

Background Paper *Inter-Regional Dialogue*

State Capture and Organized Crime or Capture of Organized Crime by the State

*"The cartels have not yet corrupted the government's senior levels, but sooner or later they will, because they have millions of dollars and you need to be a saint to reject them."*¹

Introduction

This Inter-Regional Dialogue will bring together investigative journalists, independent analysts and researchers in Latin America and West Africa to discuss the organized crime, particularly the mutually advantageous relations that have developed across regions between organized criminal groups and political/ state actors. The initiative will also focus on the current challenges and opportunities of international policy and operational responses to the political-criminal nexus, and prepare the ground for a follow-up meeting with key policy makers dealing with these issues.

The Shifting Nature of Transnational Organized Crime

Since time immemorial both legitimate and illegitimate business has attempted to distort or displace the state for its own gain. In many contexts, organized criminal groups have become major contenders in these efforts, engaging significantly at the intellectual, political and institutional level with state and social actors.

Until relatively recently, organized criminal activity was constrained within a state's borders or limited to a small number of global cartels and mafia groups. However, the end of Communism coupled with the expansion of global markets and the rising sophistication of information communications technology, have spurred mass expansion of organized crime. As noted by Glenny, "as early as 1992 Solnstevo, the largest organized crime syndicate in Moscow is alleged to have been holding meetings with representatives of the Colombian Medellin and Cali cartels in Aruba to discuss the expansion of their European markets and points of entry into the European Union."² Meanwhile, hit hard by the collapse of the bubble economy in 1990, "the activities of the Japanese organized crime cartel – Yakuza – have been expanding to Southeast Asia and as far afield as Las Vegas and Hawaii."³ More recently, Central Asian cartels have expanded their activities in a range of areas, including drugs and human trafficking; and

¹ Zainab Bangura, Minister for Foreign Affairs, Sierra Leone, (Feb. 2009).

² Glenny (2009)

³ Glenny, (2008), Hill (2004)

Afghanistan continues to churn out enough heroin to meet the ever rising demand in the Russian Federation, Europe and the Gulf states while simultaneously providing much-needed cash flows for internal warring factions.⁴ In Africa, drug trafficking drugs involving *inter alia* Latin American cartels is reported to be on a steady increase⁵ and becoming a major thorn in the side of fledgling democracies.

Mutually Reinforcing Relations

In the course of expanding their operations, transnational organized crime groups and networks have sought to gradually weaken, co-opt, disable, privatize or usurp the functions of governmental agencies, political and judicial institutions, and the state itself.⁶ At the same time, there are manifold examples of where political and other state institutions have taken full advantage of their positions often co-opting organized criminal groups as a means to meet their own political and financial interests. This political-criminal nexus continues to deepen, assisted on the one hand by the dynamic and adaptive nature of criminal networks and their ability to operate and manoeuvre between physical and cyber space;⁷ and on the other by the waning legitimacy of state and political institutions across the globe.⁸

In contrast to other illicit means of interaction with the state such as 'influence' or 'administrative corruption', organized criminal groups often seek to "prevent the law from being enforced altogether" leading to, or further ensconcing a culture of impunity.⁹ In attempting to measure the scope of penetration of the state by organized crime in a range of settings, Buscaglia *et al* have defined five different levels of organized criminal infiltration of the public sector: i) sporadic acts of bribery or other abuse of public office in local government agencies; ii) frequent corruption of low-ranking state officials (especially at international borders); iii) infiltration of the mid-ranks of public sector officials as a means to hinder the operational effectiveness of state institutions such as law enforcement and the judiciary; iv) compromising heads of public agencies responsible directly or indirectly for fighting organized crime-related activities;¹⁰ and capturing legislators, prosecutors and judges thus directly influencing lawmaking, law enforcement and judicial decisions.¹¹ This ability to control officials represents the

⁴ UNODC, (2010)

⁵ Between 1998-2003 some 1,300 pounds of cocaine a year were allegedly seized on the continent while in the first nine months of 2008 alone, the figure was 5.6 tons -- and that is considered the tip of the iceberg. UPI.com (2010)

⁶ Omelyanchuk (2001); Philip (2001)

⁷ For instance, Glenny details the rapid shift in organized criminal behavior in response to the global recession and shifting patterns in drug production and distribution in response to changes in production capabilities. See also Trends in Transnational Organized Crime, Spring 1999, Winter 1999 and Spring 2006 for insights into the Political-Criminal Nexus in China, Hong Kong, Mexico, Nigeria, Russia and Ukraine; and the United States.

⁸ Doherty (2001); Helgesen (2009)

⁹ Casas-Zamora (2010)

¹⁰ This level represents an increased perniciousness with negative long-term effects on the ability of the state to eradicate corruption and organized crime. Buscaglia, Gonzalez-Ruiz and Ratliff (xxx)

¹¹ At this level of infiltration, organized crime groups can compromise the campaign financing of politicians, act through other common kinds of extortion or through family connections to high officials. Buscaglia, Gonzalez-Ruiz and Ratliff (xxx)

highest level of public sector corruption and has served as “the basic ingredient in the expansion and consolidation of transnational organized crime.”¹² Conversely, these and similar measures provide few insights into why officials allow themselves to be ‘captured,’ and limited detail on the political, social and economic incentives that drive their choices.

Drug trafficking is one area in which organized criminal groups have persistently attempted to penetrate the state as a means to further their own interests, particularly in the main production zones such as Colombia and Afghanistan, and increasingly in the distribution/transit zones such as Brazil, Guatemala, Jamaica, Mexico, Guinea Bissau, Mali, Namibia, and the Sahel corridor.¹³ For example, an undercover operation led by the U.S. DEA recently revealed that Liberia has been serving as a staging area for the distribution of more than \$100 million worth of cocaine since 2007. One cartel had been actively seeking to recruit South American drug trafficking organizations to establish operations in various West African countries, including in Liberia, Guinea Conakry, Guinea Bissau, Sierra Leone and Nigeria. The cartel had also made efforts to corrupt and influence government officials within the West African region in order to establish safe havens for the receipt, storage, and trans-shipment of the cocaine.¹⁴ Recent revelations by the rogue site ‘Wikileaks,’ have shed further light on the degree of penetration of organized criminal groups in the region. Indeed, according to a [U.S. State Dept.] cable of June 2009, President John Atta-Mills told the U.S. ambassador to Ghana, Donald Teitelbaum, that he knew “elements of his government are already compromised” and requested that his own entourage be screened before leaving the country on official or private travel.”¹⁵

In general, the production and distribution/transit zones tend to be places where political and state institutions are less resilient and have limited resources. Hence, criminal organizations often try to penetrate them to ensure the safe passage of their goods towards consumer markets. Weak economic systems, poor policies and limited oversight can also leave financial services vulnerable to money laundering. As noted by Goredema, “the attitude of a sector besieged by a shortage of investment capital to a cash injection might well be to deal first, ask questions later,” and ‘tainted money’ is therefore rarely subjected to rigorous scrutiny.¹⁶ Thus, “underwriting political parties or bribing state officials is by far the fastest way to create a ‘business-friendly’ environment for criminal groups.”¹⁷

¹² *Idem*

¹³ Glenny, (2009), UNODC (2010)

¹⁴ Indictment 10 Cr. 457

More recently (January 2010), a senior officer of Guinea Bissau's Presidential Security Service was arrested in a narcotics sting, prompting senior military officials to publicly lament the regular involvement of security personnel in cocaine transshipment. Meanwhile, in May 2010, a Nigerian politician was arrested at Lagos airport for allegedly swallowing nearly two kilograms of cocaine (4.4 lbs) the proceeds of the sale of which were to fund his election campaign. ACSS (2010) and “Cocaine Smuggling: Nigerian Politician Held in Lagos,” BBC, May 17, 2010.

Nigeria is reported to be another major transit route for drugs - from South America and Asia - to the US and Europe. More than 300 tons of narcotics were seized in the country last year.

¹⁵ The Guardian, 15 December 2010

¹⁶ Goredema (2002)

¹⁷ Glenny (2008); Aning (2007)

Indeed, in return for a blind eye, criminals can mobilize votes and money for politicians, launder the proceeds of their activities and form networks for their own benefit.¹⁸

Responding to the nexus between Organized Crime and the State

In many states across the globe, politicians and public officials are perceived (and have often been found to be) as part of illicit, elite and corrupt networks.¹⁹ Over time this has resulted in increasing public mistrust of parliamentarians, public servants and state institutions, often leading to a waning respect for authority and the rule of law, and decreased institutional legitimacy.²⁰ And while Casas-Zamora notes that the funding of parties and candidates is “just one of the fronts where the battle between organized crime and democratic institutions is played out,” it remains important since “investing in politics is a natural step for an industry that requires weak law enforcement and a measure of control over crucial public institutions such as customs to thrive.”²¹ The phenomenon poses real challenges, not least in terms of global security, development and democratic consolidation, particularly in lesser resilient states or states emerging from conflict, where accountability is difficult if not impossible to foster and enforce.

Despite the vast body of literature on these issues and the huge sums of money invested in developing policy and operational responses to meet the challenges that organized criminals and corrupt politicians and other state actors pose, significant challenges remain. For example, according to Dobosveke most literature fails to explicitly mention public and political institutions when discussing organized crime, noting a “clear, missing link on the infiltration of criminal networks into politics.”²² Meanwhile, Yashar suggests that studies of democracy and political transitions have “traditionally sidestepped the question of organized crime and drugs and have focused primarily on formal democratic institutions (political parties, legislatures, executives and elections) and markets (the study of neoliberal reforms), as well as the relationship between them (balance of power, decentralization, policy making etc.).”²³ This has produced “an analytical and political myopia when it comes to studies of [and responses to] topics, including organized crime, that operate outside this formal arena.”²⁴

Similarly, over the past decade, strategic and security experts have increasingly focused on the study of organized crime, particularly its transnational dimension and potential linkages to transnational terrorism. However, they appear to be equally myopic on the political dimension of these issues, leading to policy and operational responses grounded in a narrow interpretation of security, and

¹⁸ Dobovsek (2008)

¹⁹ The recent Council of Europe Inquiry report linking the Kosovo PM to human organ trafficking is just one in a long series of cases linking senior politicians to organized crime. The Guardian 14 Dec. 2010

²⁰ Glenny (2009)

²¹ Casas-Zamora (2010)

²² *Idem*

²³ Yashar (2010)

²⁴ Yashar, (2010)

limited consideration of the political, social and economic aspects of organized crime.²⁵ When they do link their analysis to political issues such as the predatory or corrupt nature of political actors or the “unofficial political elite”,²⁶ they often do so in a narrow fashion. In other words, the form of political anarchy analyzed is seldom linked to the history and nature of the political system of a given state and key factors are often overlooked: these factors include for example, decentralization or devolution of authority including law enforcement, within a given state;²⁷ the *laissez faire* foreign and trade agendas of developed states vis-à-vis those most affected by the political-criminal nexus; the international political economy; or the failure of international and regional policy initiatives to raise the business costs of engaging in illicit activity, including through effective anti-money laundering initiatives.²⁸

At the operational levels, international and regional initiatives aimed at responding to the political-criminal nexus often fail to consider the aforementioned issues during mandate development or pre-mission assessment processes. When these issues *are* considered, it is usually through the prism of one of the many conflict and political economy analysis tools developed over the past decade. However, responses to the findings of these analytical tools continue to be formulated from a security/law enforcement perspective, with little consideration for a state's underlying political and cultural dynamics, questions of oversight, legitimacy, and the potential impact of different responses on state-society relations. In relation to post-conflict settings, more recently analysts have stressed the need to engage in longer-term initiatives including strengthening institutions such as political parties as a means to “ensure structural and normative transformation of the political economy and remove the comparative advantage that violent criminal entrepreneurs and organizations enjoy.” However, most actors engaged in either peacebuilding or statebuilding efforts fail to consider these institutions in their programme activities.²⁹ On the other hand, political party assistance providers, many working within the democratic peace agenda, rarely coordinate some of the important work they have carried out on issues such as political corruption with other actors involved in investigating organized crime.

Meanwhile, organizations such as the United Nations with a mandate to work on preventing or mitigating organized crime at the national, regional and transnational levels tend to focus on technical matters, avoiding the fundamentally political dimension of these issues. This is, in part, due to the dilemma of inter-governmental organizations working on political issues sensitive to member states. The trump cards of sovereignty and non-interference in the internal affairs of the state are frequently tabled to block action, even if the matter in question comes under the scrutiny of the Security Council. Incentives such as development or counter-narcotics assistance may help but they

²⁵ Interviews Washington D.C. and N.Y Oct. 2010

²⁶ Felbab-Brown (2010)

²⁷ Casas-Zamora (2010)

²⁸ Farah (2010); Godorema (2002)

²⁹ Cockayne (2010)

infrequently adhere to principles of national or local ownership. They also suffer from a short-term focus, can be slow to adapt to new challenges, and diverted for either personal financial or political gain.³⁰

When conducting their analysis, external actors do not always collaborate amongst themselves or with national and cross-national/ regional experts. This becomes problematic when threat assessments are translated into programmes that cement rather than alleviate the issues at hand. Related, the more recent tying of transnational criminal activity to transnational terrorism has placed added emphasis on the importance of securing weak states, strengthening institutions and ensuring that governments can exercise control over the entirety of their territory. However, limited consideration has been paid in international responses to the 'legitimacy gap' that often impedes the possibility of state action, particularly if state officials are being bought off by transnational criminal groups.³¹

Conversely, investigative journalists, independent researchers and analysts have made significant in-roads highlighting, analyzing, measuring and responding to these phenomena. For example, at the national level, investigative journalists, scholars and analysts in Peru, Colombia, Mexico and Guatemala are producing increasingly sophisticated studies mapping the penetration of the state by transnational organized criminal networks. In some cases they have proved more effective than law enforcement officials (who are often captured themselves) in flagging the penetration of politics by illicit groups and pushing for accountability.³² Others, such as the World Bank Institute, are currently attempting to analyze the conditions and processes by which state capture occurs and measure its extent.³³ It is important to link these experiences with those who are directly affected by the impact of organized crime and state capture. Their contribution, particularly if multi-disciplinary, can help external actors develop a deeper understanding of the *nature* of organized crime and state capture and, by extension, formal and informal power relations within and across states. It can also foster *ownership* of response;³⁴ enforce *accountability* of government *and* donor governments/ agencies³⁵; and encourage *more effective use of local knowledge* by international actors in policy and programme development.

³⁰ Felbab-Brown (2010)

³¹ *Idem*

³² Kupferschmidt (2010); Buscaglia, Gonzalez-Ruiz and Raddliff (xxx)

³³ *Idem*

³⁴ As noted by the World Bank, '[anti-corruption etc.] reforms will be ineffective unless demand for reform comes from more aware citizens within the country.' CID (2010). See also Carothers (2006), Promoting the Rule of Law Abroad; and interview with E. Buscaglia, CNN 2007 http://www.dailymotion.com/video/x23ivx_aristegui-entrevista-buscaglia-mafi_news#from=embed

³⁵ For example, a recent review by the US Government's Accountability Office has highlighted that despite claims by the US and Mexican governments that organized crime cartels are feeling the effects of the countries' joint offensive (the Merida Initiative), little regard has been afforded to whether the millions of dollars expended are actually having any impact. The State Department, which is overseeing the Merida Initiative, is alleged to have failed to "set specific targets to determine whether the money was having the desired effect of disrupting organized crime groups and reforming law enforcement agencies." NYTimes, 23 July 2010. See also ACSS (2010)

The objective of this initiative is to serve initially as a bridge between investigative journalists, analysts and researchers in West Africa and Latin America (Andean Region and Central America) and later between these and other regions, to deepen understanding of:

1. The nature of the links between organized crime and political and state institutions/actors in and across countries and regions; how they have manifested/ are manifesting themselves in specific country or regional contexts; and the impact these relations have on policy formulation and key service delivery at different levels.
2. How international policy and operational responses can more effectively consider the political nature of organized crime and other vital questions such as economic and social dynamics, informal power structures and questions of oversight and legitimacy.
3. Examples and cases where specific actors other than law enforcement officials have played an important role in shedding light on the ties between organized crime and state capture and how they have influenced international or regional policy and operational responses to the phenomenon.

Building on the outcome of this first phase, a second phase will focus on engaging with key policy actors at the regional and international levels on the political dimension of organized crime.