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Understanding Transnational Organized Crime

A constructivist approach towards a growing phenomenon



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Generally speaking, ends, ways and means of Organized Crime (OC) remain consistent: the main motive of OC was, is and will be profit (“ends”). Trade with any goods, even human beings, is still the most powerful lever (“means”) to gain profit. And the central method (“ways”) is corruption. What is “new” in regard to OC is the increasingly transnational character of this phenomenon, in terms of an expansion in volume, geographical scope, and the complexity of the criminal process. Organized Crime is no longer an isolated issue of criminality in a single country, but a transnational problem affecting the global system and international relations. Transnational Organized Crime (TOC) today is much more about transactions and related processes than actual products; its real power and flexibility therefore lies in the network of nodes that connects initial production and final distribution of any good or service that it encompasses. From our point of view, it is not possible to define TOC through a positivist or normative approach that claims to describe the phenomenon definitively. As shown in this article, the idea of a single model that defines TOC as entity, unavoidably leads to misinterpretation because this man-made phenomenon appears in various fields of criminal activity and also acts through diverse types of organizational structures. Instead, we apply a constructivist view that incorporates these varied dimensions of TOC into account and enhances our explanatory power and flexibility. Through such an approach, TOC can be understood primarily as a set of interactions – and therefore its process-related character becomes much clearer.

INTRODUCTION

In the international security debate after the cold war, security challenges are defined in a broad sense and encompass challenges and threats such as the proliferation of weapons of mass destruction, failed states, OC, regional wars as well as climate change, disturbances of the energy sector and so on. Last but not least international terrorism is viewed as the most central threat as a result of 9/11. Although OC is considered to be one of these global

challenges, OC seems to be dwarfed by the other security issues and it is still primarily understood as a challenge for the internal security of individual states. This might be due to two common errors of reasoning: First, that OC is “only” crime; and second, that OC is an underground phenomenon. In this context, one can observe a strong dichotomous tendency to distinguish between “good” and “bad”, and to locate OC only on the negative end of the spectrum. In the discourse on OC,

emphasis is predominantly placed on issues such as drugs, prostitution or the illicit trade in arms or traffic in human beings.

A look at the big picture leads us to recognize that OC must not be viewed as an “abnormal” criminal, yet clearly definable phenomenon in some countries or regions any longer. Instead, we must be aware that OC is a phenomenon which touches all areas and actors of society, including those dedicated to combating and controlling OC. Even developed states, long characterized as being immune against OC because of their intact social fabric, stable economic situation and low corruption, are today confronted with the challenge of OC.

The aim of this article is to analyze TOC¹ by providing an overview of the basic characteristics, dimensions and main trends of this phenomenon. Contrary to positivist or moralist approaches, which claim to describe the phenomenon definitively, we employ a method that can best be described as a constructivist approach. Finally, central preconditions for an effective and sustainable fight against TOC will be explored. We argue that due to the complexity and dynamics involved, only a comprehensive understanding and a comprehensive approach will be effective in confronting the challenges posed by a complex transnational phenomenon.

DEFINING TRANSNATIONAL ORGANIZED CRIME (TOC)

There is still no agreement on a single definition of TOC. Nonetheless, the various existing definitions of TOC can give the impression that it is possible to define and describe the phenomenon successfully; however, simply using these definitions without understanding their origin and context is problematic.² By examining the main authors of current definitions, we see that national and international governmental

agencies and institutions have produced the bulk of OC definitions.³ Notably, these mostly follow either a positivist or moralist definition. Moreover, each of these institutions has certain purposes and aims that shape their definition. The type of definition they employ has a direct bearing on how narrow or broad the range of their own tasks and responsibilities becomes. This affects not only the definition of OC, but also redefines “normal” crime.

GROUPS AND ACTORS

“The popular image of a concentrated, octopus-like global network of crime syndicates is a fiction” (Friman/Andreas 1999, 7). Nevertheless, actors engage in the activities inherent in TOC and therefore an analysis of these actors seems important (but not sufficient). One main feature of TOC is that the central actors are in fact not individuals but organizational units and networks that carry out their criminal activities across international borders: “Organised Crime is by its very nature a transnational phenomenon” (Jamieson 1999, 100). Transnational criminal organizations are present on each continent but notably vary in their structure, organization and fields of activity. Thus several typologies have been created by various authors:

- ▶ Europol has created its own sophisticated typology of organized criminal groups, which is included in the annual Organised Crime Threat Assessment (OCTA) and constantly refined. In its 2009 report Europol classifies OC groups on the basis of the geographic location of their strategic center and their capabilities and intentions (Europol 2009, 39).
- ▶ An in-depth-analysis of UNODC (UNODC 2002) of forty criminal organizations in different regions of the world identifies five main types of organized criminal groups, a categorization based mainly on their structural features.

- ▶ Nemet and Münnich (Nemet/Münnich 1998, 276–277) analyze different groups by looking at their degree of organization, division of labor, and their relationship to public life.⁴
- ▶ Finally, authors such as Jamieson (Jamieson 1999, 100–102) focus on the various forms of cooperation between criminal organizations.

FIELDS OF ACTIVITY AND CRIMINAL MARKETS

Another dimension for investigating TOC is to analyze fields of activity and criminal markets. Today, most observers assume that TOC will increasingly gain influence on the economic life, social fabric, public administration, judiciary and politics of societies through its enormous financial power. In general, a growth pattern in TOC should be expected. The main motive behind TOC is, and will remain, profit. Profit rates are extremely high. Moreover, there are very few legitimate business sectors, which hold out the promise of similarly high rates of profit. Despite the poor data on TOC available, due to the lack of a uniform definition and interpretation, different estimates still conclude that the global turnover, or “gross criminal product”, accounts for between 2–3 trillion dollars annually – or equal to approximately seven percent of the world’s GDP (Schneider 2008, 2).

Due to increasing profit rates, and also due to the growing use of legal business strategies such as diversion of activities and cooperation with other criminal groups, experts now speak about “criminal business” and “criminal industry” (NATO 2004). Another term developed to capture the present dynamism and flexibility of TOC activities is “multi-crime” (cp. Europol 2008, 26), which refers to criminal efforts to fully exploit all available legal and illegal means (e.g. communication

technology) and developments (e.g. globalization) available to them to provide a wide range of illegal products and services to “customers” located all around the globe.⁵

The growing tendency in TOC to apply principles and logic of the licit economy is reflected in the use of the term “criminal markets”. Criminal markets are not only characterized by the illegality of the goods or services being traded or the illegal nature of the traders involved (Criminal Intelligence Service Canada 2005). The basic principle of demand and supply applies to those criminal markets as well. As general trends in criminal markets, increasing dynamism and capacity to respond to new demand and new legal loopholes are also prominent, as is the increasing tendency of legitimate and underground markets to exist in parallel and simultaneously (Criminal Intelligence Service Canada 2005). Additionally, Europol (Europol 2009, 17–24) notes that businesses with an illegal background are increasingly pushing into the legitimate economy in order to launder money.⁶

CRIMINAL HUBS

The distributive character of TOC can clearly be observed in certain geographic regions. Europol uses the term “criminal hubs” for such regions and defines them (in relation to the EU) as follows: “A ‘criminal hub’ is a conceptual entity that is generated by a combination of factors such as proximity to major target markets, geographic location, infrastructure, types of OC groups and migration processes concerning key criminals or OC groups in general. A criminal hub receives flows from a number of sources and spreads their effects in the EU, thereby forging criminal markets and creating opportunities for the growth of OC groups that are able to profit from these dynamics. The criminal hubs do not exist by or for themselves. They are supplied by so-called feeders,

which are often locations just inside or outside the EU borders providing goods to the important European hubs (...)" (Europol 2009, 27). Common features of all hubs are that they have sea access and major ports. However, a certain degree of specialization can be observed.⁷ Today, Europol identifies five criminal hubs in Europe.

DIRECT AND INDIRECT EFFECTS OF TOC

As UNODC notes in its global assessment, violence is one of the most visible side effects of TOC and attracts media and public attention at the domestic and international levels. In its most extreme form, violence in the context of TOC can even take the form of warlike situations.⁸ However, the threat of TOC goes much deeper and can exist even in the absence of violence: "Typically, the better organized the crime, the less violence associated with it. The groups concerned have paid off the appropriate officials, resolved intra- and inter- group tensions, and terrified the public to the extent that very little additional violence is required" (UNODC 2010, 35).

UNODC suggests a differentiation between direct and indirect effects. Direct effects are "essentially the reasons each criminal activity was prohibited in the first place" (UNODC 2010, 35). One of the most prominent parameters of these direct effects is the number of drug addicts.⁹

The indirect effects, however, are even more complex and usually can undermine the state and the very fabric of society. This has deleterious effects (in particular in developing countries) with regard to the autonomy and capacity of the state and the accountability of a government. Through the establishment of parallel structures of power and control, the activities of the criminal organizations often render public development efforts useless, because in

contrast to the government there is no incentive for these groups to advance society. Instead, the aim of criminal groups is exclusively to secure profit for members of their network. Generally speaking, it can be difficult to accurately assess the direct and indirect effects of TOC for two reasons. First, since empirical data are often poor, the question of the actual size of the threat and real number of victims remains difficult to determine definitively.¹⁰ Second, most of the consequences of OC are in fact creeping or erratic in nature.¹¹ "Creeping" refers to the fact that the effects cannot clearly be defined and that they are slow to emerge or do so over the long run (e.g., the erosion of states and the emergence of parallel societies or social structures). "Erratic" means that the effects interact with each other in unpredictable ways and the implications of these interactions remain largely unclear (e.g., the interaction between TOC, terrorism, and failed states).

FUTURE TRENDS

Several general trends can be identified with regard to global TOC. Most experts point to a further expansion of TOC, in qualitative and quantitative terms, and to a further blurring of the lines between legal and illegal business. One can also expect the growing influence of TOC in the political process within states as well as on the international level. Mörbel and Schmidt (Mörbel/Schmidt 2007, 11–12) define the following parameters as likely characteristics of the future development of TOC:

- ▶ Further professionalization and use of business-like structures and procedures to avoid detection and prosecution;
- ▶ Increased use of new technologies, in particular the internet, for fraud to achieve financial gain;¹²
- ▶ Growing alliances between international OC and criminal groups on the local level;

VOCABULARY

deleterious
schädlich

blurring
Unschärfe

VOCABULARY

overarching
überspannend, allumfassend

- ▶ Increasing danger that criminal structures develop within businesses which use OC methods, and even structures, to illegally influence market processes;
- ▶ Greater geographic flexibility of OC groups connected to an expanding area of operations;
- ▶ Continuing and growing influence of OC actors, in particular in developing countries.

UNODC and other institutions note that within the last decade a remarkable shift has taken place concerning the structure of OC-groups – one from hierarchically organized groups to loose and highly dynamic networks (UNODC 2005, 27). As Europol notes in the 2006 OCTA (7): “OC groups are also becoming increasingly heterogeneous and dynamically organized in structural terms, moving towards loose networks rather than pyramidal monoliths.”

THE RESPONSES

Although responses to TOC vary depending on how the phenomenon is perceived, we can make two general observations. First, TOC is still largely seen “only” as crime that resides on the margins of society. In this view, the fight against TOC is viewed primarily as residing in the domain of (national) law enforcement agencies, and not of the society per se, including the ordinary citizen. Second, there are two predominant approaches in terms of potential responses. From the organizational/network-focused perspective, the main strategy is to identify and disable the central nodes of a given OC network (Giraldo/Trinkunas 2007, 358). The other approach is based on the idea of “transnational crime as a marketplace” and argues that to effectively combat OC, demand must be eliminated. Supporters of this strategy often criticize the prevailing approach of governments and law enforcement agencies that focus on the supply-side

of the criminal market (Naylor 2002, 11). Both approaches have their strengths but also their limitations. As the UNODC report notes: “(...) while organized crime groups can become problems in themselves, eliminating these groups is unlikely to stop the contraband flow. National efforts have successfully diverted production or trafficking to other countries, but so long as there is demand, national law enforcement alone cannot solve the problem” (UNODC 2010, vi)

In our view there are at least four fundamental preconditions for an effective and sustainable fight against TOC. As we have demonstrated, TOC is a transnational process of high complexity and dynamism across various dimensions. Therefore, the first and probably one of the most difficult preconditions is to develop a comprehensive understanding of the phenomenon. From a conceptual perspective, the idea of “comprehensive security” strives to integrate all relevant dimensions, including social, cultural, economic, legal and psychological aspects, as well as the political and strategic level. A central challenge in this respect is the integration of interdisciplinary academic research and the experience of practitioners into a common understanding.

Because of the complexity of the phenomenon, approaches that focus either on a single dimension of the threat (e.g. groups), or on single countermeasures, cannot hope to be effective in the long run. Hence, the second precondition is an overarching methodological approach that is based on a comprehensive understanding of the threat. This notion is reflected in the so-called Comprehensive Approach (CA), which has relatively recently emerged in the security studies field.¹³ Although there is no commonly accepted definition for “Comprehensive Approach”, there is broad agreement that a CA is an integrative

approach and thus requires the collaboration of different elements, actors and instruments. Moreover, a Comprehensive Approach is in particular characterized by the idea of prevention, including the creation of a stable environment.

With regard to the implementation of the Comprehensive Approach on the national and international levels, four models are prominent. First, the “Whole of Government Approach” (WGA) resorts to using all available instruments, organizations and resources of a state. Second, the “Whole of Nation Approach” (WNA) goes a step further and includes elements of the civil society of a country. The focus of both national approaches is to avoid duplications, to set priorities and to improve civil-military cooperation (“integrated security”). On the international level, CA may refer either to the approaches of international institutions or organizations¹⁴, whose aim is the harmonization of the different Whole of Government Approaches; or to the “Whole of System Approach” (WSA), which aims to spur cooperation among state and non-state actors alike to form a coherent overarching approach.

With regard to TOC, a Comprehensive Approach can be applied in two ways. First, the CA is viewed as a concept that incorporates all measures and instruments to all challenges. This version is termed an “all-hazard-approach”. Second, the CA can be understood as a general guideline that allows for the deduction of specialized, issue-driven approaches. Given the complexity of TOC, we would suggest a special “Transnational Organized Crime-Comprehensive Approach” (TOC-CA), which would focus only on the phenomenon of TOC. We can already see some efforts in this direction on the international level (e.g. within the UN, the EU or the OECD).¹⁵ But we are also aware of the

problems resulting from such an approach (such as the need to prioritize the threat, limited resources and competencies, etc.), and for most states the first approach seems much more promising.

The third precondition, which we consider to be essential, is the existence of the political will needed to fight TOC. Assuming that there is in fact real political will to combat TOC, this will must be based on three elements. First, decision makers must abandon traditional patterns of thought that view TOC as a singular, isolated criminal challenge. It is necessary that politicians accept that even their societies are affected by the activities of TOC. Not to do so would be similar to the proverbial ostrich avoiding reality and thus would yield a flawed and ultimately dangerous policy. Politicians must therefore broaden their perspectives and recognize TOC as a strategic challenge. They must know about its complexity in all existing dimensions, and acknowledge that it is impossible for any society not to be affected by TOC.¹⁶ Second, politicians must accept that TOC is also a political phenomenon since it can only prosper if its activities are more or less supported by representatives of the state. This means that there is a strong relationship between corruption and TOC. Therefore, the fight against corruption must necessarily feature prominently in the larger struggle against TOC. Moreover, this would be a clear signal to the population that the government is willing and able to take measures against TOC, even with regard to itself or state structures. Third, the notion that traditional instruments of internal security are the only, or most suitable, means to fight TOC must also be abandoned. Because of the multifaceted nature of TOC, broadly complementary measures are required for effective action that involve a wide range of public and non-state actors –

VOCABULARY

(to) spur
Sporn; anspornen

flawed
mängelbehaftet

VOCABULARY

unwittingly
unabsichtlich, unwissentlich

albeit
wenn auch

including civil society and the population – on various levels. In this environment one has to reconsider whether a heavy concentration on strong measures against the “supply-side” is the most effective response. To decision makers, this approach may still be preferable because they can use a state’s traditional and accepted instruments of power, which are assigned to ministries or other government agencies. Such instruments are also quite popular in the general public. However, we argue that these measures retain their legitimacy but must be joined by preventive measures as complements to be successful. This shift requires a rethinking of how to bring about severe reductions on the demand side of the equation that might require complex and potentially difficult changes in the social values.

Despite the fact that states remain the central actors in the fight against TOC, it is an illusion to think that any single state can effectively combat TOC. Cooperation with other international actors, such as other states or international organizations, is therefore an indispensable element of any Comprehensive Approach. This issue is crucial because cooperation in the field of security usually affects the national sovereignty of states and states are therefore more reluctant to cooperate than might otherwise be the case.

The fourth precondition, which is often neglected or not taken into consideration, is that a society itself must take an active part in the fight against TOC – principally because society itself is directly and indirectly affected. Therefore society has the right to be informed about the threat posed by TOC. This, in turn, is a challenge for the information policy of governments, which must find the balance between exaggerating and understating the threat. It will also be a challenge for society because it must accept the fact that TOC has become

a part of everyday life. Individuals must know that they can come *unwittingly* and unintentionally in contact with TOC in their daily lives (e.g., through purchasing of counterfeited software, the more or less illegal download of songs, games, etc.)¹⁷ from the internet, the illegal employment of an employee or through the consummation of sexual services, etc.) Most individuals are aware that they might violate the law, but only a few are really aware that in committing these “smaller” and “normal” crimes, they might become part of the broader criminal market that constitutes TOC.

To sum up, the demand-side of the criminal market is in fact also responsible for the existence and spread of TOC. Every individual’s actions may have some role in this process – *albeit*, in a mostly indirect manner. This insight, and the fact that every individual bears a responsibility, should be one of the most important elements in adaptation of a Comprehensive Approach to combat TOC. Measures taken by states are of course necessary and key elements in this struggle, but we argue that it is important that citizens understand the reasons why certain measures are taken. Only under these circumstances the population – at least the majority of it – will accept such measures – in particular if they involve restrictions on their freedoms – and alter their own collective and individual attitudes and behaviors.¹⁸

CONCLUSIONS

It is no exaggeration to say that the fight against TOC has become a central issue affecting virtually all policy and societal realms. The challenge is complex and responses to it must be complex as well. One of the most important elements in an effective and sustainable fight against TOC is not the development of concepts or strategies or the establishment of new in-

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stärken

stitutions, but the mobilization of political and social will. Another essential element is to understand the phenomenon in a comprehensive way. Therefore, an interdisciplinary academic approach, combined with the experience of persons with practical experience, can best contribute to this comprehensive understanding and to effective combating of this phenomenon. In particular, the social sciences are well equipped to integrate the relevant, broad

societal context and underlying processes of TOC and enable actors to develop policies that target the demand side of the criminal market underpinning TOC. Thus social sciences can help to view TOC from different perspectives and enable us to realize what this phenomenon really is: An underestimated transnational strategic threat of high complexity, which affects the foundation of societies worldwide.

¹ “Transnational” relates to relations and processes among non-state actors and has global perspective in regard to geographical scope and ambition. Taking a look at the specific situation of OC, it thus becomes clear that today, all OC is transnational in nature and hence can be denoted “Transnational Organized Crime” (TOC).

² For more information on the terminological history of OC see: von Lampe 2010.

³ See: Calcagni 2010.

⁴ In regard to the organization of various OC-groups see: Raith 1995, 42–49.

⁵ Concerning the volume of TOC, UNODC provides in the 2010 Transnational Organized Crime Threat Assessment for the first time a comprehensive set of figures.

⁶ Naim (Naim 2005, 26) estimates that the global GDP consists up to ten percent of laundered money.

⁷ For details see: Europol 2009, 27–36.

⁸ E.g. the “Drug War” in Mexico: Since the beginning of the offensive of the Mexican army and police against cartels of the drug trade in December 2006 to the end of 2010, more than 26.000 people lost their lives. According to several media reports around 40.000 members of the

army, 5.000 of the police and 300.000 members of different drug-cartels/-clans are involved. One can observe violent hostilities not only between the armed forces and the cartels but also between the different cartels.

⁹ UNODC (UNODC 2010, 35) estimates that between 172 and 250 million adults used illicit drugs in 2007.

¹⁰ The data-issue can be illustrated by two examples: The number of users of illicit drugs in 2007 is estimated between 172 and 250 million adults. Only one out of twenty or one out of thirty victims of trafficking in human beings are ever identified (UNODC 2010, 35–36).

¹¹ In contrast to e.g. “traditional” effects, which refer mainly to capacities of armed forces, “irregular” effects, which refer to the capacities of terrorist groups or guerrillas or “disruptive” effects”, which are caused by certain unforeseen event, and which make traditional concepts obsolete. This approach to define challenges by their effects can be found in the US National Defense Strategy 2005.

¹² For details on recent and future development see: Europol 2011.

¹³ See e.g. Mölling 2008; Rintakoski/Autti 2008.

¹⁴ Such as the CA of NATO, UN but also of the World Bank.

¹⁵ See e.g. Calcagni 2010; Pankratz 2010.

¹⁶ However, this does not mean that politicians must be experts in TOC, but rather that they must have at least some impression of the phenomenon.

¹⁷ Naim (Naim 2005, 25) estimates that in the United States and the European Union the percentage of counterfeited software amounts up to 25 percent.

¹⁸ We are quite aware that this is an idealistic approach and we are also aware that TOC cannot be eliminated solely by following our suggestions. However, our approach constitutes an essential element of the solution.

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