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RESEARCH ARTICLE

ORGANISED CRIME – A THREAT TO DEMOCRACY.

Dr. S. Krishnan.

The writer is working as an Assistant Professor in History in Seedling School of Law and Governance, Jaipur National University, Jaipur. He had worked as an Assistant Professor in Apex Professional University, Pasighat, Arunachal Pradesh. He also specialises in NATO Affairs. He also worked as reporter in Indian Express, Daily News Analysis, online news portals like Global News Service and Global Gujarat News and “Monitor” Magazine. He also worked as a Liaison Officer in Indian Society of International Law, New Delhi.

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Abstract

The term ‘organized crime’ can be used in two very different senses. It can simply mean systematic and illegal activity for power or profit. Today, however, the term is usually used in a second sense, and has become virtually synonymous with gangsters in general or the ‘Mafia’ or mafia-type organisations, in particular. The threat posed by organized crime in other words must be met by nations committing more resources towards increasing the effectiveness of policing efforts at home and collaborative efforts between nations.

With the process of economic globalization, the establishment of emerging supranational structures, and the current political argument in favor of the free movement of goods, capital and people have all intentionally eroded an essential aspect of sovereignty, state control on the flow of goods and services through its frontiers continues to maintain sufficient levels of security for the general population.

This paper draws attention to decisive effect of the organized crime on the political institutions. Criminal groups could try to exert an appreciate influence on the decision making capabilities of the three classical powers: the Executive, the Legislative and the Judicial. This attempted infringement is the natural consequence of the very dynamics of the illegal organizations on a grand scale, which in certain cases is similar to other large, legitimate groups, and has two main aspects. On the one hand, it tends create its own systems for dealing out justice and, on the other hand, it tries to turn the machinery of the state in its favor. Both aspects have the same objectives: to reduce the cost of viability for the group over the long run and to increase income.

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Introduction:-

“THEY were my partners in crime. They were my best friends. They were my children’s godfathers.” so said John Martorano, a former hitman known as “The Executioner”, of his fellow mobsters in a gang led by James “Whitey” Bulger, who was was found guilty of 11 murders and racketeering.

Are modern democracies threatened by organized crime? Organized crime has evolved alongside capitalism, remaining one step ahead in order to profit from new and often transnational economic opportunities. It challenges social and political structures yet its strategies are strongly conditioned by the political institutions and the specific type of civil society in which they appear.

From the first mafia films, *Little Caesar* (M.Le Roy, 1930), *Public Enemy* (W. Wellman, 1931) and *Scarface: The Shame of the Nation* (H.Hawks, 1932), there has been great interest in film representations of organized crime, in the stereotypical scenes of gangland encounters, in the glamorous mythical charismatic figures of the Godfather, the Don, the Boss or the Mobster. If a viewer of the latest example, the American TV drama series *The Sopranos*, were to assume that the fiction is true to life, that Tony Soprano and his New Jersey modern day mafia family are a realistic representation of living mafiosi, past or present, s/he would not be completely wrong. The traditional old-fashioned model which underpins the series is quite authentic, but the contemporary reality hidden behind this attractive myth is much more gruesome, chaotic, violent and ruthless than even the most extreme episode might show.

What a time the 1920's was, with the party atmosphere it was certainly a time of great criminal activity, with the prohibition laws in America and the world in an economic depression. The people turned more and more to criminal activity, organized criminals such as the American mobsters and European crime syndicates thrived, most common people looked upon these organizations as heroes. Criminals like Al Capone, Bonnie and Clyde, John Dillinger, Mickey James and John Gotti were headliners of the era.

Jobs were scarce and people needed to provide for their families, gangsterism was dangerous but provided an easy way to make money. When the American government passed the Eighteenth amendments outlawing alcohol, people who enjoyed a drink became criminal for doing so.

Now, in the last two decades, organized crime has grown more complex, posing evolving challenges for federal law enforcement agencies. This is largely because these criminals have transformed their operations in ways that broaden their reach and make it harder for law enforcement to define and combat the threat they pose. Globalization and technological innovation have not only impacted legitimate commerce, but they have simultaneously revolutionized crime. In response to these forces, organized criminals have adopted more-networked structural models, internationalized their operations, and grown more tech savvy. Criminals have become more elusive. They see international borders as opportunities while law enforcement views them as obstacles. Criminals have expanded their range of tools and targets as well. Meanwhile, law enforcement "plays by yesterday's rules and increasingly risks dealing only with the weakest criminals and the easiest problems," according to the Strategic Alliance Group, a partnership of seven law enforcement agencies from five nations.¹

Motivated by money, organized crime fills needs not met by licit market structures and/or exploits businesses, consumers, and nations for profit. Organized criminals have capitalized on commercial and technological advances that have bolstered communication and international business. They use innovative methods of moving illegal proceeds around the world. Some nations have also witnessed the creation of ties between powerful business figures, politicians, and criminals.

Modern organized criminals may prefer cellular or networked structural models for their flexibility and avoid the hierarchies governed by elaborate initiation rituals that were favored by their predecessors. Fluid network structures make it harder for law enforcement to infiltrate, disrupt, and dismantle conspiracies. Many 21st century organized crime groups opportunistically form around specific, short-term schemes. Further, these groups may outsource portions of their operations rather than keeping all of their expertise "in-house."

¹ These law enforcement agencies include the U.S. Federal Bureau of Investigation (FBI); Drug Enforcement Administration (DEA); Immigration and Customs Enforcement (ICE); the United Kingdom's Serious Organised Crime Agency (SOCA); the Australian Crime Commission and Australian Federal Police; the New Zealand Police; and the Royal Canadian Mounted Police. See SOCA, "SOCA Working in Partnership Worldwide," <http://www.soca.gov.uk/about-soca/working-in-partnership/international-partnerships>. Intelligence Committee Futures Working Group, Crime and Policing Futures, Strategic Alliance Group, March 2008, p. 2. (Hereafter, Intelligence Committee Futures Working Group, Futures.)

In reality, organized crime is very dangerous, but above all, in its most contemporary form, it has become practically invisible and all-pervasive. As white-collar crime, it is fully integrated and immersed in our everyday lives, part of the socioeconomic and political fabric of our society. Today, across the world, organized crime has come to threaten, for example, the lives of citizens in the USA, Nigeria, Belgium, Jamaica and Austria, the banking systems of the UK, Switzerland, Germany, Luxembourg or Liechtenstein and politics in Italy, Russia, Japan and the EU. Democracy is generally in danger. However, this does not mean that organized crime is seeking to gain control of institutionalized power: rather, as we shall see, its interests lie elsewhere.

Definition Of Organised Crime:-

Organised crime is a most elusive and perplexing concept to define. In any discussion about organised crime, the first question that always arises is what constitutes organised crime. Fijnaut and Paoli asked two pertinent questions, which are still relevant today, that is, where does organised crime begin and what are the specifics vis-a-vis other forms of serious crime.² Gastrow points out that it is very difficult to distinguish white-collar crime and commercial crime in which a number of people participate, from organised crime.³

The term organised crime has in recent years almost replaced other well-known phrases referring to aggravated forms of robberies such as bank robbery, truck hijacking and house robbery in the Republic of South Africa. However, this trend is not limited to South Africa. Fijnaut and Paoli state that organised crime has become a convenient tool to express the anxieties of the general population at living in the ever more uncertain and insecure world of the late or post-modern stage of modernity.⁴ They point out that organised crime has become a popular topic in public debate since the eighties and in the political and scientific agenda all over Europe. This view is compatible with that of den Boer who states that organised crime has become a core element of international law enforcement vocabulary and rhetoric.⁵ Woodiwiss observes that most policy makers, commentators and media outlets around the world now use 'organised crime' as a term that is virtually synonymous with gangsters in general, or the mafia, or mafia-type organisations in particular.⁶

Van Duyne describes organised crime as a way of doing business by systematically using criminal methods, which imply a fundamental disrespect for the rules, which govern the economic and social fabric of society. He further explains that it is not restricted to class or certain criminal or social areas. It concerns trade in goods and services for which there is a demand, albeit these goods and services are forbidden and/or are offered cheaply because the costs of doing business are reduced by criminal fraudulent methods.⁷

Marion prefers the term crime venture and defines it as a criminal activity carried out by a particular group of criminals on a regular basis. She cites examples of truck hijackings where members who have ties to syndicates, access skilled labour to carry out the job called outlets where they can get rid of stolen property.⁸

² Fijnaut, Cyrille and Paoli, Letizia (eds), *Organised Crime in Europe: Concepts, Patterns and Control Policies in the European Union and Beyond*, Springer, Dordrecht, 2004, p.7. They argue that, if organised crime is understood as a set of criminalised profit making activities, how does it then differ from enterprise crime. If instead it involves groups of criminals, what is the minimum number of individuals necessary in a group or network to apply the label of organised crime?

³ Gastrow Peter (ed), *Penetrating State and Business: Organised Crime in Southern Africa*, Volume One, ISS, Pretoria, 2003, p.ix.

⁴ Fijnaut, Cyrille and Paoli, Letizia (eds), *Organised Crime in Europe: Concepts, Patterns and Control Policies in the European Union and Beyond*, Springer, Dordrecht, 2004, p.5.

⁵ Allum, Felia, *Defining and Defying Organized Crime: Discourse, Perceptions and Reality*, Routledge, Oxon, 2010, p.xv.

⁶ Woodiwiss Michael "Transnational Organized Crime: The Strange Career of an American Concept" in Beare Margaret E (ed), *Critical Reflections on Transnational Organized Crime, Money Laundering and Corruption*, University of Toronto Press, Toronto, 2003, p.3.

⁷ Van Duyne, *Organized Crime in Europe*, Nova Science Publishing, New York, 1995, pp.1-2.

⁸ Marion, Nancy E., *Government versus Organized Crime*, Pearson, Prentice Hall, New Jersey, 2008, p.5. Rhodes, Organized Crime 25, define venture as a one-time criminal episode like robbing a bank, burglarising a series of homes or hijacking of trucks.

Organised crime is described by Cressey as the most sinister kind of crime where the men who control it become rich and powerful by encouraging the needy to gamble, luring the troubled to destroy themselves with drugs, extorting the profits of honest and hardworking businessmen, collecting usury from those in a financial plight, maiming or murdering those who oppose them and bribing those sworn to destroy them.⁹

Position Of The United Nations (Un) On The Definition Of Organised Crime:-

There exists a strong perception that the UN has defined organised crime.¹⁰ However, this is completely erroneous. Although the UN began to address issues of organised crime in September 1975 during the Fifth UN Congress on the Prevention of Crime and Treatment of Offenders meeting in Geneva, the phenomenon was never defined.¹¹ The definition of organised crime that is normally confused as that of the UN is a definition inserted by the secretary in the discussion document.¹² Obokata and Jacobs state correctly that even the Palermo Convention does not contain a definition of organised crime.¹³

Vlassis, a Secretary of the Ad Hoc Committee for the Elaboration of the United Nations Convention Against Transnational Organized Crime, confesses that the fundamental difficulty of the Working Group lay with the definition of organised crime.¹⁴ The Working Group was divided in its approach. One half of the group believed that a definition was not necessarily the most crucial element of a Convention on organised crime, but that the instrument could come without a definition, while the other half contended that the absence of a definition would send a wrong signal regarding the political will and commitment of the international community.¹⁵

The Palermo Convention was adopted in 2000 to deal with organised crime, human trafficking and trafficking in firearms. It is important to analyse the developments that led to this Convention. This approach will assist in clarifying the perception that the UN has defined organised crime. The General Assembly (GA) of UN approved Resolution 49/159 of 23 December 1994, which is the Naples Political Declaration and Global Action Plan Against Organised Transnational Crime. In terms of this Convention, States were urged to implement them as a matter of urgency. It is in the Naples Political Declaration and Global Action Plan Against Organised Transnational Crime, which is the World Ministerial Conference on Organised Transnational Crime where the Commission on Crime

⁹ Cressey, Donald R with a new introduction by James Finckenauer, *Theft of the Nation: The Structure and Operations of Organized Crime in America*, Transaction Publishers, New Brunswick, 2008, p.7.

¹⁰ According to Calderoni, the Palermo Convention defines organised crime as an organised criminal group; see Calderoni, Francesco, *Organized Crime Legislation in the European Union: Harmonization and Approximation of Criminal Law, National Legislations and the EU Framework Decision on the Fight Against Organized Crime*, Springer, Heidelberg, 2010, p.32.

¹¹ Jamieson, Alison, *The Antimafia: Italy's Fight against Organized Crime*, Macmillan Press Ltd, London, 2000, p.164.

¹² See paragraph 17 of A/AFCON.56/3 which is the UN: Changes in Forms and Dimensions of Criminality-Transnational and National Working paper prepared by the secretariat for the Fifth UN Congress on the Prevention of Crime and the Treatment of Offenders, 1-12 September 1975. The report is also accessible under UN documents with reference A/CONF.56/10 at <http://www.asc41.com/UNCongress/5thCongressofthePreventionofCrime/5th-Congress.htm> last visited on 30 July 2011. See also page 5 point 12 of the Eighth UN Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990. These reports have not defined organised crime but have included the description by the Secretariat which as an example, states that "organized crime is understood to be the large-scale and criminal activity carried by groups of persons, however loosely or tightly organized for enrichment of those participating and at the expense of the community and its members; it is frequently accomplished through ruthless disregard of any law, including offences against the person, and frequently in connection with political corruption".

¹³ Obokata, Tom, *Transnational Organised Crime in International Law*, Hart Publishing, Oxford, 2010, p.26 and Jacobs, Phillipus Christophel, *Intelligence and Intelligence Cooperation in Combating International Crime: Selected Case Studies*, PhD Thesis, University of Pretoria, 2010, pp.35-36. Jacobs argues that, within the context of the UN Convention Against Transnational Organized Crime, organised crime boils down to the commission of a serious offence involving an organised criminal group.

¹⁴ The Working Group towards the UN Convention was established in Vienna in 1997.

¹⁵ Vlassis Dimitri "The UN Convention Against Transnational Organized Crime" in Berdal Mats and Serrano Monica (eds), *Transnational Organized Crime and International Security: Business as Usual?*, Lynne Rienner Publishers, Colorado, 2002, p.87.

Prevention and Criminal Justice was directed to initiate the process of requesting the views of Governments on the impact of a Convention or Convention against Organised Transnational Crime and on the issues that could be covered therein.¹⁶

According to Nair, the conference provided a working definition of organised crime. It states that organised crime is a group activity of three or more persons, with hierarchical links or personal relationships, which permit their leaders to earn profits or control territories or markets, internal or foreign, by means of criminal activity and to infiltrate the legitimate economy.¹⁷

While it was clear that arriving at an acceptable definition of organised crime was notoriously difficult, several States were of the view that a definition was not necessarily the most crucial element of a convention, and that the instrument could come into being without such a definition. The reason advanced was that the participants could not agree on a precise definition. In moving towards a common solution, it was agreed that each element of organised crime that include a form of organization, continuity, the use of intimidation and violence, a hierarchical structure of groups with division of labour, the pursuit for profit and the purpose of exercising influence on the public, the media and political structures should be looked at.¹⁸

The meeting in Palermo was held between the 12th to 15th of December 2000 where the UN Convention Against Transnational Organised Crime was adopted by the General Assembly in Resolution 55/25 of 15 November 2000.228 The General Assembly adopted a Protocol Against the Illicit manufacturing and Trafficking in firearms, their parts and components and ammunition supplementing the Convention Against Transnational Organised Crime as per Resolution 55/255 of 31 May 2001. What could be observed is that the UN has managed to provide a definition of an organised criminal group under Article 2(a) of this Convention, which is commonly known as the Palermo Convention. This Article states that an organised criminal group is a structured group¹⁹ of three or more persons, existing for a period and acting in concert with the aim of committing one or more serious crimes or offences established in accordance with this Convention²⁰, in order to obtain, directly or indirectly, a financial or other material benefit.

According to Cockayne, the Palermo Convention defines transnational organised crime as those offences which, to paraphrase, involve a structured group of three or more people with the shared aim to commit either a Transnational Organised Convention crime (including money-laundering, corruption and obstruction of justice), or any other crime punishable by four year's deprivation of liberty or more; where those crimes are committed with a view to material gain; and where those crimes have transnational effects, are committed trans-nationally, or are committed by a

¹⁶ See Report of the Adhoc Committee as per agenda item 105 of the 55th session of the GA at 2-3 and Vlassis, Dimitri, "The Global Situation of Transnational Organized Crime, the Decision of the International Community to Develop an International Convention and the Negotiation Process" in *Organised Crime and Crime Prevention- What works, Forskoerseminar Report No. 40*, Scandinavian Research Council for Criminology, Finland, 1998, p.485 and 493.

¹⁷ Nair, PM, *Combating Organised Crime*, Konark Publishers, New Delhi, 2002, pp.9-10. Abadinsky points out that this definition was offered by the host country at the 1998 conference, which was held at Warsaw. However, the conference did not adopt it; see Abadinsky, Howard, *Organized Crime*, 9th ed, Wadsworth, Australia 2010, p.2.

¹⁸ See Report of the Adhoc Committee as per agenda item 105 of the 55th session of the General Assembly. The report is also accessible at <http://www.uncjn.org/Documents/Conventions/dcatoc/final-documents383.pdf> last visited on 26 December 2007. Further resolutions were adopted as per 53/114 of 09 December 1998, 54/126 of 17 December 1999, 54/127 of 17 December 1999, 54/128 of 17 December 1999 and 54/129 of 17 December 1999. These resolutions dealt with drafting of the main text of the Convention and the related instruments, the holding of further meetings, the establishment of an experts group, the inclusion of corruption and the acceptance of the offer by the Government of Italy to host the 2000 meeting respectively.

¹⁹ A structured group is defined in terms of Article 2(c) of the Convention as a group that is not randomly formed for the immediate commission of an offence and that does not need to have formally defined roles for its members, continuity of its membership or a developed structure.

²⁰ The Convention establishes as serious offences (i) participation in an organised criminal group, (ii) the laundering of the proceeds of crime, (iii) corruption, and (iv) obstruction of justice.

transnational group.²¹ This view is misplaced because the Convention did not define the term ‘organised crime’, but rather a ‘criminal group’.

The UN has in 2010 stated that under the Organised Crime Convention, transnational organised crime is any national offence undertaken by three or more people with the aim of material gain.²² Unfortunately, the UN erred and misrepresented itself in suggesting that an Organised Crime Convention exists. The only instrument on organised crime is the UN Convention Against Transnational Organized Crime. The UN acknowledged that it is unable to define the term ‘organised crime’ and decided that it will be better to define the term ‘organised criminal group’. As a result, many countries, academics, criminologists, jurists and researchers have incorrectly assumed that the definition as adopted refers to organised crime.

Evolution Of Organised Crime:-

The term “Organised Crime” has a history that dates back to the existence itself of sovereign states and their coexistence within the international arena, but it has a more recent history that can be traced back to the early 1900s.²³

The history of the concept of Organised Crime is unclear and the theories regarding the phenomenon tend to provide very limited solution to its understanding.²⁴ Organised Crime is, as observed by Van Duyne, in many ways a strange concept. It is found in widely diverse contexts, being used as if it denotes a clear and well-defined phenomenon.²⁵ It has constantly been redefined and contains all other kinds of implicit ideologies and myths. According to Van Duyne, instead of believing that mafia is a phenomenon typical of Sicily, which should be used only in reference to the Sicilian Cosa Nostra, it is a species of a broader genus, organised crime, and various criminal organisations - including the American Cosa Nostra, the Japanese Yakuza, and the Hong Kong Triads - belong to it.²⁶

According to Fijnaut and Paoli, the term ‘organised crime’ originated in the United States (US) where it was used for the first time in 1896 in an annual report of the New York Society for Prevention of Crime. It was used to refer to gambling and prostitution operations that were protected by public officials.²⁷ Until the late 1980s, it was often stated that organised crime was considered a problem that concerned only a limited number of countries, primarily, the United States of America (USA) and Italy. Japan, China and Colombia were added later to the list.²⁸

²¹ Cockayne, James, *Transnational Organized Crime: Multilateral Responses to a Rising Threat*, International Peace Academy, New York, 2007, p.2.

²² UNODC:TOCTA, p.19.

²³ Woodiwiss, M. (2003). “Transnational organised crime, The global reach of an American concept”, in Edwards, A. and Gill, P. *Transnational Organised Crime – Perspectives on global security*, Routledge.

²⁴ Kelly, Robert J, *Organized Crime: A Study in the Production of Knowledge by Law Enforcement Specialists*, PhD Dissertation, The City University of New York, 1978, p. 105.

²⁵ Petrus, Van Duyne, “Crime-Enterprises and the Legitimate Industry in The Netherlands” in Fijnaut Cyrille and Jacobs James B (eds), *Organized Crime and its Containment: A Transatlantic Initiative*, Kluwer Law and Taxation Publishers Deventer, 1991, p.55.

²⁶ Petrus, Van Duyne, “Crime-Enterprises and the Legitimate Industry in The Netherlands” in Fijnaut Cyrille and Jacobs James B (eds), *Organized Crime and its Containment: A Transatlantic Initiative*, Kluwer Law and Taxation Publishers Deventer, 1991, p.63; Fukumi states that the official name of Yakuza is Boryoku-dan meaning violence group; see Fukumi Sayaka “The Yakuza and its Perceived Threat” in Allum, Felia, Longo, Franscesca, Irrera, Daniella and Kostakos, Panos A., *Defining and Defying Organized Crime: Discourse, Perceptions and Reality*, Routledge, Oxon 2010, p. 99.

²⁷ Fukumi Sayaka “The Yakuza and its Perceived Threat” in Allum, Felia, Longo, Franscesca, Irrera, Daniella and Kostakos, Panos A., *Defining and Defying Organized Crime: Discourse, Perceptions and Reality*, Routledge, Oxon 2010, p. 99.

²⁸ Cyrille, Fijnaut and Letizia, Paoli, (eds), *Organised Crime in Europe: Concepts, Patterns and Control Policies in the European Union and Beyond*, Springer, Dordrecht, 2004, p.22. Von Lampe agrees that this concept is an American invention, Klaus, Von Lampe, “Organized Crime in Europe” in Reichel Philip (ed), *Handbook of Transnational Crime and Justice*, Sage Publications, Thousand Oaks, 2005, p.403. The United Nations suggests that the term organised crime emerged in Chicago in 1919, see UNODC: TOCTA 25. The report can also be assessed <http://www.unodc.org/documents/data-and-analysis/TOCTA.Report-2010-low-res.pdf> and <http://www.unodc.org/documents/data-and-analysis/TOCTA1>.

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 announcements 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”.²⁹ The discussion centered around the conditions that seemingly allowed criminals to gain a steady income from crime, particularly property crimes, under virtual immunity from the law. In the eyes of the Crime Commission, the city government had to be blamed for incompetency, inefficiency and corruptness, while the public was criticized for indifference and even open sympathy towards criminals. This characterization of organized crime as an integral part of society apparently reflected the perspective of the old established protestant middle class on Chicago as a city that, after years of rapid growth and cultural change, was drowning in crime, corruption and moral decay.

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.³⁰

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 in “gangs”, “syndicates” and “criminal organizations” and followed “big master criminals” who functioned as “powerful leaders of organized crime”.³¹ Some of these leaders moved into the limelight and gained celebrity status as “Public Enemies”, most notably Al Capone.³² 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 social conditions that could be remedied easily, like the deficiencies in the criminal justice system the Chicago Crime

²⁹ Chamberlin, H.B., 'Crime as a Business in Chicago', *Bulletin of the Chicago Crime Commission*, No. 6, 1 October 1919, pp. 1-6; Chamberlin, H.B., “The Chicago Crime Commission: How the Business Men of Chicago are Fighting Crime”, *Journal of the American Institute of Criminal Law and Criminology*, 11(3), November 1920, pp. 386-397; Chamberlin, H.B., “Report of the Operating Director”, *Bulletin of the Chicago Crime Commission*, No. 17, 31 January 1921, pp. 5-7; Holden, C.R., 'Report of the Committee on Origin of Crime', *Bulletin of the Chicago Crime Commission*, No. 10, 19 January 1920, pp. 12-13; Sims, E., “Fighting Crime In Chicago: The Crime Commission”, *Journal of the American Institute of Criminal Law and Criminology*, Vo.1. 11, No.1, May 1920, pp. 21-28.

³⁰ The term “racketeering” apparently received its first coinage in Chicago in the mid 1920s (Allsop, K., *The Bootleggers: The Story of Prohibition*, 2nd ed., Arlington House, New Rochelle, New York, 1968, p.24; Hostetter, G.L. & Beesley, Th. Q, *It's a Racket*, Les Quin, Chicago, 1929, p.1; Smith, D.C., *The Mafia Mystique*, Basic Books, New York, 1975, p.67; *New York Times*, 20 Nov. 1927, III, p. 2) even though the term “rackets” dates back further (Albini, J.L., *The American Mafia: Genesis of a Legend*, Appleton-Century-Crofts, New York, 1971, pp.29-30). 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 brothels by police officers (*New York Times*, 12 Dec., 1912, p.1). Originally, “racketeering” referred to a small and clearly defined section of crime: the activities of criminals in labor unions and business associations for the purpose of regulating local markets or to extort businessmen (Hanna, F.D., 'Professional Racketeer in New Graft', *Bulletin of the Chicago Crime Commission*, No. 54, September/October, 1927, pp. 6-7., Moley, “Behind the Menacing Racket”, *New York Times*, 23 November, 1930, V, pp. 1, 2, 19). Later on, other types of crime, like bootlegging and gambling, were also subsumed to “racketeering” (see e.g. Daniell, R., “The Big Business of the Racketeers”, *New York Times*, 27 April, 1930, V, pp. 4-5, *New York Times*, 3 April, 1931, p. 1).

³¹ Lashly, A.V., “The Illinois Crime Survey”, *Journal of the American Institute of Criminal Law and Criminology*, 20(4), February, 1930, pp. 588-605, *New York Times*, 5 Sept. 1926, VIII, p. 5, *New York Times*, 20 May, 1932, p. 2.

³² Loesch, F.J., “Lists Twenty-Eight as Public Enemies”, *Criminal Justice*, No. 58, May, 1930, pp. 1-2.

Commission had denounced earlier. Instead of social and political reform, the emphasis now was on vigorous law enforcement.³³

The concept of organised crime faded from public debate from late 1930 to the end of the 1940s. Before World War II, criminal groups were not referred to as organised crime and indeed, no kind of crime was called organised crime. According to Ryan, criminal organizations became to be known as the Mafia only after Tennessee Senator, Estes Kefauver, held congressional hearings in the 1950s.³⁴ In 1950, the Kefauver Committee³⁵ was appointed to investigate organised crime in interstate commerce. The Committee concluded that numerous criminal groups throughout the country were tied together by a sinister criminal organisation known as the Mafia, which marked a significant change in the perception of organised crime in two respects. On the one hand, organised crime no longer appeared to be primarily a product of local conditions, but a problem that existed on a national scale that threatened municipalities from the outside. On the other hand, the notion of the Mafia as an organisation of Italian-Americans added an ethnic component to the concept, which sparked reactions to those who believe that ethnicity is not a defining aspect of organised crime.³⁶ Von Lampe argued that organised crime had become synonymous with a single ethnically homogeneous organisational entity. In his view, the concept of organised crime gained momentum in the 1960s in the USA and spread to Germany.³⁷

The interest in organised crime and Mafia created by the Kefauver Committee, faded during the following years. Ryan's view is that, in 1957, a series of events, including criminal activities such as drug trafficking, brought organised crime back to center stage and eventually led to the merging of the two concepts of organised crime and Mafia in 1960.³⁸ Correspondingly, O'Kane states that the Italians in the USA increasingly took over all the major rackets by the late 1950s. He concluded that the public viewed organised crime and Italian Mafiosi as identical entities and that Congressional Committees, law enforcement agencies and the mass media did everything to reinforce this stereotype during the 1960s and 1970s.³⁹

The Federal Bureau of Investigations (FBI) completely resented (disliked) the concept of organised crime before 1963. Its head, Hoover, had not only refused the notion of an Italian-American Mafia, but also criticised concepts of

³³ 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. See e.g. *New York Times*, 30 July 1933, p. 1, 20 Feb. 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 had insisted that the gangster was "a natural product of his environment" (Landesco, John, "Organized Crime in Chicago", in *The Illinois Crime Survey*, Chicago, 1929, pp. 823-1087, 1929, 1057). See e.g. *New York Times*, 7 Aug. 1929, p. 15, Chamberlin, H.B., "Some Observations Concerning Organized Crime", *Journal of Criminal Law and Criminology*, 22(5), January 1932, pp. 652-670.

³⁴ Ryan, Partick J., *Organized Crime: A Reference Handbook*, ABC-CLIO, California, 1995, p.42.

³⁵ The Chairman of the Committee was Senator Estes Kefauver of Tennessee. See also Lyman, Michael D. and Potter, Gary W., *Organized Crime*, 5th Ed, Prentice Hall, Boston, 2011, p.24, Albanese, Jay S., *Organized Crime in Our Times*, 5th Ed, LexisNexis Anderson Publishing, New Jersey, 2007, pp. 136-138, Roth, Mitchel P., *Organized Crime*, Prentice Hall, Upper Saddle River, 2010, p.29, Fox, Stephen, *Blood and Power: Organized Crime in the Twentieth-Century America*, William Morrow and Company, New York, 1989, p.292 and Abadinsky, Howard, *Organized Crime 1*, Allan and Bacon Inc, Boston, 1981, pp.62-63.

³⁶ See also Scherrer, Amandine, *G8 against Transnational Organized Crime*, Ashgate Publishing Limited, England, 2009, p.25, Nelli, Humbert S, *The Business of Crime: Italians and Syndicate Crime in the United States*, Oxford University Press, New York 1976, p.261 and Peterson, Virgil W., *The Mob: 200 Years of Organized Crime in New York*, Green Hill Publishers, Ottawa 1983, p.275.

³⁷ Von Lampe Concept of Organized Crime paragraphs 1 and 3.4 at <http://www.organizedcrime.de/organizedcrimetheory.html>.

³⁸ Ryan, Partick J., *Organized Crime: A Reference Handbook*, ABC-CLIO, California, 1995, p.42; Robinson, Jeffrey, *The Merger: The Conglomeration of International Organized Crime*, The Overlook Press Woodstock 2000, p.33.

³⁹ O'Kane, James M., *The Crooked Ladder: Gangsters, Ethnicity, and the American Dream*, Transaction publishers, New Brunswick, New Jersey 1992, p.76.

syndicates and criminal organisations as a dominant factor in crime.⁴⁰ In the first 38 years of tenure of Hoover in office, he not only publicly denied the existence of the Mafia or other nationwide crime syndicates in the USA, but bitterly opposed investigation of organised crime by Senator Estes Kefauver and Anslinger.⁴¹ According to Poveda, Hoover was especially embarrassed by the national publicity surrounding the discovery of the Apalachin meeting since he repeatedly denied the existence of the Mafia or a national organised crime syndicate.⁴²

History is not very helpful in understanding organised crime. The weakness of the use of the historical concept of organised crime lies in the fact that it leads to a very broad definition, one that could even be applied to an individual criminal, as long as someone else knowingly contributes to his criminal conduct.⁴³ The Mafia concept of organised crime that had evolved during the 1950s and 1960s, and had largely been the result of a focus on New York City, proves this point.⁴⁴ Despite the tremendous impact of the Mafia concept on public perception, the concept soon proved unsuitable for devising valid law-enforcement strategies for the entire US. After rejecting a proposal to outlaw membership in the Cosa Nostra, the Congress passed the Racketeering Influenced and Corrupt Organisations Statute (RICO),⁴⁵ hereafter referred to as the RICO, with an extremely broad underlying concept of organised crime.

While some members of the Federal Organised Crime Strike Forces⁴⁶ defined organised crime as including only Cosa Nostra members, others had correctly included any group of two or more persons formed to commit a criminal act.⁴⁷ This resulted in the emergence of the concept of non-traditional organised crime, which transferred the Mafia model to other ethnically defined criminal organizations similar to the Cosa Nostra, such as East-Asian, Latin-American and Russian groups, outlaw-motorcycle gangs and the so-called prison gangs now referred to as International Organised Crime.⁴⁸ According to Adamoli, the passing of RICO was largely triggered by the looming threat represented by Italian-American organised crime.⁴⁹

In order to clear the ambiguity surrounding organised crime, the USA President's Commission on Organised Crime concluded that drug trafficking was the single most serious organised crime problem in the USA and the largest source of income for organised crime thereby describing organised crime as drug trafficking.⁵⁰ This view follows the submission by Chambliss that crime is a political phenomenon based on the research on state-organised crime where state engage in crime, such as the involvement of the USA support of cocaine trafficking in Vietnam, Laos, Cambodia and Thailand.⁵¹

⁴⁰ Von Lampe Concept of Organized Crime paragraph 3.2 at <http://www.organizedcrime.de/organizedcrimetheory.htm> last visited on 22 December 2007. Compatibly, Southwell states that in 1957, Hoover did not believe in the existence of Mafia (Southwell, David, *The History of Organized Crime: The True Story and Secrets of Global Gangland*, Carlton Books, London, 2006, p.38). Carl Sifakis agrees that Hoover denied the existence of Mafia (Sifakis, Carl, *The Mafia Encyclopedia: From Accardo to Zwillman*, 2nd ed, Facts on File, New York, 1999, p.ix.)

⁴¹ Newton, Michael, *The FBI Encyclopedia*, McFarland and Co Jefferson, 2003, p.256 and Newton, Michael, *Chronology of Organized Crime*, McFarland and Co Jefferson, 2011, p.138. Aslinger was the Director of the Bureau of Narcotics. Newton states that in 1955, Hoover assigned a team of FBI agents to determine and document the nonexistence of organised crime.

⁴² Poveda Tony G "Controversies and Issues" in Theoharis Athan G (ed) with Poveda Tony G, Rosenfield Susan and Powers Richard Gid, *The FBI: A Comprehensive Reference Guide*, Oryx Press, Phoenix, 1999, p.120. Apalachin meeting is refers to a meeting of the members of organised criminal group who met at a place called Apalachin.

⁴³ Von Lampe, Concept of Organized Crime paragraph 2.4. Available at <http://www.organizedcrime.de/organizedcrimetheory.htm>.

⁴⁴ This means that the concept of organised crime meant the Mafia.

⁴⁵ Title 18 of the United States Code, Section 1961 of 1970.

⁴⁶ The Units were established in different cities since 1967.

⁴⁷ Von Lampe Concept of Organized Crime paragraph 3.5. Available at <http://www.organizedcrime.de/organizedcrimetheory.htm>.

⁴⁸ Ibid.

⁴⁹ Fijnaut, Cyrille and Paoli, Letizia (eds), *Organised Crime in Europe: Concepts, Patterns and Control Policies in the European Union and Beyond*, Springer, Dordrecht, 2004, p.6.

⁵⁰ Ibid, p.29

⁵¹ This is based on the supposition that the soldiers who were based in Vietnam were involved in drug trafficking. Chambliss defines state-organised crime as acts committed by state or government officials in the pursuit of their job

In the case of India, criminal gangs have been operating since ancient times. The gangs of ‘thugs’ usually preyed on travellers or wayfarers while traversing lonely regions that passed through thick jungles. The ‘thugs’ travelled in gangs, large or small, usually un-armed and appearing to be pilgrims, ascetics or other harmless wayfarers. By means of ingenious tricks and false pretences, they won the confidence of their intended victims who were looted and murdered.⁵² Sir William Sleeman was mainly responsible for destroying the ‘thugg’ organisation. Lord William Bentinck passed a series of special legislation to crush the gangs.

The majority of organized crime groups are firmly rooted in the civil society that facilitated their existence and expansion in the first place. One has only to look at the Italian mafias, the Sicilian Mafia, the Neapolitan Camorra and the Calabrian ‘Ndrangheta, for example, and how they condition the everyday lives of many citizens through the extortion of local businesses, the shoot-outs in public places and the distribution of drugs in the small piazzas or narrow alleyways; or the emerging Russian Mafia ‘criminal groups [which] collect debts, settle disputes, at times help businessmen obtain special credits, and have even shown the ability to restrain their demands and take into consideration the ups and downs of the economy’.⁵³

These groups are an integral part of these countries’ civil society, a presence there to control, to ‘keep an eye’ on ‘everything’ and ‘everyone’, so that they can make money undisturbed; in some cases, they appear more efficient than the state, as an alternative state, which provides what the state is unable to provide—jobs, protection, goods and services: ‘organized crime emerges as a functional necessity when the State or its policies fail to deliver goods and services (including justice, peace, security or employment) to sectors of society which demand these goods and services’⁵⁴, what Siebert (1996) has called ‘instrumental rationalism’.⁵⁵

When organized crime gangs export themselves to ‘host’ countries and become transnational, they are less intertwined with the host territory and less hungry to control its civil society. They behave as a business, as an economic enterprise there to make money and not feed off its civil society, which has not helped to produce them. In this respect, the various methods, stages and strategies adopted by ‘traditional’ mafia organizations in taking control of new territories are of great interest. One such, apparently common, strategy seems to be the organizations’ initial ability to establish widespread social control over immigrant communities made up of networks of relatives and fellow countrymen (or, in the case of Italy, fellow migrants from south to north). Stefano Becucci has dealt with this phenomenon in relation to the Chinese Mafia in Italy⁵⁶, whereas Rocco Sciarrone has analysed the spread of the Calabrian ‘Ndrangheta in northern Italy’.⁵⁷

This form of criminal control has limited effects on civil society at large because the acts of violence and intimidation which typify it are aimed primarily at the immigrant community. Nevertheless, any attempt at undermining the democratic principles of society—however small the number of affected citizens may be—poses a tangible threat to the system as a whole. Indeed, mafia members take root in new territories ‘by strategically employing their skills to establish their control over the new territory’.⁵⁸

While terrorist groups have an ideological agenda, organized crime has only an economic agenda, to make money. With money, undoubtedly, comes violence, a form of violence which has the power to immobilize civil society and to control business deals. These two elements necessarily go hand in hand, and although organized crime gangs have

as representatives of the government (Chambliss, William J., “State-Organized Crime - The American Society of Criminology, 1988 Presidential Address” in *Criminology*, Volume 23, Number 2 1989, The American Society of Criminology 1989, p.204). See also Lyman, Michael D. and Potter, Gary W., *Organized Crime*, 5th Ed, Prentice Hall, Boston, 2011, p.321.

⁵² Ibid.

⁵³ Varese, F., *The Russian Mafia: Private Protection in a New Market Economy*, Oxford University Press, Oxford, 2001, p.189.

⁵⁴ Einstein, S. and Amir, M. (eds), *Organized Crime: Uncertainties and Dilemmas*, University of Illinois Press, Chicago, 1999, xi.

⁵⁵ Siebert, R., *Secrets of Life and Death: Women and the Mafia*, Verso, London, 1996.

⁵⁶ Becucci, Stephano, ‘La criminalità organizzata cinese in Italia: presentazione di un modello teoricointerpretativo’, in R.Siebert (ed.) *Relazioni pericolose, criminalità sviluppo nel Mezzogiorno*, Rubbettino, Soveria Mannelli, 2000.

⁵⁷ Sciarrone, Rocco, *Mafie vecchie e mafie nuove: radicamento ed espansione*, Donzelli, Rome, 1998.

⁵⁸ Ibid, p. 297.

become more sophisticated in their legal activities they still deal predominantly in illegal activities as their main source of capital, using violence very often as a way of doing business. In this sphere, violence remains their main currency. Indeed, the most recent statistics show that violent gangs involved in drug-dealing have now contaminated all big cities. The extreme violence of these gangs is symptomatic of the fierce and competitive nature of their business, whether it is drug-trafficking with the dominance of the Colombian cartels dealing in cocaine, heroin, marijuana and chemical drugs, human trafficking with the Albanian Mafia and the Chinese Triads, or arms-trafficking with the emerging Russian Mafia.

But, even more importantly, it is the spread of illegality within the legal economy, which makes it more dangerous and more difficult to detect and combat. For example, in Belgium, organized crime gangs have penetrated the jewellery retail stores, restaurants and hotels; in France, bureaux de change, real estate, golf courses, restaurants, private clinics and casinos in the south; in Portugal, casinos, real-estate agencies and off-shore companies.⁵⁹ In order to protect both their illegal and their legal activities, organized crime gangs do not hesitate to interfere in the political, judicial and security systems of a country: 'these criminal elements...command vast sums of money, which they use to suborn state officials'.⁶⁰ These relationships are very difficult to detect and prove because of their secretive nature. Indeed, how are we to guess that the hotel we stayed in last night or the restaurant we ate in are not fronts for organized crime and are not re-laundering 'dirty' drugs money?

Organized crime gangs have mostly appeared and developed in situations of political upheaval, economic chaos and/or social confusion. The most cited example is that of the Sicilian Mafia, where the vacuum provoked by the State's shortcomings in some areas of the country during unification and in the immediate post Second World War period has been analysed as fertile ground for organized crime; more recently, 'in China, as in the former Soviet Union, Eastern Europe and elsewhere, transition to a market economy, the opening of borders and the partial unraveling of communist political and social control mechanisms have created fertile soil for the growth of crime and drugs'.⁶¹

The globalization process has clearly had a direct impact on the structure, activities and alliances of organized crime groups. From our point of view, what we are interested in is how far these groups are impinging on local, national and international political systems, to what extent they are interfering with the everyday functioning of democracies. It is clear that the situation has deteriorated in some places 'to a point where criminal organizations can undermine a government's ability to govern, as in Italy, Russia, Colombia and elsewhere, then the problem goes beyond law and order and becomes a national and international security concern'.⁶² The operations of these organizations are no longer limited to traditional organized crime countries; they are now becoming involved in a whole variety of activities in countries neither naturally linked to native organized crime groups nor having an organized crime problem, countries such as India, Albania, Turkey and Ireland.

Our worrying obsession with the general threat sometimes diverts our attention from local problems. We would like to stress that organized crime is threatening both local and international governance. It attacks both levels, and we must not forget that its vital strength is in its control of the local—citizens, businesses and politics. Without this it cannot control other levels. Indeed, in 1993 the French journalist Marcelle Padovani bluntly asked: 'how many people are aware of the real threat the Mafia poses democracy?'.⁶³ Echoing her worry, we could ask more generally: how many people are aware of the real threat organized crime poses to democracy?

⁵⁹ Savona, E.U. (with F.Manzoni), *European Money Trails*, Harwood Academic, Amsterdam, 1999, p.39-103.

⁶⁰ Katharina Hoffman, "The Impact of Organised Crime on Democratic Governance – Focus on Latin America and the Caribbean", FES Briefing Paper 13, September 2009, p. 9.

⁶¹ Lee, R.W., III, "Drugs in Communist States and Former Communist States", *Transnational Organized Crime*, 1/2:193–205, 1995.

⁶² Godson. R. and Williams, P., 'Strengthening Cooperation against Transnational Crime: a New Security Imperative', in P.Williams and D.Vlassis (eds), *Combating Transnational Crime: Concepts, Activities and Responses* [special issue of *Transnational Organized Crime*, 4/3–4], 1998.

⁶³ Padovani, M. (1993) 'Introduction: the Falcone Method', in G.Falcone and M. Padovani, *Men of Honour: the Truth about the Mafia*, Warner, London, 1993, xvii.

Relation Between Organized Crime And The State:-

The relationship between organized crime and the State can seem paradoxical: on the one hand, the control which the organization exerts in a given territory is intrinsically totalitarian, whereas on the other, for it to gain such control in the first place, it needs to rely on the existence of a democratic environment. Indeed, it is by exploiting the very freedoms which democratic systems offer that organized crime is able to thrive and speed up its profit-making processes—though it is also thanks to the widespread web of protection and collusion it manages to weave.

Several factors determine the impact of organized crime on democratic governance and create a spiral of mistrust, corruption and violent reactions. The involvement of politicians and militaries as well as police forces (“state capture”) undermines the trust of civil society into state institutions and drives the prominence of conservative “zero tolerance” approaches.⁶⁴ “Hard hand” responses to organized crime often come along with human and civil rights abuses, thus further undermining democratic governance. The challenges organized crime poses to democratic governance and public security requires policy responses on the national, regional and global level.

Mexico is one of the examples of how organized crime and hard hand politics⁶⁵ are eroding democratic governance and therefore threaten national and in the long term international peace. Mexico is currently divided into zones that connect the country and the crucial trans-shipment points of the Caribbean, Central America and the Pacific. Along these channels the battles between cartels take place that have in parts replaced the Colombian cartels as the protagonists of the cocaine trafficking business towards the U.S. and Europe. The most affected areas are located in the north of the country (e.g. Ciudad Juarez with a death toll of around 1000 murders in the current year 2009), but also the south is now affected and divided into battle zones of the cartels and violent clashes⁶⁶ between armed forces and drug cartels. But since corruption is endemic in the police forces of Mexico, it is often unclear who is fighting on which front. Certain is that the concept of modern democratic statehood is highly affected by the very high level of violence. The young Mexican democratic system reacts very vulnerable to a death toll of around 6000 people in 2008. The cartels have decided to confront the Mexican state directly after former President Fox and current President Calderón have made the security agenda their prime political goal. By doing so, armed forces have been deployed to fight the cartels on critical points scattered over the country. Thereby, the Mexican government admitted that the federal police alone is not able to fight the cartels that are home to legions of deserted soldiers and police men who are familiar with the system which makes bribing and infiltrating much easier. The deficiency of the Mexican institutions of public security, justice system and the defence and intelligence units is due to the fact that the transformation of the Mexican state in the 1980s and 1990s has left out the reformation of the state’s institutions. This deficit is reflected in the current crisis of public security. The corruption of the police forces and the inability of the Mexican state to enforce an adequate police reform is one of the reasons of the lack of trust in political parties. The latest midterm elections in Mexico show a vast disappointment in the society towards politics in general (e.g. constant corruption scandals of politicians involved in drug deals have enhanced a feeling of indifference) and a tendency towards a re-traditionalisation towards the PRI (Partido Revolucionario Institucional) the party that had established a hegemonic party system for 70 years until the first democratic election in the year 2000. The media⁶⁷, trade unions, lawyers and other democratic actors are harassed by the cartels and their political mercenaries.

Organized Crime has gained its power from the weakness of the legal and constitutional powers and within a process of infiltration of the political system.⁶⁸ Solidarity, equality and empowerment of the excluded are not integrated in the governance of crime that is rather based on greed and fear. But the excluded are part of the structures that built organized groups like the mafia as well as local heroism incorporated in a culture of protection by drug lords that replace social and protective functions of the state. Besides simple mechanism of socioeconomic and physical survival, identity is an attraction to marginalized young people that look for orientation and a

⁶⁴Katharina Hoffman, “The Impact of Organised Crime on Democratic Governance – Focus on Latin America and the Caribbean”, FES Briefing Paper 13, September 2009, p. 9.

⁶⁵ El problema en México es que la mano dura se identifica con el empleo de las Fuerzas Armadas, con la impunidad y con posibles violaciones a los derechos humanos“ (Benitez 2009:180).

⁶⁶ According to a widely quoted estimates of the Brookings Institution, there are around 30 weapons a day passing the U.S.-Mexican border southbound.

⁶⁷ Mexico had the highest murder rate of journalists after Iraq in 2008. The death toll for 2008 is much higher for Mexico than for Iraq: 6290 Mexicans died due to drug-related violence.

⁶⁸ Katharina Hoffman, “The Impact of Organised Crime on Democratic Governance – Focus on Latin America and the Caribbean”, FES Briefing Paper 13, September 2009, p. 9.

perspective of a better life. Symbols of group identity/gangs are reflected in music (“narcocorridos”) and tattoos (Maras) that provide “angry young men” with a feeling of self-esteem.

Neoliberal politics widened already existing non governed spaces that have easily been occupied by groups of organized crime who had often been part of cliental structures on the local level but have never been globally connected like in our days.⁶⁹ Illegal forms of organized crime groups have restructured themselves into flexible trans-national operating units that are internationally linked as an adjustment to globalization and the global economy.

The structural conditions (socioeconomic insecurity, absence of a welfare state) have not been addressed by Mexico and Colombia since both current administrations react with traditional security tools and therefore ignore the root causes that give rise to the emergence of new non state groups i.e. bandas criminals that fight against the government and at the same time with parts of the same against democratic actors.⁷⁰

The role of organized crime in the erosion of democratic governance is marked by zones of fragile statehood, the undermining of political institutions, the replacement of social policies by non state actors, the bribing of political actors and the illicit financing of political campaigns.⁷¹ The most important factors for upholding a criminal system are therefore income generation through the drug trade and human trafficking, the laundering of money, the provision of arms and the intensification of political power through corruption and impunity.

Many resources are linked to conflict. Drugs, like alluvial diamonds, are easy to appropriate and transport to markets, as opposed to oil, gas, timber and minerals. The illegal drug business is the branch of organized crime which generates the highest revenues.⁷² The end of the Cold War drastically reduced the availability of state financing for terrorist and insurgent movements. The need for alternative funding made drug trafficking attractive to many groups. These developments lead to the blurring of criminal and political groups and to different variations and combinations of the two. The access to funds by participating in illegal actions enables to pay fighters, acquire weapons and buy legitimacy. Drugs are hence instrumental in enabling a group to threaten the state’s monopoly on the legitimate use of force and control over territory, as well as the security of its citizens. Where narcotics production exists, armed conflict is altered in its dynamics and alters the involved groups in its structure and behaviour. This also changes the challenge they pose to states.

The reach of actors of organized crime into the political sphere is, among intimidation and clientelism, mainly based on corruption.⁷³ The level of organized crime is correlated with the failure in the delivery of basic political goods by the state. The stability of state institutions grants predict-ability to political processes, an impartial and effective judiciary guarantees individual rights, and the protection of political rights allows citizens to vote and to compete for public offices. If corrupt politicians undermine these rights the trust in institutions and democracy are diminishing and contribute to the growth of criminal net-works. Corruption has diverse functions to maintain or newly perceive power through infiltrating police and military forces, political institutions of decision making such as national or local parliaments, judicial decision-making or the media. The strength of institutions decides over the vulnerability to corruption and can only be improved by building agencies and institutions that are granted with high levels of independence, impartiality and financial resources to address corruption efficiently. Again, the drug market and its incomparable high revenues make it difficult to create alternative incentives. Breaking the high levels of income through partial legalisation and decriminalisation, better payment for public servants and employing better-trained staff are possible ways. Besides corruption, impunity is another challenge on the political agenda. In many Latin American countries impunity is a historical factor (military dictatorships) that has risen again in the last decade since actors of organized crime have become more influential in judicial and security sectors.

When studying each different criminal group, it soon becomes clear that the origins of groups cannot be reduced to one simple common explanation. Each group, in fact, has its own specific social, cultural, economic and political *raison d’être*. Organized crime can no longer be stereotyped purely as an Italian or Italo-American phenomenon, because research has shown that organized crime existed in many different countries before the twentieth century,

⁶⁹ Ibid.

⁷⁰ Ibid.

⁷¹ Ibid.

⁷² Ibid.

⁷³ Ibid.

although not necessarily in the form we know today. If we look at China and its Triad societies, we can note certain tendencies: They are secret societies formed by patriotic Chinese three centuries ago to fight against the oppressive and corrupt Ch'ing dynasty. When the Ch'ing dynasty (1644–1911) collapsed in 1911 and the Republic of China was established, some societies began to be involved in criminal activities.⁷⁴

This is also the case when we look at Triads in Hong Kong: 'between 1842 and 1930, secret society members from China emigrated to Hong Kong and formed the mutual-aid associations that later developed into powerful Triad groups'.⁷⁵ In the case of Japan, the Yakuza has a 300-year history originating from the Tokugawa period (1600–1868) with groups of gamblers and street peddlers. Yet again, it was only at the turn of the twentieth century that these criminal groups came to the fore, and only in the post-war period that they made their mark as organized crime syndicates developing into a unique form of violent gangsterism.

Organized crime in Russia is not a post-communist phenomenon. Some suggest that organized crime existed even before the 1917 revolution⁷⁶ and existed throughout the twentieth century in different forms: from under Stalin when it was consolidated as criminal networks, to the raging black market under Brezhnev, to a vicious international mafia in the new market economy. Thus, as Gilinskiy explains that the growth of criminal associations is a natural process, in the sense that they are a manifestation of the social systems in which they develop as well as of specific features of their own 'subsystemic' development.⁷⁷ Studies of organized crime have shown that the factors influencing the level of development and the specific form of organized crime are worldwide: they are not confined to Russia or even Sicily. The high degree of adaptivity of criminal associations...is a major factor in the survival of organized crime in any society, particularly once they are well established within that social system.⁷⁸

In the post-war period, these cultural and regional differences became less important as groups entered the international market place. The rules of the market dictated the terms for all groups equally and they had to respond. They have thus had to shed their differences to become more functional and more efficient to survive in the fierce market place. As a consequence, it would superficially appear that they have moved away from their cultural roots to become a competitive economic force. But is this really the case? Castells has recently argued that their cultural differences might actually be the strength of modern criminal organizations: 'criminal networks are probably in advance of multinational corporations in their decisive ability to combine cultural identity and global business'.⁷⁹

Organized criminal gangs had a disruptive effect on democracy by challenging its participative nature and, more concretely, the functioning of the political and institutional systems. Not only did they attack some of the basic principles of democracy—equality of citizens, openness of decision-making and free elections—but they also distorted the functioning of the economy and civil society. Depending on the political circumstances, organized crime in the following years was either seen as a pressing political problem which required immediate attention, or was completely forgotten and left to its own devices: it has been considered an intermittent phenomenon, as, having materialized, it then vanished from sight.

Let's take an example of Marseilles. At the beginning of the 1920s, the growth of the illegal economy in Marseilles, in particular the rise in the amount of smuggling and prostitution, did not provoke repressive action from law-enforcement agencies nor did it trigger any form of social alarm.⁸⁰ Only at the end of the 1920s did both the local and the national press start to represent Marseilles as 'the capital of crime', an image which they nourished incessantly for the first half of the 1930s.

⁷⁴ Chin, K.-L., 'Triad Societies in Hong Kong', *Transnational Organized Crime and International Security*, 1995, p.47--64.

⁷⁵ Ibid.

⁷⁶ Varese, F., *The Russian Mafia: Private Protection in a New Market Economy*, Oxford University Press, Oxford, 2001, p.162-163.

⁷⁷ Gilinskiy, Y., 'The Market and Crime in Russia', in V.Ruggiero, N.South and I.Taylor (eds), *The New European Criminology: Crime and Social Order in Europe*, Routledge, London, 1998.

⁷⁸ Ibid., p.236.

⁷⁹ Castells, M., *End of Millennium*, Blackwell, Oxford, 2000.

⁸⁰ A wave of apprehension took place between 1900 and 1907, in which the whole of France demanded more security and more police officers on patrol.

It was around this time that the city's bad reputation was established, and Marseilles became known as the French Chicago.⁸¹ The power of local criminals in Marseilles was considered the result of the widespread corruption which existed throughout local government. According to certain reports, the exchange network between organized crime and politico-governmental circles developed during the 1920s, when those who lived off illegal activities, smuggling and prostitution were, in fact, politically integrated into the wider system of clientelism which ruled the city. It seems that criminal leaders, who were in charge of the main illegal markets and whose authority was unrivalled, started to support some of the local politicians. The typical exchange later described by Foote Whyte⁸² in the USA was at play: for their political mediation, and for their capacity to 'suggest strongly' for whom the electors should vote, the gangsters would be offered political protection, and in particular they could obtain immunity from prosecution, which they needed in order to further their business interests. During the 1920s gangs, especially of Corsican criminals—who had already made their way to the top of some of the most lucrative, international illegal organizations—began establishing strong links with the local political system. Corsican bosses were prime movers in obtaining electoral consensus among some of the new Corsican immigrants who made up the main foreign group in Marseilles and who, unlike the first generation of Italian or Spanish immigrants, were already entitled to vote.⁸³ Corsican organized crime was able to leave an indelible mark on the city: the rise of the Guerini clan is an exemplary case in point.⁸⁴

Links between gangsters and the political milieu were sometimes very strong. For example, Paul Carbone and Lydro Spirito, respectively of Corsican and Italian origin, were two of the best-known gangsters involved in international smuggling and prostitution. During the 1930s they also became the owners of numerous nightclubs, taxi services, shops and estate agencies. Despite their evident involvement in the criminal underworld, Carbone and Spirito were closely connected with Simon Sabiani, the controversial deputy mayor.⁸⁵ What is remarkable is that no attempt was ever made to cover up this relationship. For example, in 1934 the deputy mayor launched a poster campaign to proclaim his solidarity with these two criminals, who had been accused of murder⁸⁶, which in Sabiani's opinion they had not committed.⁸⁷

The exposure of the collusion between politicians and organised crime mafias was not a new phenomenon in Italy. During the post-war period, and even more so during the 1970s, this collusion had been denounced, especially in the south, by political militants, journalists and intellectuals, even by the magistrates themselves. Since the mid-1960s the problem had been the subject of many Parliamentary inquiries that had revealed the full extent of the Mafia's penetration of state institutions and politics in Sicily. The 'Mafia question' provoked controversies about the politicians and the parties in power. It was at the centre of debates on the degradation of Italian democracy caused by the underground operations of some sectors of the state apparatus and the spread of illegal activities in extensive areas of Italy.

The Anti-mafia Commission reports compiled since 1982 have established, however, the continuing 'organic' relationships between the Mafia and certain political groups. They have confirmed 'the perverse connections between criminal business, state institutions and political system'. Furthermore, they have stressed the increasing danger posed by the phenomenon as a result of the transformation of the Mafia into an organized and centralized structure which is no longer playing a passive, intermediary and parasitic role, but is trying to intervene directly in

⁸¹ Vaucoret, J.A., 'Un homme politique contesté: Simon Sabiani'. Unpubd thesis, Faculté des Lettres et Sciences Humaines, Université de Provence, Aix-en-, Provence, 1978.

⁸² Whyte, W.F., *Street Corner Society*, 3rd edn, University of Chicago Press, Chicago, 1981.

⁸³ In 1931, the number of Corsicans reached around 60,000 (8 per cent of Marseilles's population and the highest percentage outside Corsica), whereas there were around 10,000 Italians and 15,000 Spaniards.

⁸⁴ Saccomanno, E., *Bandits a Marseille*, Julliard, Paris, 1968, Sarazin, J., *Dossier M comme Milieu*, Alain Moreau, Paris, 1977 and Jaubert, A., *Dossier D comme drogue*, Alain Moreau, Paris, 1974, p.239-40.

⁸⁵ Vaucoret, J.A., 'Un homme politique contesté: Simon Sabiani'. Unpubd thesis, Faculté des Lettres et Sciences Humaines, Université de Provence, Aix-en-, Provence, 1978.

⁸⁶ 'Excellent cadavers' is an expression used to describe the murders of important institutional figures such as Giovanni Falcone.

⁸⁷ Jankowskij, P., *Communism and Collaboration: Simon Sabiani and Politics in Marseille, 1919-1944*, New Haven, Yale University Press, CT, 1989, p.37.

politics by its subversive use of violence and ‘the insinuation within state institutions, political power and legal institutions’.⁸⁸

The problem then arose as to how to qualify Mafia crimes in legal terms and so how to prosecute them. The main obstacles that the investigators faced were the power of intimidation that the Mafia had over its social environment and the difficulty in obtaining solid evidence of their crimes. This is how, for instance, Cesare Terranova, the investigating magistrate who was later murdered by the Mafia, described the problem in 1965.

With the equivocal formula of ‘acquittal for lack of evidence, a wall of impenetrable silence caused by the absence of public spirit, a fear of reprisals and, unfortunately, by the lack of trust in the power of the State, have regularly hindered judicial investigations. This is one of the most solid pillars of the Mafia system because the biggest strength of the mafioso consists precisely in the knowledge that his victim will not denounce him, that the eventual witnesses of his activities will not report what they have seen or heard...that is, in other words, what could be called ‘the certainty of immunity’.

Hence the demands for the adoption of a category of crime appropriate to Mafia crime that would recognize the specificity and the ‘organizational’ nature of the phenomenon, which was implemented in the aftermath of General Dalla Chiesa’s murder in September 1982, when Parliament passed the law known as ‘Rognoni-La Torre’.

Japan struggled with the organised crime. Following the Lockheed scandal⁸⁹ in 1976, there appears to have been a decrease in public tolerance for Yakuza syndicates, including their participation in politics, which can be attributed to several factors. First, there were incidents in which inter-gang conflict took the lives of innocent civilians. Second, Yakuza syndicates expanded their business beyond gambling and prostitution to include activities such as debt-collection, corporate extortion, bankruptcy management, real estate and settlements of disputes. Both the inter-gang warfare and the expansion of financial activities (known as *minji kainyū bōryoku*, or ‘Violent intrusion into civil matters’) increasingly impinged on non-Yakuza citizens. Finally, the organized crime countermeasures law (*Boryokudanin ni yoru futō na kōi no boshi nado ni kansuru hōritsu*, or *Bōtaihō*), passed by the Diet in May 1991 and enacted in March 1992, was a strong legal move made against the Yakuza. Although it is not necessarily the case that the law resulted from, or encouraged, public intolerance for organized crime, it did signify greater legal stringency towards organized crime syndicates. But the Kanemaru case⁹⁰ in 1992 raised the question of how Yakuza participation in national politics has impacted the practice of Japanese democracy.

Organised Crime And National And International Law:-

Organized crime and gang violence can be found in both poor and rich countries. They often pose serious problems, particularly in urban areas, to the state and to society.⁹¹ Various national and international laws have consequently been enacted to combat organized crime as well as gangs and their violence more effectively. Due to the gangs’ highly dynamic and heterogeneous nature, dealing with them in legal terms has proved to be a challenging and even

⁸⁸ Fatò, E., *Mafia, ‘Ndrangheta e Camorra dopo la legge La Torre*, Gangemi, Reggio di Calabria, 1989, p.50, 189.

⁸⁹ The Lockheed bribery scandals encompassed a series of [bribes](#) and contributions made by officials of U.S. aerospace company [Lockheed](#) from the late 1950s to the 1970s in the process of negotiating the sale of aircraft. In Japan, The scandal involved the [Marubeni Corporation](#) and several high-ranking members of Japanese political, business and [underworld](#) circles, including Finance Minister [Eisaku Sato](#) and the JASDF Chief of Staff [Minoru Genda](#). Lockheed had hired right-wing nationalist underworld figure [Yoshio Kodama](#) as a consultant in order to influence Japanese parastatal airlines and ¥500 million of the total was received by the Prime Minister Kakuei Tanaka, who was later arrested in 1976.

⁹⁰ In October 1992, the politician Kanemaru Shin was forced by public pressure to resign from the Japanese Parliament, the Diet, for receiving 500 million yen (approximately \$4.1 million) in illegal campaign contributions from the president of Sagawa Kyūbin, a parcel delivery company with ties to the Japanese Mafia. Kanemaru’s financial improprieties, which included tax evasion as well as the acceptance of illegal campaign contributions, ignited one in a series of post-war political scandals which revealed the extent to which Yakuza influenced Japanese politics at the highest of levels.

⁹¹ Graduate Institute of International and Development Studies (ed.), *Small Arms Survey 2007: Guns and the City*, Cambridge University Press, Cambridge, 2007, pp. 169–176; see also Olivier Bangerter, ‘Territorial gangs and their consequences for humanitarian players’,

delicate task. Although it seems more appropriate to distinguish between organized crime and gangs and their violence, such a distinction is often difficult to draw. Legislators have therefore opted for different approaches.

In the United States, there have been many Commissions and citizen's committees attempting to expose and deal with organized crime.⁹² The most impressive results, as in Italy, emerged out of prosecutions based on law-enforcement investigations and intelligence data gathered from informants, crime syndicate defectors, police undercover and electronic surveillance activities. Consequently, the American Cosa Nostra declined when it lost some tacit acceptance in wider society and when it was in the midst of a deep internal crisis caused by a leadership dispute. In New York, in particular, the assassination of Paul Castellano in 1985 was the flashpoint for internal war. Castellano was the most powerful Mafia boss, head of the Gambino crime family. He was murdered by one of his subordinates, John Gotti, who then emerged as the head of the family. The culture of internal solidarity reinforced by rules of conduct that forbade the murder of a boss without the permission of the Cosa Nostra commission was undermined and led the way to the dissolution of the New York Cosa Nostra by 1991.

In 1968, the US Congress enacted the Omnibus Crime Control and Safe Street Act, that stated "organised crime includes the unlawful activities of the members of a highly organised, disciplined association, engaged in supplying illegal goods and services, including but not limited to gambling, prostitution, loan sharking, narcotics, labour racketeering and other unlawful activities of such association". The U.S. also came up with RICO (Racketeer Influence and Corrupt Organisation) Act, 1970, which states that racketeering is an act of threat involving murder, kidnapping, gambling, arson, robbery, burglary, extortion or dealing in narcotics or dangerous drugs and other denominated crime.

Organised crime in contemporary India is a more complex issue. In the modern urban world, the gap between aspiration and fulfilment is widening. In India, the typical socio-political circumstances prevailing since Independence and the advent of democracy provide the logical context of the strengthening of these trends. The year 1991 was a watershed in India's economic resurgence. Liberalisation and globalisation of the economy allowed a free flow of foreign goods and capital into the country, and the dramatic growth in computerisation and e-business that followed have led to the emergence of cyber-crime.

As the financial capital of India, Mumbai has long been the playground of several criminal gangs and their continuing warfare for dominance. The first systematic study of organised crime was conducted by V.K. Saraf, Commissioner of Police (Retd), Mumbai City, 1995, in which he traced the origin of organised criminal gangs in the city, their criminal activities and the inter-gang warfare. He also highlighted the main characteristics of the Mumbai gangs.⁹³

Similarly, Haji Mastan and Yusuf Patel began as small-scale criminals and later took to smuggling gold and silver. They made a lot of money and invested it in 'legitimate' business ventures, primarily construction and real estate. Haji Mastan made an attempt on Yusuf Patel's life in the nineteen seventies due to business rivalry but the latter survived. This was the beginning of the gang warfare in Mumbai, which continues unabated to date and has claimed hundreds of lives.

Another major gang to emerge in Mumbai was that of Varadarajan Mudaliar in the nineteen seventies on the basis of bootlegging and *Matka* operations. In later years, he diversified his illegal activities into smuggling, dock thefts and contract killing, ruling the city's underground for over a decade till the mid-nineteen eighties. And finally, Dawood Ibrahim is the most powerful Mumbai Mafia 'don', with a countrywide network and extensive linkages abroad. He is one of the most powerful gangsters involved in transnational crimes, including narcotics smuggling, extortion and contract killing. He has lived in Dubai and is currently based in Pakistan. He had a phenomenal rise within a short time. One would remember the shooting of Gulshan Kumar, a Bombay music magnate with Rs. 800 crore empire, in 1997 as he refused to pay a large sum of money demanded by Dawood Ibrahim gang.

With the object of combating organised crime in the city, the Maharashtra government enacted the Maharashtra Control of Organised Crime Act (MCOCA) in the year 1999. But it was ineffective to deal with certain fugitives like

⁹² Rogovin, C.H., and Martins, F.T., 'The Role of Crime Commissions in Organized Crime Control', in R.J.Kelly et al. (eds), *Handbook of Organized Crime in the United States*, Westport, Greenwood Press, CT, 1994.

⁹³ Saraf, V.K., "Formation of Criminal Gangs in Major Cities", Research Project, 1995-96.

Anis Kaskar, Dawood Ibrahim, Tiger Memon, Chhota Rajan, etc, wanted for serious offences in India. The existing laws of extradition have also been of little help to capture these fugitives who have been living in various countries abroad and our law enforcers are totally helpless. If the need to deal with cases of organised crime differently and as a distinct category is accepted, an effective response would be to enact a separate Organised Crime Code rather than making patchwork amendments to the IPC.

In May 2011, Government of India ratified the United Nations Convention against Transnational Organized Crime (UNTOC) and its three protocols. India is one of the five countries in South Asia, including Afghanistan, Pakistan and Sri Lanka and Nepal, to ratify the UNTOC.⁹⁴

The United Nations Convention against Transnational Organized Crime (UNTOC), adopted in Palermo, Italy, on 15 December 2000, marks a major breakthrough, as the following brief outline of its content and significance shows.⁹⁵

The declared purpose of the Convention is 'to promote cooperation to prevent and combat transnational organized crime'.⁹⁶ Since the effectiveness of such co-operation depends on the applicability of common legal standards, the Convention obliges states parties to criminalize participation in an organized criminal group, corruption,⁹⁷ the laundering of the proceeds of crime (money laundering),⁹⁸ and the obstruction of justice.⁹⁹ It thus focuses on the 'enabling' or 'secondary activities' that are characteristic of organized crime. The 'primary activities' have been separated from the core instrument and are dealt with by the three Protocols thereto. This approach facilitated finding a consensus and increases the Palermo Convention's chance of gaining universal acceptance. Indeed, it already has 147 states parties.¹⁰⁰ Moreover, the decision to deal with the 'primary activities' in autonomous international treaties allows for the adoption of further protocols dedicated to specific aspects that are not covered by the existing instruments. It also facilitates its revision and amendment.

The UNTOC was adopted by General Assembly in 2000 and came into force in 2003.¹⁰¹ The Convention is the first comprehensive and global legally binding instrument to fight transnational organized crime. The UNTOC is further supplemented by three Protocols, which target specific forms of organized crime:

- 1) The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children,
- 2) The Protocol against the Smuggling of Migrants by Land, Sea and Air,

⁹⁴ Significance of the United Nations Convention against Transnational Organized Crime (UNTOC) to address human trafficking. See website, <https://www.unodc.org/southasia/en/frontpage/2011/june/significance-of-the-untoc-to-address-human-trafficking-interview-with-mr-g-k-pillai.html>.

⁹⁵ For a comprehensive study, see McClean, David, *Transnational Organized Crime: A Commentary on the UN Convention and its Protocols*, Oxford University Press, 22 March 2007.

⁹⁶ UNTOC, Art. 1.

⁹⁷ Independently from organized crime, corruption is dealt with in a series of universal and regional instruments, and in particular in the United Nations Convention against Corruption, 31 October 2003, 43 ILM (2004) 37 (entered into force 14 December 2005). For an instructive overview of pertinent instruments, see Sebastian Wolf, 'Internationale Korruptionsbekämpfung: Anmerkungen zum zehnjährigen Jubiläum des OECD-Bestechungsübereinkommens', in *Kritische Justiz*, Vol. 41, No. 4, 2008, pp. 367–370.

⁹⁸ Similarly, money laundering and asset recovery are dealt with independently from organized crime in a series of instruments such as the above-mentioned United Nations Convention against Corruption or the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime, 8 November 1990, Council of Europe, CETS No. 141. However, the 1988 UN Convention against the Illicit Traffic in Narcotic Drugs and Psychotropic Substances already obliged states to criminalize the laundering of profits obtained from drug offences.

⁹⁹ UNTOC, Arts. 5, 6, 8, and 23.

¹⁰⁰ See <http://www.unodc.org/unodc/en/treaties/CTOC/signatures.html>. Major countries that still have not ratified the UNTOC include the Czech Republic, Greece, Japan, the Republic of Korea, Thailand, and Vietnam.

¹⁰¹ Significance of the United Nations Convention against Transnational Organized Crime (UNTOC) to address human trafficking. See website, <https://www.unodc.org/southasia/en/frontpage/2011/june/significance-of-the-untoc-to-address-human-trafficking-interview-with-mr-g-k-pillai.html>.

3) The Protocol against the Illicit Manufacturing of and Trafficking in Firearms, their Parts and Components and Ammunition

The Convention against Transnational Organized Crime does not lay down a legal definition of (transnational) organized crime. However, the Convention does specify the use of some basic terms¹⁰² in order to give states some necessary guidance for its implementation in national law. Article 2 contains meaningful explanations with regard to the duty to criminalize participation in an ‘organized criminal group’ (Article 5). It stipulates that:

For the purposes of the Convention:

- a) ‘Organized 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 crimes or offences established in accordance with this Convention, in order to obtain, directly or indirectly, a financial or other material benefit.
- b) ‘Serious crime’ shall mean conduct constituting an offence punishable by a maximum deprivation of liberty of at least four years or a more serious penalty.
- c) ‘Structured group’ shall mean a group that is not randomly formed for the immediate commission of an offence and that does not need to have formally defined roles for its members, continuity of its membership or a developed structure...

These definitions are subject to criticism for being over-inclusive and vague.¹⁰³ While this point is relatively easy to make, it must not be overlooked that the consensus reached is nonetheless a remarkable achievement. Since it is the result of difficult multilateral negotiations, it at least represents a quasi-universal common denominator.¹⁰⁴

The definition recognizes that criminal associations do not always have a hierarchical structure comparable to real enterprises, but often function as networks consisting of a few loosely connected members.¹⁰⁵ Nonetheless, there has to exist a ‘Structured group ... that is not randomly formed for the immediate commission of an offence’. This means that more spontaneous forms of collective criminality are excluded from it. This is an important limitation that may help to draw a line between organized crime and gang criminality.

The world we live in today is subject to constant and rapid changes which are all the more visible in the process of globalization, where new trends and developments appear.

The attainment of wealth and power is no longer dependent on static and material forms of possession, but rather on the ability to be flexible and ever ready to generate or capitalize on economic opportunities, wherever these may be. However, despite the growing need to be more flexible, on a political level, and particularly in terms of political consensus, local groups and communities are increasingly manifesting a strong fear of losing their cultural identities. As a result, there is a general reaction against this process of globalization which is perceived as responsible for the gradual erosion of a community’s cultural identity, of geographical borders and of stability over space and time. Thus, in the same way that legal and legitimate political and economic forces are having to meet the challenge of such changing local and social perspectives, so are national and transnational criminal organizations.

The terrorist attacks of 9/11 have provoked an intense debate about non-state entities and international law governing the use of force. In this particular context, little attention has been paid to the role and significance of organized crime and gang violence as potential immediate threats to international peace and security. However, it is by no way excluded that powerful drug barons and arms traffickers are capable of launching similar attacks, for

¹⁰² UNCTOC, Art. 2.

¹⁰³ See e.g. Alexandra W. Orlova and James W. Moore, ‘“Umbrellas” or “building blocks”: defining international terrorism and transnational organized crime in international law’, in *Houston Journal of International Law*, Vol. 27, No. 2, 2005, pp. 282–287; J. O. Finckenauer, above note 12, p. 68. The UNCTOC treaty is also criticized for other reasons: see e.g. Jennifer L. Enck, ‘The United Nations Convention against Transnational Organized Crime: is it all that it is cracked up to be? Problems posed by the Russian mafia in the trafficking of human beings’, in *Syracuse Journal of International Law and Commerce*, Vol. 30, 2003, pp. 394.

¹⁰⁴ For the struggle to reach a definition in the travaux préparatoires, see McClean, David, *Transnational Organized Crime: A Commentary on the UN Convention and its Protocols*, Oxford University Press, 22 March 2007, pp. 38ff.

¹⁰⁵ Betti, Stefano, ‘New prospects for inter-state co-operation in criminal matters: the Palermo Convention’, in *International Criminal Law Review*, Vol. 3, 2003, p. 152.

example in order to blackmail governments. While it certainly is an adequate approach to consider merely the individual attacks and to qualify them, under certain conditions, as terrorism, another question is whether the groups behind it can therefore be classified as terrorist organizations.¹⁰⁶ It may be recalled that the death of 107 passengers of the Avianca Airlines Flight 203 of 27 November 1989 was due to a bomb for which the Medellin Cartel, at that time headed by Pablo Escobar-Gavira, assumed responsibility.¹⁰⁷ It should, moreover, be noted that Rio de Janeiro's most famous drug trafficker, 'Fernandinho Beira-Mar' (Luiz Fernando da Costa), whose detention in Colombia in April 2001 was even commented on by the US Secretary of State, Colin Powell, is supposed to have tried to purchase a Stinger missile.¹⁰⁸ Also in Rio de Janeiro, members of the city's drug factions shot down a military police helicopter as recently as October 2009.¹⁰⁹

Article 2(4) of the UN Charter¹¹⁰ prohibits 'the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations'. Since it is customary international law¹¹¹ and has the status of *jus cogens*,¹¹² its content is binding for all entities with international legal personality. However, the proposal by some writers that Al Qaeda be recognized as a (passive) subject of international law, in order to justify self-defence against its attacks on foreign territory,¹¹³ has gained little support in legal literature. Agreement with this assumption would raise the question whether the prohibition of the use of force is also binding for certain criminal organizations comparable to Al Qaeda. The dominant doctrine is that acts of criminal and terrorist organizations need to be attributable to a state or other recognized subject of international law and that terrorists have no such status.¹¹⁴ In the Friendly Relations Declaration (Resolution 2625 (XXV) of 24 October 1970), the UN General Assembly stated that: 'Every State has the duty to refrain from organizing or encouraging the organization of irregular forces or armed bands, including mercenaries, for incursion into the territory of another State'. The term 'armed bands' can be interpreted as also including criminal organizations and even gangs. The resolution was applied by the International Court of Justice in the Nicaragua case, in which it declared that financial support for armed bands – in the case in point, rebels – was sufficient to attribute their violence to a state.¹¹⁵

Whether and to what extent states sponsor (clandestinely) criminal collectives that are not driven by an ideology is difficult to answer. The rule is that democratically elected governments try to fight these groups. Sometimes, as the so-called 'war on drugs' shows, they even use military means to arrest criminals or destroy their infrastructure. An example is Colombia, whose government receives international military assistance for that purpose, namely from the United States.¹¹⁶ It should also be noted, however, that in 1989 the US invaded Panama to capture General Noriega, who was at that time the head of government and Commander-in-chief. Noriega was transferred to the US and

¹⁰⁶ Criminal organizations can metamorphose into terrorist organizations. When this point is reached is difficult to say. It is clear that criminal organizations also pursue political interests, but their primary motivation is material benefit and not an ideology.

¹⁰⁷ Southwell, David, "Die Geschichte des organisierten Verbrechens", Fackelträger, Cologne, 2007, p. 283.

¹⁰⁸ Amorim, Carlos, "CV-PCC: A Irmandade do Crime", Record, Rio de Janeiro and Sao Paulo, 2005, p. 380.

¹⁰⁹ Luiz, E., 'PM não resiste a queimaduras', in *Correio Braziliense*, 20 October 2009. At least thirty-nine people were killed in the wave of violence that followed.

¹¹⁰ Charter of the United Nations, 26 June 1945, UNCIO XV, 355 (entered into force 24 October 1945).

¹¹¹ ICJ, Case Concerning Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America), Judgment of 27 June 1986, ICJ Reports 1986, pp. 14ff., para. 147.

¹¹² Ibid., para. 100; Georg Dahm, Jost Delbrück, and Rudiger Wolfrum, *Völkerrecht*, Vol. I/2, Duncker & Humblot, Berlin 2002, p. 822.

¹¹³ Bruha, Thomas and Bortfeld, Matthias, 'Terrorismus und Selbstverteidigung: Voraussetzungen und Umfang erlaubter Selbstverteidigungsmassnahmen nach den Anschlüssen des 11. September 2001', in *Vereinte Nationen*, Vol. 49, No. 5, 2001, p. 163.

¹¹⁴ Brownlie, Ian, *Principles of Public International Law*, Oxford University Press, Oxford and New York, 2008, pp. 732ff.; Hobe, Stefan, *Einführung in das Völkerrecht*, UTB, Köln, 2008, p. 328; Joachim Wolf, *Die Haftung der Staaten für Privatpersonen nach Völkerrecht*, Duncker & Humblot, Berlin, 1997, pp. 456ff.

¹¹⁵ ICJ, Case Concerning Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America), Judgment of 27 June 1986, ICJ Reports 1986, pp. 14ff., para. 147.

¹¹⁶ Azzellini, Dario, 'Kolumbien: Versuchslabor für privatisierte Kriegsführung', in Dario Azzellini and Boris Kanzleiter (eds), "Das Unternehmen Krieg: Paramilitärs, Warlords und Privatarmeen als Akteure der Neuen Kriegssordnung", Assoziation A, Berlin, 2003, p. 32.

initially treated as a common criminal, then later as a prisoner of war, but was finally convicted of drug-related offences against US law.¹¹⁷ This shows that there is sometimes a thin line between organized crime and state governments and that in this context the prohibition of the use of force may become relevant.

The 9/11 debates mainly concentrated on the question whether states can invoke the right to self-defence against armed attacks by non-state entities, in particular terrorists. The subjects discussed included not only the actual level of intensity required for the attacks to qualify as 'armed', but also the (non-)applicability of the rules of attribution.¹¹⁸ Although the details of this discussion cannot be spelled out here, it is evidently assumed in some legal literature that the intensity required to constitute an 'armed attack' does not need to stem from a single act, but that the threshold can be reached by the cumulative effect of various low intensity acts that have resulted in a high number of victims and that disrupt the functioning of the state.¹¹⁹ On the other hand, the ICJ has stated that terrorist acts have to be attributable to a state.¹²⁰ If this were not so, states could easily invoke the right of self-defence against criminal organizations in particular, by referring to the cumulative effects doctrine. The difficult question that still lacks authoritative clarification concerns the conditions for such an attribution of private criminal acts to the state to be deemed admissible: that is, what kind or degree of control or co-operation is necessary.¹²¹

International law governing the use of force can become relevant in the context of organized crime and gang violence. In this respect, many questions still need to be raised and answered.

Organized Crime And Gang Violence As Subject Matter Of The Rome Statute:-

On the face of it, and like terrorism,¹²² organized crime or gang conduct do not in themselves usually amount to the crime of genocide according to Article 6 of the Rome Statute, unless they take place with the specific ('genocidal') 'intent to destroy, in whole or in part, a national, ethnical, racial or religious group'.¹²³ For instance, in remote places such as the Amazon rainforest where criminal collectives engage in all kinds of illicit trafficking activities, they may deliberately expel or eliminate groups such as indigenous peoples defending their territory against the intruders

According to Article 7(1) of the Rome Statute, to constitute a crime against humanity 'the following acts [must be] committed as part of a widespread or systematic attack directed against any civilian population'. The acts listed include several crimes typically also committed by criminal organizations: murder, extermination, enslavement, deprivation of physical liberty, torture, rape, and so forth. Interestingly, in light of the international fight against human trafficking outlined above, the term 'enslavement' is defined by the Rome Statute as 'the exercise of any or all of the powers attaching to the right of ownership over a person and includes the exercise of such power in the course of trafficking in persons, in particular women and children'.¹²⁴ Its Article 7(2) states that, for the purpose of paragraph 1, an

¹¹⁷ Green, Leslie C., *The Contemporary Law of Armed Conflict*, Juris Publishing, New York, 2008, p.93.

¹¹⁸ For an overview of the discussion, as well as references, see Stefan, Einführung in das Völkerrecht, UTB, Köln, 2008, 134, pp. 341ff.; Stahn, Carsten, 'International law at a crossroads? The impact of September 11', in *Zeitschrift für ausländisches öffentliches Recht und Völkerrecht*, Vol. 62, 2002, pp. 183ff.

¹¹⁹ Herdegen, Matthias, *Völkerrecht*, Beck, Munich, 2006, p. 240; See also Peter Malanczuk, 'Countermeasures and self-defence as circumstances precluding wrongfulness in the International Law Commission's Articles on State Responsibility', in *Zeitschrift für ausländisches öffentliches Recht und Völkerrecht*, Vol. 43, 1983, p. 797.

¹²⁰ ICJ, Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, 9 July 2004, ICJ Reports 2004, pp. 136ff., para. 139.

¹²¹ Wolf, Joachim Wolf, 'Terrorismusbekämpfung unter Beweisnot: völkerrechtliche Informationsanforderungen im bewaffneten Konflikt', in *Humanitäres Völkerrecht-Informationsschriften*, Vol. 14, No. 4, 2001, pp. 210ff.; Hobe, Stefan, "Einführung in das Völkerrecht", UTB, Köln, 2008, pp. 341f.

¹²² Kress, Claus, 'Völkerstrafrecht der dritten Generation gegen transnationale Gewalt Privater?', in Gerd Hankel (ed.), *Die Macht und das Recht: Beiträge zum Völkerrecht und Völkerstrafrecht zu Beginn des 21. Jahrhunderts*, Hamburger Edition, Hamburg 2008, pp. 323ff.

¹²³ Ambos, Kai, 'What does "intent to destroy" in genocide mean?', in *International Review of the Red Cross*, Vol. 91, No. 876, 2009, p. 833-858.

¹²⁴ Rome Statute, Art. 7(2)(c).

“Attack directed against any civilian population” means a course of conduct involving the multiple commission of acts referred to in paragraph 1 against any civilian population, pursuant to or in furtherance of a State or organizational policy to commit such attack.”

The provision clarifies that crimes against humanity can be committed by non-state entities.¹²⁵ However, what can be understood as an ‘organization’ under Article 7(2) is very controversial. One tendency is not to import the criteria that apply to ‘armed organized groups’ but to use different ones, such as power and use of force comparable to those of state institutions.¹²⁶ Although the details of that complex provision cannot be analysed here, it is evident that organized criminal groups only exceptionally meet this requirement.

Under Article 8(2)(f) of the Rome Statute, other serious violations of the laws and customs applicable to armed conflicts not of an international character, which are committed in the territory of a state when there is protracted armed conflict between governmental authorities and organized armed groups or between such groups, constitute war crimes.¹²⁷

Conclusion:-

Whether or not that organized crime is a serious threat to democracy, one must observe that the key to the success of different criminal organizations lies in their ability to exploit and manage the complexities of the modern world but, at the same time, control the static, more traditional, relationship with its local environment.

Indeed, the mafia’s sustained development over time can be explained in terms of its capacity to function both globally and locally: it has learnt to manage the technologically advanced and culturally homogeneous processes of globalization while remaining firmly rooted in its local context and gathers consensus either by exerting violence or by ‘organically’ and systematically instrumentalizing local cultures and traditional social customs, including their need to belong to a close-knit group. In this way, by bridging the gap between the global and the local, organized crime is able to maintain its hegemony at both a national and a transnational level.

Thus, in a certain sense, the mafia represents the hidden and dark side of our modern day democratic systems. The activities of organized crime can either run parallel to the everyday functioning of democracy or intertwine with the more official and visible structures of our constitutionally legal systems. Although the geographical and historical contexts described in this volume are significantly different, it would seem that, overall, the mafia’s well-established presence can be explained in terms of its longstanding involvement and development within and alongside the democratic structures of each state. In this respect, organized crime is in a position to exert ‘informal power’ over citizens’ consciences, thus acting as a substitute for the official democratic system.

Organized crime will always represent a challenge to any system because it will always provoke reactions as a result of its violent domination in promoting its interests. The difference lies in who and what is provoked by these acts: in a totalitarian regime, the provocation is directed towards those who retain authoritarian forms of power and can react either by fighting the mafia as a competitor for the domination of territory and the control of citizens or by co-opting and engulfing it to become a true ‘mafia state’. Democracy would appear to be provoked in very different ways: it is more vulnerable because it is based on guaranteed constitutional rights and duties, but it is also strong as it represents maybe the only true possible antagonistic resistance to mafia power.

The process of “organized crime penetration” of public and political institutions has to be stopped since democratic governance is considered to be a normative goal for the international community. The political process has to offer

¹²⁵ International Criminal Tribunal for the former Yugoslavia (ICTY), Prosecutor v. Tadic´, Decision on the Defence Motion to Interlocutory Appeal on Jurisdiction (Appeals Chamber), Case No. IT-94-1-AR72, 2 October 1995, paras. 654–655.

¹²⁶ See Cherif M. Bassiouni, Crimes against Humanity in International Law, Kluwer International, The Hague, 1999, p. 275; Alicia Gil Gil, ‘Die Tatbestände der Verbrechen gegen die Menschlichkeit und des Völkermordes im Römischen Statut des Internationalen Strafgerichtshofs’, in Zeitschrift für die gesamte Strafrechtswissenschaft, Vol. 112, No. 2, 2000, pp. 391–393; Ambos, Kai, Internationales Strafrecht: Strafanwendungsrecht: Völkerstrafrecht: Europa’sches Strafrecht, Beck, Munich, p. 215.

¹²⁷ Werle, Gerhard, *Principles of International Criminal Law*, Oxford University Press, Oxford 2009, margin note 982.

solutions on different levels. Organized crime can be tackled on three fronts: the economic one that would require a new global regime of controlling illicit trade; the social front which would include the creation of a renewed level of trust in politics and reduce incentives to join organized crime by integrating marginalized groups, and thirdly the political front that would require the implementation of new political concepts and institutions on the national, regional and global level.

Solutions to the global drug trade are crucial since it is the basis of organized crime. Arms trafficking, money laundering, among other criminal activities, are considered to be secondary effects of the illegal drug economy. Tri-continental cooperation has to be improved on research, evaluation and best practices to fully understand and develop mechanisms of monitoring and evaluation of international and regional drug policies.¹²⁸ The international community has to create integrated and cooperative strategies for addressing organized crime and drug trafficking.

The fight against corruption and impunity is a precondition to strengthen governance and limit the influence of organized crime on democratic structures.¹²⁹ The interface of corruption and organized crime such as the funding to political parties and campaigns is a crucial aspect to concentrate on. Transparency on the origins of funds for political parties has to be improved, especially at the local level. A preventive strategy is the training of civil and judicial servants to raise awareness on the effects of corruption on democratic institutions. Also research on corruption as a part of organized crime is necessary as well as cooperation among the respective organisations. The implementation of regional and international anti-corruption norms and conventions such as the anti-corruption conventions of the OECD, the UN and the OAS should be strengthened. Also regional organisations should pay greater attention to corruption and organized crime such as the UNASUR, which is currently implementing a special council to enhance the fight of organized crime on the regional level. The multi-lateralization of justice through the implementation of transnational justice courts could be a future option to fight impunity. The role of the media as an observer on corruption and organized crime has to be strengthened since the Mexican cartels.

The international community has to acknowledge the growing impact of organized crime on democratic governance and work on creating mechanisms to reduce it. In Latin American Countries, there is a growing call for international responsibility and engagement of international governance policies to reduce the negative impact of organized crime to democratic politics.

Ultimately, the challenge which organized crime represents for democracy is to confront it with its responsibilities, to force it to measure itself against its own ideals and basic principles and constantly revivify its own resources—in terms of rights, freedoms and legitimacy—in guaranteeing the equality of citizens.

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¹²⁸ Such as the Regional Security Program of the Friedrich-Ebert-Stiftung based in Colombia that fo-cuses on the observation and the collection of data on organized crime in the Latin American region. see: <http://www.seguridadregional-fes.org/>

¹²⁹ Katharina Hoffman, “The Impact of Organised Crime on Democratic Governance – Focus on Latin America and the Caribbean”, FES Briefing Paper 13, September 2009, pp.7-8.

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