

Transnational Organized Crime and the Palermo Convention: A Reality Check

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Cover Photo: A Montenegro customs officer throws cartons of smuggled cigarettes into an incinerator outside the capital Podgorica on August 8, 2007. Authorities in the Adriatic Coast republic had seized 1.5 million counterfeit cigarettes. © STEVO VASILJEVIC/Reuters/Corbis.

The views expressed in this meeting report reflect the *rapporteur's* interpretation of the discussions at a half-day seminar held at IPI in New York. The report does not necessarily represent the views of IPI. IPI welcomes consideration of a wide range of perspectives in the pursuit of a well-informed debate on critical policies and issues in international affairs.

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Introduction

Ten years have passed since the adoption of the *Convention Against Transnational Organized Crime* (the *Palermo Convention*) by the UN General Assembly on November 15, 2000. At the signing of the convention in Palermo, Sicily, in December 2000, many government delegations welcomed the *Palermo Convention* as an important step in the fight against organized crime. Some warned against viewing it as a final measure and stressed that the convention and its protocols should be considered as a starting point rather than an end in itself.¹

The development of the convention followed an increased realization during the 1980s and 1990s that the threat of organized crime was no longer merely a domestic one but had grown into one of global proportions. The realization that an international threat requires an international response became an important driving force.

Government delegations attending the Palermo conference in December 2000 could not have known that less than a year later a new international threat would suddenly emerge that would be regarded as far more immediate and dangerous than transnational organized crime. The attacks on the World Trade Center and the Pentagon resulted in a shift of attention and resources toward countering terrorism, causing transnational organized crime (TOC) to drop on the priority and threat lists. However, during the past five years the significant expansion and impact of transnational organized crime in different parts of the world have contributed to a renewed focus on the international threat that it poses. National strategies to counter transnational organized crime have been dusted off and strengthened, and additional resources are being made available to help in doing so.

This is part of a renewed international interest in transnational organized crime and in efforts to counter it. The *Palermo Convention*, seen as the main international tool to counter TOC, has therefore also come under renewed scrutiny. How has TOC evolved and changed over the past ten years and what role has the *Palermo Convention* played in countering it? Addressing questions such

as these is also a matter of interest to the programmatic work of the International Peace Institute.

As part of this work, a half-day seminar took place in New York on October 6, 2010. The aim of this event was to reflect on how TOC has changed over the past decade and to begin a discussion on the *Palermo Convention* as well as the challenges facing international efforts to counter organized crime more generally.

This report provides a thematic summary of the presentations and discussions that occurred on October 6th. It is important to state from the outset that the event was not intended to provide a definitive evaluation of the *Palermo Convention*; rather, it was an opportunity for experts to reflect on some broad themes and identify issues to take forward. Given the complexity of the subjects put forward for discussion, there was an inevitable limit to what could be covered, both in terms of the depth of analysis, as well as geographical scope. However, as will be evident, the meeting was successful in providing a rich debate on contemporary trends, and it benefited from the participation of leading experts on this subject from the US, Latin America, Africa, and China. Indeed, the inclusion of a Chinese perspective on transnational organized crime was one of the unique aspects of this meeting.

The report is divided into two sections. The first addresses some of the key observations in trends in TOC occurring globally and within specific regions. The second considers the *Palermo Convention* as well as some of the main difficulties facing the international community in addressing TOC.

Trends and Developments in TOC Over the Past Decade

In discussing trends in the development of organized crime over the past ten years, differences in regions are evident, as are rival views of how to understand and conceptualize the problem. Indeed, a point raised by several of the expert panelists was

¹ A useful source of articles and perspectives on the evolving role of the United Nations in combating transnational organized crime can be found in Phil Williams and Ernesto Ugo Savona, *The United Nations and Transnational Organized Crime* (London: Frank Cass, 1996), and several articles published in the journal *Transnational Organized Crime*, e.g., Phil Williams and Dimitri Vlassis, "Combating Transnational Organized Crime: Concepts, Activities, and Responses," *Transnational Organized Crime* 4, no. 4 (2001).

that in-depth research on organized crime, which can help inform international efforts at reducing its prevalence, remains sparse and the issue requires urgent attention.

The following pages summarize the main thematic issues that were discussed and debated by the panel of experts and participants at the meeting. Here we have arranged these discussions into seven key topics.

GROWTH AND STRUCTURAL CHANGE

A strong theme during the discussions was that the scale and profits of organized crime have increased significantly over the past ten years. There was also unanimous agreement that the structure of TOC has evolved; if there was ever a belief in the hierarchical mafia-style organization that dominated criminal markets, such organizations are now a thing of the past.² The organization of contemporary crime is far more fluid and dynamic, which poses unique challenges for law enforcement.

Nick Lewis of the UK's Serious Organised Crime Agency argued that drugs are still the most profitable element of TOC, with the latest estimates suggesting the annual turnover of illegal drug markets is as high as \$1 trillion.³ In Afghanistan, heroin production is valued at \$50 billion per year, and in the US \$40 billion worth of cocaine is sold annually, with a further \$30 billion sold in the rest of the world. New synthetic drugs have been created and stronger strains of cannabis have entered the market, causing new mental health problems. In the UK alone, £1.5 billion is spent on cannabis every year.⁴

Alongside drugs, there has been growth in human trafficking. The UN estimates that in 2000, 1 million people were trafficked by criminal organizations. Lewis reports that today that number has risen to roughly 2.5 million, with profits estimated at some \$20 billion.⁵

Fraud and financial scams have also increased dramatically. This is partly due to advances in technology.⁶ For example, ten years ago those perpetrating so-called 419 scams from Nigeria were restricted to sending out individual letters and emails. Now, criminals can access huge "sucker lists" and can send out thousands of letters all over the world instantly. In the UK, it has been estimated that such fraud costs £30 billion every year. New forms of fraud include "romance fraud" where people using online dating fora are lured into sending money to bogus partners. As Lewis put it at the seminar,

Before the rise of cyber crime, the man in the street felt largely untouched by organized crime. It was by definition an "underworld" activity, and rarely touched ordinary lives. In recent years though, the home computer has enabled criminals to deliver child pornography, fraud and extortion into the heart of billions of family homes.

In China, this growth in the financial profits of organized crime was also cited as a direct outcome of the remarkable economic growth occurring in the country. Although not all of China's new economic elite derive success from crime, criminal activities are thought to be behind the emergence of some very wealthy individuals who are increasingly spending the proceeds of crime overseas. For example, criminals from mainland China are believed to be one of the main groups of consumers of luxury goods in Hong Kong; Wing Lo of the City University of Hong Kong described how such people arrive in Hong Kong with suitcases of cash to buy jewelry and real estate, or gamble in Macau. Some 20 percent of real estate in Hong Kong, especially the most luxurious apartments, is now bought by mainland Chinese, and it is thought that some money-laundering activities are involved.

A further key activity of organized crime in China is the production and smuggling of counter-

2 The changing structure of organized-crime groups has been a source of debate in scholarly texts for some years, beginning with the classic piece by Donald Cressey, *Organized Crime and Criminal Organizations* (Cambridge, UK: W. Heffer & Sons, 1971), which was critiqued by many others: see, for example, Peter Reuter, "The Organisation of Illegal Markets: An Economic Analysis," Washington, DC: National Institute for Justice, 1985, and Mark H. Haller, "Bureaucracy and the Mafia: An Alternative View," in *Understanding Organized Crime in Global Perspective: A Reader*, edited by Patrick J. Ryan & George E. Rush (London: Sage, 1997).

3 For estimates on global drug trade, see the annual *World Drug Reports* produced by the UNODC. More information available at www.unodc.org/unodc/data-and-analysis/WDR.html.

4 For further information, see the 2009-2010 report, "The United Kingdom Threat Assessment of Organized Crime," London: Serious Organised Crime Agency, 2010, pp. 23-42.

5 For research and reports on human trafficking and organized crime, see UNODC, *Smuggling of Migrants: A Global Review and Annotated Bibliography of Different Publications* (Vienna: UNODC, 2010). There is also a wealth of information available from the website of the International Organization for Migration, www.iom.int; and extensive links to the literature from www.humantrafficking.org.

6 As detailed in SOCA, "The United Kingdom Threat Assessment of Organized Crime," pp. 52-69. For further discussion and an overview, see Peter Grabosky "The Internet, Technology, and Organized Crime," *Asian Journal of Criminology* 2, no. 2 (2007).

feit goods, including medicines, electronics, agricultural products, CDs, and DVDs. There is no doubt that this growth in counterfeit products has emerged as one of the main concerns of Chinese organized crime among the international community, as counterfeit products cause profound harm and undermine legitimate business.⁷ Wing noted that 55 percent of all counterfeit products seized by customs officials in the EU in 2008 originated from China. However, the external threats caused by this trade should not overshadow the impacts felt in China itself. He also pointed out that Chinese citizens are the main consumers of counterfeit goods and therefore they represent the main victims of this industry. As he put it, “in China, an egg doesn’t definitely come from a chicken, and chicken is used to make pork.”

In China we also see the structural changes in organized crime that are linked to globalization and the emergence of new technologies.⁸ Wing argued that the Chinese criminal organizations—known as triad societies, which used to be highly organized and hierarchical—have been superseded by more fluid organizations, or networks. Loyalty and territory still play important roles within the triads, but individual members are more entrepreneurial and independent in pursuing business opportunities. The triads remain important in providing protection, as well as organizing prostitution, gambling, drug trade, and money laundering, yet the old systems and forms of organizations are being eroded. That being said, Wing pointed out that in comparison to other regions, violence is not as prevalent in the operations of the triads, as they prefer a less brutal approach to business, based on forging friendly links with police and politicians that provide them with space and territory to enforce contracts.

Alongside the triad societies, Wing described the growth of less formal and opportunistic forms of organized crime in China, often based on family, social, and business connections. These types of

organized crime may only last for a short while. This form of fleeting organized crime (or project crime) is flourishing in China and creates complexity in understanding the phenomenon. Organized crime in China is not limited to the activities of the triads. Indeed, Wing argued that the growth and spread of criminal enterprise illustrates how China has vigorously embraced the ethos of capitalism, perhaps more so than most other countries in the world—using licit, illicit, or vice activities to gain money is an embedded feature of the new Chinese society. Here lies an important connection between dominant societal values and ideology, and the growth and prevalence of organized criminal activities.⁹

Nick Lewis reiterated this notion of networks becoming the dominant approach to organizing international crime.¹⁰ He further noted that over the past ten years criminal organizations are increasingly outsourcing specific activities to specialized groups. This means the supply chains in international criminal markets are fragmented and highly changeable. So, for example, in a bid to decrease their exposure to risk, Colombian drug organizations in the early 2000s outsourced smuggling operations to Mexican operators, which has been part of the reason for the dramatic rise of Mexican drug organizations in the past few years. In the EU, groups who provide transport with “no questions asked” for criminal organizations have also emerged. Both Lewis and Phil Williams, of the University of Pittsburgh, term these types of operators “criminal service providers.” Previously, such jobs were undertaken “in house,” i.e., within more structured groups that had clearly defined membership.

Williams elaborated on this change in the nature of global organized crime, suggesting that in the past few years we have seen the “appropriation of criminal activities” by a much wider group of actors. This includes not only professional criminal organizations, but also warlords, insurgents, street

7 For an American perspective on the evolving threats caused by Asian organized crime, see James Finckenaer and Ko-Lin Chin, “Asian Organized Crime and its Impact on the United States,” *Trends in Organized Crime* 10, no. 2 (2004). See also Tim Phillips, *Knock Off: The Deadly Trade in Counterfeit Goods* (Philadelphia, PA: Thompson-Shore, 2007).

8 See also, An Chen, “Secret Societies and Organized Crime in Contemporary China,” *Modern Asian Studies* 39, no. 1 (2005): 77-107, and for an earlier perspective, Curtis, E. Glenn, Seth L. Elan, Rexford A. Hudson, and Nina A. Kollars, “Transnational Activities of Chinese Crime Organizations,” *Trends in Organized Crime* 7, no. 3 (2002): 19-59.

9 Several scholars have explored the relationship between criminal organizations, dominant societal values and capitalism. A classic essay in this regards is Charles Tilly, “War-Making and State-Making as Organized Crime,” in *Bringing the State Back In*, edited by Peter Evans, Dietrich Rueschemeyer, and Theda Skocpol (Cambridge, UK: Cambridge University Press, 1982). See also Michael Woodiwiss, *Organized Crime and American Power*, (Toronto, University of Toronto Press, 2001).

10 As foreseen in Phil Williams and Roy Godson, “Anticipating Organized and Transnational Crime,” *Crime Law and Social Change*, no. 4 (2002): 311-355.

gangs, political groups, and to some extent terrorist movements (the link with terrorism is elaborated below). He strongly emphasized that in understanding organized crime today, “we cannot confine ourselves to traditional criminal enterprises.” He further argued that this appropriation of criminal activities reflects wider trends of insecurity, weakening states, and the inability of governments almost everywhere to guarantee that the basic needs of their citizens are met. The nature of organized crime is therefore a feature of a changing geopolitical landscape and alternative governance arrangements.

EXPLOITING NEW OPPORTUNITIES AND TECHNOLOGIES

Each of the expert panelists argued that the expansion of organized crime represents the exploitation of new opportunities, many of which were not anticipated a decade ago.

In particular, many new opportunities arise from technological developments. Nick Lewis argued that improvements in digital communications, including latest 3G and 4G technologies with encrypted digital streaming and high-quality video conferencing, have greatly improved the logistics of international organized crime, making it easier for criminal networks to communicate, but also making it easier to transfer money around the world. Lewis stated that the task of intercepting global communications has become much harder than should ever have been allowed.

New technologies have created new forms of organized theft and fraud. Already noted are the developments in 419 scams. Another example is the growing problem of credit-card fraud, where credit cards are temporarily stolen, their information copied then loaded onto a new, counterfeit card. Wing described this as an increasing concern in China and Hong Kong. In particular, the triads have become adept at exploiting this form of crime, typically employing indebted waiters and entertainment workers to copy cards belonging to unsuspecting customers.

Technology is one way of understanding the new opportunities available to TOC. Yet new opportunities are also being presented to TOC by weakening states and uneven law enforcement. Peter Gastrow,

IPI director of programs, described this in terms of the changing relationship between TOC and developing countries. Broadly speaking, Gastrow argues that in the last ten years there has been a discernable expansion of TOC from the developed world to the developing one. Criminals have increasingly outsourced activities to poorer countries, and transitional states have provided substantial prospects for criminal groups. In particular Gastrow mentioned the rise of TOC in West Africa involved in drug smuggling to Europe and North America,¹¹ alongside the more publicized examples of the expansion of organized crime in transitional states such as the Soviet Union and South Africa. In short, Gastrow suggested that TOC is increasingly using vulnerable developing and transitional countries as safe “launching pads” for international crimes. It was noted that developing countries are emerging as new markets for TOC, but overall the most lucrative markets remain the EU and North America. Lewis agreed, stating,

[Organized crime groups] migrate to new countries to exploit the lack of legislation, poorly coordinated law enforcement, or easily corruptible governments, or to take advantage of geographical location.

Notwithstanding these observations about the movement of TOC into vulnerable regions and countries, a somewhat different dynamic is evident in China, which again raises the issue of regional differences in organized crime trends. Wing argues that the economic boom in China has meant Chinese organized criminals have been content to operate only within the country, and have therefore not felt the need to expand operations globally, at least not to the same extent as with other TOC. For example, drug markets in China have expanded substantially and are a relatively easy source of substantial profits.

However, somewhat paradoxically, China’s economic growth has meant the opportunities for some forms of international crime have diminished; most importantly, illegal human trafficking.

Historically, migrant smuggling, controlled by the triads, has been a substantial illicit activity, driven by the large demand among Chinese citizens to leave China in the hope of finding improved employment and political freedom in Western

11 For further evidence, see UNODC, *Transnational Organized Crime in the West African Region* (Vienna, 2005).

Europe and North America. However, with improved gross domestic product (GDP) and increased employment, coupled with the financial crisis occurring elsewhere, there has been a marked decrease in this demand, and therefore the number of illegal immigrants from China appears to be falling. Put simply, Chinese people now prefer to stay in China over seeking a new life overseas. Wing suggests this trend may change again if China's economic growth stalls, particularly if the Yuan is drastically appreciated, as advocated by the US. Nevertheless, the point is an important one—while new opportunities for crime have stimulated the global expansion of TOC in many regions, the opposite trend appears to be occurring in China in terms of migrant smuggling. Moreover, for China, it is the vast opportunities for crime within the country that are the focus of triad criminal organizations.

DISPLACEMENT AND POWER VACUUMS

In addition to the new opportunities for TOC, the shifting geopolitical nature of organized crime over the last decade is also explained as an outcome of displacement. There have been isolated successes in addressing organized crime, or at least in raising the risks of doing criminal business in some places. While this may not have lessened it as a global phenomenon, over the last decade organized crime has adapted and sometimes relocated. Peter Gastrow explains this in terms of the spread of TOC from developed countries to less developed ones. However, in addition to this larger trend, there have been important regional developments.

Phil Williams discussed the situation in Latin America, citing a “change in the center of gravity.” Colombia-based organized-crime groups are no longer the dominant force in the international cocaine market, with Mexican groups largely taking over this position. This shift was partly due to national and international success at fighting large trafficking organizations in Medellin and Cali that controlled cocaine production, and therefore we are now seeing the displacement of Colombian drug organizations to neighboring countries. Guatemala

and Venezuela are two countries where Colombian organizations have had particular success, with Nick Lewis suggesting that further in-roads may be made into vulnerable countries such as Suriname and Guyana.

Although Colombian drug organizations are no longer dominating international drug trade, they remain important players. In recent times, some of the more overtly political Colombian organizations involved in drug production have morphed into more dynamic entrepreneurial groups. There is even cooperation between groups that were previously in conflict and ideologically opposed to one another.

Mexican drug organizations have rapidly seized the opportunities created by changes in Colombia—a process that has also been facilitated by geographical factors. Mexico suffers from a “location curse” and is strategically positioned for the moving of cocaine and other drugs from South America to the North and into Europe via West Africa. Mexican drug groups also have experience in producing and smuggling heroin, and more recently methamphetamines. It is now the case that throughout North America there is a clear increase in the number and spread of Mexican drug-selling operations.

The emergence of Mexican drug organizations as the dominant force in international drug supply, particularly that of cocaine, has created new dynamics of violence in Mexico, which are gaining increasing international attention.¹² Williams spoke about the complexities of this violence, as well as some misconceptions surrounding it.

There is little doubt that drug-related violence is deeply troubling in Mexico, and it is an inevitable feature of this illicit market. However, the violence is geographically concentrated and much of it is targeted strategically. Drug-related violence is not as widespread as the media and others portray.¹³ Violence is concentrated primarily in the border regions of the country and to some extent drug organizations have targeted more local politicians and journalists than was the case previously. Williams also emphasized the emergence of

12 There is a growing literature on Mexican drug violence. See, for example, Howard Campbell, *Drug War Zone: Frontline Dispatches from the Streets of El Paso and Juarez* (Austin, TX: University of Texas Press, 2009); and also Phil Williams' recent article on Mexico and Iraq which is highly relevant to the discussion here: “Illicit Markets, Weak States, and Violence: Iraq and Mexico,” *Crime Law and Social Change* 52, no. 3 (2009).

13 See also Andrew Selee, David Shirk, and Eric Olson, “Five Myths About Mexico's Drug Wars,” *The Washington Post*, March 28, 2010.

“anomic violence” in some areas, especially Juarez. At least some of the violence in Mexico’s drug markets is not rational or calculated; rather, it represents a degeneration of values and social norms: “I kill therefore I exist.”

Williams went on to describe some of the factors that are fueling conflict in these specific areas of the country. For one, the Mexican government has gone from being in collusion with drug organizations to being far more confrontational. He also noted the inadvertent implications of sequential law enforcement. In response to opportunities and resource constraints, police have tended to target specific groups sequentially rather than engage in simultaneous attacks across the board. This has created power vacuums, or “vacancy chains” within and between rival groups, leading to something akin to a feeding frenzy.¹⁴

Both Lewis and Williams therefore made the point that selective and uneven law enforcement can have perverse consequences, and this remains a critical element in the evolving nature of TOC.¹⁵ Phil Williams recommended a broader approach to fighting organized crime, whereby law enforcement would act “across the board” rather than by simply targeting prominent individuals. This is a message with both local and international ramifications.

CORRUPTION

Whether it is a new feature of organized crime or not, discussions at the seminar reiterated that corruption is critical to the phenomenon.¹⁶

Gastrow cited high susceptibility to corruption as one of the main reasons why TOC has tended to redeploy to developing countries. The capacity of police and the criminal-justice system in developing countries is generally low, which is part of the problem. He also stressed that a key factor is the ease with which TOC can infiltrate and co-opt the very top levels of government and the state in many developing countries. The resulting protection from investigation and prosecution, both nationally and internationally, presents an enormous opportunity for TOC.

The situation in China is similar. A question put to Wing Lo was whether the Chinese authorities are doing enough to curb the growth in illicit activities, including the production of counterfeit products and money laundering. He explained that the vast size of China, combined with the disorganized and sporadic nature of many criminal enterprises, forms part of the problem and he agreed that overall the response by Chinese authorities to organized crime has indeed been weak and largely ineffective. Yet again, a fundamental challenge is corruption and collusion in illicit activities by police and local authorities. A defining feature of Chinese triad societies has been the creation of protection rackets, which operate as a “protective umbrella” for criminals. Government officials and criminal-justice personnel are involved in organized crime and represent some of its main beneficiaries. Wing explained that the national government is quick to impose new laws and regulations, but these have little impact on a local level. Bribe payments are commonplace and these often mean people involved in organized crime do not end up in court.

Lewis added further weight to the importance of political corruption, explaining that international money laundering and smuggling routinely involve politicians and employees of legitimate businesses, including banking. He also touched on the considerable problem of fraud affecting development aid, noting that

The international aid program itself is targeted not just by traditional criminal types, but by corrupt government figures, elected officials and aid workers unable to resist the temptations presented by billions of cash dollars and staggered by the poor controls and audit arrangements that follow it. This corruption leads to alliances between criminal groups and politicians—indeed, sometimes they are synonymous—which in turn leads to legal and political process being undermined by criminals. One small step away from failing states, civil war, or insurgency.

Here we see further reason to agree with Williams’ notion that TOC can no longer be seen as the activities of traditional criminal organizations.

14 See H. Richard Friman, “Forging the Vacancy Chain: Law Enforcement Efforts and Mobility in Criminal Economies,” *Crime Law and Social Change* 41, no. 1 (2004).

15 For an interesting case study and discussion on this, see Dean Yang, “Can Enforcement Backfire? Crime Displacement in the Context of Customs Reform in the Philippines,” Working Paper No. 02-010, Ann Arbor, MI: Ford School of Public Policy, 2004.

16 The role of corruption in organized crime has been a subject of study for decades. For a recent review of the literature, see Kip Schlegel, “The Evolving Nature of Corruption in Organized Crime,” paper presented at the annual meeting of the American Society of Criminology, Royal York, Toronto, 2008.

It is a complex network involving different groups and actors; members of political and business elites form part of the problem.¹⁷

Returning to the analysis of developing countries and the threat posed by organized crime, Gastrow warned of a “vicious circle” facing poorer countries related in part to this systemic corruption. The growth of organized crime in developing countries can undermine law enforcement and further weaken state governance. There is therefore a worrying possibility that the gulf between the developing world and the developed, in terms of their ability to combat organized crime, will increase. Gastrow urged that this issue be given serious consideration in the review of the *Palermo Convention*.

The case of Guatemala was suggested as warranting further analysis and reflection. It was noted that frustration over systemic corruption meant the government of Guatemala has given the mandate to the United Nations to take over several functions of the state, including areas relating to criminal justice and policing. Gastrow noted that so far little is known about how this situation has influenced the emergence and development of organized crime. This is another area that was noted for further research and it is possible that there may be ramifications for other countries, although clearly handing over governance to an unelected international body is controversial and comes with major complications.

LINKS WITH TERRORISM

Arguably one of the chief developments in the last ten years causing change in the way organized crime is perceived lies with the actual and potential connections between TOC and terrorist groups. Prior to the *Palermo Convention* this was a matter that received little if any attention.¹⁸ September 11th represented a significant turning point; now the specter of TOC forging working relations with

terrorists is considered one of the major issues in this field.¹⁹

Several questions were put to the panel on specific cases where there appears to be strong working relations between terrorist groups and criminal organizations, including in North Africa, Afghanistan, Turkey, and Somalia. One of the underlying concerns raised in the meeting was that this relationship between criminal organizations and terrorists is contributing significantly to global insecurity and demands further action. Yet the nature of these links was a matter of differing perceptions and analysis. Again, regional differences were evident, but so too are conflicting intelligence reports.

It appears uncontroversial that in some areas known terrorist groups extract rents from drug trafficking and this forms an important stream of financing for terrorist activities and the purchase of weapons. The example of the Taliban and the production and smuggling of heroin from Afghanistan was highlighted as a serious concern.²⁰ However a point stressed in the discussions was that the labels used by international commentators can be artificial and there is a blurring between what is understood as organized crime and what is considered terrorism.

Williams’ approach to this subject builds on his notion of the “appropriation of criminal activities” by a growing range of actors. He suggested drawing a distinction between “groups” and “activities,” which may help provide a conceptual framework.²¹ In some cases criminal groups can become involved in terrorist activities, which is what seems to have occurred in the Madrid bombings of 2004. Likewise, formerly insurgent or terrorist groups may gradually shift focus and concentrate on illicit income-generating activities, leaving behind their political or ideological roots. The FARC in Colombia and the Irish Republican Army were

17 Michael Woodiwiss defines organized crime as being “systemic criminal activity for money or power.” Michael Woodiwiss, *Organized Crime and American Power: A History* (Toronto: University of Toronto Press, 2001), p. 3.

18 However, some scholars began writing on the links between terrorism and organized crime during the early 1990s. See, for example, D. Ward “Gray Area Phenomena: The Changing Nature of Organized Crime and Terrorism,” *Criminal Justice International* 11 (1995), pp. 1, 4, 18.

19 There is much literature exploring the nexus of terrorism and organized crime. Some recent examples include Louise I. Shelly and John T. Picarelli, “Methods and Motives: Exploring the Links Between International Organized Crime and International Terrorism,” *Trends in Organized Crime* 9, no. 2 (2005); Thomas M. Sandersen, “Transnational Terror and Organized Crime: Blurring the Lines,” *SAIS Review of International Affairs* 24, no. 1 (2004); Frank Bovenkerk and Bashir Abou Chakra, “Terrorism and Organized Crime,” *Forum on Crime and Society* 4, no. 1 (2004). There have also been several sensational publications on this theme, such as Paul Williams’ book, *The Al Qaeda Connection: International Terrorism, Organized Crime, and the Coming Apocalypse* (Amherst, NY: Prometheus, 2005).

20 For an in-depth analysis, see Gretchen Peters, *Seeds of Terror: How Heroin is Bankrolling the Taliban and Al Qaeda* (New York: Thomas Dunne, 2009).

21 A similar argument for a reconceptualization of crime types was made by Naylor, see R. T. Naylor, “Towards a General Theory of Profit-Driven Crimes,” *British Journal of Criminology* 43, no. 1 (2003).

cited as examples. Indeed, there is an argument that this represents a welcome development—organized crime being the lesser of the two evils.

Yet another permutation, one that seems prevalent today, is that criminal networks or groups are used by terrorists as “service providers.”²² An example was given of Iraq, where purely criminal networks involved in kidnapping have sold people to insurgents. In this situation, TOC may not be forging an ideological link with terrorism; rather, the relationship is one of self interest and profit.

Notwithstanding the difficulties in conceptualizing the problem, the evolving relationship between TOC and international terrorism clearly represents a major concern, one that warrants further debate.

As described below, this growing international concern with terrorism is also relevant to understanding how the international community has responded to the threat of organized crime over the past decade. Examining the link between terrorism and TOC is therefore not only about the possible synergies between these groups and activities, but also what role terrorism has played in changing policy and funding for international criminal investigations.

SOCIAL AND ECONOMIC IMPACTS OF TOC AND THE CASE FOR DECRIMINALIZATION

The growth in TOC over the past decade, as well as its changing nature, led to a consideration of the resulting social and economic harms. Discussions at the seminar touched on a number of concerns: the growth in drug markets and related violence, new forms of cyber crime, and the destabilizing effect corruption has on state legitimacy and effectiveness, particularly in developing and transitional countries.

However, focusing exclusively on the negative

impacts of TOC may only provide a partial understanding. In providing an overview of some broad trends occurring in Latin America, Phil Williams stressed an important and often overlooked aspect of organized crime. Despite the overwhelmingly negative view of organized crime presented by law-enforcement agencies and others, it is an undeniable fact that organized crime has social and economic benefits; “organized crime is not an unmitigated evil.”

The drug trade provides substantial income for otherwise poor communities and organized-crime groups can be an embedded feature of community governance in many Latin American cities, with several studies exploring this, most notably in Brazil.²³ Indeed, social scientists working on organized crime decades ago, such as Daniel Bell, noted how illicit activities can operate as an alternative ladder of social and economic mobility.²⁴ The same is partly true today, and it is this seemingly positive contribution to some sections of society that makes combating organized crime particularly difficult.

In putting forward this view, Williams noted that social and economic benefits should not be simplified; in the same areas where organized crime has beneficial outcomes, it also exacerbates poverty and marginalization. There is therefore a complex relationship between community development and organized crime in poorer areas.²⁵

Williams provided a further example of the ambiguous threats posed by organized crime. This related to money laundering. He questioned whether so-called dirty money had such a pernicious impact on the formal economy as is often assumed. He suggested that dirty money behaved exactly the same way as legitimate money.²⁶

Although there was a limited opportunity in the seminar to discuss this aspect of the social and economic consequences of organized crime, it was

22 For one of the earliest publications exploring the notion of “criminal service providers,” see Vincenzo Ruggiero, “Criminals and Service Providers: Cross National Dirty Economies,” *Crime Law and Social Change* 28, no. 1 (1997).

23 Enrique Desmond Arias, “The Trouble with Social Capital: Networks and Criminality in Rio de Janeiro,” paper presented at the Annual Meeting of the American Political Science Association, September 1, 2002. Dennis Rodgers, “Dying for it: Gangs, Violence, and Social Change in Urban Nicaragua,” *CERLAC Bulletin* 2, no. 3 (2003); and for an example from Africa, see André Standing, “Organised Crime: A Study from the Cape Flats,” Pretoria: Institute for Security Studies, 2006.

24 Daniel Bell, *The End of Ideology: On the Exhaustion of Political Ideas in the Fifties* (Cambridge, MA: Harvard University Press, 1960). However, this thesis has been criticized by several texts noting how criminal markets are characterized by the same forms of marginalization and discrimination as legal ones. See, for example, Jock Young, *The Exclusive Society* (London: Sage, 1999).

25 For a discussion on this, see André Standing, “The Social Contradictions of Organized Crime,” Pretoria: Institute for Security Studies, 2003.

26 A point made in R. T. Naylor, *Wages of Crime: Black Markets, Illegal Finance, and the Underworld Economy* (Ithaca, NY: Cornell University Press, 2002), but, for an alternative view, see Vito Tanzi, “Macroeconomic Implications of Money Laundering,” in *Responding to Money Laundering: International Perspectives*, edited by Ernesto Ugo Savona (London: Routledge, 2000).

noted that such research and discussion is long overdue.

A discussion on the harm caused by TOC led to the question of decriminalization. It was noted in particular that in Latin America the issue of decriminalization continues to be raised as a viable solution to the problems associated with drug trafficking and violence. It was put to the panel of experts that this policy option perhaps isn't being taken seriously by the international community. The view of one seminar participant was that much of the harm caused by organized crime in drug markets is a direct outcome of prohibition. Moreover, it was argued that a failure to consider decriminalization may reflect the dependence international law enforcement has on sustaining the illegality of the drug trade.²⁷ Billions of dollars are spent on international crime fighting, which may act as a barrier to reform.

The panel of experts did not agree with this view, arguing that the impacts of prohibition are more complex and that it is necessary to take into account the broader social and economic costs of decriminalization.²⁸ However, it was not possible to fully explore these arguments further at this seminar, given the restrictions in time as well as the thematic focus.

The International Response to TOC and the Palermo Convention

The expansion and growth of TOC discussed at this event suggest an overall failure to address the threat of TOC in the past decade. There appear to have been some successes, but the problem of displacement and adaptation by criminal networks means on a global scale such isolated success may not be enough. In this context a review of the *Palermo Convention* is important.²⁹ The basic question arises of whether the convention has succeeded in improving the international response, and if not,

why not? Following on from this, we need to ask what the international community can do to improve the implementation of the *Palermo Convention* to bring about a sustainable reduction in the harm of TOC.

THE NEED FOR FORMAL EVALUATION

A point raised at the meeting concerned the critical importance of a formal evaluation of the *Palermo Convention*. It was stressed that data and comparative evidence on what works in terms of fighting organized crime has historically been absent, which makes understanding international best practice extremely difficult.³⁰ Indeed, in the US, the *Racketeer Influenced and Corrupt Organizations Act* (RICO Act) has still not been scientifically evaluated in terms of its success or failures.

The United Nations Office on Drugs and Crime (UNODC) and the Conference of States Party (COP) to the UN Convention Against Transnational Organized Crime (UNTOC), which meets every two years, have embarked on a number of activities that aim to improve evaluation of the convention. This work remains in its early stages, as much emphasis has been given to obtaining the signature and ratification of the convention by state parties. However, there is a discernable shift toward creating more structured and comprehensive review mechanisms. To this end UNODC has created a software tool that allows individual signatories of UNTOC to upload key information on compliance and implementation of UNTOC, and there have been regional studies on organized crime conducted by UNODC, as well as studies focusing on particular aspects of UNTOC, including witness protection.

A view put forward at the seminar was that, until such review mechanisms were developed more fully, it would be impossible to be sure of what the impact of UNTOC has been.

The panel was asked whether international efforts to combat organized crime have failed to

27 A controversial argument, but one made elsewhere, such as James Sheptycki, "Global Law Enforcement as a Protection Racket: Some Skeptical Notes on Transnational Organized Crime as an Object of Global Governance," in *Transnational Organized Crime: Perspectives on Global Security*, edited by Adam Edwards and Peter Gill (London: Routledge, 2003).

28 There is much literature on the merits and limitations of decriminalization, particularly that of drugs. For a synthesis of these arguments, see, for example, Douglas Husak, *The Legalization of Drugs (For and Against)* (Cambridge, UK: Cambridge University Press, 2005).

29 For a useful article on the success and failure of the *Palermo Convention* in its first few years, see Andreas Schloenhardt, "Transnational Organized Crime and International Law: The Palermo Convention," *Criminal Law Journal* 29 (2005).

30 While this lack of evaluation stands true, there have been several exceptions. For a useful early discussion on this, see Michael D. Maltz, *Measuring the Effectiveness of Organized Crime Control Efforts* (Chicago: University of Chicago, 1990), as well as critical literature on the failure of law enforcement in combating organized crime such as Naylor, *Wages of Crime*.

include benchmarks of success. It was suggested this was an oversight that undermined progress, and that vast spending by the US in particular lacked clear measurable objectives. This was accepted as a weakness to national and international efforts.

It was also argued that such evaluations cannot simply focus on what has been done by law-enforcement agencies, what laws have been implemented, and what new institutions have been established. Such measurements tell us little about the actual easing of the problem. The example was given of international efforts to combat money laundering. There has been a great deal of new banking legislation and the establishment of thousands of Financial Investigation Units, but overall the impact in terms of making it harder for criminals to launder money has been minimal. Ultimately, anti-money-laundering tools, which were designed to combat organized crime, have been ineffective.³¹

Finally, a panelist noted that there were three further important observations about UNTOC, which need to be considered in relation to this issue of an effective evaluation. First, the convention is a legal instrument designed to improve international legislation and enable cooperation between countries. It is not, however, an operational agreement which directs specific crime-fighting activities. In proceeding with evaluations, we therefore have to take care in understanding what the convention is designed to do. This may help explain its limitations and influence people's expectations of UNTOC.

Secondly, UNTOC has struggled to resolve the issue of having a governing body, which, among other functions, could help direct evaluations. In previous international agreements on crime, such as that on narcotics, there have been expert bodies elected to oversee and coordinate the implementation of these agreements. However this is no longer politically viable. All individual states party to UNTOC see themselves as members of the de facto governing body of the convention. This makes it a somewhat cumbersome and slow-moving initiative. It was suggested that a more dynamic governing body is emerging through COP, but until

this issue is resolved, evaluations may remain less effective and efficient than they could be.

Thirdly, individual states can be reluctant to divulge information on their performance in meeting UNTOC and fighting organized crime, particularly where this may lead to criticism. This can undermine efforts at evaluation where data are requested from states and law-enforcement agencies by UNODC. It is partly this reason why independent research institutes may be best placed to undertake evaluations in the future.

THE EVOLUTION OF INTERNATIONAL CRIME FIGHTING AND THE IMPACT OF TERRORISM

Notwithstanding the lack of formal evaluation of the impact of UNTOC there were several reasons put forward by participants in the seminar as to why the convention has had an ambiguous impact over the past decade. Part of the problem, as described above, relates to the dynamic nature of organized crime. There have been profound changes in the nature and activities of organized crime over the past ten years. This points to the need for a dynamic and adaptable international response. Yet the *Palermo Convention* has evolved slowly and may not have kept pace with the changing reality of international crime as well as it could have.

This disappointing response appears greatly influenced by the rising concern over terrorism during the past decade. There was a strong message from experts at this meeting that momentum for addressing TOC that led to the signing of the *Palermo Convention* was quickly lost after September 11th. Put simply, new energies and funding directed toward fighting international terrorism came at the expense of international efforts against TOC. At the same time, it was noted that other international agreements promoted by the United Nations in the same era also had the effect of downgrading the importance of TOC, including the *United Nations Convention Against Corruption* (UNCAC). It was noted that this type of meeting was welcomed by those working in UNTOC as it may help to raise international attention.

31 For a recent paper on the failure of anti-money-laundering laws, with a particular focus on developing countries, see Jason Sharman, "Power and Discourse in Policy Diffusion: Anti-Money Laundering in Developing States," *International Studies Quarterly* 2, no. 3 (2008).

Some doubt was raised about the impact of the global fight against terrorism, particularly as anti-terrorism work includes strengthening law enforcement in countries where terrorists are based. The point was raised that such anti-terrorism work must have a spill-over effect on organized crime in general.³² Panelists acknowledged this influence, but it was stressed that in operational terms there remains an artificial divide between fighting the two problems. Nick Lewis argued that there was far more scope for cooperation and collaboration between agencies fighting terrorism and organized crime, not only given the emerging relations between criminal networks and terrorists, but also because terrorists are increasingly using the same tools, such as the Internet and money laundering. This sort of joined-up response is urgently needed, and to some extent seems to be occurring more often now than was the case a few years ago.

Although terrorism may have undermined efforts at combating TOC, it was also argued that recent policy failures have contributed to the challenge. It is not simply the activities and strategies of TOC where the problem lies, “we have changed society and often created organized crime and corruption as a consequence.” In particular it was noted that postconflict rebuilding in the Middle East has failed to address the criminalized chaos that is emerging—attempts at addressing corruption and crime have come to represent the application of a Band-Aid to what is a major injury.

DIFFICULTIES FACING INTERNATIONAL INVESTIGATIONS

If the impact of the global fight against terrorism is undermining responses to TOC, this is further compounded by the ongoing difficulties facing crime-fighting agencies in conducting cross-border investigations.

Peter Gastrow focused the discussion on the problems facing developing countries, particularly in Africa. His analysis of corruption in developing countries suggests that crime-fighting agencies from developed countries often find it difficult to form effective partnerships with local police. Others with experience in this field confirmed the problem, pointing out that in addition to corruption, most developing countries lack expertise and

specialization in investigating sophisticated organized crime. Conducting investigations that can lead to a positive judicial outcome is extremely expensive, meaning reservations about cross-border policing efforts tend to dampen efforts of overseas police.

The inability to improve policing cooperation across borders was also explained as a “problem of sovereignty.” Within Europe and between Europe and the US, there has been an increase in partnerships, particularly in fighting international drug trafficking. For reasons that are not immediately apparent, many developing countries take a guarded view of forging similar initiatives, showing a reluctance to hand over their independence to a collective effort. There are therefore very few, if any, effective multilateral attempts at dealing with organized crime that include developing countries.

A recurring theme during this event was that the issue should be elevated in policy discussions, including at the forthcoming conference of parties to the UNTOC. A principal concern was over the growing gulf between the ability of developing countries to counter TOC and that of developed countries, which could further encourage TOC to relocate to the Global South.

THE ROLE OF THE UN AND THE INTERNATIONAL COMMUNITY

A further observation concerned the possibility of an expanded role for the UN community in addressing TOC. It was noted that whereas TOC has evolved into dynamic networks, the UN system is closer to the old-school model of the mafia: hierarchical, slow to adapt, and cumbersome.

The issue of organized crime is a cross-cutting one, relevant to many parts of the UN architecture, as well as the realization of the Millennium Development Goals. Yet organized crime remains perceived as a specialist field, something tackled by UNODC in relative isolation. A question therefore arises, How can the UN develop policy coherence in addressing TOC?

One view on this issue is that tackling crime remains unattractive for several of the UN agencies, something thought of as a psychological problem. For complicated reasons, fighting crime is not seen

³² For an earlier discussion on combating both criminal networks and terrorists, see John Arquilla and David Ronfeldt, eds., *Networks and Netwars: The Future of Crime, Terror, and Militancy* (Santa Monica, CA: RAND Corporation, 2002).

as attractive, particularly among those who are focused on human rights and democracy.

It was also noted that a perennial problem facing the UN relates to competition for budgets and funding. This makes collaboration on a cross-cutting issue difficult. Overall, the seminar stopped short of advancing concrete suggestions for the expanded role of the UN, but it was flagged for further discussions.

Closely related to this observation, Lewis provided one of the concluding statements, arguing that the issue of organized crime is too often tackled by national governments acting in their own self-interest, and overlooking the fact that the threats of TOC interconnect across national borders. Governments need to embrace fighting organized crime as a truly global threat—a collective response to a shared problem.

Conclusion

Transnational organized crime has changed in complicated ways, partly due to new technologies and new opportunities, and partly due to the selective activities of law enforcement. Meanwhile, the emergence of global terrorism has given a further dimension to the problem. Notwithstanding the conceptual ambiguities of distinguishing between organized crime and terrorism, terrorist groups appear to be engaging in criminal activities to gain access to financing, and new working relationships are forming among crime networks, terrorists, and political insurgents. Our knowledge of these developments remains somewhat sketchy, partly due to limited and conflicting intelligence reports.

While there are broad global trends in the developments of TOC, regional differences remain important. In this respect it is useful to reflect on the situation in China, which has been influenced by impressive domestic economic growth. The issue of organized crime is distinct in Latin America and Africa yet interconnected at the same time.

The structural changes that seem to have occurred to TOC also suggest new terminology and theoretical models are needed. TOC can no longer be seen as a conspiracy of distinct criminal enterprises. Viewed as an activity, it is increasingly clear that TOC involves a wide range of actors, including corrupt officials, political groups,

warlords, and so on. Future research will no doubt have to look into the political economy of organized crime to better understand the interplay among these different actors.

Differences of opinion also exist on the harm of organized crime and its relationship to communities and economies. Perhaps a straightforward view of organized crime being an unmitigated evil is too simplistic. There are important policy implications for improving our understanding of harm, as well as benefits, related to organized crime, particularly if citizens are to play a role in assisting crime fighting. A review of the harm caused by organized crime can also help inform difficult policy debates, such as that on decriminalization.

In terms of the international response to organized crime, the *Palermo Convention* has had an ambiguous role. There was an element of optimism from some commentators that the convention may have had a slow start, but there are promising signs that it is picking up momentum. Others were less certain of this, pointing out that the convention is limited in scope and too slow to respond to the fast-changing nature of the problem. How we go forward from this situation remains a tremendously intricate issue to resolve. Evaluating what has been done appears a vital task, yet arguably the methodology for doing so remains unclear. It is not enough to measure the implementation of the convention; the real challenge lies in making the connection between the convention and real-world changes in the harm caused by organized crime. Moreover, it is worth noting that the mandate to undertake such difficult and controversial evaluations may be hard to gain from the member states of the *Palermo Convention*.

One of the key complaints made by those involved in fighting organized crime is the inadvertent impact of the importance given to global efforts to combat terrorism. Indeed, in his concluding remarks Professor Edward C. Luck noted that in the past those engaged in combating and studying organized crime have struggled to gain sufficient recognition within the international community, a point alluded to in earlier discussions. Yet it was his view that changes are evident. The issue of TOC is the object of growing attention. He noted that institutes such as IPI have a strong role to play in ensuring that this recognition continues.

ANNEX: Agenda

Transnational Organized Crime and the Palermo Convention: A Reality Check

Wednesday, October 6, 2010
8:30am – 1:00pm

Trygve Lie Center for Peace, Security & Development
International Peace Institute
777 UN Plaza, 12th floor
(Corner of 44th Street and 1st Avenue)

- 08:30am Breakfast Buffet
- 09:00am **Welcoming Remarks**
- Edward C. Luck, Senior Vice President for Research and Programs, *International Peace Institute (IPI)*
- 09:10 – 10:10am **Panel 1: Recent Trends in Transnational Organized Crime (TOC) and its Evolving Nature, Growth, and Global Impact**
- Moderator: **Peter Gastrow**, Senior Fellow and Director of Programs, *IPI*
- Global Trends and Developments**
Speaker: **Nick Lewis**, Regional Manager, Serious Organised Crime Agency (SOCA), *British Embassy, Washington, DC*
- Impact of TOC on Developing Countries**
Speaker: **Peter Gastrow**
- 09:55 – 10:10am Questions, Comments, and Discussion
- 10:10 – 10:55am **The Evolution and Impact of TOC in Latin America**
- Speaker: **Phil Williams**, Professor of International Security, *Graduate School of Public and International Affairs, University of Pittsburgh, Philadelphia*
- Current and Expected Developments in China**
Speaker: **Wing Lo**, Professor of Criminology, *City University of Hong Kong, China*
- 10:55 – 11:15am Questions, Comments, and Discussion
- 11:15 – 11:30am Coffee Break
- 11:30 – 12:15pm **Panel 2: Assessing the Role of the Palermo Convention**
- Moderator: **Peter Gastrow**

Evaluating the Palermo Convention

Speaker: **John Picarelli**, Social Science Analyst, *National Institute of Justice, United States Department of Justice*, Washington, DC

Ten Years of Palermo Convention: An Assessment of its Role in Countering TOC

Speaker: **Catherine Volz**, former Chief of the Human Security Branch of the Division for Operations, and Chief of the Treaty and Legal Affairs Branch, *United Nations Office on Drugs and Crime (UNODC)*, Vienna

12:15 – 12:50pm Questions, Comments, and Discussion

12:50 – 12:55pm **Closing Remarks**

Edward C. Luck

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