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Fighting Organized Crime in the Asia Pacific Region: New Weapons, Lost Wards

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FIGHTING ORGANIZED CRIME IN THE ASIA PACIFIC REGION: NEW WEAPONS, LOST WARS

ANDREAS **SCHLOENHARDT***

ABSTRACT:

This paper analyses offenses dealing with the incrimination of organized crime under international and domestic law in the Asia Pacific region and develops recommendations to improve existing and proposed provisions. The article frames the arguments for and against offenses such as 'participation in an organized crime group', 'gangsterism' or 'racketeering', and critically examines the rationale, elements, and application of existing and proposed organized crime offenses in the Asia Pacific.

I. INTRODUCTION

In the so-called 'war on organized crime', offenses targeting the structures and participants of criminal organizations are the most recent and perhaps most ambitious strategy to fight organized crime. Many see these offenses as the ultimate weapon.

Several countries in the Asia Pacific region have introduced specific measures to penalize the involvement in criminal organizations. The common feature of these offenses is that they are designed to target the structure, organization, members, and associates of organized crime groups. Unlike substantive offenses such as drug trafficking, trafficking in persons, arms smuggling and the like, the offenses analyzed here are not concerned with the actual activities that are generally attributed to organized crime, but with the organizational functions and purposes of criminal organizations.

A. The Palermo Convention

The United Nations *Convention against Transnational Organized Crime*[1] was opened for signature in Palermo, Italy, in December 2000. The *Palermo Convention*, as the Convention is frequently referred to, seeks to eliminate differences among national legal systems and set standards for domestic laws so that they can effectively combat transnational organized crime. The Convention is intended to encourage countries that do not have provisions against organized crime to adopt comprehensive countermeasures, and to provide these nations with some guidance for the legislative and policy processes involved. It is also intended to eliminate safe havens for criminal organizations by providing greater standardization and coordination of national legislative, administrative,

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1 *Report of the Ad Hoc Committee on the Elaboration of a Convention against Transnational Organized Crime*, UN GAOR, 55th Sess., Annex 1, Agenda Item 105, UN Doc. A/55/383 (2000) [*Convention against Transnational Organized Crime*]. The text has also been reprinted in (2001) 40 I.L.M. 335.

and enforcement approaches to the problem of organized crime, and to ensure a more efficient and effective global effort to combat and prevent it.

While the *Palermo Convention* has widespread support in the Asia Pacific region, few countries have so far implemented the obligations arising from the Convention. In particular, the offense relating to participation in an organized crime group has been met with little interest by many countries in the region. At the domestic level, countries, such as the Philippines have developed legislation modeled after the U.S. *Racketeer and Corrupt Organisations* (*RICO*) Act[2]. Jurisdictions such as China, Hong Kong, Macau, and Taiwan have laws that are tailored specifically to combat local criminal syndicates, namely Chinese triads. Japan has special laws to control boryokudan groups. Similarly, New Zealand, Canada, and Australia have created special offenses to ban associations with outlaw motorcycle gangs. Some of these provisions differ greatly from the international model and many jurisdictions remain without any specific offenses for criminal organizations.

The purpose of this paper is to review offenses dealing with the incrimination of organized crime under international and domestic law in the Asia Pacific region and to develop recommendations to improve existing and proposed laws.

II. THE NEED AND RATIONALE OF ORGANIZED CRIME OFFENSES

Many countries in the region and around the world have introduced specific offenses designed to sanction the involvement in criminal organizations. While different models have been adopted around the region, the common feature of these offenses is that they are designed to target the structure, organization, members, and associates of organized crime groups. Unlike substantive offenses such as drug trafficking, migrant smuggling, trafficking in persons, and the like, the offenses analyzed here are not concerned with the actual activities that are generally attributed to organized crime, but with the organizational functions and purposes of criminal organizations.

The shared rationale of organized crime offenses is the realization that disrupting criminal activities and arresting individual offenders does not dismantle the criminal organizations that stand behind these illegal activities. "As the law stands now", remarks Michael Moon, "the Crown may prosecute and eliminate individual members, but the organization continues; new people move into the vacated spot, and the enterprise carries on."[3]

Organized crime offenses are prophylactic: They seek to reduce the risk that criminal organizations will engage in criminal activity. They enable law enforcement agencies to intervene earlier, long before a criminal group commits specific offenses. "From the perspective of crime prevention", notes Estella Baker,

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2 *Organized Crime Control Act of 1970*, Pub. L. No. 91-452, Title IX, 84 Stat. 922; *Racketeer Influenced and Corrupt Organizations Act*, 18 U.S.C. §§1961–1968 [*RICO*].

3 Michael A. Moon, "Outlawing the Outlaws: Importing R.I.C.O.'s Notion of 'Criminal Enterprise' into Canada to Combat Organized Crime" (1999) 24 Queen's L.J. 451 at 459.

logic suggests that an approach aimed at the level of the organization is likely to produce greater crime reduction dividends than one which requires dissipated law enforcement efforts across a spectrum of individual end behavior offenses.[4]

III. MODELS OF ORGANIZED CRIME OFFENSES

Different jurisdictions in the region have adopted different models of organized crime offenses. Minor variations aside, four main types of organized crime offenses can be identified.[5] These include:

1. The conspiracy model, found in the *Convention against Transnational Organized Crime* and in jurisdictions such as Australia, Singapore, Malaysia, Brunei Darussalam, and Papua New Guinea;
2. The participation model stipulated by the *Convention against Transnational Organized Crime*, and also adopted in Canada, New Zealand, New South Wales (Australia), PR China, Macau, Taiwan, and in Australian federal criminal law;
3. The enterprise model based on the U.S. *Racketeer Influenced and Corrupt Organization* (*RICO*) *Act*, which is also used in the Philippines; and
4. The labeling/registration model of Hong Kong, Singapore, Malaysia, Japan, New South Wales, Queensland, and South Australia.

Jurisdictions, such as Indonesia, Cambodia, Thailand, Lao PDR, and Vietnam do not, or not yet, have these offenses. Other jurisdictions in the Asia Pacific region penalize criminal organizations in more than one way, using a combination of several models.

A. The conspiracy model

The criminal laws of Canada,[6] New Zealand,[7] Australia,[8] Hong Kong,[9] Singapore,[10] Malaysia,[11] Brunei,[12] the Philippines,[13] the United States, and Papua New Guinea[14] have special provisions creating criminal liability for conspiracies. The conspiracy model can be found predominantly in those jurisdictions that have their origin in English common law. This model is also one of two alternatives set out in Article 5(1)(a) of the *Convention against Transnational Organized Crime*. Conspiracy provisions are less common in those jurisdictions that base their criminal law on Soviet or Continental European traditions. Several proposals have been made to introduce conspiracy provisions

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4 Estella Baker, 'The Legal Regulation of Transnational Organised Crime: Opportunities and Limitations' in Adam Edward & Peter Gill, eds., *Transnational Organised Crime: Perspectives on Global Security* (New York: Routledge, 2003) 183 at 187.

5 *Cf.* the distinction of three models in Moon, *supra* note 3 at 494; and in Vincenzo Militello, "Participation in an Organised Criminal Group as International Offense" in Hans-Joerg Albrecht & Cyrille Fijnaut, eds., *The Containment of Transnational Organised Crime: Comments on the UN Convention of December 2000* (Freiburg: Max-Planck-Institute Fur Auslandisches und Internationales Strafrecht, 2002) 97 at 105-109.

6 *Criminal Code*, R.S.C. 1985, c. C-46, s. 465 [*Criminal Code* (Canada)].

7 *Crimes Act 1961* (N.Z.), 1961/43, s. 310.

8 *Criminal Code Act 1995* (Cth.), s. 11.5(1); *Criminal Code 2002* (A.C.T.), s. 48(1); *Criminal Code* (N.T.), Schedule 1, s. 282; *Criminal Code Act 1899* (Qld.), ss. 541, 542; *Crimes Act 1958* (Vic.), s. 321(1), (2); *Criminal Code Act Compilation Act 1913* (W.A.), ss. 558, 560; and at common law.

9 *Crimes Ordinance* (Hong Kong), s. 159A.

10 *Penal Code* (Cap. 224, 2008 Rev. Ed. Sing.), s. 120A.

11 *Penal Code* (Malaysia), ss. 120A, 120B.

12 *Penal Code* (Brunei), ss. 120A, 120B.

13 *Penal Code* (Philippines), art. 8.

14 *Criminal Code* (Papua New Guinea), ss. 515–517.

into Japan's criminal law, but successive bills have thus far failed to get the necessary support.[15]

Conspiracy charges are sometimes used in the prosecution of criminal groups involved in the trafficking, supply, or sale of illicit drugs. These cases usually involve defendants that have possession or other immediate access to the drugs or — in other words — that are physically involved in the commission of the crime. Proving the elements of conspiracy is, however, more difficult for persons who are more distantly connected to the actual execution of individual crimes or to the agreement that forms the basis of their conspiracy.[16]

Importantly, in those jurisdictions where conspiracy charges require proof of an overt act it is often impossible to target the leaders of criminal organizations who are not involved in physically executing their plans and thus do not engage in any overt activity.[17] Further, conspiracy charges cannot be used against persons who are not part of the agreement on which the conspiracy is based. This excludes from liability low ranking members of criminal organizations who are not involved in the planning of criminal activities.[18]

To overcome some of the limitations of conspiracy, Singapore amended its criminal law following the adoption of the *Convention against Transnational Organized Crime*. As a result, the scope of the conspiracy provision in section 120A of the *Penal Code* (Singapore) is now much broader than before and, in fact, much wider than any organized crime offense anywhere else in the Asia Pacific region. Yeo, Morgan & Chan express concern that section 120A

> goes beyond the other inchoate offenses of attempt and abetment where the result aimed at must be an offense. [...] [L]iability for criminal conspiracy attaches at a very early stage — no acts of preparation need to take place in pursuance of the criminal conspiracy in the case of an agreement to commit an offense. [...] [T]he potential for abuse of the law by the State is great.[19]

Yeo, Morgan & Chan also question how much or how little a person must know about the objective of the agreement to be criminally liable for criminal conspiracy:

> For example, a person who goes to a store to buy a knife states that he wants to purchase a really sharp knife to kill his unfaithful wife. The store-keeper agrees to sell him the sharp knife even though he knows its intended use but does not really care whether the crime is committed. Is the store-keeper liable for criminal conspiracy to commit murder?[20]

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15 See further, Chris Coulson, "Criminal Conspiracy Law in Japan" (2007) 28 Mich. J. Int'l L. 863 at 868–894.

16 See further, Sabrina Adamoli *et al.*, *Organised Crime around the World* (Helsinki: European Institute for Crime Prevention and Control, 1998) 132.

17 See further, Christopher Blakesley, "The Criminal Justice System Facing the Challenge of Organized Crime" (1998) 69 Rev. I.D.P. 69 at 78; Peter B. E. Hill, *The Japanese Mafia: Yakuza, Law and the State* (New York: Oxford University Press, 2003) at 148–149 [Hill, *The Japanese Mafia*].

18 *Cf.* Douglas Meagher, *Organised Crime* (Canberra: Australian Government Publishing Service, 1983) at 64.

19 Stanley Yeo, Neil Morgan & Chan Wing Cheong, *Criminal Law in Malaysia and Singapore* (Singapore: LexisNexis, 2007) ¶ 34.52.

20 *Ibid.* ¶ 34.67.

Similar observations can be made about the conspiracy provisions in Malaysia and Brunei which are based on the Singapore model.

B. The Participation Model

Historically, offenses proscribing the participation in a criminal organization could only be found in jurisdictions with Continental European criminal law systems. In these countries, the "laws proscribing criminal associations are a surrogate for the doctrine of conspiracy, which does not exist outside of the common law world."[21] Over the last twenty years, however, a growing number of common law jurisdictions have also adopted this participation model. Starting in California in 1988,[22] and followed in countries such as Canada and New Zealand in 1997,[23] a diverse range of jurisdictions in the Asia Pacific region, including Taiwan (Republic of China),[24] New South Wales,[25] and Macau[26] criminalize various forms of participation in or other associations with criminal organizations. Article 5(1)(a)(ii) of the *Convention against Transnational Crime* also sets out the participation model as an alternative to conspiracy.

1. Physical elements

At the heart of this type of organized crime offense is the participation in a criminal organization. The two basic physical elements 'participation' and 'criminal organization' are common to all jurisdictions that have adopted this model, but there are subtle, yet important, differences in how these elements are expressed.

'Participation' is the preferred term used in most jurisdictions, such as international law, Canada, New Zealand, New South Wales, and Taiwan. None of these jurisdictions, however, define the term 'participation' and it is open to the courts to interpret its meaning.

In international law the participation must be 'active' and must relate to specific (criminal) activities of the organized criminal group. In contrast, in New Zealand participation extends to passive participation and participation by mere presence,[27] though it has been suggested to limit the offense to 'active' participation to ensure that the legislation is construed strictly.[28]

New Zealand limits the participation to members, associate members, and prospective members of criminal organizations.[29] Accordingly, randomly and more remotely associated persons cannot be held liable for participating in a criminal organization. But on the other hand, the inclusion of passive participation means that mere

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21 Edward M. Wise, "RICO and its Analogues: Some Comparative Considerations" (2000) 27 Syracuse J. Int'l L. & Com. 303 at 312.

22 *Street Terrorism Enforcement and Prevention Act*, California Penal Code, §186.20 (2005).

23 *Criminal Code* (Canada), *supra* note 6, ss. 67.1, 467.11-467.13; *Crimes Act 1961* (N.Z.), s. 98A.

24 *Criminal Code* (Taiwan), art. 154.

25 *Crimes Act 1900* (N.S.W.), s. 93T.

26 *Organised Crime Law 1997* (Macau), art. 2(1)-(3).

27 *R. v. Mitford* [2005] 1 N.Z.L.R. 753 ¶ 59.

28 Timothy Mullins, "Broader Liability for Gang Accomplices: Participating in a Criminal Gang" (1996-99) 8 Auckland U.L. Rev. 832 at 837 (in reference to former s. 98A *Crimes Act 1961* (N.Z.)); *cf.* N.Z., Foreign Affairs, Defence and Trade Committee, *Transnational Organized Crime Bill 2002* (N.Z.), Commentary at 4.

29 *Crimes Act 1961* (N.Z.), *supra* note 7, s. 98A.

membership becomes a criminal offense. The same interpretation has been applied to Article 3(1) 2nd alt of the *Organized Crime Control Act 1996* (Taiwan): Although Taiwan's participation offense contains no express requirement of membership, the provision is generally seen as creating liability for membership in a criminal organization. Article 4 of the *Organized Crime Law 1997* (Macau) extends explicitly to "membership or other relationships".[30] Membership in a criminal organization is not an element of the offenses in Canada, New South Wales, and under Australian federal criminal law.

Definitions of criminal organizations and organized crime groups that form part of the participation offenses are discussed separately below. For these offenses the question whether the organization involved is a criminal group has to be answered on a case-by-case basis; it is only binding for the parties to the case and there is no continuing labeling of any one group, and no formal listing of criminal organizations.[31] Furthermore, the standard required to prove the existence of a criminal organization is usually 'beyond reasonable doubt'. This in sharp contrast to the registration and labeling model discussed below.

2. Mental elements

Among the jurisdictions that have adopted the participation model, there is some division about the mental elements that need to be established to prove the offense. In international law and Canada, the participation has to be intentional or with knowledge about the nature of the participation.[32] China further requires proof that an accused has the intention that the participation contributes to the occurrence of specific criminal acts.[33] These jurisdictions limit liability to deliberate, purposeful contributions to criminal organizations and exclude those persons who assist unwittingly.

The threshold of the mental element relating to the participation is lower in New Zealand and New South Wales. Here, it suffices to show that an accused is reckless. It is thus possible to hold those people criminally liable who have some awareness that their participation could or might contribute to the criminal activities of a criminal group, but who do not have certain knowledge about these consequences.[34] The inclusion of recklessness has been justified on the basis of deterrence: "When in doubt stay away. It places a responsibility [on the accused] for their own actions. […] It will no longer be a defense to claim ignorance."[35] This position has been criticized for criminalizing persons whose contributions to the activities of criminal organizations are not deliberate, thus setting the threshold of the mental elements too low (and the penalties too high).

There is general consistency among jurisdictions that, in relation to the second element, the criminal organization, it is necessary to show that the accused had knowledge

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30 See further, Andreas Schloenhardt, "Taming the Triads: Organised Crime Offenses in PR China, Hong Kong and Macau" (2008) 38(3) Hong Kong L.J. 645 at 678–679 [Scholenhardt, "Taming the Triads"].

31 *Ciarniello v. R.* [2006] BCSC 1671 ¶ 67 per W F Ehrcke J.

32 See, for example, *Convention against Transnational Organized Crime*, *supra* note 1, art. 5(1)(a)(ii), and the *Criminal Code* (Canada), s. 467.11(1).

33 *Criminal Law 1997* (China), art. 294(1). See further, Scholenhardt, "Taming the Triads", *supra* note 300 at 655–657.

34 *Crimes Act 1961* (N.Z), *supra* note 7, s. 98A(1)(a)-(b); *Crimes Act 1900* (N.S.W.), *supra* note 25, s. 93T(1)(b).

35 Austl., N.S.W., Legislative Assembly, *Parliamentary Debates* (6 Sep 2006) at 1537 (Mr Michael Daley, Moroubra).

about the criminal nature or purpose of the organization.[36] In Canada, section 467.11(1) of its *Criminal Code* specifically requires proof of a purpose to enhance the ability of a criminal organization to facilitate or commit an indictable offense.

3. Aggravations and variations

In addition to the basic participation offense, several jurisdictions have introduced separate provisions to capture other types of associations with criminal organizations. Frequently, these offenses are aggravations to the participation offense and provide higher penalties to reflect the level of involvement in the criminal organization and the blameworthiness of the accused.

Australian federal criminal law, Canada, China, Macau, and Taiwan have specific provisions for persons who lead, direct, or establish a criminal organization.[37] Usually, the highest penalty is reserved for these offenses. In Canada, where this provision specifically requires that the accused instruct others to commit criminal offenses, the penalty is life imprisonment. These aggravations are important extensions of criminal liability as they have the ability to capture senior members of criminal organizations that may otherwise be immune from prosecutions. International law extends the participation offense in a similar way in Article 5(1)(b) of the *Convention against Transnational Organized Crime*.

Various offenses criminalize specific types of support provided to criminal organizations. Macau and China criminalize the promoting or spreading of criminal organizations.[38] Providing financial or materials assistance to criminal groups is a separate offense in Taiwan, Macau and Australian federal criminal law.[39] A special offense for civil servants and elected officials can be found in Article 9 of the *Organized Crime Control Act 1996* (Taiwan) if they "provide cover" for a criminal organization, knowing of its existence or operation. Article 294(4) of the *Criminal Law 1997* (China) makes it an offense to harbor a criminal organization.

Some jurisdictions provide higher penalties if it can be established that an offense was carried out on behalf or in support of criminal organizations. For example, the laws in Canada, and Macau have special offenses for situations in which firearms are used by or supplied to criminal organizations.[40] Canada also has a special provision for criminal organizations involved in certain drug offenses, and a general offense for committing any criminal offense on behalf of a criminal group.[41] In New South Wales it is an offense to assault another, assault a police officer, or damage property "intending by that activity to

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36 *Convention against Transnational Organized Crime*, *supra* note 1, art. 5(1)(a)(ii); *Crimes Act 1961* (N.Z.), *supra* note 7, s. 98A(1); *Crimes Act 1900* (N.S.W.), *supra* note 7, s. 93T(1)(a).

37 *Criminal Code 1995* (Cth.), *supra* note 8, s. 390.6; *Criminal Code* (Canada), *supra* note 6, s. 467.13; *Criminal Law 1997* (China), *supra* note 33, art. 294; *Organized Crime Law 1997* (Macau), *supra* note 26, art. 2(3); *Criminal Code* (Taiwan), *supra* note 24, art. 154(1); *Organized Crime Control Act 1996* (Taiwan), art. 3(1). Under art. 288(1) of Macau's *Penal Code*, it is a separate offense (not an aggravation) to establish or promote an "organization or association designed to or engaging in criminal conduct".

38 *Criminal Law 1997* (China), *ibid.*, art. 294; *Organized Crime Law 1997* (Macau), *ibid.*, art. 2(1).

39 *Organized Crime Control Act 1996* (Taiwan), *supra* note 37, art. 6; *Organized Crime Law 1997* (Macau), *ibid.*, art. 2(2); *Criminal Code Act 1995* (Cth.), *supra* note 8, s. 390.4.

40 *Criminal Code* (Canada), *supra* note 6, s. 244.2(3); *Penal Code* (Macau), *supra* note 37, art. 288(2).

41 *Controlled Drugs and Substances Act*, R.S.C. 1996, c. 19, s. 5(3)(a); *Criminal Code* (Canada), *supra* note 6, s. 467.12.

participate in any criminal activity of a criminal group".[42] Macau criminalizes extortion and collecting protection money for a criminal association.[43]

These special offenses that complement the participation offense serve two important purposes: first, they create liability for some perpetrators that cannot be held liable under the traditional concepts of conspiracy, secondary, or inchoate liability, especially if they occupy senior roles within the organization. Second, these offenses relate to particular roles that a person may occupy within the organization or relate to actual offenses he or she may commit on their behalf. Accordingly, the aggravations and penalties are designed to reflect the involvement and blameworthiness of the accused more accurately.

C. The RICO model

The model of organized crime offenses adopted in the United States, and also under consideration in the Philippines, commonly known as *RICO*, is based on the concept of enterprise criminality. In simplistic terms, the *RICO* model focuses on actual criminal activities carried out by an enterprise and on activities that may infiltrate or otherwise influence an enterprise. *RICO* is predominantly concerned with conduct, not status. Under *RICO*, notes Gerard Lynch, "[o]rganized crime is as organized crime does."[44] Unlike the participation model, it is not primarily concerned with the involvement and roles of individuals in a criminal organization. Unlike conspiracy, it does not require proof of an agreement between a group of co-conspirators.

Central to liability under the *RICO* laws is proof of specific predicate offenses referred to as "racketeering activity". In §1961(1)(A)–(G) U.S. federal *RICO* sets out a long list of federal and state predicate offenses considered to be "symptomatic of organized criminal activity."[45] Under section 4(c) of the *Racketeer Influenced and Corrupt Organizations (RICO) Bill* (Philippines) racketeering activity refers to a list of several hundred offenses under the *Penal Code* and several other laws of the Philippines.

These lists or racketeering activities are designed to reflect those offenses that are characteristic of organized crime, but closer analysis shows that the lists include many illicit activities which are seemingly unrelated to organized crime. The advantage of the use of predicates is that liability under the *RICO* model is based on recognized criminal offenses and thus creates clear and familiar boundaries of criminal liability. The disadvantage associated with this approach is that these statutory lists of criminal offenses do not allow swift responses to new and emerging trends in organized crime as amendments to the list take considerable time. The practical problem is to find the right spectrum of offenses that is neither too wide to be over-encompassing nor too narrow to be prohibitively prescriptive.

The racketeering activity becomes a "pattern" if it is carried out repeatedly over a set period: at least two predicate offenses have to be committed within a ten-year period.[46]

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42 *Crimes Act 1900* (N.S.W.), *supra* note 25, s. 93T(2), (3), (4).
43 *Organized Crime Law 1997* (Macau), *supra* note 26, art. 3.
44 Gerard E. Lynch, "RICO: The Crime of Being a Criminal, Part I & II" (1987) 87 Colum. L. Rev. 661 at 688.
45 Blakesley, *supra* note 17 at 89.
46 *RICO*, *supra* note 2, §1961(5); *RICO Bill* (Philippines), s. 4(d).

The pattern requirement ensures that liability under *RICO* is limited to cases that involve the commission of multiple, repeated criminal offenses, rather than isolated instances of criminal conduct. One of the principal advantages of the *RICO* model is its ability to combine several prior offenses into a new, separate *RICO* offense which reflects the nature of organized crime.

The actual criminal offenses under *RICO* combine the pattern of racketeering activity with additional physical and mental elements. U.S. federal *RICO*, and the *RICO Bill* of the Philippines recognize three racketeering related offenses:

- investing racketeering funds, 18 U.S.C. §1962(a), section 5(3) *RICO Bill* (Philippines);
- illegally acquiring enterprise interest, 18 U.S.C. §1962(b), section 5(4) *RICO Bill* (Philippines); and
- operation of an enterprise through racketeering, 18 U.S.C. §1962(c).

Under 18 U.S.C. §1962(d) is also an offense to conspire to commit any of the three offenses in §1962(a), (b), and (c). The *RICO Bill* (Philippines) has a separate offense in section 5(2) for receiving, hiding, and concealing any money or property that was acquired through a pattern of racketeering activity.

It is noteworthy that apart from the proposed laws in the Philippines, the *RICO* model has not found many followers in the Asia Pacific region and, in fact, anywhere else in the world. Edward Wise also finds "no precise analogues for *RICO* in foreign legal systems, no exact clones, no word-for-word copies of its provisions in the legislation of other countries."[47] He explains this by the uniqueness of the legislation, noting that

> certain features of the *RICO* statute itself make it practically inimitable ... [and] certain features of *RICO* depend so closely on distinctive peculiarities of United States law that it would be more than usually obtuse to try to transpose them into other legal systems.[48]

While no other country may have adopted the exact provisions set by *RICO*, the statute "had a major influence on legislative changes beyond the borders of the U.S., even though most countries used it merely as a model from which to extract concepts around which domestic legislation could then be shaped."[49]

It is difficult to say with certainty whether *RICO* is adaptable to other legal systems. A principal criticism of *RICO* laws has been the fact that its definitions and elements are very cumbersome and overly complicated. *RICO* does not sit well with the traditional structures of substantive and procedural criminal law elsewhere. One of the main innovative features of *RICO* is that it combines criminal offenses with special law enforcement and proceeds of crime mechanisms, and also allows civil law suits to be brought against criminal organizations.

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47 Wise, *supra* note 21 at 303.

48 *Ibid.* at 306, 308.

49 Peter Gastrow, "The Origin of the Convention" in Hans-Jèorg Albrecht & Cyrille Fijnaut, eds., *The Containment of Transnational Organised Crime: Comments on the UN Convention of December 2000* (Freiburg: Max-Planck-Institute Fur Auslandisches und Internationales Strafrecht, 2002) 19 at 22.

The basic concept of *RICO* offenses, which combines existing predicate offenses with additional conduct elements and proof of an enterprise or criminal organization, is, however, not fundamentally different to the concepts developed elsewhere. Wise notes that:

> The drafters of *RICO* took it for granted that they could not directly proscribe the status of being a member of a criminal organization. Instead, they listed the crimes in which organized crime groups typically are supposed to engage, and then made it criminal to participate in a group that commits such crimes. *RICO*, in this respect, is not unlike conspiracy, which technically is defined in terms of an act — the act of agreeing to commit a crime — but which the courts treat "as though it were a group rather than an act." *RICO* […] goes beyond conspiracy, however, in that it permits the joinder of members of a group who are loosely connected with each other to be considered parties to a single conspirational agreement. It allows the prosecution to reach all members of the group in one trial, to expose the full scope of the organization [...].[50]

Opinions remain divided about the benefits and disadvantages of the *RICO* model. Many critics praise *RICO* for the wide and flexible application of many provisions and for *RICO*'s ability to adapt to different types of organized crime.[51] Others have attacked *RICO* for the very same reasons, criticizing this model for being vague and overly broad and pointing to past *RICO* prosecutions that were unrelated to organized crime.[52]

D. The labeling/registration model

A further way to penalize criminal organizations and their associates can be found in Japan, Hong Kong, a number of Southeast Asian countries, and in some Australian jurisdictions. This fourth model creates a two-tier system: First, it establishes mechanisms to identify and prohibit certain organizations through a registration or labeling system. Second, it criminalizes certain associations with or connections to these organizations.

Two separate systems can be identified. Brunei, Hong Kong,[53] Malaysia, and Singapore use a system of negative prohibition by way of registering legitimate organizations. The system of Japan,[54] New South Wales,[55] the Northern Territory, Queensland, and South Australia[56] is one of positive prohibition which involves the labeling of certain groups as criminal or illegal.

1. Negative prohibition: registration of organizations

Hong Kong's *Societies Ordinance*, Singapore's *Societies Act 1985*, Brunei's *Societies Order 2005*, and Malaysia's *Societies Act 1966* (which is largely identical to the

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50 Wise, *supra* note 21 at 311 [emphases added, references removed].

51 See, for example, Michael Goldsmith, "RICO and Enterprise Criminality: A Response to Gerard E. Lynch" (1988) 88 Colum. L. Rev. 774 at 774; James Jacobs, Jay Worthington & Christopher Panarella, *Busting the Mob: The United States v. Cosa Nostra* (New York: New York University Press, 1994) at 22.

52 See, for example, Ethan Brett Gerber, "'A RICO you can't refuse': New York's Organised Crime Control Act" (1988) 53 Brook. L. Rev. 979 at 992. See also, Craig M. Bradley, "Racketeers, Congress, and the Courts: An Analysis of RICO" (1980) 65 Iowa L. Rev. 837 at 838; Larry Newman, "RICO and the Russian Mafia: Toward a New Universal Principal under International Law" (1998) 9 Ind. Int'l & Comp. L. Rev. 225 at 244.

53 See further, Scholenhardt, "Taming the Triads", *supra* note 30 at 658–674.

54 See further, Andreas Schloenhardt, "Mission Unaccomplished: Japan's Anti-Boryokudan Law" (2010) 29 Journal of Japanese Law 123.

55 See further, Andreas Schloenhardt, "Crimes (Criminal Organisations Control) Act 2009 (N.S.W.) (2009)" 33 Criminal Law Journal 281.

56 See further, Andreas Schloenhardt, "Mafias and Motorbikes: New Organised Crime Offenses in Australia" (2008) 19 Current Issues in Criminal Justice 259.

Act in Singapore) require the registration of all "societies" operating in their territory. These jurisdictions maintain a register of all organizations and deem unregistered organizations to be illegal. Moreover, certain groups are unable to gain registration if they are perceived to be a threat to national security, public safety, public order, or to the protection of rights and freedoms of others.[57] Organizations that are not registered or ineligible for registration are deemed to be unlawful.[58] Hong Kong and Singapore also make special provisions for triad societies and other groups using triad insignia or rituals.[59]

2. Positive prohibition: labeling

The anti-organized crime laws of Japan, South Australia, New South, Northern Territory, and Queensland adopt a model of positive prohibition by declaring or labeling certain groups as criminal. This system is set up exclusively for criminal organizations.

Japan's *Law to Prevent Unjust Acts by Organized Crime Group Members 1991* (also referred to as the *Anti-Organised Crime Group Law, Anti-Boryokudan Law,* or bōtaihō), the *Crimes (Criminal Organizations Control) Act 2009* of New South Wales, South Australia's *Serious and Organized Crime (Control) Act 2008*, and Queensland's *Criminal Organization Act 2009* create systems for labeling individual groups as criminal by way of proscribing or declaring them.[60] Moreover, these jurisdictions have also instituted mechanisms to place individual members and associates of criminal organizations under injunction or control orders which prohibit that person from engaging in certain activities or from associating with other members.[61] These systems are essentially designed to outlaw groups and individuals that are seen as dangerous, violent, or as otherwise constituting a risk to public safety.

In Japan, the power to proscribe criminal organizations is vested in prefectural Public Safety Commissions. In New South Wales and Queensland, the Supreme Court can declare an organization at the instigation of the Commissioner of Police. In South Australia, the Attorney-General exercises this function.

The rationale and method of this labeling model has been fiercely criticized. Many commentators have expressed concerns about the elements, indicia, standard of proof, and other methods used to outlaw organizations.[62] Labeling an organization as criminal effectively criminalizes the very existence of a group on the basis of conduct in which that group may engage in the future. The administrative processes set up in Japan, South Australia, and New South Wales are also said to lack clarity, consistency, and safeguards, and create a risk of collusion between different branches of government and the

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57 *Societies Ordinance 1997* (Hong Kong), s. 8(1)(a); *Societies Act* (Cap. 311, 1985, Rev. Ed. Sing.), s. 4(2)(b), (d) [*Societies Act* (Singapore)].

58 *Societies Ordinance 1997* (Hong Kong), *ibid.*, s. 18; *Societies Act* (Singapore), *ibid.*, s. 14(1); *Societies Act 1966* (Malaysia), s. 41(1).

59 *Societies Ordinance 1997* (Hong Kong), *ibid.*, s. 18(3); *Societies Act* (Singapore), *ibid.*, s. 23.

60 *Crimes (Criminal Organisations Control) Act 2009* (N.S.W.), ss. 6–9; *Criminal Organisation Act 2009* (Qld.), ss. 8–15; *Serious and Organised Crime (Control) Act 2008* (S.A.), s. 10.

61 *Crimes (Criminal Organizations Control) Act 2009* (N.S.W.), *ibid.*, s. 14; *Criminal Organisation Act 2009* (Qld.), *ibid.*, s. 18; *Serious and Organized Crime (Control) Act 2008* (S.A.), *ibid.*, s. 14.

62 Austl., N.S.W., Parliament, Legislation Review Committee, *Legislation Review Digest*, No. 5 of 2009 (4 May 2009) ¶ 13; *Totani & Anor v. The State of South Australia* (2009) 105 S.A.S.R. 244.

judiciary.[63] The set standards to establish the existence of a criminal organization are also well below the standard of 'beyond reasonable doubt' used in criminal trials and the general rules of evidence do not apply. In the Australian jurisdictions, there is also concern over the use of classified information in the labeling process which prevents groups and individuals from knowing the reasons why they have been banned.

Moreover, while this approach may be helpful in identifying and labeling some criminal organizations, it is of no use to act against flexible criminal networks that do not carry a particular name and have no formal organizational structure. It also creates the risk that outlawed groups will consolidate, move further underground, and engage in more clandestine, more dangerous, and more violent operations. Alternatively, other groups may simply resurface under a different name, thus circumventing the legislation altogether.[64]

3. Effect of prohibition/labeling

The effect of negative and positive prohibition of an organization is that certain affiliations with the unlawful organization are rendered illegal. The offenses cover a wide range of roles that a person may occupy within the organization and cover different types of support a person may provide to the organization.

Hong Kong's sections 19-23 of the *Societies Ordinance 1997* and Singapore's sections 14-18 of the *Societies Act 1985* set out the most comprehensive range of criminal offenses. Both jurisdictions have a special offense with the highest penalty for managers of unlawful societies and triads. It is also an offense to recruit for the organization or provide them with premises for meetings or other activities. Providing and collecting funds for unlawful societies are offenses in Hong Kong and Malaysia.[65]

Membership in a prohibited organization is a separate offense in Hong Kong, Singapore, and Malaysia. South Australian and New South Wales laws set out a similar offense for "associating with one or more other members of declared organizations".[66] These offenses raise concerns over creating guilt by association as the conduct element of the offenses ('being a member'/'associating') is not inherently criminal and may easily capture a range of lawful associations.[67]

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63 *State of South Australia v. Totani & Anor* (2010) 271 A.L.R. 662; Arlie Loughnan, "The Legislation We Had to Have?: The Crimes (Criminal Organisations Control) Act 2009 (N.S.W.)" (2009) 20 Current Issues in Criminal Justice 457 at 460; *Totani & Anor v. The State of South Australia*, *supra* note 62 ¶ 155–156 per Bleby J.; Hill, *The Japanese Mafia*, *supra* note 17 at 170–171.

64 Hitoshi Saeki, "Japan: The Criminal Justice System Facing the Challenge of Organised Crime" (1998) 69 Rev. I.D.P. 413 at 418; Peter Hill, "The Changing Face of the Yakuza" (2004) 6 Global Crime 97 at 99, 103–104, 110 [Hill, "Changing Face of the Yakuza"]; David E. Kaplan & Alec Dubro, *Yakuza: Japan's Criminal Underworld* (Berkeley: University of California Press, 2003) 212; Ko Shikata, "Yakuza — Organised Crime in Japan" (2006) 9 Journal of Money Laundering Control 416 at 417; Peter Hill, "Heisei Yakuza: Burst Bubble and Bōtaihō" (2003) 6 Social Science Japan Journal 1 at 10, 15; Jennifer Smith, "An International Hit Job: Prosecuting Organised Crime Acts as Crimes against Humanity" (2009) 97 Geo. L.J. 1111 at 1118; Austl., Commonwealth, Parliamentary Joint Committee on the Australian Crime Commission, *Submission to the Inquiry into the legislative arrangements to outlaw serious and organised crime groups* by Australian Crime Commission, online: Parliament of Australia Joint Committee <www.aph.gov.au/Senate/committee/acc_ctte/laoscg/submissions/sublist.htm>.

65 *Societies Act 1966* (Malaysia), *supra* note 58, s. 43.

66 *Serious and Organized Crime (Control) Act 2008* (S.A.), *supra* note 60, s. 35; *Crimes (Criminal Organizations Control) Act 2009* (N.S.W.), *supra* note 60, s. 26.

67 Wise, *supra* note 21 at 321.

In comparison to the other prohibition models, liability under Japan's *Law to Prevent Unjust Acts by Organized Crime Group Members* is more restricted. A criminal offense will only be made out if a boryokudan member makes threatening demands or is otherwise involved in extortion or racketeering activities on behalf of the group, or if an injunction order is violated. While Japan's law has thus avoided criticism relating to overbreadth and guilt by associations, the limited scope of the *Anti-Boryokudan Law 1991* has come under attack for having "nothing to do with punishing serious crimes committed by organized crime members".[68]

E. Other models

China's and Korea's criminal law set out provisions that share some similarities with the organized crime offenses but do not fit into the other concepts outlined before. These provisions were not set up for the purpose of capturing large-scale criminal enterprises and are technically not criminal offenses; they are mechanisms to modify secondary liability and conspiracy within the traditional parameters. For example, article 26 of *Criminal Law 1997* (China) creates an avenue to hold organizers and other ringleaders criminally responsible as principals for any offenses committed by a criminal group and to ensure they face the same penalty as those actually carrying out the crimes.[69] Equally, article 114(1) of the *Criminal Code* (Republic of Korea (ROK)) extends responsibility for substantive offenses to persons who organize or join groups that have the purpose of carrying out that substantive crime.

IV. DEFINITION OF ORGANIZED CRIME

All organized crime offenses are based on definitions of criminal organization. While the exact terminology varies between jurisdictions, there is a degree of consistency between the elements used to define these terms. Specifically, all jurisdictions require proof of one or more elements relating to the structure, management, size, and continuity of the organization. Further, a separate element of the definitions relate to the purpose of the organization.

A. Structural elements

1. Structure and Management

To ensure that the entities targeted by organized crime laws have a degree of cohesiveness and integration, all definitions of criminal organization feature an element relating to the internal structure of the organization. In a negative sense, this element excludes informal, random clusters of people from the scope of application.

The term 'structured group' in Article 2(a) of the *Convention against Transnational Organized Crime*, for instance, is designed to capture "groups with hierarchical or other elaborate structures and non-hierarchical groups where the role of

[68] Saeki, *supra* note 64 at 419.
[69] See further, Scholenhardt, "Taming the Triads", *supra* note 30 at 649–650.

members of the group need not be formally defined."[70] Similarly, in Canada, New Zealand, and Macau, the words 'organized' and 'constituted' are used to ensure that the organization has some internal cohesion and that there is a functional connection between the people involved in the group.[71]

Japan, China, and Taiwan have very restrictive structural requirements, thus limiting the application of relevant provisions to formal, hierarchical organizations. Article 3 of the *Law to Prevent Unjust Acts by Organized Crime Group Members* (Japan), for instance, requires that the organization has a hierarchical structure and is controlled by a leader. In China, a ruling by the Supreme People's Court has limited the term 'criminal organization of a syndicate nature' in article 294(1) of the *Criminal Law 1997* (China) to groups with a "tightly developed organizational structure that comes with internal rules of conduct and discipline, a significant membership, the presence of leaders, and long-standing members".[72] Under Article 2 of the *Organized Crime Control Act 1996* (Taiwan) the criminal group also needs to maintain some hierarchical structure or other internal management system.[73]

The various requirements relating to the structure and internal management of criminal organizations are reflective of different types of organized crime groups. "The complexity of transnational organized crime", notes Louise Shelley, "does not permit the construction of simple generalizations".[74] There is no single model of transnational organized crime, "there is no prototypical crime cartel".[75] Criminal organizations vary considerably in structure, size, geographical range, and diversity of their operations. They range from highly structured corporations to dynamic networks which change constantly in order to adapt to the environment in which they operate. This explains why international criminal law and jurisdictions such as Canada, New Zealand, and Macau have adopted definitions that allow flexible adaptation to different structures of organized crime, while excluding loose associations without any cohesiveness.

2. Size

Most jurisdictions further require a minimum number of three persons to constitute a criminal organization.[76] In Hong Kong and in Australian federal criminal law, the

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70 *Interpretative notes for the official records (Travaux préparatoires) of the negotiations of the United Nations Convention against Transnational Organised Crime and the Protocols thereto*, UN GAOR, 55th Sess., Agenda Item 105, UN Doc A/55/383/Add.1 [*Interpretative Notes*] ¶ 4.

71 *Criminal Code* (Canada), *supra* note 6, s. 467.1(1); *Crimes Act 1961* (N.Z.), *supra* note 7, s. 98A(3); *Organized Crime Law 1997* (Macau), supra note 26, art. 1(1)-(2).

72 China, Supreme People's Court, *Explanations for the Applications of Law Concerning the Adjudication of Cases Involving Criminal Organizations with a Triad Nature* (2000) in Ronald C. Keith & Zhiqiu Lin, *New Crime in China: Public Order and Human Rights* (London: Routledge, 2006) at 102 (with reference to the original source in Mandarin). Standing Committee of the National People's Congress, *Interpretation concerning art 194(1) of the Criminal Law of the People's Republic of China* (2002) in Margaret L. Lewis, "China's Implementation of the United Nations Convention against Transnational Organized Crime" (Paper presented at the symposium *Organised Crime in Asia: Governance and Accountability* in Brisbane (Qld.), June 2007) [copy held with author] 181–182.

73 "Taiwan: Introduction to the 'Organized Crime Control Act'" (1997) 68 Rev. I.D.P. 1019 at 1021.

74 Louise Shelley, "Transnational Organized Crime" (1995) 48 Journal of International Affairs 463 at 464.

75 *Ibid.*

76 *Criminal Code* (Canada), *supra* note 6, s. 467.1(1)(a); *Criminal Law 1997* (China), *supra* note 33, art. 26; *Crimes Act 1900* (N.S.W.), *supra* note 25, s. 93S(1); *Organized Crime Control Act 1996* (Taiwan), *supra* note 37, art. 2.

minimum number is as two persons.[77] Macau and South Australia have no minimum number and no other requirement relating to the size of the criminal organization. Japan takes a different approach by requiring that the criminal organization involve a certain percentage of members with prior criminal convictions. The law in Japan requires that the ratio of members with a criminal record within the group is higher than that ratio in the general population.[78]

3. Continuity

A further characteristic of organized crime is the ongoing, sustained basis of criminal organizations and their operations. "The notion of 'organization'", notes Baker, "conjures up a sense of stability over time and of coherence of membership […]"[79] Accordingly, the definition of organized crime group in the *Palermo Convention* requires that the group "exists for a period of time".[80] Article 4 of Korea's *Act on the Aggravated Punishment of Violence* also requires operations by or existence of the criminal organization "for a period of time". These elements exclude from the definition those groups that form for or engage in single, ad hoc operations.

B. Purpose of the organization

To highlight the profit-oriented nature of organized crime, most definitions contain an element relating to material benefit. The definition under Article 2(a) of the *Convention against Transnational Organized Crime*, for instance, requires that the purpose of the group's activity is "to obtain, directly or indirectly, a financial or other material benefit". The first objective in section 98A(2)(a), (b) of the *Crimes Act 1961* (N.Z.), and section 93S(1) of the *Crimes Act 1900* (N.S.W.), also reflect this element, targeting criminal organizations that aim to commit serious offenses in order to make financial or other material profit. China's definition in article 294(1) of the *Criminal Law 1997*, Macau's article 1(1) of the *Organized Crime Law 1997*, and Japan's *Anti-Boryokudan Law* are expressed in similar terms by referring to illicit profits and economic gain. In Macau, it is necessary to show that the organization seeks to gain illicit "advantages or benefits" through particular criminal offenses.[81]

Several jurisdictions extend the 'purpose element' beyond monetary profits to other benefits. The *Palermo Convention* also applies to "other material benefit" which also includes non-material gratification such as sexual services[82] "to ensure that organizations [engaged in] trafficking in human beings or child pornography for sexual and not monetary reasons are not excluded".[83] In Canada and in the Australian federal *Criminal Code*, the benefit that the organization is aiming for also need not be economic and the

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77 *Organized and Serious Crime Ordinance 1994* (Hong Kong), s. 2; *Criminal Code Act 1995* (Cth.), *supra* note 8, ss. 390.4(1)(c), 390.5(1)(c), (2)(c), 390.6(1)(c), (2)(c).

78 *Law to Prevent Unjust Acts by Organised Crime Group Members 1991* (Japan), art. 3.

79 Baker, *supra* note 4 at 188.

80 *Convention against Transnational Organized Crime*, *supra* note 1, art. 2(a).

81 See further, Scholenhardt, "Taming the Triads", *supra* note 30 at 677–679.

82 *Interpretative Notes*, *supra* note 70 ¶ 3.

83 UN ODC, Division for Treaty Affairs, *Legislative Guides for the Implementation of the United Nations Convention against Transnational Organised Crime and the Protocols thereto* (New York: UN, 2004) at 13 [*Legislative Guides*] (with reference to the *Interpretative Notes*).

exact meaning of what may constitute a material benefit is left to judicial interpretation.[84] In *R. v. Leclerc*, for instance, it was held that providing a criminal organization with an increased presence on a particular territory (i.e. turf in the illicit drug market) can be a benefit.[85]

The meaning of criminal organization is extended in a number of jurisdictions to capture those groups that engage in violent crimes that serve no economic purpose. This is the case in New Zealand and New South Wales where organized criminal groups can also consist of syndicates aiming to commit "serious violent offenses" that involve the loss of life, serious bodily injury, or serious threats of bodily injury.[86] In Hong Kong, the purpose of the criminal organization has to be one of several serious offenses that are frequently carried out by criminal organizations, such as murder, assault, kidnapping, importation of contraband, immigration and drug offenses, gambling offenses, triad offenses, loan sharking, and offenses involving firearms or other weapons.[87]

Some jurisdictions have adopted open-ended definitions that do not require proof of specific purposes of the criminal organization. Article 26 of the *Penal Law 1997* (China) also "does not require that the crime at issue be of a certain level of severity, nor does it specify that the goal be to obtain a financial or other material benefit."[88]

Canada's definition of the term 'organized crime group' has been the subject of some criticism, as the criminal purpose does not have to be the sole objective of the organization. Section 467.1(1)(b) of the *Criminal Code* (Canada) states that the organized crime group must have "as one of its main purposes or main activities the facilitation of one or more serious offenses". This means that any serious offense — however natured — can be envisaged by the criminal group and that the facilitation of serious offenses can be one of several purposes of the organization. Judicial decisions in Canada also reject the notion of specifying particular offenses or purposes arguing "[t]here is no such thing as a 'type' of crime 'normally' committed by criminal organizations" and that "the conduct targeted by the legislation does not lend itself to particularization of a closed list of offenses."[89] Similarly, in Taiwan, the purpose of criminal organizations has to relate predominantly to criminal activities; it is not limited to specific criminal acts or to activities that are economic or violent in nature. Because the criminal purpose in Canada and Taiwan does not have to be the sole objective of the organization, it is also possible to capture legitimate organizations (and their members) that engage in illicit activities. These definitions thus have the ability to capture corporations that engage in criminal offenses. But it also creates a danger that social and other legitimate groups may be targeted — a concern that has also been raised in relation to the definition in New Zealand.[90]

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84 *R. v. Lindsay* (2004) 182 C.C.C. (3d) 301 ¶ 58 per Fuerst J.; *Criminal Code Act 1995* (Cth.), *supra* note 8, ss. 390.4(1)(d), 390.5(1)(d), (2)(d), 390.6(1)(s), (2)(d).

85 *R. v Leclerc* [2001] Q.J. No. 426 (Court of Québec – Criminal and Penal Division).

86 *Crimes Act 1961* (N.Z.), *supra* note 7, ss. 98A(2)(c), (d), 312A(a); *Crimes Act 1900* (N.S.W.), *supra* note 25, s. 93S(1).

87 *Organized and Serious Crime Ordinance 1994* (Hong Kong), Schedule 1.

88 Lewis, *supra* note 72 at 180.

89 *R. v. Lindsay*, *supra* note 84.

90 J. Bruce Robertson, ed., *Adams on Criminal Law*, 5th student ed. (Wellington: Thomson Brookers, 2007) at 252.

The disadvantage of other non-profit oriented and open-ended definitions is that they shift the focus away from the immediate problem of organized crime. They create the possibility that the organized crime laws can also be used against politically motivated groups and terrorist organizations. International law, however, has recommended that "groups with purely political or social motives" be excluded from the definition of organized crime group.[91]

C. Activities of the organization

The majority of definitions of criminal organization are not contingent upon proof of any actual criminal activity by that organization. One of the principal purposes of the organized crime laws is the prevention of substantive criminal offenses. Organized crime offenses are designed as extensions to inchoate and secondary liability in order to stop criminal groups and their members from carrying out planned crimes. Requiring proof that the organization has (already) carried out a substantive offense would thus — at least in part — defeat this purpose.

It is then surprising that a number of jurisdictions include proof of actual joint activity by the group as an element of their respective definitions. For example, section 2 of the *Serious and Organized Crime Ordinance* (Hong Kong) requires commission of certain violent offenses which involves either the loss (or threat of loss) of the life of any person, serious bodily or psychological harm to any person (or risk thereof), or serious loss of liberty of any person. The definition of 'criminal organization of a syndicate nature' in article 294(1) of the *Criminal Law 1997* (China) also requires proof that certain offenses such as corruption, extortion, or assaults have been committed by the group. The advantage of this approach is that it restricts the definition of criminal organization to groups with a proven criminal history and that it bases the definition on other substantive offenses that operate within the established parameters and boundaries of the criminal law. The disadvantage is that these definitions can only be applied after a group has already engaged in some potentially harmful conduct. Furthermore, the activities of criminal organizations are constantly changing and it is difficult to predict which new crimes groups may engage in the future.

D. Enterprise

The term 'enterprise' used in U.S. federal and state *RICO* laws shares many similarities with the definitions used elsewhere. *RICO* laws, however, do not use terms such as 'organized crime group' or 'criminal organization'.

RICO is deliberately designed to cover organized crime committed by criminal organizations as well as white-collar crime committed by corporations. In line with this objective, the term 'enterprise' includes "any individual, partnership, corporation, association or other legal entity, [...]".[92] Both legitimate and illegitimate businesses can be

[91] *Legislative Guides*, *supra* note 83 at 13.
[92] *RICO*, *supra* note 2, §1961(4).

the subject of *RICO* enforcement.[93] For U.S. federal *RICO* the enterprise must have a joint purpose, but that purpose need not be an illegal objective or a profit-related goal.[94]

The relevant structural requirements are similar to those used to define criminal organizations elsewhere. In federal *RICO*, §1961(6), it is necessary that the entity has a continuing association that can be formal or informal. It is not required to have a hierarchical structure or formal membership, but the enterprise needs to be more than a random, ad hoc group of individuals. Within the enterprise, there has to be some sort of decision-making structure and some mechanism to direct or otherwise control the activities of the group.[95]

E. Observations

Among the countries of the Asia Pacific region there is little consensus about the constituent elements of criminal organizations. Although the jurisdictions examined here conceptualize their definitions in similar ways, the scope and application of terms such as 'organized crime group', 'enterprise', and 'criminal organization' vary greatly. These differences are reflective of wider contentions about the meaning and nature of organized crime within legislative, judicial, law enforcement, and academic circles.

In many jurisdictions, the organized crime laws are local responses to local problems. Definitions of criminal organizations are tailored accordingly to suit a particular phenomenon in a particular setting at a particular time. The provisions under the *Societies Ordinance* of Hong Kong, for example, are specifically designed to prevent associations with triad societies and to suppress their activities. Many of the criteria used to define triads, such a triad initiation rituals and triad language, reflect well-known characteristics of local organized crime groups. Definitions in Canada, New Zealand, and South Australia were originally designed to suppress outlaw motorcycle gangs and some elements of the definition of organized crime group are cast specifically to reflect the structure of these gangs. Consequently, these definitions only capture the most visible groups but are ill-suited to capture other types of criminal organizations with less public structures and more clandestine activities.

The definition in international law and most other domestic laws is cast more widely to cover a diverse range of structures ranging from strict hierarchies to network-type criminal organizations. This allows enough flexibility to target a diverse range of associations and to respond to the ever-changing features and structures of organized crime.

While the flexibility of these definitions creates a clear advantage, concerns arise about how loosely a group of people can be associated and still be regarded as one criminal entity. In New South Wales and New Zealand, for instance, there are no

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93 *U.S. v. Turkette*, 452 U.S. 576 (1981). See further, Bridget Allison *et al.*, "Racketeer Influenced and Corrupt Organisations" (1997–98) 35 Am. Crim. L. Rev. 1103 at 1115–1117.

94 *National Organisation for Women v. Scheidler*, 510 U.S. 249 at 261 (1994); *U.S. v. Muyet*, 994 F. Supp. 501 at 511 (S.D.N.Y., 1998); Amy Franklin, Lauren Schorr & David Shapiro, "Racketeer Influenced and Corrupt Organisations" (2008) 45 Am. Crim. L. Rev. 871 at 881 with further references.

95 *Chang v. Chen*, 80 F.3d 1293 (9th Cir. 1996); *U.S. v. Rogers*, 89 F.3d 1326 at 1337 (7th Cir. 1996); *Richmond v. Nationwide Cassel L.P.*, 52 F.3d 640 at 644 (7th Cir. 1995); Franklin, Schorr & Shapiro, *supra* note 94; Blakesley, *supra* note 17 at 792. See also s. 4(b) of the *Racketeer Influenced and Corrupt Organizations (RICO) Bill* (Philippines).

safeguards to prevent using the legislation against a group of youth spraying graffiti. Spontaneous, random, and perhaps even accidental associations of people can be criminal groups as long they pursue one of the stated objectives. Some definitions are capable of capturing many groups involved in criminal activities even though these activities are not done for financial or other material gain. It is, however, this economic goal that is the principal characteristic of organized crime and that also features prominently in the *Palermo Convention.*

V. LIMITS OF LIABILITY

The common feature of all the offenses discussed here is the fact that they step outside the usual paradigm of criminal responsibility.

Organized crime offenses extend liability beyond the scope of inchoate offenses. They enable the criminalization of acts that occur at a point in time when liability for attempt would not yet arise. They also remove the need to prove an overt act which manifests the accused's intention to commit a specific offense. Creating liability for involvement in criminal organizations thus results in penalizing persons who engage in mere planning and preparation but who never come close to the execution of any crime. Moreover, it is conceivable to charge a person with 'attempting to associate with a criminal organization' or 'inciting to participate in a criminal group', thus creating double-inchoate liability that criminalizes acts even further removed from any substantive criminal offense.

Organized crime offenses also extend liability beyond the boundaries of accessorial and other forms of secondary liability. The mental elements of accessorial liability generally require that an accused holds specific knowledge about individual offenses other co-participants and principals are engaged in. In other words, traditionally accessorial liability cannot arise for offenses the accused does not know of. In contrast, for most organized crime offenses it suffices that an accused was aware that a group he or she associates with may engage in criminal activities, or that the group may have a goal to do so. Actual knowledge or certainty is not required. Neither is it necessary to show that the accused intended to further or support the organization's goals and activities. Accordingly, it is possible, for instance, to hold liable a person who provides a criminal organization with firearms, other equipment, or money, but who may not be aware of the specific offenses this material will be used for. Participants of this kind do not meet the threshold of the mental elements required for accessorial liability — but they would be liable for a number of offenses identified in this study.

These extensions also constitute the principal point of contention:

> Concern has been expressed about the compatibility of such a crime with [...] traditional principles of criminal law which are supposed to require focusing attention on the concrete specific act of a specific individual at a specific moment in time and on that individual's own personal guilt, not on that of his associates. [...] Every system of law has had to grapple with the problem of defining the appropriate limits to doing so which derive from a common fund of basic ideas about what is entailed in designating conduct as criminal — the requirements of an act, of harm, of personal individual culpability.[96]

A. Guilt by association, overbreadth, and vagueness

[96] Wise, *supra* note 21 at 321.

Virtually every model in every jurisdiction explored in this paper has come under attack for creating guilt by association and potentially violating the presumption of innocence. There is a common perception that the offenses relating to participation and membership, association, and support of criminal groups penalize people simply for their connection to illegal entities, thus violating basic civil liberties.

For example, in Taiwan, the offenses under the *Organized Crime Control Act 1996* have been criticized for possibly infringing on the freedom of association which is protected under Taiwan's Constitution.[97] There have equally been some concerns in Japan that the bōtaihō may violate constitutionally guaranteed rights such as the freedom of association and also the principle of equality of all citizens.[98] The same points have been made in Canada, New Zealand, Australia, and the United States.

The wide scope of many offenses explored in this study has been criticized for overbreadth; many provisions and elements have been described as vague and their meaning as uncertain. Many jurisdictions have casted their offenses deliberately wide to allow flexible adaption to various types of groups and to capture different kinds of association. The common concern has been that the breadth of the offenses is so broad and the interpretation of terms so wide that almost any personwho associates with criminal organizations, however distant, can be targeted by these laws.

It is interesting to note that despite these widespread concerns most constitutional and judicial challenges of these laws have remained unsuccessful. For example, constitutional challenges against U.S. federal and state *RICO* laws relating to vagueness, retrospectivity, double jeopardy, violation of the freedom of association, cruel and unjust punishment, principles of equal protection, violation of due process, and intrusion of state sovereignty have all largely failed.[99] In Japan, where notorious crime groups have launched legal challenges against the *Anti-Boryokudan Law*, the courts have consistently upheld the statutory provisions.[100] No court action against Canada's organized crime offenses in section 467 of the *Criminal Code* has been successful, and the courts repeatedly confirmed the provisions' consistency with the Canadian *Charter of Rights and Freedoms*.[101]

1. General offenses

Concerns over exceeding the limits of criminal liability are probably most justified in relation to those provisions that seek to criminalize different types of involvement in a criminal group with a single, 'catch-all' offense, rather than separating them these types into different offenses. Some jurisdictions have chosen vague and wide-ranging umbrella terms for a single offense which then captures a great range of diverse conduct.

For example, terms such as 'participating in' and 'associating with' criminal organizations are so broad that they allow the criminalization of persons who are

97 "Taiwan: Introduction to the 'Organized Crime Control Act'", *supra* note 73 at 1028.
98 See further, Hill, *The Japanese Mafia*, *supra* note 17 at 169.
99 See further, Bridget Allison *et al.*, *supra* note 93 at 1137–1145; Barry Tarlow, "RICO Revisited" (1983) 17 Ga. L. Rev. 291 at 312–315.
100 Hill, "Changing Face of the Yakuza", *supra* note 64 at 103; Hill, *The Japanese Mafia*, *supra* note 17 at 202–204.
101 *R v. Lindsay*, *supra* note 84.

intimately involved with the group as well as those who are only distantly connected to them. Canada, for example, makes it an offense to "participate in or contribute to any activity of a criminal organization", section 467.11(1) of the *Criminal Code* (Canada). It does not define the terms 'participation' and 'contribution'. The meaning of these terms is even further expanded by setting out a range of situations that assist the courts in determining whether an accused is involved in the group in one of these ways.[102] New Zealand, New South Wales, and Taiwan also require proof of participation without further defining the term. In South Australia, the term 'associating' is used, and is defined in the broadest possible way to include any form of communication between the accused and the criminal group or one of its members.[103] The *Palermo Convention* contains a slightly more restrictive offense of 'active participation in (criminal) activities'.[104]

In New Zealand and South Australia, the participation/association offense is the only available offense; there are no additional provisions for persons occupying specific or senior roles in the organization. This necessitates a very wide interpretation of this offense to capture both the core directors and leaders of a criminal organization as well as persons more loosely associated with the group.

Offenses based on mere participation and association do not articulate clear boundaries of criminal liability and do not conclusively answer the question as to how remotely a person can be connected to a criminal group and still be liable for participation. The offenses in operation in New Zealand, New South Wales, South Australia, and section 467.11(1) of the *Criminal Code* (Canada) do not explain where participation and association begin and where they end. Moreover, nothing in these laws suggests that it is not possible to charge a person with attempted participation in a criminal group, thus creating liability for acts even further removed from any actual criminal activity, any actual harm, or any potential social danger.

2. Specific offenses

It is instead more sensible to differentiate the various roles and duties a person may occupy in a criminal organization and also recognize any special knowledge or intention that person may have. This allows the tailoring of specific offenses which criminalize selected key functions within the organization. Simultaneously, this excludes those types of associations from liability that are seen as too rudimentary to warrant criminalization. By avoiding the use of broad and uncertain terms, these offenses also escape criticism of vagueness and overbreadth and, in the medium and long term, are more likely to withstand constitutional and other judicial challenges. Furthermore, by requiring proof of special mental elements, the offense can recognize the individual guilt and blameworthiness an accused may have. This, in turn, can justify the imposition of severe penalties on persons acting with direct intention and knowledge, while allowing concessions and more lenient sentences for persons that act recklessly or negligently.

Canada, China, South Korea, Macau, and Taiwan, for instance, have special offenses for persons directing and leading criminal organizations. These offenses generally attract the highest penalty to reflect the central function exercised by the perpetrator. It is

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102 *Criminal Code* (Canada), *supra* note 6, s. 467.11(1)(3).
103 *Serious and Organized Crime (Control) Act 2008* (S.A.), *supra* note 60, s. 35.
104 *Convention against Transnational Organized Crime*, *supra* note 1, art. 5(1)(a)(ii).

equally desirable to target persons who support a criminal organization with funds or weapons, which are separate offenses in Canada, Macau, and Taiwan. The criminal nature of the conduct involved in these offenses is undisputed and proper enforcement of these laws may, in turn, contribute to the prevention of other crimes and add to the deterrence of other offenders.

A number of jurisdictions also have special provisions that tie the accused's association with a criminal organization to other existing offenses. These provisions, although designed as separate offenses, essentially serve to increase penalties for that other substantive offense. For example, in Canada, certain firearms offenses are aggravated if they are connected with a criminal group.[105] Canada also has an aggravation for certain drug offenses committed by criminal organizations,[106] and New South Wales connects assaults and property damage to criminal groups in this way.[107]

These offenses may also serve as a model to criminalize other situations and other types of conduct usually connected with organized crime. It is, for example, conceivable to create new offenses such as 'trafficking in persons on behalf of a criminal organization', 'money laundering for the benefit of a criminal group', 'operating an illegal brothel in association with a criminal enterprise', and the like. These connect recognized criminal offenses with added elements that reflect the connection with a criminal organization. The higher penalties recognize the nature and dangers associated with organized crime and may deter some persons from committing offenses on behalf of a criminal group.

VI. IMPLEMENTATION AND ENFORCEMENT

Anti-organized crime laws have no more than symbolic meaning unless they are properly implemented and consistently enforced. The levels and methods used to police, investigate, and prosecute organized crime are beyond of the scope of this article, but it is important to note that the creation of special offenses against organized crime must be accompanied by adequate enforcement powers, investigative techniques and equipment, and witness protection programs.

A. Costs and resources

The enforcement of the offenses discussed here is extremely expensive. The implementation of the offenses creates new and large pools of offenders, especially if the offenses apply to low ranking members and loose associates of criminal organizations. Few, if any, police agencies in the region have the capacity to thoroughly investigate and arrest the great number of people that have some affiliation with organized crime groups:

> [T]he benefit of such legislation will ultimately be determined by a raft of investigative and enforcement measures accompanying such legislation along with the additional resources. A potential increase in prosecutions relating to serious and organized crime may create challenges for the judicial/legal system, for example ensuring that witnesses are properly protected. This, in turn, may have resource implications for law enforcement agencies through increased demand for witness protection programs.[108]

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105 *Criminal Code* (Canada), *supra* note 6, s. 244.2(3).

106 *Controlled Drugs and Substance Act 1996* (Canada), s. 5(3)(a).

107 *Crimes Act 1900* (N.S.W.), *supra* note 25, s. 93T(3).

108 Austl., Commonwealth, Parliamentary Joint Committee on the Australian Crime Commission, *Submission to the Inquiry into the legislative arrangements to outlaw serious and organised crime*

The criminal justice and prison systems are also ill-equipped to efficiently deal with hundreds or thousands of new defendants. "Would criminalization result in trebling the overall prison population? Regardless of the cost of such a measure, would it be desirable?" asks Peter Hill.[109] The complexity of investigations, prosecutions, and trials under the organized crime laws further adds to the costs. Police investigations and the preparation of prosecutions of organized crime are usually very lengthy and often extremely expensive. Trials are generally long and complicated, especially if multiple defendants are involved.

B. International cooperation

The effectiveness of the organized crime offenses is further limited by the diversity and discrepancy of approaches to organized crime in the region. No two jurisdictions discussed in this study adopt identical offenses and most of the models identified earlier are incompatible and frequently highly conflicting. While the *Convention against Transnational Organized Crime* seeks to harmonize and standardize organized crime offenses around the world, few countries have adopted provisions that are compatible with the international model and some jurisdictions fail or refuse to adopt the Convention altogether.

Furthermore, there is no regional or international forum to coordinate anti-organized crime policies, legislation, and their enforcement. Jennifer Smith also notes that because the *Palermo Convention* "lacks any measure to guarantee that parties fully implement its provisions or penalize violations, parties may disregard their obligations without repercussions from other parties or from an international body."[110]

C. Corruption

A further obstacle towards more effective implementation and enforcement of relevant organized crime offenses is corruption. "Weak states", notes Smith, "are unable to prosecute organized crime, and acquiescent, corrupt, and collusive states are unwilling to prosecute benefactors or collaborators from the world of organized crime."[111] Hill asks:

> If the existence of organized crime is beneficial to key constituencies, possibly including judicial, political, and law enforcement personnel either at street or at administrative level, are all of the actors seriously committed to the enactment, implementation, and enforcement of such measures? Given these possibilities, it is no great jump to postulate that the introduction of new "countermeasures" may have a purely symbolic role.[112]

The *Palermo Convention* has recognized the connection between organized crime and corruption by stipulating specific provisions, including offenses, to prevent and suppress bribery of government officials by criminal organizations.[113] A separate *Convention against Corruption* has since been created.[114] Many countries, however, have

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groups by Jim Cox (Minister for Police and Emergency Management, Tasmania), online: Parliament of Australia Joint Committee <www.aph.gov.au/Senate/committee/acc_ctte/laoscg/submissions/sublist.htm>.

109 Hill, *The Japanese Mafia*, *supra* note 17 at 174.

110 Smith, *supra* note 64 at 1119.

111 *Ibid.* at 1115-1116.

112 Hill, *The Japanese Mafia*, *supra* note 17 at 147.

113 *Convention against Transnational Organized Crime*, *supra* note 1, art. 8.

114 (2004) 43 I.L.M. 37.

been slow in implementing these provisions into their domestic systems, and some administrations continue to turn a blind eye to corrupt practices.

VII. The Way Ahead

If the fight against organized crime is indeed a war, then the offenses discussed in this article have not been able to secure a victory. Organized crime continues to exist in every society in the region, regardless of the existence of specialized offenses. This is, perhaps, not surprising given that the introduction of these laws was often driven by particular incidents or political interests, and not by empirical research. Anti-organized crime measures are frequently politically motivated, "ad hoc responses to calls by interest groups to be tougher. […] There are no votes in being soft on crime",[115] notes Donald Stuart.

A. General remarks

Importantly, the offenses discussed here do not address the causes of organized crime and it is difficult to say with certainty whether organized crime has been reduced even where law enforcement and prosecutions were swift and penalties harsh. It is more likely that any success in arrests and convictions has been offset by other organizations going deeper underground. This also reduced any chance of cooperation between gang members and police and made the infiltration of these groups and the use of informants considerably harder.

Moreover, the introduction of special offenses to penalize associations with criminal organizations has come at considerable cost. The organized crime laws mark a significant extension to criminal liability. The limits of this extension are, however, not clear and the legislation lacks sufficient safeguards to prevent their misuse.[116]

There is a real risk that this type of legislation can be used against any segment of society that may be seen as undesirable and dangerous. The offenses have the potential to criminalize legitimate organizations and their members, infringe upon basic human rights and civil liberties, and create guilt by association. "In seeking to address [organized crime] problems", notes Dorean Koenig,

> the solutions themselves have become problems. They have threatened to change the nature of the system of criminal justice [...] by greatly increasing the reach of the criminal law and enhancing sentences, while lessening the mens rea requirements.[117]

In short, the organized crime offenses are considered by many as failures and as dangerous and unnecessary violations of civil rights. It is short-sighted to view the organized offenses as the ultimate weapon and expect immediate solutions to a phenomenon that has emerged in diverse places and circumstances, and that has reached global dimensions. It is naïve to

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[115] Donald Stuart, "Politically Expedient but Potentially Unjust Criminal Legislation against Gangs" (1998) 69 Rev. I.D.P. 245 at 246.

[116] Frank Verbruggen, "On Containing Organised Crime Using 'Container Offenses'" in Hans-Jèorg Albrecht & Cyrille Fijnaut, eds., *The Containment of Transnational Organised Crime: Comments on the UN Convention of December 2000* (Freiburg: Max-Planck-Institute Fur Auslandisches und Internationales Strafrecht, 2002) 113 at 117–118 [emphasis added].

[117] Dorean Marguerite Koenig, "The Criminal Justice System Facing the Challenge of Organised Crime" (1998) 44 Wayne L. Rev. 1351 at 1377.

think that the introduction of organized crime offenses will immediately cause criminal organizations to "drive apart" and "make it impossible for them to continue as a group" so that the "gangs will simmer out".[118]

The uptake of these offenses will naturally be very slow as police and prosecutors are cautious when using new laws as they do not want to jeopardize their cases. This has been the experience in the United States, where the first significant cases went before the courts ten years after the introduction of the *RICO Act*. The experiences in Canada and New Zealand have been similar.

The new offenses are, at best, a new tool to prevent and suppress organized crime in innovative ways. They seek to criminalize persons that have thus far been immune from prosecutions despite the persons' intimate involvement in very serious offenses. This paper has shown that — if designed carefully — the organized crime offenses create an avenue to hold key directors, managers, and financiers of criminal organizations responsible. This, in turn, may destroy the larger criminal enterprises these leaders control.

Furthermore, despite its many flaws, the creation of the *Convention against Transnational Organized Crime* in 2000 is a milestone in the fight against criminal organizations. It "marks a turning point in the commitment of the community of states to cooperate against transnational crime."[119] The framework proposed by the Convention offers a new set of tools that can assist investigators, courts, and prosecutors in addressing many aspects of organized crime more effectively. It also allows for the universal criminalization of organized crime. The criminal offenses under the *Palermo Convention* are accompanied by measures that enhance investigations and law enforcement cooperation, both domestically and internationally.

B. Specific recommendations

A number of recommendations emerge from the analysis.

First, insofar as the specific offenses relating to organized crime are concerned, it is advisable to create a set of provisions that differentiate between different types and levels of involvement in a criminal group. Separate offenses should be designed to distinguish the various roles and duties a person may occupy within a criminal organization. The offenses should also recognize any intention or special knowledge an accused may have. Specifically, countries that have not already done so should consider introducing a special offense for organizers, leaders, and directors of criminal organization who have the intention to exercise this function and have a general knowledge of the nature and purpose of the organization. Furthermore, it is suggested to criminalize persons who deliberately finance criminal organizations, especially if they seek to gain material or other benefit in return.

Second, legislatures should explore the creation of offenses (or aggravations to offenses) that target the involvement of criminal organizations in already existing substantive offenses. This may include crimes such as 'selling firearms to a criminal

[118] N.S.W. Premier M. Rees cited in Lisa Carty, "No second chances as N.S.W. gets tough for bikies on gangs" *Sydney Morning Herald* (30 Mar 2009).

[119] Militello, *supra* note 5 at 97.

organization', 'trafficking drugs on behalf of a criminal organization', or 'recruiting victims of human trafficking for a criminal organization'. Here, the organized crime element operates as an aggravating factor to offenses commonly associated with organized crime which can justify the imposition of higher penalties.

Third, any definition of 'criminal organization' or of similar terms should be designed to reflect the unique characteristics of organized crime. Such a definition must also ensure that anti-criminal organization legislation is not used against legitimate groups, political parties, or organizations pursuing religious or ideological causes, no matter how criminal their pursuits may be. The prevention and suppression of organized crime offenses must not be used as a pretext to eliminate political rivals, outlaw social groups, or to combat terrorism. Any definition of 'criminal organization' must therefore reflect the structural features and the specific purposes of organized crime. It is desirable to limit this definition to organizations with a proven functional connection between the persons constituting the group, a continuing existence, and with the purpose to gain illicit profits or other material benefits.

C. Conclusion

To prevent and suppress organized crime more effectively throughout the region and close existing loopholes, it is important that all jurisdictions in the Asia Pacific work in concert to create some compatibility in the ways in which they criminalize and prosecute organized crime. Insofar as possible, the countries of the region should strive for the creation of more balanced and more consistent approaches. Furthermore, they should encourage and assist those countries that currently do not have specific offenses to accede to this body of law. Organized crime will simply be displaced into other jurisdictions, however small, unless all jurisdictions in the region join forces.

With or without the organized crime offenses, it is difficult to foresee the future of organized crime in the Asia Pacific. The history of organized crime in the region has shown that criminal organizations operate in a dynamic environment and rapidly adapt to new markets, new laws, and new enforcement measures. Nobody can predict whether the economic rise and integration of many countries in the region will be accompanied by a further increase in organized crime; or whether innovative policing, better know-how and equipment, closer collaboration between the countries, and better laws will ultimately lead to a reduction of organized crime activity.

In the absence of more comprehensive data, better research, and a deeper understanding of the causes of organized crime it is difficult, if not impossible, to identify and measure any success. Whether or not the Asia Pacific region succeeds over organized crime — or surrenders to it — is the collective responsibility of the whole region.