

## CHAPTER 3

# ORGANISED CRIME: THE EVOLUTION OF A MAINSTREAM DEFINITION

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The remainder of this monograph is concerned with a mainstream definition of organised crime. In this section, the evolution of this definition is sketched. In the next, the underlying assumptions are described and critiqued.

Before beginning this analysis, it is necessary to make clear the importance of a definition. The subject of organised crime has generated substantial interest in academia, the media, politics and in law enforcement. In most criminology courses there is a module on organised crime; in most libraries there is a sizeable section on organised crime, filled with dedicated books and specialists journals; in most law enforcement bodies there is a specialised unit for combatting organised crime; the UN now has a Convention on Transnational Organised Crime. Organised crime is not just a potential international threat, it is a hugely influential concept. The debate on clarifying precisely what it is will influence public spending and the activities and focus of law enforcement, as well as scholarly exploration.

Unfortunately, organised crime—some would suggest by its very nature—is a topic that seems frustratingly beyond objective measure, and so beyond easy classification. According to some, the reason for this inherent ambiguity lies predominantly in the problems of doing sound empirical research on an entity that is obscured in the murky criminal underworld. The reality of organised crime is therefore not easy to discover because academics and journalists cannot conduct extensive and reliable research. This situation is made worse by the fact that writers looking to sell newspapers, ‘true-crime’ books and light-weight academic publications readily and unquestioningly accept poor empirical data. Regrettably, many feel that sensationalist reporting has helped spawn a vast fascination with organised crime that has led to fantasy depictions of *the Mafia* that have obscured serious research still further.

However, disagreement over what organised crime is, is not simply caused by incomplete data or ‘bad research’—criminologists are not waiting for improved data-gathering techniques before the intricacies of organised crime are finally revealed. As will be shown in the next two sections, deciding what or who the underlying unit of measurement is has been the real stumbling block.

## Organised crime as criminal business activities

Most comprehensive insights into the origin of the concept of organised crime begin in America early in the last century. The first major attempt to provide an official definition was made by those involved with a federal commission set up by President Hoover in 1929. The Wickersham Commission, as it was later known, was not principally interested in organised crime *per se*, but was initially established to address the heated debate surrounding the prohibition of alcohol brought about by the Volstead Act. As was commonly acknowledged at the time, this piece of legislation was clearly unsuccessful for the consumption of alcohol remained commonplace and the clandestine businesses of ‘gangsters’ flourished as a result. Although this concern formed the basis of the Wickersham Commission, Hoover later expanded the scope of the investigation to cover the enforcement of all federal government laws, including those on the narcotics trade, immigration and trade restraints. As an overarching theme, the Commission was tasked to answer a rather straightforward question: “Why don’t citizens obey the law?”.<sup>47</sup>

Hoover was the first president to use the term ‘organised crime’. When he spoke to the Commission prior to the investigations, he stated that:

The American people are deeply concerned over the alarming disobedience of law, the abuses of law enforcement and the growth of organized crime, which has spread in every field of evil doing and in every part of our country.<sup>48</sup>

It is hard to know what President Hoover meant by organised crime. Prior to 1929 it was a concept that had made only fleeting appearances in mainstream publications and few scholars had addressed it systematically. In 1927 Fredrick Thrasher produced the classic text *The gang* which contained explicit reference to organised crime.<sup>49</sup> However in this book, which concentrated on urban, working class street gangs, organised crime seemed to be used to describe the way in which the economy of the underworld was structured. It was not a term Thrasher used as a criminological category and nor did he provide a clear definition.

From a comprehensive study of published material, Michael Woodiwiss has argued that until the early 1930s most ‘serious’ references to organised crime saw it as synonymous with ‘racketeering’, a term that for most Americans meant illegal and fraudulent businesses interests such as selling illegal or stolen goods, insurance frauds, forgery and illicit gambling. Woodiwiss suggested that for the

most part these so-called serious commentators were not naïve about who was involved in organised crime and it was generally understood that criminal networks often included the active involvement of police, politicians, judges, lawyers and ostensibly legitimate businessmen.<sup>50</sup> Woodiwiss, however, pointed out that less prudent commentators saw the perpetrators of racketeering to be predominantly outside the formal world, drawn from some mysterious criminal conspiracy. This view was particularly popular in sensationalist media reporting, as it still is.

Given the confusion underlying the notion of organised crime, it was interesting to see how the investigators involved in the Wickersham Commission dealt with their task. Overall the Commission produced muddled findings and it failed to provide a reasoned answer to the prohibition conundrum, at least one that would sway pre-conceived views held by the public and politicians alike. However, in one of the Commission's main reports, Goldthwaite Dorr and Sidney Simpson did provide the first detailed insight into what they understood organised crime to be. In doing so they provided a conceptual understanding that was both short-lived, and, academically speaking, ahead of its time.

The report in question was concerned with the cost of crime to the USA. In trying to arrange information on criminal costs, Dorr and Simpson produced four categories of losses caused by criminal acts: those due to crimes against the person; those due to crimes against property; those incidental to the administration of justice; and a class referred to as "losses due to other crimes affecting wealth".<sup>51</sup> That these four categories may seem incoherent is not important here, for what was interesting was the details of the fourth category, as this was concerned with the public impact of organised crime.

This category had two parts. The first was commercial fraud, about which Dorr and Simpson wrote the following:

...criminal frauds which cause the largest losses are organized schemes, carried on as a regular business, and, in many of the most serious cases, masquerading as legitimate business enterprises. Such criminal schemes shade off by imperceptible degrees into enterprises which are so conducted as to avoid criminal liability although employing unethical or even illegal methods of doing business; and the line between criminal and non-criminal activity is thus frequently a rather arbitrary one.<sup>52</sup>

The second part comprised extortion and, more importantly, racketeering. Of the latter Dorr and Simpson were frustrated by the lack of evidence, but their enquiries led them to believe that in order to understand racketeering one must be aware of the ongoing, and at times mutually beneficial, relationship between the racketeer, the consumer, legitimate business and the law enforcement official. Indeed, a report dealing with the illegal supply of alcohol stated that distribution often depended on “flagrant corruption” involving the active participation of police, politicians and gangsters.<sup>53</sup> Implicating such a wide range of people seemed to fit in with the broad thrust of the rather damning Commission in as much as it concluded that the problems of crime clearly indicated fundamental flaws in American laws and institutions.<sup>54</sup> Writing in 1931, Walter Lippmann summarised this opinion as follows:

[The underworld] is integral to the policy which our laws have laid down, and to the assumptions upon which Americans have been taught to govern themselves. It is the creature of our laws and conventions, and it is entangled with our strongest appetites and our most cherished ideals. The fact that the underworld breaks the law which we all respect in principle, that it employs methods, such as bribery, terrorism, and murder, which we all deeply deplore, should not divert our attention from the main point, which is that the underworld performs a function based ultimately upon a public demand.<sup>55</sup>

The significance of Dorr and Simpson’s report was not only that it reproached American policy and laid blame on a whole host of actors: equally important was the decision to lump together the crimes of legitimate businesses and racketeering under the general heading of organised crime. Both these crimes, they posited, were examples of “organized crime as business”. Apparently this was not viewed as a particularly contentious move by the two researchers, as the Commission accepted this conceptualisation. As confirmation of this approval, the final report to the President ended by saying that, “dealing effectively with organized crime, whether commercialized fraud or extortion, can not be overemphasized”.<sup>56</sup>

Writing in the 1990s, Dwight Smith pointed out that this interpretation of organised crime flew in the face of conventional wisdom, particularly in our own era. The gangster believed to be the architect of racketeering is rarely viewed in the same light as the businessman who commits fraud. The two are seen to exist in sufficiently different environments making them worthy of separate criminological compartments. However, Dorr and Simpson began their inves-

tigation by considering specific *activities* and not specific *criminals*. From this point of departure it is straightforward to see how they ended up putting the criminal businessman in the same basket as the gangster. Dwight Smith explained this via two observations:

First: the circumstances in which the businessman engages in criminal frauds ‘shade off by imperceptible degrees’ so that ‘the line between criminal and non-criminal activity is thus frequently a rather arbitrary one’. That is, in cases of criminal fraud, businessmen come to behave like gangsters. Second: like criminal fraud, what gangsters do is an illustration ‘of organised crime as a business’. Therefore, if businessmen and gangsters behave like each other, what is the sense of having two categories that, by definition, are not mutually exclusive?<sup>57</sup>

## Organised crime as a criminal conspiracy

The Wickersham Commission reports, and more specifically the writings of Dorr and Simpson, have provided rich pickings for generations of organised crime scholars. However, much hard work and the conceptual brilliance behind their reports seemed to fail to achieve the desired outcome. In sum, the key findings of the Wickersham Commission were largely ignored. This should hardly come as a surprise. Tasked with explaining why Americans did not chose to abide by Federal laws, Wickersham answered by blaming the legal and political foundations of the country. President Hoover was in no mind to lambaste the laws and institutions at the heart of the nation and thus the Wickersham Commission produced little in the way of legislative legacy.

The perception of organised crime presented by Dorr and Simpson also proved moribund. This is also unsurprising given the two key aspects of their understanding, these being that:

- organised crime stood for business activities that included both the commercial crimes of businessmen, and crime normally associated with gangsters, namely extortion and racketeering; and
- to understand organised business crimes, especially racketeering, one had to bear in mind the mutually beneficial relationships between various actors, including politicians, businessmen, police as well as gangsters.

Tasked with updating the official understanding of organised crime, the next generation of government consultants produced a definition that fundamentally contrasted with the first. It was also a definition that had a far greater impact in academia, politics and the media.

The weak legacy of Dorr's and Simpson's conceptualisation is hard to explain. Dwight Smith implicated the ground-breaking studies of Edwin Sutherland in undermining the first core tenet of Dorr's and Simpson's definition. Sutherland achieved this through his pioneering work on white-collar crime, made public to much acclaim in 1939.<sup>58</sup> He conducted research into 70 leading corporations and 15 public utilities, revealing that crimes committed by men in positions of respectability and power were commonplace and as harmful as conventional crimes. Sutherland also brought attention to the fact that these corporate criminals were, incorrectly, viewed in a different light to the common criminal. He went on to try and construct a general theory of crime applicable to both common criminal and corporate deviant, albeit rather unconvincingly.

Few criminologists have anything but respect for Sutherland's project and his work continues to raise debate and dominates theoretical discussions in the field of white-collar and corporate crime. However, Dwight Smith points out that Sutherland's work contrasted to Dorr's and Simpson's in the important respect that he separated crimes involving legal businesses from racketeering. Where Dorr and Simpson had used organised crime to cover all business crime, Sutherland captured the limelight by creating a unique category for the crimes of those in positions of 'respectability'—normally men who held high-ranking positions in the economy. In doing so, Sutherland also compartmentalised crime not by criminal activities, as had the Wickersham Commission, but by the characteristics of the offender. Dwight Smith recognised that once the "businessmen were segregated into a new category with a catchy heading of 'white-collar crime,' the gangsters were left as the sole and indisputable occupants of organized crime".<sup>59</sup>

Dwight Smith was correct in noting this point of departure in criminology, but he probably overstated the relationship between Sutherland's work and the demise of Dorr's and Simpson's progressive understanding of organised crime. In contrast, Michael Woodiwiss's historical study of organised crime<sup>60</sup> focused on the systemic way in which the second tenet of Dorr's and Simpson's definition was eroded, namely, the idea that organised crime was conducted by a wide range of people who occupied key positions in politics, law enforcement and business. Woodiwiss noted that almost immediately after the Wickersham

Commission, government and law enforcement—particularly the newly formed Federal Bureau of Investigation (FBI)—set about improving the image of the police. They achieved this largely via media propaganda such as banning films and radio programmes that glorified gangsters—a theme that was at the heart of many popular films during the Great Depression. Instead, law enforcement investigators became glamourised and depicted as the front line in the fight against unscrupulous gangsters who threatened the American way of life. Put simply, the sordid image of law enforcement officers, judges and politicians working with gangsters was reinvented for political ends as a simple case of *Them versus Us*—the dangerous criminal against the fearless protectors of the vulnerable law-abiding public.

Success in distancing the involvement of police, judges and politicians in racketeering made way for a new description of organised crime. From the mid-1940s onward an increasingly popular theory, largely driven by journalists and agents of the Federal Bureau for Narcotics (FBN), was that the underworld was centrally organised by an Italian organisation that was both ruthless and efficient. This view was initially substantiated by evidence that men of Italian origin occupied leading roles in all forms of racketeering throughout America. The history of this organisation was traced to the immigration of Sicilians prior to the Great War. Among these Sicilians were key members of a secret structure known as the Mafia, who arrived in America and were quick to re-organise and adjust to their new environment. As noted earlier, Robert Anderson explained this process as a qualitative adaptation to modern urban life that involved peasant organisations becoming *bureaucratised*. The result was a criminal organisation known to its members as La Cosa Nostra.

Despite exceptionally weak evidence of the existence of La Cosa Nostra, it was an image that captured the imagination of the public, politicians and law enforcement. In 1950 a Senate Crime Investigating Committee (the Kefauver Committee) was established to look into illegal gambling. As an aside to its central theme, it provided the first endorsement of the new vision of organised crime, although it was far from original and merely gave official authority to a perception borne by investigative journalists and select crime fighters.<sup>61</sup>

The Kefauver Committee's conclusions were later elaborated by the McClellan Committee in 1960, noted for the—some would say confused—testimony of Joseph Valachi, an Italian turncoat gangster who famously testified on his experience of La Cosa Nostra, and then in 1967 by a President's Commission on Law Enforcement and the Administration of Justice. The latter notably defined organised crime as, "*a society that seeks to operate outside the control of the*

*American people and their governments*". One year later the President's Commission led to the first comprehensive organised crime bill, the Omnibus Crime Control and Safe Streets Act, which defined organised crime as follows:

[Organised crime is] the unlawful activities of the members of a highly organized, disciplined association engaged in supplying illegal goods and services including but not limited to gambling, prostitution, loansharking, narcotics, labour racketeering and other lawful activities.<sup>62</sup>

In 1967 the new understanding of organised crime was given a degree of academic legitimacy. In so doing, one academic was swiftly crowned scholar supreme of organised crime. Sceptics see the involvement of an academic as a gesture, one merely designed to boost the credibility of a model that was previously constructed by a group of law enforcement officials. Be that as it may, working under extreme time constraints, Donald Cressey produced a Task Force Report for the Commission that was later turned into a book, entitled *Theft of a nation*. Perhaps not entirely coincidentally, this was published in the same year as Mario Puzo's *The Godfather*, the two being highly consistent. As described earlier, the most important aspect of Cressey's work was his belief that due to its bureaucratic nature, La Cosa Nostra was particularly *efficient* and represented the most advanced form of criminal organisation. Cressey also made clear that the term 'organised crime' was a noun reserved for this type of criminal organisation.

With the publication of *Theft of a nation* the new view of organised crime was cemented—academia had joined popular media, law enforcement, government and even the entertainment industry in agreeing on a view of what organised crime was. In contrast to the early perspectives encapsulated by Dorr and Simpson, it was a sophisticated criminal entity that threatened the foundation of America. Its origins could be traced to secret organisations formed in Italy and Sicily that were imported among the waves of immigrants who flocked to the USA early in the 20<sup>th</sup> century. No longer seen as simply illegal business activities, organised crime was a concept that described a group of special criminals. No longer did the concept implicate American policemen, judges and politicians as key members of a criminal network; rather, these people were the first line of defence against organised crime, to whom government and the public should give further support and backing.

Moreover, no longer was organised crime seen as an outcome of contradictory laws; rather, it was a conspiracy of outsiders who were intent on undermining the country's moral policies, as set out by successive governments.

The view of organised crime as a sophisticated conspiracy involving Italians was boosted from the late 1960s onwards. Fictional work such as *The Godfather* proved particularly popular and was copied endlessly by others. Furthermore, law enforcement made much out of any new evidence or new arrests that somehow backed up the Mafia model and politicians seemed keen to sustain public fear. To what extent these images reflected reality is a matter open for debate. Numerous sceptics have argued that the evidence for the Italian conspiracy model was grossly inadequate and that hidden agendas were being served. For example, in 1957 sensationalist talk of the Mafia led *Time* magazine to assign a dedicated reporter to cover the story. The following is from his report:

I spent some two weeks in New York, Washington and Chicago running down every clue to the so-called Mafia that I could find. I talked to a large number of Federal, state and local law enforcement authorities; to police, reporters, attorneys, detectives, non-profit civic groups such as the Chicago Crime Commission. Nobody from the FBI and Justice Department officials on down, with the exception of a couple of Hearst crime reporters—always happy for the sake of a street sale to associate the ‘Mafia’ with the most routine bar shooting—and the Narcotics Bureau believed that a Mafia exists as such. The Narcotics Bureau, which has to contend with a big problem in dope-trafficking, contends that a working alliance operates between an organized Mafia in Italy and Sicily and a US Mafia. But the Bureau has never been able to submit proof of this, and the FBI is skeptical. The generally held belief is that there is no tightly knit syndicate, but instead a loose ‘trade association’ of criminals in various cities and areas, who run their own shows in their own fields but have matters of mutual interest to take up...At any rate, nobody has ever been able to produce specific evidence that a Mafia is functioning.<sup>63</sup>

While it was true that certain Italian-Americans were prominent figures in specific rackets, concluding that there was a centrally co-ordinated nation-wide organisation lurking behind all illegal operations was a precarious leap of faith, albeit an entertaining one. Indeed, such was the gap between fact and conclusion that some sceptics have advanced their own conspiracy theories. These have dwelled on the possibility that in an era embroiled with Cold War politics, the new version of organised crime was politically convenient. It gave ample justification for the state to expand specialist law enforcement budgets and increase its covert powers, especially in its ability to monitor and remove potentially subversive individuals, some of whom may have been more politi-

cal than criminal. Indeed, Woodiwiss pointed out that measures brought in to fight organised crime, such as increased wiretapping and eavesdropping powers, were used far more often against perceived American dissidents than against American-Italians accused of racketeering.<sup>64</sup>

## **The growth of organised crime and the ‘pluralist revision’**

While the true picture of Italian criminal organisations may be obscure and open to question, from the late 1940s onwards the paradigm within which organised crime was understood had been completely overhauled. From a technical point of view, the new approach used organised crime as a noun for a specific entity. The previous approach had used the term as a catch-all notion of criminal business activity. One method focussed on the ‘who’, the other on the ‘how’.

The change in the use of the term was noted in the 1970s by the Scottish criminologist John Mack who argued that the USA was alone in understanding organised crime as some sort of unique phenomenon. Mack reported that, “on this side of the Atlantic ‘organised’ carries its ordinary dictionary meaning”, and thus organised crime referred to “all criminal operations, however small-scale, in which more than one person participates and some rudimentary role-differentiation occurs”.<sup>65</sup> Mack argued that the American use of the term led to a “special ambiguity”, or, in other words, was fundamentally incoherent.

In retort, a long line of American commentators, perhaps mesmerised by the image of the Mafia, justified such a selective use of the term. Thus, Michael Maltz wrote in 1976:

Of course, we could just define organised crime by characterising it as ‘crime that is organised’, which gets us nowhere...I feel that it is more appropriate to distinguish within that classification the activity of those criminal enterprises that most observers agree are part of the more virulent type of ‘organised crime’.<sup>66</sup>

Identifying the list of traits to describe accurately what was believed to be the more virulent phenomena has been behind most of the definitional literature on organised crime, much of which emanates from the USA. This task proved difficult enough when one major criminal organisation was believed to dominate

US crime. However, by the mid-1980s, it was clear that American-Italians were not—or perhaps no longer—the dominant party in the criminal underworld.

The revelation that new groups were appearing was given ‘official status’ during President Reagan’s commission on organised crime, chaired by Judge Kaufman in 1982. The explicit mandate for the Kaufman Commission was to investigate both traditional organised crime (i.e. the Mafia) and emerging organised crime groups. The latter category included Cuban, Colombian, Japanese, Chinese, Vietnamese, Mexican, Russian, Canadian, Irish, and Jamaican gangs, as well as prison and motorcycle gangs. Where earlier crime commissions were tasked with investigating activities such as gambling and prohibition, President Reagan’s commission was explicitly geared to look at specific crime groups. The ‘who’ was now of uppermost importance.

The realisation that Italian-Americans did not dominate American racketeering may have gone some way in undermining the ‘alien conspiracy’ model, i.e. that organised crime was largely a phenomenon conducted by a distinct group of outsiders. However, as highlighted by scholars such as Stephen Mastrofski and Garry Potter, the new proliferation of organised crime was used to merely expand the old model. The new groups were all defined as ethnically, racially or culturally homogenous and they were all presented as having a rational structure, being ‘rabidly expansionist’ and having alien origins.

However, in an era with more ‘official’ organised crime groups, precise definitions of organised crime were strained. No longer could lists of traits describe what was believed to be the Mafia; they now had to incorporate emerging organised crime as well. In other words, a successful definition had to be malleable so as to include the greater number of underlying groups. It was in this era that squabbling over definitions became a mainstay of organised crime literature.

In one popular text on organised crime, containing contributions from leading mainstream scholars on the subject, the introduction noted the task of developing a definition and that numerous commentators had their own ideas. However, the editors of the book, Einstein and Amir, explained that all agreed there were ‘special elements’ to organised crime that made such groups different from more mundane criminal operations. The authors wrote that:

While organised crime contains the elements of organized criminality, and uses organized criminality, organized crime has its own special elements. These include:

- Greater continuity of structure and activities
- Greater *rationality in structure and activities* (in the licit and illicit economic arenas) and
- Their attempt to gain *control over the licit and illicit markets and/or geographical areas*.<sup>67</sup>

This was a vague attempt to explain to readers what the distinguishing features of organised crime were. Others have been more precise, providing lists of traits that any group must satisfy before it can be considered part of organised crime. Albanese conducted a study of the definitional literature and presented his findings as a list of descriptions in descending order of prevalence:<sup>68</sup>

- organised hierarchy continuing;
- rational profit through crime;
- use of force or threat;
- corruption to maintain immunity;
- public demand for services;
- monopoly over particular market;
- restricted membership;
- non-ideological;
- specialisation;
- code of secrecy; and
- extensive planning.

Both the list above, and the three points raised by Einstein and Amir, can be encapsulated by the influential and oft-quoted definition of organised crime offered by Howard Abadinski:<sup>69</sup>

A non-ideological enterprise that involves a number of persons in close social interaction, organised on a hierarchical basis for the purpose of securing profit and power by engaging in illegal and legal activities. Positions in the hierarchy and positions involving functional specialisation may be assigned according to skill... Permanency is assumed by the members who strive to keep the enterprise integral and active in pursuit of goals. It eschews competition and strives for monopoly over particular activities on an industry or territorial basis. There is willingness to use violence and/or bribery to achieve ends or maintain discipline. Membership is restricted, although non-members may be involved on a contingency basis.

By the mid-1980s US mainstream discourse had come a long way since the investigations of Dorr and Simpson. From the 1950s to the mid-1980s the definition of organised crime had evolved, perhaps to accommodate changes in the nature of organised crime in the US. For most, this change would have been viewed as a maturation of a collective expertise. To others, this so-called progress of knowledge was a process built on a faulty paradigm. For them, the perception of organised crime since the 1930s had deteriorated because people were looking at it from the wrong perspective and were eager to accept questionable evidence. In agreement with other critical criminologists, Michael Woodiwiss has described this as a gradual process of “dumbing down”:

The Kaufman Commission’s understanding of organized crime was representative of a pervasive dumbing down since the early conceptualisations...These had focussed on defects in US laws and institutions and found them responsible for America’s organized crime problems. Kaufman’s group focussed on different groups of criminals and found them responsible for America’s organized crime problems. The logic of early conceptualisations suggested the repeal of unworkable laws and the honest and effective enforcement of the rest. The Kaufman group’s restricted understanding of organized crime allowed them to avoid confronting faults in US laws and institutions, leaving only recommendations of tougher and more intrusive policing of unworkable laws.<sup>70</sup>

## **(Transnational) organised crime and the Palermo Convention**

From the late 1980s, the subject of organised crime received rapidly growing attention. Mainstream commentators agree that this reflects the worldwide expansion of organised crime. Indeed, if we are to believe the quantitative and qualitative changes that have occurred in organised crime in the last few decades, then our contemporary era must approximate what evolutionary biologists call a period of ‘punctuated equilibrium’. As two leading scholars put it: “The rise of transnational organised crime in the last decades of the twentieth century was as unexpected as the end of the Cold War”.<sup>71</sup>

In recent years the conventional wisdom has been that the forces of globalisation have presented organised crime with the opportunity to vastly expand their operations. The familiar traditional organised crime formations underwent an internal revolution and expanded their operations from being primarily domestic to being truly global. At the same time thousands of new crime entities

emerged that were sophisticated, highly mobile, hi-tech and could cross national borders with impunity—hence the notion of *transnational* organised crime. This burgeoning international underworld was fed by the creation of new organised crime hotspots—as the parameters of the Cold War collapsed, troublesome transitional countries performed as criminal epicentres, spreading waves of crime formations throughout the globe. Most noticeably, the disintegration of the Soviet Union gave rise to hundreds of crime groups that quickly ventured overseas and set up criminal businesses in places such as New York and London. So terrifying have these occurrences been that it is now standard to hear organised crime referred as the ‘dark side of globalisation’, the ‘new evil empire’ or as a ‘new form of authoritarianism’.

Due to the perceived development of organised crime, the era since the early 1990s has been one in which a growing number of countries have identified it as a national security threat. This in turn has led to new regulations, new police departments and a spread of academic interest. As both a cause and effect of this burgeoning concern, over 120 countries ratified a United Nations’ Convention on Transnational Organised Crime, at a conference organised in Palermo (often referred to as the Palermo Convention). Accompanying the growth in the desire to combat organised crime was the necessity of a workable definition. In the early days countries seemed to seek independent solutions to the definitional question, however, as one of the core dimensions to the UN Convention is international co-operation, it was almost inevitable that constructing a universal official definition would be high on the agenda.

One can sense in the laborious notes from early meetings that led to the Convention that much confusion and disagreement accompanied this process. It seemed that multi-national perceptions of organised crime brought forth divergent perspectives on the salient features. Consequentially, the process gave rise to a very broad definition that was probably a compromise by weary delegates:

Organised criminal group shall mean a structured group of three or more persons existing for a period of time and acting in concert with the aim of committing one or more serious<sup>72</sup> crimes or offences established pursuant to this Convention, in order to obtain, directly, or indirectly, a financial or other material benefit.

On the surface, it may seem that the process of reaching an unproblematic terminology did much to undermine US-style definitions. Where Americanised definitions were explicitly designed to describe something rather specific, the UN version is exceptionally broad and inclusive. Although the UN definition

still stresses that organised crime is a noun for a group, when considered literally one can not help but summarise the definition as: *Organised crime is any crime that is organised, as long as it is serious*. If one conducted research based only on popular definitions, then an obvious conclusion is that in recent years the Americanised definitions have been ousted—Abadinski's definition is in stark contrast to the UN's and the special elements that Einstein and Amir mentioned are no longer thought defining.

However—and it is here where the definitional debate becomes really muddled—it seems that the majority of those who favour the UN definition remain transfixed by the notion that organised crime is a unique criminal entity. If one takes the UN definition literally, then one would not expect the distinction between organised and corporate crime to persist—the crimes associated with terrorist groups, law breaking businesses and criminal government departments will all be perpetrated by a number of individuals working in collusion, making them *ipso facto* organised crime. Yet, in the contemporary world of law enforcement and official parlance, crimes committed by legal businesses or by government officials are almost always not dealt with, nor conceptualised, under the label organised crime. Indeed, some commentators brand some legitimate corporations and even governments as organised crime, but typically this is intended as a metaphorical insult rather than as a call for definitional consistency.

The enduring belief that organised crime is some sort of unique criminal conspiracy can easily be detected by the language one regularly encounters on the subject. For example, the secretary of the Ad Hoc Committee for the Elaboration of the United Nations Convention against Transnational Organised Crime, Dimitri Vlassis, warns:

Organised crime is a threat to all the values that the democratic world holds dear. There are fundamental changes that have brought this about. The traditional roles of organised crime are being reviewed and altered... The old, well known 'Mafias' have revamped their structures and operations, while smaller and much more flexible groups have emerged and are operating all over the world.<sup>73</sup>

Similarly, Pino Arlacchi, the Executive Director of the United Nations for Drug Control and Crime, stated that, "organised criminals have established links with ordinary and juvenile crime".<sup>74</sup> So Arlacchi is in agreement with Amir and Einstein who claimed organised crime is "more than just organised criminality, it has its own special elements". Numerous law enforcement

personnel, government officials and academics warn that organised crime is a global threat, it has capitalised on the information technology revolution, it is transnational, it exploits legal loopholes, corrupts legitimate business and threatens democracy. Phil Williams describes organised crime as operating in the same 'murky world' as terrorism.<sup>75</sup> These descriptions do not seem intended for any criminal conspiracy that involves two or three people—they are intended for something specific, elusive, and intangible; a thing with an essence that makes it organised crime.

Official definitions have been painstakingly constructed by government representatives, are designed for national and international legislation and are intended to aid law enforcement co-operation. However, these definitions have acted as a smokescreen for a deeply entrenched notion of what organised crime is. The UN definition does not describe the pictures in most people's heads when they imagine organised crime. Instead, it is likely that these pictures have been constructed by the legacy of powerful stereotypes on the subject, most of which emanated from post-Second World War USA. Moreover, one can sense that the revival of this broad approach was not caused by a disagreement with the US perspective, but more likely due to a desire to establish an unproblematic nomenclature for the international crime fighting community, organised via inter-governmental agreements and a UN convention. For these arrangements, a specific definition may only serve to confuse and may act as a stumbling block for greater international co-operation.

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In sum, this section has provided an overview of the evolution of the mainstream understanding of organised crime. Early US definitions formed in the late 1920s interpreted organised crime as criminal business activities, including both racketeering and commercialised fraud. It was a concept used to denote a type of activity and did not assume the characteristics of the offenders. Indeed, early commentators noted how organised crime often involved a relationship between members of the criminal justice system, politicians and gangsters. During this era, a widespread view was that organised crime was an outcome of the contradictions inherent in the USA, most notably prohibition, which was neither popular nor properly enforced.

Organised crime changed in meaning from the mid-1930s onwards. This was due in part to the separation of business crime into a unique category, as well as a sustained public relations campaign by the police that presented a self-image of an incorruptible force, stressing its role as protector of the public.

Two key tenets of organised crime were therefore undermined and the concept became exclusively used as a noun for criminal organisations involved in racketeering. Furthermore, during this era the government accepted a theory that all racketeering was being organised by a nation-wide Italian organisation known as La Cosa Nostra, famously described by the academic Donald Cressey in his book *Theft of the nation* and by Mario Puzzo in his best selling novel *The Godfather*. Sceptics found the notion incredulous and suspected that the invention of the Mafia was politically convenient for both law enforcement and the government, as well as captivating to a gullible public. The new view of organised crime led mainstream analysts to view racketeering as an outcome of a criminal conspiracy imported into the USA from Europe. This organisation had the potential of threatening the security of the USA and therefore law enforcement needed extra powers to fight it.

In the early 1980s, the pre-eminence of La Cosa Nostra was diluted by the perceived emergence of new crime organisations, which were conceptualised as culturally homogeneous, usually comprising ethnic minorities. The definition of organised crime was updated to be applicable to these groups and the standard technique was to list traits that they all shared. The exact list of these traits was a matter of contention among commentators and thus organised crime was felt to be hard to define precisely. More critical commentators continued to insist that organised crime was being misunderstood due to a faulty 'alien conspiracy' paradigm, as well as dubious data.

In the early 1990s, international fear over organised crime grew dramatically. This was in part due to the perception that globalisation was providing increased opportunities for old crime groups to expand their operations, and in part due to the belief that troubled transitional countries were generating a wave of sophisticated and ruthless crime formations. International concern culminated in a UN Convention, an initial task of which was to develop a non-problematic definition in order for member states to work together more efficiently. This process gave rise to a broad understanding of organised crime that seemed to reverse the US trend of seeing it as being synonymous with unique criminal entities. However, there is ample evidence to suggest that broad official definitions are not used literally and that most mainstream commentators still share a conceptual understanding of organised crime based on an American mainstream model. This model depicts organised crime as a culturally homogenous structured criminal conspiracy that exists independently of, and at odds with, the formal economy.

## The concept of organised crime in Southern Africa

Ad-hoc official statements confirm that since the early 1990s organised crime has been identified as a growing security threat throughout Southern Africa. However, apart from a small number of publications from South African commentators, member states of SADC have yet to produce substantial research on organised crime in the region. The contribution to global literature on the subject is therefore minimal. As a first move to remedy this situation, in 2001 the Institute for Security Studies conducted two studies that set out to capture general information on organised crime in the SADC region. Peter Gastrow undertook research on police perceptions of the problem in nine of the twelve countries of SADC<sup>76</sup> (Angola, the DRC and Mozambique did not respond) and Charles Goredema arranged a series of papers on legislation against organised crime prepared by experts throughout the region.<sup>77</sup> These seem to be the only published sources of information on the concept of organised crime outside of South Africa. Within South Africa there have been a handful of independent research efforts, although none can be considered 'in-depth'.

### *Official definitions*

All nations in Southern Africa have either signed the Palermo Convention or have made a commitment to sign it in due course. We may therefore predict that in the near future most SADC countries will adopt the UN's definition. However, at present only one country—Zambia—has actually done so. In the remaining SADC nations, according to Peter Gastrow's study, only four police forces operate with an official definition of organised crime, although all seemed familiar with the concept. Of the four, South Africa and Swaziland use definitions that seem heavily influenced by Americanised definitions, i.e. they rely on lists of traits that a certain group must adhere to before it can be considered an organised crime group. According to the respondent to Gastrow's study, in Swaziland, organised crime is defined elaborately as follows:

Any group of individuals whose primary activity involves violation of criminal laws to seek illegal profits and power, by engaging in racketeering activities, and when appropriate, engaging in intricate financial manipulations. The term 'organised crime' consists of the following:

- A group of people (criminals), more than one
- Participating in unlawful activities
- Seeking money and power

- Forms a syndicate, group, cartel, racket, mafia etc
- Money laundering

Organised crime has taken the following characteristics:

- Structure
- Limited number of membership
- Cell forming and secrecy
- The use of violence and intimidation
- Access to corrupt police officials
- Money laundering.<sup>78</sup>

Similarly the South Africa Police Service (SAPS) state that “organised crime is the systematic commissioning of crimes motivated by a craving for profit and/or power”.<sup>79</sup> However, this is not seen as a sufficient definition on its own and to identify organised crime the SAPS has developed a system whereby a crime group can only be classed as an organised crime group if it complies with a minimum number of listed traits. These are as follows:

All four of the following criteria must be complied with:

- collaboration of more than two persons;
- involvement in serious criminal offences;
- involvement in such serious criminal activity for a prolonged or indefinite period; and
- motivation by the pursuit of profit or power.

In addition, two of the following must be evident:

- use commercial or businesslike structures;
- have members with appointed tasks;
- employ disciplinary sanctions;
- engage in money laundering;
- use violence for intimidation;
- attempt to exert political influence; or
- abuse borders.

Somewhat confusingly, SAPS have also used a definition based on Interpol’s notion of organised crime. It is not clear when and where the different definitions are used by the SAPS, which perhaps suggest that definitions are not crucial for their work against organised crime—there is a sense of knowing what organised crime is irrespective of a precise definition. The alternative definition reads:

Any group of criminals that have a corporate structure, whose primary objective is to obtain money and power through illegal activities, often surviving on fear and corruption.<sup>80</sup>

In Tanzania—the first country in the region to attempt to define the phenomenon—the official definition of organised crime was contained in the Economic and Organised Crime Control Act of 1984. This definition is hard to decipher and it is not clear what organised crime really means. The Act reads:

Any offence or non-criminal culpable conduct which is committed in combination or from whose nature a presumption may be raised that its commission is evidence of the existence of a criminal racket in respect of acts connected with, related to or capable of producing the offence in question.<sup>81</sup>

### ***Unofficial perceptions of organised crime***

Although there may be few publications on organised crime in the SADC region, it seems that an underlying uncertainty behind the concept has encouraged almost every author to offer their own interpretation. There are as many definitions as there are publications. Yet while these definitions vary considerably, all commentators show a common understanding based on a shared underlying paradigm.

At the heart of this paradigm is a view that sees organised crime as a noun for a homogenous, structured group of criminals that exists independently of, and at odds with, the formal economy. However, in this mainstream understanding there is a simple spectrum—at one end are those who see organised crime tending towards a well structured ‘corporate-like’ entity, and at the other are those who see organised crime as tending to be far less structured.

An example of a definition based on the more structured end of this spectrum was offered by Chris Peter, Professor of Law at the University of Dar es Salaam.<sup>82</sup> Although he cited both the official Tanzanian definition and the UN definition in his brief contribution to the subject, he elaborated with further descriptions of his own. In doing so Peter used the Mafia model as first presented by Kefauver to represent a typical organised crime group. While he does not explain whether such Mafia-like structures occur in Tanzania, Peter seemed to suggest that such criminal groups are forming.

Similarly, Jenny Irish also seemed to take direct inspiration from Americanised definitions and essentially offered a reworking of the most common traits found in mainstream academic literature. Irish identified the following as necessary components of organised crime:

- the criminal offence should be serious;
- the group should operate for a prolonged or indefinite period;
- the offences committed should be for profit or power;
- the group should have a clear structure;
- there should be division of labour or tasks within the group;
- the group should have some form of discipline or control;
- the group should have money laundering as a component; and
- the group should be able to exert influence, which can be done through corruption, violence or intimidation.<sup>83</sup>

Further along the spectrum, another approach has been offered by Peter Gastrow. In line with the UN perspective on organised crime, Gastrow raised concern with the notion of 'corporate structure', preferring a more generalised terminology. However, perhaps due to the recognition that organised crime can be used as either a noun for a group or as an activity, Gastrow introduced a second concept—the criminal syndicate. Apparently for him, organised crime is an activity committed by a criminal syndicate and is not meant to denote a group. Thus he offered two definitions, one for organised crime and one for a criminal syndicate. He wrote:

Organised crime consists of those serious criminal offences committed by a criminal organisation, which is based on a structured association of more than two persons acting in concert over a prolonged period of time in pursuit of both their criminal objectives and profits.<sup>84</sup>

Gastrow added:

The majority of crime syndicates are involved in some form of organised crime. In line with the above definition of organised crime, 'crime syndicates' can be defined as follows:

A crime syndicate is a criminal organisation, engaged in the commission of serious criminal offences, which is based on a structured association of more than two persons acting in

concert over a prolonged period of time in pursuit of both their criminal objectives and profits.<sup>85</sup>

However, the decision to differentiate organised crime seems to have been dropped by Gastrow in later publications. Elsewhere he returns to the common habit of using organised crime as a noun for a group of criminals. Although offered as an alternative to the problematic SAPS definition, Gastrow is essentially offering the same definition but merely transplanting the phrase 'corporate structure' with the less grandiose term 'structured'.

Finally, again disagreeing with the more *exclusive* approach adopted by SAPS and Irish, Jean Redpath adopts the broadest possible approach:

No attempt was made to use a strict definition of organised crime. This was so as not to exclude any information purely on the basis that requirements of a definition were not met. Indeed, the relatively complicated terms of the definition of organised crime used by...the South African Police Service (SAPS) for their 2000 Crime Threat Analysis may lead to groups falling outside the information net.<sup>86</sup>

This simple spectrum in the available literature does not spoil a relatively consistent view of who the main organised crime groups are. Indeed, the fact that all commentators list the same type of groups as being organised crime groups shows quite clearly that the same basic paradigm is being used to understand the—apparently ambiguous—concept. For example, of the handful of published material in South Africa, the same lists of organised crime groups are covered, no matter what definition of organised crime introduces the text.

To summarise these main groups it is important to introduce a further trait that is used by all South African commentators to compartmentalise types of organised crime. Following the international standard, organised crime is divided into that which involves domestic criminals and that which involves foreigners.

The latter category is normally referred to as 'transnational organised crime'—a misleading concept if only for the reason that it is generally acknowledged that domestic groups are engaged in frequent cross-border trade. Transnational organised crime groups are also seen to be culturally homogeneous as they are categorised by their country of origin, i.e. the Russian Mafia, the Chinese Triads and so on.

Implicit in the South African literature is that international organised crime is a more sophisticated entity than its domestic counterpart. Indeed, this belief has been explained to the author on numerous occasions by high-ranking law enforcement officials.

Evidence for this view can also be seen by the fact that transnational organised crime groups almost always receive the lion's share of analysis in research reports.

For example, in two recent documents on organised crime, written by Jenny Irish and Jean Redpath, organised crime groups involving foreigners are described in far greater depth than their domestic counterparts. Jenny Irish writes:

There exists in South Africa both domestically based organised crime groups and transnational groups. Domestic groups are increasingly linking up with these transnational groups to either offer their services to such groups, or co-operate on joint ventures or even merge with them.<sup>87</sup>

Similarly, the late Steve Tshwete lamented:

Since its return to the global arena, [South Africa] has felt the effects of transnational organised crime syndicates attempting to extend their tentacles to 'new markets'. Given South Africa's relatively well-developed infrastructure, modern telecommunication systems, technology and business practices, it would appear that the scope of organised crime has evolved from generally small-scale local operations to international syndicates.<sup>88</sup>

Peter Gastrow also differentiated between 'indigenous' and 'transnational' criminal groups in his police perceptions survey. The results show that police forces throughout the region have identified certain foreign nationalities as being particularly problematic in cross border organised crime affecting their own nation.

One question asked police in SADC countries to provide the nationalities of the top three main transnational organised crime threats to their country. The results were as shown in table 2 on the following page (Malawi did not provide an answer):<sup>89</sup>

**Table 2. Police perceptions in SADC countries of top three transnational organised crime threats**

<b>Respondent country</b>	<b>Nationality of transnational organised crime threat</b>
Botswana	Zimbabwe, South Africa, Zambia
Lesotho	China, Nigeria and South Africa
Namibia	South Africa, Angola and Zambia
South Africa	Nigeria/Cameroon, Pakistan and Zimbabwe, Russia
Swaziland	Nigeria, India and Mozambique
Tanzania	Pakistan, South Africa, Kenya
Zambia	South Africa, Zimbabwe
Zimbabwe	Nigeria, Zambia, South Africa

***Organised crime and gangs***

The definitional literature on organised crime is made more complex (or confused) by the notion of a gang—a rather notorious concept in South Africa. For Redpath, gangs are included under the broad terminology of organised crime, and indeed true to her inclusive definition (or more accurately, non-definition) she included gangs in her study. This is in contrast with other South African commentators. Following on from his description of what a criminal syndicate is, Gastrow offered a precise explanation of what a gang is and why it differs from a criminal syndicate:

In general, gangs tend to be less formally structured than syndicates. They are often territorially based, their criminal activities involve less sophistication than those of syndicates, their members tend to be youths and they tend to identify themselves by a gang name. The many different manifestations of criminal gangs makes it highly unlikely that one single definition will ever be adequate or comprehensive enough to cover all the shades and variations. As a guide, and to indicate a general understanding of the nature of a gang, the following definition is provided:

A criminal gang consists of an organised group of members which has a sense of cohesion, is generally territorially bound, creates an atmosphere of fear and intimidation in the community and whose members engage in gang-focused criminal activity either individually or collectively.<sup>90</sup>

Similarly, in his widely cited article, *The development and control of organised crime in post-apartheid South Africa*, Mark Shaw stated that:

According to SAPS definitions syndicates are seen as more sophisticated organisations operating on a wider level than gangs, which are considered to be criminal organisations of a lower order of influence and sophistication. Gangs may often be employed by syndicates to do the dirty work at street level, with the latter often acting to co-ordinate the activities of different gangs.<sup>91</sup>

A different view is presented by Irvin Kinnes in his monograph on the development of gangs in the Western Cape.<sup>92</sup> He agreed with Gastrow in that “no one definition of what a gang is seems to be adequate”. However, Kinnes listed a series of traits that were designed to enrich the reader’s general understanding of this form of criminal organisation, as follows:

- gang members may range in age from youngsters to adults between 20 and 40 years of age;
- the nature and activities of gangs are mainly determined by their social context;
- membership of gangs may include persons both inside and outside of jails;
- gang members may be anything from street level operators to sophisticated syndicate bosses;
- they may belong to the category regarded by the government and its agencies as being at risk of becoming involved in criminal activities, or may make a choice to become involved with full cognisance of the associated risks; and
- gangs may be involved in criminal activities for the sake of survival, or may be high-level, structured criminal organisations.

Clearly Kinnes’ list starts to blur the distinction between gangs and organised crime. However, while Kinnes suggested the overlapping of the two concepts, the notion that organised crime represents a higher form of criminality persists.