the Commission in the session of February 19, 2008. Published February 20, 2008.

5 | For an in-depth analysis of the Mafias and religion, see Sales (2010) and Cavadi (2009).

aspects of Mafia mythology: the glorification of violence, the power of money, the submission of women, and the fight against the state.

The songs of the 'Ndrangheta describe the rituals of the 'Ndrangheta: initiation, vengeance, the code of silence, blood, respect, honor. They repeat the styles and clichés of the organization's written and unwritten rules, simplifying them. The most enduring stereotype is the romantic image of the 'Ndrangheta as an association of pure and courageous knights, ready to assist anyone in need. These songs draw strength from popular music and are often exhilarating and powerful. They reinforce the sentiment of belonging and the group identity. The language is simple but rich in symbolism and in double meanings, full of religious references and a powerful sense of mystery.⁶

Despite the reactions of civil society to the violence and intimidating force of the 'Ndrangheta, there has been an absence of true knowledge of the phenomenon in all its complexity. The existing awareness stems from emergency situations, from alarming or sensationalist news in the media, and from the information provided by judicial inquiries. There is no real knowledge because schools and universities have seldom carried out serious research and educational work on the matter, and the few serious anti-Mafia associations that exist are unable to reach the masses. On top of that, scientific study on the 'Ndrangheta always lags well behind the speed of the phenomenon's evolution.⁷

In recent years, various public agencies of the Italian state have responded with stronger repressive actions that have led to important results.⁸ The true dangers of the 'Ndrangheta have been revealed for the first time, its presence in many foreign countries (Canada, Australia, United States, Argentina, Brazil, northern Europe) has been ascertained beyond doubt,⁹ and it has become clear that decisive change can only be based on a reaction by civil society.

The 'Ndrangheta, like all other Mafia-like organizations, derives its strength from the consensus of important sectors of the economy, of the political class, of state institutions, of the church, and of the population. Taking away that consensus would mean reducing the 'Ndrangheta to a common criminal organization, thus to a problem that would not require more than repressive state action.

6 | See the essay of Santoro and Sassatelli (2001, 505-514).

7 | On the problem of knowledge about the 'Ndrangheta, see Librandi (2012).

8 | According to the official data of the Anti-Mafia District Directorate of Reggio Calabria, in the course of the last four years, assets worth more than €2 billion have been confiscated and around 3,000 crime prevention measures (*misure cautelari*) have been taken against the Mafia. This figure is double that of the largest Italian Prosecution Service. Furthermore, 10 city administrations have been dissolved due to Mafia infiltration. These statistics may be consulted in: La Camera (2012).

9 | Official 2012 data of the Anti-Mafia District Directorate of Reggio Calabria, published in La Camera (2012).

Civil society organizations involved in the fight against the 'Ndrangheta

Since 2008 the Anti-Mafia District Directorate of Reggio Calabria has been led by investigators and magistrates of the highest level. They have achieved important results, even discovering the more secret aspects of the 'Ndrangheta. The success of the judicial inquiries has increased the spread of knowledge and has contributed to a reaction from civil society with the birth of new anti-'Ndrangheta movements.

These experiences are partly similar to those of the Italian anti-Mafia movement, with its strong evolution since the massacres in Sicily in 1992: the murders of the prosecuting judges Giovanni Falcone and Paolo Borsellino, and of their bodyguards. The period of the massacres is a dividing line in the history of the anti-Mafia movement in Italy (Dino 2004; Tessitore 2003), even if only a certain number of groups remain engaged in activities that are fragmentary and discontinuous.¹⁰

These kinds of activities are typically carried out by individuals or groups that are not structured as organizations and who only spring into action after individual cases of injustice or tragedy. Such initiatives do not succeed in overcoming the logic of events and do not contribute much to creating a concrete change in mentalities. These actions of civil society, however, have activated important mechanisms of change, mostly coming from associations and structured movements that can be classified under the term "social anti-Mafia."¹¹ Associations that are most significant in terms of their activities and their social presence in the area are presented below.¹²

These associations mostly carry out their activities in the province of Reggio Calabria, considered to be the heart of the most powerful 'Ndrangheta families. This territory is characterized by a very high fragility of its productivity structures, owing to its lack of industrial development and strong economic dependence on other Italian regions. In social terms, the fragility of the region's productivity structures has resulted in one of the highest levels of unemployment in Europe (19.8%),¹³ a very high level of unofficial employment, little investment, and strong migratory movements toward the northern regions of Italy. These social

10 | For a historical analysis of the anti-Mafia movement, see Santino (2000).

11 | For an analysis of the "social anti-Mafia" from peasant movements through to the anti-globalization movement, see Santino (n.d.).

12 | A census of these organizations has recently been carried out as part of preliminary research into the anti-Mafia movement in the Province of Reggio Calabria, supported by the Social Policy Department of the Provincial Government. The research was carried out on behalf of the 'Ndrangheta Museum, Reggio Calabria, by Viviana Frisina, and its findings can be consulted in the museum's documentation center.

13 | Official data provided by the Dati ufficiale dell'Istituto nazionale di statistica, August 2012.

structures lead to a transmission of behavioral patterns and a mentality that foregrounds individualism or an overly strong focus on the family, at the expense of the common good and the rule of law.

Common features of the associations mentioned below are regular cultural activities, through which people are brought together and which help to raise awareness among individuals and groups. Their shared aim is to take consensus away from the 'Ndrangheta as a prerequisite for a true change in mentalities. The following is a brief list of these associations and a short description of their activities.

Reggio non tace¹⁴

On January 3, 2010, the movement *Reggio non tace* was born, following a very serious bomb attack against the Prosecution Service of Reggio Calabria. Its aim is to create a continuous program of initiatives. Based on a firm belief in the persuasive power of non-violence and dialogue, *Reggio non tace* actively denounces malpractices in society and organizes meetings dedicated to social justice, regularly mobilizing large numbers of people. The movement creates and supports initiatives of social solidarity and resistance in search of social justice, not limiting its scope only to actions against the 'Ndrangheta. Furthermore, *Reggio non tace* denounces instances of non-transparency in public administration, advocating democratic participation and active citizenship.

Libera. Associazioni, nomi e numeri contro le mafie¹⁵

Libera is a coalition of groups established in 1995 that links more than 1,500 organizations, grassroots groups, schools, etc., throughout Italy. These are all committed to building local political-cultural collaborations that will promote a culture of legality. *Libera* is present in Calabria in the management of seized assets (e.g., agricultural land confiscated from the 'Ndrangheta) and in offering support to citizens who take legal action against extortion and other forms of intimidation by the 'Ndrangheta. The great inspiration of the founders of *Libera* was to bring together many different actors, each with their own ideologies and political leanings, but all sharing the aim of defeating the Mafias. Among the various Calabrian groups and cooperatives that are members of *Libera*, the cooperative "Valle del Marro" is particularly important (organic farming on confiscated land). Another important factor is *Libera*'s commitment to holding workshops, seminars, and meetings in schools, parishes, and other places in an effort to revive or inspire anti-Mafia commitments everywhere.

14 | "Reggio doesn't shut up"; see www.reggionontace.it

15 | "Free. Associations, names, and numbers against the Mafias"; see www.liberareggio.it

Associazione daSud¹⁶

daSud works on communication, culture, research, memory, and identity through practical projects that create alliances between citizens, artists, intellectuals, organizations of different kinds, and good policymakers. The main objective of the association is to raise awareness of the phenomenon through journalism-based forms of investigation coupled with creative-artistic forms of expression. daSud aims to enhance the understanding of the phenomenon by reconstructing the anti-Mafia history written by “anonymous”: ordinary citizens, trade unionists, workers who through their work have opposed the presence of the 'Ndrangheta (Chirico 2010). This is nothing less than a bid to make the anti-Mafia movement a popular movement, a widespread battle that is open to participation by all. It is a method that helps to reach everyone in society and that transforms knowledge into an instrument of real change in society. These kinds of activities are inspired by the examples of Peppino Impastato, a well-known journalist, politician, and activist who was murdered by the Mafia in Sicily in May 1978, and Danilo Dolci, an equally well-known sociologist, poet, educator, and advocate of non-violence.¹⁷

Anti-racketeering associations

These associations offer assistance to individuals who have taken legal action as a result of crimes such as extortion and usury. The associations help to solve the many problems that arise in almost all cases where businesses decide to report extortion activities by the 'Ndrangheta. Recently, a “network for ethical consumption” has been created, with the support of the Italian Ministry of the Interior and with funding from the European Community. This network consists of both traders and consumers, and it provides direct participation possibilities for consumers in the fight against racketeering. The network also aims to establish an ethical market, mounting a challenge to Mafia-run businesses. In Calabria there are nine associations of this kind that are officially registered with the Ministry of the Interior (in Sicily there are 51). Many other cultural associations take action in individual cases of racketeering and usury.

Stop ndrangheta.it¹⁸

This organization and website was created with the objective of recovering the historical roots of Calabria and the south, thereby contributing to the creation of a new southern identity. It is a network of creative young people who, through different forms of expression, show the south's best side. It was founded on the

16 | “From the South Association”; see <http://www.dasud.it>

17 | For more information on Danilo Dolci, see his large bibliography; specifically Capintini (1956).

18 | See <http://www.stopndrangheta.it>

initiative of the Associazione daSud. The editorial team is made up of activists and young professionals from the world of communication and the social sciences who have experience in the anti-Mafia movement and, more generally, in the field of civil rights and social issues. It has strong expertise in journalism, working within structured networks, and maintaining close relationships with those parts of Calabrian civil society that are committed to anti-Mafia work and social rights.¹⁹

Associazione Riferimenti²⁰

This organization was founded in 1995, among others by family members of victims of the 'Ndrangheta and magistrates such as judge Antonino Caponnetto, head of the first anti-Mafia pool comprising the murdered judges Giovanni Falcone and Paolo Borsellino. The name "References" refers to the stories of its founders, victims of the Mafia, as well as first-hand witnesses of civil commitments and reactions. Since the death of judge Caponnetto, the association has divided its work into two distinct areas of activity: coordination of anti-Mafia work, and work for civil society. The association's work is mostly carried out through activities in schools and universities throughout Italy.

Il Museo della 'Ndrangheta²¹

The project of the 'Ndrangheta Museum was created through a cultural agreement linking the most important public institutions in Calabria (the regional government of Calabria, the province of Reggio Calabria, and the City Council of Reggio Calabria) and two important universities (the University of Calabria and the Sapienza University of Rome). It is a hybrid structure with the aim of getting public bodies to assume responsibility for continuous programs with the support of schools and universities.

The museum's overall goals are: (a) to increase rational knowledge of the phenomenon of the 'Ndrangheta through educational programs that have the strength to counter the educational strategies of Mafia- and non-Mafia families; and (b) to historicize tragic events and turn them into questions so that knowledge can become personal conscience.

The museum is also a physical place in the city of Reggio Calabria – a villa that formerly belonged to an 'Ndrangheta boss. Inside this state-confiscated villa, a museum has been designed with the aim of delegitimizing and demystifying the legendary figures of Mafia bosses and Mafia symbols in their various incarnations (religious, cultural, social). For the 'Ndrangheta Museum, creating programs for cultural change means trying to meet a society that, in part, is unaware of the problem, or only knows certain aspects of it, and is, in any case, not prepared to take

19 | See www.stopndrangheta.it

20 | "References Association"; see www.riferimenti.org

21 | The 'Ndrangheta Museum; see www.museodellandrangheta.eu

responsibility for it. The museum does not so much promote an anti-'Ndrangheta model, but rather tries to promote a model of participatory democracy.

Conclusions

Despite the valuable activities carried out by these associations, it is important to remember that nowadays it is difficult to mobilize people around themes of social and civil rights. People fear the widespread presence of the 'Ndrangheta and they are disillusioned by the repeated failures of anti-Mafia repression by state agencies and by the political decisions underpinning these. In past years, in Italy, we have seen many legislative initiatives and decisions that have undermined the power of repressive actions against criminal organizations. Examples include the removal of a number of crimes from the law codes, unfavorable changes to court proceedings,²² reduced possibilities for supervised phone and communication intercepts (telephone tapping), and limits to the law governing the protection of ex-mafiosi prosecution witnesses.

On top of that, a number of Mafia crimes cannot be properly prosecuted because there is a lack of adequate legal provisions. One case in point is the convoluted legislation on the seizure, confiscation, and re-use of Mafia assets for social purposes. This legislation was the result of an important successful battle by civil society,²³ but its ultimate inefficiency gives the impression that the Mafia organizations have won.

Clearly, weak state agencies (even more so when they are directly complicit) send a symbolic message that contributes to a feeling of fear and resignation in

22 | One of the most important laws in this sense was law 194/2009, the so-called *Milleproroghe* (Thousand extensions), which reopened access to the “fiscal shield” (Italian tax amnesty) to facilitate the repatriation or regularization of financial and property activities illegally performed abroad before December 31, 2008.

23 | A bloody Mafia war raged in Sicily between the end of the 1960s and the beginning of the 1980s. On April 30, 1982, Pio La Torre, parliamentary deputy and regional secretary of the Italian Communist Party, was killed in an attack in Palermo. On September 3 of the same year, Carlo Alberto Dalla Chiesa, the prefect of Palermo, was killed. The state reacted with the introduction of two laws which changed the fight against the Mafia definitively: the law of October 12, 1982, n. 726, “Urgent measures for the co-ordination of the fight against Mafia crime,” instituted by the High Commission for the coordination of the fight against Mafia crime; and law n. 646/82, which introduced article 416-bis into the *Codice Penale* (Italian Criminal Code). With article 416-bis, the organization of a Mafia-type association was defined for the first time as a punishable crime. The Rognoni-La Torre law, furthermore, introduced measures of property crime prevention intended to combat the illicit accumulation of property. Following this, thanks to the commitment of the anti-Mafia association “Libera,” more than a million signatures were collected, which permitted the passing of law 109/96, establishing the possibility of allocating confiscated Mafia assets to social purposes.

many people, and thus reinforces the conviction that it is useless to work against the Mafias. Southern Italy, like most modern states, is experiencing a great crisis of the concept of the rule of law, understood as a shared heritage of ethical values and a trust in the overall functioning of an accountable state.

It is absolutely necessary to oppose the presence of pervasive Mafia organizations with the combined critical strength of all layers of civil society. For state repression of the Mafia to be effective, it has to be accompanied by individual acts of consciousness. It will then be possible to create a broader change in mentalities with long-term perspectives. This is the role that a large part of the anti-Mafia movement has played, with a certain success.

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10.2 AN ALTERNATIVE METHOD TO COMBAT THE MAFIA: CONFISCATION OF CRIMINAL ASSETS

*by Lorenzo Bodrero**

With their profits having totaled \$2.1 trillion globally in 2001 (about 3.6% of global GDP), organized crime syndicates pose a serious threat to the financial, cultural, and social development of our world. However, with the exception of a few countries, efficient and supranational countermeasures are still far from being adopted.

From blood to laws

Italy represents an exception. Although perceived worldwide as being a country heavily influenced by the Mafia, Italy has developed effective responses – both judicial and social – to counter the infiltration of organized crime into its social and economic apparatus. Italy, for instance, has implemented the crime of “Mafia association” into its penal code (the famous “416 bis”) in 1982, with which criminals recognized to be members of a wider network can be prosecuted with tougher charges. Without going into all the judicial norms in place in Italy, special mention should be made of the possibility to confiscate criminal properties and to use them for social purposes.

Contemporary criminal organizations are nothing but illegal enterprises whose goal is the multiplication of capital. So what better threat to their profits than a legal instrument that – through a juridical order – results in the seizure of property? Confiscation of criminal proceeds has a twofold value: It reduces the risk of financial destabilization and corruption while at the same time working as a deterrent of crime by making it unprofitable. Beyond being a sanction, the confiscation of criminal assets is also a preventive tool that shows potential offenders that they will not be allowed to enjoy their illicit wealth.

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The law that enables confiscation of criminal proceeds is named after its two authors, Virginio Rognoni and Pio La Torre. But Italy paid a high price for the “Rognoni–La Torre” law. In 1982, after gaining fame for promoting innovative Mafia-combating measures in parliament, La Torre died in a hail of bullets. His assassination was followed by the killing of another anti-Mafia crusader, General Carlo Alberto Dalla Chiesa, who was murdered in Palermo later that year. The deaths prompted parliament to adopt the Rognoni–La Torre law along with other emergency measures.

For a decade, however, the legislation languished – until the early 1990s, when there was a resurgence in Mafia-related killings of government officials and internal feuding. The 1992 slayings of activist judges Giovanni Falcone and Paolo Borsellino, most notably, shook the nation to its core and galvanized public opinion.

The killing of Falcone and Borsellino also led to the founding of Libera, a nation-wide association that represents all strata of society – from police and lawyers to social workers, politicians, youth activists, and ordinary citizens. Libera’s first act was to collect signatures for implementing the possibility of giving confiscated assets to civic groups according to the Rognoni–La Torre law. More than one million signatures were collected throughout the country, which gave parliament the impetus to strengthen the Rognoni–La Torre law and allowed for confiscated Mafia assets to be turned over to community groups for socially beneficial purposes.

As of January 9, 2012, about 12,000 properties (real estate as well as companies) had been confiscated, of which more than 700 are now used to run social projects: shelters, youth hostels, cooperatives, as well as fruit and vegetable farms stand on grounds that once belonged to ruthless criminals.

This is a heavy blow to the Mafias. Many Mafia repentants stated to authorities that they would rather go to jail than see their assets used in such a way. It is humiliating for them and an incredible sign to local communities that says “the Mafia has been defeated here.” Once the only rulers of a territory, they are now perceived as a conquerable beast. In fact, Mafia bosses and criminals count very much on the social consensus of populations to freely run their illegal businesses and provide illegal labor. The social use of confiscated properties undermines this prospect.

Europe’s role against organized crime

In past years, the European Union has shown genuine interest in enhancing its fight against organized crime. Mafias need to be fought using supranational countermeasures that are capable of harmonizing all EU members states’ national legislations into a single legal framework. Organized crime syndicates have been benefiting greatly from the inefficiency of linking law enforcement measures between countries, whereas they have no difficulty in connecting with other international criminal groups or laundering money abroad.

The use of confiscation as a tool in the fight against organized crime had initially been conceived within the EU as a useful measure in the fight against drug trafficking. Once the great offensive potential against criminal wealth was realized, it was quickly extended to non-drug-related crimes, especially to criminal proceeds.

For more than a decade, the EU had considered confiscation. The EU Action Plan to combat organized crime of April 1997 states: “The European Council stresses the importance for each Member State of having well developed and wide-ranging legislation in the field of confiscation of the proceeds from crime.”¹ Three years later the Millennium Strategy reiterated this by stating as fundamental “that concrete steps are taken to trace, freeze, seize and confiscate the proceeds of crime.”²

After those initial declarations, concrete steps were made to introduce the confiscation of criminal assets at the European level. With the 2001 Framework Decision on Money Laundering, the Identification, Tracing, Freezing, Seizing and Confiscation of the Instruments of and the Proceeds from Crime,³ member states are obliged to introduce systems of value confiscation, meaning the confiscation of a sum of money that corresponds to the value of the criminal gain. This means that instead of confiscating the specific assets derived from crime, states are merely required to confiscate a sum of money equal to the value of these assets, thereby facilitating the process. Where the confiscation of money is not feasible, the claim may be realized on any property available.

Furthermore, member states are required to ensure that all requests from other member states relating to assets identification, tracing, freezing, and confiscation, are processed with the same priority as is given to such measures in purely domestic proceedings. The 2003 Framework Decision on Mutual Recognition of Orders Freezing Property or Evidence⁴ extends the mutual recognition to pre-trial orders, thus accelerating the execution of freezing orders between member states. The 2006 Council Decision on the Application of the Principle of Mutual Recognition to Confiscation Orders⁵ applies the principle of mutual recognition to confiscation orders. This is intended to strengthen cooperation between member states by enabling judicial decisions to be executed immediately, obviating the need for the decision to be reviewed by the requesting state.

1 | 1997 Council Action Plan, Political Guideline No. 11.

2 | Council Strategy on the Prevention and Control of Organised Crime: a Strategy for the Beginning of the New Millennium (EU), May 3, 2000, O.J. (C 124).

3 | Council Framework Decision on Confiscation of Crime- Related Proceeds, Instrumentalities and Property (EU), June 26, 2001 (2001/500/JHA).

4 | Council Framework Decision on Mutual Recognition of Orders Freezing Property or Evidence (EU), July 22, 2003 (2003/577/JHA).

5 | Council Framework Decision on Confiscation of Crime- Related Proceeds, Instrumentalities and Property (EU), February 24, 2005 (2005/212/JHA).

A 2007 Council decision⁶ obliges member states to designate at least one national Asset Recovery Office (ARO) and to ensure effective and simplified cooperation. The AROs are to share best practices, thereby improving confiscation procedure all over Europe. Whether the ARO is established as an administrative, law enforcement, or judicial body is left to the discretion of the member states. But not all member states of the European Union have established AROs – and those that exist are equipped with varying powers, structures, and practices.

The main legal instruments used by the European Union are the above-mentioned framework decisions, which are to be adopted unanimously by the member states and which are used to approximate the laws and regulations of the nations. Framework decisions are binding for the member states in terms of results to be achieved, however they allow national authorities to choose the forms and methods.

The downside of this system is that huge differences persist and some member states might only do the absolute minimum to comply with the European framework, thus affecting the efficiency of Europe as a unified entity against organized crime.

A potential milestone?

On March 12 2012, a crucial step was taken by the European Commission in the fight against organized crime by publishing a law proposal⁷ – a so-called Directive – to confiscate criminal assets around Europe.

During the official press conference, the EU Commissioner for Home Affairs, Cecilia Malmstrom, said: “We need to hit criminals where it hurts, by going after the money, and we have to get their profits back into the legal economy, especially in these times of crisis.” She also added that the new legislation will simplify existing rules and fill gaps in judicial member states’ legislations. The aim is to *harmonize* more efficient tools for the fight against criminals and to retrieve the profits and assets acquired through illegal activities. Such an initiative could prove to be even more important in times of crisis, as the money may be invested in the welfare sector, healthcare, schools, or it can be returned to victims. “Law enforcement and judicial authorities must have better tools to follow the money trail,” concluded the Commissioner.

There are many norms included in the law proposal. One of them is based on the experience of both Dutch and Italian legislation, and offers the possibility to expand the measure to cybercrime and corruption-related crimes. The originality

6 | Council Framework Decision concerning Cooperation between Asset Recovery Offices of the Member States in the Field of Tracing and Identification of Proceeds from, or other Property related to, Crime, December 6, 2007 (2007/845/JHA).

7 | http://ec.europa.eu/home-affairs/news/intro/docs/20120312/1_en_act_part1_v8_1.pdf#zoom=100

of the legislative proposal is its call for non-conviction-based confiscation, which applies in the following cases:

- assets that are not linked to a specific crime, but clearly result from similar criminal activity (extended confiscation)
- assets transferred by the criminal to a third party who should have realized that they were derived from criminal activity
- when the suspect is deceased, permanently ill, or has fled
- allowing law enforcement authorities to freeze assets that risk disappearing.

Enhancing the EU directive

Aggressive actions taken against criminal wealth constitute, one of the key issues in the fight against organized crime. Organized crime – and in particular Mafia-style organized crime – does not represent a mere “gangster” phenomenon any more. Indeed, it embodies a real (counter)power system, to which the accumulation of assets, properties, and monetary and financial resources offers a significant incentive to exist and ability to flourish. Aggressive action to retrieve such riches is therefore essential for neutralizing the strength and vitality of organized crime.

Therefore, the elaboration of legislation might improve the pre-existent normative scheme on confiscation and recovery of the proceeds that criminals draw from serious cross-border crimes. On the other hand, the proposed text has some deficiencies that – if not properly addressed – risk markedly reducing the impact of the initiative and, ultimately, could undermine the overall efficacy of the Union’s action in this area.

Two issues stand out in this regard:

- the need to avoid the adoption of substantive rules on confiscation, which represents a backward step if compared with the *acquis communautaire*
- the choice to focus on just one of the pillars comprising the so-called European confiscation system.

1) The need to avoid the adoption of substantive rules on confiscation, which represents a backward step if compared with the *acquis communautaire*.

A first problematic issue is raised by the proposal’s content. On some points, indeed, the initiative falls short of the EU *acquis* on confiscation measures.

In general terms, it is necessary to underline that the proposed norms are drafted in quite general terms. This reflects, on the one hand, the manifold nature of confiscation measures, which vary from state to state. On the other hand, it entails the perpetuation of past and current shortcomings, as regards the mutual recognition of jurisdictional decisions.

A key issue in this regard is represented by the “extended powers of confiscation.” Article 4 of the proposal qualifies these measures as an ancillary instrument complementing the “ordinary” confiscation of the means and proceeds of crime. However, Article 4 allows for extended confiscation only if the judge considers the condemned person’s assets to have derived – more probably than not – from offenses similar to those the sentence has been issued for. Therefore, Article 4 sharply differs from the provision set out in Article 3.2 of the Framework Decision 2005/212/JHA on the confiscation of goods, proceeds, and instruments of crime, since it does not permit extended confiscation when the value of goods is disproportional to the convicted person’s legitimate incomes.

This is a troublesome gap. Experience shows that it is difficult – if not impossible – to collect evidence (even just in terms of probability) on the illicit origin of criminal organizations’ wealth. In the majority of cases, this wealth is the sum of both illegal activities and reinvestments in the ordinary and legal economic circuit. In such a situation, determining a gap between the value of assets and the legal incomes turns out to be a fundamental criterion to ensure a more efficient fight against crime. In the meantime, this does not entail any violation of concerned individuals’ rights, because the fundamental right to defense in criminal proceedings implies the possibility to provide evidence – or even just the serious and verifiable allegation – that this wealth, even if disproportionate, has a lawful origin.

A second weakness affecting the proposal’s content concerns the “value confiscation,” provided for by Article 3.2, which allows for confiscation of assets amounting to a value equivalent to that of the proceeds of the crime. This type of confiscation aims at neutralizing the effects of maneuvers of dispersal and concealment of the crime’s economic advantages. The provision under consideration, however, excludes “value confiscation” in relation to the instruments used to commit the crime. This is a gap that must be filled in order to safeguard the proper functioning of the system. In fact, organized crime benefits from huge liquid assets and material resources, such as warehouses, means of transport, houses, and companies, mostly located in different states and often used to commit criminal offenses. In this respect, “value confiscation” is an effective tool if these goods cannot be directly seized through judicial measures because they have been sold, reinvested, or concealed.

2) The need for a holistic approach toward a proper “European confiscation system”

In the report accompanying the proposal, the Commission rightly put great emphasis on the need to establish a “more effective and diffused system of confiscation of crime proceedings.” Nonetheless, the choice to focus only on minimum substantive rules concerning confiscation seems inadequate to achieve such a grand objective. Indeed, it is necessary to set up a more comprehensive legal framework, articulated on (at least) four complementary levels:

(i) The substantive provisions on confiscation

All member states shall adopt common minimum rules about the conditions for utilizing seizures (provisional measure) and confiscations (definitive measure), as well as about their legal nature and effects

(ii) Judicial cooperation

Seizure and confiscation, when ordered by a state's judicial authorities, must be promptly executed in the state(s) where the assets are located; any delay might frustrate the effectiveness of such measures, considering that criminal organizations are capable of transferring and/or concealing these goods, especially movables and financial assets

(iii) Investigative cooperation

Prior to seizure and confiscation, assets must be sought out and found by specialized investigative services

(iv) The destination of confiscated assets

Once seized and confiscated, assets must be entrusted to special administrative services, which should be equipped with all the necessary resources to face the – often delicate – financial, legal, and administrative tasks that the management of these goods entails.

However, the Directive's only aims at a minimum harmonization of member states' substantive rules on the matter. The Commission's initiative, albeit certainly praiseworthy, may lead to the adoption of an isolated instrument with a limited capacity to attain the objectives it declares to pursue.

Therefore, it is essential to widen the scope of application of the proposal by also taking into account the other three pillars of the European confiscation system. This may greatly enhance the chance to achieve, in the near future, a comprehensive corpus of coherent acts that touch upon all the different levels of the system.

11. Germany

11.1 THE MAFIA AND ORGANIZED CRIME IN GERMANY

*by Jürgen Roth**

“What has happened in Italy is repeating itself all over the world, in Germany as well. The Mafia transforms economic power and influence into political power and influence.”

– Roberto Scarpinato, Attorney General in Palermo

1.

In the early hours of August 15, 2007, six men from the Italian region of Calabria leave the restaurant Da Bruno in Duisburg, where they have been celebrating the 18th birthday of a friend. Shortly after leaving the restaurant, they are gunned down in their car: At least 70 shots are fired. The job is finished off by a bullet to the head – nobody is to survive. One of those shot was 16 years old. And the motive for this bloodbath? A “faida,” as they say in Calabria, a vendetta between different clans from the Calabrian village of San Luca who otherwise cooperate harmoniously in the crime business. Whether victim, killer, or the party responsible for ordering the kill, all of them not only have family ties to, but also business relations with many men and women living in Germany who belong to the Calabrian Mafia, the ‘Ndrangheta. Politicians of all complexions hastily jumped on the bandwagon of indignation against the “evil” Mafia, which dared to show its presence so openly here. After the bloodbath, many asked what exactly the Mafia is. And does it really exist in Germany? Once again, talk was rife about the influence of organized crime in Germany, as if it had never – or only rudimentarily – existed here before.

When Wilfried Albishausen, a courageous and experienced criminalist and regional chairman of the Association of Germany’s Criminal Investigators (BDK) in North-Rhine Westphalia, pointed out the dangers of the Mafia in connection with the massacre on August 15, 2007, in Duisburg, he was heavily criticized by the Ministry of the Interior. When, one year later, he also spoke critically of serious errors made during the dragnet investigation following the August 15 murders, he

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made himself even more unpopular with the Ministry. During one event in which the Minister of the Interior at that time, Ingo Wolf (FDP), took part, Albishausen spent some time talking to Wolf's Secretary of State. Ingo Wolf joined them, greeted Albishausen, and then "asked the Secretary of State why he was talking to me, an enemy of the government."

Politicians' attempts to ignore the situation already jarred with police information received from Italy long before the Duisburg massacre. Luciano Violante, president of the Italian Anti-Mafia Commission, had already reported in 1993 what was said in a taped telephone conversation by a known Italian Mafioso a few hours after the fall of the Berlin Wall. "He ordered his relations in Germany to buy up everything in East Germany as soon as it came onto the market."¹ In December 1989, Mafia experts in Palermo and Naples already estimated that sums between \$100 and \$200 billion had been pumped as illegal funds via German front men into the east of the country.

At the end of 1990, the head of the criminal law department at the Italian Ministry of Justice, Liliana Ferraro, put the real investments and/or Italian Mafia and Camorra group funds that had gone into the East to be laundered at 70 billion deutschmarks in the former German Democratic Republic alone. Some projected figures by the German Federal Criminal Police Office (BKA) even go as far as estimates of over 170 billion. (Raith 1996, 43)

All of this was either repressed or put down as a figment of the Italian imagination.

The Attorney General in Palermo, Roberto Scarpinato, by comparison, describes the situation today as follows:

The real danger for Germany is not the presence and residence of several hundred criminals from various Mafia clans on its territory who come to public attention now and then in high profile murder cases. The real danger lies far more in the billions of euros with Mafia origins that have been invested in national economies, meaning that an increasing number of state sectors are being gradually and inconspicuously infiltrated.²

A representative of the 'Ndrangheta in Germany is located, for example, in Hesse and is mainly active in the restaurant and agricultural industries. He is responsible for the import and export of typical Calabrian products and supplies the restaurants in the areas that are "controlled" by the Frankfurt "locale." At the same time, he also has close ties to a Sicilian businessman in Frankfurt am Main. He has invested a great deal in Hesse using the money of the Calabrian, Milanese, and 'Ndrine of the Genoa locale. The companies in question include more than 10 real estate firms in and around Frankfurt am Main. A report drawn up by the Italian Carabinieri in Genoa stated:

1 | Luciano Violante, quoted in 1993 by the newspaper *Neue Züricher Zeitung*, 4.

2 | Lecture from December 5, 2007, specialist seminar by the BDK in Bensberg.

It would be impossible for D to do his business if he did not have the solid support structure behind him that consists of people who know him and his criminal activities, and who are prepared to invest illegal funds with him and in the name of their clients. What is more, these people are also very familiar, not only with the legal situation in Germany, but with business and local politics in which they are integrated and/or involved and they earn enough to continue to investing with D.

After all, since the year 2000, more than 40 Italian citizens have been arrested in Germany who are members of a Mafia organization, and some of them even hold positions of importance. This arrest record may sound good on paper, but it has done nothing to impair the influence of the Mafia in Germany because, since September 11, 2001, politicians, the media, and law enforcement agencies have focused on the alleged danger posed by Islamic terrorism. It was a wondrous thing to see how financial and personnel resources suddenly began to flow, and every law that feigned to protect the citizens was rushed through parliament in the wake of 9/11. At the same time, the fight against the Mafia and organized crime was pitifully neglected, despite the fact that crime experts issued repeated warnings about the power and influence of criminal syndicates. Nobody wanted to hear this, neither in Germany, nor in Austria, Switzerland, or even Italy.

However, the criminal market is not only controlled by Italian Mafia groups, but also the Albanian Mafia, the Turkish Mafia, the Chinese Triads and, in particular, the outlaw motorcycle gangs Hell's Angels and Bandidos. Throughout Germany, Italian organized crime occupied third place in 2009 behind German organized crime and organized crime of Turkish origin. In the capital city, Berlin, Italian organized crime only occupied 13th place in 2009 behind the German, Turkish, Lebanese, Vietnamese, Polish, Commonwealth of Independent States, Lithuanian, and West African groups of organized criminals. However, apart from a few regional exceptions, in Germany no historically developed, socio-cultural basis yet exists like the one that bolsters Italian organized crime in Italy.

2.

Organized crime in Germany today is characterized by these generally accepted features:

- Major significance of individual crimes and/or crimes in their entirety.
- There are at least three people involved.
- The crimes are executed according to a plan: The crime is committed in cooperation and the tasks are divided up among the group involved, and this cooperation is for an extended or unlimited period.
- Mainly commercial or businesslike structures are apparent and these are marked by an extreme pursuit of profit and power.
- Violence or other means of intimidation are usual practice.

- Influence on politicians, the media, the public administration, the judiciary, and the economy is an essential feature of organized crime.
- Terrorist crimes, however, are explicitly excluded.

This understanding of organized crime not only affects discussions about crime-fighting policies in Germany, but is also fundamental for the BKA when drawing up corresponding reports about the situation. The three components (business structure, violence, exercise of influence) are not linked to one another cumulatively, but are rather alternatives. What remains unclear, however, is what role these three aspects play proportionally with respect to the crimes committed by a group. At the same time, there has been criticism that the term “organized crime” often refers to things other than the professional form of crime characterized by elaborate criminal tactics and techniques. The breadth of the definition has also been the focus of criticism, and many experts dealing with organized crime feel that one particularly problematic factor is that nearly all elements in the definition require interpretation. Criticism is aimed at various main components.

On the one hand, the difference between the purported dangers of organized crime and the “generous” definition is criticized, as this does not provide us with a definition that allows organized crime to be clearly differentiated from other forms of crime (multiple perpetrator/gang crime), nor does it serve the principle of proportionality in criminal proceedings. Apart from that, the lack of proof that a special danger exists for which law enforcement agencies need to gain approval to take substantial measures has been criticized.

One of the most important points of criticism refers to the insufficient differentiation between organized crime and other phenomena that are apparent in traditional business activities, with the only difference being that the former is characterized by the fact that criminal acts are committed. With the exception of “committing illegal acts,” the catalog of criteria actually refers to activities that are a part of normal legal business.

Other points of criticism are: a failure to reconcile the vague definition given with criminological findings or with the significance of organized crime in terms of national security; the failure of the definition to provide an effective tool with respect to the quality of the intended means to fight organized crime consistently; the lack of a differentiation between it and other forms of “multi-perpetrator crime”; the insufficient definition of those elements of crime that are prerequisite to justify interventions; the fact that the new dimensions of the quality of organized crime have been neglected and there is a focus only on the quantitative increase compared to previous criminal activities. This means that society does not have any useful indicators concerning the new quality of the threat facing it. By too readily defining crimes as organized crime and due to the inflationary use of this term, the result is a trivialization of the actual and real danger. This is ultimately down to the lack of an empirical foundation and precision when defining organized crime as a “terminus technicus.”

Critics maintain that these deficits make it considerably more difficult to identify functioning organized criminal structures, meaning that specific findings are often not made until the end of an investigation, instead of at the beginning.

3.

In addition to the Italian Mafia, the Hell's Angels and Bandidos, and/or the Albanian criminal clans in particular – all of which have certain structural differences – are the most powerful forces in organized crime in Germany. Take the Hell's Angels, for example. Crime experts know of cases where entire villages let themselves be financially supported by the motorbike gang. And in some towns and cities, they know that the Hell's Angels have replaced the Albanian pimps who used to dominate the red light districts there, and that they control entire districts, dividing up both the regions and the fields of crime. In those districts and areas where the motorbike gangs are active, there is apparent calm. Ulf Küch, the regional chairman of the BDK in Lower Saxony, thinks it is “a scandal that Germany was more or less divided up between the two motorbike gangs, Hell's Angels and Bandidos, in a lawyer's office in Hanover in May 2010, while the whole scene was filmed by television cameras and broadcast to the public at large.” He went on to say that criminal motorbike gangs are increasingly joining forces with Italian Mafia clans. There are similar links between the Albanian criminal organizations that are highly active here, especially in northern Germany. In January 2000, they even assisted in setting up a political party, the so-called Partei Rechtsstaatliche Offensive (Law and Order Offensive Party). In Hamburg's city parliament elections on September 23, 2001, the party even managed to win 19.4 percent of the votes, played a role in the governing coalition, and gained seats in Hamburg's Senate, while party chairman Roland Schill was appointed Hamburg Senator of the Interior. The governing party, the CDU, which formed a coalition with Schill's party in Hamburg at that time, had nothing against this unholy alliance. Police investigations were suddenly stopped. The coalition no longer exists and the Law and Order Offensive Party has also disbanded. However, this was not because the majority party, the CDU, no longer wanted to share its position in government with a criminal outcast that maintained close ties to the Albanian crime clan, but because Minister of the Interior Roland Schill tried to blackmail the CDU boss with his homosexuality.

And today, one insider from the criminal scene told me:

In the middle of a residential area where the Kurds have their drug nests, there was a disco that was regularly frequented by guests who arrived in black limousines as well as East Europeans and Yugoslavs. And then, after 20 years of stabbings and drug dealings, it was finally closed down. The neighborhood was happy. And now, an East European man who wasn't even able to pay the rent on his first business six months ago has been granted the concession to the disco for €500,000. He's a barman, we've known him for 20 years. We burst out laughing when we heard about the €500,000. He's only a front man and soon nice young Italians will be arriving in their big cars from Palermo to sell wine. Nobody says

a word. How come the local authorities approve the concession? Nothing happens in the local authorities without the compliance of those in political circles.

How do the Albanian criminal clans differ from other organized criminal groups? They are not built up in a pyramid structure like the traditional Mafia-like groups, but are organized around strong family ties or clan structures (patriarchal social groups). They are mainly family clans, although there are also city, district, and regional clans. In the past, they have been compared with so-called clustered hierarchies – on the one hand, due to their specific characteristics, and, on the other, because of their characteristic flexibility resulting from their family/clan connections. According to information from Europol, they can nowadays be seen as “goal-oriented groups,” that is, as individual criminal groups/clans that do not act in an isolated manner but pursue common goals and criminal intentions and have access to jointly available resources. These individual groups are controlled – or at least coordinated – from joint centers of power that are usually located in their home country or somewhere abroad. Some clans are well structured, while others are loose and inconstant groups. In network structures, the hierarchy between the linked cells is not always apparent. What is more, the great number of contacts between the people involved and the cooperation between the different criminal families/clans blur any clear view of the structure and the composition of the Albanian Mafia. Within a cell, agreements are reached to make sure that tasks are reallocated if normal operations are interrupted (for example, because of arrests). The different cells consist of a limited number of members, each of whom is responsible for his own tasks. However, there are larger groups of about 50 members that, in turn, can be divided between different countries.

Because of the different ways in which the criminal organizations operating in Germany have developed and are developing, it seems strange that, despite evidence to the contrary, both politicians and the press doggedly maintain that organized crime is a “*quantité négligeable*.”

At a podium discussion organized by the BDK, Senior Chief of Police Jörg Ziercke, president of the German Federal Criminal Police Office, vehemently denied that the Mafia even existed in Germany. “Are district administrators and members of parliament bought in Germany like they are in southern Italy?” he asked. “No, we do not have Italian-like structures, which is why we do not have a Mafia in Germany.” And Alexander Alvaro, member of the Federal Executive of the FDP (Liberals) and specialist for matters of law and national security in the European Parliament, backed him up as follows: “In the economy in particular, we do not have Mafia-like structures.”³ And at the press conference of the German Federal Criminal Police Office on August 27, 2008, in Berlin – which dealt with

3 | Podium discussion “At a loss before the wall of silence – How those in politics and law enforcement prevent an effective fight against the Mafia,” special conference of the BDK, Munich, June 4, 2008.

developments taking place in serious and organized crime – BKA President Jörg Ziercke once again underscored the statement that there are no cases in Germany in which criminal groups have corrupted or control large parts of the public administration or in which entire local councils or police authorities in a town or city had been arrested because of Mafia associations. This, he continued, is why the position of Italian organized crime in Germany cannot be compared with the situation in Italy.⁴ A plausible explanation for such statements, which differ fundamentally from the general findings, has not been given.

4.

It is therefore high time to take a realistic look at the Mafia and organized crime in its setup today, to look at what exactly it is, and to establish how and whether it is being fought against. With figures for the German shadow economy set at more than €500 billion in total, the Financial Action Task Force estimates that €43 to €57 billion (at least) is generated from criminal activities in Germany every year (cf. Fiedler 2010, 14). The OECD puts profits from organized crime in Germany at €50 billion annually. As financial investigations and asset recovery measures that are only possible to a limited extent in Germany, it is possible to regularly secure half a percent of these profits. However, extortion, fraud, robbery, bribery, balance sheet and investment fraud; politicians, trade union bosses and bureaucrats who can be bought; nepotism and political horse-trading – all of which are typical for the Italian Mafia and transnationally organized crime – are just as present in the German-speaking countries as they are in southern Europe. “Germany,” says Klaus Jansen, national chairman of the Association of Germany’s Criminal Investigators,

has nowadays become a region where organized crime is both inconspicuous and flourishing, carrying out its activities largely undisturbed. What we see are phenomena such as money laundering, typically disguised as real estate transactions, investments in the restaurant and hotel industries, corruption, economic subsidy fraud, and the shadow economy, things that we have always tended to associate with Italy alone. (Jansen 2008, 4)

It is patently obvious that tax fraud, the misallocation of capital as tax avoidance, abuses of tax law by legal companies to the detriment of the general public, and corrupt practices in companies that operate internationally have led to a structural and functional overlap with organized crime. Some estimates put the annual damage caused by organized white collar crime in Germany at well beyond €100 billion. Not exactly helping the situation is the fact that the various federal states in Germany no longer even have special offices dealing with organized crime. And in other areas, resources have been cut massively because of the current general financial situation. In Saxony-Anhalt, crime experts say, “Offices are starting

4 | Press release by the BKA, August 27, 2008.

to be renamed: No longer ‘organized crime,’ but ‘general and serious crime.’ In the criminal police departments, it is now referred to as ‘gang crime.’ Changing names is only the start.”

One leading criminalist from Mecklenburg-Western Pomerania has said,

When you only have a certain pool of personnel, you can’t fight biker gang crime and Mafia crime at the same time. Hardly any light is being shed on organized crime structures in the area of white collar crime. Identity theft, for example, is a phenomenon of organized crime that is not being dealt with.

In Lower Saxony, one chief superintendent said,

Certain things are no longer doable. The problem is not that we in the police force are doing nothing, the problem is a political one. You can do your best, but still fail when those pulling the strings are doing so from abroad. You might be the best police officer in the world – you still won’t manage to sort out the situation. Our police system can do nothing about it.

Money laundering plays a special role. The Financial Action Task Force confirmed that, in 2010, Germany was especially vulnerable to money laundering, among other things. Germany is a particularly attractive country for money laundering, because it has enormous importance in its role as a financial center and because of its economy. The EU’s 3rd Money Laundering Directive was only recently implemented in German national law, and supervisory authorities in the federal states and/or the municipalities often do not know how to detect money laundering and practically carry out their investigations as a kind of secondary activity. However, the question of money laundering is sometimes ignored for the sake of gaining new customers, even in large German banks. One typical example, for instance, is the case where the Board of Management of a large German bank could not even be prevented by the bank’s compliance department⁵ from accepting a dubious national of Uzbekistan as a customer. This “Uzbek,” a well-known oligarch from Russia, was a money launderer and banker in the 1990s in the Russian criminal organization Solnzevskaja, and it has been proved that he still maintains close contact with the leading representatives of the so-called Russian Mafia. The corresponding evidence of this was presented to the Board by the bank’s compliance department. However, their attempts were futile. The bank employee responsible for Russia, a former Stasi officer, had put in a good word for the “Uzbek.” It did not matter how strongly the compliance department protested. This is also why the bank employee responsible for dealing with money laundering at another large

5 | The term “compliance” was coined in the United States at the end of the 1980s. Companies undertake, in the form of a self-obligation, to set up a system that ensures that all employees comply with the legal frameworks. It affects corruption, insider trading, and money laundering in particular.

bank said that, after working in this area for more than 10 years, he was no longer able to say who was actually the bigger danger for the democratic constitutional state, the *capo* from Moscow, Reggio Calabria, and Palermo or the bank chairman of the board and investment bankers who give such people the chance to carry out their business worldwide in the full knowledge of who they are dealing with. As such, it is no wonder that “some companies have become strongholds of criminal activities in which the typical patterns of organized crime characterize the day-to-day business practices” (Hetzler 2008).

5.

We must bear in mind that the Mafia system has been – and still is able to – spread wherever specific interests override the common welfare, thus giving rise to murky political environments, where social injustices prevent people from enjoying decent lifestyles and where citizen participation in the political decision-making processes at all levels is either impossible or rests on very shaky foundations. This is something that links – in a highly differentiated way in terms of quality and quantity – the political systems of Russia, Italy, and many European states, including Germany and Austria. Mafia organizations can carry out their activities to a greater or lesser degree depending on the individual situation.

It is perhaps no longer possible today to establish to what extent and at what time there are overlaps between (still) legal companies and organized crime. However, it is already clearly apparent that the financing needs of political parties, the power interests of politicians, and the profit orientation of companies are coming ever closer together in an ominous manner. Corruption has already developed to become the most seductive and most dangerous guiding principle in modern times. This allows organized crime in particular to do away with conventional types of armed violence, which they no longer necessarily need to achieve their ends. Not only does money corrupt, it also silently paves the way for certain people to follow.

It has been clear for a long time that both the Italian Mafia and other large criminal organizations are systems of uncontrolled power. “Mafia” is synonymous with a pathological abuse of power. Organized crime is a feature of structurally weak societies and has spread in various forms into all political systems. We might console ourselves with the notion that intact political systems with a functioning legal system, parliamentary opposition, and freedom of the press might be effective defense mechanisms against criminal infiltration. “But how great and how sustainable would this consolation be, if we were forced to see that organized crime has already established itself in some communities as an economic form and as a ‘political’ principle?” asks Wolfgang Hetzer, former consultant to the director of the European Anti-Fraud Office (OLAF), Franz-Hermann Brunner. How should we react then, if organized crime has actually only “radicalized” the economic principle? And, is organized crime not merely the quintessence of the capitalist principle, and thus reflects the corrupt link between economic and po-

litical power and criminal forces? The more the democratically legitimated state is hindered from executing its protective function by powerful individual interests, and state institutions are privatized and/or constricted by a shortage of funds and personnel, the weaker this protective function is for the individual. In this way, the state leaves itself wide open to infiltration by organized crime or those political systems (Fascist or authoritarian) that are very similar to the Mafia. A civil society collapses when the citizens lose faith in state institutions.

Organized crime and the Mafia today are internationally operating criminal groups that have managed – from their regional locations – to combine economic power with the highest degree of criminal energy. They threaten to become part of our political system and our society. Infiltration through merging is the strategic alignment of organized crime, because, without a corresponding political and society-based Mafia-like biotope, organized crime could not exist or expand as rapidly as it has in the past years in Germany. In connection with tax dodges by German millionaires and the attitude of Switzerland's banks, SPD Chairman Sigmar Gabriel has already accused Swiss banks of being involved in organized crime.⁶ The symbiosis between respectable German – or, in this case, Swiss – top bankers and highly criminal but financially well-off individuals sheds light on the typical face of organized crime today. However, it is precisely here that no punitive standards under law and therefore no investigative approaches exist. And yet this is exactly – both in Germany and worldwide – where the most dangerous form of organized crime is heading. Nevertheless, this remains a taboo subject, also when analyzing the extent of the danger posed by organized crime today and in the future – at the global level.

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IV. Outlook

The question whether TOC is an intrinsic feature of a globalized economic life or an indicator of its collateral conflicts will remain a polemical one. However, from our point of view, which is backed up by the articles in this book, transnational organized crime profits significantly from the legal proceedings of global trade; the preponderant ignorance or even consent of political actors on all levels and of all parts of the world regarding the proliferation of criminal networks; the secrecy and lack of regulation of the financial sector; the still quite unknown possibilities of cybercrime; and the materialistic and individualistic philosophy of our age.

It is especially the broader debate regarding the interwovenness of legal and illegal economic activities and the underlying normative conflicts about the legitimacy of action that makes TOC politically relevant. If one assumes that transparency, accountability, and participation are preconditions for a democratic life, we see actors of transnational and national crime networks absorbing political structures – and even decision-makers – through secrecy, non-rejectable offers, and open threats. John Christensen elaborates in his interview the role and the power of secrecy. Marco Lara Klahr describes in his article on extortion in Mexico the social naturalization of threats, which is becoming a threat to democratic society itself.

Currently, *the state* and its institutions are being challenged on different fronts since they are competing with alternative networks offering often faster and more promising survival strategies. In this context it should not be underestimated how the prevailing gold-rush mood characterized by the scramble for maximum profits in society as a whole primes the field for extra-legal actions.

In Europe, the state is increasingly losing its ability to provide security and well-being via public policies to private providers. Additionally, uncontrolled financial markets compete for the money of the taxpayers, leaving the communities without resources for the most necessary investments into public infrastructure.

In many countries of the global South, state institutions never were in the position to dominate public life. As described, for example, in the articles on Afghanistan or the Amazon region, belonging to a certain network is almost natural since it corresponds with family, regional, and/or ethnic affiliations. Starting under such conditions, creating a type of democratic political culture and correspond-

ing institutions would need the support of transparent and accountable global structures instead of the “everything goes” mentality that currently shapes global trade relations. Against that background, sporadic anticorruption campaigns reveal their cosmetic and false character. All those tendencies together undermine the dwindling legitimacy of the state and open up corridors for alternative survival strategies – be they religious, patrimonial, or criminal networks.

It is not only in weak states or war-torn countries that the fine line between legal and illegal is becoming increasingly more diffuse. As long as, for example, illegal labor conditions for construction workers on public construction sites in the German capital of Berlin are the norm – with responsible police officers stating that they can only engage in surprise raids, because otherwise corrupt colleagues would sell the information to corrupt subcontractors who profit from the German bidding legislation – it will remain impossible to locate organized crime outside of our everyday lives. Additionally, Western Europe and the United States profit from cheap, sub-human labor conditions and the non-observance of environmental regulations all over the world that are incorporated into the majority of our prevalent, often surprisingly cheap, consumer goods.

The multi-facetted manifestations of transnational organized crime can be classified according to their political and personal consequences.

Personally, we hope that this book stimulates reflection on the fine line between legal and illegal activities in everyday life – especially regarding the far-reaching effects of the lack of transparency, accountability, and civic participation on the political cultures of our countries. We hope that, for example, the interviews concerning these issues with activists and people from public institutions or business – like Claudio la Camera from the Museo della Ndrangheta; Aurelio Rios from the Public Ministry of Brazil; or Steffen Salvenmoser from PricewaterhouseCoopers – will help to create visions and ideas on how to deal with these challenges, also perhaps in similar contexts.

Regarding political action, we aim to inspire everybody in the legal, political, and economic arenas to stand up for transparent and accountable structures – even though this might lead to the loss of short-term profits.

We wish to continue and to intensify the dialogue on the topic, possibly through the formation of an exchange network of experiences, especially those regarding organized crime, as described so well by various contributors to this book.¹

1 | See list of authors and their email addresses at the end of this book.

Those who hold political and economic power have very little to win by dismantling criminal networks. On the contrary, cutting back illegal practices often equals loss of power and profits, whereas those who suffer from organized crime all over the world can only win with every move that is made toward the containment of organized crime networks and structures.

*Regine Schönenberg
Annette von Schönfeld
January 2013*

ABBREVIATIONS

AML	Anti-Money Laundering
ANA	Afghan National Army
ANP	Afghan National Police
ANSF	Afghan National Security Forces
ARO	Asset Recovery Office
BDK	Association of Germany's Criminal Investigators (Bund Deutscher Kriminalbeamter)
BiH	Bosnia and Herzegovina
BKA	German Federal Criminal Police Office (Bundeskriminalamt)
C2C	Criminal-to-Criminal Model
CDU	Christian Democratic Union (Germany)
CFT	Combating the Financing of Terrorism
CIA	Central Intelligence Agency
CPI	Corruption Perception Index
DEA	Drug Enforcement Agency (USA)
ECHR	European Convention on Human Rights
EU	European Union
FATF	Financial Action Task Force
FDP	Free Democratic Party (Germany)
GDP	Gross Domestic Product
ICT	Information and Communications Technology
ILO	International Labour Organization
IMF	International Monetary Fund
IRC	Internet Relay Chat

ISAF	International Security Assistance Force
ISI	Inter-Services Intelligence (Pakistan)
IWA	Integrity Watch Afghanistan
MPF	Federal Public Ministry (Ministério Público Federal, Brazil)
NATO	North Atlantic Treaty Organization
NDLEA	National Drug Law Enforcement Agency (Nigeria)
NGO	Nongovernmental Organization
OECD	Organisation for Economic Co-operation and Development
OLAF	European Anti-Fraud Office of the Commission (Office de Lutte Anti-Fraude)
RICO	Racketeer Influenced and Corrupt Organizations Act
RS	Republika Srpska
TI	Transparency International
TOC	Transnational Organized Crime
UN	United Nations
UNDCP	United Nations International Drug Control Programme
UNODC	United Nations Office on Drugs and Crime
UPP	Unit of Pacifying Police (Brazil)

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His book *The Black Economy in India*, published by Penguin, has broken new ground in thinking about the Indian economy and its development. He has specialized in development, public finance, and public policy and macroeconomics and published many articles in these areas. He has written on globalization and its impact on Indian Society and on issues pertaining to higher education in India. He also edited a book titled *Challenges Facing Indian Universities*. His latest work is *Indian Economy since Independence*.

He authored the Alternative Budgets for 1993–94 and 1994–95, which proposed alternative economic policies for India. These were presented before a group of eminent citizens of the country. He has been a member of the group producing the Alternative Economic Survey for the last 15 years. These documents provide an alternative analysis of official data. He has written in the popular press and parti-

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As an academic, she is currently writing her thesis about the trafficking of organs as one form of the Trafficking of Human Beings (THB). Methodologically, this involves a lot of research on official documents (EU-Council, OECE, police, UN, etc) to be able to map the routes of human trafficking.

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He has published more than 130 scientific works in different languages. He is a member of editorial boards of the following journals: *European Journal of Crime, Criminal Law and Criminal Justice* (publisher Kluwer Law International, 2002–present); *Goldammer’s Archiv für Strafrecht* (publisher Decker, Heidelberg 2002–present); *Rivista trimestrale diritto penale dell’economia* (CEDAM Padova 2010); and *Archivio penale* (2011).

He has been a member of the Committee for the Reform of the Italian Criminal Code, and was appointed to the Ministry of the Justice in Rome from 2001 to 2004. He worked as a project manager for the EU Falcone program “European Joint Project to Counter Organized Crime” of the City of Palermo between 1998

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Christoph Reuter has covered Afghanistan since 2001 and lived in the country – as the only German correspondent – from 2008 to 2011.

In 2010, he took on the case of the bombing of alleged insurgents – ordered by a German colonel in Kunduz on the night of September 3, 2009. According to the official ISAF inquiry report, “between 17 and 142 people died” in the bombing. The military claimed that only insurgents were killed, while locals asserted that only civilians had died – as has happened dozens of times since 2001 in similar cases.

From December 2009 until March 2010, he went several times to Kunduz to investigate who precisely had died there: What had each person done that night, with whom had he gone to the trucks, how long had he spent at the site? At the end, there was a number, a book, and an exhibition: “Kunduz, 4. September 2009” Showing profiles of most of the 91 victims and giving an extremely detailed reconstruction of the night and its prologue.

Similar projects before have led to books on suicide bombings (*My Life Is a Weapon*, 2002, translated into eight languages); on Iraq; and on the short-lived freedom under the Palestinian Authority. Born in 1968, he has a degree in Islamic Science, worked as a reporter for *GEO*, *stern*, as a lecturer for “Investigative Reporting” in Iraq, Lebanon, and Germany, and is a correspondent for *Der Spiegel* in the Middle East. Email: Christoph_Reuter@spiegel.de

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In 2012, Rios became head of the office of the Federal Prosecutor of the Republic for Citizens Rights. In this function, he is responsible for supervising governmental and public services regarding their respect and loyalty toward the human rights guaranteed in the Federal Constitution of Brazil and regarding the international treaties and conventions dealing with human rights that Brazil has acceded to. Email: aureliorios@pgr.mpf.gov.br

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Salvenmoser works regularly as a consultant on very different aspects of white-collar crime. He has a teaching position at the University of Osnabrück in the post-graduate course on Business Crime and another teaching assignment at Steinbeis University in Berlin, in the Institute for Risk & Fraud. He is a member of the University Council of the University of Aschaffenburg.

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Her current areas of research include international standards to fight cybercrime; comparative analysis of cybercrime legislation; self- and co-regulation in addressing cybersecurity issues; the changing role of the ICT Regulators in fighting cybercrime; and future challenges for the ICT regulations that emerge as a result of cybersecurity concerns. She has been invited to speak on her research topics at different international events, including NATO, ITU, and OSCE events, and at the Worldwide Cybersecurity Summit, EU Summer School on Internet Governance, among others. Email: t.tropina@mpicc.de

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