

3-1-2002

They'll Make You an Offer You Can't Refuse: A Comparative Analysis of International Organized Crime

Joseph E. Ritch

Follow this and additional works at: <http://digitalcommons.law.utulsa.edu/tjci>



Part of the [Law Commons](#)

Recommended Citation

Joseph E. Ritch, *They'll Make You an Offer You Can't Refuse: A Comparative Analysis of International Organized Crime*, 9 *Tulsa J. Comp. & Int'l L.* 569 (2001).

Available at: <http://digitalcommons.law.utulsa.edu/tjci/vol9/iss2/5>

This Casenote/Comment is brought to you for free and open access by TU Law Digital Commons. It has been accepted for inclusion in Tulsa Journal of Comparative and International Law by an authorized administrator of TU Law Digital Commons. For more information, please contact daniel-bell@utulsa.edu.



THEY'LL MAKE YOU AN OFFER YOU CAN'T REFUSE: A COMPARATIVE ANALYSIS OF INTERNATIONAL ORGANIZED CRIME

Joseph E. Ritch[†]

I. INTRODUCTION

In light of the events of September 11, 2001, it is becoming ever so clear that the world of international organized crime is a major problem. It is quite unbelievable that a great and powerful nation could be caught off guard by an organized group of terrorists. The group that perpetrated that dreadful act in early September is but one of the many organized crime groups from around the world. Some of the groups have been around since antiquity, and one question needs to be answered: How are organized crime groups able to maintain survival throughout history, without being destroyed by criminal legislation? Bugsy Siegel, an organized crime leader, was quoted as saying, "We don't run for public office. We own the politicians."¹

In every country around the world there is some type of government in place. Whether it be a democracy, a dictatorship, a monarchy, or other form of government, there is one facet that remains the same. Every government, regardless of its form, is susceptible to the evils of organized crime. The ones who possess the powers of money, intimidation, and solidarity control the government. The world is getting smaller and the

[†] J.D., University of Tulsa College of Law, Tulsa, Oklahoma, May 2002; Bachelor of Arts, Georgia Southern University, Statesboro, Georgia, May 1999. This comment is dedicated to my beautiful wife, Delia M. Ritch, for her loving support, and to my family who has always given me the strength to accomplish my goals.

1. VIRGIL W. PETERSON, *THE MOB: 200 YEARS OF ORGANIZED CRIME IN NEW YORK* xi (1983).

organized crime syndicates are taking advantage of new technology to transcend the antiquated concept of regional activity. There once was a time when people could be at ease if they were safely behind their own borders, but that time is long gone. Today, organized crime groups reach beyond the confines of their country's borders and commit crimes on a global level.

The organized crime groups that exist today are not alone in the history of crime. The early Greek crime families have a lot in common with the Sicilian families of the 1860s and the Mafia families of the U.S. "Both the early Greek and the traditional Sicilian regimes controlled agricultural communities; both used force and intimidation to acquire land, livestock, and other resources; both exploited labour and credit with extreme severity and provoked repeated outbreaks of social unrest."² The ancient Greek families were also very similar to the Mafia families of New York in that they accumulated their wealth by violent, dishonest, and unlawful means.³

This comment will attempt to give some substance to the term "organized crime." It will illustrate the many types of organized crime syndicates throughout the world focusing primarily on the groups found in Russia, Mexico, Japan, China and the United States. Sections II and III will discuss the definitions of organized crime and the current international problem caused by the phenomenon. Sections IV and V will focus on the organized crime groups found in Russia and Japan, while Section VI will delve into crime south of the border in Mexico. Section VII will probe into the topic of Chinese organized crime. Section VIII will discuss one of America's organized crime groups, *La Cosa Nostra*, while section IX will primarily investigate the international aspect of controlling organized crime. The comment will contain the historical makeup of each country's crime syndicate, along with the legislation enacted to combat the problem. Additionally, this work will shed some light on the global effect of organized crime and the United Nations' response to the problem. In the end, this comment will compare and contrast the many organized crime syndicates throughout the world.

II. WHAT IS ORGANIZED CRIME?

The concept of organized crime is a subject that has varied opinions. A few hundred years ago, there was a "noble" man in England who

2. Hans van Wees, *The Mafia of Early Greece: Violent Exploitation in the Seventh and Sixth Centuries B.C.*, in *ORGANISED CRIME IN ANTIQUITY 1* (Keith Hopwood ed., 1999).

3. *Id.*

organized a group of other “noble” men and stole from the rich to give to the poor. Would anyone consider Robin Hood the leader of an organized crime syndicate? In the U.S., everyone uses the word Mafia to describe organized crime, but groups committed to breaking the law have been around since antiquity.⁴ Webster’s Dictionary defines the word Mafia as a secret criminal society of Sicily or Italy or elsewhere.⁵ This definition is very vague as to what exactly constitutes organized crime. One student at Wayne State University tried to clarify the issue by providing the following definition:

Organized crime is the collective result of the commitment, knowledge and actions of three components: the criminal groups[,] each of which has its core persons tied by racial, linguistic, ethnic or other bonds; the protectors, persons who protect the group’s interest; and specialist support, persons who knowingly render services on an ad hoc basis to enhance the group’s interests.⁶

Another definition of organized crime states: “organized crime may be defined as a continuing conspiracy for profit that perpetuates itself through violence or threat of violence and by arranging for immunity through the corruption of officials.”⁷ A U.S. district court defined organized crime as a structured criminal syndicate that is composed of experienced criminals who engage in unlawful activity as a profession.⁸ Although there are many different opinions on this topic, organized crime consists of a group of people tied together by a common theme: race, religion, ethnicity, etc., that follow a hierarchical scheme to acquire money and power by breaking the laws of their society.

Recently, international organized crime has received a lot of attention in the press and it is becoming apparent that crime syndicates are not isolated to the United States. The fall of the Italian Mafia in the United States has led to a rise in international crime syndicates. In the words of John Gotti:

You got a global war. You got the Chinese, the Dominicans, the Asians, the Russians, the Columbians, the Jamaicans. What they doing? They desecrate the nation. You got your variable fucking snowstorm of cocaine and smack or whatever the hell else they shove into their veins.

4. *Id.* at ix.

5. MERRIAM WEBSTER’S COLLEGIATE DICTIONARY 699 (10th ed. 1996).

6. Dorean Marguerite Koenig, *The Criminal Justice System Facing the Challenge of Organized Crime*, 44 WAYNE L. REV. 1351, 1359 (1998).

7. PETERSON, *supra* note 1.

8. *Catalano v. United States*, 383 F. Supp. 346, 350-51 (D. Conn. 1974).

You got a worldwide crime syndicate. There's no rules, there's no perimeters, there's no feelings. There's no feelings for this country. You got anarchy.⁹

Throughout history, organized crime has existed in places that the human population tends to gather. In March of 2000, the Joint Ministers on Building Capacities for Fighting Organized Crime declared that they will work diligently against the problem of organized crime; work together to reinforce cooperation measures, especially extradition and mutual legal assistance; and work on preventive measures such as education, legal reform, and public awareness.¹⁰ On December 18, 2000, more than 120 countries signed a new United Nations Convention on Transnational Organized Crime.¹¹ It is plain to see from the meeting that the world is worried about international organized crime. Pino Arlacchi, Secretary General and Executive Director of the United Nations Office for Drug Control and Crime Prevention, stated that "never before had an international convention attracted so many signatures barely four weeks following its adoption by the Assembly."¹²

Organized crime is no longer a problem for each country to handle individually; rather, it has spread throughout the world. This new treaty will provide greater cooperation between countries in dealing with criminals.¹³ Italy's Minister of Justice, Piero Fassino, stated that "the meetings had demonstrated a firm and formal international commitment to take action against organized crime."¹⁴ In recent years, it is becoming apparent that the Italian Mafia is no longer the only game in town, as evidenced by former President Bill Clinton's statement:

We must combat an unholy axis of new threats from terrorists, international criminals and drug traffickers. These 21st century predators feed on technology and the free flow of information and ideas

9. GOTTI (Motion Picture, Time Warner Entertainment Co. 1996).

10. *Fighting Organized Crime*, in 32 PRESIDENTS AND PRIME MINISTERS vol. 9, issue 2 (Mar. 1, 2000), available at 2000 WL 19413807.

11. Press Release, United Nations, More Than 120 Nations Sign New U.N. Convention on Transnational Organized Crime, as High-Level Meeting Concludes in Palermo; Head of U.N. Drug Control and Crime Prevention Office Offers Support to Help Countries Translate New Instruments into Legislation, Dec. 18, 2000, available at 2000 WL 29591808.

12. *Id.*

13. *Id.*

14. *Id.*

and people. And they will be all the more lethal if weapons of mass destruction fall into their hands.¹⁵

In the United States, the Bureau for International Narcotics and Law Enforcement Affairs is in charge of stopping and weakening the threat of international crime.¹⁶ Louis J. Freeh, former Director of the FBI, stated in 1996 that the political, social, and economic changes in Eastern Europe have allowed organized crime groups to expand internationally.¹⁷

The tragedy of September 11th has brought a newfound focus in the fight against crime syndicates. The fight on international crime syndicates has now become the War on Terrorism. On September 11, 2001, the lives of many Americans were changed when the organized plan of a sophisticated crime syndicate unfolded in New York, Washington, D.C., and Pennsylvania. "Americans have known the casualties of war, but not at the center of a great city on a peaceful morning. Americans have known surprise attacks, but never before on thousands of civilians. . . ."¹⁸ The crime group known as Al Qaeda orchestrated the horrendous events on that peaceful September day. "Al Qaeda is to terror what the Mafia is to crime. But its goal is not making money; its goal is remaking the world, and imposing its radical beliefs on people everywhere."¹⁹

"Al-Qaida is a multi-national support group which funds and orchestrates the activities of Islamic militants world[-]wide."²⁰ The organization grew out of the Afghan-Soviet war and was established by a Saudi militant named Osama bin Ladin.²¹ The organization's primary goal is to overthrow the "corrupt" governments of Muslim states and replace them with Islamic Law.²² In 1998, bin Ladin announced the formation of an umbrella organization, the Islamic World Front for the struggle against the Jews and the Crusaders, which includes other terrorist organizations in

15. Presidential Papers, The White House, International Crime Control Strategy 15 (May 1998) [hereinafter International Crime Control Strategy].

16. Susan Snyder, *Combating Transnational Crime*, ISSUES IN GLOBAL CRIME, May 1998, at 7.

17. *The Threat from Russian Organized Crime: Hearing Before the House Comm. on Int'l Relations*, 104th Cong. 56-57 (1996) (statement of Louis J. Freeh, Director, F.B.I.) [hereinafter *Hearings*].

18. Address to a Joint Session of Congress and the American People (Sept. 20, 2001), available at <http://www.whitehouse.gov/news/releases/2001/09/20010920-8.html>.

19. *Id.*

20. Maktab Al Khidamat (MAK-Services Office), *International Islamic Front for Jihad Against the Jews and Crusaders*, available at http://www.ict.org.il/inter_ter/org_det.cfm?orgid=74 (last visited Feb. 13, 2002).

21. *Id.*

22. *Id.*

Egypt.²³ This organized crime syndicate is very dangerous and can cause mass destruction around the world. The Al Qaeda group is a perfect illustration of how organized crime groups can operate beyond the boundaries of their own borders, having members of their group in a number of countries. The events of September 11th have brought the spotlight onto the group known as Al Qaeda, but this is the tip of the iceberg. People need to know that many organized crime groups have operated throughout the world for many years.

IV. ORGANIZED CRIME BEHIND THE IRON CURTAIN

The fall of the Communist regime in Russia has opened many doors for the organized crime syndicate and provided it with an opportunity to flourish. The growth of the Soviet crime syndicate is astronomical. "Developments that have taken decades in other societies have occurred within a few years in the former Soviet Union."²⁴ For example, the organized crime groups found in Russia have already developed in legal as well as illegal activities, which are distinct development stages for other countries.²⁵ On September 8, 1999, an article in *The Moscow Times* illustrated the extent to which the Russian Mafia has grown, by showing that the Russian group was involved in a money laundering scam with the Bank of New York.²⁶

The Russian version of organized crime is substantially different from other country's examples, but at the same time, it is substantially the same. It is similar because of the following reasons: it participates in drug trafficking, gambling, prostitution and people smuggling; it is involved in both illicit and licit activities; and corruption of politicians and members of the law enforcement community are key to its survival.²⁷ The organized crime group in Russia is different because numerous ethnic groups make up the Russian version of organized crime, unlike the Italian Mafia. The Russian organized crime syndicate is composed of Russians, Georgians, Chechens, Ukrainians, Armenians, and several others.²⁸ Also, the FBI has been unable to outline and chart the organizational hierarchy of the

23. *Id.*

24. Louise Shelley, *Post-Soviet Organized Crime and the Rule of Law*, 28 J. MARSHALL L. REV. 827, 828-29 (1995).

25. *Id.* at 829.

26. Yulia Latynina, *Inside Russia: Bank of N.Y. Scandal Sees Culture Clash*, THE MOSCOW TIMES, Sept. 8, 1999, available at 1999 WL 6808846.

27. *Hearings*, *supra* note 17, at 74 (testimony of Louise I. Shelley).

28. Press Release, Scott O' Neil, Federal Bureau of Investigation, Russian Organized Crime: A Criminal Hydra, May 1, 2000, available at 2000 WL 12023384.

Russian Mafia, which they were able to do with other groups.²⁹ The ability to chart the structure and hierarchy of organized crime groups and develop a pattern of activity helps in the investigation and prosecution process.³⁰ “However, whereas traditional groups have permanent hierarchical structures and usually operate within specific geographical areas, Russian Organized Crime comprises amorphous gangs that act autonomously or have loose ties to regional, national, or international networks.”³¹ The Russian Organized Crime syndicate has developed to an advance stage, but it is a long way from its humble beginnings.

A. *Historical Background for Russian Organized Crime*

The historical background for Russian Organized Crime dates back in history a great number of years. One author states, “[t]he Russian Mafiya [sic] has only recently begun to receive attention, even though its origins also trace to pre-twentieth century times.”³² The background for the modern day crime syndicate was “the Thieves in Law or the Vory v. Zakone.”³³ The *Vory* was the *crème de la crème* of the Russian Organized Crime syndicate.³⁴ This group was like a social institution because it had its own internal cohesion and ethical code.³⁵ The thieves’ code was composed of the following:

A thief is bound by the code to:

1. Forsake his relatives—mother, father, brothers, sisters . . .
2. Not have a family of his own—no wife, no children; this does not however, preclude him from having a lover.
3. Never, under any circumstances work, no mafter [sic] how much difficulty this brings—live only on means gleaned from thievery.
4. Help other thieves—both by moral and material support, utilizing the commune of thieves.

29. *Id.*

30. *Id.*

31. *Id.*

32. Ducan DeVille, *Combating Russian Organized Crime: Russia's Fledgling Jury System on Trial*, 32 GEO. WASH. J. INT'L. L. & ECON. 73, 83-84 (1999).

33. Mike Cormaney, *RICO in Russia: Effective Control of Organized Crime or Another Empty Promise?*, 7 TRANSNAT'L L. & CONTEMP. PROBS. 261, 264-65 (1997).

34. VALERY CHALIDZE, *Essays on Crime in the Soviet Union*, in CRIMINAL RUSSIA 45 (Random House 1977).

35. *Id.* at 34.

5. Keep secret information about the whereabouts of accomplices (i.e., dens, districts, hideouts, safe apartments, etc.).
6. In unavoidable situations (if a thief is under investigation) to take the blame for someone else's crime; this buys the other person time of freedom.
7. Demand a convocation of inquiry for the purpose of resolving disputes in the event of a conflict between one's self and other thieves, or between thieves.
8. If necessary, participate in such inquiries.
9. Carry out the punishment of the offending thief as decided by the convocation.
10. Not resist carrying out the decision of punishing the offending thief who is found guilty, with punishment determined by the convocation.
11. Have good command of the thieves' jargon ("Fehnay").
12. Not gamble without being able to cover losses.
13. Teach the trade to young beginners.
14. Have, if possible, informants from the rank and file of thieves.
15. Not lose your reasoning ability when using alcohol.
16. Have nothing to do with the authorities (particularly with the ITU [Correctional Labor Authority]), not participate in public activities, nor join any community organizations.
17. Not take weapons from the hands of authorities; not serve in the military.
18. Make good on promises given to other thieves.³⁶

To join the *Vory*, the members were required to pay a fee and give a speech to prove their loyalty to the group.³⁷ Members in the *Vory* had their own code of conduct that required them to divorce themselves from society and to reject all ordinary social ties.³⁸ This code was strictly adhered to in the organization. An example of the thieves' law is that a member must not cooperate with the state authorities in any way.³⁹ A

36. *Russian Organized Crime, Russian Mafia* (July 11, 2000), at http://www.gangland.net/russian_Mafia.htm.

37. De Ville, *supra* note 32, at 83.

38. CHALIDZE, *supra* note 34, at 35.

39. *Id.* at 48-49.

violation of any of the thieves' laws would result in a mock trial held by other members of the group with the punishment being death by stab wounds.⁴⁰ The extent of the seriousness of the code is illustrated in the following: "A thief may commit a crime and be unpunished by the law of the land, he may even escape from jail or from a labor camp, but he knows that it is almost impossible to escape judgment by a thieves court."⁴¹

The Russian underworld is no different than any other secret and closed society in that it has its own language. Some scholars have suggested that the thieves' language is based on the Ofeni language, which was a dialect used by nineteenth-century peddlers who traveled from place to place, selling merchandise.⁴² In addition, the thieves' language is based on sailors' slang, Yiddish, Romany, and the languages of bordering countries.⁴³ The group developed the language so that they could communicate with each other in secret. This language contained words for the criminal world and for the exercise of the profession.⁴⁴

The *Vory* was composed of different groups of criminals that were dispersed throughout the country.⁴⁵ The different parts of the *Vory* had leaders that were elected through a quasi-democratic process.⁴⁶ The hierarchy of the *Vory* is not known, but evidence shows that there were three classes: the elite, the regular members, and the apprentices.⁴⁷ The thieves would divide their spoils equally among the group because "there is no great trouble in dividing the spoils; mutual aid is a strong principal, and thieves in the Soviet Union are generally indifferent to the accumulation of wealth."⁴⁸

The reign of the *Vory* was greatly affected by the events that transpired during the 1940s. During World War II, many members of the *Vory* served in the Red Army.⁴⁹ As mentioned above, serving or cooperating with the government was strictly forbidden by the organization. A member of the *Vory* who commits the crime of cooperation is an outcast, or a "scab," which is a Russian word that means bitch.⁵⁰ After the war, the *Vory* turned its back on the scabs and they were

40. *Id.* at 48.

41. *Id.*

42. *Id.* at 56.

43. *Id.* at 57.

44. CHALIDZE, *supra* note 34, at 56.

45. *Id.* at 44.

46. *Id.* at 46.

47. *Id.*

48. *Id.* at 47.

49. DeVille, *supra* note 32, at 84.

50. CHALIDZE, *supra* note 34, at 48.

sent to prison.⁵¹ Those that survived prison no longer had any reason to follow the rule of the *Vory*, which prohibited black market business, illegal trade, and drug trafficking.⁵² The ousted *Vory* and others created Russia's Organized Crime syndicate that exists today.⁵³ One significant group that joined the organized crime syndicate in Russia was members of the communist party.⁵⁴

B. Modern Organized Crime in the Former Soviet Union

Today's organized crime syndicate in the former Soviet Union is a beast unlike any other. "Post-Soviet organized crime has emerged on the international arena with an intensity and diversity of activities unmatched by other transnational crime groups."⁵⁵ The group is composed of professional criminals, former members of the communist party, and members of the underground economy.⁵⁶ Currently there are over 5,000 organized crime groups operating in Russia with over 100,000 members with a leadership of over 18,000.⁵⁷ The groups have spread rapidly outside the borders of their mother country and have a presence in 50 different countries.⁵⁸ In 1996, the Russian Mafia met with leaders of crime groups from Sicily, Calabria, and Naples to discuss money laundering and narcotics.⁵⁹ Currently there are over 200 large, sophisticated, Russian organized crime groups throughout the world.⁶⁰ The groups engage in prostitution, gambling, drugs, contract killing, stolen automobiles, illegal export of raw materials, and the smuggling of weapons and human beings.⁶¹

"About two-thirds of the Russian Economy is under the sway of organized crime, including 40% of private business, 60% of remaining

51. DeVille, *supra* note 32, at 85.

52. *Id.*

53. *Id.*

54. *Id.*

55. *The Threat from International Organized Crime and Global Terrorism: Hearing Before the House Comm. on Int'l Relations, 105th Cong. 96 (1997)* (statement of Louise Shelley, Director of the Center for Transnational Organized Crime and Corruption, American University) [hereinafter *Hearings 2*].

56. *Id.*

57. *Hearings, supra* note 17, at 50 (statement by John Deutch, Director, C.I.A.).

58. *Id.*

59. DeVille, *supra* note 32, at 93.

60. *Id.*

61. Shelley, *supra* note 24, at 829.

state-owned enterprises and more than half of the country's 1,740 banks."⁶² "Organized crime's domination of the banking industry is the biggest impediment to economic growth and the development of healthy business."⁶³ Some experts argue that Russian Organized Crime exported over 100 billion dollars of capital during the market reforms.⁶⁴ The main reason that the crime syndicate has control of the banking industry is because of the slowly developing banking regulations and mass corruption.⁶⁵ The crime groups in Russia have power over the domestic activities in that they control 40% of the turnover in goods and services.⁶⁶ By 1995, Russian criminal organizations were allegedly in control of over 70-80% of all Russian commercial enterprises.⁶⁷ The ability of the Russian Mafia to weave itself into the fabric of the Russian society sets it apart from the rest of the crime syndicates.⁶⁸

The intelligence of its members is what makes Russian organized crime so dangerous. The groups are composed of specialists from the security forces, military, and technological experts who were left unemployed after the collapse of the Soviet Union.⁶⁹ These individuals give the crime group the advantage of "computer and communications skills, technical expertise and money laundering experience."⁷⁰ "The penetration of organized crime into the state exists from the municipal to the federal level as organized crime finances the election of candidates and members of the newly elected Russian parliament . . ."⁷¹ The Russian Organized Crime syndicate has more connections and stronger ties to the government than any other organized crime group.⁷² It has forged ties with corrupt politicians and supplanted the Russian government in many

62. *Hearings 2, supra* note 55, at 82 (letter from Arnaud De Borchgrave, Director, Global Organized Crime Project, Center for Strategic and International Studies).

63. *Hearings, supra* note 17, at 76 (statement by Louise Shelley, Professor, Dept. of Justice, Law and Society and School of International Service, American University).

64. Cormaney, *supra* note 33, at 265.

65. Larry D. Newman, *RICO and the Russian Mafia: Toward a New Universal Principal Under International Law*, 9 *IND. INT'L & COMP. L. REV.* 225, 234 (1998).

66. Cormaney, *supra* note 33, at 265.

67. Newman, *supra* note 65, at 233.

68. *Id.*

69. *Hearings, supra* note 17, at 76 (statement by Louise Shelley, Professor, Dept. of Justice, Law and Society and School of International Service, American University).

70. *Id.*

71. *Hearings 2, supra* note 55, at 97 (statement by Louise Shelley, Dir. of Center for Transnational Organized Crime and Corruption, American University).

72. Cormaney, *supra* note 33, at 269.

sectors of society.⁷³ “It is estimated that thirty to fifty percent of the income of organized crime in Russia is given to corrupt officials as bribes, and that one out of every six criminal organizations has ties to or members in it.”⁷⁴

The most disturbing characteristic of the Russian Organized Crime groups is that they are bigger and more important than the state.⁷⁵ The Russian Mafia now provides services to the citizens that were normally delegated to the government.⁷⁶ The Soviet state is no longer able to provide protection to businesses and employment, or provide effective law enforcement, which are now provided by the criminal groups.⁷⁷ The newly created organized crime syndicate has replaced the Soviet Legal System.⁷⁸ If nothing is done, Russia will become a criminal state where the criminals will reign supreme by being elected to office where they can control legislation.⁷⁹ “Organized crime has financed the election of candidates and members of the newly elected Russian parliament, as well as those of other CIS states.”⁸⁰

C. *Controlling Russian Organized Crime*

The former Soviet Union has had a hard time controlling the new criminal enterprises. Before the passage of the Criminal Code of the Russian Federation in 1997, the legislation controlling organized crime was the Soviet Criminal Code and the Decree on Organized Crime by Boris Yeltsin.⁸¹ In the 1994 Decree by Boris Yeltsin, the Russian leader gave extensive authority to prosecutors and law enforcement officials, allowing them to use the Russian military to implement searches and detain people while evidence was gathered for their trial.⁸² This Decree was law until the enactment of the new criminal code.⁸³ The passage of the criminal code of the Russian Federation was supposed to be the saving grace of the crumbling empire.⁸⁴ Rather than be the redeeming feature of the Russian

73. *Id.*

74. *Id.* at 270.

75. Newman, *supra* note 65, at 233.

76. *Id.* at 235.

77. *Id.*

78. *Hearings 2, supra* note 55, at 82 (letter from Arnaud De Borchgrave, Director, Global Organized Crime Project, Center for Strategic and International Studies).

79. *Id.* at 88 (Global Organized Crime Project).

80. Shelley, *supra* note 24, at 835.

81. Newman, *supra* note 65, at 238.

82. *Id.* at 237.

83. *Id.* at 238.

84. *Id.*

empire, the new code has been a frustration because of its inability to put the squeeze on organized crime.⁸⁵ The new code focuses on individual crimes, but lacks the capability to prosecute large and complicated organizations.⁸⁶ Unlike the U.S. RICO statutes, the Russian prosecutors cannot hold members criminally liable for the crimes of other members unless they prove a conspiracy.⁸⁷

V. ORGANIZED CRIME IN THE LAND OF THE RISING SUN

A. *Historical Backdrop*

Organized crime is everywhere that people gather and it is no surprise that it is found on the Island Empire of Japan. The name of the Japanese organized crime syndicate is *Yakuza*, which has been labeled the oldest crime group in the world.⁸⁸ The group claims that they originated from the *Machi-yakko*, which “were the middle class of medieval Japan that took up arms against the Kabuki-mono.”⁸⁹ “The Kabuki-mono were a band of thieves and misfits that rampaged across Japan, stealing from innocents.”⁹⁰ The seventeenth century marked the beginnings of the modern day *Yakuza*.⁹¹ The name *Yakuza* has its origins in the Japanese game similar to blackjack called *Oicho-Kabu*, where the goal was to get cards worth 19 points.⁹² “The word ‘Ya’ means 8, ‘Ku’ means 9, and ‘Za’ means 3; the sum of the numbers is 20, which is worthless in the game.”⁹³ The *Yakuza* is a term for the Japanese that do not fit in with society; therefore, the group is composed of outsiders and misfits.

The *Yakuza* is an organized crime group that is divided in activities like any other crime group. The Japanese Organized Crime Syndicate is composed of four different categories:⁹⁴ the *Bakuto*, *Tekiya*, *Ukoku*, and

85. *Id.*

86. *Id.*

87. Newman, *supra* note 65, at 238.

88. John William Tuohy, *Sayonara, Don Corleone* (Apr. 2000), available at http://www.americanMafia.com/Feature_Articles_34.html [hereinafter Tuohy].

89. *Yakuza* (July 11, 2000), at <http://www.gangland.net/Yakuza.htm>.

90. *Id.*

91. *Id.*

92. *Id.*

93. *Id.*

94. Genichi Nishio, *Shadowrun: Yakuza; Problems With the Yakuza* (Aug. 5, 1994), at <http://yoyo.cc.monash.edu.au/%7Ewigs/Srun/campaign/Yakuza.html> [hereinafter *Shadowrun: Yakuza*].

Gurentai.⁹⁵ The word *Bakuto* means gambler (throughout history gambling was outlawed in Japan, and owners of ancient casinos formed groups to control the illegal enterprise).⁹⁶ *Tekiya* means street merchants, who would pay a fee to gain the protection from the group during festivals.⁹⁷ The word *Ukoku* means political right; this faction was composed of anti-communists, nationalists, traditionalists, and monarchists.⁹⁸ The last group was the *Gurentai*, which means "city thugs," who would do anything for money.⁹⁹ The *Bakuto* and *Tekiya* were the original forms of the *Yakuza*, with *Gurentai* and *Ukoku* being added later.¹⁰⁰

The *Yakuza* evolved into its current status throughout a period of 400 years. In the early 1800s, the group adopted a more traditional organized crime approach when they took control of traditional vices like prostitution, gambling, booze, and adult entertainment.¹⁰¹ "In the 1860's, Japan transformed itself into an industrial nation, [and] the *Yakuza* followed."¹⁰² During this industrialization, the *Yakuza* took over the construction and shipping industries.¹⁰³ The European and American influences became prevalent in the *Yakuza* when politics became a key aspect in the crime syndicate.¹⁰⁴ "The *Yakuza* began to line the pockets of key individuals in the government to be able to get away with certain acts."¹⁰⁵ In the beginning, cooperation was the key to the relationship with the *Yakuza* wanting some freedom from police crackdowns and the government wanting tranquility with laborers.¹⁰⁶ The relationship between the gangsters and politicians was always quite conservative, but it began to change.¹⁰⁷

A man named Mitsuru Toyama joined the forces of the *Yakuza* and the government in a way that still carries through to the present day.¹⁰⁸ Toyama started a secret organization named the Dark Ocean Society,

95. *Id.*

96. *Id.*

97. *Id.*

98. *Id.*

99. *Id.*

100. Bruce A. Gragert, *Yakuza: The Warlords of Japanese Organized Crime*, 4 ANN. SURV. INT'L & COMP. L. 147, 150-51 (1997).

101. Tuohy, *supra* note 88.

102. *Id.*

103. *Yakuza*, *supra* note 89.

104. *Id.*

105. *Id.*

106. Gragert, *supra* note 100, at 155.

107. *Id.*

108. *Id.*

whose goal was to further Japanese expansion abroad and authoritarian rule on the home front.¹⁰⁹ “The Dark Ocean Society waged a campaign of terror, blackmail, and assassination to exert influence over military officers and government officials in order to achieve the goal of a new social order in Japan.”¹¹⁰ Toyama’s Dark Ocean Society joined with hundreds of members of the *Yakuza* gang to engage in “a violent crusade in support of conservative politicians.”¹¹¹ The movement was so successful that many participants were elected to national office and catapulted Japan into World War II.¹¹²

At the conclusion of World War II, all aspects of Japan were devastated, including the *Yakuza*.¹¹³ “The American occupation forces in post-war Japan saw the *Yakuza* as a threat and clamped down on them for four solid years.”¹¹⁴ Nevertheless, the U.S. government assisted the *Yakuza* in a number of ways.¹¹⁵ First, U.S. military intelligence was aiding the crime group in order to suppress communism by using the *Yakuza* to orchestrate attacks on leftist leaders.¹¹⁶ Moreover, food rationing by the U.S. government helped advance the black market that was stocked by American military personal.¹¹⁷ “In essence, the black market in foodstuffs did for the *Yakuza* what prohibition did for the U.S. Mafia.”¹¹⁸ Furthermore, the Japanese police force was disbanded, which allowed the *Yakuza* to reign supreme without hindrance.¹¹⁹ The most important thing that the U.S. did for the *Yakuza* was to release Yoshio Kodama, which eventually gave the *Yakuza* unprecedented political power.¹²⁰ Before the war, Kodama worked as a Japanese spy touring East Asia.¹²¹ At the conclusion of the war, Kodama was a 34-year-old rear admiral and an advisor to the prime minister.¹²² Yoshio Kodama was a Class “A” war criminal who had connections within the underworld as well as the

109. *Id.*

110. *Id.*

111. *Id.*

112. Gragert, *supra* note 100, at 156.

113. *Id.*

114. Tuohy, *supra* note 88.

115. Gragert, *supra* note 100, at 157.

116. *Id.*

117. *Id.*

118. *Id.*

119. *Id.* at 157-58.

120. *Id.* at 158.

121. Adam Johnson, *Yakuza: Past and Present*, available at <http://web.dar.net/~northrup/yakuza.html> (last visited Apr. 22, 2002) [hereinafter Johnson].

122. *Id.*

government and could put down any threat of communism.¹²³ Kodama became one of the most powerful men in post-war Japan and granted access to the highest levels of government to the *Yakuza*.¹²⁴ In the 1950s, the *Yakuza* grew astronomically, reaching a total membership of 184,000—a growth of 150%.¹²⁵ “By 1965, there were 5,200 *Yakuza* gang operations throughout Japan, each gang staking out its territory in the tiny country.¹²⁶ These different factions started fighting for territorial control.¹²⁷ Kodama brought the different factions of the *Yakuza* together by striking alliances with all factions.¹²⁸ Because of his efforts, Kodama earned the nickname as the underworld’s visionary godfather.¹²⁹

Like the organized crime group found in Russia, the *Yakuza* live by a set of rules. The early *Yakuza* followed the values illustrated in *bushido*, the code of the samurai.¹³⁰ Similar to the samurai, the *Yakuza* would demonstrate their masculinity by “the stoic endurance of pain, hunger, and imprisonment.”¹³¹ The heart of *Yakuza*’s code is the concept of *giri* and *ninjo*, which binds the group together.¹³² “*Giri* means ‘obligation or a strong sense of duty’, and is tied up with complex Japanese values involving loyalty, gratitude, and moral debt.”¹³³ “*Ninjo* roughly means ‘human feeling’ or ‘emotion.’ Among its many interpretations is ‘generosity or sympathy toward the weak and disadvantaged, and empathy toward others.’”¹³⁴ Comparing the *Yakuza* to the samurai enhances their reputation because it shows that the group could combine compassion and kindness with ruthlessness in the criminal world.¹³⁵

B. Modern Organized Crime in Japan

The *Yakuza* had a firm grasp on the island of Japan and in the 1980s they went global.¹³⁶ “During Japan’s booming economy in the latter half of the 1980s, the *Yakuza*’s businesses and investments were extremely

123. Gragert, *supra* note 100, at 159.

124. *Id.*

125. Tuohy, *supra* note 88.

126. *Id.*

127. *Id.*

128. Johnson, *supra* note 121.

129. *Id.*

130. Gragert, *supra* note 100, at 168.

131. *Id.* at 168-69.

132. *Id.* at 169.

133. *Id.*

134. *Id.*

135. *Id.*

136. Tuohy, *supra* note 88.

profitable, and they were able to borrow substantial sums to finance real estate and high-finance deals."¹³⁷ The Japanese economy surrendered to the *Yakuza* the equivalent of the gross national product of Singapore, the Philippines, or Malaysia.¹³⁸ "With the exception of the Russian Mafia's looting of the former Soviet republics, it was the largest transfer of wealth to an underworld in modern history."¹³⁹

Currently, the *Yakuza* are involved in the stock market, real estate, and national politics.¹⁴⁰ The days when the *Yakuza* were confined to gambling dens, construction sites, and local neighborhoods are a distant memory.¹⁴¹ "Today in Japan, there are approximately 88,000 to 90,000 members in some 3,300 separate gangs."¹⁴² The *Yamaguchi-gumi* is the largest *Yakuza* syndicate in Japan with 30,000 members composing 944 gangs.¹⁴³ Their headquarters is in the port city of Kobe, where they hide behind a front company called the Association of Harbor Stevedoring Promotions.¹⁴⁴ In addition to the crimes mentioned above, the modern day *Yakuza* is involved in money laundering, smuggling, pornography, counterfeiting, extortion, prostitution, the sex slave trade, gambling, loan-sharking, boxing and sumo-wrestling.¹⁴⁵ However, "[t]he majority of their illegal income is derived from the sale of narcotics, especially amphetamines."¹⁴⁶ The *Yakuza* are also involved in legitimate businesses.¹⁴⁷ These businesses include video games, golf courses, trucking, waste disposal, security devices, bathhouses, restaurants, bars, hospitals, English schools, amusement parlors, and overseas investment.¹⁴⁸ "It is estimated that the *Yakuza* controls 7,000 shops, 5,000 restaurants, 4,500 money laundering operations, 2,300 bath houses, 2,500 bars, 600 property companies and 400 transport firms."¹⁴⁹ The *Yakuza* has implanted itself into the heart of Japan and it doesn't look like they are going to leave anytime soon.

137. Mary-Lea Cox, *The Dark Side of Japan*, available at <http://members.tripod.com/~orgcrime/japdarkside.htm> (last visited Feb. 13, 2002) [hereinafter *The Dark Side*].

138. *Id.*

139. *Id.*

140. *Id.*

141. *Id.*

142. Gragert, *supra* note 100, at 174.

143. *Id.*

144. *Id.* at 175.

145. *Id.*

146. *Id.*

147. *Id.*

148. Gragert, *supra* note 100, at 175.

149. *Id.*

C. *Japanese Legislation Aimed at Controlling the Yakuza*

Modern day Japan does not accept the practices of the *Yakuza* and in proving this sentiment, on March 1, 1992, the Japanese government passed the Act for Prevention of Unlawful Activities by Boryokudan Members.¹⁵⁰ "This act designates the term boryokudan as a group with more than a certain percentage of membership having a criminal record."¹⁵¹ In other words, the law allows police groups to categorize different groups as organized crime syndicates based on the proportion of convicted members.¹⁵² Additionally, the law calls for a crackdown on illegal gambling activities and nonviolent crimes such as extortion, and loan sharking.¹⁵³ The *Yakuza* have had a number of different reactions to the Boryokudan Countermeasures Law.¹⁵⁴

One faction of the *Yakuza*, the *Yamaguchi-gumi*, has taken the high road when Masaru Takumi, the largest gang's second-in-command, stated to members of the Hyogo police that his organization is not involved with violent groups.¹⁵⁵ "Our spirit is to help the weak and to fight evil," he told the police panel.¹⁵⁶ This faction of the *Yakuza* will challenge the constitutionality of the new law because they think that it violates a person's rights to free association and choice of profession.¹⁵⁷ "Rather than following the Yamaguchi-gumi lead, several other *Yakuza* groups simply have removed their heretofore prominently displayed signs and adopted a lower profile."¹⁵⁸ Other factions have registered with the government as corporations, naming the leader of the faction as chairman and providing a comical description of the purpose of the enterprise.¹⁵⁹ One Tokyo gang converted itself into a political association while another became a religious sect.¹⁶⁰ Another factor in the survival of the *Yakuza* in Japan is whether or not the ordinary Japanese citizen will continue to accept the existence of the organized crime group.¹⁶¹ "Traditionally, the

150. Johnson, *supra* note 121.

151. *Id.*

152. Gragert, *supra* note 100, at 198.

153. *Id.*

154. *More Eyes on Yakuza's Role in Japanese Economy*, available at <http://members.tripod.com/~orgcrime/japeconomy.htm> (last visited on Feb. 13, 2002) [hereinafter *Eyes*] (article originally appeared in the JAPAN ECON. INST. on May 8, 1992).

155. *Id.*

156. *Id.*

157. *Id.*

158. *Id.*

159. *Id.*

160. *Eyes*, *supra* note 154.

161. Gragert, *supra* note 100, at 200.

Japanese public has accepted the *Yakuza* to some degree as long as they stayed within the boundaries of prostitution, gambling, extortion, and did not commit acts of violence and robbery against the ordinary citizens.”¹⁶² The *Yakuza* of the modern world is beginning to break the rules that kept the ordinary citizens at bay because they are ever hungry for the acquisition of wealth and power.¹⁶³ The *Yakuza* represent a threat to the existence of peace and tranquility, if there really is such a thing, but they are not the only game in town.

VI. ORGANIZED CRIME SOUTH OF THE BORDER: MEXICO

The organized crime syndicate found in Mexico goes by the name “cartel.” Webster’s Dictionary defines cartel as “a combination of independent commercial or industrial enterprises designed to limit competition or fix prices.”¹⁶⁴ The Mexican cartels were established in response to a demand for drugs and human labor.¹⁶⁵ The development of the cartels in Mexico is a side effect of U.S. crackdowns on the Columbian drug lords.¹⁶⁶ The U.S. cracked down on the Caribbean and South Florida traditional trade routes that the Columbians used to transport drugs into the country, which caused a shift to Mexico.¹⁶⁷ The Columbians chose Mexico as their new transport center because it had a 2,000-mile border with the U.S., filled with difficult terrain that is hard to monitor as well as ideal for growing illegal crops.¹⁶⁸ In the beginning, the groups in Mexico only provided transportation of the drugs across the border.¹⁶⁹ These Mexican groups were affectionately called “mules” for Colombia’s powerful cocaine cartels.¹⁷⁰ The cocaine transported across the border

162. *Id.*

163. *Id.*

164. MERRIAM WEBSTER’S COLLEGIATE DICTIONARY 176 (10th ed. 1996).

165. CHRIS ESKRIDGE & BRANDON PAEPER, *The Mexican Cartels: A Challenge for the 21st Century*, in CRIMINAL ORGANIZATIONS Vol. 12(1/2) 5-15 (1998), available at <http://www.unl.edu/eskridge/cj395mexico.html> (last visited Feb. 13, 2002) [hereinafter ESKRIDGE].

166. Drug Enforcement Administration, U.S. Dept. of Justice, *Today’s Major Drug Trafficking Organizations in Mexico*, available at <http://www.usdoj.gov/dea/traffickers/mexico.htm> (last visited Feb. 13, 2002) [hereinafter *Traffickers*].

167. *Id.*

168. *Id.*

169. *Id.*

170. Steve Macko, *Today’s Mexican Drug Cartels*, available at <http://www.emergency.com/mexdrg97.htm> (last visited Feb. 13, 2002) [hereinafter Macko] (originally published in the EMERGENCY RESPONSE AND RESEARCH INSTITUTE DAILY INTELLIGENCE REPORT-ERRI Risk Assessment Services, Dec. 4, 1997, vol. 3-338).

would bring the Mexican groups \$1,500 to \$2,000, for each kilogram transported.¹⁷¹ "Today, Mexico's narcotics traffickers have grown into drug lords in their own right, and the front line of the drug war has shifted from the Andean jungles to America's front door."¹⁷² These new Mexican syndicates resemble the Columbian cartels in their infancy because they are participating in the same types of activities.¹⁷³ The Mexican cartels are consolidating power, gaining control of the media, and killing government officials.¹⁷⁴

A. *Transition of the Mexican Cartels from Boys to Men*

The Mexican cartels have been handed the ball in the game of drug trafficking and they have hit the ground running. The end of the 1980s marked the transition of the Mexican cartels from being a "whipping boy" to the proverbial "big kid on the block." "Traffickers from Mexico became more powerful; they could deliver drugs not just across the border, but had developed the ability to deliver anywhere in the United States."¹⁷⁵ The Mexican groups eventually worked out a payment program with the Columbians and were paid as much as 50 percent of the purchase price of the drugs they transported.¹⁷⁶

The CIA has stated that the Mexican cartels "use pagers, encrypted phones and fax machines to operate new distribution networks in America's heartland."¹⁷⁷ Up to 70 percent of cocaine that ends up on America's streets comes from Mexico.¹⁷⁸ One writer has argued that, "[p]erhaps as much as . . . 80 percent of the foreign-grown marijuana, 25 percent of the heroin, and 80 percent of the raw methamphetamine ingredients consumed in the United States enters by land from Mexico."¹⁷⁹

Violence is a major aspect of the Mexican cartel's makeup.¹⁸⁰ If one were to compare the Mexican cartels to other drug trafficking enterprises, it would be easy to see that they are similar in that they both use violence along with intimidation and corruption of public officials to advance their cause.¹⁸¹ There are many examples of the ruthlessness of the cartels

171. *Traffickers*, *supra* note 166.

172. *Macko*, *supra* note 170.

173. *ESKRIDGE*, *supra* note 165.

174. *Id.*

175. *Traffickers*, *supra* note 166.

176. *Id.*

177. *Macko*, *supra* note 170.

178. *Id.*

179. *ESKRIDGE*, *supra* note 165.

180. *Traffickers*, *supra* note 166.

181. *Id.*

including severe incidents in Baja, California and Tijuana, Mexico, where many people were murdered in the name of drug trafficking.¹⁸² The groups in Mexico are a dangerous force and are growing increasingly powerful.

B. How the Mexican Cartels Operate

The Mexican cartels operate in a way that protects them from international law enforcement.¹⁸³ "By maintaining their headquarters in foreign countries and conducting all the details of their business in a protected environment, the heads of organized criminal drug trafficking organizations in Mexico have been able . . . to avoid arrest in the United States."¹⁸⁴ Each day, the Mexican bosses, situated in Mexico, arrange transactions with their loyal employees located in certain areas of the United States.¹⁸⁵ These employees carryout the orders of the bosses with an eye for detail, following the instructions with exactness.¹⁸⁶

There are four primary Mexican syndicates involved in the drug trade that have international capabilities.¹⁸⁷ First, there is the Gulf Cartel, which is based in south Texas and Tamualipas, Mexico, and controls the areas surrounding the Gulf of Mexico.¹⁸⁸ This group was run by Juan Garcia-Abrego until his arrest in 1996.¹⁸⁹ To say that the drug business is very lucrative is an understatement. At the time of Abrego's arrest, he was worth around \$15 billion, with assets including hotels, real estate, construction firms, and lumber companies.¹⁹⁰ The second group that has international capabilities is the Juarez Cartel, which controls the middle area of the Mexican-U.S. border.¹⁹¹ The third group is known as the Tijuana Cartel, which "has the potential to be the most powerful of" all the cartels.¹⁹² The Tijuana cartel also goes by the name Arellano-Felix Brothers Organization (AFO).¹⁹³ "The AFO is responsible for the transportation, importation, and distribution, of multi-ton quantities of cocaine and marijuana, as well as large quantities of heroin and

182. *Id.*

183. *Id.*

184. *Id.*

185. *Id.*

186. *Traffickers*, *supra* note 166.

187. *ESKRIDGE*, *supra* note 165.

188. *Id.*

189. *Id.*

190. *Id.*

191. *Id.*

192. *Id.*

193. *Traffickers*, *supra* note 166.

methamphetamine.”¹⁹⁴ The fourth group is named the Herrera Family and is based in the city of Durango, which is in the State of Durango.¹⁹⁵ This group is more like an old-fashioned Mafioso family with most of its members being related by blood or marriage, which makes them hard to stop.¹⁹⁶ This group supplies America with “Mexican Mud” (brown heroin), which is a shift away from the traditionally popular white powder.¹⁹⁷ The reason why these groups have international appeal is because they make tremendous amounts of money, which allows them to operate beyond the confines of their own border.

VII. THE CHINESE TRIADS

China has an ever-growing population and the fact that organized crime exists in that country should come as no surprise. The Triad groups, which have been in existence for thousands of years, infiltrate any area that holds Chinese people.¹⁹⁸ The Chinese version of organized crime has a long and varied history.¹⁹⁹ “Their origins are shrouded in legend: some say they originated centuries ago in China as legitimate underground opposition groups, resisting the tyranny of the imperial court and clinging to secrecy to protect against imperial agents.”²⁰⁰ Others say that the Triads date back to the times of Christ.²⁰¹ One Triad group, called the Red Eyebrows, tried to overthrow the Han dynasty from 206 B.C. to 220 A.D.²⁰²

Even though there is a long history involving the Triads, the modern-day Triads evolved from a group called the “Hung League,” that was established in the seventeenth century by monks who wanted to remove the Chi’ing-dynasty and restore the Ming-dynasty to power.²⁰³ “During the 18th and 19th centuries, there were many new secret Chinese societies

194. *Id.*

195. ESKRIDGE, *supra* note 165.

196. *Id.*

197. *Id.*

198. Steve Macko, *Chinese Triads; An Update*, available at <http://www.emergency.com/chi-tria.htm> (last visited Feb. 13, 2002) [hereinafter *Chinese Triads*] (originally published in the EMERGENCY RESPONSE AND RESEARCH INSTITUTE DAILY INTELLIGENCE REPORT- EmergencyNet NEWS Service, Dec. 23, 1997, vol. 1-357).

199. Magnus Kjellin, *The Triads of Hong Kong*, available at <http://www.hhs.se/eijs/anomaly/hkTriads.htm> (last visited Feb. 13, 2002) [hereinafter *Hong Kong*].

200. *The Triads*, at <http://www.rpaznsw.com/Triads.htm> (last visited Feb. 13, 2002) (on file with author) [hereinafter *Triads*].

201. *Hong Kong*, *supra* note 199.

202. *Id.*

203. *Id.*

founded, but they were not concerned as much in overthrowing the ruler as in terrorizing and robbing citizens.”²⁰⁴ The many different groups that were created in the 18th and 19th century are prevalent today because there are many Triad groups operating in Asia.²⁰⁵ To become a part of a Triad group, prospective members were required to give blood oaths and pledge a vow of secrecy.²⁰⁶ During the 20th century, the Triads infiltrated Hong Kong and quickly took control of the underworld.²⁰⁷ These groups are “[r]eputed to be among the most dangerous of organized crime organizations”²⁰⁸

A. *The Organization and Operations of the Modern Triads*

Money is the goal of the modern-day Triads and they will do almost anything to make it.²⁰⁹ The main enterprises for the Triads are extortion, drug trafficking, loan-sharking, and credit card fraud.²¹⁰ The Triads also control local bus routes, fish and produce markets and karaoke bars.²¹¹ The Chinese Triads are also involved in smuggling human cargo and prostitution rings.²¹² Like the situation in Russia, the fall of state control over day-to-day activities has provided the underworld an unfettered playground to build their moneymaking schemes.²¹³ The groups today, however, are not as organized or focused as they were throughout history.²¹⁴ Today, “[t]he Triad member is nothing more than a run-of-the-mill hoodlum masquerading in the name of a long dead giant.”²¹⁵ However, one should not count the Triads out just yet. To show the significance and growing presence of the Triads, one needs to look only so far as the White House.²¹⁶ Former president Bill Clinton was involved in a fundraising controversy because a major Democratic contributor was Ng Lapseng, confirmed by the CIA as a member of the Chinese Triads.²¹⁷ Ng

204. *Id.*

205. *Chinese Triads, supra* note 198.

206. *Triads, supra* note 200.

207. *Hong Kong, supra* note 199.

208. *Chinese Triads, supra* note 198.

209. *Hong Kong, supra* note 199.

210. *Id.*

211. *Chinese Triads, supra* note 198.

212. *Triads, supra* note 200.

213. *Chinese Triads, supra* note 198.

214. *Hong Kong, supra* note 199.

215. *Triads, supra* note 200.

216. *See id.*

217. *Id.*

Lapseng went as far as being photographed with the former president of the United States.²¹⁸

B. What is China Doing About the Triads?

The Triads have become increasingly involved in activities outside the Chinese borders.²¹⁹ In Hong Kong, there have been many actions taken to combat the problem.²²⁰ For example, more people have been added to the Chinese police force, especially in the areas of organized crime.²²¹ "Increased police presence on Hong Kong's streets has yielded encouraging results in lowering the rate of violent crimes."²²² The Chinese government has also increased the size of their prison system allowing for an enlarged holding capacity.²²³ Chinese officials admit that improvements along with anti-crime laws have been successful in combating the Triads.²²⁴ However, these improvements have done little to alter the Triads' international criminal activities and they are becoming an expanding international power.

VIII. THE AMERICAN MAFIA: DOWNFALL OF A GREAT FAMILY

The Mafia in New York City used to be a deep dark secret, but lately it has provided the themes and plots for many movies in Hollywood. Organized crime in the U.S. received a great boost from prohibition, which was a time when alcohol was illegal in America.²²⁵ However, before prohibition there was a growing crime syndicate that originated in New York City.²²⁶ In fact, organized crime has been around in the U.S. since the time of George Washington.²²⁷ Organized crime came into the U.S. since the beginning of its existence with the creation of Tammany Hall in 1789.²²⁸ "Originally a patriotic, social, and benevolent organization in

218. *Id.*

219. *Hong Kong, supra* note 199.

220. *Id.*

221. *Id.*

222. *Id.*

223. *Id.*

224. *Chinese Triads, supra* note 198.

225. Kirby Ferris, *How to Defeat Organized Crime*, available at <http://members.tripod.com/~orgcrime/defeatoc.htm> (last visited Feb. 13, 2002) (originally published in the THE COASTAL POST on Apr. 1997).

226. See Mario Machi, *New York-New Jersey*, at http://www.americanMafia.com/Cities/New_York_New_Jersey.html (last visited Feb. 13, 2002) [hereinafter Machi].

227. PETERSON, *supra* note 1, at xii.

228. *Id.*

partisan politics and objectives, Tammany Hall soon became enmeshed in partisan politics and its very name became a symbol of corruption throughout the world.²²⁹ Although Tammany Hall was an institution of political corruption, it laid the foundation for organized crime groups to gain protection from law enforcement activities.²³⁰ Because of Tammany Hall and the development of groups that would use the corrupted political engine, New York City was the perfect breeding ground for crime syndicates that would emerge during the immigration period, especially as it related to the Italian immigrants.

A. *What is This Thing Called "La Cosa Nostra"?*

The concept of *La Cosa Nostra* was the best-kept secret of the Italian Mafia until 1963.²³¹ This catchy phrase means "our thing," and it became part of the public record in 1963, when Joseph Valachi testified before the U.S. Senate on the subject of organized crime.²³² Elaborate initiation rites that included the holding of burning paper, blood oaths, vows of secrecy, and the designation of a godfather, govern membership in *La Cosa Nostra*.²³³ Like any other organized group there is a hierarchy of power inside *La Cosa Nostra*, with the so-called *solider* at the bottom of the totem poll.²³⁴ *La Cosa Nostra* did not originate in New York; in fact, its origins were thousands of miles away.

Opinions on the origins of the Mafia vary from historian to historian because of the ancient history associated with the area of the world known today as Italy. A major theory states that the Mafia was born in the ninth century when Sicily was occupied by Arab forces.²³⁵ "The Sicilians formed a secret society, to unite the natives against the Arabs, . . . [w]hich was called Mafia after the Arabic word for refuge."²³⁶ The main goal of the group was to unify the Sicilians thereby creating a sense of family based on their heritage.²³⁷ Members of the secret society were required to take an oath that they affectionately called the *Omerta*, which meant code of

229. *Id.*

230. *See id.*

231. *See id.* at 360.

232. *Id.*

233. PETERSON, *supra* note 1, at 371.

234. *Id.*

235. *Omerta? The History of the American Mafia*, at <http://users.aol.com/whizkid01/hist.html> (last visited Feb. 13, 2002) [hereinafter *Omerta*].

236. *Id.*

237. *History of the Mafia*, available at <http://www.Mafiamob.com/history.htm> (last visited Feb. 13, 2002) [hereinafter *History of Mafia*].

silence.²³⁸ This code included the following: a vow never to reveal any organization secrets, a total obedience to the leader of the group, a vow to give assistance to any Mafia faction, a vow to “[a]venge any attack on members of the” group, and to “[a]void any and all contact with the authorities.”²³⁹ In the 1700s, the group had grown to such a powerful level that they would pass a picture of a black hand around to the wealthy in Sicily, which was an unspoken request for money in return for protection from kidnappings and murder.²⁴⁰ By the 19th century, the secret society became very powerful and infiltrated political offices, enabling them to gain access to large quantities of money.²⁴¹

The 20th century marks the birth of the Mafia in the United States.²⁴² In 1901, Vito Cascio Ferro, the man known as the Father of the American Mafia, fled Sicily as a fugitive and came to the land of the free.²⁴³ Ferro is arguably the man primarily responsible for the communication link between the Sicilian and U.S. Mafias.²⁴⁴ With the backing of a prominent Mafia family, he established himself as an efficient Mafia member.²⁴⁵ After setting the foundation in the U.S., Ferro got himself into trouble and had to flee to the country from which he came, where he became the head of the Mafia families.²⁴⁶ More Mafia members immigrated to the U.S. in the 1920s when Mussolini started to crack down on the Mafia in Sicily.²⁴⁷ “The Mafia saw lucrative opportunities in the United States.”²⁴⁸ The early 1900s marked a rapid expansion of the Sicilian Mafia throughout the U.S.²⁴⁹ Every major city had its own Mafia family, who would concentrate its efforts on protection rackets.²⁵⁰ Prohibition has been described as the

238. *History of the Mafia*, at <http://www.alleged-Mafia-site.com/history.htm> (last visited Feb. 13, 2002) [hereinafter *History*].

239. *Id.*

240. *Omerta*, *supra* note 235.

241. *See History*, *supra* note 238.

242. *Omerta*, *supra* note 235.

243. *Id.*

244. *Vito Cascio Ferro* (2001), at <http://www.murderinc.com/fam/ferro.html> (last visited Feb. 13, 2002).

245. *Id.*

246. *Id.* Vito Cascio Ferro was suspected of a brutal killing. The man was stabbed, chopped to pieces and stuffed into a barrel with his genitalia stuffed in his mouth. At first, Ferro fled to New Orleans, but because of police pressure he was forced to return to Sicily. *Id.*

247. *History of Mafia*, *supra* note 237.

248. *Id.*

249. *See id.*

250. *Id.*

growth spurt of the Mafia in the U.S.²⁵¹ The 1920s marked a turning point in the U.S. Mafia, which shaped and structured the famous organization.

In 1927, Salvatore Maranzano was sent to the U.S. with orders from the Father of the American Mafia, Vito Cascio Ferro, to take control of the underworld.²⁵² Salvatore was from Castellemmare del Gulfo in Sicily, where, at one time, he studied to be a priest.²⁵³ Unfortunately, or fortunately, depending on what side you are on, Salvatore gave up the quest for the cloth and settled on a life of crime.²⁵⁴ When Salvatore arrived in New York, there was already someone in charge of the underworld—his name was Joe “The Boss” Masseria.²⁵⁵ Masseria was one of the original members of the Mafia and he took exception to Salvatore moving in on his territory.²⁵⁶ Masseria started an all out war with Salvatore, which became known as The Castellemmarese War.²⁵⁷ On the side of Masseria were the likes of Charlie “Lucky” Luciano, Frank Costello, Joe Adonis, Vito Genovese, Albert Anastasia, Carlo Gambino, and Willi Moretti, who were the almighty of the Mafia underworld.²⁵⁸ Salvatore knew that he had to win over some of Masseria’s men, so he went after the young and ambitious Charlie Luciano.²⁵⁹ When Luciano refused, Salvatore had him beaten and cut up, leaving him for dead.²⁶⁰ Luciano survived the attack and earned the nickname “Lucky.”²⁶¹

To win the war, Salvatore would have to get rid of Masseria and, ironically, Lucky Luciano would be the one to execute that plan.²⁶² On April 15, 1931, Luciano took Masseria to his favorite restaurant in Coney Island—Nuova Villa Tammaro.²⁶³ After dinner, Lucky excused himself to the restroom giving the signal for the four gunmen to enter the restaurant

251. *Id.*

252. *Salvatore Maranzano* (2001), at <http://www.murderinc.com/fam/maranz.html> (last visited Feb. 13, 2002).

253. *Id.*

254. *See id.*

255. *Id.*

256. *See The Castellemmarese War* (2001), at <http://www.murderinc.com/fam/castwar.html> (last visited Feb. 13, 2002).

257. *See id.*

258. *Id.*

259. *Id.*

260. *Id.*

261. *Id.*

262. *The Castellemmarese War*, *supra* note 256.

263. *Giuseppe Masseria* (2001), at <http://www.murderinc.com/fam/masseria.html> (last visited Feb. 13, 2002).

and kill Joe Masseria.²⁶⁴ Following the death of Masseria, Salvatore called a meeting for the families across the country to come to New York.²⁶⁵ Over 500 Mafia members appeared at this meeting where Salvatore declared himself the leader of organized crime in America.²⁶⁶ This meeting detailed how the Mafia was going to be organized.²⁶⁷ Salvatore instituted the beginnings of a commission and created five families, which included: Joseph Bonnano, Vincent Mangano, Charlie Luciano, Joseph Profaci and Tom Gagliano.²⁶⁸ Salvatore became power hungry and turned on the men who brought him his success, thereby bringing about his own death.²⁶⁹ Lucky Luciano, along with other help, “put into place the foundation of the commission as it exists today.”²⁷⁰ “The five families would continue to exist, but they would not answer directly to Luciano, . . . instead they would act as a board of trustees.”²⁷¹ For the first time, a national crime syndicate came into existence under one command because of Luciano.²⁷² The commission would be the head of the different families that would make decisions on the operations of each sect, separation of power and territory, and other Mafia interests in legal businesses.²⁷³

At the conclusion of World War II, the Mafia’s reach delved into almost all areas of business in America.²⁷⁴ “Not only did the bosses control the criminal rackets, they also ventured out into legitimate businesses, partially to make more money, but mostly to launder the illegal millions

264. *Id.* The four gunmen were “Vito Genovese, Joe Adonis, Albert Anastasia and Bugsy Siegel.” *Id.* It was rumored that Albert Anastasia gained great recognition for this assassination because he fired the fatal shot through the back of Masseria’s head. *The Castellemmarese War*, *supra* note 256.

265. *The Castellemmarese War*, *supra* note 256.

266. *Id.*

267. *Mafia History*, at <http://www.Mafiasite.8m.com/cgi-bin/framed/2379/history.htm> (last visited Feb. 13, 2002).

268. *The Commission, A.K.A.: The Syndicate, Cosa Nostra* (2001), available at <http://www.murderinc.com/fam/commiss.html> (last visited Feb. 13, 2002) [hereinafter *The Commission*].

269. *Id.*

270. *Id.*

271. *Id.* Lucky Luciano grew to be a very powerful man both in the U.S. and in Sicily. *Omerta*, *supra* note 235. The height of his power is best illustrated by describing the events that occurred after his 50-year sentence for extortion and prostitution. The U.S. government approached Lucky Luciano during World War II and offered him a deal in which he would be deported to Italy and not have to serve out his sentence if he would assist in the Allied invasion of Sicily. *Id.*

272. *History*, *supra* note 238.

273. *The Commission*, *supra* note 268.

274. *History*, *supra* note 238.

coming in from their rackets.²⁷⁵ The Mafia was also involved in the labor unions because doing so extended their control over legitimate businesses, and increased their influence in the political arena.²⁷⁶ The five families that were created by Masseria are still around today and the evolution is as follows: Luciano's gang eventually became the Genovese family; the Mangano gang became the Gambino family; the Gagliano gang became the Lucchese family; Maranzano's gang became the Bonanno family; and finally the Profaci gang became the Colombo family.²⁷⁷ The Mafia in the U.S. has had a long and varied history, but, as everyone knows, good times can't last forever.

B. The United States v. La Cosa Nostra

The U.S. Mafia has had a rough time with the overwhelming pressure that the government has placed upon them.

The "old-time" bosses governing every American city where there has been a Mafia presence since before the turn of the last century are either imprisoned, dead, or in exile as a result of sweeping Racketeer Influenced and Corrupt Organizations legislation, and the combined efforts of eighteen regional "strike forces" established between January 1967 and April 1971 under the auspices of the Organized Crime and Racketeering Section within the criminal division of the U.S. Justice Department.²⁷⁸

The U.S. has come a long way from the days when J. Edgar Hoover denied the existence of the so-called *La Cosa Nostra*.²⁷⁹ From 1993 to 1996, the U.S. Department of Justice, in Operation Button Down, prosecuted 42 top-level mob figures in seven major cities around the country.²⁸⁰ The U.S. has been successful at battling organized crime on the home front; some might say that they have been too successful because organized crime syndicates from other countries have replaced the void left by the ailing Sicilian Mafia.

275. *Id.*

276. *Id.*

277. *Mafia History*, *supra* note 267.

278. Richard C. Lindberg, *The Mafia in America: Traditional Organized Crime in Transition, An Overview of Current Conditions* (2001), available at <http://www.search-international.com/Articles/crime/Mafiaamerica.htm> (last visited Feb. 13, 2002).

279. *Id.*

280. *Id.*

IX. INTERNATIONAL CRIME CONTROL EFFORTS

Why is the concept of organized crime troubling to so many people? “[A] new poll shows that Americans now find the prospect of nuclear terrorism among the most likely and frightening outcomes of the post-Cold War era.”²⁸¹ The new global cartels are capable of buying entire governments, controlling trading zones, and hiding bought or stolen weapons of mass destruction.²⁸² Recent empirical studies have generated information confirming that the international narcotics trade has generated over \$400 billion of profits, which is the equivalent of 8% of the world economy.²⁸³ Organized crime groups have jumped into the political arena and are controlling the laws that were supposed to be created to curb crime.²⁸⁴ They will be able to do whatever they want to do, whenever they want to do it, unless the countries of the world come together to fight the ensuing problem.²⁸⁵ The U.S. has taken the initial steps at controlling the international crime problem. “We seek a climate where the global economy and open trade are growing, where democratic norms and respect for human rights are increasingly accepted and where terrorism, drug trafficking and international crime do not undermine stability and peaceful relations.”²⁸⁶

A. America's Response to International Organized Crime

The U.S. sees the problem of transnational organized crime as a serious threat to America's prosperity.²⁸⁷ The impact of international crime is felt directly in the heart of the U.S. Former President Bill Clinton stated:

In our own country, international crime threatens the lives of ordinary citizens in many harmful ways. Foreign drug cartels traffick [sic] in heroin and cocaine that poison our young people. They smuggle aliens across our borders for indentured servitude in sweatshops. They steal and modify luxury cars for resale in other countries. Some international criminals prey on the elderly, deceiving them into entrusting their savings to fraudulent, investment schemes. Others infiltrate American companies, stealing valuable business secrets and turning them to profit

281. *Hearings 2*, *supra* note 55, at 1.

282. *Id.* at 2.

283. *Id.* at 4.

284. *Id.* at 4-5.

285. *Id.*

286. *International Crime Control Strategy*, *supra* note 15, at 1.

287. *Id.*

abroad . . . [i]n short, international crime today is more than a law enforcement problem. It is a formidable threat to America's security and it demands a concerted response.²⁸⁸

As a result of the U.S. efforts, the FBI has identified organized crime groups in Russia, Asia, Africa, and other far off countries that are starting to operate intensely in the United States.²⁸⁹ In addition, the White House has developed an international crime control strategy that consists of eight different steps.²⁹⁰ Step one involves extending the line of defense beyond the U.S. borders, which includes: preventing international crimes planned abroad; using all available legislation to prosecute criminal acts that occur outside the U.S.; and increasing U.S. law enforcement, diplomatic, and consular personnel in foreign countries.²⁹¹ Step two provides that the U.S. should protect its borders by clamping down on smuggling crimes.²⁹² To accomplish this goal, the White House has stated that the U.S. should "[e]nhance our land border inspection, detection and monitoring capabilities through a greater resource commitment, further coordination of federal agency efforts, and increased cooperation with the private sector."²⁹³ The third step in the plan is to deny haven to international criminals, which involves negotiating new agreements with other countries that would create a vacuum where international criminals are held for extradition.²⁹⁴ A fourth step is to counter international financial crime which includes denying criminals the access to financial institutions, seizing the assets of international criminals, and working with foreign governments to update anti-money laundering techniques.²⁹⁵ Step five is to prevent criminal exploitation of international trade by increasing cooperation from the private sector, preventing predatory trade practices, enhancing the copyright and patent laws in different countries, and by enforcing import restrictions.²⁹⁶ Step six is to respond to emerging international crime threats by disrupting new activities by crime groups, enhancing intelligence efforts and information gathering against crime groups, and by trying to stay ahead of the criminals in the use of new

288. *Id.* at i (President Clinton's letter of transmittal).

289. *Hearings 2, supra* note 55, at 4.

290. International Crime Control Strategy, *supra* note 15, at 1.

291. *Id.* at 12.

292. *Id.*

293. *Id.*

294. *Id.*

295. *Id.*

296. International Crime Control Strategy, *supra* note 15, at 13.

technology.²⁹⁷ Step seven is to foster international cooperation with the rule of law by establishing standards, goals and objectives to combat international crime, increasing the amount of training that international law enforcement receives, and by strengthening the rule of law.²⁹⁸ Finally, in step eight, the White House's plan is to optimize the full range of U.S. efforts by enhancing executive branch policy, bringing the private sector into U.S. government efforts, and by developing a checks and balances system to monitor progress.²⁹⁹ These are major steps by the U.S. government to control international organized crime, but since September 11th, the U.S. has gone even further.

The latest attempt by the U.S. to control international crime occurred when the U.S. legislature passed the Patriot Act of 2001. This legislation is aimed at enhancing domestic security against terrorism, enhancing surveillance procedures, combating international money laundering, protecting the borders, removing the obstacles to investigating terrorism, increasing information sharing between countries, and strengthening the criminal laws against terrorism.³⁰⁰ This new legislation is a bold step by the U.S., but it is clearly warranted after the events of September 11th. This legislation, along with the efforts by the rest of the world, should have a tremendous impact on the world of organized crime.

B. International Attempts to Control Organized Crime

The international community has had enough of the transnational organized crime syndicates and they are beginning to fight back. For example, the presidents of Ukraine, the Republic of Moldova, and Romania gave a statement on cooperation in fighting transnational crime syndicates at Izmail on July 4, 1997.³⁰¹ The statement calls for the following innovations:

[t]he coordination of national legislation combating organized crime and terrorism, the intensification of measures to combat illegal trafficking in arms, narcotic drugs and psychotropic substances, the enhancement of measures to fight crime in foreign commercial

297. *Id.*

298. *Id.*

299. *Id.*

300. Uniting and Strengthening of America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (Oct. 25, 2001), H.R. 3162, 107th Cong., 1st Sess., available at www.eff.org/Privacy/Surveillance/Terrorism_militias/20011025_hr3162_usa_patriot_bill.html (last visited Mar. 27, 2002).

301. *The Moldova-Romania-Ukraine Statements on Cooperation in Combating Organized Crime and on Trilateral Cooperation and the Protocol on Trilateral Cooperation*, 36 I.L.M. 1414 (1997).

transactions, taxation, and illegal migration, the training of personnel and the exchange of information, and the establishment of mechanisms for cooperation among law-enforcement bodies at the state and local levels.³⁰²

The agreement provides that the countries will work together to provide collaboration in areas such as politics, finances, economics, and border issues.³⁰³ Finally, this agreement states that they will institute trilateral assistance in the areas of management, culture, education, environment, and organized crime.³⁰⁴

Another example of international efforts to control organized crime comes from Hong Kong. Hong Kong signed a treaty with the United States on April 15, 1997.³⁰⁵ Article One of the treaty states that the parties shall help each other in all aspects of criminal matters including: evidentiary and testimonial matters, execution of request for searches and seizures, and confiscation of instrumentalities of a crime.³⁰⁶ The treaty establishes a central authority in each country so that communications and requests can be centralized to one locale or office.³⁰⁷ In short, the treaty provides the foundation that the two countries can use to interact with each other in order to combat the problem of organized crime. The problem of ill communication and lack of uniformity between the different countries concerning the enforcement of criminal laws has been a thorn in the side of people trying to combat the problem.

In an attempt to mend this problem, the U.S. and Thailand have created an International Law Enforcement Academy.³⁰⁸ The treaty states that the objectives of the Academy shall be to build up the criminal justice system in Asia, and to bring solidarity to the region.³⁰⁹ The Law Enforcement Academy will train its officers to combat transnational crime including drug trafficking, people smuggling, money laundering, and cyber crime.³¹⁰ An executive director from Thailand and a program director

302. *Id.*

303. *Id.*

304. *Id.*

305. Agreement With Hong Kong on Mutual Legal Assistance in Criminal Matters, with Annex, Apr. 15, 1997, U.S.-Hong Kong, *available at* 1997 WL 258655.

306. *Id.* at 11-12.

307. *Id.* at 12.

308. Agreement Between the Government of the United States of America and the Royal Thai Government Concerning an International Law Enforcement Academy, Sept. 30, 1998, U.S.-Thailand, *available at* 1998 WL 830204.

309. *Id.* at 1.

310. *Id.*

from the United States will head the academy.³¹¹ The directors will oversee the monetary and budgeting needs of the institution.³¹² A joint committee will conduct annual evaluations to ensure that the policies of the academy are being upheld and will supervise everyday operations of the academy.³¹³ Another example of countries taking a step toward combating organized crime occurred in November of 1997.

In November of 1997, the U.S. entered into an agreement with many Latin and South American countries to combat illicit manufacturing and trafficking of firearms, ammunition, and explosives.³¹⁴ The countries entered into the agreement because "of the urgent need to prevent, combat, and eradicate the illicit manufacturing and trafficking in firearms, ammunition, explosives, and other related materials, due to the harmful effects of these activities on the security of each state and the region as a whole, endangering the well-being of peoples . . ."³¹⁵ There were many attempts at combating international crime, but the most important move toward controlling organized crime was created at a United Nations Convention.

In November of 2000, the United Nations took a giant step towards the elimination of international organized crime by creating a resolution entitled the United Nations Convention Against Transnational Organized Crime.³¹⁶ This Convention was discussed previously in this comment in illustrating the existence of international organized crime. "The purpose of this convention is to promote cooperation to prevent and combat transnational organized crime more effectively."³¹⁷ The Convention came out of a committee that was created in December of 1998 for the purpose of "elaborating a comprehensive international convention against transnational organized crime. . . ."³¹⁸ One of the main goals of the Convention was to bring about a uniform criminal code that would make

311. *Id.* at 2.

312. *Id.*

313. *Id.* at 1-2.

314. Organization of American States: Inter-American Convention Against the Illicit Manufacturing of and Trafficking in Firearms, Ammunition, Explosives, and Other Related Materials, Nov. 14, 1997, 37 I.L.M. 143 (1998).

315. *Id.* at 145.

316. *Crime Prevention and Criminal Justice: Report of the Ad Hoc Committee on the Elaboration of a Convention Against Transnational Organized Crime on the Work of its First to Eleventh Sessions*, U.N. GAOR Ad Hoc Comm., 55th Sess., Agenda Item 105, at 1, U.N. Doc. A/55/383 (2000) [hereinafter U.N. GAOR].

317. *Id.* at 25.

318. *Id.* at 22.

certain activities crimes in each country.³¹⁹ The committee is strongly convinced that the Convention will be successful because it will provide the necessary legal framework for international cooperation.³²⁰ The committee recommends that all the countries of the world recognize the relationship between transnational organized crime and acts of terrorism, and to apply this treaty to all forms of criminal activity.³²¹

The Convention is aimed at building a bridge between countries, but at the same time it has provisions within it that protect the states' sovereignty. The Convention will apply to crimes that are transnational in nature.³²² The Convention defines transnational crime as any one of the following descriptions:

- (a) It is committed in more than one State;
- (b) It is committed in one State but a substantial part of its preparation, planning, direction or control takes place in another State;
- (c) It is committed in one State but involves an organized criminal group that engages in criminal activities in more than one State; or
- (d) It is committed in one State but has substantial effects in another State.³²³

While defining what transnational crime means for each country, the Convention also has provisions that protect each states' sovereignty. For example, Article Four states: "[n]othing in this Convention entitles a State Party to undertake in the territory or another State the exercise of jurisdiction and performance of functions that are reserved exclusively for the authorities of that other State by its domestic law."³²⁴ The Convention is a very important key in the fight against international organized crime.

The first category of crimes that the U.N. addressed concerned the criminalization of participation in an organized crime group.³²⁵ The Convention stated that the following would meet the definition of participating in an organized crime group:

319. *Id.* at 27.

320. *Id.* at 23.

321. *Id.* at 24.

322. U.N. GAOR, *supra* note 316, at 26, art. 3 § 1(b).

323. *Id.* art. 3 § 2.

324. *Id.* art. 4 § 2.

325. *Id.* at 27, art. 5 § 1.

Agreeing with one or more other persons to commit a serious crime for a purpose relating directly or indirectly to the obtaining of a financial or other material benefit and, where required by domestic law, involving an act undertaken by one of the participants in furtherance of the agreement or involving an organized criminal group.³²⁶

Next, the U.N. wanted to provide uniformity in the prosecution of laundering proceeds of a crime.³²⁷ When committed intentionally, the change or reallocation “of property, knowing that such property is the proceeds of crime, for the purpose of concealing or disguising the illicit origin of the property or of helping any person who is involved in the commission of the predicate offence to evade the legal consequences of his or her action.”³²⁸ The U. N. has also developed a way to combat the problem of money laundering.³²⁹ One of a number of steps that each country will have to take states that they shall:

Institute a comprehensive domestic regulatory and supervisory regime for banks and non-bank financial institutions and, where appropriate, other bodies particularly susceptible to money-laundering, within its competence, in order to deter and detect all forms of money-laundering, which regime shall emphasize requirements for customer identification, record-keeping and the reporting of suspicious transactions.³³⁰

The Convention goes on to criminalize corruption when it states that bribing a public official so that they will not act or will refrain from acting in their official duties or accepting bribes by public officials to not act in their official capacity will be against the law.³³¹

A very important article in the Convention deals with prosecution of the criminals. First, Article XI states that “[e]ach State Party shall make the commission of an offence established . . . liable to sanctions that take into account the gravity of that offence.”³³² The Convention goes on to say that laws created to prevent and punish the breaking of laws shall be maximized to the fullest in the punishment of organized crime participants.³³³ In the remaining sections of Article XI, the Convention

326. *Id.* art. 5 § 1(a)(i).

327. *Id.* art. 6 § 1.

328. U. N. GAOR, *supra* note 316, at 27, art. 6 § 1(a)(i).

329. *Id.* at 28, art. 7 § 1(a).

330. *Id.*

331. *Id.* at 29, art. 8 § 1(a), (b).

332. *Id.* at 30, art. 11 § 1.

333. *Id.* art. 11 § 2.

clamps down on lenient court systems and states that each country should prosecute the criminals with a regard for the seriousness of the crime.³³⁴

The Convention calls for many efforts on the part of its participants that will put a huge damper on transnational organized crime. For instance, Article XII deals with confiscation and seizure.³³⁵ The Convention provides that each country shall create legislation allowing for the confiscation of proceeds of a crime, or property equipment, or other instrumentalities of a transnational crime.³³⁶ Finally, the Convention calls for the most important weapon of all—extradition.³³⁷

The U.N. Convention Against Transnational Organized Crime calls for the countries involved to adopt an extradition policy in which criminals who commit crimes in other countries can be punished for their actions if the crime they commit is against the law in their own country.³³⁸ Extradition is an important feature of the new weapon against organized crime because it provides that criminals will no longer be able to hide behind the borders of their country to escape prosecution for crimes that they commit abroad. The extradition provision states that there has to be a permissible reason for the extradition request, which means that a country cannot go after a particular individual for political or religious opinions.³³⁹

Another important aspect of the Convention, is that it provides that a criminal record will be put into place so that countries can accurately develop a criminal history of organized crime members.³⁴⁰ The Convention also provides for the protection of witnesses. "Each . . . Party shall take appropriate measures within its means to provide effective protection from potential retaliation or intimidation for witnesses in criminal proceedings who give testimony concerning offences covered by this Convention. . . ."³⁴¹ The Convention is a step in the right direction; time will tell if the steps taken are the necessary ones in the fight to create a civilized global community where the law is supreme.

334. U.N. GAOR, *supra* note 316, at 30-31, art. 11 §§ 3-6.

335. *Id.* at 31, art. 12.

336. *Id.* art. 12 § 1 (a), (b).

337. *Id.* at 35, art. 16 § 1.

338. *Id.* art. 16 § 1.

339. *Id.* art. 16.

340. U. N. GAOR, *supra* note 316, at 43, art. 22.

341. *Id.* art. 24 § 1.

X. CONCLUSION

The days of isolation and taking care of one's own country are history because of the emerging international crime scene. Crime exists everywhere and to believe that it is an isolated problem that should be left to other countries to handle is naive, and only perpetuates the problem. The organized crime syndicates of the world no longer stay within their borders to commit crimes; they branch out to other avenues and are becoming bolder in their pursuit. The organized crime groups that have been mentioned above are just a handful of the groups that exist today. There are crime syndicates in Canada, India, Africa, England, and many other countries around the world. Why are the crime syndicates spreading like wildfire around the globe? One reason is that the development of technology has allowed crime groups to take advantage of criminal opportunities in different countries. Another reason is that the countries in which the organized crime groups originate do not have the judicial capability to control the influx of advanced criminal activity. The reasons for the development of international organized crime are varied, but the main concern with the international issue is that these groups do exist and they pose a serious threat to the welfare of the people around them.

The organized crime syndicates of Mexico are strikingly different than the organized crime groups of Japan, China, Russia, and the U.S. in that the Mexican Cartels have a short history, which was ignited by the U.S. action against the Columbians. On the other hand, the Mexican Cartels are very similar to the other crime groups in that they are very violent and break the law to make money. With all of the differences that are evident from the different crime groups, there is one thing that remains the same: all the groups delve into illegal activities to make the "all-important" dollar. All groups are present in civilized communities with legal systems that are substantially advanced in their own right.

With all of the talk of organized crime groups and worldwide crime syndicates, one would think that nothing is being done. However, this could not be further from the truth in light of the recent United Nations' action. The United Nations Convention Against Transnational Organized Crime is a giant step in a direction toward a calmer and more civilized global community. This legislation will not completely rid the world of organized crime, but it will put a damper on its free reigning activities. The nations of the world have to work together if they are going to stop the runaway train of organized crime. The old adage of "two heads are better than one" is remarkably true in this situation.