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Concepts of Terrorism and Organized Crime

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- Introduction
- Concepts of organized crime
- Concepts of terrorism
- Linking concepts of organized crime and terrorism
- Careers in crime and careers in terrorism: Recruitment and radicalization
- Are terrorists and organized criminals citizens or enemies? From Law Enforcement to Wars against terror, drugs etc.





- Conceptual approaches to organized crime and terrorism
 - Legal and social science approaches
 - Concepts of organized crime, terrorism and substantive criminal statutes
 - Concepts of organized crime, terrorism and procedural approaches
 - Origins and meanings of organized crime and terrorism
- Concepts can be construed from various perspectives
 - Description
 - Explanation
 - Control
 - Governance
- What makes organized crime and terrorism different?



Concepts of Organized Crime





- Shadow Economies
 - Drug markets, markets in stolen goods, human smuggling
 - Transaction crime
- Immigration and Migration
 - Organized crime as import, as invasion, as conspiracy
- Transnational and Crossborder
- Local law enforcement: Globalization vs. The Nation State
- Failed states and weak central powers



- Defining „Organized Crime“
- Art. 1: Organized crime means “a structured group of three or more persons existing for a period of time and acting in concert with the aim of committing one or more serious crimes or offences established in accordance with the Convention, in order to obtain, directly or indirectly, a financial or other material benefit”



- Creating Mafia laws
 - Italy
- Qualification of criminal offences
 - Committing crimes as a member of a criminal group/gang
 - Commercialization of crime
 - Crime for profit
- Defining organized crime through
 - The power to use special investigative techniques



- Organized crime is a result of the emergence of the modern state (monopolization of violence, outlawing of private violence and feuding)
- Up to the 18th century (in North-America still in the 20th century) phenomenon like
 - Bandits
 - Pirates
 - Poachers
- Point to a category of „crime“ that is characterized by
 - Political elements (armed resistance against power perceived to be illegitimate)
 - Private violence

War Making and State Making as Organized Crime



- Charles Tilly (1985)
 - If protection rackets represent organised crime at its smoothest, then war making and state making – quintessential protection rackets with the advantage of legitimacy – qualify as our largest examples of organised crime
- What do states do?
 - War making: eliminating rivals outside
 - State making: eliminating rivals inside
 - Protection: neutralizing enemies of their clients
 - Extraction: Acquiring the means to carry out these activities
- Legitimacy vs. Illegitimacy
 - Acceptance by the people and/or acceptance by other state actors





- Corruption
- Infiltration of the licit economy and the political system
- Posing threats to the central power
- Feelings of unsafety
- Posing threats to equal enforcement of the law



- Crime as work
- Organized crime as transaction crime
- Rationalization as reduction of transaction costs
- What are transaction costs
 - Detection
 - Conviction and criminal sentence
- How are transaction costs reduced
 - Reducing the probability of complaints
 - » Threat and violence
 - » Making victims accomplices
 - » Bribing the enforcement staff

Transformation of organized crime



- In modern societies of the Western world bandits etc. lost their safe havens in terms of territories beyond the reach of the state and central powers
- Organized crime transformed into subcultures of crime in urban areas
- Theoretical approaches:
 - Miller's subculture of crime
 - Conflicting values and norms
 - Gang theories (for example Cohen)
 - Crime as rebellion in face of anomia (Merton)





Concepts of Terrorism





- Anarchists and violence in the 19th and 20th century
 - Action and propaganda
- Insurgency, violence and colonialism
- Separatist terrorism
 - ETA, IRA, South Tirol
- Revolutionary terrorism
 - Red Brigades, RAF, Action Directe, FARC
- Religious Terrorism
 - Extremist Christians against abortion (US)
 - Holy Warriors, Jihad
- Transnational (religious, revolutionary) terrorism
 - Al Qaida



- Propaganda through violence
 - Directed against political figures
- Revolutionary terrorism
 - Re-allocation of political power because of the common interest
- Religious terrorism
 - Pursuing the good and destroying the evil
- Separatist terrorism
 - Insurgency against a foreign and illegitimate power
- Anti-colonialist terrorism
 - Insurgency against a foreign and illegitimate power



- Balancing counterterrorism, human rights and humanitarian law

- Risk control and security vs
 - Presumption of innocence
 - Privacy
 - Freedom of expression
 - General right of Liberty
 - Freedom of press and media
 - Proportionality

- Demand for security can by no means be satisfied (there will be always too much terrorism, violence and crime)
 - Structural problem: asymmetric relationship between security and (human) rights



- Difficulties of translating policies against risks into legal language and criminal legislation
- A move toward endangering offences (punishment for creating risks)
- “Encouragement” of terrorism, training for terrorism, attendance at a place used for terrorist training
- Problems of identifying the protected values
- Broadly conceived values (public health, economy, public security etc.)
- Emerging hybrids that fall in between criminal and police laws



International Law, international policies and counterterrorism legislation





- National anti-terrorism laws emerging during the 1970ies and 1980ies
- UN Conventions on Combatting Terrorism created since the 1960ies
- Transnational organized crime conventions
 - 1988 Vienna UN Drug Convention
 - 2000 UN Transnational Crime Convention



- United Nations, Organisation of American States, ASEAN, the Arab League, European Union, Council of Europe, OECD, FATF
 - conventions and standards with the goal to intensify control of terrorism (and to protect human rights)
- United Nations anti terrorist conventions related to
 - Protection of civil aviation and staff of embassies, protection against the abuse of nuclear substances, control of terrorist acts carried out with explosives, control of money laundering for the purpose of financing terrorism, suppression of Acts of Nuclear Terrorism
- Currently a global and comprehensive convention to control international terrorism is in the process of being drafted



- Resolutions of the Security Council, in particular Resolution 1373 as of 28. 9. 2001. Resolution 1373
 - demands from all the member states of the United Nations to establish such measures that enable identification of terrorists during the process of immigration, the prevention of abuse of passports as well as the asylum status for terrorist activities
 - demands efficient exchange of information on terrorism as well as efficient control of financing international terrorist activities
- On the basis of the resolution a counter-terrorism committee was established responsible for the supervision of proper implementation of resolution 1373
- Duty to report within 90 days about implementation of the Security Council Resolution



Substantive Criminal Law and Counterterrorism





- United Nations Draft Comprehensive Convention on International Terrorism Article 2 a
 - “a person commits a terrorist offence if he or she ... in any other way contributes to the commission of one or more offences referred to in paragraphs 1, 2 or 3 (a) by a group of persons acting with a common purpose; such contribution shall be intentional and either be made with the aim of furthering the general criminal activity or purpose of the group or be made in the knowledge of the intention of the group to commit the offence or offences concerned”
- There is until now no consensus achieved on the definition of terrorism (or justification of violence)
- Wording of the convention provokes the risk that behaviour is criminalized which falls under the protection of fundamental rights (for example: freedom of expression)



- Organizational offences
 - Being a member of a terrorist organization, supporting a terrorist organization

- The conspiracy approach
 - Considering the commission of a terrorist offence

- Expression of the wish to control risks (that are located well before a criminal attempt)



- Penalization of being a member or supporting a terrorist organization
 - » Vagueness, freedom of association, freedom of expression
- Penalizing early expressions of extremism/radicalism
- Financing international terrorism
 - » Shifting the focus in money laundering from the past to the future
- Terrorist motives as aggravating circumstance
 - » increased penalties for „hate crimes“
- Protection of vulnerable infrastructures (eg. information networks)



- The terrorist motive
 - A terrorist criminal offence is established by subjective elements such as the purpose of seriously intimidating a population, unduly compelling a government or international organisation to perform or abstain from performing an act or seriously destabilizing or destroying the fundamental political, constitutional, economic or social structures of a country or an international organization
- The motive enhances criminal punishment
- Parallel to hate crime legislation
 - International trend towards creating and implementing hate crime legislation
 - Increased penalties are established for such motives that are perceived to be particularly dangerous or particularly low
 - International and national terrorism alike may also be conceived as “crimes against democracy” thus highlighting a particular aspect of in particular international terrorism that hits so called soft targets and with that undermines the very basis of a democratic society
- Basic problem: conflict with a tradition/rule that locates the reason for punishing in the act and not in the mind of the actor



Linking organized crime and terrorism





- Links between terrorism and ordinary crime/crime groups are well established already in the 19th century
- Alliances between revolutionary-political movements and underworlds can be found already in the 19th century; alliances can then be observed in the 20th century in the new terrorist movements in Germany as well as in North-America (Laqueur, W.: Terrorismus. Die globale Herausforderung. Frankfurt, Berlin 1987, pp. 41)
- Recent years saw a growing interest in exploring the relationships between terrorist movements and organized crime, in particular on the basis of network approaches
- Methodological approach: dense descriptions and the development of analytical frameworks

Parallels between Transnational Organized Crime Legislation and Counter Terrorism Legislation



- Special Offence Statutes: organizational crime, conspiracy
- Motives as aggravating circumstance
 - » Creation of fear: terrorism
 - » Profit: Organized crime
- Loss of importance of the concept of the political offender, replaced through the concept of the terrorist offender (extradition)
 - Traditional organized crime lost the political element earlier
- Money Laundering Control Mechanisms
- Organized crime and terrorism pose new investigation problems: New investigative powers





- **New investigative methods aim at communication, movement, identification through**
 - **Surveillance of communication**
 - Content of telecommunication
 - Telecommunication traffic data
 - Surveillance of communication in the public and private space as well as on private premises
 - **Observation**
 - Video, telecommunication geographical data
 - **Biometrical methods**
 - DNA analysis and data banks, automatic face recognition
 - **Data mining**
 - Joining data (from various sources) and mining on the basis of profiles
- **Characteristics: covert, individuals do not recognize/feel an impact, based on information technology**



- Data mining based on risk profiles
 - » Systematic data collection through electronic surveillance of communication, retention of traffic data
 - » use of data sources from the private and administrative sector (immigration, asylum, telecommunication provider, universities etc.)
- Fishing (net) expeditions
- Ethnic profiling
- Focussing on pre-suspicion fields
 - » Merging of prevention and repression
 - » Policization of criminal investigations

Characteristics of new investigative methods



- New investigative methods are covert and not known to the suspect and therefore bring with them risks for conventional rights of the suspects (eg. The right to be silent, the right to challenge investigative methods before the court)
- New investigative methods cover not only the suspect but a multitude of individuals not suspected
- New investigative methods generate a multitude of information not only relevant for the case investigated
- New investigative methods collect data independent on whether there exist witness privileges
- New investigative methods collect information independent on how intimate and private such information is



- New forms of terrorism today are essentially based on illicit economies and markets of violence
- This is evidently influenced by the disappearance of a configuration of power characterized by two conflicting superpowers
- After the transition in the East of Europe the superpowers withdraw widely from financing violent actors and insurgent groups
- Only partially funding by the superpowers was replaced by regional powers, for example Hisbollah (Lebanon) and Hamas (Palestine)
- If states or a willing diaspora are not available as sources of funds necessary to provide for arms etc. then violent groups are dependent on acquisitional activities
- Participating in economic activities makes sense only in those areas where violent groups have a competitive advantage
- The competitive advantage of violent/terrorist groups lies in their ability to exert effectively violence or to exploit a reputation of effective violence



Trafficking in illicit goods, services and in humans represent the “underside” of the (global) legitimate trade

Shadow Economies are driven

- by laws (setting the structure of political economy and defining the scope and content of trafficking and smuggling)
- by demand (which emerges from conventional society and eg. established sex markets)

Main Areas of Shadow Economies concern

- Drug Markets
- Trafficking in Women and Immigrants/Labour Force
- Acquisitional crime (ransom, robbery, theft, fraud)
- Illegal Capital (Money Laundering)



- Emergence of Transnational Communities and Cross Border Networks of Solidarity



- Networks and Swarming
 - Redundance
- Internationalization of networks and conflicts
- New forms of war/violence
 - Asymmetric nature of new wars
 - Privatization of wars/private actors
- Failed and weak states
- Abundant resources in terms of recruitment
- Transnational organized crime are linked to terrorism through shadow economies and transnational networks

Trends in criminal organizations



- From 1st to 3rd generation criminal groups
- Politicization, internationalization and sophistication
 - *Politicization*: most gangs are largely criminal enterprises, but some have begun to adopt varying degrees of political activity. At the low end: domination of neighborhood life (turf). At the high end: active political agendas
 - *Internationalization*: spatial or geographic reach of the gang. Most gangs are extremely local in nature, generally spanning several blocks of turf. Other gangs operate as confederacies of smaller “cliques,” working across entire metropolitan regions and nationally across state boundaries. At the high end, some gangs are crossborder, transnational, or even international
 - *Sophistication*: nature of gang tactics and strategies, the use of weapons and technology, and organizational complexity of the gang
 - Example: Soccer hooligans



Convergence through networks and networking



- Both, organized crime and major forms of terrorism operate today through networks (and not through hierarchical organizations with physical infrastructures and large investments)
 - Networks provide criminals with diversity, flexibility, low visibility, durability (in particular through redundancy)
- Cores and peripheries
 - Network cores characterized through strong bonds and trust
 - Shared experiences and narratives (prison and youth gangs), common ethnicity, clan/family ties, shared values (religion)
 - Peripheries
 - feature less dense patterns of interaction and looser relationships than the core. These characteristics play a critical role in networks, exhibiting and exploiting “the strength of weak ties”
 - the periphery allows the network to operate at a great distance - geographically and socially. This facilitates more-extensive operations, more diverse activities, and the capacity to carry out effective intelligence collection
 - It is most probably through these peripheries that contacts are facilitated and common interests are identified
 - Example: Hawallah based financial transactions





Recruitment and radicalization





- Radicalization, recruitment and involvement in terrorist violence points to a process and various stages that can in principle be modelled along the description of a criminal career (professional, career, organized criminal)
 - Entry, participation and exit
- Along the way of entering and participating most individuals who in principle consider violence exit
 - Opportunities are blocked
 - Re-consideration of decisions
- Questions
 - Why do individuals enter the pathway to radicalization, recruitment and extreme violence?
 - Which turning points become visible?
 - Where can prevention come in?



- Extremist (dangerous) groups fulfill important social and psychological needs of young people
 - Status and identity
- Association with extremist groups is not driven by ideology and belief systems or grievances
 - Peers
 - Mentors/recruiters (methods of recruitment)
 - Socio-political context (community) and knowledge systems
- Most will exit along the way for various reasons
 - Some will stay
 - Reinforcing processes
 - » inclusion and socialization into a new reclusive/stigmatized community
 - » Adoption of a shared system of justification (ideology) which is linked to pains coming with globalization and modernization
 - » cutting of ties to the 'normal' community outside (through participating)



- Cognitive transformations
 - Shift in the actor's basic openness to change
 - Exposure to specific 'hooks', that is mechanisms through which change becomes possible. Actors must perceive such hooks as being available and they must be available
 - Ability to envision and begin to fashion an appealing 'replacement self'
 - Transformation of the way in which the actor views terrorist behavior, including associated values and life styles
- Open Questions
 - Under what conditions do actors attribute the pains of modernization and globalization to specific actors as opposed to anonymous processes and social forces?
 - Why do potential terrorists perceive different kinds of actors as responsible for their pain, depending on regional, national, and local context?
- The role of agency (individuals respond differently to the same set of conditions)
- Moral transformations: Changes in the moral framework
 - Ordinary People and Death Work



- Only a few commit extreme violence
- Why are so few people actually recruited for terrorist violence?
- On the average: normal people
 - But: Strong self control



Organized Criminals and Terrorists as Enemies



A Change of Paradigms



- The paradigm of criminal law changes
 - from a liberal or civil type of criminal law and ordinary suspects to an enemy type criminal law
- Civil criminal law addresses the citizen; it is conceptualized on the basis of a model of inclusion
- With an enemy criminal law criminal offenders are imagined who cannot or do not want to give a cognitive guarantee that they will behave as responsible participants in social communication and thus do not guarantee a cognitive minimum of trust
 - The enemy from outside and the enemy within – homegrown terrorism
- The enemy criminal law does not provide for conventional safeguards
 - Torture, effective interrogation
 - Detention
 - Presumption of innocence
 - » Innocence/guilt are replaced by risk/danger



Which type of criminal law will prevail?



- Civil criminal law is based upon mechanisms of social integration (collective values and strong informal control) which preclude that significant parts of society can express themselves as enemies
 - restricted to psychiatric conditions or habitual offending (incapacitation or psychiatric treatment)
- Post modern societies are based on individualism
 - which produces more feelings of insecurity and corresponding demands for safety
 - and an increase in uncertainty about the question who poses a risk or danger





- **Article 5 – Right to liberty and security**
- 1 Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:
 - a) the lawful detention of a person after conviction by a competent court;
 - c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;
 - e) the lawful detention of persons for the prevention of the spreading of infectious diseases, of persons of unsound mind, alcoholics or drug addicts or vagrants;

A New Concept of Dangerousness



- Policies against international terrorism and organized crime point towards a new category of dangerousness
 - Dangerousness does not result from insanity nor from chronic offending nor from a need to respond to an imminent danger
 - It is either rational (market) behaviour or an assumption on belonging to a network which provoke assessments of (longterm) dangerousness
- Indicators such as chronic past offending or a psychiatric diagnosis will no longer be relevant
- Soft criteria like having spent time in an Al Qaeda training camp, being part of a communicating network of extremists will prevail (UK 2005)





- Dangerous criminals
 - US Predator Laws
 - Civil commitment to psychiatric hospital
 - Low self control and dangerousness, indeterminate
 - Germany (Subsequent) incapacitative detention
 - Dangerousness (and prior conviction), indeterminate
 - UK Detention/Imprisonment for Public Protection (indeterminate)
 - Conviction Selected (violent) crimes and dangerousness
- Administrative (police) detention: dangerousness
- Stalking legislation



Proposals for Work Groups





- State making and organized crime/terrorism
- Terrorists, organized criminals and the concept of the enemy criminal law
- The transformation of terrorism and organized crime into substantive legislation
- Organized crime, terrorism and problems of investigation