

# FORUM ON CRIME AND SOCIETY

VOLUME 1 NUMBER 2 DECEMBER 2001

DRUG TRAFFICKING

HUMAN SMUGGLING

CORRUPTION

ORGANIZED CRIME

GENDER AND MAFIOSI

FEMALE LAW  
ENFORCEMENT

NEW UNITED NATIONS  
INSTRUMENT AGAINST  
TRANSNATIONAL  
ORGANIZED CRIME



CENTRE FOR INTERNATIONAL CRIME PREVENTION

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**FORUM ON CRIME AND SOCIETY**

VOLUME 1 NUMBER 2 DECEMBER 2001

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## NOTE FROM THE EDITORIAL BOARD

*Forum* is a new United Nations sales publication, issued by the Centre for International Crime Prevention of the Office for Drug Control and Crime Prevention in Vienna. It is published twice each year in all six official languages of the United Nations (Arabic, Chinese, English, French, Russian and Spanish). The Editorial Board hopes that *Forum* will help to forge partnerships among scholars, experts and decision makers so as to advance knowledge and policy, upgrade practice and achieve reform in the field of crime prevention and criminal justice in line with universal standards, norms and precepts.

The first issue of *Forum* (vol. 1, No. 1, February 2001) presented articles on various subjects. The present issue of *Forum* is devoted to the theme of organized crime, thus marking the signing, by 123 States and the European Community, of the United Nations Convention against Transnational Organized Crime in Palermo, Italy, from 12 to 15 December 2000. The next issue of *Forum* (vol. 2, No. 1) will be devoted to the theme of corruption.

Two of the articles selected for this issue of *Forum* deal with the fight against drug trafficking across the border between Mexico and the United States of America. The authors of both articles shed light on the debate around the subject matter approached by a recent, powerful American film released in 2000. James Finckenauer, currently Director of the International Center of the National Institute of Justice of the United States Department of Justice, and his associates present an overview of the drug law enforcement cooperation of Mexico and the United States. Samuel Gonzalez-Ruiz, former head of the anti-mafia unit of the Mexican prosecutorial office and current Interregional Advisor of the Centre for International Crime Prevention, reviews the fight against drug trafficking across the Mexico-USA "line".

Two articles in the current issue deal with different aspects of Chinese organized crime. Sheldon Zhang and Ko-Lin Chin, both American scholars of Chinese origin, present results of their empirical study of the social organization of those involved in smuggling people out of southern China into North America. According to their findings, many Chinese people-smugglers—so-called "snakeheads"—operate on the basis of loose-knit partnerships rather than as fully fledged criminal syndicates. In an up-to-date account of organized crime in China, Xiaowei Zhang, Assistant Professor of Criminology at East China University of Politics and Law in Shanghai, depicts the full range of organized criminal activities in China.

In two more theory-oriented articles, Klaus von Lampe of Germany and Petrus van Duyne of the Netherlands reflect upon the definitions of organized crime and corruption, respectively. Mr. von Lampe uses a content analysis of German newspapers to show how the concept of organized crime has acquired different meanings over the past few

decades. Using examples from different parts of the world, Mr. van Duyne demonstrates that at the root of corruption of politicians and public officials typically lies a lack of commitment to democratic values.

In the first contribution in the section entitled "Notes and action", Christopher Ram of the Centre for International Crime Prevention provides an introduction to the newly adopted United Nations Convention against Transnational Organized Crime and its protocols.

The two other contributions in this section deal with women and organized crime. Amanda Vanstone, former Minister for Justice and Customs and current Minister for Family and Community Services of Australia, contributes an article based on the paper she presented at the workshop on women in the criminal justice system at the Tenth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held in Vienna from 10 to 17 April 2000. Mrs. Vanstone analyses how challenges posed by new types of crime to law enforcement agencies have increased career opportunities for women and how those developments are changing both the nature and the culture of policing. A contribution by Italian criminologist Marina Graziosi focuses on women as perpetrators of crime. She analyses the growing willingness of Italian magistrates to hold women accountable for their roles in mafia-type organizations and the legal dilemmas posed by that development.

#### **GUIDELINES FOR THE SUBMISSION OF ARTICLES**

The Editorial Board invites scholars and experts from around the world to contribute to *Forum* articles on criminological and socio-legal issues. Articles submitted for publication in *Forum* must be original, that is, they should not have been published elsewhere. The length of manuscripts to be considered for publication as articles in the first section of *Forum* should not exceed 6,000 words.

Shorter papers and commentaries to appear in the second section of *Forum*, entitled "Notes and action", should not be more than 2,500 words in length.

Manuscripts should be submitted in hard copy or, if possible, in electronic format. The curriculum vitae of the author and an abstract should accompany each manuscript.

Manuscripts to be considered for publication in *Forum* should follow the Harvard system of referencing, whereby the author and year of publication of a work appear in the text and full details of the work are provided in a list of references at the end of the text.

All manuscripts, reviews and correspondence should be sent to Antoinette Al-Mulla, the Managing Editor of *Forum*, either by post (Centre for International Crime Prevention, United Nations, P.O. Box 500, A-1400 Vienna, Austria), by e-mail (Antoinette.Al-Mulla@unvienna.org) or by fax ((431) 26060-5898).

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**MEXICO AND THE UNITED STATES OF AMERICA:  
NEIGHBOURS CONFRONT DRUG TRAFFICKING \***

**BY JAMES O. FINCKENAUER<sup>1</sup>, JOSEPH R. FUENTES<sup>2</sup>  
AND GEORGE L. WARD<sup>3</sup>**

**ABSTRACT**

Drug trafficking between Mexico and the United States of America is a serious concern to government leaders in both countries. Mexican traffickers have secured a significant market share of major drugs transported to the United States, including cocaine, marijuana, heroin and methamphetamine. In recent years, traffickers have become increasingly professionalized and have shown greater disregard for life and law, leading to a near-crisis situation that requires effective action.

The United States' response to drug trafficking has included inter-agency counter-narcotics operations as well as bilateral efforts with authorities in Mexico. Those initiatives have been modestly successful at reducing trafficking by primary drug organizations. Mexico has also experienced some degree of success at thwarting the efforts of traffickers. The current administration in Mexico is building on this by making anti-drug initiatives a top priority.

Recommendations to improve further the effectiveness of counter-narcotics efforts include improving coordination among United States agencies; strengthening legal institutions in Mexico; assuring sustained bilateral and multilateral cooperation between Mexico and the United States; and emphasizing demand reduction in the United States. By adopting those strategies, it is hoped that Mexico and the United States will achieve greater success in the campaign against drugs.

**INTRODUCTION**

Bilateral cooperation between Mexico and the United States of America has become a hallmark of inter-American relations in recent years. The summit between the two countries' presidents in February 2001 exemplifies the ongoing efforts of both countries to address matters of mutual

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\*Opinions or points of view expressed in this article are those of the authors and do not necessarily reflect the official position of the United States Department of Justice.

<sup>1</sup>Director, International Center, National Institute of Justice.

<sup>2</sup>John Jay College of Criminal Justice, City University of New York.

<sup>3</sup>International Center, National Institute of Justice.



concern. From trade to drug trafficking and energy to economic development, there are many issues that are important to the Governments of Mexico and the United States. As President Vicente Fox of Mexico declared prior to the United States-Mexico summit, however, the most pressing issue between the United States and Mexico was drug trafficking and drug consumption (Sanchez 2001).

Across the globe, nations such as Mexico and the United States have forged partnerships to address the problems associated with illegal drugs. The complexity of the worldwide drug market and the vast resources available to narcotic producers and traffickers requires afflicted countries to collaborate if a successful end to the campaign against drugs is to be achieved. There are, perhaps, no two bordering nations that are more immersed in the drug campaign than Mexico and the United States, and leaders in both countries realize the debilitating effects of drugs—the former as a principal consumer and the latter as a primary supplier and transporter. Though current trends indicate that the illicit drug market in the United States is as vibrant as ever, recent efforts produce hope that those trends may soon reverse.

In the United States-Mexico experience, there are relevant lessons for countries engaged in cooperative counternarcotics efforts. The primary lesson learned is that the illegal drug market has metastasized at the cost of thousands of lives and billions of dollars. A second lesson is that bilateral and multilateral efforts are key in the crusade against drugs. In the present article, the authors, drawing on these lessons, describe the nature of drug trafficking from Mexico to the United States, discuss recent initiatives to curb the drug flow and identify promising strategies to combat the drug problem experienced by both countries.

## **DRUG TRAFFICKING BETWEEN MEXICO AND THE UNITED STATES**

### **Nature of Mexican drug trafficking**

The costs that the illegal drug trade imposes on the United States have been estimated at a staggering \$70 billion each year (*Drug-Free America Act of 2001* 2001). Mexican drug traffickers are the primary transporters of the major narcotics imported into the United States. The 2,000-mile shared border between Mexico and the United States is the entry point for a large percentage of those drugs. During fiscal year 2000, 89 million automobiles, 4.5 million trucks and 293 million people entered the United States from Mexico. Each of those modes of transportation have been used by drug traffickers to ship their goods across the border. For example, a tractor-trailer transporting legitimate cargo may also contain hidden bales of marijuana; a legal immigrant might carry concealed parcels of heroin through a border checkpoint; or a passenger car may contain bags of cocaine in a tyre or in secret compartments. In addition, traffickers have smuggled drugs into the United States on aircraft, high-speed

“go-fast” boats and cargo ships. Whatever the method, traffickers have employed numerous and diverse conventions to avoid detection of transported drugs (see Office of National Drug Control Policy, 2000, or related information).

Mexican traffickers have been successful in their efforts. Joseph Keefe (2000) of the Drug Enforcement Administration (DEA), one of the principal drug law enforcement agencies in the United States, reported that approximately half of the cocaine available in the United States entered the country along the United States-Mexico border. Keefe also noted that the majority of marijuana and a significant portion of heroin consumed in the United States emanated from Mexico. Additionally, he indicated that Mexican drug organizations had established methamphetamine laboratories that had been estimated to produce 85 per cent of the methamphetamine available in the United States. Overall, Mexican drug traffickers have become a significant supply source for most of the major drugs consumed in the United States.

### **History of drug trafficking from Mexico**

In the past, drug organizations in Mexico were predominately involved in cultivating marijuana and opium, a precursor to heroin. Over the past decade, however, Mexican drug organizations secured a prominent position in the cocaine market, which was formerly dominated by Colombian drug cartels, and opened the doors for Mexican groups to dominate the drug trafficking market. In the late 1980s, Mexican traffickers were middlemen for the Colombian cartels. Traffickers would receive shipments of cocaine in northern Mexico, smuggle the drugs across the border and leave stashes in specified locations where Colombian distributors would retrieve the cocaine and transport it to destinations across the United States. In 1989, traffickers who were annoyed at delinquent service payments from Colombian suppliers retained shipments of cocaine in extortion until payments were made.

During the same year, in a stroke of good fortune for United States law enforcement, a massive stockpile of such shipments amounting to over 40,000 pounds of cocaine was discovered in an industrial warehouse in the vicinity of Los Angeles, California. That pivotal event forced the hand of the Colombian drug barons and led to a business arrangement that at present gives the Mexican traffickers as much as half of all the cocaine that they transport.

The shifting role of Mexican drug trafficking groups in the United States from subcontracted transporters of cocaine to urban-based distributors occurred somewhat rapidly in the early 1990s. Prior to that transformation, the distribution of drugs in the United States resembled a cottage industry, with loosely organized “mom and pop” distribution franchises in urban enclaves with large Mexican populations from Los Angeles to Chicago. When the Colombian cartels were toppled after significant law enforcement efforts in 1995 and 1996, the void was soon filled by Mexican traffickers, who were eager to capitalize on the potential drug profits.

Within a few short years, Mexican traffickers emerged as the primary couriers of cocaine for the robust United States drug market.

Additionally, Mexican drug organizations have infiltrated the expanding methamphetamine market. In a DEA report (2001), it was noted that narcotics groups from Mexico dominated that market in the United States, which had formerly been run exclusively by United States-based gangs and illicit trafficking groups. Methamphetamine, unlike other drugs distributed by Mexican traffickers, was produced in simple laboratories with readily available precursor chemicals. Mexican drug organizations, according to the DEA report, had established laboratories throughout Mexico and California, in addition to super-laboratories that were able to produce hundreds of pounds of methamphetamine in a week. Furthermore, the report revealed, it was not uncommon to find hundreds of major methamphetamine traffickers from Mexico established in Boise, Des Moines and Omaha and other cities in the heartland of the United States, where there had been an explosion of methamphetamine use.

### **Characteristics of Mexican drug trafficking groups**

#### *Organizational structure*

Mexican traffickers carry out their craft with proven ability and professionalism. The most prominent trafficking organizations control the drug trade across broad tracts of northern Mexico surrounding Tijuana and Ciudad Juarez and along the north-eastern part of the Gulf of Mexico. Those Mexico-based trafficking groups include the Juarez cartel, the Arellano-Felix Brothers' organization, the Caro-Quintero organization and the Amezcua-Contreras organization. A major trafficking group might contain 200 or more members in the Mexico base, with hundreds of additional members throughout the organization's network. Although such groups operate independently, they have created a loose partnership called the Federation, in order to establish a greater degree of security and profitability. A recent estimate suggests the annual income accrued by these organizations is in the tens of billions of dollars. In comparison, the entire country of Mexico had an estimated nominal gross domestic product (GDP) of \$557 billion in 2000.

Clearly, there are huge financial incentives for drug organizations in Mexico to protect and maintain their trade. As a consequence, they have been successful at corrupting or killing some of the law enforcement officers and public officials who might otherwise have impeded their operations. Under this canopy, trafficking groups have developed a well-structured network of organizations that exhibits centralized decision-making, secure command and control centres, compartmentalization and integrated work roles. The impenetrability of these organizations is clear: while the drug lords have been identified and are known to virtually all of the major law enforcement departments throughout the United States, they continue to avoid arrest and extradition (Ledwith 2000).

With a well-established base in Mexico, drug organizations have expanded their operations in the United States. Traditionally, traffickers operated primarily along the west coast. However, they have now penetrated major cities on both coasts and in the Midwest. Traffickers typically transport drug shipments to various urban venues across the United States and turn the shipments over to entrenched Dominican and Colombian distribution networks. Such bulk transactions often elude the surveillance of law enforcement officers, as transfers are carefully choreographed to avoid detection. Exchanges may take several days and may be as uncomplicated as the switching of drivers between two vehicles, one containing drugs and the other containing money. To remain discreet, traffickers often blend into an ethnic community and disguise themselves against the backdrop of day-to-day urban commerce.

In the interest of advancing their business, traffickers will frequently establish partnerships with legitimate cargo transporters and conceal their drugs amid legal goods. Traffickers also utilize advanced technologies in their operations, often receiving encrypted messages from their superiors by facsimile, telephone, computer or pager (Ledwith 2000). Mexican traffickers employ professionals such as lawyers and accountants in their illicit operations and rank high in terms of their overall professionalism compared with other organized criminal groups in the United States

### *Illicit activities*

While other organized criminal groups based in the United States are involved in a variety of illicit activities, Mexican trafficking organizations work almost exclusively in the drug market. They are not diversified in terms of other illegal trades and any other activities that they engage in are primarily to further the business of trafficking. A recent survey of transnational organized crime in the United States for the United Nations focused on the characteristics and operations of several groups, Cosa Nostra, Russians, Asian gangs and Mexican drug organizations (see report briefs for Cosa Nostra, Russians and Asian gangs at [www.ojp.usdoj.gov/nij/international/un\\_activities.html](http://www.ojp.usdoj.gov/nij/international/un_activities.html)). Of those groups, only the Mexican drug organizations are restricted to a principal trade. The other groups' activities are opportunity-driven. In other words, they engage in whatever opportune illicit venture exists at a given time and place. For example, the Wah Ching, an Asian organized crime ring based in California, has been linked to a plethora of illicit activities, including counterfeiting, forgery, bank fraud, insurance scams, money-laundering, armed robbery, home invasions, vehicle theft and trafficking, trafficking in women, prostitution, drug trafficking, kidnapping, extortion and software piracy, to name a few.

In contrast, the same survey found that the criminal activities of Mexican drug organizations in the United States were mainly limited to drug trafficking and manufacturing, money-laundering and robbery. These and other activities that Mexican drug organizations might engage in are

almost exclusively done to support or sustain their trafficking operations. The survey also found that drug trafficking and money-laundering were the primary offences by Mexican traffickers who had been arrested and prosecuted in the United States over the past three years.

### *Violence*

Drug organizations operate with great audacity and disregard for life and law in Mexico. The breadth and severity of criminal activities by the same trafficking organizations are significantly greater in Mexico than in the United States and are often accompanied by more violence. A report by a United States Government inter-agency working group published in December 2000 reveals the degree of violence exhibited by Mexican criminal organizations (*International Crime Threat Assessment 2000*):

“Drug violence has been particularly noxious—from the 1993 killing of the Archbishop in Guadalajara, gunned down in crossfire between rival drug-trafficking groups, to killings of law enforcement officers, to small-scale massacres in vendettas by one drug-trafficking or criminal group against another.”

A recent high-profile example of this violence is the murder of Tijuana’s chief of police in 2000, which is believed to have been the consequence of a turf battle between two feuding drug cartels. Ironically, the chief was assassinated just two days after the then President of Mexico, Ernesto Zedillo, visited Tijuana to rally against organized crime and its associated violence.

More recently, in February 2001, a massacre in a small village in the state of Sinaloa—infamously known as the birthplace of Mexican drug trafficking—left 12 men and boys dead. The killings are suspected to be the work of a drug gang fighting over territory in a state that has over 200 drug gangs and has witnessed more than 150 murders in a period of less than three months, many of which were mob-style assassinations, as the *Washington Post* reported (Jordan 2001).

The violence exhibited by drug organizations in Mexico was confirmed in the previously mentioned survey on transnational organized crime. Respondents to the survey indicated that Mexican drug trafficking groups engaged in a significant degree of violence (ranked at 10 on a scale of 1 to 10) in the areas of making use of violence generally, engaging in violent behaviour within the group (discipline, power struggles, etc.) and using violence against other criminal groups to settle disputes or compete for territory or markets. Mexican drug organizations also use violence as a means to remove officials who hinder their business. South of the United States-Mexico border, the violence used to achieve those objectives has been characterized as brazen and extreme, in particular among the chief drug trafficking organizations and in cities along the northern border, including Tijuana and Ciudad Juarez.

*Power to corrupt*

The enormous wealth that Mexican drug organizations have accrued through their operations have provided them with means to corrupt. The survey on transnational organized crime revealed that Mexican traffickers had a significant ability to influence others with money. There are numerous incidents of corruption reported among public and law enforcement officials in Mexico. Drug corruption is not limited, however, to the south side of the United States-Mexico border. Officials in the United States have also been charged with participating in the illicit drug market. Drug-related convictions against United States law enforcement officials in the past have pertained to such activities as waiving drug-laden vehicles through ports of entry in exchange for money, coordinating the movement of drugs across the border, using their official positions to transport drugs past checkpoints without being suspected and disclosing drug intelligence information (McCraw 2000). In the state of Arizona recently, a task force led by the Federal Bureau of Investigation (FBI) resulted in the conviction of 15 law enforcement officers and a judge on drug corruption charges (McCraw 2000).

Corruption on both sides of the border has greatly facilitated the growth and spread of Mexican drug trafficking groups in the United States and has stymied law enforcement efforts. Official corruption is systemic south of the border and opportunistic on the American side, flaring up locally through a profiteering border guard or customs inspector at the major border ports of entry. In the past, malfeasant American agents have succumbed to massive bribes, taking as much as \$50,000 to ignore a particular car or truck.

The risk of interdiction is greatly reduced once the trafficker has successfully entered the United States, so money and exploitation are concentrated where the risk is greatest—on the border. Each corrupt American official adds immeasurably to the aggregate ability of the Mexican drug trafficking groups to set up shop in distant cities throughout the United States.

Though isolated incidents of corruption have occurred in the United States, the degree of corruption is not equivalent to that found in Mexico. One reason is the deterrence to corrupt created by the decentralized organizational structure of the law enforcement system in the United States. For example, a drug trafficker smuggling a shipment of cocaine into the United States would have to bribe each of the many police departments whose jurisdictions he must cross to deliver his shipment to its final destination. In contrast, a drug organization transporting a shipment of drugs through Mexico to the border finds it somewhat easier to solicit the protective services of corrupt military or police forces and is thereby able to move massive amounts of drugs through a particular region.

The power of Mexico's drug organizations to corrupt was recently manifest in the prison escape of drug lord Joaquin "El Chapo" Guzman in January 2001. Guzman allegedly bought his way out of prison by offering

bribes to prison guards, who facilitated his escape. In response, Mexican officials ordered the arrest of numerous prison personnel. Though this is a single incident, it portrays the problem of corruption with which Mexico is at present coping.

#### *Penetration of the United States drug market*

Mexican traffickers traditionally operate more discreetly in the United States than in Mexico, as acts of violence draw undue attention to their activities. In the United States, trafficking groups exist in the shadows and tend not to show rivalrous displays of territoriality or intra-group violence as they do in Mexico. Mexican drug traffickers in the United States have been found to collaborate with what otherwise might be rival groups, including Colombian and Dominican drug traffickers, Cosa Nostra and other criminal organizations. In some instances, those groups have helped Mexican drug traffickers also to infiltrate the legitimate economy of the United States major hub cities for trafficking groups include Chicago, New York City, Los Angeles and Houston. With penetration into the Canadian drug market as well, Mexican traffickers have established a presence throughout much of North America.

In the mid-1980s, an upsurge in federal drug law enforcement pressures in southern Florida upon Colombian cocaine importation routes and distribution networks caused the South American cocaine cartels to seek other major ports of call. As a result, massive amounts of cocaine began to be moved across the south-west border, where it had been smuggled into the United States in lesser quantities for over a decade.

For the famous smuggling families of northern Mexico, retooling their networks to handle the increased flow of cocaine was a relatively easy matter. *Plazas*, a hierarchical system of payoffs and kickbacks to government officials for the licence to commit crime (Poppa 1990), were in place all along the border. Regional police and military commandants from Tijuana to Matamoros established mutually profitable relationships with particular drug traffickers or families. Chosen traffickers became the *plaza* holders. Some *plaza* holders have names familiar to those with academic or law enforcement interests in Mexican drug trafficking: Amado Carrillo-Fuentes, Jesús Amezcua-Contreras, Garcia Abrego and Ramón Arrellano-Felix are the most recognized in this notorious group. *Plaza* holders were crucial to the stability and success of the Mexican drug trade and acted as a nexus between border smuggling activity and corrupt Mexican officials.

With this clandestine network in place, traffickers were well situated to infiltrate the United States market with their drugs. A prominent example of the penetration of the United States drug market by those trafficking groups is the former cocaine smuggling enterprise of Rafael Muñoz Talavera. For almost 20 years, Muñoz ran the *plaza* in Ciudad Juarez, Chihuahua, one of the busiest official ports of entry along the south-west border. In 1988, Muñoz brokered an agreement with the Medellín and Cali cartels of Colombia to transport 500,000 kilograms (kgs) of cocaine to Los Angeles. Over an 18-month period, Muñoz smuggled

250,000 kgs of Colombian cocaine across the border into El Paso, Texas, assisted by his two brothers and his brother-in-law Rafael Aguilar, a former commandant with the Dirección Federal de Seguridad, Mexico's internal security police force. A half dozen or more cars crossed the border daily, Monday through Friday, each with at least 200 kgs stashed in them.

Muñoz's clan did not lose a single parcel of cocaine during hundreds of border crossings; however, their unblemished smuggling record was the result of corruption; not luck. According to witness testimony in the DEA investigation of the Juarez cartel, Muñoz had at least two to three American border agents on his payroll (Drug Enforcement Administration, 1992).

## **INITIATIVES TO COMBAT DRUG TRAFFICKING**

### **Efforts by the United States**

The United States response to drug trafficking along the south-west border has involved collaborative efforts among five main federal departments, the Department of Justice, the Department of Defense, the Department of State, the Treasury Department and the Department of Transportation, and numerous other government agencies. Areas of drug control have included drug interdiction, anti-money laundering, drug and immigration enforcement, prosecutions, counter-drug support and counter-drug cooperation with Mexico (Office of National Drug Control Policy 2000). The United States Government spent approximately \$1.5 billion on international drug control efforts during fiscal year 2000 (United States Department of State 2000).

With respect to drug control generally, the United States allocated \$18.5 billion in fiscal year 2000 to various priorities outlined in the National Drug Control Budget. This budget funds a wide spectrum of programmes, their objectives ranging from treating addicts to extraditing kingpins. In particular, allocations fund drug control efforts such as law enforcement training, anti-drug media campaigns, treatment and prevention research, substance abuse programmes, drug courts and drug-interdiction technologies.

Numerous departments and agencies through all layers of government are the recipients of anti-drug funding to pursue these diverse objectives. Many successes have been recorded as a result of those initiatives. United States Customs officers, for example, routinely intercept significant quantities of illicit drugs during their operations. In February 2001, a single seizure at a border check-point in San Diego netted nearly 9,000 pounds of marijuana that had been concealed in a truckload of papayas (Bond 2001). As figures I, II and III reveal, the amount of drugs seized along the United States-Mexico border has been substantial over the past four years (United States Customs, 2001).



Figure I. Heroin seizures along the United States-Mexico border

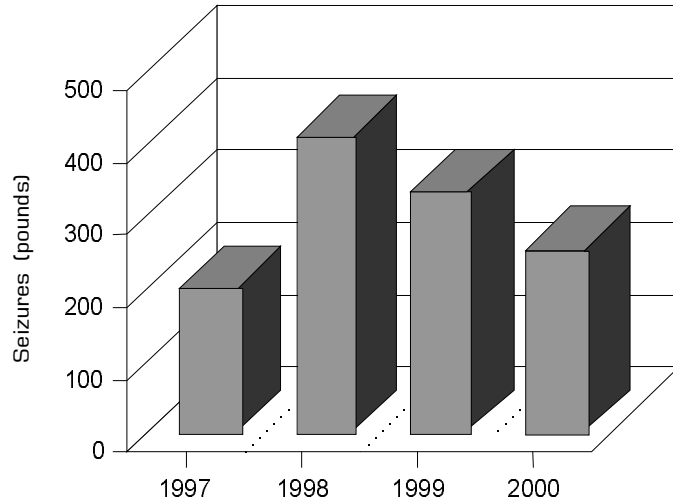
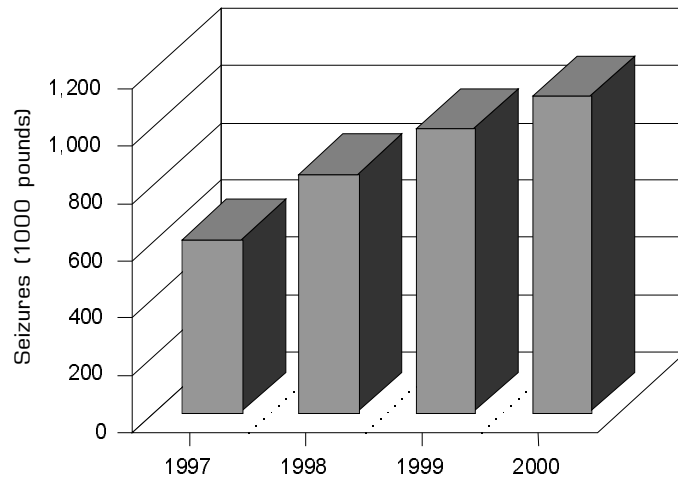
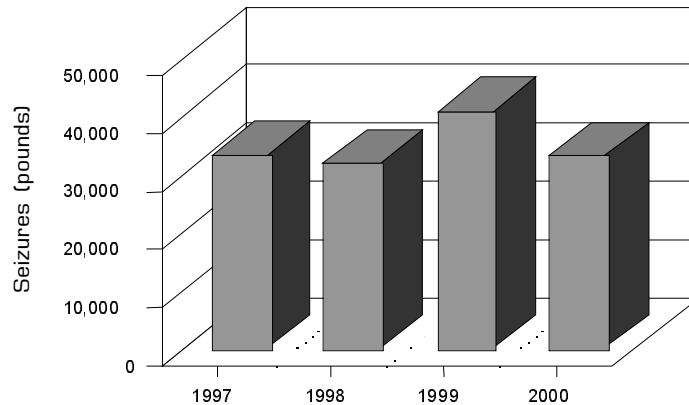


Figure II. Marijuana seizures along the United States-Mexico border



Often there is jurisdictional overlap between competing departments and agencies in the United States that are involved in counternarcotics activities. Recent initiatives, however, have brought those offices together to create a strategic and collaborative response to the drug problems facing America. Some of the strategic alliances involve schools working with local law enforcement officers to educate children about the dangers of using drugs. Other partnerships entail counter-intelligence cooperation between departments to eradicate drug sources. Whatever the organization or community group involved, they are a viable network of anti-drug interests working together to reverse the drug abuse trend in the United States.

Figure III. Cocaine seizures along the United States-Mexico border



DEA is a principal component of one of the networks that target illicit drug producers and distributors. Over half of the major operations coordinated by DEA between 1997 and 2000 focused on organizations smuggling drugs out of or through Mexico and into the United States. Those operations have hampered the efforts of traffickers and, in some cases, have entirely dismantled major drug rings. Statistics from some of the operations (Drug Enforcement Administration 2001) are indicated in table 1.

**Table 1. Drug Enforcement Administration: major operations targeting Mexican drug trafficking organizations**

Operation	Drugs seized		Quantity (kilograms)	Currency used (United States dollars)	Persons arrested
	Date concluded	Type of drug			
Operation Tar Pit	March 2000	"Black tar" heroin	19	Not reported	About 200
Operation Impunity	September 1999	Cocaine	12 434	19 million	123
Operation META	December 1997	Marijuana	2 808	Not reported	121
		Methamphetamine	60		
Operation Limelight	August 1997	Cocaine	1 100	7 million	48
		Marijuana	802		
Operation Reciprocity	August 1997	Cocaine	4 000	11 million	40
		Marijuana	5 000		
			7 400		
			1 227		

A recent successful operation, known as Operation Impunity, targeted the powerful Amado Carrillo-Fuentes Organization based in Ciudad Juarez, Mexico. Operation Impunity was the offspring of two other domestic drug trafficking investigations, Operation Limelight and Operation Reciprocity,

both of which targeted independent distribution cells of the Amado Carrillo-Fuentes Organization in Los Angeles and New York, respectively. Operation Reciprocity stands as a prime example of a successful federal and state partnership in developing a long-term strategy to attack international drug trafficking organizations operating in the United States.

Operation Reciprocity began in 1996 in the aftermath of two highway drug interdiction seizures of marijuana and currency by the Texas Department of Public Safety. As a result of those seizures, aggressive DEA investigation led to wiretaps in Houston and New York that eventually led to the dismantling of import and distribution establishments in those places, in addition to an overland transportation network based in Michigan.

After Operation Reciprocity, DEA case agents who were working on the Operation Impunity investigation sought the assistance of the New Jersey State Police to interdict shipments of cocaine dispatched by the Amado Carrillo-Fuentes Organization and destined for New York. Since that collaboration began, federal efforts to combat international drug trafficking from Mexico have continued to be strongly supported by highway drug interdiction programmes nationwide. Participants in those programmes include state troopers and highway patrol officers who are trained by the DEA's El Paso Intelligence Center and the United States Department of Transportation's Drug Interdiction Assistance Program. As was manifest in Operation Reciprocity and numerous other investigations, seizures of bulk shipments of illicit drugs on highways produce invaluable information for investigations aimed at major drug cartels in Colombia and Mexico.

Highway drug interdiction as a critical support to federal drug enforcement has not existed without controversy, however. In recent years, it has come under unrelenting criticism from civil libertarian and political action groups condemning the apparent discriminatory treatment of minorities (Fuentes and Guidetti 2000). Recognizing that using race to conduct highway drug interdiction is both indefensible and unconstitutional, consensus among federal drug enforcement agencies is needed to preserve crucial programmes that thwart the encroachment of Mexican drug cartels into the United States

### **Efforts by Mexico**

Shortly into his administration, President Vicente Fox declared: "I am confirming an all-out war on pernicious criminal mafias" (Walker 2001). So far, he has witnessed a respectable degree of success: approximately 2,000 drug trafficking arrests have occurred during the first three months of his presidency (Jordan 2001). Likewise, 2000 was a banner year for Mexico in terms of anti-drug initiatives. Between 1999 and 2000, the United States Department of State (2001) indicated that law enforcement and military officials in Mexico had reported an increase in seizures and destruction of marijuana (37 per cent increase), heroin (17 per cent increase) and methamphetamine (78 per cent increase), although there had been a 31 per cent decrease in seizures and destruction of cocaine.

Additionally, in response to increased domestic drug consumption, the Government of Mexico appointed a drug tsar in June 2000 to oversee efforts to reduce illicit drug demand (United States Department of State 2001).

Mexico and the United States have recently developed a strong partnership, which has resulted in several significant accomplishments in the fight against drugs. In January 2000, for instance, a cooperative effort between the Mexican Navy and the United States Coast Guard resulted in the seizure of approximately 2.25 tons of cocaine from a fishing boat off Mexico's coast (Foley 2000). The Government of Mexico has also provided valuable support in counternarcotics operations such as Operation Impunity. A recent cooperative investigation between FBI and Mexican officials brought about a lengthy indictment against Vicente Carrillo-Fuentes, the reputed leader of the powerful Carrillo-Fuentes Organization. The investigation, called Operation Plaza Sweep, entailed the documentation of 17 murders and disclosed the location of burial sites of victims of the Carrillo-Fuentes Organization (McCraw 2000).

In addition to counternarcotics efforts, anti-corruption is also a declared priority for the new administration in Mexico. A task force called the Interdepartmental Commission for Transparency and the Fight against Corruption has been created and will meet regularly to discuss problems associated with corruption in the Government of Mexico and identify solutions for ridding agencies of corrupt practices. Those and other initiatives by the Government reveal the desire of authorities to bring down the drug cartels in their country.

#### **PROMISING STRATEGIES FOR THE FUTURE**

Although there have been significant investments by Governments on both sides of the border, drugs continue to flow into the United States in massive quantities. A former head of the FBI announced that, according to his commission on federal law enforcement, anti-drug initiatives had not yet had a significant impact. He declared that, despite a record number of seizures and a flood of legislation, the commission was not aware of any evidence that the flow of narcotics into the United States had been reduced (Lynch 2001). The United States General Accounting Office confirmed that in a 1998 report on Mexican drug trafficking and in a follow-up report in 1999. The General Accounting Office (1998) revealed that, despite United States and Mexican counternarcotics efforts, the flow of illegal drugs into the United States from Mexico had not significantly diminished. Leaders of both countries remain optimistic, however, that success is in sight. Bilateral agreements recently entered into by Mexico and the United States yield promise and represent increased desire on both sides of the border to overcome the drug problem.

The following strategies have been recommended for addressing the issue of drug trafficking between Mexico and the United States.

### **Improved coordination among United States agencies**

Over 50 United States agencies have been linked to counternarcotics efforts (Murphy et al. 2000). Administering and coordinating the efforts of those numerous and independent groups is a monumental task. Although the Office of National Drug Control Policy was established to direct drug programmes and centralize counternarcotics initiatives, agencies often work independently. The General Accounting Office listed several shortcomings in drug control efforts by United States agencies, including problems involving competing priorities, inter-agency rivalries, lack of operational coordination, inadequate staffing of joint inter-agency task forces and lack of oversight (General Accounting Office 1998). In order to ensure an effective, unilateral policy towards Mexico and drug control, it is recommended that units in United States agencies involved in anti-drug initiatives abandon parochial interests and make greater efforts to collaborate with their counterparts in other agencies.

### **Institution-building in Mexico**

Effective institutions are a critical component of successful anti-drug campaigns. Examining drug markets in the context of government institutional reform is one approach to resolving drug-related issues. Frank Cilluffo (2000) of the Center for Strategic and International Studies concluded:

“Part of the solution is strengthening the domestic legal institutions and social organizations in the afflicted countries. . . . Without strong judicial systems, effective law enforcement and prosecution of criminals and terrorists is impossible. Without strong social organizations that promote democracy and combat corruption, effective change is impossible.”

The law enforcement system in Mexico is particularly in need of strengthening. The inadequate salaries of law enforcement officers and public officials in contrast to the enormous assets available to Mexican drug organizations create an enticing environment for corruption among police officers and officials alike.

Gomez-Cespedes (1999) of the Centre for International Crime Prevention illuminates another cause of Mexico's police problem. She reveals:

“In practice, Mexican police forces were created not to protect but to control the population, and they were granted permission to repress, steal, and extort bribes in exchange for loyalty to whoever was in authority. Now . . . the police are being forced to reconsider their previous operations and adjust to more community-oriented policing.”

Although police units in Mexico have a reputation for corrupt and unethical practices, recent reform initiatives have targeted improving the integrity and effectiveness of law enforcement. A new federal unit called the Federal Prevention Police was established in 1999 and is responsible

for enforcing against terrorism, smuggling, kidnapping, arms trafficking, drug trafficking and protection of federal installations such as airports, ports, highways and borders (United States Department of State 2001). With new organizations such as this in place, there is hope that institutional reform in Mexico will bring improved results in the drug campaign.

### **Sustained bilateral and multilateral cooperation**

Cooperation between Mexico and the United States in the anti-drug campaign has been manifested in various forms, including law enforcement training, cooperative investigations and military aid. A United States Department of State report (2001) indicated that 12 fugitives had been extradited by Mexico to the United States during 2000, with 51 more in custody awaiting extradition; more than 500 judges from Mexico had taken part in conferences and various training programmes sponsored by the United States over the past three years; and approximately 4,000 students in Mexico had completed law enforcement-related courses sponsored by the United States. Each of these cooperative ventures reveals an increase in the degree of Mexico-United States collaboration in law enforcement matters.

A central component of bilateral counternarcotics cooperation between Mexico and the United States is the High Level Contact Group for Drug Control (HLCG). This entity was created in 1996 to facilitate collaboration between authorities in the two countries in the anti-drug campaign. HLCG brings together counterparts from both countries to discuss the many aspects of the illicit drug market and to formulate an effective response. In a recent meeting in Washington, D.C., HLCG participants reviewed progress in achieving performance goals outlined in the strategy, including progress in areas such as demand reduction, firearms tracing, training and precursor chemical control (*Daily Washington File* 1999). Cooperative ventures like HLCG are an important aspect of drug initiatives in that they raise awareness among key figures and facilitate communication between counterparts. The United States-Mexico Binational Drug Strategy is one of the acclaimed products of this venture.

Mexico's former Secretary of Foreign Relations emphasized the importance of maintaining mutual respect for the legal authority of both countries in bilateral cooperative efforts. She proposed (Macias 2000):

“Mexico and the United States share the will to launch a frontal attack on both drug trafficking and drug traffickers. We must therefore join forces to combat them effectively, working shoulder to shoulder, and extolling the virtues of a cooperation agreed upon and regulated by our respective legal frameworks.”

To be sure, United States intervention in Mexico's affairs with regard to drug trafficking has not been without controversy. It would appear that in order to ensure greater success in the drug war, the relevant agencies in both countries must continue to work together with mutual respect and understanding.

**Demand reduction**

At least 14.8 million Americans—roughly 5 per cent of the United States population—reported using drugs in 1999 (Substance Abuse and Mental Health Services Administration 2000). Additionally, during the same year Americans spent approximately \$63.2 billion on drugs overall (Office for Drug Control and Crime Prevention 2000), implying that each drug user in the United States spent over \$4,200 on drugs on average in 1999. Clearly, there is a significant demand for drugs in the United States.

A good portion of the United States drug intervention effort has focused on reducing supply. Recent initiatives, however, have acknowledged the importance of demand reduction efforts as well. Legislation introduced so far in 2001 in the United States Congress proposes funding for various demand-oriented initiatives, including drug treatment programmes, prevention initiatives and treatment research projects. Bills with titles such as the Drug-Free America Act of 2001, The Drug Abuse Education, Prevention, and Treatment Act of 2001 and the Drug Abuse Treatment on Demand Assistance Act reflect an increased emphasis on treatment interventions. Through this and similar legislation, the United States Government is establishing a network of programmes, offices and other entities to combat the drug consumption problem in America.

It is incumbent upon the United States and similar drug-consuming countries to engage themselves in the battle against drugs on both fronts—demand reduction and supply eradication—with commensurate resources and concern. Fuentes and Kelly (1999) concluded that the tendency to promote law enforcement sting operations, raids and investigations while treatment facilities and anti-drug use campaigns in American cities remained comparatively underfunded was simply poor policy. And, indeed, evidence suggests that United States drug enforcement efforts will be futile unless demand reduction initiatives are an integral part of the national strategy.

**CONCLUSION**

With respect to the illegal drug problem throughout the world, the United Nations Secretary-General recently declared that if the international community was to deserve its name, it must respond to this challenge (Office for Drug Control and Crime Prevention 2000). The Mexico-United States bilateral response to the illicit drug market affecting both countries has been commendable, though the need for improvement is clear. Leaders in both countries have acknowledged that measures to reduce demand are a critical component of their drug strategies. They also recognize the importance of open, respectful cooperation in combating the criminal syndicates that produce and transport narcotics. Mexico and the United States are both making progress in many areas, albeit sometimes limited. It is hoped that both will continue to benefit from cooperative initiatives that have

been established in recent years. The drug epidemic affects an increasing number of communities around the world. Reversing that trend will require sustained, collaborative efforts across borders in every hemisphere. To that end, the Mexico-United States bilateral campaign against drugs perseveres.

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**FIGHTING DRUG CARTELS ON  
THE MEXICO-UNITED STATES BORDER<sup>1</sup>**

**BY SAMUEL GONZALEZ-RUIZ<sup>2</sup>**

**ABSTRACT**

In the present article, the author describes the Mexican contribution to investigations into Mexican cartels specializing in trafficking of drugs into the United States of America. An account is given of the investigative efforts of prosecutor José Patiño Moreno, who was killed by organized criminal groups in 2000. His case illustrates the difficult conditions surrounding the fight against organized crime in Mexico, including corruption among public officials. The article continues with an analysis of the impact of drug consumption in the United States upon the growth of organized crime and related violence in Colombia and Mexico.

**THE CASE OF JOSÉ PATIÑO MORENO AGAINST THE  
ARELLANO FÉLIX ORGANIZATION**

José Patiño Moreno participated as a member of the Mexican delegation in a meeting held in Warsaw from 2 to 6 February 1998 of an intergovernmental committee of experts that considered the draft prepared by the Max Planck Institute for Foreign and International Criminal Law, based in Freiburg im Breisgau, Germany,<sup>3</sup> which formed the basis for what became the United Nations Convention against Transnational Organized Crime,<sup>4</sup> signed by 124 States in December 2000 in Palermo, Italy. The comments of José Patiño Moreno, as Federal Anti-Narcotics Prosecutor in the Office of the Special Prosecutor for Crimes against Health (FEADS) of Mexico, were incorporated into the document setting forth Mexico's position.

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<sup>2</sup>Programme Manager, Global Programme against Transnational Organized Crime, Centre for International Crime Prevention, Office for Drug Control and Crime Prevention, United Nations Secretariat.

<sup>3</sup>See A/C.3/51/7, annex.

<sup>4</sup>General Assembly resolution 55/25, annex I.

Two years later José Patiño Moreno was found dead with his companions, Federal Prosecutor Oscar Pompa Plaza and Captain Rafael Torres Bernal of the Mexican Army, in a ravine on the road from Tijuana to Mexicali, in a car with United States number plates that had been bought with official money for the prosecution of investigations of the Tijuana cartel. The videos from the checkpoint at San Isidro, California, show the three men entering Mexican territory after a meeting with colleagues from the Federal Bureau of Investigation (FBI) and the Drug Enforcement Administration (DEA) of the United States. Hours after Patiño Moreno failed to report to his office, the alarm was raised and a search for him was conducted on both sides of the border. Two days later, a vehicle with three bodies in it was located. The report of the Federal Highway Police claimed that the car had swerved off the road. However, the forensic report demonstrated that the officials had died as a result of the destruction of internal organs when a heavy lorry was driven over them until they were dead. The bodies had been put back into the car, which had then been pushed down the bank. None of the injuries were in keeping with a car going off the road (Office of the Attorney-General of the Republic of Mexico 2000a).

Jorge Madrazo Cuellar, the Mexican Attorney-General, the most important Mexican officials in the campaign against drug trafficking, representatives of United States agencies, including DEA, FBI and the Customs Service, and, quite exceptionally, the United States Ambassador, Jeffrey Davidow, took part in the public act of tribute to the three men killed.

Emphasizing the differences in the treatment received by Mexican and United States agents killed in service, some of the Mexican members of the Tijuana/San Diego Binational Group<sup>5</sup> used to joke to their United States colleagues that, if they were killed in service, they prayed to God that it would be together with one of their American colleagues, because tributes in the United States involved the government authorities, whereas in Mexico that did not usually happen. Exceptionally, José Patiño Moreno did receive such a tribute.

Fortunately, José Patiño continues to win battles after his death. In May 2001, thanks to continued efforts in Mexico and the United States, Everardo Arturo "Kitty" Paez Martínez was extradited to the United States. He had been held since October 1997 in the federal maximum security prison at Almoloya de Juárez, thanks to the efforts of the Tijuana/San Diego Group, in which all the federal agencies of Mexico and the United States participated and in which José Patiño Moreno played an important role.

The life and work of José Patiño reflects better than any other the vicissitudes in the fight against organized crime on the Mexican border. In

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<sup>5</sup>This Group is made up of top officials of Mexican and United States law enforcement services and other agencies and its creation has for the first time given federal officials from both sides of the border an opportunity to exchange information and participate in joint operational planning, always respecting the sovereignty of each country. It was set up as a result of an agreement signed by Mexico and the United States in 1996 when Antonio Lozano was Attorney-General of Mexico.

line with the wish of Jorge Carpizo McGregor, Attorney-General of Mexico in 1993, to clear up the murder of Cardinal Juan Jesús Posadas Ocampo, José Patiño participated in the groups combating the Tijuana cartel whose efforts led to the detention and sentencing of Francisco Arellano Félix, arrested in 1993 on charges of weapons possession and imprisoned in the Almoloya de Juárez maximum security prison.

His activities included the difficult task of investigating the deaths of several of his colleagues. In March 1994, the group to which Patiño Moreno belonged attempted to arrest the second in command of the Tijuana cartel, Ismael "El Mayel" Higuera Guerrero, and Javier "El Tigrillo" Arellano Félix. Both were wounded and Commander Alejandro Castañeda Andrade and four officers were killed in the clash. After being arrested, the two men were released as the result of local corruption (Office of the Attorney-General of the Republic of Mexico 2000b).

Ernesto Ibarra Santés, a commander in the Federal Judicial Police, swore to take revenge on the Arellano Félix brothers and El Mayel for the death of his friend Commander Castañeda. It was perhaps for that reason that he did not hesitate to enter into an alliance with the rival criminal organization led by Amado Carrillo Fuentes. Unaware of that alliance, officials of the Office of the Attorney-General of Mexico and United States officials supported Ibarra Santés in his fight against the Tijuana cartel. In August 1996, Ibarra Santés was appointed Chief of the Federal Judicial Police in Tijuana as part of a major effort to combat drug trafficking in Mexico. On 14 September 1996, Ibarra Santés, officers Juan Rosas Gallegos and Israel Moreno Flores and a taxi driver, Juan Hernández Lisard, were murdered in Mexico City, a few streets away from the anti-drug offices, upon their return from a working meeting in Tijuana (*La Jornada* 1997). José Patiño Moreno, who had temporarily left his post as Federal Prosecutor to serve as Special Prosecutor for Homicides in Mexico City, was responsible for investigating the murders.

As mentioned above, the Attorney-General of Mexico and his staff were unaware that, only a few weeks earlier, when Ibarra Santés had been offered the post of Chief of the Federal Judicial Police in Tijuana and had not yet accepted the post, he had directly requested the support of Amado Carrillo Fuentes, the leader of the Juárez cartel, in his campaign against the Arellano Félix brothers. Some weeks later, General Jesús Gutiérrez Rebollo, then Commander of the Military Region of Guadalajara, Jalisco, with the support of Amado Carrillo, Eduardo González Quirarte and the group of assassins known as "Los Arbolitos",<sup>6</sup> provided information that served in the prosecution of the murderers of Ibarra Santés, not only identifying the assassins but also disclosing the infiltration of certain state bodies by the Arellano family. Ironically, two and a half months later, Jesús Gutiérrez Rebollo was appointed Mexico's anti-drug tsar, but in February 1997 he was arrested on charges of protection of the Amado Carrillo Organization and participation in organized

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<sup>6</sup>This criminal group, led by Juan Jesús Álvarez Tostado, was targeted in the "Casablanca" operation for money-laundering offences.

crime, thus becoming the first person prosecuted under the Federal Law against Organized Crime, which had come into force in 1996. He is now serving a sentence of over 70 years' imprisonment (Office of the Attorney-General of the Republic of Mexico 2000c).

José Patiño participated in the Binational Group, which was formed at that time and which has helped to bring about a situation in which, of the 10 criminal leaders of the Tijuana cartel in 1996, six are behind bars and one is dead. Thus Emilio "El CP" Valdez Mainero was arrested in Coronado, California, pursuant to a request for detention for extradition purposes submitted by Mexico in September 1996. He was sentenced by the San Diego Federal Court to 30 years' imprisonment for offences committed in his United States prison pending the extradition proceedings (Office of the Attorney-General of the Republic of Mexico 2000c) and when he comes out he will be sent to Mexico for trial there. Everardo Arturo "Kitty" Paez Martínez, arrested in 1997 in Tijuana at the request of the United States Government, was sent to the Almoloya de Juárez maximum security prison. The Secretariat for Foreign Affairs granted an extradition request. That decision was challenged in the courts, but, after lengthy proceedings, Paez was extradited to the United States; he is the first important Mexican criminal to be extradited to that country for drug trafficking. In October 2001 he pleaded guilty in the United States to charges of drug trafficking and criminal association, and is at present awaiting sentencing. Amado Cruz Anguiano has been held since February 1998 in the Almoloya de Juárez maximum security prison and is being tried for laundering money for the Arellano Félix Organization. Ismael "El Mayel" Higuera Guerrero, who may have ordered the killing of José Patiño, was arrested in May 2000. He is in the Almoloya de Juárez maximum security prison and is now on trial. Jesús Labra Áviles, arrested in February 2000, is also being held in the Almoloya de Juárez prison. David "El CH" Baron Corrona died on 17 November 1997 in an attempt to kill Jesús Blancornelas, editor of the newspaper *Zeta*. Unfortunately Blancornelas' bodyguard was killed in that incident.

Of the 1996 leadership of the Tijuana cartel, only the brothers Benjamín and Ramón Arellano Félix and Manuel "El Caballo" Aguirre Galindo have so far evaded arrest. The activities of the Binational Group, in which José Patiño played a decisive role, also permitted, for the first time, the issue in the United States of arrest warrants against Benjamín and Ramón Arellano Félix, the latter being one of the 10 criminals on the FBI's list of most-wanted fugitives.

The latter programme also helped the United States justice system to prosecute Jesús "Cougar" Zamora and Enrique "Tarzan" García for their participation in the criminal group that attempted to kill Joaquín "El Chapo" Guzmán Loera, which led to the death of Cardinal Juan Jesús Posadas Ocampo. All the Mexican evidence was reassessed and several witnesses who cooperated in the investigation were included in an exchange of witnesses between Mexico and the United States. The investigation into the death of Cardinal Posadas in Guadalajara in May 1993 was in fact again carried out by the United States prosecution services on the

basis of principles of United States criminal justice. The conclusion that they reached is in the United States file on the Arellanos case, which can be consulted in the court archives in San Diego, California.

Establishing trust in the region between public authorities and between the agencies of the two countries is not an easy matter. There is jealousy over the credit to be given for work done and a lack of confidence in the work of other agencies, which is greatly increased by the disinformation campaigns conducted by drug trafficking groups in the region. It must not be forgotten that many of the members of those groups were themselves trained in police or military schools.

As is well known, the Arellano Félix family and other organizations of drug traffickers engage in extensive counter-intelligence activities, mainly through *(a)* the use of informers working with Mexican and United States police agencies and at the same time supplying information to harm rival gangs (for example, by stopping drug deliveries of such gangs); *(b)* giving information leading to seizures of small amounts of drugs while larger quantities are moved through at the same time at other points; and *(c)* relations with the press, based in part on the natural interest of the press in being informed about the drug trafficking situation, but sometimes involving journalists who are friends of the criminals or whom they simply pay and control. This is one of the factors making it very hard to combat drug trafficking and organized crime in Mexico.

#### **THE CONSUMPTION OF COCAINE IN THE UNITED STATES AND THE INCREASE IN VIOLENCE AND CORRUPTION IN COLOMBIA AND MEXICO**

Although the practice of allotting blame on a geographical basis, with the producer countries criticizing the countries where drugs were consumed and the consumer countries criticizing producer countries for supplying them with the drugs, is now fortunately a thing of the past, one may legitimately ask questions about the complex problem of drugs. Humberto Fernandez, in his book *Heroin* (1998), states that in 1924 there were 250,000 drug addicts in the United States, whereas by 1945 the number had dropped to 20,000. Fernandez asks:

“Why then did the situation with heroin become worse, not better, after World War II? . . . Enforcement efforts and the restriction of high-seas smuggling during the war years, when major ports were under close scrutiny for sabotage, reduced the supply of heroin to a point where complete elimination of heroin addiction was thought possible. How did it come to pass that by 1997 more than 250,000 Americans were serving time in prison for drug law violations, and drug use that year caused 500,000 emergency room visits? In 1996 there were 1.6 million Americans arrested for drug abuse violations. Of these, almost 40 per cent were for heroin and cocaine—nearly 600,000 individuals arrested for possession with intent to sell or for

simple possession. What happened? There are no simple answers to this question. Many factors contributed to the resurgence of heroin use in post-war America, but one can look to the start of the cold war era as a turning point.”

The increase in the number of persons using heroin and marijuana, of which Mexico has always been a producer, has had some indirect repercussions on the institutional stability of Mexico, although contacts with the United States have been documented for many years.<sup>7</sup> However, the illegal markets for Mexican marijuana and heroin in the United States are not so extensive that they cannot be absorbed by the Mexican economy. Circumstances changed radically with the advent of the cocaine market (see figure I).

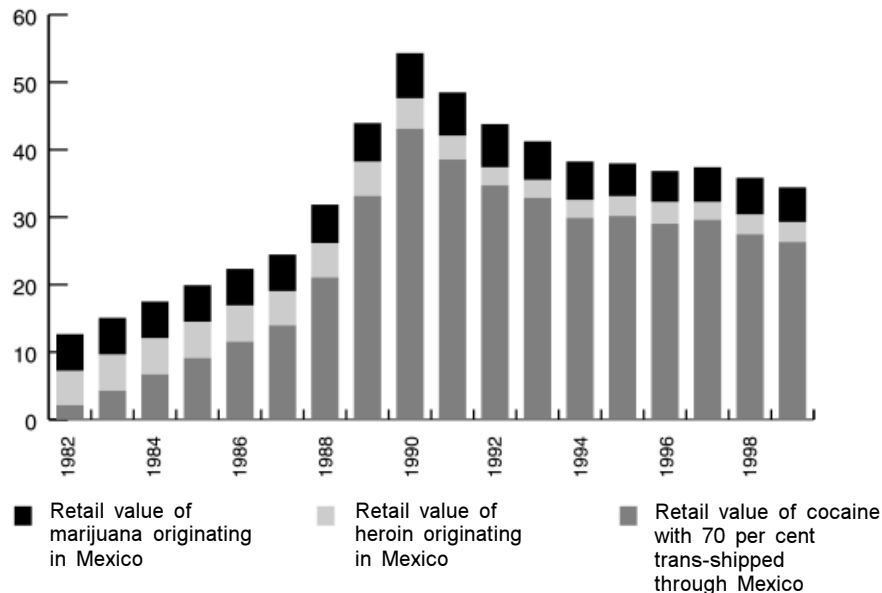
Organized crime almost always generates violence because it has no way of resolving disputes except by mutual consent or settling of scores. The bigger the illicit business and the weaker or less effective the mechanisms for resolving conflicts, the greater will be the violence and the associated crime. The violence and the deteriorating public security situation in Mexico, as in Colombia, are closely related to the increase in cocaine consumption in the United States and to how the illegally acquired capital is managed by Colombian and Mexican criminal organizations. In 1982, the estimated annual consumption of cocaine in the United States was 50 tons; by 1988, it had peaked at 401 tons. The figure stabilized at approximately 300 tons by 1992-1993 and has remained at that level. In Colombia, the late 1980s and early 1990s were the worst years for violence and killings. In those years turf battles between Colombian cartels were probably at their most fierce because the market had not yet stabilized.

Figure II depicts the indexed trends in the homicide rate in Colombia and in the financial value of the United States' wholesale cocaine market. The homicide rate in Colombia appears to be strongly correlated to the value of the United States cocaine market ( $r=.89$ ;  $n=17$ ;  $p<0.01$ ). Although many other factors have contributed to criminal violence in Colombia, that correlation provides some indication that the United States' cocaine market has indeed had an impact on Colombian homicide rates through the activities of the cartels.

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<sup>7</sup>According to Stanley Pimentel, writing in *Organized Crime and Democratic Governability: Mexico and the U.S.-Mexican Borderlands*, eds John Bailey and Roy Godson (Pittsburgh, Pennsylvania, University of Pittsburgh Press, 2000): "Since the existence of the frontier between Mexico and the United States, there has always been smuggling between the two countries. From Mexico came marijuana, heroin and, later, cocaine, whereas from the United States came refrigerators, television sets, cars and weapons." See also the article by Luis Astorga in the same work.

Figure I. Estimated total retail value of drugs originating in or in transit through Mexico and sold in the United States of America, 1982-1998<sup>a,b</sup>



Source: W. Rhodes and others (2000). *What America's Users Spend on Illegal Drugs, 1988-1998*, United States Office of National Drug Control Policy.

<sup>a</sup>Mexican organized crime has been active in the retail cocaine market since at least 1993, but not all cocaine in transit through Mexico is sold by Mexican organized criminal groups. At least 50 per cent of cocaine in transit through Mexico is the wholesale property of Colombian organized crime.

<sup>b</sup>Figures are based on official United States retail value and the following assumptions:

(i) Cocaine in transit through Mexico represented 20 per cent of United States consumption from 1982 to 1989;

(ii) From 1991 to 1993, the amount of cocaine in transit through Mexico increased to 70 per cent;

(iii) For heroin, calculations were based on the total expenditure of United States consumers multiplied by the percentage of heroin originating in Mexico for the years 1982 to 1988, using 1989 as a constant;

(iv) For marijuana, using the same method as for heroin, it was calculated that 50 per cent of the drug on the United States market originated in Mexico.

In Mexico, the impact on drug-related violence was delayed. Initially, the Colombian cartels monopolized supply and transportation, but that situation changed with the closing of the entry route into Florida for Colombian cocaine and, consequently, the opening of the Mexican route, where initially, up to the beginning of the 1990s, \$1,000-\$3,000 was paid per kilogram for the transport of the product through the country. Subsequently, Mexican territories came under the control of Mexican organized crime, with the Mexican cartels insisting on splitting up to 50 per cent of the shipments from the Colombian cartels. This, as a result, marked the beginning of large-scale distribution by Mexican criminal organizations in the United States. Consequently, it may be said that the increase in violence in Mexico followed the upward trend in the consumption of cocaine in the United States and Mexico's increasing involvement in trafficking.



Figure II. Trends in the indexed total wholesale value of cocaine sold in the United States of America and in the indexed homicide rate in Colombia, 1982-1998

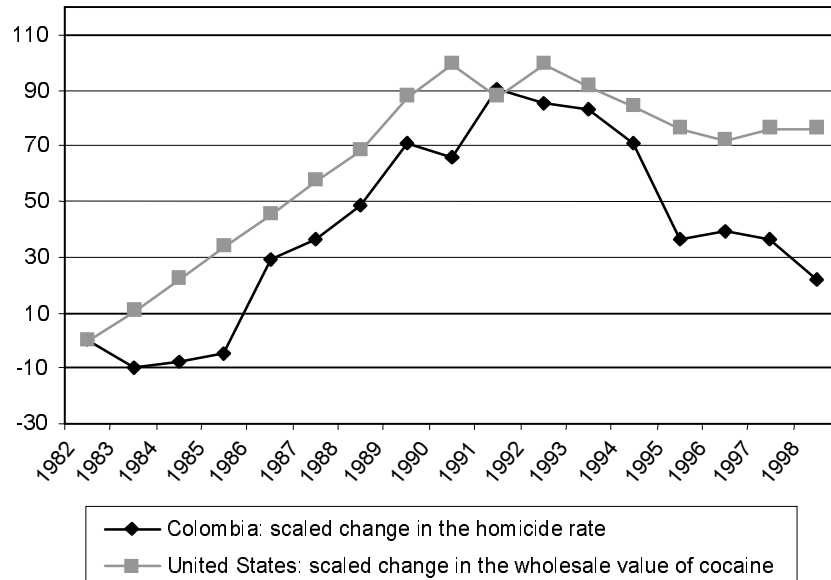
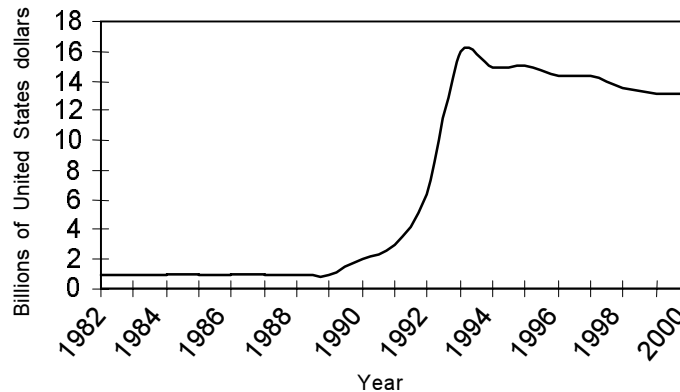


Figure III. Estimated income generated from trafficking in cocaine into the United States of America by Mexican organized criminal groups, 1982-2000<sup>a</sup>



<sup>a</sup>Does not include money-laundering. Figures indicate the market control by Mexican criminal organizations on the basis of official statistics for the retail values on the United States cocaine market. Estimates are based on the following assumptions:

- (i) Twenty per cent of cocaine passing through Mexico from 1982 to 1989 (with the Florida route in operation);
- (ii) Seventy per cent of cocaine passing through Mexico from 1990 to 2000 (with the Florida route closed);
- (iii) Money paid to Mexican criminal organizations: \$3,000 per kilogram from 1982 to 1990;
- (iv) Thirty-five per cent of cocaine cargo in 1991 and 1992;
- (v) Fifty per cent of cocaine cargo from 1993 to 2000.

The conquest of the United States market by Mexican organized crime has generated a concentration of illicit capital that is not at par with the Mexican economy, but rather with the United States economy. The total value of the cocaine passing through Mexico can be calculated in the following way: the reported annual consumption of cocaine in the United States is 300 tons, between 50 per cent and 70 per cent of which passes through Mexico, according to United States figures; consequently, between 150 and 210 tons pass through Mexico, representing approximately \$14 billion in wholesale value. That money is shared between Bolivian, Colombian and Peruvian producers and Mexican distributors. It is calculated that the retail value of cocaine in the United States is \$37 billion. The question is how much is received by Mexican criminal organizations and enters the Mexican economy and how much is laundered in the financial systems of the countries of the North and remains in foreign countries. If it is assumed that 35 per cent of the retail market value accrues to the Mexican distributors, their annual turnover in cocaine will now be close to \$14 billion (see figure III). Since the retail value in the United States of marijuana and heroin originating from Mexico has been estimated at \$10 billion (see figure I), the total turnover in illicit drugs trafficked by Mexican criminal groups can be estimated to have surged from about \$10 billion in 1990 to \$25 billion or more today. It is obvious that the criminal gains from the drugs flowing through Mexican criminal organizations are out of proportion to the Mexican economy, which totals about \$450 billion. The injection into a national economy of criminal money amounting to about 6 per cent of GNP is bound to create severe economic, social and political disturbances.

Kaplan (1989) analysed the serious situation in Colombia and predicted that that situation would spread to Mexico and, in fact, all Latin America. He was criticized by many for exaggerating the state of affairs. At that time, the drug trafficking problem in Mexico was seen as one that was geographically limited to Sinaloa, Guerrero and Oaxaca, but the problem has since spread to the whole country and there is practically no part of the Federation that is not affected by the resulting violence. Adolfo Aguilar Zinser, National Security Adviser to President Vicente Fox, describes Mexican reality 12 years later in terms similar to the predictions of Kaplan when he says (Aguilar Zinser 2001):

“Organized crime has already become the main threat to national security; it may flare up anywhere, launching surprise attacks. Organized crime takes advantage of freedoms, develops networks of interests and complicities, uses institutions, skilfully harnesses the forces of globalization and shelters socially behind an appearance of refinement and respectability . . . On 2 July 2000, the democratic transition reached Mexico when organized crime was already beginning to strangle the State and overtake society. More than any other force, organized crime profited from the deterioration of the old system to corrupt institutions, to expand its clientele and network of accomplices and to launder its profits, investing them little by little in the financial system, real estate, commerce, services and industry of the country . . . Governmental corruption, the instrument par excellence

of political control in Mexico, lost its endogenous character; that is to say, it ceased to be a phenomenon of a politico-bureaucratic nature, reflected in practices such as the improper use of government funds, discretionary management of the budget, favouritism in the allocation of contracts, trafficking in influence and extortion by the authorities, and moved into the area of criminal activities, mainly associated with narcotics trafficking and money-laundering.”

### **CHALLENGES FOR BOTH COUNTRIES**

Each society has its own view of the drug problem, which reflects the way it is affected by drugs—whether it is predominantly a consumer country or region (Europe and the United States), an area of transit and production (Mexico and Latin America) or one that generates illicit resources or constitutes a tax haven where, inter alia, the money accumulated by drug traffickers is laundered. The consequences are vastly different and so are, inevitably, the perspectives and approaches of policy makers and researchers.

The multiplicity of approaches to the drug problem sometimes makes it difficult to appreciate the need to take into account all elements of the problem in trying to develop real solutions.

The United Nations (2000) has launched a programme in which key components of the fight against drugs are identified as preventing trafficking, consolidating national institutions, preventing displacement of illicit cultivation, supporting country efforts and implementing alternative development. Only by reducing the demand for drugs at the same time as the supply is curtailed, strengthening programmes for sanctioning those responsible for drug trafficking, generating support in the community for the officials entrusted with combating organized crime, developing anti-corruption mechanisms in different countries, working with civil society to develop techniques for the elimination of violence, developing effective programmes for confiscating the assets of drug traffickers and promoting measures to punish money-launderers will it be possible to reduce the social burden for society in the twenty-first century created by the drug problem.

As far as cooperation between Mexico and the United States is concerned, it is clear that much remains to be done, but great steps forward have already been made. From the Mexican perspective, the drug problem arises mainly as a result of consumer demand for cocaine in the United States. That demand has made organized criminal syndicates into financial and social powerhouses that have started to undermine Mexican public institutions. Violence and corruption have become so prevalent that they have weakened the ability of society to address them. These circumstances constitute the background to dramatic stories such as that of José Patiño.

On both sides of the border, there are stories of successes and failures, of mistakes and of highlights in cooperation. That cooperation

between Mexico and the United States in the fight against organized crime is flourishing can be seen from recent statements by President Fox and the results of the talks between the Attorneys-General of Mexico and the United States, Rafael Nacedo de La Concha and John Ashcroft, respectively. The contribution from each party should be seen in its unique national context.

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**CHINESE HUMAN SMUGGLING IN THE  
UNITED STATES OF AMERICA<sup>1</sup>**

**BY SHELDON ZHANG<sup>2</sup> AND KO-LIN CHIN<sup>3</sup>**

**ABSTRACT**

Transnational human smuggling involving Chinese nationals has reached a global scale, with enterprising individuals forming complex networks around the world and funnelling migrants towards three main destinations—North America, western Europe and Australia. Socio-structural factors interact with personal-level factors to generate tremendous market demand for population migration, which is also made easier by recent advances in telecommunications and transnational travel and the relaxation of China's residential control. However, the massive influx of Chinese nationals through clandestine channels has caused grave concern among receiving nations and met with various restrictive measures. In the United States of America, those who facilitate the illegal population movement as a business are considered organized criminals and targeted by federal and local law enforcement agencies.

Through field observations and interviews with smuggling organizers in the United States, the present authors have found that, contrary to widely held conceptions about Chinese organized crime, most smugglers of human beings are otherwise ordinary citizens whose family networks and fortuitous social contacts have led them to take part in a profitable trade in shipping human cargo around the world. They are loosely connected and form temporary alliances to carry out smuggling operations. With the exception of a shared commitment to making money, there is little that holds them together. The smuggling organizations mostly resemble ad hoc task forces and are assembled for specific operations. The organizations have clear divisions of labour with limited hierarchical structures. The amorphous organizational structure has allowed smugglers to improvise creative measures to conceal their operations from law enforcement authorities and to be successful in moving large numbers of Chinese nationals into the United States.

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<sup>2</sup>Associate Professor, Department of Sociology, California State University San Marcos, San Marcos, California, United States of America.

<sup>3</sup>Associate Professor, School of Criminal Justice, Rutgers University, Newark, New Jersey, United States of America.

### **INTRODUCTION**

Chinese nationals entering the United States of America illegally is not a new phenomenon. However, organized Chinese smuggling of human beings is a recent development. Economic growth, greater commercial exchange, easier travel between countries and the proliferation of telecommunications have expanded the horizon of transnational activities, legal and illegal (Zhang and Gaylord 1996; Zhang 1997). Since 1978, when the United States established diplomatic relations with China (Fairbank 1983), Chinese nationals have resumed their legal immigration to America (Zhou 1992). Because of the limited immigration quota for Chinese nationals, few have a legitimate opportunity to emigrate to the United States. The restrictive immigration policies have therefore given rise to a lucrative niche market where enterprising agents and contractors charge a fee to move customers through illegal channels. These entrepreneurs are called "snakeheads" both in China and among the receiving Chinese communities overseas.

While law enforcement agencies and policy makers view illegal Chinese immigration into the United States as a criminal activity with grave long-term political and social implications, those who engage in the business of transporting people across borders as well as those who are smuggled generally do not share the same view. The smuggling of human beings does not carry much social stigma in either the sending or the receiving communities. Most view it simply as a business involving willing participants—those who have at their disposal certain services and those who desire such services and are willing to pay for them. At most, such smuggling is viewed as a crime of *mala prohibita*, made so solely by government regulations.

### **BACKGROUND**

Organized Chinese smuggling of human beings attracted attention in 1993 after the freighter *Golden Venture* ran aground near New York with 260 undocumented Chinese aboard; 10 passengers were drowned while attempting to swim ashore (Gladwell and Stassen-Berger 1993). In the years since, the United States Government has mobilized its resources from the United States Immigration and Naturalization Service and the United States Coast Guard to develop high-tech underwater listening devices and establish overseas diplomatic posts to curb the influx of illegal Chinese immigrants (Gross 1996; Marquis and Garvin 1999; Offley and Connelly 1999). Recognizing the failure of lenient punishment to deter smugglers of human beings, the United States Congress passed the Violent Crime Control and Law Enforcement Act of 1994, which dramatically increased the penalty for smuggling of human beings (United States Commission on Immigration Reform 1994). Federal authorities have also successfully prosecuted several smuggling groups as racketeering enterprises (Gold 1995). The wave of illegal entry of Chinese nationals into the

United States does not appear to be ebbing, however. Instead, a complex web of smuggling networks appears to have formed globally, capable of effective response to various market uncertainties and legal constraints that are inherent in the illicit business, as evidenced by the discovery of 58 dead Chinese migrants inside a refrigerated truck in Dover, United Kingdom of Great Britain and Northern Ireland, in June 2000 (McAllister 2000). It was believed that those illegal immigrants had come from Fujian province in China and had passed through many European countries before the human cargo was found.

Several strategies have been used to transport Chinese citizens into the United States (United States Senate 1992). One strategy is to travel to Canada or Mexico by some means and then illegally cross the borders into the United States (Asimov and Burdman 1993). A second strategy is to fly into the United States either directly or via several transit points outside China. Such by-air illegal immigrants must have some fraudulent documents to enable them to board the plane and enter the country (Lorch 1992). A third strategy is to transport Chinese nationals on fishing trawlers or freighters into the United States (Myers 1992; Zhang and Gaylord 1996).

Unlike illegal immigrants from Latin America who enter the United States at little or no cost (Cornelius 1989; Jones 1984), each illegal Chinese migrant must pay smugglers tens of thousands of dollars (Chin 1999). Some estimate that more than 100,000 undocumented Chinese are being smuggled into the United States each year, and the human smuggling business brings in more than \$3.2 billion in annual profits (Myers 1992, 1994; United States Senate 1992), which is lucrative enough to rival heroin trafficking and aggressive enough to threaten the integrity of the legal immigration system in the United States. The social and legal ramifications would be hard to ignore were the influx of illegal immigrants from such a vast country as China to continue unchecked.

#### **CURRENT KNOWLEDGE OF CHINESE HUMAN SMUGGLING**

Chinese human smuggling activities have received little attention from United States researchers. This is in part because smuggling of humans, except in a very limited context such as the Chinese, is not a traditional choice of business for organized criminals. More importantly, illegal Chinese immigrants have been largely "invisible", owing to linguistic and cultural barriers erected by the ethnic enclaves in the receiving Chinese communities in the United States. As long as their problems do not spill over into the mainstream of society, few "outsiders" have reason to intrude into their communities.

Myers (1992, 1994, 1996, 1997), a former immigration lawyer who worked with many undocumented immigrants, warns about the threat of the influx of illegal Chinese nationals to United States national security and suggests that a worldwide web of criminals from Taiwan province of



China controls the human trade. On the basis of informal interviews with a small number of illegal immigrants in New York and a trip to China, Kwong (1997) has written a book on the labour aspect of illegal immigration. He argues that the rise of Chinese illegal immigration is due mainly to unfair American labour practices. Although a number of other scholars have also written on Chinese human smuggling (Bolz 1995; Liang 1998; Wang 1996), only three researchers in only two separate studies have gathered systematic empirical data on a large scale to explore the causes and processes of Chinese human smuggling into the United States.

In the first study, funded by the National Science Foundation, Chin and Kelly (1997) interviewed 300 smuggled Chinese immigrants in New York in 1993. Some of their major findings are as follows:

*(a)* Almost 90 per cent of the subjects were from Changle City, Tingjiang Township and Mawei District, all in the Fuzhou area. Most were young, married men with little formal education and few professional skills;

*(b)* The vast majority of the subjects admitted that they had come to the United States to make money, not because they had been politically persecuted in China;

*(c)* Forty-eight per cent of the respondents flew into the United States. Another 40 per cent entered the country by crossing the border with Mexico or with Canada overland. Only 12 per cent arrived by boat;

*(d)* The Chinese human smuggling trade was not dominated by Chinese-organized criminal groups such as the China-based secret societies, triads based in Hong Kong,\* organized gangs based in Taiwan province of China and United States-based tongs and street gangs;

*(e)* Of the 143 respondents who flew into the United States, only 7 flew directly from China to the United States. Most travelled through two or more transit points in Asia before they arrived in the United States. It took an average of 106 days for the 143 by-air respondents to arrive in the United States;

*(f)* Most of the respondents who arrived by boat endured horrendous personal suffering during their voyage. Women were raped and men were beaten by the enforcers on the boats. More than 90 human cargo ships left China between 1989 and 1993, but few of them were detected;

*(g)* Those who crossed into the United States on land also faced a variety of risks and hardships. The majority of them had travelled to Mexico or Guatemala by sea. They suffered not only during the sea voyage, but also while crossing the border;

*(h)* Although the average rate of detection by the United States authorities for the whole sample was 37 per cent, only 11 per cent of those who crossed the United States border overland were discovered by the United States Border Patrol, whereas as many as 64 per cent of

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\*On 1 July 1997, the territory of Hong Kong became the Hong Kong Special Administrative Region of China.

those who flew into the United States were caught at their point of entry. However, all of the respondents who were detained at their point of entry were immediately released after they petitioned for political asylum;

*(i)* Respondents were kept in safe houses by debt collectors upon their arrival and were released only after they had paid their smugglers the entire smuggling fee. Many of those who failed to deliver the payment promptly were tortured by their captors. The average smuggling fee for the whole sample was \$27,700;

*(j)* Most of the respondents worked in restaurants, garment factories or construction firms. They made about \$1,400 a month and paid off their smuggling debts in less than three years.

In the second study, funded in 1999 by the National Institute of Justice of the United States Department of Justice, Zhang and Chin (2000) gathered data on the characteristics of Chinese human smuggling organizations. In-depth interviews were conducted with a total of 130 Chinese human smugglers and ethnographic observations were made in both the sending and receiving communities in China and the United States. Some of the preliminary findings from the ongoing National Institute of Justice study are as follows:

*(a)* People of diverse backgrounds participate in the smuggling business, including government officials, police officers, owners of small businesses, housewives, handymen, masons, taxi drivers and fruit stand owners;

*(b)* Those in a smuggling ring often belong to a family or a close social circle;

*(c)* Unlike those involved in traditional Chinese organized crime, a significant number of the snakeheads interviewed are female (18 per cent of the sample). Furthermore, those female respondents are found at different levels of the smuggling business. Some are very successful, while others are only part-time recruiters;

*(d)* The snakeheads interviewed perceive themselves as regular business people. Smuggling in humans does not carry much social stigma and some forms of smuggling, such as fraudulent marriage with a United States citizen, is even considered perfectly legal and acceptable;

*(e)* All smugglers get to know each other through informal social networking with friends and business contacts. A human smuggling ring is a business arrangement involving only those with valuable resources to contribute;

*(f)* There is no clear hierarchy in a smuggling organization. Despite the lack of a hierarchical structure or the absence of a "godfather", most smuggling activities have been surprisingly uneventful. The division of labour in smuggling operations is highly evolved with minimum redundancy. There are many specialized roles to ensure the successful completion of an operation;

(g) All snakeheads tend to develop their own niche in the smuggling business: some specialize in fraudulent marriages, while others prefer arranging business delegations to the United States;

(h) Systematic corruption and bribery are essential in Chinese human smuggling, but corruption methods vary tremendously depending on the type of services desired. The need to bribe and corrupt is not always embraced equally among smugglers. Some view bribery as part of their normal social networking that is conducive to building their business contacts, while others despise corrupt officials for their greed, which cuts too deep into their profits;

(i) Chinese human smuggling involves mostly temporary alliances for specific operations. Partnerships are formed as quickly as they are dissolved once their purposes have been fulfilled;

(j) Human smugglers are not connected with traditional triad societies, although individual members of traditional organized criminal groups may participate in the business.

#### **REGENT TRENDS AND CHANGES IN THE SMUGGLING BUSINESS**

The 1993 survey in New York by Chin and Kelly (1997) was significant in the sense that it was the only large-scale empirical effort to gather information on the characteristics of the tidal wave of illegal Chinese immigration that started in the 1980s and accelerated after the crackdown on the democracy movement in Tiananmen Square in 1989. The study and the subsequent book by Chin (1999) provided critical first-hand information on the nature and extent of Chinese human smuggling.

However, while a landmark study, Chin and Kelly's survey should now be considered historical because it only included respondents who had arrived in the United States in the pre-*Golden Venture* era. The present authors have argued for some time that the *Golden Venture* incident was a watershed event in the study of organized Chinese transnational human trafficking. It was a defining moment on several grounds. Firstly, it signified the arrival of the tidal wave of illegal Chinese immigrants to the United States after China resumed diplomatic relations with the country. Secondly, it brought to the front page of national newspapers the potential threat to United States national security and the legal immigration system by the influx of illegal immigrants from a country with one fifth of the world's population. Thirdly, it compelled law enforcement as well as social service agencies in the United States to confront the problem of illegal Chinese immigrants as real and serious and to mobilize resources that had previously been directed mostly to curbing illegal migration from Latin America. Fourthly, it showcased the capability, albeit disastrously, of Chinese organized criminal groups to form transnational networks for the sole purpose of moving human cargo around the globe.

Since the *Golden Venture* incident, significant changes have taken place in the human smuggling business and new trends have emerged in directions that have not been encountered or investigated before. A few examples are given below.

Firstly, there have been several major changes in the methods and routes that are used by snakeheads to transport Chinese nationals into the United States. In recent years, smugglers have been increasingly going to peripheral locations to unload their human cargoes, such as the United States Virgin Islands and Guam, Ensenada (Mexico) and British Columbia (Canada) (Associated Press 1999; Lau and Dibble 1999; Reuters 1999; Wang 1999). Chinese human smugglers have also developed other sophisticated methods for infiltrating the defence lines erected by the United States Coast Guard. Cargo containers are now used to transport Chinese immigrants directly into United States ports (Jablon 1999). In January 2000, three Chinese migrants were found dead inside a container of a freighter that arrived in Seattle from the Hong Kong Special Administrative Region of China (SAR) of China (Hervocek 2000). There is no reliable information on how many smugglers have adopted such new smuggling methods and their relative success rate.

Secondly, many would-be migrants now demand either a direct flight from China to the United States (i.e. as members of a business or official delegation or as bogus legal migrants) or "legal" immigration procedures (i.e. as spouses of United States citizens through fraudulent marriages or as spouses of F-1 visa holders). The use of the air route is therefore on the increase. Far less hazardous and torturous than fishing trawlers, the air route has become the preferred choice of transportation for entering the United States by those with good connections and financial resources. While not all flights carrying Chinese illegals land directly in the United States, many Chinese fly into Canada or Mexico or by using international transfers at United States airports where, upon arrival, Chinese immigrants can demand political asylum. Such incidents have become commonplace in many main United States ports of entry.

Thirdly, there is a change in the geographical origins of the smuggled immigrants. In the past, the United States Immigration and Naturalization Service estimated that more than 95 per cent of illegal Chinese immigrants in the United States came from Fujian, a province across from the Taiwan Strait in southern China (Zhang 1997). In recent years, the present authors have noticed an increasing number of Chinese nationals from the Wenzhou area in Zhejiang Province (bordering on Fujian Province to the north). Wenzhounese have been known for years for their emigration to European countries, but it appears that they are now shifting towards the United States. An increasing number of illegal immigrants are also coming from north-eastern China, from places such as Shenyang, Dalian and Harbin. With an estimated surplus labour force of almost 100 million people in China (Goldstone 1997), the spread of clandestine immigration to other parts of China can, as Massey (1999, p. xiii) has suggested, produce a flow of immigrants dwarfing that now observed from Mexico.

Fourthly, there is a change in the socio-economic status of those being smuggled into the United States. In the past, most illegal immigrants from China were young people of working class origin whose lives in China offered poor prospects (Hood 1993; Zhang 1997). In recent years, because of the massive lay-off of white-collar state employees following the economic reform in China, there has been an increasing number of illegal immigrants who used to work for various government agencies of state-owned businesses and are well off enough to obtain "authentic" documents through "proper" channels. Little is known about how the arrival of such better-educated and skilled workers has sustained the trade in humans and how the settlement processes followed by such immigrants differ from those followed by immigrants who arrived earlier.

Fifthly, there have been significant changes in the fees charged for arrangement of the journey to the United States. In 1993, the smuggling fee was less than \$30,000, but in 2000 some field subjects said that they had paid their smugglers about \$60,000 each. A woman who arrived with two children in the United States in December 2000 by contracting a fraudulent marriage said that she had paid her snakehead \$140,000 for the deal. Earlier media reports have also seemed to corroborate the present authors' field findings. For instance, Lau and Dibble (1999) reported smuggling fees of \$51,000 and Jablon (1999) a smuggling fare of \$50,000. In late 1998, when a major smuggling operation transporting Chinese citizens across the Canadian border into the United States through a Mohawk Indian reservation was broken up, the smuggling fee was reported to have been \$47,000 per person ("China-Canada-U.S. Smuggling route shut" 1998). The rapid increase in smuggling fees indicates major shifts in market conditions or significant supply and demand imbalances between those desiring to emigrate and those offering services to smuggle them into the United States.

In sum, in the years since the *Golden Venture* incident, the authors' field interviews and ethnographic observations among the Chinese communities in China and the United States have uncovered so many changes in Chinese human trafficking that one can infer that a new generation of smugglers as well as immigrants may have come of age. The smuggled immigrants appear to be more diversified in their backgrounds and the smugglers have become more capable of using multiple sophisticated routes and methods to funnel Chinese nationals into the United States illegally.

#### **CONCEPTUAL EXPLANATIONS FOR TRANSNATIONAL MIGRATION**

Population migration became a global phenomenon in the past century and the general trends have shifted from outflows of Europeans to their overseas colonies to massive emigrations from developing nations in Africa, Asia and Latin America to industrialized countries in North America and Europe (Massey 1999).

There are many theories on the causes of international migration (Massey and others). According to neoclassical economics theory, huge wage differences between sending and receiving countries constitute the most important reason for people to move (Harris and Todaro 1970; Mahler 1995). Often, international population migration is viewed as an equalizing mechanism to balance the distribution of economic resources across countries. The tremendous discrepancies in the supply of cheap labour between countries have, for a long time, drawn people from developing countries to the developed, in much the same way as people from rural areas are drawn to urban areas in countries with an expanding economy.

The new economics theory of migration suggests that migration is a collective family act to maximize expected income, to minimize risks and to loosen constraints associated with a variety of market failures (Stark and Bloom 1985). In such cases, wage differences are not the only incentive for people to migrate. By sending family members abroad to work, households diversify their portfolios to manage risks stemming from unemployment, crop failures or price fluctuations (Massey 1999). With the money remitted home from overseas, households are able to make major investments, such as building houses and setting aside savings for retirement.

The world systems theory proposes that immigration is a result of the expansion of capitalism from its core in countries of western Europe, North America and Oceania, as well as Japan, to other peripheral countries. The incorporation of those peripheral regions into the world market economy causes disruptions and dislocations in those areas, which in turn generate population migration (Morawska 1990).

The dual market theory of international migration suggests that immigration is caused by the pull factors in receiving countries, especially a chronic and unavoidable need for cheap foreign workers (Piore 1979). Labour markets in post-industrial nations have become split, with high pay and steady jobs at one end, low pay and unstable jobs at the other. In cities such as Los Angeles and New York, the concentration of managerial, administrative and technical jobs leads to steady demand for low-wage services, which provides a structural incentive for cheap foreign labour (Massey 1999).

Even after the original factors that gave rise to the transnational migration became less important, other factors may emerge to sustain the movement of human migration. Many scholars of international migration have suggested that the spread of migrant networks and the development of institutions supporting transnational movement make additional movement more likely, a process known as cumulative causation (Taylor 1992). Smugglers, together with immigrants, have come to create migrant-supporting institutions along the transport routes, providing successive migrants with the necessary infrastructure capable of supporting and sustaining continuous international movement.

These micro-level (or personal-level) factors and macro-level (or socio-structural) factors interact to cause Chinese to embark on the illegal passage to the United States. That is, micro-level personal factors

manifest in the form of motive (and family pressure) and macro-level structural factors emerge from adverse socio-economic and political conditions (push factors) and opportunities abroad (pull factors). Whereas structural factors might be helpful in explaining the prevalence of illegal immigration, many personal factors may play a key role in determining who will actually participate. Thus, in explaining illegal immigration, both individual-level factors and socio-structural forces must be taken into account to arrive at a better understanding of the phenomenon.

### **CHINESE HUMAN SMUGGLING AS ORGANIZED CRIME**

Snakeheads generally see themselves as regular business people working to make their living or even as contributing a worthwhile service. Many smugglers even consider emigration, legal or illegal, a viable solution to China's many pressing problems—unemployment, overpopulation and poverty. As one snakehead said:

“I have nothing to feel bad about being a snakehead. I don't lie to my clients, nor ask for additional payments after they arrive in the United States, nor physically abuse them. In fact, I feel as if I am doing something positive for China. There are so many unemployed people here, and we have a huge population. We not only help China to solve these problems but also increase the amount of foreign currency being wired back to China.”

While helping the Government solve pressing social problems may be an exaggeration, such snakeheads nonetheless see themselves as making a living in an honest way. As one snakehead emphatically told the interviewer:

“My family is proud of what I am doing. To be a snakehead, you need to have a good reputation. Most snakeheads are overseas Chinese who come back to Fuzhou to get involved in this business. Local people are highly unlikely to be able to establish a good reputation. Like Sister Ping,\* her clients are extremely comfortable having their money in her hands because she has such an impeccable reputation. People know that she will never ever take the money and run. Many people are envious of us and their eyes turn red whenever they see us make so much money. I don't steal or rob people. Nor do I lie to my clients or ask them to pay more after they have arrived in the United States. My clients also leave China legitimately. I have no uneasy feelings about what I am doing.”

The present authors' studies of Chinese human smuggling have found that smugglers in human beings come in all sizes and shapes. They are generally males aged 30-50 with no more than secondary-level education.

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\*Sister Ping was a Fujian native and a well-known human smuggler based in New York. She was allegedly involved in the *Golden Venture* incident. She was recently arrested in Hong Kong SAR and awaits a court ruling on her extradition to the United States.

No qualifications are needed to participate in the smuggling business. Snakeheads in a smuggling organization are normally from a close social network. Their motives are relatively straightforward: to make money, to help relatives and friends, or a combination of both. As one of the subjects described it:

“It’s not easy to define a ‘snakehead’. Not only are many government officials working with the snakeheads, some snakeheads are people who have been smuggled abroad. Like a friend of mine who went to Japan as a foreign student—he paid a snakehead a lot of money to achieve that goal. When he got there, he worked for a bakery store. After he befriended his boss, he came back to recruit people to go to Japan as students and arrange for them to work in his boss’s bakery store. His goal is simply to earn back the money he had initially spent for his trip to Japan.”

The snakeheads are sometimes divided into “big” snakeheads and “little” snakeheads, as they are often referred to by their customers. In general, a big snakehead is a person who invests money in a smuggling operation and oversees that operation. Such a person, often an overseas Chinese, is usually not known to the person being smuggled. A little snakehead can be a recruiter, a transporter or a debt collector and often works as a middleman between a big snakehead and the clients. He or she usually resides in or around the sending or receiving community and is mainly responsible for recruiting clients and collecting payments. Big snakeheads tend to be perceived as capable business people, with power, wealth and formidable reputations and connections. Many big snakeheads are from areas adjacent to Fuzhou, the capital city of Fujian Province in southern China, but live in Hong Kong SAR, Thailand or the United States. In the authors’ studies over the past few years, subjects repeatedly mentioned that Taiwanese in Bolivia, Brazil, Panama and Taiwan province of China were also active in smuggling in humans. Little snakeheads, on the other hand, are local Chinese residents rather than overseas Chinese.

It is not clear how many Chinese immigrant smuggling organizations or networks exist. Estimates have varied widely, from only 7 or 8 to as many as 20-25. Most smugglers themselves do not have any idea of the size of the smuggling industry. Some put the figure at around 50 networks. There is a close working relationship among the leaders and others in the smuggling networks, especially among snakeheads in the United States and their counterparts in China.

Based on the survey of 300 illegal Chinese immigrants and field observations, Chin (1999) has identified several distinctive aspects of this clandestine business.

### **Customer recruitment**

Of the 300 illegal immigrants interviewed in New York, only a small percentage (11 per cent) said that they had initially been approached by little snakeheads. The majority (74 per cent) had initiated contact with little



snakeheads themselves, mainly through friends or relatives in China. Some subjects (12 per cent) had found their snakeheads through relatives and friends living abroad.

Some smugglers have recently moved their recruiting activities to mainland China by hiring friends and relatives living there to recruit clients. This change seems to have started in the early 1990s. According to various accounts, big snakeheads normally pay recruiters or little snakeheads somewhere between \$500 and \$1,000 per recruit (Burdman 1993). Some can go even higher.

As mentioned earlier, little snakeheads are usually family members, relatives or good friends of big snakeheads. If little snakeheads are unable to recruit clients themselves, they turn to members of their extended families and friends to act as a second tier of little snakeheads. This is especially true in the case of smuggling by sea, where hundreds of recruits need to be lined up in a short period of time. Subjects reported that occasionally former clients currently living in the United States had been asked by snakeheads to do recruiting from among their friends and relatives in China.

### **Down payment**

The United States media have reported that, since 1989, when modern smuggling by sea began, smugglers have allowed many of their customers to board smuggling ships without requiring a guarantor or a down payment (Chan 1993). The data from the New York study did not support that assertion: only 28 (9 per cent) of the present authors' New York subjects were allowed by their smugglers to leave China without a guarantor or a down payment. Most needed either to make a down payment or to provide the name and address of a guarantor, or both. From 1989 to 1993, there appeared to be an increase in the number of subjects who came to the United States without a down payment or a guarantor. The New York data also showed that the need to have a guarantor was not as critical in 1993 as it was in the 1980s. Instead, smugglers required their clients to make a down payment, especially if they were to be smuggled by ship.

The average cost of a down payment to be smuggled into the United States was \$3,069, but the mode was \$1,000. After the down payment was made and/or the name and address of a guarantor provided, the smuggler and the customer might sign a contract. Many rules were stipulated in the contracts, but it was not clear how closely the signing parties followed the rules. One chilling aspect of the contracts was the understanding by both parties that the smugglers would hold their clients hostage if the clients, upon arrival in the United States, failed to come up with the smuggling fee.

After a contract was signed, the customers would wait for the smugglers to inform them of the departure time. About one in five of the authors' subjects needed to wait only a week or less, while more than half waited for a month or less. Only about 15 per cent had to wait for more

than three months. The average length of the waiting period did not change from 1988 to 1993, remaining at about two months. However, the amount of time smugglers needed to move their customers out of China differed significantly according to the smuggling method. The average waiting period was 29 days for subjects who left China by ship, 46 days for those entering the United States by land and 73 days for those who left China by air.

### **Smuggling fee**

Smuggling fees have remained rather uniform in relation to the various sending communities. Although snakeheads work in small groups independently, somehow consensus has emerged quickly as to how much a client should be charged. Variations do exist, but each region tends to develop a fairly consistent and unique pricing structure.

The overall trend in the human smuggling business is that the price is on a steady climb. In the New York survey in 1993, the majority of respondents paid an average of \$27,745 for their illegal passage, ranging from a minimum of \$9,000 and a maximum of \$35,000. However, in the National Institute of Justice study in 2000, the smuggling fee in Fujian Province had increased to an average of \$60,000 (Zhang and Chin 2000).

Of the three routes, the air route appeared to be the most expensive, followed by the sea route. The least expensive was the land route. Recently geographical differences have been found in smuggling fees, with the north-eastern being the cheapest and areas around Fuzhou, the capital of Fujian Province, being the most expensive.

### **Transit points in the air route**

Of the 143 respondents in the 1993 New York study who flew to the United States, 138 (96 per cent) either flew out of China or left their country overland through either Hong Kong or Myanmar. Of those who left China by air, only seven flew directly to the United States. Most of those who went through Hong Kong subsequently went to Bangkok. All who crossed the China-Myanmar border also travelled to Bangkok. It was in Bangkok that most of the subjects congregated after leaving China and Bangkok-based snakeheads obtained travel documents for their clients to go either directly to the United States or to another transit point.

If the smuggled migrants did not fly to the United States from Bangkok, they would most likely go to another transit point in Asia. From there, most took a direct flight to the United States. Apart from those who were lucky enough to take direct flights to the United States, two thirds of others had to go through three or more transit points. A few travelled through as many as nine transit points.

The seven locations most likely to be used for transit purposes by the respondents in the 1993 New York study were Bolivia, Hong Kong, Japan, Myanmar, Russian Federation, Singapore and Thailand. Almost two out of three of those surveyed used Hong Kong as one of their transit points,

more than half used Thailand and about one in four travelled to Singapore for transit purposes before arriving in the United States.

For those who entered the United States by air, not only did the number of transit points vary but also the length of stay in transit points. Most spent about seven days at their first transit point and about a month at their second. Some respondents stayed from 2 to 12 months at their second transit point because of difficulties in obtaining travel documents or because they were "sold" by their original snakeheads in China to snakeheads at the second transit point. After spending a substantial amount of time at the second transit point to obtain travel documents, most respondents spent only a few days at the remaining transit points, if any. It took an average of 106 days for the 143 respondents to arrive in the United States. Ten respondents spent a year or more at various transit points before landing in the United States.

Most of those who flew to the United States travelled in small groups of three or four immigrants, unaccompanied by a guide or a snakehead. If a group was guided, the guide was most likely to be a Chinese who spoke English and either Mandarin or the Fuzhou dialect.

It was difficult to identify the city most used as a stopover before arriving in the United States because the immigrants in the New York study flew to the United States from 44 cities. With the exception of Bangkok and Tokyo, none of the other cities figured prominently on the list of transit points. Nevertheless, New York City was the most likely entry point for those who came by air. Of those who flew to the United States, more than two thirds entered through John F. Kennedy Airport in New York. A quarter of them flew into Los Angeles International Airport. The rest came through cities such as Miami, Honolulu, San Francisco and Chicago.

Most of the illegal migrants travelling by air arrived in the United States with some travel documents (either genuine or fake), while others simply destroyed their documents during the flight and requested political asylum upon arrival. Those illegal immigrants held a total of 15 different types of passport, the majority of which were issued by authorities in China, Singapore and Taiwan Province of China. The majority of those who entered the United States with a passport were also in possession of a tourist visa, most often counterfeit. Those arriving with genuine Chinese passports often possessed bona fide business visas issued by United States consulates in China. Two respondents said they had entered the United States with false green cards or advanced parole certificates.

### **Role imperatives in smuggling activities**

The organization of a human smuggling ring requires multiple players, each fulfilling a specific role. One smuggler characterized a Chinese smuggling network as a dragon: "although it's a lengthy creature, the various organic parts [of the body] are tightly linked". The different parts that seem to play a part in enabling the "dragon" to function effectively have been identified as follows:

(a) *Transporters.* If an immigrant leaves China by land or by ship, a China-based transporter helps him or her get to the border or to the smuggling ship. Transporters based in the United States are responsible for taking smuggled immigrants from airports or seaports to safe houses;

(b) *Corrupt government officials.* Chinese government officials accept bribes in return for Chinese passports. Law enforcement authorities in many transit countries are also paid to aid the illegal Chinese immigrants entering and leaving their countries;

(c) *Guides and crew members.* A guide is a person responsible for moving illegal immigrants from one transit point to another or for aiding immigrants to enter the United States by land or by air. Crew members are people employed by snakeheads to charter smuggling ships or to work on them;

(d) *Enforcers.* The enforcers, themselves mostly illegal immigrants, are hired by big snakeheads to work on the smuggling ships. They are responsible for maintaining order and for distributing food and drinking water;

(e) *Support personnel.* Support personnel are local people at the transit points who provide food and lodging to illegal immigrants;

(f) *Debt collectors.* A debt collector based in the United States is responsible for locking up illegal immigrants in safe houses until their debt is paid and also for collecting pre-arranged smuggling fees. There are also China-based debt collectors.

Not all roles are required in an operation and some members of a smuggling group may also assume more than one role. As one subject in Los Angeles noted:

"I don't always collect debt. I do various things to help my friends. Last time I was asked to call on a Taiwanese smuggler to drop his demand for more money from a client of my friend's. This Taiwanese smuggler first set a price, then decided to charge more because his group went through a few more countries than he had planned before arriving in the United States. My friend's client was not happy because of the increased fee. His understanding was that the price was for getting the client into United States regardless of how many countries the Taiwanese had to go through. So I called this Taiwanese and made a few threats. He got scared and changed all his phone numbers and asked my friend in China to tell me not to call or look for him any more. I didn't make any money on this case—I just did it to help out my friend. Who knows? Maybe next time I will need a favour from him."

### **Organizational characteristics**

The authors of the present article have observed a number of organizational features of Chinese immigrant smuggling groups. Firstly, the groups

tend to be small and their formation is mostly haphazard, arising through coincidental social meetings or informal referrals rather than in a systematic manner. The small size of the groups makes them highly adaptable to market constraints. Smugglers are parts of networks that have little bureaucratic structure (limited vertical hierarchy), even though their operations may involve working with partners in diverse countries. Although sharing a common ancestry, the same dialect or the same hometown origin may increase the shared understanding and expectations of smuggling activities, smugglers need not possess those prerequisites to take part in the operations. The alliance is purely a business arrangement involving only those who have valuable resources to contribute. Few are found to have absolute control over an entire smuggling operation. As one snakehead told us:

“The smuggling network is not a hierarchy. There are big and small snakeheads. They work together. There is cooperation among them but it’s also a one-man show. I don’t think anyone can order people to do anything in this business. At least I have never heard of any.”

Secondly, although there is little hierarchical differentiation, the division of labour is highly developed among smugglers. Each member fulfils specific functions, with minimum overlap. For instance, in human smuggling, overseas smugglers dominate in arranging the international transportation and developing a global network of rendezvous points. The Fujianese entrepreneurs, on the other hand, recruit clients and provide payment guarantees from the sending communities. Two factors may have contributed to this high level of horizontal differentiation. Firstly, safety concerns in smuggling activities require that each member of the team operates as clandestinely and independently as possible to reduce exposure to law enforcement agencies. Secondly, profit protection or concern over potential competition ensures that no one divulges his or her sources or connections. Resource-sharing is therefore rare in human smuggling and few can undertake the many tasks needed to complete an entire operation. As one smuggler subject in Los Angeles said:

“The division of labour is really clear and refined. Everyone involved is useful in his own way and does his own thing only. There is no leadership in any smuggling rings. Leadership will not emerge because the work involved is so specialized and I don’t think anyone can control another’s work. If you can deliver the service and I have the client, then we work together. No one is boss here.”

Thirdly, most contacts among smugglers are dyadic and most involved appear to honour their contracts, though a few cases of payment problems were found. For instance, most human smuggling cases caught by law enforcement agencies result from unanticipated disruptions encountered by the smugglers or the illegal immigrants, such as failure to pass interrogations of the United States Immigration and Naturalization Service at the port of entry. As one smuggler told us:

“Whenever I want to see my ‘big brother’, I always call his cell phone. He never tells me where he is except right before our meeting. He calls me and tells me where to meet him at what time. When I deliver my documents [fake passports] to him, he usually drops them into his briefcase, where I often see dozens of other different passports bundled together. There have been a few times that I asked about his contacts and he snapped at me: ‘Why are you asking? It is none of your business.’ In this business, as long as you can provide the service as you have promised, no one should ask about how anything came about.”

Fourthly, there is a lack of connections between these small entrepreneurs and the traditional Chinese organized crime organizations—the tongs and the triads. This observation does not deny the involvement of Chinese gangs in human smuggling: the authors merely argue that such smuggling is vastly different from traditional racketeering activities in Chinese communities, such as extortion, gambling and prostitution. Human smuggling as an illicit business has not shown signs of consolidation or monopoly by any crime syndicates.

If the United States law enforcement agencies insist on viewing these entrepreneurs as organized criminals and fight them as such—then one must come to the conclusion that a new generation of non-triad Chinese criminals (i.e. people having no connections with triad societies, tongs and street gangs) has arrived on the global crime scene. These non-triad “criminals” are responsible for moving a large number of Chinese nationals illegally into the United States and many other countries. They are more likely than people of the triad subculture to infiltrate the larger society through human smuggling, money-laundering and other types of transnational crime. They are wealthier, more sophisticated and better connected than the former Chinatown tong members. On the other hand, they do not have the same historical baggage as the traditional triad societies and are not committed to any rituals or subcultural norms and rules, thus enabling them to assemble quickly when the criminal opportunity arises and to dissolve after their criminal conspiracy is carried out.

Members of this emerging non-triad subculture include import-export businessmen, community leaders, restaurant owners, workers, gamblers, housewives and the unemployed. It is extremely difficult to penetrate this subculture because members have no prior criminal records, no identifiable organization, no rigid structure and no clearly defined deviant norms and values. They can conceal their criminal activities through their involvement in lawful business activities. Their participation in criminal activities is sporadic rather than continuous. They may not be involved in any illegal activities for a prolonged period of time until another opportunity arises. Since their illegal activities are non-predatory and transient in nature, they can thrive without the assistance of members of the triad societies.

Chinese human smugglers have been effective in evading law enforcement efforts. Although there have been few successes in federal prosecutions and little impact on human smuggling activities, most law

enforcement strategies are still built on the assumption that large criminal organizations (such as the triads) are behind the smuggling operations.\* The lack of success of United States anti-smuggling efforts has been due in part to insufficient guidance from empirical research and in part to a deep-rooted institutional tradition that focuses on fighting a clearly defined enemy. To policy makers and law enforcement administrators, it is disconcerting to fight the masses of entrepreneurs who somehow find each other to form a temporary alliance to carry out a transnational operation.

If law enforcement authorities focus only on the triads, tongs and Chinese gangs, and view them as the main source responsible for transnational Chinese organized crime activities, or mistakenly label these non-triad entrepreneurs as part of the triad subculture and attempt to fight them as such, this will have far-reaching and unfortunate consequences.

#### **FUTURE RESEARCH AND POLICY CONSIDERATIONS**

There is a clear lack of knowledge of the organizational as well as operational characteristics of these human smuggling rings upon which effective policies or strategies can be planned. For instance, a hierarchically structured criminal organization can be best dealt with by the removal of the leadership (i.e. the strategy of going for the "big fish"), while small entrepreneurial groups are most sensitive to disruption of resources (i.e. removal of any business contacts). What is necessary is to focus attention on the development of both the triad subculture and the Chinese smuggling subculture simultaneously and to prevent the coalition of these two equally destructive forces.

The significance of and need to conduct research on Chinese human smuggling goes beyond intellectual curiosity. It carries direct implications for United States law enforcement strategies, community planning, planning of social services and immigration policy at all levels. First of all, illegal immigration of any organized sort poses a serious threat to the legal immigration system and undermines the integrity of a nation's borders. Secondly, illegal immigrants residing in the United States exert pressure on various social service resources in the local communities, from health-care facilities to schools. Thirdly, illegal immigrants who have managed to enter the United States will most likely want to stay and therefore seek methods, legal or illegal, to regularize their legal status, which in turn affects various aspects of the processing of legal immigration from outside the country.

Illegal immigration into the United States is not likely to stop in the near future or even to decrease to any great extent, because the forces behind population migration are likely to grow with the strengthening of

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\*See the "Fact sheet: alien smuggling policy" released by the White House, Office of the Press Secretary, Washington, D.C., on 18 June 1993.

the global economy. As Massey (1999) points out, wage differentials, market failures and segmentation of labour markets are likely to accelerate amid the globalization of commerce. With the collapse of many totalitarian regimes in recent times, the proliferation of telecommunication devices and improved convenience in air, land and maritime transportation, the traditional barriers to communication and transportation have been greatly reduced, thus making the logistics of coordinating and moving people around the world much easier.

Given the tremendous market demand for cheap foreign labour, United States law enforcement agencies face many challenges in stemming the tide of illegal immigration, in much the same way as in fighting drug trafficking. There is a particular shortage of suitable labour in the ethnicity-specific service sector, where the provision of services hinges upon cultural and linguistic familiarity. For example, the rapid spread of Chinese restaurants in the United States in recent years depends on a steady supply of cheap labour. The owners of the majority of those restaurants require those who work closely with them to speak Chinese. Furthermore, the cultural idiosyncrasy of preparing Chinese food requires a significant cultural understanding and training, which few non-Chinese can master in a short period of time. Secondly, and probably more importantly, few native-born Americans are willing to work long hours for the low wages the Chinese-owned businesses are willing to pay.

The general political climate in the United States is likely to become more restrictive towards immigration—legal or illegal—but corresponding policies and legal structures needed to deter immigrants and hence control the flow of international migration are nonetheless constrained by a variety of important influences (Massey 1999). Domestic policies regarding ethnic groups and civil rights, coupled with strong and independent judiciaries, tend to hamper government efforts in dealing with immigration issues effectively.

Although most immigrants, legal or illegal, in the United States are now from Latin America, Asia is well poised to take over the lead because of its many populous nations and the growing forces that initiate and sustain transnational population migration. The prospect for Chinese immigration alone is of a large increase. Even a small rate of emigration from that populous country will have a profound impact on the cultural, social and political landscape of the United States. Much research is thus needed to answer the many questions on the patterns of immigration and settlement processes by Chinese nationals.

Such research into the origins and processes of smuggling and the destinations of illegal Chinese immigrants should shed light on such issues as the employment of undocumented immigrants, the capacity of immigration agencies to control borders and the informal economies of the settlement communities. Many of these issues have long been straining the resources of the United States Immigration and Naturalization Service. Short of militarizing the borders, human smuggling is likely to continue unabated unless disincentives are increased internally and internationally. Studies are needed to provide more precise knowledge of how and when



the service market relies on the influx of illegal cheap labour and give service agencies in the United States and elsewhere a better understanding of this persistent economic phenomenon.

Furthermore, studies are needed to provide a detailed description of the most recent methods utilized by human smugglers to transport thousands of Chinese nationals into the United States each year. Counter-measures and policies can thus be formulated to combat the problem. In the case of Australia, Canada, the United States, countries in western Europe and many other countries affected by the surge of illegal Chinese immigration, results and findings from empirical research should provide fresh insights that will stimulate discussion about legislative reform and the enforcement of immigration laws.

Finally, research on Chinese immigration will be able to provide a detailed description of the interrelationships among the physical, economic and socio-psychological dimensions of illegal Chinese immigration. Knowledge of those dimensions should assist local politicians and policy makers in developing programmes for social services such as health care, including mental health, housing, education and crime prevention.

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**THE EMERGENCE OF “BLACK SOCIETY”  
CRIME IN CHINA**

**BY XIAOWEI ZHANG<sup>1,2</sup>**

**ABSTRACT**

Organized crime—or “black society” crime as it is commonly called in China—is a growing concern for the Government of China. The present paper describes five notorious black society syndicates that have recently been dismantled by the Chinese authorities. The groups are of medium size (50-200 members), hierarchically structured, with strict “house rules”, and are engaged in armed robberies, trafficking of illicit goods and services and local racketeering, using extreme violence and availing themselves of the protection and support of government officials.

The paper presents recent local statistics available on the World Wide Web on the prevalence and geographical distribution of solved cases. Those statistics confirm the existence of considerable numbers of organized criminal groups in many Chinese provinces and the increased investigative efforts of Chinese law enforcement authorities. The social background to the emergence of black society crimes in present-day China is discussed briefly.

**INTRODUCTION**

Almost at the same time as the High-level Political Signing Conference for the United Nations Convention against Transnational Organized Crime and the Protocols thereto, held in Palermo, Italy, from 12 to 15 December 2000, the Government of China launched a powerful nationwide campaign against organized crime. Starting in December 2000, China mobilized more than one million policemen to take part in the campaign, officially named “Attacking and Suppressing Black Societies and Thugs”. It is the largest campaign of its sort since the founding of the People’s Republic of China and is expected to last for 10 months.<sup>3</sup>

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<sup>1</sup>East China University of Politics and Law; currently Crime Prevention Officer, Centre for International Crime Prevention, Office for Drug Control and Crime Prevention, United Nations Secretariat, working for the Global Programme against Transnational Organized Crime.

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<sup>3</sup>*China Police Daily*, 14 December 2000.

In China, the authorities and experts generally refer to organized crime as "black society crimes" and to criminal syndicates as "black societies". According to article 294 of the Criminal Code of the People's Republic of China (amended in 1997), organized crime is a specific concept different from ordinary gang crime. It consists of three main types of crime:

(a) Forming, leading or participating in syndicates in order to carry out criminal activities through violence, intimidation or other serious crimes, disrupting economic order and public life;

(b) Recruitment of members by overseas mafia organizations in mainland China;

(c) Protection or facilitation of criminal syndicates by government officials.<sup>4</sup>

As is typical of organized crime elsewhere, current black society criminality in China is characterized by an upward trend in violence, ruthlessness and scale. The available data show that the number of black society organizations is growing constantly, that collaboration with government and justice system officials is becoming closer and that financial assets have risen progressively too. In addition, more black society organizations manage to obtain political protection and to escape detection or prosecution.

In China, black society activities now include bank robbery, transnational drug trafficking, smuggling of human beings, operating prostitution rings, organizing gambling, protection, debt collection, racketeering and so on. Occasionally overseas mafia organizations recruit members and organize and control criminal activities in mainland China.

In an attempt to combat organized crime more effectively, the Supreme People's Court on 4 December 2000, enacted the Judicial Explanation relating to article 294 of the Criminal Law, prior to the government

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<sup>4</sup>Article 294 of the Criminal Code of the People's Republic of China reads as follows:

"Whoever forms, leads or takes an active part in organizations of the nature of a criminal syndicate to commit organized illegal or criminal acts through violence, threat or other means, such as intimidating the people in an area, perpetrating outrages, riding roughshod over or cruelly injuring or killing people, thus seriously disrupting economic order and people's daily activities, shall be sentenced to fixed-term imprisonment of not less than three years but not more than ten years; other participants shall be sentenced to fixed-term imprisonment of not more than three years, criminal detention, public surveillance or deprivation of political rights.

"Members of the mafia abroad who recruit members within the territory of the People's Republic of China shall be sentenced to fixed-term imprisonment of not less than three years but not more than ten years.

"Whoever, in addition to the offences mentioned in the preceding two paragraphs, commits any other offences shall be punished in accordance with the provisions on combined punishment for several crimes.

"Any functionary of a state organ who harbours an organization of the nature of a criminal syndicate or connives with such an organization to conduct illegal or criminal acts shall be sentenced to fixed-term imprisonment of not more than three years, criminal detention or deprivation of political rights; if the circumstances are serious, he shall be sentenced to fixed-term imprisonment of not less than three years but not more than ten years." (Criminal Law of the People's Republic of China, China Legal System Publishing House, Beijing, 2000, p. 25.)

signing of the United Nations Convention against Transnational Organized Crime (General Assembly resolution 55/25, annex). Judicial explanations of the Supreme Court can be seen as quasi-legislation. The Explanation reads as follows:

“The Judicial Explanation has elaborated on the defining characteristics of black society-type syndicates. Such syndicates typically possess the following characteristics:

“(a) They have a more or less fixed structure, with a large number of members and clearly identifiable leaders. Their core members are stable and comply with rigid disciplinary rules;

“(b) They make financial profits through engagement in illegal activities or other means that allow them to obtain a position of economic power;

“(c) They tempt or force government officials to take part in their activities through bribery, threats or other means, or make officials provide protection for them;

“(d) They commit illegal or criminal acts, in some areas or sectors, through violence, threats, disturbance or other means, such as extortion, racketeering (monopolizing markets through violence), creating disturbances or intentionally injuring people, thus seriously disrupting economic order and people’s daily activities.”

At the same time, the Judicial Explanation of the Supreme People’s Court has increased the punishments for government officials providing protection for a black society-type organization or condoning such an organization’s illegal or criminal acts. According to the Judicial Explanation, abetting a syndicate is an aggravating circumstance for government officials who do not perform their duty as required by the law.

#### **NARRATIVES CONCERNING NOTORIOUS ORGANIZED CRIME GROUPS**

##### **The Liang Xiao Min syndicate from Chang Chun**

###### *Brief description of the case*

Liang Xiao Min, a high-school dropout, first worked as a labourer in a food storage warehouse. Through his brother’s connections, Liang later became a policeman in the Public Security Bureau of Chang Chun, a city in north-east China with a population of 6.8 million, including an urban population of 2.8 million. In 1993, Liang started his syndicate with roughly a dozen local malefactors and three of his police colleagues. In 1994, the syndicate expanded to more than 20 members and armed itself with guns bought through illegal channels. Liang called his syndicate a “family”, set up “house rules”, and acted as the head of the “household”. In less than

seven years, the syndicate started and operated several businesses, including casinos, nightclubs, sauna baths, fast food restaurants and garages. While the businesses were all doing legitimate business on the surface, some were in fact underground gambling houses and/or houses of prostitution. To finance his businesses, Liang, using his position as a policeman, obtained bank loans through violence or threats of violence. For example, when one bank manager refused to grant Liang a loan of 1.8 million yuan renminbi (y) (roughly \$220,000), she was followed through the streets by Liang's men who attacked her and broke her leg. During his criminal career, Liang eventually obtained more than y 20 million (roughly \$2.42 million) by illegal means, including the use or threats of violence, extortion and kidnapping.

In Chang Chun, Liang made his name as the "rogue policeman". He once boasted:

"I have three magic weapons: First, I am a policeman. Who is not afraid of me? Second, I am the head of a black society syndicate. Who dares to offend me? Third, I have connections to the people with power. Who can do anything about me?"<sup>5</sup>

The Liang Xiao Min syndicate was dubbed the "top case of 1998" by the Ministry of Public Security, the top national law enforcement agency in China. On 16 August 2000, 35 syndicate members were convicted on 70 counts in the Intermediate People's Court. The convictions involved 15 types of crime, including organizing and participating in a criminal syndicate, homicide, assault, robbery, extortion, operating a prostitution ring, illegal possession of guns, disturbing the peace, assaulting on-duty police officers, gambling, racketeering and unlawful detention. The crimes left 4 victims dead and 33 injured. The 7 leading syndicate members were sentenced to death, while 28 other members were sentenced to serve from several years to life in prison.

#### *Assessment of the Liang case*

Liang exercised control over his syndicate in two ways: *(a)* he paid syndicate members generous regular salaries and bonuses based on performance; and *(b)* he rigorously enforced his house rules. Those rules required, among other things, that members report everything to the boss, be absolutely loyal to the syndicate and never leave it. If a member violated a rule, the punishment could be cutting off a finger or breaking a leg, depending on the severity of the transgression. One of Liang's closest collaborators once lied to Liang and was found out. He volunteered to cut off part of his finger as self-punishment, knowing Liang's ruthlessness, but Liang insisted that he cut off his entire finger in accordance with the house rules. After the aide did as ordered, Liang preserved his finger in a wine bottle and displayed it as a warning to others.

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<sup>5</sup>China Youth Daily, 17 August 2000.

Liang Xiao Min’s syndicate is one of the biggest black society groups ever brought to justice in China. The emergence of the syndicate is significant because it indicates that highly structured organized criminal groups in their truest form now exist in China. Liang’s syndicate has many similarities with the triads in the Hong Kong Special Administrative Region (SAR) and Taiwan province of China.

Liang’s case also shows that severe corruption exists in some departments of the Government and in its law enforcement apparatus and that organized crime is closely connected to them. A partnership of corrupt policemen and criminals often surfaces in sophisticated syndicate cases. Liang and his group believed that they were protected by *guanxi* (relationship),<sup>6</sup> their secret network. The *guanxi* network did indeed protect Liang when he was arrested in 1994 for a crime of which he was acquitted. Not only was Liang released, but he afterwards became a policeman by further using his connections. Such *guanxi* networks foster corruption and provide opportunities for organized crime.

### **The Zhang Jun syndicate from Hunan**

#### *Brief description of the case*

As a teenager, Zhang Jun had a long history of violent temper and of involvement in fierce street fights. When he was in senior high school, he committed an assault with a knife and was sent to a re-education-through-labour camp for three years. He left there more anti-social and violent than ever. In 1989, he threatened his girlfriend’s father with a knife and forced him to agree to let her marry him. In 1995, he used violence to force his wife to agree to a divorce, after which he established his syndicate. During the next five years, he planned and implemented a series of shockingly violent armed robberies that invariably resulted in fatalities or serious injuries.

The Zhang Jun syndicate committed crimes in three provinces of China, Hubei, Hunan and Sichuan (mainly in the city of Chong Qing). (Hubei and Hunan are provinces in central China. Chong Qing, a municipality in south-west China reporting directly to the central Government, has a population of 33 million (including its suburbs) and is the largest city in China.) The syndicate was the first found to be carrying out black society crimes across several provinces. Between 1994 and September 2000, the group carried out 12 armed robberies, killed 28 people and injured 20 and looted more than y 6 million (roughly \$725,000). With an arsenal of 2 sub-machine guns, 26 army pistols and 1,000 rounds of ammunition, the syndicate was the best armed and the most brutal professional criminal organization uncovered so far in China.

The syndicate’s last robbery was conducted in Chang De, Hunan Province, on the afternoon of 1 September 2000. Six armed syndicate

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<sup>6</sup>*Guanxi* is an informal network underpinned by a bond of reciprocal obligation.



members robbed an armoured security vehicle loaded with y 2 million. During the daylight robbery, they shot and killed seven people, including three security guards escorting the truck, and injured five more. Over 15,000 policemen were mobilized to conduct a manhunt after the robbery and the Ministry of Public Security sent three groups of experts from Beijing to assist in the search, which led to the arrest of all the members of the Zhang Jun syndicate. In a public trial, Zhang Jun and 18 syndicate members were convicted in the Chong Qing Intermediate Court and the Chang De Intermediate Court, and Zhang and his 14 core syndicate members were sentenced to death.<sup>7</sup>

#### *Assessment of the Zhang Jun case*

A psychiatric report on Zhang Jun showed an anti-social personality with severe abnormalities.<sup>8</sup> He displayed moral insanity, which left him without a conscience and with no regard for human life. For instance, he ordered prospective syndicate members to kill innocent people in order to qualify for membership. His purpose in making such demands was to establish permanent control over members of his syndicate. Zhang Jun's suspicions about a member's loyalty could lead to the death of that person. He never hesitated to kill anyone who got in his way.

From a sociological perspective, the Zhang Jun case shows that criminals like him become violent not only because of their particular psychological make-up, but also as a result of certain social and environmental factors. In modern China much emphasis is placed on economic growth and material wealth and some people seem to lose sight of ethical norms altogether in their zeal to conform to the new morality.

Zhang Jun's syndicate was able to operate for several years without being detected, although they did not have the powerful protection of a *guanxi* network like that established by the Liang Xiao Min syndicate. The endurance of Zhang Jun's syndicate lay in its strict control of its members, its sophisticated criminal techniques and its careful anti-detection planning. When Zhang observed that his driver had not killed any victims for a period of time, he became suspicious and eventually killed the driver. After every robbery, Zhang would take his syndicate members to a remote forest area and give them training to improve their marksmanship. The goal was to make his men psychologically tougher and more merciless in their actions. Zhang recruited two former soldiers for his syndicate, both of whom had received advanced training. One was also a sniper. After they joined up, the syndicate's capacity for violence was much enhanced.

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<sup>7</sup>The public trial of Zhang Jun and his syndicate members was held on 21 April 2001 (see *China Police Daily*, 23 April 2001).

<sup>8</sup>Zhou Ju, Director of the Institute of Psychological Research, Sinolaw.net, 6 October 2000.

## **The Zi Lao San syndicate from Heilongjiang Province**

### *Brief description of the case*

In his early days, Zi Lao San spent three years in a re-education-through-labour camp because of involvement in street fights and was later sentenced to one year in prison for hooliganism. After his release in 1990, Zi Lao San and his siblings started their syndicate, which consisted mostly of local miscreants and former convicts. By 1997, the city's lumber business, restaurants and entertainment businesses, liquor distributors and real estate market had all fallen within the syndicate's sphere of influence. Legitimate businessmen in those sectors were forced to give the syndicate extraordinarily profitable deals and to pay it a regular fee in exchange for protection. The syndicate thereby accumulated great wealth. Other smaller syndicates in the area submitted themselves to the rule of the Zi Lao San syndicate and Zi Lao San was recognized by all in the area as the syndicate overlord in Yi Chun.

The core members of the Zi Lao San syndicate were all from one family in Heilongjiang Province, in north-eastern China. The brothers Zi Lao San and Zi Lao Wu were the leaders of the syndicate and five other siblings were also involved in organizing and operating the group, which had 84 members. It possessed 16 guns and assets of y 8.8 million (\$967,400). From the early 1990s to June 2000, the syndicate's violent activities in Yi Chun, a city of 140,000 (considered a small city in China), left 2 dead and 32 injured. In November 1998, the syndicate wrecked 130 beer shops that carried brands from other provinces. Beer distributors from other provinces were thus completely driven out of Yi Chun.

Members of the syndicate were convicted of 271 serious crimes, including extortion, operating prostitution rings, robberies, assaults and forcing people to accept unfair business deals. Victims of the syndicate's activities numbered more than 370 people.

### *Assessment of the Zi Lao San case*

Although the syndicate was from a small city in a remote area, its organization and operations were obviously modern. For instance, the Zi family kept control in two ways: *(a)* they kept power within the family; and *(b)* they spread management duties among the siblings. Zi Lao San and Zi Lao Wu were heads of the syndicate, while each of the other Zi siblings had sole responsibility for one of the syndicate's many businesses. That arrangement guaranteed that power never left the hands of the family and that each of the Zi siblings could derive a stable income from the particular business he or she headed. The siblings could also help each other out as needed. Concentrating power within the family made the organization stable and secret and kept disputes among syndicate members to a minimum. Spreading duties among the siblings allowed the syndicate to break the whole organization into separate, relatively independent parts and made it easier to hide the syndicate's illegal activities. Long-term

planning is another feature that distinguished the Zi Lao San syndicate from ordinary syndicates: the syndicate planned to expand its activities to bigger cities in Heilongjiang and nearby provinces when it had more money and to establish a coordinated relationship with syndicates in other provinces. The Zi family also developed methods to control and keep syndicate members loyal. They paid syndicate members regular salaries, bought them cell phones and gave them rewards based on individual performance. If a member had to go into hiding, the syndicate provided for the family left behind. Thanks to efficient measures of the sort, Zi Lao San's syndicate lasted nearly 10 years, which is notably longer than most syndicates in China.

Zi Lao San's syndicate demonstrated an important characteristic of black society groups in China today: it inherited some of the basic aspects of Chinese traditional black society but also incorporated some of the features of western organized criminal groups. Like the traditional Chinese black societies, for instance, the Zi Lao San syndicate was a secret association, with one clan as the core of the organization and honour or disgrace shared within the syndicate. On the other hand, it learned some methods from western syndicates, such as accumulating wealth, committing violent crimes and territorial expansion of the criminal organization. Currently, a high percentage of syndicates in China are organized in a similar way to the Zi Lao San group.

### **The Liu Yong syndicate from Liaoning Province**

#### *Brief description of the case*

In 1992, Liu Yong shot and injured a deputy in a neighbourhood police station and then fled as a fugitive. In 1994, he was arrested 1,800 miles away in Guangzhou, the capital of Guangdong Province, in southern China. In 1995, he bribed his way out of jail and formally started his syndicate life. He first recruited some former convicts and bought arms to empower the syndicate. Later, he recruited several policemen into it. His syndicate thus consisted of people with power both in mainstream society and in the criminal underworld. In pursuit of great wealth, the Liu Yong syndicate brutally crushed business competitors and Liu Yong soon became the area's most powerful individual. Once his syndicate was established, Liu Yong seized whatever prime real estate locations he wanted. To lease a building in the busiest commercial area in Shen Yang, where he wanted to open a supermarket, he ordered his men to beat up and seriously injure the unwilling owner and then forced him to sign the lease contract. In order to monopolize the cigarette wholesale market in Shen Yang, he sent his men to beat another businessman to death because he was an agent for a brand of cigarette for which Liu also was an agent. Liu Yong placed no value on the lives of innocent people. A fortune-teller once told Liu that his complexion was ashen, indicating he was in poor health. Liu was irritated by the comment and, at his order, his men stabbed the man 15 times.

In spite of this, Liu was given various honorary titles such as “outstanding entrepreneur” and “philanthropist helping the poor”. While he was head of a syndicate committing serious crimes, he was elected a member of the District People’s Political Consultative Conference and a People’s Representative for Shen Yang, the capital of Liaoning Province, in north-eastern China, and China’s fifth largest city, with 6.9 million inhabitants. This strange situation was linked to the corruption of some of the city’s leading bureaucrats. In fact, Liu obtained the above honours by bribing government officials and creating a false life history for himself. It has been documented that Liu Yong bribed dozens of city administrators or their wives, including former Deputy Mayor Ma Xiang-dong.

Liu Yong’s syndicate was well-structured, financially strong and its leader held a high political position. Liu Yong was ostensibly a pillar of the community: a People’s Representative for Shen Yang, a ranking member of the city’s Communist Party cell and managing director of the Jia Yang groups, a respected conglomerate. His syndicate had 45 members, armed with 13 guns and 26 martial weapons and with more than 10 trucks and cars at its disposal. The syndicate’s activities were mainly in the central commercial area of Shen Yang. Through murders, assaults and threats, the syndicate achieved a monopoly in the cigarette wholesale market and largely controlled business in the centre of the city. According to an investigation by the Public Security Bureau of Shen Yang, the syndicate committed 42 crimes, causing one death, 16 very serious injuries and 25 minor injuries. The syndicate was also charged with evading more than y 20 million (\$2.42 million) in taxes.

#### *Assessment of the case*

The Liu Yong syndicate is a typical criminal syndicate. Not only was it able to disguise illegal activities as legitimate business, but it also managed to make use of political power and financial dealings to protect its position of advantage. Its operations were similar to those of the major triad, the Four Seas Syndicate, in Taiwan province of China. Compared with other syndicates in mainland China, Liu Yong’s was more sophisticated and powerful. His operation was run more like syndicates existing outside China. Liu Yong claimed he had personally accumulated y 500 million (\$60,459,000) in assets.

Ironically, Liu Yong, a syndicate leader, was assigned to inspect law enforcement departments in his official capacity as a People’s Representative. A criminal responsible for many crimes was thus honoured as a good citizen with supposedly high ethical principles. The Liu Yong syndicate had a wide variety of social connections and its power penetrated into law enforcement departments. He had friends in all fields of endeavour, including some high government officials, and his syndicate was skilled at avoiding investigation. Thus, the local Public Security Bureau’s first attempt to investigate Liu Yong failed because it was interrupted by high officials. To catch and interrogate Liu Yong proved to be a very difficult task and to prevent him from escaping from prison once he had been arrested the

Public Security Bureau had to move him twice. The paperwork on him piled up more than two metres high. By the time it was over, the case had cost the Public Security Bureau of Shen Yang more than y 1 million.

Liu Yong's case clearly illustrates the facilitating role of corruption within institutions of state power. It could even be said that some black society organizations emerge as a direct consequence of corruption.

### **The Zhang Wei syndicate from Zhejiang Province**

#### *Brief description of the case*

The Zhang Wei syndicate, operating in Zhejiang Province, in eastern China, consisted of 184 members of whom 32 core members have been prosecuted. Among syndicate members, 67 were either Communist Party or local government officials. The one with the highest position was formerly mayor of Wen Ling, a city in Zhejiang Province.

Zhang Wei himself was at one time Vice-Chairman of the People's Political Consultative Conference of Yi Du, in Hubei Province, Chairman of East Sea Corporation in Zhejiang, General Manager of Dong Sheng Corporation in Shanghai and a committee member of the Youth Association in Tai Zhou, in Zhejiang Province. He was praised by local government as a "business mogul" and a "new political star". To the public he was known as "Leader Zhang". From 1995 to the end of 2000, his syndicate committed 50 plus crimes, resulting in one death, 4 very serious injuries and 10 minor injuries. It accumulated more than y 84 million (\$10.2 million) in illegal profits. The syndicate was charged with a dozen different kinds of crimes, including organizing and operating a criminal syndicate, homicide, extortion and tax evasion. On 12 March 2001, the Intermediate People's Court of Ning Po, in Zhejiang Province, sentenced Zhang Wei and other major members to death. Thirty other members were sentenced to periods of imprisonment of several years to life.

The Zhang Wei syndicate had two sets of rules: syndicate rules and house rules. In addition, it employed advanced management methods. For instance, syndicate members had to live together and were given uniforms. All members had identical cell phones and pagers, were divided into hierarchical levels and were treated accordingly. The leading members of the syndicate were given cars of well-known makes and salaries of from y 20,000 to y 150,000 (\$2,400-18,100) a month. Other inner circle members were given Santana (mid-range Chinese) cars, cell phones, suits, leather shoes and regular salaries. Such perquisites attracted many miscreants from Wen Ling and surrounding areas who wanted to work for Zhang Wei.

Zhang Wei gave huge sums in bribes to local government officials and staff in banks, including the mayor, the director of the local Public Security Bureau and a bank manager, and thereby kept firm control over them. As a result, he was able to establish his own illegal bank and to transfer hundreds of millions of yuan from state-owned banks to his personal bank.

The money was then used to finance the activities of his syndicate. Thanks to support from the local authorities and the local bank, the syndicate grew to be the most powerful and the richest in China.

#### *Assessment of the case*

The Zhang Wei syndicate emerged in Wen Ling, which is in one of the richest areas in China. The key reason Zhang Wei was able to force the local bank to grant him loans and thereby help him accumulate great wealth was that he was skilled at taking advantage of loopholes in the system. Because of such deficiencies, Zhang Wei was for a very long time able to avoid being investigated for his illegal activities. In fact, the local government considered him an extraordinarily capable person. He was one of the most trusted of the mayor’s advisers.

Corrupted local government officials will be found wherever there is a large organized criminal syndicate. Zhang Wei’s group corrupted more government officials than any other syndicate and the ranks of those officials were higher. In other syndicate cases where government officials were involved, they were often unwilling to help the syndicate but had no choice because they had already taken bribes. Zhang Wei’s case was different: government officials involved in that case, such as the director of the Public Security Bureau in Wen Ling and the local bank manager, took the initiative to assist and protect the syndicate. The local Public Security Bureau even hung a sign on the wall of Zhang Wei’s villa and listed it as one of the most important places to be protected. As if in illustration of the old Chinese saying, “Money can bring the devil into your service”, the case shows how corrupt some of the institutions of state power are and how deeply government officials can become involved in illegal activities. This is one of the keys to the rapid growth of organized criminal groups and their capacity to stay in business over relatively long periods.

#### **SOME COMMON FEATURES OF BLACK SOCIETY SYNDICATES**

The typical Chinese criminal syndicates described here are made up of 50 to 200 members, which makes them medium-sized in comparison with those in countries worldwide. They have a clear hierarchical structure, more so than criminal groups in many other countries. They show readiness to use extreme violence and rely heavily on connections with corrupt officials. In some instances, syndicate leaders and members even hold official government functions themselves.

#### **STATISTICS ON BLACK SOCIETY CRIME IN CHINA**

The Government of China has not adopted universal standards for recording and cataloguing black society crime, nor has it published any official

statistics on the subject. However, the Chinese media report increasingly on black society criminal activity. Some provinces and cities are now publishing local crime statistics. Based on those reports and a secondary analysis of published statistics, it is clear that black society crime has increased sharply since August 2000. Within overall crime statistics, the proportion of crimes attributable to criminal syndicates has also gone up rapidly.

By August and September 2000, black society crime had reached new heights in China. A large proportion of all violent crimes and economic crimes involving large amounts of money were attributable to black society organizations, according to the statistics on serious crime published by the Ministry of Public Security of China in September 2000. For instance, black society groups committed 22 per cent of robberies and kidnappings in September and 16 per cent of all serious theft cases. Homicides committed by black society groups constitute a smaller proportion of all such crimes than the percentages for robbery, kidnapping and theft, however. Black society groups were involved in only 6 per cent of homicide cases, but that number does not include deaths caused during robberies or bombings. It is worth noting that black society groups are responsible for 9 per cent of reported rape cases, a figure that is higher than that for homicides and bombings carried out by such groups because they often operate prostitution rings, an activity that can easily lead to rape charges.

There are no official statistics published about drug-related crimes, kidnappings or smuggling of persons. However, according to an analysis of data from various sources, a higher proportion of those types of crime are committed by black society groups than is the case for any other types of crime. For example, it is almost impossible to smuggle people out of China illegally without the involvement of black society groups. Table 1 provides statistics on serious crimes solved in September 2000.

Table 1. Serious crimes solved in China in September 2000 (in hundreds)

<i>Type of crime</i>	<i>Number of convictions</i>	<i>Number committed by organized criminal groups</i>	<i>Percentage</i>
Serious robbery <sup>a</sup>	22	4	22
Homicide	35	2	6
Rape	25	2	9
Bombing	17	1	6
Serious theft <sup>b</sup>	44	6	16
Abduction	11	2	22

*Source:* Chinese Law Network—Cases—October 2000.

<sup>a</sup>"Serious robbery" refers to cases that either involve a large amount of money or result in the death of one or more victims.

<sup>b</sup>"Serious theft" refers to cases that either involve a large amount of money, stealing from financial institutions or stealing of precious cultural relics.

Since the Ministry of Public Security of China issued an order in December 2000 to attack and suppress black societies and thugs, the numbers of black society groups dismantled and members arrested have increased considerably. Public security agencies in various regions have started to publish regular reports on cases solved as part of a public information effort. In the latter half of December 2000, reporting provinces on average dismantled 28 black society organizations each and broke up an average of 534 gangs. An average of 2,447 syndicate members was arrested in each reporting province (see table 2). Guangxi Province, in South China, recorded the largest number of dismantled black society groups—48—and 839 gangs. Next to Guangxi comes Sichuan Province, with 47 black society organizations disabled and 713 gangs. Anhui Province, in eastern China, arrested the most members of criminal groups: 9,963 members of black society organizations and other criminal groups. No less than four provinces, Guangxi, Henan, Jilin and Zhejiang, arrested more than 3,000 members of black society organizations (3,799, 3,343, 3,337 and 3,100, respectively). However, because of the lack of universal standards in China, some reporting provinces failed to distinguish between black society organizations and ordinary gangs, referring to both as “black societies/gangs”. This inflated the overall numbers recorded for black society groups and their members.

Table 2. Cases solved involving criminal organizations, China, by province, December 2000

Province	Number of criminal organizations dismantled		Arrests made	Firearms seized	Cases prosecuted
	Black society organizations	Gangs			
Anhui	18	895	9 963		10 875
Guangdong	39		849		
Guangxi	48	839	3 799		2 445
Guizhou	8	115	747		
Heilongjiang	19		2 269		12 692
Henan	43	1 304	3 343	1 050	
Hubei	13	292	1 448		
Hunan	25	376	2 225		
Jiangxi	20	267	876	109	779
Jiling	35	622	3 337		6 483
Ningxia	38	220	221		
Shandong	13	235	1 500		
Sichuan	47	713	2 800		3 844
Zhejiang	27	529	3 100		

Source: *Legal Daily*, *China Police Daily* and *Prosecutor Daily* (October 2000-January 2001).

### **LATEST FIGURES**

In January 2001, China further cracked down on black society-type syndicates. The overall numbers of black society organizations dismantled and syndicate members arrested in January 2001 are higher than the



numbers for December 2000. In sweeping actions, Chong Qing, Hubei, Hunan, Jiangxi, Jiling, Ningxia, Shandong and Sichuan neutralized the largest numbers of black society organizations. In a 10-day sweep, law enforcement authorities in Jiangxi Province put 267 black society organizations out of action and arrested 793 members. In Hubei Province, the numbers were 292 and 1,448. In Shandong Province, 50 black society organizations were shut down and 262 syndicate members arrested. In the city of Chong Qing, the numbers were 47 and 168; in Sichuan, 42 and 386; in Ningxia Hui Autonomous Region, 41 and 161; in Hunan Province, 18 and 163; and in Jiling Province, 16 and 50.

In a January 2001 sweep, the Transportation Security Department of the Yangzi River caught nine "river pirate" criminal groups and arrested 150 members along a 635 kilometre stretch of the Yangzi River in Hubei. River pirate criminal groups concentrate their activities on rivers and docks, robbing passing ships, securing control of the docks by violence, collecting protection fees by force and stealing navigational equipment. This is a unique type of criminal organization, existing only in the Yangzi River areas of Hubei, Hunan and Jiangxi Provinces.

Data on arrests made in the period from April to June 2001 confirm the upward trend in arrests of syndicate members (see tables 3 and 4).

Table 3. Cases solved in April and May 2001, China, by province

<i>Province</i>	<i>Number of black society organizations dismantled (including gangs)</i>	<i>Arrests made</i>	<i>Firearms seized</i>	<i>Cases prosecuted</i>	<i>Criminals sentenced to death</i>
Beijing	102	1 000		400	
Chong Qing					14
Gansu	93	622	109	726	
Guangdong	68	6 737	153	5 800	7
Guangxi	23	118			11
Hainan	5	51	10	1 800	12
Hebei	432	1 714		3 436	
Jiangsu	128	768	55	786	
Jiangxi	207	1 838	2 238	6 375	
Liaoning	59	3 407	1 050	1 400	9
Shandong	204				
Neimenggu	68	405	120	504	
Shanxi (in northern China)	182	1 200		842	4
Shanxi (in north-west China)	54	274		1 218	
Sichuan	1 182			21 285	8
Qinghai	27	285		108	
Yunnan	124	1 341		750	14
Zhejiang	882				6

*Source: Xinhuanet News, China Police Daily and Prosecutor Daily (April-June 2001).*

Table 4. Cases solved in April, May and June 2001, China, by major city

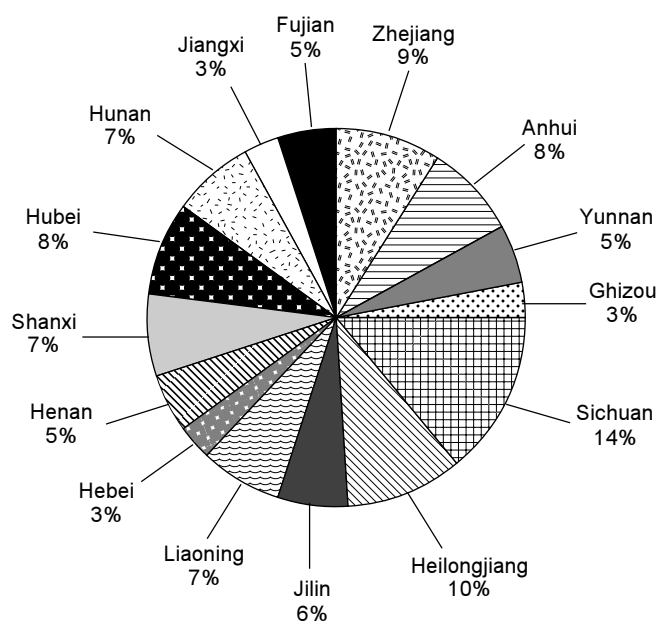
City	Number of black society organizations dismantled (including gangs)	Arrests made	Firearms seized	Cases prosecuted	Criminals sentenced to death
Chengdu	40	553	192	304	9
Fuzhou	167	598	15	3 000	
Haerbing	28	112		157	23
Hangzhou	101	900			
Huhehaote	23	82			
Jinan	26	202			12
Shen Yang	35	161	153		
Xi'an	42	164			10
Xining	4	448		108	
Xuzhou	103	223		1 633	9

Source: Xinhuanet News, China Police Daily and Prosecutor Daily (April-June 2001).

### **GEOGRAPHICAL DISTRIBUTION OF ORGANIZED CRIME IN CHINA**

Black society organizations have been found in many areas throughout the country. However, rates of black society criminality vary in relation to different levels of economic development, to differences in local culture and customs and to differing effectiveness in crime control by local authorities (see figure 1).

Figure 1. General distribution of black society organizations in China



Source: Sinolaw.net and xinhuanet.com (Xinhua News Agency) (November 2000-February 2001).

There is a general pattern in the distribution of black society activities: *(a)* major or serious crimes are more prevalent in the north and west of China than in the south and east; *(b)* the types of crime committed in each region tend to remain fairly stable: homicide is most prevalent in the north, drug trafficking in the south, robbery in the west and theft in the east; and *(c)* serious organized crime is most prevalent in small and medium-sized cities where the economy is underdeveloped. Road robbery is often seen in remote areas whereas criminal enterprises are often established in wealthy areas.

Although the statistics are incomplete, it can be said that the black society crime rate is high in the north-east, south-west, southern and eastern coastal areas, such as Shen Yang, Chang Chun and Haerbin, three larger cities in north-east China, Chong Qing, a municipality directly under the central Government, in south-west China, Wuhan, a large city in central China, and Nanchang, a medium-sized city in eastern China. The provinces of Guangxi and Yunnan (south-west China), Hainan and Guangdong (southern China), Heilongjiang and Liaoning (north-east China), Hebei and Shandong, Anhui, Zhejiang and Jiangxi (eastern China), have more criminal organizations than other provinces. Metropolises like Beijing and Shanghai have comparatively lower crime rates than other big cities. However, some districts in those cities, such as suburban communities and foreign residents' compounds, also experience black society crimes to some degree. In addition, black society activities from Taiwan province of China, Hong Kong SAR, Macao SAR and overseas are also more often found in large cities such as Beijing, Shanghai, Guangzhou and Shenzhen where the economy is more developed.

The distribution of black society organizations is related directly to urban demographic structure, local economical development, natural geographical conditions and historical and cultural traditions. For instance, the population in Beijing and Shanghai is composed largely of immigrants from other provinces. Migration to those cities took place a long time ago and those arriving have by now established themselves well both socially and financially and belong to the upper and middle classes of the city. It is thus unlikely to find illegal organizations and criminal groups among these people. On the contrary, newly developed cities like Shenzhen, Zhuhai, and Haikou in southern China are composed exclusively of recent immigrants with unstable jobs or no jobs at all. They are on the bottom of society. To survive, they are likely to group together for legal or illegal activities that tend to lead to black society crimes. On the other hand, large cities like Chong Qing, Wuhan and Nanchang have a long history of inherited residence, culture and living customs. In those areas, economic development is slow and living standards are low because of the areas' geographically disadvantageous location in hinterlands and mountains. People in such places traditionally used to belong to secret associations, so they now tend to organize illegal groups to form the bases for black society and other organized criminal groups.

Black society crimes in each region have more or less fixed patterns and characteristics:

(a) Yunnan has the most minority nationalities and it shares borders with Myanmar. It is ideally suited to drug trafficking. Therefore, black society groups are engaged mostly in drug production, trafficking and smuggling;

(b) In cities like Chong Qing, Xi'an, a large city in north-western China, and Wuhan, the economy is slack because of the disadvantage of this inland location. A small minority of people have made fortunes overnight owing to the lack of restraint on public powers. The drastic gap between the “happy few” and the majority of the poor have caused feelings of resentment among the general population, which have led in turn to antagonistic organized crimes such as bank robbery, theft of national treasures and kidnapping for ransom;

(c) The southern coastal cities of Guangdong and Hainan have been granted considerable flexibility in free trade. The black society groups take advantage of the favourable policies to conduct smuggling, financial fraud and embezzlement of public property;

(d) In the provinces of Anhui, Henan (in central China) and Shandong, the economy is undeveloped and people tend to be hot-blooded. There have often been violent organized crimes such as syndicate fighting and fights to maintain market monopolies;

(e) Heilongjiang Province and the other parts of north-eastern China often experience serious robbery and murder cases. In addition, organized crimes in other cities or provinces are often committed by criminals coming from the north-eastern provinces. For instance, a number of major organized crimes in Beijing have been committed by black society groups from the north-east;

(f) Hunan and Hubei Provinces, the main grain-producing areas in central China, with a high population density, have traditionally had many private organizations. The violent criminal groups there have lately grown in size and internal control abilities;

(g) Fujian Province, in eastern China, and Guangdong Province have easy access to overseas Chinese because of their proximity to Hong Kong SAR and Taiwan province of China. Black society groups often conduct migrant smuggling, currency counterfeiting, drug trafficking and smuggling and arms smuggling. People from Fuqing in Fujian Province and Wenzhou in Zhejiang Province have traditionally travelled widely on business or as migrants. Organized smuggling and trafficking in human beings and extorting money from overseas Chinese are more often found in those places than elsewhere. In 1998, 1,400 “snake heads” (migrant smugglers) were caught. Some 30,000 people illegally crossing borders were captured in Fujian Province alone.<sup>9</sup> According to an expert in the Fujian police force, fake currency worth up to y 20 billion (\$2.42 billion) has been smuggled into the country by Fujian black society groups. Lufeng in Guangdong

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<sup>9</sup>Sanlian Life Weekly, 23 October 2000.

Province is the headquarters of counterfeit activities in China. Some 80 per cent of all counterfeit money on the market come from Lufeng, produced by well organized criminal groups.<sup>10</sup>

Violent organized crimes are most likely to happen in small and medium-sized cities and towns near major transport nodes. Rates of violent crimes committed by black societies, such as murder, robbery, bombings, kidnapping and extortion, are higher in small and medium-sized cities than in large cities. In Xuchang, Henan Province, one black society group was taken into custody recently. The criminal activities and the consequences of the crimes it had committed were on a scale rarely seen in recent years. Once the group buried a kidnapping victim alive when it failed to collect a ransom from the victim's family. In another crime it committed, the victim's throat was cut.<sup>11</sup>

In rural areas, organized crime often takes the form of intimidation and oppression of people in the villages and surrounding countryside. In areas where major transport arteries are located, crimes such as robbing trains, ships and buses are common. Those committing such crimes are referred to as "vehicle bandits" and "road robbers" in Chinese. Because of the frequent train robberies in the Shuijahu area, in Anhui Province, the local railway company had to cancel most of its scheduled stops. Armed police officers were put on duty to patrol the trains that had to stop at that station. For some groups, train robbery has become a major source of income.<sup>12</sup>

Generally speaking, rates of organized crime in major cities and economically better developed areas are lower and crimes are more likely to be committed by criminals coming from other regions and areas, known as the "floating population". As an example, most organized crimes in Shanghai, such as racketeering, drug trafficking, gang robbery and burglary, have been committed by criminals coming from the provinces of Anhui, Sichuan, in south-western China, Xinjiang, in western China, and the north-eastern provinces. In Beijing, organized crimes, such as bank robbery, car theft, bombings and murder, are committed mostly by criminals coming from the north-eastern provinces, Hebei and Shanxi (northern China) and Xinjiang.

Most cases of armed bank robbery and attacks on cash-in-transit security vehicles occur in the north-eastern, central and south-western areas. Major cities where such cases arise include Shen Yang and Haerbin (north-east), Chong Qing (south-west), and cities in the central region, such as Changsha and Changde (Hunan Province), Kaifeng and Xuchang (Henan Province), Wuhan and Shashi (Hubei Province) and Nanchang (Jiangxi Province). The methods used in the bank robberies organized by black society groups are practically identical. They tend to be committed mostly by well structured organized criminal groups and the crimes are

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<sup>10</sup>*Outlook Weekly*, 23 October 2000.

<sup>11</sup>*China Police Daily*, 23 December 2000.

<sup>12</sup>*Ibid.*, 14 October 2000.

well planned. During the robbery they usually kill police officers, security guards and witnesses first and then escape with huge amounts of cash, gold, jewellery and other valuables. Afterwards, the individual participants disperse and escape separately along pre-planned routes. From 2000 to the beginning of 2001 there were 11 cases of bank or security vehicle robbery in the above-mentioned cities, all of them committed by local black society groups.

Criminal activities involving trafficking in guns and ammunition are mostly restricted in the coastal areas in the north-east and south-east, the source of nearly 90 per cent of all guns and ammunition used by Chinese criminal groups. In the north-east, criminal groups usually sell hunting guns, rifles and sub-machine guns, some of them produced in Germany and the Russian Federation. Criminal groups in the coastal areas of the south-east are usually involved in smuggling weapons in from abroad, some of which have previously been sold by the Government of China to south-east Asian countries. They somehow find their way back to China and are purchased by criminal groups.

## **CONCLUSIONS**

Organized crime—or black society crime as it is called in China—has undeniably emerged as a pressing social problem for Chinese society and for the Government. Statistics on cases solved show high rates in many provinces. The syndicates exhibit many characteristics of conventional organized crime: hierarchically structured groups that accumulate considerable wealth through different types of criminality and further their activities by means of violence and corruption.

Some tentative hypotheses are proposed below concerning the social background of the emergence of organized crime in China. The new economic policies introduced in the late 1970s have brought radical social and cultural changes and the emergence of organized crime can be seen as the downside of some of those developments. On the one hand, the pool of potential syndicate members seems to have grown. According to court statistics, conventional crime has increased steadily over the past two decades. More people have gradually acquired criminal skills and attitudes. Large numbers of convicts are released from prison every year without much prospect of finding jobs, owing to the high levels of unemployment. The contrast with the conspicuous wealth of the newly rich is huge and disadvantaged people are less inclined to accept their fate than in previous times. More people are now determined to acquire wealth at all cost and feel little solidarity with others. In sociological terms, Chinese society seems to be undergoing a period of social disorganization. All these factors work together to create a large pool of young people who are susceptible to recruitment by criminal syndicates.

On the other hand, the opportunities for organized crime also seem to have broadened. The new economy has spawned a booming vice industry:

prostitution, gambling and drug abuse have become more prevalent, creating ample market opportunities for criminal syndicates.<sup>13</sup> Changes in the economic domain also seem to have led to ambiguities in managerial responsibilities, which can and are ruthlessly exploited by criminal syndicates. Collusion between managers of state-owned companies or law enforcement agencies and criminal syndicates is not uncommon, as is apparent from the case histories of syndicates outlined above. Two factors seem to facilitate organized criminal activity, the availability of guns and corruption. Criminal syndicates seek and often obtain political patronage or simple protection against criminal investigation. Some public officials resort to collaboration with black society groups in order to eliminate political rivals or competitors. As mentioned, some organized criminal figures even manage to obtain high positions in government themselves.

The Government of China is obviously hard-pressed to address the growing prevalence of black society crime. New legislation has been passed and special law enforcement campaigns have been launched. Lists of persons suspected of belonging to black society-type organizations are distributed nationwide to railway stations, ports, airports and hotels. Those providing information on members of major black society syndicates are given financial rewards. The Ministry of Public Security has announced that officials who fail to deal with black societies in their regions will be removed from their posts. Citizens who are victimized by local syndicates are encouraged to report such activities to their local police. So far 687 reports have been received from citizens and 433 citizen's arrests have been made.<sup>14</sup>

Processes of globalization may further exacerbate problems of organized crime in the future. The present paper on emerging problems of organized crime in China may help to explain the commitment of the Government of China to international cooperation in the fight against transnational organized crime as expressed at the High-Level Political Signing Conference in Palermo.

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<sup>13</sup>According to statistics of the National Narcotics Control Commission, the number of officially registered drug addicts rose from 680,000 in 1999 to 860,000 in 2000. The actual number is estimated to be much higher.

<sup>14</sup>*Xinhuanet News*, 8 April 2001.

# WILL "CALIGULA" GO TRANSPARENT?

## CORRUPTION IN ACTS AND ATTITUDES

BY PETRUS C. VAN DUYNÉ<sup>1</sup>

### ABSTRACT

In the present article, the author approaches the subject of corruption from the perspective of behavioural aspects of decision-making and the "exchange relationship" between the decision maker and another party. Six categories of corrupt relationships are described. The author focuses on corruption as a leadership disease: fish starts to rot from the head downwards. The successful leader is used as a starting point in describing the shift towards corruption as a result of a decline in accountability. The author describes the development of the leadership disease through several phases: the phase of extravagance; the erosion of accountability; the ownership phase; "court-building" and "Caligula appointments"; and, finally, favouritism and nepotism. The prevention and repression of corruption are based on the simple principles of transparency and the "first servant" principle, which have to be enforced from the top down.

### THE ESSENTIALS OF CORRUPTION

At present, the phenomenon of corruption is widely debated. In the industrialized countries, it has become a prominent political issue, resulting in anti-corruption treaties and conventions, such as the 1997 Organization for Economic Cooperation and Development (OECD) Convention on Combating Bribery of Foreign Public Officials in International Business Transactions and the 1997 Second Protocol, drawn up on the basis of Article K.3 of the treaty on European Union, to the Convention on the protection of the European Communities' financial interests. In developing countries, various deposed heads of State have found themselves charged for having committed acts of corruption during their term in office or are being held responsible for the corruption of their cronies. Given this state of affairs, it seems as if corruption is a clearly delineated phenomenon. However, an examination of past and present cases of corruption reveals that

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<sup>1</sup>Professor, Tilburg University, Netherlands.



it is frequently a mixture of bribery, self-enrichment, fraud, cronyism and mismanagement. This raises questions about the essence of corruption.

Some clarification of the concept of corruption may be found in a country that has been considered notoriously corrupt: Russia—not just today's Russian Federation, but also the old tsarist empire before the introduction of the Duma in 1906. In that corruption-ridden country, tsar Nicolas I could say to his son Alexander: "In this country there are only two people who are not stealing; you and me". He was correct, not because he was an honest man but because he was the virtual owner of Russia, and as absolute autocrat he was accountable to nobody, making decisions as he pleased without being bothered by decision-making rules or criteria. He might be whimsical, but could he be bribed to bend rules? As a matter of fact, being an absolute, unaccountable decision maker, he was too powerful for corruption. This anecdote contains some of the components that are essential to corruption. On the decision side, the components include a decision maker, whose decisions are guided by rules and criteria from which he has the power to deviate and who is in principle accountable for the propriety of his decision-making. Corruption is directly related to the discretionary freedom or power in the decision-making process. When decision outcomes are predestined, there is nothing to corrupt. Powerless people are "below" corruption; autocrats are "above" corruption. One of the problems of a corrupter is to find out who has the real discretionary power: corrupters may also be cheated (Della Porta and Vannucci 1997).

Inherent to the concept of corruption are two other elements. The first element is the most important because it differentiates corruption from fraud. Corruption is an "exchange relationship" between a decision maker and an interested person offering or promising an advantage in exchange for a desired decision outcome, whereas fraud can in principle be committed as a solitary act. The second element concerns the subsequent justification of the "bought" decision: the decision maker must always veil the improper nature of the "exchange relationship". He must pretend to have acted in accordance with the accepted criteria for decision-making or—if there is a monetary trade-off—he will have to defraud, which is the reason why fraud is so often technically connected to corruption.

### **DEFINING CORRUPTION**

The problem with delineating the concept of corruption is that it does not stem from behavioural or legal science. Once used in the sense of "moral decay" the concept of corruption is now used in many overlapping contexts and legal, economic, political or cultural comparative perspectives (Lancaster and Montinola 1997; Bull and Newell 1997; Passas 1998). Most definitions contain one or more of the components described above and are frequently overlapping. The overlap or "semantic intersection" to be found in the literature are the original "moral decay" and "abuse of power" in return

for an advantage (Hoetjes 1982; Friedrichs 1989; Huberts 1992). Bearing in mind this semantic intersection, corruption may be defined as follows:

"Corruption is an improbity or decay in the decision-making process in which a decision maker (in a private corporation or in a public service) consents or demands to deviate from the criterion that should rule his decision-making, in exchange for a reward or the promise or expectation of a reward."

This definition is broader in scope than politics, public administration or good governance (Goudie and Stasavage 1998) because it is based on what is fundamental in corruption: the behaviour of the individual deviant decision maker. The "principal agent" model, described by Groenendijk (1997), can be derived from this behavioural foundation. This behavioural definition transcends the penal law definition: the violated decision-making criteria do not need to be codified, though they must be known and recognized by the community.

One objection to this "individual decision maker" approach may be that it renders the definition of corruption rather broad in its application, covering decision-making situations that are considered outside its usual range of application. For example, in bringing up children, there is much "loving corruption", whereby clever children play off one of their parents against the other. For example, a boy bribing his father might say: "If you let me watch television, I will wash the dishes for you. Just don't tell Mom!" The tired father accepts the offer: he will not have to do the dishes and, in addition, his son will appreciate his cooperation. The father cautions his son: "Make sure that everything is finished before Mom comes home. Otherwise there will be trouble!" Why should this not be considered corruption? Corruption is not an exceptionable or pathological form of behaviour, but one that is all-too human. It permeates many relationships in which people must deal with decision makers. Are not most churches and temples marketplaces where divine favours may be bought from the highest Decision Maker? As Deflem (1995) observes, corruption is a feature of a certain type of social (inter)-action; it is not an inherent feature of systems, though it may develop into a system. Values and moral standards are to guide people in making daily decisions, but who follows the narrow path of virtue, never deviating from the norm, never doing anything in favour of someone or in return for something? Psychologically, corruption is not a pathological state of mind, even if it is reprehensible.

The broad reach of this behavioural definition is as such not problematic. It is precise and capable of encompassing more specific definitions applicable to the relevant sectors of social life, whether public, business or private, like the situations described by Gardener (1970, 1993). It should also be able to encompass historical variations of corruption (Johnston 1992; Beare 1997) or national variations owing to culturally different concepts of proper decision-making and accountability. This means that, from this definition, context-specific "operationalizations" may be deduced by projecting the responsible individual decision maker onto the social contexts of public administration or politics.

The concept of corruption should be clearly differentiated from fraud, embezzlement and the sheer abuse of power, to enrich oneself or one's associates. Corruption is not about putting one's hand in the till and other acts which prejudice the employer or the State, though such acts are frequently associated with corruption. Technically, corruption may entail fraud (and vice versa), but that depends on the "administrative" requirements of the surrounding legal system. Likewise, stealing from the boss or from the State as such is not corrupt, but corruption may be instrumental, for example, in buying silence from those who are informed. This may lead to questions with complicated answers like: were presidents such as Suharto, Marcos, Mobutu and Abacha just thieves or were they corrupt? Though such historical examples may be confusing, this behavioural definition maintains the conceptual dividing line. It also provides a suitable complement to the methodological questions related to cross-cultural measurement raised by Lancaster and Montinola (1997).

The observation that corrupt conduct, though deviant, is not an abnormal behaviour should not be confused with the increased intolerance for this phenomenon in the last decade, which coincided with the lessened need of the United States of America to prop up corrupt but anti-communist regimes. Indeed, the attitude against corruption has changed dramatically in the last few years and is nowadays found in juxtaposition with organized crime and money-laundering (Goldstock 1993; Arlacchi 1993; Jacobs, Panarella and Worthington 1994). Apart from this moral perspective, the empirical basis of this phenomenon is deviant decision-making. In the next section, the corrupt decision maker is shown in his various social roles.

#### **A CLASSIFICATION OF CORRUPTION**

If the individual decision maker and his social position are taken as the point of departure, it may be necessary to describe a large and somewhat chaotic range of opportunities of corruption. In order to create some order, a simple classification has been made on the basis of a rough functional division of decision-making situations in which the components of corruption are present. There are decision makers in the public sector, in the private sector and in politics (Van Duyne 1996a). Between and within these sectors, improper exchange relationships may develop which corrupt the decision-making process.

##### **Categories of corruption**

	Public	Private	Politics
Public sector	X	X	X
Private sector		X	X
Political sector			X

This classification produces nine categories of corruption, if a differentiation between corrupter and “corruptee”, between the person who induces or initiates the corrupt exchange and the person who accepts it. In general it is difficult to make such a differentiation. In simple cases this difference may be discerned: a civil servant makes it clear that he will not stamp a document if ...; or a contractor makes it clear that granting the contract will result in some “extras”. In the typology of Deflem (1995), these are simple cases of monetary corruption. However, in cases of what Deflem calls bureaucratic corruption, it is not so easy to discern the initiator of corruption. When corruption has been systematized, as in Indonesia, Italy, the Russian Federation or Spain, corrupters and “corruptees” change roles frequently. Who started the corrupt deal in the Belgian Agusta affair? Was the previous President of Castilla y Leon, and subsequently the Prime Minister of Spain, the corrupter or the “corruptee” when he received millions for his Partido Popular? For this reason, the author has disregarded the three extra categories based on which party takes the initiative.

Another aspect that remains implicit in the above definition is the transition of a corrupt relationship to blackmail. Entering an improper exchange relationship can imply engaging a lifelong “(im)moral bondage” from which one cannot walk away at will. The phrase “You owe me a favour” may be a threat as well as a reminder.

### **Public sector corruption involving officials**

There is so little known about the potential occurrence of corruption between officials or civil servants that one might ask whether it exists at all. Only journalistic investigator Bouman (1978) of the Netherlands has devoted attention to this phenomenon. One of the reasons for this blind spot may be that, to outside observers, civil servants in their (inter-)departmental dealings do not operate in such visible decision-making situations, while the “venal” exchange relationship is more difficult to recognize. Moreover, civil servants do not bribe each other with thick envelopes for which they do not even have the money. If an improper exchange relationship develops in a decision-making situation, the pay-off will more likely be in terms of non-monetary benefits or favours. The rewards need not reflect personal advantage: “official objectives” of the department may be served by the dubious decision so that the appearance of probity may be upheld. Such behaviour may even be admired as a display of “clever use of sneaky alleys”, “unorthodox management”, “greasing good interdepartmental relations” or other forms of “daring leadership” (Chibnal and Saunders 1977). As long as there are no rumours about personal gains, it is unlikely that the heavy negative label of corruption will be used. A few examples may help to illustrate this point:

- A senior civil servant has a private consultancy firm that silently acts as an adviser for the building department of the town council. The head of that department discovers the fact but chooses

to remain silent about it because the civil servant knows how to wrangle difficult assignments.

- ❑ The heads of the responsible government ministry and the municipal authorities come to a mutually satisfactory agreement about the assignment of a major project to a dubious waste processor, despite serious warnings.
- ❑ A research institute is cajoled into producing the “desired” but wrong figures concerning the sick leave of teachers. (In this case, the withholding of a follow-up contract functioned as blackmail.)
- ❑ An official in the government ministry was furnished a boat, while the local officials who provided the bribe wanted nothing for themselves—only “something extra” for their district government.<sup>2</sup>

These murky decision-making situations not only are corrupt, but they are also important psychosocial breeding grounds for more direct forms of corruption. For example, if one accepts the idea of providing wrong information, either for fear of missing a promotion or in order to improve one’s relationship with an important section or department, one not only accepts a corrupt decision-making situation, one also sets a precedent for fraud and deceit. The former communist countries of central and eastern Europe provide good examples of this mixture of corruption and public deceit. Either for personal gain or for fear of demotion, departments, production sectors and production units knew that any figure they produced was false. Virtually all statistics were “bought” or obtained by the use of blackmail. It is no wonder that corruption permeated every branch of public life, a social feature that was to be continued and vastly expanded after 1989, interacting with the unfolding of organized (economic) crime since the last years of Brezhnev’s “gerontocratic” rule (Rawlinson 1997).<sup>3</sup>

### **Public/private sector corruption**

The most familiar form of corruption is between a private person or corporation and an official. However, this seemingly simple category covers various subcategories. The simplest form is one-to-one bribery: an individual wants a service to which he or she is not entitled, or wants it quicker than usual, and offers a bribe. This might be called “front office” corruption. The service to the corrupter is relatively simple and the material gains are rather small: providing a stamp or licence outside the normal procedure, “taking care” of a parking ticket for half of the cost of the fine. Such individual bribes may occur in any department, even when it is

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<sup>2</sup>Example provided by Ahti Laintinen, Professor at the University of Turku in Finland.

<sup>3</sup>The demise of the Soviet Union liberated a lot of capital from the ubiquitous underground economy (Sinuraja 1995), from which the nomenclatura have always profited by striking an alliance with the *Vor v Zakonyi* (thieves of the law) and the *avtoritety*, the new entrepreneurial professional criminals (Handelman 1994; Kelly, Schatzberg and Ryan 1996; Waller and Yasmann 1996).

well managed. In such instances, one may speak of “one rotten apple spoiling the basket”. However, this may be a case of a negligent management unwilling to recognize that the basket itself is affected, even if the management is not itself wilfully implicated (Van Duyne 1996b).

This leads us to a higher level of managerial venality: a morally questionable management that scarcely supervised, wielding broad discretionary powers, which makes it attractive for valuable exchange relationships. This is not the playground for the individual citizen with his petty requests, but for men of power. Heads of departments or government agencies bestowed with the authority of granting licences meet business interests, which requires sensitive and usually complicated procedures for making extraordinary decisions, which are characterized by anything but transparency (Vahlenkamp and Knauß 1995). Men of influence who have a perverted “credit of trust” (Della Porta and Vannucci 1997) know how to work according to the bureaucratic stealth procedure: “soaking”, “predigesting” the desired decision, followed by creating an atmosphere of complaisance in which colleagues are not supposed to be so frank as to say “no”. Such frankness has long since disappeared. In other words, corruption may be imbedded in a strategy of “decision cooking”, though such a strategy may only succeed in a dirty and murky organizational kitchen:

- In cases of multilayer decision-making, the decision-making process is spread as requests have to be channelled through the bureaucratic hierarchy. Here, improper decision-making becomes a social-psychological affair, requiring smooth preparation and an accommodating, rubber-stamping attitude on the part of several officials. Corruption becomes a ramified departmental or sectional business, which contains several variations, including the following:

There are no daily relationships between the lower management or executives and the “outside world”, but the head of the department is corrupt. It is not easy to conceal corrupt relationships and suspicions easily arise. Lower-level managers face a difficult choice between showing disagreement or going along with the scheme and being morally affected by it, even if they are not actually a part of the scheme. In the end, they frequently become involved, receiving for their silence rewards ranging from small favours to speedy promotions. Those who feel uneasy and frown upon what they observe or surmise are considered a nuisance and removed to “save places”, leave the organization or, if they are really troublesome, are threatened with dishonourable dismissal. Sometimes an individual, disgruntled at the rotten climate, becomes a whistle-blower—a very perilous undertaking, whose legal protection is either absent or imperfectly codified (De Maria 1997; Bovens 1987)

It also happens that an entire public service unit has become corrupt in its relationships with third parties, without the knowledge of the management. This happened in the public

transport department of Amsterdam. While the management locked itself away in its wood-panelled boardrooms, seeing and hearing nothing, gross mismanagement of assets and contracting out to corrupting entrepreneurs (who were "induced" or "forced" to do so) had become everyday practice, according to the investigator. In another case, a whole section of a customs unit took part in a value-added tax (VAT) scheme whereby T1-forms were systematically stamped to simulate the export of goods from the European Union (EU) to third countries (Van Duyne, 1995).

- ❑ A public service such as a town council can also decide that it is in its interest to enter a particular competition with all available public relation techniques, including corrupt ones. This happened with the competition for the winter Olympics in Salt Lake City and Sydney. Individual members of the International Olympic Committee appeared to have received huge sums as part of efforts to win their votes for the allocation of the winter games.

In such cases, the corrupt attitude has become deeply rooted in the organizational culture of the department, deeply affecting "human resource management". This is discussed below.

### **Public sector/political corruption**

The public sector/political corruption category is concerned with the interaction between civil servants and the holders of a political office, such as aldermen, members of parliament or government ministers. What is the nature of the improper exchange relationships of interests in terms of improper favours and pay-offs? It is likely that the pay-offs will not consist of money or something on which a monetary value can be placed; instead, the favour to be returned will be of a personal nature:

- ❑ A local political dignitary intimates to the head of the environmental department that, if he tolerates a higher level of pollution than would normally be permissible, he need not worry about his career. It appears that the local politician is himself a pig farmer who is in breach of the Manure Disposal Regulation (Van den Berg 1992).
- ❑ The reverse situation occurs when a political figure who wishes to be nominated for a high position in public service is told "not to rock the boat" by insisting on a critical investigation into the functioning of a department. His "correct" voting behaviour is "bought" by the consideration of winning the support of "important individuals" in the department, where later the decision about his nomination will be taken.

This is an area with many grey transition zones providing the social breeding grounds for "hard-core" corruption. Hoetjes (1991) calls such a landscape "corruptogenic", a euphemism that does not do justice to this

phenomenon. If influence-peddling, "pulling strings" and making pay-offs in the form of "mutual aid" have become the background of decision-making, one may choose to call it outright corrupt.

The decision-making situations of this category are not hypothetical. In countries like Belgium, France and Italy, within the elite groups, it is quite a political reward for a high-ranking party member to become the top civil servant in the town council or even the mayor (for France, see Becquard-Leclercq (1990)). These are no neutral nominations based on administrative skills, but politically coveted places, "warehouses of rewards" to bestow on political friends, on friends in the business community, eager for profitable contracts, and (at a lower level) the "respectable" network of "yes-men" who get smaller jobs and favours. This corrupt situation looks very similar to the promotion of a political figure to the post of mayor of Paris, Bordeaux or Nice—the most favourable positions for creating a personal party machine.<sup>4</sup> Which mayor of Paris (who later became president) has not been tainted with (the suspicion of) corruption?

It is interesting to observe that in this climate all participants usually oppose any attempt to introduce decision criteria and to further transparency. Take, for example, the tenacity with which the Belgian elite or the British Conservative Party (Doig 1996) resisted (or rather delayed) demands for transparency in these matters.

### **Private sector corruption**

The most obvious situation of corruption in trade and industry is the negotiation of contracts in which the negotiator solicits for "an extra" or is "seduced" (or hints that he is very much open to seduction) in return for the coveted order. This is an inter-business corruption, which does not exclude the potential for internal corruption within a firm: the mechanism described in the section on corruption between officials applies here as well. For example, a stock manager may be bribed to allow the embezzlement or the unauthorized "borrowing" of equipment by providing false receipts.

It is important to be precise in discerning adjacent phenomena like fraud and corruption, while recognizing the ways in which they interact technically. Systematic business fraud is rarely a one-man action. As soon as the fraud or corrupt scheme becomes more complicated, it requires some "bought" accountancy skills to make the figures "balance"; for example, the payments for the bribes have to be accounted for by higher invoices or pretended expenses charged to another firm. That firm, in turn, surmises (and condones) something improper and will also demand a share of the "pie" for its false invoices. Corruption gradually spreads, leading to a corrupt market and a loosening of business morale.

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<sup>4</sup>In 1965, Jacques Medecin, like his father, became mayor of Nice, ruling like a corrupt monarch for 25 years, until he had to escape prosecution. In 1998, when he died, flags in Nice were flown at half mast, which says a lot about the public's perception of corruption.



The following examples of schemes are encountered frequently by fraud squads and fiscal police:

- ❑ *"Black" accounts.* Unrecorded or black money flows in a firm create accountancy problems that may be solved by "soliciting" third parties to provide aid in the form of inflated purchasing invoices, for example to cover the unrecorded ("black") buying of goods or the extra payment of wages. The return favour may be a coveted contract or the promise (or hope) of establishing a long-term profitable business relationship. If such cases are discovered by the fiscal police, they will usually only be labelled and recorded as tax fraud. In the construction industry (subcontracting with "black" labour) and in VAT scams, such corrupt practices have been the cornerstone of extensive fraud schemes (Aronowitz, Laagland and Paulides 1996; Van Duyne 1993, 1995).
- ❑ *Price manipulations.* Price manipulation implies the corrupt co-operation of several partners in a number of related deals intended to influence prices to the detriment of third parties. In the real estate market it occurs frequently that brokers are bribed to increase the assessment of the value of real estate, which is sold and resold by a network of real estate dealers in order to increase artificially the price of the property. This mechanism has been used to launder black money or to obtain inflated mortgages to the detriment of the mortgage banks (Van Duyne forthcoming).
- ❑ *Sales manipulation.* Seducing clients to buy products or services by lavish gifts is a common, well-known practice. Every firm that has an acquisition department knows its representatives may be bribed by lavish gifts to take on more expensive products or contracts. In the field of public health, doctors are less likely to be labelled corrupt even when they accept gifts, free trips to summer courses and other favours from the pharmaceutical industry that are intended to induce them to prescribe the more expensive brands instead of cheaper, generic products.
- ❑ *Bidding manipulation.* Bidding manipulation is the widespread practice of tampering with regulations concerning fair bidding practices, which should lead to the assignment of the lowest bidder offering the most efficient execution of the job. In this area, information is the most valued and traded "commodity": how to penetrate the principal and obtain information about the competing bidders. Andvig (1995) provides a lively description of information brokers who buy information from employees to sell to the bidding suppliers. Information brokerage, with all its corrupting side effects, has developed into a global business (De Waal Malefijt 1996; Hoogenboom 1996). If the number of suppliers to the principals is limited, there may also develop a conspiratorial ring of entrepreneurs who grant each other contracts by rotation, determining the lowest bid by consent. Strictly speaking, this is not

corruption but “bid-rigging”, though such an operation functions most smoothly if it is “greased” by inside information, which has its price (Dohmen and Langenberg 1994).

These are not exotic examples, nor do they concern a gradual sliding into a corruptive exchange relationship.<sup>5</sup> In the branches of trade and industry in which this occurs, it signifies an already decayed moral landscape in which many actors manage to downplay their behaviour by calling it “marginal”, invoking the excuse that “everyone does it” or referring to the requirement to act as a “sharp businessman” in order to survive in a world of cut-throat competition and marginalized profits. The entrepreneurial landscape in the construction industry, as described by Dohmen and Langenberg (1994) for the southern Netherlands and by Ludwig (1992a), Müller (1993), Kilian (1996) and Stemmer and Augustin (1996) for Germany (especially Berlin), revealed widely accepted corruption, or at least a “mutual aid” system involving tax evasion, subsidy fraud and illegal price-setting.

### **Private sector/political corruption**

In every country, there is continuous interaction between the private sector and political office holders. In feudal times, as soon as the first merchants became a distinct group, they needed the protection of the authorities, who, in turn, needed money in the form of taxes. The interactions of the modern State have become vastly more complicated. In the simplest form of the relationship, the stereotypical businessman only wants (more) money and the politician desires (more) power. In practice, they frequently change roles and, in doing so, they frequently do not shed certain old habits, like their lust for money or power. History has shown that this mixture yields an interesting potential for corruption. There are a number of combinations, including the following:

- *Party interests.* Political figures have corrupt relationships with businessmen, not for personal gain but to further the interests of their political party. Those interests are particularly at stake at election times, which is becoming increasingly costly. This has provided the traditional playground for exchange relationships with private entrepreneurs, ranging from “classical” organized crime (Arlacchi 1986; Abadinsky 1991) to respectable building contractors (Ludwig 1992b). Every bit of monetary support is welcome, but in politics and business there is no such thing as a “free lunch”. Not all firms contributing to political parties do so for ideological reasons; many do it to increase the chances of the

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<sup>5</sup>An extensive fiscal fraud case involving a bank in the Netherlands and several senior members of pension funds has recently been uncovered. Large amounts of non-declared moneys were transferred to Swiss banks to be reinvested on the stock exchange. Some senior managers of the pension funds had been bribed to go along with the operation.

benefiting party or office holder returning the favour later in the form of contracts. This is particularly valuable when the elected office holder has an important role in the allocation of such contracts, as is the case in France (Ruggiero 1996). Depending on the social-political culture, such expectations may be expressed explicitly in a backstage deal or are implicitly assumed to be honoured. Though the politicians involved invariably express their “selflessness” (like the convicted corrupt party officials in the Belgian Agusta-Dassault scandal or former Bundeskanzler Kohl), there are good reasons to be suspicious, as pulling financial strings increases one’s prestige and status.

- *Bribing voters.* Bribing voters is a practice related to the one mentioned above, but it is more directly related to inducing political figures to a desired voting behaviour. In a jurisdiction such as the United States, this is considered a legal form of lobbying, though some senators have protested against this form of corruption, which is particularly rampant in re-elections. Financially strong pressure groups can also induce or sometimes directly “buy” voting behaviour. A United States congressman from Illinois voted against the interests of his own ethnic group and defended his conduct by saying that members of another ethnic group “promise me votes and money”.<sup>6</sup> In this category there are many transition zones. How can one classify the conduct of Blair, the “moral white knight”, who ran into moral problems with some entrepreneurial supporters? He suggested exempting motor racing from the European ban on tobacco advertisement. The press revealed that Ecclestone, the boss of Formula 1, had donated some £1 million to his election campaign. The “bribe” had to be returned. Subsequently Blair appeared to be entangled in a very delicate exchange relationship with Murdoch.<sup>7</sup>
- *Personal enrichment.* When improper relationships “on behalf of the party” are accepted as non-deviant conduct, the climate is such that the party will not insist that the successful fund-raiser will completely empty his pockets on behalf of the party. No one will ask whether there is a personal “rake-off” for the sly fund-raiser himself. Why should he not ask for personal favours in return for his profitable interventions “in high circles” on behalf of his generous business friend? In Europe, Italy is not the only country in which this has occurred. In the United Kingdom of Great Britain and Northern Ireland during the conservative era, as well as in Belgium, the Czech Republic, France and Spain, cases have been

<sup>6</sup>Interview in *Volkscrant*, 31 October 1998.

<sup>7</sup>Murdoch owns the media “muscles” to make or ruin election campaigns of the Labour Party, as the last two general elections have shown. Should Blair, who mediated with Prodi concerning Murdoch’s desire to merge with Berlusconi’s empire, act against Murdoch’s takeover of Manchester United? Murdoch’s support has its price, too.

discovered, leading to dismissals and arrests (and accompanying cover-up attempts).

- ❑ *Conflict of interest.* Conflict of interest may more appropriately be called a commingling of interests because most corrupt politicians or businessmen do not feel any conflict at all, like the unrepentant Berlusconi, for whom a public office appears to be an extension of his business empire. Apart from this extreme, but not exceptional example, the interaction or rather the entanglement is frequently more subtle and veiled. As can be observed in the improper exchange relationships between (top) civil servants and politicians, the most efficient bribe consists of highly valued jobs. Which politician will vote for strict environmental regulations when he desires to join the valued ranks of the “captains of (the polluting) industry”? Conversely, a businessman who has become a politician may keep his interest in “his” branch of industry by retaining his seat in the commissions of his previous corporations or in a company’s board of commissioners. In the Netherlands such a situation led a high-ranking Member of Parliament, connected to the pharmaceutical industry, to use his weight in a decision-making procedure concerning the policy on pricing medicines by addressing the responsible minister directly on behalf of his firm. That was more than lobbying: it was sheer influence-peddling.

There has always been interaction between the private sector of trade and industry and there are many who argue that professional politicians should participate more in business so that they can “enrich their insight” in the “real world”. This may be true, but the argument can also be used to downplay corrupt relationships.

### **Corruption involving politicians**

Some may consider corruption involving politicians a tautology. Is the political stage not full of dishonesty and corruption? Are politicians not continually engaged in mutual trade-offs? These questions do no justice to the need for flexibility in an open, multiparty, democratic system. For example, coalition-building requires some deviation from certain principles in a spirit of give-and-take to keep negotiations open. This does not mean that political decision-making processes cannot be improper in the sense of being reprehensible. This is the case when the exchange of interests should not have been an element in the decision-making and therefore has to be veiled, preventing it from becoming a part of the public justification or explanation, which is essential in a democratic system. Though the principle of corruption remains the same, it is often difficult to label murky decision-making as “corrupt”. There are many broad grey areas in this field as shown in the following examples:

- ❑ *Cover-ups.* Though it is not a corrupt act to cover up the evidence of mistakes and wrong conduct, cover-ups may very well slip into

decision-making situations and become the hidden trade-off in an exchange relationship, when the support of a third person or party is necessary to keep an embarrassing situation in the closet. This is not necessarily an inter-party exchange of interests. Silence or the right voting behaviour may also be “bought” within one party, for example by offering a job or a promotion (or conversely by the threat of “an early end of a promising career”). The mutual cover-up may become a part of the political craft between and within parties: “If my scandal is disclosed, then I will ...”. The outcome of such a political climate will be a silent collective harbouring of skeletons in political closets: the skeleton of your political neighbour may be traded off against your own embarrassing past. The network of solidarity has turned into a network of balanced blackmail, a kind of collective negative reward.<sup>8</sup>

- *Nepotism.* Nepotism itself is not necessarily corrupt: helping relatives, friends or members of one’s own closed circle to obtain a job is nothing new. In the eighteenth century, selling jobs was a normal practice in most parts of Europe.<sup>9</sup> However, it infringes the modern criterion of competence: the right person in the right place who has not been given a “leg up”. As we have seen before, jobs represent important assets in the hands of politicians. Louis XIV realized that he could turn an unruly nobility into a herd of “creepers” by bestowing jobs in his court. In modern times, such a job-creating clientelistic situation is a breeding ground for corruption, as can be seen in any country where the elite vehemently opposes any attempt to privatize large sections of state-owned corporations. Being in charge of such a corporation (or having influence) means that one can create a retinue of dependent yes-men or grateful persons who will later feel obliged to return favours. Such favours may be returned years later: “You owe me a favour” may be an effective way of influencing decision-making situations. Corruption does not need to consist in an immediate exchange of interests. Providing jobs may be considered an ideal exchange relation between politicians (and higher-level civil servants). It costs no money and yet it is hardly considered corruption, certainly not by most players in the field: “Those who hold themselves incorruptible bend like a thin cane as soon as they feel the slightest breeze which may affect their career” (Van Duyne 1996a).

<sup>8</sup>This “skeleton trade-off” appeared to be one of the mechanisms used by the Chairman of the European Commission, Santer, to move some German Christian Democrats into the right voting direction: he is alleged to have unearthed some unpleasant facts concerning the previous EU Commissioner, the German Christian Democrat Schmidhuber. Meanwhile, the French socialists did not dare to sacrifice their fellow socialist commissioners Cresson and Marin, accused of clientelism and “irregularities”.

<sup>9</sup>See, for a brief overview, Swart (1990). For the monarchies, the selling of offices was an efficient way of extracting money while avoiding the costs of running the office, like the collection of taxes. In the Dutch Republic, the sale of offices and contracts between families to transfer such office property was widespread and accepted.

Corruption involving politicians may become more than just a reprehensible exchange of interests. It may develop into a polluted political climate in which democratic and accountable decision-making is so deeply eroded that only a few insiders know how decisions are being made. This lack of transparency reinforces corruption, because the only way to serve one's interests and to penetrate through this opacity is to also become a part of the personal clientelistic network, having a patron who acts like a guide or who may even provide one with a position, which allows one to build up a retinue of one's own. Clientelism and corruption may be mutually reinforcing (Della Porta and Vannucci 1997).

These categories of corruption cover most corrupt decision-making situations. Together, they do not provide a new model, though most of the existing explanatory models can easily be fitted into this scheme. An important element of this scheme has not yet been discussed: the role of the leader.

#### **CORRUPTION AS A LEADERSHIP DISEASE**

Like the proverbial fish that starts to rot from the head downwards, in organizations corruption develops frequently (but not always) as a disease that gradually develops from the top down. This development, beginning with non-corrupt but questionable conduct, sliding subsequently to the first stages of corruption, may go unnoticed even by the participants themselves. In this section the obvious and more blatant forms of corruption are not discussed; instead, there is a discussion of the forms of corrupt conduct that are not so easy to recognize, as the symptoms may easily be explained away as normal management practice. This top-down development towards corruption because of morally defective leadership erodes standards for proper decision-making and is likely to result in an organizational disease.

#### **The hidden seeds of leadership corruption**

Corruption does not need to be alien to (technically) successful leadership: though it seems paradoxical, it can develop alongside successful management, at first remaining unseen or veiled and in later stages being denied by the halo effect of the praised leader's successes. If the road to hell is paved with good intentions, the road to corruption may follow the shining path of success. Depending on the surrounding social-political climate, the first steps on this road are not causally connected to corruption and they may even be rationalized under the heading "the good leader deserves the best". There is a built-in corruptive trap in this rationale.

#### *The phase of extravagance*

An example may be found in the career of a good secretary of State for defence who did not succeed in becoming a government minister. Before

becoming a secretary of State, he had been mayor of a provincial town in the province of North Holland. After he had been installed as mayor, his expenses for representation increased, gradually at first but eventually by more than 10-fold. Despite (in his opinion, because of) this expensive way of fulfilling his office, he tried hard to defend the interests of the decaying navy town. If he had only been able to justify his expenses for copious meals, taxi drivers waiting for hours with their meters running and other symbols of being important or if he had simply taken care to collect the bills and receipts, he might have got away with such squandering. As secretary of State, he topped this display of extravagance by ordering, against the advice of experts, an expensive but unsuitable aeroplane for his many trips to visit his foreign colleagues. Otherwise his department and parliament were satisfied with his handling of the sensitive defence policy in the period of austerity following the end of the cold war and they tended to ignore his financial exploits. Without too much criticism, he survived his first term of office. But during the following general elections, journalists started to dig into his financial record as mayor. Even though formally no misconduct was established, senior members of his party began considering him an example of sloppy, indulgent public administration and his name was simply no longer mentioned for a second term.

There is not the slightest indication that this secretary of State might have been corrupt or sleazy. But his extravagant conduct may be considered the first phase in the development of a leadership style that deviates from proper managing standards. It first affected the principle of parsimony, or proper "housekeeping", concerning the use of public assets. Secondly the related accountability and tangible demonstrations of it, such as keeping receipts for expenses, were neglected. This led to the next stage in the developmental model.

#### *The erosion of accountability*

The more success a leader has, the more people will not only trust him, but will also make allowances for his whims in other matters. However, the increase in trust and indulgence for the leader's whims is not only inversely related to the principle of accountability, but also to the mental openness to critical evaluation of the leader's deeds. Psychologically, the successful leader will gradually be deprived of negative feedback, just because of his success.

This may be an important phase in the development of the leader himself and his organization. Unless a sufficient degree of self-criticism is maintained, there is a serious risk of professional leadership deformation. One may observe an aversion for independent minds and a circumvention of the principle of accountability and transparency, unless there is obligatory external auditing. Internal auditing tends to turn into a "fig leaf" for implausible expenses. Those who still have the nerve to ask questions are browbeaten in the social climate of going along with the boss. Administrators who become exasperated by the continuous undermining of their professional ethics and standards leave the organization one by one.

Those who leave will naturally be replaced by new staff fitting better into the “profile” of the organization, which is characterized by acceptance of or devotion to the manager. This comes down to accepting the results of the erosion of accountability: the opacity of the organization in general and the lack of transparency of personal decision-making in particular.

### *The ownership phase*

Meanwhile, an important transitional phase has been reached: while incorporating the standards of decision-making in his own person, the leader of the organization starts behaving as the “owner” of the organization. He virtually “owns” the place, the assets and the people as he feels that he is the (indispensable) one who has the “natural” right to decide what to do with all of it. Though he may still pay lip service to conventional standards and principles of management, he himself determines what is responsible management. There is some subtle difference in the display of extravagance described above. While there is no less squandering, there is a blurring of the use of assets of the organization for private and organizational aims, which is understandable if one “owns” the place. With expenditure for “representational purposes” already high, it is becoming less and less clear whether the expenses are for the promotion of the organization or the desire of the leader to live in luxury. That is rationalized as being a “necessity” in the early stages or is just taken for granted later (the “natural” rights of the leader). Case studies and investigations by the police and accountants have repeatedly revealed exorbitant “declaration behaviour” among managers who considered their company or department or even the town of which they are mayor to be virtually their own household, wastefully spending its assets at will, mixing private and business expenses, “all for the good of the firm”, as has recently been observed in Rotterdam.<sup>10</sup>

### *“Court-building” and “Caligula appointments”*

Within the organization, two social processes consolidate and eventually further the growth towards corruption: “court-building” and the unjustified recruitment of new staff, which is related to “court-building”.

A leader who is accustomed to not being held accountable shies away from employees who might be independent-minded. He needs an inner circle of reliable yes-men for his daily monologues, just as the feudal lords needed their courtiers sitting around listening to them. Within this inner circle, a system of privileges develops. To receive such privileges, one has to be somewhat like the boss, sharing his ideas, tastes and/or values, and, what is very important, one has to laugh at his jokes. Displaying

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<sup>10</sup>The mayor of the Spanish town of Leon (*Volkscrant*, 17 December 1998) used public funds to pay for even small items, such as hairbrushes, handkerchiefs or chocolates. While he was Prime Minister of Israel, Netanyahu displayed similar conduct, ordering bottles of wine valued at 300 euros for his personal consumption; however, his prosecution ended with an acquittal.



some real skill and, above all, avoiding risks arising from independent action increase one's chances of moving upward and entering the inner circle. The inner circle of the organization develops like a court, guarding its position; its members have the same opinions and prejudices, particularly the "others", those lower in the hierarchy or in the outside world.

This "court-building" has far-reaching social-psychological consequences. The pressure on staff members (and their morale) has already been mentioned. A tendency to appear obedient may become a dominant trait in human resource management. Sharing the same attitudes, reflected in feelings and values, becomes apparent in the selection mechanisms, being applied to newcomers as well as to existing lower-level staff. For the middle management, usually the mainstay of the organization, this negative role model can be highly contagious. Among such managers, loyalty to the organization is likely to wane, eventually to be replaced by a desire to get a share of the spoils and privileges. This situation in human resource management is likely to lead to the loss of one of the most important decision-making standards, the recruitment standard, which is supposed to safeguard the quality of human resources.

Within this context the phenomenon of favouritism is more likely than not to slip in. The leader is in a position to "reward" persons at will or to appoint someone from outside, because he wants to bestow a favour (or, what is worse, because he owes someone a favour). Consequently, one may witness what has been called (Van Duyne 1996b) "Caligula appointments": just as, according to legend, the emperor Caligula, the "owner" of the Roman Empire, could make his horse Incitatus a consul, the "owner-boss" may feel free to appoint whom he likes, irrespective of quality. The quality of the appointees is usually mediocre at best, as talented people tend to become troublesome, unless their lack of "spine" is greater than their talent.

#### *From favouritism to clientelism*

"Caligula appointments" are not necessarily unambiguous symptoms of clientelism. When a favour is bestowed on someone, it is a one-sided generous action. However, very few people are so generous or full of self-denial that they will not turn such a one-sided gesture into a two-sided exchange, nor is the favourite in a position to neglect his benefactor. Once having been "received" in the organization, the new appointee is the boss's pet, careful not to bite the hand that feeds him, which means that he will always lend his support to the boss. Such "Caligula appointees" are usually not harmless lower-level employees with meaningless, "just-be-there" jobs; on the contrary, they are frequently the right hand of the leader, having a powerful position of their own. The "Caligula appointee" will try to strengthen his position, surrounding himself with his own little "Caligula appointees", while the other courtiers will sense the importance of following his example by nominating their own followers or clones. Clientelism gradually permeates the very fabric of the organization. When a Caligula is able to appoint his horse as consul, the *ménagement* becomes a menagerie.

The organization has passed the threshold of corruption. The proper decision-making standards have been eroded and replaced by complicated social exchange mechanisms, on the order of: "I must support the suggestions of my benefactor or he may cease to provide me with protection or favours." This attitude radiates downwards within the hierarchy, while the organizational aims have been replaced by an internal competition for the crumbs from the bigger spoils. In some way, the staff may feel justified in acting as "shareholders" of the firm, which has developed some features of a medieval fiefdom, with the boss and, to a lesser extent, the members of his entourage enjoying certain privileges.

Psychologically, it is an understandable development. It is much more satisfying to wield some personal power than to be part of a system of abstract, impersonal standards. Psychologically, the Weberian, objective, bureaucratic standards may seem a deviation from the human tendency towards such personal households or fiefs. The pre-bureaucratic management principles of medieval and early capitalist times are a natural outcome of a personal leadership style.

The development towards clientelism has been described as a social-psychological growth process, demonstrating the gradual "sneaky", but psychologically "normal" growth of corruption, of which clientelism may be considered the first unambiguous symptom. Allowing clientelism to become part of the recruiting process implies deviating from the decision-making standard of recruiting the best. The personal exchange relationship starts permeating the decisions: "I will appoint you and further your career if I can rely on your support" and vice versa. In certain social contexts (such as among "gentlemen" in higher circles), it is most unusual and vulgar to express such things. Nothing has happened but the "helping of friends". Who would call that corrupt, when it is exactly "what friends are for"? This appeared to be the defence of the Commissioner Cresson, who "helped friends" with meaningless jobs. Her reference to "normal French practice" is revealing, as it reflects the deeply rooted, corrupting clientelism in France. When clientelism is taken for granted, so is corruption.

### **FIGHTING OR LIGHTING CORRUPTION**

In the 1990s, Western Governments discovered the emotional and symbolic value of proclaiming a "fight" or even a "war" against some "threatening" phenomenon: drugs, organized crime, money-laundering and even corruption. Looking back at the literature, the term "fight" misses the essence of corruption. "Corruption is very similar to a mushroom ...: What one can observe is the head and the stem, often provided with a white collar ... The essence is the underlying mycetes of hyphal threads extending through numerous invisible branches in rotten and sick wood" (Van Duyne 1996b). Fighting against "mushrooms", the outward manifestations, seems a bit futile if the rotten wood remains untouched. Being tough against such vile enemies is popular: leaders in China during the mid-1980s and Andropov and Gorbachev in the former Soviet Union tried to

clamp down on corruption (Levi 1987), but all they hit were the “mush-rooms”. Ten years later, the hyphal threads are still growing underneath in the rotten wood. These are no targets for fights, but for cleaning operations and overdue maintenance. By turning a blind eye to the growth of corruption in large parts of the world during the cold war, Western institutes dominated by the United States, like the World Bank and the International Monetary Fund, furthered this development in virtually every anti-communist client State (apart from destroying the local indigenous economies and the environment). Those institutions have finally begun to take a real interest in the contagious and disruptive impact of corruption in the third world (Theobald 1997). They have realized that a broad repressive and preventive educational approach has a better chance of success than the ritual “war against language” (Quah 1994), though—like turning a blind eye to corruption—that awareness is accompanied by the economic self-interest of the United States (Williams and Beare 1999).

To realize the lofty aims of prevention and repression of corruption, one has to deal with a basic human trait: the tendency to tinker with established rules on decision-making, which are soon regarded as oppressive and impersonal. This is a normal tendency in a society in which flexibility is considered a virtue and rigidity a killer. The higher the decision-making level, the more easily accepted are the exceptions. In addition, there is the basic social requirement of smoothing human relations by friendly gestures and showing gratitude.

Preventing and combating corruption entail carefully interfering with such basic tendencies, which should not be dismissed as something pathological. Designing technical measures to raise barriers against corrupt acts without doing something to develop the attitude of the public is like designing iron chastity belts while ignoring the sexual drive. The various administrative techniques used to prevent fraud or the legal possibilities of, and the difficulties encountered in, repressing it have been described at length by Poerting and Vahlenkamp (1998). The behavioural “basics” are described below.

### **Material and social basics**

Fighting and preventing corruption cannot be described in socio-economic and culturally neutral terms. In many countries there are the brutal economic facts of income and subsistence. If a Government pays a high-level civil servant \$120 a month while the subsistence level is \$150 or \$200 a month, no package of ingenious prevention measures will prove effective, and no moral lectures, ukases or EU aid programmes will be able to change anything. A policeman or customs officer has other worries, such as paying the electricity bill or the rent.

Two concomitant, adverse socio-economic factors aggravate this situation. The first concerns the very skewed distribution of income in such countries. A skewed income distribution as such is not causally related to corruption, but in combination with a second factor, the illegal origins of the wealth of the ruling elite, it may function as a major amplifier. Every

underpaid civil servant has a ready excuse for his petty “subsistence” corruption. These are brutal economic and social basics requiring no deep philosophical reflection, though they should be included in any sober risk assessment (see Quah 1994).

The problem with poverty-induced corruption is the underlying economy of clientelism. Many jobs are created to reward supporters or to buy votes rather than to perform an economic function. Hence, more jobs are created than can be paid for, resulting in meagre salaries. Such jobs are extremely coveted, though their emptiness is demoralizing.<sup>11</sup> Increasing the salaries cannot be accomplished without dismissals, depriving the politicians of mechanisms for giving cheap rewards.<sup>12</sup>

### **Cleaning from the top down: making “Caligula” go transparent**

In the previous sections, corruption was characterized as a leadership disease. If that observation is correct, it may provide an answer to the question of where to start. The attack on and the prevention of corruption must start by concentrating preventive and repressive efforts on the acts and attitudes of the highest levels of private and public leadership, as has successfully been done in Singapore (Quah 1994). A staircase has to be cleaned downwards from the top. The principles to be applied, transparency and accountability, are simple, basic management rules for addressing not only corruption but also any form of arbitrary and wasteful leadership. Huberts (1998) has shown that there is a high degree of predictable agreement among experts on this and related principles. The problem is not the lack of principles and rules but the systematic neglecting of existing principles and rules.

Anti-corruption principles have been endorsed widely. To prevent shady deals and to further transparency (and to boost their public image), many multinational corporations have designed codes of conduct (Kaptein and Wempe 1995). In countries that have a parliamentary democracy, transparency is supposed to be guaranteed by the political control of parliament. That is an interesting development; however, what is of equal if not greater interest is the lack of resistance. When corruption is also an attitude, will the personification of it, “Caligula”, go transparent?

It is difficult to answer that question unequivocally. There are solid reasons not to be optimistic. After the upheaval caused by the whistleblower van Buitenen (1999) and the subsequent political downfall (MacMullen

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<sup>11</sup>There was not much point in anti-corruption activity in a stuffy state record office in Calabria visited by approximately 10 visitors a day requesting 44 copies. They were served by 168 civil servants, who owed their jobs to their political patrons, among them Giulio Androtti (Van der Putten 1998).

<sup>12</sup>In Italy in 1998, there were about 1 million persons carrying out political functions. Together with their families, they constituted about 6 per cent of the population. Most jobs did not provide sufficient income for them to make a living, which “compelled” the functionaries to look for additional income. The political top consisted of 10,000 functionaries and 40,000 members, who together needed about 4 billion euros to make a living. Their salaries, however, totalled approximately 1.75 billion euros. The illegal way in which they bridged the gap was a publicly accepted aspect of the economy of corruption (Van der Putten 1998).

1999), the European Commission proposed measures to broaden the range of policy documents that would be considered classified; as a result, there was even more severe criticism of the Commission for its lack of transparency. Remarkably, only the smaller member States raised objections. There is a strong tendency to make exceptions among the more important decision makers. For example, during an anti-corruption meeting with police officers, a member of the "trust team", handling confidential reports about questionable police conduct, mentioned that he was not allowed to handle reports on persons with the rank of inspector and above.

If no good reasons are given, such exceptions may create a breeding ground for leadership corruption: the erosion of accountability, the feeling of "ownership" among office holders ("no poking around in my kitchen!"), the "court-building" of like-minded officials and "Caligula appointments" of yes-men within the inner circle of office holders. Depending on the shared (hidden) interests, even the democratic watchdog, the parliament, may falter. This is particularly the case when corrupt or questionable acts of the Government endanger the position of the ruling party. In the United Kingdom, the Conservative Party tolerated a good deal of sleaze, except for the sexual escapades of some of Major's ministers. The Belgian parliament functioned for decades as an elected carpet under which much corrupt mischief was swept. Only in the second half of the 1990s, after the Agusta-Dassault affair and the public loathing caused by the Dutroux case, did politicians become nervous.<sup>13</sup>

The preventive aspects of top-down transparency and its potential to make "Caligulas" go transparent or to keep them at bay have been much neglected. This preventive potential can only be enhanced when members of an organization agree on what constitute undesirable and dishonest behaviour and forms of conduct that may lead to venality and when they support rigorous compliance. This will create a climate in which people dare to come forward to report such undesirable behaviour (Gorta and Forell 1995). This is recommended for lower forms of corruption, but reporting undesirable behaviour by the management frequently requires a desperate (or self-destructive) whistle-blower".

The media plays an important role in fostering a favourable climate in which the whistle-blower will be heard instead of being sacrificed. Though the media is often accused of sensationalism and unscrupulously damaging people's reputations, some members of the media have turned a deaf ear even when the corruption and abuse are well known. There is no simple answer to the question of when and how the media should expose questionable conduct, but the social impact of a scandal may be huge (Kjelberg 1994). However, nothing may blunt this effect better than a situation characterized by the media outlets being in the hands of questionable businessmen and politicians. The case of the media tycoon Berlusconi may serve as a warning. The difference between Italy and countries in northern Europe is striking. In no northern European country could any public figure

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<sup>13</sup>The three top figures of the Belgian socialist party, Claes, Spittaels and Coëme, and 11 co-defendants were finally convicted of corruption on 23 December 1998.

indicted for corruption remain in office or even in politics. And yet, Berlusconi is still able to count on a substantial part of the voters. In other countries, such as the United Kingdom, where the media is also in the hands of a few people, the situation should also be observed with great concern: the media should not become a screen behind which new “Caligulas” may hide.

### **CONCLUSION**

We have reviewed the essentials of corruption and the various categories in which the phenomenon may be divided and have developed a developmental model of corruption, starting with the phase of successful leadership. A common denominator may be found in the tension between the opposing organizational principles of “ownership” and “service”. Feeling or acting like the “owner” of an office is psychologically and socially different from being a “servant” to an organization, whether public or private. The difference is illustrated by two very different leaders in the Netherlands: the former mayors of Rotterdam and Amsterdam. The first excelled in incurring high expenses and making unclear declarations. During his 16 years in office, he earned for himself the nickname of “the Sun King”, adopting the attitude of “*l'état c'est moi*”. In 1999, after he had left to become Minister of the Interior, a scandal broke out about the expenses he had incurred as mayor and he had to resign from the cabinet. The mayor of Amsterdam was a less conspicuous person, a very modest spender who rather preferred to act as “the first servant” of the city. He left the office with honour.

Those who develop ownership habits and “monarchic” attitudes are at risk of abusing rules on transparency. Of course, not all leading officials who develop such an attitude will necessarily become bribe-takers. However, as “owners” of their office and their organization, they tend to corrupt rules on decision-making, especially those rules concerning human resource management, creating their own personal household or court.

Closer examination of the literature about the “fight” against corruption reveals predictable recommendations concerning the application of the principle of accountability, usually related to administrative matters. Fewer recommendations are found concerning the psychological side of corruption: prevention measures in the seemingly nondescript, slippery stages preceding corruption, addressing the attitude of the management of organizations and the management culture.

What needs to be done to make the best out of good leadership (in the sense of “the first servant of the organization”), not allowing that leadership to become deformed and move towards “monarchic” rule? Preventing the latter development from taking place requires human resource management to have strict rules governing decision-making. The first human resource management rule should be concerned with limiting the term of office, learning from history that almost nobody (or no political party) is capable of withstanding the long-term lure of power. After an

extended term in office, most leaders develop their own "system", such as the "Kohl system", with its inevitable negative moral side effects. In addition, strict human resource management rules should function as a barrier against clientelism or nepotism and related "court-building". In fact, their preventive function should be broader: they should contribute to an open, non-authoritarian leadership style, which takes seriously its accountability to the public. This is in accordance with the still valid ideal of an open society.

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**NOT A PROCESS OF ENLIGHTENMENT:  
THE CONCEPTUAL HISTORY OF ORGANIZED  
CRIME IN GERMANY AND THE UNITED  
STATES OF AMERICA<sup>1</sup>**

**BY KLAUS VON LAMPE<sup>2</sup>**

**ABSTRACT**

The present study explores the conceptual history of organized crime in Germany and the United States of America during the twentieth century. Data were obtained from a content analysis of various publications, including *The New York Times Index* and the German news magazine *Der Spiegel* from 1896 and from 1960, respectively, until 1995.

The content and meaning of the term "organized crime" has undergone various changes since it was first coined in Chicago in 1919 and entered the criminal policy debate in Germany in the 1960s. Two overall trends are most significant, the extension of the geographical scope from a local to a global frame of reference and the narrowing down of the social scope from a systemic to a dichotomic view of organized crime and society.

The term "organized crime" is used nowadays mainly in an ambiguous manner in order to accommodate different political and institutional interests.

**INTRODUCTION**

The German philosopher Friedrich Nietzsche once stated that a term lent itself only to definition if it had no history. This may explain why law enforcement officials and criminologists around the world have so far failed to arrive at a generally accepted definition of organized crime. The purpose of the present paper is to explore the conceptual history of organized crime in Germany and the United States of America by identifying major trends in the content and meaning of the term, the social context of its use and the actors who have contributed to its becoming one of the key concepts of the contemporary criminal policy debate around the world.<sup>3</sup>

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<sup>1</sup>An earlier draft of the present paper was presented at a conference entitled "Crime organisé international: Mythe, pouvoir, profit ..." (International organized crime: myth, power, profit), sponsored by the Interdisciplinary Research Institute, University of Lausanne, Switzerland, in October 1999.

<sup>2</sup>Researcher, Free University of Berlin.

<sup>3</sup>The study of the conceptual history of organized crime in the United States has been published in greater detail elsewhere (see Lampe (1999)). The study of the conceptual history of organized crime in Germany has not yet been completed. Thus the findings presented in the present paper are preliminary.

Data were obtained from a systematic analysis of *The New York Times Index* (1896-1995), the *Journal of Criminal Law and Criminology* (1910-1995), the news magazine *Der Spiegel* (1951-1995) and the law enforcement journals *Kriminalistik* (1951-1995) and *Die Polizei* (1960-1995). Additional publications were systematically analysed for shorter periods of time or only selectively analysed, namely, other periodicals (*Bulletin of the Chicago Crime Commission*, *Time* and so on), books, government reports, parliamentary records (of the United States Senate, the German Bundestag and so on), and unpublished documents, in particular the minutes of various German joint state-federal committees on defining organized crime.

The interest in the concept of organized crime and its historical development derives from the notion that in the study of organized crime two distinct aspects need to be discussed, the reality of organized crime on the one hand and its conceptualization on the other.

The reality of organized crime consists of a myriad of mostly clandestine, diverse and complex aspects of the social universe. These do not readily fall into place to form an easily identifiable entity. Rather, it takes a cognitive and linguistical construct for those phenomena to be seen to be interrelated.

It therefore seems appropriate to explore an issue like organized crime not exclusively as an empirical problem. Indeed, exploring the concept of organized crime in its own right may well be a necessary starting point for any comprehensive inquiry into the empirical nature and the theoretical implications of organized crime. Exploring the concept of organized crime, especially in its historical dimension, provides an insight into the breadth and the depth as well as into the inconsistencies and contradictions of the meanings attached to the term "organized crime" and alerts us to some of the social and political factors that may play a role in shaping perceptions of organized crime.

## **THE CONCEPTUAL HISTORY OF ORGANIZED CRIME:**

### **AN OVERVIEW**

#### **The frequency curve**

The first step in a conceptual history study is to search a database of representative texts for incidences of the use of the term in question. In that way it is not only possible to determine with some accuracy the point in time when the concept first appeared, but also how, in quantitative terms, its use has changed over time and what phases, marked by an increase in popularity, deserve particular attention.

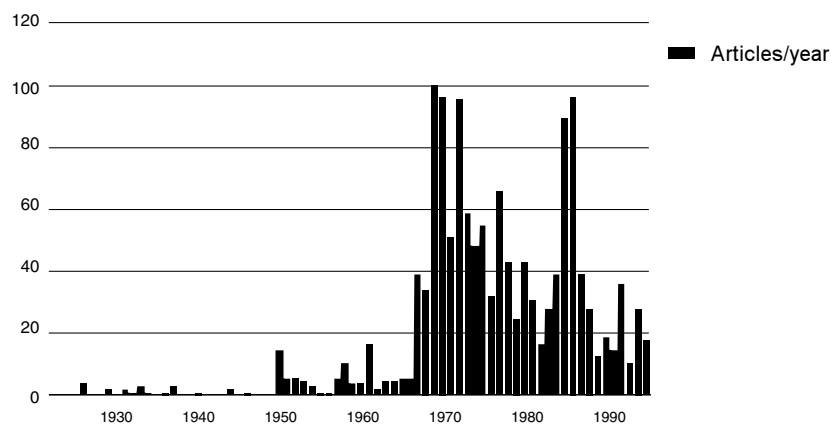
For example (fig. 1), changes in the frequency of the term organized crime in *The New York Times Index* show that the concept of organized crime has only very gradually gained acceptance in the media and that it has been a major issue only for rather short periods of time between the late 1960s and mid-1980s.<sup>4</sup> The frequency curve also points out certain key events like

<sup>4</sup>Included are all articles in *The New York Times* that the *Index* refers to as using the term "organized crime". Therefore, multiple entries in the *Index* are counted only once if they refer to one and the same article.

the creation of a Senate committee to investigate organized crime in the year 1950.

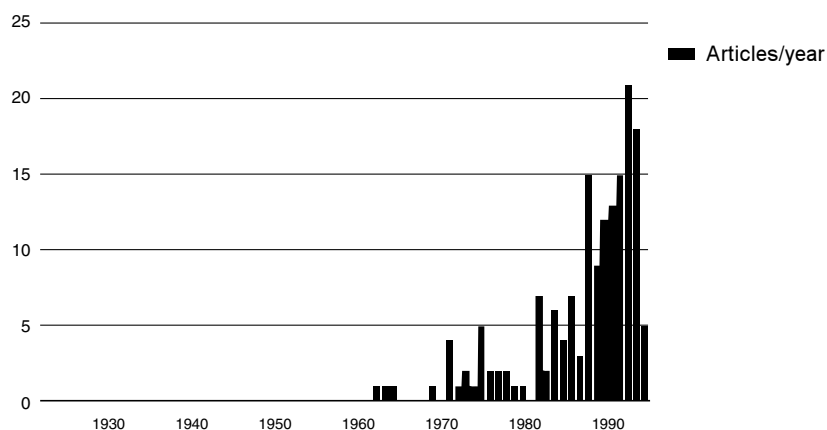
The same kind of analysis of Germany's leading news magazine *Der Spiegel* (fig. II)<sup>5</sup> shows that when the American debate on organized crime gained momentum during the 1960s, the concept of organized crime slowly began to gain a foothold in Germany. But as indicated, the concept of organized crime did not move to the centre of the German criminal policy debate before the late 1980s.

Figure I. "Organized crime" in *The New York Times Index*, 1920-1995



Note: Included are only articles that the *Index* refers to using the term "organized crime".

Figure II. "Organized crime" in *Der Spiegel*, 1960-1995



<sup>5</sup>Articles on corruption, crime, drugs, internal security, the justice system as well as on Italy and the United States of America were analysed on an issue-by-issue basis. The sections "Briefe", "Panorama", "Trends", "Szene", "Prisma", "Personalien", "Fernseh-Vorausschau" and "Hohlspiegel/Rückspiegel" were not included. Searches in the CD-ROM databases that are available for recent volumes of *Der Spiegel* show a higher frequency of the term "organized crime" ("organisierte Kriminalität", "organisiertes Verbrechen", etc.) than indicated in figure II. This may reflect a recent tendency to use the term "organized crime" in a context that is broader than that of the criminal policy debate.

### **Categories for assessing statements on organized crime**

When attention is turned from the frequency curve to the substance of the conceptual history, it is necessary, first of all, to define categories with which to classify and assess the various statements on organized crime.

One criterion for classifying statements is how many dimensions they comprise. Some statements on organized crime are too vague to reveal any notion of the nature of organized crime. Some statements focus on a single, quintessential quality of organized crime, while others combine a number of characteristics into a multidimensional concept of organized crime.

As far as unidimensional conceptions of organized crime are concerned, three basic approaches can be distinguished that may be labelled the activity, organization and system approaches, respectively.

The activity approach equates organized crime with certain types of criminal activity, for example, with the provision of illegal goods and services, regardless of the degree of organization of those involved in those activities and regardless of their socio-political position. The organization approach focuses on organizational entities, regardless of the type of criminal activity in which they are involved and of their socio-political position. The system approach perceives organized crime in essence as a social condition in which legitimate and criminal structures are integral parts of one corrupt socio-political system, regardless of either the types of crime promoted or the degree of organization of those supporting the system.

Multidimensional conceptions tend to be based on an organization-centred understanding of organized crime but to include other criteria as well. The various criteria of multidimensional conceptions can be distinguished by using a classification of four levels of complexity: *(a)* the individual characteristics of "organized criminals"; *(b)* the structures, for example, networks or groups, that connect those individuals; *(c)* the overarching power structures that subordinate the structural entities; and finally *(d)* the relation between the illegal structures and the legal structures of society.

### **The prevailing concept of organized crime**

Today's concept of organized crime is heterogeneous and contradictory when one takes into account the entire range of pertinent statements in the criminal policy debate. When focus is placed on the imagery that dominates the general perception of organized crime, however, a tendency can be discerned towards equating organized crime with ethnically homogeneous, formally structured, multifunctional, monopolistic criminal organizations that strive to undermine and subdue the legal institutions of society.

Within the framework of the four levels of complexity outlined above, the dominating imagery centres around individuals who belong to specific

ethnic minorities.<sup>6</sup> The prototypical organized criminal is a foreigner. In fact, on some occasions it seems that a number of criminals with the same ethnic background are readily viewed as an organized criminal entity, popularly labelled “mafia”, even if no connection exists between them other than the fact that they are engaged in the same type of criminal activity.

With regard to the structure of criminal organizations, the stereotypical image of organized crime focuses on bureaucratic organizations in contrast to informal groups or networks. Moreover, those criminal organizations are typically portrayed as multifunctional. They are said to be illegal enterprises and secret societies at the same time.

As far as the structures of illicit markets and criminal subcultures as a whole are concerned, the prevailing understanding of organized crime is based on the notion that they tend to be monopolized and that all criminal groups strive for monopoly positions on an ever increasing scale.

Finally, the prevailing view of organized crime places criminal organizations in fundamental conflict with the legal institutions of society, especially with regard to the concept of globally operating “mafias”, instead of stressing the underlying socio-political conditions conducive to the phenomena known as “organized crime”.

Retrospectively, it may appear that the concept of ethnically homogeneous, monopolistic criminal organizations has continuously dominated the perception of organized crime since the time of the famous Italian-American gangsters of the Prohibition era, such as Al Capone and Lucky Luciano. But this is not in fact the case, especially with regard to the 1920s and 1930s.

### **Major trends in the development of the concept of organized crime**

Viewed in perspective, the conceptual history of organized crime shows little continuity and little consensus. If one were to take the smallest common denominator of all pertinent statements collected for this study, one would arrive at a very broad definition of “organized crime”. From an activity-oriented point of view, the term would comprise all criminal acts that were not impulsive or spontaneous. From an organization-oriented point of view, organized crime would refer to all criminals who did not operate in complete social isolation. Consequently, the term “organized crime” could even be applied to an individual criminal as long as someone else knowingly contributed to his criminal conduct, for example, by providing useful information or by merely showing respect for his behaviour.

The conceptual history of organized crime is characterized less by consensus and continuity than by change. Two trends are most significant, the extension of the geographical scope from a local to a global frame of reference and the narrowing down of the social scope from a systemic to a dichotomic view of organized crime and society.

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<sup>6</sup>See Kuschej and Pilgram (1997, 1998) for a detailed analysis of the xenophobic context of the debate on organized crime in Austria with particular emphasis on the perpetuation of traditional concepts of “the enemy” in the concept of the “Russian mafia”.

In the United States, those changes have taken place in six more or less distinct phases of development between 1919 and the 1990s. In Germany, the conceptual history of organized crime can be broken down into roughly three phases between the 1960s and the 1990s.

### **THE CONCEPTUAL HISTORY OF ORGANIZED CRIME IN THE UNITED STATES**

#### **The original concept of organized crime coined by the Chicago Crime Commission**

The original concept of organized crime was quite the opposite of the imagery of global "mafias" that dominates the current understanding of organized crime.

The term "organized crime" first came into regular use among the members of the Chicago Crime Commission, a civic organization that was created in 1919 by businessmen, bankers and lawyers to promote changes in the criminal justice system in order to better cope with the crime problem.

In the pronouncements of the Chicago Crime Commission, "organized crime" referred not to criminal organizations but in a much broader sense to the orderly fashion in which the so-called "criminal class" of an estimated "10,000 professional criminals" in Chicago allegedly could pursue "crime as a business" (Chamberlin (1919, 1920, 1921), Holden (1920) and Sims (1920)). The discussion centred on the conditions that seemingly allowed criminals to gain a steady income from crime, in particular property crimes, under virtual immunity from the law. In the eyes of the Crime Commission, the city authorities were to blame for incompetency, inefficiency and corruption, while the public was criticized for its indifference and even open sympathy towards criminals. This characterization of organized crime as an integral part of society apparently reflected the perception of Chicago by the old established Protestant middle class as a city that, after years of rapid growth and cultural change, seemed to be drowning in crime, corruption and moral decay.

#### **The Depression era**

The original understanding of organized crime did not prevail for long. Beginning in the mid-1920s but especially during the Depression era, the concept of organized crime changed significantly.

First of all, the term "organized crime" began to be used outside of Chicago. But only for a short time did it function as a generic term in the criminal policy debate. By the mid-1930s it was almost completely replaced by the somewhat narrower concept of "racketeering".

The term "racketeering" apparently received its first coinage in Chicago in the mid-1920s (Allsop (1968), p. 24; Hostetter and Beesley (1929), p. 1; Smith (1975), p. 67; and *The New York Times*, 20 November 1927, III, p. 2)

even though the term “rackets” dates back further (Albini (1971), pp. 29 and 30). The term “protection racket” can be found in *The New York Times Index* as early as 1912 with reference to an article on the extortion of funds from brothels by police officers (*The New York Times*, 12 December 1912, p. 1). Originally, “racketeering” referred to a small and clearly defined section of criminal activity: the activities of criminals in labour unions and business associations for the purpose of regulating local markets or to bribe businessmen (Hanna (1927) and Moley (1930)). Later on, other types of crime, such as bootlegging and gambling, were also subsumed under “racketeering” (see, for example, Daniell (1930) and *The New York Times*, 3 April 1931, p. 1).

In the late 1920s and early 1930s organized crime no longer referred to an amorphous “criminal class” but to “gangsters and racketeers”, who were organized into “gangs”, “syndicates” and “criminal organizations”, and who followed “big master criminals” functioning as “powerful leaders of organized crime” (Lashly (1930) and *The New York Times*, 5 September 1926, VIII, p. 5, and 20 May 1932, p. 2). Some of those leaders moved into the limelight and gained celebrity status as “public enemies”, most notably Al Capone (Loesch (1930)).

While the picture of the “criminal class” became more and more differentiated, the understanding of the relation between organized crime and society took a decisive turn. Organized crime was no longer seen as a product of conditions that could be remedied by means of social and political reform, like the deficiencies in the criminal justice system the Chicago Crime Commission had denounced earlier. Instead of reform, the emphasis now was on vigorous law enforcement. For example, whereas the pertinent articles in *The New York Times* during the 1920s had a primarily analytical orientation and only quite moderately advocated the need for action, in the 1930s all pertinent articles spoke of a “war” or “warfare” against organized crime.<sup>7</sup>

### **The Kefauver Committee 1950-1952**

From the late 1930s to the late 1940s the concept of organized crime had all but disappeared from public debate. It returned in 1950 when a Senate Committee set out to investigate organized crime in interstate commerce. The Committee, under its chairman Estes Kefauver, focused its attention on a group of underworld figures from Chicago and New York who were suspected of controlling illegal gambling operations and municipal authorities in various parts of the United States.

The Kefauver Committee concluded that numerous criminal groups throughout the country were tied together by “a sinister criminal organization known as the Mafia” (US Senate (1951), p. 2).

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<sup>7</sup>See, for example, *The New York Times*, 30 July 1933, p. 1, and 20 February 1934, p. 11. The only exceptions to the rule were occasional explicit or implicit references to John Landesco, the author of a report entitled “Organized crime in Chicago”. In the tradition of the Chicago school, Landesco insisted that the gangster was “a natural product of his environment” (Landesco, 1929, p. 1057). See *The New York Times*, 7 August 1929, p. 15, and Chamberlin (1932).



The Kefauver Committee marked a significant change in the perception of organized crime in two respects. On the one hand, organized crime no longer appeared to be primarily a local problem but instead one that existed on a national scale and threatened municipalities from the outside. On the other hand, the notion of the Mafia as an organization of Italian-Americans added an ethnic component to the concept of organized crime. It is somewhat surprising that this had not happened earlier, because the image of the Mafia as an Italian-American organization was not at all new: it had first appeared in 1890 when the chief of police of New Orleans was murdered by alleged mafiosi (Nelli (1976), Smith (1975) and *The New York Times*, 19 October 1890, p. 1).

Yet another aspect is noteworthy in this context. For the first time the law enforcement community itself was taking an active role in the conceptualization of organized crime. It was the Federal Bureau of Narcotics that provided the testimony that led the Kefauver Committee to assert the existence of the Mafia in the United States (Smith (1975)).

In contrast, the Federal Bureau of Investigation completely rejected the concept of organized crime before 1963. Prior to 1963, its director, J. Edgar Hoover, had not only ruled out the notion of an Italian-American Mafia, but had also criticized more general conceptions of syndicates and criminal organizations as dominant factors in crime (Powers (1987)). In an article on the white slave trade published in 1933, for example, Hoover voiced his disapproval of "considerable misconceptions by the public of the extent of so-called vice rings". The occasional discovery of such an organization, he maintained, was no indication of their prevalence (Hoover (1933), p. 479).

### **The late 1950s to the late 1960s: from Apalachin to *The Godfather***

The interest in organized crime and in the Mafia that the Kefauver Committee had stirred faded in the following years. Beginning in late 1957, however, a series of events brought organized crime back to centre stage and eventually, by the late 1960s, led to the merging of the two concepts of "organized crime" and "Mafia".

In 1957, Senate hearings on the influence of Italian-American criminals on legitimate business coincided with the discovery of a national meeting of Italian-American criminals near Apalachin in New York State. In 1961, Robert Kennedy was appointed Attorney General and declared the fight against organized crime one of his top priorities. In 1967, a presidential commission on crime equated organized crime with the Mafia or Cosa Nostra as a nationwide bureaucratic organization. Finally, in 1969, when the concept of organized crime, measured by *The New York Times Index*, reached the height of its popularity, Mario Puzo's novel *The Godfather* presented the Mafia imagery in a consumer-friendly form while the release of secretly taped conversations of a Cosa Nostra boss, Simone Rizzo (Sam the Plumber) de Cavalcante, provided additional credibility to the official depiction of the Cosa Nostra as a formal organization.

Organized crime had become synonymous with a single ethnically homogeneous organizational entity (Cressey (1969) and Task Force on Organized Crime (1967)).

### **The 1970s: the concept of organized crime reconsidered**

The Mafia-centred concept of organized crime that had evolved during the 1950s and 1960s had to no small degree been the result of a focus on New York City.<sup>8</sup> Despite its tremendous impact on public perception, it soon proved unsuitable for devising valid law enforcement strategies for the entire United States.

After rejecting a proposal to outlaw membership in the Cosa Nostra,<sup>9</sup> Congress passed the Racketeer Influenced and Corrupt Organizations (RICO) Act in 1970 with an extremely broad underlying concept of organized crime (Atkinson (1978), Blakey and Perry (1990), Goldsmith (1988) and Lynch (1987)).

Likewise, many state commissions on organized crime that had been established in response to the national debate at best paid lip service to the concept of Cosa Nostra as an all-encompassing criminal organization. Instead, they defined organized crime in much broader terms to include less structured gangs and illicit enterprises (Governor's Organized Crime Prevention Commission (1973), Hawaii Crime Commission (1978) and Missouri Task Force on Organized Crime (n.d.)).

A similar uneasiness with the Mafia paradigm was evident among law enforcement officials at the state and local levels (National Advisory Committee (1976)) and even among members of the federal organized crime strike forces that had been established in a number of cities since 1967. While some defined "organized crime" as including only members of Cosa Nostra, others included any group of two or more persons formed to commit a criminal act (US Comptroller General (1977)).

### **The concept of non-traditional and international organized crime in the 1980s and 1990s**

Eventually, the notion that there was more to organized crime than the Cosa Nostra did not lead to a profound revision of the conception of organized crime. Instead, in the late 1970s and early 1980s, a concept of non-traditional organized crime emerged that merely transferred the Mafia model to other ethnically defined criminal organizations allegedly similar to Cosa Nostra, such as East Asian, Latin American and Russian groups, outlaw motorcycle gangs and so-called prison gangs (President's Commission on Organized Crime (1983)).

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<sup>8</sup>Joe Valachi, a Mafia turncoat who served as the primary source of information on the inner workings of the Cosa Nostra for journalists and investigators, was from New York, as was Ralph Salerno, an influential member of the Task Force on Organized Crime of President Johnson's crime commission. Puzo's *The Godfather* was set in New York and de Cavalcante's base of operation was located in northern New Jersey, close to New York City.

<sup>9</sup>Senate Bill 2187, 89th Congress; Senate Bill 678, 90th Congress.

In recent years, outlaw motorcycle gangs and prison gangs have somewhat dropped out of sight, while groups of criminals from Asia and Europe, especially criminals from the former Soviet Union, have received more attention (US Department of Justice (1983)). In comparison with Cosa Nostra, they are now believed to be at least of equal importance, especially in view of the successful prosecution of numerous Cosa Nostra members in a series of RICO trials since the mid-1980s (*The New York Times*, 23 August 1994, p. 1). Today, the concept of organized crime is applied to domestic crime groups like the Cosa Nostra and to what is now referred to as "international organized crime", that is, criminal organizations believed to be operating on a global scale, including Chinese triads and the so-called "Russian mafia". It seems that, to the extent the Cosa Nostra is believed to be losing ground and organized crime is turning into an issue of international politics rather than remaining an issue of immediate relevance, the American public has lost much of its prior interest in the subject.

### **Summary**

In essence, over the last 80 years the American perception of organized crime has evolved from an integral facet of big city life to an assortment of global criminal players who challenge even the most powerful countries. In other words, the original systemic view of the relation between organized crime and society has been replaced by a dichotomic view that in recent years has been carried to extremes with the concept of global "mafias".

### **THE CONCEPTUAL HISTORY OF ORGANIZED CRIME IN GERMANY**

The currently prevalent American concept of organized crime is quite similar to the generally accepted understanding of it in Germany. In fact, it seems that the discourse on organized crime is globally so much interconnected now that one is inclined to speak of a uniform global conception of organized crime. However, the developments leading up to that consensus were not quite as uniform, warranting a look at the specific conceptual history in a country like Germany, where the concept of organized crime entered the criminal policy debate at an earlier point in time than in many other countries.<sup>10</sup>

### **The 1950s and 1960s: organized crime in Italy and the United States**

At first, during the 1950s and 1960s, the concept of organized crime appeared only sporadically in the press and in law enforcement journals in Germany, mostly in discussions of crime in the United States (Weinberger (1951), *Die Polizei*, 1960, no. 5, p. 128, and *Der Spiegel*, 1963, no. 50,

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<sup>10</sup>For a discussion of the debate on organized crime in Israel, see Amir (1999).

p. 76 and 1965, no. 18, pp. 124-135). There was no sense of a direct relevance those issues might have for Germany. Then, towards the late 1960s, concerns were expressed by law enforcement officials that organized crime in the United States and also in Italy in the form of the Sicilian Mafia could pose a threat for the future.

One scenario saw foreign crime syndicates extending their spheres of influence into Germany (Beuys (1967)). Another scenario envisioned an independent development of crime but one similar to the emergence of organized crime in the United States (Mätzler (1968)).

### **The 1970s and 1980s: a uniquely German understanding of organized crime**

#### *A failed attempt to define organized crime*

In the early 1970s police officials began to discuss a third solution to the conflict between concept and reality: a uniquely German definition of organized crime independent from the Mafia paradigm. While assuming that Germany provided no fertile ground for the emergence of crime syndicates like the Cosa Nostra, they argued that "organized crime" was a suitable label for new manifestations of crime in Germany (Kollmar (1974)). That approach combined the abstract discourse on organized crime in Italy and the United States with a parallel discourse on qualitative changes in the conduct of criminal activities and in the patterns of criminal cooperation that the police had begun to observe during the 1960s (Heitmann (1962) and Niggemeyer (1967)).

In 1973, state and federal police agencies established a commission to work out a definition of organized crime as a basis for revising law enforcement strategies (Protocol of the 64th session of the AG Kripo (unpubl.), 12 and 13 December 1973). The commission shifted between debates over whether or not organized crime existed in Germany and conceptual debates over where to place German organized crime in a spectrum of collective crime ranging from the perceived complexity of the American Cosa Nostra to the simple structure of a "gang" (*Bande*) as defined by Germany's criminal law.<sup>11</sup> The commission agreed on a definition that centred around criminal acts committed by groups with more than two hierarchical levels.<sup>12</sup> The reaction within the law enforcement community was mixed. While many police officials seemed to welcome an end to the debate over definitions in

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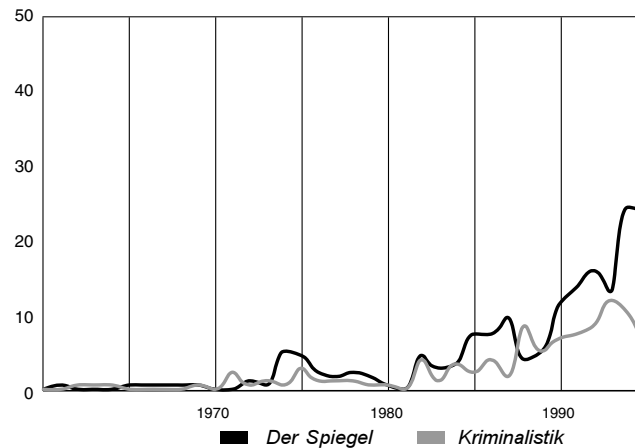
<sup>11</sup>See the Protocols of the 1st and 2nd sessions of the Fachkommission "Organisierte Kriminalität" der AG Kripo (Organized Crime Expert Committee of the Criminal Police Working Group) (unpubl.), 28 and 29 January 1974 and 14 and 15 March 1974. According to Germany's Criminal Code (sect. 244), a "gang" requires two or more persons to join for the purpose of the continued commission of criminal acts.

<sup>12</sup>"Organized crime comprises criminal acts that are committed by either combinations with more than two hierarchical levels or by several groups in a division of labour with the aim of obtaining profits or influence in public life": Protocol of the 2nd session of the Fachkommission "Organisierte Kriminalität" der AG Kripo (Organized Crime Expert Committee of the Criminal Police Working Group) (unpubl.), 14 and 15 March 1974, p. 1.

order to turn to more practical aspects of dealing with organized crime, the Bavarian police department in particular opposed the definition the commission had presented (Bundeskriminalamt, KI 12 (unpubl.), "Dokumentation über die Berichte und Empfehlungen der Arbeitsgemeinschaft der Leiter der Landeskriminalämter mit dem Bundeskriminalamt (AG Kripo) zu dem Generalthema 'Organisierte Kriminalität'" (Documentation on the reports and recommendations of the working group of the heads of the *Länder* criminal investigation departments with the Federal Office of Criminal Investigation (Criminal Police Working Group) on the general subject of organized crime), October 1976, pp. 19 and 20). Presumably, the State of Bavaria resisted the adoption of any official definition of organized crime out of fear that it would lose some of its jurisdiction in criminal investigations to the Federal Police Agency, the Bundeskriminalamt.<sup>13</sup>

In the end the commission was disbanded in 1975 without an agreement on a definition of organized crime (Protocol of the 72nd session of the AG Kripo (unpubl.), 3 and 4 December 1975, pp. 26 and 27 (Bundeskriminalamt, KI 12). Interestingly, the disbanding of the commission was followed by a rapidly fading interest in discussing organized crime. By 1981 the concept of organized crime had all but disappeared not only from the two law enforcement journals but also from the news magazine included in this study (fig. III). This indicates how closely connected the police and public discourses on organized crime were and what a dominant role law enforcement officials had assumed in shaping the public perception of crime during the period.<sup>14</sup>

Figure III. "Organized crime" in *Der Spiegel* and *Kriminalistik*, 1960-1995



<sup>13</sup>Similar objections were made in the debate over the revision of the Bundeskriminalamt (Federal Police Agency) Act in 1973 against giving the Bundeskriminalamt (Federal Police Agency) jurisdiction in all cases of internationally organized gangs (Deutscher Bundestag (1973), Kurzprotokoll 9. Sitzung des Innenausschusses (Bundestag report of the proceedings of the ninth meeting of the Internal Affairs Committee), 16 May, pp. 23 and 24).

<sup>14</sup>An earlier example of the influential role of police officials on the media is the fact that the first impulse for the news magazine "Der Spiegel" to discuss organized crime as a manifest problem in Germany came from a conference sponsored by the Bundeskriminalamt (Federal Police Agency) in 1974. See *Der Spiegel*, 1974, no. 43, pp. 89-98.

*Organized crime as a domestic problem*

In 1982 the concept of organized crime resurfaced (Steinke (1982), Stümper, (1982), Werner (1982) and *Der Spiegel*, 1982, no. 9, pp. 66-69, 1982, no. 13, pp. 38-40, and no. 38, pp. 124-129). Apparently, the German law enforcement community had finally reached a consensus that “organized crime” was an appropriate concept. That consensus became manifest in yet another joint state and federal police committee that had been established the previous year to explore new methods of law enforcement, especially with regard to the use of undercover agents and confidential informants. Without any further debate, the committee adopted a definition of “organized crime” that was to be included in the introduction of its report. It is not clear what had brought about the change of atmosphere. It is obvious, however, that Bavaria, which was strongly represented on the committee, had given up opposition to the concept of organized crime, possibly because of a previously aired television programme that, in an embarrassing way, had contrasted examples of organized crime with statements made by the Bavarian police that there was no organized crime in Germany (Alfred Stümper, Chairman of the Commission, and Dagobert Lindlau, co-author of the television programme “Die Bedrohung” (The Threat), in personal communication with the author).

The new definition was much broader than the 1974 one. Instead of a multi-level hierarchy, the committee was content with the continuous cooperation of several criminals in a division of labour.<sup>15</sup> The definition set the tone for a conception of organized crime that focused on criminal networks in contrast to hierarchically structured, clear-cut organizations (Weschke (1986) and Rebscher and Vahlenkamp (1988)). It allowed the conclusion that organized crime was a reality in Germany and had in fact existed in the country for quite some time. While the international implications of certain types of crime such as drug trafficking were not ignored during the 1980s, organized crime was viewed primarily as a domestic phenomenon, especially as an outgrowth of the red-light districts in the major metropolitan areas (*Der Spiegel*, 1982, no. 38, pp. 124-129, and 1986, no. 34, pp. 82-92).

**The return to the Mafia paradigm**

The network approach, however, proved unattractive for the media. The concept of organized crime did not gain widespread popularity before the late 1980s when the image of foreign crime syndicates such as the American Cosa Nostra and the Sicilian Mafia once again became the centre of attention. In contrast to the original perception of the 1960s, however,

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<sup>15</sup>Organized crime “is not only to be understood in terms of a Mafia-like parallel society [...] but also as a conscious and willing, continuous cooperation in a division of labour between several persons for the purpose of committing criminal acts—frequently with the exploitation of modern infrastructure—with the aim of achieving high financial gain as quickly as possible” (ad hoc-Ausschuss (ad hoc committee) (1983), p. 17; translated by the author).

they were now believed to be actually present in Germany (*Der Spiegel*, 1988, no. 9, pp. 68-83).

The image of foreign "mafias" as an imminent threat to German society continues to dominate the public perception of organized crime and is constantly being reinforced by the media, politicians and police officials. However, it is important to note that behind the cliché the day-to-day police work continues to be based on a very broad and vague concept (Pütter (1998)). The current official definition of organized crime, which dates back to 1990 and is contained in the guidelines for criminal investigations, requires basically not much more than the continuous cooperation of three persons.<sup>16</sup>

### **Summary**

In sum, the German debate on organized crime appears to have come full circle in the 1990s by going back to the Mafia-oriented conception of the 1960s, though without completely abandoning the broad concept of organized crime that had been tailored to suit domestic crime networks during the 1980s.

### **CONCLUSIONS**

Several conclusions may be drawn from the analysis of the conceptual history of organized crime.

Firstly, the emergence and transformation of the concept of organized crime has been brought about by a number of factors of which the reality of crime is only one.

Secondly, the concept of organized crime gains broader acceptance only if two aspects are combined, on the one hand a set of easily comprehensible categories, like that of foreigner and that of bureaucratic organization, and on the other hand the notion of imminent relevance.

Thirdly, the concept of foreign "mafias" that today dominates the public perception of organized crime stands in stark contrast to the very broad conception of organized crime that appears in criminal statutes and law enforcement guidelines. This provides opportunities for a flexible use of the concept of organized crime to accommodate different political and institutional interests.

Fourthly, the conceptual history of organized crime cannot be interpreted as a process of enlightenment. Even after decades of debate there remains a great deal of uncertainty and confusion about the nature of organized crime.

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<sup>16</sup>Organized crime is defined as "the planned commission of crimes for profit or power which by themselves or as a whole are of considerable relevance if more than two participants cooperate over a longer or undetermined period of time in a division of labour through the use of business or businesslike structures or through the use of violence or other means of intimidation or through the influence of politics, the media, public administration, the justice system or the economy" (Lampe (1998), p. 38).

Analysis of the conceptual history does not provide an alternative means of determining the true nature of organized crime. It does give an answer to the question "What is organized crime?", but only insofar as one adopts Howard Becker's famous phrase by saying that organized crime is what people so label (Becker (1966), p. 9). And this covers a complex range of phenomena once one looks beyond the façade of popular cliché images of organized crime.

There seems to be no easy solution to the task of coming to terms with the subject of organized crime. Certainly a definition will not help as long as there is no understanding of the intrinsic links that supposedly connect the various aspects of the social universe that fall under the label "organized crime". Until then all attempts to define organized crime will necessarily be arbitrary and contradict in some way or other existing perceptions of organized crime.

Nevertheless, one can attempt to define narrower concepts that can assist in seeking answers to the questions raised in the debate on organized crime. Those questions centre around two issues: *(a)* how patterns of criminal cooperation emerge and are transformed; and *(b)* how within those criminal structures positions of power develop that are not only relevant for the criminal structures themselves but for society in general.<sup>17</sup>

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<sup>17</sup>For a more detailed discussion of this course of inquiry and a model combining these aspects, see Lampe (1999).



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**NOTES AND ACTION**



**NO LONGER "LADY POLICEMEN":  
THE CHANGING ROLE OF WOMEN IN LAW  
ENFORCEMENT IN AUSTRALIA**

**AMANDA VANSTONE<sup>1</sup>**

**ABSTRACT**

Law enforcement organizations in Australia have responded to increased public demand for their services by becoming more relevant and responsible to community needs. This change in emphasis has had a significant impact on the nature of policing and the methods employed by law enforcement agencies to combat crime.

Law enforcement agencies must now also fight crime that exploits technology and transcends physical and political boundaries, namely transnational crime.

The role of women in law enforcement has been enhanced by these changes. Reduced emphasis on physical attributes and changes in what has been described as the law enforcement culture present women with an unprecedented range of opportunities. Improved working conditions also encourage greater participation by women.

The future of women in law enforcement in Australia is bright, but more organizational adjustments are needed to maximize the contribution and satisfaction of women law enforcement officers.

**FACTORS DETERMINING THE CHANGES IN  
LAW ENFORCEMENT IN AUSTRALIA**

The role of law enforcement agencies in Australia has developed with changing community expectations of the function that they serve. Australian society has changed dramatically since Governor Philip established the first Australian law enforcement agencies in 1789. The nature of the tasks performed by law enforcement agencies in the British penal colony were primarily reactive, concentrating on apprehending individuals for breaches of laws relating to public drunkenness and crimes against the person or property (Allen 1987). In contrast, the primary responsibilities that law enforcement agencies are expected to perform today focus on promoting public safety and security, in addition to preventing and reducing crime, both domestically and internationally

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<sup>1</sup>Former Minister for Justice and Customs of Australia.

(Australasian Police Ministers' Council 2000). The community is increasingly demanding that law enforcement agencies operate as police services rather than police forces and that they become more problem-oriented and focused on people and partnership.

The public expect law enforcers to devote increased attention to the causes of crime and crime prevention, rather than on after-the-event activities. Accordingly, policing today is far more proactive than it has been in the past, with law enforcement officers adopting a much less physical and confrontational role (French and Waugh 1998). Worldwide, law enforcement is increasingly focusing on providing immediate and long-term community services to enhance community well-being. This community focus demands greater interaction between community residents and law enforcement officers, who must rely on interpersonal skills involving communication and conflict resolution (Gold 1999). This community service approach has created new and interesting opportunities in law enforcement for women, who are traditionally perceived as having such skills.

The community now conceives law enforcement more broadly to include non-traditional law enforcement activities such as financial investigations, customs, tax evasion and peacekeeping. An example of this is the recent deployment of federal state and territory police officers to East Timor, where they served in the United Nations Transitional Authority in East Timor (UNTAET), the United Nations Mission in East Timor (UNAMET) and the International Force in East Timor (INTERFET). While the focus was on peacekeeping, their tasks included maintaining law and order at the community level; securing prisons, courts, harbours and airports; training the East Timorese police service; and monitoring the vote for self-determination.

The direction of law enforcement in Australia is, to some extent, dictated by Australia's broader legislative and policy framework. Developments in government policy, in particular in relation to employment principles and practices, have been the catalyst for changes in the way that law enforcement agencies in Australia operate. An obvious example is the enactment of anti-discrimination legislation in all Australian jurisdictions in the 1970s and 1980s.

The nature of crime has also changed significantly in recent years; there is often little connection between criminal activity and physical or political boundaries. This development can be attributed to a number of factors, but it is largely a result of the increased use of technology by criminals (Nixon 1999). Other emerging threats and challenges that characterize the nature of crime include changing demographics, such as an ageing population, and the breakdown of traditional family structures; increases in transnational and multijurisdictional crime; and a spiralling illicit drug problem worldwide.

In response to increasing globalization, many law enforcement agencies are placing greater emphasis on crimes that constitute illegal international trade, such as drug trafficking, money-laundering and the smuggling of persons (Etter and Palmer 1995). The emergence of new

crimes, as well as new methods of committing traditional crimes, has made it necessary for law enforcement agencies to adopt novel practices to prevent and combat crime more effectively. Those changes have highlighted the need for highly skilled and educated law enforcers. Increased importance is also being placed on the effective use of resources, particularly through increased cooperation between law enforcement agencies and jurisdictions.

The recruitment and training practices employed by law enforcement agencies have altered substantially in response to changes in the nature of crime. Leaders in Australian law enforcement agencies recognize that criminals of the future are likely to further exploit the opportunities presented by globalization and technology and that crimes will become increasingly complex and well concealed (Palmer 1996). For that reason, law enforcement agencies are adopting far more comprehensive recruitment practices than ever before. Current recruitment and employment policies foster recognition of law enforcement officers by the community as professionals; emphasize training and education; demand greater accountability to peers, government and the community; encourage representativeness of Australia's multicultural society; demand decision-making and problem-solving skills; are client-oriented and outcome-focused; base authority on competency and integrity; recognize the need for specialist services; and emphasize the value of expert leadership and coordination (Rohl 1994).

Selection and training processes are directed at achieving those aims. For example, the New South Wales Police Service now requires applicants to have tertiary qualifications (White 1996). New Australian Federal Police graduates also possess an impressive range of tertiary qualifications, including degrees in law, arts, economics, commerce and behavioural science. Many new recruits also speak second languages. Better qualified and trained law enforcers in Australia are well equipped to deal with the new crimes and emerging threats and challenges that they are expected to combat.

Increasing importance has been placed on law enforcement agencies reflecting the community that they serve (Palmer 1996). For that reason, Australian law enforcement agencies have become more multicultural and gender-balanced in composition, and strategies are being implemented to ensure that agencies achieve an even better representation of groups within society (Rohl 1994). Australian law enforcement agencies once recruited primarily white, middle-class males, largely because of their military background (Niland 1996). Today, law enforcement officers are drawn from a more diverse cross section of society, with increased participation by those from culturally diverse backgrounds (Williams 1996). That change reflects the development of society as a whole and the growing acceptance of women in the workplace and a multicultural society. That shift is reflected in the recommendations of the National Police Ethnic Advisory Bureau, which emphasize avoiding a male, Anglo-Saxon bias in recruiting; broadening the recruitment base to expand the cultural and linguistic skills available to the service; and



placing increased emphasis on the importance of a balanced and objective approach to the appointment of members of selection panels (Palmer 1996).

The increasingly interjurisdictional nature of crime, or its "borderlessness", requires greater cooperation among law enforcement officers at all levels. Recognition of that need has fostered multi-levelled recruitment and interjurisdictional mobility, wider recruitment practices, the establishment of uniform national recruitment standards, alliances between a wide range of law enforcement related agencies at the federal, state and territory levels and enhanced intelligence-sharing arrangements (Palmer 1996). For example, the Action Group into the Law Enforcement Implications of Electronic Commerce comprises representatives of a broad range of law enforcement agencies who collectively and collaboratively examine the implications of the spread of electronic commerce for law enforcement. The changing nature of crime has made it necessary for Australian law enforcement agencies to optimize the use of available resources to prevent and combat crime more effectively (Etter 1999a, 1999b). The use of technology has changed the way in which law enforcement agencies operate by improving their efficiency in tackling new threats, furthering the need for cooperation between agencies and altering the emphasis on the attributes required of law enforcers in today's environment.

Technological innovations have created more opportunities for individuals working in law enforcement agencies. Law enforcement agencies are increasingly valuing flexible and multi-skilled personnel, presenting more opportunities for the mobility and promotion of women (Henderson 1996).

In addition to reforming the selection and recruitment processes, police services are also promoting social understanding through the implementation of targeted training programmes. Those programmes promote equality and understanding, thereby fostering a pleasant working environment for all employees and a service that is sympathetic to community needs (Berry 1996). In response to those changes, policing is being regarded more and more as a profession (Rohl 1994).

#### **OPPORTUNITIES FOR AND CONTRIBUTION OF WOMEN IN LAW ENFORCEMENT IN AUSTRALIA**

The previous section presented the factors that have created the impetus for change in the way that law enforcement agencies in Australia operate and the changes that have occurred. Those changes have benefited the community in general, and they have enhanced opportunities for women law enforcement officers.

Women now have unprecedented access to a wide range of opportunities, services and experiences. Factors that have contributed to the improved position of women officers include: the changing role of women in the labour force, including increased participation rates of women;

changes to stereotypical sex roles; an evolving legislative and regulatory framework; changes to policies and practices of law enforcement agencies; personnel turnover; and reform of the informal occupational culture (Sutton 1996).

The first female police officer in Australia was appointed as a Probationary Special Constable in 1915 (Bradley and Tynan 2000). For the next 50 years, the duties of women officers were primarily limited to dealing with children and female offenders and performing preventive work. Their tasks included participating in investigations of cases involving missing children, carrying out checks on prostitutes and accompanying male officers on investigations that involved women (Bolen and Ramsey 1996). Women were remunerated less and had fewer responsibilities and privileges than their male colleagues (Wooley 1992).

Stereotypical feminine characteristics, such as intuition, nurturing and communication (Austin 2000) have traditionally been regarded as having no legitimate role in law enforcement, where the best law enforcers were considered to be those who possessed stereotypical masculine attributes, such as logic, aggression and independence (Etter 1996).

Now there is a growing awareness within law enforcement that traits perceived as feminine can add value to the service that law enforcement officers provide. Operational policing is enhanced by effective and efficient communication, mediation and conflict resolution (Prenzler 1995). Other skills commonly associated with women and identified as essential to effective law enforcement include superior organization, high adaptability to new technology, emotional strength and greater stamina (Niland 1996). The value of those skills in the law enforcement environment continues to increase, as agencies become more focused on intelligence and technology. This new understanding benefits both law enforcement agencies and the women working within them, creating an opportunity for women to contribute to the efficiency, effectiveness, legitimacy and integrity of law enforcement (Etter 1996).

Government legislation and policies have been adopted to eliminate discrimination in all of its guises, including discrimination against women and against people from different cultural backgrounds. Government legislation, such as the Sex Discrimination Act enacted in 1984, has removed many of the obstacles that prevented women from advancement and job opportunities in the past.

Largely in response to the women's movement of the 1960s and 1970s, it became a priority of police services to recruit more women and to expand their opportunities within the service. Achievements during that period included securing equal pay for women, continuing the option of employment for women after marriage and introducing an integrated seniority list of all police, regardless of gender (Bolen and Ramsey 1996). By 1993, all Australian police services had removed barriers that hindered the recruitment, deployment and promotion of women (Prenzler 1999).

The implementation of equal employment opportunity policies and equity and diversity policies has also enhanced opportunities available to

women in law enforcement (Townsend 1996). Law enforcement agencies have also appointed equal opportunity advisers, established women's consultative committees, conducted training and introduced new work arrangements, such as the option of working part-time and maternity and family leave (White 1996). Those measures have created more opportunities for women than measures available in the past. For example, more flexible work options, such as part-time work, allow women to balance their career with family responsibilities. That is particularly important for women given that they are statistically more likely to be responsible for the care of children and other family members than men are.

Law enforcement agencies have adopted initiatives specifically designed to enhance opportunities for women in law enforcement. The establishment of the Women in Law Enforcement Strategy (WILES) is an excellent example of this. WILES was established in 1998 to assist in identifying institutional barriers that faced women in law enforcement, so that government and management could address those issues. WILES provides advice on ways to encourage women to join law enforcement agencies and assists in the career development of women already working in law enforcement. All federal law enforcement agencies are represented in WILES (Montano 1999). One initiative of WILES has been to establish a cross-agency mentoring programme. Through the programme, mentors provide recruits and young members of law enforcement agencies with: an opportunity to discuss their career development; a source of advice and encouragement; and feedback on their progress. The initiative was implemented in 2000 and has already generated positive feedback from participants (Sutton and Newton 2000).

Several other organizations have been formed within and between law enforcement agencies to foster the development of women within law enforcement. The Commissioners' Australasian Women in Policing Advisory Committee (CAWIPAC) was established by law enforcement ministers in 1996 in recognition of the need to increase the number and participation of women in law enforcement. CAWIPAC is an advisory body of senior law enforcement officials that provides advice and develops strategies to assist police commissioners in maximizing the contributions of women within their organizations.

CAWIPAC has been instrumental in assisting women in policing at the strategic and planning levels. Since its inception, CAWIPAC has provided police ministers and police commissioners with advice on policies and progress in relation to women and has highlighted the need for further activity and research in particular areas. CAWIPAC has also established a database of information relating to women in law enforcement and developed a model for change and growth in career development initiatives. Actions planned by CAWIPAC include the development of support structures for women in policing and the establishment of a mentoring programme and women's consultative mechanisms. The Australian Federal Police has already established a national women's consultative team, modelled on a similar initiative in New Zealand.

The Australasian Council of Women and Policing (ACWAP) was founded in 1996 as an outcome of the inaugural conference of the Australasian Women in Policing Conferences, held in Sydney from 29 to 31 July 1996. The objectives of ACWAP are to establish an Australasian link in the global network of women in policing, to improve the position of women in policing and to improve the relationship between policing and women in the community. ACWAP produces a journal entitled the *Journal of the Australasian Council of Women and Policing*. With the support of CAWIPAC, ACWAP and the Australian Federal Police, are hosting an international conference in 2002 entitled "Women and Policing Globally".

In documenting the role of women in law enforcement in Australia, it is important to recognize not only the opportunities for women, but also the valuable contribution that women are making in law enforcement agencies.

Greater participation of women in law enforcement has fostered greater flexibility and diversity within law enforcement organizations. The increasing role and profile of women law enforcement officers are also helping to break down barriers between law enforcement agencies and the communities that they serve. For example, women victims are more likely to report crimes committed against them, in particular those of a personal or violent nature, to women officers (Etter 1996). Research indicates that women law enforcement officers are perceived to be less aggressive than their male colleagues and more polite to, and respectful of, the public (Price 1989). Studies have also found that women officers are perceived to handle violent confrontations better than their male counterparts (Price 1989).

It is well documented that women and men communicate differently (Jago and Vroom 1982). Women have been found to be more adept at open communication than men, being more willing to share knowledge and experience in order to achieve shared goals (Stuart 1994). Women tend to encourage others to participate, increasing job satisfaction and ownership within organizations. Given the inadequacies perceived in the past in the management of personnel within law enforcement organizations and communication barriers between the police and the community, a greater infusion of women in law enforcement can only have a positive effect.

Though law enforcement agencies have created unprecedented career and advancement opportunities for women, more can be done to further the opportunities, status and experiences of women in law enforcement.

An obvious indicator of the need for continued improvement is the low participation rates of women working in Australian law enforcement agencies. The number of women in management positions within law enforcement agencies is also low. Recent figures indicate that, as at June 1999, women comprised about 16.5 per cent of total sworn officers in Australia, or 7,089 out of 43,048 officers (Australian Institute of Criminology 1999). While these statistics represent a significant improvement on past participation rates, greater participation and retention of women officers should be actively pursued.

Unacceptable levels of sexual harassment and discrimination remain a disincentive for greater participation of women in law enforcement. It is estimated that 83 per cent of women police officers believe that sexist attitudes and behaviour are entrenched in the police service, despite the implementation of policies and training designed to address those concerns (Sutton 1996). One study also suggests that 58 per cent of policewomen have experienced some form of discrimination or harassment during their service (Etter 1996). Despite the existence of equal employment opportunity coordinators, many women in policing are apparently reluctant to report incidences of discrimination, for fear of repercussions (Prenzler 1999). The potential effects of these problems include loss of self-confidence and frustration at the perceived lack of opportunities.

Figures indicate that women are leaving police services at a rate disproportionate to that of their male colleagues (Williams 1996). There are many reasons why women are under-represented in law enforcement; those reasons include the actual and perceived nature of law enforcement (for example, dealing with criminals), the physical nature of some of the work and the working conditions (for example, the long hours and shift work). Other contributing factors include the public's perception of policing and policewomen (Mitchell 1996). As long as women remain under-represented in law enforcement, the service provided will not accurately reflect the composition of society. For that reason, greater participation of women in law enforcement should be pursued rigorously.

#### **STRATEGIES FOR THE FUTURE OF LAW ENFORCEMENT**

The future directions of law enforcement in Australia are outlined by the Australasian Police Ministers' Council in "Directions in Australasian policing". Law enforcement will continue to strive to improve its representation of the community that it protects. That will be achieved through the promotion of equity and diversity in law enforcement organizations (Australasian Police Ministers' Council 2000). Police leaders in Australia have expressed a strong commitment to furthering equity for all members of the police services, through both training and the promotion of ideals of equality (Palmer 1996).

Changes in the nature of crime and the functions of law enforcement, as well as the implementation of initiatives aimed specifically at improving the experiences of women in law enforcement, will ensure that increasing numbers of women will pursue successful and satisfying careers in law enforcement.

Further organizational change is necessary to maximize the contribution and satisfaction of women law enforcement officers. Law enforcement agencies must continue to proactively increase the proportional representation of women; to recruit suitable women officers; to ensure a minimum number of women at the management level; to intro-

duce more flexible working practices for men and women; to include women in policy development and decision-making; and to recognize and acknowledge the presence and contribution of women (Etter 1996).

### **CONCLUSION**

Law enforcement agencies today focus on preventing and combating crime through strategies that rely on enlightened community-based leaders and practitioners for their success. Women have benefited significantly as a result of the paradigm shift in law enforcement policies and practices.

Women law enforcers now have more opportunities available to them than ever before and enjoy significantly improved working conditions. It is important to plan for a future that builds on strengths, capitalizes on opportunities and overcomes inadequacies to ensure that women in law enforcement continue to prosper.

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## WOMEN, THE MAFIA AND LEGAL SAFEGUARDS

BY MARINA GRAZIOSI<sup>1</sup>

### THE IMPACT OF EMANCIPATION

New questions are being asked about the women who are the mothers, daughters, sisters or wives of notorious Mafiosi. Attention has focused on the role that such women play in the rigid, patriarchal world of the Mafia. Many women have had to make public their choice either to refuse or to accept the decisions of the Mafiosi in their families. For example, some women have disowned their sons, publicly affirming that they consider them dead because they are "traitors" (for having broken the Mafia's code of silence (omertà)). Other women have chosen to share the fate of the Mafia turncoats in their families, fleeing with them and abandoning every link with their past.

Radical transformations have taken place in women's responses to the Mafia: many have had the courage to report the murders of their relatives (Fiume 1989a) or have chosen to collaborate with the authorities, breaking not only the code of silence and the code of submission but also the code governing revenge (Puglisi 1990; Rizza 1993).

Significant changes are also taking place in terms of social control. While anti-Mafia organizations are calling for a complete rethinking of the image of women in the Mafia; at the same time, against the background of women's emancipation, the perceptions and attitudes of the judiciary are also shifting. Some judges have abandoned the model according to which, in Mafia crimes, women are not considered to be accomplices and have begun regarding women as an integral component of the Mafia. Judicial data show that a growing number of women are prosecuted for Mafia-related crimes and that the number of Mafia women in prison is growing.

In the face of such transformations various kinds of problems emerge, including, above all, problems involving legal safeguards. It is wrong to assume that women are a priori innocent because of the subordinate role that they traditionally play in the Mafia and because they are not allowed to be formally affiliated with the organization. On the other hand, it is

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<sup>1</sup>University of Rome, "La Sapienza".



dangerous to charge them with the generic offence of being associated with the Mafia. According to a recent ruling by the Cassazione (the supreme court), judges should refrain from considering generic crimes, such as involvement in "family affairs", or sharing in the resulting economic benefits, because responsibility in those areas is difficult to prove. The Cassazione stated that the judge must evaluate the collaborative behaviour in the family environment of the accused, establishing if it is a matter of inclusion or not—with a specific role of any nature—in the criminal organization and having a function in the achievement of its objectives (Cassazione 1999).

There is a risk involved in creating for women a special status offence based on family relations that does not distinguish between penal responsibility and moral responsibility.

#### **THE ROLE OF WOMEN IN THE MAFIA**

Formal affiliation to the Mafia, which is regulated by a rigid ritual, is not open to women (Gambetta 1992), but they are allowed subordinate, supporting roles. Recently, the practicalities of this support have changed profoundly; such support is now provided in more modern ways. With the help of many informers' accounts of daily life, it has been possible to develop a less stereotypical portrait of women's role in the world of the Mafia.

According to the majority of experts and scholars, the Mafia is an absolutely male organization (Fiume 1989b), a world only accessible to men of proven virility. Women, because of their natural "otherness" are untrustworthy: they must not know the facts, and/or the criminal plans, because that would be dangerous. They can only know that which is safe, or not dangerous, to know. The men of Cosa Nostra are careful about what they say to their wives. According to the informer Antonino Calderone, "Women think in a certain way—all women, even those who have married Mafiosi or who come from Mafia families. When a woman's deepest feelings are hurt, she can't think anymore, there is no more code of silence" (Arlacchi 1992, p. 165). It is with this in mind that a Mafioso tries to keep his wife, mother and sisters far away from the business of Cosa Nostra: "He does it to protect them, to safeguard them, to save them, because if the woman knows something it ends up that he either has to kill her himself or have her killed by someone else" (Siebert 1996, p. 56). Antonio Saia, who was once affiliated with the Catanesi family, said: "My wife knew that I was stealing, but she could never imagine that I had killed someone .... Sometimes she asked me about work and I made her understand that it was stealing money ... but I never said to her specifically: 'I robbed this bank or that one'. That's to say, in the beginning, when we were married, she asked me. Then I made her understand that she shouldn't ask me anything. First because she was a woman and I didn't want to involve her in my business. Because she could be talking to a female friend and one talks to

friends. It can happen .... When I started to inform, when I said to my wife, 'listen, I've done all these things', she began to cry, 'I don't believe it!'" (Cottino 1998, p. 38).

Even today, when a crime committed by a woman is detected, it is difficult to avoid the old ways of thinking regarding the "wickedness" of women (Corso 1996). Underrepresentation of crime by females in statistical data still results in the most bizarre and contradictory explanations. The traditional image of women as being unable to commit violent crime, because of their alleged biological nature, was based on prejudices about their being naturally subordinate and passive. That image conveyed the notion of women being "always innocent". The opposite stereotype depicts women as being "always guilty", as they allegedly hide behind their crimes and actually inspire crimes committed by men.

Some stereotypes and generalizations are still alive today and tend to inspire a form of legal fundamentalism. When underrepresentation of crime by females is exclusively associated with passivity and subordination of women, crime itself becomes equated with emancipation, the result being that the latter is stigmatized as a criminogenic factor. It is, on the contrary, that emancipatory process which encourages and allows the rebellion that women have begun to engage in even in a Mafia environment (Graziosi 1993).

The role of women in the Mafia is difficult to interpret with the usual instruments of criminological analysis. Women are not "part of" but "belong" to the Mafia organization, in the most literal sense of "being the property of". As the number of informers grows, threatening its image of strength and solidarity, the Mafia has entrusted its women with an important task. They are expected to pass on the Mafia culture to their children, just as most women in a patriarchal culture would do. Moreover, as they affirm that they totally belong to that world, with its different moral order, they are also being asked to promote in the outside world the power of the Mafia system. When a woman marries a well-known Mafioso who is a fugitive from the law, has his children and has them baptized, she is sending a message to the State and to society, namely, that the organization to which her husband belongs is powerful and untouchable. If a Mafia woman disowns her husband or son for being "wicked" (ie. for having broken the code of silence), she does not do so merely out of self-interest or for fear of reprisal, but because she is carrying out a codified role. These are the only moments of public and political visibility of Mafia women.

The wives, daughters or sisters of Mafia men fighting among themselves are regarded as non-existent: they are not allowed to choose between one side or the other. Numerous informers have mentioned cases in which a girl was killed by her own family for having chosen to live as an individual, to work, to move around and, above all, to marry the man of her choice (Siebert 1996, p. 64). Cases have also been cited in which a father ordered the murder of his daughter for betraying the husband he had imposed on her (Principato and Dino 1997, p. 13).

In the Mafia system, women must not be allowed to choose. The wife of a Mafioso who is a fugitive is respected and protected. The wife of a Mafia informer, if she does not escape or immediately dissociate herself from her husband, can be raped freely (an act that becomes a ritual of degradation) or killed. Mafia women are, therefore, active or passive mediators with the world outside the Mafia culture. Their subordination is not an end in itself: they have a role to play as messengers; and there are times when their fate is the message.

### **REDEFINING CRIMINAL RESPONSIBILITY**

All this makes women an integral part of the world of the Mafia. The impunity granted to Mafia women for colluding with their husbands, sons, fathers or brothers is commonly interpreted, even by those who have studied the phenomenon of the Mafia, as part of a protective attitude towards them, an act of judicial chivalry that confers a lesser judicial status on them. As Siebert (1996, p. 69) notes: "The issue around the clear complicity of the wives and daughters of bosses remains unresolved. The individual responsibility of women who have clearly covered up criminals and ferocious murderers is not investigated". "Despite having lived for 20 or so years with a murderer, sharing their being on the run," writes Falluca, "a woman is not regarded as an accomplice". She cannot be prosecuted for collusion either. This is a judicial anomaly because *(a)* it puts family links before the universality of the law; *(b)* it subordinates the definition of individual responsibility to an "extraterritorial" concept of family; and *(c)* given the particular Mafia organization and the "family" structure of Cosa Nostra, it consolidates the existence of "other" laws, the codes of the "men of honour" (Falluca 1993, p. 3).

The prosecution of these women, however, would be a judicial aberration as well. It must be borne in mind that it is the universality of the law that puts family links before the obligation to collaborate with the judicial system. This applies not only to Mafia crimes and not only to women. Impunity for providing false evidence, reticence, failure to report a crime or personal collusion performed due to the necessity to save oneself or a close relative from serious and inevitable damage to their liberty or honour is a general judicial principle, applicable to both women and men, established in Italian law (article 384 of the penal code).

Husbands, fathers, sons and brothers have the right to abstain from giving evidence against wives, daughters, mothers and sisters, and they cannot be punished for giving any help to evade investigation, whatever the charge of the defendant. It is unclear why this should not be the case for women. Women must respond for "complicity" in crimes in which they have personally taken part or for their effective membership in a Mafia organization, irrespective of the fact that their formal affiliation is not permitted by Mafia codes. They should not be

prosecuted in their capacity of women, wives, mothers, daughters or sisters, but as individuals, where they demonstrate autonomous personal responsibility.

It will always be difficult to distinguish in individual cases between complicity and collusion, between membership in a Mafia organization and judicial fraud, between complicity and covering up for the hiding of criminals. These are ever-present difficulties in such cases, however—whether they involve men or women, Mafia crimes or common crimes—because of the narrow boundaries separating them and above all the inevitable uncertainties in the weighing up of evidence. It is important to distinguish analytically between the complex phenomenology of Mafia criminality, between situations, roles and facts, in order to avoid undeserved privileges or discrimination.

There is a final distinction that needs to be made. People live under a system of law, not a system of morality or in a culture in which women are both victims and mediators. The impunity of women who “know” and collude with their husbands and sons does not make them exempt from moral disapproval. Such disapproval, however, is only justifiable when concrete cases are examined. Because the Mafia’s code of silence is not always easily distinguishable from mere solidarity with close relatives, the fight against that code is first and foremost a cultural, political and civic fight. The attitude intrinsic to Mafia culture that there is no distinction between natural and Mafia families has been challenged repeatedly in recent years, thanks to the courage and the collective involvement of many women who have rebelled against that culture. What must be avoided is, on the one hand, confusing Mafia families with natural families and, on the other, mingling moral and criminal responsibility. In this way, it may be possible to promote moral responsibility and recognize criminal responsibility within the framework of legal safeguards.

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**THE UNITED NATIONS CONVENTION  
AGAINST TRANSNATIONAL ORGANIZED  
CRIME AND ITS PROTOCOLS**

**BY CHRISTOPHER RAM<sup>1</sup>**

**INTRODUCTION**

New developments in transportation, communications and other modern technologies, accompanied by the increasing interdependency and globalization of social, political and economic systems, have produced corresponding developments with respect to organized crime. The ability of domestic criminal groups to extend their grasp beyond national borders and to work collectively with offenders in other jurisdictions has enabled them to exploit global disparities in the supply, demand and value of illicit commodities such as drugs, firearms and valuable minerals. National boundaries and jurisdictional limits are also explored by offenders to conceal evidence and avoid investigation and prosecution. Trafficking in commodities that are restricted for policy reasons—including human beings—has generated vast criminal profits. The increase in the quantity and scope of transnational organized crime, the commodities in which organized criminal groups deal and the underlying corruption that inevitably accompanies their activities is seen increasingly not only as a problem of crime control, but in many regions of the world as a problem of domestic and regional security as well.

The reaction of the international community has been the negotiation of a new United Nations treaty—the United Nations Convention against Transnational Organized Crime<sup>2</sup>—to assist States in dealing with the problem at the domestic level and to create a framework for concerted international cooperation against it. The present article is intended as an overview of the Convention and its Protocols. It will briefly examine both the structure and content of the instruments and the process whereby they came into existence. It will also provide information about the present status of their signature, ratification and implementation, and discuss what may come next, with respect to both the instruments themselves and the potential for further protocols or parallel instruments dealing with other problems of transnational crime.

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<sup>1</sup>Crime Prevention and Criminal Justice Officer, Centre for International Crime Prevention, Office for Drug Control and Crime Prevention, United Nations Secretariat.

<sup>2</sup>General Assembly resolution 55/25, annex I.

### **PROCEDURAL BACKGROUND AND PRESENT STATUS**

During the 1990s, as concerns about transnational organized crime grew, a series of international meetings considered possible solutions to the problem.<sup>3</sup> An open-ended intergovernmental group of experts, established pursuant to General Assembly resolution 52/85 of 12 December 1997, met in Warsaw from 2 to 6 February 1998 and produced a preliminary draft text of a new convention against transnational organized crime. Upon receiving the report containing that text, the General Assembly established an intergovernmental ad hoc committee to negotiate a finished instrument in the form of a comprehensive international convention against transnational organized crime. It also called on the Committee to consider further instruments addressing trafficking in women and children, the smuggling of migrants and the illicit manufacturing of and trafficking in firearms.<sup>4</sup>

The text of the Convention itself was negotiated by the Ad Hoc Committee on the Elaboration of a Convention against Transnational Organized Crime at 10 sessions (comprising 239 three-hour meetings) held between 19 January 1999 and 28 July 2000. The pace of negotiations was intense, in particular after the General Assembly called for their intensification in late 1999 in order to permit completion of the instruments during the year 2000.<sup>5</sup> Several sessions of the Ad Hoc Committee included simultaneous, parallel negotiations, during which one instrument was discussed formally by the Committee in plenary while a second instrument was the subject of informal consultations. The products of those informal consultations were informal draft texts prepared by the Secretariat for later review and adoption by the plenary at the next session at which the instrument in question was on the agenda. The process moved quickly, but proved onerous for many of the smaller delegations involved, which were not able to attend two discussions at the same time, and created some difficulties because some protocol provisions could not be finalized until the text of the parent convention and the provisions governing the relationship between the instruments had been decided upon. Parallel negotiations were discontinued in the final sessions as first the Convention (tenth session) and then the Protocols (eleventh and twelfth sessions) were completed.

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<sup>3</sup>These included the World Ministerial Conference on Organized Transnational Crime, held in Naples, Italy, from 21 to 23 November 1994 (see A/49/748); the Regional Ministerial Workshop on Follow-up to the Naples Political Declaration and Global Action Plan against Transnational Organized Crime, held in Buenos Aires from 27 to 30 November 1995 (see E/CN.15/1996/2/Add.1); the African Regional Ministerial Workshop on Organized Transnational Crime and Corruption, held in Dakar from 21 to 23 July 1997 (see E/CN.15/1998/6/Add.1); and the Asian Regional Ministerial Workshop on Organized Transnational Crime and Corruption, held in Manila from 23 to 25 March 1998 (see E/CN.15/1998/6/Add.2).

<sup>4</sup>See General Assembly resolution 53/111. The wording used to describe the three protocols is substantially similar to the final titles of the instruments, with the exception of the protocol against trafficking in women and children. The mandate for that instrument was expanded by the Assembly during the negotiation process to refer to "trafficking in all persons, but especially women and children" (see resolution 54/126, para. 3) and corresponding changes were made to the title of the instrument.

<sup>5</sup>See resolution 54/126, paragraph 4.

The Convention itself was finalized by the Ad Hoc Committee at its tenth session, from 17 to 28 July 2000; the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (the "Trafficking in Persons Protocol"), and the Protocol against the Smuggling of Migrants by Land, Sea and Air (the "Migrants Protocol") were finalized at the eleventh session, from 2 to 28 October 2000; and the third protocol, dealing with illicit manufacturing of and trafficking in firearms, was finalized by the Committee at its twelfth session, from 26 February to 2 March 2001.<sup>6</sup> The texts of the Convention and first two Protocols were adopted by the General Assembly by its resolution 55/25 of 15 November 2000 and, in response to an invitation from the Government of Italy, opened for signature in Palermo, Italy, from 12 to 15 December 2000.<sup>7</sup> The Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition (the "Firearms Protocol") not having been finalized in time for consideration by the General Assembly together with the other instruments, was referred to the Assembly and adopted separately.<sup>8</sup> In Palermo, 124 States signed the Convention, 81 the Trafficking in Persons Protocol and 78 the Migrants Protocol.<sup>9</sup>

As at 1 May 2001, 2 further States had signed the Convention and 4 further ones had signed each of the two Protocols, bringing the total number of signatures of the Convention to 126, of the Trafficking in Persons Protocol to 85 and of the Migrants Protocol to 82. No State had ratified any of the instruments and the Firearms Protocol was not yet open for signature. All four instruments will remain open for signature until 12 December 2002, although States may still accede to them after that date. Each of the instruments will come into force on the ninetieth day after the fortieth State files an instrument of ratification with the Secretary-General of the United Nations, but none of the Protocols can take effect before the Convention itself does (see below).<sup>10</sup> The Centre for International Crime Prevention of the Office for Drug Control and Crime Prevention of the Secretariat is actively engaged in providing pre-ratification assistance to States that request it and both the Convention and the General Assembly in its resolution 55/25 encourage donor countries to make financial or other contributions to assist other States both before and after ratification.<sup>11</sup>

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<sup>6</sup>Reports of the Ad Hoc Committee, other procedural materials and draft texts of the instruments can be found on the web site of the Office for Drug Control and Crime Prevention at <http://www.uncjin.org/Documents/Conventions/conventions.html>

<sup>7</sup>See resolution 54/129 concerning the High-Level Political Signing Conference in Palermo.

<sup>8</sup>See resolution 55/255. Article 17 of the Protocol declares it open for signature on the thirtieth day after its adoption by the General Assembly.

<sup>9</sup>See <http://www.odccp.org/palermo/convmain.html> The European Union also signed all three instruments.

<sup>10</sup>See articles 36 and 38 of the Convention, articles 16 and 17 of the Trafficking in Persons Protocol, articles 21 and 22 of the Migrants Protocol and articles 17 and 18 of the Firearms Protocol.

<sup>11</sup>See article 30 of the Convention and resolution 55/25, paragraph 9.



### **RELATIONSHIP BETWEEN THE CONVENTION AND PROTOCOLS**

The structure of the four instruments is that of a parent Convention and three subordinate Protocols. The intention of the Ad Hoc Committee, after substantial discussion, was to include provisions dealing with transnational organized crime in general in the Convention, with more specific provisions dealing with the relevant subject matter appearing in each of the Protocols. Thus, for example, general forms of cooperation between Governments and law enforcement agencies are dealt with in articles 18 and 27-30 of the Convention, while specific forms of cooperation such as the tracing of firearms and the verification of passports or other travel documents are dealt with in the appropriate Protocols. Since general matters were dealt with in the Convention, it was not necessary to renegotiate or repeat them in the Protocols unless the intention of the Committee was expressly to vary the rule established by the Convention in cases to which one of the Protocols applied. Articles 12 and 14 of the Convention, for example, presume that a State party that has seized or recovered property that is proceeds of crime will reduce it to cash, and provides for such disposal in accordance with the laws of the State concerned, with due consideration to the use of the proceeds to compensate victims, to funding the fight against transnational organized crime or to sharing the proceeds with other States involved. Simple resale was not seen as appropriate where the property concerned consisted of firearms, their parts and components or ammunition, however, and article 6 of the Firearms Protocol varies the provision of the Convention, requiring States parties either to destroy confiscated trafficked firearms or to make official arrangements for disposal that include clear marking of the firearms and the creation of records of the disposal.

Essentially, this structure means that the Protocols are not in themselves complete, stand-alone international legal instruments: each Protocol must be read and applied in conjunction with the main Convention. Article 37 of the Convention provides that States may become parties to the Convention alone, but that they cannot become parties to any of the Protocols without first being party to the Convention. Thus, in cases involving subject matter covered by one or more of the Protocols, if the States involved are parties to the appropriate Protocol(s), the provisions of the parent Convention will always also be available and applicable. As an added safeguard while the instruments are in the process of ratification, the in-force provision incorporated into each Protocol provides that the Protocol cannot come into force before the Convention.<sup>12</sup> To ensure that the provisions of the Convention will always be available for offences established by the Protocols, article 1, paragraph 3, of each Protocol specifies that offences under that Protocol must also be regarded as offences under the Convention. The provisions

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<sup>12</sup>Article 17, paragraph 1, of the Trafficking in Persons Protocol, article 22, paragraph 1, of the Migrants Protocol and article 18, paragraph 1, of the Firearms Protocol.

of the Convention apply to each Protocol, *mutatis mutandis*—with such modifications as the circumstances require—which allows for the reconciliation of the specific rules of each Protocol with the more general ones of the parent instrument.<sup>13</sup> Finally, each Protocol provides that it “shall be interpreted together with the Convention”, which would generally require that parallel provisions be given similar or parallel meanings and that definitions used in the Convention would also apply to each Protocol, *mutatis mutandis*.<sup>14</sup>

### **SCOPE AND APPLICATION OF THE INSTRUMENTS**

After extensive negotiations, the Ad Hoc Committee struck a balance in determining when the instruments would apply. Generally, the policy was to exclude cases of a purely domestic nature, for which an international instrument was seen as unnecessary, but to leave open the possibility that some provisions might be applied where an element of transnationality was only suspected, in order to determine whether this was the case or not. In keeping with the mandate created by the General Assembly, the instruments also do not apply to crime that is not organized crime, although this excludes some areas—notably corruption and computer-related crime—where transnational crimes committed by individuals have become a problem that may require further international attention. The Convention applies where the following conditions are met:<sup>15</sup>

*(a)* Requests must relate to the prevention, investigation or prosecution of one or more offences that are established by the Convention itself or one of the Protocols to the Convention or that are “serious crimes” as defined by the Convention. A “serious crime” is any offence established by domestic law that is punishable by four years’ imprisonment or more;

*(b)* The offence involved must be “transnational in nature”. Generally, this includes offences that are planned or committed in more than one State or that are committed in one State, but have substantial effects in another;

*(c)* The offence must involve an “organized criminal group”, which is a group of three or more persons acting in concert with the aim of committing one or more offences covered by the Convention or a Protocol. At least one of the offences involved must be planned or committed for the purpose of direct or indirect financial or other material benefit;

*(d)* Article 3 of the Convention, the general scope provision, sets general rules that apply only where different rules are not incorporated

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<sup>13</sup>Article 1, paragraph 2, of the Protocols.

<sup>14</sup>Article 1, paragraph 1, of the Protocols.

<sup>15</sup>See articles 2 (Use of terms) and 3 (Scope of application) of the Convention.

into individual articles of the Convention and Protocols. The general rule that transnational organized crime must be "involved" is modified in article 18, which provides for mutual legal assistance. Under article 18, paragraph 1, assistance can be requested where there are "reasonable grounds to suspect" that one of the offences involved is transnational in nature. This allows for legal assistance requests to be used to gather evidence to determine whether transnational elements are actually "involved" or not.

The scope provisions of the Protocols follow the same pattern as that of the Convention, with some modifications appropriate for the subject matter involved. Article 4 of the Trafficking in Persons Protocol, for example, expressly includes the protection of victims of trafficking, article 6 of the Migrants Protocol refers to the rights of smuggled migrants and article 4 of the Firearms Protocol excludes certain transactions or transfers that involve States acting in the interests of their national security.

#### **OFFENCES ESTABLISHED BY THE CONVENTION AND PROTOCOLS**

The Convention will require States parties to create four new offences unless these already exist under their domestic law, in circumstances where the activities are linked in some way to transnational organized crime:

- (a) Participating in the activities of an "organized criminal group" and "organizing, directing, aiding, abetting, facilitating or counselling" serious crimes involving organized criminal groups (art. 5);
- (b) Certain activities relating to money-laundering (art. 6);
- (c) Activities relating to corruption (art. 8);
- (d) Obstruction of justice (art. 23).

In addition, the Protocols require the establishment of offences dealing with their core subject matter and in some cases additional offences as well. Thus, for example, in addition to establishing the core offences of illicitly manufacturing and trafficking in firearms, their parts and components and ammunition, the Firearms Protocol also establishes an offence relating to the removal, alteration or defacement of firearm serial numbers in order to deter offenders from doing so to frustrate the Protocol's requirements for record-keeping and the tracing of trafficked firearms.<sup>16</sup> Similarly, the Migrants Protocol establishes offences relating to fraudulent travel or identity documents. Determining the exact scope of the offence of smuggling migrants proved complex. The intention of the

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<sup>16</sup>See article 5 of the Trafficking in Persons Protocol, article 6 of the Migrants Protocol and article 5 of the Firearms Protocol.

Committee was to establish an offence that would include organized criminal offenders who smuggled migrants, but which would not criminalize mere migration or the actions taken by migrants in attempting to smuggle themselves. To accomplish this, the Protocol provides that migrants are not liable for Protocol offences for the mere fact of having been smuggled, but that nothing in the Protocol prevents States parties from establishing or maintaining non-Protocol offences relating to illegal entry or residence. The document offences also apply “when committed for the purpose of smuggling migrants”, which will generally not include cases where documents were prepared, possessed or used by the migrants themselves.<sup>17</sup>

#### **INTERNATIONAL COOPERATION AND ASSISTANCE PROVISIONS**

The provisions of the Convention that deal with extradition and mutual legal assistance are similar to established practices and principles already embodied in treaties that apply only to specific regional or bilateral agreements or in some cases only to specific forms of crime. The negotiation of the Convention produced some new or modernized provisions, but the major significance of the new instrument is probably that it extends to all forms of transnational organized crime and, if a large number of States ratify and implement the instruments, that the rules will apply to many countries at present not covered by any treaties at all. Those provisions are intended to set minimum standards only and States are in fact encouraged to go further in bilateral or regional arrangements. Where more advantageous provisions are found in other agreements between the States involved in a particular case, those provisions would apply.<sup>18</sup> Such provisions apply to the Protocols, *mutatis mutandis*, since the Protocols contain no similar articles.

Under article 16 of the Convention, extradition from another State party may be sought for the four specific offences established by the Convention or for any “serious crime”, where an “organized criminal group” is involved, if the person whose extradition is sought is in the requested State party and the offence itself is punishable by the domestic laws of both States. Article 1, paragraph 3, of each of the Protocols extends the extradition provisions of the Convention to Protocol offences as well. Some limits are placed on extradition. Article 16, paragraph 7, makes extradition subject to conditions imposed by the domestic law of the requested State party and any applicable bilateral or multilateral treaties. Thus, for example, treaty requirements setting minimum punishment thresholds below which offences are not extraditable will continue to apply under the Convention. Extradition can also be refused under article 16, paragraph 14, if there are substantial grounds to believe that

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<sup>17</sup>Articles 5 and 6, paragraphs 1 and 4, of the Migrants Protocol.

<sup>18</sup>See articles 16, paragraphs 3-6, 17 (Extradition) and 18 (Mutual legal assistance), paragraphs 2, 6 and 30, of the Convention.

the real reason for the request relates to the race, sex, nationality, ethnicity or political opinions of an individual and not to crimes he or she may have committed. States parties may also refuse to extradite their own nationals, but in such cases must prosecute the case themselves.<sup>19</sup> Where extradition is refused, the requested State party is required to consult with the requesting State, where appropriate.<sup>20</sup>

Under article 18 of the Convention, "the widest measure of mutual legal assistance" can be requested from another State party for any investigation, prosecution or judicial proceeding in relation to crimes or offences covered by the Convention. As noted in the discussion of scope above, this provision applies to a broader range of circumstances than the general rule for application set out in article 3 in order to allow it to be used to establish elements of transnationality in cases where this is only suspected prior to making an assistance request. The mutual legal assistance provisions can be used to obtain statements or other evidence, conduct searches or seizures, serve judicial documents, examine objects or sites, obtain original documents or certified copies, identify or trace proceeds of crime or other property, obtain bank, corporate or other records, facilitate the appearance of persons in the requesting State party or any other form of assistance permitted by the laws of the States involved.<sup>21</sup> Requests for assistance can be made "in any form capable of producing a written record", which creates the possibility of using electronic media to speed up the process, where the Governments involved are satisfied as to measures taken regarding such things as authenticity, security and confidentiality, and the forms of available assistance include the giving of witness testimony in proceedings using video conference technologies.<sup>22</sup>

Legal assistance can be refused in the following cases: if the request does not contain the information required by the Convention;<sup>23</sup> if the request is for an offence or form of assistance not covered by the Convention; if the offence alleged is not an offence under the laws of both States parties;<sup>24</sup> if providing assistance would be prejudicial to essential interests of the requested State, such as public order, sovereignty or security requirements; or if it is inconsistent with constitutional or other fundamental legal requirements.<sup>25</sup> Legal assistance cannot be refused on the ground of bank secrecy or on the ground that the alleged offence also involves "fiscal matters".<sup>26</sup> Assistance may be postponed to protect an ongoing domestic investigation and there are

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<sup>19</sup>Article 16, paragraph 10.

<sup>20</sup>Article 16, paragraph 16.

<sup>21</sup>Article 18, paragraph 3.

<sup>22</sup>Article 18, paragraphs 14 and 18. Under article 18, paragraph 28, the costs of assistance are normally borne by the State that provides the assistance, but can be negotiated between States parties in exceptional cases.

<sup>23</sup>Article 18, paragraphs 14, 15 and 21.

<sup>24</sup>Article 18, paragraph 9.

<sup>25</sup>Article 18, paragraph 21 (d).

<sup>26</sup>Article 18, paragraphs 8 and 22.

provisions for the giving of reasons and consultations between Governments when assistance is postponed or refused.<sup>27</sup>

In addition to the provisions dealing with extradition and mutual legal assistance, both the Convention and the Protocols contain provisions establishing or encouraging other forms of cooperation and assistance. These include the general basis for conducting joint investigations,<sup>28</sup> cooperation in special investigative procedures, such as electronic surveillance and general law enforcement cooperation.<sup>29</sup> The development of domestic training programmes and the provision of technical assistance to other States in training matters are also encouraged.<sup>30</sup>

#### **THE PROTECTION AND SUPPORT OF VICTIMS AND WITNESSES**

The nature of transnational organized crime makes the protection of victims and witnesses a matter of some importance. Article 24 of the Convention requires States parties to adopt appropriate measures to protect witnesses from potential intimidation or retaliation. This includes physical protection, relocation and, within legal constraints, concealment of identities. States are called upon to consider international relocation of witnesses where appropriate. States parties are also encouraged to develop techniques and programmes that encourage those involved in organized crime to cooperate with law enforcement authorities.<sup>31</sup> In addition, the Convention provides for the protection and support of victims, who may be covered by the provision dealing with witnesses also.<sup>32</sup> Victims of trafficking in persons are particularly in need of protection and support. In many cases, repatriation may leave them vulnerable to retaliation from offenders, the possibility of being re-trafficked or social stigmatization, in particular if they were trafficked into prostitution or similar activities. The Trafficking in Persons Protocol therefore contains additional safeguards for victims, both generally and in the context of return to their countries of origin.<sup>33</sup>

#### **POSSIBLE FUTURE INSTRUMENTS**

The structure of the Convention and its Protocols leaves open the possibility that further protocols could be created to respond to concerns about other specific forms of transnational organized crime. The advantage of this approach is that many of the general provisions, such

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<sup>27</sup>Article 18, paragraphs 23, 25 and 26.

<sup>28</sup>Article 19.

<sup>29</sup>Articles 20 and 27.

<sup>30</sup>Articles 29 and 30.

<sup>31</sup>Article 26.

<sup>32</sup>Article 25.

<sup>33</sup>Articles 6 and 8, paragraph 2.

as those dealing with mutual legal assistance and extradition, could be applied to new subject matter with little or no modification, leaving Governments and their negotiators free to concentrate on issues and options specific to the subject matter at hand. This might also serve to reduce the length of time consumed by negotiations, allowing the international community to react more quickly to the evolving problems of transnational organized crime. Any mandate for such negotiations would come from the General Assembly in much the same form as the original mandate, resolution 53/111 of 9 December 1998.

Article 32 of the Convention establishes a Conference of States Parties to promote and review efforts to implement the Convention, a function that will be applied, *mutatis mutandis*, to each Protocol in accordance with its article 1. In its resolution 55/25, by which it adopted the Convention, the General Assembly provides that the Ad Hoc Committee on the Elaboration of a Convention against Transnational Organized Crime will meet to prepare the draft text of the rules of procedure for the Conference of States Parties prior to its first meeting, which must be convened not later than one year following the entry into force of the Convention<sup>34</sup> Within its mandate, the Conference is called upon to facilitate the operation of elements of the Convention dealing with international cooperation, technical assistance, information-sharing and raising some of the necessary funds by voluntary contributions from States. Its mandate also includes conducting periodic implementation reviews and making recommendations to improve the Convention and its implementation. This could include proposals by the Conference for further protocols, although any mandate to proceed with the negotiation of a new instrument would have to emanate from the General Assembly, as was the case with resolution 53/111.

As noted above, the provisions governing the scope of application of the Convention, which also apply to the Protocols, generally limit application to cases where there is some involvement of an "organized criminal group", subject to the more specific scope principles that are applied to particular provisions of the instruments. This effectively precludes the development of further protocols in areas where there is any significant amount of crime that does not involve an organized criminal group as defined in article 2, subparagraph (a), of the Convention. In such areas, a separate instrument would be needed, although many of the general provisions of the Convention governing such things as mutual legal assistance and extradition would no doubt serve as useful precedents.

Two significant areas under discussion at present are high-technology and computer-related crime and corruption, both of which raise substantial issues of transnationality and both of which combine organized criminal activities with significant elements of non-organized crime. Many major offences committed with the use of computer net-

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<sup>34</sup>General Assembly resolution 55/25, paragraph 10, and article 32, paragraph 2, of the Convention.

work technologies or against those technologies, for example, involve single offenders. The nature of the technologies also makes possible crime by groups, such as paedophiles, which may not be "organized" in the sense of the Convention definition, if at all.

Since the adoption of the Convention, the desirability of an instrument dealing with high-technology and computer-related crime was considered by the Commission on Crime Prevention and Criminal Justice at its tenth session, but no further action was taken.<sup>35</sup> Work on a further international legal instrument dealing with corruption has already commenced, however. In its resolution 54/128 of 17 December 1999, the General Assembly directed the Ad Hoc Committee to incorporate into the Convention measures against corruption linked to organized crime, and requested it to explore the desirability of an international instrument against corruption. The following year, acting on the report of the Ad Hoc Committee,<sup>36</sup> the Assembly in its resolution 55/61 established a further ad hoc committee to negotiate such an instrument, once certain preliminary requirements, including completion of the United Nations Convention against Transnational Organized Crime, had been met. One of those requirements was the development of terms of reference for the negotiation of the instrument, to be developed by an intergovernmental open-ended group of experts. The Intergovernmental Open-Ended Expert Group to Prepare Draft Terms of Reference for the Negotiation of an International Legal Instrument against Corruption met in Vienna from 30 July to 3 August 2001, producing a draft resolution that will be considered by the General Assembly at its fifty-sixth session.<sup>37</sup> Subject to final determination of its title, the instrument will be referred to as the "United Nations Convention against Corruption" and the negotiations are set for 2002-2003, with at least three sessions of two weeks' duration per year.<sup>38</sup>

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<sup>35</sup>See the report of the Secretary-General on the conclusions of the study on effective measures to prevent and control high-technology and computer-related crime (E/CN.15/2001/4). While no official action was taken, several delegations at the Commission expressed the view that it would be premature to negotiate such an instrument at the present time (*Official Records of the Economic and Social Council, 2001, Supplement No. 10* (E/2001/30/Rev.1), paras. 37 and 38).

<sup>36</sup>A/AC.254/25.

<sup>37</sup>Revised draft resolution entitled "Terms of reference for the negotiation of the United Nations convention against corruption" (see A/AC.260/2, para. 5).

<sup>38</sup>See the report of the Intergovernmental Open-Ended Expert Group (A/AC.260/2).