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OVERLAPS BETWEEN ORGANISED CRIME AND TERRORISM

*Morgane Ferrari*¹

Council of State, France

E-mail: morganeferrari@gmail.com

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Abstract. This article analyses the distinctive and connecting aspects of organised crime and terrorism, presenting the criminological elements of these two phenomena and legal aspects involved in fighting them. Although each of them has an independent existential theoretical and legal expression, they are not only interconnected, but also complement each other. The article emphasises that to combat these ills effectively, international and national (including criminal and procedural) legislation must reflect both the individual specifics of organised crime and terrorism and the context of their common features – with the connections between these features understood. Both international and national normative regulation can be more effective in the fight against organised crime and terrorism if their content is directed against these phenomena by perceiving them both in isolation and in recognising their integrity.

Keywords: French criminal code, French antiterrorism law, international law, organised crime, terrorism

*It's about time law enforcement got
as organized as organized crime.*

Rudy Giuliani (1984)

Introduction

Organised crime and terrorism are often analysed separately. However, numerous similarities exist between them and repressive policies have taken those into account when focusing on drugs, arms trafficking and counterfeiting.

The key question to answer not only for France but also the world is therefore: Are existing tools and policies appropriate for fighting both organised crime and terrorism?

The links between the threat of each can be identified by studying their differences and similarities, and by looking at their funding at both an international and national level.

The author at the article basically use comparative and systematic methods to identify the problems, assess and synthesize information. The main sources of research shall be two: (i) legal acts (national and international laws) and (ii) criminological material (scientific articles, monographs, sources of sociological research).

1. Links between organised crime and terrorism

Differences. When it comes to threats to society, organised crime and terrorism differ mainly with regard to their exposure and advocacy. Though these two types of threat are not watertight, the risk of alliances, hybridisation and transformation should be analysed.

¹ Doctor of Law, lawyer internship at the Council of State in France (*Le Conseil d'Etat*).

Organised crime tends to stay invisible while the groups involved carry on their parasitic activities. In the long run, concealment remains the best way to avoid suppression and progressively set up an operation as a key player in business and politics. In that way, the criminal activity can become an integral part of society. In contrast, terrorism fights against society and looks for mass media recognition for advocacy. It alternates between secrecy when preparing for attacks and high exposure during and after them. Organised crime keeps a low profile all along and forges political relationships to prosper and maximise profits.

The two threats differ with regard to their goals and means. A high level of mass media exposure is one of the best tools for terrorist groups, but the worst enemy of organised crime. Could we therefore conclude that terrorist groups employ a short-term strategy and criminal organisations a long-term one? That would be too reductive a way of looking at it, because the latter are acquiring hybrid qualities (Gayraud, 2008).

Unlike terrorism, organised crime isn't subversive but a type of societal parasitism. It is also concerned with profit and not ideology. Organised crime and terrorist groups differ in two key respects: their ideology and their relationship to the establishment.

The former do not aim to overthrow the established order because they prosper as a substitute when the state is weaker, and they do not seek regime change or political instability.

Terrorist groups pursue a different goal by competing with the establishment and the rule of law, though they do not offer any credible alternative to the state. Terrorist organisations do not traditionally work to establish a new political system, whereas organised crime groups compete with the state or local political actors for sovereign functions, such as the monopoly on the legitimate use of force and the withholding of tax. Nowadays, along with the transformation of criminal entities, hybrids of terrorist and criminal groups rule large territories.

Organised crime was traditionally considered a domestic threat integrated into society, whereas terrorism was an external threat with state destruction as an ultimate goal.

ISIL (*Islamic State / Daesh*) tends to be decentralised into autonomous local entities and favour promotional or propaganda operations of promotion. The aim is for them to conduct high-intensity operations with broad exposure to take control of and embed themselves within large territories. Does a terrorist group expect to consolidate its supremacy and keep expanding, like one involved in organised crime?

It is common to link and compare the two types of crime, which saw significant and simultaneous developments following the end of the bipolar world. Criminal entities benefited from the fragmentation of a world divided by ethnic conflicts and demands. They developed strong worldwide relationships, set up local units and sometimes shared resources.

Similarities. If it is considered dubious to talk about ideology when it comes to organised crime, numerous common trends can be identified between ordinary criminal and terrorist recruitment. Prison and disenfranchised areas remain the best two recruitment pools for criminal entities.

Prisons are considered "terrorist incubators", producing hybrids of common criminals and Islamist preachers. Military camps in Iraq, such as *Bucca*, have been a typical example of such incubators. In France, a National Centre for Counter Terrorism has been created for the strategic monitoring of intelligence services from different ministries (namely, the ministries of justice, the interior, defence and economic affairs). This body aims to ensure more effective collaboration between all intelligence services on a domestic level and aid sharing of terrorism-related information at a European and international level.

Organised crime groups are like families and have a specific recruitment process, while affiliates are equal and have a duty of mutual assistance. This sense of belonging to a consistent and superior group also exists in terrorist groups, with being the “chosen one” finally duly recognised. However, this feeling remains artificial in both criminal and terrorist groups, in which relationships are actually more often based on dominant/subservient dynamics.

Discipline in each type of group is also based on similar methods of intimidation and secret networks with a significant sense of hierarchy.

Like the army, organised crime puts emphasis on a hierarchy, implements standards, and encourages vocations among younger generations. By training and promoting recruits, especially with regard to their fighting abilities, organised crime channels those “violent skills”, whereas terrorist groups intentionally heighten them. Religious fanaticism is used to justify extreme violence and the expression of proven mental disorders.

Meanwhile, organised crime and terrorism both provide new recruits with an artificial sense of belonging, along with social status. The similarities of these two threats increase their danger.

Criminal groups sometimes replicate tactics used by terrorists, such as beheadings or the threat of terrorist attacks. However, it is usually terrorists who copy the tactics of organised crime by instigating fear while earning profits and laundering money.

Terrorism, organised crime and corruption (Shelley & Picarelli, 2002) are interconnected. When trafficking is implemented, corruption is exacerbated as a means to maintain it; and when supported by lucrative trafficking, terrorist threats become all too real. It has been proven that the Turkish mafia, a form of organised crime, played a significant logistical role in providing equipment and recruits to the Islamic State. In return, ISIL provided access to oil, raw materials and stolen antiquities from occupied territories.

Terrorist groups aim to profit from transnational trafficking, so debates at an international level and at the French domestic level have logically focused on the legal limitation of their financial funding².

2. Organised crime and terrorism at a national and international level

France: domestic level. French law of June 3, 2016, established to further fight organised crime, terrorism and its funding, and to improve the enforcement of criminal proceedings purposely linked these activities. Is this relevant? It is if we take into account the hybrid nature of the terrorist threat, which has evolved to resemble the activity of a “multinational crime company”. French antiterrorism law implemented on November 1, 2017, is focused on the endless tug of war between individual freedoms³ and fighting terrorism effectively in the context of the overlapping threats of organised crime and Islamism after two years of having a state of emergency in France⁴. Of course, this is not only a French issue, and a democratic model demands control over the constitutionality of

² E.g. “FATF IX Special Recommendations”, *Financial Action Task Force, FATF-OECD*, February 2012; UN Security Council Resolutions 1373, 2178, 2253.

³ The French Conseil Constitutionnel approved the main provisions of the antiterrorist law in compliance with the Constitution, such as the possibility for a French local administrative official, called a “préfet”, to “temporarily close” cult locations to prevent terrorist attacks. It made a lone reservation on search-and-seize activities called “perquisitions administratives” under the state of emergency. The Conseil Constitutionnel determined that French lawmakers did not provide a sufficient legal framework on seized data analysis, detention and recovery, apart from electronic data.

⁴ The new antiterrorist French law differs greatly from the state of emergency on one point. Under the state of emergency, law enforcement and security forces could search residences or companies on the strength of mere suspicion. From now on, they have to request the discretion of a liberty and custody judge (*juge des libertés et de la détention*) to search and seize.

antiterrorist laws. David Golove has described the constitutional problems the US faces in the fight against terrorism, with a rigorous verification of the constitutionality of the law (Golove, 2005).

The French law of June 2016 strengthens the fight against organised crime, terrorism and their funding. It also broadens the tools for investigation into arms trafficking and extends the ability for law enforcement agencies to conduct search-and-seize operations in residences at night if there are suspicions of terrorism or danger to lives.

Eligibility conditions for acquiring or detaining weapons have been tightened to improve control over access to weapons and ammunition. Among other provisions, buyers who have been convicted of certain infractions in their criminal record (“bulletin n°2”) are prohibited from acquiring weapons in the B, C and D categories⁵. French local administrative officials, or “*préfets*”, can also stop reported citizens from buying weapons. In the same way as with drug trafficking, investigators are allowed to buy weapons to unveil a trafficking network.

It has been reasonably stated that “in the face of the economic downturn, an increasing number of business entities are encountering financial difficulties and some of them turn to the shadow economy” (Gutauskas, 2011). Obviously, legislators must react to this. In 2016, French law therefore strengthened its fight against money laundering by creating a new offence relating to the trafficking of cultural goods from regions where terrorist groups are active. Under the new article 322-2 of the French Criminal Code, the importation, exportation, transit, transportation, detention, selling, buying or exchanging of a cultural good with archaeological, artistic, historical or scientific interest from a region where terrorist groups are active can be prosecuted if its lawful origin remains unproven. However, the article seems incomplete because it only takes into account the goods’ geographic origin without referring to funding for terrorism. This law also modifies the French Monetary and Financial Code, whereby the new provisions do not have any criminal nature but breaking them carries severe penalties⁶. Article 315-9 of this code provides for amounts held on prepaid cards to be capped to reduce the massive underground flow of money⁷.

Article L. 561-29-1 of the French Monetary and Financial Code provides that the country’s financial intelligence service *Tracfin* (*Traitement du renseignement et action contre les circuits financiers clandestins*) is empowered to report on every legal or natural person involved in any operation that carries a high risk of money laundering or terrorism funding. Banking institutions therefore need to enhance their due diligence measures for reported customers.

Apart from the financial perspective, French law enforcement policies have also been reinforced in other ways. For example, article 427-7 of the new French Criminal Code, added by the country’s Senate and maintained by a Senate-National Assembly joint committee (*commission mixte paritaire*⁸), stipulates that the Criminal Court can order a minimum period of up to 30 years for perpetrators of terrorist attacks sentenced to life imprisonment.

Since a law on public security of February 8, 2017, law enforcement agencies are allowed to fire after having summoned, once a hazard is present – for example, after a terrorist attack when the fugitive perpetrators can potentially commit other murders.

The French antiterrorist law of November 1, 2017 aimed to end the exceptional state of emergency. Home arrest⁹ and administrative searches are now part of ordinary law. As previously discussed, resistance to adopting the law

⁵ Under the new article L. 312-3 of the French domestic security code (Code de la sécurité intérieure).

⁶ For example, any authorised person who communicates information from the French financial intelligence service (Tracfin) to a client or third person is subject to a €22,500 fine under article L. 574-1 of the French Monetary and Financial Code.

⁷ It is planned to improve the tracking of operations made with similar prepaid cards.

⁸ In the event of disagreement between the two French legislative chambers (the Senate and National Assembly), a joint committee is convened to conciliate them.

⁹ In French law, the term “*assignation*” (arrest) has been replaced by “*surveillance*” (monitoring).

was only about ensuring an effective fight against terror and respect for human rights and fundamental freedoms¹⁰. The French Senate wanted to provide a stronger framework for administrative searches, which are the measures that most infringe on individual freedoms, and the government moved for requests for administrative searches to be under the discretion of the liberty and custody judge.

International level. It is evident that organised crime and terrorism should be a target not only at a national level, but that international activities and legislation are also an obligatory part of the structure for preventing these two phenomena. International treaties outlaw separate types of terrorist activities; paradoxically, organised crime is evil, but a universal definition of terrorism is not yet enshrined in universal international treaties (Vasiliauskienė, 2014).

United Nation Security Council (UNSC) Resolution 1373 linked transnational organised crime and international terrorism. This 2001 measure aimed to improve transnational cooperation and suggest measures that governments could take to prevent and prosecute terrorist acts by cutting off funding¹¹.

Drug trafficking has been the foremost avenue of funding for many terrorist groups, such as the Revolutionary Armed Forces in Colombia or Al-Qaeda in Afghanistan (Neumann and Salinas de Frias, 2017). Opium trafficking provides each local unit with enough profit to be financially independent. The international legal framework against drug trafficking¹² is based on three major conventions that complement those on transnational organised crime and terrorism, which never address interactions between organised crime and terrorism.

These nonetheless provide extradition policies that are considered the preferred form of cooperation between governments for fighting illegal drug trafficking. The three conventions, however, differ on crucial matters¹³, although they include provisions with regard to legal assistance. In light of this, the 1988 UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances provides an additional type of cooperation by allowing joint teams to operate in a member's territory. Because it allows cross-border surveillance, the convention can be used in a common fight against transnational organised crime and terrorism to help prosecute terrorists involved in drugs trafficking.

It should be stressed that connections between terrorism and organised crime are multiplying and becoming among the most strategic elements in the fight against terrorism. Combating underground economies, cash transfers, tax fraud, informal exchanges and developing banking systems are central goals in the fight against terrorism and the transformations it undergoes.

At an international level, connections between organised crime and terrorism have been taken into account. The European Union has even stated that it was “convinced of close connections between terrorism, organised crime

¹⁰ The French National Consultative Commission on Human Rights (Commission consultative des droits de l'homme) delivered an opinion on the necessity of balancing guarantees of individual freedoms and public security on January 26, 2017.

¹¹ On the need to jointly address these two threats, see: International Peace Institute, *Transnational Organized Crime and the Palermo Convention: A Reality Check*, 2010; UN Secretary-General report to the Security Council S/2016/92, 01/29/2016; report S/2016/501, 05/31/2016 and resolutions A/RES/70/177, 01/08/2016 and S/RES/2199(2015), 01/12/2015.

¹² See the Single Convention on Narcotic Drugs of 1953 as amended by the 1972 Protocol, the 1971 Convention on Psychotropic Substances and the 1988 UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances. The Council of Europe, pursuant to article 17 of the 1988 convention, adopted the Agreement on Illicit Traffic by Sea in 1995 (ETS n° 156), counting on a cooperative group called the Pompidou Group to combat drug abuse and illicit trafficking in drugs.

¹³ Only the 1988 convention contains a specific provision establishing extradition measures as the main instrument of cooperation, including the general principle of “*aut dedere aut judicare*”. In contrast, the two previous conventions provide extradition measures among other penal provisions, but do not specifically refer to the state's obligation to decide on cases in the absence of any extradition agreement.

and drugs trafficking”. Arms trafficking and counterfeiting have recently been considered main sources of funding for terrorism. The trafficking of counterfeit goods is opportunistic, because it faces low penalties in France and other countries. Although profits from this activity are huge and can supply a shadow economy aiming to fund terrorist networks¹⁴, it is still prosecuted as a minor offence. Groups involved in this can control the whole distribution chain and adapt their *modus operandi* to national legislation (see 2015 Situation Report on Counterfeiting in the European Union – Europol and OHIM). They benefit from the lack of legal harmonisation in European, while laws have little dissuasive effect and financial penalties remain low.

The role of the UN Arms Trade Treaty in fighting terrorism and organised crime can be analysed in relation to arms trafficking.¹⁵ Adopted on April 2, 2013, this provides importation provisions with regard to export licences. Member states need to issue an authorisation prior to exporting any weapon. If there is a non-negligible risk that arms could be used to commit offences contravening international law and human rights, export demands will be rejected. This treaty is the first worldwide legally binding tool for regulating the conventional arms trade, fighting against illicit international arms traffic and preventing the consequences in the civil arena. It applies to all conventional arms as defined in the UN Register, including small arms and light weapons. State parties¹⁶ must implement laws and legal tools, as well as practical control, of military equipment and its components.

On December 8, 2008, the Council of the European Union adopted a common position “defining common rules governing control of exports of military technology and equipment”. This directive lists criteria that member states must carefully consider each time a national company makes a request for export.¹⁷

An analysis of arms trafficking highlights the following issues: the UN Arms Trade Treaty is ineffective; national systems relating to the transfer of weapons are too diverse and sorely lack transparency and responsibility for this activity; and weapons transferred to corrupt governments or armies involved in wars can ultimately fall into the hands of terrorist groups or be bought by them. Nonetheless, this crucial initiative for combating illegal arms trade and transfer could be strengthened if governments were to subordinate their weapons transfers to common legal provisions.

Both international and national normative regulation could therefore be more effective in the fight against organised crime and terrorism if the content of such regulation were directed against these evils by perceiving them both on a national and international basis and in isolation, and in recognising the integrity of these two activities.

¹⁴ For example, ISIL makes profits from all kinds of trafficking (such as that relating to drugs, cigarettes and counterfeit goods).

¹⁵ Arms trafficking is a criminal offence defined at an international level by the Additional Protocol to the Palermo Convention as: “*the import, export, acquisition, sale, delivery, movement or transfer of firearms, their parts and components and ammunition from or across the territory of one State Party to that of another State Party if any one of the State Parties concerned does not authorize it in accordance with the terms of this Protocol or if the firearms are not marked in accordance with article 8 of this Protocol*”. The protocol deals with every aspect: illegal production, trafficking, falsification or erasure, illegal removal or alteration of the compulsory mark(s) on weapons, parts, components and ammunition. It also deals with secondary offences, such as attempting to commit an offence or abetting it, and organising, leading, helping, encouraging or fostering the committing of any offences.

¹⁶ France signed the UN Arms Trade Treaty in fighting terrorism and organised crime in New York City on June 3, 2013.

¹⁷ The legal framework for the control of exports for war material and related items was significantly reworded in 2012 and 2013 after law n° 2011-702 of June 22, 2012, entered into force on June 30, 2012, pursuant to the European directive simplifying the terms and conditions for transfers of defence-related products within the Community (Directive 2009/43/CE of the European Parliament and of the Council of 6 May 2009).

Conclusion

Terrorist groups make profits from more and more criminal activities, from local illegal trafficking to transnational trafficking – for example, with counterfeiting¹⁸. The Islamic State has become a real crime “multinational” acting as a crime “company” under ideology. Terrorist groups are increasingly similar to criminal groups, a trend that cannot be qualified as a simple way to serve their ideology and the ultimate goal of these organisations.

There is no miraculous solution for fighting against the expansion of organised crime and terrorism on the same level. Nonetheless, improving international and regional cooperation, seizing criminal and terrorist assets, and relying on both classic intelligence and judicial police methods would allow all aspects of these two threats to be combated. As of now, terrorism and organised crime must be addressed jointly in security policies to ensure an effective fight against them.

Understanding the connections between organised crime and terrorism is a basis for combating these phenomena in an effective manner. Both international and national normative regulation could be more effective in the fight against organised crime and terrorism if the content of this regulation were directed against these phenomena by perceiving them both in isolation and recognising their integrity.

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¹⁸ As with other criminal activities, terrorist groups have invested in *cybercrime* for money laundering or credit card fraud.