GLOBALISATION, CRIME AND RIGHTS: THE QUEST FOR ROLE BY INTERNATIONAL INSTITUTIONS

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1. Introduction

Concepts like environmental security, cultural security or societal security are attracting the interest of scientists and of the public and policy-makers. Such security problems can be solved by means of international cooperation. Not just by means of mutual assistance among countries, but by international standards and norms, by world watcher agencies, by global strategies and the use of huge amounts of material and financial resources. All this requires action by international institutions. Means and solutions worked out at the state level have small and temporary efficacy.

This is also true of an area of security closely associated with the fundamental rights of the individual. Usually referred to as public or internal security, it concerns the protection of individuals and people from crime and violations of law. A particular function of the state, public security – as almost all social and human affairs – has changed, today, due to the accelaration of the globalisation process which has almost overtaken the traditional sovereignty of nations.

This essay calls attention to the international dimension of internal security. The criminal side of such a dimension – that is the increase of trans-national crime, mainly organised crime – has often been addressed. Less energy is given to the "containment" side, that is, the prevention and repression of trans-national crime by international institutions. Doubtless, the "containment" side is at a very early stage. Plans and action are small and, for the seriousness of the problem, discouraging. However, the nature and size of the problem are so signficant that the role of international institutions will probably grow in the years ahead. The first part of the essay looks at the criminal aspect of the international dimension of internal security; the second part, instead, looks at

containment, that is at international organisations, the actions of groups of governments and other international initiatives aimed at responding to crime at the global level.

Contemporary societies suffer from problems which in their origin, evolution and solution exceed national borders. This is true in different fields such as the environment (pollution), demography (migration), health (epidemics) and public security (organised crime, illegal business, etc.). Because of the effects that the globalisation process has on contemporary societies and states, governments are unable to ensure personal security for the population, societies with economic growth, groups with social protection and even individuals with rights, unless they turn to international cooperation.

The problems raised by the current acceleration of the globalisation process cannot be controlled unless governments coordinate the strategies and policies at the national level with strategies, policies and regulations issued at the international level. The problems globalisation raises cannot be solved unless they enter the agenda of the global system or, at least, the agenda of regional groups of countries. To put a problem on the agenda of the global system or of a regional system means to make that problem the object of specific rules of international law and/or the object of the creation of competent international institutions and/or the attribution of competence to already existing international institutions.

This is what occurs today in the field of internal security in Europe with the building up of police cooperation through the organisation known as Europol and with the so-called Third Pillar (or Justice and Home Affairs) cooperation among the members of the European Union. The de-bordering effect of the accomplishment of the "four freedoms" (i.e. free circulation of people, capitals, goods and services), scheduled in the Treaty of Rome, and of the single market, scheduled in the Treatry of Maastricht, add to the de-bordering effect of the globalisation process. The problem of trans-national crime in Europe has reached an alarming state, and there is, in fact, an urge to build up appropriate measures to protect people from illegal and criminal actions perpetrated across the internal borders of the Union by single and, mostly, by associated criminals and even by occasional legal offenders. Cooperation on public security in Europe is not aimed only at protecting public and social order from the intended and unintended effects of the breaking down of the EU-internal borders. It is also aimed at defending people and societies from one of the unwanted effects

of globalisation, i.e. from the expansion of international crime. However, Europe is just one of the regions where today international crime and international cooperation against crime are increasing – admittedly, with a lag between the second and the first.

2. The rise of trans-national crime organisations

The most important form of international crime today is organised crime, i.e. crime committed by groups of people equipped with stable, generally hierarchical organisation which perpetrate illegal actions, usually with violent means, in order to enrich themselves without consideration for international frontiers. Important groups of internationally organised crime are the mafias (Sicilian, American and Russian), the Japanese yakuza, the Colombian drug cartels of Medellin and Cali, the Chinese triads. However, a crime group is not a unitary organisation made of rigidly subordinated groups. It is, instead, a network of homogeneous groups linked to one another by various forms of solidarity, complicity and spurious hierarchical order. Such relations make it very hard to combat against these crime organisations and to put their action under control.

Rivalry and conflict between crime organisations are settled according to rules and mechanisms only partially known to the outside and usually without giving place to all-out confrontation. According to Phil Williams (1994), labels such as *Pax Mafiosa* or global organised crime *"do help to draw attention to the growing linkages amongst transnational criminal organisations that make them an even more formidable challenge than they are in isolation"*.

But, contrary to Sterling's (1994) interpretation of the rise in the formation of cooperative linkages among transnational criminal organisations as an attempt to carve up the globe into criminal fiefdoms, he views these linkages as simple *"strategic alliances"* based on economic considerations (such as risk reduction, need for specialised services and desire to enter new markets) rather than as part of a global criminal conspiracy. In addition, he notes, crime alliances encounter significant problems. The common aim of circumventing law enforcement agencies provides an underlying incentive for sustained cooperation, but such an aim may be neutralised by factors like different criminal cultures and codes of honour, different priorities and concerns over relative gains and who is benefiting most from the collaborative ventures.

International crime is in continuous change. It becomes more diversified every day, moving from traditional fields, such as gambling, loan-sharking and prostitution, to international automobile smuggling, art and archaeological theft, arms trafficking, trade in illegal wildlife products, credit-card fraud and other transnational enterprises. A crime organisation may prefer a particular sector of crime rather than another, but no organisation avoids action in drug traffic, arms trade, prostitution and the international recycling of dirty money – this last being the natural complement of all kinds of criminal occupation. Modern technology in the banking, communications and electronic sectors has provided criminals with new tools enabling them to steal millions of dollars and to launder their huge illicit profits across borders and continents. For this reason, as we shall see later, the fight against money laundering is the most important step in the criminal process to contain national and transnational crime in the present time.

The crime business in all its forms, like drug trafficking, illicit arms deals, theft of cars, child pornography, prostitution and smuggling of migrants, was worth $95 billion ten years ago. Today it has more than quintupled. According to the International Monetary Fund, some $500 billion changes hands in the global criminal business each year – more than the combined value of international trade in petroleum, steel, pharmaceuticals, meat, fruit, wheat and sugar (Giacomelli, 1996).

International criminal organisations are frequently involved in the privatisation programs which many governments have set-up to re-start national economies after years of crisis. They buy previously state-owned banks and financial, telecommunications and service institutions as a front or cover for their clandestine operations. Businesses acquired by organised crime are likely to have an edge over their law-abiding competitors, and criminals tend to widen that edge by violent means. In that manner, near-monopolistic situations are created, forcing honest entrepreneurs into bankruptcy.

The huge transactions made by organised crime are often higher than the total budgets of most developing countries. Inflation and currency fluctuation can result from such business, throwing the domestic financial institutions into disarray with tremendous injury to the conditions making possible the achievement of fundamental social and economic rights.

Most transnational criminal organisations are concerned with

profit rather than politics, and are unlikely to want to undermine a system that they are able to exploit and abuse for their own purposes. But, organised crime is always a form of lawlessness that cynically exploits citizens' rights and threatens the most basic elements of democracy. Corruption is one of the most destructive accompanying phenomena. Corruption of public officials is often the preferred way of doing business, since violence is likely to attract unwanted public attention. The resulting public reaction to revelations of corruption of officials is one of profound distrust, fear and unwillingness to cooperate with authorities with further damage to public order and human rights.

3. International institutions for internal security

There is no alternative to fighting international organised (and not organised) crime other than to collaborate and coordinate national police and judiciary actions. To improve such coordination, agencies like Interpol and the new Europol have been constituted; the United Nations has taken action since its foundation; groups of states (like the G7) formulate specific plans and run concerted strategies.

The operation of such actions and institutions is faced with great problems and obstacles because states have particular penal law codes and regulate in very different ways police operations like, for instance, preventive incarceration, collection of information and telephone controls. In addition, they have different priorities in combating different kinds of crime. Resistance and even opposition originate from governments which are not disposed to fight crime for political reasons (it may create trouble to rival governments and cause disorder in enemy countries), economic interest (state treasuries may take advantage of certain criminal business) and corruption in the ranks of politicians, army and police officers and state administrators.

3.1. ICPO – Interpol

International police cooperation has a long tradition. Since crime has assumed the character of an international phenomenon, the police has responded with cross-border cooperation. In 1923 the first international police organisation was set-up, but during the first half of the present century cooperation was of an informal nature,

not based on formal agreements and conventions. The situation changed in the 1950s. Since 1956, Interpol (the International Criminal Police Organisation, ICPO) has been the world organisation for international police collaboration.

Interpol deals with such organised criminal activities as drug-trafficking, arms smuggling, artwork and car thefts, money-laundering and slave trading. It operates under a constitution which has as its aim to ensure and promote the widest possible mutual assistance between all criminal police authorities within the limits of the laws existing in the different countries and in the spirit of the Universal Declaration of Human Rights.

Almost all the states of the world are members of Interpol. About eighty police agents of different countries work at the headquarters of the organisation in the French town of Lyons. In the national capital of the member countries the CNOs (Central National Offices) operate with local police officers. These Bureaus communicate directly for the exchange of information. The central data bank in Lyons receives and gives information and data. Interpol mainly exchanges and analises information, supplies national police forces with data and analysis to recognise international criminal structures and connections, provides the tools that enable them to work together when something international has to be dealt with (See: Anderson, 1989; Bresler,1993; Fooner, 1989; Valleix, 1984).

3.2. Europol

Judiciary and police cooperation among the countries of the European Union (EU) started in the 1970s. It was aimed mostly at fighting terrorism. The recent increase in such cooperation is linked, instead, to the upsurge of drug-related crimes and to the wish to control immigration and prevent illegal immigration (Ahnfelt and From, 1993).

In the early 197Os, Germany advocated to go straight to the establishment of a common police agency. The extent of political terrorism experienced by several member states lead to the creation of TREVI, the inter-governmental forum of Ministries of Justice and Home Affairs established by the European Council of Rome in 1975 to coordinate anti-terrorism measures (See: Benyon, 1992; de Boer and Walker, 1992). Since November 1993, the EU Council of Interior and Justice Ministers co-ordinates a number of actions which were previously operated under different forms of cooperation

like the TREVI forum (den Boer, 1995).[1] Maastricht Treaty article K, Title VI "Cooperation in the Fields of Justice and Home Affairs" is the basis of such coordination. Like foreign and defence affairs (the Second Pillar of Maastricht), justice and home affairs (the Third Pillar) are sensible matters of state sovereignty. They involve the use of coercion, the restriction of liberties, the definition of the conditions of public and social order. In spite of this, the results achieved in the first years of existence of the Third Pillar are not irrelevant to the pursuit of the *communautarisation* of internal security.

Article K.1.9. of the Maastricht Treaty provides for the establishment of Europol. The mandate of Europol is *"to improve the effectiveness and cooperation of the competent authorities in the Member States in preventing and combating terrorism, unlawful drug trafficking and other serious forms of international crime where there are factual indications that an organised criminal structure is involved and two or more Member Stares are affected... "*. The supplementary Declaration appended to the Treaty refers also to different instruments provided by Europol like support, analysis of national prevention programmes, training and research and development. Lastly, the Europol Convention, currently under ratification by the member countries, describes Europol's tasks as the exchange of information, analysis, facilitating the co-ordination of ongoing investigations, increasing expertise and training.

Europol's tasks are performed by Europol officials and analysts and by liaison officers from the member states. Every country is obliged to set up a national intelligence service (Europol National Unit). However, Europol is not a completely new agency. On June

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[1] Article K 1. identifies nine areas as "matters of common interest": (1) asylum policy; (2) rules governing the crossing by persons of the external borders of the Member States and the exercise of controls thereon; (3) immigration policy and policy regarding nationals of third countries; (4) combating drug addiction in so far as this is not covered by (7) to (9); (5) combating fraud on an international scale in so far as this is not covered by (7) to (9); (6) judicial co-operation in civil matters; (7) judicial co-operation in criminal matters; (8) customs co-operation; (9) police co-operation for the purposes of preventing and combating terrorism, unlawful drug trafficking and other serious forms of international crime, including if necessary certain aspects of customs co-operation, in connection with the organisation of a Union-wide system for exchanging information within a European Police Office (Europol).

1993 a Ministerial Agreement set up the Europol Drugs Unit (EDU), which started operation on January 1, 1994. Its mandate has been extended from drugs-related crime to illicit trafficking in radioactive and nuclear substances, illicit vehicle trafficking, clandestine immigration networks and all associated money-laundering activities. EDU and Europol do not take charge of cases but provide assistance and support. Each team of liaison officers remains under the exclusive control of the national authorities and the management of EDU and Europol co-ordinates the team, not the cases.

In 1996, EU ministers signed two milestone documents on criminal cooperation. Beside the Europol Convention, signed in June, the convention simplifying extradition procedures between the 15 member states was signed in September. The Third Pillar is a kind of a rising star in the Union. Governments are aware that closer cooperation over justice and home affairs is vital today as never. Indeed, working at the Europol and extradition conventions, EU ministers expressed a level of mutual trust never shown by their predecessors. Yet, disputes continue. The most clear sign of uneasiness is the quarrel over the role of the European Court of Justice. To sign the Europol convention, a compromise was reached between those (like the British government) who want to resist any extra transnational involvement in national affairs and those who argue that only a European court of law could pass judgement on third pillar instruments. Under the compromise reached, member states accept certain degrees of jurisdiction only if they want to.

3.3. G7/G8: against terrorism and money laundering

Since the early 1980s, the G7 has been engaged in developing a long-term anti-terrorist strategy. Such strategy focuses on cooperation between national administration for the enforcement of existing conventions and the harmonisation of laws on extradition and other issues. The final Declaration of the last Summit of the G7 and Russia, held in Lyon in June 1996, extended the fight against terrorism to related activities such as fundraising, the preparation of terrorist acts, recruitment, the acquisition of arms and incitement to violent acts. It stressed the need for giving attention also to the threat of terrorist use of nuclear, chemical and biological products and other toxic substances.

The participants at the Lyon Summit decided to call for a meeting of their Foreign Ministers and Ministers responsible for security.

The meeting was held in Paris on July 30, 1996, and produced the "Agreement on 25 Measures to Counter Terrorism". The document invites all States to two forms of action: (a) adoption of "internal measures" to improve counter-terrorism cooperation and capabilities, deter, prosecute and punish terrorists, apply appropriate measures on asylum, borders and travel documents; and (b) increase of international cooperation to fight terrorism by expanding international treaties and other arrangements, preventing terrorist fund raising and improving information exchange on terrorism. From a practical point of view, the eight countries attending the conference decided to establish a common directory of counter-terrorism competences, skills and expertise to facilitate practical cooperation.

An occasion to express the G7/G8 countries' solidarity against terrorism arose with the December hostage crisis at the home of Japan's ambassador to Peru. The Group of Seven industrialised countries – along with Russia – condemned the Tupac Amaru rebels as terrorists, "reaffirmed the general principle under which no concession must be made in the face of a terrorist action" (See the communiquè issued on the 11th day of the crisis by the French government in charge of the organisation's rotating presidency) and promised to help the Peruvian government with "all the appropriate means that it could request".

Critics warn against strengthening the tendency to endow the G7/G8 with competences beyond economical issues, fearing this would lead to a further weakening of legally-established international institutions such as the United Nations. The U.S. government, however, is determined to go ahead with a firm attitude against political terrorism, an area of special concern for the leading power of the international system and its close partners. The same can be said with regard to money laundering. In this field the United Nations also takes part with its agencies, especially those set-up for drugs control, because the proceeds by which organised crime convert "dirty money" (usually cash received from criminal activities) into "clean money" through the financial system are most often associated with illicit profits derived from the sale of narcotics.

To address the problem of money laundering, the G7 countries established the Financial Action Task Force (FATF). The decision was taken at the 1989 Summit. In April 1990, the Task Force issued a report listing 40 recommendations to improve national legal systems, enhance the role of financial systems, and strengthen international co-operation against money laundering. FATF is

composed of financial, institutional, supervisory, regulatory and law enforcement personnel from all OECD countries and others. FATF's principal purpose is to assess and report on the procedures adopted by its members to prevent the use of the financial system as a conduit for money laundering.

Also the United Nations has called for an urgent crackdown on money laundering to block the spread of organised crime. Its 1988 convention against illicit traffic in narcotic drugs and psychotropic substances includes tough measures requiring signatory governments to make money laundering a criminal offence and to use all the powers of seizure and confiscation that such a move implies. Despite enormous support by the United Nations for these measures, more than one-third of the 185 UN members have yet to become parties to the 1988 treaty. Many more, who are signatories, have not put into force the necessary laws and controls to make the treaty work (Giacomelli, 1996).

3.4. United Nations Drug Control Programme

The United Nations International Drug Control Programme (UNDCP) was established pursuant to General Assembly resolution 45/179 of 21 December 1990 as the single body responsible for concerted international action for drug abuse control. The Programme integrated fully the structures and the functions of the Division of Narcotic Drugs of the Secretariat, the secretariat of the International Narcotics Control Board (INCB) and the United Nations Fund for Drug Abuse Control (UNFDAC), with the objective of enhancing effectiveness and efficiency in implementing the functions and mandate of the United Nations in this field

As the central unit in the UN Secretariat in matters of drug control, UNDCP:

- acts on behalf of the Secretary-General in carrying out the responsibilities assigned to him under international treaties and resolutions by United Nations bodies on international drug control, monitors implementations to ensure that these functions are fully carried out;
- provides advice to member states concerning implementation of international drug control treaties and assists states in acceding to and implementing these treaties;
- designs and implements worldwide technical cooperation programmes relating to drug control and assists governments to develop and implement national, subregional and regional

programmes to reduce the production, manufacture, trafficking and abuse of illicit narcotic drugs and psychotropic substances.

Besides UNDCP, the Commission on Narcotic Drugs (CND), established in 1946 by the Economic and Social Council, is the central policy-making body within the United Nations system for dealing with all drug-related matters. Membership in the Commission grew from 15 States in 1946 to 21 in 1961, 24 in 1966, 30 in 1972, 40 in 1983 and 53 in 1991. That growth reflected the need to broaden the Commission's representational base to keep pace with the worldwide expansion of the drug abuse phenomenon.

The International Narcotics Control Board (INCB) is the independent and quasi-judicial control organ for the implementation of the United Nations drug conventions, established in 1968 by the Single Convention on Narcotic Drugs of 1961. The Board is independent of governments as well as of the United Nations. It is the Board's responsibility to promote government compliance with the provisions of the drug control treaties and to assist them in this effort. Broadly speaking, the Board deals with two aspects of drug control. With regard to licit manufacture, commerce and sale of drugs, the Board endeavours to ensure that adequate supplies are available for medical and scientific uses, and that leakages from licit sources to illicit traffic do not occur. With respect to illicit manufacture and trafficking of drugs, the Board identifies where weaknesses in the national and international control systems exist and contributes to correcting the situation.

3.5. United Nations Crime Prevention and Criminal Justice Programme

Since the United Nations was formed, the control and prevention of crime has been an area of its concern. Over the years, the area has developed considerably, reflecting the growing awareness of member states of the structural and sociological causes of crime and the need for measures to alleviate the economic and social conditions that foster criminal behaviour, as well as the need for more effective strategies for incorporating planning for crime prevention and criminal justice within overall social and economic development planning.

On 21 June 1946, the Economic and Social Council requested the Social Commission to consider how effective machinery could be developed for studying, on a wide international basis, the means for the prevention of crime and the treatment of offenders. In 1948,

the Economic and Social Council endorsed the opinion of the Social Commission that the United Nations should assume leadership in the prevention of crime and treatment of offenders, having regard to and making the fullest use of the knowledge and experiences of international and national organisations that had interests and competence in the field. The rationale for conferring this role on the United Nations had its genesis in the Charter which, inter alia, states the aims of the Organisation as safeguarding universal values, including the protection of life, health and security of the people of the world as well as "to achieve international cooperation in solving international problems of an economic, social, cultural or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language or religion".

In 1950, an Ad Hoc Advisory Committee of Experts, consisting of seven internationally recognised experts, was established to act as an advisory body to the Secretary-General and the Social Commission, and to assist in devising and formulating programmes and policies for international action in the prevention of crime and the treatment of offenders. The group's membership was enlarged to 10 in July 1965 by the Economic and Social Council, which also changed the Group's name to the Advisory Committee of Experts on the Prevention of Crime and the Treatment of Offenders. In 1971, the Advisory Committee was again enlarged, from 10 to 15 members by the Economic and Social Council, and renamed the Committee on Crime Prevention and Control.

In February 1992, the Economic and Social Council dissolved the Committee on Crime Prevention and Control, composed of experts serving in their individual capacities, and established the new intergovernmental Commission on Crime Prevention and Criminal Justice.

The establishment of the Commission on Crime Prevention and Criminal Justice ushered in a new era in United Nations' involvement in crime prevention and criminal justice following the heightened awareness and concern of the member states that crime, in its internationalised form, has to be tackled adopting a multilateral approach including international cooperative measures, and that interdependent efforts are urgently required. The Commission provides a means by which governments can be directly involved in the determination and supervision of the programme of work of the United Nations in crime prevention. It works closely with officials of member states, intergovernmental and non-

governmental organisations and through public information activities. It fosters the application of United Nations norms and instruments in national legislation, collects and analyses statistics, and conducts studies on various aspects of crime prevention and control and criminal justice administration

The Commission works in close cooperation with a network of institutes and other regional, affiliated and associate training and research institutes based in various parts of the world. These entities inter alia promote United Nations recommendations and policies, assist the governments of their regions in the implementation of United Nations international standards and instruments, provide advisory opinions on policy matters, organise training courses, conduct research in the field of criminal justice, organise regional seminars and facilitate cooperation between the States of their regions and the United Nations.[2]

As part of its work in the collection, analysis and exchange of international crime statistics, the Commission established, in 1989, a computerised database known as the United Nations Criminal Justice Information Network (UNCJIN). UNCJIN offers its members – governmental and non-governmental institutions, including criminal justice officials and experts – a number of services ranging from a calendar of criminal justice events, information on training and statistical data on crime trends in the world.

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[2] The network, which is continually expanding, currently consists of, in order of creation: the Asia and Far East Institute for the Prevention of Crime and the Treatment of Offenders (UNAFEI), established in 1961 in Fuchu, Japan; the United Nations Interregional Crime and Justice Research Institute/(UNICRI), established in 1968 in Rome, Italy; the Latin American Institute for the Prevention of Crime and the Treatment of Offenders (UNLAI), established in 1975 in San Josœ, Costa Rica; the Helsinki Institute for Crime Prevention and Control, affiliated with the United Nations (HEUNI), established in 1981 in Helsinki, Finland; and the African Institute for the Prevention of Crime and the Treatment of Offenders (UNAFRI), established in 1989 in Kampala, Uganda. Associate members of the network are: the Arab Security Studies and Training Centre in Riyadh, Saudi Arabia; the Australian Institute of Criminology in Canberra, Australia; the International Centre for Criminal Law Reform and Criminal Justice Policy in Vancouver, British Columbia, Canada; the International Scientific and Professional Advisory Council (Centro Nazionale di Prevenzione e Difesa Sociale) in Milan, Italy; and the International Institute of Higher Studies in Criminal Sciences in Siracusa, Italy.

3.6. United Nations: toward an International Criminal Court

National governments are responsible for protecting their citizens, investigating alleged abuses of human rights in their countries and bringing the perpetrators to justice. They may also extradite those accused of such crimes to any other state prepared to give them a fair trial. However, when governments are unable or unwilling to perform this duty, the international community must step in and search for justice.

The system of international justice will be enhanced when the current negotiation at the United Nations on the creation of a permanent international criminal court reaches a final decision. On the initiative of a coalition of non-governmental organisations including the World Federalist Movement, Amnesty International, the International Commission of Jurists, Human Rights Watch, and Parliamentarians for Global Action (See: Deen, 1996), a Preparatory Committee on the Establishment of an International Criminal Court (ICC) is discussing the various aspects of the proposed statute. A decision by the UN General Assembly is required to convene an international conference to create the court.

Since World War I the international community has sought to establish a court to prosecute perpetrators of major international crimes like aggression, genocide, crimes against humanity and war crimes. Nearly half a century ago, on the experience of the former Nuremberg Tribunal, member states of the newly founded UN pledged to create a new system of international justice. They recognised that an international criminal court was an essential element in building respect for human rights throughout the world, but the court was never set up. Governments have been reluctant to pursue the establishment of such a court because of its potential to limit their own political options. Outraged by the atrocities in the former Yugoslavia and in Rwanda, world public opinion is now inclined to support the initiative as never in the past. Almost unanimous assent has been expressed to the United Nations decision to set up ad hoc tribunals to prosecute those who committed atrocities in former Yugoslavia and in Rwanda.

The international criminal court could bring to justice those accused of the most outrageous crimes against human rights and humanitarian law in proceedings which guarantee all the internationally recognised safeguards for fair trials adopted by the international community. It would hold individuals personally responsible for planning, ordering or committing gross crimes under

international law. It would prosecute them whether they were committed in war or peace and regardless of whether the perpetrators were leaders or subordinates, civilians or members of military, paramilitary or police forces.

According to the current draft statute, the court would complement prosecutions in national courts, acting when states were unwilling or unable to bring perpetrators to justice. Since the creation of the United Nations, millions of people have been the victims of genocide, crimes against humanity and serious violations of humanitarian law. But only a handful of those responsible have been brought to justice in national courts.

The major issue relates to the powers of the Prosecutor of the court and, consequently, to the role of the Security Council. The two U.N. war tribunals established to investigate genocide in Rwanda and Bosnia were set up by the Security Council. Some countries, including the United States, have expressed a preference for the U.N. Security Council to create ad hoc tribunals to deal with international crimes on a case-by-case basis. The Council, they argue, would have better control over the powers of such tribunals and the appointments of judges. But the Security Council is a political body, where the use of the veto can deny justice to victims. The Council has established ad hoc tribunals for the former Yugoslavia and for Rwanda but has not used these powers in other situations where crimes of similar gravity have been committed like in Cambodia, Liberia or Afghanistan. So if the Prosecutor has to rely on the UN Security Council as the only way of bringing a case to court, very few indictments would be issued, tainted by political motives rather than based on objective, legal assessments. The Prosecutor of the court, instead, must be truly independent. He must be able to investigate the complaints of victims, their families, non-governmental organisations and other reliable sources. He or she must have the power to submit indictments for approval by the court.

4. Security as a public good: the internal / international contrast

After reviewing the principal international organisations in the field of internal security, attention is called on the present junction of the growth of cooperation in the field of internal security with the decline of formal cooperation in the field of international security. Such a coincidence can be the symptom of a major change in international politics and a (nother) sign of it being overcome

by global politics. It is on a global political stage that the quest for a role in internal security by international institutions must be considered.

Recently, scientific knowledge on international security has been increasingly reconsidered by scientists. The fading of bloc-rivalry-determined conflicts has been an important transformation, yet an even greater transformation is taking place in the world. Globalisation has been seen as the process ecompassing all the causes for the ascendance of the security dimension in international security. This is true as much as the "other side" of globalisation, fragmentation, is also taken into consideration as the cause of collective conflicts. The most common conception on the consequence of globalisation and fragmentation on collective conflicts is that international conflicts have been largely replaced by national and ethnic conflicts taking place mostly at the intra-state level, sometimes at the cross-national one. Hence, re-examining the concept of international security is not a matter of adapting it to the condition created by the non-violent (self) defeat of the Soviet Union, the would-be superpower of the would-be bipolar world. Briefly, the content of the transformation of international security is that, in the post-world-war international system, it ceased to be only a right of the single state and an individual good. It took also the nature of public good.

An individual good is something that individuals supply to themselves mainly by their own means. At the same time, it is not the obligation and task of the political authority to impede any action of restriction to such a right and punish the offenders. A collective good, instead, is something individuals benefit from mainly because the authority makes it available to all the subjects of the system. Individuals have only to comply with few obligations to avoid "wasting" the good. In national political systems, the provider of public goods is either the state government or a state agency. In the international political system, the provider of public goods is the hegemonic power and specific institutions constituted for the purpose. Authors of the hegemonic theory of international politics like Gilpin (1981), Modelski (1978) and – especially on collective goods – Kindleberger (1970 and 1988), have indicated certain public goods provided by the leading power to the system such as currency for international exchange and freedom of circulation for international trade. In the contemporary international system, two important changes occurred with regard to public goods: one is the inclusion of international security in the

public goods set of the system; the other is the legitimate role of the United Nations regarding the action of the hegemonic state (the United States) to ensure international security, no matter what the content of the U.N. Charter and the best for the world.

In the past, international security was acquired by building national military power and/or through binding a nation to the strongest nation(s) of the system by a military alliance. In the contemporary international system, instead, national security is mainly and *in the last resort* defended by the "governmental institutions" of the system, namely the United States and the United Nations. For that reason, in current international politics, to make military alliance is an obsolete instrument of foreign policy. Indeed, the number of military alliances created in the last twenty years is near to zero. The only important exception to such decaying importance of military alliances is Nato.[3]

In the contemporary international system, apart from the attack on nascent states (like East Timor by Indonesia and Western Sahara by Morocco), only five cases can be counted as cases of real threat to the existence of a state by invading its territory. In chronological order, they are the invasion of South Korea by North Korea, of South Vietnam by North Vietnam, of Afghanistan by the Soviet Union, of Kuwait by Iraq and of Bosnia by Croatia in 1995. Other cases of military occupation – for example, in the Middle East – can be counted but in such cases territorial offence was neither deliberately intended to produce the death of the offended state nor intentionally produced such a result. The rescue of three attacked and threatened-of-death states (South Korea, Kuwait and Bosnia) was openly made by the United States army under the legitimating flag of the United Nations. In the fourth case (South Vietnam), the United States failed as much in military intervention as in obtaining United Nations legitimation, certainly because the Soviet Union apprehended the error committed in the Korean affair. In the fifth case (Afghanistan) the United States had to resort to covert operations and indirect intervention, and the United Nations

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[3] NATO grows toward the East with the Partnership for Peace and even to the South, as the proposal made to certain Maghreb countries in 1995 witnesses! The fact is that NATO is not a traditional military alliance. It has gradually assumed the nature of the major military instrument of the Pax Americana in the enlarged European region.

legitimation did not take the form of Security Council resolutions but of General Assembly resolutions.

Hence, despite voices of the declining inclination of the United States to provide security to all the states of the world, America takes on itself the role of the security provider of last resort (see more in Attinà, forthcoming). Still, the world faces a great alternative. Is the change in international security exclusively linked to the fact that the United States, as the hegemonic power of the international system, successfully and willingly carried out the role of the provider of last resort of the public good of international security? If this is the case, the (relative?) decline of the US hegemony and the (seeming?) decreasing willingness of the United States to play such a role (at least to the extent they have done to now), may reverse the public good nature of the international security to the traditional nature of individual good. Or, on the other hand, is this change the product of that "civilisation process" the international system is going through at an accelerated pace in these times of enhanced globalisation and role for international institutions? If this is the case, the flourishing of international cooperation on internal security is a (nother) sign of the early phase of the evolution of the world toward the "one-world state" condition and the formation of the "world government" of which certain scientists are currently debating – of course, without implying that the states and the governments of the world are going to fade-out.

5. Conclusion

The "almost perfect" condition of international security in the present world goes together with the deterioration of the condition of internal security. Such a deterioration is mainly the product of the mounting threat to public security by transnational crime organisations and the weakness of national governments to respond appropriately to such threat by national means. Beside, the consolidation of international security enhances transnational crime because the increased mutual confidence among states relaxes government controls on state borders. Finally, since the globalisation process – which is one of the essential conditions for the existence of transnational crime – is irreversible, we can expect that it will increasingly affect the conditions of internal security of all the states and bring forward its "international dimension". For a while, governments will continue making treaties of cooperation against

crime and with giving the United Nations the job of collecting and diffusing information and analysis and proposing standards and norms. However, as the European Union demonstrates with its nascent common policy in Justice and Home Affairs and the constitution of Europol, and since no internal security provider of last resort yet exists (with the imperfect exception of the role exterted by the United States in the field of international state-sponsored terrorism), it is foreseeable that the demand, which is already felt, for the attribution to international institutions of the task to police the world against transnational crime organisations will continue to grow and become urgent in the near future. The contrast between international security and internal security will, at that time, be probably smaller than it is today. However, much depends on the evolution of the state and the overcoming of the international system by the global (or "world government") system.

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