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## **The UN Convention and the Global Problem of Organized Crime**

CYRILLE FIJNAUT

### **I. Introduction**

It is quite self-evident that there is a great deal to be said about the problem of organized crime in our modern-day society. In this paper, however, I shall not be seeking to offer a concise summary of the sum total of that knowledge (Corsun, 1998; Cretin, 1998; Einstein and Amir, 1999; Friman and Andreas, 1999; Kelly, 1986; Martin and Romano, 1992; Ryan and Rush, 1997; Williams and Vlassis, 2001). The aim here is to look at the problem in the light of the content and the aims of the UN Convention against Transnational Organized Crime. In view of the short time-frame within which this has to be done, this paper will focus on three aspects:

- the content of the Convention with regard to the definition of organized crime and the policies to combat it;
- the limits of our existing knowledge about organized crime in the world;
- the part that the Convention can play in improving our knowledge of this phenomenon.

A number of important topics will therefore be intentionally excluded. These include the transnational efforts that are being made by international organizations (apart from the United Nations), inter-State collaborative partnerships and individual governments to keep organized crime under control. The limitations of the policies that are being pursued – at whatever level – to combat this type of crime are another important subject that will not be touched upon here. These limitations include the existence of all kinds of black markets in the world as a result of large-scale poverty,

problems of dictatorships and civil wars that make proper domestic administration and international cooperation impossible, major economic and financial interests of States or national power groupings in criminal activities and, to some extent, the constitutional relationships in democracies.

## II. Three comments on the Convention

This Convention is a comprehensive attempt to make coherent arrangements to deal with a large number of issues that are directly and indirectly linked to inter-State cooperation aimed at combating organized crime. In that sense the authors of this Convention deserve a great deal of praise for their ambitious initiative. But the fact that this Convention is open for discussion on a number of points is not surprising either. The many complications and dilemmas, and hence the numerous compromises that are usually made when seeking to fight organized crime, are of course part and parcel of this Convention, and automatically provoke a certain amount of controversy. The comments that follow refer to just three aspects: the definition of organized crime, the emphasis on the transnational character of this type of crime and the origins of the policies to combat it.

On the first point it should be mentioned that the Convention adopts a very broad definition of organized crime<sup>1</sup>, in fact so broad that all types of more or less serious crime fall within the scope of the Convention. Although this may have benefits from the political and practical point of view, it does mean that the concept of organized crime actually no longer has any specific meaning. This, in turn, makes it very difficult to gather information on a global scale about the nature, scale and development of organized crime. And ultimately it makes it virtually impossible to realistically appraise the situation in these areas throughout the world. That is because this all-embracing definition gives both individual States and individual researchers scope to use their own definitions in gathering and interpreting data on the nature, scale and development of organized crime, with the result that the findings of official reports or the results of academic research will be difficult to compare.<sup>2</sup> The fact that using a broad (even excessively broad) definition in this way has an impact on interna-

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<sup>1</sup> See Article 2, paragraphs (a), (b) and (c) of the Convention concerning this definition.

<sup>2</sup> It is therefore worth mentioning that in Article 28, paragraph 2, the parties are even encouraged to develop their own definitions of criminal activities etc. at international and regional level.

tional comparative reports and studies has been clearly shown in the European Union. In this context a very broad official definition of organized crime is also used. In practice, however, the various Member States interpret this definition in their own way. The result is that the description of the problems with organized crime in the European Union, as formulated by Europol, is so different for the various Member States that not only is comparison between countries virtually impossible, but building a cumulative picture is also a perilous undertaking.<sup>3</sup>

With regard to the second point – the emphasis on the transnational character of organized crime in the Convention<sup>4</sup> – it can be stated that transnational organized crime is presented in the Convention as a separate category of organized crime, as an offence that is transnational "in nature". This characterization of organized crime is very much open to discussion. On the one hand it can be observed that a lot of organized crime does not have a transnational character at all, but is primarily a local phenomenon, for example in New York City or in Southern Italy.<sup>5</sup> Consider, for example, all the forms of organized crime that consist in illegal control of legitimate economic sectors such as the construction industry (or at least parts of it) and the transport sector in certain industries. On the other hand those types of organized crime that may at first sight seem to be primarily transnational in nature – because they involve the supply of illegal goods and services on the black market – are to a large extent a local problem too. Take the example of synthetic drugs or "blood diamonds". Their production does not take place in some "transnational" location, but – in the

<sup>3</sup> In this context, cf. the full version of, for example, the "2000 European Union Organised Crime Situation Report", which was compiled by Europol. In the abridged public version of this report, which was published in 2001 by the European Communities, this problem is of course not so conspicuous.

<sup>4</sup> In Article 3, paragraph 2, of the Convention, which defines what is meant by an offence that is "transnational in nature", it is implicitly recognized that such an offence always affects more than one State and therefore in this sense always has a national/local character as well, but there is no explicit recognition of the local roots of transnational organized crime. The "Report of the Ad Hoc Committee on the Elaboration of a Convention against Transnational Organized Crime" and the "Interpretative Notes for the Official Records (travaux préparatoires) of the Negotiation of the United Nations Convention against Transnational Organized Crime and the Protocols thereto" also fail to demonstrate this insight (United Nations, General Assembly, A/55/383 and A/55/383/Add. 1).

<sup>5</sup> On the situation in New York City, see inter alia J. Jacobs, Ch. Panarella and J. Worthington, (1994), and J. Jacobs, C. Friel and R. Radick (1999). On the situation in Southern Italy, compare P. Arlacchi (1996), D. Gambetta (1993) and L. Paoli (1997).

case of the drugs – simply in the southern part of the Netherlands and the north of Belgium or – in the case of the diamonds – in Sierra Leone or Za-ire. The same is also true of their distribution. This does not happen "somewhere in the world", but – in order to stay close to the drugs – in the local consumption centres in western countries, and increasingly also in southern and oriental countries.<sup>6</sup> The diamonds mentioned find their way to jewellers in major cities – or at least they used to do so – through the markets in Belgium, the United Kingdom and the United States.<sup>7</sup> The transnational character of these forms of organized crime is usually therefore limited to the cross-border transportation of the relevant goods and/or raw materials that are needed to make them, or of the money that is earned through the sale of these goods. It is also important to establish this, since it means that combating organized crime should not be presented as something that can only be done effectively by international organizations. On the contrary, efforts to combat this form of crime will stand or fall by the deployment of (or failure to deploy) adequate resources by national governments, both to deal with problems within their own territory and with a view to mutual cooperation. It is therefore very important for the countries that are party to the Convention to introduce a number of domestic measures. Clearly the authors of this Convention have also perceived that the effectiveness of efforts to combat so-called transnational organized crime actually depends to a large extent on the ability and willingness of individual countries to curb this form of serious crime.

On the third point it should be emphasized here that the Convention very much reflects the criminal and other policies that have been developed in recent decades in the United States and in the Member States of the European Union to combat organized crime.<sup>8</sup> This influence may have been unavoidable, to some extent, precisely because in these countries – by and

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<sup>6</sup> See the 2000 annual report of the Synthetic Drugs Unit in Eindhoven, the Netherlands. See also the hearing held on 15 June 2000 before the Subcommittee on Crime of the American House of Representatives on the "Threat Posed by the Illegal Importation, Trafficking, and Use of Ecstasy and Other 'Club' Drugs" (<http://commdocs.house.gov/committees/judiciary>).

<sup>7</sup> Cf. the paper by M. Kaplan entitled "Carats and Sticks; Controlling Civil Wars through the Economic Transactions that Nurture Them", whose central focus is the illegal diamond trade. This paper was written in 2001 - 2002 as part of her fellowship at the Center for International Studies of the New York University School of Law.

<sup>8</sup> For the policy of the United States, refer to D. Kenney and J. Finckenaer (1995), 313 - 371. With regard to the policy in the European Union, see inter alia G. Wittkaemper, P. Krevert and A. Kohl (1996), 20 - 158, and V. Militello (2000), 3 - 32.

large – a lot of work has been done to combat this phenomenon. Against the background of specific policy reports, this factor does, however, easily create the impression that organized crime is mainly perceived in this Convention as a threat to the West, to the so-called developed world, and that it is therefore primarily intended to avert this danger more effectively, above all in the interests of the West itself.<sup>9</sup> Those who are responsible for the implementation of this Convention should be aware of this silent message, since it may have a disastrous impact on the way in which it is implemented. This is because, firstly, this signal may seriously and adversely affect the legitimacy and hence also the effectiveness of this Convention in the so-called developing countries. Secondly it also makes it easy to overlook the fact that the West is in many ways itself part of the global problem of organized crime. It is incontrovertible that the black market in the West, for example in the areas of drug abuse or prostitution, is partly the cause of the problems of organized crime in these areas in other parts of the world.<sup>10</sup> It also should not be forgotten that in several areas Western countries are also the source countries behind organized crime. The transnational trade in synthetic drugs still largely originates from Western Europe.<sup>11</sup> Trafficking in illegal firearms in large parts of the world cannot, of course, be seen in isolation from arms manufacturing in Europe and North America. And the illegal trade in hazardous waste is almost, by definition, linked to industrial activities in the West.<sup>12</sup>

### **III. The limits of our knowledge about organized crime in the world**

A great deal tends to be written about how globalization influences the problems of organized crime, for example about the impact of the globalization of means of transport, communication channels and financial services on the internationalization of organized crime. Attention is often also drawn to the factors that make it attractive for criminal groups to promote this process: large markets, high profits and low risks. In this context we

<sup>9</sup> See, for example, the “International Crime Threat Assessment” which was published in Washington in December 2000 by a US Administration working group.

<sup>10</sup> With regard to trafficking in human beings and in women in particular, reference can be made inter alia to D. Kyle and R. Koslowski (2001), Department of State (2001), International Organisation for Migration (2001).

<sup>11</sup> See H. Moerland and F. Boerman (1998).

<sup>12</sup> Cf. J. Clapp (1999). Specifically concerning nuclear waste, see R. Lee III (1998).

can also point to the fact that global links are sometimes established between terrorism on the one hand and organized crime on the other, particularly trafficking in drugs and firearms.<sup>13</sup>

The voluminous literature on the subject of globalization of organized crime should not, however, allow us to forget that most academic research on organized crime is not only conducted in North America and Western Europe but is also confined to problems of organized crime in these parts of the world. To a certain extent these problems are therefore dealt with as domestic problems here. In any case, most research stops at national borders (as do a lot of criminal investigations). As a result of this, our knowledge of organized crime in large parts of the world is extraordinarily limited.<sup>14</sup>

There are, of course, certain exceptions to this rule. Some research has, of course, been carried out into problems of organized crime in Russia and Japan by researchers from these countries. On occasion you will also find studies by "native" researchers, which examine these problems in Asia and Africa.<sup>15</sup> There are also a few researchers who have studied aspects of organized crime in a truly transnational way. One prime example is the study by Chin on the smuggling of and trafficking in human beings into North America. This study begins in Southern China where a large proportion of the people being smuggled come from. It then analyzes the routes by which they are smuggled into the West. Finally it considers the outcome of their adventures in the United States and Canada. This type of study is, however, very exceptional.<sup>16</sup>

In large parts of the world, for various reasons, there is therefore a huge shortage of research and hence also of researchers. Possible reasons for this include the lack of university infrastructure or research funds in many developing countries. Not to mention the situation in countries that are torn by civil war or governed by dictatorship regimes. Another point that should not be overlooked in this context is that in some parts of the world

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<sup>13</sup> See the literature in the notes above. See also, for example, Ph. Williams and E. Savona (1996) and Ph. Williams (1999).

<sup>14</sup> At the moment there is not a single good international bibliography on research into organized crime.

<sup>15</sup> With regard to China, reference can be made to A. Lodl and Z. Longguan (1992). One of the few "domestic" studies on a country like Thailand is the one by P. Phongpaichit, S. Piriyanangsan and N. Treerat (1998). On Southern Africa, see inter alia P. Gastrow (2001).

<sup>16</sup> See K-L. Chin (1999).

– for example Australia – organized crime has only recently come to be seen as a significant problem.<sup>17</sup> All this means that the picture we have of organized crime in the world contains a lot of black spots, not to say black holes, and that for this reason alone it is not easy to conduct a responsible debate at international level on the development of organized crime, on the part that specific countries or continents play in this development and on the inhibitory effect that the Convention may have on this development under certain circumstances.

What is more, it is not appropriate to be fixated with the academic research. Many aspects of organized crime are also explored by non-governmental organizations (NGOs), which publish extremely valuable reports from time to time on specific developments or problems. One example are the NGOs that are active in the field of the trade in "blood diamonds", the arms trade or, to give a different example, the illegal trade in cigarettes.<sup>18</sup> It may also be possible to mobilize these NGOs to gather information in a targeted way on the implementation and enforcement of the Convention that is the central theme of this conference.

#### **IV. The significance of the Convention for research into organized crime**

There are not many conventions that stipulate mechanisms to promote the implementation and enforcement of the agreements that have been made. Fortunately this has been done in this Convention.

Article 28 of the Convention obliges the parties, in consultation with the academic community, both to analyze the trends in organized crime in their own territory and to identify the groups that commit these crimes. They are also obliged, pursuant to this article, to develop the expertise that is needed to do this and, for that purpose, common definitions and methodologies should be developed. Finally, they must consider evaluating their policies to combat organized crime on a regular basis and, particularly, the effectiveness and efficiency of these policies.

<sup>17</sup> See A. McCoy (1986). The same can, however, be said of the Netherlands to a certain extent. See C. Fijnaut, F. Bovenkerk, G. Bruinsma and H. van de Bunt (1998).

<sup>18</sup> With regard to the trade in "blood diamonds", see, for example, *Fatal Transactions* (2001). On the trade in illegal firearms, see inter alia B. Wood and J. Peleman (1999), P. Gasparini Alves and D. Cipollone (1998) and the international action network on small arms ([www.iansa.org](http://www.iansa.org)). On the illegal trade in cigarettes, reference can be made to L. Joossens (1999).



The obligations in this article must certainly be read in conjunction with the provisions of Article 29. These include a stipulation that States must not only set up their own training programmes for their law enforcement personnel, including prosecutors, investigating magistrates and customs personnel, but that they must assist one another in taking initiatives of this kind. Article 30 adds to this that the implementation of the Convention must also be promoted by States that, through international and regional organizations, provide economic and technical assistance to developing countries with a view to strengthening their capacity to combat organized crime.

It probably goes without saying that the majority of these provisions are intended to enhance the ability of developing countries to cope with the problems of organized crime, and quite rightly so. It must not be forgotten here, however, that in order to achieve this aim it is very important to have a good overview of the nature, scale and development of organized crime in these countries and of the effects of the efforts that they are able to make to tackle this problem. It would therefore be helpful if a proportion of the resources generated through the aforementioned articles could be spent on promoting academic research into organized crime in these countries and on developing a global network of researchers in this field. Through this network the United Nations could not only significantly improve the global perspective on organized crime but it could also keep an eye on the implementation of the Convention.

Policymakers – even in this field – are unfortunately not always convinced about the importance of academic research. Here, however, its relevance to policy is so obvious that it may be hoped that they will take up this suggestion.

## **V. Conclusion**

The Convention against Transnational Organized Crime is not an isolated bureaucratic invention. In more than one respect it offers an appropriate response to a number of problems relating to organized crime that currently exist on a global level. This does not, however, alter the fact that implementation and enforcement of this Convention represents a huge challenge for a variety of reasons. A number of these reasons have been touched upon above. There are undoubtedly more, for example the United Nations manpower available to promote and monitor this important proc-

ess. The parties to this Convention should be willing to devote a proportion of their resources to this. In this way they could at least eventually put themselves in a position to assess whether their other efforts aimed at combating organized crime throughout the world are having any positive result, and, if so, what those results are.

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