

As trademark legislation quickly evolves in China, an increasing number of successful precedential actions brought by Chinese and foreign trademark holders suggests that a commitment is finally becoming a reality. Given past progress and a true nationwide resolve, there is good reason to believe that trademark protection in China will soon achieve the international standard that it has vigorously aspired to over the past two decades.

GLOBAL ORGANIZED CRIME AND INTERNATIONAL SECURITY,
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REVIEWED BY

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Professor Emilio Viano's book begins with the following premises: globalization has "increased the profitability and destructive impact of systematic illegal activity."¹ "Transnational crime is presently one of the most serious security threats to democratic institutions, the rule of law, community welfare, and basic values and norms."² "Along with military power, law and its enforcement are indispensable integers in a transnational equation of peace."³ Each of these assertions deserves careful scrutiny in its own book.⁴ They are not examined here; this book has other objectives.

First, it aims to share research and information concerning the globalization of organized crime. Second, it hopes to analyze the effects of this globalization and of the responses initiated by states. Third, it seeks to discuss contemporary approaches and strategies to fight organized crime. Finally, it promises to "[f]acilitate understanding the complexity, methodologies, and specificities of organized crime in the contemporary "global village."⁵ Although the book does not accomplish these ambitious goals, it nevertheless contains a number of thought-provoking essays, and therefore merits a look by anyone curious about this fascinating and obscure topic.

The book consists of a series of essays by different authors loosely organized into three parts. The first part offers several essays that purport to show the outlines of the problem. The second part contains a series of "case studies," which are essentially descriptions of particular authors' research in organized crime, usually in specific geographic locales. The third part examines various public policy responses to global organized crime. This format imbues the book with a vaguely schizophrenic quality, and significantly frustrates the stated aims of the text.

"Organized crime" is difficult to define and rather difficult to research, arguably as obscure as the dark side of the moon. Perhaps even more obscure, because the moon's very existence is not contingent upon

1994, 33 I.L.M. 1125. See also *id.* at Annex 1C, 1197; Michael Yeh, *Up against A Great Wall: The Fight against Intellectual Property Piracy in China*, 5 MINN. J. GLOBAL TRADE 503, 514 (1996).

¹ GLOBAL ORGANIZED CRIME AND INTERNATIONAL SECURITY xi (Emilio C. Viano ed., 1999).

² *Id.*

³ *Id.*

⁴ Such careful scrutiny is not contained in this text. The first of these premises is unexceptional; globalization has increased the profitability and "impact" of many types of systematic economic activity. The second premise, which is ultimately the assumed conclusion of the book, is questionable. The third premise is merely an assertion of political ideology.

⁵ VIANO, *supra* note 1, at xii.

secrecy. However, as one interlocutor observed, "like the dark side of the moon, you know there is something there."⁶ Although few would deny the existence of criminal firms, the reader may remain unconvinced of the book's basic premise, *i.e.* that transnational criminal enterprises have the potential to destabilize democratic institutions, distort worldwide economies, and subvert the international order.

As we have seen in recent months, the international order is remarkably resilient, able to absorb cataclysmic attacks and continue nonetheless. Furthermore, international enterprises engaged in significant criminal activity are an important element of the *de facto* international order. These enterprises are not secret cabals plotting the destruction of economies. Rather, they consist of licit business entities, and occasionally governmental or quasi-governmental bodies, sometimes employing or acting in concert with illicit firms, which find it efficient to break the law in order to accomplish their legitimate objectives. These enterprises and the criminal activity engaged in by them are not examined in this book. Nor does this book examine the phenomenon of accommodation between criminal firms and other social institutions such as law enforcement agencies.

The exclusion of these semi-licit criminal firms may stem from the difficulty of offering an adequate definition for "organized crime." Most definitions, including that offered by the second essay, *The European Union and Organized Crime: Fighting a New Enemy with Many Tentacles*,⁷ by Monica Den Boer, focus not on defining the instance of organized crime but instead attempt to define the organized criminal. This necessary emphasis on the racketeer rather than the racket typically serves to exclude from consideration the large corporations directly or indirectly engaged in the corruption of public officials, price fixing, smuggling, the illicit arms trade, illicit waste disposal, the production of counterfeit goods, and so on. It also excludes the bankers, lawyers, and accountants who, rather than serving as an independent conscience to constrain profit-motivated criminal activity instead facilitate fraud, money laundering, and tax evasion. Unfortunately, it is not possible to address the security implications of transnational crime without exploring this dimension of the phenomenon. The book paints an overly narrow picture of the phenomenon, and consequently fails to persuade the reader that criminal firms threaten international security.

Peter B. Martin's essay, *Confronting Transnational Crime*,⁸ closes Part One. Martin asserts that criminal enterprises tend to benefit from a

⁶ Interview with Mauricio Garcia-Villegas, Professor, National University, Bogota, Colombia, in Madison, Wis. (April 2002).

⁷ VIANO, *supra* note 1, at 13

⁸ *Id.* at 25.

particular "ethnic character or signature" which paradoxically facilitates transnational penetration of the enterprise by enabling it to set up "networks of affiliation" within communities of that ethnic group residing abroad, and also makes it more difficult for outsiders to penetrate the enterprise. According to Martin, this characteristic of organized crime serves to minimize cooperation among criminal groups. Consequently, organized crime remains "more transnational than international."⁹ Martin also argues that organized criminal enterprises actively subvert civil society by laundering their illicit proceeds and investing them in politicians sympathetic to their cause, by funding and controlling (or suing) the media, and by enforcing a social order that makes citizens dependent on criminal enterprises for a variety of social goods. Martin proposes a transnational approach involving enhanced multilateral cooperation, improved intelligence gathering methods, greater jurisdictional flexibility, money-laundering investigation, and asset seizure to counter this perceived menace. Although Martin's contribution shares several of these theses with many of the remaining essays, Martin adopts the most alarmist stance in the text. "You have to know your enemy, his methods, and use them against him. We have to drop our armor of civility and fight them on equal terms if we are going to persevere and preserve our democracy."¹⁰

The tenor of Martin's warning is disquieting. In effect, Martin is arguing that unseen enemies of some particular minority ethnic group are subverting our institutions and threaten our way of life; extraordinary responses are necessary. The conclusion would be troubling even if the premises were true. Here, however, neither Martin's recycled 'ethnic' hypothesis nor his proposed criminal methodology comport with recent empirical evidence. As discussed in Donald Liddick's excellent treatise,¹¹ "the significance of ethnic background has been vastly overstated by those who continue to embrace the alien conspiracy/bureaucracy orthodoxy."¹² Also, it is not at all clear that our institutions are subverted or that our way of life is threatened by organized crime. Persistent, organized criminal firms must make accommodations with these very institutions in order to exist. Empirical research has shown that these connections to legitimate institutions are themselves the most potent force organizing criminal

⁹ *Id.* at 26

¹⁰ *Id.* at 28.

¹¹ DONALD LIDDICK, AN EMPIRICAL, THEORETICAL, AND HISTORICAL OVERVIEW OF ORGANIZED CRIME (1999)

¹² *Id.* at 22.

enterprise.¹³ If our institutions are organizing crime, it is incoherent to speak of racketeers corrupting our institutions.

Transnational Organized Crime in Spain: Structural Factors Explaining its Penetration,¹⁴ by Carlos Resa-Nestares, is an informative case study contained in Part Two. The author provides a historical overview of the activity of various transnational criminal firms operating within Spain, including Colombian, Moroccan, Sicilian, and Turkish drug syndicates, Arab arms traders, Chinese firms involved in extortion and the smuggling of immigrants, and Russian firms engaged in significant money-laundering. The author also offers an instructive list of economic, social, and legal factors that have facilitated these criminal firms' expansion into Spain. In closing, Resa-Nestares suggests that although financial crime has played an important part in Spain's recent economic growth, Spain experiences less organized criminal activity than other Western European nations. In light of the "can't-tell-the-players-without-a-program" inclusiveness of Resa-Nestares list of groups active in Spain, the assertion that Spain is less affected than other European nations seems remarkable.

With the notable exception of the extortion and protection rackets, these diverse firms, like licit entrepreneurs, are supplying goods and services to fill a demand created by eager consumers. The line between "legal" and "illegal" goods is not easy to describe in the context of tacit police/governmental approval of at least some criminal activity.¹⁵ Furthermore, the consumers and many of the active participants (lawyers, accountants, bankers, police, businessmen, and so on) are substantially involved in licit enterprises.

Also, many enterprises that provide only legal goods and services are permeated by a "gangster mentality" whereby questionable methods (e.g. price fixing, espionage, tax fraud, etcetera) are adopted in pursuit of the enterprises' business objectives.¹⁶

If our companies behave like racketeers, if our institutions participate in the racketeers' illegal enterprises, if we purchase their products, if we are all somewhat enriched by the significant economic contributions of the criminal sector, if, in short, the gangsters are us, it is inappropriately simplistic for us to fix the blame on some class of crooks

¹³ See *id.* at 40-50.

¹⁴ VIANO, *supra* note 1, at 47.

¹⁵ As University of Wisconsin Law Professor Howard Erlanger has observed, it is a bit facile for us to speak of the speed limit in a certain place being 65 mph if every driver understands that in that locale (under ordinary driving conditions) the police will not ticket anyone traveling at speeds less than 78 mph.

¹⁶ See, e.g., VINCENZO RUGGIERO, ORGANIZED AND CORPORATE CRIME IN EUROPE 71 (1996).

hell-bent on destroying our way of life. In light of the widespread demand for and occasional social utility of illegal goods and services (e.g. as a social safety valve when harsh regulations adopted in part for some exemplary or symbolic purpose frustrate legitimate liberty interests yet it remains politically impossible to modify such regulations), one might argue that the grave concern in Viano's book is misplaced.

Nevertheless, it is worth mentioning ways in which the harmful externalities of criminal activity might be minimized. The final part of the book includes two pertinent essays.

The first, *Criminal Financial Investigations: A Strategic and Tactical Approach in the European Dimension*,¹⁷ by Petrus C. Van Duyne and Mike Levi, describes the ecology of criminal funds and details the use of financial investigative techniques to research the scope of a criminal enterprise and its connections with the legitimate sphere. The second, *Repeal Drug Prohibition and End the Financing of International Crime*,¹⁸ by Arthur Bernye, proposes exactly what the title suggests. The advantages and disadvantages of such a strategy are obvious and need not be rehashed here, except to note that the markets available to organized criminal enterprises are determined by the legislatures, sometimes arbitrarily. If the social costs of a flourishing illegal sector become too steep to bear, the society has the power to eliminate the criminal sector's monopoly rents. However, it will generally be difficult to exercise that power because various entrenched institutional interests will be consistent with continuation of the criminal activity.

Perhaps no single volume could achieve all that Professor Viano hopes to achieve with this text. Regardless, that reader will be well satisfied who approaches the book as one might sample a plate of tapas, expecting to enjoy several discrete, brilliantly flavored morsels. The reader who would prefer to sit down to a complete meal and push away from the table sated by a deep, coherent overview of transnational organized crime should be prepared to look elsewhere after digesting this book.

¹⁷ VIANO, *supra* note 1, at 139.

¹⁸ *Id.* at 173.

