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Chapter 5

Transnational Organized Crime, Civil Society and Victim Empowerment

Jan Van Dijk

“Corruption hurts the poor disproportionately by diverting funds intended for development, undermining a government’s ability to provide basic services, feeding inequality and injustice, and discouraging foreign investment and aid.”

Former Secretary-General Kofi Annan¹

1. Introductory remarks

Organized crime has over the past thirty years been expanded and transformed by increased globalization.² Like legitimate business people entrepreneurial criminals are increasingly free to move their operational activities to those places with the best chances for high profits.³ Globalization allows them to operate on the global markets in illicit products such as drugs, cheap labor or firearms.⁴ E-commerce has opened unprecedented opportunities for committing sophisticated fraud across borders or selling child pornography.⁵ In addition, electronic banking allows criminals to stash away illegal assets in financial havens out of reach for governments where predicate offenses have been committed.

Emerging forms of transnational organized crime pose serious problems for domestically oriented law enforcement and judiciary institutions. Governments are handicapped in combating transnational crime by their reliance on frameworks and tools designed for the control of domestic crime on national territories. Existing legal mechanisms for

¹ Kofi Annan, in his statement on the adoption by the General Assembly of the United Nations Convention Against Corruption.

² Levitsky, M. (2003), ‘The Dark Side of Globalization’, 5, *International Studies Rev.* p. 253.

³ Gros, J-G (2003), ‘Trouble in paradise; crime and collapsed states in the age of globalization’, *British Journal of Criminology*, 43, pp. 63-80.

⁴ Raustiala, K. (2001), ‘Free Trade Pact a Boon to Drugs Dealers’, *UCLA TODAY*, 22 May, 2001.

⁵ Grant, A., David, F. & Grabrosky, P. (1997), ‘Child Pornography in the Digital age’, *Transnational Organized Crime*, 3, p. 171 .

international cooperation in investigation and prosecution are found to be wanting. To tackle transnational or global crime, governments are urgently in need of more adequate legal and operational tools.

Towards the end of the last century consensus emerged about the need for a new global framework for cooperation against organized crime.⁶ In 2000, the members of the United Nations assembled in large numbers in the city of Palermo to sign the *United Nations Convention against Transnational Organized Crime (UNTOC)* and its protocols against human trafficking and smuggling of migrants. For the mayor of Palermo, Leoluca Orlando, the High Level Signing Ceremony, attended by several heads of state and dozens of ministers, marked a jubilant confirmation of his lifelong struggle against the organized crime families in Sicily. In his view Palermo would from now on be known as the capital of the global fight against the mafia instead of as the world's capital of organized crime.

In his book *Fighting the Mafia and Renewing Sicilian Culture*, Orlando describes how the fight against the mafia requires both the commitment of specialized investigators, prosecutors and judges and of the victimized local community. As mayor, Orlando himself mobilized the local community of Palermo against the local mafia groups of the city.⁷ To visualize the need of such twinned approach, he invokes the image of a Sicilian Cart with two wheels, one of law enforcement and one of civil society. If one wheel turned without the other the cart would go in circles. The fight against the mafia in Italy relies on the use of specially tailored tools of criminal justice.⁸ But lasting progress in the fights against entrenched forms of organized crime can only be made when professional and dedicated law enforcement goes hand in hand with political determination and civic commitment.

The adoption of the UNTOC in 2000 raised expectations of improved collaboration in global action against transnational organized crimes.⁹ The Convention laid the legal groundwork for better law enforcement and judicial cooperation against organized crime. It also includes agreements on international cooperation in implementing the Convention. Special articles foresee support for capacity building for specialized law enforcement and prosecutorial agencies in developing countries and countries in transition. States Parties are obliged to provide technical assistance to developing countries to assist them in meeting their needs for the implementation of the Convention. To this end a special account was to be set up by the UN secretariat, to which regular voluntary contributions should be made, including a percentage of all confiscated assets from criminal groups.¹⁰ To set an example and ensure that this provision would not remain a dead letter, the Italian government pledged at the Palermo Conference that it would in the

⁶ Williams, P., & Vlassis, D. (Eds.) (2001). *Combating transnational organized crime: Concepts, activities and responses*. London, Frank Cass.

⁷ Orlando, L. (2001). *Fighting the mafia; and renewing Sicilian culture*. San Francisco, Encounter Books.

⁸ Spina, A. La. (2008) 'Recent Anti-Mafia Strategies: The Italian Experience', In: D. Siegel & H. Nelen (2008), *Organized Crime; Culture, Markets and Policies*, Springer.

⁹ In Albrecht, H-J & Fijnaut, C. (2003), *The containment of transnational organized crime*. Kriminologische Forschungsberichte, Freiburg, Max Planck Institute for Foreign and International Criminal Law.

¹⁰ Article 30, 2 c of UNTOC reads : "to that end States parties shall endeavour to make adequate and regular voluntary contributions to an account specifically designated for that purpose in a United Nations funding mechanism."

coming years allocate 20% of all assets confiscated from Italian mafia groups to this account. In anticipation of the Convention's adoption, the Member States had already agreed in the final Declaration of the quintennial UN Congress on Crime Prevention in Vienna earlier in 2000 on concrete targets in their fight against organized crime. According to the Vienna Declaration Member States would cooperate with each other and the UN secretariat to provide a comprehensive global overview of organized crime groups. Following the model of the Millennium Declaration, the Vienna Declaration established 2005 as target year for a significant reduction in the numbers of trafficked persons and smuggled migrants as well as in the illicit manufacturing of and trafficking in illicit firearms. If this was not attained, Member States committed themselves to reassess the measures implemented (A/CONF.187/4/Rev 3). With the adoption of the UNTOC the stage seemed set for a well-funded, targeted and closely monitored global campaign against the main forms of transnational organized crime in the years ahead.

Since 2000 large numbers of Member States have indeed ratified the Convention and its three protocols (in 2001 a third supplementary protocol against trafficking in illicit weapons was adopted). Consequently all four instruments have entered into force rapidly. In 2003 this package of new international criminal laws was expanded with the *UN Convention against Corruption* which also rapidly entered into force. From a legalistic perspective the Big Five legal instruments are a major breakthrough in the development of international criminal law. As foreseen in the UNTOC a Conference of States Parties was convened that oversees its implementation and suggest possible amendments. This Conference has been convened regularly in Vienna at the headquarters of UNODC. Deliberations at the committee have, however, to this day mainly centered on procedural issues. Several working groups have been set up, such as a permanent one on international cooperation and an interim one on technical assistance. A special working group has been set up to discuss the implementation of the trafficking protocol. Each of these working groups have in turn set up expert groups on specific subtopics. On behalf of working groups and expert groups the secretariat has sent out questionnaires consulting Member States on their needs and best practices. None of these deliberations, however, seems to have resulted in agreement on a strategy to implement the convention, let alone a comprehensive Action Plan or Action Plans concerning selected topics. Somewhat surprisingly, no follow up has been given to the establishment of an account for capacity-building as foreseen, and special donations from Italy as pledged at the Palermo Signing Conference have never been made. The targets for reducing organized crime, mentioned in the Vienna Declaration, have not been revisited at the subsequent UN Crime Congresses in Bangkok in 2006 or Salvador, (Brazil) in 2010. In the Conference of States Parties of the UNTOC the previously agreed-upon targets seem to have been completely forgotten.

In 2008 the Conference of State Parties at its fourth session expressed "its concern at the information contained in the report of the Secretariat on the development of tools to gather information from States on the implementation of the Convention and each of its protocols thereto, which showed persisting gaps in the implementation of the Convention and its protocols". (UNODC, CTOC/COP 4 Decisions). Since then more countries have sent in information but such survey, however well- executed, falls far short of a serious mechanism to follow up and monitor operational strategies or action plans. Some Western countries including the USA and Sweden, speaking on behalf of the European Union, have recently argued for the adoption of a review mechanism. As a preparatory step they have also agreed to pilot test such mechanism on a voluntary basis in their own countries.

There is little room for optimism that their proposal will shortly meet with the approval of the Conference of State Parties. The Salvador Declaration, adopted at the end of the Twelfth United Nations Congress on Crime and Crime Prevention on 12-19 April, 2010 contains ominously weak language on the said initiative¹¹.

It is theoretically possible that implementation on the ground, in spite of a lack of commitment at high political level, has yet been fairly successful. Mention could be made of a flurry of promotional and educational activities against human trafficking including those funded with a special gift of Bahrain (the UN Gift). The global fight against this form of organized crime received a boost from legislation passed by the USA requesting the administration to publish annual ratings of foreign countries on their anti-trafficking efforts (known as the Trafficking in Persons Reports). This legislation mandates the government to impose sanctions on non-complying countries. This action by the USA administration seems to have prompted many countries to ratify the UN Protocol.¹² But what about real legislative and operational implementation? The Global Alliance Against Trafficking in Women (GAATW), an umbrella organization of NGOs supporting victims of human trafficking, issued on 13 October 2008 a statement criticizing weak implementation of the anti-trafficking protocol and lack of adequate review mechanisms.¹³ In a report of UNODC of 2008 the conclusion is drawn that from a global perspective the crime of human trafficking remains largely unpunished. Only in a handful of mainly Western countries cases of human trafficking have been systematically investigated and prosecuted.¹⁴ These are worrying signals considering that they relate to the type of organized crime that has received by far the most attention from the world community. It seems unlikely that more progress has been made in the fight against other forms of organized crime that are less dramatic in their human consequences. There are few indications that transnational organized crime has been brought under control. In 2010 the UNODC released a report documenting the destabilizing impact of trafficking in cocaine on the Andean region, West Africa and Mesoamerica and of trafficking in heroin on South West and Central Africa, South East Europe and South East Asia (UNODC, 2010) and a more

¹¹Article 19 of the Salvador Declaration calls for Member States that have not yet done so to consider ratifying the UNTOC. It then continues as follow: “We also take nte of ongoing initiatives aomed at exploring options reAgrding an appropriate and effective mechanism to assist the Conference of the Parties to the United nations Convention against Transnational Oragnized Crime in the review of the implementation of the Convention” (United Nations, A/CONF.213/L.6/Rev.2).

¹² Van Dijk, 2007.

¹³ Statement on a monitoring mechanism for the United Nations Convention against Transnational Organized Crime and each of the protocols thereto with specific attention to the Protocol to Prevent, Suppress and Punish Trafficking in Persons (the Human Trafficking Protocol): “However, the current review process to UNTOC does not provide for a comprehensive review of States Parties anti-trafficking responses. In fact, it is often used as a means of promoting the “great work” of a country, rather than reviewing how the State is implementing the Protocol and the impact this is having. Furthermore, this process does not provide adequate means for civil society engagement. We believe that the existing information gathering and implementation review mechanisms to UNTOC neither offer a means of highlighting progress on implementation of UNTOC made by States Parties nor provide adequate space for improvement on implementation measures taken”.

<http://www.gaatw.org>.

¹⁴ UNODC (2009), *Global Report on Trafficking in Persons*.

encompassing report on the threat posed by transnational organized crime (UNODC, 2010/2) largely based on open source information ¹⁵

Whether progress has been made in reducing human trafficking, smuggling of migrants or other types of organized crime such as drugs trafficking is at any rate impossible to assess with any degree of certainty for lack of a credible monitoring system. As said, no mechanism of independent monitoring has met with the approval of the States Parties, let alone that it was put in place. Neither has any work been done on the scientific global overview of trends in organized crime envisaged in the Convention and as explicitly agreed upon in the Vienna Declaration of 2000. Proposals from the UN secretariat in 2004 to start preparations for a regular World Crime Report, although welcomed at the 2004 Crime Prevention Congress in Bangkok in the final Declaration, were rejected by the Member States at the meeting of the Crime Commission in 2004 as well at later occasions. In the absence of a review system as well as of a monitoring system, there is no way to determine to what extent the UNTOC has been properly implemented and starts to have the desired effects.

As said, the entry into force of UNTOC in 2003 created unprecedented opportunities for more cross-border cooperation in criminal justice on a global scale. Since then many meetings have been convened in Vienna and an avalanche of sophisticated manuals, toolkits and model laws has been produced and disseminated by the UN secretariat. And yet the conclusion seems inescapable that the UNTOC has largely remained a dead letter. It is functioning as just another case of soft law codifying international best practices in criminal justice which Member States can use to their discretion rather than as the Treaty with binding obligations for all States Parties that it formally is. It seems therefore unlikely that the first jubilee of the UNTOC in 2010 will be commemorated in a similarly spectacular way as its adoption in Palermo ten years ago. To paraphrase the famous dictum of the Prince De Ligne at the Vienna Congress in 1814, the diplomats representing their countries in Vienna keep dancing without making any real progress.¹⁶

In this article I will reflect on the slow implementation of the UNTOC and explore which political factors prevent Member States from following up the widely applauded UNTOC more diligently. I will try to understand the deeper reasons for the current impasse. . The legitimacy of UNTOC implementation has in my view been undermined by its association with agenda's of national security in the aftermath of 9/11. I will argue that the legitimacy of the fight against transnational organized crime is intrinsically weak because of the lack of a clear and universally persuasive victim narrative. I will subsequently explore

¹⁵ UNODC, Crime and Instability; Case studies of transnational threats, February, 2010; UNODC, The Globalization of Crime: A Transnational Organized Crime Threat Assessment, summer 2010).

¹⁶ "Le congrès danse beaucoup, mais il ne marche pas". Prince de Ligne on the lack of progress at the Vienna Congress in 1814. In the same vein the Italian Cardinal Pappalardo once castigated the Italian government for its lack of real action against the mafia citing a saying from Roman times: "While S. is burning, Rome keeps talking". The former Italian magistrate G. Polimeni who used to represent Italy during negotiations of many international treaties on international law both in Europe and at the UN between 1980 and 2000 noticed the creeping dominance of diplomats over criminal justice experts in the deliberations at the Crime Commission and Crime Congresses of the UN, a process which he described as the "diplomatization" of the commission. This process has led to the marginalization of NGO's and individual experts at this forum (J.J.M van DIJK, Message to the Liege Colloque, in G. Kellens & M. Dantinne (2010), Scientific NGOs and Crime Policy, Nijmegen, Wolf Legal Publishers).

avenues for a strategic reorientation of the fight against organized crime. I will argue, in short, that the UNTOC is an international treaty in search of a victim-centred constituency outside the world on international diplomacy that can start canvassing for its implementation.

2. Organized crime as security threat

Organized crime has in many countries including the USA often been framed as a threat to national security emanating from abroad (the so-called alien conspiracy theory). The concept of transnational organized crime was first put prominently on the agenda of the UN by former US president Bill Clinton in his address to the General Assembly of the United Nations in 1995. In this address former President Bill Clinton expressed concern about emerging asymmetries between international crime and the domestically oriented rules and practices of criminal justice. His analysis was subsequently endorsed by major European nations at a meeting of the G8 in Lyon. At this meeting the political foundations were established for the elaboration and subsequent near universal adoption of the *United Nations Convention against Transnational Organized Crime* and its protocols. From the outset transnational organized crime was seen by the American administration and its allies as a threat to the sovereignty of the state and the rule of law.¹⁷ Global crime was unequivocally construed as a national security concern and not as a mere crime problem. Law enforcement was fused with national security missions, strategies and technologies.¹⁸ A leading American scholar on these issues, Louise Shelley, positioned global action against transnational organized crime in the following words:

The recently mounted attack on transnational organized crime is, indeed, partly a consequence of the need for security bodies (such as the CIA, KGB and the Mossad) and international organizations (such as the U.N. and the Council of Europe) to develop new missions in the post-cold War era. While the world focused on such highly visible problems as the superpower conflict or regional hostilities, the increasingly pernicious and pervasive transnational crime that now threatens the economic and political stability of many nations was ignored. Long-term neglect of this problem means that the world now faces highly developed criminal organizations that undermine the rule of law, international security and the world economy and which, if they are allowed to continue unimpeded, could threaten the concept of the nation-state.¹⁹

After 9/11, American officials have highlighted linkages between organized crime and terrorist groups such as Al Qaeda.²⁰ The fight against transnational organized crime was subsequently subsumed under the broader objective of the war against terrorism. Much attention was focused on the alleged linkages between terrorist groups and the global trade in drugs. In 2002 the Executive Director of UNODC was for the first time invited to brief the Security Council on the crime and drugs situation in Afghanistan. The issues on

¹⁷ R. Godson, (2003), *Menace to Society; Political Criminal Cooperation Around the World*, Transaction Publishers.

¹⁸ P. Andreas & R. Price (2001), From War Fighting to Crime Fighting: Transforming the American National Security State, *International Studies Review*, Vol. 3 (Autumn), pp 31-52.

¹⁹ Shelley, L. (1995), 'Transnational Organized Crime: An Imminent Threat to the Nation State', *Journal of International Affairs*, Vol. 48.

²⁰ Schmid, A. (2004). 'Links between terrorist and organized crime networks: Emerging patterns and trends', In: Vlassis, D. (Ed.), *Trafficking: Networks and logistics of transnational crime and international terrorism*. Proceedings of the International Conference on "Trafficking: Networks and Logistics of Transnational Crime and International Terrorism". Courmayeur Mont Blanc, Italy. 6-8 December 2002.

the agenda of that meeting were linkages between terrorism and the production and trafficking of drugs. Ever since, drugs and crime issues have been regularly discussed in the Security Council as emerging security threats.²¹ As mentioned above, in 2010 UNODC published a report on trends in organized crime, mainly consisting of an update on the main flows of drugs trafficking. The report was initially titled *Crime and Instability; case Studies of Transnational Threats*. At a meeting in Vienna in the summer of 2010, co-organized with the World Bank, UNODC staff announced that the report would soon be discussed in a meeting of the Security Council. The phenomenon of transnational organized crime has over the years been consistently framed by UNODC as a threat to national security.²²

Transnational organized crime is now widely understood a threat to national security rather than as a threat to the lives of ordinary people, individually or collectively. The association of UNTOC implementation with the fight against terrorism and/or political instability seems to have raised the political profile of the UNTOC but, paradoxically, to have weakened political support for its operational implementation. In the international domain as well as domestically, secret intelligence gathering has substituted for the exchange of law enforcement and judicial information. Covert cooperation between security services has taken priority over mutual legal aid with its inbuilt safeguards for the rights of individual citizens. One of the consequences of the response to 9/11 has been diminished interest in government circles in the type of international judicial cooperation, facilitated and promoted by the UNTOC, as well as in building capacity for the administration of criminal justice in developing countries. Also, interest in UN-based comparative, criminological research seems to have waned. Crime statistics have always been politically sensitive but this is even more the case now that they are presented as information on security concerns. Unsurprisingly, proposals for operational strategies, action plans and review mechanisms are met with suspicion at the United Nations if implementing the UNTOC is presented as serving the national security interests of core players. In the reconstruction of Findlay,²³ fledgling international criminal justice has been successfully “hijacked” by the USA and its coalition partners to advance the war on terrorism. With respect to the UNTOC we see little evidence of such instrumentalization of international criminal justice. If this would have been the case, UNTOC implementation would have attracted more political attention and funding. Rather, concerns about global terrorism seem to have overshadowed the UNTOC project and to have radically lowered the priority of its implementation. In our view the marginalization of the UNTOC is an unintended side-effect of the radical reordering of political agendas in

²¹ On 9 December 2009 the Security Council adopted a Presidential Statement calling for “greater action against drugs trafficking as a threat to international security.”

<<http://www.unodc.org>>.

²² The report concludes that the UN conventions against drugs, organized crime and corruption have failed to address the national security implications of transnational crime: “Too often, work under the Conventions has been limited to law enforcement, while transnational organized crime cannot be reduced to a criminal justice issue. The Conventions provide a bedrock, but they do not constitute a global strategy, and they do not frame drug trafficking as a matter of international security.” The report ends with a plea for comprehensive global action against organized crime “making use of the full range of military, development and crime prevention tools available” (UNODC, 2010, *Crime and Instability*, Vienna, February, 2010).

²³ Findlay, M. (2008), *Governing through Globalized Crime, Futures for International Criminal Justice*, Cullompton, Devon, Willan Publishing.

the aftermath of 9/11. The fight against transnational organized crime, an overriding international priority in 2000, has since then been sidelined by the war on terrorism. The fusion between the “low politics of law enforcement” with the “high politics of national security” may have raised the temporary interest and support of powerful bodies such as the Security Council. But this upgrading has reinforced the image of organized crime as a threat to national security rather than to the interests of real victim communities and this has reduced the political standing of the UNTOC. Invitations to meetings of the Security Council for UNODC staff have come at the considerable cost of reducing the legitimacy of UNTOC implementation in the long term.

3. Organized crime and the lack of victim-based legitimacy

The question must be addressed why the international law enforcement community, the primary stakeholder of the UNTOC, has been unwilling or unable to resist the subsumption of the fight against transnational organized crime under the war on terrorism. In my view, an important explanation is that the investigation and prosecution of transnational organized crime suffers more than that of common crimes such as homicides or rapes from reduced legitimacy. The project of UNTOC implementation could probably be so easily derailed because it suffered from a legitimacy deficit from the outset.

In his seminal studies critical criminologist Schur (1965) raised doubts about the legitimacy of laws criminalizing “crimes without victims.”²⁴ Such “victimless crimes” are defined by him as crimes without evident individual victims, such as abortion, homosexuality, drugs addiction and prostitution. Schur’s analysis of the problematic stature of “victimless crimes” seems even more valid now than it was at the time of writing. In modern, secularized nations awareness of the suffering of victims has become the principal justification of interventions by criminal justice²⁵. This trend towards victim-centeredness has been dubbed the “victimization” of criminal law. It is often, rightly or wrongly, critiqued for having fuelled penal populism and new punitiveness.²⁶ Another, less obvious implication of the victim focus of criminal policies would seem that it has further reduced the legitimacy of criminalizing and prosecuting victimless crimes. In a secular, post-modern culture a victim focus legitimizes the use of power by criminal justice institutions. Without such focus, its legitimacy can easily be put into question.²⁷

Schur’s own opposition against the criminalization of victimless crimes was not based solely on moral consideration. An important point of his analyses is that if no interests of

²⁴ Schur, E.M. (1965), *Crimes without Victims*, Prentice, Hall.

²⁵ Boutellier, H. (1999), *Crime and Morality; The Significance of Criminal Justice in Post- Modern Culture*, Dordrecht, Kluwer Academic Publishers; Garland, D. (2001), *The Culture of Control, Crime and Social Order in Contemporary Society*, Oxford, Oxford University Press.

²⁶ Buruma, Y. (1994), ‘The Victimization of Criminal Law’, In: *How Punitive is The Netherlands ?*, Arnhem : Gouda Quint (in Dutch) (Dutch title: De victimisering van het Strafrecht).

²⁷ Victim-based legitimacy implies that criminal justice will be more strongly supported if it is perceived to be at least partly directed at serving the interests of actual and potential victims (victim communities). It follows from this notion that criminal justice can enhance its public standing by directly serving tangible victim interests such as respect, information, compensation and voice in criminal proceedings (Reemtsma, J. Ph. (1998), *In the Cellar*, Hamburg, Rowolt TaschenbuchVerlag (in German) (German title: Im Keller); Prittwitz, C. (1999). The Resurrection of the Victim in Penal Theory. *Buffalo Criminal Law Review*, 3, pp. 109–129; Dijk, J.J.M. van (2009), Free the Victim; a critique of the Western conception of victimhood, *International Review of Victimology*. 2009, Vol. 16, pp. 1–33).

individual victims are at stake, few citizens will come forward to assist law enforcement agencies as victim-witnesses or complaining bystanders. This lack of victim-witness support makes the investigation and prosecution of such crimes difficult. Packer (1968) characterized victimless crimes as: "crimes that do not result in anyone feeling they have been unjustly treated in such a way that they feel called upon to bring the crime to the attention of the authorities."²⁸ This lack of civil support forces investigators to apply expensive, special techniques, to actively collect evidence themselves. They are forced to tap phones, use informants, employ undercover activities or use sophisticated electronic bugging devices. The reliance on covert techniques of detection creates, according to Schur, a risk of infringements on civil liberties and of bribetaking or extortion. Such official misconduct undermines the respect for state institutions.. Schur's analysis leads him to the conclusion that the legitimacy of laws against victimless crimes is relatively weak and that their enforcement can easily compromise involved state institutions.

Although Schur's notion of victimless crimes was not applied by him or other authors to organized crime in its current transnational manifestations, his analyses seem to hold a lesson for the global fight against transnational organized crime. First, it can make us aware that investigations of organized crime often suffer from the same lack of support from complaining victims as the consensual crimes examined by Schur. Investigations against organized crime groups are rarely triggered or sustained by voluntary complaints from ordinary citizens who have been directly victimized. Some forms of organized crime such as illegal gambling can indeed be regarded as relatively victimless. Other forms, such as extortion, victimize citizens but these will often refrain from issuing complaints for fear of retaliation. Investigations into organized crime are for that reason almost always largely based on the use of special investigative techniques. Not coincidentally the UNTOC specifically obliges States Parties to introduce a wide range of such techniques in their legal systems such as controlled delivery, electronic surveillance and undercover operations.²⁹ For this reason many of Schur's observations of the possible risks involved in investigating victimless crimes apply seamlessly to anti-mafia investigations. The legitimacy of such investigations can easily be compromised by the overzealous use of special techniques or corruption. Many countries have over the past two decades been plagued by scandals about derailments of anti-mafia units undermining support for such activities. Many examples can be given of alleged or real abuses by anti-mafia units across the world.³⁰ In Belgium the use of undercover agents became controversial after it led to a corruption case.³¹ In the Netherlands large-scale operations against organized crime led to a Parliamentary Enquiry on the use of informants/undercover operations which led to the resignation of several prosecutors and the ministers of justice and the interior in 1995.³² Although investigations into mafia groups continued, the impetus in the fight against organized crime in the Netherlands was lost for many years.

²⁸ Packer, Herbert L (1968). *The Limits of the Criminal Sanction*, Stanford, California, Stanford University Press.

²⁹ UNTOC, Article 20 Special Investigative Techniques.

³⁰ Fijnaut, C.J.C.F. & G.T Marx (ed.) (1995), *Undercover, police surveillance in comparative perspective*, The Hague, Kluwer.

³¹ Fijnaut, C.J.C.F. (1983), *De Zaak Francois*, Antwerpen, Kluwer.

³² Fijnaut, C.J.C.F. (1996), 'Over de opzet, de uitvoering en de resultaten van het onderzoek', In: F. Bovenkerk (Ed.), *De georganiseerde criminaliteit in Nederland: Het criminologisch onderzoek voor de parlementaire enquêtecommissie opsporingsmethoden in discussie*, Deventer, Gouda Quint, pp. 17-24.

Crucially important in this regard seems Schur's observation that derailments are especially damaging for the legitimacy of investigations of crimes without complaining victims. In other words, investigations into victimless crimes are hindered by the lack of complaining victims in two ways. First, the absence of complainants forces the police to use intrusive techniques of investigation. Secondly, the use of such intrusive techniques cannot be justified to the public with reference to the need to protect vulnerable and innocent victim communities. This double bind makes protagonists of anti-mafia campaigns vulnerable to innuendo about their true motives. The intrinsic vulnerability of anti-mafia campaigns can be illustrated by the notorious Scascia incident in 1987 in Italy. At the height of the preparation of the maxi-trials against the mafia the highly acclaimed Sicilian novelist Leonardo Sciascia criticized in *Il Corriere della Serra* the emergence of what he named the "anti-mafia professionals" (public officials and politicians making a career out of fighting the mafia).³³ Although his motives have never been fully revealed, his criticism seems to have been motivated by a feeling of unease about the ulterior motives of the main actors. Were they really committed to fight serious offenders or were they looking for personal glory? In other words, he expressed doubts on the legitimacy of the high profile fight against the mafia in Italy.

As said, Schur's analysis of the dubious legitimacy of investigating victimless crimes seems relevant for a study of the stagnant implementation of the UNTOC. In many cases of transnational organized crime such as drugs trafficking opinions of who are the victims can differ. From the perspective of production countries those living under the terror of organized groups can be seen as victims. In destination countries many will see drug addicts as primary victims. The visibility of the victims of organized crimes is often diminished by its transnational nature. This is for example clearly the case with money-laundering operations in Western countries. Public opinion is hard pressed to understand that actions against banks facilitating money-laundering by criminal groups operating abroad serve concrete interests of victim communities in these countries (Global Witness, 2009)³⁴. The mistaken notion that organized crime is "victimless" is reinforced by the fact that in major anti-mafia investigations and trials victims play hardly any role. Investigations and prosecutions rely on evidence gathered through special techniques and from former gang members turned into witnesses for the prosecution (*pentiti*). An exception to the image of organized crime as victimless is constituted by the crime of trafficking in women for sexual exploitation. Policies against trafficking seem to be firmly grounded in a narrative around the moral need to protect the vulnerable victim community of women and children. The UN protocol against human trafficking, unlike the parent convention, mentions as one of its overarching objectives, besides preventing and combating trafficking "to protect and assist the victims of such trafficking." The article on victims lists a range of services that States Parties should make available to victims and an even longer list of services that they should consider making available (e.g. residence permits). But are these policies really geared towards the interests of victims and are they perceived as such by the victim communities themselves? In spite of the victim-centeredness of anti-trafficking policies, experiences with the investigation of trafficking cases have revealed that victims themselves often remain suspicious about what the institutions can do for them. Although American strategists have framed

³³ Described in Orlando, *op. cit.*

³⁴ *Undue Diligence; How banks do business with corrupt regimes*, a report by Global Witness, March 2009.

investigations into trafficking rings as “rescue operations” and routinely speak about the “escape” of trafficked women, the sex workers involved seem often reluctant to cooperate with investigators. And, perhaps more tellingly, they often allow themselves to be trafficked again soon after their “rescue.” As a result of these ambiguous attitudes among victims, trafficking investigations often face many of the problems identified by Schur.

Despite formal commitments of governments, the numbers of convicted traffickers have remained small. The gap between objectives set by governments and actual results on the ground is notably huge in the USA, where fewer cases have been brought to the courts than in several individual European countries, with much smaller populations (including Italy and Belgium). In official documents the standard explanation given for these lackluster results is the reluctance of victims to cooperate as witnesses. The victims’ reluctance to cooperate with investigations and prosecutions can partly be ascribed to fear of retaliation from the traffickers. The problem, however, seems to be more fundamental. Studies among trafficked persons suggest that many victims are doubtful of the payoffs of criminal interventions for themselves. The lack of victim testimonies forces those carrying out investigations into human trafficking to rely to an increasing extent on special techniques including the use of informants and financial investigations. And, as predicted by Schur, many specialized law-enforcement agencies have experienced derailments of individual investigators which have damaged the legitimacy of their operations.³⁵ In not a few cases, negative publicity on supposedly or actual abusive activities of anti-trafficking units have undermined the political will to tackle local organized crime or to make sufficient funds available. The lack of cooperating complainants renders anti-mafia policies vulnerable to accusations of official misconduct and/or the pursuit of ulterior bureaucratic or political agendas.

In our view, an examination of the anti-mafia strategies of the United Nations in the light of Schur’s concept of victimless crimes suggests the need of critical reflection on the framing of these activities. We will in the next section of this article argue that to enhance its legitimacy the global fight against organized crime should become and seen to become more victim-centered. A first step towards this goal is a fully fledged research effort to illuminate the hidden human and economic costs of organized crime. In the next section we will try to demonstrate the types of victimological studies needed to that end. In the final section of this article we will come back to the need of a strategic reorientation for the UNTOC. The legitimacy of the fight against transnational organized crime cannot be restored by studies on the human impact of organized crime alone. To become more successful, institutions tackling mafias need to harness the potential support of civil society both at the local, national and, most challengingly, global level in the common fight against the mafias of the world. In this final section we will discuss best practices of victim empowerment in criminal cases against mafia groups as well as newly emerging initiatives towards the involvement of collective and individual victims of organized crime in anti-mafia policies in the European Union. We will, finally, discuss how these best practices and fledgling initiatives could be transferred to the global level within the framework of UNTOC implementation.

4. Organized crime and its direct and indirect victims

³⁵ Zhang, S.X. (2007), *Smuggling and trafficking in human beings: all roads lead to America*, Praeger Publishers.

Sellin and Wolfgang (1964) designed a typology of victims distinguishing between primary victims, secondary victims and tertiary victims.³⁶ This typology is often presented in textbooks on victimology.³⁷ According to this typology primary victims have been directly victimized by criminal acts. In the case of organized crime this would include victims of mob-related homicides and trafficked women. Secondary victims are legal entities such as business corporations or public institutions economically victimized by crime. Tertiary victims are classified people, belonging to communities whose interests are directly or indirectly harmed by crime. The typology seems to classify victims both on the basis of the length of the causal chain of victimization and the nature of the affected entities (natural persons or legal entities). In our opinion, a clearer typology would distinguish primarily on the basis of the length of the causal chain. According to this logic primary victims are directly harmed by the crime. They can be sub-divided into natural persons and legal persons. Secondary victims are family members and other intimates of primary victims. This is an important category because in many countries such secondary victims are assigned procedural rights in criminal trials and made eligible for awards by State Compensation Funds for Victims of Violent Crime, including from the Italian Fund for Victims of Organized Crime and Terrorism. Tertiary victims in our view are persons or entities that are indirectly harmed by the crime. They could alternatively be described as indirect victims. In many cases the indirect victimization will be collective in nature. The victimization of collectives such as a local community has been recognized in the framework of the International Criminal Court (see also *Chapter 12*) but has not yet been a subject of many victimological studies.

In this paragraph we will first discuss the direct victims of organized crime. In our view both existing victimological studies and the literature on organized crime have given insufficient attention to tertiary victimization by organized crime. As we will argue below, the neglect of organized crimes' tertiary or indirect victims invites the mistaken view of organized crime as threat to national rather than to human security. We will therefore elaborate at the end of this paragraph on the indirect victims of organized crime.

A review of current knowledge on organized crime provides ample evidence that organized crime activities are directly damaging citizens and communities in many parts of the world. Different from organized crime groups in the sixties and seventies of the last century, current organized crime seems to have become relatively more violence-intensive, especially in South America, Central America, Eastern Europe and Western Africa (UNODC, 2010). As observed by Mexican expert Gonzalez-Ruiz: "Organized crime almost always generates violence because it has no way of resolving disputes except by mutual consent or settling of scores."³⁸

In countries as different as the USA, Colombia, Mexico and Italy upsurges in organized crime activity go together with upward trends in overall homicide rates.³⁹ In Kosovo, homicide rates plummeted after the reconstruction of the justice and security sector by the

³⁶ Sellin, T. & M. Wolfgang (1964), *The Measurement of Delinquency*, New York, John Wiley.

³⁷ See also Letschert, R.M., Staiger, I., Pemberton, A., *Victims of Terrorism, Towards a European Standard of Justice*, Springer Press, 2010, Chapter 1.

³⁸ Gonzalez-Ruiz, S. (2001). Fighting drug cartels on the Mexico-United States border. *Forum on Crime and Society*, Vol. 1, pp. 19-31.

³⁹ Rubio, M. (2001), Homicide, kidnapping, and armed conflict in Colombia. *Forum on Crime and Society*, Vol. 1, pp. 55-69. See also Orlando, op. cit.

United Nations, including focused police action against the local mafia. In Serbia homicide rates went down after the disruption of the local organized crime groups after the assassination of the prime minister in 2002.⁴⁰ Elsewhere rampant organized crime has manifested itself in surges of mob-related violence. Since 2007 over 14,000 citizens lost their lives in Mexico in the ongoing drugs wars. In the Brazilian capital Rio alone, about 25 people were recently killed on a single day by drugs gangs (October 17th 2009).⁴¹ Murder rates have also exploded to unprecedented levels in Honduras, El Salvador and Guatemala (UNODC, 2010). Besides drugs, trafficking for exploitation in sex industries is one of the largest global criminal markets. Estimates of trafficked women and children are in the range of 2 to 4 million per year. Many of those trafficked persons are subjected to various forms of violence and of fraud both during their recruitment and during their exploitation at the place of destination.⁴²

Indirect victims

It is generally understood that organized crime invariably goes together with the corruption of relevant public officials including high-ranking police officers, judges and politicians. "Buying" protection from the state is a necessary condition for the sustained growth of organized crime activities. In many countries organized crime groups enter into alliances with public officials and politicians to plunder public resources. The highest level of infiltration encompasses the capture of the state's policies by criminal groups who are then able to unduly influence law-making, policy setting and crucial (appeal court) judicial decisions (state capture).

The symbiosis between organized crime groups and corrupt public officials has been documented in case studies in many different countries. In Italian legislation infiltration of the licit economy, the state and the electorate process have been incorporated as defining traits of organized crime.⁴³ In Europe systematic collusion between organized crime and political elites has been well-documented in several Eastern European countries, most notably Bulgaria.⁴⁴ In an edited volume, Roy Godson (2003), assembled case histories of what he names Political-Criminal Nexuses.⁴⁵ Analyses are presented of collaboration between organized crime and political elites in Colombia, Mexico, Russia, the USA, Nigeria and Taiwan. In his view these nexuses constitute a menace to society by undermining key administrative functions and the rule of law. In analyses of the World Bank Institute "state capture"—defined as undue influence on laws, policies, and regulation by special interest groups – has been found to be correlated to current and future economic performance.⁴⁶ In an important elaboration of these notions, Kaufmann and

⁴⁰ Dulic, D. (Ed.) (2005). *Human security indicators in Serbia*. Philo, Belgrad (in Serbian with an English summary).

⁴¹ Although the casualties of drugs wars could be construed as side-effects of unnecessary criminalization, the concept of victimless crimes seems not applicable in countries where organized crime groups have entrenched positions. In such situations the repeal of anti-narcotic laws is likely to trigger diversification of the criminal activities of organized crime groups to other illicit markets.

⁴² Aronoff, A. (2008).

⁴³ Jamieson, A. (2000), *The Antimafia, Italy's fight against organized crime*, Great Britain, MacMillan Press.

⁴⁴ Roth, J. (2005), *The New Bulgarian Demons*, Sluntse.

⁴⁵ Godson (2003), op. cit.

⁴⁶ In 'comparative economics' it is now generally acknowledged that sound legal infrastructures, especially those governing 'property rights', are a primary determinant of economic performance. See Knack, S., Keefer, P. (1995), 'Institutions and economic performance : cross-country tests using alternative institutional measures', *Economics and Politics*, vol 7, pp. 207-227; Kaufmann, D., Kraay, A., & Mastruzzi, M. (2004), *Governance Matters III*:

Kraay have attributed the negative influence of high-level corruption on development to the intermediary factor of “cronyism,” the widespread interference of particular interest groups in rational decision-making in the economic domain.⁴⁷ Infiltration in the legitimate economy and political process is as discussed a defining characteristic of mafia-type organizations. If such “crony capitalism” is indeed the main impediment of economic development, organized crime, as an especially entrenched type of cronyism, may well be at the heart of the governance-related economic problems of many countries. The Sicilian economy, for example, seems to have been seriously hampered by the reign of the mafia and started to prosper only after the local mafia bosses were put on the defensive through the maxi-trials and community mobilization.⁴⁸ The experience with racketeering in New York, USA also points to economic revitalization after the defeat of mob-related racketeering in several sectors of the local economy.⁴⁹

Analyses of the interrelationships between organized crime, institutional failure and economic growth cannot be solely based on case studies. A systematic assessment of the economic impact of organized crime requires the construction of a statistical measure of organized crime. Some preliminary work on the construction of a composite index of organized crime has been conducted.⁵⁰ As one of our measures of organized crime, we have used the results of the annual business executives’ surveys commissioned by the World Economic Forum on the perceived costs of organized crime to businesses. An index was also constructed to measure the extent of high-level corruption using existing survey research findings collated by the World Bank Institute.⁵¹ The index of organized crime perception was very strongly correlated to the index of high-level corruption ($r=.82$; $n=67$, $p<0.05$). The results confirm the close links between organized crime and corruption.

To empirically explore whether organized crime hampers or spurs economic growth, we looked at the correlations between the composite measure of organized crime prevalence, comprising of a set of intercorrelated indicators and indicators of economic development. The index for organized crime prevalence was found to have a strong negative correlation to GDP per 100,000 population ($r=.76$). Figure 5.1 shows results in the form of a scatter plot.

Figure 5.1: Prevalence of organized crime (composite organized crime index) and GDP per capita

Governance Indicators for 1996-2002, Policy Research Working Paper 3106, Washington, DC, World Bank: <http://www.worldbank.org/wbi/governance/pubs/govmatters3.html>.

Feld, L. P., & Voigt, S. (2003), ‘Economic growth and judicial independence: Cross country evidence using a new set of indicators’, *European Journal of Political Economy*, Vol. 19, pp. 497-527.

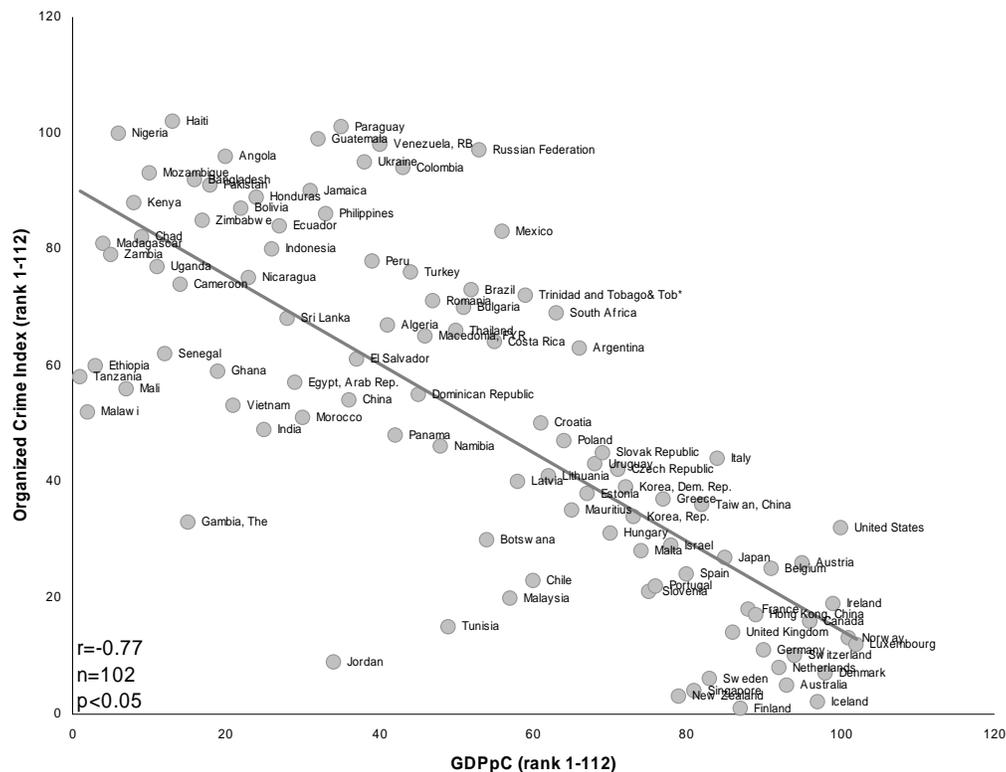
⁴⁷ In a case study of ‘cronyism’ in a Latin American country by Kaufmann and Kraay (2002), drug cartels and other organized crime groups are mentioned as drivers of crony capitalism. See Kaufmann, D., & Kraay, A. (2002), ‘Growth without governance’, *Economia*, Vol. 3, pp. 169-215.

⁴⁸ Moody Financial Certification , a financial analysis agency, upgraded its rating of the city of Palermo to Aa3, meaning excellent, in 2000.

⁴⁹Giuliani, R.W. (2002), *Leadership*, Miramax Books.

⁵⁰ Van Dijk, J. J. M., Shaw, M., & Buscaglia, E. (2002). ‘The TOC convention and the need for comparative research: Some illustrations from the work of the UN centre for international crime prevention’, In: Albrecht, H.-J., & Fijnaut, C. (Eds.), *The containment of transnational organized crime. Comments on the UN Convention of December 2000*, Freiburg, Max Planck Institut für Ausländisches und Internationales Strafrecht.

⁵¹ Johnson, S., Kaufmann, D., & Zoido-Lobaton, P. (1998), ‘Regulatory discretion and the unofficial economy’, *The American Economic Review*, Vol. 88, pp. 387-392.



The statistical results depicted in Figure 5.1 lend empirical support to the hypothesis that organized crime is structurally bad for the local economy.⁵² The existence of Political–Criminal Nexuses deters investment and impairs the capacity of governments to promote sustainable economic growth. In our view, the most important negative effect of organized crime, offsetting all possible benefits, is its pernicious impact on governance. Where organized crime groups are powerful, legislation, policymaking and legal rulings no

⁵² The finding that on balance significant revenues from drugs trafficking or other forms of lucrative crime slow down rather than strengthen economic growth may seem paradoxical or surprising on first sight. But this phenomenon is actually just another example of what development economists have called the ‘resource curse’ (MacMillan, J. (2005), ‘The Main Institution in the Country is Corruption: Creating Transparency in Angola’, *CDDRL*, Stanford Institute on International Studies: <<http://cddrl.stanford.edu>>).

As mentioned above, developing countries that are rich in natural resources such as oil or diamonds often experience reduced rather than enhanced economic growth. This is because their institutions are undermined by rampant corruption at the highest level of government. Some of the main drugs exporting countries seem to suffer from the same predicament. In such countries drugs generate by far the most profitable opportunities for ‘rent seeking’ by corrupt officials. While corrupt elites accumulate great personal wealth, their countries remain underdeveloped and poor Reuter, P., et al. (2004), ‘Mitigating the effects of illicit drugs on development. Potential roles for the World Bank’, *Rand Corporation project memorandum series*, PM-1645-PSJ-1. Prepared for the World Bank.

longer serve the general interest but the interests of the few. Through the pervasive bias of legislation, policy decisions and jurisprudence, market efficiencies are undermined and both local and foreign investors lose confidence in the legal and regulatory functions of the state and consequently stay away. Even if the illegal activities of organized crime groups can be regarded as “victimless crimes,” their overall impact on society constitutes a grave form of collective victimization. Far from being victimless, modern organized crime qualifies as a predatory crime à l’outrance. In many parts of the world economically poor nations or cities are trapped in a vicious circle of bad governance, rampant organized crime and a lack of economic prospects. In such countries powerful crime groups forge close alliances with corrupt political elites and can therefore operate with near impunity. The experiences in Sicily have borne out the validity of this point of view. In his memoirs former mayor of Palermo, Orlando, proudly observed that Palermo – for many decades an economically problematic city – had at the end of his term been given a triple A rating by Moody International Certification.⁵³ The successful fight against the mafia had paid off generously in economic terms.

5. Learning from the Italian experience

In his memoirs Orlando remembers how he was drawn into Sicilian politics when a friend who tried to reform the Christian Democratic Party was assassinated by the mafia. Around 1980 the mafia, involved in heroin trade, had become more powerful than ever and had de facto captured the Sicilian state. A turning point was the public outrage about the killing of Dalla Chiesa, head of the anti-mafia unit of the Italian police. At the funeral politicians from Rome were heckled and for the first time the Archbishop of Palermo, Pappalardo, openly spoke out against the reign of terror of the mafia and the conspiracy of silence around it. Criminal investigations into the activities of mafia-leaders were spearheaded by a pool of magistrates headed by the judges Falcone and Borsellino. At a meeting in 1985 Orlando and the two leading magistrates decided to join hands in the ongoing fight against the mafia. At his occasion Orlando used for the first time the metaphor of the Sicilian Cart with two wheels, “the wheel of justice – the law, the police, the courts, the prisons; and the wheel of civil society – an informed and responsible citizenry and a growing economy.”

To express his political and moral support for the legal actions against the mafia and to show that the inhabitants of the city had collectively been victimized, Orlando decided to make the City of Palermo a civil plaintiff (Partie civile) in the upcoming maxi-trial. The court accepted the city as civil plaintiff and would eventually award significant sums of compensation to the city as part of their final verdict. At the trial several family members of persons murdered by the mafia also spoke up as civil plaintiffs, including the family of Dalla Chiesa and a mother of a murdered mafia member. Her example would later be followed by a social movement called Women Against the Mafia. A few days before the trial the City of Palermo convened a “National Assembly Against the Mafia,” where hundreds of local mayors and administrators endorsed the necessity to tackle the mafia comprehensively with all available legal and social means. In Palermo the education system was mobilized to raise awareness and teach pupils classes in civics condemning mafia practices. At a later stage school classes adopted recently restored public buildings. Educational efforts like these are directed at the development of what the organizers have named a culture of legality (or lawfulness).⁵⁴ Legislation was passed to enable judges to

⁵³ Orlando, op. cit.

⁵⁴ Schneider, J. & P. Schneider (2002), ‘Suggestions from the Antimafia Struggle in Sicily’, *Anthropological Quarterly*, 75, 1, pp. 155-158.

confiscate the assets of convicted mafia groups and transfer ownership to social councils or non-profit organizations for social ends. Land once owned by the mafia is used by organizations such as Placido Rizzotto-Terra Libera which labels its olive oil and other products as coming from land “liberated from the mafia.”⁵⁵ In the Palermo province an organization Development and Legality uses confiscated mafia assets to create jobs in agriculture for unemployed youngsters. Across Italy associations have been set up to promote legal and social action against the mafia, often named after citizens or officials killed by the mafia. In 1995 a national alliance of anti-mafia associations was formed, Libera, Associations, Names and Numbers against the Mafia. Vice-president of Libera is the magistrate Rita Borsellino, sister of one of the magistrates killed by the mafia in 1992.

In 1992, the magistrates Falcone and his wife and Borsellino were killed by mafia members. Somewhat later the mafia also killed an activist priest, father Pino Puglisi, who had organized a group of young anti-mafia volunteers in a mafia-controlled neighborhood in Palermo. After the pope, John Paul II, had openly accused the mafia during a trip to Palermo, several churches in Rome were bombed by way of retaliation. Efforts to control the mafia were subsequently stepped up. An important breakthrough in the fight against the mafia was the arrest of Totò Riina in 1993. Since then the power of the mafia in Sicily seems to have somewhat declined.⁵⁶ One indicator of the decline is the drastic reduction in the number of mafia-related murders.

In their analytical reviews of the fight against the mafia experts Paoli and La Spina make a distinction between direct and indirect anti-mafia policies.⁵⁷ Direct policies consist of law enforcement and imprisonment and indirect measures of preventive actions including the promotion of a culture of legality. According to both authors successes in the fight against the Italian mafia have mainly been obtained with direct legal means. There can be no doubt that in the fight against well-organized and ruthless criminals intrusive investigative techniques, witness protection and harsh penal measures are required. The necessity of these direct measures should not blind us to the complementary roles of indirect policies. Many of the indirect policies can be seen as means to rally support for the state’s fight against the mafia around a program of solidarity with victims and of victim activism. The Sicilian experience shows how indirect policies can help to build and sustain the victim-based legitimacy of the legal measures.

At the UN Signing Ceremony in Palermo in 2000 several side-events took place, including a Symposium on The Role of Civil Society in Countering Organized Crime: Global implications of the Palermo, Sicily Renaissance. At this symposium presentations were given by cardinal Pappalardo, Rita Borsellino, Maria Falcone and Orlando. Speakers from other countries such as Hong Kong, Mexico, Georgia and Botswana shared their

⁵⁵ Spina, A. La. (2008), ‘Recent Anti-mafia Strategies: the Italian Experience’, In: D. Siegel & H. Nelen (Eds), *Culture, Markets and Policies*, Springer.

⁵⁶ Paoli, L. (2008), ‘The Decline of the Italian mafia’, In: D. Siegel & H. Nelen (Eds), *Culture, Markets and Policies*, Springer.

⁵⁷ Paoli, op. cit.; La Spina, op. cit.

experiences with preventive measures against organized crime.⁵⁸ Projects on civic education against organized crime were in the following years initiated by the Sicilian Renaissance Institute and partners in Georgia, Mexico and Lebanon.

In June 2008 the Italian organizations Libera, just mentioned, and Terra del Fuoco, launched in the European Parliament a new initiative aiming to extend Italian non-governmental anti-mafia activities to the legal space of the European Union and beyond. This new European initiative consists of a network of over forty associations and NGOs from thirty different European countries, called FLARE – Freedom, Legality and Rights in Europe ([www. Flarenetwork.org](http://www.Flarenetwork.org)). The participating organizations are active in their home countries in related fields such as youth, violence against women, sexual exploitation of children, environmental protection, human rights, the fight against corruption, and support for migrants and refugees. In 2009 the network received financial support from the European Commission and set up a secretariat in Turin, Italy. Considering the transnational nature of organized crime, the FLARE members seek to introduce a new strategy against organized crime that will complement the efforts of national institutions. The strategy will comprise of awareness raising and mobilization of civil society against organized crime. The overarching aim is to seek a leading role for civil society in the fight against transnational organized crime. The network has set itself the following operational goals:

- raising awareness among European citizens about the penetration and growing impact of organized crime in Europe and in surrounding territories through the organization of social events and providing information by means of a web portal and online newsletter;
- supporting national and international institutions in the fight against transnational organized crime;
- lobbying for the adoption by the European Parliament of a “European Day in memory of the victims of the mafia and of commitment to tackle organized crime” on March 21 of each year;
- requesting the European Commission and the Council of Europe to pass legislation on the reuse for social purposes of property and goods confiscated from international criminal organizations.

The network has launched a website with a virtual library. It has also started a comprehensive research program aimed at mapping and monitoring trends in organized crime in Europe. The network intends to launch an international version of the Italian magazine *Narcomafie*, a production of the Turin-based NGO Gruppo Abele.⁵⁹ Other plans for the future include a legislative guide on asset confiscation and redistribution, training programs for European civil servants and the identification and recruitment of citizens and officials who can present personal victim testimonies about the impact of organized crime on their lives. At a later stage the network also aims to establish a network of victims of organized crime to promote peer support and joint action to obtain recognition from state institutions (see annex A for full text of the Declaration). On March, 20, 2010 the Association Libera organized a manifestation called Day of Memory of

⁵⁸ Godson, R. (2000), *The role of civil society in countering organized crime*, *Global implications of the Palermo, Sicily Renaissance*. UNODC/ The Sicilian Renaissance Institute, Cita di Palermo, Palermo, 14 December, 2000.

⁵⁹ The name Abele refers to the biblical figure of Abel, the first victim. The Gruppo Abele was originally founded as a voluntary aid group for drugs addicts in Turin, Italy.

Victims of Organized Crime in Milan, Italy. At this manifestation, attended by over 150.000 participants from 30 different countries, names were read out of known mafia-victims.

6. The ways forward

As discussed, the halting implementation of the UNTOC is in our view due to a confluence of factors. A prominent factor seems the overriding concern about international terrorism in the post 9/11 period. The key factor holding back a more focused implementation of the UNTOC and related UN instruments is a lack of political will. Lack of political will is in its turn caused by lingering doubts about the legitimacy of the fight against transnational organized crime. Does the world community really need to spend considerable sums on legal action against abstract phenomena as racketeering, human trafficking or grand corruption or are other, political interests at stake? Decision making on the elaboration of the UNTOC was from the outset primarily guided by considerations of national security. When priorities in the national security agenda of the Western powers shifted, the convention was bereft of its key constituency while no other powerful stakeholders came to the fore.

Organized Crime Corruption Nexuses still prevail in many parts of the world and have serious negative spin-offs for the world community. In our view implementation of the Big Five UN instruments on global crime is as urgently required now as it was at the time of its entry into force. A successful relaunching of the implementation of the Big Five hinges on their chances to obtain a renewed legitimacy by focusing on the advancement of concrete interests of victim communities. Organized crime, besides victimizing many citizens, impoverishes local communities. For this reason it is substantively more closely related to the fight against poverty than to the wars on terrorism or drugs and should therefore strategically and operationally be linked to the global agenda of human development.

Point of departure for a new strategy on organized crime should in my view be the role of organized crime as spoiler of institutional arrangements needed for sustainable and equitable human development and protection of the environment. It should ideally be understood and presented in the framework of the new concept of human security. According to this concept, discussed in more detail in *Chapter 2*, international policies and aid policies ought to be directed not at protecting national security but at protecting ordinary people against threats to the core of their existence. The ultimate objective of human security has once been succinctly summed up as “freedom from fear and freedom from want”. Advocates of the human security concept stress the need of a holistic approach to the protection of human security interests. Actions should be guided by a full understanding of the linkages between various threats and monitoring should look at effects in a comprehensive model representing all relevant parameters. In our view fighting organized crime in the framework of the UN conventions and protocols should be understood and positioned as an integral part of the *United Nations Millennium Declaration*. In its current format, the Millennium Declaration and its follow-up have overlooked the need to give priority attention to issues of governance, specifically to the need of addressing the Political Crime Nexus.⁶⁰ Conventional aid policies have come

⁶⁰ One of the advisers of the Millennium Declaration, the economist Jeffrey Sachs consistently underplays the importance of institutional factors as key determinants of economic growth and proves to be blind for the impact of CPN (Sachs, J. (2005), *The end of poverty, How we can make it happen in our lifetime*, London, Penguin Group). Several authors have pointed at the need to integrate a security and justice component in the Millennium Goals (Eiras, A. I. (2003), ‘Make the rule of law a necessary condition for the millennium challenge account’, In: *The heritage foundation backgrounder*, Washington, DC, 7 March). In an interview with a Dutch newspaper another UN adviser, Paul Collier, qualified his proposals for continued development aid to African countries with the observation

under increasing attack for their lack of tangible results.⁶¹ Alignment of a UNTOC implementation program and the Millennium program is a win-win proposition by enhancing the legitimacy of both. It will demonstrate that protagonists of development aid are ready to face the unpleasant realities of organized crime and corruption and their nefarious impact on human development. It will at the same time enhance the legitimacy of comprehensive policies to tackle organized crime through multi-agency cooperation across the world addressing ordinary people's concerns for protection against violence and exploitation and their hopes for economic prosperity.

The alignment of UNTOC implementation to the Millennium Goals will lead to a fundamental resetting of its agenda of implementation. The focus will need to be broadened to include a broad range of preventive measures as listed in both the UNTOC and the Convention against Corruption. Implementation of the Big Five will be part and parcel of a global overhaul of the institutional infrastructures needed for human development. Within that context, capacity building in the fields of law enforcement, prosecution, courts and corrections can finally become the priority of official development aid that it needs to be.

7. Engaging civil society and victims

To structurally enhance the long term legitimacy of UNTOC implementation, civil society should be engaged in the fight against transnational organized crime to the maximum extent possible. In the UNTOC the article on Prevention encourages States Parties to promote public awareness regarding existence, causes and gravity of and the threat posed by international organized crime and to promote public participation in preventing and combating such crime. States Parties are obliged to inform the Secretariat of the United Nations (i.c. UNODC) of the authorities that are involved in preventive measures with a view to mutual exchanges and collaboration. This obligation should be duly followed up by the Conference of States Parties. Within relevant meetings of the United Nations accredited Non Governmental Organizations are traditionally allowed to make contributions to the deliberations through presentations at the end of the discussion on items on the agenda. An example of such contributions is the presentation of the Global Alliance against Human Trafficking at meetings of the Ad Hoc Committee on the Elaboration of the UNTOC and its protocols. It is unfortunate that the Conference of States Parties seems unwilling to give such hearings to relevant NGOs when discussing implementation issues. In my view representatives of NGOs such as the FLARE Network and the Global Alliance Against Trafficking in Women should be invited to share their information and views with the Conference. An appropriate format for such hearings of civil society should be created within the rules of procedure of the Conference. If this proves to be unfeasible, the Commission for Crime Prevention and Criminal Justice as the

that in some places the political power of organized crime should be addressed first. As worrying example he mentioned the presence of Colombian organized crime groups in Guinea-Bissau (NRC/Handelsblad, 9 October, 2009).

⁶¹ Moyo, D. (2009), *Dead Aid; Why Aid is not Working and How there is Another Way for Africa*, Allen Lane

parent body of the Conference should organize such hearings during its annual sessions in Vienna.⁶²

The UNTOC contains an article on the rights of victims.⁶³ States Parties should provide victims “assistance and protection, in particular in cases of threat of retaliation or intimidation.” The article also obliges States Parties to establish “appropriate procedures to provide access to compensation and restitution for victims.” They should, finally, also “enable views and concerns of victims to be expressed and considered at appropriate stages of criminal proceedings.” With these provisions, the article faithfully incorporates at least some of the elements of the UN Victim Declaration of 1985,⁶⁴ but falls short of establishing an up-to-date statute for victims in many respects. Rights to assistance are not specified and seem limited to victim-witness protection. In the protocol against human trafficking assistance to victims of trafficking is specified but their actual provision is optional. The provision on victim compensation seems to refer to procedural arrangements for claiming compensation from offenders and not to the establishment of a State Compensation Fund. Finally, and most importantly, the right to express views in criminal proceedings fails to mention the possibility of presentations by representatives of victim communities rather than individual victims. Understandably the article has received little scholarly attention. In commentaries by legal or organized crime experts the content of the article is rarely even mentioned.⁶⁵ The role of the victim is generally considered to be marginal in cases against mafia groups. The key interest of victims in this field is seen as the provision of adequate protection in their capacity of witnesses for the prosecution. The Rome Statute and its bylaws have tailored relevant elements of the Victim Declaration to the needs of victims of genocide and the other crimes that will be tried by the ICC (see *Chapters 3 and 12* in this volume). The provisions for social assistance and protection are described in great detail and their execution is put in the hands of a special unit within the court. A special unit assists victims in obtaining specialized legal aid. Elaborate provisions have been introduced for the compensation of individual and collective victims from a Victims Trust Fund. Finally, the Rome Statute contains detailed provisions for victim voice in the proceedings including for legal representatives of communities of collective victims. In these and other respects the victim-centered provisions in the ICC should be taken as a model by the Conference of the States Parties of the UNTOC. The experiences in Italy over the past fifteen years have proven that the presentations by legal representatives of collective victims can make an important contribution not only to victim compensation but also to the impact of anti-mafia trials on public opinion. In other countries including Belgium representatives of victim communities regularly act as civil plaintiffs against traffickers in women. In 2007 an international NGO

⁶² In a highly critical assessment of the way the Financial Action Task Force monitors the implementation of anti-corruption legislation, including the OECD anti-bribery convention and the UNCAC, Global Witness, an anti-corruption lobbying group, advises governments participating in the FATF to forge stronger links not only with official anti-corruption agencies but also with civil society (Global Witness (2009), *Undue Diligence; how banks do business with corrupt regimes*, March 2009).

⁶³ UNTOC, article 25, Assistance to and protection of victims.

⁶⁴ Dijk, J. J. M. (2005), ‘Benchmarking legislation on crime victims: The UN victims declaration of 1985’, In: Vetere, E., & David, P. (Eds.), *Victims of crime and abuse of power: Festschrift in honour of Irene Melup*, Bangkok, 11th Congress on Crime Prevention and Criminal Justice, April 2005, United Nations, New York.

⁶⁵ Albrecht H-J. & Fijnaut, C. (2003), *The containment of transnational organized crime*, Kriminologische Forschungsberichte, Freiburg, Max Planck Institute for Foreign and International Criminal Law.

was set up, SOS Legalita, which aims to provide legal aid to citizens or officials victimized by organized crime including through acting as civil plaintiff in criminal cases. As discussed, the FLARE Network advocates the confiscation of criminal assets of organized crime groups and their allocation to non-profit organizations. The UNTOC contains an article on the disposal of confiscated assets which mentions the option to contribute the value of confiscated assets to the Special Account for capacity building in developing countries or “intergovernmental bodies specializing in the fight against organized crime” (UNTOC, art. 14, 3, c).

The Conference of States Parties is obliged to review periodically the implementation of the UNTOC and to come up with recommendations to improve the convention and its implementation. In its 2008 appeal for a better review mechanism for the UNTOC, the Global Alliance against Trafficking in Women has called for involvement of civil society and especially victims in the consultations.⁶⁶ In my view the Conference of States Parties should indeed seek ways to engage civil society in its deliberations and consult specialized NGOs and researchers on issues of implementation. It should seek guidance from the experiences of the International Criminal Court on how the legal provisions and implementation of the UNTOC could be made more victim-centered. One practical way to support victims would be the establishment of a legal aid fund for individual and collective victims of transnational organized crime. By reorienting itself to its key stakeholders outside government, the Conference of States Parties will significantly enhance its legitimacy and thereby its chances for more effective and sustainable implementation.

⁶⁶ GAATW statement of 13 October, 2009 : “This will finally benefit the victims of transnational organised crime who are most in need of the protections that the UNTOC was intended to provide. Such persons or their representatives are often at the forefront of evidence gathering and legal investigations and consequently bear first-hand, practical experience of UNTOC”.

Annex A

Rome, October 25, 2009

We, undersigned citizens, men and women of every age, take the responsibility to:

Undertake in our everyday life the values of peace, of solidarity, of human rights, of legality and of civil cohabitation against any form of violence, of illegality and of denial to humans' dignity;

Promote and participate to all initiatives, projects and activities necessary to free the world from organized crime;

Bring forward the memory of victims of organized crime as a testimony of a just, courageous and responsible world.

We commit ourselves to:

Create a global alliance of international solidarity against organized crime;

Establish an independent commission, formed by civil society organizations, to evaluate Italian laws in regard of the Universal Declaration of Human Rights;

Defend the right of information granted by Article 21 of the Italian Constitution by reinforcing local experiences, spreading free access to sources and backing of – even by the judiciary – the work of those journalists who are exposed and committed the most;

Defend the absolute value of independency of the Bench, a true patrimony for democracy and crucial value for a system of equality and justice for citizens before the Law;

Socially promote – given the inactivity of national institutions on the matter – a law proposal for the implementation of crime against the environment into the penal code;

Sustain cooperatives and associations that work on the social re-use of properties confiscated to organized crime in order for them to become – from south to north – the engine of an economy of legality;

Promote in all local institutional bodies new legislative and administrative tools to grant transparency in assigning tenders and in the management of public services;

Underline the relevance of the school system, of universities and of all training agencies in the matter of a definition of new social policies and new legislative measures for matters such as immigration, human rights, employment and the fight against organized crime;

Spread knowledge of citizenship that enables youngsters to become main actors of a process of education to legality, to the values of responsibility and of participation;

To grant confrontation between professionals in the field of literature, art and entertainment who through music, movies, theatre, writing and fictions work for producing quality and for spreading knowledge about the organized crime phenomenon, enhancing a genuine culture of democratic legality;

We suggest the Italian government, Parliament, political parties, European and supranational institutions to:

Create effective and efficient political and legislative counter measures to transnational organized crime;

Create in Italy, as indicated by the UN, a national human rights commission;

Expand to a European level the legislative norm that allows the social re-use of properties seized from organized crime;

Welcome the European directive that extends corruption as a crime also when perpetrated between private bodies;

Implement an independent authority against corruption, empowered with inspection and control tools;

Assure the application of the law that foresees the duty of denouncement for whom is subjected to racketeering;
Abolish all discriminations against the relatives of innocent victims of organized crime. They must be considered as a civil model and a resource for the Country; to implement “tutors”, a professional figure, as the sole point of reference for the victims;
Assure adequate palimpsest in the national TV channels for informing and analyzing more important social problems of the Country, in respect of the public service contract.

We reaffirm the urgency of:

Define and approve urgently a single text for anti mafia legislation, able to overcome actual dysfunctions and to grant more efficient countermeasures by law enforcement agencies and the Bench;
Establish a national agency for the management of those properties taken from organized crime in order to ensure quickness and transparency when re-assigning those properties to the collectivity;
To adopt an ethic code to prevent people who have been condemned by a court from holding institutional positions;
Reinforce counter measures against the eco-mafia and the illegal trafficking of waste;
Make the fight against the building without planning permission a more concrete and daily activity, eliminating practices of supporting the demolition of illegal cement buildings;
Grant the persons subjected to human trafficking the status of victims by reinforcing social and institutional support to those who denounce the perpetrators;
Fight illegal employment that too often foresees a condition of slavery for migrants, through the affirmation of their right to citizenship;
Promote a new anti-drug law, centered upon people's health and the decrease of demand;
Rewrite the anti-doping law and promote the values of sport inspired on principles of loyalty and in respect of rules;
Establish an independent authority to fight the laundering of money coming from illicit business activities;
Hit the international trafficking of weapons, the “grey zones” and fiscal paradises by implementing the crime of “mediation”;
To institutionalize, through a legislative measure, March 21 as the Day in Memory of all victims of organized crime.