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Author(s): Aleksandar Fatić

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Aleksandar Fatić

The criminal syndicate as para-state in the Balkans: is the 'New War-Making Criminal Entity' a reality?

Introduction

Traditional definitions of organised crime tend to focus on its links with the market. In fact, they depict organised crime as an alternative industry based on the stable supply of a criminal market, characterised by the use of force or threat by it, and motivated by illicit profit or a quest for political power. These definitions arise from the historically most common depictions of specific activities of organised crime which, in most parts of Europe and North America, have traditionally been associated with the illegal collection of debts, extortion rackets, contract murders or systemic corruption leading to, and associated with, a transnational trade in drugs. Through the evolution of the definitions, these stereotypes have gradually waned and the use of violence, as well as the primary motivation by material profit, has been omitted from the lists of obligatory characteristics that a crime must fulfil in order to be classified as 'organised crime'. More recently, in the European Union definition, the use of violence and motivation by profit alone have been made only conditional criteria and the quest for institutional power has been recognised as a motivating factor for organised crime equal to that of generating illicit profit. These new definitional approaches have opened the way to revolutionary ways of understanding the development of organised crime, specifically towards including white-collar crime and large-scale fraud in the future definitions of organised crime, and to elaborating further the aspect of political violence that appears worrisomely present in many organised crime activities across the world.

In the Balkans, these new moments in defining organised crime appear to have been tested particularly directly in Serbia where, firstly, there has been a long public debate over a systematic 'siphoning off' of public funds to the accounts of private companies through the mass corruption of a former, post-communist government until 2001, and where subsequently organised criminal rings have been accused of having masterminded and executed the assassination of the late Serbian Prime Minister, Dr. Zoran Đinđić. The Balkans, and particularly Serbia, has been exposed to some of the most destructive consequences of the two novel aspects of organised crime. Correspondingly, the region can serve as a polygon, or testing ground, for the exploration of these conceptual issues. Finally, the crime control-related experiences gained in this testing process could be valuable tools to address the emergence of what has recently become known in the criminological discourse on organised crime as a 'New War-Making Entity'. This paper explores the key features of organised crime against the background of the Serbian and, by extension, Balkan circumstances and draws conclusions as to how these experiences can be useful more globally.

What is the 'New War-Making Criminal Entity'?

General definitions of organised crime have undergone a comprehensive, yet inconclusive evolution. The first colloquial definitions started to be mentioned in the 1920s, in the US, and it was only in the 1990s that the concept of organised crime finally successfully migrated to Europe. These first definitions focused on a group of perpetrators working together for a more or less extended period of time, thus forming a vaguely-definable 'criminal organisation'.¹ The definitions that followed endeavoured to specify what it meant for a group of perpetrators to represent a criminal organisation and, in the beginning, these attempts toyed with the criteria of the use or threat of violence by the group, a transnational dimension of the crimes committed (e.g. the crimes being planned or executed, or their consequences being felt, in more than one country) and the motives that stood behind a typical 'organised criminal activity'.²

The most familiar crimes associated with the concept of 'organised crime' were the activities of the colloquial overweight, middle-aged men with Italian accents from television films and serials, dealing in the supply of drugs in the North American and European markets, trading in weapons and running extortion rackets. These stereotypes conditioned the assumption that organised crime was different from 'conventional' crime primarily by being an entire illegitimate industry and, as any industry, it was supposed to be motivated by profit and generally characterised by a criminal equivalent of 'business logic'. According to this view, 'classic crime' would typically include irrational criminal deviance, such as street violence, while systematically organised and profit-driven criminal activity would be considered 'organised crime'.³

- 1 It should be noted that, in the Balkans, even this very basic aspect of organised crime, until very recently, used to be quite seriously misperceived. Sometimes it could be heard that 'any offence that is committed in an organised way belongs to the realm of organised crime'. This is profoundly mistaken because even the most conventional offences, such as robberies, are often conducted with a high degree of planning preceding the execution of the offence, which does not necessarily make them 'organised crime'. Namely, organised crime is most usefully associated with activities undertaken on behalf of, or by, a 'criminal organisation', as opposed to conventional crimes which, whatever their 'operational' description and level of seriousness, may not be plausibly attributed to a criminal organisation. This, of course, is a very general view that will be further developed in the forthcoming discussion.
- 2 A comprehensive discussion of the evolution of definitions of organised crime has already developed in the newest criminological publications in English and thus need not be repeated here. For useful accounts, see Michael Levi (2002) 'The Organisation of Serious Crimes' in Mike Maguire, Rod Morgan & Robert Reiner (eds.) *The Oxford Handbook of Criminology* Oxford University Press: Oxford, pp. 878-913; Mike Woodiwiss (2003) 'Transnational organised crime: The global reach of an American concept' in Adam Edwards & Peter Gill (eds.) *Transnational Organised Crime: Perspectives on global security* Routledge: London, pp. 13-27; and Mike Woodiwiss (2003) 'Transnational Organized Crime: The Strange Career of an American Concept' in Margaret E. Beare (ed.) *Critical Reflections on Transnational Organized Crime, Money Laundering and Corruption* University of Toronto Press: Toronto, pp. 334.
- 3 Extremely useful work on the market-oriented dimension of organised crime is that by R.T. Naylor – e.g. 'Predators, Parasites or Free-Market Pioneers: Reflections on the Nature and Analysis of Profit-Driven Crime' in Beare (ed.), loc. cit., pp. 35-54; and 'Follow-the-Money Methods in Crime-Control Policy' *ibid.*, pp. 256-90.

More recently, such a rational criminal organisation has been involved in other rackets, such as human trafficking, trade in nuclear materials and possibly providing logistic support to terrorist groups which is a novel and highly under-explored dimension of organised crime.⁴

There is no doubt that the origins of organised crime can be traced back to crime as an alternative industry which first sought to substitute itself for failing state structures that could not cope with social control demands and which then developed a life of its own. For example, the crisis of debt-collection in most transitional countries of eastern Europe in the 1990s led to a flourishing of criminal debt-collection by violent means, while the failure of the state to cope with the proliferation of property-related crime after the societal liberalisations in the 1980s led directly to the flourishing of protection rackets, which then grew quickly into a profitable criminal industry in most central and east European capitals throughout the 1990s.⁵ Yet, developments in Serbia in 2003, with the assassination of the Serbian Prime Minister on 12 March, allegedly by an organised crime group called the 'Zemun Gang', re-actualised a perspective familiar from other parts of the world where criminals have waged war on the security forces in the attempt to gain control of state institutions and the avenues of the *de facto* exercise of state power. Wars with drug cartels in Latin America, where even the US Army occasionally assists the Colombian government in armed clashes with the 'drug armies' that control parts of the country, come to mind as a familiar example. However, south-eastern Europe has less well-known, yet highly consistent examples of a continued and deeply-rooted style of warfare by underworld organisations against state institutions. Sometimes, 'the underworld' acts in synergy with political elites to undermine institutions. Robert Bunker and John Sullivan call this model of organised crime group 'the New War-Making Criminal Entity' and it is this style of underworld activity that I shall focus on in this article.⁶ To do so, it will be necessary briefly to discuss the relationship between the traditional concept of the profit-driven motivation for organised crime as one, and the use of violence as another, defining characteristic of organised crime and then to proceed to explore the political and institutional background that nurtures the conditions for the development of a New War-Making Criminal Entity.

- 4 Some very preliminary analyses of the signs of this new co-operation trend between organised crime and terrorist groups are given in Aleksandar Fatić (2004) 'Security Threats in Southeastern Europe and Ways to Respond to Them' in A. Fatić (ed.) *Security in South-eastern Europe* Security Policy Group – The Management Centre: Belgrade, pp. 1-28.
- 5 For a policy-perspective tied to threat assessments related to organised crime, see Sappho Xenakis (2004) 'Organised Crime in the Balkans: Pitfalls of Threat Assessment' in Fatić (ed.), loc. cit., pp. 197-212.
- 6 Robert J. Bunker & John R. Sullivan (1998) 'Cartel Evolution: Potentials and Consequences' *Transnational Organized Crime* Vol. 4 No. 2, Summer, pp. 55-74.

Profit and violence in the general definitions of organised crime

It is probably fair to say that there are two major international normative definitions of organised crime today that sum up most of the confusion over what it means for a criminal offence to be classifiable as 'organised crime'. They are the European Union definition and the UN definition.⁷

Both definitions are enumerative, that is they list certain obligatory and optional features that must pertain to particular criminal offences for them to be classifiable as 'organised crime'. They are both expansive, rather than restrictive, because they obviously start from the assumption that the definition of organised crime should encompass all those crimes that might belong to the category of organised crime, thus minimising the possibility that some such crimes might be omitted and, consequently, treated as 'conventional' crimes. By contrast, a restrictive definition would start from the assumption that only those crimes that are undoubtedly characteristic of organised crime should be embraced by the definition, while taking special care not to include crimes that do not necessarily belong to the realm of organised crime. The restrictive approach to defining organised crime is justified by reference to the civil and human rights of the accused as treatment of the accused for 'organised crime' is often considerably less favourable procedurally, and the penalties meted out considerably harsher, than in the case of 'conventional criminals'. The expansive definitions of the EU and the UN reflect a political dimension of the concept of organised crime. It is a new 'buzzword' in the policy-making community and it is perceived as a 'prime threat' to societal security alongside terrorism after 11 September 2001.

The EU definition consists of four obligatory characteristics and two characteristics from a list of seven optional features that a crime must satisfy in order to be considered 'organised crime'. The obligatory features are:

- a. the presence of more than two perpetrators
- b. criminal activity stretching over a long period, namely the stability of the criminal operation or group activity
- c. the commission of 'serious offences', i.e. any offence that is punishable by an upper limit of four years of imprisonment or above, according to the relevant national criminal law
- d. the main motive of the criminal activity is illicit profit or the attainment of (political) power.

The list of optional features includes the following:

- a. a specialist division of labour and distribution of tasks among the participants in the criminal enterprise

7 There are also numerous criminological definitions offered by scholars, but they do not have the normative power arising from the obligatory character of the definitions provided by the EU and the UN and will thus be omitted from this discussion. They are omitted not because they are less intellectually stimulating – in fact, the opposite might well be true – but rather because my interest here lies primarily with the definitions that have direct policy implications for south-eastern Europe.

- b. discernible mechanisms of discipline and control within the criminal group
- c. the use or threat of violence in the conduct of criminal activity
- d. the use of commercial or business-like structures
- e. money-laundering activity
- f. cross-border or international criminal activity
- g. the exertion of influence over legitimate state institutions.⁸

The satisfaction of any two of the optional criteria plus all four obligatory criteria renders a criminal offence 'organised crime' and qualifies it for special treatment as provided for by national and international legislation and policy. This often includes the use of special, extended investigation techniques and competencies by the police and the prosecution, trials before special courts or special sections of the ordinary courts, the meting out of considerably harsher penalties, stricter conditions for parole, the confiscation or legal forfeiture of property, etc.

The UN definition is similar and is given in Article 2 of the UN Convention Against Transnational Organised Crime:

- a. 'organised criminal group' shall mean 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 this Convention in order to obtain, directly or indirectly, a financial or other material benefit
- b. 'serious crime' shall mean conduct constituting an offence punishable by a maximum deprivation of liberty of at least four years or a more serious penalty
- c. 'structured group' shall mean a group that is not randomly formed for the immediate commission of an offence and that does not need to have formally defined roles for its members, continuity of its membership or a developed structure.

This definition is accompanied by an interpretative note that states that the meaning of 'structured group' should be viewed flexibly so as to include both hierarchically organised groups and those that are informal in structure and do not resemble organisations governed by recognisable rules and definable roles for their members.

Article 3(2) of the Convention defines 'transnational offence' in the following way:

- 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
- d. it is committed in one State but has substantial effects in another State.

If an offence satisfies any of these four criteria, it is to be considered a transnational crime.⁹

8 Europol & the European Commission (2001) *Towards a European Strategy to Prevent Organised Crime* working paper, Europol & the European Commission: Brussels.

9 http://www.unodc.org/unodc/en/crime_cicp_convention.html

Both definitions reflect an awareness that organised crime threatens the state and grows closer to terrorism, because they specify that the goals of organised crime are either profit or the (illegal) acquisition of (political) power (EU definition), or the exertion of influence over legitimate (state) institutions (UN definition).¹⁰ This is an important element of the two normative frameworks for defining organised crime, given that they are obligatory for an increasing number of states, which means that they will have to be included and operationalised in the domestic definitions and anti-organised crime legislative provisions in the member countries of the two international organisations. Profit and terror are, of course, closely inter-linked and it could be argued that those criminal groups that seek to assume control over the distribution of political power in society are, in fact, seeking a reliable vehicle to foster profit-making. Clearly, if a state is criminalised and a criminal group has control over its institutions, that group will be able to adapt laws and policies so as to maximise its freedom of manoeuvre and enhance its profile on the global criminal market, all of which are likely to result in a dramatically-increased criminal profit for the group. There are, however, groups that act with the express ambition of attaining political power, even when this means sacrificing a part of criminal profit and at a dramatic risk to the criminal organisation. This was particularly clearly exhibited in the assassination of Dr. Zoran Đinđić in March 2002.

Lessons from the assassination of the Serbian Prime Minister in 2003

According to police sources, Đinđić was assassinated by a criminal group called the 'Zemun Gang', led by Milorad Luković (Legija), a former Special Operations Unit Commander and which included major drug traders in the region. The person accused of firing the fatal shots at the late Prime Minister is Colonel Zvezdan Jovanović, Deputy Commander of the Special Operations Unit, but the general context of the group is one of a drugs-based gang that has generated enormous profits by using the alleged 'favours' that it apparently received from the previous political elites that were in power in Serbia between 2001 and 2003.

When Jovanović was interrogated after arrest, he was at first an extremely difficult interviewee for the police inspectors. A policeman seasoned by one of the most demanding training programmes in the *JSO* (*Jedinica za specijalne operacije* – the Special Operations Unit, to give it its name in Serbian) and physically extremely well-

- 10 In 1995, four leading Dutch criminologists (C. Fijnaut, F. Bovenkerk, G. Bruinsma and H. van de Bunt) formed the so-called 'Fijnaut Group' that drew up a comprehensive report on the threats arising from organised crime in the Netherlands. The analysis was published under the title *Organized Crime in the Netherlands* by Kluwer Law International in 1998. They proposed the following definition of organised crime: 'If and when groups of individuals join for financial reasons systematically to commit crimes that can adversely affect society. And are capable of relatively effectively shielding these crimes from targeted intervention of the authorities, in particular by way of their willingness to use physical violence or eliminate individuals by means of corruption.' – see Peter Klerks (2003) 'The network paradigm applied to criminal organisations: theoretical nitpicking or a relevant doctrine for investigators? Recent developments in the Netherlands' in Adam Edwards & Peter Gill (eds.), loc. cit., p. 112, footnotes 7 & 8.

prepared for the hardships of interrogation and long-term detention, he refused to speak. According to police interrogators, it was difficult even to persuade him officially to state his name and those of his parents.¹¹ Gradually, Jovanović was 'softened' by the interrogators appealing to his 'patriotism' and the political motivation for his actions. They stated that they appreciated that he was not an ordinary criminal but a police officer who acted 'out of conviction', because he had supposedly perceived the late Prime Minister to be politically controversial. They promised him a more lenient treatment based on an old federal criminal law provision that those who committed 'political crimes' were punishable by less severe prison penalties than those for organised crime. They visited his wife, spoke with her, and told her that he was 'all right' in prison, provided security for her and secured the street where she lived. Subsequently they arranged for the wife to visit Jovanović in prison and confirm all this. Finally, they persuaded the prison governor, who was an acquaintance of Jovanović, to advise him to co-operate. The result was that Jovanović not only admitted to having assassinated the Prime Minister, but also led the inspectors to the sites where he had buried the rifle and provided all the details necessary for prosecution.

There are numerous issues that remain unresolved regarding the assassination of Đinđić. Immediately after the assassination, the police declared in public that they 'knew' who the perpetrators were and proceeded to arrest a large part of the 'Zemun Gang', without explaining when they had managed to complete such a comprehensive investigation and why, if they had known about the intentions of 'the Gang' before, they had not acted earlier. Subsequently, an Investigation Committee was created which, to say the least, was less than persuasive in its personnel composition, with the former Deputy Prime Minister Žarko Korać, a psychologist and leader of one of the smallest parties on the Serbian political scene, heading it. Unsurprisingly, the Committee found that there were no faults in the security system and that the 'Zemun Gang' was solely to blame for the tragedy. It should be noted that there remain unanswered questions about the real motives for the killing of the Prime Minister. However, the arrest of Zvezdan Jovanović and his subsequent confession are simple and undeniable facts, and it is these facts alone that will be viewed here as a basis for the conclusions regarding the motives for the assassination.

Firstly, it is relatively safe to conclude that Jovanović did not kill the Prime Minister for money or profit. His behaviour in the interrogation reveals that he was 'broken' on the issue of 'respect' for his 'patriotism'. However bizarre it might be to speak about 'patriotism' in murdering a Prime Minister, clearly Jovanović held his political motives very dear, so dear that they proved to be the button that the police pushed to persuade him to admit to the crime. This alone reflects that, at least for Jovanović, profit was not the motive for the crime. Jovanović could hardly be described as a typical 'organised criminal', but it is clear that he knew that he was committing a grave

11 I am grateful to a high-ranking police commander for confidential discussions of the events during the investigation. As these discussions were informal and not intended to be publicised in any direct form, the source must remain undisclosed although the material itself does not represent any form of state secret.

crime and that the likelihood of being caught was, to say the least, considerable. Even though he is not a typical criminal, criminals do have political motives and are not always motivated by profit alone.

Secondly, let us look briefly at the official version of how the 'Zemun Gang' was responsible for the assassination. This version has it that the late Prime Minister had been in contact with individuals who had belonged to 'the Gang' in various contexts and that they had decided to kill him because he 'had become a threat'. Allegedly, 'the Gang' had earned enormous profits from the trade in drugs, with the tacit support of some 'higher echelons of the establishment' during the 2001–3 government. One might ask here which organised criminal in his or her right mind would attempt to kill the Prime Minister in such allegedly favourable circumstances of the corruption of the 'upper echelons of the establishment', while being able to generate enormous drugs profits. What would be the rationale for killing the head of the government? Why not transfer the operation elsewhere, assume a low profile for a while or escape to a different part of the world with the money and the contacts? What could a criminal group expect from the killing of a Prime Minister other than a major police action that would further jeopardise its members and stifle its operations, at least for a considerable time? The result of the assassination was that the largest operation in the history of the Serbian police was mounted, codenamed 'Operation Sable', resulting in the arrest and detention of over 10 000 people, changes in the criminal procedure to allow a hugely increased police and prosecutorial discretion, the declaration of a state of emergency and a courts reform leading, among other developments, to the establishment of a Special Section of the Belgrade District Court for Organised Crime. Operation Sable was a major blow to the underworld at the time, whatever the realistic estimates of its structural and long-term consequences might be. In other words, it seems irrational for a criminal group, from the point of view of profit, to adopt such a high-risk strategy as killing the Prime Minister in order to avert any risks arising from any of his or her views or actions. It is also irrational from the point of view of the security risks for the group, as has become clear in the immediate aftermath of the assassination, with most of the group now either killed by the police or imprisoned.¹²

It has been argued by the government, subsequent to the initial results being achieved in pursuing the members of the 'Zemun Gang', that the plan of the assassins was to cause confusion and facilitate critical space to be used by the JSO to take decisive action and assume control of the government in the immediate aftermath of the Prime Minister's death. This is a more plausible explanation, although it must also be taken with some reservations given the overall vagueness of the official version of the events and the speed with which the former government allegedly 'discovered' the structure behind the PM's assassination. A group funded by the drugs trade, characterised by collusion with parts of the official establishment and allegedly enormously wealthy appears to have decided to strike at the very heart of the political system and assume control of the government. This is a motive for assuming power, for the realisation of which wealth may be required as a pre-requisite, but profit itself does not ap-

12 Fatić, loc. cit.

pear to play any immediate or direct role in the motivational structure for such a dramatically risky and starkly 'political' criminal act. Such events graphically illustrate the justification for including the quest for power in both the EU and UN definitions of organised crime as a criterion that is alternative to, and, although compatible with, still independent from, the generation of criminal profit. However, such a conceptualisation of the motivation for organised crime that arises from parapolitical aspirations opens up the question of the relationship between organised crime, in the conventional sense, and terrorism.

Terrorism and organised crime

When drawing a parallel, or exploring a link, between organised crime and terrorism, it is obviously desirable to depict a plausible definition of terrorism. 'Standard' or traditional criminology makes a rather problematic distinction between organised crime and terrorism on the seemingly plausible grounds of the predominant motivation of the respective perpetrators. This distinction is succinctly formulated by Mats Berdal and Monica Serrano, who argue that terrorists act with a view to reordering the social reality, supposedly based on idealistic goals, while the perpetrator of organised crime acts with a view to profit alone.¹³ They go on to say that:

Historically, the freedom fighter's cause has been understood to require clean hands. Dirty hands have compromised any agenda claiming political purity and moral superiority.¹⁴

Such a view seems simple enough and, if true, it would allow for a comprehensive and simple systematisation of organised crime and terrorism. Berdal and Serrano sum up the argument based on the criterion of motivation in the following way:

The fundamental point is this: to the extent that terrorism and trans-state and transnational criminal activities continue to respond to divergent patterns of motivation, the distinction between one and the other will, and should, remain in place. Maintaining such a distinction is pertinent not only for analytical purposes, but also for policy considerations.¹⁵

This criterion, while simple, elegant and highly intuitive, unfortunately does not correspond with much of the reality. There are three main reasons for such a lack of plausibility.

Firstly, it does not appear materially true that contemporary terrorists appeal to claims of 'clean hands' and 'moral superiority'. Most active terrorist organisations in Europe, for example, strive to realise an ethnic territorial autonomy within recognised states, or to extract privileges for marginalised groups from the government, in which they neither claim to apply a 'clean hands' approach nor do they shy away from 'standard' crime. The Basque ETA, the Kosovo Liberation Army and the Irish Re-

13 Mats Berdal & Monica Serrano 'Introduction' in Berdal & Serrano (eds.) *Transnational Organized Crime and International Security* Lynne Rienner: London, p. 7.

14 *ibid.*

15 *loc. cit.*, p. 8.

publican Army belong to the most active terrorist groups over the last several decades. Yet, neither claims a ‘moral superiority’, clean hands or a particular repugnance to crime. So, it is just materially untrue that the threat from terrorism has much to do with a claim of cleanness.

Secondly, it is true, as many commentators have pointed out, that the ‘transformative’ (as Richard Falk qualifies them) events of 11 September 2001 have taken place with the terrorists operating on a low budget, but this is more an exception than the rule. All of the above-mentioned major terrorist movements (and they are major both by volume of activity and by stability across time) operate on high budgets. Berdal and Serrano acknowledge that the Kosovo Liberation Army, as an incontrovertibly terrorist movement, ‘was deeply involved in crime’, but they do not pay sufficient attention to this fact as a matter of principle in terrorist-style insurgency movements. KLA operatives have systematically drawn funds from drug smuggling networks operated by Kosovo Albanians, who control the Balkan route that connects the middle east with the EU. The entire route, which starts in Afghanistan and ends in the European capitals, was initially controlled by Turkish traffickers, with the Albanians responsible for the Balkan part for which they were paid in kind, rather than in cash. However, payment in drugs led to the Albanian gangs ‘going into business’ themselves and eventually taking over control from Turkish groups in several major distribution centres in Europe, namely in Switzerland, Norway, Sweden and Italy.¹⁶ It could even be argued that this business has been cultivated with a view to empowering Albanian insurgents with the means for conducting terrorism towards the realisation of ethnic goals. The reason is that Kosovo Albanian gangsters are also among the dominant ‘ethnic’ criminal groups in Europe in the trafficking of women, although it is primarily from the trafficking in drugs that they have funded the Kosovo Liberation Army. This suggests a clear ‘division of criminal labour’ where one branch of organised crime is intimately, motivationally, linked with funding terrorism and another one with ‘profit proper’. However, there is a tendency to ascribe this only to the KLA operations and the Balkan circumstances – interestingly, Berdal and Serrano do this. This is a deeply misguided tendency because what is at stake here is the general principle that is in no way peculiar to any ethnic group – it applies equally to Serbian gangster/terrorists, as to ETA, the IRA and all the other European terrorists who consider themselves to be ‘insurgents’. In other words, everything that has been so frequently said about the Albanian gangs can, to varying extents, also be said about the ‘Zemun Gang’ and most other gangster/terrorist groups.

Thirdly, a distinction based on motivation falls on the grounds of the identity of the perpetrators. Many times, as in the case of the KLA, the perpetrators of organised crime and those of terrorism are the same networks and individuals. For example, the main leaders of the Albanian insurgent movement in Kosovo in the late 1990s and early 2000s were people previously known as organised traffickers in heroin. It is in-

16 Phil Williams ‘Co-operation Among Criminal Organisations’ in Berdal & Serrano (eds.), loc. cit., p. 80; Thomas Köppel & Agnes Szekely ‘Transnational Organized Crime and Conflict in the Balkans’ in Berdal & Serrano (eds.), loc. cit., pp. 129-40.

conceivable that, in an internally tightly-controlled society such as that of Kosovo Albanians, the major trafficking of women, along with the trade in drugs, which are going on right now, under the presence of KFOR and UNMIK, could develop and be sustained without the explicit support of and encouragement by the same networks that have conducted the operations ascribed to the KLA. In Chechnya, much of the criminal funding came from the chain of trade in stolen cars and it is also difficult to imagine how the ring leaders of this trade would be able to remain completely disconnected from Chechen terrorist circles. Finally, in Serbia, the assassination of the Prime Minister has clearly demonstrated the symbiosis between organised crime and terrorism in the same perpetrators, if the official version of the events is true. It appears that the commander of an elite special operations unit, on his own admission, was also a major heroin trafficker. In short, the modern form of terrorism is so closely connected to organised crime that the same individuals often commit both types of offence, and this trend ranges over various societies and political circumstances. Furthermore, it is certainly true that organised crime is traditionally motivated by profit, but it is increasingly the case that a division of labour takes place within the realm of organised crime in which certain activities are conducted specifically with a view to funding terrorism. This fact itself invalidates the claim that a clear distinction based on motivation exists between the two.

The three types of facts discussed show that the traditional, intuitive and elegant criminological explanation of the difference between the two types of threat is implausible in modern circumstances. It is based on the habit of associating terrorism with Islamic groups alone because it seems that Islamic terrorism by and large satisfies the 'clean hands' criterion to a significant extent. Yet, a major amount of terrorist activity remains outside this 'motivational' explanatory umbrella.

Unfortunately, the 'motivation' story does not solve the question of difference here, but there are plausible and useful formal definitions of terrorism. At the same time, however, there appears to be, at least amongst some policy-making and diplomatic communities, a serious lack of familiarity with any such definition, alongside an extremely liberal and assertive use of the terms 'terror' and 'terrorism'.

Contemporary political discourse first included a frequent use of the concept of 'terror' after 1983 when, in the explosion of a truck-bomb in Lebanon, 241 American Marines lost their lives. The Reagan administration abruptly ended the American presence in that country and labelled the incident as 'a terrorist attack'. Historically, however, such attacks could not be plausibly described as 'terror attacks', because terror had usually been associated with acts against civil society or the civil population with a view to coercing the state in a certain political or ideological direction.¹⁷ Liberals and authors to the left of the political spectrum have pointed out many times that civilian populations have most frequently suffered terror at the hands of states.¹⁸

17 Richard Falk (2003) *The Great Terror War* Arris Books: Gloucestershire, p. XIX.

18 The name of Noam Chomsky and other 'liberals' is odd only at first sight – conceptually and historically, even philosophical anarchism is an offspring of consistent liberalism, such as in the case of Robert Nozick (*Anarchy, state and utopia* Blackwell: Oxford, 1974).

Yet states, which have historically been the greatest perpetrators of ‘terror attacks’ against their own and other populations, have worked to exempt themselves from the colloquial meaning of ‘terrorism’, to the extent of actually labelling anti-state violence that targets occupying soldiers as ‘terrorism’. There remain several relatively plausible definitions of terrorism, however. For example, the FBI definition depicts terrorism as:

The illegal use of violence against persons or property with a view of forcing a government or a civilian population, society or any part thereof, to submit to certain social or political demands.

A definition proposed by the US Department of Defence in 1990 depicts terrorism as:

The illegal use of violence, or threat of violence, against individuals or property with the goal of forcing or intimidating a government or society to accommodate political, religious or ideological demands.¹⁹

The academic community has generally been reserved towards these normative definitions as being too restrictive and has preferred a broader approach which would include more specific references to a civilian society being targeted by acts of terror not only from the side of informal terrorist groups but also from a terrorist state. In a pungent formulation by Richard Falk:

(...) terrorism needs to be understood as political violence that is deliberately aimed at civilians and civilian society, whether perpetrated by political movements or by states.²⁰

Clearly, states have not been particularly welcoming of a definition of terror that posits them as potentially the most dangerous perpetrators, yet it is undoubtedly true that ‘state terrorism’ has been a major component of the overall problem of terrorism over the past several decades. Attacks conducted by the CIA outside the US borders to assassinate political leaders or other opponents of various American interests; direct assassination operations undertaken by the Israeli security agencies and army against the leaders of Hamas and other Palestinian insurgent fractions; attacks by the former communist states in eastern Europe against political opponents in the diaspora – all mark illustrative, yet isolated, examples of a far more far-reaching trend of state terrorism as a frequent and eagerly-applied strategy of political violence. In fact, contrary to the dominant discourse, which depicts ‘political violence’ as being predominantly associated with deviant political movements resorting to violent means of struggle against the state, the real bulk of political violence is perpetrated by the state,

19 Bruce Hoffman (1998) *Inside Terrorism* Columbia University Press: New York, pp. 14-44.

20 Falk, loc. cit., p. 10.

and quite frequently by democratic states that form a 'fully-fledged' part of the international community.²¹

State terror and state-organised crime

States can undoubtedly be terrorists, but they can also be criminals. Sometimes, states and state officials become involved in organised criminal operations in the belief that they are serving patriotic causes by doing so. In mid-1998, senior politicians and Civil Guard officials during the Spanish Gonzalez government were tried for extensive money laundering operations to finance the assassinations of individuals believed to be members of the Basque separatist movement ETA. Apparently, the officials used their influence to help launder the money earned by organised crime through commercial banks and then used the commissions received to pay for the assassinations, which they could not fund from the state budget. It is conceivable that the perpetrators acted here in the belief that they were protecting the Spanish national interest and, in fact, serving the state. Even so, the actions described fulfil all the criteria for the definition of organised crime.²²

In a succinct formulation, Michael Levi writes generally about organised crime in the US as follows:

(...) rather than being viewed as an alien group of outsiders coming in and perverting society, organized crime in America is best viewed as a set of shifting coalitions between groups of

- 21 The complete lack of awareness of the tragic fact that states are the greatest perpetrators of terror against civilians is reflected in the 12 multilateral treaties and conventions that have been signed against terrorism under the auspices of the UN. They include:
1. *Convention on Offences and Certain Other Acts Committed On Board Aircraft* (1963)
 2. *Convention for the Suppression of Unlawful Seizure of Aircraft* ('Hague Convention' (1970))
 3. *Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation* (1971)
 4. *Convention on the Prevention and Punishment of Crimes Against Internationally Protected Persons* (1973)
 5. *International Convention Against the Taking of Hostages* (1979)
 6. *Convention on the Physical Protection of Nuclear Material* (1980)
 7. *Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, Supplementary to the Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation* (1988)
 8. *Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation*, (1988)
 9. *Protocol for the Suppression of Unlawful Acts Against the Safety of Fixed Platforms Located on the Continental Shelf* (1988)
 10. *Convention on the Marking of Plastic Explosives for the Purpose of Detection* (1997)
 11. *International Convention for the Suppression of Terrorist Bombing* (1997)
 12. *International Convention for the Suppression of the Financing of Terrorism* (1999)
- See more at: http://www.unodc.org/unodc/terrorism_conventions.html. No convention mentions any form of state terror against civilians.
- 22 Levi, loc. cit., p. 885, footnote 7.

gangsters, businesspeople, politicians and union leaders, normally local or regional in scope. Many of these participants have legitimate jobs and sources of income.²³

Organised crime is, in fact, an opportunistic undertaking and 'legitimate business-people', as well as state officials, are not immune to involvement in it. A perhaps more important dimension of organised crime is that it is connected with the factual distribution of power in society. This is where the market paradigm of organised crime comes into play. Namely, where the state institutions are too weak or inefficient, organised criminals come in to fill the void; they provide protection, debt collection, retribution or compensation. Such a market-based development of organised crime is particularly pronounced in transitional states marked by a high degree of societal anomie, disorientation and dysfunctional institutions. At the same time, legitimate businesspeople and state officials are more likely to form coalitions with organised criminal groups in such states because that allows them a more efficient participation in the distribution of societal power. In the disturbed and victimised society of Serbia in the early 2000s, it was only to be expected that the first 'democratically elected' government would become deeply immersed in co-operation and negotiation with the factual, yet illegal, power-brokers ranging from various semi-legal paramilitary units to drug traders.²⁴

Where institutions do not work, the levers of power are controlled by those with guns and money, and they often belong to the criminal underworld. Negotiating with them brings tangible results, while sticking to 'legalist' procedures may seem fuzzy and unproductive to the voters, potential foreign donors and diplomatic supporters. The charm of working with gangsters in transitional countries is sometimes irresistible for the 'democratic' elites. Such shady dealings between state officials and criminals tax public trust in the political system, but they are far from being the main problem connected with state-organised crime.

State-sponsored crime starts with the above-described friendships and negotiations with criminals, but goes far further and posits the state as the main perpetrator of offences of organised crime. For a state to become the main organised criminal, it must have comprehensive control over most of the society, a stable majority in parliament, solid international relations and support, and a loyal repressive apparatus. Some of these conditions were inherited in most transitional states from the communist times, when the state was the main terrorist. At that time, the police and parapolice units were frequently used by the state to conduct terrorist operations against political

23 *loc. cit.*, p. 890.

24 The frequent talk of the Serbian government between 2001 and 2003 as 'the first democratically elected government after Milošević' is inaccurate. This government was voted for on the explicit promise that it would call a new election within 12 months at the latest, really to test the will of the voters, and the entire vote was presented to the public more as an anti-Milošević referendum, which is how it is often referred to, than as a real election. Subsequent to the fall of this government, outcomes are being sought in the Special Department of the Belgrade District Court for Organised Crime, where systematic links between the most serious criminals and former state officials are being referred to by witnesses.

opponents abroad, as well as against civil society inside the country. The literature is full of descriptions of such uses of Balkan state security agencies and more conventional police forces. Sometimes, the underworld was engaged directly in the conduct of assassinations and beatings of emigrants and businesspeople in other countries.²⁵ For such actions to succeed, a loyal repressive structure was needed and, in fact, the lack of civilian oversight of the police force has been one of the main problems in the Balkan transitions.

Problems arising from the criminalisation of the state invariably occur in environments characterised by institutional weakness and the moral crisis that accompanies weak institutions. There are numerous accusations against Montenegro for the trade in illegal cigarettes; against Serbia for the systematic support by the 2001-4 government of drug traders in exchange for their support for 'societal reforms'; against Albania for systematic involvement in the trade in heroin, refugees, human trafficking; etc. Such accusations have been elaborated elsewhere.²⁶ It is clear from these examples that the distribution of power in the critical regions characterised by transitional processes conditions the synergies between the state and organised crime. In Montenegro, the government of Prime Minister Milo Đukanović was forced to resort to cigarette-smuggling rings for support in order to finance the state budget and the loyal party elite necessary to maintain a hold on power, while in Serbia organised crime was more 'classic' in shape and reminiscent of the criminal rings that operated in the US during the prohibition or in Europe in the 1960s. In Albania, the general poverty and cultural stereotypes allowed for the development of human trafficking, and the traditional use of Kosovo as a part of the route for smuggling heroin from the middle east to western Europe accounted for the attempts by Kosovar separatists to run a developed heroin racket in order to fund terrorist actions against the Serbian security forces and, ultimately, an independence war in 1999. In all these cases, criminals played a key role in reinforcing the political leaders of the troublesome, and largely failed, 'transitions'.²⁷ Such synergies between political elites and criminal organisations, when they grow sufficiently close, become state-organised crime in the same way in which the incident under the Gonzales government described earlier was an incident of state-organised crime in Spain.

States argue that the main threat from terrorism and organised crime comes from informal groups that target them, the states, and civilian society. However, it is worth considering to what extent it would be plausible to argue that the main terrorists and organised criminals globally, and in the region of south-eastern Europe specifically, are, in fact, states. It is clear that states and coalitions of states have been involved in terrorism for a long time, and continue to be so, and it is equally clear that states, es-

25 See Fatić (2004) 'The Role and Structure of Organised Crime in the Balkans' unpublished paper, Institute of International Politics and Economics: Beograd, April.

26 Köppel & Szekely, loc. cit. I have discussed the criminalisation of several particular countries in the Balkans in 'Security Threats in the Balkans and Ways to Respond to Them', loc. cit., and 'The Role and Structure of Organised Crime in the Balkans', loc. cit.

27 Köppel & Szekely, loc. cit; Phil Williams, loc. cit., pp. 67-80.

pecially those in transitional countries, do not shy away from collaboration with organised crime. This reverses the perspective of conventional wisdom that terrorists are guttersnipes attacking legitimate state structures and civil society from the margins, and reaffirms the view both that terrorists and organised criminals come from all ranks of society, including the ‘top brass’ of the law enforcement agencies acting in the national interest, and that the main threat to citizens’ security comes from states.

There is an internal tension in all states which exists between the legitimate actors, including the independent critics, and the instrumentalised state bureaucracy that is willing to do almost anything ‘in the interest of the state’. Such tension needs to be cultivated and independent forces must be assisted in every way, because they are the only hope that totalitarian tendencies in modern states can be placed under some degree of control. The current global situation suggests that totalitarian forces have dangerously gained the upper hand in the most influential societies and that the tendency is to circumscribe human and civil rights in the interests of the state-sponsored definition of the ‘new security’. This makes it all the more urgent to re-affirm the importance of, and the need for, independent civil society actors. Richard Falk comments:

It is only a vigilant citizenry that can hope to counteract the instinctive law enforcement biases of government and preserve human rights in times of stress, and limit departures from the normal expectations of freedoms to an absolute minimum.²⁸

However, there should be no doubts about the conclusion that such a citizenry cannot counter the terrorist and criminal tendencies of authoritarian state circles when acting as an amorphous democratic mass; it must be led by independent civil society and intellectual leaders, and these leaders are increasingly isolated and socially victimised by authoritarian governments around the world.

This trend of isolating independent critics goes along with the trend of promoting disciplined intellectuals, a disciplined media and, consequently, a disciplined public opinion. When ‘pro-European’, democratic forces co-operate with criminals, that is in the interest of reform. They are not to be criticised, because otherwise ‘Europe’ will be against it. They may smuggle heroin and tolerate groups that organise the killing of people. Such hypocrisy is supported by a disciplined academia, media and public opinion. Chomsky comments:

Partly, it’s just internalization of values. I mean, you don’t consider that what you do to other people matters. It’s not just journalists. It’s true of scholarship, for example. It’s true of the general intellectual world. (...) I bet you anything, if you went back to Japan in the 1930s or 1940s, and you did a poll of intellectuals on the war, you would probably get the same reactions. I know it was true in Germany and France and everywhere else. It’s just standard. It’s ugly, but it’s standard.²⁹

28 Falk, loc. cit., p. 172.

29 Chomsky (2003) *Power and Terror: Post 9/11 Talks and Interviews* Seven Stories Press: New York, pp. 28-29.

Such trends, justified by a disciplined scholarship and public, are the very substance of which the New War-Making Entity is built. States that become involved in domestic and international terrorism; coalitions of states that go on rogue marches in distant crisis areas, self-righteously proclaiming themselves and their vanity-driven administrators as 'agents of the good', as opposed to forces of chaos and evil (e.g. everybody indigenous or with a differing opinion on their mission); and state structures that, 'in the name of democracy', foster close friendships and co-operative ventures with former assassins and drug traders – all engage in a particular form of state capture. In fact, these states capture themselves and their societies, and hijack the official agenda from the democratic citizenry. They install a climate of fear and insecurity alongside an escalated public discourse focusing on 'a security state'. These events have now occurred across Europe and North America and they have been prodigious in the Balkans since the fall of the former communist regimes. Ever since, the new tycoons of 'Europeanisation' and 'market liberalisation' have either had a criminal history themselves, or have been widely believed to co-operate closely with the Balkan and international underworld.³⁰

The so-called 'primary accumulation of wealth' in the Balkans was made possible by a systematic siphoning off of public funds into the accounts of private firms, whose owners were often members of the current government, directors of public enterprises or persons closely associated with them. Until recently, public procurement procedures in most countries of the region were simply not obligatory, and they were far from fair and transparent. Parallel with the draining away of state resources and the impoverishment of state budgets, individual 'entrepreneurs' became extremely rich. In all cases, the links between organised crime and the political establishments of the 'transitional democracies' ranged from 'stable plunder', as some theorists call it, to complete state capture by organised crime.³¹ Let us not forget that most of the criminal affairs in Serbia occurred during the 'pro-European', 'reformist' DOS government between 2001-4 and similarly that the emergence of the so-called 'athlete gangsters underworld' in Bulgaria (the underground economy dominated by former sports stars of this country turned criminal), as well as the collapse of bank savings schemes in Albania, the 'tycoon privatisation' in Croatia and most other paradigm-setting phenomena of organised crime in the Balkans over the past 20 or 30 years – all these have happened under 'reformist' and 'democratic', 'pro-European' governments.³² Being 'progressive' carries no guarantees of honesty and, if the degree of honesty among Europe's favourites in the region remains unchecked, it is possible that they will ascertain a definitive and permanent entrenchment of a culture of organised crime throughout the region.

30 Fatić, 'The Role and Structure of Organised Crime in the Balkans', loc. cit.

31 Berdal & Serrano, loc. cit., p. 6.

32 For details of some of these paradigm-setting types of organised crime, see Fatić, 'The Role and Structure of Organised Crime in Southeastern Europe', loc. cit.

The New War-Making Criminal Entity

In 1998, Robert Bunker and John Sullivan wrote an article in *Transnational Organised Crime* that I believe to be programmatic for the future law-enforcement effort globally.³³ Bunker and Sullivan analyse the evolution of criminal organisation using the example of a drugs cartel, but there is no reason in principle why their analysis should not apply to criminal organisation generally. According to this analysis, the most developed stage of this process is characterised by the following features:

- a globally ‘internetted’ criminal organisation
- highly developed transnational and inter-enterprise links
- the use of discriminate violence (against political adversaries and all those who are judged to be strategically dangerous)
- entrenched and legitimised corruption
- the use of mercenary, paramilitary and parapolice forces
- the acquisition or use of the latest technology
- global economic reach through legitimate institutions
- the conduct of activities in ways that allow the public at large to profit
- the provision of a broad range of products and engagement in a broad range of activities.³⁴

All of the above characteristics suggest the involvement of a broad spectrum of various categories of actors, not just local ones: criminals, independent individuals, even politicians. International actors, both armed and unarmed, are ingredients of this coalition. On the one hand, such an international involvement is necessary for the global reach that the New War-Making Entity seeks; on the other hand, internationalisation helps legitimise all types of dubious practices, including political corruption, which is deeply entrenched in the *modus operandi* of the Entity. The process characterised by the above features could cause the initial clientelist relationship between traditional organised crime (‘the gang’) and the various political elites to grow into a comprehensive phenomenon that pervades the political system to the extent that the system itself becomes an instrument in the hands of a militarised and politicised criminal network.³⁵ What is worse is that such a criminal network, by the inclusion of legitimate actors, might legitimise itself and thus automatically cease to be perceived as criminal; this is exactly what the Entity is all about today.

The New War-Making Criminal Entity is already a global reality and, due to Balkan particularisms, it is especially obvious there. The Entity consists of a conglomerate of criminal groups, criminalised states and particular state structures in otherwise legitimate states, rogue international bureaucrats and military missions in crisis areas.

33 Bunker & Sullivan, loc. cit.

34 loc. cit, p. 59.

35 I have discussed this at greater length in ‘Veze između organizovanog kriminala i politike’ (‘Links Between Organised Crime and Politics’) *The Pulse* Beograd, March-April 2004, pp. 9-14.

The Entity relativises not only international law, but also traditional ethical norms. It is, at one and the same time, the result and the generator of general social anomie, where the limits of moral and immoral, right and wrong are lost and all actors play virtually all roles: organised crime is a reflection of, and plays the role of state authority; states are involved in organised crime and terror; coalitions of states apply 'humanitarian militarism' (or 'military humanitarianism') in pursuit of geopolitical goals by major international forces disguised as agents of 'global justice'.

Organised crime is a momentary and partial manifestation of the process of the constitution of a New War-Making Entity. In this process, the Balkans merely plays the role of 'testing ground'.³⁶ However, it should be noted that, for an area to serve as a testing ground for the New War-Making Entity, it must fulfil certain structural conditions; namely, it must consist of failed states.

In failed states, there is a semblance of competition between stabilising and modernising forces, labelled collectively as 'development', on the one hand, and destructive, criminalising forces on the other. It is often forgotten, however, that both types of forces have inbuilt interests that direct them towards each other. The least controversial and easiest point of contact between the two is a focus on the ability to 'deliver'. External modernising forces seek partners who can deliver and the real question is who can really deliver in failed states? Only those with the money, influence, weapons and factual power and these actors in failed states tend to be either criminalised themselves or close to crime. 'Modernising' forces believe that they can deal with such criminalising influences and, consequently, that they can work with such dubious, yet influential, actors.

It should be noted that the above paragraph does not refer to a tendency, or a weakness in the process of 'development' but rather to a principle that is inherent in it. Examples include the following:

- once they assumed power, most 'post-authoritarian' leaders in failed states in the Balkans have opted to engage their former security guards – by-and-large shady individuals from the margins of legal society, and sometimes outright criminals – as official security staff. Thus, in Serbia, the people who provided the security for the late Prime Minister Đinđić were not professional police officers, but cadres 'taken over' from the previous, largely informal political times when brute force and political loyalty was all that was asked of security guards³⁷
- in most failed states of the Balkans, 'Europeanisation' is the dominant mantra in which, however, the moral content of Europeanisation is obscured or completely lost. European officials who encourage this confused discourse about a political, in-

36 The term is taken over here from Aleksandar Fatić & Milan Popović (1999) 'NATO Expansion and Balkan Testing Grounds' *Peace and Security* Vienna, Vol. XXXI, December, pp. 36-42.

37 A senior police officer made the assessment in a private conversation that, had the late Prime Minister taken over the security service that had used to protect Slobodan Milošević, he might have survived the attack on 12 March 2003 as these police officers, now mainly retired, were expert professionals.

stitutional, but also societal and cultural, 'Europeanisation' do not seem to be picky about their local partners and, essentially, as long as one verbally embraces European values, 'anything goes'

- all of the above is contained in the international support given to 'political pragmatists', as opposed to 'rigid legalists', across the Balkans. This very formulation of the political orientation of these favourites is sufficiently telling about how much regard is paid to the rule of law in the states of the European semi-periphery.

Pragmatism in political transition is a dangerous thing and the obvious tendency by key policy-makers to go along with the 'Europe talk', alongside treating Balkan institutions as a matter for the long-term future, means that power will be brokered between those who factually have it, namely those with money and the muscle to protect it, and those who can articulate their political interests in 'European' terms. That approach is contrasted with 'legalism', which takes institutions as the core of all political decisions and which does not use the term 'Europe' cheaply, as an excuse for breaches of the law and legitimacy. Organised crime has played a role in authoritarian governments and it has consistently played a part in the revolutionary 'pro-European' governments immediately following the onset of political transitions. The only political circles where organised crime does not have a foothold are those characterised as 'conservative' and 'overly legalistic'. That in itself is a problem which requires further critical reflection on what it really is that Europe seeks in supporting its current protégés in the Balkans without checking their credentials of integrity, while almost hysterically rejecting anyone who is remotely associated with 'nationalism', despite clear indications of honesty and political modernity.