THE WIDER PROBLEM

Alphonsus (Al) Capone, 1931 (1899-1947)

‘Valentine’s Day Massacre’, 1929
Nicolo Rizzuto, (*1924, Sicily)

Pablo E Escobar Gavira (1949-93)
LIMITS OF CRIMINAL LIABILITY

Action of an Individual: Chain of events

Plan → Preparation → Completion

Inchoate liability → Completed offence → Secondary liability

Org. Crime Offence → Secondary liability

TIME

NUMBER OF PARTICIPANTS

Dr Andreas Schloenhardt
“The purpose of this Convention is to promote cooperation to prevent and combat transnational organised crime more effectively” (Article 1)

- criminalisation of participation in an organised criminal group, Art 5;
- criminalisation of money laundering; Arts 6, 7;
- criminalisation of corruption; Arts 8, 9;
- confiscation and seizure of assets; Arts 12-14;
- extradition of offenders, Arts 16, 17;
- mutual legal assistance, Art 18;
- investigation and law enforcement cooperation, Arts 20, 26-29;
- protection of witnesses, Arts 24, 25.
### Art 5(1)(a)(ii): Participation in an organised criminal group

<table>
<thead>
<tr>
<th>Art 5(1)(a)(ii)</th>
<th>Elements of the offence</th>
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</table>
| **Physical elements** | • Taking an active part in  
  a) Criminal activities of the organised criminal group (art 2(a)); [or]  
  b) Other activities of the organised criminal group [with special knowledge, see below]. |
| **Mental elements** | • Intention [to actively participate] (art 5(1) châpeau);  
  • Knowledge of  
    o Aim and general criminal activity of the organised criminal group, or  
    o The organised criminal group’s intention to commit crimes.  
  • If (b) above: knowledge that participation will contribute to achieving the criminal aim. |
| **Procedural matters** | Intention and knowledge may be inferred from objective factual circumstances, art 5(2). |
 MODELS OF ORG. CRIME OFFENCES

Conspiracy (common law, Qld)

Participation model (int’l law, NZ, Canada)
- Difficulties defining ‘criminal organisation’;
- ‘Guilt by association’, esp. if membership/association is an offence

RICO enterprise model (US, Philippines)
- Very cumbersome definitions and offences (difficult for juries)

Registration model
- Positive registration (Hong Kong, Singapore, Malaysia, Brunei)
- Negative declaration (Japan, SA, NSW)
- Counterproductive, pushes groups further underground, further consolidation of more powerful groups.
Bill C-24 (2001)

s 467.13: instruction to commit an offence by a constituting member (instructors/directors)

s 467.12: commission of an offence (soldiers)

s 467.11: participation in or contribution to any activity (enhancers/facilitators)

Criminal organisation, s 467.1(1)

Criminal offences

(any/other) activities of the criminal organisation
### Societies Ordinance 1997

<table>
<thead>
<tr>
<th>Offences</th>
<th>Unlawful societies</th>
<th>Triad societies</th>
</tr>
</thead>
<tbody>
<tr>
<td>Managers, assistant managers, office bearers</td>
<td>S 19(1)</td>
<td>S 19(2)</td>
</tr>
<tr>
<td></td>
<td>3yrs/HKD100,000</td>
<td>15yrs/HKD100,000</td>
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<tr>
<td>Members, acting as members, attending meetings</td>
<td>S 20(1)</td>
<td>S 20(2)</td>
</tr>
<tr>
<td>Paying money, giving aid, control of books, accounts, seals, lists of members etc</td>
<td>1yr/HKD20,000 (1\textsuperscript{st} offence)</td>
<td>3yrs/HKD100,000 (1\textsuperscript{st} offence)</td>
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<td></td>
<td>-</td>
<td>3yrs/HKD100,000 (1\textsuperscript{st} offence)</td>
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<tr>
<td>Allowing premises to be used</td>
<td>S 21(1)</td>
<td>S 21(2)</td>
</tr>
<tr>
<td></td>
<td>1yr/HKD50,000 (1\textsuperscript{st} off)</td>
<td>3yrs/HKD100,000</td>
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<tr>
<td>Recruitment of members</td>
<td>S 22(1)</td>
<td>S 22(2)</td>
</tr>
<tr>
<td></td>
<td>2yrs/HKD50,0000</td>
<td>5yrs/HKD250,000</td>
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<tr>
<td>Procuring aid/support</td>
<td>S 23(1)</td>
<td>S 23(2)</td>
</tr>
<tr>
<td></td>
<td>2yrs/HKD50,000</td>
<td>5yrs/HKD250,000</td>
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### Terminology

<table>
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<tr>
<th>Elements</th>
<th>Declared organisations</th>
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<tbody>
<tr>
<td><strong>Structure</strong></td>
<td>• association of members (s 3) of the organisation (s 3)</td>
</tr>
<tr>
<td><strong>Activities</strong></td>
<td>• organisation represents a risk to public safety or order</td>
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<tr>
<td><strong>Objectives</strong></td>
<td>• organising, planning, facilitating, supporting or engaging in serious criminal activity.</td>
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#### Determination of purpose, s 10(4)

AG may be satisfied of the purpose of the association regardless of whether or not

(a) all the members or only some members associate for the purpose;

(b) members associate for the purpose of organising, planning, facilitating, supporting or engaging in the same serious criminal activities or different ones; and

(c) members also associate for other purposes.

Information to be considered when making declaration, s 10(3).
s35(1), (2): “criminal associations”

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<th>S 35(1), (2)</th>
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| **Physical elements** | • associating with another person;  
• at least six times over a 12-months period;  
• the other person is either  
  o a member (s 3) of a declared organisation (s 10); or  
  o the subject of a control order (s 14). |
| **Procedural matters** | Certain associations to be disregarded, s 35(6). |
| **Mental elements** | • knowledge or recklessness that the other person was (s 35(2)):  
  o a member (s 3) of a declared organisation (s 10); or  
  o the subject of a control order (s 14). |
| **Penalty** | 5 years imprisonment |
Differentiate between different types and levels of involvement in a criminal organisation:
- Higher penalties for senior leaders and financiers who also have requisite mens rea

New offences/new aggravations to connect substantive offence with criminal organisation:
- E.g.: ‘trafficking in drugs on behalf of a criminal organisation’; ‘selling firearms to a criminal organisation’,

Definition of criminal organisation must reflect unique characteristics of organised crime and not be used against political organisations, legitimate enterprises, and ideologically motivated terrorist groups.

Wider adoption of Palermo Convention in the region.