

International Law and Transnational Organised Crime

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OXFORD
UNIVERSITY PRESS

2016

Transnational Organised Crime and its Impacts on States and Societies

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3.1 Introduction

The impacts of transnational organised crime (TOC) on societies are complex and not easy to describe. There is no simple explanation or concept that grasps all the impacts TOC imposes on, and their consequences for, societies, states, and the rule of law. This chapter, therefore, will only try to provide an approximation to the different problems and challenges with which societies are confronted by the emergence of TOC. The fact that TOC is, by definition,¹ a cross-border phenomenon strongly related to the 'darker side'² of globalization makes it even more difficult to give a brief, problem-based account. There is no single or single set of impacts that TOC has on societies around the globe. Indeed, the impacts may be similar in different countries but, nevertheless, the consequences for societies differ from country to country and even from region to region. For example, the current war against drugs in Mexico imposes consequences on the Mexican state and on civil society that are devastating and quite different from those of the war on drugs in the USA or The Netherlands. Organised environmental crimes in the south Italian region of Calabria are perceived and dealt with by the Italian state and society in a different manner than in Bangladesh or India.

Another difficulty criminological research is facing when dealing with 'organised crime' is the question of definition, which has not been simplified by adding the term 'transnational' to it. Quite a few criminologists have worked on a definition, but the concept of organised crime remains one of the most contested terms in criminological research.³ This is due to the fact that the organisational and structural variations of the phenomenon are vast. The problem with the debate about definitions is that it threatens to kill off the substantial debate about the phenomenon itself.⁴ This chapter, therefore, will not join this debate. The same counts for the question concerning the difference between organised and transnational organised crime. Organised crime

¹ See—for the matter of definition—Ch. 2, sections 2.1.1, 2.3.2 and Ch. 21 of this book.

² Susanne Karstedt, 'Organised crime, democracy, and democratization: how vulnerable are democracies?', in Caroline Robertson-von Trotha (ed.), *Organised Crime: Dark Sides of Globalisation*, Interdisciplinary Studies on Culture and Society 8, Baden-Baden, Nomos, 2013, pp. 95–112.

³ For a good overview see James Sheptycki *et al.*, 'International organised crime in the European Union', in *Directorate General for Internal Policies. Policy Department C: Citizens' Rights and Constitutional Affairs*, Civil Liberties, Justice and Home Affairs, 2011, pp. 11–12.

⁴ James Sheptycki, 'The governance of organised crime in Canada', (2003) 28 *Canadian Journal of Sociology* (4), 489–90.

increasingly operates on a transnational level; even more so as the distinguishing of virtual and geographical borders becomes more and more obsolete, and likewise the distinction between TOC and organised crime.⁵ However, a key aspect of the research into TOC is to identify this tipping point at which (domestic) organised crime becomes transnational and to which extent this is the case.⁶

TOC is a complex social phenomenon in an even more complex globalized world and it is constantly adapting itself to challenges imposed by modern conditions. Nevertheless, the world of TOC and the world of civil society are two sides of the same coin. Criminal organisations only exist where a society demands their goods and services, and where an accessible marketplace is provided in which goods and services are offered.⁷ In the following pages, an attempt will be made to shed some light on selected aspects of TOC by focussing on areas deemed crucial for getting a grasp on how TOC impacts on societies.

Why are impact assessments important and of what practical use can they be? Understanding the harm done by TOC and developing analytical models tracing those harms back to their roots can be of assistance for policy makers implementing law enforcement policies, allocating financial resources, and evaluating those measures that were taken.⁸ In particular, the measurement of the costs of organised crime can play a crucial role when evaluating the impact on crime of the money spent as well as the effectiveness of crime reduction policies. It can help to prioritize and to focus scarce resources on policies that have the potential to actually reduce the harm caused by crime, rather than simply reducing the number of crimes.⁹

3.2 Assessment of Difficulties

Criminological research on organised crime has been quite extensive in recent years.¹⁰ Nevertheless, it seems that this research mainly focused on criminal organisations themselves, the way they are organised, and how they operate. Much less research has been conducted on how societies are affected by TOC, what consequences states and societies face when infiltrated by TOC, and how they perceive and cope with those impacts.¹¹ A reason for the under-representation of impact research on TOC

⁵ Michael P. Roth, 'Historical overview over transnational crime', in Philip Reichel and Jay Albanese (eds), *The Handbook of Transnational Crime and Justice*, 2nd edn, London, SAGE Publications, 2014, p. 7.

⁶ Rosemary Barberet, 'Measuring and researching transnational crime', in Reichel and Albanese, *Transnational Crime and Justice*, *ibid.*, p. 50. For a critical view of the concept of TOC see Paolo Campana, 'Governing vs. trading: the functional diversification of Mafia activities across territories', in Ursula Töttel, Gergana Bulanova-Hristova, and Heinz Büchler (eds), *Research Conference on Organised Crime at the Bundeskriminalamt in Germany (Vol. II): Organised Crime—Research and Practice in Western and Northern Europe (2011–12)*, Polizei + Forschung 45, Wiesbaden, Luchterhand Verlag, 2013, p. 51.

⁷ Roberto Scarpinato, 'Organised crime in the third millennium', in Robertson-von Trotha, *Organised Crime*, cited in note 2 above, p. 81.

⁸ Ernesto U. Savona and Barbara Vettori, 'Evaluating the cost of organised crime from a comparative perspective', (2009) 15 *European Journal on Criminal Policy and Research* (4), 379–93, p. 380.

⁹ Sam Brand and Richard Price, *The Economic and Social Costs of Crime*, London, Home Office Research Study 217, 2000, p. 5.

¹⁰ Klaus von Lampe, 'Transnational organized crime challenges for future research', (2009) 58 *Crime, Law and Social Change* (2), 179–94, p. 180.

¹¹ Barberet, 'Measuring and researching transnational crime', cited in note 6 above, p. 47.

in criminology is certainly due to the methodological difficulties of measuring impacts of crime on societies. However, these problems of criminological harm-research are not particularly related to TOC, but rather occur whenever the harm caused by crime is measured using either official data, victimization data, or self-report data. But the methodological difficulties of measurement are particularly grave when organised forms of crime are in focus. The problems evolve around the question which indicators are best suited to give a precise estimation of the harm caused. A feasible way would be to estimate the financial costs either in absolute numbers, in proportion to income, wealth, or national GDP.¹² In fact, the research into the economic costs of crime has been quite rewarding over the past years.¹³ But how does one measure the non-financial or indirect costs, such as the costs of policing and prosecution, environmental degradation, the trauma and suffering of victims, their medical treatment and insurance costs, and the loss of confidence and trust in state institutions either among their own citizens or among other states or business partners? And how does one take into account possible positive monetary side effects of TOC? To an extent some mafia organisations fulfil social functions in their regions of operation, by keeping people employed, running social facilities, and reinvesting profits from illicit commodities in the formal and informal economies.¹⁴ All these impacts of TOC are highly relevant when assessing the impacts on societies but can never be truly captured by applying monetary values.¹⁵

The same difficulties of measurement apply for victimization surveys, a powerful criminological tool for measuring the dark figure as well as the impact of crime. Ordinary households are seldom directly victimized by organised crime and victimization surveys and, therefore, can hardly be used as a vehicle to measure organised crime.¹⁶ Even when individuals are directly victimized, they may not be aware that organised crime played a role, or might not even become aware that they have been victimized at all. The latter is a phenomenon that often occurs with various forms of cybercrime. Moreover, traditional forms of crime like burglary are almost impossible to classify as domestic or transnational (e.g. when conducted by a transnational burglar ring) by the victims themselves. Despite this missing awareness, a wide range of crimes typically related to organised crime is sometimes called 'victimless', since no individuals are directly affected by the criminal conduct but rather a collective entity, such as companies or states, or simply no one at all. Finally, conventional victim surveys hardly detect typical TOC offences that occur relatively rarely among the civil

¹² Michael Levi, 'States, frauds, and the threat of transnational organized crime', (2012) 66 *Journal of International Affairs* (1), 46.

¹³ Claudio Detotto and Edoardo Otranto, 'Does crime affect economic growth?', (2010) 63 *Kyklos* (3), 330–45, p. 330; Brand and Price, *Economic and Social Costs*, cited in note 9 above, p. 5; For a historical overview see Jacek Czabanski, *Estimates of Cost of Crime: History, Methodologies, and Implications*, Berlin, Springer, 2008.

¹⁴ Mark James, 'The other civil society: organised crime in fragile and failing states', (2012) 12 *Defence Studies* (2), 218–56, pp. 218ff.; Jan van Dijk, 'Mafia markers: assessing organized crime and its impact upon societies', (2007) 10 *Trends in Organized Crime*, 39–56, p. 50.

¹⁵ Peter Johnston, Stephen Schneider, et al. *Organized Crime Harm Index: A Scoping and Feasibility Study*, Department of Public Safety Canada, 2010, p. 30.

¹⁶ van Dijk, 'Mafia markers', cited in note 14 above, p. 40.

population, such as human trafficking for sexual exploitation, and are, therefore, only limited in their usefulness in our area. It lies within the very nature of sexual exploitation that the victims are systematically isolated from civil society, so the likelihood of their taking part in a victim survey is very low.¹⁷

Researching TOC is complicated by the fact that the research is typically conducted on a cross-border level because of the very nature of its study subject. As already mentioned, reliable data on TOC are rare, as the methodological difficulties are hard to overcome. But even where data collections exist, a comparison between different countries is challenging. Different legal systems, cultural differences in the definition of offences, and different crime-data collection systems make the results rarely comparable.¹⁸ This is the case not just across continents or among distant countries but even between EU member states, since a large number of asymmetries exist in standards for measuring organised crime.¹⁹ In addition, TOC is highly flexible and able to adopt to new developments. Hence, state authorities are constantly confronted with new, or variations of old, offences that make reliable recording problematic.²⁰

This complexity of TOC has the effect that official statistics of police-recorded or court-recorded crimes may be a source of disinformation rather than illuminating the actual extent of the crimes. Official data provided by states measuring the performance of law enforcement agencies, such as numbers of arrests or convictions for involvement in organised crime, are likely to merely reflect police performance rather than the true extent of criminal activity.²¹ Van Dijk assumes

that in countries where organized crime is most prevalent, investigations into such crimes will be hampered by police corruption and political interference in prosecution and sentencing. Fewer investigations or prosecutions of organized crime will be initiated or successfully completed. Low rates of court cases on corruption or organized crime in a country may point to high rather than low prevalence of such types of crime.²²

Then again, high numbers of arrests and convictions are likely to indicate a strong police performance, which may lead to a decline in crime rates in the long run rather than indicating a high rate of TOC activities. Unfortunately police-based information tends to be misleading and should therefore be interpreted with caution.

When assessing the impacts of TOC on societies, one has to keep in mind all these inconsistencies and difficulties of measurement and statistics. The results of any research into the impact of organised crime are unlikely to be exact or even remotely accurate but rather have to be treated as broad estimates and more or less reliable

¹⁷ Barberet, 'Measuring and researching transnational crime', cited in note 6 above, pp. 51–2.

¹⁸ Savona and Vettori, 'Evaluating the cost of organised crime', cited in note 8 above, p. 380.

¹⁹ Barbara Vettori, 'Comparing data sources on organised crime across the EU: a first step towards an EU statistical apparatus', in Petrus van Duyne, Almir Maljevic, Marten van Dijk, Klaus von Lampe, and James Newell (eds), *The Organisation of Crime for Profit: Conduct, Law and Measurement*, Nijmegen, Wolf Legal Publishers, 2006, pp. 43–67, p. 61. For a good overview of the difficulties deriving from the official German BKA statistics on organised crime see Klaus von Lampe, 'Making the second step before the first: assessing organized crime', (2005) 42 *Criminology, Law and Social Change* (4–5), 227–59.

²⁰ Barberet, 'Measuring and researching transnational crime', cited in note 6 above, p. 50.

²¹ van Dijk, 'Mafia markers', cited in note 14 above, p. 40. ²² *Ibid.*, p. 40.

approaches.²³ This is particularly important as crime control strategies are powerful political instruments. As an integral part of the internal security strategies of states crime policies are strongly receptive to subjective needs for security of citizens and may develop a tendency to exploit these needs for political reasons. This counts especially for TOC with its alleged proximity to international terrorism, a phenomenon that has knowingly triggered far-reaching measures and political consequences in all fields of law enforcement in most countries of this world.²⁴

3.3 Conditions for the Flourishing of TOC

The conditions for the flourishing of TOC are manifold and cannot be reduced to a single (or a set of the most important) factor(s) promoting the growth of TOC structures. An easy explanation offered would be that the best conditions for the flourishing of TOC are provided by weak state institutions, resulting in a power vacuum where law enforcement is weak or does not exist at all.²⁵ This view, although intriguing and statistically corroborated, is too simplistic and poses more questions than it is able to answer.²⁶ There are examples of strong states with functioning institutions being infiltrated by TOC. A number of scholars argue that globalization played a major role in the growth of TOC networks in recent years.²⁷ Increasing migration, mobility, and transportation, the revolution in information and communication technology, but also social and ethnic distance and major political and economic changes have to be put in that framework. The reduction and disappearance of barriers and frontiers have created new opportunities for the expansion and diversification of organised crime.²⁸

Nevertheless, as a precondition for the flourishing of TOC globalization should not be overrated and it should not be indiscriminately applied to all forms of TOC. In some cases it seems that, depending on the local setting and historic conditions, TOC often has strong local and social roots. An example would include the mafia (or mafia-like) organisations in south-eastern Europe and the Middle East, including Albania, former Yugoslavia (especially Kosovo)²⁹, Turkey, and Lebanon where strong

²³ Johnston, Schneider, *et al.*, *Organized Crime Harm Index*, cited in note 15 above, p. 5.

²⁴ Louise Shelley *et al.*, 'Methods and motives: exploring links between transnational organized crime and international terrorism', (2005) 9 *Trends in Organized Crime*, 52–67, pp. 4ff.; Augustus Martin, 'Terrorism and transnational organized crime', in Reichel and Albanese, *Transnational Crime and Justice*, cited in note 5 above, pp. 243–61, pp. 243ff.; Tamara Makarenko, 'Foundations and evolution of the crime–terror nexus', in Felia Allum and Stan Gilmour (eds), *Routledge Handbook of Transnational Organized Crime*, Abingdon, Routledge, 2012, pp. 234–49.

²⁵ Stergios Skaperdas, 'The political economy of organized crime: providing protection when the state does not', (2001) *Economics of Governance*, 180.

²⁶ Jan van Dijk and Toine Spapens, 'Transnational organized crime networks', in Reichel and Albanese, *Transnational Crime and Justice*, cited in note 5 above, pp. 213–26, p. 217.

²⁷ *Ibid.*, p. 223; Skaperdas, 'The political economy of organized crime', cited in note 25 above, p. 184; Kelly Hignett, 'Transnational organized crime and the global village', in Allum and Gilmour, *Routledge Handbook of Transnational Organized Crime*, cited in note 24 above, pp. 281–93.

²⁸ Don Loree, 'Organized crime: changing concepts and realities for the police', (2012) *Trends in Organized Crime*, 75.

²⁹ Thomas Feltes, 'Peacebuilding and police reform in the New Europe: lessons from Kosovo', in Martin H. W. Möllers and Robert van Ooyen (eds), *Jahrbuch öffentliche Sicherheit 2008/09*. Frankfurt, Verlag für Polizeiwissenschaft, 2008, pp. 439–66.

social support structures are constituted by family units that provide status, protection, and communication and where membership is predominantly defined by blood ties and marriage.³⁰

The argument that unstable social economic conditions are significantly related to the growth of TOC networks is also too simplistic. TOC is not confined to a particular social milieu or deeply rooted in the 'underclass', but in a number of instances linked to political elites and business leaders in what von Lampe (in his typology of organised crime) calls a 'mafia-like alliance of upper world and under world'.³¹

Identifying and analysing the conditions for the flourishing of TOC is important for various reasons. The biggest threat from TOC is not that it simply exists, but rather that it keeps on spreading around the globe. To expand, it is dependent on 'safe havens' in which the conditions for prospering are ideal and controls weak.³² Identifying the safe havens might be the key to preventing criminal conglomerates from expanding and becoming destabilizing factors for states and a threat to global security.

3.3.1 Legal conditions

The legal conditions that promote TOC structures are hard to identify. The simple equation stating that the tougher the legislation criminalizing particular conduct, the better will be the deterrence and prevention of the conduct in question, seldom adds up. Among criminologists, it is common sense that tougher laws are not useful instruments to prevent and deter illegal conduct. On the contrary, the end of drug prohibition policies is discussed as it is believed likely to drive criminal organisations out of the drug market.³³ For this legalization to work, it would require universal laws and world-wide cooperation, which seems to be unrealistic at the moment owing simply to the unwillingness of legislators as well as widely unknown possible side effects such as the estimated increase in demand and the aggravation of drug abuse.³⁴

However, it is only half the truth that legalization is the weapon of choice, as coercive strategies have proved inefficient against TOC in the past. A good example of the likelihood that legalization might have no positive effect or, on the contrary, might even trigger off an increase in criminal conduct is human trafficking for sexual exploitation, an area in which TOC groups are typically active. A number of countries like The Netherlands, Australia, and Germany have liberalized their anti-prostitution laws and declared prostitution legal so as, among other reasons, to prevent human trafficking for sexual exploitation, a booming market since the early 1990s.³⁵ In Germany, since

³⁰ Klaus von Lampe, 'Organized crime in Europe: conceptions and realities', (2008) 2 *Policing* (1), 7-17, p. 12.

³¹ *Ibid.*, p. 15.

³² van Dijk and Spapens, 'Transnational organized crime networks', cited in note 26 above, p. 222.

³³ Matthew S. Jenner, 'International drug trafficking: a global problem with a domestic solution', (2011) 18 *Indiana Journal of Global Legal Studies* (2), 901-27; Brian Ford, 'From mountains to molehills: a comparative analysis of drug policy', (2013) 19 *Annual Survey of International & Comparative Law*, 197-231.

³⁴ Matthew S. Jenner, 'Drug trafficking as a transnational crime', in Reichel and Albanese, *Transnational Crime and Justice*, cited in note 5 above, pp. 65-84, pp. 81-2.

³⁵ Cornelius Friesendorf, 'Pathologies of security governance: efforts against human trafficking in Europe', (2007) 39 *Security Dialogue* (3), 379-402, p. 379.

the new prostitution law came into effect in 2002, prostitutes can take out health insurance and make retirement provision, and can officially register their businesses. The political goals of these legal measures were to stop discrimination against prostitutes, to strengthen their legal position, and to fight crimes typically related to prostitution, such as sexual exploitation or human trafficking, classic fields of organised criminal activity.³⁶ Soon it became clear that the new prostitution law was causing a fairly small (or even no) reduction in human trafficking for sexual exploitation.³⁷ For example, after the introduction of a law in Germany to legalize prostitution in 2002 only a very small number of prostitutes registered themselves, not least because they wished to avoid relatively high social security contributions and taxes. Among foreign prostitutes, who still form the majority of workers in the sex industry, the willingness and ability to register was even lower owing to the fact that in many cases the prostitutes do not possess residency and working permits. As far as legalization of prostitution might lead to better working conditions for prostitutes, legal prostitutes might stay longer in the business, which might have the effect of increasing the demand for younger women and girls, a safe source of income for traffickers.³⁸ Scholars therefore fear that legalizing prostitution might not break the link between organised crime and the sex industry but strengthen it, encourage the growth of the industry, and increase trafficking.³⁹

In Sweden, therefore, a different legal approach was adopted to combat human trafficking: while the selling of sexual services was legalized, the purchase of such services was criminalized, punishing clients with the aim of reducing demand and creating an anti-prostitution climate. A similar legislative approach is being discussed in France.

Those examples illustrate the complexity of a legalistic approach to preventing or fighting TOC. It lies within the very nature of TOC to move activities very flexibly and rapidly from one state to another as soon as new legislation is passed against it. That is why loopholes in state legislation are apt to provide safe havens for TOC and only strong cooperation and harmonizing measures provide an effective instrument in the fight.

As regards legal harmonization strategies that are popular in the EU, one should keep in mind that particular legislation developed in a unique legal system is not simply applicable in other states.⁴⁰ For example, the Italian anti-mafia legislation has been proven highly effective in recent years. A resultant negative knock-on effect is that Italian mafia organisations seek new, safe havens where legislation and law enforcement is less effective.⁴¹ But to conclude that the implementation of Italian-style

³⁶ Barbara Kavemann, 'Die praktischen Auswirkungen des deutschen Prostitutionsgesetz', in Thorsten Benkel (ed.), *Das Frankfurter Bahnhofsviertel: Devianz im öffentlichen Raum*, Wiesbaden: V. S. Verlag für Sozialwissenschaften/GWV Fachverlage, 2010, pp. 211–28, p. 214.

³⁷ Günther Mailhold, 'Der Mensch als Ware. Konzepte und Handlungsansätze zur Bekämpfung des globalen Menschenhandels', Stiftung Wissenschaft und Politik Research Paper S24, Berlin, 2011, p. 17.

³⁸ Friesendorf, 'Pathologies of security governance', cited in note 35 above, pp. 396–7.

³⁹ *Ibid.*, p. 397 with further references.

⁴⁰ For a good overview of the European External Security Strategy against TOC see Daniela Irrera, 'The EU strategy in tackling organized crime in the framework of multilateralism', (2011) 12 *Perspectives on European Politics and Society* (4), 407–19.

⁴¹ Felicia Allum, 'Italian organised crime in the UK', (2012) 6 *Policing* (4), 354–9, p. 358.

anti-mafia legislation in other countries might be the best way of dealing with the expansion of the mafia to other territories could be a mistake. Legal systems, even inside the European Union, are too different to allow the simple copying of legal strategies rather than taking a jurisdiction-specific and more pragmatic approach.⁴² A good example of such a pragmatic approach to harmonizing different legislation is the European Arrest Warrant (EAW), which has simplified extradition procedures in the EU significantly. On the downside, the criticism has been offered that the EAW and its pragmatic and informal approach have had a negative effect on the rights of people who are extradited.⁴³ In sum, differences in legislation and policies across states might prove beneficial for highly mobile TOC actors and result in uneven progress in the fight against TOC groups, since they might simply move their operations to a less risky jurisdiction.⁴⁴

3.3.2 Institutional conditions

A simple model of stable states suggests three elements as a precondition for stability: governance/the rule of law, economic/infrastructure development, and security.⁴⁵ All three elements are interdependent and all three are vulnerable to influence in one way or another by TOC. When determining the extent of TOC activities in states, the quality of the institutions responsible for the rule of law, such as competent police services and independent courts complying with the standards of professional integrity, is a crucial factor. The effectiveness of the criminal justice system relates negatively to the performance of organised crime groups at the country level. According to van Dijk's study on mafia markers, high levels of organised crime rarely go together with effective policing and strong maintenance of the rule of law.⁴⁶ Interestingly, the collected data suggest that this effect is lower for the fight against conventional crime than it is for organised crime. Van Dijk concludes that the impact of police services and independent professional judiciaries on fighting conventional crimes may have been somewhat overrated while the importance of the criminal justice system fighting complex crimes such as TOC seems to be underrated.⁴⁷

Among the most important prerogatives of states and their institutions are the provision of protection, legal services, and services to facilitate exchange and contracts. But when state institutions are weak, illicit organisations may act as illegal suppliers of governance and protection and become credible alternatives to state institutions, as is

⁴² Paolo Campana, 'Understanding then responding to Italian organized crime operations across territories', (2013) 7 *Policing* (3), 316–25, p. 324.

⁴³ Michael Böhm, 'Das neue europäische Haftbefehlsgesetz', (2006) 36 *Neue Juristische Wochenschrift*, 2592–6; Stefan Braum, 'Europäisches Strafrecht im Fokus konfligierender Verfassungsmodelle. Stoppt das Bundesverfassungsgericht die europäische Strafrechtsentwicklung?', (2009) 4 *Zeitschrift für Internationale Strafrechtsdogmatik* (8–9), 418–26, available at: http://www.zis-online.com/dat/artikel/2009_8-9_348.pdf, accessed 29 January 2016.

⁴⁴ Joseph Wheatley, 'Transnational organized crime: a survey of laws, policies and international conventions', in Allum and Gilmour, *Routledge Handbook of Transnational Organized Crime*, cited in note 24 above, pp. 65–79, p. 77.

⁴⁵ James, 'The other civil society', cited in note 14 above, p. 227.

⁴⁶ van Dijk, 'Mafia markers', cited in note 14 above, p. 47. ⁴⁷ *Ibid.*, p. 47.

the case with some mafia organisations in Italy or in a number of post-conflict countries.⁴⁸ Weak states are defined by weak institutions and organised crime actors prey on that. As self-evident as this may seem, the same is not true for economically weak states as there is no significant relation between poverty and the quality of the rule of law, as will be explained in chapter 4 of this book.

A complicating factor for the simple scheme that seeks to link TOC to the weak state institutions that are particularly found in developing countries is the fact that particularly in fragile and failed states, state institutions are not the only source of authority. In a number of poor and developing countries, the boundaries between state and society are widely unclear.⁴⁹ Very often stability is more of a constant bargaining process of distribution and limitation of power between government and its institutions, competing elites, and civil society.⁵⁰ In these constellations, TOC may act more or less independently of weak or strong state institutions, serving only its own political agendas and functions. The latter do not necessarily have a negative impact on societies, but rather develop a number of positive and stabilizing potentials.⁵¹

There is not much doubt that one of the most important institutional conditions for the flourishing of organised crime is the receptiveness of state institutions to corruption. This receptiveness occurs in various forms, such as direct bribery of law enforcement agencies and state institutions, of political institutions by paying off politicians or through the funding of political parties. Corruption functions by opening doors for organised crime actors into state institutions. Van Dijk, therefore, refers to organised crime and corruption as two sides of the same coin.⁵² Most directly affected by corruption are law enforcement institutions, particularly the police, that seem to have a high level of vulnerability to corruptive practices. The reasons for this are varied and range from the systematic recruitment of relatively poorly educated officers (arriving from low prestige attached to joining the police force), to a predominant lack of meritocracy in the police force (preventing exposure of unprofessional or even ill-behaviour).⁵³

In and of itself, corruption does not generate negative effects, and may even contribute to stability, especially in fragile states.⁵⁴ But the example of Mexico shows how illusory this stability may be in the long run. Here, corruption in the past contributed to

⁴⁸ Campana, 'Understanding then responding to Italian organized crime', cited in note 42 above, p. 322. Also see Center for the Study of Democracy, *Examining the Links Between Organised Crime and Corruption*, Irvine, California, 2010, p. 150.

⁴⁹ James, 'The other civil society', cited in note 14 above, p. 228.

⁵⁰ Tilman Feltes, 'Jugend und Demokratie. Die Förderung der Partizipation Jugendlicher durch internationale Gemeinschaft im Kosovo', (2013) 1 *Südosteuropäische Hefte* (2), 45–57, available at: http://suedosteuropaeischehefte.files.wordpress.com/2012/12/sh_1_2_feltes.pdf.

⁵¹ See James, 'The other civil society', cited in note 14 above; William Reno, 'Understand criminality in West African conflicts', in James Cockayne and Ada Lupel (eds), *Peace Operations and Organised Crime: Enemies or Allies?*, London, Routledge, 2011; van Dijk, 'Mafia markers', cited in note 14 above, pp. 50ff.

⁵² van Dijk, 'Mafia markers', cited in note 14 above, p. 49; also see Stephen D. Morris, 'Corruption, drug trafficking, and violence in Mexico', (2012) *Brown Journal of World Affairs* (11), 29–43, p. 30.

⁵³ For the European Police see CSD, *Examining the Links*, cited in note 47 above, p. 150.

⁵⁴ Philippe Le Billon, 'Buying peace or fuelling war: the role of corruption in armed conflicts', (2005) 15 *Journal of International Development* (4), 413–26.

low level of violence and relative stability, but began to fuel an unprecedented amount of violence in recent years. This paradox can be explained by a number of changes that together have altered the patterns and impact of corruption as it relates to drug trafficking and organised crime. In the past, corruption provided the cartels with a relatively secure state-sponsored protection and linked the state and narco-trafficking discreetly together, to the degree that centralized political authorities essentially managed the drug business.⁵⁵ But since 2006 and the launch of president Calderón's war on drugs the level of corruption skyrocketed owing to the weakening of the large cartels and the growing number of rival and splinter organisations that increasingly infiltrated the state via corruption to maintain the operation of their drug-related businesses.⁵⁶ Today an essential part of the war on drugs in Mexico is against the state's own officials. In the long run, corruption is likely to become a Trojan horse within the walls of governments.⁵⁷

Nevertheless, one should not overestimate the corruptive practices of organised crime actors as means to gain power in governments and infiltrate societies. In most cases money is only invested when it seems beneficial for the conducted crime trades. Long-term investment strategies for building power sustainably in different branches of the government and the economy are not very common.⁵⁸

3.3.3 Socio-economic conditions

To assume that the weakness of state institutions correlates with the economic performance of the state is too simplistic. The strong relationships that exist between the measures of governance and economic growth or performance do not necessarily imply that a strong economy is followed by a high quality of institutions. In fact, it seems more plausible that good governance with highly independent law enforcement agencies does not require expenditures only affordable by rich countries with vast resources, but is rather dependent on sound legislation and political will.⁵⁹ On theoretical grounds, the relationship between favourable socio-economic conditions for TOC is a more indirect one, following the logic that weak institutions lead to less wealth and poorer societies that provide good breeding grounds for TOC activities. Those activities may reach an extent where they re-impact the legal economy and state institutions resulting in a vicious circle the dynamics of which are further explained below in section 3.5.1 of this chapter, 'Economic impacts'.

However, poverty often goes hand-in-hand with political instability and both constitute an important force driving the flourishing of TOC. In fragile states, such as some parts of northern Africa, power and investment vacuums in the public and private sector are likely to be filled by TOC, particularly through providing essential

⁵⁵ Morris, 'Corruption, drug trafficking, and violence in Mexico', cited in note 52 above, pp. 34–6 with further references.

⁵⁶ Ibid, p. 38.

⁵⁷ van Dijk, 'Mafia markers', cited in note 14 above, p. 54.

⁵⁸ Petrus van Duyn, 'Organized crime, corruption and power', (1997) *Crime, Law & Social Change* (26), 201–38, pp. 218ff.

⁵⁹ van Dijk, 'Mafia markers', cited in note 14 above, p. 48.

goods and services such as transport infrastructure, food, and fuel.⁶⁰ Thanks to the global economic crisis, however, not only African states are suffering from a high rate of unemployment, especially among young people. In nearly all parts of the world, poverty and unemployment provide a nearly unlimited recruiting pool of foot soldiers for illicit organisations.⁶¹ The absence of opportunities and participation in the labour market has a strong effect on human trafficking of labourers and on sexual exploitation, as unemployment is a significant push-factor. Victimization of both kinds becomes more likely for (young) people living in insecure economic circumstances.⁶²

We have already mentioned how TOC may generate benefits and positive impacts for society by employing people or reinvesting money derived from their illicit activities. However, the real problem with the profits of TOC is that they are mainly funnelled to transnational crime syndicates where they are used to maintain or establish new trade networks, while the labour force at the base of such syndicates only receives a minor part of the profits made from the trade. The coca farmer from Peru, the organ donor from Pakistan, or the prostitute from Bulgaria only receive a tiny fraction of the retail earnings of their contribution.⁶³

Among scholars of TOC there is broad consensus that the economic liberalization that goes hand-in-hand with globalization has been a factor facilitating the evolution and expansion of criminal organisations.⁶⁴ As a consequence, the absence of effective regulatory oversight and the establishment of offshore financial centres made money laundering easier.⁶⁵ The increasing desire for mobility paralleled by the hardening of border protection and tightening of immigration laws created a new variety of opportunities for human traffickers. More generally expressed: the global economy has created socio-economic inequalities around the world as well as an extensive mobility of goods and people that, in turn, has created circumstances described as 'criminogenic asymmetries', offering a variety of opportunities to criminal organisations while complicating regulation by states.⁶⁶

3.4 TOC and its Impact on Societies

When analysing the impacts of TOC on society, it would be one-dimensional to focus solely on the negative and devastating consequences associated with organised crime. Contrary to popular belief, to a certain extent TOC may actually contribute to regional development, particularly in some regions of the southern part of the globe

⁶⁰ Europol, *EU Organised Crime Threat Assessment, OCTA 2011*, The Hague, Europol Police Office 2011, p. 49.

⁶¹ Antonio Maria Costa, 'The economics of crime: a discipline to be invented and a Nobel Prize to be awarded', (2010) *Journal of Policy Modeling*, 660.

⁶² Malhold, 'Der Mensch als Ware', cited in note 37 above, p. 9.

⁶³ Jeremy Haken, *Transnational Crime in the Developing World*, Washington DC, Center for International Policy, 2011.

⁶⁴ See Tim Hall, 'Economic geography and organized crime: a critical review', (2010) *Geoforum* (41) 841-5, p. 842.

⁶⁵ Tim Hall, 'Geographies of the illicit: globalization and organized crime', (2013) *37 Progress in Human Geography* (3), 366-85, p. 371.

⁶⁶ Hall, 'Economic geography and organized crime', cited in note 64 above, p. 842.

These positive effects should be recognized but not overestimated. It is argued that through violent and corruptive practices, particularly through the diversion of resources from the legitimate economy and the tendency to destabilize state institutions, the net developmental impacts of TOC are inevitably negative.⁶⁷ However, the terms 'negative' or 'positive' impact may oversimplify the complexity of the effects of TOC. The benefits in one community may result in a downside for a community somewhere else, though probably not in the short term but rather in the long run.⁶⁸ TOC can best be understood by its mutual interdependencies and strong ties with civil societies. As much as TOC's impacts and threats have shaped civil societies, these societies in turn leave their mark on the underworld and shape it by their own transformative processes from a once merely domestic phenomenon to a plural and highly internationalized terrain.⁶⁹

3.4.1 Direct vs indirect impacts

Criminological research in recent years has increasingly focused on the indirect impacts of crime, particularly by assessing its economic costs. This perspective allows for the analysis of data that were not directly connected to crime data collected by the law enforcement agencies and the measurement of economic impact. Simply put, direct impacts are the more or less intentional result of a given activity conducted by organised crime actors; indirect impacts are non-intentional, or at least not known to be a goal of TOC actors, but still are a specific result or outcome of the activity.⁷⁰

The difference between direct and indirect impacts, as well as the need for drawing a distinction between them, is best illustrated by the example of drug trafficking and drug abuse. Here, the indirect costs of use and abuse sometimes far outweigh the direct costs. Sometimes the estimated indirect costs seem to be far-fetched. For example, it is argued that the increased transnational smuggling of tobacco tends to result in lower prices for cigarettes on the black market, which makes tobacco more attractive and affordable for everyone, especially younger consumers. But the younger the consumers, the more vulnerable they are to the addictive and health-damaging effects of tobacco. The probable lower quality of smuggled tobacco may aggravate those devastating effects. The impact of these dynamics on state health systems are immense, though quite difficult to measure.

Another indirect effect is that different licit and illicit drugs may interrelate with each other and the consumption of one drug can influence the consumption of another.⁷¹ For example, reducing the supply of marijuana through increased law enforcement activities, including seizure, may lead to a rise in prices. This scarcity may drive drug users to alternative drugs such as alcohol, or even worse, synthetic

⁶⁷ Ibid, p. 371.

⁶⁸ James, 'The other civil society', cited in note 14 above, p. 247.

⁶⁹ Hall, 'Economic geography and organized crime', cited in note 64 above, p. 371.

⁷⁰ For direct and indirect impacts of organised drug crimes on young people see Holly Richter-White, 'The direct and indirect impacts of organized crime on youth, as offenders and victims', (2002) *Trends in Organized Crime*, 83.

⁷¹ Ibid, 85.

drugs or opiates.⁷² Getting tough on one drug may aggravate the drug problem instead of actually solving it.

The gateway drug problem is another indirect dilemma societies are confronted with and for which no easy answers can be found. Closely related to this question of impacts on health systems is the controversy about legalizing weaker drugs such as marijuana. A different, but still widely related, indirect impact of drugs would be the harm and damage caused by traffic accidents from people under the influence of drugs. Quite apart from the cost for law enforcement this list of indirect impacts could be easily extended. For example, productivity losses in the workforce attributable to drug abuse by employers and employees are nearly impossible to measure. Furthermore, it is worth noting the link between drug trafficking and terrorism: drug consumption may directly or indirectly finance terrorism which, again, leads to enormous cost in the field of internal security.

In conclusion, the direct impacts of TOC may be easier to measure than the indirect impacts. But the collected data give an incomplete picture that only allows limited conclusions. The informative value of data measuring indirect impacts is much higher and the derived picture may be broader, but collecting reliable data is difficult and costly.

3.4.2 Moral panics and TOC

According to Goode and Ben-Yehuda,⁷³ a moral panic can be identified by five crucial elements or criteria. First, there must be a heightened level of concern over a particular behaviour, which can be measured, as through media attention for example. Second, an increased amount of hostility is required towards the people seemingly engaging in the behaviour, which is allegedly harmful to the society. Third, a consensus has to be reached in the form of a minimal agreement fairly widespread among the population that the behaviour in question is real and serious. Fourth, a certain disproportion has to be reached, meaning that the moral panic is in fact considerably greater than empirical evidence would support. The fifth element is described as a certain volatility of moral panics, meaning that they subside as suddenly as they have erupted, although they might have been latent for relatively long periods. Garland adds two further elements to this conceptualization, namely '(i) the moral dimension of the social reaction, particularly the introspective soul-searching that accompanies these episodes; and (ii) the idea that the deviant conduct in question is somehow symptomatic'.⁷⁴

When applied to TOC, the concept of moral panics offers some enlightening insights into the peculiar dynamics of crime policies.

⁷² For an interesting overview of possible impacts of drug seizures see Joseph McGallaghy and Neil McKeganey, 'The impact of drug seizure on local communities', in Töttel, Bulanova-Hristova, and Büchler, *Research Conference on Organised Crime, Vol. II*, cited in note 6 above, pp. 81–105.

⁷³ Erich Goode and Nachman Ben-Yehuda, 'Moral panics: culture, politics, and social construction', (1994) *Annual Review of Sociology* (20), 149–71, pp. 156–8. The 'classic' work about moral panics is that by Stuart Hall, Chas Critcher, Tony Jefferson, John Clarke, and Brian Roberts, *Policing the Crisis: Mugging, the State and Law and Order*, 2nd edn, Basingstoke, Palgrave Macmillan, 2013.

⁷⁴ David Garland, 'On the concept of moral panic', (2008) 4 *Crime, Media, Culture* (1), 9–30, p. 11.

First of all, organised crime seems to be a taboo topic in a number of countries. The reasons for that may be that the existence of organised crime is associated with failed governance and public distrust, political corruption, and economic leeway, as well as human rights violations. Political discourses about TOC may have a negative impact on the reputation of governments and state institutions, as viewed either by external states or companies, or by its own citizens.⁷⁵ This tendency to disguise organised crime discussions in a shroud of secrecy is not restricted to the politics level, but also practised on the law enforcement and police level, as these institutions are under nearly the same pressure of public opinion as politicians.⁷⁶

Second, the media plays a crucial role in influencing and shaping public perceptions about TOC through entertainment programming as well as information and news, and is only to a limited extent controllable by political agendas. Media discourses about TOC seems somehow to suffer from a certain hypocrisy: on one side, the entertainment branch glorifies organised criminals in movies and TV shows (*The Godfather*, *The Sopranos*, *Scarface*, *Breaking Bad*, etc.), and on the other side it engages shamelessly in moral panicking by overestimating the violent side of organised crime by, for example, strongly concentrating on crimes by violent motorcycle gangs ('biker wars').⁷⁷ Depending on their own agenda, some of those motorcycle gangs in their turn try to influence public perception either by creating a positive image through charity activities, or by keeping up with the 'bad boy' image.⁷⁸ Public relations strategies of organised crime actors may reach a point at which the organisation itself is only living by its reputation, which is fuelled by journalistic and law enforcement speculation, as was suspected of 'La Cosa Nostra' in New York City or the Russian 'thieves in law'.⁷⁹

Third, for various reasons, some forms of organised crime go entirely unnoticed by the media and the public. In the past, this was the case for a variety of environmental crimes, corporate crimes, and contraband activities. This is particularly noteworthy for white-collar crimes, where it seems that the usual moral panic dynamics and the demonizing of the criminals at least in the long run seem to be rendered ineffective by economic power, respectability, and prestige.⁸⁰

A similar disinterest has been the case for TOC as well which, according to Irrera, has positioned itself and has widely gone unnoticed by the media as a dangerous global threat.⁸¹ One reason might be that, as with white-collar criminals,

⁷⁵ Cyrille Fijnaut, 'Organised crime in Europe and beyond: some general considerations', in Robertson-von Trotha, *Organised Crime*, cited in note 2 above, p. 13.

⁷⁶ Richter-White, 'Direct and indirect impacts', cited in note 70 above, p. 100.

⁷⁷ Judith Dubois, 'Media coverage of organized crime—police managers survey', (2002) *Trends in Organized Crime*, pp. 52ff.; Loree, 'Changing concepts and realities', cited in note 28 above, pp. 74–5; Sheptycki, 'Organised crime in Canada', cited in note 4 above, p. 501. For a good overview of the role of TOC in the modern media see Paddy Rawlinson, 'Transnational organized crime: media, myths and moralities', in Allum and Gilmour, *Routledge Handbook of Transnational Organized Crime*, cited in note 24 above, pp. 294–306.

⁷⁸ For a good overview of motorcycle gangs and moral panic, see Karen Katz, 'The enemy within: the outlaw motorcycle gang moral panic', (2011) 36 *American Journal of Criminal Justice* (3), 231–49.

⁷⁹ Richter-White, 'Direct and indirect impacts', cited in note 70 above, p. 99.

⁸⁰ Michael Levi, 'Suite revenge?: The shaping of folk devils and moral panics about white-collar crimes', (2009) 49 *British Journal of Criminology* (1), 248–67, p. 251.

⁸¹ Irrera, 'The EU strategy in tackling organized crime', cited in note 40 above, p. 411.

transnational organised criminals may today have more in common with respectable and distinguished businessmen than with the violent thug of ancient mafia organisations. Another reason might be found in the transnational aspect of organised crime itself. This, on one hand, offers the possibility for politicians and law enforcement institutions to constitute a 'particular form of othering' where the organised criminal is presented as an external threat and not a product of poor security governance, and through that, reinforce those politicians' and institutions' own political agenda.⁸² On the other hand, this outsourcing of societal problems connected to TOC, as well as its blurred and ghostlike appearance, may have the effect that the critical mass of interest to set off the discourse dynamics of moral panics based on the identification of folk-devils may not be reached.

3.4.3 Organised exploitation

When it comes to organised exploitation, one might primarily think of the most prominent branches such as sexual exploitation of women and children or the exploitation for labour, both classic fields in which TOC has been widely active for years. Accordingly, it has played an important role in crime policies, and the research activities in that field have been extensive over recent years.⁸³ But the exploitation of human beings is not limited to sexual or labour services. It rather has a number of different faces: it encompasses sexual exploitation of men and boys, the mail-order bride business, the trade in children offered for adoption, and the illicit trade in human organs.⁸⁴ All these phenomena of exploitation have at least one characteristic in common: most of the victims come from socially and economically precarious backgrounds where unemployment rates, poverty, or inequalities are high, and where educational perspectives and prospects for social and economic advancement are low.⁸⁵ Compared with the sexual exploitation of women and exploitation for labour, the other named fields of exploitation have gained less attention in the past and are not well researched. These fields are constantly growing and are likely to become more and more important in the future. For example, inter-country adoptions of children, particularly from very poor sending nations, has dramatically increased over the past years. A whole industry of adoption agencies has been developed, sometimes perverting the humanitarian aid system to meet the growing demand. To grasp that phenomenon, Smolin coined the term 'child laundering',

⁸² See, for the concept of 'othering', Michael Woodiwiss and Dick Hobbs, 'Organized evil and the Atlantic Alliance: moral panics and the rhetoric of organized crime policing in America and Britain', (2009) 49 *British Journal of Criminology* (1), 106–28, p. 124.

⁸³ Maria O'Neill, 'Trafficking in human beings and the European Neighbourhood Policy: new challenges for the EU Justice and Law Enforcement Framework', in Maria O'Neill, Ken Swinton, and Aaron Winter (eds), *New Challenges for the EU Internal Security Strategy*, Cambridge, Cambridge Scholars Publishing, 2013, pp. 188–216; Brenda Breuil, Diana Siegel, Piet van Reenen, Annemarieke Beljer, and Linda Roos, 'Human trafficking revisited: legal, enforcement and ethnographic narratives on sex trafficking to Western Europe', (2011) *Trends in Organized Crime*; Manfred Paulus, 'Sexual slavery and trafficking in women—a summary of current developments in Europe', in Robertson-von Trotha, *Organised Crime*, cited in note 2 above, pp. 127–36.

⁸⁴ Friesendorf, 'Pathologies of security governance', cited in note 35 above, pp. 379–80.

⁸⁵ Mailhold, 'Der Mensch als Ware', cited in note 37 above, p. 9.

which describes the obtaining of children illicitly through force, fraud, or financial inducement, providing false paperwork that identifies such illicitly obtained children as legally abandoned or relinquished 'orphans', and offering or putting them up for adoption.⁸⁶ Child laundering is conducted by a highly organised, commercialized, and corrupt system of adoption agencies that operate behind a perfidious humanitarian facade and are driven by the demand of rich Western adults for children.⁸⁷ However, the questions how this system qualifies as, and is linked to, TOC and human trafficking remain controversial. A quite similar field is the 'mail-order bride' system, where a whole industry of agencies pair Western men with women mostly from Eastern Europe for marriage. Statistical data and research on that topic are rare, but available information suggests that mail-order brides are likely to become victims of human trafficking and sexual exploitation by a system of agencies operating with the same patterns as TOC.⁸⁸

The trade in organs has become a multibillion-dollar industry ranked among the ten most profitable illegal trading activities, such as the illicit trade in arms, diamonds, and humans. Both the mere commercialism, such as organ tourism, and the actual trafficking in organs, the latter encompassing coercion or fraud, are prohibited in nearly every country of the world.⁸⁹ The global shortage of organs has fuelled the controversial debate over how this prohibition of the commercial trade contributes to trafficking and exploitation of human beings for the purpose of organ transplantation. Organ trafficking is strongly linked to TOC activities, especially in the developing world.⁹⁰

3.5 TOC and its Impact on States

TOC impacts states mainly on three levels: the economic, the political, and the rule of law levels. However, these different levels of impact cannot be strictly separated. Van Dijk describes the complex interplay by stating that organised crime activities tend to erode public trust in state institutions by targeting the integrity of those holding public offices, including those responsible for upholding the rule of law.⁹¹ The greater

⁸⁶ David M. Smolin, 'Child laundering and the Hague Convention on Intercountry Adoption: the future and past of intercountry adoption', (2010) 48 *University of Louisville Law Review [Online]* (3), 441–98, available at: http://works.bepress.com/david_smolin/8, accessed 24 April 2014, pp. 443–4.

⁸⁷ David M. Smolin, 'Child laundering: how the intercountry adoption system legitimizes and incentivizes the practices of buying, trafficking, kidnapping, and stealing children', (2006) 52 *Wayne Law Review [Online]* (1), 113–200, available at: http://works.bepress.com/david_smolin/1/, accessed 24 April 2014, p. 116.

⁸⁸ Kirstin M. Lindee, 'Love, honor, or control: domestic violence, trafficking, and the question of how to regulate the mail-order bride industry', (2007) 16 *Columbia Journal of Gender and Law* (2), 551–601, p. 554.

⁸⁹ Haken, *Transnational Crime In The Developing World*, cited in note 63 above, p. 22.

⁹⁰ For the discussion see Frederike Ambagtsheer and Willem Weimar, 'A criminological perspective: why prohibition of organ trade is not effective and how the Declaration of Istanbul can move forward', (2012) 12 *American Journal of Transplantation* (3), 571–75; for a good overview of the global organ trade see Debra A. Budiani-Saberi and Francis L. Delmonico, 'Organ trafficking and transplant tourism: a commentary on the global realities', (2008) 8 *American Journal of Transplantation* (5), 925–9.

⁹¹ van Dijk, 'Mafia markers', cited in note 14 above, p. 54.

the power of organised crime groups, the more biased are legislation, policy-making, and legal rulings serving the interest of a few rather than the majority. This pervasive bias undermines market efficiencies, impedes on investments and sustainable development, and results in economic decline. These impacts are considered to have the potential and capacity to destabilize states economically, socially, and politically to an extent at which TOC is perceived as a threat not just to security, but also to the existence of countries themselves.⁹² Particularly in those countries where TOC refrains from merely evading or infiltrating law enforcement agencies, but rather chooses the open confrontation, the state is in significant danger. But there are also positive examples of countries, such as Botswana, Jordan, or Chile, that illustrate how proper legal infrastructures and zero tolerance for organised crime and corruption may promote economic growth and societal wealth.

3.5.1 Economic impacts

The global economic impact of TOC is impossible to estimate precisely. Although strenuous efforts are made by international organisations, such as the UNODC, to harmonize official data from around the world, reliable numbers are scarce. The same goes for empirical studies and the weaknesses and relative merits of every new study are contested by experts.⁹³

Despite those concerns, it seems clear that the profits made by TOC are enormous. Haken, for example, estimates the global illicit flow of goods, weapons, people, and natural resources at approximately \$650 billion, whereas the illicit drug trade accounts for \$320 billion and counterfeiting for \$250 billion.⁹⁴ Transit crimes, such as international smuggling, seem to be among the most profitable branches and are, therefore, among the main activities of TOC.⁹⁵

Apart from the estimation of profits, the economic impacts on states are even harder to quantify. For example, the German Federal Police Office (BKA) publishes annual reports in which the monetary damage of organised crime in Germany is measured. The overall figure for the year 2012 reached €1.1 billion, while one organised crime group alone was responsible for damage worth €320 million.⁹⁶ However, this report gives just a very rough estimate of the actual economic impact, since it specifically does not account for the dark figure, nor for the indirect economic impacts.

One of the crucial, devastating, economic effects of TOC networks, according to Haken, is the fact that, particularly in under-developed countries, organised crime networks have very little incentive to bolster the legitimate economy.

⁹² Helena Carrapiço, 'Transnational organized crime as a security concept', in Allum and Gilmour, *Routledge Handbook of Transnational Organized Crime*, cited in note 24 above, pp. 19–35, p. 19.

⁹³ Edward R. Kleemans, 'Organized crime and the visible hand: a theoretical critique on the economic analysis of organized crime', (2013) 13 *Criminology and Criminal Justice* (5), 615–29, pp. 616–17.

⁹⁴ Haken, *Transnational Crime In The Developing World*, cited in note 63 above, p. 5; for a good overview of the economic impacts of TOC see UNODC, *The Globalization of Crime. A Transnational Organized Crime Threat Assessment*, Vienna, 2010.

⁹⁵ Kleemans, 'Organized crime and the visible hand', cited in note 93 above, p. 620.

⁹⁶ Bundeskriminalamt, *Bundeslagebild Organisierte Kriminalität*, Hamburg, 2012, p. 7.

Unregulated, they minimize overheads in developing source countries by exploiting local labour forces, often resorting to forced or child labour, dodging environmental and safety regulations, and evading trade tariffs.⁹⁷

It is, therefore, in the best interest of TOC to not just search for weak states as 'safe havens' for their activities, but to actively contribute to the weakening of states by impairing the capacity of governments to promote sustainable economic growth.⁹⁸ This, in turn, will deter local as well as foreign investors, leaving a vacuum preferably filled by illicit actors perpetuating the parasitic dependence of economically underdeveloped states on TOC.

3.5.2 Political impacts

From a political perspective, the occurrence of growing TOC networks alongside globalization have led to a number of impacts. First of all, TOC is included in the political agenda on a global scale owing to its similarities and actual links to global terrorism. The fight against TOC has turned into an approach like warfare, with similar political implications to the 'war on terror'.⁹⁹

Nevertheless, this warfare cannot be considered to have the same exclusive policy priority as the 'war on terror'. This may derive from the fact that the political differences in position among the main actors in the fight against TOC, such as the USA, the EU, and the UN, are significant.¹⁰⁰ This is reflected in national legislations and statutes that focus on domestic organised crime and seldom refer to the transnational or international aspect of an offence. As a consequence, the combat against TOC differs in each country, even if it is a signatory of the Palermo Convention. In addition to this statutory variety, domestic policy initiatives and law enforcement strategies to fight TOC differ from each other significantly.¹⁰¹ But with a view to the aforementioned tendency of TOC to develop strong local roots, domestic law enforcement and policy approaches specifically tailored to the local TOC activities may be successful in the long run. Nevertheless, stronger international cooperation and coordination seems inevitable, taking into account how easily TOC groups move across borders and how difficult the same might be in turn for national law enforcement authorities.¹⁰²

Political impacts on developing countries may differ from this discussion about stronger legal cooperation and law enforcement measures to erase TOC. Here, the question of fighting TOC effectively boils down to approaches encouraging organised crime actors to become less predatory, but rather parasitic and symbiotic (and thereby less violent), or even to transform to licit actors.¹⁰³ When state institutions are

⁹⁷ Haken, *Transnational Crime In The Developing World*, cited in note 63 above, p. 5.

⁹⁸ van Dijk, 'Mafia markers', cited in note 14 above, p. 51.

⁹⁹ van Dijk and Spapens, 'Transnational organized crime networks', cited in note 26 above, p. 222.

¹⁰⁰ Irrera, 'The EU strategy in tackling organized crime', cited in note 40 above, p. 407.

¹⁰¹ Wheatley, 'Transnational organized crime', cited in note 44 above, p. 77.

¹⁰² van Dijk and Spapens, 'Transnational organized crime networks', cited in note 26 above, p. 224; Wheatley, *ibid*, p. 77.

¹⁰³ James Cockayne and Ada Lupel, 'From iron fist to invisible hand: peace operations, organized crime and intelligent international law enforcement', in James Cockayne and Ada Lupel (eds), *Peace Operations and Organised Crime: Enemies or Allies?* London, Routledge, 2011, pp. 190–208.

weak and political branches are infiltrated by TOC, pragmatic approaches to accept it as a political player are considered to be an alternative, at least in the short term. The reasoning behind this is the assumption that a hypothetical successful removal of all TOC structures in developing societies would lead to destabilization, as it is unclear what would emerge to replace these structures. Moreover, the primary drivers for TOC, such as poverty, social inequality, unemployment, weak borders, and government structures, as well as the demand for the illicit goods in question, would remain present.¹⁰⁴

Despite these legitimate concerns, it was argued before that considering TOC as a stabilizing factor in societies is a dangerous approach that is apt to misjudge the highly subversive and destabilizing risks TOC unfolds in all societal spheres. Political strategies in the developing world face this dilemma of finding a balance between fighting and taming TOC by including it in the political process.¹⁰⁵ The international community may play a crucial role in these transformation processes, not only by stressing the law enforcement aspect, but also by supporting political and economic reforms.¹⁰⁶

3.5.3 Impacts on the rule of law

It has been established that in countries where the rule of law is weak and the perceived independence of the judiciary is low, organised crime structures are more prevalent.¹⁰⁷ When assessing the impact of TOC on the rule of law, distinguishing between conditions for the flourishing of TOC and its impacts is not a simple task. This is particularly the case for developing and post-conflict countries in which the relationship between corruption in the public sector and TOC is strong.¹⁰⁸ Corruption tends to unfold a dynamic, in German called '*anfüttern*' (feeding). This term describes the deliberate development of a relationship based on the dependency of the bribed. The bribed become dependent on more bribes to finance their improved lifestyle, which was made possible by accepting bribes in the first place. Simply put, corruption tends to create its own demand. On the state level, this dynamic is reflected in the devastating impact corruption has on economic performance. The damage to national budgets is enormous, contributing to the inability to pay public servants adequately. This, in turn, makes public servants more susceptible to bribes paid by criminals to foster their illicit goals.

This threat posed by TOC undermining the rule of law through corruption and violence is widespread around the globe. Even relatively strong states are not immune to this dynamic. But the most devastating effects unfold where organised criminals are seeking to directly confront governments rather than simply to undermine them. This has recently been the case in some parts of Mexico and in West Africa. The

¹⁰⁴ For the discussion see James, 'The other civil society', cited in note 14 above, pp. 248ff.

¹⁰⁵ Reno, 'Understanding criminality in West African conflicts', cited in note 51 above, p. 49.

¹⁰⁶ James, 'The other civil society', cited in note 14 above, pp. 248ff.

¹⁰⁷ van Dijk, 'Mafia markers', cited in note 14 above, pp. 46-7.

¹⁰⁸ Edgardo Buscaglia and Jan van Dijk, 'Controlling organized crime and corruption in the public sector', in *Forum on Crime and Society* 3, Nos 1 and 2, Geneva, United Nations Publication, 2003, p. 32.

symptoms remain the same in these regions: investigators, prosecutors, judges, and even journalists and activists who pursue organised crime, are threatened and killed. Corruption has taken over large parts of government and law enforcement agencies are paralysed by mistrust.¹⁰⁹ Military forces are deployed to get the situation back under control and enforce public authority, which may have short-term successes, but is itself a threat to civil liberties and the rule of law in the long run. Civil society may react by forming militia and civilian vigilante groups to take security into their own hands, operating widely uncontrolled. These groups may become a security threat to the rule of law over time similar to the criminals they were formed to combat.¹¹⁰ These might be extreme examples, but they illustrate very clearly the consequences that may arise from organised crime networks taking advantage of weak rule-of-law structures.

This dynamic is drastically illustrated in the case of Kosovo and the failure of the international organisations. Just one of many examples is the story of an African citizen who was hired to rebuild the Kosovo railway system, although he personally had no experience with railways.

Mr Bangura teaches the Kosovans how to run a railway and is paid some €8,000 a month. Local railwaymen who are supposed to live on €150 feel a bit humiliated by the project, especially since Mr Bangura knows nothing about railways. How could he? He is from Sierra Leone where the last train stopped in 1975. He is an expert in harbours.¹¹¹

As if that wasn't enough, in 2007 a high-ranking US police officer, working for the UN Interim Administration Mission in Kosovo (UNMIK), was prosecuted for sexual exploitation of women and cooperation with organised criminals. Corruption scandals, some of them at the highest level, have damaged the reputation of the international administration. The former director of the Kosovo Electricity Corporation, KEK (from 2001–3), a 36-year-old German, was only one example. US\$4.5 million from international donors disappeared from his books at KEK. He sold electricity to other countries, and the money was transferred to his private account in Gibraltar. He was sentenced to probation in 2007 in Bochum—not for fraud or corruption in Kosovo, but for using false doctorate titles while applying for jobs in Germany.

The rise in organised crime marked a serious failure by the UN administration. More than ever, Kosovo is at the heart of the European trafficking in drugs and human beings. The 'Balkans ... already distribute most of Europe's heroin, facilitate illegal migration and are responsible for nearly 30 per cent of women victims of the sex trade

¹⁰⁹ UNODC, *Crime and Instability: Case Studies of Transnational Threats* Vienna, 2010, pp. 1–2.

¹¹⁰ *Ibid.*, p. 2.

¹¹¹ Maciej Zaremba, 'Koloni Kosovo. Part 1: Report from Unmikistan, land of the future', available at: <http://www.dn.se/kultur-noje/kulturdebatt/part-1-report-from-unmikistan-land-of-the-future/>; 'Koloni Kosovo. Part 2: The UN state and the seven robbers', available at: <http://www.dn.se/kultur-noje/kulturdebatt/part-2-the-un-state-and-the-seven-robbers/>; 'Koloni Kosovo. Part 3: Complain in Azerbaijan', available at: <http://www.dn.se/kultur-noje/kulturdebatt/part-3-complain-in-azerbaijan/>; 'Koloni Kosovo: Part 4: Prowess, courage and plastic socks', available at: <http://www.dn.se/kultur-noje/kulturdebatt/part-4-prowess-courage-and-plastic-socks/>, all in *Dagens Nyheter*, 25 June 2007, all accessed 29 October 2015.

worldwide'.¹¹² Illicit trade is developing on its borders. Albanian groups organize 80 per cent of the smuggling of heroin in Northern Europe and 40 per cent of that in Western Europe, and four to five tons of heroin cross the borders of Kosovo every month.¹¹³ The UN police works closely with the Kosovo Police, but some members of the service are known for their good contacts with local and international criminals, and the same is true for the always necessary language assistants, some of whom have made tremendous careers in recent years, because the internationals needed them and good and reliable interpreters are rare for a language that was used rarely on an international level before. A monthly list, issued by UNMIK, lists some 140 brothels, officially 'off limits' to UN employees—for a country of some 2 million people.

Mr Bhattacharya from Bangladesh ... is an expert in nothing. He is a parking guard, without a driver's licence and speaks only Bengali, but he must have paid handsomely in Dhaka, because now he is a UN policeman. There are hundreds of them, incompetent people, within the UN police, within finance, and even within the justice system.¹¹⁴

They are called 'domestic internationals', 'project addicts', or, when working for one of the estimated 4,000 NGOs in Kosovo, 'MANGOs' (short for MAfia-Non-Governmental Organization).

3.6 Final Observations

To analyse the 'impact' of TOC on societies is to some extent misleading. The notion 'impact' might suggest that TOC is taking a position somewhere outside societies from where it unfolds its activities and invades the society. This view is only partly true. TOC has its roots within societies around the world. Within these societies, it follows the same social patterns, adopts the same societal developments and changes, takes advantage of weaknesses, preys on state failures, and operates its business in an economic system provided by the international community, obeying some of its rules while violating others. As much as TOC is a measurable and observable phenomenon, it is more of a social construction defined and influenced by societal perceptions and projections. With disregard to the positive or stabilizing role TOC might play in some regions of the world, one might still consider TOC as a tumour or parasite feeding on the blood of its host. But this metaphor, although popular, is somehow crooked as it describes TOC as an outsider, which it simply is not. If a metaphor is needed at all, one might compare TOC more to a limping leg on the body of society: it slows us down and might hurt from time to time, but it is still a functional leg and sometimes we might not even realize that it is limping. And whether we like it or not, the leg remains a part of our body.

¹¹² International Crisis Group, 'Breaking the Kosovo stalemate: Europe's responsibility', (2007) Europe Report 185, available at: http://www.crisisgroup.org/~media/Files/europe/185_breaking_the_kosovo_stalemate__europe_s_responsibility.ashx.

¹¹³ Walter Mayr, 'Elefanten vor dem Wasserloch', (2008) 17 *Der Spiegel*, 128–30.

¹¹⁴ Zaremba, 'Koloni Kosovo', cited in note 111 above.