

Foreword

It is a pity that there isn't any international law in *The Wire*, the highly popular television series that is built around cops and the local gangsters in the city of Baltimore whom they are trying to put in jail. It is mainly about trafficking in drugs, but one set of shows also looks at human trafficking, prostitution, political corruption and systematic theft by workers in the city's dockyards. Regularly, the overworked Baltimore police try to enlist the interest of their federal counterparts, who have much better resources. Usually, they are told that their focus has switched to counter-terrorism, and away from the drug trade and human trafficking. It is post-11 September, after all.

Lurking in the background is 'the Greek', soft-spoken and avuncular, and his lieutenant, Vondas, who is usually clad in a charming newsboy cap. At one point, when the police make a series of arrests, the two are seen at the airport checking in for an international flight. Three years later, in the final series, they make a perfunctory reappearance. The two seem to be the local emissaries of a criminal multinational, but the show never lets us get behind their mysterious facade. If it did, we might find a new layer of activity, with international lawyers, Interpol and complex issues of mutual legal assistance.

Although the engagement of international law in the suppression of organised crime goes back more than a century, it has been through quite dramatic developments in the last decade or so. These comprise the subject matter of Tom Obokata's book. Now, the centrepiece is the Convention against Transnational Organized Crime, known generally as the 'Organised Crime Convention'. It was adopted in 2000, along with three Protocols which deal with human trafficking, smuggling of people and the international trade in firearms. As a result, the last decade has been particularly fertile, and it is time to take stock of the developments in a major monograph.

There has been much talk about the 'fragmentation' of international law. It is certainly true that many new areas have developed, with much interaction involving related fields. Human rights law is especially important here. Legal mechanisms to address various features of organised crime require close attention to human rights norms and standards. Indeed, human rights law probably owes a debt of gratitude to European mafias. With their wealthy resources for legal battles, they have taken fascinating challenges before the European Court of Human Rights, facilitating the further development of the law and the clarification of matters concerning due process and prison conditions.

The European Court of Human Rights will consider the importance of dealing with organised crime when it considers the acceptable limitations that

may be imposed upon fundamental rights. In one ruling, its Grand Chamber said:

Inherent in the whole of the Convention is the search for a fair balance between the demands of the general interest of the community and the requirements of the protection of the individual's fundamental rights. As movement about the world becomes easier and crime takes on a larger international dimension, it is increasingly in the interest of all nations that suspected offenders who flee abroad should be brought to justice. Conversely, the establishment of safe havens for fugitives would not only result in danger for the State obliged to harbour the protected person, but also tend to undermine the foundations of extradition.¹

International law concerning organized crime also comes into contact with the discipline known widely as 'international criminal law'. The latter's primary concern is with international atrocity crimes, specifically genocide, crimes against humanity and war crimes. In some European languages, a distinction is made by changing the order of the words: *droit international pénal* and *droit pénal international*. The former concerns atrocity crimes such as genocide, while the latter is largely addressed to the suppression of organised crime through mutual legal assistance. In English, we more often make the distinction by speaking of 'transnational organised crime', underscoring the point that this is crime to be dealt with primarily through national prosecutions. International law intervenes to assist in the process because of the trans border nature of the criminal activity.

This book contemplates the relevance of such a distinction. One explanation is that atrocity crimes are generally perpetrated by governments, whereas transnational crimes are the work of non-state actors. Atrocity crimes require internationalisation of prosecution because the investigating authorities and the courts that would normally be responsible are themselves often accomplices in the criminal acts. Organised crime seems different, because states are generally willing and able to prosecute such acts, but complications are imposed by the mafias themselves, with their skilled exploitation of the international environment.

This analysis works well as a general rule, but it has its limits. At the atrocity crime end of the spectrum, we have the phenomenon of non-state actors, such as rebel or guerrilla groups. They are the enemies of states and are in fact often trying to overthrow them. In some respects they resemble organised crime, and the legal problems have similarities. As for organised crime, sometimes it insinuates itself so deeply into the state that the boundaries become difficult to determine. Certainly, there is no willingness to prosecute because the relevant authorities are so corrupted.

There is a constituency that supports the addition of certain forms of organised crime, notably drug trafficking, to the subject matter of international criminal law, effecting its migration from the related but distinct area of transnational criminal law. When the Rome Statute of the International Criminal

¹ *Öcalan v Turkey* [GC], no 46221/99, Judgment, 12 May 2005, para 88.

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Court was adopted, at the 1998 Rome Conference, proponents of such a view were unsuccessful in attaining this objective. Only a reference in the Final Act, adopted at the same time as the Statute of the Court, has kept the flame alive. There is a debate not only about the practical issues involved in the addition of such forms of organised crime, but also a more theoretical concern as to whether drug trafficking and similar acts belong to the same genus as genocide and the other international atrocity crimes.

One thing is certain: the international law governing organised crime is a close relative of the body of law applicable to the International Criminal Court and similar institutions. It provides a forum to address issues of more general concern, such as the scope of universal jurisdiction, immunities, statutory limitation and extradition. Tom Obokata's study, with its original and in some ways unique perspective, enriches our knowledge of the field.

Professor William Schabas OC MRIA
Galway, 28 February 2010

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Acknowledgements

The completion of this monograph would not have been possible without assistance from a number of individuals and organisations. First, I would like to thank Brice Dickson at the QUB School of Law, who spent long hours reading and commenting on an earlier version of this monograph. I also wish to express my gratitude to Jean Allain (QUB) and Neil Boister (University of Canterbury, New Zealand) for their expert comments, as well as to Professor William Schabas (Irish Centre for Human Rights, Galway) for writing a foreword to this book.

I conducted field research to complete this monograph, and a number of people and organisations kindly offered their assistance. In particular, I would like to thank Professor Nenad Radovic (Academy of Criminalistic and Police Studies, Serbia), Lt Colonel Fatos Haziri (Kosovo Republic Police), Mr Uthai Arthivech (Office of the Attorney-General, Thailand), Major General Krerckphon Pukprayura (Royal Thai Police), Mr Matt Friedman (United Nations Inter-Agency Project on Trafficking), and Ms Anne Gallagher and her staff at the Asia Regional Trafficking in Persons Project.

Finally, I would like to thank the QUB School of Law for giving me some time off to complete this monograph.

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