From the Margins to the Mainstream: Toward an Integrated Multilateral Response to Organized Crime

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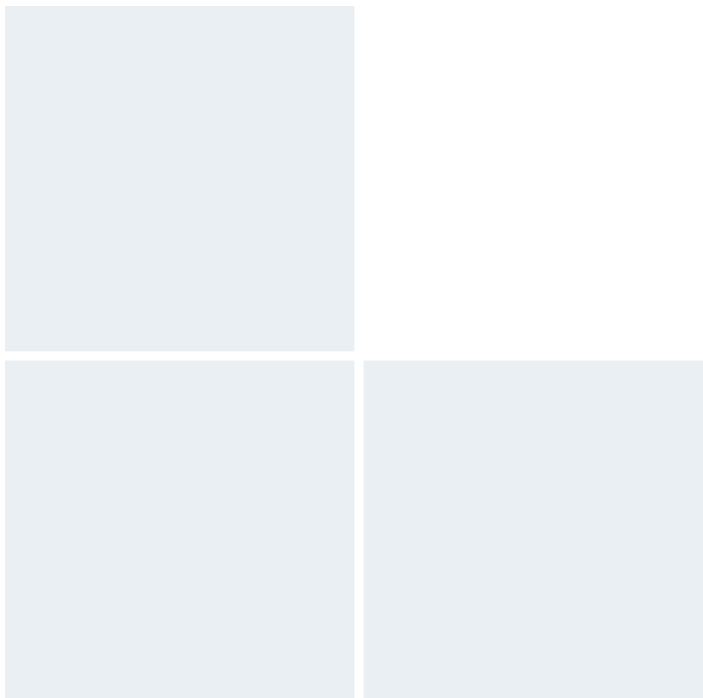INSTITUTE

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Abbreviations

CICIG	*Comisión Internacional contra la Impunidad en Guatemala*
DPA	Department of Political Affairs
DPKO	Department of Peacekeeping Operations
DRC	Democratic Republic of the Congo
ECOWAS	Economic Community of West African States
EU	European Union
EULEX	European Union Rule of Law Mission in Kosovo
G8	Group of Eight
INTERPOL	International Criminal Police Organization
IPI	International Peace Institute
JMAC	Joint Mission Analysis Centre
MINUSTAH	United Nations Stabilization Mission in Haiti
MONUSCO	United Nations Organization Stabilization Mission in the Democratic Republic of the Congo
OECD	Organisation for Economic Co-operation and Development
OSCE	Organization for Security and Co-operation in Europe
UN	United Nations
UNDP	United Nations Development Programme
UNMIK	United Nations Interim Administration Mission in Kosovo
UNODC	United Nations Office on Drugs and Crime
UNPOL	United Nations Police
UNTOC	United Nations Convention against Transnational Organized Crime
WACI	West African Coast Initiative

Executive Summary

Since the end of the Cold War, organized crime has moved from being a marginal problem in a few cities and regions to being a mainstream threat to national stability and international peace and security. While the threat has become transnational, the multilateral response has been slow, disjointed, and reactive. Broad structural changes are needed to deal more effectively with illicit trafficking and other activities of organized criminal groups.

This report—the third in a trilogy of publications by the "Peace without Crime" project of the International Peace Institute (IPI)[1]—calls for a more integrated multilateral response to organized crime. It highlights the impact of organized crime, provides an overview of international efforts made to tackle the problem, and suggests steps toward a more effective response.

KEY FINDINGS

Among the key findings is the need for more robust information. The report highlights the dearth of information as one of the biggest threats to international peace and security. At the global level, there is a lack of information about the effectiveness of the *United Nations Convention against Transnational Organized Crime* (the *Palermo Convention*). At the operational level, there is insufficient use of organized crime threat assessments, as well as a lack of willingness and resources for regional and international organizations to gather and use intelligence on illicit activities.

The report also highlights the need to tackle the problem from more than a law enforcement perspective, for example, by decreasing vulnerability to organized crime through development assistance, community violence reduction and urban renewal strategies, measures to fight corruption, efforts to strengthen the rule of law, and public awareness campaigns to reduce demand for the goods and services of illicit activities.

RECOMMENDATIONS

The report suggests that since organized crime has gone from the margins to the mainstream, the international community should follow suit and "mainstream" the issue into its work on peace, security, and justice. Among the main recommendations are the following:

- Integrate organized crime threat assessments into mission-planning assessments, mandate review processes, and training.

- Strengthen analytical capacity on the political economy of conflict at headquarters and in field operations to better identify, understand, and address organized crime.

- Develop a network of crime prevention and crime-fighting experts who could be deployed to carry out organized crime threat assessments and anti-crime capacity building.

- Factor organized crime into early warning indicators and raise the alarm on organized crime at an early stage.

- Enhance preventive measures to raise awareness about the threats posed by organized crime, reduce vulnerability, and strengthen institutions that can fight crime (including anti-corruption and financial intelligence agencies).

- Work in a coordinated way to reduce demand for goods and services provided by criminal groups.

- Integrate crime prevention more effectively into justice and development strategies and programs, including the Sustainable Development Goals.

- Develop indicators to measure progress in implementing crime prevention.

- Integrate United Nations (UN) Panels of Experts dealing with the political economy of conflict more closely into the UN crime prevention and crime-fighting activities.

- Explore good (and bad) practices in engaging with armed groups involved in illicit activity, and provide guidance to mediators on how to deal with spoilers who profit from instability.

- Ensure that capacity building to fight organized crime is needs-driven, sustainable, and locally owned.

- Promote regional solutions to deal with organized crime to avoid displacing the problem and to promote information sharing and joint

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[1] See also Walter Kemp, Mark Shaw, and Arthur Boutellis, "The Elephant in the Room: How Can Peace Operations Deal with Organized Crime?" New York: International Peace Institute, June 2013; and Mark Shaw and Walter Kemp, "Spotting the Spoilers: A Guide to Analyzing Organized Crime in Fragile States," New York: International Peace Institute, 2012.

operations. Draw on the capacity of states in the region with greater criminal justice capacity, work with regional bodies, and promote regional strategies that address a broader set of issues (including development and justice) rather than just providing hardware to fight crime.

- Independently assess the effectiveness of the *Palermo Convention,* and take steps to enhance its implementation, such as more effective information sharing, disrupting money flows, and conducting joint operations.

- Where possible and appropriate, use executive measures, approved by the international community and the host state, to stop criminals and their collaborators from operating with impunity, and strengthen national capacity to restore justice.

- Revisit the idea of international jurisdiction for cases of organized crime, recalling the fact that this was the original inspiration for establishing the International Criminal Court.

- Review the current international system of governance related to preventing and controlling organized crime. For example, enhance implementation of the *Palermo Convention,* address more effectively the links between crime and stability, and consider the creation of a Global Crime Control Strategy.

- Transform the UN Task Force on Transnational Organized Crime and Drug Trafficking into a permanent contact group to improve coordination of UN actions related to drugs and crime.

- Move the health-related aspects of UN work on drugs to the World Health Organization and cluster all of the UN justice and rule-of-law work (including crime prevention and anti-trafficking) into a UN office for justice.

The report aims to contribute ideas to a more effective multilateral response to organized crime and to stimulate policy debates on drug control (such as the UN General Assembly Special Session on Drugs), crime prevention (particularly in relation to peace operations), as well as development (including the Sustainable Development Goals).

Introduction: A Threat to International Peace and Security

Organized crime used to be considered a marginal issue. It was a threat that only affected the security of a few big-city neighborhoods (particularly in North America) or regions (such as the south of Italy). It was something for law enforcement officials to confront. Organized crime was regarded as being apart from mainstream issues of security, governance, and development in the same way that "crime" is displayed in a separate section from "fiction" in many bookstores.

But in the past quarter-century—since the end of the Cold War—organized crime has moved from the margins to the mainstream. As the dark side of globalization, the problem has grown in size— reaching macroeconomic proportions. It has widened in geographic scope—its fingerprints are now all over the globe. Like sophisticated multinational companies, criminal groups are penetrating new markets, diversifying their product range, innovating to take advantage of new technologies and opportunities, and quickly adapting to reduce risks and increase profits. The rewards are high, as is demand, while the risks are relatively low.

Whereas in the past criminal groups lurked in the shadows, today they either directly confront states, or they hide in plain sight, thanks to the complexity and massive scale of international trade, communications, information technology, and financial transactions, as well as the complicity of corrupt public officials, bankers, lawyers, and real estate agents. To borrow an expression from Mao Tsetung, modern criminals "move amongst the people as fish swim in the sea." Organized crime is no longer just a menace to a few neighborhoods. It has become a strategic threat to states, and the international system as a whole.

Yet the multilateral response to the threat of organized crime has been slow, and disjointed. As demonstrated in this report, a number of initiatives have been, or are being, taken. The issue is receiving greater attention, for example, within the

UN and regional organizations in Africa, the Americas, and Europe. But there is still a lack of information and analysis, insufficient operational resources and responses, limited cooperation, and poor governance.

This report—the third in a trilogy of publications by the "Peace without Crime" project of the International Peace Institute (IPI)—analyzes the main multilateral responses to organized crime. It builds on IPI's past research on this topic, including the *Greed and Grievance* debate triggered by Mats Berdal and David Malone, Karen Ballentine and Jake Sherman's work on the political economy of conflict, and James Cockayne and Adam Lupel's ground-breaking and prolific work on organized crime and peace operations. Furthermore, it continues the policy debate generated by the 2009 IPI Blue Paper on transnational organized crime, which was the product of a task force on strengthening multilateral security capacity.[2]

The report is constructively critical of some aspects of the current international system. The aim is to generate debate and to provide some ideas and policy recommendations on how to move from the current and rather haphazard approach to a more integrated multilateral response.

THE IMPACT OF ORGANIZED CRIME

Crime is often perceived as a threat to human security, negatively impacting many facets of life. According to the *Human Security Report,* crime— whether petty or organized—is what people fear the most,[3] and for good reason. More deaths occur from causes unrelated to conflict—including criminal violence—than from conflicts. In 2012, El Salvador ranked higher than Iraq in terms of violent death rates per 100,000 people, and two dozen countries (mostly in Central America and Africa) ranked above Afghanistan in large part because of rampant crime. The physical and social impact of organized crime also can be seen in terms of increased crime rates, a growing propensity for violence in the affected societies, increases in drug addiction, and a climate of fear. Since the UN and its member states now put such a strong emphasis on the protection of civilians, and since most civilians are being killed as a result of crime-related violence, then saving lives means stopping crime.[4]

Since more than half of the world's population now lives in cities, crime in cities is becoming a challenge to both urban and global security. The impact of "failing cities" may soon become as serious as that of "failing states," if they become the breeding grounds for drug abuse, crime, and extremism.

Organized crime is not only posing a threat to human security, it is—in unprecedented ways— posing a threat to national security. In numerous examples, including Afghanistan, Guatemala, Guinea-Bissau, Honduras, Libya, and Mexico, criminal groups (often working closely with insurgent and terrorist groups) are challenging the state's monopoly on the use of force, and even undermining state sovereignty. As Achim Wennmann has pointed out, "much like lobbyists seeking to influence political decisions and systems, organized crime groups work politically to shape the state, the economy, and society to fulfill their own interests."[5] The nexus of crime and conflict is creating a dangerous threat to peace and security.

This is not only a problem for the state concerned. It can have a knock-on effect on regional security. As has been evident in parts of the Balkans, Central America, West Africa, the Greater Mekong region, the Sahel, or in Afghanistan's neighborhood, crime-related instability in one country can spill into the surrounding region, increasing the threat to peace and security.

The problem does not stop there. In an increasingly interconnected world, what is trafficked through small islands off the coast of Guinea-

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2 Mats Berdal and David M. Malone, eds., *Greed and Grievance: Economic Agendas in Civil Wars* (Boulder, CO: Lynne Rienner, 2000); Karen Ballentine and Jake Sherman, eds., *The Political Economy of Armed Conflict: Beyond Greed and Grievance* (Boulder, CO: Lynne Rienner, 2003); James Cockayne and Adam Lupel, eds., *Peace Operations and Organized Crime: Enemies or Allies?* (New York: Routledge, 2011); International Peace Institute, "Transnational Organized Crime," *IPI Blue Paper* No. 2, Task Forces on Strengthening Multilateral Security Capacity, New York, 2009.

3 Human Security Report Project, *Human Security Report 2005* (Vancouver: Human Security Press, 2005), pp. 47–54.

4 UN Office on Drugs and Crime (UNODC), *Global Study on Homicide 2013* (Vienna, 2014), available at www.unodc.org/gsh/en/index.html ; Geneva Declaration Secretariat, *Global Burden of Armed Violence* (Geneva, 2008), 3, 53; UN Development Programme, "Citizen Security with a Human Face: Evidence and Proposals for Latin America," Human Development Report for Latin America 2013–2014, New York, November 2013, available at www.undp.org/content/undp/en/home/librarypage/hdr/human-development-report-for-latin-america-2013-2014/ .

5 Achim Wennmann, "Negotiated Exits from Organized Crime? Building Peace in Conflict and Crime-affected Contexts," *Negotiation Journal* (July 2014): 256.

Bissau, or across mountain passes on Afghanistan's borders, or from a mine in eastern Congo not only has an impact on the affected regions but also on communities along trafficking routes and to people thousands of miles away. Organized crime also can pose a threat to peace processes. Since criminal groups profit from instability, they may act as spoilers to efforts designed to resolve conflict and promote peace.[6]

Organized crime hurts in other ways too. It is a threat to the rule of law and undermines governance and justice. It can also fuel political violence; the profits of crime can buy power, elections, and protection.[7] Where the rule of law is too weak to counteract malign forces, the social contract is replaced by a criminal bargain: either a Pax Mafiosa results, where criminal groups create an alternative form of government and the local community falls into line, or criminal activity becomes state-sponsored, and, in return, the sponsors are protected and enriched by the criminals—leading to the criminalization of the state. In the process, the state is hollowed out from the inside—captured by a crooked clique of self-serving cronies who hide their criminal activities behind a veil of legitimacy, use the proceeds of crime to build patronage networks, and silence opposition by the threat or use of force. The worst-case scenario of such a symbiotic relationship is what Moisés Naím has described as a "mafia state."[8]

Crime undermines development. It scares away investors and donors, diverts resources (either through corruption, lost tax or customs revenue, or increased security costs of either police or protection money), contributes to brain drain, fuels corruption, perverts local economies (for example, by inflating prices, particularly real estate), dampens entrepreneurship, and hurts aid effectiveness.[9] It diminishes quality of life and reduces the chances of achieving the Millennium Development Goals. As a result, organized crime has been described as "anti-development,"[10] analogous to Paul Collier's description of civil war as "development in reverse."[11]

Organized crime can lead to human rights violations, such as those against freedom of movement, freedom of expression, freedom from fear, the right to liberty, and security of person. In some cases, criminals may violate these rights. In other cases, the heavy-handed response to crime by the state may violate rights.

If crime does not kill, then it can endanger health. Drug trafficking often increases drug use in transit countries, either because couriers are paid in kind rather than in cash, or seepage along drug routes leads to new markets. Victims of human trafficking often develop psychological scars for life, while the victims of organ smuggling bear scars that are physical. Perhaps most cruelly, counterfeit medicines harm those who are most in need.

Organized crime is also killing the planet: Greater scarcity of environmental commodities as a result of exploitation is both a cause and a consequence of illicit trafficking and associated organized crime.[12] Illegal fishing and logging are wiping out stocks of precious natural resources; minerals are being plundered; poaching is driving some species to the brink of extinction; oil bunkering is causing the destruction of fragile ecosystems; and the unregulated dumping of hazardous waste and e-waste is causing ecological damage such as poisoned ground water and landfills as well as polluted oceans. This is damaging economies and ecosystems.

So the threat posed by organized crime is great, and its impact is both destructive and far-reaching.

PLAYING CATCH-UP

Understandably, the emergence of organized crime as a threat to international peace and security was not anticipated by the architects of the post-World War II multilateral system. As a result, the interna-

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6   See James Cockayne, "Strengthening Mediation to Deal with Criminal Agendas," Oslo Forum Papers No. 2, Geneva: Centre for Humanitarian Dialogue, November 2013; Cockayne and Lupel, eds., *Peace Operations and Organized Crime.*

7   See James Cockayne, "Chasing Shadows: Strategic Responses to Organised Crime in Conflict-Affected Situations," *The RUSI Journal* 158, no. 2 (2013): 10–24.

8   Moisés Naím, "Mafia States: Organized Crime Takes Office," *Foreign Affairs,* May/June 2012.

9   See James Cockayne, "Breaking the Crime Trap: Factoring Crime into Development Policy," *Global Observatory*, February 13, 2014, available at http://theglobalobservatory.org/analysis/678-breaking-the-crime-trap-factoring-crime-into-development-policy.html .

10 See, inter alia, UNODC, *Crime and Development in Central America: Caught in the Crossfire* (Vienna, 2007), p. 18; UNODC, *Crime and Development in Africa* (Vienna, 2005), p. 67.

11 See Paul Collier, "Development and Conflict," Oxford University, October 2004, available at www.un.org/esa/documents/Development.and.Conflict2.pdf .

12 Justin S. Brashares et al., "Wildlife Decline and Social Conflict," *Science* 345, no. 6195 (July 25, 2014): 376–378.

tional community has been playing catch-up to deal with what former UN Secretary-General Kofi Annan described as "uncivil society."[13]

The first major multilateral response to organized crime was the signing by the UN General Assembly in 2000 of the *United Nations Convention against Transnational Organized Crime* (UNTOC), also known as the *Palermo Convention*, and its three protocols. This was a triumph of international cooperation. A few years later in 2004, the UN High-Level Panel on Threats, Challenges, and Change identified transnational organized crime as one of "six clusters of threats with which the world must be concerned now and in the decades ahead."[14] The 2005 World Summit Outcome Resolution adopted by the General Assembly expressed "grave concern at the negative effects on development, peace and security, and human rights posed by transnational crime."[15] Yet perhaps because of the strong focus on terrorism after 9/11, there was little follow-up.

As explained in this report, a number of useful initiatives have addressed organized crime, but they have been disjointed, short-lived, and reactive. As the *World Development Report 2011* pointed out, "[T]he international system has not been adjusted to keep pace with the emerging analysis of conflict—in particular, recognition of the repetitive and inter-linked nature of conflict, and the increasing challenge of organized crime and trafficking."[16] As Moisés Naím concluded, "[T]he existing tools that national governments can use to counter the new threat—treaties, multinational organizations, and cooperation among national law enforcement agencies—are slow, unwieldy, and unsuited to the task."[17] Furthermore, the existing international arrangements "do little to create incentives for changing behavior or increasing national efforts to eradicate transnational organized crime."[18]

In particular, the *Palermo Convention* has failed to live up to its potential. Organized crime has evolved faster than the ability of member states to control it. Furthermore, there is still no agreement on a review mechanism to measure implementation, and law enforcement practitioners report that the convention makes little or no difference to their day-to-day work. There is also very little publicity associated with the work of the convention and few statistics to demonstrate its effectiveness. While the review mechanism itself may not be key to the convention's overall success, what seems clear is that the convention is not seen in the wider policy community as playing a central role. Despite being the only global convention against organized crime, it is seldom mentioned in ongoing debates as being at the center of the response to organized crime and is often easily dismissed as being "hobbled by politics." If the convention is to play a critical role in the years ahead, then it needs to be reinvigorated.

One of the main impediments is that some UN member states are not comfortable with transnational organized crime being considered a threat to peace and security. Justice and law enforcement are jealously guarded as a national responsibility at the core of state sovereignty. Some states are concerned that the "securitization" or "internationalization" of crime-related issues could justify the use of force under Chapter VII of the UN Charter, since it could be argued that cracking down on organized crime in a particular country is necessary to restore international peace and security.[19] They see this as a violation of their sovereignty. This is obviously a legitimate concern. But the weakness of this argument is that organized crime is a major threat to sovereignty, particularly in fragile states. The point of having the UN take action would be to help restore sovereignty, not to violate it. If states cling to protecting formal sovereignty, then they risk losing their effective sovereignty—with far-reaching consequences for national security and the potential export of instability.[20]

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13 UN General Assembly, *United Nations Convention against Transnational Organized Crime and the Protocols Thereto,* Resolution 55/25, Foreword, UN Doc. A/RES/55/25, November 15, 2000.

14 UN General Assembly, *Report of the Secretary-General's High-Level Panel on Threats, Challenges, and Change,* UN Doc. A/59/565, December 2, 2004.

15 UN General Assembly Resolution 60/1 (October 2005), UN Doc. A/RES/60/1, para. 111.

16 World Bank, *World Development Report 2011: Conflict, Security, and Development* (Washington, DC: World Bank, 2011), p. 181.

17 Moisés Naím, "Mafia States," p. 109.

18 International Peace Institute, "Transnational Organized Crime," p. 4.

19 For more, see James Cockayne, "The UN Security Council and Organized Criminal Activity: Experiments in International Law Enforcement," United Nations University Working Paper Series No. 3, Tokyo: United Nations University, 2014.

20 See International Peace Institute, "Transnational Organized Crime," p. 12.

Still, there is a growing awareness that a more effective multilateral response to organized crime is urgently needed. In the past few years, transnational organized crime has moved back up the agenda of the international community. Since the mid-2000s, UN Security Council resolutions or statements addressing organized crime have grown in number: in 2005 there was one statement; in 2013 alone there were fourteen resolutions and one statement. The occurrences of debates in the UN Security Council on crime have also become more frequent, for example in the context of Afghanistan, Central America, the Democratic Republic of the Congo (DRC), Guinea-Bissau, Mali, the Sahel, Somalia, and West Africa, as well as thematic debates on drug trafficking and piracy. Significantly, on February 24, 2010, under the presidency of France, a debate was held on organized crime under the heading of "Threats to International Peace and Security." At the conclusion of the meeting, a presidential statement was issued.[21] In it, the UN Security Council noted with concern "the serious threats posed in some cases by drug trafficking and transnational organized crime to international security in different regions of the world."[22] It also pointed out the link between organized crime and other threats to security, such as terrorism.

The UN Security Council has called on member states and the UN system to do more, including more effectively implementing the *Palermo Convention*. It encouraged the coordination of UN actions, including those of its agencies, funds, and programs, to enhance the effectiveness of appropriate efforts. It also invited the secretary-general "to consider these threats as a factor in conflict prevention strategies, conflict analysis, integrated missions' assessment and planning and to consider including in his reports, as appropriate, analysis on the role played by these threats in situations on [the Council's] agenda."[23] This echoed a presidential statement from December 8, 2009, on the issue of "Peace and Security in Africa" that invited the secretary-general "to consider

mainstreaming the issue of drug trafficking" into UN work.[24]

In short, there is a realization at the highest level within the UN that since transnational organized crime has moved from the margins to the mainstream, so too must the UN response. In the past few years, the issue has also moved up the agenda of regional organizations such as the African Union (AU), the Organization of American States (OAS), and the Organization for Security and Co-operation in Europe (OSCE). But concretely, what steps are being taken toward a more integrated response? What are the opportunities and challenges?

The Need for Information and Analysis

FLYING BLIND

Information is a prerequisite for a more effective multilateral response to organized crime. For the international community to tackle organized crime, it needs to know more about what it is confronting: What are the commodities and services that comprise the criminal markets? How big are they in terms of volume and profit? Where are the sources of supply, the trafficking routes, and the markets that create demand? What means are being used to get the products to market? How are markets and trends changing? Who are the actors involved? What are their incentives? At the moment, such information is lacking. As a result, there is no clear picture of the actual world crime situation. This is a major handicap.

The root of the problem is that states are not collecting sufficient information on organized crime, and those that are collecting it do not always share it. According to the *Palermo Convention,* the Conference of the Parties to the Convention should "facilitate the exchange of information among States Parties on patterns and trends in transnational organized crime and on successful practices for combating it."[25] But since there is still—after

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21 UN Security Council, *Statement by the President of the Security Council,* UN Doc. S/PRST/2010/4, February 24, 2010.

22 Ibid.

23 Ibid.

24 UN Security Council, *Statement by the President of the Security Council,* UN Doc. S/PRST/2009/32, December 8, 2009.

25 UN General Assembly, *United Nations Convention against Transnational Organized Crime and the Protocols Thereto*, Resolution 55/25, Article 32, para. 3(b), UN Doc. A/RES/55/25, November 15, 2000.

nearly fifteen years—no agreement on an implementation review mechanism, there is no pressure on states to provide such information, nor are there any consequences if they do not provide it. As a result, as the former head of the United Nations Office on Drugs and Crime (UNODC), Antonio Maria Costa, said to the Palermo Conference of the Parties in 2006, "We are flying through a statistical fog because there is almost no data available on crime: Is it increasing or not? What comparisons can be made among countries? What forms of crime are greater threats than others, and why? Our compass is broken because we are not even sure *how* to measure organized crime, let alone *what* to measure."[26] His successor, Yury Fedotov has highlighted the importance of trend analysis in the organization's regional programs.[27]

Unlike information on drugs—which includes considerable data on cultivation, production, seizures, and drug use—the lack of information on organized crime means that no *World Crime Report* is produced. The first and only attempt was a UNODC report on *The Globalization of Crime* in 2010.[28] As a result, there is, quite simply, no reliable global overview of organized crime. To overcome this shortcoming, states should be encouraged to fulfill their commitments under the *Palermo Convention* to provide and share information. And UNODC should compile and publish this information on a regular basis, at least every five years to correspond with the United Nations Congress on Crime Prevention and Criminal Justice.

If it is too early for a global crime-mapping exercise, then at least more regional threat assessments could be produced. UNODC has a solid track record in this field.[29] Furthermore, some UN Panels of Experts include detailed information on organized crime as part of their reports (see p. 14). The research community should also be encour-

aged to become more actively engaged. For example, the United Nations Interregional Crime and Justice Research Institute (UNICRI) as well as the United Nations Crime Prevention and Criminal Justice Programme Network are two under-utilized resources. The new Global Initiative against Transnational Organized Crime also shows potential for greater research into organized crime given that it draws on an international network of expertise.[30] A research community on organized crime is slowly emerging, but it is still very small, peripheral, and lacks an interdisciplinary perspective—perhaps because of the dearth of information and the danger of conducting research. But if policy is to be evidence-based, and if we are to have a better understanding of the many facets of organized crime, then its study needs to move from the margins to the mainstream. Furthermore, there needs to be greater interaction among researchers, policymakers, and practitioners.

What about at the operational level? As discussed in IPI's report, "The Elephant in the Room: How Can Peace Operations Deal with Organized Crime?" member states are wary of the UN gathering intelligence.[31] The result is that peace operations lack a situational awareness of illicit activity, which can jeopardize the safety of mission staff and hamper efforts to build or keep peace. As Mats Berdal has pointed out, it is undeniable that an adverse feature of many postconflict settings is "the ability of organized crime to take root and flourish in periods of transition from war to peace, to develop symbiotic relationships with local political elites and to strengthen ties to transnational criminal networks."[32] As he warns, "[W]ithout an understanding of these structures and networks, outsiders will grope in the dark and their actions will continue to produce perverse and unintended consequences, at worst creating structures that encourage and reward continuing violence."[33]

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26 Antonio Maria Costa, speech delivered to 3rd Session of the Conference of the Parties to UNTOC, October 11, 2006.

27 See UNODC, "UNODC Chief Launches New Caribbean Regional Programme," April 7, 2014, available at www.unodc.org/unodc/en/frontpage/2014/April/unodc-chief-launches-new-caribbean-regional-programme.html .

28 UNODC, *The Globalization of Crime: A Transnational Organized Crime Threat Assessment* (Vienna, 2010).

29 For example, see UNODC, *Transnational Organized Crime in Eastern Africa: A Threat Assessment* (Vienna: 2013), available at www.unodc.org/documents/data-and-analysis/Studies/TOC_East_Africa_2013.pdf ; or UNODC, *Transnational Organized Crime in East Asia and the Pacific: A Threat Assessment* (Vienna: 2013), available at www.unodc.org/documents/data-and-analysis/Studies/TOCTA_EAP_web.pdf .

30 For more information on this initiative, see www.globalinitiative.net .

31 Kemp, Shaw, and Boutellis, "The Elephant in the Room," pp. 59–61.

32 Berdal, "Building Peace after War," p. 62.

33 Ibid., p. 92.

Therefore, the key to understanding organized crime in fragile states, or elsewhere, is to understand the actors, the incentives, the enabling factors, and the impact.

Fortunately, some changes are taking place. Organized crime is increasingly becoming one of the threats that is identified and monitored by Joint Mission Analysis Centres (JMACs) that operate within UN peacekeeping operations.[34] The information gathered by JMACs can enable intelligence-led policymaking and support integrated mission management, mission security, and strategic planning and forecasting.[35] Therefore, at least one member of the JMAC (or its equivalent in other types of field missions) should have a background in dealing with the political economy of conflict.

Peace operations with crime-fighting mandates (such as the European Union Rule of Law Mission in Kosovo [EULEX] or the United Nations Stabilization Mission in Haiti [MINUSTAH]) have used operational intelligence to track, if not interdict, criminal groups.[36] On a case-by-case basis, the UN draws on available information from national law enforcement agencies and the International Criminal Police Organization (INTERPOL).[37]

While there is a growing realization of a desperate need for more information about the political economy of unstable countries—from Afghanistan to Libya, and from the DRC to Mali— the UN and regional organizations such as the AU,

the European Union (EU), and the OSCE currently lack the tools to help their staff to focus on the threat posed by organized crime. The United Nations Development Programme (UNDP) has guidelines for dealing with fragile states and for carrying out what it calls Institutional and Context Analysis.[38] The International Network on Conflict and Fragility (INCAF) of the Organisation for Economic Co-operation and Development (OECD) is looking into factors that increase the risk and fragility of conflict.[39] But there are few tools to help practitioners carry out threat assessments focused specifically on organized crime.[40] As a result, the staff of international and regional organizations involved in pre-deployment or mandate review processes are not attuned nor equipped to look for crime-related problems. Because of this, organized crime is often overlooked, with serious consequences. Therefore, organized crime should be addressed in mission planning and assessment processes.

To assist in this process, IPI has produced a publication called "Spotting the Spoilers: A Guide to Analyzing Organized Crime in Fragile States."[41] This guide is designed to help practitioners identify warning signs of criminal activity in the theater where they operate, assess the impact caused by organized crime, and prepare assessments that can be used by policymakers to take remedial action. Our hope is that this guide can be "mainstreamed" into the assessment tools used by international and regional organizations.

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34 It is worth noting that a recent report by the International Crisis Group recommended the creation of a special unit within MINUSCA to lead the fight against trafficking. See International Crisis Group, "The Central African Crisis: From Predation to Stabilisation," Africa Report, No. 219, Brussels: ICG, June 17, 2014, p. 22.

35 See Philip Shetler-Jones, "Intelligence in Integrated UN Peacekeeping Missions: The Joint Mission Analysis Centre," *International Peacekeeping* 15, no. 4 (2008): 517–527; Melanie Ramjoué, "Improving UN Intelligence through Civil-Military Collaboration: Lessons from the Joint Mission Analysis Centres," *International Peacekeeping* 18, no. 4 (August 2011): 468–484; and Per Martin Norheim-Martinsen and Jacob Aasland Ravndal, "Towards Intelligence-Driven Peace Operations? The Evolution of UN and EU Intelligence Structures," *International Peacekeeping* 18, no. 4 (August 2011): 454–467.

36 See Kemp, Shaw, and Boutellis, "The Elephant in the Room," 2013; and A. Walter Dorn, "Intelligence-led Peacekeeping: The United Nations Stabilization Mission in Haiti (MINUSTAH), 2006–07," *Intelligence and National Security* 24, no. 6 (December 2009): 805–835.

37 The UN and INTERPOL first concluded a Cooperation Agreement on July 8, 1997, which was followed by a Supplementary Agreement in 2009. They cover areas including exchange of information, access to INTERPOL's police information system (for UN operations performing law enforcement functions), the right for such operations to issue and circulate INTERPOL notices (such as its red notices), and capacity building for national police and other law enforcement agencies. The agreements also create the possibility of joint programs for UN police and INTERPOL to provide direct support to national police and other law enforcement agencies, for example in relation to transnational organized crime. In the past, INTERPOL granted the UN Mission in Liberia (UNMIL) and the UN Interim Administration Mission in Kosovo (UNMIK) temporary access to its telecommunications network and databases. INTERPOL also cooperated with the UN Special Tribunal for Lebanon, the International Criminal Tribunal for the Former Yugoslavia, the International Criminal Tribunal for Rwanda, and the Special Court for Sierra Leone in relation to investigations and proceedings about crimes within their jurisdictions. This included the exchange of police information, access to INTERPOL's police information system, assistance in the search for fugitives and suspects, the issuance and circulation of INTERPOL notices, and the conduct of criminal analysis. INTERPOL also helps UN Sanctions Committees to fulfill their mandates, for example, in relation to freezing assets, travel bans, and arms embargos, as well as through the use of the I-24/7 global police communications system.

38 UNDP, *Institutional and Context Analysis: Guidance Note,* Sept. 19, 2012, available at http://cq-publish.dev.undp.org/content/undp/en/home/librarypage/democratic-governance/oslo_governance_centre/Institutional_and_Context_Analysis_Guidance_Note .

39 See OECD, "The International Network on Conflict and Fragility," available at www.oecd.org/dac/incaf/theinternationalnetworkonconflictandfragility.htm .

40 See Mark Shaw, "Know Your Enemy: An Overview of Organized Crime Threat Assessments," New York: International Peace Institute, October 2011.

41 Shaw and Kemp, "Spotting the Spoilers."

FUSION RATHER THAN CONFUSION

While there are good examples of situations where international or regional organizations have been able to effectively gather information on organized crime, there is a tendency for this information to be used only in the theaters where missions operate. Furthermore, different parts of the same organization may be looking at different issues related to organized crime (such as child soldiers, human trafficking, money laundering, border management, or disarmament, demobilization, and reintegration [DDR] activities), but in isolation. Therefore, a more integrated approach to information sharing is needed.

As suggested in "The Elephant in the Room," it would be worth revisiting a proposal made in the *Report of the Panel on UN Peace Operations* (known as the Brahimi Report) to create an Information and Strategic Analysis Secretariat at UN headquarters that would act as a fusion center to consolidate the various departmental units that are assigned policy and information analysis roles related to peace and security.[42] As the Brahimi Report noted, the UN system needs

> a professional system […] for accumulating knowledge about conflict situations, distributing that knowledge efficiently to a wide user base, generating policy analyses and formulating long-term strategies. That system does not exist at present.[43]

Although there has been some movement in this direction,[44] more than a decade later, this is still the case. For its part, IPI has recommended the establishment of a Joint Crime Threat Analysis Cell.[45] This idea is worth revisiting.

The UN seems to be aware and concerned about potential blind spots related to lack of information on organized crime. For example, the UN Department of Peacekeeping Operations (DPKO) and the UN Department of Field Support's *New Partnership Agenda* on charting a new horizon for UN peacekeeping stresses that "the strengthening of system-wide conflict assessment must be a priority of ongoing UN integration efforts."[46] But

perhaps this is too ambitious for some member states.

At least information on organized crime could be shared among relevant parts of the UN system, including the Department of Political Affairs (DPA), DPKO, JMACs, UNDP, UNODC, UN Panels of Experts, country teams, and regional offices. The UN Task Force on Transnational Organized Crime and Drug Trafficking could be used as a clearinghouse for exchanging and coordinating policy within the UN system on issues related to transnational crime. A small team (perhaps made up of staff seconded from interested member states and/or relevant parts of the UN system) could also carry out analysis on specific crime-related issues.

Within regional organizations, it would be advisable to have at least one analyst in a central location (such as the secretary-general's office) to act as a contact point on organized crime issues that have an impact on political and operational activities. The contact point should also help to ensure that the organization has sufficient training and assessment tools, and develop a network of experts who could provide advice and/or be deployed at short notice.

More thought should also be given to how on-the-ground "monitors" can prevent organized criminal activity or report on trends. Since the international community monitors elections and unstable environments, then why could it not also deploy crime monitors? This may be dangerous, but as with human rights and election monitors, their very presence may act as a deterrent. This could play a crucial role in terms of early warning and conflict prevention.

EARLY WARNING

Within multilateral organizations, analysis should not be an end in itself, rather it should serve the purpose of promoting peace and security. In other words, crime prevention should be more closely integrated with conflict prevention. While it is not for multilateral organizations to pursue individual

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42 See the Brahimi Report, also known as United Nations, *Report of the Panel on United Nations Peace Operations,* UN Doc. A/55/305–S/2000/809, August 21, 2000, p.12. For a more contemporary suggestion on integrated analytical capacity, see Cockayne and Lupel, *Peace Operations and Organized Crime,* p. 204.

43 See the Brahimi Report, para. 68.

44 For example, the establishment of a Situation Center or the Policy Evaluation and Training Division in DPKO.

45 International Peace Institute, "Transnational Organized Crime," p.17.

46 United Nations, *A New Partnership Agenda: Charting a New Horizon for UN Peacekeeping,* July 2009, p. 11.

cases of criminal activity (unless the case falls under international jurisdiction), if the organization has pertinent information or analysis on a disturbing crime trend affecting peace and security, then this should be shared with relevant partners. This was done to great effect by UNODC in relation to the influx of cocaine trafficking into West Africa, particularly Guinea-Bissau, in 2007–2008. What if the alarm bell had been sounded earlier in relation to the destabilizing impact of organized crime in the Fergana Valley before 2010, or to the links among traffickers, insurgents, and terrorists in Mali? Could crises have been averted? The lesson is that there needs to be better early warning in relation to organized crime, and that early warning should be followed by early action.

Who should ring the alarm bell? INTERPOL deals mostly with individual cases. When it comes to peace and security, the UN or regional organizations should provide early warning. That means that UN Country Teams and regional offices as well as the field operations of regional organizations should readjust their antennae to be more attuned to spotting crime-related warning signs. Senior officials could also sound the alarm. In the same way that DPA has monthly "horizon scanning" meetings, on a quarterly basis the executive director of UNODC could brief the UN Security Council. This would be consistent with the presidential statement of February 24, 2010, in which the UN Security Council welcomed further briefings, on a more regular basis, by the executive director of UNODC.[47] If there is a more urgent issue related to drugs and crime, then the secretary-general could bring the matter to the attention of the UN Security Council, pursuant to Article 99 of the UN Charter.[48] Most secretaries-general of regional organizations have similar powers that could be used, particularly where crime has an impact on conflict. In short, since organized crime is a threat to peace and stability, crime-fighting activities should become more deeply integrated into the political activities of multilateral organizations.

In conclusion, the first step to preventing and fighting crime more effectively is to have more information about it. Furthermore, this information should be used in a more integrated way so that various disparate actors—whether they are states or organizations—can acquire a clearer picture of the threat that they face. In this way, they will be able to chase criminals rather than shadows.[49]

PREVENTION AND ADVOCACY

More successful crime prevention would reduce the need for early warning. Currently, unlike counterterrorism efforts, there is no integrated international crime prevention strategy. Rather, crime prevention is either focused on a specific type of crime that may be in vogue (such as human trafficking or the "blood diamonds" trade) or on specific community-level threats.

At the global level, a few campaigns have galvanized public opinion against certain types of organized crime. For example, there have been high-profile campaigns against human trafficking ("a modern form of slavery"), the use of slave labor in the garment, sport shoe, and cocoa-picking industries, illegal logging, wildlife poaching, as well as the trade in blood diamonds. While these campaigns help to raise awareness, they are less effective at implementing solutions and prosecuting suspects. Furthermore, other topics, such as the smuggling of migrants or firearms, have been mostly ignored.

The Kimberley Process, an international certification scheme for diamonds, has tried to clean up the supply chain of blood diamonds. In a similar initiative in the United States, under Article 1502 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, companies using "conflict minerals" such as coltan or cassiterite in their products (such as laptops, mobile phones, gaming consuls, and other consumer electronics) are required to declare the source of such minerals.[50] In an effort to curtail the trade of illegally harvested timber, in 2010 the EU

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47 United Nations Security Council, *Statement by the President of the Security Council,* UN Doc. S/PRST/2010/4, February 24, 2010.

48 Article 99 says, "The Secretary-General may bring to the attention of the Security Council any matter which in his opinion may threaten the maintenance of international peace and security."

49 For an interesting article of the same name, see James Cockayne, "Chasing Shadows."

50 Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, 12 U.S.C. § 5301 et seq. (2010).

introduced a regulation that obliges companies that place timber on the European market to carry out due diligence on the source of the timber.[51] The problem with these initiatives is that they lack teeth. They encourage companies to carry out due diligence, but there are few monitoring or enforcement mechanisms. Furthermore, affected companies complain that further guidance is needed on how these relatively new directives should be implemented.

At the local level, crime prevention programs (for example, in North and South America) have focused in particular on the following: reducing the exposure of vulnerable groups (particularly the youth) to organized crime, for example, through sport and employment opportunities as well as community clubs; community mobilization (often through religious groups) against particular criminal activities and people's tacit support for them; armed violence reduction strategies focused on reducing gun ownership or the presence of guns ("gun-free zones"); urban renewal projects to create safer neighborhoods; security sector reform and demobilization—particularly after conflict situations—to reduce the risk that young men with conflict experience and access to weapons will drift into crime; as well as shelters to house women who have been the victims of trafficking to prevent re-victimization.[52]

However, few studies have systematically tested the impact and effectiveness of such initiatives. As a recent review of the data has concluded, the "evidence base around effective [transnational organized crime] programming remains under-developed. Many of the assumptions that underpin these programmes are not robustly tested."[53] Furthermore, because of their small-scale nature, many of these initiatives often lack staying power. Therefore, such local initiatives should be integrated into wider (particularly development-oriented) strategies that enjoy sufficient and sustainable donor support. Furthermore, more work is needed at the local level to tackle crime in the context of broader urban renewal, community

violence reduction, and armed violence reduction programs.

Reducing demand for the goods and services being offered and implementing preventive measures that lessen the vulnerability of potential victims and increase the risks to criminals are vital. This is a tall order and is more than a law enforcement issue. The engagement of governments, the private sector, and civil society is essential. Of course, the biggest challenge in terms of prevention is to reduce the supply of and demand for illicit goods and services. Efforts to reduce supply, for example, in relation to illegal drugs, have ranged from the "stick" of eradication to the "carrot" of alternative livelihoods (such as crop substitution). There is a growing realization (for example, in the context of Afghanistan, the Andean countries, and Myanmar) that reducing the world's supply of drugs must go hand in hand with increasing stability and development in the drug-growing regions. But while the global supply of opiates and cocaine is more or less stable, drug control has had less success in reducing the supply of synthetic drugs, cannabis, or new psychoactive substances. And even if the world's current supply of illicit drugs were wiped out, and all drug traffickers arrested, there would still be—according to UN data[54]—several million drug-dependent people in the world who would look for new sources of drugs. Reducing demand for drugs is therefore crucial to reduce the likelihood of people becoming dependent on drugs.

One suggestion is decriminalization: An argument in favor is that the current international drug control system has had the unintended consequence of creating a lucrative black market characterized by violence that is exploited by criminal groups. It has also led a number of states to incarcerate drug users as well as dealers, while spending large amounts of money chasing the drug traffickers. The failures of this system are leading to calls (including from some former heads of state and senior law enforcement officials) for decriminalization of drug use to reduce the incentives for

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51 Regulation (EU) No. 995/2010 of the European Parliament and of the Council Laying Down the Obligations of Operators Who Place Timber and Timber Products on the Market, 2010 O.J. L 295.

52 See Nat J. Colletta and Robert Muggah, "Context Matters: Interim Stabilisation and Second Generation Approaches to Security Promotion," *Conflict, Security and Development* 9, No. 4 (December 2009).

53 Tim Midgley, Ivan Briscoe, and Daniel Bertoli, "Identifying Approaches and Measuring Impacts of Programmes Focused on Transnational Organized Crime," DFID Conflict, Crime, and Violence Results Initiative, London: DFID; Saferworld; Small Arms Survey, May 30, 2014, p.3.

54 UNODC, *World Drug Report 2014* (Vienna: 2014).

drug trafficking and dealing, improve treatment for drug users, and reduce the size of prison populations. The decision by Uruguay and two US states (Colorado and Washington) to legalize marijuana will no doubt further open up the debate on loosening existing drug controls. The UN General Assembly Special Session on drugs, scheduled to take place in 2016, should offer a badly needed opportunity to review the current drug control system. A broader strategic discussion is required regarding the impact of trafficking and use of drugs; the reports of the global, Latin American, and West African commissions on drugs have highlighted the extent to which the debate is beginning to shift.[55] Recurring arguments seem to be in favor of a more health-based approach and a greater focus on high-level trafficking and corruption. As explained below, in the longer term, the structural make-up of the multilateral system should be adjusted accordingly.

The private sector has a key role to play in prevention: companies have to ensure that slave-made products are kept out of their supply chains to reduce forced labor; distributors need to ensure that the timber, diamonds, gold, and minerals that they buy are properly sourced, or that products are not counterfeits; mining and oil companies should "publish what they pay"; banks must ensure that they know their customers and carry out due diligence to avoid money laundering; and consumers need to stop creating a market for drugs, slaves, guns, and counterfeit goods. This should increase the risks and reduce the incentives for criminal activity.

Prevention also requires education and effective institutions. This means independent anti-corruption agencies, a free media to carry out responsible investigative reporting, ombudsmen and consumer protection groups, effective witness protection, and a legal system that will protect the victims and bring perpetrators to justice.

Since most criminal activity is motivated by profits, disrupting the flow of the proceeds of crime makes illicit activity less attractive. This can be done nationally by closer cooperation among banks and financial intelligence units, and the implementation of private-sector reporting obligations in line with the intergovernmental Financial Action Task Force. Multilaterally, cooperation to seize and recover stolen assets, as well as greater cooperation to crack down on money laundering, can pay huge dividends.

In short, a much more determined and integrated approach is needed to prevent organized crime: integrated both in terms of cooperation among countries of demand, transit, and supply, and in terms of engaging governments, the private sector, international organizations, the media, parliamentarians, and the public to reduce vulnerability and strengthen resilience to organized crime.

Beyond Law Enforcement

DEVELOPMENT

In the past, organized crime was treated as a law enforcement issue separate from development, stability, or justice. Indeed, the development community tended to stay clear of the issue of organized crime. But slowly, important shifts are occurring in the debate. This is a reflection of the development community's changing view that organized crime is a major hindrance to development, and that under-development increases vulnerability to crime. Therefore, development and crime-fighting are inextricably linked.

An important marker in this debate was the publication of the World Bank's *World Development Report 2011,* which focused on the nexus of conflict, security, and development. The report is a call to the development community to focus on insecurity and violence by building effective institutions, an effort that entails restoring confidence and transforming the institutions that provide citizens with security, justice, and jobs.[56] After all, illicit market structures in war-torn societies characterized by extreme levels of socio-economic dislocation may simply be the result of a survival strategy. If the underlying vulnerabilities are addressed, then development will be fostered and, at the same time, the risk of recidivism into crime and conflict will be reduced. Therefore,

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55 See Organization of American States General Secretariat, *The Drug Problem in the Americas* (Washington, DC: OAS, 2013); and West Africa Commission on Drugs, *Not Just in Transit: Drugs, the State and Society in West Africa*, June 2014.

56 World Bank, *World Development Report 2011*, p. 3.

criminal justice and crime-fighting strategies should be integrated into development strategies.

This message was re-enforced by the High-Level Panel of Eminent Persons on the Post-2015 Development Agenda who, in their report of May 2013, emphasized the link between development and instability, including organized crime. They noted that the Millennium Development Goals (MDGs) "were silent on the devastating effects of conflict and violence on development."[57] They pointed out that "the importance of development of good governance and institutions that guarantee the rule of law, free speech and open and accountable government was not included, nor the need for inclusive growth to provide jobs."[58] They therefore called for a fundamental shift—"to recognize peace and good governance as core elements of well-being, not optional extras."[59] The bottom line is that promoting sustainable development requires building peaceful, effective, open, and accountable institutions for all. As the report points out, "freedom from fear, conflict and violence is the most fundamental human right, and the essential foundation for building peaceful and prosperous societies."[60] Since crime is a major source of violence and what people fear the most, then addressing that threat should clearly be a priority for the development community. This should be taken into account in the post-2015 Sustainable Development Goals.

Development efforts are particularly important in fragile states and those in the process of post-conflict transition. As noted in the *World Development Report 2011*, "While much of the world has made rapid progress in reducing poverty in the past sixty years, areas characterized by repeated cycles of political and criminal violence are being left far behind, their economic growth compromised and their human indicators stagnant."[61] Many countries that have successfully negotiated political and peace agreements after violent political conflicts, such as El Salvador, Guatemala, and South Africa, now face high levels of violent crime, constraining their development."[62]

Fragile states are the most vulnerable.[63] In a cruel yet logical twist of fate, people who live in fragile states are most vulnerable to organized crime—and, as a result of crime, they become even more vulnerable. They become trapped in a malign spiral where underdevelopment and insecurity attract crime, and crime makes it more difficult to create a more stable environment. Particularly in post-conflict settings, war economies evolve into criminal economies.[64] The dangerous nexus between violent conflict and organized crime is present, to varying degrees, in several unfolding crises, including Libya, Mali, Nigeria, Syria, and Ukraine. Addressing crime and underdevelopment simultaneously is vital for fragile countries to break out of this cycle.

The advantage of taking a development perspective is that development is a much more palatable entry point than "crime fighting" when engaging host governments. Since alternative forms of government arise where the state is weak or absent,[65] then development actors should work with the state to strengthen its ability to provide public services, and to build the institutions that it needs to deliver on its responsibility to provide security, justice, and well-being. Since crime thrives where unemployment, corruption, inequality, and poverty exist, efforts to reduce those vulnerabilities also will reduce crime.

For example, in countries that have a large supply of illicit crops, development programs should not only focus on crop substitution, but they also

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57 United Nations, *A New Global Partnership: Eradicate Poverty and Transform Economies through Sustainable Development,* Report of the High-Level Panel of Eminent Persons on the Post-2015 Development Agenda, May 30, 2013.

58 Ibid.

59 Ibid., p. 9.

60 United Nations, *A New Global Partnership.*

61 World Bank, *World Development Report 2011,* p. 1.

62 Ibid., p. 2.

63 See Stewart Patrick, *Weak Links: Fragile States, Global Threats, and International Security* (Oxford: Oxford University Press, 2011).

64 See, for example, David Keen, "The Economic Functions of Violence in Civil Wars," Adelphi Paper 320, Oxford: IISS; OUP, 1998; Berdal and Malone, *Greed and Grievance;* Ballentine and Sherman, *The Political Economy of Armed Conflict;* Mat Berdal, "Building Peace After War," Adelphi Paper 407, London: IISS; Routledge, 2009; Mary Kaldor, *New and Old Wars: Organized Violence in a Global Era* (Stanford, CA: Stanford University Press, 1999); and Achim Wennmann, *The Political Economy of Peacemaking* (Oxford, UK: Routledge, 2011).

65 Anne Clunan and Harold Trinkunas (eds.), *Ungoverned Spaces: Alternatives to State Authority in an Era of Softened Sovereignty* (Stanford, CA: Stanford University Press, 2010).

should look at how to improve rural development more generally, including infrastructure, education, training, access to loans, and the creation of new markets for local products. In cities plagued by crime, urban renewal programs should not just look at how to reduce gang violence but also at how to address wider issues of community policing, job creation, public transportation, and urban planning. In short, crime and drug prevention should be integrated into a wider strategy of development, while development strategies should include drug and crime prevention components. To do this, it may be necessary to develop indicators. This would force both the development community and the crime fighters to be realistic and concrete about what to achieve and how to measure it. Indirectly, such indicators would also help with needs assessments and create benchmarks for implementation of the *Palermo Convention.*

Since development agencies and banks have more funds at their disposal than foreign ministries or law enforcement agencies, they should use their leverage to ensure that criminal justice is a central plank of development strategies. This will not only reduce crime, but it will also create a more permissive environment for implementing development programs, and it could increase aid effectiveness (particularly through reducing corruption).

NAMING AND SHAMING

Gathering and publishing information about organized criminal and illicit trafficking has long been a way to expose and raise attention to these activities. The publication of IPI's guide "Spotting the Spoilers" was designed precisely to facilitate this process, particularly among the staff of peacekeeping and political missions concerned with the issue of organized crime.[66]

Civil society groups and the media can also play an important role. For example, IPI has published a detailed study of organized crime in Kenya,[67] which has generated a debate as to the seriousness of the problem and appropriate responses to it in that

country. Investigative journalists can expose illicit activities, including the perpetrators and accomplices (often in high places).

Of course simply publishing information on organized crime does not guarantee that anything will be done in response. However, within the UN system, a number of information-gathering mechanisms suggest that a more interventionist approach could be taken.

UN Panels of Experts, essentially small investigative teams appointed by the UN Security Council to monitor sanctions, have developed a track record for putting forward detailed information. Since their establishment, the scope of their mandates has expanded to include detailed analysis of conflict drivers (including illicit activity) as well as recommendations for resolving conflicts. Indeed, as Victoria Holt and Alix Boucher point out, "[T]he panels were among the first to link criminal networks to continuing conflict, detailing how spoilers secure arms and undermine peace, and in some cases how governments use these networks to continue war."[68] The panels have not been uncontroversial and have named sitting heads of state (for example in Angola) as well and private sector corporations (for example in the DRC) as being active in various illicit and criminal activities.[69] Since their establishment, most panels have been deployed to countries where peacekeeping or political missions are present (including Cote d'Ivoire, the DRC, Liberia, Somalia, and Sudan). The use of panels has some advantages:

- The panels are comprised of neutral experts and backed by the UN, so their findings generally have credibility. The experts employed typically have a combination of skills, both country/regional expertise as well as law enforcement/intelligence experience.

- The process in which information is gathered involves a variety of methods, including, in some cases, public hearings that allow ordinary people and/or interest groups to express their opinions, building the legitimacy of the final reports.

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66 Shaw and Kemp, "Spotting the Spoilers."

67 Peter Gastrow, "Termites at Work: A Report on Transnational Organized Crime and State Erosion in Kenya—Comprehensive Research Findings," New York: International Peace Institute, 2011.

68 See Victoria K. Holt and Alix J. Boucher, "Framing the Issue: UN Responses to Corruption and Criminal Networks in Postconflict Settings," in *Peace Operations and Organized Crime: Enemies or Allies?* edited by James Cockayne and Adam Lupel (New York: Routledge, 2011), p. 25.

69 See Alix J. Boucher, *UN Panels of Experts and UN Peace Operations: Exploiting Synergies for Peacebuilding* (Washington, DC: Stimson Center, 2010).

- Panels can investigate in much more detail than, for example, UN agencies working on specific issues. Panels regularly interact with law enforcement and intelligence organizations in a way that would be inappropriate for UN organizations.

- Reports are made available publicly and so have maximum impact in terms of "naming and shaming." Reports are widely covered in the media, and the response to their findings (and the criticism that is often directed at the panels) suggests that the very publicity is the factor that ensures impact.

- Panels are not permanently based in a particular country, so (unlike a UN field office or peace operation) they do not have to worry as much about lack of host country agreement.

No panel has focused exclusively on the issue of organized crime. However, a panel has worked with the United Nations Organization Stabilization Mission in the Democratic Republic of the Congo (MONUSCO) to, inter alia, monitor the sanctions with the objective of curtailing provisions of support derived from illicit natural resources to illegal armed groups,[70] while the UN Panel of Experts in Liberia monitored the embargo of arms, diamonds, and timber.[71] In a recent case, the UN Security Council's Monitoring Group on Somalia and Eritrea accused Somalia's Transitional Federal Government of protecting a prominent pirate leader by issuing a diplomatic passport to him. The report criticized the "climate of impunity" that pirate kingpins enjoy both in Somalia and in their travels abroad.[72]

Despite such clearly stated investigative conclusions, the panels have shown some limitations.[73] These include the following:

- There has not been effective coordination between the work of the panels and peace operations themselves. Rule-of-law work, for example, is seldom linked to the findings of panels.

- The recommendations of panels, while generating a debate, are seldom followed.

- The panels are usually constituted on an ad hoc basis and so, while influential at the time, are generally not in a position to follow and/or monitor events over longer time periods.

If linked more specifically to the mandate of peace missions with a clearer process in which their recommendations could be debated or followed, then UN Panels of Experts could constitute a viable method to focus on the issue of investigating organized criminal activity at either a regional or national level. This is particularly important since what is missing in so many current discussions of countering organized crime is a structured debate on key aspects—for example the financial flows from piracy—for which a Panel of Experts may provide an ideal mechanism for gathering and presenting information. Better use of the panels' information could achieve a greater understanding of political economies and the networks, accomplices, incentives, and drivers that need to be addressed holistically to transform illicit economies into more sustainable and law-abiding environments. Otherwise one either has an incomplete picture or goes after certain individuals without addressing the factors that enable such individuals to thrive.

In short, the work of Panels of Experts should be more closely integrated into UN crime-fighting and conflict prevention activities.

MEDIATION

The opposite approach to "naming and shaming" spoilers is to try to co-opt and work with them. This is a controversial approach that requires further study. On the one hand, if criminal groups are de facto authorities that hold power and some degree of legitimacy, then their voice needs to be heard, and they could help reduce violence and promote peace. On the other hand, there is a danger and a moral hazard in rewarding bad behavior and making a virtue out of necessity by working with individuals and groups that have gained money and power by breaking the law. Experience has shown (for example, in regard to the Revolutionary United Front in Sierra Leone)

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70 United Nations Security Council Resolution 1856 (December 22, 2008), UN Doc. S/RES/1856.

71 For a useful chart on mandates of panels of experts, see Boucher, *UN Panels of Experts and UN Peace Operations,* p. 9.

72 United Nations, *Report of the Monitoring Group on Somalia and Eritrea Pursuant to Security Council Resolution 2002 (2011),* Advanced Copy, June 27, 2012.

73 For a more detailed discussion, see Boucher, *UN Panels of Experts and UN Peace Operations.*

that mishandling such negotiations can empower and enrich criminals rather than encourage them to change their ways. As James Cockayne asks:

> Does a 'mediated' outcome, involving a compromise on enforcement of the law, risk betraying the interests of victims of past criminal activity, rewarding past criminal behaviour, provoking future criminal behaviour and even empowering those with continuing criminal agendas?[74]

Yet simply ignoring them will not make them go away. As Cockayne points out, armed groups involved in illicit activity increasingly use their control of criminal rents to develop military, political, and social power. Mediators who ignore this fact risk seeing their peace process spoiled.[75]

This is a dilemma that is not restricted to criminal groups: humanitarian actors and mediators often come into contact with nonstate armed groups, particularly in fragile states. The jury is still out on how best to deal with such groups.[76] The difference between criminal groups as opposed to other nonstate armed groups is that they usually have economic rather than political motivations, which means that they may not necessarily be interested in power-sharing arrangements or peace settlements. Indeed, since they profit from instability they may actively try to derail peace processes. They therefore require different incentives and need to be treated differently than other nonstate armed groups. So how can their behavior be transformed, or their needs accommodated?

There has been some success with gang truces, for example, in El Salvador in early 2013, or in the slums of Brazil and Haiti.[77] But not enough time has passed to see if these agreements will stick, nor is it clear what the mediators were able to offer the gangs in return for peace.

Furthermore, the situation is more complex when dealing with armed groups in a postconflict environment if those groups have been involved in illicit activity. Should the groups' past transgressions be forgiven and forgotten as a survival strategy during the conflict? But where should the line be drawn? Do you turn a blind eye to fuel smuggling but go after those involved in the smuggling of human organs? What if some former combatants are still involved in illicit activity? Do you try to bring them to justice at the risk of creating greater instability in a fragile postconflict environment? Or do you leave them alone at the risk that they may use their ill-gotten gains to move up in the worlds of business and politics?

One lesson learned is that to create space for engaging with such actors and groups, it is important not to label them as "criminals" since that paints them into a corner that is hard for them, and the mediator, to escape.[78] Describing their activities as "criminal" implies that they deserve to be punished. So negotiating with spoilers engaged in illicit activity to bring them from the margins to the mainstream requires achieving a delicate balance between creating incentives for change and offering concessions. And yet, if they have committed crimes, or are still involved in illicit activity, does negotiating with them run the risk of legitimizing their actions? It is a tough call.

In short, mediation with criminal groups is an option, and criminal agendas certainly need to be taken into account when trying to build peace, but the process is delicate and fraught with potential problems. Therefore, as a matter of urgency, this topic requires further study to look at past experiences, both good and bad, and to develop guidelines for mediators (such as the UN Mediation Support Unit). Failure to integrate the issue of organized crime into mediation strategies and peace processes will leave the international community with a potentially dangerous blind spot.[79]

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74 Cockayne, "Strengthening Mediation to Deal with Criminal Agendas," p. 5.

75 Ibid., p. 21.

76 See Cockayne, "Strengthening Mediation to Deal with Criminal Agendas"; Sukanya Podder, "From Spoilers to Statebuilders: Constructive Approaches to Engagement with Non-State Armed Groups in Fragile States," OECD Development Cooperation Working Paper, Paris: OECD, October 2012; and Wennmann, "Negotiated Exits from Organized Crime? Building Peace in Conflict and Crime-affected Contexts," pp. 255–273.

77 See Teresa Whitfield, "Mediating Criminal Violence: Lessons from the Gang Truce in El Salvador," Oslo Forum Papers No. 1, Geneva: Centre for Humanitarian Dialogue, June 2013.

78 For more on this argument, see Cockayne and Lupel, *Peace Operations and Organized Crime,* pp. 3–6.

79 See Cockayne, "Strengthening Mediation to Deal with Criminal Agendas," p. 2.

CRIME REDUCTION INFRASTRUCTURE

The response to organized crime and illicit trafficking has resulted in an enormous amount of technical assistance, which has typically been targeted at law enforcement, criminal justice, and security sector institutions.

The most fundamental task, especially in fragile states, is to help the state regain control of its territory and the monopoly on the use of force. This may require war-fighting or peacebuilding. This is obviously not the role of the international community, unless it is asked to intervene by the government concerned to restore or support the extension of state authority.[80]

A more common response is to provide assistance for enhancing border management, for example through assistance to air traffic control, coast guard, customs, container security, or counter-narcotics. Other types of technical assistance that are often provided to help strengthen national capacity to fight crime include training police; strengthening prosecution services; building independent judiciaries; and reforming prisons. Much of this work is bilateral or carried out through the UN, particularly UNODC and UNDP.

However, it is difficult for the UN or regional organizations to provide capacity when they have little to spare. As explained in "The Elephant in the Room," there are currently very few experts within the UN system, or even among member states, with the skill set to carry out transnational organized crime threat assessments, analyze the political economy of organized crime, and provide hands-on advice on how to reduce the risks posed by criminal groups and activities.[81] To overcome this problem, the UN and regional organizations should create incentives to encourage countries, particularly those from the Southern Hemisphere, with domestic experience in dealing with transnational organized crime to contribute experts to crime-fighting and justice-building operations.[82] A baseline should be to provide training to incoming

civilian, police, and military members of peace operations on how to spot spoilers involved in illicit activity. Other suggestions include having a pool of organized crime experts connected to strategic police units (such as the UN Standing Police Capacity or the OSCE's Strategic Police Matters Unit),[83] and/or deploying pre-formed teams of crime experts to field operations.

But increased law-enforcement capacity alone is insufficient. It may also be resisted by the host government since accepting international assistance to fight crime or corruption may carry a stigma. More general rule-of-law support functions and/or development assistance (which includes a criminal justice component) can therefore be more palatable entry points for building capacity.

A recurrent problem is that assistance is often provided without first conducting a needs assessment. This results in activities that are donor driven rather than needs driven, and there is no way to monitor progress since there is no strategic picture of either organized crime or gaps in the criminal justice system.

Another problem is that providers prefer to give bilateral assistance—often undermining or duplicating multilateral initiatives. This is another reason why an integrated approach is necessary. And assistance is often provided in a context where political will is lacking. All the training in the world has no value if there is not valid political support for those who have to investigate and arrest within the framework of the law. Capacity building must be combined with efforts to bolster political will and oversee progress. The role of civil society in assisting in this regard has been overlooked by support programs that have focused exclusively on state agencies.

Acceptance and ownership of crime-fighting assistance by the host government is essential. As noted, too often donors impose their priorities. That said, recipients sometimes have a tendency to ask only for hardware or may appear willing to receive assistance yet fail (wittingly or unwittingly)

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80 See Jake Sherman, "Peacekeeping and Support for State Sovereignty," in *Annual Review of Global Peace Operations 2012,* Center on International Cooperation (Boulder, CO: Lynne Rienner, 2011), pp. 11–25.

81 See Kemp, Shaw, and Boutellis, "The Elephant in the Room," pp. 61–63.

82 Ibid., p. 62.

83 This idea was described in the IPI Blue Paper "Transnational Organized Crime" as creating a team of "blue suits" to complement the "blue helmets." See International Peace Institute, "Transnational Organized Crime," p. 23. Such experts have also been informally described as "the blue fedoras."

to use it effectively. It is therefore vital to involve all stakeholders in the development of technical assistance plans and to take a holistic and integrated approach. The New Deal for Engagement in Fragile States and the g7+ (which brings together donors and governments of fragile states) can be instructive in this regard.

There is growing recognition that capacity building to tackle organized crime is most effective when provided as a package, or at least as some sort of coherent programmatic framework rather than one-off projects. It should be part of efforts to create what has been described as "infrastructures for peace."[84] The most recent donor-supported interventions against organized crime—for example, against piracy off the coast of Somalia and countering cocaine trafficking in West Africa—have both adopted responses that include a combination of police, prosecution, and correctional elements. This is likely to be the path in future approaches.

Nevertheless, serious questions need to be raised as to the actual efficacy of this assistance. For example, technical assistance is often fragmented, and it is easily derided in some cases as "PowerPoints and sandwiches" with little lasting effect. Police-to-police support, for example, is in many cases poorly conceived and structured and may not take into account wider questions of the criminal justice system, such as the importance of effective prosecution. Therefore, it is necessary to develop more systematic responses that focus on strengthening institutions and not just individuals.

As organized crime is predominantly a financially driven phenomenon, one way to disrupt it is to target the money flows. Building the capacity of financial intelligence, anti-money laundering, and anti-corruption units is therefore vital.[85] This could reduce the risk of corruption and increase the risks to criminals (and their collaborators), for example, by freezing, seizing, and confiscating their assets.

Another lesson learned is that support for rule-of-law assistance is slow to arrive, and takes time to implement. Donors, who are often looking for quick fixes and the impact of results that they can measure annually, may not have the patience or funding for longer-term engagement that takes years to show results. The outcome is the equivalent of quickly repainting the exterior of a decaying house without taking the time and effort to repair the floors, walls, and roof. In the short term, the house looks nice, but soon it will collapse.

The Multilateral System

REGIONAL COOPERATION

Organized crime is seldom contained within fragile states' borders and often spreads to bordering states. Neighboring states and those in the wider region have a direct interest in ensuring that organized crime and associated illicit trafficking are contained in the country in question. For example, the proceeds of crime are often transferred to neighboring countries and invested in assets such as property. This can have a detrimental effect. Criminally inflated property booms price legitimate actors out of real estate markets, causing severe dislocations and economic distortions. A recent study by the World Economic Forum detailed fourteen ways that the laundering of criminal money into real estate encourages further criminal behavior and creates insecurity.[86] The violence associated with organized crime can also spill over borders, as can be seen along the drug-trafficking routes from Colombia through Central America, Mexico, and beyond. Yet, despite the tendency of organized criminal activity to cross borders, there are surprisingly few examples of subregional or regional responses being encouraged and effectively executed. Europe is perhaps the leading exception where a number of collaborative arrangements—including the European Union's Judicial Cooperation Unit (EUROJUST), the European Police Office (Europol), and the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (Frontex)—have been established to improve cooperation and coordination to enhance criminal justice.

In some regions, attempts have been made to

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84 See The International Civil Society Network on Infrastructures for Peace, "Infrastructures for Peace," available at www.i4pinternational.org/infrastructures-for-peace .

85 For more, see United Nations General Assembly Resolution 58/4, *UN Convention against Corruption* (October 31, 2003), UN Doc. A/RES/58/4.

86 World Economic Forum, *Global Agenda Council on Organized Crime: 2010–11 Term Report* (Geneva, 2011).

improve the sharing of crime-related intelligence among countries, for example by establishing national and/or regional transnational crime units. For example, the Pacific Transnational Crime Coordination Centre was established in Suva (Fiji) in 2004 and then moved to Apia (Samoa) in 2007. The center linked a number of transnational crime units located in the Pacific Islands. A similar system, called the West Africa Coast Initiative (WACI), was established in 2009, but thus far it has been hard to measure its effectiveness. A more successful example is the Central Asia Regional Information and Coordination Centre, which opened in 2009 in Almaty, Kazakhstan, with the aim of exchanging information on drug trafficking among the countries of Central Asia including Azerbaijan and Russia.

With the free sharing of information, a comprehensive analytic model of organized crime activity can be developed, concurrent with development of coordinated planning and operations by the range of national security and law enforcement agencies. Information exchange can also significantly contribute to building trust among different criminal justice and security actors, thereby building a longer-term platform for an effective national response. Replicating this model would be worthwhile to create specialized multinational "fusion centers" or observatories to analyze and provide information on transnational organized crime at the regional level.

Regional cooperation is particularly important among weak and fragile states. Since the rule of law and border controls are weak in such states, they can be particularly vulnerable to attracting and spreading crime: yet a well-constructed regional crime-fighting strategy can improve regional cooperation and increase resilience to crime.

The general characteristics of successful regionally based interventions among fragile states can be summarized as a combination of the following:

- a clear regional strategy or plan focused specifically on containing organized crime with a specific focus on fragile states;

- a recognition or agreement stating that courts in stronger states may be able to prosecute organized crime suspects from weaker or fragile

states according to their national laws;

- extra-judicial courts, where suspects are tried according to their national law but in a physical location outside the home country;

- an agreed-upon mechanism (or "hand over") where suspects can be arrested and turned over to a national court responsible;

- an agreement on where imprisonment should be served; and

- joint or coordinated intelligence, military, or seizure operations.

In this way, countries affected by illicit transnational flows can work together to strengthen their individual sovereignty and their collective security. Such an approach can also contain rather than displace the problem.

The response to piracy, while not fully successful in addressing the roots of the problem, has demonstrated the capacity of a region to respond in a coordinated manner to an emerging organized crime threat. Kenya, Mauritius, and the Seychelles came together to provide a criminal justice framework under which pirates could be held, tried, incarcerated, and, ultimately, transferred back to Somalia once the capacity had been sufficiently built. Another effective example of a regionally owned solution was "Operation Prosperity," a six-month joint patrol effort between the governments of Benin and Nigeria to counter piracy off their coastlines.[87]

On the positive side, the case of countering piracy has ensured that international assistance has been focused on strengthening regional capacity and ownership of the process. Counter-piracy efforts are a clear case of partnerships between developed and developing countries, despite some of the political tensions involved. Regionally owned initiatives help to mitigate the interplay between fragile states and their neighbors, and the international community has a key role to play in supporting capacity building in the stronger states to investigate, try, and convict offenders from weaker or fragile ones, thereby creating a bulwark around weaker states and preventing the establishment of a system of impunity for organized crime. On the negative side, however, concluding

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87 United Nations Security Council, UN Doc. S/2012/45, January 19, 2012, p. 6.

agreement around regional responses can be politically fraught, and generally will require considerable international advocacy and financial incentives for the stronger states to engage and comply. For the regional criminal justice approach to work, several preconditions are required:

- a functioning set of courts in regional or neighboring countries that broadly meet international rule-of-law and human rights standards;
- sufficient trust among the countries concerned to enable cooperation and information sharing;
- agreement that the crime in question is of sufficient seriousness to warrant regional intervention; and
- agreement that cases will only be prosecuted outside of national courts if a state is unwilling or unable to effectively investigate and prosecute the crime.

Initiatives at the regional level to counter organized crime and drug trafficking in West Africa have focused primarily at the strategic and policy levels. The *Regional Action Plan To Address the Growing Problem of Illicit Drug Trafficking, Organised Crime and Drug Abuse in West Africa* by the Economic Community of West African States (ECOWAS) is the primary instrument in play. There has been some progress on aspects of the plan—for example, the establishment of the WACI—but even here progress has been slower than hoped. Another regional initiative developed in the wake of the increased infiltration of illicit funding in politics in the region is the *Praia Declaration on Elections and Stability in West Africa,* which includes a provision on preventing the financing of political parties and their campaigns by criminal networks, particularly drug-trafficking networks. The Dakar Initiative, a subregional initiative launched in February 2010 by seven West African countries (Cape Verde, Gambia, Guinea-Bissau, Guinea, Mali, Mauritania, and Senegal), was in follow-up to the Praia Ministerial Conference aimed at helping to implement the political declaration and the ECOWAS regional plan of action. The reality of all of these strategies, to varying degrees, is that, while they have sought to be as comprehensive as possible, they often lack practical and monitored plans for implementation that prioritize a clear set of actions.

Furthermore, in the case of West Africa, the role of the international community has not contributed to effectively strengthening the initiatives of countries in the region. They have continued to implement bilateral activities in isolation, leading to fragmentation, overall lack of efficacy, and an increased challenge to the regional bodies to promote overall coordination and prioritization. The requirement for achieving greater success is to channel ownership, funding, and capacity-building support through the regional bodies themselves, as part of a plan that has the buy-in of all stakeholders. Again, what is needed is an integrated approach, both in terms of cooperation among the affected states, as well as donors and assistance providers, and in terms of taking a holistic approach that focuses on advocacy, development, and justice rather than just providing hardware to fight crime.

INTERNATIONAL COOPERATION

Criminal groups have shown themselves to be masters of international cooperation. They share information, carry out joint cross-border operations, develop global networks, and exploit the latest technological advancements—exactly what law enforcement agencies should be doing. But government agencies and law enforcement institutions are often slow, ineffective, rigid in approach, and too bureaucratic to be able to match the speed and efficiency of criminal operations. They also may have fewer resources. As Kofi Annan wrote more than a decade ago, "Criminal groups have wasted no time in embracing today's globalized economy and the sophisticated technology that goes with it. But our efforts to combat them have remained up to now very fragmented and our weapons almost obsolete."[88] To be fair, governments must respect certain procedures to operate within the rule of law and must, for obvious reasons, operate with higher standards than criminal groups. Regardless, even in the most highly developed relationships, for a variety of reasons but most notably due to issues of national sovereignty, cooperation across national borders is a challenge.

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88 Kofi Annan, "Foreword," in *United Nations Convention against Transnational Organized Crime and the Protocols Thereto* (Vienna: UNODC, 2004), p. iii.

As mentioned earlier, states are hesitant to share information with each other. This is a major handicap. Practical cooperation also has been in short supply. This is not due to a lack of legal instruments. There are several key conventions for establishing more effective cooperation in criminal matters. The most prominent have been the 1988 *UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances,* followed by the *Palermo Convention* in 2000.

The main forms of cooperation mandated under these and other legal arrangements include: extradition; information and intelligence sharing; mutual legal assistance; seizure and confiscation of assets; liaison arrangements; and joint investigative teams.

In each of these cases, there has been some progress in advancing the effectiveness of international cooperation. However, the use of these measures has been largely limited to states that have the capacity and the willingness to engage in such arrangements. Indeed, UNODC reported in 2010 that it knew of only nineteen of 157 states parties to the *Palermo Convention* that had used it as an instrument to facilitate international cooperation, including extradition, to fight organized crime groups.[89]

The *Palermo Convention* has failed to live up to its potential, highlighted by the fact that member states have not been able to agree on an implementation review mechanism, nor do they share much information about serious crimes. This is despite an impressive number (179) of states parties to the convention. While the data remain scant, and an independent assessment is urgently required, the conclusion must be drawn that the implementation arrangements for the convention have been weak in many states. There has been little comparison of experiences using the provisions of the convention and not enough thought and cooperation among UN bodies as to how the convention might be used as a first line of defense in countries with poor governance and weak institutions.

The Group of Eight (G8) also has promoted multilateral cooperation to fight transnational organized crime. For example, after the G8 Summit in Halifax in 1995, a group of experts was brought together to look for better ways to fight organized crime. In 1996, this group (later known as the "Lyon Group") produced forty recommendations to combat international crime. A particular emphasis has been put on the financial aspects of crime, such as tackling money laundering, terrorist financing, and corruption. While the G8's attention to the problem of organized crime has helped to generate political will, its recommendations are mostly declaratory.

Cooperation pursuant to the *United Nations Convention against Corruption* has been slightly more successful. But even here there is a long way to go. In cases of bribery, misappropriation of funds, and other corrupt practices, some of which may be linked to organized crime, developing countries are reported to lose approximately $20–40 billion per year. To date, however, only $5 billion has been recovered.[90] The Stolen Asset Recovery (StAR) Initiative of the World Bank and UNODC reports that many countries have sought to recover stolen assets and that while success has been demonstrated in some high-profile cases, "what we need now is more visible, tangible progress in forcefully prosecuting bribery cases, and systematic recovery of proceeds of corruption."[91]

International cooperation seems to work best when it unites a group of like-minded actors who have both a self-interest and a collective interest to solve a problem. A good example is the Contact Group on Piracy off the Coast of Somalia (CGPCS). This group, created in 2009, brought together states either affected by piracy off the Horn of Africa or involved in fighting it. Relevant international and nongovernment organizations as well as participants from the shipping industry also took part. The fact that the group was plugged into, but not part of, the UN system seems to have been one of the secrets of its success.[92]

89 Yury Fedotov, "International Cooperation: The Key to Halting Organized Crime," opening address delivered at the Conference of the Parties to the United Nations Convention against Transnational Organized Crime and its Protocols, Fifth Session, Vienna, October 18–22, 2010.

90 Jean-Pierre Brun, Larissa Gray, Clive Scott and Kevin M. Stephenson, *Asset Recovery Handbook: A Guide for Practitioners,* Stolen Asset Recovery Initiative, World Bank and UNODC (Washington, DC: World Bank, 2011), p. xi.

91 Ibid.

92 See Danielle A. Zach, D. Conor Seyle, and Jens Vestergaard Madsen, "Burden-Sharing Multi-Level Governance: A Study of the Contact Group on Piracy off the Coast of Somalia," A One Earth Future and Oceans Beyond Piracy Report, Broomfield, CO: One Earth Future Foundation, 2013.

There is a growing recognition that cooperation among states must evolve more quickly in the coming years to keep up with the speed of criminal innovation, particularly in the digital age. A report by the UN has concluded that

…criminal justice authorities labour to achieve even slow, incomplete and inefficient cooperation. Legal systems are burdened with obsolete concepts, practices unsuited to current conditions and rigid mindsets that inhibit change, while adaptable criminals grow ever more powerful in the global economic system and in national societies.[93]

The need for international cooperation is particularly acute in relation to cybercrime. Since cybercrime often takes place in more than one country, laws need to be harmonized among the various jurisdictions, and law enforcement agencies need to cooperate effectively and quickly. The private sector—particularly internet service providers—also need to be engaged, while human rights (particularly data protection standards) need to be upheld. This is an issue that—by necessity and by its nature—calls out for an integrated multilateral response both in terms of the legal framework and the operational response.[94]

Greater international cooperation is also needed in cases where military coalitions are involved in crime-fighting operations. At first, when ships of different countries—as part of international counter-piracy flotillas (such as the multinational naval Combined Task Force 151, the EU Naval Force Somalia–Operation Atalanta, and NATO's Operation Ocean Shield)—captured pirates off the coast of Somalia, they were not sure what to do with them. Some let the pirates go; some sunk the pirate skiffs; some handed the pirates over to Kenyan authorities; and, in a few cases, pirates were extradited. Eventually, coordination and legal guidance clarified the situation, but the initial reaction demonstrated that navies from different countries acting under different laws in the murky waters of international law were very much "at sea." The same confusion was seen in Afghanistan when countries of the International Security Assistance Force (ISAF) took different approaches to counter-narcotics efforts. Most countries took a very hands-off approach, arguing that counter-narcotics was not part of their mandate. They also were concerned that opium eradication could push poor farmers into the hands of the Taliban. Others, such as the US and the United Kingdom for a brief period, took action on some occasions—for example blowing up drug labs and convoys—arguing that drugs were fuelling the insurgency and funding terrorism, therefore, counter-narcotics and counter-insurgency/terrorism should be two sides of the same coin. And yet, where it was expedient, these same forces cut deals with drug lords.

A major challenge in terms of promoting international cooperation to fight crime is how to work with countries—particularly fragile ones—where the cancer of crime has spread to key parts of the state. Indeed, the emergence of states where organized criminal groups have overwhelming influence over political and state institutions completely undermines the very concept of international law enforcement cooperation. As noted in a recent *Foreign Affairs* article: "[H]ow can a country coordinate its anti-crime efforts with government leaders or police officials who are themselves criminals?"[95] In such cases where state officials are so compromised and yet operate with impunity, international cooperation is vital. Targeted sanctions, sting operations, or adding wanted persons to the INTERPOL notice list can increase risks for politically exposed persons complicit in illicit activity.[96]

EXECUTIVE MEASURES

Direct intervention—or to use a less Draconian expression "executive measures"—entails agreement that external parties can directly run or manage components of a state's justice system. The motivation for doing so is to provide a relatively rapid response to prevailing criminal challenges by putting in place effective institutions of justice. This applies particularly in cases such as those of

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93   See United Nations, Twelfth Congress on Crime Prevention and Criminal Justice, *Practical Approaches to Strengthening International Cooperation in Fighting Crime-Related Problems,* UN Doc. A/CONF.213/10, Salvador, Brazil, April 2010, p. 2.

94   For example, see Council of Europe, *Convention on Cybercrime,* November 23, 2001.

95   Moisés Naím, "Mafia States."

96   For example, the arrest and prosecution in April 2013 of Bubo Na Tchuto, the former head of the Guinea-Bissau Navy, on charges of drug trafficking sent an important signal to a group of senior officials in Bissau that they would now have to be accountable for their actions.

political violence or corruption where local institutions may be susceptible to outside pressure or are simply too weak to investigate or try cases effectively. In extreme cases, such arrangements are almost like a trusteeship system. Direct intervention, or executive measures, are particularly important in the context of transitional justice.

The obvious sensitivity involved in taking this route is infringing on national sovereignty. But this is a weak argument. Where organized crime threatens the state, sovereignty has already been violated. Asking for outside assistance helps to restore sovereignty; it does not undermine it. Yet some states—particularly those with links to illicit activity—cling to the sovereignty argument.

For some of the most prominent examples, direct intervention has only been possible because it was preceded by a military campaign, and the judicial systems established were the work of an occupying or liberating power. The following are examples:

- In Kosovo (e.g., as part of the United Nations Interim Administration Mission in Kosovo [UNMIK] and then EULEX), international prosecutors were inserted into individual cases in district courts, and ad hoc panels containing a majority of international judges were created for selected serious cases.

- In Kosovo and Timor-Leste, multinational police units have carried out executive policing functions, including arresting organized crime suspects.

- In Bosnia, international judges and prosecutors have been integrated into a department for war crimes within the state court.

- The Australian-led Regional Assistance Mission to the Solomon Islands appointed international judges and prosecutors to various positions. The international personnel handled sensitive cases against the leaders of different warring factions as well as cases of corruption leveled against the police and parliamentarians.

- In Fiji, foreign judges have been appointed to handle particularly sensitive cases dealing with treason and high-level corruption.[97]

Perhaps the most prominent example of a law enforcement institution established as a partnership with external actors is The International Commission against Impunity in Guatemala, known by its Spanish acronym CICIG *(Comisión Internacional contra la Impunidad en Guatemala).* CICIG was established by treaty agreement between the UN and Guatemala and began work in January 2008. The specific objective of CICIG is to assist Guatemala in investigating and dismantling violent criminal organizations. The reach and power of organized crime in the country have paralyzed the criminal justice system and have had a profound impact on Guatemala's politics and society.

CICIG is without doubt one of the most innovative attempts to support a government in fighting organized crime and promoting the rule of law. The commission operates under Guatemalan law, prosecutes in the country's courts, and follows Guatemalan criminal procedure. Yet CICIG also has some elements of an international prosecution. Key staff members are foreigners, including the head of the commission who is appointed by the secretary-general. The powers of the commission are wide ranging and include the ability to

- collect, evaluate, and classify information provided by any person or entity;

- promote criminal prosecutions by filing criminal complaints with the relevant authorities, as well as be empowered to join any prosecution underway as a private prosecutor;

- provide technical advice to state agencies engaged in investigations and criminal prosecutions;

- report to relevant authorities the names of civil servants who have committed administrative offenses;

- request statements, documents, reports, and cooperation from any state body that is obligated by law to comply with the request; and

- select and supervise an investigative team of foreign and local professionals.[98]

The mandate has recently been extended until

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97 These and other examples are included in Colette Rausch, ed., *Combating Serious Crime in Postconflict Societies: A Handbook for Policymakers and Practitioners* (Washington, DC: United States Institute for Peace, 2006).

98 See *Agreement between the United Nations and the State of Guatemala on the Establishment of an International Commission Against Impunity in Guatemala* ("CICIG"), December 12, 2006.

September 2015. An independent evaluation of the commission notes its many achievements, including the successful conclusion of several high-impact cases, the dismissal and prosecution of several senior legal officials, removal of a compromised attorney general, and assistance to select a respected successor. However, the assessment argues that the core task of the CICIG—to dismantle illicit security forces in Guatemala—is still unmet, "and it is uncertain whether sufficient progress has been achieved or foundations have been laid to guarantee those goals will be accomplished."[99] A major concern that the report notes is the degree to which the Guatemalan state and society are prepared to exercise ownership of CICIG and make the achievements of the commission sustainable. In a memorable quote, the report concludes: "CICIG has provided a crutch. The justice system must now learn to walk on its own and increasingly assume the responsibilities with which CICIG has been charged."[100]

That "handover" challenge has been evident in other attempts at direct intervention to support ailing or threatened criminal justice systems and states. For example, in the case of Timor-Leste, it has been noted that "[p]anels [with international participation] with exclusive jurisdiction over serious criminal offences […] while technically part of the existing Timorese judiciary, in fact have been poorly integrated into the national court system, fuelling serious concerns about their long-term impact."[101]

Of course, externally supported criminal justice does not occur in a political vacuum. Questions arise, such as: Which cases are chosen, and why? Are internationals best placed to gather information, or should it be done by locals? What if senior acting politicians are implicated? How do you measure success, or in other words, when is it time to leave? The biggest underlying question is whether there needs to be, at least in some cases, a trade-off between justice and stability. Or should justice be pursued at all costs?

This brief overview suggests that, while there

may be compelling reasons for direct intervention in the judicial systems of weak states, this may come at a cost: the difficulty of ensuring that externally imposed and funded mechanisms are integrated effectively in the longer term. Although there have been several cases where such models have been adopted, such as CICIG in Guatemala or EULEX in Kosovo, it is clear that there are still important lessons to learn, not least of which is the requirement to ensure that technical assistance delivery to the broader criminal justice system is linked more effectively to the provision of new structures and internationals who staff them. A recent review of the effective provision of civilian capacity in the aftermath of conflict, for example, emphasized that the provision of expertise must be linked to the ability to undertake programmatic tasks as well as create the flexibility required to direct relevant civilian capacity toward needs.[102]

Perhaps, in the years ahead, it will become increasingly necessary for the international community to provide executive support to deal with states that have been compromised by organized crime. The challenge will be how to work with the host country to ensure "ownership" of the process by benign actors rather than "ownership" of the state by malign ones involved with crime. The key is to foster domestic solutions—in cooperation with external actors as necessary.

Hybrid solutions might be the best way to go. For example, one way is to ensure that the leadership of judicial panels or commissions that are externally funded are, in fact, led by a prominent local (or where local leadership is assumed after some time), while being staffed in part by internationals. Alternatively, any new judicial structure or commission should report to a board of "the great and the good" that has a mix of international and local representation.

INTERNATIONAL JURISDICTION

There may be occasions when it is not possible, even for internationally supported national or regional courts, to bring suspects to trial, especially

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99 International Crisis Group, *Learning to Walk without a Crutch: An Assessment of the International Commission Against Impunity in Guatemala,* Latin America Report No. 36, May 31, 2011.

100 Ibid.

101 Rausch, ed., *Combating Serious Crime in Postconflict Societies,* p. 84.

102 UN General Assembly/Security Council, *Civilian Capacity in the Aftermath of Conflict: Independent Report of the Senior Advisory Group,* UN Doc. A/65/747–S/2011/85, February 22, 2011, p. 45.

if those suspects enjoy high-level protection or have political immunity. There may be other occasions where, because of the transnational nature of organized crime, no national court feels that the case falls within its jurisdiction. What can be done in these instances?

In certain cases, such as piracy, provision could be made for universal jurisdiction.[103] As a result, any country in the world may choose to prosecute suspects of piracy, no matter where the actual offense occurred.

In contrast, the *UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances* of 1988 and the *Palermo Convention* do not provide for universal jurisdiction for these types of offenses. Instead they set out a series of mandatory bases for criminal jurisdiction—if, for example, the offense occurs on state territory, on board a country's ships or aircraft, or when the person is present in the territory and the state refuses extradition—as well as optional bases, such as the nationality of the accused, the nationality of the victim, or where certain offenses were committed outside a country's territory but with a view to committing the offense inside its territory.[104]

During the height of the piracy campaign off the coast of Somalia between 2008 and 2012, and with a growing number of cases also reported off the West Coast of Africa, there were renewed calls for the establishment of specialized international piracy courts. A report of the secretary-general at the time considered a range of different options, and the solution adopted was for greater international support to domestic courts as was outlined in the previous section on regional criminal justice.[105] The various international criminal courts established following civil wars or conflicts in different countries (Sierra Leone, Liberia, and Cambodia, for example) have dealt with criminal matters, but their mandates have been very restricted.

Perhaps of greatest interest in respect to this discussion is the original proposal forwarded for the establishment of an international criminal court to consider the issue of drug trafficking, among other crimes. A proposal made by Trinidad and Tobago argued for the inclusion of international criminal jurisdiction for the illicit trafficking of narcotic drugs, "which threatens to engulf small states."[106] It argued that the 1988 convention against drug trafficking did not "provide international mechanisms for prosecuting and punishing offenders who command the means to evade the jurisdiction of domestic courts" and that "domestic criminal legislation and national legal institutions have not proved adequate in deterring the actions of international criminals, including those engaged in the illicit traffic of narcotic drugs."[107] In the draft statute for an international criminal court from September 1994, drug trafficking was listed among the crimes constituting exceptionally serious crimes of international concern that could be brought before an international criminal court.[108] As some delegations pointed out at the time, drug trafficking offenses that involved an international character have serious consequences for the global population. Furthermore, there is no unified system for addressing these crimes because of divergences in national laws. However, this paragraph was removed before the treaty was adopted. It seems that the view prevailed that the court would not be able to handle the volume and complexity of serious drug-related cases, and the crimes could be more effectively investigated and prosecuted by national authorities under existing international cooperation arrangements.[109] With the benefit of

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103 See United Nations, *Convention on the Law of the Sea,* December 10, 1982, Article 101.

104 Candice Welsch, *Strengthening the Prosecution of Transnational Organised Crime in West Africa,* United Nations Office on Drugs and Crime, June 15, 2010, p. 4.

105 United Nations, *Report of the Secretary-General on Possible Options To Further the Aim of Prosecuting and Imprisoning Persons Responsible for Acts of Piracy and Armed Robbery at Sea off the Coast of Somalia, including, in Particular, Options for Creating Special Domestic Chambers Possibly with International Components, a Regional Tribunal and Corresponding Imprisonment Arrangements, Taking into Account the Work of the Contact Group on Piracy off the Coast of Somalia, the Existing Practice in Establishing International and Mixed Tribunals, and the Time and Resources Necessary To Achieve and Sustain Substantive Results,* UN Doc. S/2010/394, July 26, 2010.

106 See Paul D. Marquardt, "Law Without Borders: The Constitutionality of an International Criminal Court," *Columbia Journal of Transnational Law* (1995): 90.

107 Ibid.

108 See paragraph 9 of the annex to United Nations, *Report of the International Law Commission on the Work of Its Forty-Sixth Session,* UN Doc. A/49/355, September 1, 1994.

109 See summary of the proceedings of the Preparatory Committee on the Establishment of an International Criminal Court, UN Doc. A/AC.249/1, May 7, 1996. See also Cockayne, "The UN Security Council and Organized Criminal Activity: Experiments in International Law Enforcement," p. 6.

fifteen years of hindsight, perhaps it is time to reconsider placing these crimes under the jurisdiction of the International Criminal Court (ICC) and bring the kingpins of organized crime to The Hague. This may seem counter-intuitive at a time when many critics (including the authors of this report) have recognized the need for decriminalization of drug use. However, all three major independent drug commissions (global, Latin American, and West African) have concluded that the prosecution of elite traffickers is a necessary complement to a health-oriented harm reduction strategy. The very existence of a criminal court that could deal with cases involving organized crime would shatter the sense of impunity of corrupt leaders who are complicit in illegal activity. Failing that, ways should be found to use the existing provisions of the Rome Statute to address organized crime, for example by prosecuting human trafficking as a crime against humanity.[110]

IMPROVING GLOBAL GOVERNANCE

An important factor in moving toward a more integrated multilateral response to organized crime is to improve global governance on this issue. At the moment, within the UN, more than a dozen bodies address organized crime. On the one hand, this demonstrates how the topic cuts across so many aspects of UN work. On the other hand, it shows that the UN system of governance is extremely fragmented when it comes to the issue of organized crime.

The following are among the elements:

- UN Commission on Crime Prevention and Criminal Justice
- Conference of the Parties to UNTOC
- Commission on Narcotic Drugs (CND)
- UN Crime Congress
- UN Security Council (for security-related matters)
- Economic and Social Council
- Peacebuilding Commission
- Special Committee on Peacekeeping Operations (C-34)

- First Committee (Disarmament and International Security Committee)
- Second Committee (Economic and Financial Committee)
- Third Committee (Social, Humanitarian, and Cultural Committee)
- Sixth Committee (Legal Committee)

The UN Commission on Crime Prevention and Criminal Justice (referred to as the Crime Commission) dates prior to UNTOC. The roughly forty countries that make up the Crime Commission are supposed to guide the activities of the UN in the field of crime prevention and criminal justice. Yet now, pursuant to UNTOC, there is a Conference of the Parties to UNTOC where the 179 states that are parties to the convention do more or less the same thing as the Crime Commission.

Although the *Palermo Convention* has been in force for more than a decade, there is still no mechanism to review its implementation, as called for in Article 32. This is a serious drawback and undermines the relevance of the UNTOC Conference of the Parties. The governance structure is further hampered by the fact that some discussions related to transnational organized crime take place in Vienna, while others are carried out in New York. Furthermore, UN crime-related debates are seldom attended by criminal justice practitioners. The result is rather general discussions and resolutions about politically related issues.

In short, while the UN executive structures addressing criminal justice may lack coordination, it is also up to member states to improve their own coherence on the issue, perhaps as part of a mandate review exercise or in relation to reforming the UN's rule-of-law policy and operational activities.

For example, despite issuing a number of presidential statements about its concern for the threat posed by organized crime, the UN Security Council has not taken many decisions to confront the problem. Nor has it given peace operations sufficient mandates to tackle the problem effectively.[111]

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110 Cockayne, "Strengthening Mediation to Deal with Criminal Agendas." See also, "Pope Francis Says Human Trafficking Is 'a Crime against Humanity'" *The Guardian,* April 10, 2014.

111 See Kemp, Shaw, and Boutellis, "The Elephant in the Room," Annex.

What could be done to improve multilateral governance in relation to organized crime? One idea would be to create a contact group within the UN on crime-related issues. This could be a catalyst for enhancing the response of member states to organized crime.

Another idea that has been floated in the past is the creation of a Global Crime Control Strategy modeled on the UN's Global Counter-Terrorism Strategy. This would be consistent with the secretary-general's Five-Year Action Agenda that includes the need "to address the heightened threat of organized crime, piracy and drug trafficking by mobilizing collective action and developing new tools and comprehensive regional and global strategies."[112] Such a strategy would enable member states to engage a broader spectrum of partners, including regional organizations, the private sector, and civil society, thereby enabling a truly integrated response to organized crime. "A global system which predominantly encourages policies that transfer the costs of prohibition onto poorer producer and transit countries, as the current system does, is an ineffective and unsustainable way to control drugs in the long term."[113]

What is clear is that a more integrated multilateral response to organized crime requires leadership. This is not the responsibility of executive structures; it is the duty of states. This issue needs at least one champion and ideally a Group of Friends to give it the political attention and will that it requires.

COORDINATION OF UN ACTIONS

A more integrated approach among UN executive structures is needed to address organized crime. At the moment, there is no clear lead agency within the UN for dealing with transnational organized crime. UNODC obviously has the most relevant mandate for tackling crime. But it has a relatively limited budget, limited reach in the field, and weak links to UN peace operations and development programs. It is also slightly out of the mainstream of the UN system by its location in Vienna.

The basic problem is that the UN has no department of justice. Indeed, as the *World Development Report* points out, remarkably, there is no international agency charged with taking the lead on criminal justice issues.[114] The result is that different parts of the UN system tackle the problem in their own way. This leads to fragmentation, even competition. That is why the presidential statement of February 24, 2010, encouraged "coordination of United Nations actions" in relation to transnational organized crime.[115]

DPKO has a strong presence in the field, it is home to the Office of Rule of Law and Security Institutions (OROLSI) and the UN Police (UNPOL). As noted previously, peacekeeping operations are in the front line of dealing with transnational organized crime where JMACs play a key role in intelligence gathering. But peacekeepers seldom have the mandate to take action against criminal groups. And UNPOL resources and focus on organized crime are limited. This needs to change. As has been pointed out, "[I]f UN peace operations aim to build peace, security and the rule of law, then, logically, they need to be part of the strategy that addresses threats to these objectives, including transnational organized crime."[116]

But peacekeepers and police alone cannot tackle organized crime. A strong rule-of-law component is vital. Unfortunately, thus far the UN's internal Rule of Law Coordination and Resource Group, set up in 2006, has had limited impact on improving internal coordination in relation to the rule of law, including organized crime. As pointed out in a scathing report by the Center on International Cooperation, the UN's rule-of-law support agenda "rests on shaky foundations: unstable political settlements; a weak empirical base; and a decision-making architecture and culture that has proved unable to clarify confusion, make decisions, or present member states with a roadmap towards more streamlined arrangements."[117]

DPA is becoming further engaged in the issue of transnational organized crime. For example, as

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112 United Nations, *The Secretary-General's Five-Year Action Plan,* January 25, 2012, p. 8.

113 "Ending the Drug Wars," Report of the LSE Expert Group on the Economics of Drug Policy, London, UK: London School of Economics, May 2014, p.11.

114 World Bank, *World Development Report 2011,* p. 200.

115 United Nations, *Statement by the President of the Security Council,* UN Doc. S/PRST/2010/4, February 24, 2010.

116 Holt and Boucher, "Framing the Issue," p. 21.

117 Camino Kavanagh and Bruce Jones, "Shaky Foundations: An Assessment of the UN's Rule of Law Support Agenda," New York: New York University Center on International Cooperation, November 2011, p. 7.

organized crime appears increasingly on the agenda of the UN Security Council, DPA has taken an active role in the transnational organized crime debate (including co-chairing the UN Task Force on Transnational Organized Crime and Drug Trafficking). In theory, it is well-placed to focus on organized crime in the context of conflict prevention, particularly through its regional offices in West and Central Africa, and in Central Asia. After all, a transnational problem requires a regional response: a purely national response, either by member states or UN Country Teams, is insufficient. DPA is also responsible for a number of political missions—particularly in Africa—where organized crime has a serious impact on stability. However, DPA tends to get squeezed out by bigger players such as DPKO and UNDP. For example, since most resident coordinators are UNDP resident representatives, a development agenda rather than a political agenda usually takes precedence on the ground. Yet the message that organized crime is an impediment to development has not taken hold among most UNDP staff.

What seems strange is that UNDP is considered as the lead agency for justice within the UN system. In a capacity-mapping exercise as part of the recent report on *Civilian Capacity in the Aftermath of Conflict,* UNDP is listed repeatedly as having a lead role in key aspects of rule-of-law issues, such as legislative assistance, governance assistance (particularly in fragile states), public administration reform, and even conflict prevention.

In practice, the role of UNDP in crime prevention is more modest. On the one hand, it works to build the frameworks needed for effective rule of law, as well as (re)building capacity in the justice sector. On the other hand, it works at the community level to reduce vulnerability to "uncivil" society. This bottom-up approach of strengthening resilience to crime (which has been dubbed "citizen security") is particularly useful in societies where systemic corruption and collusion between political and criminal elites makes a top-down approach very difficult.

Other parts of the UN system are also engaged in dealing with organized crime. The Peacebuilding Commission touches on organized crime in its work in, for example, Guinea-Bissau and Sierra

Leone, and more generally in relation to security sector reform and the rule of law. But much more should be done to integrate crime-fighting into peacebuilding efforts, to manage more effectively the transition from war economies to peace economies. As the recently appointed High Commissioner for Human Rights and then Jordanian Ambassador to the UN, Prince Zeid Ra'ad Al-Hussein, pointed out: "Should we fail to grasp just how fundamental security and justice are to the whole enterprise of peacebuilding, the sole beneficiaries of our inattentiveness, and much to their delight[,] will continue to be organized crime —the very offspring of war itself."[118]

The Office of the High Commissioner for Human Rights (OHCHR) plays a role in providing advice in relation to transitional justice and support to deal with human rights situations, including in fragile states. Panels of Experts have provided analysis on spoilers, specialized bodies such as CICIG assist in criminal justice reform, and the Office of the Special Representative of the Secretary-General for Children and Armed Conflict looks at the protection of children affected by conflict and former child soldiers who may get involved with criminal groups.

Attempts have been made to establish a more coherent approach to organized crime within the UN. For example, in 2003, the UN Chief Executives Board (CEB) recognized the need to strengthen collective action in the UN system to confront threats posed by transnational organized crime. But there were few tangible results. Rare examples of a "one UN" approach to fighting crime include the UN Inter-Agency Coordination Group against Trafficking in Persons (ICAT) and the Global Initiative to Fight Human Trafficking (UN.GIFT). Other examples, already highlighted in this report, include CGPCS and WACI. But such cases have been the exception rather than the rule.

A fresh attempt to improve coordination was made in March 2011 with the launch of the UN Task Force on Transnational Organized Crime and Drug Trafficking. Its mandate is to develop an effective and comprehensive approach to the challenge of transnational organized crime and drug trafficking as threats to stability and security. The task force, co-led by UNODC and DPA, has

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118 World Bank, *World Development Report 2011,* p. 273.

been reviewing the UN response to transnational organized crime and exploring ways of enhancing it. Unfortunately, the task force's work has been hampered by the very reasons that it was needed in the first place: lack of vision; lack of coordination; and turf wars. This is a missed opportunity at a time when member states are calling for greater action on crime prevention by the UN executive structures. If handled properly, then the task force could be a focal point for coordinating system-wide action on transnational organized crime, stimulating relevant activity in different parts of the UN system, and providing an interface with member states on this issue. The task force could also be used as a kind of transnational organized crime contact point: a clearing house of information on transnational organized crime and a source of advice for parts of the UN system looking for guidance on how to deal with transnational organized crime. But neither too much hope nor too much blame should be given to the task force. It is an internal coordination body—one element of a broader strategy.

Perhaps a more radical structural approach is needed to strengthen the UN executive response to organized crime. If the prevailing wisdom in drug control is to put a greater emphasis on health, then the UN should join the trend in favor of decriminalization by separating drugs from crime. The health-related aspects of drugs should be dealt with by health specialists, such as the World Health Organization, while the trafficking element should be dealt with by a specialized UN body that would focus on all types of crime, including drug trafficking. Since UN institutions generally emphasize what they are for rather than what they are against, such a crime-prevention or crime-fighting entity should accentuate the positive and become the UN office for justice. This would enable one office to cluster all the UN work related to rule of law. It would also enable the UN and its member states to more effectively live up to one of the main aims of the "peoples" of the UN as stated in the preamble of the UN Charter, namely "to establish conditions under which justice and respect for the obligations arising from treaties and other sources of international law can be maintained." This is a proposal that obviously

needs to be developed further, but surely the time has come to put a stronger emphasis on justice within the UN system, especially at a time when the rule of law is being undermined in so many different contexts.

Conclusion

In conclusion, organized crime has moved from the margins to the mainstream. A growing realization exists that organized crime is a threat, particularly in relation to conflict and stability. But this has not led to significant changes in policy, as manifested by the weak response to illicit activity in Mali. Nor is the UN in the mainstream of debates on revising drug policies—the initiative has been seized by special regional commissions and independent experts. The lack of a coherent international approach to organized crime is partly due to resistance from some states that defend sovereignty against the internationalization of the rule of law. It is also due to inherent limitations of the post-World War II international system to address the role of nonstate and transnational actors. There is also a sense that the issue is so pervasive and multifaceted that it is impossible to tackle.

Yet if the issue is so ubiquitous, and its impact so devastating, small-scale and ad hoc responses by a number of well-meaning but disjointed and poorly equipped actors is insufficient. Since organized crime seriously affects so many aspects of life, it needs to be taken seriously by leading international actors that deal with health, justice, development, and security. Furthermore, since all countries and all sectors of society are affected, there should be an integrated global response.

It may be naïve to think that one can do away with criminality. On the other hand, failing to address the issue will make it much more difficult to promote core issues such as development, justice, and stability. Indeed, the opposite of peace without crime is a criminal peace[119]—and this is not a viable basis for national security or international relations. Our hope is that this report can stimulate debate and decisive steps toward an integrated multilateral response to organized crime.
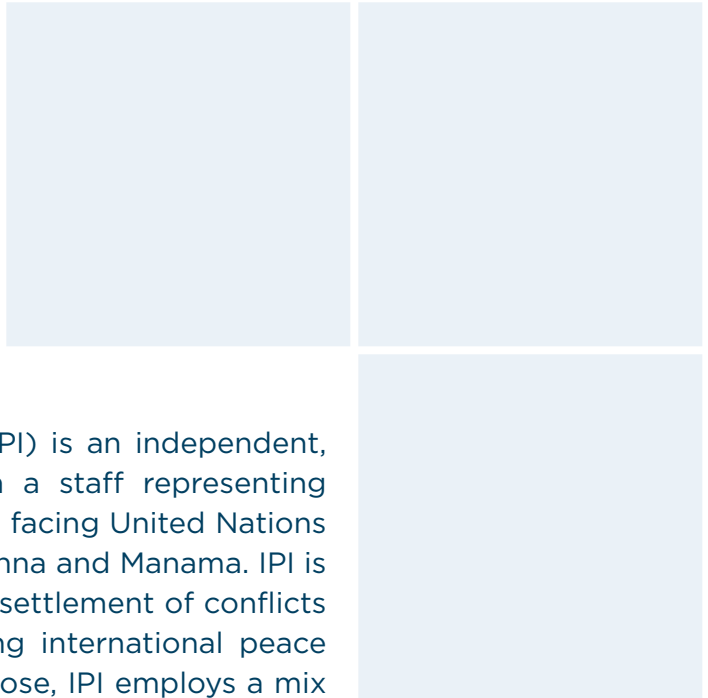
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119 Cockayne, "Chasing Shadows," p. 10.

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