

[Note]

## Defining transnational organised crime in international law<sup>\*</sup>

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### Abstract

It is often claimed that international terrorism and transnational organised crime constitute two of the most serious challenges currently facing the international community, and there has recently been an attempt to examine the legal relationship between international terrorism and transnational organised crime. While there is no agreed-upon definition of terrorism in the international community, the definition of transnational organised crime is established in the UNTOC. However, critical views have been expressed that the UNTOC definition of transnational organised crime is overly broad and may raise interpretative issues. Although the UNTOC definition of transnational organised crime can be credited with having the flexibility to adapt to use against emerging criminal activities, any gaps or ambiguities in the definition are of concern in terms of creating a legal 'gray area'. Thus, we should not abandon our efforts to form a more comprehensive definition, acknowledging that the UNTOC lacks an accurate legal definition of transnational organised crime.

**Keywords:** international law, transnational organised crime, UNTOC

## 国際法における国際組織犯罪の定義

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## I Introduction

It is often claimed that international terrorism and transnational organised crime constitute two of the most serious challenges currently facing the international community.<sup>1)</sup> The UN Security Council noted with ‘concern the close connection between international terrorism and transnational organized crime, illicit drugs, money-laundering, illegal arms-trafficking, and illegal movement of nuclear, chemical, biological and other potentially deadly materials’ in Resolution 1373, adopted on 28 September 2001.<sup>2)</sup> In its Resolution 2482, adopted on 19 July 2019, the UN Security Council also noted that ‘terrorists can benefit from organized crime, whether domestic or transnational, as a source of financing or logistical support’ and emphasised ‘the need to coordinate efforts at the local, national, subregional, regional, and international levels to respond to this challenge, in accordance with international law, including by promoting international legal cooperation’.<sup>3)</sup> The Council of Europe set up a ‘Working Group of Experts on Terrorism and Transnational Organized Crime’, and the ‘Guidelines on the Links between Terrorism and Transnational Organized Crime’, produced by this working group, were adopted by the Council of Europe Committee on Counter-Terrorism (CDCT) in November 2020 and by the Committee of Ministers in March 2021.<sup>4)</sup>

The relationship between terrorism and organised crime has indeed generated academic interest, and various aspects have been examined through research, mainly in the social sciences. Already in the year following the terrorist attacks in the United States on 11 September 2001, it was noted that understanding the link between terrorism and transnational organised crime will help develop an effective and sustained strategy to address these groups and limit their destructive operations.<sup>5)</sup> More recently, there has been an attempt to examine the legal relationship between international terrorism and transnational organised crime, with an awareness of how effectively international

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- 1) Alexandra V. Orlova and James W. Moore, “‘Umbrellas’ or ‘Building Blocks’?: Defining International Terrorism and Transnational Organized Crime in International Law,” *Houston Journal of International Law*, Vol. 27, No. 2 (2004), p. 268.
  - 2) UN Doc. S/RES/1373, 28 September 2001, para. 4.
  - 3) UN Doc. S/RES/2482, 19 July 2019.
  - 4) Council of Europe, CM(2021)12-final, 31 March 2021.
  - 5) Louise I. Shelley and John T. Picarelli, “Methods Not Motives: Implications of the Convergence of International Organized Crime and Terrorism,” *Police Practice and Research*, Vol. 3, No. 4 (2002), p. 306.

terrorism can be addressed through the legal frameworks for suppressing other transnational crimes.<sup>6)</sup> Even now, there is no generally agreed-upon definition of terrorism in the international community, despite the fact that the experience of the terrorist attacks in the United States in 2001 led to moves to develop definitions in national laws and attempts to define terrorism in regional treaties and within the United Nations. On the other hand, with regard to transnational organised crime, the United Nations Convention against Transnational Organized Crime (UNTOC) and three Protocols (human trafficking, the smuggling of immigrants and the illegal trafficking of firearms) were adopted in 2000, and further attempts have been made to examine the legal relationship between international terrorism and transnational organised crime with reference to the UNTOC.<sup>7)</sup>

However, critical views of the definition of transnational organised crime established by the UNTOC have been expressed, with some pointing out that its overly broad character may raise serious interpretative issues.<sup>8)</sup> This note will examine the definition of transnational organised crime established by the UNTOC and consider what problems it contains.

## II UNTOC Definition of Transnational Organised Crime

The UNTOC, adopted by the UN General Assembly on 15 November 2000, now consists of 190 member states (and the European Union). The UNTOC, in particular in Article 2(a)-(c), provides the following details regarding organised crime:

For the purposes of this 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;

The definition offered in Article 2(a) focuses specifically on sophisticated criminal organisations

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6) See Ben Saul, “The Legal Relationship between Terrorism and Transnational Crime,” *International Criminal Law Review*, Vol. 17, No. 3 (2017), pp. 417.

7) See *ibid.*

8) See Orlova and Moore, *supra* note 1, p. 284.

and on the people that constitute them rather than focusing on the activities in which the organisation and its member engage.<sup>9)</sup> However, during the drafting of the Convention, the intentions were to define ‘organised crime’ itself. In the first draft of a possible Convention, submitted by Poland in September 1996, ‘organized crime’ was defined as part of the Article defining the scope of the Convention,<sup>10)</sup> and in April 1998, it was proposed that the definition of ‘organized crime’ might appear in a separate definitional Article; for example, a proposal by the United States considered, during the First Session of the Ad Hoc Committee, defining ‘organized criminal activity’ as ‘[the commission of] serious crime involving a group of [three] or more persons, [either for its own sake or] for any purpose relating, directly or indirectly, to the obtaining of a financial or other material benefit’.<sup>11)</sup> During the First Session of the Ad Hoc Committee, a draft was considered, referring to the Belgian suggestion that “[o]rganized criminal group” means a structured group of three or more persons established over a period of time and having the purpose to commit in a concerted fashion serious crimes in the sense of the present Convention in order to derive, directly or indirectly, financial profit or other material benefit by utilizing [in particular] intimidation, threats, violence, fraud or corruption or other means to conceal or facilitate the realization of those serious crimes’,<sup>12)</sup> but it can be said that there was no agreement on exactly which term among ‘organised crime’, ‘organised criminal activity’ and ‘organised criminal group’ should be defined.<sup>13)</sup>

Article 2(a) requires the participation of at least three persons, which sets a very low size-threshold for what the state parties consider to be an increase in social danger.<sup>14)</sup> Under Article 2(c), a ‘structured group’ means 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’, and according to an interpretative note, the term ‘is to be used in a broad sense so as to include both groups with hierarchical or other elaborate structure and non-hierarchical groups where the roles of the members need not be formally defined’.<sup>15)</sup> While some in

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9) Andreas Schloenhardt, “Transnational Organised Crime,” in Neil Boister and Robert J. Currie (eds.), *Routledge Handbook of Transnational Criminal Law* (Routledge, 2015), p. 414.

10) UN Doc. A/C.3/51/7, 1 October 1996, p. 3

11) UN Doc. A/AC.254/5, 19 December 1998, p. 18.

12) UN Doc. A/AC.254/4/Rev.1, 10 February 1999, p. 4, Article 2 *bis* and footnote 22.

13) David McClean, *Transnational Organized Crime: A Commentary on the UN Convention and its Protocols* (Oxford University Press, 2007), p. 39.

14) Neil Boister, “The UN Convention against Transnational Organised Crime 2000,” in Pierre Hauck and Sven Peterke (eds.), *International Law and Transnational Organised Crime* (Oxford University Press, 2016), p. 131.

15) *Interpretative Notes for the Official Records (travaux préparatoires) of the Negotiation of the United Nations Convention against Transnational Organized Crime and the Protocols Thereto*, UN Doc. A/55/383/Add.1, 3 November 2000, p. 2, para. 4.

the drafting process took the view that one determinant of a 'structured group' was that it had a hierarchy,<sup>16)</sup> the text adopted makes it clear that the authors of the Convention intended that the scope of an 'organised group' would include not only groups such as the Mafia, which are tightly organised in a hierarchy with a clearly defined membership and command structure, but also other, more fluid groups.<sup>17)</sup> The UNTOC definition of an 'organized criminal group' is broad enough to encompass a great variety of structural models.<sup>18)</sup>

Orlova and Moore sharply criticise such a 'contradictory definition' as being the result of trying to accommodate divergent views of organised crime, including hierarchical and non-hierarchical groups, stating that such 'compromising' allows for the term 'structured group' to refer to almost any kind of formation, rendering it practically meaningless.<sup>19)</sup> Militello also criticises the breadth of the definition in Article 2(a) because it 'eclipses the distinction between the simple complicity of two persons in a single crime and the specific danger represented by an organisation whose programme covers an indeterminate number of crimes'.<sup>20)</sup> Beare further notes that the elements set out in Article 2(a) do not set up a set of conditions that address the 'extra' risk that such an organisation poses in order to assess true 'organised crime operations'.<sup>21)</sup> Criticism can also be made to the effect that the elementary way in which the organised criminal group is described removes it from the social and political context in which it is formed and, therefore, will not help us understand why it exists and what needs to be done to prevent the formation of similar groups in the future.<sup>22)</sup>

The inclusion of references to 'serious crime' has also been criticised.

In the deliberations of the expert group, it was recognised that attempting to list all possible criminal activities that criminal organisations were likely to engage in would be difficult, given that such an approach entailed two major risks: 1) it would ab initio prejudice the applicability and effectiveness of the convention, as a list of offences could not be all-inclusive and would most probably exclude emerging forms of criminal activity; 2) it would present considerable difficulties with regard to other provisions of the convention as specific crimes often demanded specific

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16) United Nations Office on Drugs and Crime, *Travaux préparatoires of the negotiations for the elaboration of the United Nations Convention against Transnational Organized Crime and the Protocols thereto* (United Nations Publication, 2006), p. 12, footnote 20.

17) McClean, *supra* note 13, p. 43.

18) Schloenhardt, *supra* note 9, p. 415.

19) Orlova and Moore, *supra* note 1, pp. 282-283.

20) Vincenzo Militello, "Participation in an Organized Criminal Group as International Offence," in Hans-Jörg Albrecht and Cyrille Fijnaut (eds.), *The Containment of Transnational Organised Crime: Comments on the UN Convention of December 2000* (Edition Iuscrim, 2002), p. 103.

21) Margaret E. Beare, "Shifting Boundaries—between States, Enforcement Agencies, and Priorities," in Albrecht and Fijnaut (eds.), *supra* note 20, p. 183.

22) Boister, *supra* note 14, p. 133.

responses. Thus, an approach based on the seriousness of the offence was chosen, and it was agreed that the seriousness of the offence might be determined on the basis of the penalty foreseen in the national legislation, as the concept of seriousness was not equally as meaningful in all national systems.<sup>23)</sup> Article 2(b) defines a ‘serious crime’ as a ‘conduct constituting an offence punishable by a maximum deprivation of liberty of at least four years or a more serious penalty’.

Militello criticises the definition of ‘serious crime’ on the ground that ‘a fixed level of sanctions as reference of “serious crime” disregards the considerable differences that exist among the criminal law systems of the more than 190 UN Member States in the matter of establishing sanctions for crime’.<sup>24)</sup> Indeed, the Conference of Parties to the United Nations Convention against Transnational Organized Crime acknowledged that ‘[d]epending on the penalty, an offence may be considered a serious crime in one State and not in others’.<sup>25)</sup> Schloenhardt notes that ‘[l]eaving the decision of what does and does not amount to “serious crime” to national legislators means that even if an organised criminal group engages in exceptionally violent, heinous or detrimental conduct, the group will not fall within the definition of the Convention, unless such conduct attracts a penalty of four year’s imprisonment or more’, and points out that the definition of ‘serious crime’ is seen as ‘one of the main weakness of the concept of organised crime under the Convention’.<sup>26)</sup>

Orlova and Moore further criticise the definition of an ‘organized criminal group’ in Article 2(a)-(c) as being overly broad, but also point out that ‘the definition is at the same time under-inclusive’.<sup>27)</sup> They note that ‘while the definition of an “organized criminal group” refers to some elements that characterize such groups, other equally valid elements, frequently discussed in legal and academic debates, are omitted’,<sup>28)</sup> and emphathise that ‘the omissions are understandable as it is rather difficult and arguably not that useful to create a “check-list” definition of organized crime that incorporates all possible elements of organized criminal groups’, but warn:

‘[T]he selection of certain elements to describe organized criminal entities and the omission of other equally valid elements poses a danger in itself. The danger consists of allowing the selected elements to take precedence in identifying what constitutes organized crime, while structures lacking some of those elements and possessing others that are not mentioned would be disregarded and not identified as part of organized crime. Such an approach may ultimately

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23) United Nations Office on Drugs and Crime, *supra* note 16, pp. xxii–xxiii.

24) Militello, *supra* note 20, p. 103.

25) UN Doc. CTOC/COP/2012/CRP.4, 20 September 2012, p. 2, para. 3.

26) Schloenhardt, *supra* note 9, p. 416.

27) Orlova and Moore, *supra* note 1, p. 284.

28) As an example, they point out that no references are made to the potential for the utilisation of violence and corruption. *Ibid.*, p. 284.

lead to “tunnel vision” with respect to organized crime.’<sup>29)</sup>

### III ‘Overly Broad’ Definition?

Draft Article 2 included a list of crimes that could be considered indicative of transnational organised crimes,<sup>30)</sup> but the Chairman proposed that a list of offences, which could be either indicative or exhaustive, such as the list originally contained in this Article, could be included either in an annex to the Convention or in the *travaux préparatoires*, and the Ad Hoc Committee accepted this compromise proposal.<sup>31)</sup> The list included a number of criminal activities, including drug trafficking, money laundering, trafficking persons, illicit trafficking and transporting of migrants, counterfeiting of currency, illicit trafficking of cultural objects, nuclear smuggling, terrorist acts, illicit trafficking of arms and explosives, illegal trafficking of motor vehicles, corruption of public officials, illicit traffic of human organs, illegal access to computers, kidnapping and illegal trafficking of biological and genetic materials.<sup>32)</sup> Eventually, a consensus could not be reached on which offences would have needed to be included in such a list by the Ad Hoc Committee.<sup>33)</sup> Attempts to include a list of offences in the Convention were unsuccessful. There has been severe criticism of such a list not having been included in the Convention. Guymon, for example, says that ‘[p]lacing such a defining provision of the convention in an attachment will make it easier for eventual signatories to become lax in recognizing criminal activities and operations within their borders as symptomatic of the problem of transnational organized crime’.<sup>34)</sup>

However, the core meaning of ‘organised crime’ is not easy to identify. Sinn notes that ‘OC is not an especially visible phenomenon, and it is one that is understood very differently in various countries

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29) *Ibid.*, pp. 284–285.

30) The list was informally circulated by some delegations at the second session and is included in the attachment to the revised version of the draft Convention. UN Doc. A/AC.254/11, p. 3, 25 March 1999, p. 3, para. 14.

31) UN Doc. A/AC.254/4/Rev.4, 19 July 1999, p. 2, footnote 3.

32) *Ibid.*, p. 52.

33) UN Doc. CTOC/COP/2012/CRP4, 20 September 2012, p. 5, paras. 21–22.

34) Guymon also stresses the need for a list, saying ‘[w]hile a list need not be exhaustive, a list that is at least indicative, if it were to be included in the main text of the convention, would enhance universal recognition of the most common and damaging activities of organized criminals, such as drug trafficking, trafficking in persons, counterfeiting, trafficking in cultural objects, nuclear smuggling, terrorist activities (as defined by the U.N. conventions against terrorism), trafficking in firearms, theft and smuggling of motor vehicles, and corruption of government officials’. CarrieLyn Donigan Guymon, “International Legal Mechanisms for Combating Transnational Organized Crime: The Need for a Multilateral Convention,” *Berkeley Journal of International Law*, Vol. 18, Issue 1 (2000), pp. 93–94.

because of their diverse historical and cultural experiences with such crime’, and that ‘[i]t is possible to identify more than 100 definitions worldwide—and even the value of having a definition at all is not uncontroversial’.<sup>35)</sup> Sinn argues that engaging with the term organised crime requires looking at the various theoretical approaches and structural analyses surrounding it and that the theoretical approaches are primarily those that see organised crime as tied to traditional subcultures of the modern city and those that deal with crime as a reasonable, well-organised enterprise.<sup>36)</sup> The first model orients the structures of organised crime in the underworld, from which they only occasionally participate in normal society. It, thus, corresponds to the model of organised crime that they operate out of sight. Under this approach, a distinction is made between two types of structure: 1) the mafia-type structure, composed of independently operating groups of offenders; 2) the network-type structure that traverses regional or multiregional networks and operates on a national or international scale, characterised by multifaced horizontal connections among the offenders.<sup>37)</sup> In the second approach, because we encounter organised crime in the form of everyday, conventional economic activities, organised crime can hardly be distinguished from a legitimate commercial enterprise.<sup>38)</sup> And Sinn sums it up, ‘it probably has to be admitted that organised crime is a phenomenon that is difficult to squeeze into the structure of a particular definition since its manifestations can be so various depending on its ethnic origin and type of criminal activity’.<sup>39)</sup>

The difficulty of distinguishing it from other phenomena also makes it challenging to define organised crime. A case in point is terrorism. Although the UNTOC included terrorist acts in transnational organised crime at the draft stage, ultimately, terrorist acts were excluded from the Convention text, and only a residual reference to terrorism is made in the preamble to its relevance to organised crime and to its reference to UNTOC in negotiating a draft comprehensive Convention on international terrorism. A legislative guide to the Convention prepared by the United Nations Office on Drugs and Crime (UNODC) explains that ‘[t]he definition of “organized criminal group” does not include groups that do not seek to obtain any “financial or other material benefit”’, and that ‘[t]his would not, in principle, include groups such as some terrorist or insurgent groups, provided

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35) Arndt Sinn, “Transnational Organised Crime: Concepts and Critics,” in Hauck and Peterke (eds.), *supra* note 14, pp. 24–25.

36) *Ibid.*, pp. 29–30.

37) Sinn says there are groups of offenders of different sizes within the networks: small, loose associations of two to five offenders without an internal hierarchy; core groups of five to ten offenders divided into planning and operational levels and closed to the outside; and large groups of twenty to fifty offenders with a high level of organisation, a multilevel structure, and a chain of command among the various operational levels. *Ibid.*, pp. 29–30.

38) *Ibid.*, p. 30.

39) *Ibid.*, p. 30.



that their goals were purely non-material'.<sup>40)</sup>

It was Turkey and Egypt that particularly deplored the exclusion of links between terrorist crimes and organised crime from the Convention text. Turkey argued that the reflection of dangerous links between terrorist crimes and organised crime in the Convention text would better serve that instrument's purposes,<sup>41)</sup> while Egypt repeatedly called for including a clear and express reference to the growing relationship between transnational organised crime and terrorist crimes in the Convention.<sup>42)</sup> However, it had already been stated at an informal meeting in 1997 that the UNTOC would not be the appropriate international instrument to deal with the issue of terrorism, which was already the subject of ongoing international initiatives within the United Nations.<sup>43)</sup> There was no general agreement on a uniform international definition of terrorism then, which remains the case today. In light of the circumstances in which separate attempts have been made to formulate a separate definition of terrorism, it was probably decided that it would be inappropriate for the UNTOC to define terrorism on its own. Nevertheless, the interpretative notes contain the following statements:

'During the negotiation of the Convention, the Ad Hoc Committee noted with deep concern the growing links between transnational organized crime and terrorist crimes, taking into account the Charter of the United Nations and the relevant resolutions of the General Assembly. All States participating in the negotiations expressed their determination to deny safe havens to those who engaged in transnational organized crime by prosecuting their crimes wherever they occurred and by cooperating at the international level. The Ad Hoc Committee was also strongly convinced that the Convention would constitute in effective tool and the necessary legal framework for international cooperation in combating, inter alia, such criminal activities as money-laundering, corruption, illicit trafficking in endangered species of wild flora and fauna, offences against cultural heritage, and the growing links between transnational organized crime and terrorist crimes. Finally, the Ad Hoc Committee was of the view that the Ad Hoc Committee established by the General Assembly in its resolution 51/210 of 17 December 1996, which was then beginning its deliberations with a view to the development of a comprehensive convention

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40) United Nations Office on Drugs and Crime Division for Treaty Affairs, *Legislative Guides for the Implementation of the United Nations Convention against Transnational Organized Crime and the Protocols Thereto* (United Nations Publication, 2004), p. 13, para. 26.

41) UN Doc. A/AC.254/34, 11 September 2000, pp. 4-5, para. 18.

42) Algeria, while sharing the views expressed by Egypt, also called upon all delegations to spare no effort in ensuring the success of the work on the development of a comprehensive convention against terrorism. *Ibid.*, pp. 6-8, paras. 28, 36.

43) UN Doc. E/CN.15/1997/7/Add.2, 16 April 1997, p. 3, para. 6.

on international terrorism, pursuant to Assembly resolution 54/110 of 9 December 1999, should take into consideration the provisions of the Convention.’<sup>44)</sup>

Despite some criticism of individual elements and aspects, the definition of an organised criminal group under the UNTOC features most of the established characteristics of criminal organisations while allowing some flexibility to target a diverse range of associations and structures.<sup>45)</sup> Orlova and Moore cite an interview with Keith Morrill, the chief Canadian negotiator of the UNTOC, as a possible explanation for some of the problems with the UNTOC definition of an organised criminal group, noting that defining organised crime in the UNTOC was really a secondary issue. That is, ‘[t]he primary concentration was on working out the “co-operation provisions” of the Convention (that is, extradition, mutual legal assistance and police co-operation)’. ‘In other words, what was hoped would be accomplished was not a convention that provides a comprehensive definition of organized crime, but rather a convention that serves as a “tool box” to enable the functioning of various “co-operation provisions.” Thus, the definition of an organized criminal group, contained in Article 2, alongside other provisions of the Convention, serves the utilitarian purpose of accommodating the provisions dealing with extradition, mutual legal assistance and police co-operation’.<sup>46)</sup> Mr. Morrill’s view was that the Convention would have been preferable to entirely omit a broad definition of organised crime from the Convention and instead only keep the definitions of the specific offences associated with transnational organised crime, such as money laundering and corruption, as the Convention was not designed to tell the signatories what organised crime was.<sup>47)</sup> Indeed, the 2012 Conference of Parties pointed out the following regarding the concept of ‘serious crime’ under Article 2(b):

‘The inclusion of the notion of serious crime in the Organized Crime Convention enables the application of the Convention to a broad range of offences in a flexible manner. Moreover, new forms and dimensions of transnational organized crime fall under the scope of the Convention, considerably enhancing the use of the Convention, in particular for purposes of international cooperation.’<sup>48)</sup>

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44) *Interpretative Notes for the Official Records (travaux préparatoires) of the Negotiation of the United Nations Convention against Transnational Organized Crime and the Protocols Thereto*, UN Doc. A/55/383/Add.1, 3 November 2000, pp. 2-3, para. 7.

45) Schloenhardt, *supra* note 9, p. 418.

46) Orlova and Moore, *supra* note 1, p. 285.

47) *Ibid.*, p. 285.

48) UN Doc. CTOC/COP/2012/CRP.4, 20 September 2012, p. 8, para. 34.

This suggests that the discussions over the UNTOC did not centre around varying perceptions of organised crime but rather on the need to accommodate varying legal systems.<sup>49)</sup> ‘It may not be surprising—but it is nevertheless disappointing—that the development of UNTOC, including the definition of “organised criminal group” and the offences under Article 5, was motivated and heavily influenced by national interests and political considerations of the negotiating States, rather than by a genuine desire to understand the organisation and operation of organised crime and by thorough, empirical research about the best and most effective ways to combat it’, Schloenhardt says, while it has to be remembered that the creation of the Convention against Transnational Organized Crime marks a turning point in the commitment of the community of states to cooperate in the fight against transnational crime:

‘The framework proposed by the Convention offers a new set of tools that can assist investigators, courts, and prosecutors in addressing many aspects of organised crime more effectively. It also allows for the universal criminalisation of organised crime. The criminal offences under UNTOC are accompanied by a set of measures that enhance investigations and law enforcement cooperation, both domestically and internationally. It is very encouraging to see that the Convention has found widespread support and adoption around the world.’<sup>50)</sup>

#### IV Concluding Remarks

As it has been pointed out that ‘[f]or the international community, there is no such thing as the phenomenon of organised crime’, there are various aspects of actual transnational organised crime.<sup>51)</sup> The failure of states to arrive upon satisfactory all-inclusive definitions of these terms can be traced to the changing nature and diversity of organised crime itself.<sup>52)</sup> In addition to traditional organised crime, such as mafia organisations, drug cartels and motorcycle gangs, new forms of organised crime, such as cybercrime, financial crimes, mass fraud and property crimes, are emerging at present.<sup>53)</sup> Besides, with the increasing links between international terrorism and transnational organised crime, there have been attempts to develop a definition of international terrorism, but no agreed-upon

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49) Orlova and Moore, *supra* note 1, p. 286.

50) Schloenhardt, *supra* note 9, pp. 432–433.

51) Sinn, *supra* note 35, p. 41.

52) Orlova and Moore, *supra* note 1, p. 304.

53) Sinn, *supra* note 35, p. 41.

definition has been established in the international community.<sup>54)</sup> Under these circumstances, states have failed to reach a real consensus on the definition of ‘organized criminal groups’, and the definition in Article 2 of the UNTOC has remained apparent.

On the other hand, the UNTOC can be credited with having the flexibility to adapt and account for against emerging criminal activities.<sup>55)</sup> However, any gaps or ambiguities in the definition of organised criminal activity create a legal ‘gray area’ that both the criminal and the victim state can exploit, and states may exploit any definitional gaps in order to harness the ‘war on crime’ for other unrelated and often less creditable ends. The term ‘organised crime’ has the potential of becoming a convenient ruse to satisfy various agendas going beyond crime control without raising suspicious about the inconsistency of the goals of these various programmes and initiatives.<sup>56)</sup> Acknowledging that the UNTOC lacks an accurate legal definition of ‘transnational organized crime’, we should not abandon our efforts to form a more comprehensive definition.

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54) In 1996, the UN General Assembly decided to establish an Ad Hoc Committee ‘to address means of further developing a comprehensive legal framework of conventions dealing with international terrorism’. UN Doc. A/RES/51/210, 17 December 1996. However, a drafting process of a comprehensive convention stalled, and no sessions of the Ad Hoc Committee have been held to date since April 2013.

55) Boister, *supra* note 14, p. 149.

56) Orlova and Moore, *supra* note 1, pp. 305-306.