

TRASNATIONAL ORGANIZED CRIMES : GLOBAL THREAT, LOCAL EFFECT.

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ABSTRACT

Over the last century, issues relating to criminal activities have grabbed the nation's attention. In particular crimes that involve more than one country. Transnational Organized crime is a reality associated with drug trafficking, sexual slavery, and shocking violence that is known to affect almost every part of the world. It is not a new threat for the society. Whether it is a drug cartel organization from Mexico or a cybercrime group out of Eastern Europe, operations of such organizations have been known to threaten the safety, health and economic well-being of the world. These organizations use violence, corruption, and fraud to protect and disguise their illicit, profit-driven activities. This paper examines how these groups – with roots in places around the globe – have flocked to engage in an increasingly diverse range of criminal activities. These are of varying nature ranging in size and sophistication from corporation-like drug cartels and extremely violent transnational gangs to Internet-based hacking and financial fraud rings. Once an organized crime takes root in a country, it can destabilize the entire region, thereby deteriorating the development in those areas. Neither the developing nor the developed world's are spared. Due to many political, social and economic changes as well as variations in legislation, procedures and policies in different countries relating to assistance in criminal matters have further allowed these criminal groups to become more active in the international arena. Globalization of markets increased ease of international travel, high-tech communication equipments, dismantling of trade barriers, and other sophisticated techniques have also encouraged these groups to further increase their strength and also forge alliances with other criminal groups. And thus, this rapid growth in transnational organized crime and the complexity of their investigations requires a global response.

Introduction:

- **RISE OF ORGANISED CRIME:** Organised Crime is not a modern or urban phenomenon.¹ It is deep-rooted in the history of all cultures and continues to evolve in line with political, social and economic changes.² Although systematic and comprehensive research on the evolution of organised crime around the globe is lacking,³ individual case studies exist and it is possible to identify a trend through a comparative analysis. One of the most famous examples of organised crime or criminal groups is the Italian mafia.

Detailed examination shows that organised crime and mafia type bodies are not purely Italian phenomenon. Other, older counterparts to the Italian exist. For example, the contemporary Russian mafias have their roots in fifteenth-century criminal associations formed by peasants fleeing serfdom.⁴ This was promoted by a social institution known as *artel*, an arrangement which organised joint labour activities in agriculture, trade, construction and craft industries.⁵ In time these associations evolved into more solid criminal organisations engaging in theft, burglary and robbery. A similar trend was also visible in Germany during the Napoleonic wars. Under the Ottoman Empire (1299-1922) people known as *kabadayi* emerged as an early example of organised crime groups.

There are also prominent examples of organised crime and criminal groups in Asia. The Chinese criminal group Triad is a case in point. Of particular significance was their growth in Hong Kong. Soon after British colony was set up in 1842, Hong Kong became major transit point for the flow of opium and Chinese labour, both of which

¹ A Block, *East Side- West Side: Organised Crime in New York City, 1930-1950*, 10 (2nd ed. 1995)

² Id.

³ Organised crime in Europe: Concepts, Patterns and Control Policies in the European Union and Beyond, 21(Letizia Paoli and Cyrille Fijnaut eds. 2004).

⁴ Y Gilinskiy and Y Kostjukovsky, 'From Theivish Artel to Criminal Corporation: The History of Organised Crime in Russia' in ORGANIZED CRIME IN EUROPE;CONCEPTS, PATTERNS AND CONTROL POLICIES IN EUROPEAN UNION AND BEYOND (Letizia Paoli and Cyrille Fijnaut eds. 2004).

⁵ Id.

were facilitated by the Triads.⁶ In seventeenth-century Japan the forerunners of the organised criminal group known as Yakuza emerged.

In looking at the historical development of these major criminal groups globally, it is noticeable that early forms of organised crimes and organised criminal groups emerged in response to oppressive governments or other malignant socio-economic forces, often with other external impetus. The result was associations that provided protection for disadvantaged groups or acted as intermediaries between public and governments. Therefore many of these groups were regarded as guardian angels of some sort and not necessarily criminals in the perception of oppressed people. The support of local populations undoubtedly helped these groups to grow and gain legitimacy.

How this noble cause did become corrupt one? While it is difficult to generalise about all criminal groups in history, it may be inferred from above analysis that they started recognising 'protection' as an important saleable commodity. In modern times this practice is known as extortion in many jurisdictions, where criminals demand financial or material benefits in return for 'protection' which is often not required in practice. This has been a common undertaking by Italian mafias. Gambetta notes that the Italian mafia has been 'an industry which produces promotes and sells private protection.'⁷ A similar trend was recognised among the Japanese Yakuza, the Chinese Triad and the Turkish *kabadayi*.

These groups gained a more criminal character when they started providing protection to criminals who sold illegal goods and services. The demand for such service was there because the governments were to regulate and not to provide protection over these illegal markets.⁸

- **CONTEMPORARY MANIFESTATION OF ORGANISED CRIME:** While many characteristics noted above are relevant to modern day organised crime and criminal groups, there are some noticeable differences. For instance, globalisation has altered ways in which organised crimes flourish and criminal groups operate. Globalisation refers to 'a process which transforms the special organisation of social relations and transactions, generating transcontinental or interregional networks of interaction and the

⁶ YK Chu, The Triads as Business 14(2000).

⁷ D Gambetta, The Sicilian Mafia: The Business of Private Protection 1(1993) .

⁸ F Varese, The Russian Mafia: Private Protection in a New Market Economy 1(2001).

exercise of power.’⁹ The principle driving force behind globalisation is the expansion of global market economy. Globalisation has allowed capital, goods, services, people and information to move across borders with increasing speed, frequency and ease, contributing to the growth of global markets and financial systems, multi-national corporations and international trade.¹⁰

However, globalisation has enabled these criminals to operate beyond national borders thanks to improved transport capabilities. In other words, organised crime has become more transnational in nature. Advances in communication, another consequence of globalisation, have allowed criminals to exchange information with anyone or any organisation in various parts of the world and to facilitate transnational co-operation.

What is new or different about the contemporary manifestation of organised crime, then, is its scale or diversity. Wide variety of individuals and criminal groups across the globe are involved in a range of criminal activities. Another key point to note is the way in which the management of risk is conducted in modern times. Criminals are now able to transfer criminal proceeds with a touch of a button, and technology such as internet banking has aided the accumulation and diversification of wealth while evading law enforcement actions.¹¹ In addition, in order to avoid law enforcement, criminal groups engage in ‘jurisdictional shopping’,¹² where they shift their activities to states and territories where their conduct is not properly prohibited or regulated.

In addition to these direct benefits to criminals and criminal groups, there are by-products of globalisation which have facilitated organised crime. Another side effect of globalisation is the reduced ability of states to regulate transnational activities.¹³ This is more evident in states in transition or developing states, as they lack the requisite capacity and/or resources.

The newly independent states did not inherit the infrastructure or expertise on crime control, nor did they have adequate resources for such. The situation was exacerbated by corruption and undue influence by various industries keen to expand their business. A

⁹ D Held and A McGrew, ‘Introduction’ in D Held and A McGrew (eds), *Governing Globalisation: Power, Authority and Global Governance* 2(D Held and A McGrew eds., 2003) .

¹⁰ P Williams, *Organising Transnational Crime: Networks, Markets and Hierarchy* in *COMBATING TRANSNATIONAL CRIME: CONCEPTS, ACTIVITIES AND RESPONSES* (P Williams and D Vlassis eds. 2001).

¹¹ C Fijnaut, *Transnational Crime and the Role of the United Nations, in Its Containment through International Co-operation: A Challenge for the 21st Century* 8(2000)

¹² N Passas, *Cross-Border Crime and the Interface between Legal and Illegal Actors* in *UPPERWORLD AND UNDERWORLD IN CROSS-BORDER CRIME* 27(P Van Duyne, K Von Lampe and N Passas eds. 2002) .

¹³ N Passas, *Globalization, Criminogenic Asymmetries and Economic Crime*, 1, *Eur JL Ref*, 399,402 (1999)

similar problem is also evident in developing regions such as Asia, Africa and Latin America.

Furthermore, states are no longer the sole holders of power. Other, non-state actors, such as multi-national corporations (MNCs) and regional/international organisations such as the European Union and the United Nations have become important players/stakeholders in international affairs.¹⁴ The existence of these multiple actors has undoubtedly affected states' ability to monitor transnational activities, because it is extremely difficult, if not impossible, to pay attention to every single transaction.

Definition:

- **DEFINITION OF ORGANISED CRIME IN INTERNATIONAL LAW- GENERAL DISCUSSION:** Under International Law, an attempt to define organised crime was made in early 1990s. The Eighth Congress on the Prevention of Crime and the Treatment of Offenders, held in 1990, defined organised crime as 'the large scale or complex criminal activities carried out by tightly or loosely organised associations and aimed at the establishment, supply and exploitation of illegal markets at expense of the society.'¹⁵ The Congress also identified the transnational nature and the use of violence as elements of organised crime.

The next indicator is the Naples Political Declaration and Global Action Plan against Organized Transnational Crime,¹⁶ adopted at the Ministerial Conference in 1994. While stopping short of definition, the Declaration identified six main characteristics of organised crime. They are: (1) group organisation to commit crime; (2) hierarchical links or personal relations which permit leaders to control the group; (3) violence, intimidation and corruption used to earn profits or control territories or markets; (4) laundering of illicit proceeds to further criminal activity and to infiltrate the legitimate economy; (5) the potential for expansion into any new activities beyond national borders; and (6) co-operation with other organised transnational criminal groups. Further development came in Europe, when EU adopted the Joint Action on Criminal Organisations in 1998. Article 1 defined a criminal organisation as: a structured

¹⁴ N Passas, *Globalisation and Transnational Crime: Effects of Criminogenic Asymmetries*, in COMBATING TRANSNATIONAL CRIME, 29(Williams and Vlassis eds.).

¹⁵ U.N. GAOR, U.N. Doc. A/CONE 144/7 (26 July 1990).

¹⁶ U.N. GAOR, 47th Sess., U.N. Doc. A/49/748 (2 December 1994).

association, over a period of time, of more than two persons, in concert with a view to committing crimes which are punishable by deprivation of liberty or a detention order of a maximum of at least four years or more or a more serious penalty, whether such offences are an end in themselves or a means of obtaining material benefits and, where appropriate, of improperly influencing the operation of public authorities.

The most important instrument on the organised crime, however, is the Organised Crime Convention, as this is legally binding instrument that can be ratified by states in all parts of the world. The very first draft was proposed by the Government of Poland in 1996. Two months later, the UN General Assembly recognised a need to develop an international convention to address organised crime, and requested the Secretary-General to invite views from Member States on this issue and comment on the draft proposed submitted by Poland. It further requested the Commission on crime Prevention and Criminal Justice to consider, as a matter of priority, the question of the elaboration of an international convention. In response to the recommendations of the Commission and the UN Economic and Social Council, the General Assembly decided to establish an open-ended group of experts within the Commission to elaborate upon a preliminary draft.¹⁷ Poland offered to host a meeting for this purpose, which was held in February 1998. Later that year, the United Nations General Assembly adopted a Resolution to formally establish an Ad Hoc Committee to elaborate on the convention. The Ad Hoc Committee held 11 meetings to elaborate on the Organised Crime Convention and its Protocols, and final version was endorsed by the General Assembly in November 2000.¹⁸

It should be noted at the outset that the definition of organised Crime has not been provided in the Organised Crime Convention. Instead, an organised crime is to be understood as a 'serious crime' committed by an 'organised criminal group.' According to Article 2: 'Organised Criminal group' shall mean 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.

There are two key elements in the definitions of 'serious crimes' committed by 'organised criminal groups.' The first is organised nature of a group, as opposed to the

¹⁷ U.N. GAOR, 52nd Sess. U.N. Doc. A/RES/52/85 (Dec 12, 1996).

¹⁸ U.N. GAOR, 55th Sess. U.N. Doc. A/RES/55/25 (Nov 15, 2000).

organised nature of criminal activity. Another key element is profit. This has been a subject of intense discussion among states participating in drafting.

What may be noticed in looking at these definitions under the Organised Crime Convention is that they are broad enough to cover a wide variety of activities committed by different types of criminal groups. In the authors' view, they serve as a good guidance for all those who are concerned to follow.

- **TRANSNATIONAL NATURE OF ORGANISED CRIME:** While the above definitions are flexible, it is important to note that the application of the Organised Crime Convention is somewhat limited by the requirement of transnationality in Article 3(2). The concept of 'transnational crime' is not exactly a new one. In any event, Article 3(2) of the Organised Crime Convention provides that:

An offence is transnational in nature if:

- (a) It is committed in more than one state;
- (b) It is committed in one state but substantial part of its preparation, planning, direction or control takes place in another state;
- (c) It is committed in one state but involves an organised criminal group that engages in criminal activities in more than one state; or
- (d) It is committed in one state but has substantial effects in another state.

- **'TRANSNATIONAL' AND 'INTERNATIONAL' CRIME:** Sometimes the terms 'international crime' and transnational crime' are used interchangeably by the media and commentators to describe a conduct or activity which has international dimensions. Under International law, however, there is a distinction between these acts, and therefore a classification should be made. Under International law, international crimes are regarded as concern for the international community as a whole, or *delicta juris gentium*. They are those conducts which threaten international conduct or international values.¹⁹ These offences are directly prohibited by international law, namely International Criminal Law (ICL), and establish an individual criminal responsibility.²⁰ The most recent examples of ICL, only war crimes, crimes of aggression, crimes against humanity and genocide are regarded as belonging to this category. Prohibition of these offences is firmly established in customary international law,²¹ and constitutes *jus*

¹⁹ A Cassese, International Criminal Law, 11(2nd ed. 2007).

²⁰ EM Wise, The Obligation to Extradite or Prosecute, 27 Isr Law Rev, 268 (1993).

²¹ Statute of International Court of Justice art. 38, S. 1

cogens.²² These crimes can be committed within jurisdiction of one state, unlike the notion of ‘transnational crime’.

One of the reasons why international crimes are said to shock the conscience of humanity and of the international community is perhaps because the human cost is very high. From moral point of view, international crimes threaten the human life and dignity, and therefore offend fundamental human values.²³ A further point to note is that international crimes are often committed on a massive scale.

Transnational Organised Crime, in contrast, is not generally regarded as a crime for concern for the international community. It can affect interests of more than one state, but not all states which collectively constitutes the international community. The crimes in this category are dealt with an emerging branch of international law known as ‘transnational criminal law’ (TCL) which does not establish individual criminal responsibility in international law, nor does it prohibit a conduct directly. Instead, TCL promotes indirect suppression of a crime through domestic criminal law by imposing obligations on the state to enact legislation. Furthermore, prohibition of organised crime is not generally regarded as part of customary law. In summary, transnational organised crime may appropriately be termed as *mala prohibita*,²⁴ or conducts which are wrong because they are prohibited by law.

Organised crime threatens the rule of law, good governance, democracy and state sovereignty, as criminals resort to violence, intimidation, corruption and other means to achieve their aims. It goes without saying that these are the key principles for maintaining friendly relations and co-operation among states, as well as international peace and security. Therefore, it seems reasonable to argue that organised crime does affect the interest of international community.

Terrorism and Organised Crime:

A nexus between organised crime and terrorism has become more evident in modern times. Generally speaking, the key objectives of organised crime and terrorism are said to be different. While the main aim of organised crime is to maximise longer-term profits, that of terrorism is more political or ideological in that terrorists are interested in overthrowing a

²² Vienna Convention on Law of Treaties, art. 53, Jan. 27, 1980, 1155 UNTS 331.

²³ W. Schabas, *International Crime* (D Armstrong ed. 2006).

²⁴ *Id.*

government or establishing a new state, for example.²⁵ As noted by some commentators, money is the goal of organised crime, while it is a tool for terrorist organisation in achieving political or ideological goals. This distinction can be blurred at times, as organised criminal groups can become more ideological. Lal points out to an example of South Asian criminal groups which acquired ideological/ religious predispositions.²⁶ Conversely, terrorists have increasingly been involved in organised crime to finance and sustain their activities.

In any event, there is ample evidence of this link between organised crime and terrorism. Organised criminal groups and terrorists sometimes co-operate with each other in areas such as acquisition of illicit goods, trafficking routes and training of group members. The Revolutionary Armed Forces of Colombia (FARC) is a good example as it works with drug cartels in production and trafficking of cocaine.²⁷ The same trend can be seen in Pakistan and Afghanistan, where drug traffickers support the activities through organised crime.²⁸ Of particular concern in modern times is the trafficking and acquisition of weapons of mass destruction (WMDs). Trafficking of nuclear weapons has been long suspected of states such as North Korea, Iran and Libya.²⁹ Other forms of WMDs such as chemical and biological weapons, also pose a threat to international peace and security. This and other incidents, such as the September 11 attacks in New York (2001), and the July 7 bombings London (2005) concluded by Al Qaeda, demonstrate the determination of terrorist and organised criminal groups in advancing their agenda. As such, there is an urgent need to ensure that they do not get possession of WMDs.

Different forms of Transnational Organised Crime:

Transnational organized crime is not stagnant, but is an ever changing industry, adapting to markets and creating new forms of crime. In short, it is an illicit business that transcends cultural, social, linguistic and geographical boundaries and one that knows no borders or rules.

Drug trafficking means traffic in illegal drugs. It is also known as narcotrafficking. It has been known to be the most lucrative business for the criminals with an estimated annual value of \$320 billion.³⁰ Its trade involves the cultivation, manufacture, distribution and sale of

²⁵ Organised Crime: A Compilation of UN Documents xl-xli (MC Bassiouni and E Veter eds. 1998).

²⁶ R Lal, South Asian Organised Crime and Terrorist Networks, 49, Orbis-J World Aff, 293(2005).

²⁷ P Bibes, Transnational Organised Crime and Terrorism: Colombia A Case Study, 17, CCJ, 243, 248 (2001).

²⁸ UK Home Office, One Step Ahead: A 21st Century Strategy to Defeat Organised Crime 9(March 2004).

²⁹ Lal, *Supra* at 294.

³⁰ UNODC, World Drug Report 2011 (United Nations Publication, Sales No. E.11.XI.10).

substance prohibited by drug prohibition laws. In 2009, UNODC placed the approximate annual worth of the global cocaine and opiate markets alone at \$85 billion and \$68 billion, respectively.³¹

Human trafficking means illegal movement of men, women and children for the purposes of labour or sexual exploitation. It is form of modern slavery where people profit from the control and exploitation of others. it is a serious crime and gave violation of human rights. While figures vary, an estimate from the International Labour Organization (ILO) in 2005 indicated the number of victims of trafficking at any given time to be around 2.4 million, with annual profits of about \$32 billion.³² Recent research on overall forced labour trends however would suggest that the scope of the problem is much bigger.³³ In Europe, the trafficking of mostly women and children for sexual exploitation alone brings in \$3 billion annually and involves 140,000 victims at any one time, with an annual flow of 70,000 victims.³⁴

Smuggling of migrants is transportation, attempted transportation or illegal entry of a person into a state of which he is neither a national nor a resident for financial or other material benefit. It is a well-organized business moving people around the globe through criminal networks, groups and routes. Migrants can be offered a “smuggling package” by organized crime groups, and the treatment they get along the route corresponds to the price they pay to their smugglers. In the process of being smuggled, their rights are often breached and they can be robbed, raped, beaten, held for ransom or even left to die in some cases, when the risks get too high for their smugglers. Many smugglers do not care if migrants drown in the sea, die of dehydration in a desert or suffocate in a container. Every year this trade is valued at billions of dollars. In 2009 some \$6.6 billion was generated through the illegal smuggling of 3 million migrants from Latin America to North America,³⁵ while the previous year 55,000 migrants were smuggled from Africa into Europe for a sum of \$150 million.³⁶ It undermines the integrity of the countries and communities and costs thousands of people their lives every year.

³¹ Id.

³² A Global Alliance against Forced Labour: Global Report under the Follow up to the ILO Declaration on Fundamental Principles and Rights at Work (2005).

³³ Global Estimate of Forced Labour 2012: Results and Methodology 7 (2012).

³⁴ *Trafficking in persons to Europe for sexual exploitation* 1 (June 2010) (unpublished comment, on file with the United Nations Office on Drugs and Crime Report).

³⁵ Sales No. E.10.IV.6.2010, at 4 (2010).

³⁶ Id at 5.

Illicit trading in firearms brings in around \$170 million to \$320 million annually³⁷ and puts handguns and assault rifles in the hands of criminals and gangs. It is difficult to count the victims of these illicit weapons, but in some regions (such as the Americas) there is a strong correlation between homicide rates and the percentage of homicides by firearms.³⁸

Trafficking in natural resources, apart from being a source of funds for the criminal groups, this strand of criminal activity ultimately contributes to deforestation, climate change and poverty. It includes the smuggling of raw materials such as diamonds and rare metals (often from conflict zones). The trafficking of timber in South-East Asia generates annual revenues of \$3.5 billion.³⁹

The illegal trade in wildlife- Trafficking in elephant ivory, rhino horn and tiger parts from Africa and South-East Asia to Asia produces \$75 million in criminal profits each year and threatens the existence of some species.⁴⁰ Organized crime groups also deal in live and rare plants and animals threatening their very existence to meet demand from collectors or unwitting consumers. According to the WWF, traffickers illegally move over 100 million tons of fish, 1.5 million live birds and 440,000 tons of medicinal plants per year.

The sale of fraudulent medicines represents a potentially dangerous trade for the innocent consumers. Piggybacking on the rising legitimate trade in pharmaceuticals from Asia to other developing regions, criminals traffic fraudulent medicines from Asia, in particular to South-East Asia and Africa to the value of \$1.6 billion.⁴¹ Instead of curing people, however, they can result in death or cause resistance to drugs used to treat deadly infectious diseases like malaria and tuberculosis. In addition to traditional trafficking methods, criminals continue to build a lucrative online trade in fraudulent medicines targeting developed and developing countries alike, which can also lead to health implications for consumers.

Cybercrime encompasses several areas, but one of the most profitable for criminals is identity theft, which generates around \$1 billion each year.⁴² Criminals are increasingly exploiting the Internet to steal private data, access bank accounts and fraudulently attain payment card details.

³⁷ The Globalization of Crime: A Transnational Organized Crime Threat Assessment. (June 2010) (unpublished comment, on file with the United Nations Office on Drugs and Crime Report).

³⁸ *Global Study on Homicide: Trends, Contexts, Data (2011)*.

³⁹ *The Globalization of Crime: A Transnational Organized Crime Threat Assessment*. (June 2010) (unpublished comment, on file with the United Nations Office on Drugs and Crime Report).

⁴⁰ *Id.* at 151

⁴¹ The Globalization of Crime: A Transnational Organized Crime Threat Assessment. (June 2010) (unpublished comment, on file with the United Nations Office on Drugs and Crime Report).

⁴² *Id.* at 203

Nature and Extent of Obligations under International Law:

- **PROHIBITION OF ORGANISED CRIME AND ASSOCIATED ACTS:** The main purpose of TCL is to promote indirect crime prevention at the national level. However, as the Organised Crime Convention is not subject specific like these suppression conventions, its benefit is that it can be used to prosecute and punish a variety of criminal activities.

In addition to organised crimes themselves, states are obliged to prohibit participation in organised crime groups. Under Article 5(1)(a)(i) of the Organised Crime Convention, states must criminalise agreements to commit a serious crime for financial/material benefit. Article 5(1)(a)(ii) also criminalises participation in criminal and other activities of a criminal group with knowledge of either the aim and general criminal activity of such group or its intention to commit the crime in question. In addition, Article 5(1)(b) obliges states to prohibit secondary participation, such as aiding, abetting or counselling the commission of a serious crime. There is, however, a major problem with Article 5 of the Organised Crime Convention, conspiracy in particular. Sometimes an act can be very remote from the actual commission of a crime.

Article 6 provides the definition of money laundering, and a point to note is the term 'intentionally'. This excludes money laundering committed through negligence or without knowledge. Article 7 then obliges states to take action against money laundering. This last point on reporting obligations is worth noting as it demonstrates that TCL as represented by the Organised Crime Convention indirectly imposes an obligation on non-state actors to co-operate with the authorities through national law.

Article 14 of the Organised Crime Convention further allows states to dispose of the proceeds of crime in accordance with domestic law. Two more related offences are criminalised under the Organised Crime Convention. They are corruption and obstruction of justice under Articles 8 and 23 respectively.

Another branch of law which imposes an obligation to prohibit organised crime is IHRL. This branch of law is relevant where organised crime can be regarded simultaneously as a violation of human rights. Crimes such as child prostitution and pornography, sexual/labour exploitation and illicit production, trafficking and

consumption of narcotics⁴³ are some examples of crimes which entail human rights implications.

- **MUTUAL ASSISTANCE IN CRIMINAL MATTERS- EXTRADITION:** Another important aspect of TCL is the facilitation of international co-operation to suppress and punish transnational organised crime. Given the global nature of organised crime, prohibition and prosecution at the national level is not enough. States must be able to co-operate with each other to facilitate prosecution and punishment. A key measure to promote international co-operation in preventing and suppressing organised crime is extradition. The Organised Crime Convention provides detailed guidance on extradition under Article 16. The benefit of this provision is that it applies to all regions of the world, unlike the geographically limited regional treaties.

There are several key principles relating to extradition. The first is the principle of reciprocity. This means that a state will honour a request for extradition if it asks others to honour the same request.⁴⁴ The second principle is double criminality. It provides that the conduct for which extradition is sought must be an offence both in requesting and requested states. This reflects the principle of *nulla poena sine lege* (no crime without law). The third is the political offence exception, providing for the refusal of extradition if the offence in question is political in nature. Finally, there is a rule of speciality, under which a person who has been extradited may be prosecuted only for the offence listed in the extradition request.⁴⁵ It is apparent that many of these principles are designed to protect the rights of suspects and defendants.

- **KEY LEGAL CHALLENGES FACING EFFECTIVE IMPLEMENTATION OF OBLIGATIONS:**

a). Periods of Limitation for Organised Crime- One of the major challenges facing the prosecution and punishment of organised crime is the existence of statutes of limitations in many jurisdictions. Generally speaking, the law of enforcement authorities are not able to initiate prosecution after a passage of a certain period of time under this rule. This is also known as a period of limitation in civil law states where it is recognised under their Criminal Codes. The main reason for retaining this rule is to ensure fairness in criminal procedure. As time passes, it becomes difficult for the accused as well as the authorities

⁴³ United Nations Convention against Transnational Organized Crime, Palermo, Italy, art 1-4, Nov 15, 2000.

⁴⁴ Geoff Gilbert, Aspects of Extradition Law, 93, AJIL, 752, 753 (1991).

⁴⁵ Id.

to prepare a case due to loss of memory on the part of witnesses and of other evidence. This not only affect's the defendant right to a fair trial, but casts doubt on the credibility of the administration of justice.

b). Immunity of Government Officials and Diplomats- Another challenge is immunity granted to the government officials and diplomats serving in foreign states. This occasionally becomes an issue when the agents of states abroad become part of organised crime, although it should be stated from the outset that such instances are rare. A recent example of this is a case concerning the domestic worker working for a diplomatic mission in London who became a victim of slavery.⁴⁶ In simple terms, immunity gives procedural protection from adjudication and enforcement at national level, although it confers no substantive exemption from local law.⁴⁷

c). Protection of Human Rights of Suspects/Defendants- TCL as represented by the Organised Crime Convention provides a comprehensive framework for addressing the organised crime. Nevertheless, the primary focus is placed upon prosecution and punishment, and the rights of suspects and defendants are not sufficiently provided for. In addition to some of the issues raised above, there are pertinent human rights issues in relation to suspects and defendants. During the course of investigation of organised crime, instances of arbitrary detention, torture and ill-treatment, the breach of principle of non-discrimination and even extrajudicial killings have been widely reported.⁴⁸

International Responses to Transnational Organised Crime:

- **Monitoring Implementation of the Organised Crime Convention:** The key mechanism tasked with monitoring implementation of the Organised Crime Convention is COP, which was established by Article 32 of the Convention. As the name suggests, it is a political body consisting of state parties, although UNODC serves as a secretariat.⁴⁹ Article 32(1) explicitly provides that one of the key tasks of COP is to review the implementation of the Organised Crime Convention- otherwise, there is no separate independent body performing this task. This is different for IHRL, where there are several bodies consisting of independent experts, such as Human Rights Committee, the Committee on Economic, Social and Cultural Rights and the Committee on the Rights of

⁴⁶ Emily Dugan, Diplomat's Nanny Lift Lid on Modern Slavery, The Independent (August 9, 2009).

⁴⁷ A Reinisc, International Organisations before National Courts (2000).

⁴⁸ T Obokata, Illicit Cycle of Narcotics from a Human Rights Perspective, 25, NQHR, 159, 162 (2007).

⁴⁹ U.N. GAOR, 55th Sess., U.N. Doc. A/RES/25 (Jan. 8th, 2001).

the Child. Article 32(3)(d) allows COP to establish a mechanism which monitors the implementation of the Convention.

- **Provision of technical Assistance:** In addition to reviewing the implementation of the Organised Crime Convention, Article 32(1) provides that COPs task is to improve the capacity of state parties to prevent and suppress organised crime. A lack of capacity on the part of states has been identified as a problem. In order to address this, COP established the Working Group on Technical Assistance. The Working Group's mandate, however, is limited to making recommendations to the secretariat,⁵⁰ which is responsible in practice for implementing various measures on technical assistance. UNODC was established in 2002 and merged the United Nations International Drug Control Programme⁵¹ and the Centre for International Crime Prevention.⁵² Its headquarters are located in Vienna, and it operates 20 field offices as well as liaison offices in New York and Brussels.⁵³ Due to its long-established expertise and experience in assisting states in combating transnational organised crime, UNODC had taken a leadership role in this field even before the adoption of Organised Crime Convention.
- **International Co-operation:** International Organisations and bodies play an important role in facilitating inter-state co-operation. In addition to the activities conducted by UNODC noted above, COP under the Organised Crime Convention established an open-ended working group to examine various issues of international co-operation, and requested its secretariat to develop and promote tools to facilitate it.⁵⁴ In particular, it requested the establishment of an online directory and a network of central authorities, as well as a catalogue of examples of cases on extradition, mutual legal assistance and international co-operation.⁵⁵ In response, UNODC consolidated the existing directory on central authorities used in relation to narcotics to cover Organised Crime Convention and its Protocols. The upgraded directory was finalised in 2007.⁵⁶ This undoubtedly makes it easier for states to identify and contact appropriate authorities to directly contact appropriate directly to facilitate mutual assistance in criminal matters.

⁵⁰ U.N. GAOR, 4th Sess., U.N. Doc. CTOC/COP/2008/7 (Oct 12, 2007).

⁵¹ U.N. GAOR, 45th Sess., 71st plen. Mtg. U.N. Doc. A/RES/45/179 (Dec. 21 1990).

⁵² Secretary-General's Bulletin on the Organisation of the UN Office of Drug and Crime, ST/SGB/2004/6 (14 March 2004). It was formerly known as the UN Office for Drug Control and Crime Prevention.

⁵³ UNODC, 'Making the World Safer from Crime, Drugs and Terrorism' (2007).

⁵⁴ U.N. GAOR, 2nd Sess., U.N. Doc. CTOC/COP/2005/5 (Aug 12, 2008).

⁵⁵ Id.

⁵⁶ U.N. GAOR, 4th Sess., U.N. Doc. CTOC/COP/2008/5 (Aug 12, 2008).

In addition to the UN bodies, there is another key agency which has been instrumental in facilitating functional co-operation among national law enforcement agencies. That is International Criminal Police Organisation (Interpol), originally established in 1923.⁵⁷ Interpol maintains a global communication system which enables police forces of all its Member States to request, submit and access vital police data. Interpol also provides operational supports, such as a 24 hour contact point and expert assistance in the field.⁵⁸

Conclusion:

Dealing with organized crime and gang violence is a practical and also a theoretical challenge involving highly complex and dynamic phenomena. While national legislators have reacted in very different ways according to the peculiarities that they (believe they) identify, the fight against organized crime, gangs, and gang violence has increasingly become the subject of international regulation. It focuses on the transnational dimensions of organized crime and expresses the will of states to co-operate more effectively and to harmonize national laws. A complex international framework has been established, but it still lacks universal acceptance and full implementation. According to the prevailing doctrine, international law governing the use of force can become relevant only insofar as the criminal acts in question can be attributed to a state. In exceptional circumstances, however, organized crime and gang violence may fall within the scope of IHL and international criminal law; in general, this requires that the criminal collectives have developed into organizations possessing powers and/or structures similar to those of states.

⁵⁷ M Fooner, *Interpol: Issues in World Crime and International Criminal Justice* (1989).

⁵⁸ Todd Sandler, Daniel G. Arce, and Walter Enders, *An Evaluation of Interpol's Cooperative-Based Counterterrorism Linkages*, 54, *Journal of Law and Economics*, 79,110 (2011).

It is no exaggeration to say that the fight against Transnational Organized Crime has become a central issue affecting virtually all policy and societal realms. The challenge is complex and responses to it must be complex as well. One of the most important elements in an effective and sustainable fight against Transnational Organized Crime is not the development of concepts or strategies or the establishment of new institutions, but the mobilisation of political and social will. Another essential element is to understand the phenomenon in a comprehensive way. Therefore, an interdisciplinary academic approach, combined with the experience of persons with practical experience, can best contribute to this comprehensive understanding and to effectively combating this phenomenon. In particular, the social sciences are well equipped to integrate the relevant, broad societal context and underlying processes of Transnational Organized Crime and enable actors to develop policies that target the demand side of the criminal market underpinning Transnational Organized Crime. Thus, social sciences can help to view Transnational Organized Crime from different perspectives and enable us to realise what this phenomenon really is: An underestimated transnational strategic threat of high complexity, which affects the foundation of societies worldwide.

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